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THE AMERICAN COLLEGE OF TRIAL LAWYERS

Beautiful surroundings, distinguished speakers and time-honored traditions marked the College's Spring Meeting in Key Biscayne, Florida.

American College of Trial Lawyers
JOURNAL

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

American College of Trial Lawyers
19900 MacArthur Boulevard, Suite 530
Irvine, CA 92612
949.752.1801
www.actl.com

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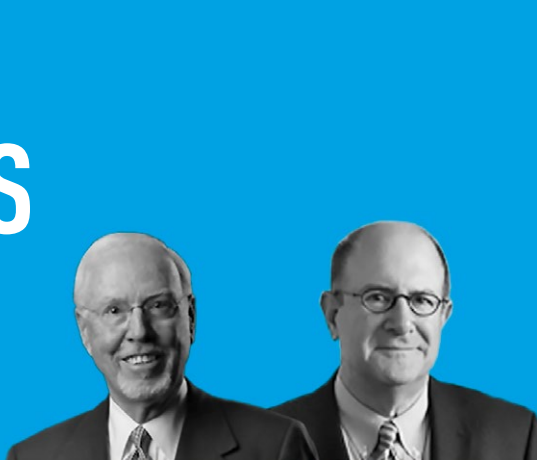


Andy Coats and Stephen Grant

The Spring Meeting of the College is always a treat, especially for those coming from the colder climes let alone the Canadians coming from the freezing climes. Key Biscayne was no exception, and we have the best of the meeting for you in this issue of the *Journal* along with a number of thought-provoking feature pieces. Needless to say, we continue to be proud of the College's pro bono efforts, some highlighted also found in this issue.

To our point, we know empirically that many Fellows attend their induction and then forgo any further involvement, a real shame for those Fellows. For one thing, the College's meetings, both Spring and Annual, offer a real insight into the workings of our most brilliant colleagues, jurists and lawyers, but as well, into society at large. We hear from captains of government and industry, those in the arts, those in humanities, those in science. It's always a thrilling eclectic mix of the famous and less famous but equally fascinating people on the world's stage in one capacity or another.

For example, a few meetings ago, we heard from a younger lawyer about his experience in repossessing for the rightful heirs Gustave Klimt's masterpiece *Portrait of Adele Bloch-Bauer,* now turned into a film called *The Woman in Gold* starring Helen Mirren. Art imitating life imitating art, looked at one way.

At the height of popularity of HBO's series *The Sopranos*, the American Psychiatric Association invited the actress Lorraine Bracco (who played, of course, Dr. Jennifer Melfi, Tony Soprano's psychiatrist) to their annual meeting to standing acclaim. The introduction essentially confirmed that she was a model analyst and the psychiatrists learned as much from her as they did anywhere.

The College meetings are no less thrilling. The speakers are models of clarity, humor and insight in all fields. To boot, the Fellows introducing the speakers have clearly mastered their chops as the introductions, too, are compelling. In short, without the slightest braggadocio, the College's General Sessions are the best legal events you will ever encounter. If you haven't been for a while or since your induction, for that matter, you may want to rethink your conference priorities.

There are civil justice developments in both of our countries. Created with our colleagues at the IAALS, the twenty-nine recommendations made in 2009 for efficient, cost-effective and accessible civil courts have gained great traction in both federal and state level courts over the last six or so years. With still more work to be done, they have now been condensed into twenty-four revised principles and incorporated into a new publication (available on the College website) called *Reforming Our Civil Justice System: A Report on Progress and Promise* calling for, among other things, "a sharp realignment of the discovery process and greater court resources to manage cases." Fellow **Paul C. Saunders**, Chair of the ACTL Task Force on Discovery and Civil Justice and his colleagues on it, should feel justly proud of their work. The report is more than a worthwhile read, it is an essential read.

Developments north of the forty-ninth parallel are in train, some heralding better and more effective processes for litigants and counsel such as the Ontario Civil Practice Court, while other initiatives are speeding along alternate dispute resolution lines without lawyers at all and barely without judges. The British Columbia Civil Relations Tribunal is to be launched later this year. Our London counterparts are also hearing from IT guru Richard Susskind (author of *The End of Lawyers? Rethinking the Nature of Legal Services*) about the HM Courts & Tribunal Services in which "solicitors will inevitably be phased out of low-value claims" and where facilitators, not necessarily lawyers, will work with "litigants to prevent their dispute going any further, with judges ruling online – possibly through videoconferencing – for cases that cannot be settled." The move toward an adapted version of this approach is taking hold in Ontario, accelerating the replacement of legal professionals with technology.

As trial lawyers, we certainly live in interesting times.

Andy Coats/Stephen Grant ■

2015 SPRING MEETING HELD IN KEY BISCAYNE, FLORIDA

The College's sixty-first Spring Meeting was held in Key Biscayne, Florida, from February 26, 2015 through March 1, 2015 at The Ritz-Carlton Key Biscayne. Nearly 600 Fellows, spouses and guests attended, and eighty-two new Fellows were inducted.

The General Session on Friday morning started with an invocation from Florida State Vice Chair **Patricia E. Lowry.**

Secretary Designate **Jeffrey S. Leon**, LSM of Toronto, Ontario introduced the meeting's first speaker, Dr. **Samantha Nutt**, founder of War Child, an organization whose mission is to help children reclaim their childhood though access to education, opportunity and justice. She told Fellows that as lawyers, their skills are vital in countries where legal mechanisms have remained elusive for women and children living in war zones.

Foundation Trustee **Alan G. Greer** held a question and answer session with University of Miami President **Donna E. Shalala**. She provided her thoughts on issues pertaining to higher education including costs, social media, sexual harassment and fundraising. She ended by saying she is "stepping down to help her friend run for president."

Past President **Thomas H. Tongue** of Portland, Oregon introduced Dr. **Gordon B. Mills**, Professor and Chair of the University of Texas, MD Anderson Cancer Center. He spoke on personalized cancer therapy where it includes targeting the genetic changes specific to each patient's cancer.

Past President **Gregory P. Joseph** of New York, New York introduced the professional program entitled "NSA Surveillance: Listening In." The panel was moderated by Fellow **Lawrence S. Lustberg** and included panelists **Alex Abdo** from the American Civil Liberties Union and **Stewart A. Baker** from Steptoe & Johnson, LLP.

Past President **Joan A. Lukey** of Boston, Massachusetts introduced Friday's final speaker, **Kathleen Sebelius**, 21st U.S. Secretary of Health and Human Services. She spoke on changes in healthcare since the signing of the Affordable Care Act nearly five years ago.

Top honors from the golf tournament at the Trump National Doral's Silver Fox Golf Course went to **Stephen G. Schwarz** for the men's longest drive and **Peter A. Sachs** for closest to the pin. The winning team with the score of 65 consisted of **William B. Jakes III**, **Steven A. Allen**, Kendall Allen and **Gayle Malone, Jr.** The winners of the tennis tournament at the Ritz-Carlton's Cliff Drysdale Tennis Center were Former Regent **Trudy Ross Hamilton** on the ladies' side and the Honorable **William J. Kayatta, Jr.** on the men's side.

Saturday's General Session was opened by Past President **Ralph I. Lancaster, Jr.** of Portland, Maine, who introduced Judge Kayatta, a former Regent before he was elevated to the bench. He gave his perspective as a trial lawyer becoming an appellate judge.

Past President **Chilton Davis Varner** of Atlanta, Georgia introduced **William C. Hubbard**, president of the American Bar Association and a College Fellow. He spoke on how technology is changing the practice of law, calling on Fellows to think of "disruptive innovations," to identify new models for delivering legal services.

Past President **E. Osborne Ayscue, Jr.** of Charlotte, North Carolina introduced Chairman, President and CEO of Dominion Resources, Inc. **Thomas F. Farrell, II**, who spoke on the energy issue in the U.S., that despite its flaws and strengths, many countries around the world long for what the U.S. takes for granted, "the simple luxury of a monthly bill."

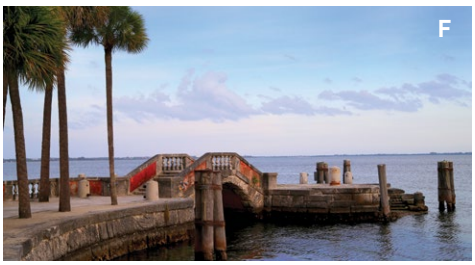
Fellow **DeMaurice F. Smith** of Washington, DC introduced the session's final speaker **Frank Cerabino**, columnist for the *Palm Beach Post*. He humorously recounted his coverage of the 2000 presidential election and the hanging chad issue that ensued in Florida as well as his run-ins with Donald Trump.

A luncheon program for inductees and their spouses or guests followed Saturday's General Session. President **Francis M. Wikstrom** of Salt Lake City, Utah ▷

Thursday evening's President's Welcome Reception at Villa Vizcaya, the former estate of businessman James Deering of the Deering McCormick-International Harvester fortune, offered attendees a way to mark the beginning of the three-day event with cocktails and hor d'ouevres against the backdrop of Biscayne Bay. The first Women Fellows Luncheon held at the Wilkie D. Ferguson, Jr. U.S. Federal Courthouse gave women Fellows the opportunity to join the Honorable Patricia Seitz, a U.S. District Judge for the Southern District of Florida, and her judicial colleagues for lunch and a tour of the courthouse. The catamaran sailing tour allowed sea farers a chance to enjoy the scenery along the tropical blue waters.

presided while Past President **Mikel L. Stout** of Wichita, Kansas explained the selection process to inductees, their invitation to become part of the fellowship and the history and traditions of the College.

Saturday night's grand finale to the Spring Meeting began with the traditional induction ceremony, followed by a banquet, dancing and the time-honored sing-along. **Doris Cheng** of San Francisco, California gave the response on behalf of the eighty-two new Fellows. After remarks from Wikstrom, Fellows, spouses and their guests enjoyed the live band and camaraderie of another treasured College gathering. ■



A | *Rob and Fellow Cynthia Grimes, San Antonio, TX*

B | *Treasurer Bart and Eileen Dalton, Wilmington, DE; Ann and Judge William Kayatta, Portland, ME*

C | *The Past Presidents face the inductees while Past President Stu Shanor, Roswell, NM, reads the induction charge.*

D | *Federal Civil Procedure Chair Hank and Pam Fellows are set for the open road*

E | *Mary Beth and Fellow Dave Johnson, Pittsburgh, PA*

F | *Clear view of Biscayne Bay from Villa Vizcaya*

G | *Thomas P. and Regent Liz Mulvey, Boston, MA*

H | *President Fran Wikstrom shows Fellows proper form on a Harley*

I | *Capturing the moment at the Inductee Luncheon*

J | *Ready for some good rallies*

K | ***Front row:*** *Leann Stout, Ellen Shanor, Nancy Muenzler, First Lady Linda Jones*
Back row: *Past Presidents Mike Stout, Wichita, KS; Stu Shanor, Roswell, NM; Andy Coats, Oklahoma City, OK; President Fran Wikstrom*

AWARDS & HONORS

David J. Beck of Houston, Texas was selected as one of six 2015 recipients of the Texas Bar Foundation's Outstanding 50 Year Lawyer Award. The award recognizes attorneys whose practice has spanned fifty years or more and who adhere to the highest principles and traditions of the legal profession and service to the public. The Bar Foundation commissioned an oral history to recognize and preserve the accomplishments of Beck's legal career. Additionally, he will be publicly recognized at the Texas Bar Foundation Annual Dinner held on June 19, 2015 in San Antonio, Texas. Beck has been a Fellow since 1982. Beck served as President of the College. He currently serves as President of the Foundation and chair of the Retreat Planning Committee.

Thomas L. Shriner, Jr. of Milwaukee, Wisconsin was selected to receive the 2015 American Inns of Court Professionalism Award for the Seventh Circuit. The award was presented in May at the Seventh Circuit's Annual Judicial Conference. The award is given in participating federal circuits, to a lawyer or judge whose life and practice display sterling character, unquestioned integrity and dedication to the highest standards of the legal profession. Shriner has been a Fellow since 1995. He has served as chair of the Wisconsin State Committee.

FELLOWS TO THE BENCH

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

Mary Gordon Baker
Charleston, South Carolina

Effective January 2015
U.S. Magistrate Judge
District of South Carolina

.....

J. Michal Fairburn
Brampton, Ontario

Effective January 7, 2015
Superior Court of Justice

W. Danial Newton
Thunder Bay, Ontario

Effective December 11, 2014
Superior Court of Justice

.....

Collins J. Seitz, Jr.
Wilmington, Delaware

Effective March 2015
Justice
Supreme Court of Delaware

The College extends congratulations to these newly designated Judicial Fellows.

THE WORLD NEEDS MORE LAWYERS: LEGAL PROCESS BEST DEFENSE AGAINST TYRANNY, ABUSE

Canada offers many gifts to the world stage: hockey, cold weather, back bacon, Saturday Night Live and the College's Past President **David W. Scott**. Dr. **Samantha Nutt** is also one of those gifts. "How can you not want to listen to somebody who is about to tell you that what the world needs is more lawyers? Or, as she has put it in another context, 'This Christmas, give a lawyer instead of a goat,'" said Secretary Designate **Jeffrey S. Leon**, LSM of Toronto, Ontario in his introduction of her at the 2015 Spring Meeting in Key Biscayne.

She has traveled to many of the most violent and lawless places on Earth confronting extreme danger and brutality. She has provided hands-on medical care to women and children in war-torn and socially devastated areas: Iraq, Afghanistan, Somalia, the Congo, Sierra Leone and Darfur.

Nutt, the founder of War Child, is an advocate for peace and justice and a believer in the rule of law and the importance of creating access to justice as a response. She has been recognized with two of Canada's highest civilian honors: the Order of Canada and the Order of Ontario. She was named one of Canada's 25 most influential figures by the *Globe and Mail* and one of Canada's five leading activists by *Time* Magazine.

DISRUPTING THE CLIMATE OF IMPUNITY

"I have asked myself many, many questions, and I have drawn a few conclusions about what it is that the world really needs, and about how it is that we might prevent the ongoing abuse and the abhorrent rape of women and children, and the stubborn, insidious slaughter that is unfortunately so common in so many of the world's war zones. I hope to share some of those lessons and experiences with you and talk about what it is that I think all of us here might do to disrupt this climate of impunity. Frankly, it is a conversation that could not be more oppressing. All of us who follow the news, we know that in the past few, very short years, there has been a very violent and brutal war in Syria—the rise of ISIS, the collapse of Libya and South Sudan, the emergence of Boko Haram and many other militant groups across Africa, the ongoing violence of Afghanistan and Yemen and Pakistan, and not to mention the threats that this lawlessness and insecurity in other corners of the world present to those of us living here, as well, and to the world at large. What is undeniably evident, no matter which political divide you manage to find yourselves on, is that not all of the world's problems can or will be solved militarily," Nutt said.

These problems cannot be solved with the usual approaches to humanitarian aid like food, blankets, tents, food distributions and earnest doctors. "Something more is clearly needed…. the world really does need more lawyers.

"There is perhaps no more compelling place to begin this conversation than in the eastern Democratic Republic of Congo, formerly called Zaire. The horror, frankly, has never ceased in this country made famous by Joseph Conrad. Over the past seventeen years, more than five million people have perished as a result of the war in the eastern DRC, the vast majority of those have been women and children. It is considered to be the worst war in terms of the numbers of civilians killed since World War II, and yet we hardly hear anything about it. Roughly thirty percent of those who are fighting in the eastern DRC are children under the age of eighteen."

Lawlessness and impunity have continued in the Congo in spite of "more than two reasonably Democratic elections that were internationally monitored; despite more than 17,000 United Nations peacekeepers in the region; despite billions of dollars spent on humanitarian assistance; and despite many high-profile prosecutions that have taken place at the International Criminal Court of some of Congo's rebel leaders."

The elusive nature of local justice and legal mechanisms to protect women and children "creates the kind of accountability vacuum that gives perpetrators every conceivable advantage, with deadly consequences for those young women and girls living on the front lines." ▷

QUIPS & QUOTES

I am not a lawyer. I am a medical doctor. I have spent the better part of the last twenty years working in various zones of armed conflict with women and children. Even though I am not a lawyer, I do, as it happens to turn out, have a couple of honorary doctorates in law. But it seems that those are entirely token in nature—something that they don't tell you before they ask you to give the free speech.

Samantha Nutt

NADINE'S STORY

Nadine's story "is a story that she very much wanted the rest of the world to hear. I truly believe that it is only in confronting the truth about some of these atrocities, with allowing ourselves to be discomforted by them that we are truly capable of the kind of empathy that provokes social change."

Nadine was in her early teens when she approached Nutt, who at the time was working in the back office of a War Child-supported rehabilitation center in eastern Congo in a town called Bunagana, right along the Rwandan border.

Frantically writing a report, surrounded by her computer, cell phone and bottled water, "all of these privileges we take for granted, Nadine knocked on the door and she asked if she could come in and sit down. Sitting across from me, this young girl explained how she had been in her village. She had been quite sick with malaria when her mother handed her the money that she needed to walk into town to purchase medication. So Nadine set off on this busy road into town. It was a couple of miles to walk. As she did this, she was surrounded by three young boys. They were former Mai Mai militia. They had been demobilized, their guns taken away from them. But they had been sent back to communities who had very few programs for them and they joined some of the Congo's many roving gangs. These young boys surrounded her, they pinned her down and then they took turns raping her.

"When she got up to run, one of them pulled out a hunting knife and then proceeded to slice off the soles of her feet. She passed out, and was eventually picked up by some young school children, different boys, who helped her wash her clothes. They carried her home.

"Nadine didn't ever tell her mother what had happened to her, because in Nadine's community, young girls who are raped and young girls who are exposed to HIV have absolutely no hope of ever getting married. In her context, that can sentence her to a lifetime of poverty and social isolation. I looked at the scars on Nadine's feet. As a physician, I can tell you, I was amazed that this young girl could walk. She must have been in so much pain with every step that she took. One month after I had this conversation with this young girl, on the same road into town, she was raped again. There are, without exaggeration, hundreds of thousands of young girls and women and even young boys who have been brutally sexually assaulted in connection with the war in that country, even in areas where the war has officially been declared over."

VIOLENCE CENTERED ON MINERAL WEALTH

In order to truly understand the crisis "you should also consider what is underneath it, underneath Nadine's scarred feet, in the Congo's rich volcanic soil, and hidden within its lush forests. The entire Eastern Congo, in addition to being the epicenter of this war, is not coincidentally, also the epicenter of Congo's vast mineral wealth – things like tin, tungsten, copper and gold, and a little known mineral called coltan."

Coltan, a conducting element that looks like black coal, is used in cell phones, computers and video games in order to make electronics run faster. "The Congo contains the world's eighteen largest coltan deposits, accounting for between sixty to eighty percent of the world's coltan. It is readily smuggled across the Congo's borders, especially with Rwanda, which has been actively backing the M23 rebels. It generates, every year, hundreds of millions of dollars for Congolese military groups, mercenary groups and rebel groups who are operating in this climate of impunity, and who are not invested in reaching a resolution to this crisis."

Doctors who have been treating young women like Nadine at a referral center in Bukavu undertook a study a few years ago. The doctors asked these women where the rape had taken place. They plotted locations of those rapes on a map. They took the map of the mining areas, and they put the two together. "They found that consistently across the eastern Congo, the closer you got to those mining areas, those mining areas that are a magnet for military groups, rebel groups and other war profiteers because of the money to be made from, the higher the rate of what is called 'rape with extreme violence' which, by definition, involves gang rape and the amputation of parts of a girl's anatomy. This is exactly what Nadine experienced."

The afternoon she and Nadine were talking, she said "painful words to hear. They are words that I reflect on very often. But she turned to me, we were speaking in French, and she said, 'Tout ceci pour toi.' 'All of this is for you.' 'Nous morouns pour rien.' 'We die for nothing.'

"Young girls like Nadine seek and desperately long for justice, an end to the climate of impunity that ruins their

lives and restricts their movements and makes it even impossible for them to go to school, which robs them of their futures, as well. Is there a role here for the rule of law and access to justice as part of an integrated humanitarian response? Some would say, 'I don't know.' Some would say 'That is wishful ideological thinking.'"

The Congo, a place rife with corruption, has very few judges, no qualified lawyers, police who can be bribed and a government implicated in atrocities against its own people. War Child, offers a starting point where change can begin.

LEGAL PROTECTION IS A MULTIFACETED APPROACH

War Child Canada and War Child U.S.A. work with half a million children and their families every year, protecting them in war zones with programs that support education, justice and economic opportunity.

"Legal protection, in the most basic sense, requires a multifaceted approach involving multiple levels of government, as well as legal and social community services. It is about lawyers and judges, about prosecutions and defenses, about rehabilitation and incarceration. But it is also about schools and teachers, social workers, the police, civil society, governance. It is a continuum—and this has not changed, even in the most complex humanitarian environments."

For young girls like Nadine, access to justice, in a place where the most basic infrastructure does not exist, means, "quite simply, mobilizing those grassroots agencies in her community, and strengthening their capacity to respond with training and resources. It means, in the absence of judges and formal legal procedures, engaging in community-based mediation and reconciliation so the disputes can be resolved peacefully and reducing the stigma that far too many survivors experience. It means reaching out to hard to access communities in the middle of that violence to foster a rights-based culture. It also means enhancing the number of safe spaces, such as in schools and community centers, that women and girls can access. It is work that is face-to-face, village-to-village and, on some occasions, lawyer-to-lawyer."

The effort works, as evidenced by War Child's longest-running access to justice program is in Northern Uganda. The pilot program began more than ten years ago. "Just to give you context to this conflict, a war that from the late 1980s until about six years ago, displaced millions of people from their homes; resulted in the loss of hundreds of thousands of lives. More than 30,000 children were abducted by the Lord's Resistance Army, which was run by the self-declared prophet, Joseph Kony, who is indicted by the International Criminal Court on war crimes but who remains at large.

"Even as the war began to wind down in northern Uganda, it remained a lawless abyss where its sexual predators continued with impunity, not dissimilar to what we are seeing in eastern Congo. This is a very traumatized population where all of the social norms had broken down. Disputes were settled with aggression. There was one judge. That judge would routinely throw out rape cases if the victim was wearing a skirt that landed slightly above her knee. Few foreigners are familiar with the rule of law, or how it applied to them, or how they might seek legal redress. Against this backdrop, War Child began its access to justice work."

They started by training and by creating manuals developed by Canadian and American legal aid experts in conjunction with local Ugandan lawyers. Local lawyers and paralegals were recruited to begin casework. A legal aid clinic, financed by international donors, was opened and run by northern Ugandans. "Those trainers would go out into communities. They would identify volunteers. Many of those volunteers were people who had survived sexual violence themselves. They would act as focal points within those communities for people who needed support. Then they would refer these people to legal services."

War Child also invested in a rights-based radio program that reached more than two million households and was ▷

QUIPS & QUOTES

What I have learned in the most painful and haunting of ways is that children aren't just dying in war. They are living in war, as well; tens of billions of them: exploited, abused, displaced and separated from their parents and forced to commit extreme atrocities. What they ask of us, what they deserve more than anything else, is our protection as an international community.

Samantha Nutt

a vital tool in shaping public understanding on the rule of law. "All these initiatives fostered accountability and understanding instead of impunity." Within two years of launching this pilot program, War Child was processing tens of thousands of cases. It was the only legal aid resource in the entire northern region, which serviced millions of poor, affected people.

In the next three years, War Child plans to expand into the Syrian region and to Iraq. The lawyers and paralegals in War Child's programs are all local. They go out into communities and work with local officials and elders. "They have helped war-ravaged populations understand the ways in which the rule of law applies to them, and they have worked with these people to settle their disputes. It isn't easy. I won't lie. Depending on the context, the rule of law can be subverted without much difficulty from country to country. The goal is not to replicate western models, which would be far too ambitious. The goal is to move the dial forward by investing in those local advocates and those local human rights activists who are the ones who set the pace.

"None of the ways that we monitor our progress speaker louder than this: our team in northern Uganda, which consists of all war-affected Africans, has now extended its operations to include work with refugees fleeing the violence in south Sudan. That team, whenever they go into communities, now receives a spontaneous standing ovation from those war-affected populations, not because of what they do, but because of what they represent: Change, instead of charity."

However, programs that seek legal redress are necessary and vital to breaking the cycle of impunity, "a very tough sell…. The hard truth is that people want to do what is easy, even if it is at the expense of what is best, even if it contributes to aid-dependency around the world. They have good intentions. They want to build schools, they want to send blankets, they want to buy goats, and they want to sponsor children. But all of you here in this room, you understand why programs that offer legal redress matter. They matter because there cannot be peace where impunity pervades, and there cannot be stability where justice remains elusive."

Despite the flaws in the U.S. and Canadian court systems, "we cannot forget these processes are still our best defense against tyranny and abuse. It is Nadine's best defense, as well. Peace, after all, is impossible without accountability."

REAL CHANGE MEANS LONG-TERM INVESTMENT

Financial support is an easy way to help "if you want to see your money well managed, give a small amount of money on a regular basis. Or give a large amount of money, if you are so inclined. But the regularity of it is what is critically important."

About two years ago Nutt traveled with a group of trial lawyers to visit the access to justice program in northern Uganda, to look at the processes and procedures and to make recommendations on how to improve those efforts. They initiated what is called Advocates for War Child, a program Nutt asked the College to consider participating in.

"The best development work is about investing in those local partners, not flying in external experts, except to improve that local capacity and to maintain those kinds of partnerships. The emphasis can and must be on the work that is being done by those local partners, and making that work possible. Our role, no matter what qualifications we possess—doctor, lawyer—should always be to support and to facilitate, but never to usurp, because that simply isn't sustainable.

"What I have learned in the most painful and haunting of ways is that children aren't just dying in war. They are living in war, as well; tens of billions of them: exploited, abused, displaced and separated from their parents and forced to commit extreme atrocities. What they ask of us, what they deserve more than anything else, is our protection as an international community. Because like all children everywhere, they must be able to walk without fear of abduction; they must be able to without fear of rape; and they must be able to play without fear of enslavement. It is within our power to affect change here. So you see, the world really does need more lawyers. In fact, peace would be impossible without you. I hope that you will work with us to help make that a reality." ■

PERSONALIZED CANCER THERAPY FACES SEA OF CHALLENGES

Dr. **Gordon B. Mills**, a Canadian native, was recruited by the University of Texas MD Anderson Cancer Center, the world's largest cancer research center, in 1994. Today, he holds joint appointments in the Department of Systems Biology, of which he is the Chair, in Breast Medical Oncology and in Immunology. He is also the Director of the Kleberg Center for Molecular Markers and of the Institute for Personalized Cancer Therapy.

Originally from Alberta, Mills received his medical degree from the University of Alberta in 1977, and his Ph.D. in Biochemistry in 1984. From 1984 to 1994, he taught at the University of Toronto and the University of Western Ontario and served on the staff of Toronto General Hospital. His work in the fields of oncology, immunology and obstetrics and gynecology prompted MD Anderson's search committee to seek him out. The relationship among these at first glance disparate fields became apparent in the course of his address.

"All us wonder from time to time whether we are really making a difference," observed Past President **Thomas H. Tongue** of Portland, Oregon in his introduction of the speaker at the College's Spring Meeting at Key Biscayne. "Dr. Mills never need wonder," Tongue continued, "He makes the world a better place every day, every year."

"What I am going to do today," Mills began, "is take you through some of the things that are happening in personalized cancer therapy and personalized medicine to give you a background for the way in which science and patient care is changing."

Noting that MD Anderson cares for over a hundred thousand patients at any one time, Mills said that the area he would address will influence the outcomes for over 30,000 of its patients. He described his job as much more that of an engineer, determining how to manage a process for 30,000 patients, than it is in delivering to the patients before him. That process is the use of analysis of the human genome to devise patient-specific treatment of cancer.

HISTORICAL PROGRESS IN CANCER TREATMENT

Mills traced the progress of cancer treatment beginning in1953, the year of his birth, when the five-year survival rate for cancer was only thirty percent. By 1971, when the National Cancer Act was enacted, the five-year survival rate had increased to fifty percent. There were three million survivors in the United States. In 1990, the mortality rate actually started to decrease. It had been going up constantly per hundred thousand individuals at that time. The number of cancer survivors has risen to where there are now about 14.5 million five-year survivors. 2003 was probably a watershed moment; the absolute death rate from cancer actually started to decrease; not in percentages per hundred thousand individuals, but simply in actual numbers. In 2013, the last time there were reasonable statistics, over two thirds of patients were living at least five years after a diagnosis of cancer.

"That is a wonderful step," Mills said, "[but] it is not where we want to be. That number is still not acceptable."

QUIPS & QUOTES

Indeed, I am surprised, given all of the things that can go wrong in our genes and genetically, that any of us exist.

Gordon B. Mills

THE CURRENT APPROACH TO CANCER TREATMENT

He noted that "personalized medicine" has been used to describe the current approach. He explained that conceptually each individual cancer patient is different, with a different genetic background, different genetic changes in their tumors. "We need to look at the right dose of the right drug for the right medication for the right patient the first time. It is not the right time but in cancer care, it is the first time that we see the patient that we have the opportunity to make the greatest impact."

Quoting a fellow Canadian that, "If it were not for the great variable among individuals, medicine might as well be a science, and not an art," Mills noted that individualization, personalization, was talked about way back in the 1890s. What has changed is that in the past, this was done empirically, by observation of the patient. "Today," Mills explained, "we have the tools to do it scientifically, functionally."

As he went on to explain, the door to being able to do this was opened by the Human Genome Project. In ▷

President Obama's 2016 budget proposal is a provision for funding a Precision Medicine Initiative, a concerted, sustained effort by the National Institute of Health, the Federal Drug Administration and the Office of the National Coordinator of Health Information to implement personalized cancer therapy, personalized medicine with the major emphasis relating to personalized cancer therapy. The goal is more and better treatment for cancer. This involves the creation of a voluntary national research cohort, where over a million cancer patients are going to be asked to donate their genetic information, both their own and that of their tumor, the product of genetic changes, into a repository that then can be mined to give researchers more information about what is going on.

"There is," Mills remarked, "no regulatory process in place and active in this area. It is just emerging and changing, and it is of major importance." He noted that this will be a public-private partnership with a commitment to protecting privacy, an issue with legal and moral implications to which he later returned.

In an aside on the terms used to describe this new effort, Mills noted that "personalized medicine," personalized care, is a concept that physicians have long felt they were furnishing to their patients. The use of this term to refer to therapy driven by the molecular characteristics of the tumor in an individual patient is probably producing some confusion. He suggested that there is therefore a strong emphasis now on the use of the term "precision medicine," a term whose use he prefers to describe giving each individual patient more precise therapy, driven by the molecular characteristics of the patient and the patient's tumor.

QUIPS & QUOTES

Personalizing medicine is personalizing care.

Gordon B. Mills

THE FIRST STEP—STRATIFIED THERAPY

"Where we really are today," Mills continued, "is at stratified medicine. . . . [R]eally, we are not able to treat each individual yet with a separate therapy; but rather, we are developing ways to look at more and more homogenous groups of patients that are alike . . . that develop therapies that are much more effective, based on that process. And the final concept is "N of One" [a clinical trial involving only a single patient]. Each patient is different. They need to be treated and managed differently, and that really is a goal and aspiration, but not where we are today."

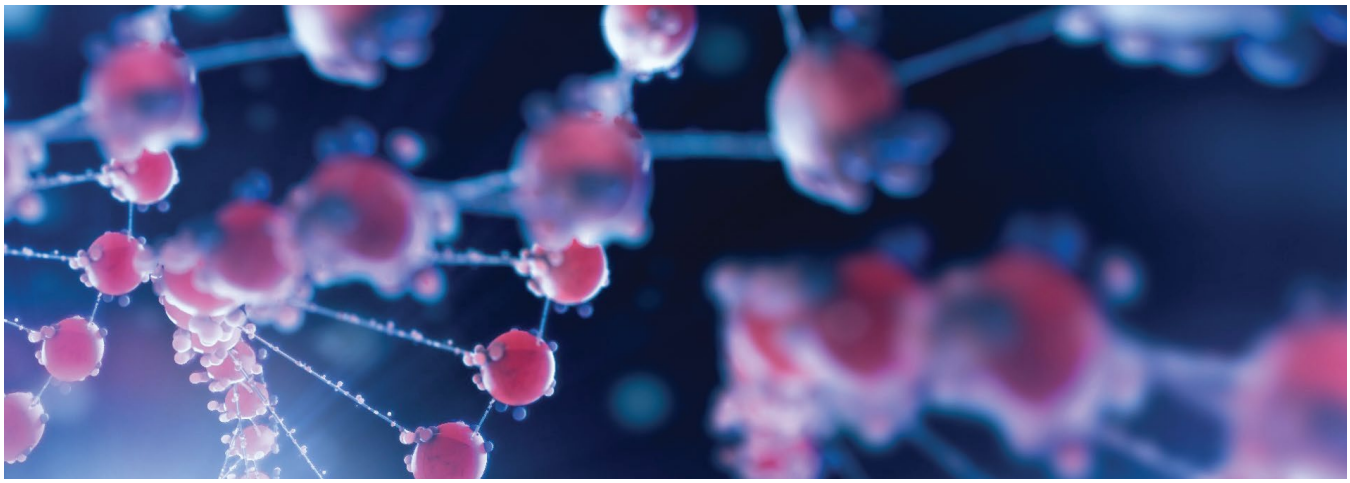
Mills went on to describe "stratified medicine," the current approach in the absence of present ability to deal with the fact that each patient is different. "If many patients have a diagnosis of breast cancer, they are going to fall into three groups. One of those groups is going to have a great response to current therapy or a combination of drugs, and they should receive what we are doing today. We are very successful with the therapies we have. There is going to be another group, though, that really are not going to respond to our standard therapy. They need either new drugs or a change in therapy. We need to be able to identify those patients much earlier. And then, finally, there is going to be a set of individuals where the drugs that we use today are toxic. They have something in their own genome that changes the way in which they metabolize the drugs, and they will get sick from them. So we will need to change based on this.

"The whole idea of personalized molecular medicine is being able to identify these individuals and manage them, based on this idea and concept, before we give them the drugs empirically, as we have done in the past. Really, the concept is, 'Which drug for you, at which time?'"

THE IMPACT OF INDIVIDUAL GENOMES

"In the past, all of our drugs were given in a single dose. You got the same dose as everyone else. It worked, but for about eighty percent of the drugs, we know that most individuals were receiving a non-optimal dose, either too much or too little, because of changes in their own genome and the way they dealt with drugs."

