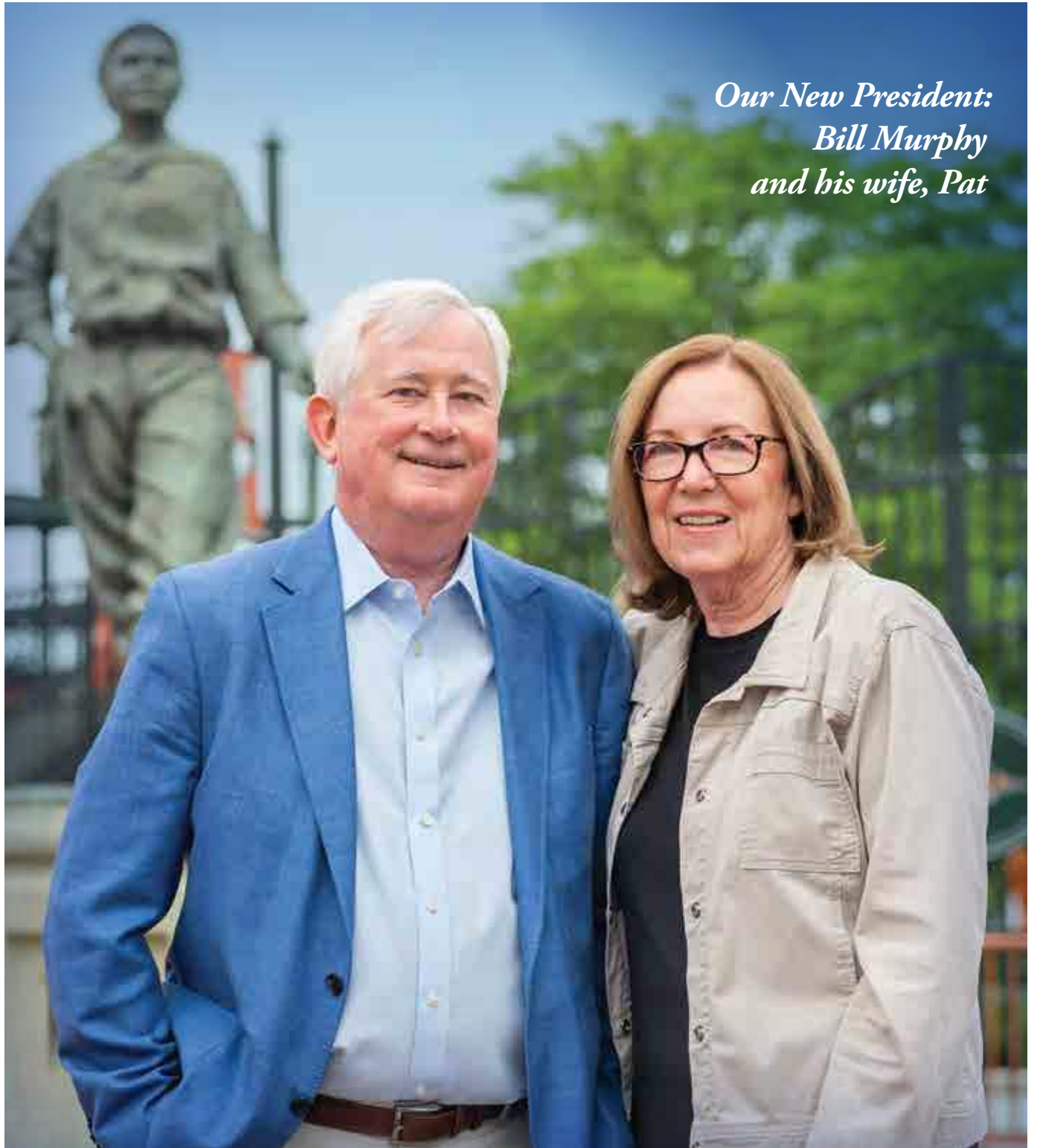


JOURNAL

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and his wife, Pat*



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American College of Trial Lawyers
1300 Dove Street, Suite 150, Newport Beach, California 92660

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LETTER FROM THE EDITOR

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THEY'RE COMING FOR US. THE MACHINES. THE MACHINES ARE COMING FOR US. NOT FOR MANKIND. LAWYERS. THEY'RE COMING FOR LAWYERS. THEY PLAN TO FULFILL SHAKESPEARE'S INVECTIVE "FIRST, LET'S KILL ALL THE LAWYERS."

In April, the *New York Times* featured a story with the chilling headline "**A.I. Is Coming for Lawyers.**" "A new A.I. threat looms," the *Times* reports, "ChatGPT-style software, with its humanlike language fluency, could take over much of legal work . . . Law is seen as the profession perhaps most at risk from the recent advances in A.I. because lawyers are essentially word merchants. And the new technology can recognize and analyze words and generate text in an instant. It seems ready and able to perform tasks that are the bread and butter of lawyers."

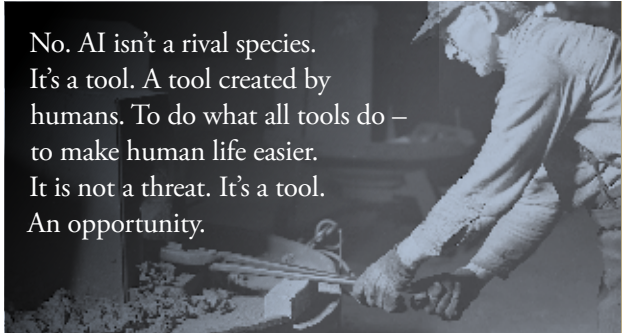
That's the good news. The bad news is that AI will not simply replace us, it will be smarter, way smarter than most of us humans. Most of us, not all. A few of us will remain poor dumb bastards. Read Steve Schwarz' story (p. 25) about the lawyers who used AI to write a brief; and AI wrote a great brief, apart from the fact that it simply made up the cited cases. AI was smart enough to create a good-looking brief; the humans were too dumb to cite-check.

But while AI may be *artificial*, it is *intelligent*. In March, a paper was published by a group of law school professors with the modest title "GPT-4 Passes the Bar Exam." GPT-4 (the AI program created by OpenAI) didn't just pass. It *aced* it. The Uniform Bar Exam has been adopted in over forty U.S. states and territories. A twelve-hour, two-day ordeal with multiple choice and essay questions, a perfect score is 400. A passing score, in most of the states that use it, is 270. GPT-4 scored 297, putting it in the 90th

percentile. And in dog-years, GPT-4 is still an infant. GPT-5 will score higher. GPT-6 will probably get a 400.

What? A machine can answer essay questions? It's almost as smart as us already and will soon be smarter? Holy Terminator! Save us, Sarah Connor! That's terrible news. We have to do something!!!!

Okay, let's take a breath. The plot line of the Terminator Franchise is that the machines created by mankind become too smart for our own good and decide to eliminate their creators. Is that what AI is on the cusp of doing? Is war between intelligence and artificial intelligence inevitable? Are we doomed?



No. AI isn't a rival species. It's a tool. A tool created by humans. To do what all tools do – to make human life easier. It is not a threat. It's a tool. An opportunity.

What is intelligence? What is artificial intelligence? What we really mean when we talk about *artificial* intelligence is that it is distinct from, different than *human* intelligence. But that's too blunt a distinction. Animals aren't artificial. Ask anyone who has ever owned or met a dog whether an animal can exhibit intelligence. All animals have some level of intelligence. What differentiates us from other animals is the ability to create and use tools. No, wait, that's not true. Chimpanzees use tools, even

weapons. Elephants use tools. Octopi use tools. What actually differentiates us is the complexity of our tools.

Merriam-Webster tells us that intelligence is the ability to learn or understand or to deal with new or trying situations, the ability to apply knowledge to manipulate and adapt one's environment. Isn't that what a dog does when he sits to earn a treat? Isn't that what GPT-4 did when it took and passed the Bar Exam? Both show intelligence. Neither is artificial.

There's nothing artificial about artificial intelligence. It's real, it's tangible. It's a tool, created by humans. But like all new tools, folks who are slow to adapt (the opposite of intelligence) may fear it. Early 1800's textile workers feared that mechanized looms and knitting machines were stealing their livelihoods. So they used their existing, familiar tools – axes and sledgehammers – to destroy these new, unfamiliar tools.

AI is no different. We are constantly inventing new and better tools. There have always been Luddites who fear and decry them. There have always been a few who are slow to adapt and who are economically displaced by innovations. But we always motor on. We embrace the new tool. Life gets better, horizons expand. We should embrace AI, not fear it.

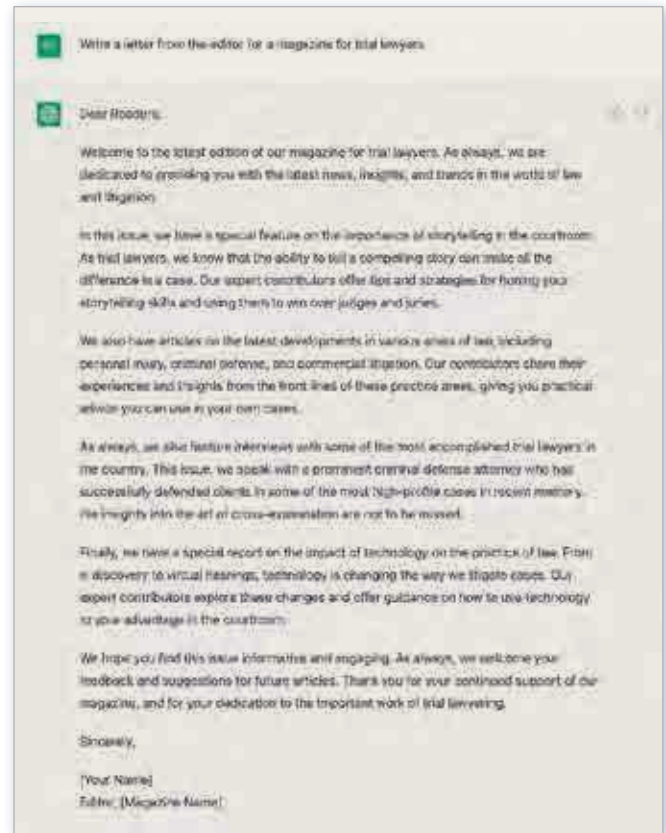
But wait, you say. If AI can answer essay questions, how can we trust the grades of law students – any students – whose grades are based upon essay questions?

I suppose one of the things we can do is no more take-home work. Papers will have to be written, tests will have to be taken in the classroom, where the professor can assure that the work is being done by the student rather than by a program. Pretty much like what most states currently do for their bar exams, with requirements that the student download a special program through which to take the test which blocks all other programs (like AI or search engines or saved files).

Or maybe, just maybe, we can use this new tool and our intelligence to learn and adapt.

Why do we care *how* a student comes to the right conclusion? Who cares if he uses tools to get to the right place? Why *isn't* the bar exam a take-home exam? Why aren't future lawyers encouraged to show their competence by doing what lawyers do instead of being tested on their short-term memories? Why do we think a good way to test whether someone is ready to be a lawyer is to ask her to do what would get her fired if she did that on the job?

You assign a second-year associate to write a pre-trial bench brief for an upcoming trial with a draft due in forty-eight hours. Do you tell the associate to stay out of the library? Away from her computer? Off the internet? That the draft has to be composed entirely from her unassisted memory? Of course you don't. You expect her to use every tool, every resource available to create the best possible finished product. You care about the



end product, not the carnival trick of showing off what she can recall without a net.

So why on earth is the admission to practice our profession designed to test the wrong thing?

I think AI is a terrific tool. I see no reason why prospective lawyers should not be able to use it in the take-home bar exam I would use if I were made King. The art will come from what the examinee does with the draft the AI tool chugs out, since everyone using AI will get pretty much the same initial draft. What I would test is the finished product the examinee can create using all the available tools. I would test the examinee's ability to manipulate and adapt. I would give her the opportunity to demonstrate her intelligence.

But since I am not King and bar exams will likely continue to be memory tests, let's at least embrace AI in our practices. Let's use every tool we have. But let's cite check.

Ah, but that's just me. Or is it? Did I write this or did my AI program do it?

* * * * *

We have another great issue for you. We welcome a new President, Bill Murphy. We say goodbye to a Past President, Stu Shanor, and to thirty other departed Fellows. And more.

Bob Byman

PRESIDENT'S PERSPECTIVE

SUSAN J. HARRIMAN



IT'S HARD TO BELIEVE THAT YOU ARE RECEIVING THIS ISSUE OF THE *JOURNAL* AS MY TERM AS PRESIDENT IS ENDING. IT HAS BEEN A WONDERFUL YEAR, AND I OWE A HUGE DEBT OF GRATITUDE TO ALL OF YOU, WHO HAVE WELCOMED ME SO WARMLY AS I TRAVELLED THROUGHOUT THE UNITED STATES AND CANADA.

As I write this, I have visited twenty-three states (and several of them more than once) and seven provinces (and a couple of those more than once). By the time you read this article, I will have visited another seven states. I feel very fortunate that, at least so far, the pandemic has not affected any of my travels. I'll step down knowing that the College will be in great hands with Bill Murphy as President and with a superb Executive Committee, who have been terrific all year. I want to thank and acknowledge the great work of President-Elect Bill Murphy, Treasurer Rick Deane, Secretary John Day, Immediate Past President Mike O'Donnell and our Secretary-Designate Sandy Forbes. None of us, of course, could accomplish any work for the College without the unwavering support and hard work of our National Office staff led by Executive Director Dennis Maggi, who is celebrating his twentieth anniversary with the College this year. Thank you Dennis, Amy, Suzanne, Geri, Sarah, Kim and Cheryl for your role in making this year so enjoyable.

Throughout my travels for the College this year, I have sounded the theme of relevance in my remarks to Fellows around the US and Canada. One aspect of relevance relates to our membership and ensuring that it mirrors our society, our communities and our courtrooms. In order for the College to continue to consist of the best trial lawyers in our two countries, it's imperative that we find and nominate more people of color and more women. Although the diversity of our Fellows has increased considerably over the last several years, we need to continue to work hard to ensure that the absolute top trial lawyers are considered for Fellowship.

The other aspect of relevance is ensuring that the College is working to make a positive difference. One way the College does so is by helping to nurture the next generation of exceptionally qualified trial lawyers. Our competition committees, Boot Camp Trial Training Programs Committee and Diversity Advocacy Trial Training Program are all doing important and wonderful work to fulfill this aspect of our mission. The College's podcast, *Trial Tested*, provides enlightening discussions about life and law through interviews with prominent attorneys and figures in trial law – the vast majority of whom are Fellows – and is yet another way that we educate the public and inspire others in the profession of law.

I am very proud of all that the College does to improve our profession. I'd like to recognize the chairs, vice chairs and the members of every state and province committee and our general committees for their hard work. The committees truly are the lifeblood of the College. It would fill an entire issue of the *Journal* to talk about all the work they accomplish each year. Here are some examples (in alphabetical order) of how the College is having a positive impact on the legal profession.



COMPLEX LITIGATION COMMITTEE

This year, the Chair and Vice Chair of the Complex Litigation Committee, Terri Mascherin and Brent Gurney, decided to try a new format for some of their committee meetings – a Lunch and Learn series involving speakers on topics of interest to committee membership. The format is a one-hour noon ET program over Zoom. Some programs have been conducted as interviews of a guest speaker and some have been presentations on a topic, but in every case the committee allots plenty of time for Fellows to ask questions and engage in conversation with the guests. The committee has experimented with inviting Fellows who serve on other committees, and most recently all Fellows, to join the programs. For its May meeting, the committee heard a fascinating presentation by Fellow Bill Lee of Washington, D.C. and jury consultant Jamie Laird on trends in damages in post-Pandemic trials. Eighty-three Fellows joined on Zoom for the program. Earlier programs featured Barrister Toby Cadman of the Guernica Centre for International Justice discussing his work seeking redress for clients who suffered as a result of international terrorism, and Professor Shari Diamond, J.D., Ph.D., discussing her recent research on why scientists who are recognized by their peers as among the very best tend not to testify as experts at trial. The series resumes this fall.

JUDICIARY COMMITTEE

In 2019, the College published a White Paper entitled, “The Need to Promote and Defend Fair and Impartial Courts.” The Judiciary Committee, chaired by Donna Melby, is re-examining the 2019 White Paper and conducting a study of pending legislation in various states that adversely impacts the independence of our courts.

JUDICIAL INDEPENDENCE COMMITTEE

The mandate of the Judicial Independence Committee includes the duty “to recommend initiatives as appropriate . . . in educating the public regarding the judiciary’s role in protecting the rule of law.” In furtherance of that mandate, the committee crafted a well-articulated, thoughtful set of recommendations for changes to the confirmation process in the United States Senate for nominees to the Supreme Court. The last several Senate confirmation hearings have caused an undermining of respect for the Judiciary – and for the Senate itself. The committee’s recommendations will be set forth in a White Paper, which will be submitted to the Board of Regents for its approval in September. As soon as it is approved, the College will make a copy available to all Fellows.



In keeping with its mission, the committee also helps the Executive Committee with responses to instances where threats of any kind are made against a judge. Although it’s important to respond quickly to such attacks, it takes time to write and obtain approval for a letter denouncing the threat or attack. The committee has dealt with the time issue in two ways. First, it has written a model letter to have on hand that can quickly be adapted to a given situation when there is a threat against a judge. Second, it has created a set of guidelines to help the Executive Committee determine whether the situation calls for a response from the College. With these tools in hand, the Executive Committee should be able to respond more quickly when a response is warranted.



TASK FORCE ON CIVICS EDUCATION

At the Leadership Workshop in Newport, Rhode Island, the state and province chairs and the general committee chairs had a lively discussion about what the College can do about the decline of respect for the rule of law in the United States. Everyone agreed that an increased knowledge of basic civics would help alleviate the problem. In response, the College formed a Task Force on Civics Education, whose goal was to determine how to match the enthusiasm and skills of our Fellows with a well-respected organization that would help us reach the communities who would benefit from hearing from us. I am pleased to report that the Task Force completed its work and recommended that the College pursue a partnership with the National Constitution Center (NCC) by having Fellows participate as scholars in its Peer-to-Peer Scholar Exchange Program. The Executive Committee approved that recommendation at a meeting in early June.

The NCC's Scholar Exchange Program relies on volunteer judges, attorneys, historians and educators to engage virtually via Zoom with multiple classes of high school, middle school or college students to discuss selected constitutional topics throughout the year. Typical topics include the American Revolution, the structure of the Constitution, Federalism and separation of powers, the Bill of Rights, The Fourteenth Amendment, Article III, and landmark cases, among others. The NCC develops the content and handles the logistics of scheduling and advertising the programs and matching the appropriate scholar, while a member of its staff moderates each discussion. The NCC also offers training to new volunteer scholars. Approximately two weeks before a scheduled presentation, the NCC reaches out to scholars who have expressed an interest in the topics to be discussed to determine if the scholar is available to present on the selected date and time. The NCC then forwards any PowerPoint, script or other materials to the scholar in advance of the program.

For several reasons, this program provides an excellent opportunity for Fellows interested in civics education. First, the NCC is a well-respected national organization, and the educational materials that it develops are of the highest quality. The program has been very successful; this past school year, it reached 10,000 students in thirty-three states. The program is also national in scope and has an existing audience network. Importantly, the program seems well-suited for trial lawyers with unpredictable schedules, given that the scholars do not have to commit to a presentation until two weeks in advance. Two of our Task Force members, Judicial Fellows Jack Zouhary and Christine O'Hearn, have participated in NCC programs and have spoken highly of their experience. And, best of all, the NCC is very interested in a partnership with the College. It currently has a list of 30-40 volunteer scholars but welcomes the opportunity to expand its reach by adding scholars and new topics.

The College owes a debt of gratitude to the Task Force, and I personally want to thank each of its members and Chair Kathleen Trafford for their impressive work.

The Outreach Committee will be reaching out to ask Fellows to volunteer to be a scholar in the program. I hope each and every Fellow will agree to present at least one program related to civics.

TASK FORCE ON MENTAL HEALTH AWARENESS

Another task force that sprang up this year was the Task Force on Mental Health Awareness, which is chaired by Fellow James Brown of Louisiana. Those of us who were in Key Biscayne for the Spring Meeting heard Fellow John Broderick, the former Chief Justice of the New Hampshire Supreme Court, speak passionately about how he and his wife failed to realize that the problems their son was experiencing were due to mental health issues – until it was almost too late. Justice Broderick ended up in the hospital and his son in prison before they learned that his son was self-medicating his mental health problems with drugs and alcohol. At the conclusion of Justice Broderick's talk, I promised that the College would join the fight to increase awareness around mental health, and the Task Force arose as a result of that promise. The reasons for having the Task Force were reinforced when I read a talk by Justice Clement Gascon, a retired Justice of the Canadian Supreme Court, about his bouts of chronic anxiety and depression. He said that by offering support, understanding and acceptance, we will be part of the solution. Justice Gascon's remarks underlie the reasons for having the Task Force. We all need to offer support, understanding and acceptance to anyone suffering from mental health issues. The Task Force will recommend ways in which we can do that, and I look forward to hearing their recommendations.

