



## News & Notes

*Collegiality Newsletter of the  
American College of  
Construction Lawyers*

*Issue #43 July 18, 2018*

### **PRESIDENT'S UPDATE**

I hope you are all enjoying a pleasant summer, a time of year when our children are mostly relieved from homework, and litigation progress must often yield to the higher demands of vacation schedules. It's also a season when many of our Fellows get support from temporary summer clerks, and I hope that some of you are making use of this resource to research papers for the ACCL Journal.

We can also look ahead to the first international conference of the Society of Construction Law of North America, to be held in Chicago on 26-28 September 2018. It will be the 8th international SCL conference, and it continues the tradition in which a half day of the program will be devoted to speakers from the American and Canadian Colleges. It's a great selection of topics and an excellent opportunity to interact with leaders in

international construction law and arbitration. You can register at:

<https://www.eventbrite.com/e/8th-international-society-of-construction-law-conference-registration-46305478934?ref=ebtnebregn>

Summer is also the season when our ACCL Board identifies individuals to join us as new Fellows in 2019. More than a dozen names have been put forward, and Fellows are asked to cooperate fully with representatives of our Membership Committee (chaired by David Lane), who will be collecting background information for the Board.

Meanwhile, plans are coming together for our next annual meeting in St. Petersburg, Florida on February 21-24, 2019. In addition to constructing another strong program of speakers, we are considering a variety of social events. Suggestions should be directed

to Terry Brookie, our 2019 program chair.

This year, we are also attempting to strengthen our College committees. I have asked each committee to undertake at least one project prior to the 2019 annual meeting. Fellows who are willing to participate actively in a committee should contact one or more of the chairs, including:

ADR

Adrian Bastianelli & Tom Stipanowich

Documents

Ross Altman & George Meyer

Insurance

Jocelyn Knoll & Dan Brennan

International

Wendy Venoit & Helmut Johannsen

Public Contract

Shannon Briglia & Jim Archibald

In-House Counsel

Paul Bruno & Kevin Colby

Practice Transition

Alan Harris & Charles Sink

Looking back a little further in history, we also commemorate the 400th anniversary of the occasion when two Catholic lords regent and their secretary were thrown out of a window of the Bohemian Chancellory for having opposed construction of new Protestant churches. Although they

fell from a height of around 70 feet, they managed to survive, and their mistreatment helped spark the long bloody conflict that became known as the Thirty Years War. This “Defenestration of Prague” reminds us of the value of the peaceful resolution of disputes, a process in which all of us can be proud to serve.

Warm Regards,

*-Douglas Stuart Oles, President*

**FUTURE MEETINGS OF INTEREST**

**HOLD THESE DATES** for future ACCL Meetings:

30<sup>th</sup> Annual Meeting

February 21 -24, 2019

Vinoy Renaissance St. Petersburg Resort

St. Petersburg, Florida

**COLLEGIALITY CORNER**

**Bruce Reynolds** - Singleton Reynolds partners would like to share the news that our esteemed partner Bruce Reynolds has been named Global Construction Lawyer of the Year by the legal ranking organization Who's Who Legal.

Bruce received the award on May 8, 2018 in London, England at a dinner honoring award recipients from around the world. The award is



based on research, interviews and nominations from industry and client participants who, according to Who's Who Legal, "*...unequivocally identified you (Bruce) as the leader in this practice area.*"

Please join us in congratulating Bruce on this remarkable achievement.

To learn more click [here](#).

*John Singleton,  
Managing Partner, Singleton Reynolds*

**Clifford Shapiro** - I was accepted by the AAA to be a member of its national arbitration panel for construction disputes. In addition, I recently spoke before the Society of Illinois Construction Attorneys about "Ethical Negotiations In Mediation: How Far Is Too Far Or Is It Ever Appropriate To Lie During Mediation?" The discussion was based in large part on Buzz Tarlow's recent article published in the ACCL Journal titled "In-Defense of Lying: The Ethics of Deception In Mediation." Topics included whether misrepresentations in mediations are common, whether mediations are structured to include some accepted level of deception, and whether the role of a mediator as a "Settlement Master" includes or encourages some accepted level of deception. The ethical rules that apply to conduct during mediation, including Rules 4.1 and 8.4 of the Model Rule of Professional Conduct the Model Standards Conduct

for Mediators, were also discussed. A very interesting discussion ensued, and the consensus in the room was that the mediation process does include a level of consensual, anticipated and acceptable negotiating practices and tactics that, at times, are not based on full disclosure. But there was also consensus that there are ethical lines to be drawn, including a prohibition on false statements of material fact.

**Larry Schor** - Susan and I just returned from a trip down the River Seine to the D Day beaches.

We were there on June 4 and the crowds were very large already. A lot of people dress in World War II military uniforms and ride around in restored World War II vehicles. Each town above the beaches has its own museum and they are all good. It was great to see and we can only imagine what it will be next year for the 75th anniversary. We stood on Omaha beach near Point Hoc and looked at some of the cliffs where the remnants of the German bunkers and pillboxes still exist. We also visited the American cemetery where they had a lovely ceremony that included playing the national anthem and TAPS on chimes. With most people here either not knowing or caring about the greatest land invasion in history, we were happy to personally be where it all happened.

**Josh Leavitt** - I guest lectured on Construction Arbitration on April 3 at the Commercial Arbitration class of DePaul School of Law.

I also co-delivered a seminar entitled "Litigation Support Services for Building Envelope Experts," at RCI's 33rd International Convention & Tradeshow in Houston, March 22 through March 27, 2018.

My middle daughter Mollie is graduating from Northwestern's Medill School of Journalism and will be working for the Atlantic in Washington D.C. I will be happy to visit DC Fellows more frequently as a result.