To illustrate this, he asked the audience how many were coffee drinkers. He then asked which ones had to stop drinking coffee about ten o'clock in the morning and how many at noon. "So you can't sleep. You are slow accelerators. You metabolize the caffeine in the coffee differently. I am a slow accelerator, so that means that one single change in your genome, one nucleotide, one amino acid change, is how you metabolize the caffeine. Now, it turns out that it may have a benefit, because you also have a very slight, but real, decreased chance of developing bowel cancer, because the same enzyme metabolizes other events. So what we are looking at



here is understanding, not just what is going on in the cancer, but in your own genome in a sufficient depth to be able to personalize what drug and what dose you should receive."

THE HUMAN GENOME PROJECT

Mills then explained that all of this is based on information that came out of the Human Genome Project, and its progeny, the Cancer Genome Atlas Project, in which he has played a major part. "The most exciting information from this is that there are only 30,000 genes; when this started, we thought there were millions. 30,000 is a number we can deal with. It is a set concept that we can go ahead and characterize now in breadth and depth, everything that is happening in an individual and their tumor in a way we had never done before.

"If we look at it in more depth, there are about three billion nucleotides [one of the structural building blocks of DNA and RNA]. The base pairs of that are the genetic code. Each individual will have, when we sequence their genome, about a hundred new variations we have never seen before. And the difference between any two individuals in this room is about three million in nucleotides or genetic changes. That is only point one percent of your complete genome. However, that genetic variation determines your risk of disease and the risk that you will have challenges with [using] the drugs that we are talking about.

"So we now have a new revolution. With computing sciences and the technology that came out of the Human Genome Project, we are now able to start to talk about a thousand dollar genome, being able to sequence every single nucleotide, every single gene you have [as a cost] in the thousand dollars range. That's not the charge if you were to go to a doctor's office. Further, it is going to cost about a hundred thousand dollars for any individual to figure out what that means. The complexity of this is still a challenge. So the thousand dollar genome may be here, but it is not yet useable for most of the things that we are doing."

CHALLENGES OF THIS NEW KNOWLEDGE

"The cancer that we are talking about today is a disease of genetic change. There are hundreds of genetic changes per tumor, and we are in a sea of challenges. However, right now, we only have a few of those that we can act upon. And so, many of us are focusing on what is called the 'actionable genome.' We need to know what we can do something about in your cancer and nothing more. . . . The other major problem that we have in cancer is that there are many different clones; every cell is probably different. We are going to have to figure out how to analyze that and how to deal with it as we move forward. We have a new opportunity, going from very blunt instruments of chemotherapy, radiation therapy, to understanding the genetic aberrations that are present in the patient's tumor at a sufficient breadth and depth to really go after why that tumor is there, and use that as a target.

"Indeed, we think that the tumor cell is much less robust than a normal cell in the body. The genetic change itself that led to it becoming a tumor makes it less strong, less robust. And indeed, I am surprised, given all of the things that can go wrong in our genes and genetically, that any of us exists. Our systems must be robust. I mean that caffeine that I drank this morning, if I put it into a tissue culture dish with tumor cells, they would all die. My body is able to deal with that because of robustness. Cancer cells have lost this, and [knowing] this is an opportunity for us to move forward." ▷

DEVELOPING DRUG "TOOL KITS"

"The other thing that is exciting is that we finally have a drug tool kit. The industry is investing about $20 billion a year in building drugs we can use to help our patients. And indeed, we may be entering a perfect storm where we can finally let the patient teach us and personalize our care by looking at what is going on in their tumor and having the drugs to treat those changes. . . . We now have over thirty drugs that are approved that target events that are specifically occurring in the cancer cell in the way I have been talking about. Now, one of the disappointing parts of this is that it takes usually twenty to thirty years from when we discover a target to when we have a useful drug. What has happened recently, though, is that with that drug library, we have had cases now where we have discovered a genetic abnormality that drives a tumor and had a drug approved within four years.

"But that drug development pipeline is still challenged. It is very slow. We have a high failure rate. Indeed, five percent of the drugs that enter the clinical trials are ever shown to be useful for patients and thus enter into the standard of care. I am going to be able to improve that, I hope, from what I have been talking about, characterizing what is happening in each patient, finding the right drug for the right patient, instead of trying to treat all patients the same way and having only a few patients benefit. It is a challenge."

STRATIFIED MEDICINE

"Can we really achieve personalized therapy? We have an 'N of one' problem with the way we develop drugs. The way in which we regulate drugs really precludes us saying, 'I want to use this drug for this patient.' We need to have clinical trials to show efficacy, and that means lots of patients. So we are looking at probably precision medicine, stratified medicine, as I mentioned before, but that has its own problem.

"Breast cancer, the most common cancer of women, the one that I work on, is found in a single type of disease that ten years ago we called ductal breast cancer. We now know that breast cancer has eight different subclasses that matter. Some of them are now so uncommon, but important, that we can't do the clinical trial to prove that your drugs work. By the way, breast cancer is the poster child: for the last fifteen years, a two percent improvement in outcomes, in cure rates, compound interest, and it is not slowing down. And that is coming to a major degree, because we treat each of these diseases separately. So this is working."

WHERE WE ARE HEADED

"We now have approaches where we can go in and characterize the patient's tumor, treat that patient's tumor. Hopefully, it won't come back, but when it does, we repeat that process and then repeat it again. Some of my colleagues call that a 'whackamole' approach . . . . If we whack that mole and it doesn't come back and you survive your disease with relatively nontoxic therapy, even though there are a number of rounds, that is a great step forward. Hopefully, we are going to move beyond that to whacking it the hard way the first time, and it will never come back.

"Now, we have a major problem. We are hearing about education and education processes. My colleagues who trained when I did had never heard of personalized cancer therapy. They had never heard of any of the genes that we target, and the methods and the messages that we need to move forward are very complicated. So we have to educate our physicians in how to manage patients and how to move this forward. It is a major challenge. At the MD Anderson Cancer Center, we have developed a web page which is now available and used around the world, telling you what is going on with all of these genetic defects and what one can do with them. So we think there is a major opportunity for education of patients, of physicians, to move this forward, and this is a critical part."

QUIPS & QUOTES

So what is the balance between the right to privacy and the need to inform? Who gets to make those decisions? These are worries about becoming preexisting conditions that could influence insurance and employment, health care and other approaches. Now, we have a law in Texas. It is the most aggressive and nasty in the country for protecting individuals from this type of discrimination. I actually testified and helped script that law, and it was an extremely interesting process, to deal with the Legislature of Texas. I learned a lot. It is not the same. It is a little more rough and tumble than what we saw in Canada. I could use a lot worse terms, but that one is safe.

Gordon B. Mills

THE ETHICAL DILEMMA OF COLLATERAL INFORMATION

Mills then addressed one of the unexpected consequences that he terms perhaps the most challenging part of this process. "When I look at a patient's tumor and I want to know what genetic changes are in that patient's tumor so that I can then treat that patient's tumor appropriately, I am also going to see what is going on in their own genome, in their germline, the genes that they inherited from their parents and that they are going to pass on to their children. These are called incidental or secondary results, the things that I learned because I was characterizing the genome, but not what I was looking for, and I can't not see it. And that means that we are going to have information about you, about your risks of developing disease, about your risks of developing cancer, your risks of developing things we can prevent, like hypercoagulability [abnormal increased tendency towards blood clotting], things that we can work with, like pharmacogenetics [inherited genetic differences in individual response to drugs], such as the caffeine I talked to you about.

"We are also going to learn about diseases we can do nothing about, such as Alzheimer's, and the question that comes out of this is, 'What should I do with this information?' It not only affects you, my patient, but every family member and every person you are related to. So what is my need to inform? What is my need to return information to the family members, and how do we do this? Basically, we are really going from the tumor to what you have actually inherited, and that has major implications now, not just for you, but for your family."

ACCESS, COST OF TESTING

"As we move forward with this, we are having a number of concerns. The first one is the testing process, itself. There really are no standards for what and how we should test, what should be done. There is now an actionable genome consortium that is working on this. There are also major efforts from the FDA to help us with these questions. What accuracy is required? Are there errors? Do they matter? If you are trying to measure three billion events, those nucleotides I told you about a while ago, there are going to be things we see that aren't there, and there are going to be things that we miss. How are we going to deal with this?

"Access is a major problem. Who should and should not pay for this testing? In the studies that we do for the outcomes of these [tests], we direct patients to clinical trials. And that means that these tests themselves could be considered research and are not billable or reimbursable. Yet, we know that these help patients, and so we are going to have to create a new culture in which this becomes the standard of care and is paid for as part of what you have access to, to get the best care possible. The cost of the testing is substantial. Right now, in the various labs around the world, it ranges from $5,000 to $15,000 for one of these genetic tests. However, the [insurance] companies are very nervous because the drugs that we use as the consequence of this can run from $10,000 to $20,000 a month, so that the consequence of a testing result can be problematic. We are going to have to figure out how to deal with this and how to pay for it."

RIGHT TO PRIVACY VS. NEED TO INFORM

"We also have to deal with this incidental, secondary result problem: How are we going to give the information to the patients, and [what] if the patient doesn't want it, their right to privacy? I am not giving information to their brothers and sisters that could be important to them. So what is the balance between the right to privacy and the need to inform? And, who gets to make those decisions? There are worries about becoming preexisting conditions that could influence insurance and employment, health care and other approaches.

"And the big question is, how do we get informed consent from our patients? I don't know what I am going to find. I can't say to Mrs. Green, 'I might find your risk of Alzheimer's. If I find that, do you want to know?' I am just going to have to say, 'Mrs. Green, I might find something of importance. I don't know what it might be. Do you or do you not want to know?' Our Institutional Review Board does not like that. They believe that is not specific enough. And although the American College of Clinical Geneticists insists that we have to do this and provide it to patients, our Institutional Review Board which right now, says "No." We have to ask specifically what they want. And so how are we going to move forward in this area? This is going to be something, I think, that you [lawyers] will end up getting more resolved than I will." ■

A UNIVERSITY PRESIDENT'S PERSPECTIVE

Donna E. Shalala learned from the women in her family that her future could be filled with limitless possibilities. Her mother, Edna Smith Shalala, was a national champion tennis player who, later in life, went to law school, practiced law from her forties well into her eighties and died at age 103. Her twin sister, Diana Fritel, is a farmer and rancher in North Dakota.

Shalala, who has been president of the University of Miami since 2001, stands at about five feet, "but she really stands about six foot ten, and her punching is way faster than her weight class," said Foundation Trustee **Alan G. Greer** of Miami, Florida in his introduction of Shalala at the College's Spring Meeting in Key Biscayne.

After graduating from Western College for Women (since merged into Miami of Ohio) with a bachelor's degree in history, she joined the Peace Corps, and was one of its very first volunteers, serving in Iran from 1962 to 1964. She returned from Iran and earned her Ph.D. at Syracuse University. From there, she launched a career of teaching as a chaired professor at a series of universities, including Columbia University. Thereafter, she became President of Hunter College of CUNY and then Chancellor of the University of Wisconsin, Madison. Interspaced with her academic career, she has had a distinguished career in public service. She was Assistant Secretary for Policy in the Department of Housing and Urban Affairs in the Carter administration. Later, she was chosen by President Bill Clinton to be the Secretary of the Department of Health and Human Services, where she became its longest-serving leader. Among her many honors, in 2008, President George W. Bush awarded her the nation's highest civilian recognition, the Presidential Medal of Freedom.

In the fourteen years since she has been Miami's president, she has vaulted it into the forefront of research institutions, and in doing that, she has spearheaded campaigns that have raised a total of $3 million of private funds to support those efforts. Excerpts from her engaging discussion with Greer follow:

GREER: How did your mother and sister, these extraordinary women, affect your life?

SHALALA: "Limitless possibilities" is the response. My mother actually went to law school so that she could play tennis. She was a teacher, but she was a nationally competitive tennis player, and she needed a profession that was flexible, so that she could play in tournaments. For years, she told me she went to law school so that she could play tennis. She was a very successful neighborhood lawyer, and even at her funeral, her clients, including the priest that said the funeral mass, talked about how getting appointments with her at different hours had to fit around her various tennis matches.

STUDENTS OF TODAY

GREER: Would you compare and contrast for us the students of the '60s, '70s and '80s, the contemporaries of many folks here in the audience, with the students you are seeing on your campus today?

SHALALA: I think my generation was almost lost in large issues. The civil rights issue, the women's issues, the peace issue–they were the larger-than-life policy issues of our time–and we marched in large groups and fought the good fight. This generation, on a smaller scale, but with just as much passion, is involved in numerous organizations. I make recommendations for students all the time. They have resumes that are unbelievable; not just in terms of their campus organizations, but the kind of volunteering they do in the community. It is not because they were required to do it in high school. They actually feel that they need to give back, and they are learning how to be good citizens much earlier than I think many of us did. . . . During the Haitian earthquake [in 2010], it was our students who stayed up night after night to organize the supplies that were sent in to the warehouses here in Miami. They were the only people I knew that could stay up all night . . . but they did an extraordinary, unheralded job while our very distinguished physicians flew down there and ran the trauma hospital, and took some medical students with them. Most of them want to change the world, to improve the world around them.

THE STICKER PRICE OF HIGHER EDUCATION

GREER: Just about everyone in this audience has experienced the problems in rising costs of se-condary education. For example, at the University of Miami, I understand your tuition and basic fees run about $44,000 a year. What is our country going to do in terms of being able to afford education for the greater mass of our students? Are we developing a culture in which we are dividing the haves and have-nots? And how will that affect our future?

SHALALA: First of all, seventy percent of my students are on some kind of financial aid, so the sticker price does not really reveal our extraordinary efforts to get diversity in our student body. By that, I mean not racial diversity alone, but economic diversity. We make an extraordinary effort to make sure poor [and] middle-class students from all different kinds of backgrounds are part of our classes that we recruit. We do that deliberately. We do other things too, because sometimes when you are talking about the affordability of college, it is not simply the tuition, but it is the cost of books, the costs of other things. We have thought all of that out. The washers and dryers in the dorms are free because, not only do we believe in clean clothes, but we ▷

basically want to make sure that every student can do everything that every other student can do, on campus in particular. Colleges have to think about that.

The cost of higher education, particularly in the public institutions, is driven by the withdrawal of state support. When you really look at it, tuitions have been forced up because the states have spent less and less money on higher education. Our federal government has done the same. . . . [I]n addition to that, we are heavily regulated. Here, I start talking like a Republican, which amuses me to no depth, but we are a heavily regulated industry. . . . More recently, we are getting another set of regulations related to Title IX that are going to require us to hire a group of full-time people essentially to investigate crimes on our campuses and to adjudicate them outside of the legal system. If you add to the combination of that, salaries that are no longer going up, technology costs, facility costs and the withdrawal of the government from investment in higher education, then you can account for much of the increases that are going on.

BALANCING ACADEMICS, ATHLETICS

GREER: Today university presidents such as you are under enormous pressure to produce championship athletic programs in football, baseball and basketball. How do you integrate and make relevant athletics to academics in a modern university setting? Where is the balance between the two?

SHALALA: You constantly have to work at it, particularly, to make sure your student athletes are actually students first and are [also] participating in the highest level of athletics. We integrate a whole set of activities into our educational system and consider it part of the educational experience of all of our students. Division I sports are very expensive. They are also heavily regulated. . . . They are market-driven. Coaches' salaries are market-driven. Very few universities in this country don't have to subsidize their sports. We have to subsidize the tuition of our student athletes because our tuition is so high compared to a public institution. But there are also virtues to this. If you go to an American college football game, it is the only time in which the students, the faculty, the staff, the alumni and the community gather together. It bonds us to our broader community, win or lose. We get lots of complaints about losing but it does create a ceremony that pulls in the broader community to the university. Does it help in fundraising? No. There is no evidence that a winning football team increases your applications or the quality of your applications. From my point of view, it doesn't help in fundraising. None of the research on fundraising and athletics reveals that a winning team creates a better environment for raising money. In fact, when the University of Miami's football team has been at its lowest point, I raised the most money. That doesn't mean I want to lose football games!

GREER: Today college football is a $5 billion industry, and we are paying many coaches into the millions of dollars. But by contrast, the athletes that make up these teams are just disproportionately from poor inner-city backgrounds. Shouldn't they participate in the wealth they are producing?

SHAHALA: Well, athletes are paid. If you look very carefully, it is not only that they are getting rewarded in tuition; those poorest athletes are also getting a stipend. Do I think we ought also to raise the amount? The answer is "Yes," but they are not employees of the institution . . . . They are students, and they are playing a sport, very much like the students that are working. The vast majority of them who are very low income are getting a stipend along with room, board, tuition, books, tutors, transportation. They really are getting a comprehensive package to come and play the sport. At my institution, if they finish their eligibility or if they get injured, we continue to pay that package. If they finish and they have not finished all their courses to graduate, we coax them back to finish their degrees, and we pay for it. So I think that the package that athletes get, the support they get, is equal to those that get academic scholarships. . . . I actually don't think that they should be paid salaries. I think that would put them in a very different situation.

I do worry about the athletes who aren't interested in going to college. . . . I have talked with some of those students who were interested in coming to the Univer-

sity of Miami, and most of them that I talked to really wanted to go to college for four years, but were under enormous pressure from their families to just spend a year in college and go out. . . . So I think we are doing a pretty good job. I worry about the amount of time that they have to spend on their sport but, given the fact that they are graduating, that they are going on to successful lives, I think that the best colleges and universities are doing a really good job.

SEXUAL VIOLENCE AND SEXUAL HARASSMENT

GREER: Another area of concern on the college campuses today is sexual violence against women. We all have read the story of the University of Virginia, which shut down a fraternity after a reported case of rape. Would you comment on this issue, and what can be done about it, especially when it occurs in association with binge drinking?

SHALALA: There is no excuse. All of us have to have zero tolerance for these crimes. I can't comment on the Virginia situation specifically because we really don't know all of the facts of that situation. [Editor's note: The publication that published the charges has since disclaimed them.] I can say that universities are deeply concerned about sexual harassment and sexual violence. We need to do more training. We need a seamless process. We are in a very difficult situation because the standards for our decisions are different than the judicial standards. Universities were not originally organized to take on a crime and then to adjudicate it, but increasingly, we have taken on those roles. These are very sensitive and very difficult situations in which many of the victims do not want to come forward. One of the things that we do is provide an extensive support system. In our experience, the complaint may come later if we provide a very good support system.

My concern is whether that young person has an opportunity to continue their education, to psychologically recover and whether we have a fair system to both parties—to the person that is accused and to the alleged victim. We are getting more professional and more sophisticated. I recently had to handle a case during the summer, and it was interesting because all my senior people were on vacation, so I actually had to handle it. . . . I think I did okay, but it reminded me of how skilled and trained people have to be to be fair and to make certain that you act swiftly. In many of these cases, making sure that we act swiftly is just as important.

A whole other issue is related to sexual harassment. Universities have had different standards, different processes for their faculty because they are tenured. . . . [W]e have to be even more vigilant with anyone that interacts with a student. I have, in my career, actually let go tenured professors who were guilty of sexual harassment. I am not afraid of going through the processes, but often the processes take too much time, and the people who are affected are really frustrated by the time that it takes to go through.

SOCIAL MEDIA AND THE IMPORTANCE OF OTHER SKILLS

GREER: Social media has become so prevalent today that people of my generation are becoming concerned about the younger cohort's ability to communicate with each other and their loss of fluency in the spoken word. Would you comment on that phenomenon today on the university campus?

SHALALA: I don't know about the loss of fluency because they seem to be communicating with me very well and pretty articulately. Yes, I think all of us are worried about that. If you go to some universities where they have many of their courses online for example, the students actually don't interact from the time that they are freshmen. Or, they can sit in their residence hall and watch the lecture online. We try to avoid a lot of that. . . . I think that group projects, other ways in which we teach, using modern technology, integrating it, but basically forcing students to interact with each other, to interact as groups – if you watch business education training now, it is almost all group training. That is also true of other professions. In the arts and sciences, I insist that the classes be smaller so there is more conversation that goes on. As higher education integrates technology, I think we have to worry about the other skill sets at the same time. And so, we can mainstream technology, but we also have to worry about whether students are learning how to write and how to work together.

The one thing that made a difference forty years ago when I was a Peace Corps volunteer, as we landed in these isolated villages to work, was that every single one of the volunteers that I worked with and was assigned with had headed student organizations, and they knew how to organize. We landed in places in which that skill set was as important as the amount of growth that we had made in our own institutions. And most of us were very successful because we had had that experience ▷

in our own institutions. Organizing a couple of mud villages in southern Iran with the skill set of being a college newspaper editor actually transferred pretty well, because I came out of college with a lot of patience.

FUNDING FOR PUBLIC AND PRIVATE INSTITUTIONS

GREER: Historically, public schools have had those extra dollars provided from the public purse. But across the nation today, those additional funds are being massively reduced and cut back by state legislatures and even the federal government. Are we getting into a situation where private institutions and public institutions are competing for the same dollars to an extent that is harming both sets of institutions?

SHALALA: I think the answer is "No." I raised money in two public universities as well as a private university. Basically, you go after people who have some affinity with your institution. . . . The tragedy, of course, is that the public institutions have to go deeply into fundraising now because they need to match the loss that they have in public dollars. I have always found fundraising easy because you can find out what people are interested in and fit them with your institution. Even in public institutions like Wisconsin, there were alums that were very successful and deeply grateful for the opportunities that they had. We find the same thing here in Miami, but also pride in the success of the university, and sensitivity to what we are trying to achieve—a world-class university that is very diverse. Diversity is to give our students the experience of meeting students from different backgrounds. And we sell that, we sell the diversity.

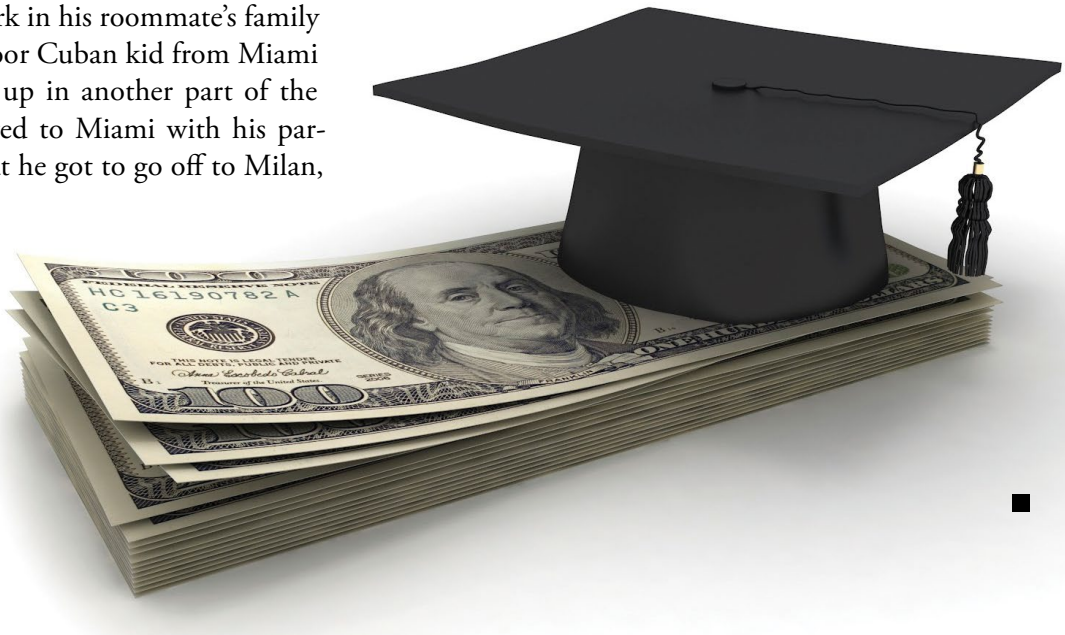
I met a student last summer [who was] going off to Italy with his roommate to work in his roommate's family business. This was a very poor Cuban kid from Miami who had previously grown up in another part of the country and then had moved to Miami with his parents. He was telling me that he got to go off to Milan, and his roommate's father was paying for everything. He was a business student, and he was very excited because they were going to start at the bottom and work in all different sides of the company. One thing he said to me was, "Well, the company works with leather." This is a poor kid who is on full scholarship at the university, a brilliant student. I asked, "Well, what kind of leather?" He said, "I don't know, but we are going to work in the company." I said, 'What is the name?' He said, "Ferragamo." Mr. Ferragamo said this kid was going to be a CEO of some company someday.

QUIPS & QUOTES

I'll tell you a funny story. When I first arrived at Miami, the general counsel brought me a case and she said, 'These people are going to sue us and they are threatening to sue.' I stated, 'That doesn't make me nervous. I just came out of government. In my last job, I was sued 11,000 times a year.' So my general counsel loves me because I am very cool about being sued, in case any of you have ideas.

Shalala's response when Greer asked the audience if there were any questions for her

At the close of her presentation, the floor was thrown open for questions from the audience. Shahala was asked what the future holds for her. In her response, she disclosed that she is stepping down at the end of the current school year, giving a somewhat vague answer about what lies next. It has since been announced that she will succeed presidential candidate Hilary Clinton as head of the Clinton Foundation.



ABA PRESIDENT CHALLENGES COLLEGE TO BE CREATIVE DISRUPTER

The current President of the American Bar Association, **William C. Hubbard** of Columbia, South Carolina, celebrated the many ties that have bound together the American College of Trial Lawyers and the ABA over the years.

Hubbard, a Fellow of the College, reminded the Key Biscayne audience that the ABA and the College have shared seven Presidents: **Lewis F. Powell, Jr.**, **Leon Jaworski**, **Whitney North Seymour**, **Bernard G. Segal**, **Edward L. Wright**, **Robert W. Meserve** and **Morris Harrell**. Hubbard noted the common stewardship the College and the ABA have provided for such issues as protecting the attorney-client privilege, ensuring ethical and professional performance through the College's *Code of Pre-Trial and Trial Conduct* and the ABA's *Model Rules of Professional Conduct*, and committing to improve equal access to justice. Hubbard observed that it should be unacceptable that the U.S. ranks eighteen out of twenty-four developed countries in North America and western Europe on access to justice. "We cannot establish justice, as our Constitution mandates, when people do not have access to justice," he said.

Hubbard challenged the College to be a "creative disrupter" in imagining new and creative ways to employ technology to improve access to justice. Going a step further, he pointed out that many lawyers have already fallen behind a burgeoning collection of non-law-firm providers who have changed the delivery of legal services. Some courts now allow smart phone users to view legal forms and documents; some lawyers offer real-time chat consultations; others provide secured portals so that clients can review and sign without having to travel to law firm offices. All of this makes law practice more efficient and less costly. The result? One internet provider of legal advice, AVVO, has eight million hits on its website per month and has responded to 6.5 million legal inquiries.

Hubbard closed by quoting Stephen Hawking: "Intelligence is the ability to change." Hubbard expressed his confidence that "lawyers possess intelligence, and we will adapt. But we should not leave it to others to define our future. Our beloved College must play a major role to ensure that our profession and the justice system remain relevant, responsive, effective and accessible."

Chilton Davis Varner
Atlanta, Georgia ■

THE FUTURE OF HEALTHCARE IN AMERICA

For some, politics is in their blood and **Kathleen Sebelius** is a prime example. Her father, John "Jack" Gilligan, was governor of Ohio from 1971 to 1975. Her election as Governor of Kansas in 2002 made them the first father-daughter governor duo in United Sates history.

In her introduction of Sebelius, College Past President **Joan A. Lukey** of Boston, Massachusetts noted that her brother, **John Gilligan**, is a Fellow of the College. Her husband, also a lawyer, is a magistrate judge. Although not herself a lawyer, early in her career, Sebelius served as the executive director of the Kansas Trial Lawyers Association, which she freely says taught her all of the skills she needed for what she faced thereafter.

Sebelius stepped down from her gubernatorial post in 2009 to accept the call from the White House to take on the daunting task of Secretary of Health and Human Services at a time when the Affordable Health Care Act was just being introduced. She served in that role through 2014.

UNDERSTANDING THE HEALTHCARE PUZZLE

Sebelius began her presentation to the College at the Spring Meeting in Key Biscayne by noting that over the past five years since President Barack Obama signed the Affordable Care Act in March 2010, much of the focus has been on what has happened on the marketplace side. She chose therefore to focus principally on the aspects of the Affordable Care Act that have received less public attention, the delivery-system side of the health care system.

"It is very important to the public," she suggested, "that people understand this piece of the puzzle. I would like to remind people it is like watching synchronized swimming, when you only focus on the bathing caps and there is a whole lot going on underneath the water."

In 2009, before the signing of the Affordable Care Act, the United States was spending about twice as much per capita as any other country on health care. Costs were rising at about double the inflation, and health care results were mediocre at best.

The Affordable Care Act gave "the federal government and particularly, the centers for Medicare and Medicare services, the opportunity to use that $1 trillion buying power to begin to shift how we pay for health care, and by that shift, begin to see some different results. Rather than a straight fee-based, fee-for-service payment system, there is a rapid change underway to move that to a value-based proposition, where outcomes become measured and are looked at as important, and more attention is being paid to what actually happens to patients. Dollars spent are being aligned with outcomes, and metrics are being used across the system.

"We are seeing . . . the most serious drop in health care inflation that has been recorded in fifty years . . . so that health costs are now rising with GDP, not double inflation. That is saving billions of dollars, not just for the public plans, but for the system overall. Medicaid spending per capita has dropped dramatically. Medicare spending has dropped dramatically. Private health insurance rates are rising at a much slower rate, and overall health costs are rising at a slower rate.

QUIPS & QUOTES

I want to thank Joan for that kind introduction. But more importantly, first of all, it has a nice ring, 'Madam President.' I could get used to that

Kathleen Sebelius

"Perhaps more important, quality of care is rising. We are seeing a consistent drop in hospital-acquired conditions, incidents that adversely happen to patients in the hospital. A decrease has also been seen in preventable readmissions, those instances when a patient is discharged and returns within thirty days, mostly as the result of lack of follow-up patient care. Much of this drop is the result of the federal government's measuring the patient safety records of hospitals under their Medicare contracts."

Smoking and obesity have long been known as "the two underlying causes for most of the chronic ▷

QUIPS & QUOTES

It was great to see Donna Shalala, who was a wonderful predecessor of mine. I lived in 'Shalala Land' because a lot of my staff actually worked in the Clinton administration, and she chose excellent people.

Kathleen Sebelius

conditions that end up with patients living sicker and dying younger, but also costing a lot more in the health system." Efforts to deal with these problems have begun to show results.

Sebelius described the coverage the Affordable Care Act promises as having three components. First, insurance companies can no longer lock somebody out because of a pre-existing health condition. These rules have changed nationally, not just in the states that they run their own exchanges. Second is the individual responsibility written into the law that requires those who do not have affordable coverage in the workplace to go into the market to purchase insurance. Requiring everyone to have coverage creates a balanced risk pool of both people who need medical care now because they are sick or old and people who are younger and healthier.

The third piece Sebelius described is the provision designed to make sure that people can afford coverage by providing them with tax credits to pay for a share of the cost of their health insurance. Just as employer-sponsored health plans do not pay a hundred percent of their costs, anyone who is below 400 percent of the poverty line has an opportunity to receive a subsidy for health care.

She pointed out that *King v. Burwell*, now pending in the United States Supreme Court, endangers that third piece of the Affordable Care Act. At issue in that case is whether taxpayers in those states that chose not to establish their own insurance marketplace, but instead deferred to the federal government marketplace, will be eligible for this subsidy for insurance coverage.

"If, indeed," she noted, "the Court were to decide that only the seventeen states that run their own exchanges have taxpayer-supported subsidies, you would suddenly have a domino effect in [the other] states. The likelihood would be that both marketplaces would collapse, because people would drop their coverage quickly. They couldn't afford to pay a hundred percent, but it would also have a ripple effect on the very viability of the insurance companies who have counted on these new customers and priced according to the new customers. The other pieces of the law would stay in place. You would just suddenly have a pool of customers who could no longer afford their coverage."

Out of the estimated 11.5 million people who are on a marketplace plan, about eighty-five percent are receiving some kind of subsidy because they did not have affordable coverage in their workplace or they had no coverage at all. "You have a lot of people looking at the possibility of actually losing the coverage that they had. I can tell you if they [the Supreme Court] rule with the plaintiffs, it will cause enormous problems in thirty-four states and enormous problems for citizens across the country. It goes against the framework of state's rights that is written into a lot of federal legislation, where the states have an option to run their own show, but in their choice of not doing that, then the federal government provides the services to the people."

TRANSFORMATIONS IN THE SYSTEM

Sebelius believes that the United States is in the process of seeing the largest transformation of health care to date, the impact of modern information technology "a long overdue shift in an industry that has been pretty impervious to technology providing information or different types of results. . . . Transparency has not been a hallmark of the healthcare system."

Beginning in 2009, the administration made a concerted effort to encourage and incentivize medical professionals and hospitals to begin using electronic health records. "As recently as 2008, most health care information was still being exchanged on paper files, and being sent around and stored in file cabinets. It is about the ability to measure, monitor and follow patient care and coordinate complicated cases in a way that just can't be done when providers are using paper. In 2008, twenty percent of hospitals and about ten percent of doctors used any kind of comprehensive electronic record. We now have about ninety-five percent of hospitals making that conversion, and over eighty percent of doctors' offices. That is a huge change

in a relatively short period of time, but it begins to change dynamics."

This matters to patients because now "you can finally own your health information. You will be able to see and monitor your own records. You will be able to have access to information from a whole variety of doctors. It re-empowers primary care doctors to coordinate care in a way that they found impossible when files were not coordinated."

On other fronts, Sebelius noted that precision medicine (patient-specific diagnosis and treatment using modern technology) is accelerating, not just in the treatment of cancer but also in diabetes and other care strategies that will result in individualized and personalized care. Preventive care is increasing throughout the world, with communicable diseases seeing a decline in developed and developing countries.

"The diseases that are being more prevalently seen, diabetes, stroke, heart disease and cancer, are now the killers many of which lend themselves to strategies to reduce the likelihood that people will actually be sufferers from those in the long run. That is an effort that also is being assisted by keeping people healthy in the first place." Paying providers to offer health screenings and to work with patients around different strategies that could decrease their likelihood of developing chronic conditions is now more common. For those who already have a chronic disease, providers are actively engaging in disease management.

The voice of consumers "demanding different kinds of service from their healthcare provider" is more prevalent, thanks to the call for transparency and the Internet. Consumers are now able to research, compare and price doctors, hospitals and other healthcare facilities in their areas.

CROSS-BORDER HEALTH, SECURITY

"There is a growing recognition that an outbreak anywhere is a risk everywhere. We have a global society. We can't lock down our borders. You can't keep diseases from crossing the borders. We have a global supply of food and drugs and people that continue to share issues. . . . But building country capacity for disease detection, for identifying outbreaks very early then preventing and stopping them at their root is the only way to keep Americans safe and secure. If Ebola is breaking out in Africa, it makes us less secure in America, and so we have every interest and need to actually stop it at its root."