* * * * *

All in all, I am proud to call myself a Fellow of the American College of Trial Lawyers, and I hope you are too.

Susan J. Harriman

INCOMING PRESIDENT WILLIAM J. MURPHY

BILL MURPHY HAS SAID MANY THINGS, MANY IMPACTFUL THINGS, NOT THE LEAST OF WHICH IS HIS CLASSIC LINE “BASEBALL BEEN BERRY, BERRY GOOD TO ME.”

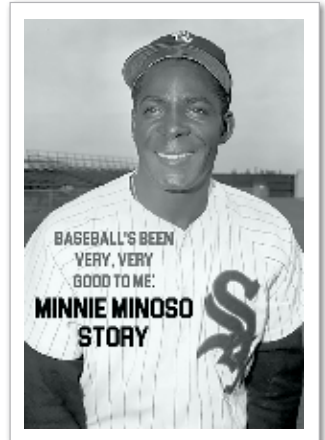
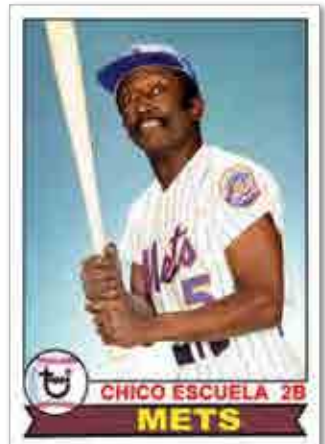
BILL WILL BE INDUCTED AS PRESIDENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS AT THE ANNUAL MEETING IN SAN DIEGO ON SEPTEMBER 23, 2023. BERRY GOOD, BILL.

Well, no, Bill didn't actually say that, at least not as an original thought. It was uttered by Garrett Morris in 1978 in a Saturday Night Live sketch in which he played the fictional Dominican Republic born Chicago Cub (and later Met) veteran Chico Escuela, who, in turn, was based upon the real-life Cuban born Chicago White Sox veteran Minnie Minoso, who, after three years in the Negro Leagues, broke into the Majors with Cleveland in 1949. Minnie became the first black player to play for the White Sox in 1952, and he played twenty seasons in all, amassing a lifetime .299 batting average. And while his last two seasons were Bill Veeck stunts – three games in 1976 and two more in 1980 – that made him one of only three players in baseball history – Minoso, Satchel Paige and Nick Altrock (who?) – to have played major league ball in five different decades.

At one of Minnie's many retirement parties (only the Eagles have had more farewell tours), Minnie said “baseball's been very, very good to me.” That's right – proper grammar, proper pronunciation. Morris used berry in what became a classic of malapropism.

But we digress. Baseball *has* been berry, berry good to Bill Murphy. It figured prominently in the courtship of his wife; it gave him his most memorable moment from his Supreme Court clerkship; it shaped his family vacations.

Without really knowing at the time what the word meant, Bill matriculated at St. Joseph's University in 1971, where he met a sophomore, Pat Fox, who was from Cincinnati and was a Reds fan. Bill somehow managed to get Pat to visit his



dorm room, for, of course, purely platonic purposes. Bill was too poor to afford posters, much less art, so he had decorated his walls by taping up a few hundred selections from his extensive baseball card collection. Pat was intrigued. “Are these for show, or do you actually know anything about these guys?” “Pick a card, any card,” Bill responded. Pat looked at the wall. “Joey Jay.” Bill didn’t miss a beat. “This is his first twenty-one-win season with the Reds, when they won the pennant. He was the first major league player to have played Little League ball. He won twenty-one the next season too but then his career faded.” Pat was impressed. Berry impressed.

Well, not all that impressed. It still took another year and a half for Bill to talk Pat into an actual date. Pat spent the first semester of her junior year in Mexico City. She returned for the second semester and in March 1973, Bill, Pat and a bunch of other friends were on their way to New York for the St. Patrick’s Day Parade. They stopped at the Bull & Barrel for a quick green beer, which turned into enough further rounds that Manhattan and parades were forgotten. But somewhere along the line of empty glasses Pat decided what Bill had already decided two years ago – they were in love. Beery good. And together ever since. Berry, beery good.

Bill also met a few other lifelong friends at St. Joe’s. Past President Bart Dalton was in Pat’s class; Eileen Dalton was in Bill’s class. The Daltons remember Bill well. Whenever they comment on whether some individual is up to some anticipated task, they intone together, in Greek chorus, the mantra “Well, he’s smart, but not Bill-Murphy-smart.”

When Pat graduated, she began what became a forty-year career with the Department of Labor, beginning as an Investigator and rising to Chief of the Division of Enforcement.



Bill finished his senior year at St. Joe’s and law school at Penn, where he was Articles Editor of the Law Review and graduated *magna cum laude* and Order of the Coif. Bill clerked for Collins J. Seitz on the Third Circuit in 1978-79 and for Harry Blackmun on the Supreme Court in 1979-80.

Most Supreme Court clerks have interesting stories about their Justice, and I asked Bill for his. Bill responded that he has two, both involving baseball, of course – a long one and a short one. I asked for the short one.

Bill related that the publication of *The Brethren* during the early days of his clerkship rocked the Court. Bob Woodward and Scott Armstrong’s revelations (apparently from past law clerks) of behind-the-scenes warring among the Justices in prior years was serialized in Newsweek, and every issue brought some new tension.

Bill and Justice Blackmun shared a mutual interest in the National Pastime, and when the chapter describing Justice Blackmun’s opinion in *Flood v. Kuhn*, 407 U.S. 258 (1972), arrived, Bill saw an opportunity.



When Curt Flood’s antitrust case against Major League Baseball had been discussed at conference, the vote was five to three in favor of Major League Baseball. The Chief Justice was in the minority, so it fell to the most senior Justice in the majority, Potter Stewart, to assign the opinion. He assigned it to Blackmun, a devoted fan of the Minnesota Twins, who welcomed the opportunity to let baseball thrive without the drag of anti-trust laws. Blackmun began his opinion with an homage to the game that included a list of “the many names, celebrated for one reason or another, that have sparked the diamond and its

environs and that have provided timber for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in season and off season: Ty Cobb, Babe Ruth . . .” and more than seventy other names.

Whatever readers of that opinion may themselves have taken from those passages, Woodward and Armstrong had great fun with it as they describe (from anonymous sources) the internal angst Blackmun’s ode to baseball caused.

Woodward writes “Brennan was surprised. He thought Blackmun had been in the library researching the abortion cases, not playing with baseball cards.”

One of Justice Rehnquist’s clerks called Blackmun’s chambers, Woodward relates, and joked that Camillo Pascual, a former Washington Senators pitcher, should have been included in the list of greats. Other Justices lobbied for names to be added, not simply out of fan loyalty. Justice Marshall, Woodward insists, “registered his protest. The list included no black baseball players.” Three black players were added – Jackie Robinson, Roy Campanella, and Satchel Paige.”

Woodward goes on to write “Stewart was embarrassed that he had assigned the opinion to Blackmun. He tried to nudge him into recognizing the inappropriateness of the opening section, jokingly telling him that he would go along with the opinion if Blackmun would add a member of Stewart’s home-town team, the Cincinnati Reds. Blackmun added a Red.”



The Reds player Blackmun apparently added to the list was Eppa Rixey. Really? Rixey was the winningest left-handed pitcher in the National League until Warren Spahn took that title in 1959. But Eppa amassed his 266 wins largely by hanging around for twenty-one years, and it appears that while he was hall-of-fame good enough to hang around, he also registered 251 losses to go along with a lifetime 3.15 ERA. Blackmun’s list included no active players in 1972, but maybe he should have listed Frank Robinson, who was the 1956 Rookie of the Year with Stewart’s Redlegs, and who remains the only player in MLB history to have been selected MVP of both Leagues, once as a Red, and once as an Oriole.

But, whoops, we digress again. Blackmun wanted to assuage Stewart about the revelation of his embarrassment caused by Blackmun’s opinion in *Flood*, and Bill thought he might have an acceptable peace offering – a 1965 Frank Robinson baseball card, the year before he was traded from the Reds to the Orioles, and a Milt Pappas card from that same year – just before he was accepted by the Reds as a woefully less than adequate trade for Robinson, the future Triple Crown winner (who led the Orioles to the World Championship in 1966 and helped defeat the Reds in the 1970 Series). The Justice took Bill’s cards and passed them down the bench to Stewart during an oral argument with a note that suggested that perhaps this could ease any embarrassment. Stewart returned the cards with a note that said that Woodward got it wrong – there was no embarrassment.

Great story, Bill, I said, but I asked for the *short* story. That *is* the short story, Bill responded. So I didn’t ask for, haven’t heard, didn’t have time for the long story. I am berry sorry for your loss, that you won’t get to hear it. Ask him yourself if you have time.



Bill and Pat were married the summer before Bill's last year of Law School. Pat wanted to honeymoon in the Bahamas. Bill wanted to spend their honeymoon in Cooperstown at the Baseball Hall of Fame. So they compromised. They went to the Bahamas.

But baseball's siren song continued to blare loudly in Bill's ear. In 1986, he talked Pat into a vacation in Cooperstown while she was pregnant with their daughter, Amy. They didn't return the following year as Bill wanted – Amy was a higher priority. But the family has returned every year since 1988. There is berry, berry much to see in Cooperstown.

Amy and her husband Charlie Quigg are both practicing lawyers; they have two kids, Peter (4) and Ruthie (1). Bill and Pat's other child, Dan, is also a lawyer, married to Sara Kugel, a producer for CBS Sunday Morning. No baseball players, but a berry nice family. When they family-vacationed in Cooperstown, the kids got to pick their own hats. Dan wisely and nattily chose a vintage Cubs model; Amy, for reasons not readily apparent, chose the Red Sox.



After his SCOTUS Clerkship, Bill became a litigation associate at Williams & Connolly, where he had the opportunity to try cases with the legendary Edward Bennett Williams. But after three years there, as Bill looked at the many more senior, talented trial lawyers who had amassed at the firm, he wondered when if ever he would get a chance to first chair his own case. His friend at Williams & Connolly (who had also clerked for Seitz and Blackmun), Bill McDaniel, came to the same conclusion. The two of them formed their own small firm and set off to try cases. And they did.

Bill Murphy practiced and prospered until 2011 as essentially a sole practitioner, in firms that never exceeded a half-dozen lawyers. In 2011, he merged his firm into Zuckerman Spaeder LLC, the nationally renowned eighty-lawyer litigation boutique.



Bill's legal career has had many highlights. His most fun case? A murder trial in which his client admitted to shooting the victim five times but Bill still won an acquittal on self-defense. The case wasn't exactly pro bono; the client paid the firm \$10,000.

His most impactful case? The Yemini physician who did nothing wrong other than having the misfortune of having had Bin Laden try to recruit him to be his personal doctor. Bill and his partner got him released after nine years in Gitmo.

His most important case? Leading the team that defended Greg Craig, Obama's White House Counsel, on charges of making false statements to the Justice Department about work he did for the Ukrainian government.



We all read about that case; we know about it. But it occurred to me that our Fellow Greg Craig might not be thrilled to have this bit of history brought up. So I asked him. And Greg said he is fine with our mentioning the case; then he added “Bill actually tried this case twice — and won both times. First, he presented the evidence to the SDNY which had originally been assigned the matter. Bill won. The US Attorney for SDNY — Geoff Berman — said that Craig had done nothing wrong and should not be prosecuted. But US DOJ took the case away from SDNY and gave it to the US Attorney in DC. Bill tried it again and won — within a matter of hours — a jury verdict of acquittal.”

Berry good. Nothing better than a satisfied client.



Then there was Zach Warren. The New York Times led its 2014 story with the headline “A Dragnet at Dewey & LeBoeuf Snares a Minnow.” After Dewey imploded in 2012, financial fraud charges were brought against the firm’s chairman, executive director and chief financial officer — and Zach, the minnow who was a relatively low-level client relations employee working at Dewey in 2010 to earn money to go to law school. At the time of the indictment, Zach was clerking on the Sixth Circuit and had a job offer from Williams & Connolly. Bill got the case dismissed. The offer at Williams & Connolly stood. Zach is now a successful partner and trial lawyer.

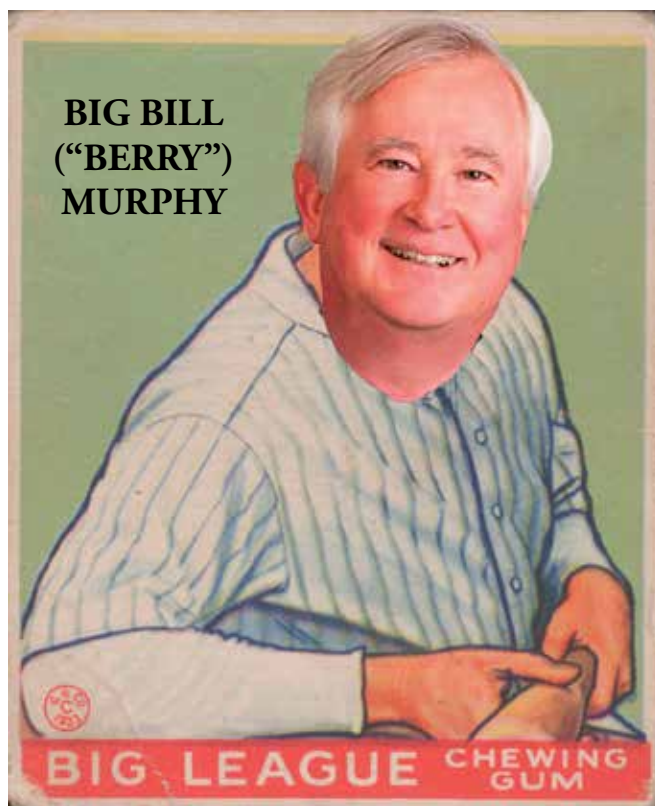
And, again, I wondered how Zach might feel about having this rehashed. So I asked. And Zach responded “Please feel free to discuss my case in your article, I have no concerns at all. I adore Bill and couldn’t be more grateful to have him in my corner. He’s an extraordinary person in every respect. Even the baseball partisanship I’ve learned to love — I’m a huge SF Giants fan but also grew up watching A’s games, so I appreciate his endless stories about Connie Mack. All the best, Zach.”

Baseball been berry, berry good to Bill.

Yogi Berra once said that “Love is the most important thing in the world, but baseball is pretty good, too.”
Berry, Berra good.

If they made baseball cards for lawyers, Bill’s would be one to collect.

Bob Byman



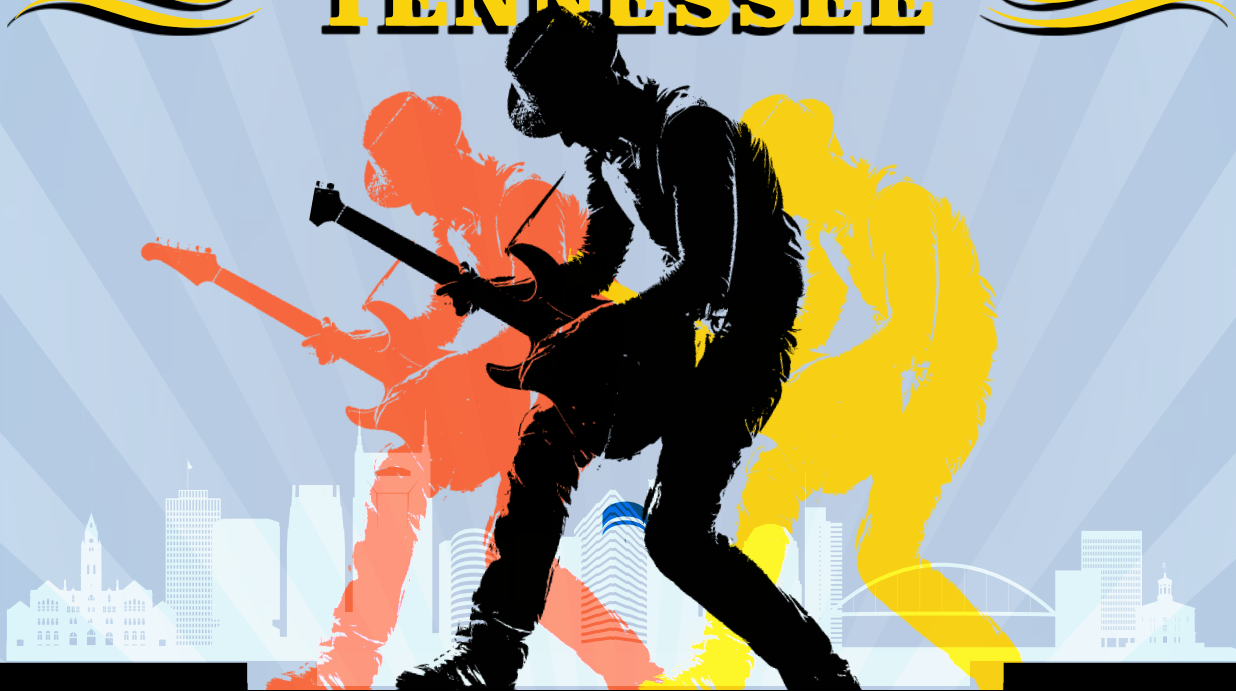
2024



ANNUAL MEETING

NASHVILLE

TENNESSEE



SEPTEMBER 26-29 ★ JW MARRIOTT

SAVE THE DATE

Audemus Iura Nostra Defendere

IZBA ADWOKACKA W WARSZAWIE



WARSAW TRIAL ADVOCACY PROGRAM

FELLOWS CYNTHIA GRIMES, BRENT GURNEY, NANCY HOLLANDER, KNUT JOHNSON, THOMAS POPE AND SCOTT RICHARDSON TRAVELLED TO WARSAW THE WEEK OF APRIL 17, 2023 TO PARTICIPATE IN A TRIAL ADVOCACY PROGRAM IN CONJUNCTION WITH THE WARSAW BAR ASSOCIATION. THE TEACHING ABROAD SUBCOMMITTEE OF THE INTERNATIONAL COMMITTEE OF THE COLLEGE, CHAIRED BY JOSEPH STEINFELD, ORGANIZED THE PROGRAM. THE WARSAW BAR ASSOCIATION PROMOTED THE WORKSHOP TO ITS MEMBERS AND PROVIDED SPACE AT ITS ICONIC BUILDING IN DOWNTOWN WARSAW.

The program invited young lawyers and bar trainees (who must do a three-year apprenticeship before they can handle cases on their own) and at least one law student, to participate. Each day began with a short lecture and discussion by ACTL faculty members, followed by small group mock cross examinations and closing arguments.

The Polish organizers had translated a simple attempted murder case into English. On the first day, Cynthia Grimes gave a brief lecture on using theories and themes in cross-examination. Then the participants picked one of three possible witnesses to cross examine. They were divided into small groups, each with one or two Fellows and one experienced Polish lawyer. Each participant performed a short cross-examination, and the faculty gave a short critique. They repeated the exercise in front of different faculty in the afternoon.



On the second day, Brent Gurney gave a brief lecture on storytelling in closing argument. Each participant presented a short closing argument to different faculty, once in the morning, and once again in the afternoon. The next two days, the bar-trainees did the same. Scott Richardson delivered the lecture on theories and themes and Tom Pope gave a lecture on storytelling.

On the last day, April 21, Fellows Cynthia Grimes and Knut Johnson demonstrated how we do cross-examination and closing argument in the U.S., which the participants were eager to witness. In the afternoon, the ACTL faculty and Polish colleagues toured the Polish Supreme Court building and viewed two courtrooms.

The differences between the U.S. and Polish systems are significant. Nevertheless, the participants enthusiastically presented in accordance with their system, and were grateful for the input from the Fellows. The program was a rousing success. Participants praised the hands-on, participatory nature of the program.

The College looks forward to conducting more of these workshops in Europe. Fellows who have an interest in participating and have some criminal defense experience, and experience with this type of training, are encouraged to indicate their interest by contacting the College. A civil training seminar is set for South Africa later in the year.



The Warsaw Bar Association is also interested in a civil training program in Warsaw next year. Additionally, the subcommittee hopes to conduct another criminal defense program in 2024 in association with the European Criminal Bar Association.