**Stan Sklar** - Josh Leavitt and I will be presenting an ADR Workshop on Friday September 28, 2018 at the 8th International Society of Construction Law Conference in Chicago. We will address issues relating to arbitrability, motions in arbitration, including dispositive motions, consolidation, discovery issues, subpoenas, sanctions and vacatur in the ADR process. We hope to make it an interactive workshop and look forward to seeing many of you then.

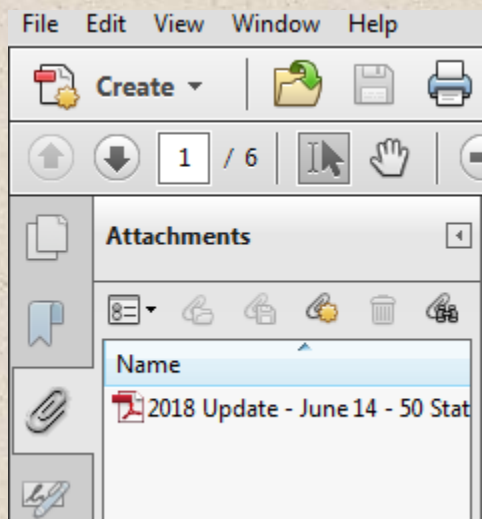


**Charles Sink** - I spent the month of May pedaling from New Orleans to Minneapolis, where Mary was kind enough to meet me (after horse riding in Portugal and catching several David Bromberg concerts across the Southeast). This 1,700 mile trip fulfilled a childhood dream of cycling across the country (well, south to north). Now, I am pleased to be off the bicycle and back home! 2 days of rain, 18 days of heat, and 2 days of spring weather. But, no flat tires.



**Clifford Shapiro** - I was unable to attend our annual meeting last February due to a health issue. But I'm recovered now, and I finally found some time to prepare the annual update to the 50 state "occurrence" survey which I am providing to you belatedly with this note.

To open the survey, click the paperclip in the left-hand corner (titled Attachments), and double click on the pdf. Below is a screenshot of what your screen will look like



I'm also happy to say that I'm busy working on various defect, extra work and delay claims in mediation and arbitration. Very good to be back.

**Wendy Venoit** - I have just been named as co-Chair of the National Construction Dispute Resolution Committee of the AAA/ICDR, and have been re-elected to the Council of the AAA/ICDR. I also wrap up a very excitin and successful year as Chair of

the ABA Forum on Construction Law, and look forward to a much quieter year as "Immediate Past Chair" once Tom Rosenberg takes over the helm on September 1, 2018.



**Leslie O'Neal** - My daughter, Lacey Harris-Coble was married to Luca Mantegazza on April 29, 2018. The civil ceremony and reception were held at my home by the lake. Lacey & Luca will have a Roman Catholic ceremony in Rome, Italy on September 29, 2018 at Basilica di Santa Francesca Romana, a

10th century church located near the Roman Colosseum.

**Ben Shapiro** – Nancy and I went on a wonderful 10 day trip to Cornwall and the Cornish coast in England. The Royal Wedding at Windsor took place while we were in England. Our invitation to the wedding must have been lost in the mail!

**Howard Ashcraft** - On behalf of the Charles Pankow Foundation, the Center for Innovation in the Design and Construction Industry and the Integrated Project Delivery Alliance (a Canadian organization), we have co-authored a guide to commencing IPD projects: “Integrated Project Delivery - An Action Guide for Leaders.” It is designed to help those who have decided to do an IPD project, but don’t know how to get started. It may be downloaded for free from the Hanson Bridgett website at:

[https://www.hansonbridgett.com/-/media/Files/Publications/IPD\\_Full-Pass\\_180603\\_comp.pdf](https://www.hansonbridgett.com/-/media/Files/Publications/IPD_Full-Pass_180603_comp.pdf)

It will be available from other sites as well.

**Robbie MacPherson** – I recently negotiated, pro bono, a design-build contract for the renovation of the new home of Family Resource Associates, Red Bank, New Jersey\*. FRA helps children, adolescents and people of all ages with *disAbilities* to

reach their fullest potential. FRA connects individuals to independence through specialized therapies and advanced technology. Acknowledging the powerful influence of the family, FRA offers both support and education. Their new home will allow FRA to expand its mission of creating *PossAbilities for people with disAbilities*. See [www.frainc.org](http://www.frainc.org)

If you are interested in opportunities to provide pro bono construction law services in your area contact me about participating in Building For Good, a nationwide referral service for non-profits in need of construction lawyers that is just getting off the ground.

\*Red Bank is the hometown of “The Red Bank Kid”, Count Basie



**Congratulations  
to Bill Geisen!**

In the April issue of News and Notes we announced a contest for the renaming of our newsletter and asked the Fellows to submit a name of their choice. After reading many creative submissions, we are pleased to announce that the winner of the contest is Bill Geisen.



After this issue, all future newsletters for the ACCL will be named:

## ACCoLades

Below is an excerpt from Bill's submission:

*"Besides containing the acronym for the American College of Construction Lawyers, "Accolades" will recognize the achievements of, celebrate the successes of and promote the collegiality among our Fellows. "Accolades" will also remind our Fellows of the distinct honor and privilege to be a member of such an outstanding organization."*

Thank you to Bill for coming up with the new name for our newsletter, and thanks to everyone who participated in the contest.

## EDITOR'S NOTE

It is time once again to wish everybody a happy and healthy summer. I hope that you all have interesting and exciting plans for your summertime, some of which, perhaps, do not include work.

My wife and I are busy planning for the marriage of our daughter on July 7, 2018. So, this will be a memorable summer for us.

My best wishes to you all.

**John H. "Buzz" Tarlow**  
jtarlow@lawmt.com  
406-586-9714