HEALTH CARE IN A GROWING ECONOMY

In 2009, President Obama said that we could not fix the economy without fixing healthcare. In his 2015 State of the Union address, he highlighted the following points: the country is seeing the fastest economic growth in decades; the stock market has doubled; deficits are down by two-thirds; and health care cost inflation is the lowest in fifty years.

"We have," Sebelius concluded, "the largest drop in the uninsured rate ever seen in this country. About a third to a half of people who, as recently as 2013, had no health coverage, now have affordable coverage. We now have coverage for about 11-and-a-half million people in the marketplace, another 11,000,000 through Medicaid expansion and millions of young adults are now on their parents' plan. Costs are rising more slowly and patient care is getting better. I would just suggest that that is not only good for those individual patients and good for the uninsured population, but, frankly, good for our overall economy and for the prosperity and security of this country. . . . There is a lot of transformation underway, and this will put us in a much healthier and more prosperous place as a nation in the long run." ■

QUIPS & QUOTES

I was taken to the Situation Room where a call was underway with the head of the World Health Organization, the Mexican Health Minister and some people from Homeland Security because we were in the early days of the outbreak of h1n1. Nobody knew what that virus was. Nobody had a vaccine or a way to deal with it and what we knew was that it was killing children and young adults. After the group conducted a couple of hours of discussions and got up and left at 11 o'clock, when everybody walked out of the room I thought, 'What in the world have I gotten myself into?' But it was a good way to start, a reminder that I had a boss again. I had not had a boss in a while.

Sebelius talking about her first day as Secretary of Health and Human Services

TRIAL LAWYER TURNED APPELLATE JUDGE

In his introduction of The Honorable **William J. Kayatta, Jr.**, Judicial Fellow, Past President **Ralph I. Lancaster, Jr.** shared a story that took place thirty-some years ago at his Portland, Maine firm, Pierce Atwood LLP. Kayatta, a member of the new crop of associates, had an office next to his own. The associates jockeyed to be seen, heard and known by the veteran lawyer. "They would come in and out of my office, with one exception, my neighbor. I thought that a little strange at first. . . . When I went in his office, I realized there was a reason for that. He was a listener. That's not an easy accomplishment, to be a real listener," Lancaster said. "Still waters do run deep."

A skilled strategist, Kayatta was the person who, after sitting in conference for hours kicking a case around from one person to the next, "will say something that no one else had ever thought of that will resolve the matter completely," Lancaster said.

Kayatta, a former Regent of the College, spoke to the College's Spring Meeting in Key Biscayne. A graduate of Amherst College and Harvard Law School, he served as law clerk to Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit. He then maintained a trial and appellate practice at Pierce Atwood from 1980 to 2013. He served from 2011 as a Special Master by appointment of the U.S. Supreme Court in an original action, a water rights case, *Kansas v. Nebraska*, filing his final report several days before he spoke to the College.

In February 2013 he left his law practice to serve on the United States Court of Appeals for the First Circuit.

After jokingly looking over to see if, Lancaster, his former mentor, had his red pencil out to record comments on his presentation, as he had done for years on the written product of all the younger lawyers in his firm, Kayatta began the presentation that follows.

"It has been two years, almost to the day, since I ended my law practice, resigned from the College's Board of Regents and donned a black robe. Since then, many friends, especially my lawyer friends, have asked me, 'What is it like for a former trial lawyer to serve now as an appellate judge?' Do I look at things differently than I did before?' So today, I am going to address that question as it bears on my view of the College. Specifically, now that I am an appellate judge and not a trial lawyer, do I continue to think that what this College does matters and matters to me?"

THE CONFIRMATION PROCESS

"Now, certainly, what this College does mattered in my own confirmation hearing. The only organized interest group that opposed my nomination—actually cited as grounds for opposing my nomination in fact as a principal reason to vote against me—the College's White Paper on judicial elections, the publication of which I had approved as a member of the Board. These folks argued that the white paper was a product of, and I quote, 'elitist lawyers who supported elitist judges.' They then somehow connected that with being 'anti-military' and 'against families.' I kid you not.

"But the accusation, though, did give me some pause. I don't think of the College as elitist as that adjective is commonly understood, but I do think it is fair to describe the College as a hard-to-get-into association of elite trial lawyers. Indeed, the defining essence of this College is its exclusivity based on demonstrated excellence in craft and professionalism. And as long as the College fairly maintains its exclusivity based on merit, the College is going to have a stature, and will continue to have a stature, that will give its voice great credibility.

"Well, I didn't get into this debate in the Senate because, as it turned out, no Senator was interested in debating about the College itself. But I was pressed on why the College opposed traditional judicial elections, and whether I still agreed with that position. That question gets asked to you almost like, 'Here is a chance to repent.' I could not repent. I replied that, on balance, the College thought, and I thought, that our founders who met in Philadelphia in 1789 had the better view of how to pick judges.

"Now, that position I took as a trial lawyer and as a Regent at the College is one that I still share today, and I would like to take a moment to explore some of its detail and nuances. The College currently takes the position that, and again I quote, 'Judicial independence is best served if politics is removed insofar as possible from the judicial selection and retention process.'

QUIPS & QUOTES

Ralph also didn't tell you about his red pen. I may not have wandered into Ralph's offices as much as I should have, but every day, I had to leave any work that I had done as a new associate on his desk. And every morning, when I came in, the folder would be on my desk. And it was good if there was nothing written on anything in it. Usually, there was something that was always in red ink. I remember one time I wrote a letter to clients saying opposing counsel was tied up on the phone, and his comment to that was a little stick drawing, with a person with a cord around their head. I hope if I sound nervous today, please understand that as I stand up here speaking, I am going to keep looking over and wondering if he has his red pen out for the speech.

Judge Kayatta discussing former mentor Past President Ralph Lancaster

"I said I would focus on some nuances. One nuance: I actually think the breadth of this aspiration may go a bit too far, at least in concrete terms. There has to be some link between the people who are governed and those who make the laws, including judge-made law. (By the way, that is a phrase you don't use in your confirmation hearing. You must pretend that there is no common law.)

"Now, politics is that link between the people who are governed and their judges. For prospective federal appellate judges, the presence of politics is palpable, even in the absence of any election. The President generally has no current merit selection panel that binds the President's choices in nominating circuit court judges. In some states, the home state Senators themselves set up merit selection panels, but if you notice, they always take care to approve who is on the panel, and then the panel gives them a number of choices, none of which bind the White House. On the other hand, the President knows that any home state senator can veto a selection under the 'blue slip' procedures of the Senate Judiciary Committee, so it is classic politics between the other two branches of the government.

"Now, during this process, the ABA Committee on the Federal Judiciary does weigh in at the end of the President's selection process and, as someone who once served on this committee, I can assure you that its evaluation is nonpolitical, despite what critics on the right and left some- ▷

times claim. We are honored to have William Hubbard here today, the President of the ABA, and I would say to him that if you ever get to the point where no one in Washington is criticizing the ABA process, then you will know something is wrong. So the ABA does serve in an effective gate-keeping role. No President wants the nominees to be deemed unqualified, and that helps, but it is still a political process.

QUIPS & QUOTES

There has to be some link between the people who are governed and those who make the laws, including judge-made law. By the way, that is a phrase we don't use in the confirmation hearings.

Judge Kayatta

"And it becomes especially political once you are off to the races in the Senate. Anyone who has not seen a Senate confirmation proceeding as a political process hasn't been subjected to the 'Thurmond Rule.' So the whole selection process is political, but it is conducted with a shared expectation by most of the politicians that qualifications are important."

THE POST-CONFIRMATION ROLE OF POLITICS

"Now, the crucial factor in all of this—and this is where the College really stakes out its position, and where I think its position is clearly correct—is that once the President and the Senate make and confirm the selection, the role of politics disappears. The swearing-in ceremony for Chief Justice Roberts nicely illustrated this point. For several months, then-Judge Roberts was exposed to the maelstrom of the political process, what we all saw play out, and his pending appointment to the Court was entirely at the pleasure of the President and the Senate, two other branches of our government. Politics were in full bloom.

"And as soon as he took down his hand, though, at his swearing-in ceremony, he literally—and politely, I would add—he literally turned his back on the President to address, at length, Justice Stevens, who had sworn him in, his new colleague. This was Article III in action. Neither President Bush nor any senator retained any ability to command the new Chief's retention, at least short of impeachment and the like. He was independent."

POLITICS IN STATE JUDICIAL SELECTION

"So that brings me back to the College's position. While my new experience has caused me to think that politics can and should play an important role in selecting judges, I continue to think that the College gets it exactly right in concluding that elections, themselves (and of course, I am referring here to the elections that are held in the majority of our states, elections for state court positions) provide an ill-suited and harmful mechanism for allowing politics to play its important role.

"Now, why do I say this? The reasons to oppose elections as an initial selection tool are mostly pragmatic. A large number of top lawyers are simply not going to subject themselves to election campaigns, with the likelihood that the voters have the relevant information needed to assess the candidate will be low. We live in a representative of democracy. We elect our political leaders. We know how to do that. We are best served, I think, by having them select our nonpolitical leaders such as our state court judges.

"Now, that's the selection process. The retention process is, I think, even more a cause for concern. The reasons against using elections to retain judges are deeper because those reasons bear on the integrity and independence of the judiciary. It is the flip side of what I said of Chief Justice Roberts' swearing in. If he had been a judge in any of our state courts, he would not have been done with the political side of the aisle. As a federal judge who cannot lose his job because of an unpopular decision, I work free now of any yoke other than the discipline of the rule of law. Conversely, as Justice Stevens observed in *Harris v. Alabama*, many state judges facing the political pressure of re-election confront a danger just like that faced by judges beholden to King George III. For much of the twentieth century, the possibility of political pressure posed by the need to get re-elected was largely theoretical, at least in many states. Judges were almost always re-elected, and many states tried to make judicial elections very unlike other elections, kind of nonpartisan and non-political, almost non-elections.

"The Supreme Court, though, has been moving towards saying that an election is an all-or-nothing deal, no matter the office. It now has under consideration a challenge to direct personal solicitation rules of the Florida Bar. [Editor's note: The Court has since ruled in favor of the Florida Bar rule.] We may well be in the world now in which judicial elections look just like other elections. Indeed, in several states, it has already reached that point, with TV attack ads, multi- million dollar campaigns.

"So the choice on which the College has taken the position is increasingly relevant. It is a choice between selection by appointment of a capable and independent judiciary, and the election of a judiciary that, however capable its members may be–and there are certainly extraordinarily talented and dedicated state court judges–they will always be laboring under the suspicion that they are unduly beholden to political and financial patrons.

"There has to be a voice that can credibly explain the downside of having so many state judiciaries subjected to such temptations. And through its State Committees, with its many Fellows who are so well respected in their communities, the College has been an important voice in an effort that is going to be a very long-term effort. I hope the College continues its work in that direction."

THE COLLEGE'S STATURE

"Now, of course, picking judges is one thing, but trying cases is a subject closer to the College's heart, and for that there is the College's *Code of Pretrial and Trial Conduct*. That certainly still matters to me. In fact, this past year I cited this College's *Code* in a published opinion I issued on behalf of our court. In sustaining a serious sanction on a misbehaving lawyer, I pointed to the College and to its *Code* to support the proposition. If you worked for Ralph Lancaster, you learned the first day you were a lawyer the proposition that no lawyer should confuse combative aggressiveness for the resolve of an effective advocate. This College and its Fellows disproved the notion that a lawyer need be unpleasant and cut corners to be most effective.

"I now hire up these bright, young, new, not always young, but new, lawyers as law clerks, and they will see the ACTL mementos that I have in my chambers. And they ask about the College on occasion and they ask, 'What does it take to be a good trial lawyer?' This is where the College plays its most important role, one that remains so very important to me. Young lawyers look to older, successful trial lawyers to see what works and how to behave. By modeling and teaching effective trial advocacy, the College makes my job as an appellate judge much easier.

"Perhaps two-thirds of the cases I see contain records with serious deficiencies. Most commonly, counsel fail to develop a straightforward presentation. They spend much effort chasing red herrings. Even worse, they fail to preserve the claims of error. That is especially true in criminal cases. Poor lawyering makes then for difficult judging when it becomes unclear what the issues are. We then need to apply discretionary rules of waiver, forfeit and plain error. There are people now sitting in jail who would not be in jail had the trial counsel been more effective.

"The standard, though, given to us as judges for giving someone a new trial or new counsel because their counsel erred is very difficult for me. So to the extent that the College, not just in its efforts to raise the standards of trial practice, but also, by its very presence, as this elite institution, based on merit, to the extent that this College, with its stature derived from that exclusivity, stands as a symbol of how to do it right, it leads in the direction of justice.

"In that respect, I quote one of the lines the new inductees will hear tonight. It is a line I remember from my induction: 'By your ability, learning and character you have added luster to the legal and judicial annals of your state and nation, and have helped to strengthen and preserve the mighty fabric of our law.' For this reason, the College offers guidance to all Fellows that extends beyond the scope of day-to-day litigation and individual cases.

"The College goes on to state and you will hear this again, 'As an officer of the court a lawyer should strive to improve the system of justice and to maintain and develop in others the highest level of professional behavior.' This matters to me very much in what I do now."

CONTRIBUTING TO THE CAUSE OF JUSTICE

"This fabric of law is the greatest invention of our species. By replacing disorder with an intricate balance of order and freedom, the law provides an element of predictability that is necessary to the conduct of all human relationships. We heard that yesterday in the presentation on War Child. You take away the law entirely, remove that fabric, and there is very little left behind that Hobbes (Thomas Hobbes, the founding father of modern political philosophy) would recognize. So when you are told tonight, you new inductees, that you have helped strengthen the fabric of our law, you should accept that compliment as high praise, indeed.

"The Code matters to me in another way. It has a provision I didn't realize before, that actually applies to me, as a judge. I cannot say that if I had known, I would have ever tried it in front of a judge, but as a judge, I have read it. It says a judge has a corresponding obligation to respect the dignity and independence of a lawyer. I hope that any lawyer who appears in my courtroom finds that respect.

"As you can imagine, I could go on, but I won't. The work of the College's many committees contributes much to the cause of justice. The point, though, is obvious: what this elite institution stands for, and what it does matters very much to the judiciary. I am certain that that is one of the key reasons why all of the members of the United States and Canadian Supreme Courts have accepted Honorary Fellowship in the College.

"Let me close now with one final personal note about why the College matters to this particular judge standing before you today. To borrow again from the words of Chancellor Gumpert, my wife Anne and I continue to find pleasure and charm in the illustrious company of my fellow contemporaries and their spouses, and we take the keenest delight in exalting our friendships together.

"Thank you." ■

PAST PRESIDENT GAEL MAHONY: A MEMORIAL TRIBUTE

Gael Mahony, age eighty-eight, the thirty-third president of the American College of Trial Lawyers, died, in the words of his wife of sixty-two years, "peacefully and elegantly, as he had lived his life," on the afternoon of November 4, 2014, after a series of strokes.

He had led the American College of Trial Lawyers during what is described in *Sages of Their Craft*, the history of the College's first fifty years, as the era in which the modern College emerged. (His immediate predecessor, Leon Silverman, who, with Mahony, participated in launching that era, has also since died.)

Born March 26, 1926 in Boston, Mahony grew up in Back Bay, attended Boston Latin School and graduated in 1943 from Phillips Academy, Andover. That school's seal, cast in 1778 by a Boston silversmith named Paul Revere, bore the legend, *Non Sibi*, "not for oneself," which could well have served as a description of Mahony's life.

After serving in the United States Army Air Corps in World War II, he returned to Yale University, graduating in 1949. The son of a trial lawyer, Thomas H. Mahony, who was himself an early Fellow of the College and an activist for world peace, a founder of the United World Federalists and of a mother who had served as President of the Boston League of Women voters, Gael was destined to be both a lawyer and a civic leader.

After graduating from Harvard Law School in 1952, he began his career, as he described it, "carrying the briefcase" of Claude B. Cross, also an early Fellow of the College. Then, in 1955 he became an Assistant United States Attorney for the District of Massachusetts, serving for two years before joining the Boston firm Hill, Barlow, Goodale & Adams (later shortened to Hill & Barlow), where he practiced for most of his career. He had found a home in a firm that, over the years, produced three Governors of Massachusetts and a president of the American Bar Association. Upon the dissolution of that firm in 2002, Mahoney joined the Boston office of Holland & Knight LLP, where he practiced for the remainder of his career with his son.

By the time he was inducted into the College in 1968 at age forty-two, sixteen years after he became a lawyer, he had already forged a remarkable career. He had been a member of the Boston Finance Committee and in 1962 had succeeded United States Senator-to-be Edward Brooke as its chair. In 1963, Brooke, by that time Attorney General of Massachusetts, appointed then thirty-seven year old Mahony as Special Assistant Attorney General to prosecute a celebrated case involving alleged political corruption in the construction of a Boston Common parking garage. During this time, he had also served for two years as a member of the Boston Bar Council.

Over his long career, Mahony tried many high-profile cases, including representing the founders of *The Atlantic* magazine in a 1987 suit involving its sale to Mortimer B. Zuckerman, the reversal of a $130 million award in a class action suit against Volvo and, in the late 1980s, the 82-day trial of a case involving development rights to Fan Pier, the center of the Boston waterfront, reaching a result that was described as having "changed the face of Boston."

He had been a member of the Massachusetts Commission on Judicial Conduct, and, in the federal court arena, had chaired both the Massachusetts Federal Magistrate Selection Committee and the Advisory Committee of the United States Court of Appeals for the First Circuit.

In the civic arena, Massachusetts Governor William Weld appointed him to chair a Special Commission on Foster Care. Under Mahony's leadership, that effort literally reinvented the way that the Massachusetts Department of Social Services dealt with the support and adoption of foster children. Weld later remarked, "Gael was imperturbably a gentleman. His voice was always calm, even and respectful. His appeal was not to his interlocutor; it was to the reasonableness of the facts that he had so murderously assembled. Gael was my mentor for the better part of my ten years at the bar, and later served the Commonwealth's most underserved citizens at my request, unhesitantly and brilliantly."

Mahony is perhaps best remembered among his Boston neighbors for his leadership in preserving intact Boston's Beacon Hill residential area. Gael and Connaught Mahony arrived as part of a large migration of young newly-weds, fresh out of graduate school and eager to live in the city, while most of their contemporaries were moving to the suburbs. When they moved into 86 Pinckney Street, they found a loosely-connected group of dedicated neighbors who called themselves the Beacon Hill Association. The young leaders of the neighborhood set about to make it a progressive community, suited to the needs of the influx of younger residents, establishing, among other things, a neighborhood nursery school.

Mahony immediately recognized that, if the organization was to succeed in preserving the area's architectural integrity, it needed a legal status, and he drafted and filed the documents that created the Beacon Hill Civic Association. At age twenty-nine, he became its first president. He was so devoted to Beacon Hill that when his children once raised the possibility of moving to the suburbs where there were a lot of trees, he responded with his characteristic dead-pan humor, "Would you children like a tree or a father?"

Years later, Mahony led his neighbors' resistance to Suffolk University's proposed incursion of non-conforming buildings into Beacon Hill, successfully contesting that in legal proceedings. In 2011, his neighbors recognized his efforts by giving him the Association's Beacon Award. In the words of the *Beacon Hill Times*, he was "a gentleman whose vision and leadership shaped Beacon Hill for more than 50 years."

Among his many honors was the American Jewish Committee's Judge Learned Hand Award, given to members of the legal community who exemplify the ideals that were reflected in Judge Hand's own career. In connection with that award, former United States Senator Edward Brooke remarked, "Gael Mahony is the finest person I have ever known."

Mahony's career in the College, to which he was devoted, was equally remarkable. He became a member of the Massachusetts State Committee two years after his induction and its Chair the following year. He served as Chair of the National Moot Court Competition Committee; over the ▷

years he also served at various times on nine other College committees and served a term as a Trustee of the College Foundation.

He had played a major role in the expansion of the College's membership in Canada by helping to reorganize it into four regions and combining them with regions that included adjoining states in the United States, so that Canadian lawyers could be included in regional meetings with their United States counterparts.

Elected to the Board of Regents in 1976, he was elected to serve as Secretary of the College in 1981-82, as President-Elect the following year and as President in 1983-84. During his presidency, the College created its own publication, *The Bulletin*. Before that, the annual President's Report was the only communication of that sort to Fellows. During his term of office, the College's Executive Director, Richard Pruter, had died, and Mahony was also involved in selecting his successor.

In keeping with the tradition of the College, after his presidency was over and until his health prevented his attendance, Mahony continued to attend and to participate in and contribute to the twice-a-year meetings of the Board of Regents, of which Past Presidents are members *ex officio*.

Mahony's memorial service was held on January 5, 2015 at Boston's historic King's Chapel, an institution housed in a granite building built in1754 on a site first used for a church in 1686, that combines Congregational governance and Anglican liturgy. Its senior minister, Rev. Joy Fallon, who conducted the service, is a graduate of both Harvard Law School, who once served as Counsel to Hill & Barlow alumnus Governor Michael Dukakis, and of Harvard Divinity School. One of Mahony's children noted that he was not a regular churchgoer and that he had chosen to have his memorial service there. He had both selected the location and framed the service.

In addition to Rev. Fallon, Mahony's former law partner and College Fellow, Joseph Steinfield, all three of his children and one grandchild spoke at the memorial service. Steinfield's remarks collected the comments of Mahony's colleagues at the bar.

Governor of Massachusetts and former Hill & Barlow partner Deval L. Patrick, who could not be present, had written: "Gael was both the ultimate lawyer and the ultimate gentleman, able to bring his professional best without demeaning or belittling his opponent. As a result, he was widely respected in the legal and business communities, and revered by his colleagues at Hill & Barlow and beyond."

From others:

- He was intense and meticulous in his presentation. Judges loved him because he was always prepared.
- He had a wonderful sense of humor, a very polished guy. I don't think he had an equal in the Boston bar [in terms of] charm.
- Gael was the first person I ever heard say the words "ready for trial," and he meant it.
- The best, the nicest, the most hard working and the most tenacious, a lawyer, who took trial law to a better level.
- Indefatigable. He has an endless supply of energy. At the end of a trial day, he was the freshest in the room.
- Nobody ever knew the details of a case better than he did. . . . Nobody could work all night like he could.
- Words such as "principled," "elegant," "dignified," "honorable," "ethical," "diligent," "larger than life," "tower of strength and integrity," "a great teacher" and "grace and integrity" reverberated.
- He would always stop to listen, really listen to what you had to say.

"You knew where you stood with Gael," his long-time secretary remembered. "He cared about everybody, even if he wasn't always demonstrative, and he cared about his clients, whether he liked them or not."

Mahony, front row, second from the left, at the March 1985 Board of Regents meeting in Boca Raton, Florida

And finally, "No one ever handled illness with greater fortitude or dignity."

His children and grandchildren drew a similar picture:

- He was a perfect lawyer, even with his children. He always had a calm, rational way of doing things.
- When asked a question he thought could be used to educate, he would respond, "What do you think? Let's go home and look it up."
- He taught each child how to find the North Star, pointing out that it always stays in the same place. "He was our North Star, and the law was his North Star."
- A grandchild remembered being shown the best place from which to search for shooting stars on the beach at Cape Cod.
- He showed his love with actions, and not words.
- He had a profound reverence for the law, thought that it could bring about a new Jerusalem.
- He was incredibly entertaining. No one ever had a dull conversation with him.
- He was a listener.
- He had a wonderful sense of humor.

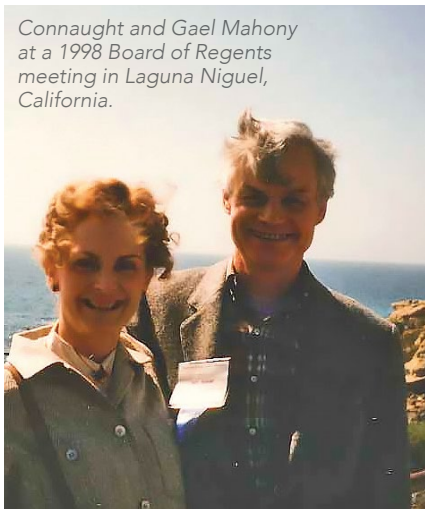
He did not claim to know everything. Once when he was driving down the highway and the car started to behave erratically. He remarked "I'd like to have a case about cars, so that I could understand how these things work."

And his children told humorous stories about his ineptitude with a sailboat, how he once lost a tooth while holding a mainsail sheet in his mouth in a stiff wind and how he once ran aground, throwing an English aunt out of the boat

Gael and his wife, Connaught, were memorable fixtures at the social events that accompany the College's national meetings, particularly at the traditional theme parties, where they were always the most colorfully attired, something that often puzzled those who otherwise knew Gael Mahony as a quiet, dignified older lawyer.

The answer to this puzzle was Connaught O'Connell Mahony. Connaught, a Radcliff student, met "Mike" Mahony at a Harvard-Yale football game; her date was the brother of his date. He later took her to meet his mother, who kept talking about a man called "Gael." It turned out that during his college years, he had decided that he did not like the name Gael, and had started introducing himself as "Mike." Connaught liked his real name and insisted that he use it. As the book *Legendary Locals of Beacon Hill* related it, "They decided to give their children memorable names also. They came up with Medb (Maeve), Ieuan-Gael (Ian Gael) and Eoghan Ruadh (Owen Roe); the children married a Sam, a Carol, and an Elizabeth, respectively."

When they moved to Beacon Hill after their 1952 marriage, Connaught reflected that she was delighted to find that her neighbors lived up to their reputation as eccentric. "Everyone is so odd I don't stand out at all," she commented. As one daughter observed, "It was a good match. My mother is passionate and mercurial, and my father was quiet and patient. He used to say that she spent her life at the edge of a cliff and he spent his life helping her down."



Connaught and Gael Mahony at a 1998 Board of Regents meeting in Laguna Niguel, California.

Connaught was, in turn, his greatest fan. She was once quoted in print as saying, "He is so modest that you wouldn't know a damn thing about him if I weren't here to tell you."

One of their children related at the memorial service that their parents were rock and roll dancers who themselves were out on the dance floor at dances where they were the chaperones, "with no care about who might be watching."

Even the colorful attire that College Fellows remembered was, one learned, attributable to Connaught: Gael was color-blind, and Connaught chose all his clothes. It was not difficult to imagine that she had also selected the black bowler hat that thirty-five year-old Gael Mahony was wearing in a 1961 photograph of him and Edward Brooke that accompanied the *Boston Globe* article announcing Mahony's death.

Steinfield remarked at the end of the memorial service that Mahony had many partners during his life, but only one lifetime partner. "She was at his side these past years [during his illness] for his longest and most difficult trial."

Near the end of the printed service program at Mahony's January 5 memorial service, a program whose graphic design was done by one of his grandsons, was a note that read: *"The family of Gael Mahony wishes to invite everyone to join them at a reception at the Somerset Club, 42 Beacon Street, following the service. Transportation is available for those needing assistance."*

The procession on the challenging six-block walk from King's Chapel to Somerset Club on a cold, windy January Boston day was led by a piper softly playing "Amazing Grace" and by Connaught Mahony.

E. Osborne Ayscue, Jr.
Editor Emeritus ■

AMERICA'S HISTORIC ENERGY MOMENT, NO SURE THING

In his introduction, of **Thomas F. Farrell II**, Past President **E. Osborne Ayscue, Jr**. of Charlotte, North Carolina observed that Farrell is eminently qualified to address this topic.

A trial lawyer in a Virginia law firm, he had been counsel for the CEO of a large electric company in a contest for control of the company. When the matter was successfully concluded, the client asked if Farrell's law firm might grant him leave to be the client's "interim" general counsel.

His law firm allowed him to do that, and he never came back. Today he is the chairman, president and CEO of that former client, Dominion Resources, a Fortune 500 energy company which ranks among the largest investor-owned utilities.

He is, Ayscue noted, an avid reader and a student of history, interests that were reflected in his presentation at the Spring Meeting of the College in Key Biscayne.

Farrell combined the analytical processes of a trained legal mind, the perspective of a student of history and a businessman's command of facts to explore the conflict between the desire to preserve our planet from the effects of climate change and the economic and societal costs of achieving that desire.

"Today, in 2015," Farrell began, "we actually see an energy landscape that barely resembles what we knew a generation ago. Some call it energy opportunity. . . . I do think that it qualifies as an historic opportunity. Not everyone sees it the same way, and the public discussion often gets tied up in knots. . . . We have to sort this out, resolve or blend the competing views of the future, and we must do so as a nation."

As he moved into the subject of energy and how to address its many challenges, he suggested, "It is useful to apply some historical attributes that I learned in practicing law: how it reasons its way to justice; how it tracks our national development; how the quality of discourse shapes the nature of the outcome. All apply to this discussion; in a democracy, it matters greatly how we talk about our choices.

"As late as 1780, colonial legislators had chartered only seven corporations. . . . The number grew quickly over the years, but our legal thinking had to follow the business development. The nation was encountering new things. . . . [R]oads were displaced by turnpikes, and ferries were threatened by bridges. Soon, turnpikes were challenged by canals, and then canals by railroads, with each new step creating a complex set of new legal questions for which the past supplied only the dimmest of guidance.

"All this gave our legal ancestors plenty of work. Indeed, it fundamentally altered American law forever with a fusion of legal and commercial interests. By the time we reached the end of the nineteenth century, Oliver Wendell Holmes tells us, 'The life of law has not been logic, it has been experience'. . . . We see the emergence of legal realism, an attempt to account for things as they are, rather than as they are theorized to be.

"And so, by fits and starts, we have made this thing called 'America' work. We have held it together. We have done great things, not without many hurdles, but to make it work, there has to be one underlying constant, and that is *reason*. Without a healthy respect for reason . . . we would lose our way as a nation. Whatever the advantages or deficiencies of the American system – and when you run an energy company, you see them all– we still have to reason through our choices, lest we come undone."

CHANGES IN THE ENERGY LANDSCAPE

Farrell observed, "There is plenty of good news to report, breathtaking actually. . . . OPEC now has to think about what we are doing, rather than the other way around. Thanks to technological advances in extraction techniques, commonly referred to as fracking, natural gas has become abundant and cheap. Fracking also explains our improved geopolitical posture on oil and the dramatically reduced cost of gasoline. . . . All told, the United States has become the world's largest producer of both oil and natural gas in combination. . . . We have seen the cost of renewable technologies drop significantly, making wind and solar energy more commercially viable. In fact, the contribution of renewable energy to the country's electricity supply, including hydroelectric power, has risen from eight percent seven years ago to almost thirteen percent last year. Despite that impressive growth on a percentage basis, the output of renewable resources on an absolute basis is dwarfed by coal and natural gas and uranium.

"Here is a critically important point that the vast majority of Americans do not understand: We still have to use fossil fuel to back up the renewable power resources, because ▷

we do not have any effective way to store electricity at scale, so if the electricity from the sun and the wind is not available, we have to have other sources of power to provide it.

"Coal has become today's energy villain number one. Proposed carbon regulations and other emissions rules from the Environmental Protection Agency, combined with competition from natural gas, are expected to force the retirement of about fifteen percent of all of the coal capacity across the country over the next ten years. That amounts to the power it takes to supply over eleven million homes.

"That level of plant shutdowns raises significant concerns for our industry about reliability and the economic impact of rising electricity prices going forward. . . . Where the [power] plants sit on the system makes a very large difference in balancing the grid. When one is retired, it has to be replaced with something that keeps the grid in balance. It also presents challenges associated with maintaining fuel diversity in our energy mix as we become more and more reliant on natural gas for the production of electricity.

"That is actually the biggest story in the energy business today. The production and consumption of natural gas hit a record high last year. Since the year 2000, over ninety percent of all new generating capacity in this country has come from either natural gas or renewable energy sources, including wind and solar and biomass, and, in a very, very small amount, geothermal.

"And so, the energy landscape is changing; it is changing rapidly, and when the energy world shifts, so does almost everything else. . . . These days, we are not just in the power business; we are in the clean power business. There is no getting around that. . . . The clean energy sector invested about $400 billion in new technology from 2007 to 2014. This growth in clean air, this investment, is obviously good news for the country. It creates new jobs, stimulates the economy and, in the case of power production, it reduces atmospheric emissions. But still, we must recognize that it is at a cost significantly higher than either nuclear or fossil generation."

OUR MODERN DILEMMA—CLIMATE CHANGE

Farrell then went on to characterize the competing points of view. "In certain quarters, America's recent energy, economic and environmental achievements do not matter very much. They are, according to this particular world view, a negative so long as fossil fuels remain anywhere in the mix. . . . Failure to abide by this view of the future renders one a climate denier. . . . Such has become the character of the present debate about climate change. Nevertheless, the varied views about climate must be considered and measured. Those who want all hydrocarbon resources to stay in the ground point to these facts: Global carbon dioxide emissions from fossil fuels in 2008 were forty percent higher than they were in 1990. United States carbon emissions are being reduced every year, but the world's carbon emissions are growing fairly rapidly.

"What I have articulated is the point of view of a great many people, and there is a great global apparatus moving in support of it. Think of names like Kyoto, Copenhagen and, come December of this year, Paris. These are the venues where the world has grappled with climate change and tried to fashion a response. The diplomatic summit to be held in Paris at the end of this year will be the twenty-first United Nations' framework convention on climate change, and it will be the most significant multilateral climate negotiation to take place since Copenhagen in 2009."

A WORLD VIEW

Farrell went on to point out that the U.S. has no national policy, has never had a national policy, on the subject, except during World War II. "So are we pulling these pieces together?" he asked. His answer: "Not exactly. As a nation, we go about things incrementally, often defensively, and almost always incoherently."

To make his point, he referred to four news articles on the subject that were published in the national press in a two-day span in early February 2015. They ranged from predictions of 'thermostat wars' among nations, conflict over what is the right temperature, to an account of people in the Eastern Ukraine, struggling individuals in the midst of warfare and social conflicts, digging for coal in private mines, doing what they have to do to survive. He pointed to one especially thought-provoking news article that bore the headline, "Lights Out in Nigeria." The author, based in Lagos, said, "We need a government that will create the environment for steady and reliable electricity and the simple luxury of a monthly bill."

"The simple luxury of a monthly bill," he noted, "sums up how much of the world sees electricity. It is not a line we get very much in the developed world. . . . People address the reality that they know, but . . . there are many realities in a highly diverse mosaic of experiences all around the world."

Farrell went on to point out articles reporting the results of polls, all overwhelmingly in favor of government action to combat climate change. He went on to sound a note of caution. Omitted in the questions posed by such polls is any mention of two factors–cost and megawatt hours. The latter measures what is needed by way of power supply to meet customer demands. "You have to generate by whatever means you are using to have sufficient power to

I find myself thinking back to the headlines I read . . . about the large portions of the world where poverty rules, where one-and-a-half billion people do not have what we take for granted every day, reliable, affordable, and secure supplies of electricity. These people are not thinking about becoming carbon-free. They are thinking about survival. They want a decent standard of living that can be had within a budget they can afford. They want the simple luxury of a monthly bill.