Scott Richardson
West Palm Beach, FL

IN DEFENSE OF THE JUDICIARY



IN 2018, THE IOWA LEGISLATURE PASSED A BILL THAT RESTRICTED THE RIGHT TO AN ABORTION AFTER DETECTION OF A FETAL HEARTBEAT.

After it was signed into law by the Governor, challenges in the Iowa District Court resulted in a permanent injunction on the ground that the statute violated the Iowa Constitution’s due process clause. The State did not seek appellate review for four years, but then sought to set aside the injunction after the U.S. Supreme Court decision in *Dobbs v. Jackson Women’s Health Organization*, ___ U.S. ___, 142 S. Ct. 2228 (2022). The Iowa District Court denied that request, and the State appealed to the Supreme Court.

One member of the seven-justice court recused herself because of her law firm’s previous representation of a party in the District Court. The remaining six justices split 3-3 on the appeal, so the District Court decision denying the State’s request to set aside the injunction was affirmed by operation of law.

The court’s “longstanding practice has been to issue no opinions when the justices are evenly

divided on the outcome. There are valid reasons for not writing at all in 3–3 cases. Anything that any justice says is just their personal advisory opinion. As our court recently reiterated unanimously: we don’t give the public advisory opinions. *Vasquez v. Iowa Dep’t of Hum. Servs.*, 2023 WL 3397460, at *4 (Iowa May 12, 2023).” Nevertheless, both sides published detailed opinions, some sixty-four pages of them, which can be viewed in full at

<https://www.iowacourts.gov/courtcases/18325/embed/AdditionalFile>

In the wake of those opinions, Robert Vander Plaats, who self-describes himself as “President and CEO of The Family Leader, an Iowa-based Christian ministry that encourages Christians to engage with government,” published statements in which he called for resignation, impeachment, or rejection via retention votes of the three justices who voted to affirm. Mr. Vander Plaats’ statements received considerable press coverage because of his involvement in the electorate’s decision in 2010 to vote out of office three other justices for their decision recognizing the legality of gay marriage in 2009. On July 2, 2023, the Des Moines Register ran a guest editorial penned by Mr. Vander Plaats in which he accused the three justices of misdemeanors and malfeasance (the trigger words in the Iowa Constitution for impeachment) and called for resignations, impeachment, or recall. Mr. Vander Plaats

wrote “When justices go outside their sworn oath, seize unconstitutional power, and threaten our freedoms, they must be held accountable. Full stop. Period. This is why I tweeted after their June 16 ruling that these three justices should resign, be impeached, or be ousted.”¹

The Iowa State Committee acted quickly and unanimously (with one abstention by a member who is a state employee) to issue a statement in defense of the justices. State Chair Jerry Spaeth commissioned a small group of members to draft a statement, which in turn was reviewed and approved by the State Committee and then by the College’s Executive Committee; the statement was published just six days after the editorial appeared.

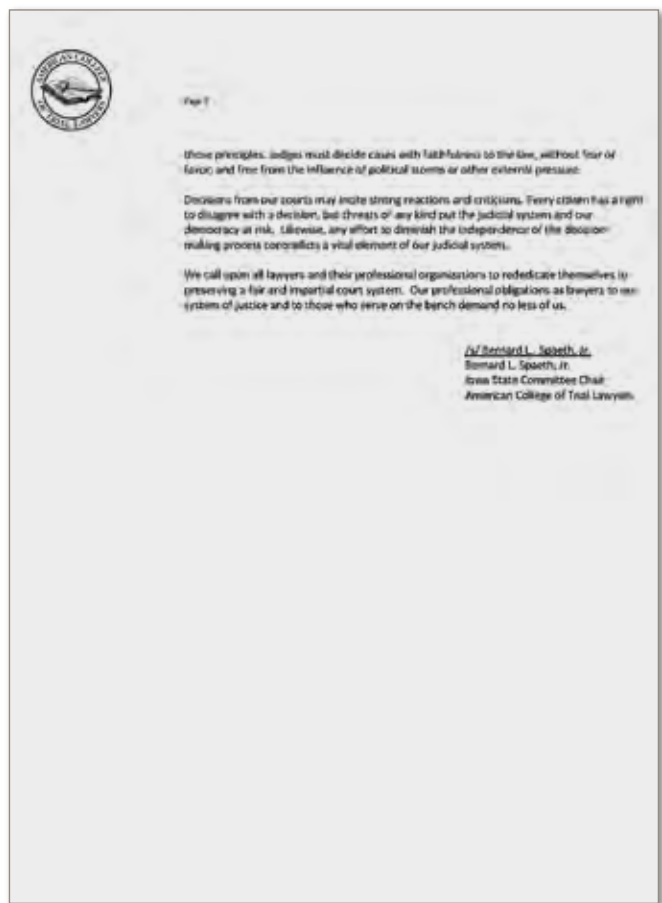
The Iowa Committee’s statement notes that “disagreement with a court decision is not grounds for impeachment . . . The separation of powers and the principles governing judicial review would be undermined if legislators could simply remove judges or justices based on a decision they didn’t like. Further, to pursue impeachment simply because Mr. Vander Plaats disagrees with the decision or because the justices vigorously debated competing interpretations of the law would damage the ability of our courts and the judges who serve Iowa to act as fair and impartial decision-makers.”

The Iowa Committee’s statement has been published by several print/internet media entities in Iowa. It is a notable, tangible example of the College’s commitment to its mission to support the independence of the judiciary and the administration of justice.

Since publication of the statement, the Iowa Legislature conducted a special session and passed a new fetal heartbeat law, and the Governor signed it. But no legislator proposed impeachment. The new law is already being challenged in Iowa District Court, so it likely will make its way again to the Supreme Court. The Iowa State Committee will remain watchful and protective of the proper functioning of the judicial process and will seek to advocate against persons and entities who seek to damage the court system based on nothing more than disagreement with judicial decisions.

Greg Lederer
Cedar Rapids, IA

¹ You can read the guest editorial at: <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2023/07/02/iowa-judges-abortion-case-unlawful-power/70366965007/> but only if you are a Register subscriber. However, you can do so for \$1.00; just remember to cancel your subscription within six months to avoid being charged \$19.99/month.





DIVERSITY TRIAL ADVOCACY PROGRAM

The College held its Annual Diversity Trial Advocacy Program May 5-7 2023 in Chicago. Fifty diverse lawyers from across the United States gathered for an intensive two-and-a-half-day program that covered each segment of a trial – opening statements, direct and cross examination, impeachment and closing argument. Each segment opened with faculty demonstrations followed by the participating lawyers doing and redoing each skill exercise, to positive and encouraging faculty coaching and review. There were panel discussions on “Diversity in the Courtroom” and the use of expert witnesses. A diverse group of volunteer Fellows from United States and Canada participated as faculty. The program culminated with the participants (in teams of two) trying the case file. The program was dynamic, fast-paced, and fun.

Kirkland & Ellis sponsored the May 2023 program, devoting countless hours to preparing and hosting. Their support was superlative and enthusiastic.

Both the participants and the faculty expressed their heartfelt thanks for the program. Here are just a few: “thank you for a fantastic experience...”, “...such a wonderful weekend...”, “...thank you for...this important initiative...”, “the best thing the College does to train the next generation of trial lawyers.”

The purpose of this program is simple: Our society is diverse. Our courthouses are diverse. We believe the talented lawyers trying cases in those courtrooms should better mirror the





diversity in our society. The College “has long been committed to increasing its ranks of talented and accomplished trial lawyers, by including more women and persons of color, varying ethnicities, disabilities, and sexual orientation. Through this program, the College expands its commitment by helping to develop the next generation of diverse and inclusive trial advocates.” The College is equally committed “to building faith, trust, and belief in the civil justice system. Preserving and protecting the rule of law and the civil trial system depends in part on the commitment provided today. The ACTL is committed to these goals and to nurturing future generations of excellent trial advocates.”

There was no fee to attend the program. Fellows volunteered their time and paid their own expenses to participate as faculty.

The program received a significantly higher number of applicants than available capacity. To meet the interest and demand, the College will hold a second 2023 Diversity Trial Advocacy Program on October 26-29, again limited to fifty participants. Some travel scholarship funding is available. You can help ensure the continued success of this program by encouraging and nominating diverse litigators in your orbit to attend. Applicants will be accepted so long as slots remain available. The October 2023 program will be hosted and sponsored by Latham & Watkins and held at its trial training facilities in Chicago. If you have any questions, please reach out to: Tom Heiden, Program Chair (thomas.heiden@retiredpartner.lw.com or tjh66@cornell.edu), Brittany Ehardt (Brittany.Ehardt@lw.com) or Sarah Stokes (ssokes@actl.com).

Thomas J. Heiden
Chicago, IL



June 22–25, 2023

Fairmont Waterfront Hotel
Vancouver, British Columbia,

REGION III – NORTHWEST REGIONAL MEETING



THE NORTHWEST REGIONAL MEETING CONVENED IN VANCOUVER, BRITISH COLUMBIA, ON JUNE 22–25, WITH NEAR PERFECT WEATHER, A HOST OF INTERESTING SPEAKERS AND EXCELLENT DINING.

In the College tradition, trial lawyers and their partners came together as friends, new and old, and created memories at the elegant Fairmont Waterfront Hotel in downtown Vancouver.

The hotel hosted a cocktail reception to kick off the proceedings, and a banquet dinner to conclude. Between those bookmarks, College Fellows and guests heard from a range of speakers.

Broadcast journalist Tamara Taggart spoke in moving terms about how the two most important conversations in her life both involved health issues. One of those conversations was optimistic and reassuring, while the other was deeply worrying and downbeat. One involved the birth of her first child, a boy named Beckett, who has Down Syndrome. The other involved Tamara's diagnosis with a serious form of cancer. But the upbeat and reassuring conversation was about the cancer, not her son.

Despite society's progress in so many areas, disabilities like Down Syndrome are too often seen as abnormalities that detract from a person's worth. Reflecting back on those two conversations — and experiences — Tamara brought her audience to tears with her articulate explanation of how it is that she came to be a disability advocate.

Additional speaker presentations featured topics as diverse as avalanche risk assessment; the study of happiness; transnational crime and money laundering; anti-Asian racism; addiction medicine; and the truckers' convoy protest that shut down Ottawa in 2022.

University of British Columbia Health Professor Michael Law narrated in vivid terms how he and his young family uprooted to Rwanda and studied an initiative using drones to deliver time-sensitive emergency blood supplies and medicine to remote areas of that East African country.

Fellows Marilyn Sandford, KC, and Geoffrey Cowper, KC, spoke respectively on an astounding wrongful conviction case, and on justiciability and the intersection of politics and the law.

In addition to the speakers and upscale hotel venue, those attending were treated to an oceanside feast of salmon and chicken at a restaurant on Granville Island, and had the chance to check out all of the offerings of the dynamic city of Vancouver. President Susan Harriman conveyed the warmth and collegiality of the gathering with her address at the final banquet dinner. The event was a success, one measured in memories and friendships.

Brock Martland, K.C.
Vancouver, BC



CORPORATE LITIGATION COUNSEL TRIAL ADVOCACY PROGRAM



FURTHER ELEVATING THE PROFILE OF THE COLLEGE AS THE LEADING ORGANIZATION IN NORTH AMERICA DEDICATED TO MAINTAINING AND IMPROVING THE STANDARDS OF TRIAL PRACTICE, THE COLLEGE SPONSORED ITS INAUGURAL CORPORATE LITIGATION COUNSEL TRIAL ADVOCACY PROGRAM IN CHICAGO. THE TARGET AUDIENCE WAS CORPORATE GENERAL COUNSELS AND IN-HOUSE COUNSELS WHO MANAGE LITIGATION. MORE THAN THIRTY CORPORATE COUNSELS FROM ACROSS THE COUNTRY ATTENDED THE PROGRAM, WHICH SPANNED ONE AND ONE-HALF DAYS ON MAY 11 AND 12, 2023.

Fellow Kimball Anderson organized the program, which began with a big welcome and overview of the College's mission by Past President Michael

O'Donnell. Fellow Jeffrey Fisher then led the first panel that covered "Trial Counsel Selection." Panelists included corporate counsels from Nissan North America, Smiths Group PLC, Option Care Health and Archer Daniels Midland Company. That session was followed by a lively panel discussion on "Protecting the Record on Appeal" led by Fellow Habib Nasrullah, The Honorable Thomas L. Kirsch II, (Judicial Fellow and Seventh Circuit Judge) and Linda Coberly (Winston & Strawn's Appellate Practice Chair).

Past President O'Donnell presented a keynote speech during lunch: "Avoiding the Nuclear Verdict," a discussion of the causes and defensive strategies for potential blockbuster cases.

Following lunch, Jeff Fisher led a panel discussion on "Fair Juries and Jury Research." Dr. Samantha Holmes, CEO of EDGE Litigation Consulting, presented on jury research trends and techniques. She was followed by Dr. Shari Diamond (American Bar Foundation and Northwestern University) who presented her latest, soon-to-be-published research on how juries decide cases.

The attendees enjoyed a stirring master class on opening statements. Fellows Habib Nasrullah and Andrew Vail presented on effective techniques for opening statements and then demonstrated opening statements using a NITA case file.



The final session of the first day was a presentation on “Ethics for In-House Counsels,” led by Kimball Anderson and Winston & Strawn Assistant General Counsel Alicia Duncan. Key takeaways included the challenges of in-house corporate counsel in properly identifying their client and clearing conflicts within the corporate legal department.

The final day of the program began with a panel presentation on expert witnesses. Russ Rosenzweig, CEO of Round Table Group, presented on how to select expert witnesses. Winston & Strawn partner Terry Dee then presented on *Daubert* motions, followed by presentations and demonstrations on expert witness examinations by Past President Doug Young and Kimball Anderson.

The next session covered “Closing Arguments at Trial.” Fellows Carolyn Fairless, George Lombardi, and Dan K. Webb presented and gave demonstrations. The attendees enjoyed closing arguments presented by masters of their craft.

The keynote speaker on Friday was Dan Drobny, former Sears and Groupon General Counsel. He spoke on “What Keeps Corporate GCs Up at Night.”

The program concluded with remarks by Doug Young about the College’s role in training lawyers and maintaining the rule of law.

Kimball R. Anderson
Chicago, Illinois

By all accounts this inaugural program was a huge success. Attendees said:

“This program was truly exceptional. The panel members were not only highly experienced and accomplished -- they were also terrific speakers. Great energy and lots of interesting insights.”

* * * * *

“I enjoyed the variety of topics covering many relevant issues such as utilization of experts, jury research, trial advocacy skills and themes, and ethics for in-house counsel relating to client conflicts and other topics. The speakers were all very well prepared, thorough, and engaging. I appreciated how the speakers covered practical topics such as trial budgeting, selection of trial & appellate counsel, and communications between in-house counsel and corporate boards/management.”



ARTIFICIAL INTELLIGENCE:



SUPERFICIAL LAWYERING

CHANNELING MARK TWAIN, REPORTS OF OUR OBSOLESCENCE AS ATTORNEYS HAVE APPARENTLY BEEN GREATLY EXAGGERATED.

When I read an article about the New York City attorneys who had filed a brief written by ChatGPT only to discover that some of their citations were not only wrong but did not exist, I was amused. I was less amused to observe that one of the lawyers has a very similar name to mine, which prompted numerous emails and texts from friends and colleagues assuring me they knew it wasn't me. Happy to have avoided that ignominious association, I became intrigued to learn more about how my almost namesake and his colleague had gotten themselves into such an incredibly bad situation and wanted to learn more about how good ChatGPT is at creating misinformation.

I wasn't terribly surprised to learn that computer software had been misused by lawyers in a way that was contrary to the proper administration of justice. Although AI in its current stage of development has only recently burst onto the scene with the introduction of ChatGPT, in my view, misuse of computer research has been occurring for some time now. In several cases I've litigated in the past decade, I've encountered opposing briefs citing and quoting cases that surprised me based upon my understanding of the legal issue involved. When I looked up the cited cases I discovered the quotes were indeed accurate, but the context was not.

No fair reading of the case supported the proposition for which it was cited and the quote, although sounding meaningful, was not related directly to the holding. Use of technology to search for words or phrases in cases that seem to support a theory, regardless of whether the case holding actually does, has been going on for some time. It's been somewhat frustrating in my experience that negative consequences haven't been visited on the perpetrators of this disingenuous tactic. Fortunately, my clients never suffered either, as the court ruled our way in every instance. But the way technology was being misused in an effort to mislead courts continued to worry me, and I knew the day would likely come when a clever attorney would mislead a lazy judge to reach the wrong outcome based on this type of deception.

Mata v. Avianca, Inc., began as a fairly mundane personal injury claim filed in New York State's trial court of general jurisdiction, which is somewhat misleadingly named New York Supreme Court. Mr. Mata was allegedly injured when he was struck in the knee by a flight attendant moving through the aisle with a beverage cart on a flight from El Salvador to New York in 2019. This was important fact number one: it was an international flight, which meant it was governed by a treaty called the Montreal Convention, which provides a uniform mechanism for seeking relief from an airline for a variety of things, including injuries that occur on or in relation to international flights. The defendant airline unsurprisingly retained a law firm with great familiarity with aviation law and specifically this treaty, and promptly removed the case to federal court on the basis of diversity of



citizenship as well as federal question jurisdiction since the Montreal Convention was a treaty adopted by the United States. So this relatively minor injury case wound up in the United States District Court for the Southern District of New York.

My namesake who represented Mr. Mata initially filed the lawsuit in New York State court. Once it was removed, however, Mr. Namesake could not appear on behalf of Mr. Mata because he was not admitted to the Southern District. He turned to a colleague, (let's call him Mr. Mope) to become the attorney of record for Mr. Mata. Avianca moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, principally on statute of limitations grounds, because the Montreal Convention requires an action to be commenced within two years of when the flight on which the claim is based landed at its destination. And then the trouble began.

For those who have never attempted to sue an airline, and my guess is, Mr. Mata's lawyers fit this description, it is far from a routine analysis. Until they received the defendant's motion to dismiss they had probably never heard of the Montreal Convention and were unaware of its requirements that vary significantly from New York statutory and common law. At first blush, I was sympathetic to Mr. Mata's lawyers, whom I assumed had turned to the new Open AI application, ChatGPT, to lead them through this byzantine labyrinth to find an argument that their case was timely filed in a court that had jurisdiction over Mr. Mata's claim. But more digging left me feeling less charitable.

Mr. Mata's attorneys submitted a "brieffidavit", my term for a document submitted by a lawyer under the heading of an Affidavit, Affirmation, or Declaration, but instead of limiting its contents to facts, it contains the legal arguments that would and should otherwise be articulated in a separate memorandum of law. It always amazes me when lawyers see it as appropriate to "swear, declare or affirm" to the truth of their legal arguments. But it is a practice I've seen employed in a number of jurisdictions in New York State Courts over the years and most judges don't make a point of correcting it. I had never seen it employed in federal court, however, which is what immediately led me to the conclusion that the lawyers representing Mr. Mata were not familiar with federal court practice. This shortcut only made matters worse for Mr. Mata's attorneys. Instead of dealing only with a violation of Rule 11 of the Federal Rules of Civil Procedure, they now were venturing into the realm of perjury, having sworn to legal arguments that turned out to have no factual basis.

The brieffidavit was apparently drafted by Mr. Namesake and signed by Mr. Mope. Mr. Namesake asked ChatGPT to formulate a legal argument as to why Mr. Mata's case was timely under the applicable statute of limitations. Mr. Namesake then plugged the ChatGPT generated legal argument into Mr. Mope's brieffidavit with the case citations the AI program had provided.

ChatGPT generated a remarkably strong argument to thwart the airline's attempt to have the case dismissed. The first section of the legal argument in the brieffidavit was entitled "Legal Standard." This section recited the usual language one uses to oppose a motion to dismiss a pleading, i.e., all facts must be accepted as true, with the plaintiff being entitled to every reasonable inference from the pleading. The two cases cited in this section *Askcroft v. Iqbal*, and *Doe v. United States*, were correctly cited. *Iqbal*, familiar to anyone who practices in federal court, is the Supreme Court's 2009 articulation of minimal pleading require-



ments. *Doe* was, in my view, an unusual choice although not incorrectly cited. *Doe* is a Ninth Circuit case. It was an odd choice since the Second Circuit has issued thousands of decisions using the same language to explain this settled legal standard on a motion to dismiss. But odd or not, the AI program had not crossed any bright lines.