Thomas Farrell

satisfy demand. And, it has to be instantaneously done, instantaneously matched, every moment of every day, because you cannot store it for later use. That is what keeps your lights on. If you do not see any reference in . . . a poll to cost or megawatt hours, then you have something that may be heartfelt, but is ultimately of very little value to decision makers.

"To become 'developed' takes a great deal of time and massive levels of investment, especially in energy infrastructure, producing it and delivering it. In America, we started in the nineteenth century. Our electricity system emerged over a period of multiple generations as Americans innovated and built and spent. From sea to shining sea, you see the end product, the generating stations, interconnected power grids, and the network of pipelines that crisscross the country. The better portion of it is based on the hydrocarbons we extract from the ground, coal and natural gas.

"We cannot overlook the fact that America is an energy nation. We survive, we thrive, on safe, reliable and affordable energy, and the vast majority of Americans pay almost no attention to it at all because it is reliable and it is cheap. And most of it, seventy-five to eighty-five percent, now and for at least the next several decades, comes from fossil fuels.

"Nevertheless, we are being told to go out and get energy another way, a greener way, and to do it today. Fair enough. But for those inclined to sit down and write about the wholesale transformation of our energy system or to chart a brave path forward, a few words of advice: Please do not forget to include the currency symbol or the megawatt hour symbol in your writing, in your thinking.

"Indeed, we are spending enormous amounts of money, making considerable headway in redirecting our fuel supply mix for a cleaner power source. The United States finished the year as the second-highest ranked country in the world in terms of total dollars spent on clean energy. Wind and solar power have been the fastest growing technology in the world. The United States tripled its capacity since 2008, and last year, our nation was the world's second largest market for new wind installation."

PROS, CONS OF RENEWABLE ENERGY SOURCES

Turning to solar power, Farrell reported that costs were down very significantly, and the efficiency of solar panels is up tremendously.

"Let me come back to my point about the numbers for a minute, because the numbers don't lie. One of our other recently announced projects was a 20-megawatt facility near a little town, Remington, Virginia. That 20-megawatt facility is going to sit on 125 acres of land. There, we will install almost 100,000 photovoltaic panels that will have enough power, when the sun is shining fully, to provide power for 5,000 homes: 125 acres, 100,000 panels, 5,000 homes. Not far from Remington, in December we placed a natural gas power station. It sits on 39 acres, generates 150 megawatts of power, and will supply 335,000 homes. So the natural gas plant uses less than one-third the land and produces 225 times as much power. It serves 330,000 more homes than will the solar facility.

"Presented in comparison, you might be surprised the number of people who say that that is fine, build more solar facilities. It happens all the time. There is not enough land for the United States to power solar. Often the land itself becomes an issue of public dispute. The same thing happened with wind turbines.

"The challenge that we have with wind and solar is that they are typically located in remote locations away from population centers. In many cases, that means we have to connect them with very popular, very large electric transmission lines, and then integrate their output into our existing grid. . . . Then there is the reliability factor that plays into our options. Solar and wind produce power very intermittently. A really good solar facility will only produce power about twenty percent of the time. That is all you can rely on it for. As a result, all areas with solar or wind require backstop generators using fossil fuels which can be turned on and off relatively easily.

QUIPS & QUOTES

Making our republic work has never been a day at the beach, but we always do better when we are honest with each other, and it has been that way from the beginning. One of America's leading nineteenth century historians was a man named George Bancroft. He once wrote that there are basic conflicts in society that are always going to endure, conflicts that can never be, in his words, 'entirely quieted.' He went on to say that he who will act with moderation prefers fact to theory and remembers that everything in this world is relative, and not absolute. . . . That is a very fair statement of America at its best. We are pragmatic, we Americans and we Canadians. We need to keep our heads and allow reason to rule, and that goes for the debate about energy and the environment.

Thomas Farrell

"Of all the western nations, none has been more committed to green power than Germany, especially after its overly hasty decision to close its nearly twenty nuclear reactors in the wake of the Fukushima accident in Japan. Nuclear power, remember, is the only large scale of electricity in the world that is carbon-free. About fifteen years ago, Germany initiated its commitment to climate-friendly generation. About half of its power comes from the local sources. Nevertheless, every single megawatt hour is backed up with fossil fuels. So as a result of the way we have been changing the way power is created, last year, Germany used coal to generate almost fifty percent of its power, the largest level since 2007. And . . . Germany has banned fracking, so that natural gas can hardly be used to generate electricity. The country's forty million households now pay more for their electricity than any other country in Europe except Denmark.

"It is also worth mentioning that Germany's major industries are located in the southern part of the country, which leads to the ever-popular transmission lines because wind technology, the wind resources, are in the north. . . . [T]he public response has been overwhelmingly negative. We are quite familiar with that in our company, because it usually has to do with proximity. In other words, put it in somebody else's neighborhood, not in my neighborhood.

"The bottom line is that the transition to clean energy will ultimately cost Germany many trillions of dollars, and its economy is already becoming far less competitive."

HOW WE MUST FACE OUR ENERGY CHOICES

"The point I am trying to make is this: All of our energy choices have consequences, and we need to talk about these choices intelligently and honestly. The national conversation about energy has to be real, and it has almost never been. . . . These are positive developments. Still, there are strong, compelling voices in America saying the pace is too slow, that the time has come to stop extracting the fossil fuels from the ground, or wherever it is from. In fact, the White House declared this to be a matter of national security. It made a bid for America to lead the way towards a carbon-free world.

"Americans take affordable, abundant electricity for granted…. Every time a hurricane kind of skirts Florida, it slides up the East Coast, we get a mass movement. It shows up in the form of frantic phone calls, text messages and e-mails and they all say the same thing, 'Turn my lights back on.' . . . We have become victims of our own success, and we have unrealistic expectations. That seems to be the case with electricity that powers our enterprises, powers our homes, powers our lifestyles."

Farrell concluded with this thought: "Making our republic work has never been a day at the beach, but we always do better when we are honest with each other, and it has been that way from the beginning. One of America's leading nineteenth century historians was a man named George Bancroft. He once wrote that there are basic conflicts in society that are always going to endure, conflicts that can never be, in his words, 'entirely quieted.' He went on to say that he who will act with moderation prefers fact to theory and remembers that everything in this world is relative, and not absolute. . . . That is a very fair statement of America at its best. We are pragmatic, we Americans and we Canadians. We need to keep our heads and allow reason to rule, and that goes for the debate about energy and the environment.

"How we reason through these issues will determine whether we seize the historic energy opportunity before us or lose it."

E. Osborne Ayscue, Jr.
Charlotte, North Carolina ■

CHICAGO

AMERICAN COLLEGE OF TRIAL LAWYERS ANNUAL MEETING

OCTOBER 1-4, 2015, FAIRMONT CHICAGO MILLENNIUM PARK, CHICAGO, ILLINOIS

The following speakers are confirmed for the meeting:

Erskine Bowles
Former President of the University of North Carolina, former White House Chief of Staff

James Comey
Director of the FBI

The Honourable Mr. Justice Clément Gascon
Canadian Supreme Court Justice

Admiral William H. McRaven
Chancellor of the University of Texas System, Lewis F. Powell, Jr. Lecturer

Eva Marszewski
L.S.M., Founder and Executive Director of the Extra Judicial Measures Pilot Project for Peacebuilders International (Canada), Emil Gumpert Award Recipient

The Honorable Allan van Gestel
Samuel E. Gates Award Recipient

REGISTRATION INFORMATION WILL BE AVAILABLE IN JULY

FINDING HUMOR IN NEWS AND POLITICS

Journalist, columnist and novelist **Frank Cerabino** is a warrior of words, words laced with dry wit.

In a recent *Palm Beach Post* column Cerabino had compared Fox New host Bill O'Reilly's combat experience with his own experience in facing the traffic snarls on the I-95 Expressway in Palm Beach County. Fellow **DeMaurice F. Smith** of Washington, DC observed in his introduction, "Anyone who is willing to take on Bill O'Reilly with an allusion to combat experience driving on a freeway should be commended."

Cerabino is a graduate of the United States Naval Academy and of the Northwestern University Medill School of Journalism. Previously a reporter on the courthouse beat for the *Miami Herald*, he has authored five books.

STORIES INSPIRED BY REAL NEWS

The self-described "youngest accordion player in America" told the College at its Spring Meeting at Key Biscayne that he finds material for his column by reading the newspaper, "a fount for ridiculous things parading as legitimate news."

One of his favorite columns started out as a short brief on the inside pages. One of the county commissioners in Palm Beach County, the county where he resides, thought it would be a good idea to have strippers carry photos IDs at work. The detail that intrigued him was that "the governmental office they were using was the place where they had re-counted the ballots in the 2000 election. They used the same office."

After the September 11 attacks, people needed to see an ID for everything, and this would be a government-issued ID. Deciding to find out more about becoming a licensed stripper, he went to apply. He began to get nervous, because the only license he had at the time was a driver's license, which required both a written and a performance test.

Cerabino assumed that he could pass a written stripper's test because most government tests are multiple choice. "You can kind of bluster your way through a multiple choice, but I was worried about the performance test, because if I walk into this office and they have those brass poles set up: 'Okay, Mr. Cerabino, get up over there and do whatever the stripping equivalent is to a three point turn,' I would be completely lost. And they'd say, 'You are a fraud. Get out of here.'"

He soon found out that this was just a way to collect $25 from people. The clerk was more interested in whether he would pay the fee by cash or check. The clerk handed him a form to complete and he went through the form without any issue until he reached the part that said "stage name."

Caught off-guard, he asked the clerk to see what names were already taken so that he would not duplicate any. As he looked through the packet of forms, he saw a pattern. "I learned that people who take this on usually pick a name that has something to do with a meteorological condition, like 'Stormy' or 'Ice.' I was at a loss. The only thing that came to mind was 'Partly Cloudy.'" Inspired by the 2000 presidential election re-count and the room where the ballot count took place, he thought "Dangling Chad" or "Hanging Chad" would be a "wonderful stage name." Better judgment prevailed, and he chose a name that he could tell his mom back in Long Island, New York. "I picked something PG. I picked 'Rusty Libido' as my name."

The licensing requirement was later declared to be unconstitutional, but not before Cerabino got his story.

THIRTY-SEVEN DAYS OF A RECOUNTING CIRCUS

The famous thirty-seven day vote re-count took place after the results of the 2000 presidential election between George W. Bush and Al Gore proved to be unclear, specifically unclear in the results in Florida. In Cerabino's opinion, the recount was "a horrible thing for America, but it was a wonderful thing for being a journalist in Florida and for the legal profession. It was just thirty-seven days of a complete circus."

A significant problem was that the ballot had the names for the presidential candidates on two pages, and, "You let Florida Man vote on two pages, and Florida Man is going to pick one on that page and then one on the other page. So, 20,000 Florida men voted for Al Gore and somebody else, too."

The Democratic party decided to do recounts in four of the sixty-seven Florida counties, "which was a strategic mistake. It ended up allowing the Supreme Court to say it was unconstitutional, that by doing selective recounts, they were disenfranchising the rest of the counties that didn't get recounts. But they picked four counties that they thought they could get a bunch of votes back. One of them was Palm Beach County."

QUIPS & QUOTES

I want to welcome you all to Florida. For those who don't live here and this is your first time, it is a very interesting place. It is a terrific place for journalists and attorneys. We have no shortage of people who are requesting our service. The way it usually works is when people have a grievanc ... they first find a lawyer. If there is no money in it, they get sent to us, the reporters. So we deal with the same people.

Frank Cerabino

The ballots were cards that used a stylus to poke through and separate the chad from the card. The chad is the piece of paper created when holes are made from the ballot card. The only way to confirm if someone ▷

actually voted was to inspect each ballot manually. The job was assigned to a canvassing committee, which normally includes a county commissioner, the supervisor of elections and a county court judge.

"This is the loopy part; it usually gets assigned to the most junior county court judge, a thankless job. Most times, you're going on election night and you are sitting there refereeing a small municipal election where there are a couple hundred votes. Suddenly, this county court judge is now in the middle of a national election where his decision on whether or not it should count as a vote could sway who gets to be the next president."

QUIPS & QUOTES

We have a collection of America's loose marbles that come down here. It makes life really interesting. We all appreciate those loose marbles, to the point to where if you read a story and it begins with 'A Florida man,' chances are really good that it involves a real strategic blunder, too much alcohol, and probably a firearm. 'A Florida man shot himself in the leg while bowling when his concealed weapon went off in his shorts.'

That is an actual story.

Frank Cerabino

The task went to Chuck Burton, a county judge Cerabino had known from the time he was a prosecutor. With a Democratic and a Republican lawyer looking over the canvassing board's shoulder, they would decide what to do with each ballot.

"Of course, Florida Man had run amok, because even though you had a stylus where you just had to poke a hole, some people actually wrote on the ballots. Some people, where there were ten candidates, they poked nine holes. That led the canvassing board to decide, 'Does that mean they are voting for the one person who he didn't poke?' Because law in Florida is very slippery; it just says 'voter intent,' is the imperative. Until they make a decision that 'I think this is what the voter intended to do,' it doesn't matter if the voter didn't follow the directions. The voter could write on the ballot, 'I want Gore,' and not punch Gore, and that would count for a Gore vote."

The debate intensified when the poke on a ballot was "just a tiny poke and it was not all the way through. If you're a Republican, that is known as a 'check swing.' He was trying to vote, and he pulls it back. If you're a Democrat, then, 'No, it's an 85-year old person who didn't have the strength to push it all the way through.'"

Cerabino recalled Burton as being fair, despite the enormous amount of pressure and scrutiny. Burton refused interview requests from national network anchors such as Connie Chung, who sent flowers to his home, and Dianne Sawyer; he even refused to talk to Cerabino.

After the recount was completed and the decision was up to the Supreme Court, Burton and a delegation from Palm Beach County were invited to sit in and watch the oral arguments in early December 2000. Cerabino was assigned to go with Burton to Washington, D.C. and write a story on the proceedings. He arranged to sit next to Burton on the flight, but Burton was upgraded to first class, while he was stuck in coach.

After sharing a cab ride to the Hyatt Regency on Capitol Hill, the pair got to the registration desk. "There he is in front of me. He is checking in, and the concierge says, 'Is that going to be a king-size or two double beds?' He looks back at me and says, 'Do you have your room yet, Frank?' I said, 'No.' He says, 'Do you want to just bunk-in together?' I tried not to jump up and down, and I said, 'Yeah, sure. That would be great.' I clandestinely call my editor and he says, 'How are you doing over there?' I said, 'We are sleeping together.'"

Burton and Cerabino ended up going to dinner with other people from south Florida. After dinner, the group returned to the hotel, leaving Burton and Cerabino, "two married guys from Boca Raton, sitting there in Washington with nothing to do except to go back to the room together, which is very awkward."

They decided to walk over to the Supreme Court. The building was lit up like a "birthday cake," and thousands of people were outside, huddled in blankets, all waiting for a chance to get into the visitors' gallery to watch the oral arguments.

When he and Burton walked up, "it was like he was Elvis. He had no idea how many people had really come to know him from this time during the re-count. We walked up there, and this murmur went through the crowd. These 20-something-year-old kids were like, 'The judge is here.' It validated their whole night's stay

outside. They ran up to him and had him autograph anything. . . . That is what I ended up writing about. I didn't interview him, but I talked about him talking to all of those kids, what they said about him and how they really appreciated what he was doing. . . . That was one of the highlights of my career."

RUN-INS WITH DONALD TRUMP

Cerabino shared with the audience some of his experiences with businessman and TV personality Donald Trump. In their first encounter, Trump had just gotten divorced from Ivana Trump and he was throwing a party at his Palm Beach home, Mar-A-Lago.

Cerabino, who received an invitation, planned to attend so that he could include the party in his Sunday column. He was the first guest to arrive in his eight year old "Pepto-Bismol pink" Toyota Corolla, which he was asked to park behind some bushes. The doorman refused to let him in, and so he waited in the driveway. The driveway eventually filled with other local media members who also were not going in to the party. The party started, and they were still outside. Trump came out once around nine o'clock to offer them a cup of coffee, but he still would not let them in. At around 9:30, Trump partially opened the door and waved his hands at them, motioning them to get away. Behind him, Cerabino saw a TV crew from *Prime Time Live*, an ABC show. The reporters outside called the ABC reporter, Judd Rose, who was inside, and found out that Trump had told him that those outside were "party crashers."

"I realized we weren't actually invited to be invited in," Cerabino said. "We were just the props, to show the party is way more popular than it probably is."

In his column, Cerabino wrote about being duped by Trump and how it felt to be one of Trump's stooges. He then got a call from his brother, a New York lawyer, who was doing legal work for Trump at the time. His brother told him that Trump wanted to call and talk to him. Trump called Monday morning and said that there was a misunderstanding. "Trump said if he had known Tom was my brother I would have been let in to the party. I told him, 'I got a much better column by what happened, and I want to thank you. Thank you for fake inviting me.'"

His final Trump story related how Trump had tried to move the Palm Beach County Jail because that three-story facility was next to a golf course Trump had built on land he bought from the city. The Palm Beach International Airport sits on the other side of the course. Trump did not like the fact that his golf course could not be shielded from a view of the jailhouse. Trump called the sheriff to move the jail.

After getting a tip from the sheriff about Trump's request, Cerabino wrote in a column that, while the jail could not be moved, it could be renamed to "fool all the golfers who were paying $30,000 to join the club to play next to the jailhouse." He then ran a contest to choose the best name. His two favorites were "The Breakers Inn" (after a famous hotel in Palm Beach) and "Bar-A-Lago," in honor of Trump's Palm Beach residence Mar-A-Lago.

QUIPS & QUOTES

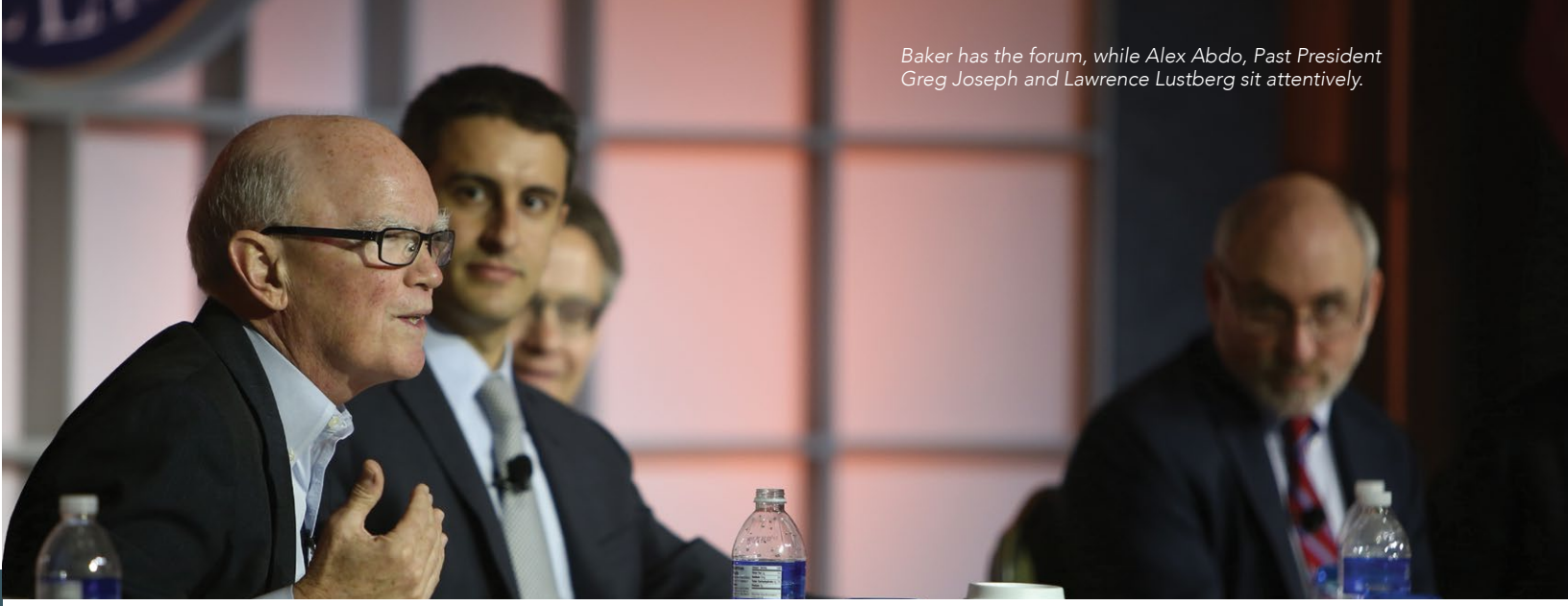
One of the byproducts of having a column in the paper is that I get a lot of mail from people in jail. I found out why. It turns out that if you behave yourself with the Palm Beach County jail, you get an issue of the *Palm Beach Post*. We try to get subscribers anywhere we can. So people read the newspaper, and when they see something they don't like or they imagine that somebody might be interested in their case, or they want to vent a complaint about the world, they are given stationery and they get to write a letter. And they write to me, more often than not.

Frank Cerabino

As President Fran Wikstrom remarked, Cerabino's dead-pan humor ended the entertaining Key Biscayne meeting program "on a perfect note." ■

PROFESSIONAL PROGRAM:
NSA SURVEILLANCE: LISTENING IN

The professional program, NSA Surveillance: Listening In at the Spring Meeting in Key Biscayne lived up to its billing as a thought-provoking debate between two dynamic advocates with starkly different perspectives on the Fourth Amendment constitutional and public policy implications at the core of two key but conflicting district court opinions on the legality of the controversial, massive, previously secret NSA Bulk Telephony Metadata Program. While targeted at foreign nationals, this federal intelligence program has been collecting telephone call number records of millions of Americans since at least 2006, under a classified Foreign Intelligence Surveillance Court (FISC) order that was made public in 2013 by Edward Snowden.



Baker has the forum, while Alex Abdo, Past President Greg Joseph and Lawrence Lustberg sit attentively.

Past President **Gregory P. Joseph** of New York, New York kicked off the CLE program with an introduction in which he highlighted its timeliness by noting a number of recent revelations about secret government domestic intelligence collection efforts, including one story just a week earlier in which the *Wall Street Journal* reported that the federal government has the ability to "send a text message to every cell phone in the U.S." by virtue of each person merely buying a cell phone. Joseph quipped, "You are all members of a social network."

Fellow **Lawrence S. Lustberg** of Newark, New Jersey the panel moderator, and Chair of the Criminal Defense Department of Gibbons P.C. also noted in his introductory comments that in addition to the NSA bulk data collection controversy being in the news, it now is in the movies as well, with *Citizenfour*, the documentary about Snowden's leaking of information about this program and other information, winning the 2015 Academy Award for Best Documentary Feature Film in March.

One panelist, **Alex Abdo**, Staff Attorney in the American Civil Liberties Union's Speech, Privacy and Technology Project argued the *Clapper* case for the ACLU before U.S. District Court Judge William H. Pauley III in the Southern District of New York and later, before the Second Circuit. The other panelist, **Stewart Baker**, is a partner in the Washington, D.C. office of Steptoe & Johnson and former Assistant Secretary for Policy at the Department of Homeland Security (DHS), and author of a 2010 book about his years at DHS, *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism.*

Lustberg began by giving a step-by-step primer on how the bulk data collection program works. The following summary provides context for the divergent views of the program and underscores the massive nature of this domestic intelligence undertaking. Once one understands the general concept, one may believe it is an appallingly unconstitutional intrusion of privacy or, to the contrary, that it is a limited collection of information where citizens have no expectation of privacy for valid national security purposes. Consistent with the FISC Order, the Bulk Telephony Metadata Program generally follows these steps:

1. The NSA collects all phone records per the FISC Order from telephone service providers - Providers turn over all call records identifying each telephone subscriber's phone number, when and what calls were made from and received by that phone number and length of each call. NSA does not review the individual records at this juncture. This is the Bulk Telephony Metadata database.

2. Identifying seeds - The records are then only to be accessed for counterterrorism purposes under NSA ▷

QUIPS & QUOTES

We know you are all happy to have us here, because notwithstanding all the other incredibly compelling and important speakers, we are the ones who, if you listen to, you actually get CLE credit. We are going to do that within an hour, which is only about fifteen minutes beyond your attention span. Unless, you are judge, in which case it is thirty minutes.

Lawrence Lustberg

procedures if there are approved seed identifiers ("seeds"), that is, phone numbers the NSA has obtained of people who pass a Reasonable Articulable Suspicion (RAS) test as being involved with "a specified foreign terrorist organization."

3. Queries of the bulk metadata via first hop - Once a seed is identified and approved, NSA petitions the FISC for permission to run queries against the bulk database. Queries can then be run with regard to those approved seeds by running them through three "hops." The first hop is all "the numbers that [the seed] interacted with . . . within a five year period"– calls made and received by the seed phone number. The list of phone numbers that would be generated by this query would be the first hop list.

4. Second hop - Each one of the phone numbers on that first hop list would then be reviewed to determine if any of them are seed numbers associated with a foreign terrorist organization. If so, then the analyst may suspect the query has uncovered the existence of a network. In most cases, the analyst goes to a second hop and makes the exact same query of the bulk data through the second hop of each phone number that had been identified in the first hop. That is, the query would identify all the numbers in the bulk data that each one of those first hop list numbers interacted with during the same five-year period.

5. Third hop - Finally, the huge and exponentially expanded number of individual phone numbers resulting from the second hop query would then be put through a third hop—that is, each one of the numbers from the second hop yield of phone numbers would be queried (in the bulk data bank) to find each and every phone number that each number on the second hop list interacted with during the same five year period. This last list of phone numbers, three steps away from the original seed, has now evolved into "millions and millions and millions" of phone numbers that are being queried based on the original one seed phone number. If any of these new numbers is associated with a foreign terrorist organization, then the analyst conducts further investigation outside of the bulk data, mainly to determine if there is a network.

6. Retention of bulk metadata - Note that five years' worth of data in the telephony bulk database is destroyed permanently, pursuant to statutory requirements, every five years.

By now, the panel hoped the audience was pondering to what end and at the expense of whose privacy were all these records collected and queries made of specific individual phone calling records? How do you balance civil liberties and national security in an age of terrorism, and was Snowden a hero or villain for revealing this program and starting this national discussion?

Lustberg further set the stage by briefly describing the two key opposing court decisions noted earlier.

In *Klayman v. Obama*, Judge Richard J. Leon ruled against the government and found the bulk data program unconstitutional under the Fourth Amendment.

In *ACLU v. Clapper*, Judge Pauley ruled for the government.

Both cases are awaiting decision in their respective circuit courts. Both judges agreed that third parties (telephone subscribers) cannot challenge the program under the APA. But both judges also agreed that the government was wrong—telephone subscribers do have standing to challenge the program under the Fourth Amendment. But that's where the agreement between the judges ended and our discussion began.

Lustberg explained that both decisions turned on the interpretation of one Supreme Court precedent - *Smith v. MD*, a 1979 case in which the police installed a pen register without a warrant to capture calling information from a suspected bank robber's telephone line. The Court held in the *Smith* case that there was no expectation of privacy, so no search warrant under the Fourth Amendment was needed because the telephone subscriber voluntarily transmitted the numbers he was calling after the bank robbery to a third party, the phone company. Lustberg then put a number of questions to the panel. A summary of key points follows:

FOURTH AMENDMENT CLAIMS

When you place or receive your phone calls, you know your phone company (a third party) is keeping a record of your call so, under *Smith*, how can there be a Fourth Amendment claim if the information is later gathered?

ABDO'S POINTS: *Smith* doesn't control here; *Smith* had different facts and, according to the Supreme Court, privacy expectations are very fact-bound. *Smith* involved targeted and limited collection of a single criminal suspect's phone calling records for a few days; it did not involve the bulk and indefinite collection NSA does now. Four years after *Smith*, the Supreme Court decided *U.S. v Knotts* involving surveillance of what the government called a suspected drug dealer's "public movements" in his car. Police used a tracking device without a warrant to track

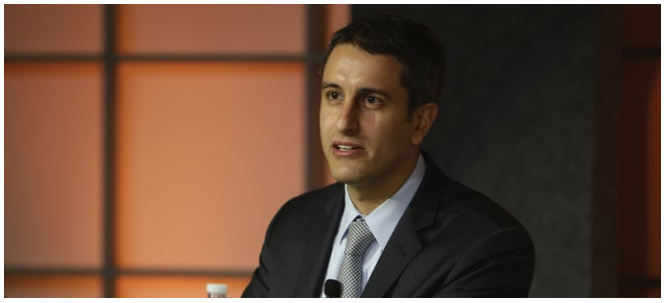
him. The Court approved the limited use in this case but as Abdo pointed out, "said something extraordinarily important." The Court noted that if the government engages in dragnet surveillance in the future, the Court would consider the constitutional implications. Go back to first principles – the *Katz v. United States* test and an individual's reasonable expectation of privacy. No one in 1979 (when *Smith* was decided) expected the government would collect and keep their personal call records for five years on the off chance the government would need them later. The bulk telephony records themselves are "extraordinarily sensitive" and reveal one's personal and professional life, "your intimate relationships, medical conditions, your fidelity, your sexuality and more." If *Smith* controls here, then what about credit card transactional records, internet browsing history, every move a person makes that is tracked by wireless phones? "There's a lot at stake here. . . . It's about the future of privacy. . . . Virtually everything we do today leaves a digital trail of some sort in the hands of third parties." Surveillance under the Fourth Amendment must be targeted.

BAKER'S POINTS: *Smith v Maryland* is directly on point and cannot be confined to its facts; the principle matters–that is, "when you give away your secrets, your relationship to that secret changes and your expectation of privacy in that secret changes, as well. . . . It is no longer entirely yours," Baker said. The bulk telephony program was adopted because the government realized there was a safe harbor in Afghanistan for terrorists planning attacks against the U.S.; the government wanted to find plotters quickly and determine if there were co-conspirators in the U.S.; if so, there was a "decent chance they'll call back home to Afghanistan." For the FBI to go telephone carrier to carrier is a long, slow process of inquiry by subpoena that requires asking each of the carriers in the country about the same numbers for calls and connections. Matching up the calls to build a "social graph" requires an enormous amount of footwork. So, the government decided to put it all in one place so it would have records that phone companies would ordinarily destroy within a short time. The data was assembled quickly and strict privacy controls on accessing it were imposed. The governed could not search for attackers without the data; a very practical problem.

JUSTIFYING THE COLLECTION

Generally, the Fourth Amendment allows for searches and seizures based on some showing of individualized suspicion. At the time the records are collected from the phone companies there is no such suspicion and no crime has been committed, [so how do you justify the collection?]

BAKER'S POINTS: It is reasonable to separate the collection of the data from the search, the query of the bulk data. When the query is made there is reasonable and articulable suspicion for doing so. "We face extraordinary risks."



QUIPS & QUOTES

To answer your question why the NSA bulk telephony metadata program is not controlled by *Smith* [*Smith v. Maryland*] is very simple. *Smith* involved a dramatically different set of facts. If *Smith* were a sniper bullet, then the phone records program is a napalm run.

Alex Abdo

ABDO'S POINTS: Baker's argument is that the Fourth Amendment is blind to the government's collection of data. That logic would allow the government to "not just monitor a database of phone calls, but a database of the actual content of the calls; of every single email we send. . . . We fought a revolution over the general warrant of the Crown," Abdo said. Writs of assistance were general search warrants that did not expire [Abdo then shared a historical account of the writs and the colonists' aversion to them and how the colonists' ultimately required a particularity requirement—that is, that the target of a search warrant must be particularly described in detail. The Fourth Amendment that came later contains such a particularity requirement]. Look at the 2012 Supreme Court decision in the GPS surveillance case, *US v. Antoine Jones*. In that case, the government made the same argument they are now making in the NSA cases: when a person moves in public, a person's privacy is sacrificed. Five justices said, "No," when someone moves in public and is monitored for long periods of time with the aid of technology, "the Fourth Amendment has something to say," so a warrant is required. Recently the Court said that the search incident to arrest doctrine does not apply to cell phones, unlike wallets, because there is such a complete record of everything someone has been doing over the last few years and months on a phone. "Technology makes a difference," Abdo said. If Baker is right that *Smith* controls and there is no expectation of privacy in the telephone records, then ▷

"the privacy protections the government put into place are constitutionally superfluous. They make no difference. If you have no expectation of privacy, the government can collect these records without any restrictions on the number of hops…without any restrictions on why they can query the database and without any of the restrictions on who they can disseminate that information to" once it is in hand. If the Constitution and the Bill of Rights have any continuing relevance, it is "to stand between individual rights and the political branches, because we can't trust the political branches to safeguard rights as sensitive as those."

EXPECTATIONS OF PRIVACY

Judge Leon's opinion states that "the government does not cite a single instance in which analysis of the NSA's global metadata collection actually stopped an imminent attack, or otherwise aided the government in achieving any objective that was time-sensitive in nature." Why should there be a different treatment of this material because it is a national security interest if the program does not make a difference?

BAKER'S POINTS: The judge had a very narrow view of what "stopping the attacks" meant. "There is only one case, in which, but for this program somebody, who was engaged in financing terrorism would not have been identified," Baker said. This is a program designed to identify widespread conspiracies. "We have been very lucky." Louis Brandeis, a sainted Supreme Court Justice, invented the right to privacy in a case where he was appalled about Kodak's new technology enabling people to take his picture without his permission. "If we had frozen our expectations to privacy based on a seventy-year-old justice's sense of what is creepy, and then left it in place for thirty or forty years, which is how constitutional doctrines work, we would still be stuck with a world where the police can't take your picture, maybe they can't put out an APB. . . . What is private evolves and we need to be able to let it evolve."

REASONABLE GATHER AND SEARCH

If Abdo is right and *Smith v. Maryland* is old precedent in light of new realities, do you have an argument, Stewart, that because of the extraordinary national security imperatives, you win because the gathering of information and its search would be reasonable under the Fourth Amendment, in any event?

BAKER'S POINTS: "Absolutely. Reasonableness is a flexible standard that looks at the extent of the harm that you are trying to prevent."

ABDO'S POINTS: Courts interpret the Constitution and apply the facts. "Look at the 9-11 Commission Report, which extensively analyzed the intelligence failure….They said the problem was not that the NSA or the CIA did not have the dots. They had the dots. The problem was that the agencies were not talking to one another. They were not connecting them. . . . They were not busy analyzing them."

SNOWDEN – HERO OR VILLAIN

This debate was sparked because one person reveal ed classified information. So the public now knows about the program. Is Snowden a hero or a villain?

BAKER'S POINTS: "He exposed this one program and has been dining out on it ever since…. He revealed enormous amounts of things that caused massive damage to our ability to gather intelligence on critical things from ISIS to Ukraine. He has done great damage to our relations with our allies. I think he was a villain."

ABDO'S POINTS: Snowden "revitalized our privacy; he has allowed a public debate on digital privacy…. He has emboldened Congress to–for the first time in a generation–consider passing surveillance reform. These changes are extraordinary."

Carol Elder Bruce
Washington, DC

UPDATE ON THE NSA SURVEILLANCE PROGRAM

Three key events were on the horizon after the panel took place: the approaching expiration of the Patriot Act, including Section 312, at midnight on June 1, 2015, and anticipated decisions from two key Circuit Courts in cases described by the panel—the Second Circuit Clapper case and the DC Circuit Klayman case. At press time, no decision was made in Klayman. However, there was a May 7 decision in Clapper in which the Court did not reach the constitutional issues, but found that the NSA bulk data program went far beyond what Congress authorized when it passed Section 215. A divided Congress is running out of time as it engages in a high stakes stand-off within the Senate and between both Houses.

The House overwhelmingly passed the USA Freedom Act on May 13 (338-88), with Administration support, that takes the bulk data program out of the NSA and requires telephone companies to retain the data and

QUIPS & QUOTES

I think the real problem is if we say we are going to abide by the Fourth Amendment, we are opening the door and diving off the slippery slope that will require the courts to consider hundreds of different kinds of data that are given away. In every case, the real question will be, 'Judge, is this creepy enough to apply the Fourth Amendment here?' I don't think that's how we should be making law.

Stewart Baker

the government to subpoena it as needed. The House promptly adjourned and will not return until the afternoon of June 1, within hours of the sun-setting on the Patriot Act. Meanwhile, Senators fall into a broad spectrum of views between those decrying the perceived violations of privacy caused by the bulk data collection and those who staunchly oppose any NSA reforms. The latter proclaim the scary imagery of that Agency going "dark" in a "high threat environment" if 312 is not reauthorized and that such congressional inaction is "dangerous politics."

Representing the pro-privacy spectrum end is Kentucky Senator Rand Paul who quasi-filibustered the Senate for 10 1/2 hours on May 20, against the Patriot Act, "the most unpatriotic of acts," to kill Section 312, and to "end the NSA spying!" On the other end is Kentucky's other Senator, Senate Majority Leader Mitch McConnell, who after the Second Circuit decision in Clapper came down, went to the floor of the Senate with his own bill to reauthorize a "clean bill" of the Patriot Act with no amendments. Both extremes are highly unlikely to become the law of the land. Even a proposed short sixty day extension of the Patriot Act with no amendments faces Obama Administration opposition and, in the face of the Second Circuit decision and bound by it, the SDNY Clapper trial judge, Judge Pauley, would likely enjoin the NSA program if Section 312 is reauthorized or extended before June 1. Meanwhile, the NSA reports that it will begin dismantling its program in anticipation of the expiration of the Patriot Act. Who knows? Maybe the DC Circuit will clarify or complicate things further with a decision in Klayman. ■

DID YOU KNOW?

1. TWENTY YEARS AGO: A MOMENT IN HISTORY

On April 16, 1995, president-elect **Andrew M. Coats** was conferring with the general counsel of a client in an office building across the street from the Alfred P. Murrah Federal Building in downtown Oklahoma City. He and the general counsel had left the room to go to meet with the CEO. The blast that became known as the Oklahoma City Bombing occurred while they were on the other side of the building.

When they returned to the room where they had been, the floor-to- ceiling window had been blown inward and shattered, and the wall opposite the window was full of large shards of glass that had been blown across the room and embedded in it. Had Coats still been there, sitting with his back to the window, the shards of glass would have gone straight into him and would have killed him.

He took the next day off and went out to play golf with his sons.

2. **THE COLLEGE HAS NINE FELLOWS WHO ARE 100-YEARS-OLD OR OLDER, WHILE TWO FELLOWS ARE 105-YEARS-OLD.**

EIGHTY-TWO INDUCTED AT THE SPRING MEETING IN KEY BISCAYNE

ALABAMA
Mobile
George W. Finkbohner, III
Montgomery
E. Hamilton Wilson, Jr.

ARIZONA
Phoenix
James R. Condo
Jeffrey A. Williams

ARKANSAS
Little Rock
Stuart P. Miller

BRITISH COLUMBIA
Vancouver
Peter John Wilson, Q.C.

CALIFORNIA-NORTHERN
Menlo Park
Ron E. Shulman
San Francisco
Doris Cheng
Craig M. Peters
Linda E. Shostak
Walnut Creek
Andrew C. Schwartz

CALIFORNIA-SOUTHERN
Irvine
Matthew Hodel
Jeffrey T. Thomas
Los Angeles
Michael P. McNamara
William W. Oxley
Marina Del Rey
James P. Carr
Newport Beach
Gary Pohlson
Woodland Hills
Randolph M. Even

COLORADO
Colorado Springs
Lori M. Moore
Denver
David A. Zisser

CONNECTICUT
Rocky Hill
Leonard C. Boyle
Westport
Stephen P. Fogerty

DELAWARE
Wilmington
Michael P. Kelly
Steven P. Wood

FLORIDA
Miami
Ramon A. Abadin
Peter Prieto
Kenneth J. Reilly
Orlando
J. Scott Kirk
St. Petersburg
Jeffrey M. Goodis
Tampa
John L. Holcomb
West Palm Beach
Edward A. Marod

INDIANA
Bloomington
Joseph D. O'Connor

IOWA
Cedar Rapids
J. Michael Weston
Marshalltown
Sharon Soorholtz Greer

KENTUCKY
Louisville
Richard P. Schiller
Paducah
Jonathan Freed

MASSACHUSETTS
Boston
Jonathan M. Albano

MARYLAND
Baltimore
Catherine Flynn
Thomas V. McCarron
Bethesda
Harry C. Storm
Greenbelt
Edward C. Bacon
Towson
Steven A. Allen
Robert L. Hanley, Jr.

MAINE
Augusta
Walter F. McKee
Presque Isle
Harold L. Stewart, II

MICHIGAN
Gross Pointe Farms
C. Kenneth Perry, Jr.

MINNESOTA
Minneapolis
Jan Conlin

MISSOURI
Columbia
Walter H. Bley, Jr.
Joplin
Roger A. Johnson
St. Louis
Willie J. Epps, Jr.

NEBRASKA
Omaha
Rex A. Rezac

NEVADA
Las Vegas
Peter S. Christiansen

NEWFOUNDLAND
St. John's
Daniel M. Boone, Q.C.

NEW JERSEY
Morristown
John Zen Jackson
Westfield
Paul A. O'Connor, III

OKLAHOMA
Antlers
James T. Branam

ONTARIO
London
Kevin L. Ross
Toronto
David M. Porter
Jocelyn Speyer

OREGON
Portland
Christopher H. Kent

PENNSYLVANIA
Scranton
Daniel T. Brier

TENNESSEE
Jackson
Marty Roy Phillips
Knoxville
John T. Johnson, Jr.
Memphis
Lawrence J. Laurenzi
Nashville
William B. Jakes, III

TEXAS
Amarillo
Kelly D. Utsinger
Austin
Mark T. Beaman
Eric J.R. Nichols
Dallas
William D. Cobb, Jr.
Fort Worth
John W. Proctor
Houston
Russell Hardin, Jr.
Charles W. Schwartz
Longview
Bruce A. Smith

TEXAS *(Continued)*
Lubbock
Daniel W. Hurley
San Antonio
J. Alex Huddleston

VIRGINIA
Richmond
Kathleen M. McCauley

WASHINGTON
Seattle
Steven W. Fogg
Henry C. Jameson
Rebecca J. Roe
Spokane
Kevin James Curtis
Stephen M. Lamberson

WEST VIRGINIA
Huntington
Marc E. Williams

INDUCTION IS CONTINUATION OF JOURNEY, CHANCE TO CHANGE HISTORY

Following the induction of new Fellows, **Doris Cheng** of San Francisco, California responded on their behalf. In her speech, Cheng spoke on being proud to be with her people, "trial lawyers," how family has shaped her legal career and Vince Lombardi.

I thought, as I looked around, what a true privilege it would be to carry your bags. This is truly an august, an amazing group of individuals who all believe in the same thing that I believe. I am so proud and so elated to be with my people: trial lawyers.

WORK IS LOVE MADE VISIBLE

I am mindful that this invitation and membership in the College means that we now have a heightened responsibility to protect two important parts of this concept. The first is the right to a jury trial, whether it's criminal or civil; and the second is equality by diversity. When I became a trial lawyer, there was probably no one more disappointed than my mother.

She was from the small island of Hainan, and it is a very large farming community. Her family owned the land that they farmed. She was born in 1932 and by 1958 the entire country was in upheaval because of communism and the great famine of China. They no longer owned their land, it became communist land, and they left for Hong Kong. Because of that experience she had a very, very deep distrust and mistrust of the government; and by that extension, lawyers.

I got to experience that firsthand much later when I was in my second year of practice. We went back to Hong Kong and visited some of her family members. They were absolutely acidic to me. It was a shock. They were incredibly disgusted and said, "How can you be a lawyer? All you do is talk. You don't make anything happen, you don't invent anything. Why aren't you studying math?"

I saw over time my mother's view changed. It was something very powerful. Kahlil Gibran said, "Work is love made visible." That was the definition of my mother. She was work. Everything that she ever did was for the love of us, the love of her family.

When we were growing up both of my parents were immigrants and we relied heavily initially on a lot of welfare support. Because she couldn't afford new clothes for us, she would stay up very late sewing a new wardrobe for us because she was a seamstress by trade. That was one of the things that she did when she left China and went to Hong Kong. That was my mother's definition of work, those things that you could see, something very concrete. The concept of being an attorney was not only foreign but frivolous. Over time that really did change because she saw that what we do as trial lawyers is work and she saw me work. She became very proud watching the process happen.

I do plaintiff's side injury cases and it is such a privilege to represent individuals. It was a privilege for me to share that with my mother, to let her see that there is

a process that happens that is fair; and that when I go to trial, I am standing up for somebody and I am their spokesperson for when nobody else will be.

CONVICTION OF BEING RIGHT

That view of my relatives in Hong Kong stayed with me because, frankly, we see that same view of attorneys reflected in our own community, in our own country. We have seen in the last decade the diminishing value of jury trials. I know in California our jury trial rate is currently about three percent on civil cases. The criminal cases are a little bit higher, but, frankly, not a whole lot higher. In the federal courts they are quite low. We have had legislative cuts to our court system, diminishing what should be a co-equal branch. About seven months ago I saw a business magazine article about the need to do away with jury trials because they're inconvenient to jurors both in time and money. I'm preaching to the choir here. We all know the value of this system.

I had the pleasure of spending some time in Kosovo and Macedonia, working with the judges and prosecutors there to work on their adversarial system because they were interested in mirroring the United States. Their goal was to eradicate the corruption that they saw in their own countries because it wasn't decided by a body of their peers. I find sometimes how hypocritical it is that while we champion civil rights, many of the people in our own soil are ready to forego them.

I had the wonderful joy of arbitrating a case this last summer and it was a single neutral arbitrator. My biggest worry was having to channel the entire closing argument to fit one person's biases. There would be no playback or brainstorming. That's exactly what we had worked on in Kosovo, Macedonia, Albania and Bulgaria. I thought, "What a tragedy."

I am encouraged by this class that we proceed to trial because we have the conviction of being right; otherwise, we would counsel our clients very differently. If our conviction is wrong, we would rather be told by twelve people, or at least six, rather than a single individual with unbridled power in a singular world view. One of the benefits with a jury is there is a collective wisdom. I respect the fact that the person who is twenty-years-old to the person who is eight-years-old years old, that among twelve people, or at least six in federal court, that there is at least one-hundred years of life experience there.

I am proud to be part of this organization that will stand up for democracy and the right to a jury trial in criminal and civil cases, because I want to say to all of you, trial lawyers are relevant. Trial judges are relevant. It matters to this process that it is done fairly.

Let me say to the appellate judges, to make sure that there is a check and balance below you. This process matters.

Let's take a lesson from one of my inspirations, Vince Lombardi. I coached girls' basketball for about twenty years, and so inspirational speeches come from great coaches. After all the cheers have died down and the stadium is empty, after headlines have been written and you are back in the quiet of your room and the championship ring has been placed on the dresser and after all the pomp and fanfare have faded, the enduring theme that is left is the dedication to doing with our lives the very best that we can to make the world a better place in which to live. ▷

TRUSTING THE JUDICIAL PROCESS

On the issue of equality by diversity, my father is a very interesting man. He left the same island my mom came from, in 1939, twenty years earlier. He left because of the Japanese invasion. Many of you are probably not familiar with, but Hainan is on the same latitude as Hawaii, so we get beautiful tropical weather there. It's a great place now for resort living and vacations. You may want to think about our next trip there. But it was a very difficult time because Japan occupied Hainan Island for about six years.

My father left and he made his way to New York. He worked as a merchant seaman for the U.S. Coast Guard for probably more than a decade, up to the point where the Korean War ended.

Tonight is a very poignant night for me. It is the eve of the five-year anniversary of his death. Before he passed away, we were looking through his papers. I saw these papers from 1954, when he was frequently contacting an attorney. Most of my family tries to stay away from lawyers. They're allergic to them. I thought, "What is this about?" He laughed and said, "Every six months somebody would come around and threaten to deport me, so I had to hire a lawyer every six months." My father had to trust people who were not his people to ensure that the process was going to be just for him. Part of the confidence that we have in our judicial system is the continued ambition that the process is managed by people who reflect our own community.

We still have quite a journey. The percentage of women judges in state final appellate courts is about thirty-two percent; in the intermediate appellate courts, about thirty-two percent; and in the state level, general trial courts, it's twenty-five percent. For minority judges, it's much lower. In the circuit court, fourteen percent; county court, thirty-eight; and in district courts, twenty-three percent. I violated the rule of trial, which is that if you have statistics you should have a chart or an exhibit. I don't. Don't punish me for it, it's not that exciting. If you just close your eyes, you can imagine it.

I think about what Ruth Bader Ginsburg said: 'When I'm sometimes asked when will there be enough women on the Supreme Court and I say when there are nine, people are shocked. But there have been nine men and nobody's ever raised a question about that.'

RIPPLES OF HOPE

Let me close with a few thoughts about where we can go. I harken to Robert F. Kennedy in his speech in 1966. 'Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation.' He went on to say: 'It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope and crossing each other from a million different centers of energy and daring, those ripples build a current from which can sweep down the mightiest walls of oppression and resistance.'

On behalf of this inductee class of 2015, we thank you, Fellows of the College. By this invitation the College acknowledges my class, our past accomplishments, but more importantly our future potential. Our work does not end with this prestigious induction. It is a continuation of a journey.

If you will please indulge me because I do miss my father, I have a collection of his poetry that I translated from Chinese to English. He wrote this in 1997 when he had been diagnosed with cancer. We were visiting China in Gualing, and he wrote: "The weary sun looks down humorously at the sycamore tree. Sweet Agmontis burst open in greeting. Behold the mountains and river and climb the crooked path. Without realizing it you have reached the cliff of the immortals."

That is what I wish for all of us, that we shall reach that cliff to change history, to right all the wrongs in the world, and immortalize it for the people who come behind us. Thank you for the opportunity to speak on behalf of this class. As you look to your left and you look to your right, you must see what I see: a ripple of hope that the strength of this organization will never surrender the fight to protect the right to a just, equal and democratic society. ■

HOW TO NOMINATE A POTENTIAL FELLOW

Past President **Cody Fowler** of Tampa, Florida was the first non-Californian to be inducted into the College. Serving as President from 1952-1953 and then from 1954-1955, he was one of the College's leading missionaries. As he traveled throughout the country on American Bar Association business, he forwarded recommendations for College membership to College Chancellor-Founder Emil Gumpert. Within thirty days after his induction as the first Fellow from outside California, Fowler had contacted six potential members from four states. At the January 1952 meeting in San Francisco, eleven new members were inducted, including five whom Fowler had recommended.

One need not be President to nominate a potential Fellow. However, there are guidelines a Fellow should know in order to submit a candidate for membership.

Q: Can any Fellow recommend a potential nominee to be considered for membership?

A: Yes, a Fellow can propose an attorney for nomination. One Fellow must nominate and two other Fellows must second the nomination. State or province committees can also propose nominations. Details of the nomination process can be found in the *Bylaws,* Section 3.3, "Election to Fellowship" (page 460 and page 468) in the 2015 *Roster,* commonly referred to as the Blue Book. Qualification requirements can found on page 467 of the *Roster*. It is important to remember that candidates must not be made aware that they are being considered.

Q: What other information is needed when submitting a nomination?

A: Other detailed information is required such as biographical and professional data, as requested on the Proposal Forms.

Q: Who receives the completed nomination package?

A: The State or Province Committee Chair receives the completed nomination package.

Q: Do Fellows vote on potential new Fellows?

A: All Fellows within a state or province receive a poll ballot. Fellow input on candidates is very important and is considered in detail by the Executive Board. Responses to polls are held in the strictest confidentiality.

Q: What if I have more specific questions?

A: Questions can be directed to the National Office at nationaloffice@actl.com or 949-752-1801. ■

THE VANISHING LAW STUDENT: A POSSIBLE SOLUTION

Texas Fellow and United States District Judge **Royal Furgeson, Jr.** has been an advocate of changing legal education for a long time, especially in regard to practical training. Then, he received an offer he could not refuse. In May 2013, he retired from the federal bench in Dallas to become the founding dean of the newest public law school in Texas, UNT Dallas College of Law, a law school aligned with many of the most critical reforms being called for in legal circles and by independent researchers.

"Starting a new law school – most people think that is a big challenge – and they're right. There are even some who think it is downright crazy to open a new law school given the current economic condition," said Furgeson. "With that notion, I have to respectfully disagree."

The arguments against another law school run across common themes. There are already too many lawyers and too many law schools. Law school applications are falling. Tuition rates and the related student debt are skyrocketing. Graduates cannot find the kinds of jobs they hope to find.

"We've heard all the arguments," said Furgeson. "But there are a deeper set of facts, many that do not get media attention, that are relevant to the discussion about legal education in today's world.

"We have been told anecdotally over the years that there are too many lawyers," said Furgeson. "While this may be true in a limited number of practice areas, it is a misleading generalization. When you consider that many middle income families, lower income families and small business owners don't have access to even basic legal services, it is clear that there are many unmet needs that must be addressed. When citizens cannot access legal representation, we cannot uphold our country's commitment to the rule of law."

The Chief Justice of the Texas Supreme Court, Nathan Hecht, echoed this theme as keynote speaker at the law school's inaugural convocation on August 10, 2014. "I doubt whether any society has ever needed lawyers more than today's. Never has what has come to be called the justice gap – the gulf between those that desperately need legal services, and those that can provide them – never has this justice gap been wider,"

said Hecht. "Across the country, in bar associations and law schools, the leaders of our profession are concerned that there is more legal work to be done – for many clients, life-changing legal work – than there are lawyers to do it."

In creating the UNT Dallas College of Law in 2009, the Texas legislature agreed with the law school's advocates that a new kind of law school was needed, one that reflected the opportunity to tailor legal education to meet the needs of today's students and the needs of the clients they will serve.

The result is an ambitious mission for UNT Dallas College of Law: to broaden access to an affordable legal education; to graduate students who have the full range of practice-related competencies necessary to be effective lawyers worthy of client and public trust; to provide the best possible educational environment for learning the law and developing professional identity; to advance the career and professional goals of students; to improve access to justice to meet underserved legal needs; and to be a valuable partner in civic engagement.

Each aspect of the mission is embedded in the goals and everyday operation of the new law school. "Instructional methods proven in undergraduate and medical schools, but rarely adopted by law schools, are part of our DNA," said Furgeson. "The teaching methods are not new, but we're innovating how to use them in legal education. For example, instead of only one test at the end of the semester, our students receive low-stakes testing every two weeks plus a mid-term exam. In addition, in our second and third year classes, three-hour courses will have two hours of instruction and one hour of lab." Experiential education programming is also integrated with traditional doctrinal courses to increase development of practice-related competencies.

Without legacy costs to shoulder, the law school's tuition is considerably lower compared to other private and public schools. With lower tuition and, therefore, less loan debt upon graduation, it is hoped that students at UNT Dallas College of Law will have more career paths available to them. Lower student loan debt will help many current students planning to pursue public interest careers a real possibility. The inaugural class' annual tuition is approximately one-half the average for full-time resident students in public law schools.

"In our admission decisions, we use a holistic approach to access overall credentials, not just LSAT scores and GPA," explained Furgeson. The inaugural class of one-hundred fifty-three students, chosen from 618 applicants, reflects diversity across age, gender, race and ethnicity, career and professional backgrounds, and military or law enforcement service. "We've been successful with our first class in widening access to legal education to those who might not otherwise be able to attend law school."

The inaugural class is fifty-two percent female and forty-eight percent are students of color. The average age of the law school's students is thirty-three. The majority of students have military service or other career experience and twenty-nine percent hold advanced degrees. Many have spouses and children and are working full- or part-time while in law school.

"Our students really inspire me. We have outstanding people, many of whom know how to survive life's challenges, ready to serve their communities and who we believe are capable of becoming great attorneys," added Furgeson.

Scott McElhaney, Immediate Past President of the Dallas Bar Association, recently wrote, "Royal Furgeson and his team are doing something new and potentially groundbreaking. [Their law school] represents a bold experiment. It aims to offer an affordable legal education to train lawyers to be able to serve traditionally underserved people and businesses."

The UNT Dallas College of Law is not trying to be Yale. Rather, it is trying to meet the needs of its unique service area, through innovation and being practical. And, in doing so, it is bringing back some of those vanishing law students.

David N. Kitner
Dallas, Texas ■

THE TRIAL OF OSCAR PISTORIUS: AN AMERICAN PERSPECTIVE

Oscar Pistorius, one of the most recognizable athletes in the world, fired four bullets through a locked bathroom door in the middle of the night on February 14, 2013, killing Reeva Steenkamp, his girlfriend of three months. In today's world of incessant media coverage and cameras in the courtroom, the ensuing case promised to be an international spectacle. It did not disappoint. Sensational and dramatic trials like this one hold our interest not unlike reality television; they rivet our attention like no fictional drama can.

Pistorius was born without fibulae, a congenital defect that required amputation of both legs below the knee before his first birthday. From an early age, he relied on prosthetic devices to get around. In answer to murder charges, he claimed that he believed he was acting in self-defense, asserting that he thought an intruder had entered the bathroom through a window. Having removed his prosthetic legs to sleep, he testified that he was terrified and felt vulnerable given his limited mobility. He said that he aimed at the door of the bathroom but did not intend to shoot the "intruder."

Pistorius was found not guilty of murder because he mistakenly believed that he was defending himself. He was, however, found guilty of culpable homicide, which is akin to voluntary manslaughter in the U.S. system, because his mistaken belief was found by the judge to be unreasonable. Below we examine the case from the perspective of an American criminal defense lawyer.

THE CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA

The legal system in South Africa is informed by both the Dutch and the British legal systems. South African criminal law, however, derives primarily from English traditions. As a result, the system is adversarial in structure, the prosecution bears a burden of proof that is beyond a reasonable doubt and a defendant has a right to remain silent. In these respects, our systems are similar.

There is, however, one profound difference. In the United States, while a criminal defendant may elect to proceed to trial before a judge, the Sixth Amendment guarantees a right to a jury trial. In South Africa, trial by jury was abolished in 1969 in consideration of the risk of bias against black defendants and racial tensions in general. Before then, only white citizens served as jurors. From that time, criminal cases have been tried to judges who have the authority to appoint "assessors" to assist them in fact finding, particularly in connection with forensic or technical evidence. To this day, the debate over jury trials and the risk of racial bias continues in South Africa.

Many South African court watchers have observed that the Pistorius trial does not serve as an example of how the criminal justice system works for a majority of South African criminal defendants. In most cases, they languish in jail while they await trial. Defense lawyers are often overwhelmed. Witnesses fail to appear, and the system is said to be broken for defendants and victims alike. Pistorius, on the other hand, was defended by effective counsel, presented funded forensic experts, was free on pre-trial release and was tried within a reasonable period of time.

THE TRIAL: PROSECUTORIAL ETHICS AND TACTICS

In spite of the economic and legal advantages afforded Pistorius, there are legitimate questions of whether the prosecutor's overzealous tactics might have compromised the fairness of the proceedings. Pistorius was tried before Justice Thokozile Masipa of the High Court of South Africa, Gauteng Division in Pretoria. She was born in Soweto and is only the second black woman to be appointed to that court. From an American lawyer's perspective, it appeared that the judge did not exercise effective control over the courtroom and, as a result of the free rein given, the prosecutor crossed the line in potentially critical ways. The cross-examination by prosecutor Gerhard (Gerrie) Nel, whose moniker is "Pit Bull," was abusive, argumentative and full of statements of his own beliefs. He invoked religious faith and his conduct was otherwise inappropriate by American standards.

One would expect an experienced trial judge to be better equipped to separate probative evidence from provocation and bias than a jury. Nevertheless, the record is astonishing to American eyes. Nel constantly prefaced his own questions with assertions of fact, such as "You have concocted a version," "Your story is untrue, that's why you can't remember," and "The only reasonable inference" is that Steenkamp not Pistorius "was screaming." He challenged Pistorius repeatedly with "You won't concede anything" and "You won't take responsibility." Nel told Pistorius that he was "tailoring evidence" in a gratuitous observation. Oddly, from an American criminal defense lawyer's point of view, there were few defense objections.

Early in his cross-examination, Nel asked Pistorius if he lived "by Christian principles," and whether "As a Christian, you will not lie?" He then proceeded to call ▷

Pistorius a liar over and over again, despite the judge's enjoining him not to do so. The judge did not seem to react to Nel's ignoring her.

Nel repeatedly admonished Pistorius in the manner ordinarily performed by a judge controlling an examination: "You have got long answers…you are not listening…answer the question." He even opined that certain answers to his questions "[are] not good for you." Perhaps most strange of all, Nel repeatedly challenged Pistorius with the choices his defense counsel made in his questioning of other witnesses during the government's case-in-chief. He pointed out that Pistorius handed his counsel notes from time-to-time, and could point out relevant facts or inconsistencies for his counsel to focus on with certain witnesses, thus impinging upon the attorney-client privilege.

The impact of the prosecutor's excesses as viewed under American law is difficult to gauge. It can only be assumed that, as the finder of fact, the judge was in the best position to decide if the prosecutor's practices interfered with her understanding of the facts and could have reined him in had she found it necessary.

THE VERDICT: A COMPROMISE INCONSISTENT WITH THE EVIDENCE?

Occasionally, juries reach compromise verdicts; perhaps so do judges. Is this verdict an unprincipled compromise, an injustice? We think not.

Taking the judge at her word, she found reasonable doubt about the prosecution's contention that Pistorius intended to kill Steenkamp as a result of, or during a confrontation. In other words, the court found that Pistorius's testimony that he feared an intruder had entered the bathroom through a window raised reasonable doubt about his intent to kill in light of all of the other evidence. It is difficult to conclude that finding as unprincipled. Pistorius argued that the screams heard by neighbors were his screams after he realized he had shot Steenkamp. The prosecution had difficulty persuasively articulating a sufficient motive. The evidence that their relationship had been stormy included a series of text messages and other examples of confrontation in public that in fact seemed to demonstrate little more than that Pistorius was selfish and self-absorbed. The forensic evidence was also effectively contested by the defense.

Other factors may have played a role in the court's analysis of intent, the most notable of which was the prosecution's theory about Pistorius's character. The prosecution seems to have overplayed its hand, characterizing Pistorius as a cold-blooded, out-of-control, gun happy sociopath. The joinder of the gun charges from previous unrelated incidents contributed to the effort to so characterize Pistorius.

Nowhere was Nel's theory that Pistorius was cold-hearted and trigger happy more explicit than in his cross-examination of Pistorius regarding an otherwise unrelated incident at a shooting range. Pistorius and his friends videotaped the event for their own amusement. After shooting at a watermelon with a large caliber handgun that Pistorius referred to as a "zombie stopper," Pistorius could be heard on the video commenting on how soft it was, leading to the following exchange with the prosecutor on cross-examination:

Q: You wanted to see the effect on the watermelon?

A: I did My Lady, as did many of the other people that were there.

Q: And you then said words to the effect: "It is a lot softer than brain." Am I right?

A: That is correct My Lady.

Q: Referring to?

A: Referring to the watermelon.

Q: "It is like a zombie stopper." Referring to?

A: I guess referring to a firearm that would be used to stop the zombie My Lady.

Q: So, am I correct in saying that you were shooting at the watermelon to see what the effect would be if you shoot somebody in the brain…. Why do you not just admit that you shot that firearm at the watermelon to see what the effect would be if you hit somebody in the head, in the brains?….So the brains you referred to, whose brains would that have been?

A: My Lady, as I said earlier, the context … it was made with a zombie, so ... [interrupted]

Q: You see, I thought you would say that. Therefore I am going to read out the whole sentence again. "It is a lot softer than brains, but it is like a zombie stopper." It is like zombie stopper. Not it is a zombie stopper. Or a zombie's brains, you were referring to something else. Do you want to respond to that?

A: No, My Lady.

Q: You don't have to.

This incendiary line of examination seemed bizarre. Its relevance to the case was tenuous and it would never have been permitted in an American court.

Prosecutors and indeed all trial lawyers must calibrate their theories so they do not risk establishing a premise they cannot sustain. This is a particularly serious risk for prosecutors of violent crimes. The O.J. Simpson murder trial is an example in which the prosecution may have relied too heavily on Simpson's prior violent and jealous confrontations to tell a story that the jury ended up not believing.

Having found reasonable doubt that Pistorius intended to kill Steenkamp, the court still had to decide whether his actions were subjectively reasonable. By his own account, Pistorius found himself in front of a locked door to a bathroom with window access and he fired multiple large caliber rounds into the door, knowing that a human being was on the other side. The judge held that Pistorius was in fact guilty of the lesser offense of culpable homicide. She further noted that it was irrelevant to the case that he felt vulnerable and believed an intruder was in the bathroom. In the judge's view, in lieu of pulling the trigger, Pistorius could have called security or the police, he could have run to the balcony and screamed for help. While the court believed Pistorius did not intend to kill whoever was in the bathroom, he fired not one but four shots, after having sufficient time to deliberate and act reasonably. She found that this constituted sufficient evidence to convict him of the lesser charge.

What would the outcome of this trial have been in an American court? It is all too common that homeowners shoot first when fearing an "intruder," only to realize that they have used unreasonable force in the face of an unfounded threat. Certainly, verdicts of a lesser degree of homicide are appropriate in such cases, but the principles leading to them merit examination. At heart, the judge in the Pistorius case found that it was unreasonable to use such force in the face of the threat Pistorius perceived that he faced. While that finding would support a U.S. verdict of manslaughter, if the use of lethal force were sufficiently egregious as to evidence a "malignant heart," a finding of second degree murder could result. A belief in the right of self-defense (albeit unreasonable) negates malice. Short of malicious intent, the use of unreasonable force in purported self-defense results in what our common law traditions would label unreasonable or imperfect self-defense manslaughter. While the judge in the Pistorius case did not articulate her verdict in such terms (and the law of South Africa may not so categorize the offense) her verdict is consonant with that concept.

Considering this case from an American legal perspective also requires a look at the "castle doctrine." The doctrine, articulated in some state statutes, creates presumptions of reasonable force or eliminates the common law requirement that a person retreat before using lethal force when facing an intruder or perceived intruder in the home. If some version of the castle doctrine were available in South Africa, it seems likely that Pistorius would have invoked it, arguing that he had no obligation to explore other means of avoiding danger and was therefore entitled to resort to deadly force.

Since her verdict, the judge granted the prosecution leave to appeal the issue of intent. Her doing so will allow this issue as it pertains to this case, as well as South African criminal law, to be more fully adjudicated. The notion of the prosecution appealing a verdict as insufficiently severe is alien to us. Our system permits prosecution appeals that seek review of a sentence but the double jeopardy clause in our constitution prohibits any prosecution challenge to the verdict itself.

Ultimately, Pistorius might well have received the same verdict and a similar sentence whether tried under U.S. or South African law, even though the roads to that end would have been significantly different. All roads may not lead to Rome, but it is of some comfort that diverse systems can lead to compatible results.

Catherine M. Recker
Philadelphia, Pennsylvania

Robert E. Welsh
Philadelphia, Pennsylvania

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SEEKING NOMINATIONS FOR EXEMPLARY JUDICIAL INDEPENDENCE

The Sandra Day O'Connor Jurist Award Committee seeks your help in identifying candidates for the Sandra Day O'Connor Jurist Award. The Award, established in 2007, is given from time to time to a judge in the United States or Canada, whether or not a Fellow of the College, who has demonstrated exemplary judicial independence in the performance of his or her duties, sometimes in difficult or even dangerous circumstances.

Judge George W. Greer

This prestigious award has been given to two judges – Florida state court judge George W. Greer, who presided over the Terri Schiavo "right-to-life" case, and Texas federal judge Sam Sparks, who presided over the trial of multiple members of the "Texas Syndicate" on racketeering and conspiracy charges involving robbery, kidnapping and murder.

Judge Sam Sparks

Please carefully consider any nomination. The Award is not an annual award but depends upon "exemplary" judicial independence coupled with "difficult or even dangerous" circumstances.

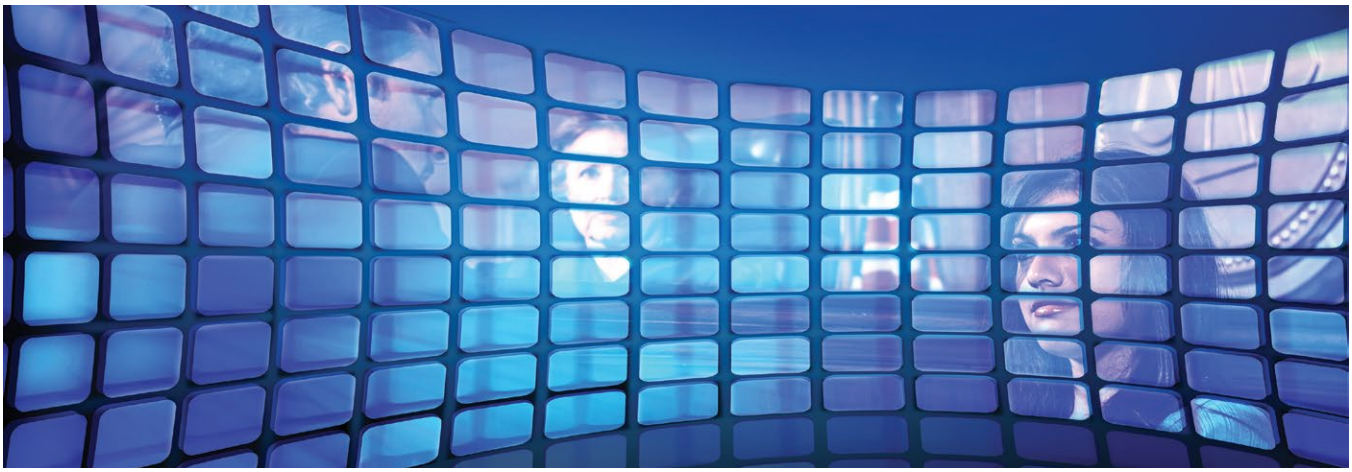
If you would like to nominate a candidate for the Award, please go the Jurist Award page on the College website and download the Proposal Form for the Award. Completed forms should be forward to the attention of the Chair of the Sandra Day O'Connor Jurist Award Committee at nationaloffice@actl.com.