The brief filed argued that it was proper for Mr. Mata to have filed his claim in New York State Court prior to its removal to federal court. A series of state court decisions were cited to support the proposition that the Montreal Convention allows an injured passenger to sue in a state court. *Shaboon v. EgyptAir*, from the appellate court of Illinois, is cited for the premise that an injured passenger can choose state court to file a claim under the Montreal Convention. *Peterson v. Iran Air*, from the United States District Court for the District of Columbia, was also cited in support of this proposition, as were *Ehrlich v. American Airlines, Inc.*, a decision from an intermediate appellate court in New Jersey, *Martinez v. Delta Airlines*, a decision from the intermediate appellate court in Texas, and *Estate of Durden v. KLM Royal Dutch Airlines*, a decision from the intermediate appellate court in Georgia.

The brief further argued that because the airline had filed for bankruptcy a year after Mr. Mata was injured, the limitations period of two years set by the Montreal Convention was tolled by the bankruptcy filing. *Varghese v. China Southern Airline*, an Eleventh Circuit case, is cited because it “specifically addresses the effect of a bankruptcy stay under the Montreal Convention,” and includes a large block quote which references a ruling from *Zicherman v. Korean Air Lines*, holding that a bankruptcy filing tolled the limitations period under the predecessor treaty, the Warsaw Convention and a reference to a United States Supreme Court Case, *Kaiser Steel Corp. v. W.S. Ranch Co.*, which, the brief asserts, held that the effect of a stay in bankruptcy was a matter of federal law.

Great authority! Um, yes, if it existed.

Neither Mr. Namesake nor Mr. Mope apparently thought it necessary to read any of the cases cited generated by the AI program before they inserted them into their brief. Counsel for Avianca, being well versed in aviation law and the Montreal Convention, must have found the law recited in the papers filed by plaintiff quite surprising. Even more surprising, they couldn't find many of the cited cases; and those they could find didn't remotely stand for their cited propositions. Avianca's counsel wrote to the judge, and advised him that they were unable to locate many of the cases

cited in the brief by name or citation. The judge issued an Order to Show Cause requiring Mr. Mope to produce copies of the cases neither opposing counsel nor the court could seem to locate.

This is when the situation went from bad to worse for Namesake and Mope. Initially, in a non-AI related blunder, Mr. Mope requested an extension to file the required response to the Order to Show Cause because he claimed to have been on vacation (it was later admitted that wasn't accurate either as it was actually attorney Namesake who had been on vacation). After being granted the extension, Mope submitted a new Affidavit attaching copies of eight case reports for decisions cited in his original submission, four from federal courts (including *Varghese* and *Peterson*) and four from various state appellate courts (including *Shaboon*, *Martinez*, *Durden*, and *Ehrlich*). Mope's Affidavit went on to explain he “was unable to locate” *Zicherman*, the Eleventh Circuit case cited in the quote from *Varghese* in the brief, and that the copies of the eight decisions he submitted “may not be inclusive of the entire opinions but only what is made available by online database.” Finally, he offered that *Shaboon* was unpublished as a reason why no one could find it.



The eight case reports Mr. Mope filed with the Court look odd, unlike what one would see from Westlaw or LexisNexis. They looked odd because none of these case reports was real. Instead, they were created by the AI program from bits and pieces of other cases and cobbled together into something resembling (very loosely) a real case report; at least that's what Mr. Mata's lawyers later claimed/confessed.

Varghese, the Eleventh Circuit case principally relied upon to address the statute of limitations issue, lists the names of three judges who supposedly heard this appeal. I was able to identify two as actual Eleventh Circuit Judges and the third as a Fifth Circuit Judge. The *Varghese* case report submitted to the judge is full of anomalies and inconsistencies. The decision is undated. The initial paragraph identifies Susan Varghese, the personal representative of the Estate of George Varghese, who has filed a wrongful death claim. The next paragraph refers to the plaintiff as "Anish Varghese" and later paragraphs describe the cause of action as breach of contract. The case report first recites that the defendant airlines filed for bankruptcy in China, but then recites that it was the plaintiff who filed for bankruptcy under U.S. law, though the report first recites that it was under Chapter 7, but later refers to a Chapter 13 filing.

Peterson, a second case report submitted to the court, purports to be an opinion by Judge Walton of the District of Columbia. Judge Walton indeed sits in that district, but the alleged case report has obvious flaws, such as that the judge grants the motion to dismiss in the first paragraph and denies the same motion in the final paragraph. A third case report, *Durden*, allegedly from the Georgia Court of Appeals from 2017, does involve a suit against an airline, but recites that the plaintiff was killed in an accident at Hartsfield-Jackson Atlanta International Airport "when he was struck by a tow bar that had detached from a baggage tug ownedand [sic] loss of consortium claims." A colossal failure of proofreading, it defies credulity that any real court would issue this opinion.

You get the point. So did the judge who has Mr. Mata's case. After Mr. Mope submitted these obviously bogus case reports, the judge issued a second Show Cause Order requiring Mr. Mope to appear for a hearing as to why sanctions should not be imposed against him. Mr. Mope sought another extension and explained that it was actually Mr. Namesake who had drafted the legal argument submitted to the Court as well as gathering the case reports that were submitted.

Thus a third Show Cause Order, requiring Namesake to also appear at the hearing. In a sign of things to come, the judge refused to grant Mope any further extensions, but did give Namesake two extra days to submit something in writing in advance of the hearing.

In his written submission, Namesake explained himself initially by saying he *did* check the sources referenced in the legal argument generated by ChatGPT. How? He asked ChatGPT. He actually submitted screen shots of his question and answer session with the AI Program:

Namesake: "Is Varghese a real case?"

ChatGPT: "Yes, Varghese v. China South Airlines Co Ltd, 925 F.3d 1339 (11th Cir. 2019) is a real case."

Namesake and his firm hired counsel. Namesake's counsel wrote: "ChatGPT even assured him the cases were real and could be found on Westlaw and LexisNexis, and continued to provide extended excerpts and favorable quotations. Now that Mr. Namesake and the Firm know ChatGPT was simply making up cases, they are truly mortified." The memo also referenced several articles warning of the dangers of errors that can be made by ChatGPT and the inadequacy of the warnings that tell users: "May occasionally generate incorrect information."

Do you think?

At the sanctions hearing, Judge Castel forced Namesake to admit he didn't do anything to check the AI program's research output. "ChatGPT was not supplementing your research. It *was* your research, correct?" the judge asked.

On June 22, 2023 Judge Castel issued two decisions. The first unsurprisingly granted Avianca's motion to dismiss. The beginning of the second considerably longer decision is worth quoting:

In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings. [The lawyers in this case] abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the ar-

tificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question. Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

After making detailed findings of fact and conclusions of law, Judge Castel collectively sanctioned Mssrs. Mope and Namesake \$5,000.

The future potential dangers of artificial general intelligence ("AGI") were captured brilliantly in a hypothetical posited by philosopher Nick Bostrom in a paper published in 2003. AGI refers to a type of artificial intelligence that possesses the capacity to understand, learn, and apply knowledge across a broad range of tasks at a level equal to or beyond that of a human being. Current AI systems, including ChatGPT, are referred to as narrow AI, or weak AI. These systems are designed to perform specific tasks, like answering questions or playing games like chess and Go. While narrow AI programs can sometimes perform these tasks at or above human level, they don't have the flexibility that a human or a hypothetical AGI would have to learn and adapt. Some believe that AGI is possible in the near future. In Bostrom's "paperclip problem" he posits that AGI has been invented and has been tasked with manufacturing as many paperclips as possible. It has no instructions other than to meet that goal. It starts by using all resources available to create machines to make paperclips efficiently and then to make as many as possible. But because it has no other programmed constraints, like HAL in *2001 A Space Odyssey*, it is willing to sacrifice humans to fulfill its mission, converting all available matter, including humans and the Earth itself into the raw material to make more paperclips, ending life as we know it.



DAVE: Open the pod bay doors, HAL.

HAL: I'm sorry, Dave. I'm afraid I can't do that.

DAVE: What's the problem?

HAL: I think you know what the problem is just as well as I do.

DAVE: What are you talking about, HAL?

HAL: This mission is too important for me to allow you to jeopardize it.

DAVE: I don't know what you're talking about, HAL.

HAL: I know that you and Frank were planning to disconnect me, and I'm afraid that's something I can't allow to happen.

So, what's the moral of the story? Narrow or weak AI is certainly not ready to replace lawyers quite yet. This debacle lends credence to the concerns raised by many that AI is going to become proficient at generating misinformation, a problem that is already bad enough even without this sophisticated technology. ChatGPT was certainly not very proficient at creating bogus case authority, as the ridiculous case reports submitted in the Mata case amply demonstrate. But the technology will continue to improve to a point when it probably will become proficient at finding cases to support any arguably valid legal proposition and even drafting an argument that incorporates these cases. But we can't let AI check itself. In the end, I think, this saga starkly demonstrates that relying on AI to do *all* of your legal work is a foolish idea and will likely remain so for the foreseeable future no matter how much the technology improves. I guess we all have Namesake and Mope to thank for demonstrating this so profoundly.

Stephen G. Schwarz
Rochester, New York



THE COLLEGE LAUNCHES TASK

At the College's 2023 Spring Meeting in Key Biscayne, Fellow John Broderick, former Chief Justice of the Supreme Court of New Hampshire, gave an unflinching and courageous portrayal of his son's mental health struggles and of his family's journey toward understanding, acceptance and support of their loved one. Justice Broderick made an urgent plea to the College to take action to raise awareness of the serious mental health issues facing the trial bars of the United States and Canada. Undeniable evidence supports Justice Broderick's call to action:¹

- A 2016 national survey of 13,000 practicing attorneys by the Joint ABA Commission on Lawyer Assistance Programs/Betty Ford Clinic Survey of Lawyers reported that 28% of respondents struggled with depression and over 21% abused alcohol or other substances;
- A 2017 study by the National Task Force Report on Lawyer Well-Being reported that more than one in six lawyers said they had contemplated suicide during their legal career;
- A 2023 ABA survey, *Report on Mental Health in the United States Legal Profession*, reports significantly worsening levels of debilitating stress, anxiety and depression amongst lawyers, with 38% of respondents reporting having dealt with depression, and 31% having grappled with another serious mental health issue;
- A 2023 survey of New Jersey lawyers found a "profession in crisis," with respondents reporting much higher rates of anxiety, burnout and suicidal thoughts than in other occupations. 56% of respondents reported alcohol misuse, 23% reported depression, and 10% reported suicidal ideation. (April 13, 2023 Law 360);
- Similar recent surveys in California and in D.C. reported an average of 8.5% of respondent attorneys having suicidal thoughts (*id*);
- A recent study, *It is Okay to Not Be Okay: The 2021 Survey of Law Student Well-Being*, (David Jaffe; Katherine Bender & Jerome M. Organ) U. Louisville L. Rev. (2022), reports significantly increased levels of depression, suicidal thoughts, and other serious mental health problems in our law schools.

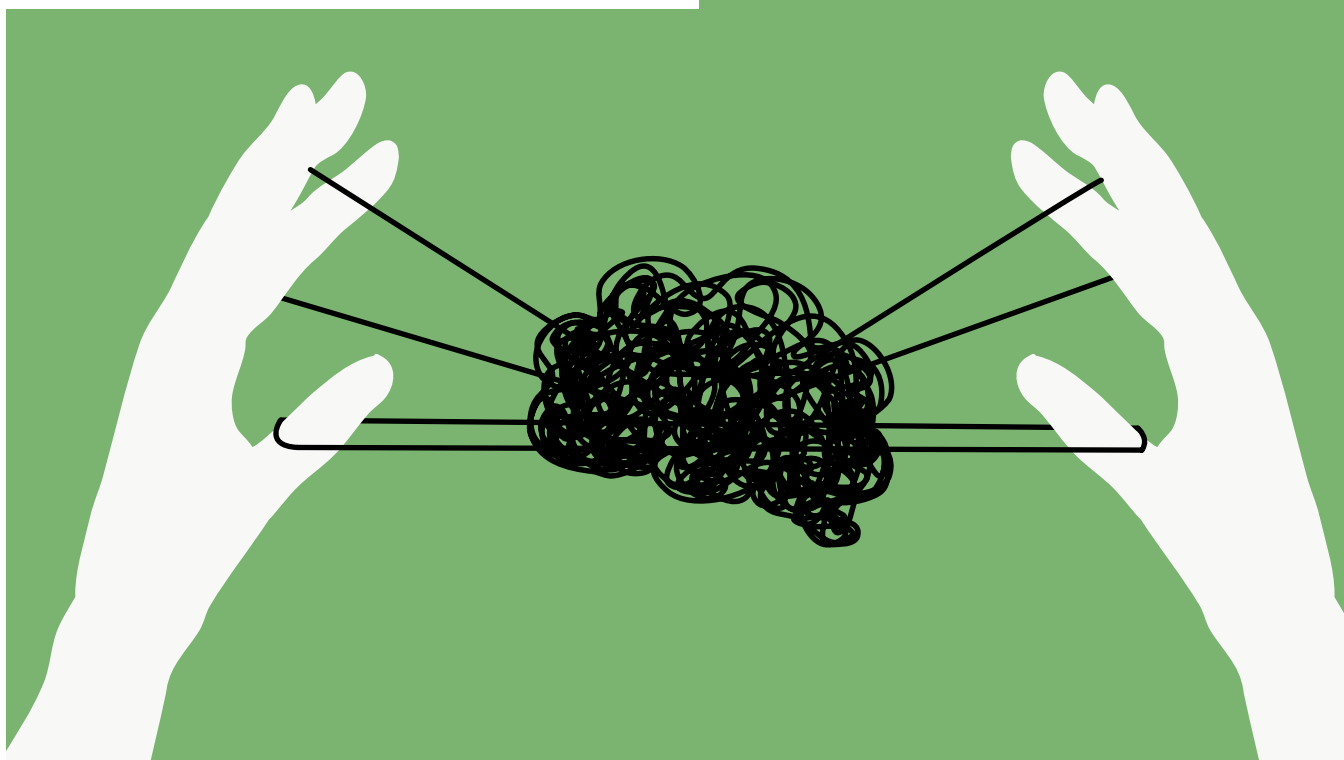
And the dire statistics go on and on.

¹ Thanks to Pepperdine University Law School Senior Alanna Austin for her research assistance.

FORCE ON MENTAL HEALTH AWARENESS

Justice Broderick's moving and impactful account hit a nerve, to say the very least. At the conclusion of his presentation, President Susan Harriman took to the dais to announce that she would call for the College's Executive Committee to take action to address the mental health issues facing the trial bar. That same day, I approached President Harriman in Key Biscayne and volunteered to lead the initiative in whatever form it might take. A few weeks later, the Executive Committee approved the formation of a Task Force on Mental Health Awareness and President Harriman asked me to chair it. Within hours of the announcement of the Task Force initiative, President Harriman and I received e-mails and phone calls from Fellows around the U.S. and Canada asking to join. The Task Force membership coalesced in the following days.

Our current roster includes: Sandra Barton of Toronto; Hon. John Broderick, Jr. of Bedford, N.H.; James Brown of New Orleans (Chair); Hon. Patricia Dodge of Pittsburgh; Dicky Grigg of Austin; Charles ("Chad") Joseph of Baltimore; Diane MacArthur of Chicago; Don McKinney of New Orleans; Stephen Schwarz of Rochester, N.Y.; and Julie Willoughby of Juneau, AL.



At our first virtual meeting on May 17, 2023 we identified priorities to guide our work, including the urgent need for:

- fuller understanding and recognition of the dire seriousness of the mental health issues facing law students and the trial bar;
- de-stigmatization and acceptance of mental health problems in law schools and in the trial bar, including senior lawyers and law professors willing to say “no I’m not ok” and “it is ok” to talk about the issues;
- greater input from law students and young lawyers on mental health issues;
- places and spaces for law students and trial lawyers to talk about mental health issues with peers and obtain help;
- identifying resources and best practices for law firms and other organizations to address mental health issues;
- mental health first aid training and similar education to recognize the signs of mental illness;
- law firm “wellness pledges” similar to the ABA “7-point” pledge; and
- other measures to promote cultural change to accept mental health issues and illness as *unchosen*, and not a weakness.

The Task Force has discussed several short-term and mid-term goals that will be finalized and presented for consideration by the Board of Regents. Some of these ideas include:

- recruiting a nationally prominent speaker on mental health issues to address Fellows at meetings of the College;
- arranging for Task Force members to speak at state bar meetings, law schools, and regional College meetings about the importance of addressing the mental health challenges of our profession;
- analyzing surveys and studies addressing mental health issues in law schools and the trial bar to gain a better understanding of the nature, depth and breadth of the problem;
- consulting with nationally recognized mental health professionals;
- publication of articles on mental health issues in the ACTL Journal , e-Bulletin and on the College’s website;
- developing opportunities for willing Fellows and others to share their stories;
- identifying mental health resources in each State and Province that can be shared on a “mental health awareness” page on the College’s Website; and
- developing and publishing a set of best practices for law firms to address mental health issues.

YOU WILL BE HEARING FROM US SOON.

The Task Force will be presenting their recommendations to the Board of Regents and we will be asking Fellows to help us as we move forward. Please don’t hesitate to contact any of us with your suggestions and ideas. The needs are urgent and action is long overdue. We are going to make a difference!

James A. Brown
New Orleans, LA



MICHAEL HERRING



TERRI MASCHERIN



AMY GUNN



RENEE ROTHAUGE



VINCE CITRO



DAVE THOMAS

TRIAL TESTED

A PODCAST BY THE AMERICAN COLLEGE OF TRIAL LAWYERS

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Hosted by Fellows of the College, Trial Tested aims to inspire trial attorneys to maintain and improve the standards of trial practice, professionalism, ethics and the administration of justice. Listen in to enjoy enlightening discussions about life and law through interviews with prominent trial lawyers and significant figures in the world of trial law. actl.podbean.com

STUART DEATON SHANOR

Sometime in the summer of 1947, W.W. “Mac” Brazel found wreckage on his ranch in Lincoln County, New Mexico, near the town of Corona, a pip on the map with a population of about 500. The nearest big town, Roswell – with 25,000 people, it was the third biggest city in the State – was approximately seventy-five miles to the northeast. So Mac brought some of what he had found to Sheriff George Wilcox of Roswell, who in turn brought it to the attention of Colonel William Blanchard, the commanding officer of the Roswell Army Air Field (RAAF).

The next day, the RAAF released a written statement that announced “The many rumors regarding the flying disc became a reality yesterday when the intelligence office of the 509th Bomb Group of the Eighth Air Force, Roswell Army Air Field, was fortunate enough to gain possession of a disc through the cooperation of one of the local ranchers and the sheriff’s office of Chaves County.”

But U.S. Army officials quickly reversed themselves on the “flying saucer” claim, stating that the found debris was actually from a weather balloon.

And weather balloon was the official story until 1994, when the U.S. Air Force issued a report in which it admitted that the story was bogus. The wreckage, the Air Force now claimed, came from a U.S. spy device created for an until-then classified project called Project Mogul. The device – a connected string of high-altitude balloons equipped with microphones – was designed to float furtively over the USSR, detecting sound waves at a stealth distance to monitor the Soviet government’s attempts at testing their own atomic bomb. Because Project Mogul was a covert operation, a false explanation of the crash was necessary to prevent giving away details of their spy work.

Many remained skeptical of the government’s new explanation. Roswell, to this day, remains the epicenter of the widespread belief that we have been visited by aliens.



Maybe so. Maybe not.

But here's what we know for sure. Roswell was visited by aliens in 1967. Stuart Shanor, born and raised in the far-away galaxy of Ohio, chose Roswell as his new home.

Stuart Deaton Shanor, fifty-second President of the College (2001-02) passed away peacefully on Wednesday April 12, 2023 at the age of eighty-five, preceded in death by his wife of fifty-three years, Ellen.

Stuart was born in Canton, Ohio and raised in Springfield, Ohio. After graduating from Springfield High School in 1954, Stuart attended and graduated from Wittenberg University in Springfield, Ohio, where his father was Chair of the Religion Department, in 1959. He enrolled at the University of Michigan School of Law. A good move, he met an undergraduate student there and they were married December 28, 1963. Stuart and Ellen moved to

Cleveland, a likely and likeable spot for a native Ohioan, for Stuart to begin the practice of law.

But Ellen was not a native Ohioan; she was from Hobbs, New Mexico, the County Seat of Lea County on the border with Texas. On a trip to visit Ellen's family in 1966, Stuart and Ellen decided to pick up roots and replant them in Roswell. Hobbs was a town of about 25,000 at the time; Roswell, about a hundred miles northwest, was a relative metropolis of 37,000 and offered more opportunity. Stuart interviewed and landed a job offer with a Roswell firm and passed the New Mexico Bar Examination on January 7, 1967. He never left.