PUERTO RICO FELLOWS WELCOME NEW MEMBER

Enrique "Rico" Mendoza was welcomed to the College by Fellows in Puerto Rico this March at the historic La Casona Restaurant in San Juan. Mendoza was inducted as a Fellow at the 2014 Annual Meeting in London last September. He was accompanied by his two sons, Enrique and Manuel, to the activity. It gave all who attended a chance to explain to them just how special their father's admission to the College truly is for a trial attorney. Enrique is finishing law school and Manuel is an artist. The afternoon had an intimate, family feel to it.

From bottom row to top, left to right: First row: Manuel, Rico and Enrique Mendoza, second row: Alvaro Calderon, Joe Laws and Puerto Rico State Committee Chair David Indiano, third row: Tony Bird, Eugene Hestres, Puerto Rico State Committee Vice Chair Francisco Colon Pagan, fourth row: Ruben Nigaglioni, Francisco "Paco" Bruno, Eric Tulla, Salvador Antonetti

Among the Fellows present was **Antonio M. Bird, Jr.**, who flew all the way from Asheville, North Carolina to celebrate the event. The luncheon also served as an opportunity for Fellows to map out the group's activities and goals for the coming year.



TEACHING TRIAL AND APPELLATE ADVOCACY COMMITTEE OFFERS DEPOSITION TRAINING PROGRAM

"Depositions play an extremely important role in the American justice system." *GMAC Bank v. HTFC Corp.*, 248 F.R.D. 182, 184 (E.D. Pa. 2008).

The College's Teaching Trial and Appellate Advocacy Committee has produced a deposition training program for aspiring trial lawyers in their first five years of practice.

The video deals with the practical realities that confront every interrogator and defender, including:

- Deciding upon your objectives with a witness
- How to ask questions to exhaust the knowledge of the witness
- Various approaches to obtaining admissions from the witness
- How to use exhibits effectively
- How to deal with the tight-lipped uncooperative witness
- How to deal with an obstreperous opponent
- Which objections are proper, which are not
- In what circumstances may the defender properly instruct the witness not to answer
- In what circumstances may counsel confer privately with the witness during the course of the deposition
- How to apply to the court to obtain rulings on disruptive behavior, objections and instructions
- How to ethically and effectively prepare the witness so that he/she will do a better job of testifying
- Tips on taking video depositions
- How to use deposition testimony effectively at trial

The training video is user-friendly and consists of a series of video vignettes of life-like deposition excerpts, followed by commentary from participating Fellows, as well as series of panel discussions on various deposition topics. Each vignette, commentary and discussion is a separate clip, so that viewers may pick and choose what to use in their own training program. The written materials complement the video, and include a discussion of Rule 30(b)(6) depositions, which are often a struggle for even the most experienced trial lawyers.

Fellows who participated in the program are:

Commentators:
Dennis R. Suplee

Participants Fellows:
Lynn R. Johnson
Mary Lee Ratzel
Paul L. Redfearn, III
George H. Robinson, Jr.
Lonnie J. Williams, Jr.

Fellows who have reviewed the program uniformly praise its excellence and usefulness.

The video, which is stored on a flash drive, is available, without charge, to Fellows who wish to use it as part of the College's project for training public interest lawyers. It is also available to Fellows to purchase for $50 for use in training lawyers in Fellows' own law firms. Copies can be purchased through the College by contacting the National Office at nationaloffice@actl.com. ▷

2015 EMIL GUMPERT AWARD WINNER ANNOUNCED

Extra Judicial Measures Pilot Project of Peacebuilders International (Canada) in Toronto, Ontario is the 2015 Emil Gumpert Award winner. It employs "Talking Circles" or "restorative justice" for conflict resolution of young offenders as an alternative to arrest and criminal charges. All too often, an arrest record leads a youngster to suspension or expulsion from school, unemployment, confinement and a life of crime. The proposed Extra Judicial Measures Pilot Project seeks to establish the prototype in Toronto for a pre-charge, youth diversion program that will divert youth identified as having likely committed a non-violent offense, who have no prior criminal record, to a community-based diversion program. Diversion is sought instead of charging them with a criminal offense that likely leads to confinement, creation of a criminal record and failure. Of 500 children referred to restorative justice to date, not a single one has returned to criminal conduct. The Foundation of the American College of Trial Lawyers funds the $100,000 first-place cash prize, and Eva Marszewski, L.S.M., Founder and Executive Director of the Extra Judicial Measures Pilot Project, will present remarks at the October 2015 Annual Meeting in Chicago.

UPDATE ON 2013 EMIL GUMPERT AWARD WINNER: THE MILLER RESENTENCING PROJECT

The 2013 Emil Gumpert Award winner, The Miller Resentencing Project of the Florida State University College of Law Public Interest Law Center's Children in Prison Project, of Tallahassee, Florida, claimed an important victory in March. The Miller Project won its case in the Florida Supreme Court, where the Court decided that the U.S. Supreme Court decision in Miller to be retroactive. "Now, all 201 kids who were going to die in a Florida prison have a right for resentencing and a real hope of being released," said Paolo Annino, Director of the Florida State University Public Interest Law Center. "I want to thank the American College of Trial Lawyers for its vital support which made this victory possible and I wish to thank especially **Bob Mackenzie**, Mark Suprenant and **Gary Bostwick** for believing in the Miller Project." As the torch-bearer of minors who have been incarcerated for homicide crimes, with no chance of parole, the Public Interest Law Center addresses the *Miller v. Alabama* 2012 Supreme Court decision and provides legal representation and a model for replication in all states.

IAALS-ACTL RELEASE NEW PUBLICATION: 24 RECOMMENDATIONS FOR IMPROVING CIVIL JUSTICE

In 2009, national media outlets—and the legal profession—were abuzz with talk of concrete, reasoned and achievable recommendations for making the American civil justice system less time consuming and expensive, while also more accessible and just. The efforts of IAALS—the Institute for the Advancement of the American Legal System—and the American College of Trial Lawyers Task Force on Discovery were lauded as they sought to improve the way the legal system functions not only for lawyers and judges, but for litigants and clients. The recommendations took the form of 29 Principles for achieving landmark reform in the courts at both the state and federal levels.

"Over the past five years, numerous pilot projects around the country have tested alternative rules and procedures for civil cases in line with these Principles," said **Paul C. Saunders**, Chair of the College Task Force on Discovery and Civil Justice that helped propose them. "We have made great progress, but there is still much work to be done. These tests have informed our new, final recommendations, which should serve as a guidepost for reform nationwide."

These 24 revised Principles lay the foundation for achieving fundamental improvement of the judicial system to help ensure that no one is shut out due to a lengthy and expensive process. The recommendations are defined in the new publication *Reforming Our Civil Justice System: A Report on Progress and Promise*, and include calls for a sharp realignment of the discovery process and greater court resources to manage cases.

- The "one size fits all" approach to trying cases is not optimal; the process appropriate for one case is not necessarily the process appropriate for another case. Both court rules and judicial case management strategies should reflect that reality.
- Effective case management by judges is critical to each case, ultimately saving the parties time and money, and leading to more informed and reasonable resolutions. Management should be tailored to the needs of the case.
- To accomplish this greater involvement by judges, courts need more resources. Where judicial resources are in short supply, those resources should be increased to allow courts and judges to work more efficiently and effectively.
- Proportionality is reaffirmed to be a guiding principle for all discovery. This is a consistent theme across the country and a significant aspect of the proposed amendments to the federal rules of civil procedure.

"When the first recommendations were released, we called for a dialogue. We now call for action," said Rebecca Love Kourlis, Executive Director of IAALS, the College's partner on the project. "Great changes are underway already in some places, but our legal system and profession must unite around principles that can be extended nationwide, so that every court—and every litigant—will benefit." ■

CONTINUING SERIES

FELLOWS PROVIDE ACCESS TO JUSTICE

GIVING NEW HOME, NEW STARTS TO CHILDREN

The love of a parent can lead to many journeys. Kansas Fellow **J. Eugene Balloun** and his wife Sheila Wombles had no idea that when they first became foster parents it would lead to Balloun reaching an important milestone: celebrating his 1,000th pro bono adoption case in February.

"Personal involvement is what got me started in this work," Balloun said.

To be precise, it was his 1,001 adoption because the case involved a single mom adopting 10- and 12-year-old siblings.

"It was remarkable because the case I consider to be the first one me and my legal assistant worked on was also a single mom who adopted two children," he said.

Before the hearing started Johnson County District Judge Kathleen Sloane told him, "It is an honor for me to be sitting here today." After the hearing ended, Judge Sloane ordered the courtroom to give him a standing ovation – a rarity for a division where talk of abused and neglected children is the norm.

When Balloun and Wombles went through the licensing process to become foster parents, they initially wanted to skip the baby stage and foster children between the ages of three and twelve. However, Wombles called one day while he was in federal court in Topeka. She told him they asked if the couple would take a baby.

By the time he got home, his assistants had purchased a baby bed and diapers. The baby arrived Nov. 20, 1987. The next day Balloun took him to see the doctor.

"Are you new parents?" the doctor asked.

"Got him yesterday," Balloun told him.

The Johnson Country courtroom and Kansas Fellow Eugene Balloun applaud the happy news as Lexie Hicks, center, officially adopts Will and McKenna. Balloun, right, celebrates with the courtoom.

"Well, you got the diaper on backwards," the doctor said.

The baby, David, is now their 28-year-old son. Since then, the couple have fostered twenty-nine children, and adopted a second child, Hannah, 16. They no longer foster children but continue to work with support groups for foster and adoptive parents in Kansas and Missouri.

The majority of Balloun's adoption cases were former foster care children who were in need of a permanent home; almost all were in Kansas. These cases can last anywhere from six months to one year; for older children, it takes closer to a year as they are harder to place. On average, he can spend around ten hours on a case.

"We did an adoption where a family adopted five siblings all at the same time, that took far more than ten hours," he said. "And the time when one woman decided she was 1/32nd Native American and all of a sudden we had to face transferring the case to Oklahoma tribal court."

In addition to offering legal support, he helped establish a post-secondary educational scholarship fund exclusively for any student who has been in the foster care system in Kansas.

The attorney fees generated by these adoptions, which are paid by the state, are donated by Balloun's firm, Shook, Hardy & Bacon, to the scholarship fund for foster and adopted children. During the past thirteen years, these adoptions have helped provide more than $625,000 in educational scholarships to nearly 500 students who have been foster children in Kansas.

"I never quite envisioned it becoming as big a program as it had," Balloun said. "I was only doing a few adoptions, now I'm doing over one-hundred adoptions and expanding throughout the state." Families have found out about Balloun through different agencies that handle foster and adoptive children, mostly by word of mouth.

He and his longtime assistant Kathy Hoffman have streamlined the process down to a system where he feels a similar program can be started in another state.

"I would urge any Fellow who feels strongly about helping children to consider some program like this," he said. "This is a great way to help kids, you almost always feel good about what you accomplish."

EQUAL RIGHTS FOR FAMILIES

A number of years ago, Fellow and former Florida State Chair **Sylvia Walbolt** was on a long drive back from an oral argument with one of her law partners. As sometimes happens on trips that long, people open up and talk about their personal lives. Her colleague began to share her story. She explained that she had been in a committed relationship since college and that she and her partner had adopted two girls. In addition to the everyday challenges presented by a relationship and child rearing, her colleague spoke about the added difficulties she and her partner faced because, as a same-sex couple, they did not have the same parental rights as a married couple.

For example, Walbolt's colleague worried that her partner would not have access to her federal Social Security survivor benefits if something were to happen to her, since the benefits are payable only to the surviving spouse of a married couple. She worried that if her partner got sick, medical personnel could exclude her from the hospital room and from making the important medical decisions that legal spouses are routinely called on to make. She explained how these ▷

worries were constant and distracted her from the quality time she had with her partner and children. It was at this moment that Walbolt decided she needed to get involved—it offended her sense of right and wrong that the ability to marry and the legal benefits of marriage were being denied to couples in Florida simply because they were of the same sex.

In the years that followed that car ride, Walbolt took up the cause, assisting in cases involving same-sex couples' rights, including the right to adopt. She advocated for same-sex couples' employee benefits and chaired her law firm's board when it adopted domestic partner benefits. In time, she decided to take her advocacy even further and joined the campaign for the legal recognition of same-sex marriage in Florida.

As with many the other Fellows, it is often a troubling sense of injustice that motivates them to perform extraordinary acts to provide access to justice. As stated by Judge Billings Learned Hand in 1951:

> It is the daily; it is the small; it is the cumulative injuries of little people that we are here to protect. . . . If we are able to keep our democracy, there must be one commandment: thou shalt not ration justice.

Belief in this sentiment is what motivated her.

MAKING THE COMMITMENT TO HELP

While eager to help, from the beginning Walbolt was concerned that some of her law partners and colleagues would be opposed to her efforts on religious grounds. In her conversations with them, she made clear that she did not believe this was a religious issue. Her position was, and only would be, that individual churches have the right to decide their own rules of marriage. She explained that her argument was focused on her view that if the state—as opposed to the church—was going to provide specific rights to its citizens, the rights needed to be administered on a fair and equal basis. She felt that her position actually promoted religious freedom because it permitted the individual faiths to decide what they wanted and a number of faiths recognize same-sex marriage. In the end, despite knowing the potential for negative fall-out from their participation in this politically charged debate, her partners agreed that Walbolt and the firm should take on this important issue.

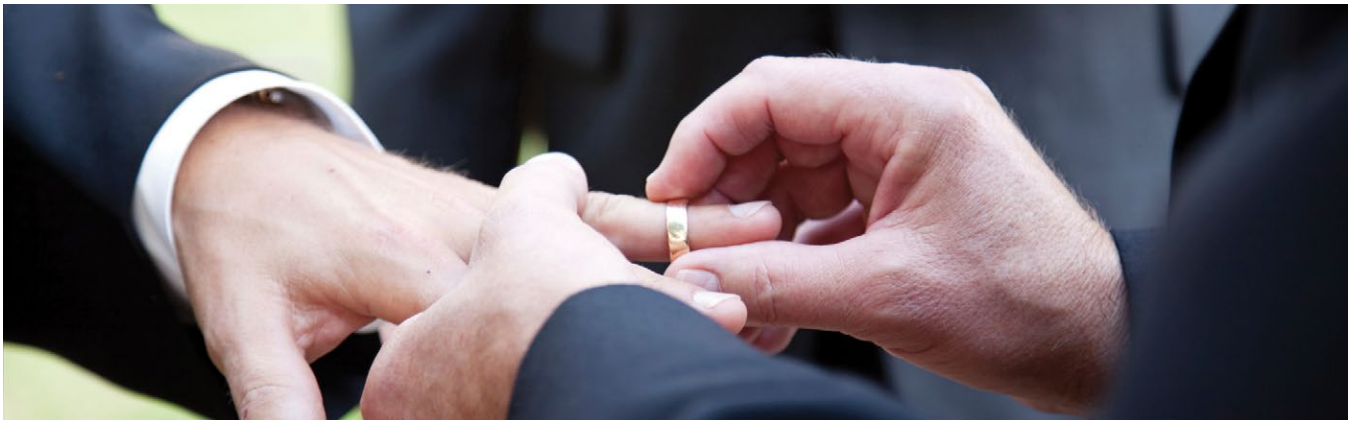
THE LITIGATION

In January 2014, on behalf of six same-sex couples, some of whom have children and grandchildren, Walbolt and her firm filed a lawsuit (*Pareto v. Ruvin)* in the Miami-Dade Circuit Court challenging the state's ban on same-sex marriage as a violation of their rights to equal protection under the Fourteenth Amendment to the U.S. Constitution. The ban was based on both the Florida legislature's 1997 adoption of the Defense of Marriage Act (defining marriage as the "union between one man and one woman" and barring recognition of same-sex marriages performed in other states) and the November 2008 vote by the citizens of Florida to approve Florida Amendment 2 (a constitutional amendment banning same-sex marriage and civil unions in the state).

The legal arguments advanced by those supporting Florida's ban on same-sex marriages centered around the voters' choice and against the judicial creation of a new "definition of marriage." For example, Walbolt was faced with the argument that Florida's same-sex marriage ban reflected the considered judgment of the citizens of Florida who voted for it. Other arguments she encountered included that marriage is defined by nature and predates government, and Florida's same-sex marriage ban fortified the foundation of Florida law and the health, safety and well-being of its citizens.

Walbolt countered these arguments with the equal protection principle that Florida's marriage ban intentionally and directly discriminated against same-sex couples and imposed inequality on them and their families, while failing to serve a compelling state interest. She compellingly compared her clients to those affected by *Turner v. Safely* (1987), in which the U.S. Supreme Court recognized the right of incarcerated prisoners to marry. She challenged whether there was any logical reason why someone who had been convicted of committing a crime and who was serving time in prison could marry but same-sex couples, who were productive members of society and who had been legally permitted to adopt children, could not.

In July 2014, the court ruled that Florida's same-sex marriage ban deprived couples of due process and equal



protection of the laws as guaranteed by the Fourteenth Amendment. As a result, the court ordered Miami-Dade County to immediately issue licenses to same-sex couples.

The case is being appealed to the Florida Third District Court of Appeal.

THE AFFECTED PEOPLE

Walbolt's clients were all individuals who had been in committed, long-term relationships. Todd Delmay, an upbeat and energetic entrepreneur, had been in a committed relationship for over twelve years and, together with his now-spouse Jeffrey, had a son who was almost five years old. Delmay and Jeffrey knew they could go to another state to get married and return to Florida, but that is not what they wanted. They were Floridians, responsible citizens and good parents; they grew up in Florida and wanted to be married under the laws of their state.

Kathy Pareto was in a long-term committed same-sex relationship with her now-spouse Carla. She and Carla adopted their child some time ago and she knew very little about how Florida's marriage laws deprived her of so many important rights that parents need. Nonetheless, she was confronted daily with the added complications and inconveniences she and her partner faced as a same-sex couple without the parental rights of a married couple.

Pareto remembered Walbolt acting as her protector during the all-day hearings held in July 2014, in the midst of the media frenzy. She marveled at the contrast between the opposition's emotionally charged arguments and Walbolt's soft-spoken, reasoned analysis. Pareto was proud that Walbolt ignored the aggressive and derogatory arguments hurled at her and instead simply explained her legal position in a very coherent, yet impassioned manner.

Delmay echoed Pareto's admiration for Walbolt. He also remembered her presence in the courtroom and her measured, reasoned and authoritative approach. Never did Walbolt or her firm seek credit or glory. Never did she let on that her firm and she had made huge personal sacrifices and financial commitments to the cause.

Delmay, Pareto and the others know they were lucky to get Walbolt and her firm on their side.

APPRECIATION AND RECOGNITION

Walbolt looks back on her client community and admires their strength. She is proud that the legal team, together with their clients, refused to lose focus on the core and yet traditional equal protection argument, the same one that has allowed Fellows to achieve access to justice throughout the country.

Walbolt's clients are equally proud of her. Pareto explained that she "met so many amazing people along the way, at the center of that group of people is Sylvia Walbolt." Delmay said that to succeed in this cause he and his fellow plaintiffs had to "stand on the shoulders of giants" in order to win:

If we as plaintiffs, if we had to pay all of the legal fees, that would have been a huge obstacle and would have denied us our ability to go up against the State. Against these odds, we needed the best attorneys, the best team.

Walbolt's work should be recognized as being an exemplary example in the finest tradition of the College of Fellows providing access to justice and to those whose causes are unpopular.

David P. Ackerman
West Palm Beach, Florida ■

NATIONAL TRIAL COMPETITION: LIKE NO OTHER COMPETITION

The fortieth anniversary of the National Trial Competition (NTC) was celebrated at the NTC Finals in Houston, Texas March 12-14, 2015. President **Francis M. Wikstrom** spoke and recognized Past President **David J. Beck** of Houston, Texas as the father of the NTC.

Indeed, Beck is the father of the National Trial Competition. In 1974, he noticed that most of the law schools in the country had no trial advocacy programs. There were exceptions, such as Baylor Law School and Harvard Law School, but the list was short. To fill that perceived void, Beck asked the Texas Young Lawyers Association (TYLA) to create and sponsor a national mock trial competition for law schools. TYLA approved the creation of the competition and then left it up to Beck to get it done. In response to that directive, Beck sought the support of the College. Fortunately, one of his partners at Fulbright & Jaworski, **Kraft W. Eidman**, was a Regent at the time. Initially, Eidman was skeptical, but eventually sought and received the endorsement of the College at a Board of Regents meeting in 1975. The College has been a staunch supporter of the competition ever since.

NTC ALUMNI AND COLLEGE FELLOWSHIP

The first competition in 1975 was won by a team from Baylor Law School. **Roy Price, Jr.** of Longview, Texas was on the winning team, and in 1992 became a Fellow of the College. In 1979, the winning team from Syracuse University included the now Honorable **Mae D'Agostino**. D'Agostino, a federal judge in Albany, New York, became a Fellow in 2003. To date, they are the only winners who have become Fellows. Both attended the fortieth anniversary event.

HOW NTC WORKS

The National Trial Competition is open to all accredited law schools in the United States, and a school may enter two teams. In 2015, 167 schools participated, with approximately 750 students on 318 teams.

The National Trial Competition begins with preliminary competitions in fourteen regions. The cases alternate each year between criminal and civil. This year's problems were criminal matters and were authored by Fellow **Pamela Robillard Mackey** of Denver, Colorado. The teams are randomly assigned as the prosecution or defense during each trial. Only two teams from each region advance to the finals in Houston, with each regional finalist receiving a Lewis F. Powell commemorative medallion from the College.

The National Trial Competition Committee, in conjunction with TYLA, provides support to the host schools in each region, enlisting Fellows and other experienced lawyers to act as judges. Two hundred fifteen Fellows participated this year in regional rounds throughout the country. Chair **Timothy J. Helfrich**

of Ontario, Oregon, Vice Chair **N. Karen Deming** of Atlanta, Georgia and the committee members recruited judges for both the regionals and national finals.

THE FINAL ROUNDS

The final rounds are held in Texas each year, with the location rotating among Austin, Dallas, Houston and San Antonio. This year's competition was won by a team from Chicago-Kent College of Law which prevailed over a team from Washington University School of Law in St. Louis, Missouri. Winning team members receive plaques, and their school receives the $10,000 Kraft W. Eidman Award, which is endowed by Norton Rose Fulbright. The Best Oral Advocate is awarded the George A. Spiegelberg Award, endowed by Fried, Frank, Harris, Shriver & Jacobson. Beck Redden LLP sponsors a $5,000 award to the second place school. Each semifinalist team is awarded $1,500 by Polsinelli PC.

On March 12, after the first day of competition, a fortieth anniversary dinner was attended by approximately one-hundred sixty people. Invited guests included all past winners and their coaches as well as past and present members of the National Trial Competition Committee and officers of TYLA. Guest speakers included Beck and Judge D'Agostino, who both provided historical background for the occasion.

The three-day competition involved a total of forty-nine trials. Each of the twenty-eight teams participated in three trials. The top eight teams then advanced to the quarterfinals. Each trial required at least three judges, four witnesses and a bailiff.

Fifty-two Fellows of the College (including members of the National Trial Competition Committee) ▷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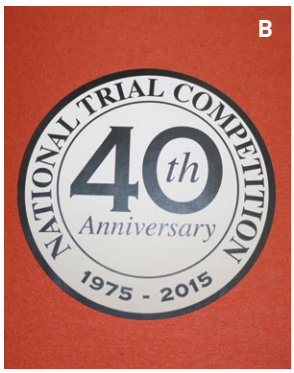

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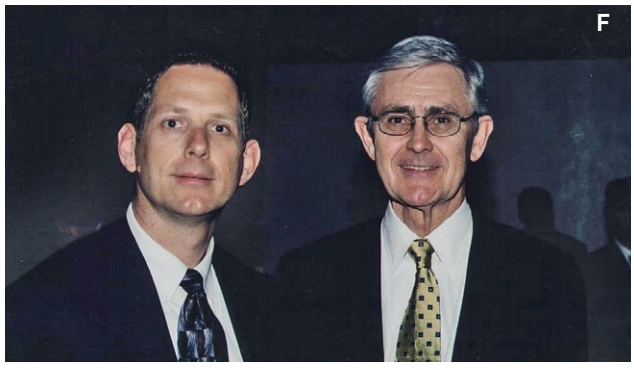
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A | *Participants from this year's competition and President Fran Wikstrom*

B | *The National Trial Competition celebrated its fortieth year*

C | *Downstate New York Chair Larry Krantz and Marjorie Berman*

D | *Texas Bar Association Past President Andrew L. Strong, left, and College Past President Warren Lightfoot, third on the right, present an award at the 2003 competition*

E | *Texas Bar Association Past President David R. McAtee II, left, and College Past President David Scott, fourth on the right, with participants from the 2004 competition*

F | *Executive Director Dennis Maggi and National Trial Competition Committee Chair Phillip R. Garrison at the 2005 National Trial Competition*

participated as judges. The championship round was held on Saturday afternoon, March 14, at the Southern District of Texas courthouse in Houston. The final round was the sixth trial in three days for the two teams. The championship round was, as is traditional, presided over by the President of the College. Wikstrom was at his judicial best and the trial went off without any problems.

For the final trial, all members of the National Trial Competition Committee sit as jurors. Most years there are more than twenty Fellows who are jurors. One can only imagine what must be in the minds of the competitors when they see an overflowing jury box of experienced trial lawyers.

LIKE NO OTHER COMPETITION

The teams that make it to the finals put in countless hours of preparation. Many are coached by lawyers who previously participated in the competition. Murray Hensley, now deceased, was the coach at Texas Tech University for many years and a winner of the competition in 1982. He has said, "The National Trial Competition is by far the best and most prestigious competition. Nothing else comes close. What makes it so special is the quality of the judges. The students know they are being judged by the best trial lawyers in the country."

Clint Harbour, a long-time TYLA committee member, has expressed a similar view. "The involvement of the ACTL is what gives the competition its gravitas and stature as the premier trial competition in the country. I have coached in another national competition, participated in another one as a law student, and run the so-called 'Tournament of Champions' that NITA puts on, but none of those compare to NTC. I do not discount all the (mostly behind the scenes) hard work that all the TYLA volunteers put in, but the Fellows on the bench and in the jury box are the faces the competitors see when they walk in the room. When these law students are arguing to lawyers who are renowned for their litigation expertise, that takes the NTC to a level that no other competition can approach."

David N. Kitner
Dallas, Texas

NOTES OF INTEREST

The competitors in the final trial sometimes make for strange, if not actual, bedfellows. In 2012, the two teams in the championship round were both from Baylor Law School. What made it even more interesting is that there was a husband and wife on opposite teams. Recent reports are that they have not since been on opposite sides of a case.

In the forty-year history of the competition a number of schools – Baylor, Northwestern, Texas Tech, Chicago-Kent College of Law and Washington University, to name a few – have appeared often in the finals and won multiple championships. In the end, however, reputation and history count for little in the actual competition. Each team is identified by a number only and the judges do not know the school represented. Preparation and ability always win out. No better example exists than the Yale team of 2013. Yale has no trial advocacy program, yet its team won the national championship, despite having no coach and no funding from the school to travel to the finals.

But occasionally there has been a bump in the road. In 1995 when **Lively M. Wilson** was President, the defendant made a motion for instructed verdict. Such motions are routinely made and routinely denied; otherwise, the competition would end prematurely. Unfortunately, no one had advised Wilson and he (properly on the facts) granted the instructed verdict. A brief recess was held, after which he announced that he had reconsidered his ruling and that the trial would proceed.

65TH ANNUAL NATIONAL MOOT COURT COMPETITION

The National Moot Court Competition celebrated its sixty-fifth anniversary this year. Held annually since 1951, the competition is organized by the New York City Bar and has been sponsored by the College for decades.

The team from The George Washington University Law School of Dane Shikman and Kyle Singhal won the 2015 National Moot Court Competition. The runner-up for best overall team was Georgetown University Law Center. Its members included Ani-Rae Lovell, Stephen Petkis and Terence J. McCarrick, Jr. Best Oral Advocate went to Stephen Petkis of Georgetown University while Kyle Singhal of George Washington University was runner-up.

Fifteen regional rounds were held around the country in November, and regional winners were sent to the final rounds, held in New York City February 12-13, 2015. More than a dozen Fellows volunteered to serve as judges of the elimination rounds.

The panel of judges in the semi-final round included Past President **Michael A. Cooper**, Regent **Ritchie E. Berger**, **David B. Weinstein**, chair of the National Moot Court Committee, downstate New York Chair **Larry H. Krantz** and First Lady Linda Jones. President **Francis M. Wikstrom** and Fellow **Debra L. Raskin**, current President of the New York City Bar, sat on the final panel along with a group of distinguished New York federal and state judges.

This year's case involved two issues: a Batson challenge based on a juror's sexual orientation and an antitrust issue involving the application of the Foreign Trade Improvements Act to a foreign price-fixing conspiracy.

The final argument was the culmination of more than six months of preparation and arguments by one hundred seventy-five teams from one hundred twenty-three law schools throughout the U.S. competing at the regional and national levels.

Past winners of the best oralist award have included Past President **Joan A. Lukey** and Weinstein.

All winners will be honored at the Washington, DC Fellows dinner in June. ■

FELLOWS WHO WERE WINNING TEAM MEMBERS:

Carey E. Matovich (1980)
David B. Weinstein (1979)
Joan A. Lukey (1973)
Joe Thrasher (1969)
David R. Noteware (1965)
Bryan J. Maedgen (1965)
John C. McDonald (1960)
Walter E. Workman (1958)
Alfred H. Ebert, Jr. (1958) **
Howard F. Gittis (1957) **
J. Harold Flannery (1957) **
Patrick A. Williams (1956) **

**deceased

COMPETITIONS SHOW COLLEGE'S CORE MISSION IN ACTION

The College continues its long-standing tradition of significant involvement in the leading trial and appellate competitions in Canada by providing substantial financial support and securing Fellows to participate as judges, assessors and feedback providers. These competitions provide the student participants with what many describe as the highlight of their law school experience.

GALE CUP MOOT

The Gale Cup is Canada's national appellate moot competition. It is held each year in Toronto's historic Osgoode Hall. On February 20-21, 2015, twenty law school teams from across Canada gathered to moot the finer points of the defense of abandonment of a common intention to commit murder based on the Supreme Court of Canada's decision in *R. v. Gauthier* [2013] 2 S.C.R. 403 — a perfect case for a moot court.

The College awards the Dickson Medal to the competition's three most exceptional oral advocates. The medal is named in honor of the late Chief Justice Brian Dickson, one of Canada's most renowned and beloved jurists. The College also presents an additional award for the most exceptional oralist performance and members of the winning team receive plaques.

Treasurer **Bartholomew J. Dalton** of Wilmington, Delaware attended the competition. Other Fellows, including members of the College's Canadian Competitions Committee, also attended. Fraser Genuis, a student at University of Alberta, was this year's top oralist and the winning team was from the University of Toronto. At the awards dinner, Dalton offered very well received remarks about former Chief Justice Dickson and spoke engagingly from a trial lawyer's perspective about what the students might anticipate in their future as litigation lawyers.

The College's presence was also strengthened by the presence of Judicial Fellows who participated on the panels of

Immediate Past President Bob and Jane Byman take in the reception and awards ceremony at the 2014 Gale Cup.

The 2015 Gale Cup winning team from the University of Toronto

At the Sopinka Cup Awards event, recognizing Canada's two official languages Ellen Bain Smith handled the French portion of the remarks while President-Elect Michael W. Smith delivered his remarks in English.

judges. This year, the Judicial Fellows included: the Hon. Justice **Allan R. Hilton** (Quebec Court of Appeal), the Hon. Chief Justice **Christopher Edward Hinkson** (B.C. Supreme Court), and the Hon. Justice **Roger T. Hughes** (Federal Court of Canada). The Hon. Mr. Justice **Clément Gascon** of the Supreme Court of Canada, who is scheduled to be inducted as an Honorary Fellow at the College's Annual Meeting in Chicago in October, presided over the final rounds and was the featured speaker at the awards dinner.

SOPINKA CUP TRIAL COMPETITION

The Sopinka Cup is Canada's national trial competition. The College provides tremendous financial support to the Sopinka Cup in which the eight best teams from the four regional trial competitions vie for top national honors in Ottawa. The Advocates' Society serves as the administrator of the competition. The College presents an award to the best overall advocate and members of the winning team receive plaques.

The competition is named in honor of the late Hon. Mr. Justice **John Sopinka**, Q. C., a celebrated trial lawyer appointed directly from practice to the Supreme Court of Canada who played professional football in the CFL and the violin in a symphony orchestra. Justice Sopinka was inducted as a Fellow of the College before his elevation to the bench.

Braving a late-winter snowstorm, President-Elect **Michael W. Smith** of Richmond, Virginia, accompanied by his spouse, Ellen Bain Smith, attended the competition, March 13-14, 2015.

On Friday evening, the Supreme Court of Canada continued its tradition of hosting a reception for all students, coaches, assessors and feedback providers at the Supreme Court of Canada building. This year, the Hon. Mr. Justice **Richard Wagner**, an Honorary Fellow, welcomed all in attendance and conducted a guided tour of the impressive building, including the Court's "deliberation room."

The Saturday night awards event was a highlight of the weekend. This year, both Smith and his spouse spoke. Recognizing Canada's two official languages, and to the delight of the audience, Ellen Bain capably handled the French side of the remarks while Smith continued by delivering his remarks in English.

The awards dinner was also honored by the attendance and thoughtful remarks of the Hon. Madam Justice **Suzanne Côté**, a Fellow of the College who was a leading litigator before her appointment in 2014 directly to the Supreme Court of Canada.

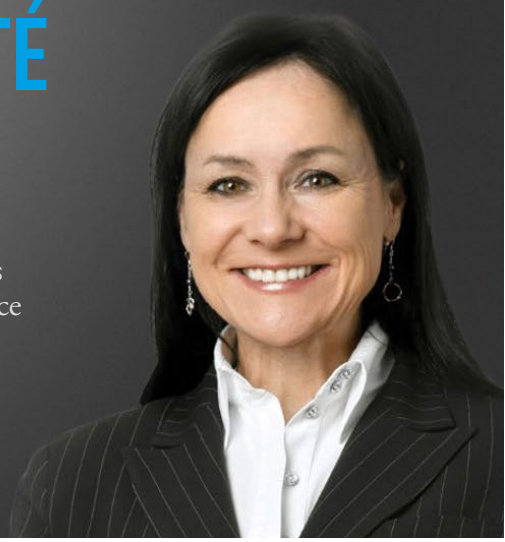
This year, the team from McGill University took top honors and Noémie Doiron of the Université de Moncton won the best overall advocate award. Last year's award-winner, Reem Zaia, spoke at the awards dinner. In addition to thanking the College, she spoke eloquently about the importance of the Sopinka Cup to her legal education.

Many other College Fellows attended the competition, including Regent **Stephen G. Schwarz**. Former Regent and Secretary-Designate, **Jeffrey S. Leon**, LSM, was President of the Executive Committee of the Sopinka Cup this year and acted as master of ceremonies at the awards dinner. Six other College Fellows participated as assessors (jurors) and feedback providers, including five members of the College's Canadian Competitions Committee.

The College's sponsorship of the Gale and Sopinka Cups, and the extensive participation of Fellows in the competitions themselves, furthers the College's mission in a multitude of ways. As best described by Immediate Past President **Robert L. Byman**, training a generation of future trial lawyers "is in the wheelhouse of our core mission."

J. Gregory Richards
Toronto, Ontario

TRIAL ADVOCACY – ART OR SCIENCE?
REMARKS FROM JUSTICE CÔTÉ



The appointment of the Hon. Madam Justice **Suzanne Côté** to Canada's Supreme Court in 2014 made her the fourth Canadian Fellow to have been elevated to Canada's highest court. The other three Canadian Fellows include the late Hon. Mr. Justice **John Sopinka**, Q.C.; the Hon. Mr. Justice **John C. "Jack" Major**; and the Hon. Mr. Justice **W. Ian C. Binnie**. The Hon. **Lewis F. Powell, Jr**. is the only U.S. Fellow who was appointed to the Supreme Court during his active membership with the College.

Justice Cote's remarks at the Sopinka Cup competition follow:

I am delighted to be here, precisely as this moment, only a few months after my appointment to the Court, giving this speech at an event named for this great litigator-directly appointed-Supreme-Court-Justice. You cannot help but share a certain affinity or kinship with those who climbed to the Court in the same manner as you did yourself. These are the people who blazed a trail through the bramble, from private practice "straight" to the Supreme Court, a trail I unexpectedly found myself upon at the end of last November.

When I read about Justice Sopinka, I cannot help but see some interesting similarities. He, a Saskatchewan farm boy, me, a Gaspesie country girl; both litigators and trial lawyers; both veterans of Stikeman Elliott, even if one of us could not stop with just one of the Seven Sisters; and both drawn to the most public of endeavors in private practice, a Commission of inquiry. I relish Justice Sopinka facing his eventual successor, Justice Binnie, in the Parker Commission of 1986-87, before either knew they would eventually don the red robes of the Court. There is a certain joyful pugilism that I associate with litigation, a pleasure in the everyday scraps of advocacy, which I cannot help but project onto them both when I imagine them in action.

I like to think that this adversarial predilection is the reason they only seem to let one of us on the bench of the Supreme Court at any given time. Two, and the ensuing tussles, could take the house down!

A funny thing happens when one is appointed to the bench directly from private practice, when you move so quickly from the litigator inside you.

FINDING THE ELUSIVE WAY

This reminds me of a true story, the one of Justice Paul Reeves when he was appointed judge of the Superior Court of Quebec.

At the first trial he was presiding, a lawyer asked a leading question to his own witness.

Before the lawyer of the opposite side had the time to do anything, the judge was already on his feet, with a firm objection. There was silence in the courtroom. And the story does not say what the ruling on his own objection was.

The day of my appointment, I was preparing witnesses for a hearing scheduled the week after, and so I had to return "the famous call" at the end of the day; there was no gap between my one persona as a litigator, and my nascent persona as a judge. They blend together . . . at least for a while.

In that way, I still live on both sides, or more accurately with two Côtés-litigator and judge whenever I study a case or sit at a hearing. The little angel on one shoulder and the devil on the other shoulder, but do not expect me to tell you which is which. Sigmund Freud would have said this sort of personality splitting is a symptom of ego deficiency, but then he clearly had not met me.

Sometimes, as I review a file, I still find my thoughts drifting to the considerations over which I was obsessed as a lawyer, considerations of which, competitors of the Sopinka Cup and future litigation stars of our country, are now intimately aware. Strategy, style, deadlines, finding the strongest case for your side, careful drafting, anticipating counter-arguments, rebuttals, strategy again, argument and so on.

But then, I take a deep breath, remember I am now a judge, and try to enter that judicial or judicious state of mind. My job now, it seems, is to find the elusive "Way," to find the path that is right, just and fair, which requires long, repeated peregrinations back and forth between the extreme positions I used to inhabit and argue as a litigator. At times, it feels like an invitation to shed this mortal coil, and head into the soft, ethereal light of pure law.

But I cannot escape my litigator side, and thank goodness. That side is the fighter, which will not go quietly into the night. This side reminds me that law is not an abstract or

ethereal question, but truly a "body of law:" something that is living and breathing, something corporeal, something fought for, and lived everyday by people and lawyers alike. And no, people and lawyers are not exclusive categories. It's good to have this Côté on my shoulder-it means my practice of advocacy will always keep my decisions grounded in reality. At least, this is my hope.

However, this phenomenon cuts both ways. The newly formed Justice Côté, sitting at hearings for the first time from the front of the courtroom, cannot help but castigate litigator Côté for her hubris. If as a lawyer, I was in the trenches of law, then these moments would properly be described as flashbacks, at times full of trauma and horror. Watching from this side, from within the judicial robes, I have learned even more about advocacy than I thought I knew, but alas it is too late for me. But it is not too late for you all, not too late for tonight!

The Sopinka Cup dedicates itself to "trial advocacy," an art or a science, you, competitors, have been practicing and perfecting over the last few months, and an art or a science from which you may derive both great joy and let's hope a reasonable standard of living in the years to come.

TWO CÔTÉS WORTH OF WISDOM

In that spirit, I would like to leave you with the advice gleaned from a life advocacy, buttressed by some positive and some embarrassed reflections spawned by three and a half months on the bench. In other words, two Côtés worth of wisdom. I do this for obvious selfish reasons. I hope one day, when you appear before me, you will have taken this all to heart, so that I may profit from your art.

I present to you, competitors of the Sopinka Cup, my top ten pieces of advice, in no particular order. This may seem irrelevant for the skilled practitioners in the room, but a refresher never harms.

1. Be careful to whom you are speaking to and keep in mind that you are talking to one or to many judges. The judge is a human being who has seen many lawyers in action. Be efficient, be polite and anxious to save the court's time as well as yours. As such, avoid repetitions.

2. There is a proverb: "Zeal without knowledge is fire without light." For the zealous advocate, this means know the law and know your file inside out. Ironically, you should know it blind. Your fire is useless without it. And I remind you that zealous advocacy is not the equivalent of uncivil advocacy.

3. To convince, you must believe in your case and in what you are saying. If not, it will be detected easily. Consequently, be clear, concise and be confident—within reasonable limits, however.

4. Advocacy is a conversation, not a lecture. Your written speech should be an aid, not a crutch. Do not read; discuss. As Justice Binnie once wrote, on a similar topic: '[t]oo many counsel are locked in the trajectory they had planned beforehand, like an intercontinental missile which, once launched, can be neither controlled nor recalled. Like the missile, their trip often comes to a catastrophic conclusion.'

5. Answer the damn question. No, not the question you wish I asked, the question I did ask. When I was a lawyer, I answered the question ninety percent of the time. I know now that ten percent was a massive mistake. A question is a window into what a judge is thinking and what he or she believes to be essential. Go through it. By the question, the judge wants your help to decide to permit him or her to convince a colleague.

6. Benjamin Cardozo (Associate Justice of U.S. Supreme Court) wrote that "[m]etaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it." I would add that advocates are too often charmed by their own metaphors, evinced by their obvious joy in repeating them. Use them precisely, use them wisely and recognize they are rarely as clever as you think.

This reminds me of an anecdote related to me by my companion, Gérald Tremblay, one of the best lawyers in Canada, who was once arguing on an objection to the evidence. To support his argument, he gave an example, something like: 'It's as if your Honor and so on . . .' The judge's answer was: 'Mr. Tremblay, what do you want? A ruling on the objection or a ruling on the example?' So, this shows that if you are using a metaphor, make sure it squarely fits the point you want to make.

7. Speak slowly, articulate, project your voice and intonate. Avoid what Northrop Frye (literary critic) called his "monotone honk," which he thought Canadians had learned from the Canada goose; emulate the accent chantant of the Gaspesie. If advocacy is an art, then your voice is a brush or an instrument. Master it! Let me hear you, let me follow you, and let me be excited by what you say and the way you say it. A sleeping judge might not be of great assistance.

8. Did I mention: "Answer the question?"

9. Be pithy. With every breath, you need to be clarifying the issue, even on unfavorable points. If a lawyer is clearing the fog, he or she will receive undivided attention.

10. Be ready. Improvisation is not only inappropriate but it is out of the question. Do not forget that your ability to convince is directly proportional to the quality of your preparation.

So, is trial advocacy an art or a science? Or both? I would say, after all these years in courtrooms, that it is a mix of both!

And who knows? Maybe the sixteenth trial lawyer to become a judge of the Supreme Court of Canada is in this room tonight!

It has been a pleasure speaking to you all. Both Côtés cannot wait to see you someday in the Supreme Court, practicing your art and/or your science of advocacy. ■

IN MEMORIAM

Long-time observers of the American College of Trial Lawyers *Bulletin*, now more appropriately called The *Journal*, will know that, during their lives, we have avoided focusing on the legal careers of our Fellows, all of whom are presumed to be exemplary trial lawyers. Indeed, their collective modesty would have made this an impossible task. Even an early attempt to mine the experiences of those who served in World War II was met with virtual silence. In the years since we first began the In Memoriam tributes, the stories that emerge after their deaths have enabled us to bring to life the remarkable lives of those who are the best of our profession. Their stories, both as exemplars of our profession and as human beings, are at the heart of the College's enduring legacy.

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In this issue, we celebrate the lives of another fifty-eight Fellows who have passed from among us. One would assume that with the passage of time, the words "World War II" would have begun to disappear from these pages. Not so. Twenty-one of those whose deaths are chronicled in this issue participated in a war that began seventy-four years ago. Many of them went as teenagers. Things such as "wounded at Iwo Jima" and "he would never talk about Saipan" still appear in published obituaries. Two flew the carrier-based gull-winged F4U *Corsair* fighter-bomber; two were crewmen on lumbering four-engine B-24 *Liberator* bombers. One was in the U. S. Army unit that met with the oncoming Russian army at the Elbe River, completing the final defeat of Nazi Germany. Those who had military service in the Korean Conflict generally had non-combat roles in a changed scenario. Ten had peacetime military service. One of those was an officer on a ship sent on an evacuation mission to Alexandria, Egypt, when President Gamal Abdel Nasser seized control from the Suez Canal Company. Time does, however, move on; one of our first Vietnam veterans has appeared among those who have died.

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The ages to which they lived, the product of engaged lives, tell a story. Forty-two of the fifty-eight lived beyond eighty years. Fourteen of those lived into their nineties. One died at one hundred. Two were brothers who died seven weeks apart—one at eighty-nine, the other at ninety-one. Perhaps another clue to their longevity lies in the fact that of the thirty-three whose obituaries disclosed the length of their marriages, twenty-seven had been married fifty or more years, ten for over sixty years.

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Many returned to college on the GI Bill. One paid his way through law school working in a butcher shop; another worked each summer in a coal mine; another worked as a patent examiner. They numbered among their ranks many who led their classes or their law reviews. Several won judicial clerkships.

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Their careers took them in many different directions. One was a criminal defense lawyer who courageously took on the defense of notorious defendants; the saga of one client was memorialized in the movie *American Gangster*. One devoted ten years to the ultimately successful pro bono representation of two innocent victims of prosecutorial abuse who had been sentenced to death within twenty-eight days of the crime of which they had been convicted. Their story had been the subject of a Pulitzer Prize-winning book. One, a pioneer in plaintiff's medical malpractice cases, had checked into a local hospital for a minor procedure under an assumed name. One had moved his family to Anchorage, Alaska a few days before it became a state. Many were prolific writers on legal subjects, adjunct professors and continuing education lecturers.

Five were elevated to the bench, three on the federal bench, two on state courts. Several led their state bar organizations, two served on the American Bar Association Board of Governors. One led its Standing Committee on the Federal Judiciary. One as the leader of his state Bar association had a major role in bringing

about one of the first statewide legal services offices in a time when much of the profession still opposed its creation. One of the most widely known Canadian Fellows, in his desire to have the public understand the workings of the criminal justice system, was for twelve years the host and narrator of a public radio and later a television docu-drama that had won him a Gemini Award, the Canadian equivalent of an Emmy. One was vice-chair of a local school board that kept its schools open when other schools around the state were closed in the wake of *Brown v. Board of Education*. Many had had major roles in their churches and synagogues.

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They were not "Johnny one-notes." Two had been Eagle Scouts. Many were college athletes: football, golf, tennis, boxing, basketball, baseball. One, courtesy of relocation in the Navy V-12 program, had been a football team captain at two major universities. Two had been starters on winning bowl teams, one the Sugar Bowl, one the Rose Bowl. Two had gone on to play professional football. One had toured with an acting troupe. Another, a hiker, left a collection of hiking sticks he had fashioned to be taken home by those who attended his memorial service. One played mandolin in a bluegrass band and "rode to the hounds" in a foxhunting club. One at age seventy-eight had made his way around the world, traveling as a passenger on tramp steamers.

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One aviator, whose naval career was ended by injuries from a plane crash, went to law school while recovering and lived to ninety-one. Another, told by his doctor at age fifty-three to slow down to ease the stress in his life, did so by buying a race car, on which he placed the number 53, drove it in competitions and lived another thirty-three years. One who had flunked his induction physical when he volunteered in World War II on account of a minor heart problem was still playing basketball and working out well into his eighties and died at age one hundred.

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Their collective contributions in the civic arena defy description. Many had been trustees of the universities to which they owed their education. One had left the practice to run a charitable foundation whose assets had grown from $8 million to over $200 million during his tenure. One had been an architect of the financing of the Giants Stadium in the Meadowlands Sports Complex. Another had been an architect of a charitable trust created from the sale of the Long Beach, California naval station. One had been a member of the Council for Foreign Relations.

✦

And finally, there are among them one former Regent of the College, one member of the United States delegation to the 2005 Anglo-American Legal Exchange and the College's thirty-second President.

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Some of the following tributes are less complete than others. Some had outlived their contemporaries or lived in retirement away from where they had practiced. Some lived in a city where long obituaries are not the custom. Some had themselves restricted as to what their obituaries would say or had left family members who were only generally aware of details of their lives outside the family. Many such histories could not be traced through the auspices of Google. A number of State and Province Committees have already begun to collect and record the histories of their Fellows. This is a project well worth considering. The history of our Fellows lies at the heart of a College history that should be preserved and shared among us.

E. OSBORNE AYSCUE, JR.
EDITOR EMERITUS

THE DATE FOLLOWING THE NAME OF EACH DECEASED FELLOW REPRESENTS THE YEAR I N WHICH HE OR SHE WAS INDUCTED INTO THE COLLEGE.

Carl Victor (Vic) Anderson, '98, a Fellow Emeritus, retired from Shannon, Gracey, Ratliff & Miller, LLP, Fort Worth, Texas, died October 15, 2014 at age seventy-two after a series of strokes. A graduate of Rice University, where he lettered in both golf and football, he played in the 1961 Sugar Bowl Game. After earning his law degree from the University of Texas Law School, he initially served as an FBI agent before joining the firm in which he practiced for forty years, ultimately serving as its managing partner. His survivors include his wife of thirty years and four daughters.

Jon Alan Baughman, '95, a Fellow Emeritus, retired in 2007 from Pepper Hamilton LLP, Philadelphia, Pennsylvania and living in retirement in Fort Washington, Pennsylvania, died January 12, 2015 at age seventy-two, of dementia. A graduate of Gettysburg College and the University of Pennsylvania Law School, he was Comment Editor of the law review. After a year at Pepper Hamilton, he had served for four years as an officer in the United States Army Judge Advocate General's Corps before returning. During his career, he had directed his firm's litigation and intellectual property departments and had led it for two crucial years in the 1990s as it reorganized. His survivors include his wife and two sons, both of whom are attorneys.

George J. Bedrosian, '79, a Fellow Emeritus, retired from Goodman, Eden, Millender & Bedrosian, Detroit, Michigan and living in retirement in Dearborn Heights, Michigan, died November 30, 2014 at age eighty-five. A graduate of Wayne State University and of its Law School, he had practiced for over thirty-five years and, in retirement, had remained active in various forms of alternative dispute resolution. He had served as President of the Michigan Trial Lawyers Association, as Chair of the State of Michigan Attorney Grievance Commission and on several statewide professional committees. The first appointed ombudsman for the United States District Court for the Eastern District of Michigan, he served for almost ten years without compensation to address and resolve sensitive problems and issues brought to him by attorneys and judges. He had also served on the Executive Committee of the Detroit Symphony Orchestra. His law school had honored him with its Distinguished Alumni Award. At his death, Chief District Chief Judge Gerald E. Rosen had commented: "Through decades of service and leadership, George Bedrosian has been a shining beacon of good will, humility, courtesy and integrity, and a model for lawyers who followed after him. . . . [W]e have lost not only a beloved and trusted friend and colleague, but a true giant in our community." A widower whose wife of fifty-five years had predeceased him, his survivors include a daughter.

Irwin J. Block, '88, who practiced for most of his career as a member of the Miami, Florida firm Fine Jacobson Schwartz Nash & Block and who was still practicing at age eighty-seven from an office in Boca Raton, Florida, died February 13, 2015 from a heart condition. Born in Brooklyn, New York, he had enlisted in the United States Marine Corps at age seventeen. After World War II, he attended the University of Miami and its Law School on the GI Bill, then began his career as an Assistant State Attorney in Miami, serving for five years before entering private practice. He is perhaps best known for his ten-year pro bono effort to free two black men, Freddie Lee Pitts and Wilbert Lee, who had been indicted for the murder of two gas station attendants in 1963 and who, twenty-eight days after the crime, had been sentenced to death by an all-white jury. It was ultimately shown that the prosecutors had deliberately tampered with evidence by pressuring witnesses, and ultimately the defendants, to change their testimony. On advice of counsel, both defendants had pled guilty. Three years later another man confessed to the murders, then pled his Fifth Amendment rights, so that his testimony could not thereafter be admitted. The case became the subject of a Pulitzer Prize-winning book, *Invitation to a Lynching*. The two men were eventually pardoned while their second appeal to the United States Supreme Court was pending. Block had been President of his county Bar, a member of the Board of Governors of the Florida Bar and of the Florida Board of Law Examiners and Chair of the Miami-Dade County Community Relations Board.

He had been honored with the Dade County Bar's David W. Dyer Professionalism Award, the American Jewish Congress' Judge Learned Hand Award and History Miami's Legal Legend Award. His survivors include his wife of sixty-five years and four daughters.

Lewis Thomas Booker, '73, a Fellow Emeritus, retired from Hunton & Williams LLP, Richmond, Virginia, died April 4, 2015 at age eighty-five. A fourth-generation graduate of the University of Richmond, he was the son of the long-time Executive Director of the Virginia Bar. After graduating from Harvard Law School, he had served for eighteen months in the United States Army Judge Advocate General Corps as Chief Trial Counsel to the 8th Army in Korea, serving the remainder of his active duty in the Pentagon. He then joined the firm where he had first worked as a fourteen-year-old office boy where he was involved in numerous high-profile cases, including the Westinghouse uranium case. Remaining in the Army Reserves and retiring with the rank of Colonel, he had served in the Virginia Militia as Aide-de-Camp to two successive Governors, rising to the rank of Major General. He had joined the Richmond School Board in 1970 and, as Vice-Chair, was involved in keeping that city's public schools open when those of many other cities in Virginia had closed in the turmoil following *Brown v. Board of Education*. He had served the University of Richmond as Trustee or Trustee Emeritus for forty years, eleven of those as Rector (chairman). In 1994, that University created the Lewis T. Booker Professorship of Ethics and Religion, and had honored him with its Distinguished Service Award and with an honorary doctorate. He had also served as Chair of the Fellows of the Virginia Law Foundation. In wide-ranging civic involvement, he had served numerous local organizations. The Booker Hall of Music of Richmond's Modlin Center for the Arts is named for him and his parents. His local Bar had honored him with both the Hunter W. Martin Professionalism Award and the Hill-Tucker Public Service Award. A Sunday school teacher for fifty years at Richmond's Second Baptist Church, he had served for thirty years as counsel to the Christian Children's Fund, which later became ChildFund International. During a sabbatical, he had taught at Seinan Gakuin University in Fukuoka, Japan. After his retirement, he had served as a substitute judge, sitting regularly in state courts, devoting himself to bringing sanity to juvenile and domestic violence matters. His survivors include his wife of fifty-eight years, a daughter and three sons.

Richard R. Bostwick, '69, a Fellow Emeritus, retired from Murane & Bostwick LLC, Casper, Wyoming died February 2, 2013 at age ninety-four. A graduate of the University of Wyoming, where he was for three years the football team's quarterback, he had been commissioned in the United States Army while still in college. After a year of law school, paying his way by working in a butcher shop in Laramie, he was called to active duty and attended Army Intelligence School before joining General George S. Patton's 94th Infantry Division in the European Theater in World War II. Participating in campaigns in Northern France, Central Europe, Ardennes and the Rhineland, he returned to law school at the University of Wyoming with a Victory Medal, a Bronze Star, a Combat Infantryman Badge and the European Medal with four battle stars. In forty-six years of active practice, he had served as President of his county Bar, of the Wyoming State Bar, establishing its pro bono program, and of the International Society of Barristers. A member of the Executive Committee of the American Judicature Society, he had been honored with its Herbert Harley Award. He had also been Commander of his local American Legion Post. In retirement, he had developed a community swim program and coached a Little League team. His survivors include his wife of sixty-nine years, a daughter and two sons.

Thomas F. Bridgman, '76, a Fellow Emeritus, retired from Baker & McKenzie LLP, Chicago, Illinois, died December 19, 2011 at age seventy-seven after a long illness. A graduate of John Carroll University, which he attended on a football scholarship, and a cum laude graduate of Loyola University Chicago School of Law, he was the fourth member of the litigation department of his firm. He had served as chairman of that department and on

the firm's executive committee. In the early 1980s, he had successfully defended one of the first cases brought against DPT vaccines, regarded as a victory for public health. In retirement, he had been the first chairman of the Little Company of Mary Hospital Foundation. His law school had honored him with its Medal of Excellence for his years of service to the school. His survivors include his wife of fifty-two years, four daughters and a son.

Walter F. Brinkley, '72, a Fellow Emeritus, retired from Brinkley Walser, PLLC, Lexington, North Carolina, where he practiced for sixty years, died April 6, 2015 in a retirement home at age eighty-eight. A graduate of the University of North Carolina and of its Law School, he had served as a Lieutenant Commander in the United States Navy in the Korean Conflict era and as a staff attorney in the office of the Attorney General of North Carolina before entering private practice. He had been President of the North Carolina Bar Association, leading, against opposition from a segment of the Bar, the establishment of one of the nation's first statewide legal services organizations. He had also chaired the North Carolina Board of Law Examiners. A leader of his small community, he had served as President of the local Chamber of Commerce, the Lexington Area United Way, the Kiwanis Club and the Lexington Tennis Association and had been Chair of the Administrative Board and the Board of Trustees of his local United Methodist Church. He had been inducted into the North Carolina Bar Association's General Practice Hall of Fame and had received the Association's highest honor, the Judge John J. Parker Memorial Award. An avid hiker, he had left for distribution to those who attended his memorial service two large containers of hiking sticks that he had fashioned from native trees. A widower whose wife of sixty-three years had predeceased him, his survivors include two daughters.

Bernard Patrick Costello, '77, B. Patrick Costello & Associates, Greensburg, Pennsylvania, died April 4, 2015 at age ninety after a fall. He had practiced law until a year before his death. An Eagle Scout, he enlisted as an aviation cadet after graduating from high school in 1942, piloting a carrier-based F4U *Corsair* fighter-bomber and serving until the end of World War II. He then attended undergraduate school at Notre Dame University, where he was President of his senior class, and earned his law degree at the University of Pennsylvania Law School. To earn money for his education, he worked during the summers in a Western Pennsylvania coal mine. He had remained in the Naval Air Reserve for nearly twenty years, qualifying in an F9F *Panther* fighter jet and retiring as a Lieutenant Commander. Active in many community organizations, he was for more that forty-two years General Counsel of Seton Hill University in Greensburg, which had named him a Trustee Emeritus and General Counsel Emeritus and had given him an honorary Doctor of Laws degree. Active in his local Catholic parish, he had served as a Eucharistic minister, lector and member of the Parish Council, as well as serving on the Finance Council of his diocese. His survivors include his wife of forty-eight years, whom he met while handling a claim involving a university-owned car that she had been driving, two daughters and two sons.

James Ellington Cox, '67, a Fellow Emeritus from Lafayette, California, died July 29, 2014 at age ninety-three. His undergraduate education at Stanford University, where he was captain of the football team, was interrupted by World War II. Sent to the University of California at Berkeley in the United States Marine Corps V-12 program, he also played football there for a year and was again team captain. Wounded at Iwo Jima while serving as a First Lieutenant, he returned to Stanford Law School after the war, simultaneously playing guard for one year for the San Francisco 49ers of the All-America Football Conference. After law school, he served as Deputy District Attorney in Alameda County, California. He then practiced in Martinez, California his entire career. He had served as Special Counsel for the California State Athletic Commission in a state boxing and wrestling investigation and had served again as a special prosecutor in 1958. An avid trout fisherman, he had once fought a twenty-five or thirty pound steelhead trout in a river in British Columbia for twenty-one

hours until the fish tore loose from the hook and escaped, while news reporters hovered overhead in a helicopter to cover the story. His survivors include his wife, who had been a fellow law student at Stanford, and a son.

Roy Walton Davis, Jr., '86, a member of The Van Winkle Law Firm, Asheville, North Carolina, died April 5, 2015 at age eighty-five. A graduate of Davidson College and a graduate with honors of the University of North Carolina School of Law, where he was elected to the Order of the Coif, he spent three years in the United States Army Judge Advocate General Corps before entering private practice. He had been President of his local Bar and of the North Carolina State Bar, the regulatory bar organization, a Vice-President of the North Carolina Bar Association, the statewide voluntary bar organization, a member of the American Bar Association House of Delegates and a twelve-year member of the North Carolina Board of Law Examiners. He had served as President of the Board of Pisgah Legal Services, which had established the Roy Davis Volunteer Lawyer Award in his honor. His local district Bar had honored him with its Centennial Award for Outstanding and Exemplary Community Service. He was a member of the North Carolina Bar Association's General Practice Hall of Fame and a recipient of the North Carolina Chief Justice's Professionalism Award. The North Carolina State Bar had honored him with its John B. MacMillan Distinguished Service Award. He had served the College as North Carolina State Chair. A member of Trinity Episcopal Church, where he sang in the choir, taught Sunday school, served on the vestry and served as Senior Warden of the parish, and he was for over thirty years Chancellor of the Episcopal Diocese of Western North Carolina, its counsel in legal matters. At his memorial service, the Bishop of the Diocese delivered a eulogy, remarking that Davis had served in every capacity in his church, including being the Bishop's counselor when he was a twelve-year-old preparing for his own confirmation. His survivors include his wife and three daughters.

Richard Erwin Day, '89, a Fellow Emeritus, retired from Williams, Porter, Day & Neville, P.C., Casper, Wyoming, died September 17, 2014 at age eighty-one. At the age of seventeen, he had enlisted in the United States Navy, serving on the *USS Lyman K. Swenson*, DD-729 during the Korean Conflict. A graduate of the University of Wyoming and of its Law School, after graduation he worked for two years for Tennessee Oil & Gas Company before being appointed Colorado Special Assistant Attorney General. He then returned to Casper, where he had been born, and practiced there until his retirement. He was a Past President of his local Bar, of the Wyoming Bar Association and of the International Society of Barristers. He had served the College as Wyoming State Chair. In his civic life, he was a Past President of the local United Way Board, the Casper Kiwanis Club and the Casper Board of Public Utilities. His survivors include his wife of fifty-six years, a daughter and a son.

William Rinaldo Dorsey, III, '82, a Fellow Emeritus, retired from Semmes, Bowen & Semmes, Baltimore, Maryland, died January 15, 2015 at age eighty of kidney failure. A graduate of the University of Virginia, he was captain of the tennis team and sports editor of the university newspaper. Entering the United States Navy, he served as an officer on the *USS Chilton*, APA-38, an attack transport ship, seeing duty in the Mediterranean and Caribbean. In 1956 when Egypt's President Gamal Abdel Nasser nationalized the Suez Canal, his ship was sent to Alexandria, Egypt to evacuate fleeing United States citizens. After completing his naval service, he earned his law degree from the University of Virginia Law School, where he was a member of the law review, the Order of the Coif and the Raven Society. A maritime lawyer who had served as chairman of his firm, he had been appointed as the Dean of the Baltimore maritime bar and had served as President of the Maritime Law Association. His survivors include his wife of fifty-eight years, one daughter and two sons.

Herald Price Fahringer, '75, a member of Fahringer & Dubno PLLC, New York, New York, died February 12, 2015 at age eighty-seven of complications from prostate cancer. A graduate

of Pennsylvania State University, from which he earned both a bachelor's and a master's degree, and where he was a member of the boxing team, he then served in the United States Army during the Korean Conflict. After a USO troupe used him as a temporary replacement performer, he had toured with English actor Arthur Treacher. After earning his law degree from the University of Buffalo Law School, he practiced for many years in Buffalo, frequently commuting to Manhattan to argue cases. Ultimately opening his own office in Manhattan, he devoted his practice to the underdog. Known for his representation of unpopular clients, his clients ranged from Larry Flynt, the publisher of *Hustler*, and Jean Harris, convicted of the murder of Dr. Herman Tarnower, author of *The Complete Scarsdale Medical Diet*, to adult establishments throughout New York City in their battle over zoning laws. He represented the petitioner in a landmark case that resulted in the United States Supreme Court decision that overturned a federal law barring defendants from claiming in a habeas corpus proceeding that their trial counsel had been ineffective. The saga of one of his clients was memorialized in the movie *American Gangster*. He left no direct descendants.

Ralph Woodson Farmer, Jr., '88, a Fellow Emeritus from Dyersburg, Tennessee, died November 3, 2014 at age eighty-one. A graduate of the University of Tennessee, he had served in the Air National Guard, and then earned his law degree from the University of Tennessee College of Law, where he was Editor-in-Chief of the law review and a member of the Order of the Coif, graduating with highest honors. He practiced law in Memphis for a decade, serving first in the Tennessee House of Representatives and later in the State Senate, serving as Chair of a joint Constitutional Revision Committee. He then moved to Dyersburg, where he practiced until his retirement in 1994. He had served his local Baptist Church as a Trustee and a Deacon. His survivors include his wife of fifty-eight years, two daughters and a son.

Hon. George M. Flanigan,'72, a Fellow Emeritus from Carthage, Missouri, died December 23, 2014 at age eighty-nine in the aftermath of a stroke. After attending Joplin Junior College, he served in the United States Navy in World War II serving on two cruisers, the *USS Pittsburgh* (CA-72) and the *USS Columbus* (CA-74). He then earned his law degree from the University of Missouri School of Law, where he was a member of the Order of the Coif. He was recalled to active duty during the Korean Conflict. He had practiced with his brother, whose obituary follows this one, in a family firm in Carthage, where he had been President of his local Bar. In 1974, he was appointed to the Missouri Court of Appeals where he served for twenty-two years. His survivors include his wife, a daughter and two sons. His funeral was held on what would have been his sixty-third wedding anniversary.

Laurence Hamilton (Hop) Flanigan, '81, a Fellow Emeritus retired from Flanigan, Lasley & Moore LLP, Carthage, Missouri, died February 9, 2015 at age ninety-one. After attending Joplin Junior College, his undergraduate education at the University of Missouri was interrupted by World War II, in which he served in the 15th Air Force in Italy as the nose gunner in a B-24 *Liberator* bomber. He earned his law degree from the University of Missouri School of Law, where, like his younger brother, he was a member of the Order of the Coif. He had practiced in his family firm, McReynolds, Flanigan & Flanigan, now Flanigan, Lasley & Moore, until his retirement in 2001. A colorful fellow, he was described by one of his sons as a combination of Atticus Finch (a character in Harper Lee's Pulitzer Prize-winning novel *To Kill a Mockingbird*) and George Bailey (the lead character in the Frank Capra film *It's a Wonderful Life*), with a little bit of Archie Bunker thrown in. His survivors include his wife of sixty-nine years, three daughters and two sons.

Adrian M. (Bud) Foley, Jr., '76, a Fellow Emeritus, retired from Connell Foley LLP, Roseland, New Jersey, died on February 9, 2015 at age ninety-three. A cum laude graduate of Seton Hall University who served in the United States Army Air Corps in World War II, he was the navigator of a B-24 *Liberator* bomber, flying missions over the Mediterranean, Baltic and European Theaters and winning an Air

Medal with three oak leaf clusters, a Presidential Unit Citation with two oak leaf clusters and five battle stars. After the war, he earned his law degree from Columbia Law School. Generally recognized as one of the leading lawyers in New Jersey, he had been the youngest President of the New Jersey Bar Association and the youngest elected Surrogate in the State of New Jersey. He served for many years as the New Jersey State Delegate to the American Bar Association House of Delegates, chaired the ABA Litigation Section and was elected to the ABA Board of Governors. He had also served as a Director of the American Judicature Society and was a Fellow of the American College of Estate and Trust Counsel. He had been honored by the New Jersey Commission on Excellence in Law with its Daniel J. O'Hern Award, given annually in honor of the late state Supreme Court Justice. One New Jersey governor had appointed him as President of the 1966 New Jersey Constitutional Convention. A second had appointed him the first Treasurer and Chief Financial Officer of the New Jersey Sports and Exposition Authority and another reappointed him to that post. Together with the Sports Authority Chairman, he was instrumental in devising the bond issue that generated the funds for construction of Giants Stadium and the Meadowlands Race Track. He had served on the Board of Overseers of Seton Hall University's Immaculate Conception Seminary for over a decade. He was a member of the Board of Visitors of Columbia Law School and a Trustee of Seton Hall University. He was the first recipient of Seton Hall's All University Award. He had received an honorary doctorate from St. Peter's College, was a Knight of Malta and had received a Medal of Service from the Archdiocese of Newark, for which he served as legal counsel for many years. A widower whose wife of sixty years predeceased him, his survivors include two daughters and two sons.