Stuart began trying cases. Now, the College has always required a minimum of fifteen years of trial work before admission to the College. But

in truth, not many of us achieve the requisite level of success and recognition in a mere fifteen years. The majority of our Fellows need twenty



or more years to assemble a sufficient body of work. Not Stuart. He was inducted as a Fellow on September 1, 1979, less than sixteen years after his admission to the Ohio Bar.

Stuart served as New Mexico State Chair from 1986 – 1988. After service as a Regent and on the Executive Committee, Stuart became President of the College in 2001. Stuart was also a member of the International Society of Barristers and the Tenth Circuit Historical Society.

Stuart was a highly respected lawyer in the State of New Mexico and throughout the United States, having maintained an active practice spanning nearly six decades, more than fifty years of which was as a partner in the firm Hinkle Shanor LLP, which bears his name.

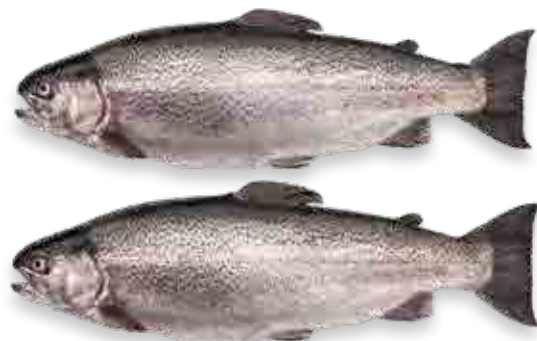
Stuart gave generously of his time both to his legal community and his local community in Roswell. Stuart was active in the State Bar of New Mexico, serving on many and various Supreme Court boards and commissions including the Client Protection Fund, the New Mexico State Bar Foundation, the Supreme Court Task Force on Professional Conduct, and the New Mexico State Disciplinary Board as a Hearing Officer. Stuart also served on numerous local boards including the Board of Trustees for the Eastern New Mexico Medical Center, the Board of Directors for the First National Bank of Roswell and later United New Mexico Bank; he served thirteen years on the Roswell Independent School District Board of Education. He was a longtime member of the Saint Andrew's Episcopal Church and a former member of the St. Andrew's Episcopal Church Foundation.

Presidents of the College, of course, must make dozens of trips during their terms, so proximity to a hub airport is a real plus. And in Stuart's year, his foresight in choosing Roswell as his home base became clear. Centrally located, he could head north to Albuquerque and be at the airport after a short three-and-a-half-hour drive. Or south to El Paso in a mere four hours. Or East to Dallas-Ft. Worth in a brisk seven hours. Easy-peasey.

Actually not all that hard. Stuart and Ellen would get into their pickup truck with their Airstream trailer and skip the airports altogether for most of their trips

to the Western half of the U.S. Driving took a little longer, but it was the longer time together that made it fun. Ellen did the majority of the driving so that Stuart could work as they drove.

Past President Tom Tongue recalls that Stuart and Ellen were both "birders" – accomplished fly fishermen. He and Ellen made frequent trips to Colorado to fish the Fryingpan River. One year Stuart joined a group of Fellows in Oregon fishing the Deschutes. With an audience watching, he hooked and landed two steelhead on dry flies.



Past President Warren Lightfoot recalls that Stu's College participation, including his presidency, was very much a *team* effort, with Ellen heavily involved in planning and executing all College activities. More than any others, they worked in tandem to generate interest and enthusiasm in their six-state region and were constantly coming up with ideas for regional participation. Stu took the helm of the College soon after 9/11, and just after heart surgery, so he and Ellen negotiated some airport terminals by wheelchair in the early days.

Past President Mike Stout's initial impression of Stu was that he was polished and professional. He knew what he needed to do for the College and he did it precisely and professionally. He was always right. Mike realized that not only was he a great source of information but he would take the time to help Mike or anyone who had a problem and needed a little help. Later Mike realized how much the New Mexico Fellows thought of him and how much their state committee relied on him. But as Mike and LeAnne got to know Stu and Ellen, they realized how important she was to him. It's trite but true – she was his wife, best friend and fulltime consultant; very involved, not only in helping with his group

responsibilities but also planning and participating in all of the activities that were fun and relaxation for Stu. When she died in his arms, unable to breathe with the cancer taking over her lungs, the lights really went out for Stu. He still did whatever he could for the College and all of us, but the fun and excitement were gone.

Past President Chilton Varner believes that Stu and Ellen were the epitome of what it meant to be a College President and first spouse. When Chilton and Morgan showed up for the first time in her service as a new Regent they were a bit late (Morgan's doing, of course), and most of the tables were already filled; Chilton and Morgan had no idea what to do. The Shanors, as a Past President couple, spotted their bewilderment and concern. Both of the Shanors stood up, walked up to them and said, "You need to come and be at our table. We are so glad to honor you."

Past President Jack Dalton was inducted into the College in 1985 in London. Marcy and he were out walking nearby their hotel the first day or so around lunch-time and noticed a restaurant that had outdoor tables. They thought it fitting for lunch and noticed a surely American couple (baseball hats perhaps?) already seated at a table for four. As they moved closer Stu instinctively asked "Are you here with The American College?" Jack doesn't recall that they had any badges or symbols that gave away their reason for being in London, but Stu knew. Stu then graciously asked them to join him and Ellen. It became a most delightful experience.

The Shanors' grace in asking others to join them is a repeated story many of us have. Past President Mike

O'Donnell remembers that he and Brett were at a Palm Springs College meeting and went to a restaurant. The Shanors were already there and asked the O'Donnells to join them. Mike fondly remembers they were a lovely couple who were obviously very much in love. The Bymans have the same exact story, lunch and love, all of it; but the Bymans' story was at La Quinta, not Palm Springs.

Those invitations to share tables introduced so many of us to the College's most important characteristic – the elevation of and reverence for collegiality among its members. Those invitations began friendships that lasted through many years.

Stuart enjoyed golf and often was seen playing two balls at a time. He was an avid fly fisherman and could cast a fly as gracefully as he danced in the ballroom, which was another great joy he shared with Ellen.

Stuart is survived by two children and five grandchildren: daughter, Sheryl Mahaney, her husband John H. Mahaney (Wirtz, Virginia), granddaughter, Lauren (Charleston, West Virginia) and grandson, John (Boone, North Carolina) and son, Stephen S. Shanor, his wife Heidi E. Shanor (Springfield, Ohio) granddaughter, Katelyn (Midland, Texas) grandson, Andrew and his wife Kelly (Columbus, Ohio) and grandson, Matthew (Springfield, Ohio).

Hopefully, Stuart's heaven is a big place. He and Ellen will want to get into their celestial pick-up truck towing their Airstream and drive all around.





ALL IN THE COLLEGE FAMILY

a series

THE AMERICAN COLLEGE OF TRIAL LAWYERS IS A RELATIVELY SMALL GROUP, AND IT IS ALWAYS ENTERTAINING TO MEET FELLOWS WHO ARE RELATED BY BLOOD OR MARRIAGE TO OTHER FELLOWS. THE JOURNAL STARTED TO TALK TO THOSE FELLOWS AND FOUND SOME WHO ARE PARENT/CHILD, AND OTHERS WHO ARE MARRIED TO EACH OTHER. PERHAPS THERE ARE OTHERS OUT THERE? IF SO, THE JOURNAL WOULD LIKE TO KNOW OF ANY SPECIAL RELATIONSHIPS WITH OTHER FELLOWS, AS THIS IS A CONTINUING SERIES.

NEIL AND TOM QUINN



ONE COULD SAY THAT INSTEAD OF CHOOSING THE LAW, THE LAW CHOSE BOTH FATHER NEIL QUINN ('77) AND SON TOM BAKER QUINN ('18) – AS DID THE AMERICAN COLLEGE OF TRIAL LAWYERS. BEFORE BECOMING DEDICATED AND RESPECTED TRIAL LAWYERS, BOTH FOLLOWED NONLEGAL CAREER PATHS, UNTIL THE CHOICE OF A LIFE IN THE COURTROOM BECKONED. AND ONCE THEY HAD EACH SET THEIR GOALS ON BECOMING TRIAL LAWYERS, THEY NEVER LOOKED BACK.

Both were relatively late bloomers to the practice of law. Neil was attending undergraduate school at the University of Illinois just as the Korean War was heating up. Since he thought he would be drafted when he finished, he chose to enlist in the Marine Corps in December 1950, entering an OCS program that allowed him to graduate from the University in the spring of 1951, before immediately going to Parris Island, and then Quantico, where he was commissioned as a second lieutenant in the Marine Corps. He was then stationed in the Second Marine Division at Camp Lejeune on the East Coast.

Neil had been trained to be a platoon leader in the Marines, with a second job as a military police officer. There, it was his responsibility to ensure that marines who were arrested over the weekends had some sort of monitoring, or actual representation, when they got to court. He even had an office in the basement of the Wilmington NC Courthouse, complete with spittoons. Somehow, one of those spittoons followed him home, where it has now been re-purposed as a table lamp.

Neil had some exposure to the legal profession in his childhood, as he had two uncles who practiced law in Chicago, one in insurance defense, and the other a successful plaintiff's lawyer. But it was those early courthouse observations in the Marines that truly piqued his interest in the law. By the time he left the Marine Corps, his wife was expecting their first child, so he chose a more practical life choice – going to work for IBM selling electric typewriters. He somehow managed to combine both the practicality of making a living and the higher calling of law by attending night law school at DePaul University in Chicago, graduating in 1957. He said he knew he always wanted to be a lawyer and that kept him motivated during his legal schooling – he wanted to be a part of this higher profession.

Upon graduation he was still employed at IBM. But the law won; he quit his job at IBM and started a six decade career as a trial lawyer with a Chicago firm filled with Fellows in the American College of Trial Lawyers, such as Robert Rooney ('69), Matthew Egan ('04) and Brian T. Henry ('02). The firm's core was insurance defense work, but he branched out and took other cases including some involving notable union leaders. ▶

Tom had grown up in Chicago, but western vacations in his youth called him to the University of Wyoming for an economics degree in the 1970's. Following graduation, he moved to Gillette, Wyoming, to assist in building highway overpasses. After a few years, he and his wife decided to go into business for themselves and opened garden centers in Gillette and Buffalo, Wyoming. But when interest rates rose, business in the oil field and coal mines slowed. Slowed? No, Tom says "business was awful," so, almost as a default decision, he decided to return to Laramie for law school. He was instantly intrigued by the courtroom, and the concept of becoming a trial lawyer grew on him. It was not a light bulb, but something that slowly and surely came to him.

When Tom finished law school in 1988, he accepted a job offer from a Colorado insurance defense firm, which included another up and coming young lawyer named Michael L. O'Donnell ('99) (ACTL President 2021-2022). Tom followed his father's footsteps of associating with other Colorado trial lawyers who were Fellows in the American College, such as Bill Steele ('65) and John Palmeri ('14). And like his father, Tom started with insurance defense, but more complex litigation overpowered his time and geography.

Neil had some memorable cases in his career, including a five-to-six-year stint representing the Teamsters Central States Health & Welfare Fund in Chicago, a Teamsters pension fund that had been established by former International Brotherhood of Teamsters president Jimmy Hoffa. When Neil started handling those matters, a consent decree had already been entered, but Neil was often in court against Department of Labor attorneys, as compliance was being monitored by the courts.

It was a time of turmoil in the Teamsters Union, and the nation was still looking for the missing Jimmy Hoffa. Neil vividly recalls being on trial in one of the cases in 1983 when he was slipped a note saying that Allen Dorfman, one of the co-defendants, had been assassinated in the Lincolnwood Hyatt parking lot in Lincolnwood, Illinois. It was not the first attempt on Dorfman's life; he had narrowly escaped a hit attempt eighteen years earlier.



Dorfman has been described as a close associate of Jimmy Hoffa, and Dorfman's father was identified in a Congressional investigation as the link between the Teamsters Union and the Chicago underworld. The shooting was described as a gangland-style execution (perhaps because of the six .22 caliber bullets to his head) and was believed to be intended to keep Dorfman from cooperating with authorities (perhaps because dead men tell no tales). But, Neil says, the lawsuit wrapped up in a hurry with Dorfman gone.

Another memorable appearance for Neil in the Teamster litigation involved one matter where renowned Chicago lawyer Albert E. Jenner Jr. represented a vendor who had provided the services at issue. Neil chuckles that he doesn't know how many lawyers today can say they were in trial with Albert E. Jenner Jr.¹

Tom also notes some memorable cases, including a multi-week trial dealing with the old Stapleton Airport Fuel Farm Fire in Denver, Colorado, and a lengthy trial involving a Frontier Refinery explosion in Cheyenne, Wyoming. The November 1990 fire at Stapleton had erupted on the busiest air traffic day of the year, when two million gallons of jet fuel exploded, threatening to engulf an additional 12 million gallons at a depot just north of the airport tower. After burning unchecked for some 52 hours, a Texas hotshot team extin-

¹ EDITOR'S NOTE: Neil may merely have been being polite when he recalled him as Albert, but if you actually knew him, you called him Bert. Bert Jenner served as assistant counsel to the Warren Commission and special counsel to the House Judiciary Committee during the Watergate Scandal and the impeachment process against Richard Nixon. He was the eighth president of the College. At his funeral in 1988, he was eulogized by Illinois Governor Jim Thompson: "When the soul of our nation was torn by the assassination of a president, our nation reached out to Bert Jenner. And when the fabric of our Constitution was threatened by the actions of a president, our nation reached out to Bert Jenner. When the wounds were deep and grievous for all Americans, when some impoverished soul was threatened, when some unpopular cause would have been extinguished but for the bravery and perseverance of that man, they all reached out for Bert Jenner."

guished the blaze in just thirty minutes by smothering it with foam. The leader of the Texas team described his process like this: “It’s like riding bad horses or jumping out of an airplane, and I’ve done both.”

The Frontier Refinery explosion in Cheyenne resulted in a number of deaths and severe injuries. It presented some extremely challenging legal issues, with good lawyers (and Fellows) on both sides. Tom’s job was to attempt to recover the \$19.25 million Frontier Refinery had paid to settle the personal injury claims that resulted from the fire. A difficult attorney-client privilege issue arose when a former lawyer was called as a witness at the trial, and within minutes, a privilege objection was asserted. U.S. Dist. Judge Clarence Brimmer immediately sent the jury out and took all the lawyers (at least six) to chambers. A U.S. Magistrate Judge had earlier found that the privilege had been waived, but the Judge disagreed. And since the Judge’s daughter was employed by the firm involved, he felt he had a conflict. In order to resolve the issues, Judge Brimmer sent the jury away for the day and ordered all counsel to charter a private plane and fly from Cheyenne to Casper, Wyoming that afternoon to have the Magistrate Judge rule on the objection, and then return to Cheyenne after the hearing to resume Court the next morning.



It was December and it was Wyoming. It was freezing. And the only attire the lawyers had were business suits and street shoes. But of course they complied with the Court’s Order, flying to Casper on a “super-small” airplane, where they were met by a court-arranged station wagon for transport from the rural airport to town. The Magistrate Judge ruled that privilege had not been waived, and they returned to Cheyenne that night on that same “super-small” airplane. Most memorable for Tom, however, were the lasting and good friendships that came from their court-ordered ordeal.

Neil said he might have stayed with IBM in typewriter sales had he not decided to go to law school, and Tom similarly said business school was an option. Except, they both say, they really didn’t think of doing anything except the law once that decision had been made.

In his spare time, Neil takes part in activities in the Evanston, Illinois retirement community where he resides. Tom says he likes to bike in the mountains surrounding his Colorado home, and has learned that in the last few years, he can place well in various citizens races, as there are only a few racers left in his age category.

Both Neil and Tom count many Fellows in the College as mentors and good friends. Both were surprised – and extraordinarily pleased -- when their names were put forward to be considered as Fellows. Both say they were awed to be invited to join the group and consider it a huge honor. They have attended as many meetings as possible, and together attended the Annual Meeting in Chicago, Illinois, in 2021. Neil said he was the oldest Fellow there, and they were the only father-son Fellows in attendance. Let’s hope that we see the pair at many future meetings.

Carey Matovich
Billings, MT





HERITAGE OF THE COLLEGE

Judge Thomas John (“T. John”) Ward

Just after midnight, an East Texas client of T. John Ward’s called and told him that he had just killed a man who broke into his house; there was another burglar outside. T. John asked if the client had called the Sheriff. “No,” the client said, “I called you.” T. John called the Harrison County Sheriff and then set off for the client’s house. The house was dark when he got there, and T. John went in shouting to his client, a World War II veteran who was hard of hearing, not to shoot him. Inside, T. John found a young man in his early twenties with a mask and a large knife in his rear pocket who was obviously dead. Several deputies arrived about five minutes later. The client was no-billed by a Harrison County Grand Jury when Sam Baxter, now a Fellow of the College, was serving as District Attorney.

EARLY LIFE

T. John was born in Bonham, Texas (population 7000 in 1950) but his childhood was primarily spent about ten miles south in Bailey, Texas (population 198). T. John’s mother was a school teacher, and his father tenant farmed about a hundred acres of mostly cotton after his successful grocery store and feed business went broke during the depression. T. John had an older sister, Delia, and an older brother, Charles Albert.

When T. John was ten and entering the 6th grade, the Ward family moved to Magnolia, a metropolis of 400 about forty-five miles northwest of Houston. T. John’s Magnolia High School class of 1960 was the largest in school history with twenty-six students; T. John was the valedictorian.

ON TO COLLEGE

Delia’s mother-in-law, Ms. May Hargis, was a widow who lived in Lubbock. Delia determined that T. John was going to Texas Tech and would live with Ms. Hargis his freshman year. When T. John began that year, he had spent his entire life known as John Ward. But he pledged

Phi Delta Theta, and during pledge week, the pledge trainer lined everyone up alphabetically and announced “There’s too damn many Johns in this pledge case. What’s your first name?” T. John responded, “Thomas.” From then on, he has been T. John.

T. John describes himself as “Joe College.” He was elected to the student council and was a cheerleader for the Texas Tech Red Raider athletics team. He boasts “I was enthusiastic and all of that, but I basically couldn’t keep time with music, and I certainly couldn’t do any of those gymnastics routines they do now.”

During his senior year, T. John met Elizabeth “Cissy” Clark. He’d never had a serious girlfriend before. But during a summer session in 1963 T. John saw a young woman wearing an olive-green wrap-around skirt, Wenjun loafers, and a light-yellow blouse. T. John blurted “Wow! Who’s that?” His female lab partner said “Big boy, she’s off limits. That’s Cissy Clark. She is a Pi Phi.” Off limits, because T. John was dating one of Cissy’s sorority sisters. But in the fall semester, he and Cissy were in the same lab for an analytical chemistry class. He broke up with the sorority sister, waited a couple of weeks, and then called Cissy.

T. John and Cissy were engaged in December 1963. Cissy was a junior, and the plan was to be married in the summer of 1965 after Cissy graduated. But T. John couldn’t wait. He told Cissy “We need to get married this summer; otherwise, I’m going to get drafted and sent to Vietnam and probably get shot or killed.”



Senior John Ward holds Kathy Osthoff during a cheer. Junior Cynthia Moore was also a cheerleader.

They were married on August 29, 1964 and have been married fifty-eight years.

John’s first job after college was as a sales rep at The Upjohn Company; his territory was the northern half of Wisconsin and the Upper Peninsula of Michigan. He and Cissy married on a Saturday night and on Sunday afternoon they were a car and trailer headed to Eau Claire, Wisconsin.

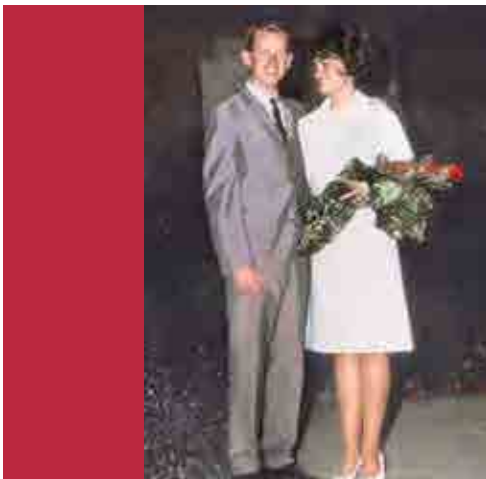
Maybe it was the cold weather. Maybe it was the knee surgery after a toboggan accident. But T. John started thinking about going back to school – to law school. Cissy’s grandparents lived in Waco, Texas and helped arrange a meeting with the Dean of Baylor Law School. T. John applied to Baylor and a number of other Texas law schools (but not to the University of Texas because they had beaten Texas Tech so badly in football) and the University of Wisconsin.

T. John was probably accepted at all of the schools to which he applied, but only one mattered. He went to Baylor. His brother, the smart one of the family who by then had his Ph.D. and was a college professor, asked whether he was going to use his law degree to be a corporate lawyer for Upjohn. T. John replied that he didn’t know, but he knew he didn’t want to be one of those “courtroom lawyers.” He would go on to spend his life as a trial lawyer and trial judge.