Victor Stanley Friedman, '81, a Fellow Emeritus, retired from Fried, Frank, Harris, Shriver & Jacobson LLP, New York, New York, died August 12, 2014 at age eighty-one of cancer. A graduate of Harvard University and of Yale Law School, where he was a member of the law journal, he began his career as Assistant to the Deputy Attorney General of the Civil Rights Division of the United States Department of Justice. He then practiced for the rest of his career as an antitrust lawyer at Fried Frank. In retirement, he had devoted his time to acting as a mediator and a math tutor to high school students. Divorced and remarried, his survivors include his wife of thirty years, two daughters and three sons.

Edward J. Gallagher, Jr., '72, a member of Gallagher, Langlas & Gallagher, P.C., Waterloo, Iowa, died April 5, 2015 at age eighty-nine after a fall. His undergraduate education at Loras College was interrupted by service in the United States Navy in World War II, where he served on the aircraft carrier *USS Chenango* (CVE-28), participating in the Battles of the Philippine Sea and Okinawa. After the war he graduated magna cum laude from Loras College and earned his law degree at Georgetown University Law Center. He had been President of the Iowa Academy of Trial Lawyers and had served as City Attorney for both Evansdale and Waterloo, Iowa. Among his varied civic service, he had served on the local Symphony Board and on the Loras College Board of Regents. Local Post Commander, State Commander and President of the Amvets National Service Foundation, he chaired the fiftieth anniversary of the death in World War II of the five Sullivan brothers, all of whom died in the sinking of the *USS Juneau* (CL-52), and the renaming of the Waterloo Convention Center for them. He and his wife were members of the Equestrian Order of the Holy Sepulchre of Jerusalem. He had served the College as Iowa State Chair. A widower whose wife of sixty-five years had predeceased him, his survivors include two daughters and a son.

Richard Owen Gantz, '78, a Fellow Emeritus, retired from the Anchorage, Alaska firm, Hughes, Thorsness, Lowe, Gantz & Clark, died August 30, 2014 at age ninety-three at his home in Big Lake, Alaska. The tenth of eleven siblings, his education at Otterbein College in Westerville, Ohio was interrupted by World War II, in which he served

in the United States Army in both the European and Pacific Theaters. After the war, he earned his undergraduate and law degrees from Ohio State University, graduating from law school summa cum laude. He had practiced in Akron, Ohio, both in private practice and as Assistant Director of Law for the Summit County Law Department and as Executive Director of the Summit County Employers' Association. In 1959, a few days before Alaska became a state, he moved his family to Anchorage, where he served as City Attorney and as City Manager before entering private practice. He had served on the Board of Governors of the American Bar Association. He had also served the College as Alaska State Chair. A widower, his survivors include a son.

William Gerald Gaudet, '96, a Fellow Emeritus with Voorhies & Labbe, Lafayette, Louisiana, died November 20, 2014 at age seventy-eight of cancer. A graduate of Tulane University and of its Law School, he had served in the United States Navy and, remaining in the Naval Reserve, had retired as a Captain. His survivors include his wife, two daughters and a son.

Frank Edward Gilkison,'77, a Fellow Emeritus, retired from Beasley & Gilkison LLP, Muncie, Indiana, died March 20, 2015 at age eighty-eight in the aftermath of a stroke. The son of an Indiana Supreme Court Justice, after serving in the United States Army Air Corps in World War II, he had then earned his undergraduate and law degrees from the University of Indiana. He had served as Muncie City Attorney for thirteen years and as a Circuit Court Probate Commissioner. He had also represented several local government-related organizations, including chairing his local elections board, and had led a multitude of local organizations, including serving on the Board of Trustees of his Presbyterian Church. He had been President of his local Bar, and the Indiana Bar Foundation had honored him as a Legendary Lawyer. A widower who had remarried, his survivors include his wife, four daughters and a stepson.

Brent Boyer (Chris) Green, '89, a partner in Duncan, Green, Brown & Langeness, PC, Des Moines, Iowa, died January 19, 2015, at age seventy-four of lung cancer. A graduate of the University of Iowa and of its Law School, he practiced for two years in New York City before serving in Vietnam as an officer in the United States Army Judge Advocate Office of the Saigon Support Command, earning a Bronze Star. After his service was over he had practiced in Des Moines for the rest of his life. His survivors include his wife of fifty-one years, whom he had met before they started classes their freshman year, two daughters and a son.

Edward Leonard Greenspan, Q.C., '91, Greenspan Partners LLP, Toronto, Ontario, died in his sleep on December 24, 2014 at age seventy at his family vacation home in Phoenix, Arizona. He had received his undergraduate education at University College at the University of Toronto and his law degree from Osgoode Hall Law School of York University. A fierce, gregarious lawyer, he had represented many high-profile defendants in often controversial criminal matters. He had been an outspoken opponent of attempts to reinstate the death penalty in Canada. In his desire, as one observer phrased it, "to bring the workings of the criminal justice system to life for the public," he had for twelve years been the host and narrator of *Scales of Justice*, a CBC radio and later CBC television legal docu-drama. He had been awarded the Academy of Canadian Cinema and Television's Gemini Award. A prolific writer, at the time of his induction into the College, he was the Editor or Associate Editor of five different Canadian legal publications. The Law Society of Upper Canada had awarded him both an honorary Doctor of Laws and its Law Society Medal, the highest honor that can be bestowed on an Ontario lawyer. His survivors include his wife and two daughters, one of whom was his law partner.

Allen Brooks Gresham, '88, a Fellow Emeritus, retired from Gresham Savage Nolan & Tilden, PC, San Bernardino, California, died April 20, 2014 at age eighty-two. A graduate of Occidental College and Stanford Law School, he practiced for

his entire career in the law firm of which he served as managing partner. A former President of his local Bar, which had honored him with its John B. Surr Award, he had served for thirty-five years as a Trustee of San Bernardino Valley College and on the boards of several other health-oriented and civic institutions. A 33rd Degree Mason, he had twice served as President of the San Bernardino Symphony Board. His survivors include his wife and two sons.

Bernard E. Harrold, '78, a Fellow Emeritus, retired from Edwards Wildman Palmer LLP, Chicago, Illinois, died October 22, 2012 at age eighty-seven. Drafted after high school, he served in World War II in the United States Army Antitank Company, 333rd Infantry Regiment, 84th Division (the Railsplitter Division), where he took part in the last push across Germany, meeting the Russian Army at the Elbe River. After the war, he earned his undergraduate degree from Indiana University and his law degree from its Maurer School of Law, where he was inducted into the Order of the Coif. He had been named to the Maurer School of Law Academy of Alumni Fellows. After his death his widow created the Bernard Harrold Endowed Scholarship at his law school. His survivors include his wife, a daughter and a son.

Peter Jay Hughes, '77, a Fellow Emeritus, a sole practitioner from San Diego, California, died December 5, 2014 at his home in La Jolla, California at age eighty-six of a heart attack. He had earned his undergraduate and law degrees from Stanford University. After serving for three years at the Pentagon as an officer in the United States Army Judge Advocate General Corps, he served for over two years as an Assistant United States Attorney in Los Angeles and then in San Diego before entering private practice. He practiced for twenty years in law firms and then for the rest of his career as a sole practitioner. Told by a cardiologist when he was fifty-three years old that he needed to reduce stress, he decided to challenge himself by racing cars, putting the number 53 on his vehicle. Recognized as the Dean of the San Diego Criminal Defense Bar, he had served on the California State Bar Board of Governors and on the National Executive Committee of ABOTA. He had served as a Trustee of the University of San Diego for thirty-six years, including a term as Chair. He was a Lector and Extraordinary Minister at All Hallows Catholic Church in La Jolla, which he and his wife had helped to found. He had been honored with the San Diego Bar's Daniel T. Broderick III Award for integrity, civility and professionalism, the Thomas More Society Lifetime Achievement Award and the Ninth Circuit's John P. Frank Award. His survivors include his wife of fifty-eight years, three daughters and a son.

Harold Weinberg Jacobs, '88, a Fellow Emeritus, retired from Nexsen Pruet, LLC, and living in a retirement home in Charleston, South Carolina, died December 2, 2014 at age ninety-one. After attending Clemson College for two years, he transferred to the United States Naval Academy, graduating the summer that World War II ended. Serving as an officer in the United States Navy, first on a destroyer and then as a naval aviator, he was an instructor at the Naval Academy until a serious injury in a plane crash in 1957 ended his naval career. While recovering from his injuries, he earned his law degree at the University of South Carolina School of Law. His years of active practice were spent in Columbia, South Carolina. He had been President of the South Carolina Bar and of the South Carolina Trial Lawyers Association and Chair of the South Carolina Supreme Court Commission on Character and Fitness. He had been awarded the South Carolina Bar's most distinguished award, the DuRant Distinguished Public Service Award. He had served on the South Carolina Commission on Higher Education and on the vestry and as Senior Warden of Saint Michaels and All Angels Episcopal Church. His survivors include his wife of fifty-seven years, two daughters and a son.

William Lawrence Keating, '98, a member of Keating Wagner Polidori & Free, P.C., Denver, Colorado, died January 1, 2015 at age seventy of cancer. A graduate of the University of Michigan, where he was a starting guard on a team that won

the Big Ten Championship and the 1965 Rose Bowl, he played professional football for three years, first with the Denver Broncos and then with the Miami Dolphins, before earning his law degree from the University of Denver's Sturm College of Law. After a year as a law clerk for a judge of the United States Court of Appeals for the Tenth Circuit Court, he helped to found the firm in which he practiced until his death. He had been President of the Colorado Trial Lawyers and a lecturer and teacher for the National Institute of Trial Advocacy. The Colorado Trial Lawyers Association had honored him with its Kenneth Norman Kripke Lifetime Achievement Award and he had received the Thompson G. Marsh Award from his law school. His survivors include his wife of forty-seven years, a daughter and a son.

Benjamin Lee (B.L) Kessinger, Jr., '72, a Fellow Emeritus, retired from Stites & Harbison, PLLC, Lexington, Kentucky, died November 23, 2014 at age ninety-one. A graduate of the University of Kentucky, where he played football and basketball, he served as an officer in the United States Army in World War II, seeing combat in the Philippines. After the war, he earned his law degree from the University of Kentucky Law School and joined the law firm in which he practiced until his retirement. He had been President both of his local bar and of the Kentucky Bar Association, whose House of Delegates he had also chaired. He had served as a Special Judge of the Kentucky Court of Appeals and as a Special Justice of the Kentucky Supreme Court and as a United States Commissioner. Active in numerous civic organizations, he had taught Sunday school at his Methodist Church for twenty-five years. He had been honored by the Kentucky Bar Association's Outstanding Lawyer in Kentucky Award. His survivors include his wife, two daughters and a son.

John Michael Lawrence III, '73, a Fellow Emeritus from Bryan, Texas, died September 2, 2014 at age ninety-two, nine days before his ninety-third birthday. An Eagle Scout who had graduated from Texas A & M University, he had then served as an officer in the United States Army in the Pacific Theater in World War II, seeing combat duty in the Philippines. After the war, he earned his law degree at the University of Texas School of Law. He had been President of his county Bar, of the Texas Association of Defense Counsel and of the Texas Bar Association. He was a founding director of the local television station and taught a men's bible class at his Methodist Church for twenty-five years. His survivors include a daughter and a son.

Philip H. Magner, Jr., '72, a member of Lipsitz Green Scime Cambria LLP, Buffalo, New York, died December 9, 2014 at age eighty-seven, following heart surgery. In retirement, he had been living in Sarasota, Florida. He received his undergraduate education from the University of Rochester and his law degree from the University at Buffalo Law School. A pioneer in medical malpractice plaintiff's practice who was also known for his humor, he once chose to use an assumed name when he was admitted to a local hospital for minor surgery. As President of his county Bar, he had chaired a citizens' conference on criminal justice after the Attica prison riot, a project that led to the formation of the Citizens Commission on Criminal Justice, which won an award of merit from the American Bar Association. He also launched an annual fund campaign for the Erie County Bar Foundation, now in its thirtieth year, which raises funds for the care of lawyers and their families with serious economic problems related to health, addiction or stress. A prolific writer, he was an Editor Emeritus of the *Journal* of the New York State Bar Association, and his comments on Summations were a part of that Association's *Manual of Civil Trial Practice* for over twenty-five years. After the loss of vision in one eye and four surgeries in two years, he had retired in 2003, but had nevertheless argued an appellate case at age eighty-four. His survivors include his wife of fifty-four years and two sons.

Hon. Neal Peters McCurn, '73, a Judicial Fellow, retired United States Judge for the Northern District of New York, Syracuse, New York, died September 7, 2014 at age eighty-eight. He had attended La Salle Military Academy and New York

State Maritime Academy and had served as an officer in the Maritime Service before completing his undergraduate education at Syracuse University, where he went on to earn his law degree, being named the Northeastern Law School Graduate of the Year. He was in private practice in Syracuse for twenty-seven years before being confirmed to the federal bench in 1979. He had served as President of his county Bar, had served as President of one legal aid society and had been an incorporator of another. He served on the Syracuse University College of Law Board of Visitors and had been President of the Syracuse College Law Alumni Association, whose Distinguished Service Award he had received. He had also received his county Bar's Centennial Award for Outstanding Judicial Service. In private practice he had been Chair of his county chapter and state Chair of the National Foundation of March of Dimes, County Chair of the American Red Cross, Chair of the Mayor's Commission on Human Rights and a member of the boards of numerous other civic organizations. Active in local politics, he had served as a delegate to a New York State Constitutional Convention and as President of the Common Council of the City of Syracuse. As a judge, he had presided over many cases involving Native American land claims. He had been Chief Judge of his district for five years, had then taken senior status and had retired completely in 2012. His survivors include his wife of sixty-five years, five daughters and a son.

John Gregg McMaster, '68, Tompkins & McMaster, LLP, Columbia, South Carolina, died February 24, 2015 at age one hundred. A graduate of the University of South Carolina and of its School of Law, he had applied for and received an appointment as an officer in the United States Naval Reserve several months before the Japanese attack on Pearl Harbor. Discovery of a minor heart condition ended his naval career, and he served as an Attorney for the federal Office of Price Administration during World War II. Elected to the South Carolina House of Representatives, he served two terms. He had also served as Code Commissioner for South Carolina and as a member of the South Carolina Aeronautics Commission, serving for eleven years as its chairman. He had also chaired his county's Public Defender Corporation. He had been elected to the Cum Laude Club of the University of South Carolina Educational Foundation and had received his local Bar's John W. Williams Distinguished Service Award. The Governor of South Carolina had awarded him the Order of the Palmetto. The South Carolina Trial Lawyers Association had awarded him its Worthy Adversary Award and his county Bar had also given him its Lifetime Achievement Award. Practicing law for over seventy-five years, he tried his last case at age ninety-three. He had been a founding member and President of the St. Andrew's Society of The City of Columbia. He had served as Sunday school teacher, deacon, elder and elder emeritus of his local Presbyterian Church. Until his late eighties he played basketball and worked out. A widower, his survivors include six sons.

Francis J. McNamara, Jr. '84, a Fellow Emeritus, retired from Cummings & Lockwood, Stamford, Connecticut, and living in retirement in Vero Beach, Florida, died June 8, 2012 at age eighty-four. After beginning his undergraduate education at Georgetown University, he served a year as a seaman in the United States Navy before returning to college to graduate. He then earned his law degree from Georgetown University Law Center. Recalled to active duty during the Korean Conflict, he was at first stationed on a destroyer and then on shore duty. After his discharge, he was for three years an Assistant United States Attorney for the District of Connecticut before joining the law firm in which he served as managing partner and with which he practiced until his retirement in 1991. A Past President of his local Bar, and a former member of the House of Delegates and the Board of Governors of the Connecticut Bar Association, he was one of the first lawyers appointed by the Chief Justice of Connecticut to act as an Attorney Trial Referee to hear and decide non-jury civil cases to relieve docket congestion in the state courts. In 1968, he had been elected Chair of the Board of Trustees of the Charles E. Culpeper Foundation, a position he held while continuing to practice law. In 1991, he left his firm to become President

and Chief Executive Officer of the Foundation, a position he held until it was merged into the Rockefeller Brothers Fund of New York City in 1999. During the period of his leadership, the Foundation gave away $120 million to charitable causes, while its assets grew from $8 million to over $200 million. In retirement from his law firm, he had served as a mediator and arbitrator. He was a Knight of Malta and a Knight of the Holy Sepulchre and had been designated a Knight of the Order of St. Gregory the Great by Pope John Paul II. The Fairfield Foundation of the Diocese of Bridgeport had given him its Outstanding Philanthropic Service Award. A Trustee of Fairfield University, he had been awarded an Honorary Doctor of Laws by that institution. He also bred and raced thoroughbred horses. A widower who had remarried, his survivors include his wife of twenty-six years, six children and three stepchildren.

Preston Donald Moses, '93, a partner in Timberlake, Smith, Thomas & Moses, P.C., Staunton, Virginia, died January 1, 2015 at age seventy-one. He was a graduate of the University of Virginia and of its Law School. He had been President of his county Bar, a member of the Council of the Virginia State Bar and a Director of the Virginia Association of Defense Attorneys. His survivors include his wife and two daughters.

Edward A. Moss, '84, a member of Shook, Hardy & Bacon L.L.P., Miami, Florida, died February 15, 2015 at age seventy-eight of prostate cancer. A graduate of the University of Florida and of the University of Miami School of Law, he had for years principally represented plaintiffs, before beginning to do major corporate defense work. In 1997, he had defended Brown & Williamson in a landmark second-hand cigarette smoke class action that resulted in a $366 million settlement. He had served on the Board of the International Academy of Trial Lawyers and been honored with the Miami-Dade Legal Legend Award. His survivors include his wife, whom he met when they became law partners, three sons and a stepson.

Hon. Robert Terrence Ney, '99, a Judicial Fellow, a District Court Judge in Fairfax, Virginia, died November 24, 2014 at age seventy. A graduate of Harvard College, where he had been a member of the tennis team, and of the University of Texas School of Law, where he was elected to the Order of Barristers, he had practiced law in Fairfax for thirty years before being elected to the bench, where he then served for sixteen years. In 2000, at the request of the co-chairs of the United States delegation to an Anglo-American Legal Exchange, he allowed the delegations from both the United Kingdom and the United States to sit in the audience as spectators while he presided over a "he-said-she-said" date rape criminal case. One of the British Law Lords was later heard to remark that what they had seen that day laid to rest the preconceived doubts they had harbored about criminal trial procedure in the United States. A Past President of the Virginia Bar Association, he had served in the American Bar Association House of Delegates and on the Executive Council of Bar Presidents. A member of the American Academy of Appellate Lawyers, he had authored a chapter on Virginia appellate practice and had taught appellate law at George Mason University School of Law for ten years. Before going on the bench, he had served in several civic and charitable groups, including a local hospital board and was the first President of a scenic preservation group. He had played in a rock and roll band at Harvard and for twenty years played mandolin in a group called the Raggedygrass Bluegrass Band. A member of the Middleburg Hunt, he was an avid rider and had proudly won two ribbons in the "Silver Foxes" competition in a regional horse show. His survivors include his wife and two daughters.

Richard W. Odgers, '87, a member of Pillsbury Winthrop Shaw Pittman LLP, San Francisco, California, died September 6, 2014 at age seventy-seven after a long illness. A graduate of the University of Michigan and of its Law School, after his induction into the College, he had become General Counsel and Executive Vice-President of Telesis, the then parent company of Pacific Bell, for eleven years, before returning to Pillsbury. After

a mass shooting at a San Francisco law office in 1993, he had helped to establish a lawyers' gun control group, called the Law Center to Prevent Gun Violence. He was also a co-founder and had served as President of the California Minority Counsel Program, devoted to offering training and access to minorities and promoting diversity in the profession. It became the largest such organization in the nation. Known to be the first to arrive at his office each morning, he would bound up seven flights of stairs to his office and make coffee for those who arrived later. He had received career awards from the San Francisco Bar Association, the Anti-Defamation League of B'Nai B'rith and the San Francisco Legal Aid Society Employment Law Center, whose board he had chaired. His survivors include his wife of over fifty years and two sons.

Forrest A. Plant, '72, a Fellow Emeritus, retired from Diepenbrock, Wulff, Plant & Hannegan, Sacramento, California, a former Regent of the College, died February 20, 2015 at age ninety. A Phi Beta Kappa graduate of the University of California, Berkeley, he served as an officer in the United States Navy in the Pacific Theater in World War II on the heavy cruiser *USS Boston* (CA-69). He then earned his law degree at the UC Berkeley School of Law. He had been President of his county Bar, of the California State Bar and of the Legal Aid Society of Sacramento. He had chaired the California Law Revision Commission and for ten years had been a Professor of Law at Pacific McGeorge College of Law. He had been Chair of the Sacramento Region Community Foundation, President of the Crocker Art Museum Foundation, a Trustee of the Sacramento Symphony Foundation and a Regent of the University of California. He had received the Sacramento Lawyer of the Year Award, the University of California Alumni Citation and had been named a Berkeley Fellow. His survivors include his wife of sixty-five years and four sons.

Hon. William Taliaferro Prince, 81, a Judicial Fellow, a retired Federal Magistrate Judge from Norfolk, Virginia, died December 15, 2014 at age eighty-five. After high school, he had served in the United States Army before entering college at the Norfolk Division of the College of William and Mary. Recalled to active duty during the Korean Conflict, he had returned to college, graduated from the College of William and Mary and then earned both a law degree and a master's degree in taxation from the Marshall-Wythe School of Law at William and Mary. He began his practice with the Norfolk firm Williams Kelly & Grier and served as President of the Virginia State Bar before his appointment to the bench, where he served for twenty-four years. In later life, he had traveled the world as a solo traveler on freighters, circumnavigating the globe at age seventy-eight. His survivors include his wife, three daughters and three sons.

Harry Thomas Quick, '88, a member of Brzytwa, Quick & McCrystal LLC, Cleveland, Ohio, died November 10, 2014 at age seventy-five. He had attended Mount St. Mary's College and Athanaeum of Ohio before graduating from John Carroll University and had earned his law degree at Case Western Reserve University School of Law. His survivors include his wife, four daughters and a son.

James Crawford Roberts, '80, a Fellow Emeritus, retired from Troutman Sanders LLP, Richmond, Virginia, died March 8, 2015 at age eighty-two. After his undergraduate education at Hampden-Sydney College and the University of Richmond, he had finished at the top of his class at the T. C. Williams School of Law at the University of Richmond. Joining Tucker, Mays, Moore & Reid, later Mays & Valentine before its 2001 merger into Troutman Sanders, he had been managing partner of his firm for many years. A generalist, he had been President of the Richmond Bar Association, the Virginia State Bar and the John Marshall American Inn of Court. He had been lead counsel for A. H. Robins Company during its bankruptcy and reorganization. He had helped to found the Central Virginia Legal Aid Society, which had created the Jim Roberts Society in his honor. He had served on or chaired the boards of numerous health-oriented organizations and served on the boards of the State Fair of Virginia, Virginia Military Institute,

the Commission on the Future of the Virginia Judicial System, the Chesapeake Bay Foundation, Westminster-Canterbury of Richmond and the Virginia Commonwealth University Health System. He had been honored with the Virginia State Bar's Harry L. Carrico Professionalism Award, the Richmond Bar Association's Hunter W. Martin Professionalism Award, the Robert H. Merhige, Jr. Outstanding Achievement Award and the Virginia State Bar's Tradition of Excellence Award. His own law firm had created the James C. Roberts Award to recognize outstanding achievements in pro bono contributions. His survivors include his wife of sixty years, a daughter and two sons.

John D. Ross, Jr., '73, a Fellow Emeritus, retired from Ross & Ross, PC, a firm which he and his father started, Springfield, Massachusetts, died December 2, 2014 at age ninety-two. A graduate of Brown University, where he was captain of the baseball team, and Boston University School of Law, he had served as an officer in the United States Marine Corps in the Pacific Theater in World War II, participating in the battle of Saipan. He had been President of his county Bar. A widower whose wife of fifty-seven years had predeceased him by eight weeks, his survivors include a daughter and a son.

Peter M. Sfikas, '85, a member of Bell, Boyd & Lloyd, Hinsdale, Illinois, died September 6, 2014 at age seventy-seven. A graduate of Indiana University and of Northwestern University School of Law, he had served as Chief Counsel and Associate Executive Director of the American Dental Association. He had served the Legal Aid Bureau of Chicago, had been an adjunct professor at Loyola University Chicago School of Law and had served as President of the Parish Council of his Greek Orthodox Church. He had received the Chicago Bar Foundation's Maurice Weigle Exceptional Young Lawyer Award and had been President of the Northwestern University Law School Alumni Association. His survivors include his wife of forty-eight years and three daughters.

Leon Silverman, '65, a Fellow Emeritus, retired from Fried, Frank, Harris, Shriver & Jacobson LLP, New York, New York, the thirty-second President of the American College of Trial Lawyers, died January 28, 2015 at age ninety-three. His memorial service took place after the press deadline for this issue of the *Journal*. He will be the subject of a separate article in the next issue.

Allen L. Smith, Jr., '82, a member of Plauché, Smith & Nieset, LLC, Lake Charles, Louisiana, died January 11, 2015 at age seventy-eight. He was a graduate of Louisiana State University and of its Law School, where he was a member of the Order of the Coif. He had been President of the Southwest Louisiana Bar Association and of the Louisiana Association of Defense Counsel. He had served on several local boards and on the vestry of his Episcopal church. He was a recipient of the Louisiana State Bar Association's President's Award, of the Louisiana State Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award and of the Judge Albert Tate American Inns of Court Professionalism Award. His survivors include his wife of thirty-five years, a daughter and two sons.

Blake Tartt, '84, a member of Beirne, Maynard & Parsons, LLP, Houston, Texas, died July 27, 2014 at age eighty-five. After earning his undergraduate degree at Southern Methodist University, he saw combat as an officer in the 98th Bombardment Wing of the United States Air Force in the Korean Conflict, winning an Air Medal, a Korean Service Medal with two battle stars, the United Nations Medal and United States and Korean Presidential Citations. He then returned to law school at Southern Methodist University, graduating cum laude and receiving the Outstanding Senior Law Student Award. After practicing for over forty years as a partner in Fulbright & Jaworski LLP, he joined a group of friends in the firm in which he practiced until his death. He had served as President of the State Bar of Texas, and as Chair of the Houston Bar Foundation and the Texas Bar Foundation. He had also served in the American Bar Association House of Delegates, on its Board of Governors and

as Chair of the ABA Standing Committee on the Federal Judiciary. He had also served on the Board of Directors of the Magna Carta Foundation and on the Board of the Law Library of Congress. He had been honored with the Southern Methodist University Distinguished Alumnus Award and the Texas State Bar 50 Year Outstanding Trial Lawyer Award. His survivors include his wife of fifty-four years, a daughter and a son.

John O. Tramontine, '83, a Fellow Emeritus, retired from Fish & Neave LLP, New York, New York, died September 21, 2013 on his eighty-first birthday of natural causes, following years of respiratory and pulmonary illness. A graduate of the University of Notre Dame, he had begun his legal education at Georgetown University Law Center, working as a patent examiner. He then completed his legal education at New York University School of Law. He had served in the United States Marine Corps and had been President of the New York Intellectual Property Law Association.

Hon. James Clinton Turk, '70, a Judicial Fellow from Roanoke, Virginia, Senior United States Judge for the Western District of Virginia, died July 6, 2014 at age ninety-one of pneumonia. After growing up on a farm, he served in the United States Army in World War II. After the war, he attended Roanoke College on the GI Bill. Inducted into Phi Beta Kappa and Omicron Delta Kappa, he then attended law school at Washington & Lee University on a scholarship, serving as Editor of the law review and being inducted into the Order of the Coif. He practiced law in Radford, Virginia for twenty years, serving in the Virginia State Senate for thirteen years, for seven of those years as minority leader. Appointed to the federal district bench in 1972, he served as Chief Judge for twenty years, taking senior status in 2002 and continuing to sit on the bench. He had last held court in May 2014, when he had already turned ninety-one. Known as a model of grace and decorum, it was his custom to come down from the bench at the end of a proceeding to shake hands with counsel and the parties, including defendants he had just sentenced to prison. One notable Valentine's Day, a defendant he had just sentenced to almost two years of prison expressed the desire to be married to the woman he loved before being sent away. The judge presided over the marriage ceremony, the court clerk produced a cake and the jury room became the celebration site. In addition to serving various civic organizations, he had been President of the Roanoke College Alumni Association, which had awarded him an honorary Doctor of Laws. The pre-law program at Roanoke College is named for him and his brother. His survivors include his wife, two sons, both lawyers, and three daughters.

John Charles Walker, QC, '05, a member of Walker Thompson, Sault Ste. Marie, Ontario, Canada, died January 21, 2015 at age seventy-two. He had earned his undergraduate and law degrees from Queen's University, Kingston, Ontario. He had served as President of the Sault Ste. Marie Chamber of Commerce and as a member of the Research Ethics Board for the Group Health Center and of the Community Theater Board. His survivors include his wife, two sons, a stepdaughter and a stepson.

Gerald L. Walter, Jr., '87, a member of Taylor, Porter, Brooks & Phillips, LLP, Baton Rouge, Louisiana, died January 14, 2015 at age seventy-eight of cancer. He had earned his undergraduate degree from Louisiana State University, where he was an Army ROTC Distinguished Military Graduate. After serving on active duty in the artillery and Judge Advocate General branches, he earned his law degree from the Louisiana State University Law School, where he was Managing Editor of the law review. He had served as President of his local Bar. His survivors include his wife of fifty-four years, two daughters and a son.

David Jerome Watters, Jr., '76, a Fellow Emeritus, retired from Plunkett Cooney, Bloomfield Hills, Michigan, died December 19, 2014 at age eighty-three. He was a graduate of the University of Detroit Mercy and of its law school. Focusing on healthcare litigation, he was a Charter Property Casualty Underwriter and had been awarded the Michigan

Defense Trial Counsel in Excellence Award. His survivors include his wife of fifty-eight years, two daughters and a son.

Edwin J. Wesely, '77, a Fellow Emeritus, retired from Winthrop, Stimson Putnam & Roberts (now Pillsbury Winthrop Shaw Pittman), New York, New York, died February 15, 2015 at age eighty-five after several years of declining health. Born into an immigrant European Catholic family in New York, he began his higher education at Deep Springs College, graduating from Cornell University and earning his law degree from Columbia Law School. He had been a federal prosecutor and had served as a Special Master in federal court cases. For many years, he was Chairman/President of CARE and had helped to found CARE International. A member of the Council of Foreign Relations, he had been honored with the Foreign Press Association World Humanitarian Award. Divorced and remarried, his survivors include his wife and two daughters.

Hoyt Henry Whelchel, Jr., 75, a Fellow Emeritus, retired from Whelchel & Carlson, LLP, Moultrie, Georgia, died December 30, 2014 at age eighty-eight. A graduate of Georgia Institute of Technology and of the University of Georgia School of Law, he had served in the United States Navy after undergraduate school and had been recalled to active duty during the Korean Conflict. He had served on both the State Disciplinary Board and the Board of Law Examiners of the Georgia State Bar. For many years he had been the City Attorney for Moultrie. A widower, his survivors include two daughters and two sons.

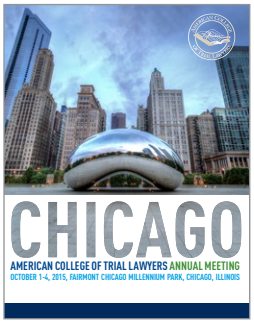
George E. Wise, '72, a Fellow Emeritus, retired from Wise Pearce Yocis & Smith, Long Beach, California, died March 28, 2015 at age ninety-one. He attended Lake Forest College and then Northwestern University and other undergraduate institutions in the course of his training to become an aviator in the United States Navy in World War II, learning to fly the carrier-based fighter-bomber F4U *Corsair*. The war in the Pacific ended the month his unit was to ship out to combat. After the war, he earned his law degree from the University of Chicago Law School and was a law clerk for a Justice of the California Supreme Court before entering private practice. In the 1980s, he had acted as an elections observer in Nicaragua. He was best remembered for his role in the late 1990s in negotiating an agreement that created the Long Beach Navy Memorial Heritage Association (known as the "Navy Trust") to administer the use of funds derived from the closing of the United States Naval Base at Long Beach for public purposes, including historic preservation. A widower whose wife of fifty-three years, a former WAVE member (an all-woman division of the U.S. Naval Reserve) he had met while on active duty, predeceased him, his survivors include a daughter and four sons.

Fletcher Leftwich Yarbrough, '81, a member of Carrington, Coleman, Sloman & Blumenthal. LLP, Dallas, Texas, died November 14, 2014 at age eighty. An Eagle Scout, he was a Phi Beta Kappa graduate of Southern Methodist University. A magna cum laude graduate of Harvard Law School, he was Editor of the Harvard Law Review. At his graduation, he was awarded the Frederick Sheldon Traveling Fellowship, which allowed him to travel with his wife for a year through Europe and the Middle East before he began law practice. He was for many years the managing partner of his firm and ultimately served as its chairman. He had taught constitutional law at the Southern Methodist Law School. Active in a number of local civic and educational organizations, he had been honored by the Dallas Bar as its Trial Lawyer of the Year and by the American Jewish Congress with its Torch of Conscience Award. He had been a member of the United States delegation to the 2005 College-sponsored Anglo-American Legal Exchange, had served on numerous College committees and had chaired its Federal Rules of Evidence Committee. His survivors include his wife of fifty-seven years, a daughter and two sons.

UPCOMING EVENTS

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

NATIONAL MEETINGS



2015 Annual Meeting
Fairmont Chicago
Millennium Park

Chicago, Illinois
October 1-4, 2015

2016 Spring Meeting
Grand Wailea Resort
Hotel & Spa

Maui, Hawaii
March 3-6, 2016

REGIONAL MEETINGS

Region 3
Northwest Regional Meeting

Alaska, Alberta,
British Columbia, Idaho,
Montana, Oregon, Washington

The Fairmont Jasper
Park Lodge Resort
Jasper, Alberta

August 6-9, 2015

Region 9
Sixth Circuit

Kentucky, Michigan,
Ohio, Tennessee

The Homestead Resort
Glen Arbor, Michigan

August 13-16, 2015

Region 4
Tenth Circuit

Colorado, Kansas, New Mexico,
Oklahoma, Utah, Wyoming

The St. Regis Deer Valley
Park City, Utah

August 20-23, 2015

JOURNAL

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

"In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships."

Hon. Emil Gumpert
Chancellor-Founder
American College of Trial Lawyers

Statement of Purpose

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.