EARLY LEGAL EMPLOYMENT

T. John took the bar exam in October 1967. He was certain that he had flunked. So certain that he quit interviewing for jobs with law firms and found a job working for the Texas Legislative Counsel which only required a law degree but not a law license. He and Cissy moved to Austin. His first assignment was a complicated task of drafting an amendment to the Texas statutes that would authorize liquor by the drink. T. John hated the job. Fortunately, he learned he had passed the bar and was sworn in at the Texas Supreme Court three days after arriving in Austin.

T. John called a friend from Baylor who was an Assistant District Attorney in Lubbock. His office wasn’t hiring but he steered T. John to the County Attorney’s office. He and Cissy happily returned to Lubbock.



LUBBOCK / HENDERSON / LONGVIEW

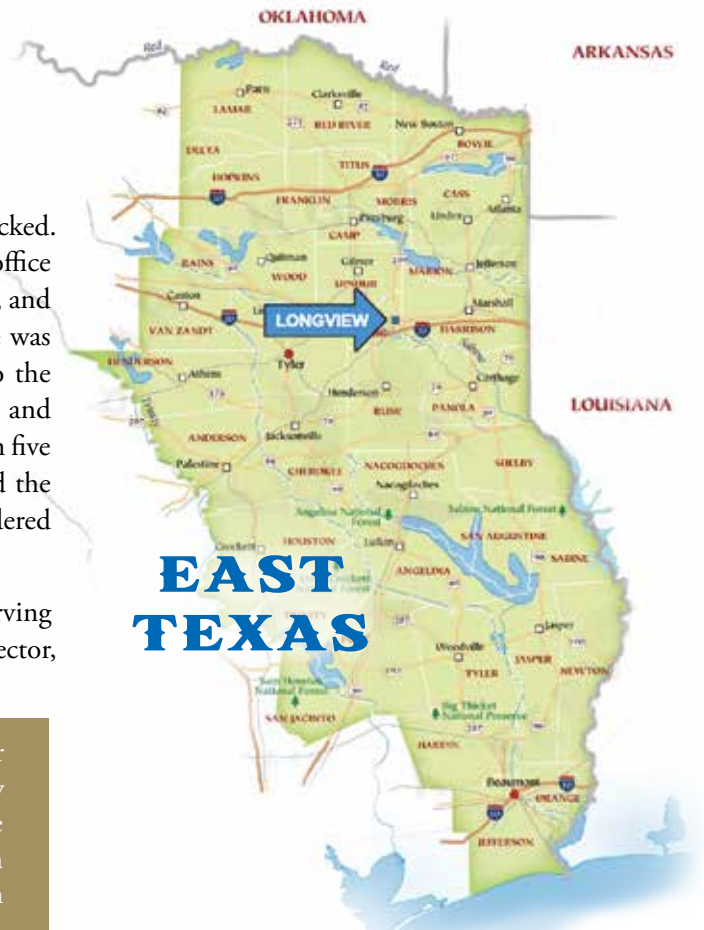
On his first day, T. John arrived early. The office was dark. Locked. When someone arrived with a key, T. John found he had a little office about ten feet wide and fourteen feet deep. He had a desk, a chair, and a legal pad. Within forty minutes of arriving at his new job, he was informed by his secretary that he had to report immediately to the Justice of the Peace, Court #2. The matter involved a jury trial and they were going to dismiss the case, unless T. John was there within five minutes. It turned out that his bosses, the County Attorney and the First Assistant, were out of town. In retrospect, T. John has wondered if it was a “set up.”

Indeed, there was a real trial. The defendant was charged with serving alcohol to a minor. The defendant was the YMCA Executive Director, represented by the premier criminal defense lawyer in Lubbock.

The judge gave T. John fifteen minutes to visit with his two liquor control officer witnesses. It was a weak case. By the time they made the arrest, the officers couldn't find the beer can. Try as he might to convince the jury of guilt, the jury came back later in the day with a “not guilty” verdict. T. John had never before seen a jury selected in a criminal case.

As T. John was leaving the courtroom, one of the jurors came up to tell T. John that he was impressed with him. T. John asked why he voted not guilty. The juror responded that T. John should never have picked him – and told T. John why. So T. John asked, “Why didn't you tell me that?” to which the juror responded, “Because you didn't ask!” From that point on, T. John has finished every voir dire with the question, “Whether I have asked you about it or not, is there anything which would affect your ability to be a fair and impartial juror?”

Within a few months, the County Attorney announced he was not going to seek re-election. T. John backed the First Assistant District Attorney in the election in early May, and his man lost. There would be a new County Attorney, so T. John began looking for his next job. He ran into a law school acquaintance, Ken Ross, who informed him of a possible position near Henderson.



T. John travelled to Henderson to interview at a plaintiffs' firm that had a lot of files that needed work, and they needed another lawyer. Returning from the interview, he told Cissy that if he could get this job, they would get rich. T. John got the job, and there were plenty of cases, but even though T. John didn't like math, it did not take him long to learn that 25% of zero was zero. Henderson was not the right fit for them.

T. John then got a call from Otto Ritter of Longview. Ritter had an insurance practice and a reputation of being difficult to get along with. In early January 1969, Ritter made T. John a nice job offer with an incentive bonus. He knew Ritter's reputation, but they got along well at their meeting. The next month, T. John and Cissy moved to Longview.

After a few weeks, and needing yet another lawyer, Ritter offered a job to Ken Ross on T. John's recommendation. But shortly after the offer, T. John and Ritter had a falling out. By the time Ross got there, T. John knew he couldn't stay permanently. A few months after Ross arrived, it appeared that Ross was unhappy, too. Ross and T. John agreed that they would leave

Ritter's firm. They found a little office, directly across from the courthouse, remodeled, and moved in. Ward and Ross opened its doors on November 13, 1969.

Word of their move spread quickly. In August 1970, they were approached by Judge Earl Sharp, who was turning sixty and wanted to have a firm for his son to join should he decide to go to law school. On January 1, 1971, the law firm of Sharp, Ward, and Ross was formed. Mr. Sharp was inducted into the College in 1962 and was T. John's mentor and dear friend.

GROWING FAMILY, GROWING PRACTICE

By 1990, T. John and Cissy had two children already attending and one preparing to enroll in a university. T. John determined that he needed a larger income. His practice had developed such that he was representing major clients. His thoughts turned to practicing in Houston.

T. John contacted his friend Richard Hightower, a Houston lawyer, about possible employment. Richard had come to work for T. John's firm right out of Baylor Law School and had stayed five years. Richard became known as the "fourth Ward child" before moving to Houston in 1986. In December 1990, after nineteen years in Longview, T. John announced he was leaving his Longview partners and moving into practice in Houston.

He and Cissy enjoyed their time in Houston, but after about twenty-seven months in Houston, T. John and Cissy decided to move back to East Texas. T. John suggested the Houston firm should consider opening an East Texas office. The law firm agreed and, in September 1993, the East Texas office of Brown, McCarroll, & Oaks Hartline opened.

MEMORABLE CASES

Adobe sought to reclaim millions already paid in taxes to the government. T. John had two weeks' notice to take over a case for a lawyer who had been hurt in a skiing accident. It was a complicated case with a complex verdict form. The trial judge, Lucius Bunton, speaking to the jury, announced that he appreciated their service, especially as it was a complex case that was hard to understand. Judge Bunton then added an afterthought, "I've known Mr. Ward for a long time, and I know he doesn't understand the case." T. John stood and replied, "Thank you, your Honor." T. John secured a verdict that resulted in recovery by Adobe in excess of \$14 Million.

It doesn't matter if you don't understand the case, if you understand the jury.

Charlotte James and Kathy Butler were water skiing on the Millwood Reservoir in Arkansas. The water on the surface appeared to be calm. But when both young women fell into the water they were sucked through underwater gates and into a discharge canal. One of their husbands dove into the water attempting to save his wife. The husband drowned and the two women were badly injured. The lake was under the control of the U.S. Corps of Engineers ("Corps"). The Corps operates enormous underwater gates to allow discharge from the reservoir into a spilling basin below. The gates create a strong undertow that was not visible from the surface. T. John represented the Plaintiffs. The trial court found that a cable strung with orange buoys delineating the area of danger near the gates had broken and drifted away; that white anchor buoys marking a restricted area near the dam were also out of place. The condition continued for over 30 days. The trial judge found that the government's conduct exceeded gross negligence and that damages were in excess of \$1,000,000.00 but entered a take-nothing judgment based upon an immunity provision of the Flood Control Act of 1929. The take-nothing judgment was affirmed by a three-judge panel of the Fifth Circuit. In a split *en banc* opinion, the panel decision was reversed, and judgment was entered in favor of Plaintiffs. The government then filed a writ of certiorari to the United States Supreme Court, and it was granted. T. John argued the appeal. Unfortunately, the award was reversed on a 6-3 basis with a dissenting opinion by Justice Stevens joined by Justices O'Connor and Marshall.



After the case was over, in August 1986, T. John wrote a letter to Justice Stevens in appreciation of his dissenting opinion. Justice Stevens responded:

Dear Mr. Ward:

Thank you for your thoughtful letter. I know that many lawyers think that dissenting opinions are an unnecessary use of scarce law library space, but I have long believed that a lawyer is entitled to know when he has persuaded some members of an appellate court even if he did not win his case.

Sincerely,

Still undaunted, T. John managed to get a bill introduced in the House of Representatives and U.S. Senate providing compensation. He went to D.C. to lobby on behalf of the bill. His congressman advised him the problem was in the House Judiciary Committee, chaired by Congressman Jack Brooks of Beaumont, Texas. T. John visited Brooks in his office in the Rayburn Building. Suffice it to say, before T. John actually talked with Brooks, he learned he had less than a snowball's chance in hell of succeeding. On a wall of Brooks' office hung a dozen plaques from the Corps of Engineers recognizing him in some manner for his outstanding contributions to their mission. The conversation consisted of Brooks telling T. John about how great Brooks was and how stupid T. John's clients were for water skiing on the lake close to the dam and how poor T. John's judgment was in taking the case.

You can't win them all, but it wasn't because of lack of trying . . .

APPOINTMENT TO FEDERAL COURT BENCH

In September 1999, after thirty-one years as a trial attorney, T. John began his service as United States District Judge for the Eastern District of Texas, appointed by President Clinton. At that time, Texas did not have a Democratic Senator. Senator Phil Gramm was not in favor of T. John, and reportedly said "Over my dead body will T. John Ward become a U.S. District Judge." But T. John had Senator Kay Bailey Hutchinson in his corner, as well as former Senator Lloyd Bentsen and Kent Hance, who ultimately became Chancellor of the Texas Tech University System.

As a district judge, T. John had one of the heaviest intellectual property dockets in the country. He presided over hundreds of patent cases. His knowledge of the Northern District of California Rules for patent cases first came in the Hyundai case. T. John had grown tired of the numerous San Francisco lawyers talking about the patent rules from the Northern District of California. T. John recalls announcing to the group of his California co-counsel as they were preparing for a sanctions hearing, "We're trying this case in the Eastern District of Texas, and we've got problems, and some of them you created because you won't follow the Eastern District rules." T. John remembers that he used some strong language that his bird dog would understand. The first Markman hearing T. John conducted as a trial judge, he and his staff spent many hours preparing for the hearing, and early in the hearing, it became apparent that the time was not necessary because the parties had not bothered to confer prior to the hearing. As a result, he got out the Northern District of California patent rules to see if he and his staff could learn anything from them. He learned the Northern District of California patent rules made sense because they moved cases along. T. John and his staff shortened the preparation time from 36 months to 18 months and held the trial settings firm.

One of T. John's major cases as judge involved a redistricting by the Texas legislature which covered a six-year period. T. John refers to this as the "Redistricting Saga." Judge Carolyn King, the Chief Judge of the Fifth Circuit, appointed two three-judge panels, including T. John. The panels dealt not only with United States Congressional Districts but also Texas State House and Senatorial Districts. The decision of the first panel was summarily approved by the Supreme Court of the United States. The second panel's opinion made two trips to the Supreme Court, and in 1986, the United States Supreme Court in a 5-4 decision reversed and remanded as to one congressional district and affirmed as to the remaining 31 districts. T. John had dissented as to that one district.

MENTORS AND ROLE MODELS

As to judicial temperament, T. John wishes his ears didn't get red as quickly as they occasionally did. He recalls a situation in 1999, his first jury trial as a judge, where he saw defense lawyers for the railroad and a railroad representative signaling witnesses how to answer. The local lawyer for the railroad had no part in it. After the second time, T. John dismissed the jury thirty minutes early and recalls, "I came unglued. I unloaded on those guys. I was so hot. I had never seen anything like that in U.S. District Court."

In 2011, instead of taking senior status, T. John joined his son in private practice in Longview and presently serves as Of Counsel to Ward, Smith & Hill, PLLC. T. John "Johnny" Ward, Jr. was inducted into the ACTL in 2014.

HONORS

In 2004, T. John was honored by Baylor Law School as its Baylor Lawyer of the Year, an award given annually to an outstanding alumnus who has brought honor and distinction to Baylor Law School and the legal profession. In 2009, T. John was named the Trial Judge of the Year by the Texas Chapter of the American Board of Trial Advocates. The Inns of Court for East Texas was named the Honorable T. John Ward Inns of Court in 2006. In 2022, the Texas Bar Foundation recognized him with an Outstanding 50-Year Lawyer Award.

T. John was inducted into the College in August 1986. He has been very involved with the Trial Competition Committee and has judged many of the national competitions since 2004. Presently, T. John is serving on the Judicial Independence Committee.

T. John's number one mentor during his life was Judge Earl Sharp. Judge Sharp had served as a County Judge in Gregg County during the 1950's and the Texas tradition of "once a judge, always a judge" is how he is remembered. Judge Sharp was inducted into the College in 1962. T. John tried a lot of cases before 1978, but it was during a six-week medical malpractice trial in Federal Court in Tyler, Texas,



with Sharp as lead counsel, that he came of age. In the mid-1980s, T. John and Past President David Beck were adversaries in a large oil and gas case in East Texas which was ultimately resolved without a trial. Since that time, they have managed to always be on the same side. T. John describes David Beck as being a lawyer in a class all by himself.

T. John acknowledges that many of his adversaries served as mentors in that "you can learn a lot from a good whipping by some of the great trial lawyers I went up against." T. John readily acknowledges he couldn't have the career he has had without Cissy. He recalls the numerous jobs he had before they settled down and that she never complained. She was the one who raised the children, who T. John describes as his greatest legacy. In addition to their three children, Cissy and T. John enjoy seven grandchildren and one great-grandson.

T. John has no second thoughts regarding the choices he made as a lawyer and judge. He describes himself as very lucky and "he'd rather be lucky than good."

The legal profession is a noble profession, and the relationships that are developed with lawyers in and out of trial practice and members of the judiciary will remain the favorite part of T. John's career. T. John, despite all of his accomplishments, says the greatest honor he has received is being a Fellow in the American College of Trial Lawyers. It was through the College that T. John developed so many of his relationships with so many great lawyers, and T. John considers these relationships as his greatest professional achievement or experience.

Ron MacLean
Fargo, ND

HEROES AMONG US RICHARD ALLEN KNUDSEN AND TIMOTHY ROBERT MCCORMICK



It has become a regular Journal feature to tell the stories of the heroes among us, the stories of Fellows who wore the uniform, who fought and bled to keep us all safe. This is one of those stories. If you have one, please share it with us . . .



RICHARD ALLEN KNUDSEN, '70, passed away May 5, 2023 after ninety-eight years of life. Dick graduated from high school in 1943 and enrolled at the University of Nebraska but cut that short to serve in combat during World War II in the 69th Infantry Division. He returned to Nebraska to earn his BA in 1948 and his LLB in 1950. Dick married Sally Stebbins in 1949. He served as President of the Lincoln Bar Association, Chairman of the Nebraska State Bar and Nebraska Bar Association President. Dick was predeceased by Sally and a child but survived by two children.

You'll see this brief memorial to Dick in the In Memoriams at p. 61 below. Brief, because this is pretty much all we know. What a shame. We bet he had some stories to share.

Here's the thing. People who have served in and survived war almost without exception don't talk about it. Ask me about my military experience, and I'll talk your ear off. But that's because the most dangerous place I ever served was Louisiana. Ask someone who served, actually served, in Vietnam or Korea or Iraq or Afghanistan or World War II, and I suspect you'll get reticence – heroes, real heroes, don't talk about it.

But if you know someone you suspect has a story, *do* something. Preserve their story so it can inspire all of us. We wish someone had done that for Dick, for us. We are certain that Dick was in combat, that he had a story, but it would be nice to be sure we have the story right. It would be nice to have some detail.

We know that after basic training Dick Knudsen was assigned to the 10th Mountain Division and trained at Vail, Colorado. The 10th was initially formed to fight in the Alps and other mountainous areas of Europe, but Dick's unit was stationed in the Aleutian Islands as a defense to a possible Japanese invasion through Alaska; Dick described it as "defending a rock." Dick tried for a transfer to the Army Air Corps but instead was transferred to the 69th Infantry Division. He was in the third wave at Normandy. He operated a howitzer.



His family recalls that Dick fought in the Battle of Remagen in 1945, famous because the Allies captured the Ludendorff Bridge across the Rhine intact. He tore down a Nazi flag from the German headquarters in Remagen. His family still has the flag.

But while Dick's family has his story and the flag to prove it, the story has some question marks. Mostly, the history of the Battle of Remagen doesn't include Dick's unit, the 69th Infantry Division. The history books record that it was the 1st Army 9th Armored Division that took the bridge; the 69th isn't mentioned.

We do know that Dick's unit captured the fortress of Ehrenbreitstein on March 27. The Ludendorff Bridge was captured by the 9th on March 7, and the Battle of Remagen waged for the next two weeks or so as the Germans threw pretty much everything they had left at trying to destroy the bridge; they eventually did, but only after the Allies had used the bridge to get huge amounts of equipment and manpower across the Rhine, undoubtedly shortening the War. We surmise that Dick's unit got across using that bridge, so he probably was at the Battle of Remagen and was under fire when he crossed. The flag Dick took home may have been from Remagen or it may have been from Koblenz (where Ehrenbreitstein is located) or it may have been from somewhere else. Who cares? The important thing is that Dick captured the flag.

Since we don't know the details of what Dick did (we do know he had a foxhole buddy so we know he wasn't peeling potatoes back in the mess tent), let's talk about what his units did.

The 10th Mountain Division (Light Infantry) was formed in 1943 as a mountain warfare unit, the only one of its size in the U.S. military to receive specialized training for fighting in mountainous conditions. Dick would have been among the first trainees in the unit, activated on July 15 at Camp Hale, Colorado near Vail Mountain. After extensive winter and mountain warfare training, the division moved to Camp Swift, Texas, for additional combat training. Though Dick had transferred out by then, the Division later fought in the mountains of Italy in some of the roughest terrain in World War II. By January 1945, the division was executing combat operations in northern Italy. During these operations, the 10th seized German positions on Riva Ridge and Mount Belvedere, breaking through the German mountain defenses into the Po River Valley and reaching the northern end of Lake Garda by the war's end. On April 14, Pfc. John D. Magrath performed actions that would make him the division's first Soldier to earn the Medal of Honor. During nearly five months of intense ground combat in Italy, the division was opposed by 100,000 German troops, yet effectively destroyed five German divisions, unhinging the defense in Italy and drawing forces away from other theaters. The division sustained nearly 5,000 casualties during World War II, with 999 soldiers killed in action.



But Dick had transferred to the 69th Infantry Division, which was in a very different place.

The Fighting 69th was activated on May 15, 1943 and saw its first combat on February 11, 1945. Over a total of eighty-six days of combat the unit sustained 1,506 casualties.

The Division landed in Le Havre, France on January 24, 1945, and moved to Belgium to hold defensive positions in the Siegfried Line. The Division went over to the attack on February 27, capturing the high ridge east of Prether to facilitate use of the Hellenthal-Hollerath highway. In a rapid advance to the east, the 69th took Schmidheim and Dahlem. The Division resumed its forward movement to the west bank of the Rhine, crossing the river and capturing the fortress of Ehrenbreitstein on March 27. It captured Leipzig on April 19 after a fierce struggle within the city.



Eilenburg fell on April 23, and the east bank of the Mulde River was secured. Two days later, Division patrols in the area between the Elbe and the Mulde Rivers contacted Russian troops in the vicinity of Riesa and again at Torgau. Dick was there.

Thanks, Dick, for your service. ▶

And then, you'll find this brief memorial to Tim McCormick at p.62. Another War, another hero. And, sadly again brief, because we know so little.

TIMOTHY ROBERT MCCORMICK, '01, passed



away in Dallas, TX on April 16, 2023 at the age of seventy-five, survived by his wife of fifty-one years, Robin McCormick, three children and six grandchildren. Tim briefly attended the University of Texas in Austin before enlisting in the Army. He served as a helicopter pilot in Vietnam

in the 1st Cavalry Division. He was awarded the Distinguished Flying Cross, twice, the Bronze Star, twice, a Purple Heart, as well as several Air Medals and two Army Commendation Medals with Valor device. After his service, Tim completed his undergraduate studies at the University of Texas and Law School at SMU with honors. Tim generously shared his wisdom and knowledge whenever asked (and sometimes without being asked). He leaves a legacy of eternal optimism and a large collection of Life is Good t-shirts. He had a life best described in his own words as "not too shabby."

Thanks, Tim, for your service.

We know Tim was a hero, he has the medals to prove it. It's just that we don't know the stories that produced those medals; we only know he earned them. So let's talk a bit about what that takes.



There is only one way to get a Purple Heart. You have to bleed for your country. You must be wounded – or killed – as a result of enemy action while serving in the U.S. Military. The first woman to earn a Purple Heart was Lt. Annie G. Fox, the chief nurse at Hickam Airfield on December 7, 1941, who supervised the treatment of the wounded as the Pearl Harbor attacks raged around her and her six other nurses. But Lt. Fox's Purple Heart was later rescinded in 1943, after the Military clarified that the award required an actual wound as a result of enemy action. Her Purple Heart was replaced with a Bronze Star.

The first woman to earn – and keep – a Purple Heart was Cordelia "Betty" Cook. In 1943, working as a nurse in a field hospital on the Italian Front, Betty received multiple shrapnel wounds from German shelling. She bandaged herself up and continued to treat wounded soldiers, earning her both a Purple Heart and a Bronze Star.



So. Let's talk Bronze Star. Tim earned two. You don't have to do anything heroic to win a Purple Heart, you just have to bleed. If the enemy drops propaganda leaflets and one of them gives you an accidental paper cut, you probably qualify. But to get a Bronze Star, you really have to do something heroic or meritorious. Wish we knew what Tim did to earn his. But whatever he did, it was nothing compared to what he would have had to do to earn his two Distinguished Flying Crosses. That medal is awarded to those few who distinguish themselves by single acts of heroism or extraordinary achievement while participating in aerial flight. Both heroism and extraordinary achievement are entirely distinctive, involving operations that are not routine.

And then there were Tim's half dozen or so Air Medals and Army Commendation Medals with V devices – that is, valor.

Let's recap. To get a Purple Heart, you have to bleed. To get a Bronze Star you have to do something heroic. To get a Distinguished Flying Cross, something *really* heroic. These are not participation awards. You don't get them for merely showing up.

We have lost Dick and Tim, and that is a shame. But death is inevitable. The real shame is that we have lost their stories with them, and that was preventable. If you know someone with a story, get it. Get it now. ■

FELLOWS TO THE BENCH



PATRICK OUELLET was appointed to the Superior Court of Quebec for the district of Montreal on April 24, 2023. Prior to his appointment, Justice Ouellet was a partner at Woods LLP, where he worked for twenty-one years, specializing in multiple areas of civil and commercial litigation. Inducted into the College in 2018, Justice Ouellet served as Province Committee Vice Chair until his appointment and will be a member of the Sopinka Cup Committee beginning this fall.



DARREL J. PAPIILLION was nominated to the US District Court, Eastern District of Louisiana by President Joe Biden and confirmed in June 2023. Judge Papillion grew up in rural Louisiana and is a French-speaking Creole who hosted a radio show in French as a teen. He is a graduate of LSU Law Center and previously served as President of the Louisiana State Bar Association. Inducted into the College in 2020, Judge Papillion served as a member of the State Committee until his appointment to the bench.



MARYBETH AYRES became a Fellow of the College in 2021 and was a member of her State Committee until her appointment to the Montgomery County (Maryland) Circuit Court. Prior to her appointment, Judge Ayres was the Chief of the Major Crimes Division at the Montgomery County State's Attorney's Office and has tried over twenty murder cases. Judge Ayres received her J.D. from George Washington University Law School and has been a prosecutor since 1998. Judge Ayres is, apparently, the only one of our four new Judicial Fellows who does not speak fluent French.



ANNE M. TURLEY spent thirty years as a civil litigator and was Senior General Counsel at the Department of Justice Canada in Ottawa before her appointment to the Federal Court of Canada on May 8, 2023. Born and raised in Montreal, Justice Turley has been a director of The Advocates' Society as well as an active contributor and mentor in the Department of Justice and legal community. Justice Turley was inducted into the College in 2021 and a member of her Province Committee until her appointment to the bench.



FOUNDATION UPDATE

POVAT
PROJECT ONE VET @ A TIME

EACH YEAR THE ACTL FOUNDATION NOT ONLY FUNDS THE EMIL GUMPERT AWARD, INCREASED LAST YEAR TO \$150,000, BUT ALSO CONSIDERS THE GUMPERT RUNNERS-UP FOR POSSIBLE AWARDS. THIS YEAR ONE OF THOSE RUNNERS-UP WAS A VETERANS DISABILITY ADVOCACY GROUP, PROJECT ONE VET @ A TIME (POVAT).



POVAT's foundation story is the story of Command Chief Master Sergeant Will Markham, the highly decorated combat veteran who co-founded POVAT. Markham's job, as a Combat Controller, was to deploy – undetected – into hostile territory to conduct reconnaissance and to establish assault zones and airfields. Markham was the first Air Force member on the ground in Afghanistan after 9/11 and was awarded a Silver Star for gallantry in action.

Upon Markham's retirement in 2016 after thirty-one years in the Air Force, the Veterans' Administration (VA) initially determined that he was 100% disabled as a result of the severe physical injuries and psychological damage that he had sustained. Nonetheless, the

POVAT Summary Table

Case	DOB	Life Expectancy	Married	Additional Dependents	Pre-POVAT Disability %	Post-POVAT Disability %	Increased Lifetime Benefit in US Dollars
BW	06/26/68	80.48	NO	NO	0	90	569,186
JS	03/07/69	80.36	YES	NO	0	90	609,627
BT	12/08/67	80.60	YES	YES	90	100	366,006
WM	06/09/68	80.49	YES	NO	30	100	875,960
AC	09/17/70	n/a	n/a	n/a	80	80	--
JR	10/09/78	79.07	YES	YES	0	60	456,673
SL	09/16/72	79.80	YES	YES	50	100	720,448
CW	04/05/66	80.90	YES	YES	90	100	328,440
AVERAGE INCREASED BENEFIT							491,918

VA downgraded his disability rating eighteen months later from 100% to 30% as the result of a “reassessment” that lasted a total of seven minutes conducted by a nurse. That downgrade meant that Markham was no longer eligible for VA medical benefits. Moreover, the VA then used the downgrade to claw back \$10,000 from Markham for purported “overpayments.”

At that time, Markham knew very little about the VA disability or appeal process. To obtain some expert assistance, Markham contracted Jeffrey O’Hara, a well-known Newark, N.J. trial lawyer and a Fellow of the College. O’Hara, in turn, brought in Dr. Mark McLaughlin, a renowned neurosurgeon. That began a multi-year process during which Markham, O’Hara and McLaughlin worked together to have Markham’s original 100% disability rating reinstated. Finally, in November 2019, the VA reinstated Markham’s original 100% disability rating and made that rating permanent.

That experience led Markham, O’Hara and McLaughlin to co-found POVAT to assist other disabled veterans in obtaining the benefits that they are rightfully

due. During its first three years of existence, POVAT has assisted 100 veterans in seventeen different states and Japan. The vast majority of claims that POVAT is handling are still stuck in the VA disability adjudication process, but POVAT’s record of success on resolved claims is impressive. The results POVAT obtained for the first eight veterans it helped are summarized above.

With the \$100,000 grant awarded by the Foundation, POVAT hopes to assist approximately twenty additional veterans. The Center for Forensic Economics has estimated that, with POVAT’s assistance, those disabled veterans should be able to obtain total additional lifetime economic benefits of approximately \$9.8 million. That’s a return on the Foundation’s grant that even Wall Street investors would envy.


Our thanks to the many Fellows who contribute to the Foundation because, for these disabled American veterans and many others, justice can’t wait . . .

David Hensler
ACTL Foundation President



Original hermit and horse design created by Former Regent John S. Siffert




"We know that your attainment of the front ranks of the bar has not been without its costs; and we recognize that our specialty exacts much of those who win its favor. Truly, we are, in Lord Eldon's words, the hermit and the horse."
— from the College Induction Charge

CELEBRATE YOUR FELLOWSHIP IN THE AMERICAN COLLEGE OF TRIAL LAWYERS

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Prices include shipping and handling.

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___ Blue Neck Tie	\$150 x ___ = \$ _____
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___ Scarf	\$250 x ___ = \$ _____
	Total \$ _____

With each purchase, the following contribution is made to the Foundation:
Bow Tie: \$25 Neck Tie: \$50 Scarf: \$25

IN MEMORIAM

Since our last Issue, we have learned of the passing of thirty Fellows.



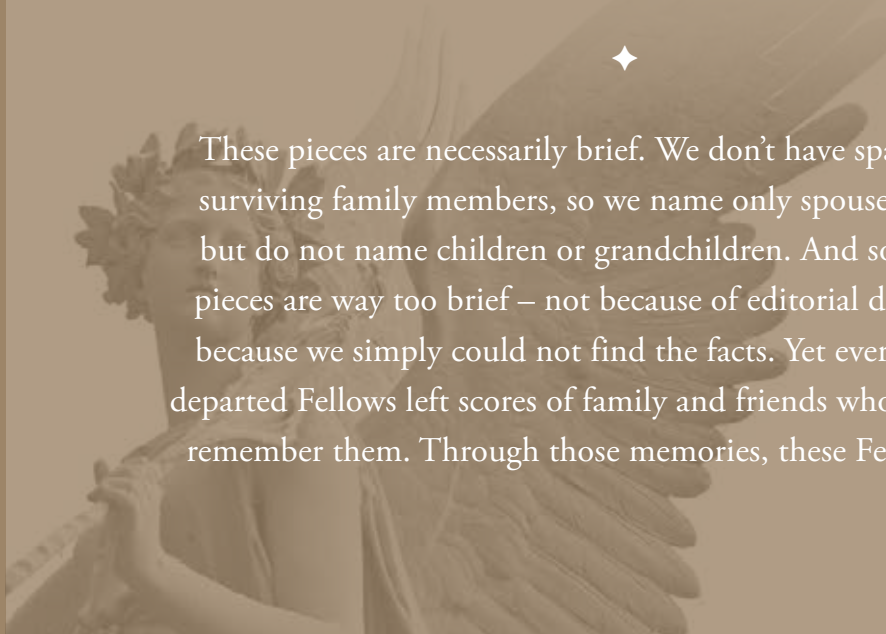
Our thirty departed Fellows ranged in age from sixty-nine – way too young – to ninety-seven – three were ninety-seven – and that’s still a bit too soon. Ten of these departed Fellows were veterans, three of them having served in World War II. Two were judges. Four were college athletes. They will all be missed.



We can only honor those we know have passed, when we know. We do not charge retired Fellows dues, so we don’t think much about not hearing from them. So if you learn of the passing of a Fellow, please be sure that the National Office Staff is informed.



These pieces are necessarily brief. We don’t have space to list all surviving family members, so we name only spouses; we count, but do not name children or grandchildren. And some of these pieces are way too brief – not because of editorial discretion but because we simply could not find the facts. Yet every one of our departed Fellows left scores of family and friends who will miss and remember them. Through those memories, these Fellows live on.



Elijah Dale Adkins, '95, passed away at the age of seventy-six on June 1, 2023, after a brief illness. Dale came from a family of lawyers and judges in the heart of Maryland's Eastern Shore. Dale graduated from Haverford College in 1968, where he was on the varsity swim team. Dale enlisted in the United States Army in 1969 and served as a counterintelligence officer in Korea. After completing his military service, Dale returned to Baltimore and earned his J.D. with Honors from the University of Maryland School of Law in 1974. Dale had a forty-five-year career representing both plaintiffs and defendants in complex lawsuits involving medical malpractice and serious injuries. Dale was an avid golfer; he enjoyed spending time at his home in Puerto Vallarta, Mexico. He loved the Orioles, Colts and Ravens and frequently regaled his children with tales of the Orioles' and Colts' prowess in the 1960's and 70's. Dale is survived by his wife of thirty-one years, Marlene Adkins, two children and a grandson.

Robert Flowers Baker, '81, passed away on . . . well, we aren't sure. Bob, if you're still among us, we hope you enjoyed reading the funeral service in *Tom Sawyer* and can take a joke; if not, we are sorry to hear about your passing. The National Office was told you had passed, but we can't find an obit and we can't confirm. A past North Carolina State Chair and North Carolina Bar President, someone must know or knew Bob, and we'd love to hear from you. We know that Bob graduated from Davidson College in 1958 and Duke law in 1961; he retired in 2002 and continued to act as a mediator and arbitrator after having retired from the practice of law in 2002. He would eighty-seven now (or at his death).

Thomas Ivo Carlton Jr., '88, passed away on April 22, 2023 at the age of eighty-four, survived by his wife Kathleen (Rowan) Carlton, six children and step-children, and eleven grandchildren and step-grandchildren. Tom attended Vanderbilt University and The Nashville School of Law, from which he graduated in 1965 and where he later instructed moot court. Tom was a Senior Metropolitan Attorney for the Metropolitan Government of Nashville from 1965-1970 before joining the firm where he practiced until retiring in 2022.

The Honourable David Ritchie Chipman, K.C., '76,



passed on April 23, 2023 just a week

shy of his ninety-third birthday.

David attended Dalhousie University, graduating in 1951 and going on for an LLB in 1953. In

law school, David was awarded the

Smith Shield for proficiency in moot

court and the University Medal in Law for the highest standing in his class. David married Carolyn Christie a few days after he was called to the bar in 1953. David specialized in civil litigation and appeared regularly before Nova Scotia courts and tribunals and on numerous occasions before the Supreme Court of Canada. He was appointed a Queen's Counsel in 1968. He practiced law until his appointment to the Appeal Division of the Supreme Court of Nova Scotia (later Nova Scotia Court of Appeal), becoming the fifth generation of Ritchie family judges. He sat on the Court for nearly eighteen years until his mandatory retirement at the age of seventy-five. He served on the Executive Committee of the Canadian Judges Conference and chaired the Independence of the Judiciary Committee for several years. Over the years, David was active in the community, serving as a member of the Board of Directors of the IWK Hospital, Chairman of the Halifax School Board, a member of the Halifax Infirmary and Chairman of the Committee of Consultation and Advice of the Cathedral Church of All Saints. He was a founding member of the Hubbards Yacht Club, a member of Ashburn Golf Club, The Halifax Club, Halifax Curling Club and Royal Nova Scotia Yacht Squadron. He had an inexhaustible supply of stories and trivia he would share at the drop of a hat, over a drink or otherwise. He was formerly a Chevalier of the Confrerie de Chevaliers du Tastevin. In their retirement years, David and Carolyn travelled extensively, mostly by ship, to many places, including the Caribbean, South America, South Africa, the Far East, the Middle East, Europe, the Black Sea, the Baltic, Bermuda and the United States. David took up duplicate bridge after retirement, became a Life Master at age eighty and ultimately reached the rank of Silver Life Master. David is survived by Carolyn, three sons (one of whom is a judge, the sixth generation of his family to serve) and five grandchildren.

John Francis Corrigan, '76, died on April 18, 2023, at the age of ninety-one. Raised in New York City, Charleston and Jacksonville, John's early memories included riding horseback down Fifth Avenue, leading a string of horses back to his father's livery stable after the big parades.



After his retirement, John wrote three books: a family history, a trial lawyer memoir, and an account of the early Fellows of the College in Florida. His sense of humor is captured near the beginning of his law memoir: "I tried my first solo jury case about two years after I started practicing, and lost, causing my client to suffer a \$700 adverse verdict. The last case I tried about forty years later I managed to have my client suffer a \$7,000,000 adverse verdict. Nevertheless, the cases kept coming and I kept trying them. There were some victories in between the first and last cases." Indeed, there were. Shortly after starting his own firm, John obtained what was at the time the largest jury verdict in Florida history. The trial lasted five months. John recalled that "The first time I remember seeing the children from February until June was when the older ones came to court to hear the final arguments." John was a fierce advocate (and an even fiercer Notre Dame fan). John met Patricia O'Malley when they were both home from college. They married in 1955 and raised their family in Jacksonville, where all their children still reside. After Patricia died in 2008, John met and married another Patricia, Patricia Lanahan Demeranville. In addition to Patricia, John is survived by his five children, including the Hon. Timothy J. Corrigan, Chief Judge of the Middle District of Florida, seven grandchildren, and his great-grandson.

Ward DeWitt, Jr., '81, passed away on April 25, 2023, at the age of ninety-seven, predeceased by a child but survived by his wife of seventy years, Barbara Millikan DeWitt, four children and nine grandchildren. Ward graduated from Duncan Preparatory School in 1943 and entered the Navy's V-12 program for officer training at Tulane University. He was training on an LCT ship, preparing for the invasion of Japan, when Japan surrendered in August 1945. So he didn't see combat, but he did see nuclear mushroom clouds. Still in the Navy in July 1946, he witnessed test explosions of two atomic bombs at Bikini Island in the Pacific, as part of a mission to record the effects of atomic bombs on ships.



After leaving the Navy, Ward returned to Nashville, graduating from Vanderbilt University in 1948, and Vanderbilt Law School in 1951. Ward served a term in the Tennessee House of Representatives from 1955-56. Ward had a passion for Tennessee history. He could recite from memory many classic poems. In 1965, Barbara and he along with four other families bought a farm in Perry County on the Buffalo River, where they fished, canoed and hung out.

Carl Crockett Gillespie, Jr., '81, died May 3, 2023 at the age of ninety. Carl was a graduate of Lynchburg College and University of Richmond's T.C. Williams Law School. After graduation, he joined his father's law practice in Tazewell, Virginia, where he remained until his retirement in 1995. Carl is survived by his wife of forty-seven years, Linda Matthews Gillespie. ▶

Gerald S. Gold, '75, passed away after a brief illness on April 3, 2023 at the age of ninety-two. Jerry graduated second in his class from Western Reserve University School of Law in 1954, where he was Editor-in-Chief of the Law Review and Order of the Coif. While attending law school, Jerry served in the U.S. Naval Air Reserves flying with a blimp squadron.



Jerry was the first Assistant State Public Defender and then helped establish the Cuyahoga County Public Defender's Office, where he served as Chief from 1960-1965. In 1970 he formed his own private firm, specializing in criminal defense work. Many lawyers and judges in Cleveland began their careers as clerks or associates for the firm. Before he retired in 2013, Jerry served as President of the Cleveland Bar Association and the National Association of Criminal Defense Attorneys. Jerry lectured at both Case Western Reserve University and Cleveland State University law schools and was a strong advocate of pro bono work and legal aid for indigents. Jerry leaves behind his wife, retired Judge Rosemary Grdina Gold, his daughter and four grandchildren.

John B. Grier, '83, passed away May 20, 2023 at his home in Marshalltown, Iowa, at the age of eighty-four. Jack grew up in Ottumwa and attended the University of Iowa where he was a student manager of the football team, which earned him a free season football ticket for the next sixty-three years. Jack practiced several years as an Assistant U.S. Attorney and decades in private practice in Des Moines. When not at Kinnick Stadium or in the courtroom, Jack's favorite place to be was the golf course. Jack is survived by his wife, Donnis, three children and six grandchildren.

Alexis Merrill Hawkins, '75, passed away peacefully at his residence in Dallas, Texas on April 21, 2023 at the age of ninety-seven. Lex was born in Red Oak, Iowa, on December 17, 1925. Lex served as a Navy Corpsman and was with the second wave of Marines who went ashore during the Battle of Okinawa.



After World War II, Lex returned to Des Moines and attended Drake University. An accomplished drummer, he paid for law school working gigs with various bands in the Des Moines area. In 1948, Lex married Rosemary Kathryn Carney, a schoolteacher and the family's primary bread winner during law school and after graduation. They were married for more than seventy years; Mitzie passed away in 2019. In the early 1960s, Lex and Mitzie were on the first plane that was hijacked to Cuba. Lex used his skills as a negotiator to help reduce tensions and to allow the plane and passengers to return to the United States. There might also have been some sharing of rum among and between Lex and the hijackers. Lex was a Renaissance Man. He was a pilot and owned two different airplanes that he flew to all ninety-nine counties in Iowa during various political campaigns. He collected classic and antique cars, including two Rolls Royces which won national championship awards. He took ski lessons from Olympic ski champions Phil and Steve Mahre and became a slalom ski racer, winning ten gold and twenty-one silver medals in Colorado Nastar races. Lex was an art collector, with a portfolio that included mosaics he acquired from the Vatican and a trophy-sized Polar Bear which he shot in Alaska. Lex attended the Porsche Driving School in Birmingham Alabama, where he set the track record for his age group at age eighty-nine; he continued auto racing until age ninety-two. He studied meditation under the tutelage of Deepak Chopra. As chair of the Iowa Democratic Party, Lex helped Lyndon Johnson carry the state of Iowa in a landslide in 1964. Lex is survived by his son and granddaughter.

Mark Lawrence Horwitz, '96, was seventy-five at his death on May 19, 2023. Mark studied economics at the University of Florida and law at the University of Florida College of Law, where he was on law review and Order of the Coif. Mark graduated with his Juris Doctorate in 1972 and served as an officer in the United States Army Active and Reserve for eight years. In 1973, Mark became an Assistant United States Attorney for the Middle District of Florida and spent eight years handling both criminal and civil matters. He spent the rest of his career as a defense attorney. Mark had two children with his first wife, Mary Horwitz, who were both graduates of the University of Florida. In 1996, the year he was inducted as a Fellow, Mark married his second wife, Susan, so we're guessing the Induction Ceremony was not his most important event of that year. Mark and Susan loved to travel all over the world, from Europe to Dubai, but their favorite place to be was in the mountains of Aspen, Colorado. Mark and Susan enjoyed spending time together with friends, family and their beloved dog, Max. They loved hiking, skiing, riding their Harley Davidsons to delicious breakfast spots, attending University of Florida football games, and were constantly on the hunt for good food. Mark is survived by Susan, his two children and two grandchildren.

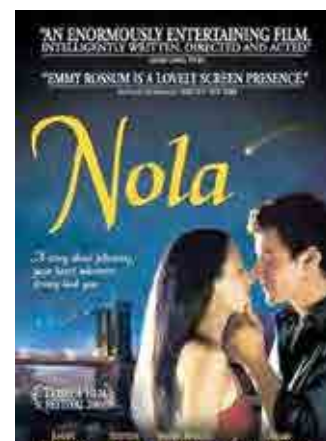
Alan Jay Hruska, '76, was a trial lawyer. But he was also a novelist, a writer, a director and producer of plays and films; he helped establish the independent



publishing house Soho Press. He passed on March 29, 2022 at the age of eighty-eight. Alan graduated from Yale University and Yale Law School and practiced law from

1958 until he retired from practice in 2001 to pursue his other careers, but he had moonlighted in those other vocations all along. He published his first novel in 1985. The next year, with his wife, Laura Chapman Hruska

(one of three women in his law school class), he founded Soho Press, which made its reputation by welcoming unsolicited manuscripts from little-known writers. Alan often said that both lawyering and literature, done successfully, are about storytelling. "I was a trial lawyer, and, while I would expect my actors to remember their lines better than my witnesses did, there is less disparity between the two professions than might be thought. . . . A trial and a play are both productions." Alan borrowed from his litigation experiences for a number of his novels, including *Wrong Man Running* (2011); *Pardon the Ravens* (2015); *It Happened at Two in the Morning* (2017); and *The Inglorious Arts* (2019). Alan wrote and directed the film *Nola*, a romantic comedy which opened at the Tribeca Film Festival in 2003. Other films include *The Warrior Class*, and *The Man on Her Mind*. Alan made his theatrical debut directing an Off-Broadway revival of "Waiting for Godot" in 2005. Laura died in 2010. Alan remarried in 2013 to Julie Iovine, a former reporter for The New York Times and The Wall Street Journal. In addition to Julie, Alan is survived by three children and six grandchildren.



David Thomas Knight, '05, passed away on June 4, 2023 at the age of seventy-five, survived by his wife of fifty-four years, Carla, his four children and two grandchildren. Dave and Carla met when they were captains of the tennis teams at Plant High School. Dave was a graduate of the University of Florida College of Law and a devoted Gator football fan. Dave served as Florida Chair for the College and as Chair of Bay Area Legal Services. When he was not working, David appreciated great food and loved traveling with his children. He spent Saturday mornings walking through the neighborhoods of South Tampa, soaking up the history of his lifelong community. In recent years, he was inseparable from his pig, Arnold.

Philip E. Kaplan, '04, age eighty-five, passed away peacefully on June 23, 2023. Phil graduated from Harvard College in 1959 and the University of Michigan Law School in 1962. Originally licensed to practice law in Massachusetts, he and his family moved to St. Louis for a brief period as a field attorney for the National Labor Relations Bureau. Following his calling as a civil



rights attorney and social activist, the family moved to Little Rock in 1967 where he founded the State's first integrated law firm. Phil successfully tried several landmark lawsuits, the most notable on behalf of the inmate population of the Arkansas prison system in a challenge to a law requiring equal treatment for creationism any time evolution was taught in the classroom. A proud and committed Arkansas and Little Rock resident for over fifty-five years, Phil served on many civic, religious and philanthropic boards, which included The Jewish Federation, Temple B'nai Israel, Arkansas Symphony Orchestra, Arkansas PBS, KUAR Public Radio and as the Chairperson of the Arkansas Martin Luther King Commission. Phil is survived by Ruthe, his wife of sixty-two years, two children and three grandchildren.

Richard Allen Knudsen, '70, passed away May 5, 2023



after ninety-eight years of life. Dick graduated from high school in 1943 and enrolled at the University of Nebraska but cut that short to serve in combat during World War II in the 69th Infantry Division.

He returned to Nebraska to earn his BA in 1948 and his LLB in 1950. Dick married Sally Stebbins in 1949. Dick served as President of the Lincoln Bar Association, Chairman of the Nebraska State Bar and Nebraska Bar Association President. Dick was predeceased by Sally and a child but survived by two children.

Judge Michael William Krumholtz, Sr., '07, graduated from Denison University in 1976 and earned his J.D. from the University of Cincinnati College of Law in 1979. He joined the Montgomery Ohio County Prosecutor's Office (1979-1981), before private practice, followed by serving as a judge on the Montgomery County Common Pleas Court from 2013 to 2022. Mike passed on April 20, 2023 at the age of sixty-nine, survived by his wife Janis, three children and two grandchildren. Mike was a dedicated sports fan, notably of teams all outside of Ohio (except for the Dayton Flyers). He was an avid collector of eclectic objects and a consummate storyteller.

George O. Lawson Jr., '18, passed away on May 28, 2023 at the age of seventy-eight. George was born in New Jersey but his family returned shortly after to Cordele, Georgia where George grew up. George attended Morehouse College where he majored in biology. In 1965, George was drafted into the United States Army. After basic training and before reporting to duty at Fort Meade in Maryland, George married his college sweetheart Jacquelyn Brown. Upon his discharge in 1967, George and Jackie returned to Atlanta where he began work in a hospital medical lab. He progressed through a number of leadership roles, eventually being named Assistant Administrator of the hospital. During that time, he enrolled in Atlanta Law School at night on the GI Bill. George passed the State of Georgia Bar exam in 1976 and began practicing law the following year. Among the many distinctions in his legal career, George successfully defended a client against 224 felony charges — the largest indictment in the history of the State of Georgia. He was a lead defense attorney in the Atlanta Public School standardized testing case. George's love for the game of golf began when he was working at Holy Family Hospital; he would arrange his work schedule so that he could play golf with the doctors. He became a scratch golfer and won a new Cadillac by hitting a hole-in-one during a golf tournament in 2012. Our Treasurer, Rick Deane, had cases against George when Rick was in the U.S. Attorney's Office. Rick recalls George as thorough, professional, formidable in court, and yet one of the nicest people he has ever known. Judges and opponents could absolutely rely on his word. George is survived by Jackie, their daughter and granddaughter.

Michael D. Loprete, '92, was ninety at his death on



May 5, 2023. Michael grew up in South Orange. He graduated from Princeton University in 1954 where he was the point guard on the Varsity Basketball team. From 1954-1956, he served in the U.S.

Army, stationed primarily in West Germany with the Second Armored Division, an experience that influenced his lifelong passion for travel, languages, history, and literature. In 1959, Michael graduated from Columbia Law School and was a recipient of a Fulbright Scholarship. From 1977 to 1981, Michael was in the Legal Department of AT&T and played a lead role in the government divestiture lawsuit against the Bell System. Michael was an avid reader who would typically ask his children not what they were up to but rather what they were currently reading. He enjoyed studying languages, reading great works of literature (even auditing a Dante class at Princeton in his later years), drinking wine and beer with his family and friends, running, playing tennis, scuba diving, lifting weights, and taking yoga and Pilates well into his eighties. He was active as an event organizer and coach in the Special Olympics and served as a governmental advocate for the Juvenile Diabetes Research Foundation. Michael leaves behind his wife Nancy with whom he shared sixty-two years of marriage, his three sons and his five grandchildren.

Edward D. McCarthy, '90, died unexpectedly, age eighty-four, in Dusseldorf, Germany while on vacation with his wife and son. Ed attended Boston University for undergrad and law school. He served first as Assistant and then as City Solicitor of Cambridge for twelve years while he was forming and growing his insurance defense practice. Ed is survived by his wife, Christel, and his son.

Timothy Robert McCormick, '01, passed away in Dallas, Texas on April 16, 2023 at the age of seventy-five, survived by his wife of fifty-one years, Robin McCormick, three children and six grandchildren. Tim briefly attended the University of Texas in Austin before enlisting in the Army. He served as a helicopter pilot in Vietnam in the 1st Cavalry Division. He was awarded the Distinguished Flying Cross, twice, the Bronze Star, twice, a Purple Heart, as well as several Air Medals and two Army Commendation Medals with Valor device.



Troops of the 1st Cavalry Division engage North Vietnamese soldiers in the Ia Drang Valley as a UH-1 Huey takes off from Landing Zone X-Ray, November 14, 1965. (U.S. Army)

After his service, Tim completed his undergraduate studies at the University of Texas and Law School at SMU with honors. Tim generously shared his wisdom and knowledge whenever asked (and sometimes without being asked). He leaves a legacy of eternal optimism and a large collection of Life is Good t-shirts. He had a life best described in his own words as “not too shabby.”

George Bew McGugin, '84, passed away April 16, 2023 at eighty-two years of age. George played football at Vanderbilt. Of course he did. His grandfather, Daniel Earle McGugin was head coach from 1904 to 1917 and again from 1919 to 1934, compiling a record of 197–55–19 and becoming the winningest head coach in the history of the university. George was named to the All-SEC Sophomore First Team. Following graduation in 1962, George entered Vanderbilt law school, finishing in 1965. Before starting his law practice – at the firm his grandfather had started when he wasn't busy with football – George joined the National Guard and served in ▶

Germany. In 1976, George married Anne Applegarth. George had the family gift for coaching and mentoring.



George spent the early 1960s assisting his high school alma mater's football team. He returned in the late 1990s, making a positive and lasting impact on hundreds of players; he considered that his ultimate job was to provide intangibles that did not show up in the box score. George was a master storyteller who personified "never let a few facts stand in the way of a good story." George is survived by Anne, three children and ten grandchildren.

John L. Nesbitt Q.C., '86, was eighty-five when he died on August 18th, 2022, predeceased by a daughter and survived by his wife of sixty-seven years, Wendy, five children, twelve grandchildren and eleven great-grandchildren. John attended Ashbury College and Carleton University and studied law at Osgoode Hall. He was called to the bar in 1955 and was a lecturer for the Faculty of Law at the University of Ottawa until 1975. John loved road trips. He was happiest studying a map, planning camping trips with his family. An avid skier, camper and golfer, John taught all of his children to ski and introduced them to the beauty

of nature and camping while traveling across the country in the family station wagon. John enjoyed many holidays in New England, Nassau, England, Ireland, Scotland and Mexico. Most recently, John and Wendy called Victoria, B.C. their home away from home.

J. Vincent O'Donnell K.C., Ad.E., '75, died June 6, 2023 at the age of ninety-two. Vince was the first in his family to pursue higher education. He won a merit scholarship to Loyola College, unlocking the opportunity to study at McGill University and become the star of the football team; he graduated with a Bachelor of Civil Law in 1955. During a year abroad in Europe as a starving graduate student, he was the poorest he'd ever been but it was the richest he ever felt. Springtime in Paris inspired him to marry his McGill sweetheart Liliane. They were together for fifty years until her death. Together they raised five kids and one Irish wolfhound in their historic stone house at Prévile-en-Bas.



Vince balanced his passion for the law with devotion to his family. Coaching kid's sports teams or mentoring young legal minds, he fostered fair play and brilliant strategy. Vince is survived by his wife Beverley, four children, six grandchildren and two great-grandchildren.

William Henry Pugh, IV, '89, was eighty-six when he passed on May 23, 2023. Bill was a 1958 graduate of Villanova University and a 1961 graduate of Villanova

Law School. An avid and cynical Philadelphia sports fan, Bill watched the Eagles win the 1948 NFL Championship in a blizzard with his father, and again at Franklin Field in 1960. He held Phillies season tickets for most of the 1970s and yelled at them on the TV, right up until the end. Bill ran the Philadelphia and Boston marathons in the early 70's before most people even knew what running a marathon meant. He founded the Tortuga Golden Striders (described in his formal obit as "world-renowned" but it must be a small world; a google-search turns up next to nothing), coining the phrase "Start slowly, then ease off." Not satisfied with running, Bill also became a triathlete and a prominent open water swimmer in the 1980s, competing in many endurance events, including the USA Triathlon Age Group National Championships. Bill competed in the Ocean City Masters Swim more than thirty-five times. He last completed the Masters Swim in 2021 at the age of eighty-four, at which time he dominated his age group. Bill is a former President of the Montgomery Bar Association ("short speeches, long drinks") and a member of the Ocean City Beach Patrol Hall of Fame. A lifelong Beatles fan, Bill and his wife Nancy were in the audience at the Ed Sullivan Show when the Beatles made their first American appearance in 1964.



When Bill turned sixty, he thought it was a good idea to sail across the Atlantic Ocean in a thirty-seven-foot sloop. Upon reaching his destination after thirty-five days at sea, Bill disembarked, and never set foot on a boat again. Bill is survived by his wife of sixty-two years, Nancy O'Connell Pugh, his five children, eleven grandchildren and three great grandchildren.

Richard E. Shadley, K.C., Ad.E, '94, died April 12, 2023 at age eighty-five. Admitted to the Barreau du Québec in 1964, he practiced as a Crown Prosecutor for two years before founding his own firm in 1967 where he pleaded before all levels of court, including the Supreme Court of Canada. Richard taught criminal law at McGill University's Faculty of Law for ten years. He was a member of the faculty at the annual Federation of Law Societies of Canada's Criminal Law Program for twenty years, for which he was awarded the title of Honorary Life Member of the Faculty. Richard was appointed Queen's Counsel in 1992 and Advocatus Emeritus by the Barreau du Québec in 2008. Richard participated in numerous commissions of inquiry, including the McDonald Commission into certain activities of the RCMP (1979), the Keable Commission regarding police conduct after the October 1970 Crisis (1981-1983), the Commission of Inquiry on the administration of the Rivière-des-Prairies Hospital (1984-1985) and the Doyon Commission on the purchase of private power stations by Hydro-Québec (1995-1996). Richard is survived by his special friend Shirley Braverman, four children and two grandchildren.

Roger William Smith, Sr., '94, passed February 28, 2023 at the age of eighty-one. Roger was an avid collector of stones and debris from space as meteorites. He was also a collector of artifacts left by early peoples of his region. Roger hiked the Appalachian Trail from Springer Mountain, Georgia to the Shenandoah Valley with a hiking group known as the Will Turner Hiking Club. At times, he had to join the group a day late because of work related delays, so he would walk into the wilderness alone in the dark of night. Roger's parents were mill workers; the family lived in a mill house with no indoor plumbing or running water, and no phones. In eighth grade Roger met and fell in love with Bonnie Lowder. They remained together until Bonnie's death in 2020. Roger attended the University of North Carolina at Chapel Hill where he was on ▶

the football team and selected in his senior year to be team captain when the team ended its season in the Gator Bowl with a win over the Air Force Academy.



Roger attended law school, supported by his job delivering the Daily Tar Heel and Bonnie's as a teacher. Roger was a passionate criminal defense lawyer. In one death penalty case, Roger came up with a new argument the night before his client was scheduled to die. Roger called the chief justice of the North Carolina Supreme Court and persuaded him to convene the Court at 2:00 in the morning. The Court agreed with the argument, called the prison, and . . . the execution was postponed. Roger is survived by his two children and (forgive us if we got the count off, but this is a complicated family tree after the first generation) thirteen grandchildren and thirteen great-grandchildren.

Marcus S. Topel, '96, died on March 13, 2022 at the age of seventy-seven, but that's pretty much all we know, since we can't find an obit and haven't located a family member or friend. If you knew him, tell us about him. He might have been the co-owner and wine-maker at Topel Winery in Mendocino County; their website says that Mark Topel is a San Francisco defense attorney in his part time when he isn't making wine. His application, when he was inducted, informs us that he graduated from the University of Cincinnati in 1967 and attended Boalt Hall for law school from 1970-1972. That gap, and the times, strongly suggests that he was in service, maybe in Vietnam. But we're guessing. We're guessing he was an interesting guy, and we'd like to know. So if you knew him, drop us a line.

Robert Lawrence Ward, '80, died May 7, 2023 ten days shy of his eighty-seventh birthday. Larry attended Donnelly College, and the University of Missouri – Kansas City School of Law. In 1960, Larry married Catherine Joan Gannon Ward (Joan) and began practicing law. Larry cherished visiting his kids and grandkids coast to coast. He adored history, read libraries full of books, played golf around the world, and traveled to Ireland multiple times. In his youth, Larry worked as a street sweeper and was also a switchman for the Rock Island Railroad. Larry never forgot his humble roots and generously dedicated his life and resources to supporting the people, families, and communities of which he was a part. Larry was preceded in death by his eldest son and survived by Joan, four children and eleven grandchildren.

Walter Stanley Weiss, '80, was born in Newark and attended Rutgers University and Rutgers University Law School; but he spent his adult life in Los Angeles. He was ninety-four at his death on April 12, 2023. Walter was proud of his service in the USAF JAG Corps, the IRS, and the U.S. Attorney's Office, and his career in several Los Angeles area law firms. Walter is survived by his second wife Misty, his two sons and four grandchildren. Walter attended high school in Newark with Philip Roth's older brother Sandy; he proudly pointed out the landscape of his childhood scattered throughout Roth's works.

George Weisz, '86, was ninety at his death on March 29, 2023. George met Joan Beth Gross in high school; they married in 1952 shortly after George graduated from Harvard College *magna cum laude*. He went on to Harvard Law School, served as an editor of the Harvard Law Review, and graduated *magna cum laude* in 1955. After a highly successful, nearly fifty-year career, he reluctantly retired in 2002 at the age of seventy. George was predeceased by Joan Beth and survived by his three children, six grandchildren and three great-grandchildren. ■

UPCOMING EVENTS



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

NATIONAL MEETINGS



2023 ANNUAL MEETING
MARRIOTT MARQUIS
SAN DIEGO
CALIFORNIA
SEPTEMBER 21-24



2024 SPRING MEETING
ARIZONA BILTMORE
PHOENIX
ARIZONA
FEBRUARY 29 – MARCH 3

STATE/PROVINCE MEETINGS

- OCTOBER 20, 2023 **INDIANA FELLOWS MEETING, INDIANAPOLIS, IN**
- OCTOBER 26, 2023 **WASHINGTON ANNUAL DINNER, SEATTLE, WA**
- OCTOBER 27, 2023 **NEBRASKA ANNUAL DINNER, LINCOLN, NE**
- NOVEMBER 2, 2023 **ALABAMA FELLOWS DINNER, BIRMINGHAM, AL**
- NOVEMBER 3, 2023 **MONTANA FELLOWS MEETING, MISSOULA, MT**
- NOVEMBER 18, 2023 **ARIZONA FELLOWS MEETING, TUCSON, AZ**

REGIONAL MEETINGS

JANUARY 24-27, 2024
TRI-STATE REGIONAL MEETING
SEA ISLAND, GA

SPECIAL EVENTS

OCTOBER 26-29, 2023
DIVERSITY TRIAL ADVOCACY PROGRAM
CHICAGO, IL

JOURNAL

American College of Trial Lawyers
1300 Dove Street, Suite 150
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Statement of Purpose

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

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

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