



ISSUE #61, January 2023

ACCLADES

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Collegiality Newsletter of the American College of Construction Lawyers

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President's Update

John Bulman

Dear Fellows:

I do hope you are enjoying the New Year. The year was already eventful enough through the summer with droughts, tornados, and work (and a first grandchild for me – Mark Edgeworth Bulman!). Last summer, 34th Annual Meeting Program Chair Wendy Venoit and Donna Passons' able crew were advancing our plans for the February 2023 meeting in Bonita Springs. On September 28, Hurricane Ian roared ashore at Ft. Myers with 150 m.p.h. winds. To say this disrupted our plans a bit would be a substantial understatement. "Apocalypse Now" was an apt moniker. Or, perhaps "Paradise Lost"?

Well, Wendy, Donna and Bill rallied and worked with the Hyatt Regency as it recovered from the onslaught of wind and water. Despite The Good, The Bad, and The Ugly of unexpected challenges, we have a great program for you next month thanks to their hard work. I just

watched. We have a nice blend of the old and the new discussing such misunderstood topics as the duty of candor in negotiations and Construction ADR and where the line can be drawn between design assist and design delegation, or can it be? Professor Emeritus Stephen Ressler from West Point and David Buoncristiani have the floor first to discuss aspects of famous engineering design and construction failures such as the Skywalk collapse at the Kansas City Hyatt Regency in 1981. This should be entertaining and worrisome at the same time!

On top of the great program content, we have a full slate of entertainment, golf and other activities available. It looks like nature's fury has temporarily been held at bay, thanks to the efforts of the planners, the hotel and, frankly, all the Fellows who have pitched in to put this great program together.

This will be my last missive to you as President of the ACCL. It has been an honor to be the President and I can say with great confidence that the College will be in great hands



with Shelly Ewald as the College celebrates its 35th year.

See ya in February. John.

Report from the ACCL Foundation

Buck Hinkle

I am pleased to report that the Foundation received six donations in December totaling \$17,000. At year end the Foundation had \$62,262.12 on hand. These recent donations are encouraging. Collectively we have the capacity to make the College a meaningful supporter of construction legal scholarship.

Future Meetings of Interest

34th Annual Meeting

February 23-26, 2023
the Hyatt Regency
Coconut Point in Bonita
Springs, Florida

Know our New Fellows

Wyatt A. Hoch



Wyatt grew up on the Kansas prairie and has spent his entire legal career practicing in the Air Capital of the World, but has had the privilege of helping resolve claims arising on major construction projects from sea-to-shining sea (and beyond). He has combined 40 years of construction law practice with five years of undergraduate study in



architecture and hands-on work in the residential home-building industry. He enjoys learning why building components/systems don't work in some contexts. And serving on the American Arbitration Association's national panel for construction industry cases.

Wyatt and his wife of 41 years, Mary Ann, live in Wichita, where he enjoys working on home remodeling and landscaping (planning, execution, and maintenance) projects and playing handball. He "bleeds purple" when it comes to supporting K-State Wildcat athletics and is a self-proclaimed baseball junkie. Their daughter Adele is a professional recruiter in Kansas City, and their son Logan (college baseball coach turned specialty-metals salesman), his wife Kaitlyn, and 3 young sons also live in Kansas City.

Wyatt played in the K-State Concert Jazz Ensemble and Marching Band (trombone), was once known as the "scatting attorney" when he and Mary Ann sang in a vocal-jazz group, was a FAA-certified (but no longer current), instrument rated private pilot, and was one of K-State's

Rhodes scholarship finalists in 1980. Now, he serves on the executive committee of the Quivira Council of the Boy Scouts of America, the board of trustees of Northern Seminary in Chicago, and is an emeritus trustee of the Wichita Botanical Gardens. And he is grateful to be invited to join this esteemed group.





Mark R. Becker



Mark Becker and his wife Julie met as sophomores at Northwestern University, where he was studying civil engineering and she pre-med. After law school at the University of Iowa, Mark rejoined Julie in Chicago, where he was incredibly fortunate to start his career in 2000 learning construction law at Schiff Hardin & Waite and the many excellent construction lawyers there. At the same time, Julie was finishing her medical school and working through residency, both at Northwestern.

After Julie finished her residency, her career path was wide open. Her opportunities were most amazing in Mark's home state of Minnesota, and they made the difficult decision to uproot and relocate. This decision turned out well for both of them. Mark had the good fortune to land at Fabyanske, Westra, Hart & Thomson, where he has practiced construction law since 2006. Julie practices Obstetrics and Gynecology in Minnesota's oldest city, Stillwater.

Fast forward, Mark and Julie are the proud parents of daughter Amber (14) who besides being a star student plays tennis and Nordic skiing and son Edison (12) who plays football and practices Tae Kwon Do. After their beloved Westie passed a few years ago, Mark caved to the pressure for another dog and said he would be open to another dog. Oskar the Danish-Swedish farm-dog joined the family last year and, with some very expensive obedience training, has brought much joy to the family. The Becker family lives in Hugo, Minnesota, a town twenty or so miles north of the Twin Cities, yet largely rural.

When there is a break in the construction lawyer action, Mark spends time tending his fruit tree



orchard and gardens. The trees sometimes bear fruit, and the gardens usually provide some vegetables, but the abundant local wildlife can't be denied their share. The winter squash, corn, rhubarb, and plums produced a good crop in 2022 despite drought.

Lisa Mingoia



I was born in Madison, Wisconsin while my parents were still in college. I grew up in Long Island, New York and went to SUNY-Binghamton in Binghamton, NY. I spent an amazing semester abroad in London during college which sparked my love of travel. I decided to attend law school in sunny San Diego after many cold years in NY. It also gave me the opportunity to form a

closer bond with my dad who moved to California when my parents got divorced. As a result, we grew very close and maintained that tight bond until he recently passed away in October. I met my husband, Joe, two weeks after I moved back to NY to take the NY Bar Exam. We relocated to Georgia for my previous job and have never looked back. We love the South! We have been happily married for 25 years and we have two sons, Benjamin, 22, and Ethan, 19 who attend GA Tech and the University of Georgia, respectively. I now understand the excitement of college football (especially the SEC!). I love spending time with my family, Pilates, skiing, traveling the world, live music, hiking, being at the beach and walking my dog. I'm looking forward to exploring Greece this year!



Jerry Brodsky



An Introductory Note About Happenstance

My dear friend Roberto Hernandez asked that I prepare a short introductory piece about myself for publication in Acclades, so I have been thinking about how honored I am to even have the opportunity to address this amazing group as a Fellow.

In order to explain my reference to “happenstance”, I first need to describe myself in the necessary predicate terms:

I am a Peruvian-born-and-raised, grandson of eastern European Jewish

immigrants to Peru. I have an undergraduate bachelor’s degree in Industrial Engineering from Lehigh University in Bethlehem, PA, and a law degree from The University of Miami, in South Florida, where I have lived, and practiced as a construction lawyer in Florida and points south, for the past thirty years.

Why Peru? Because my grandparents had to leave Europe on the next ship they could get on in 1914, and the one they were able to get on crossed from the Atlantic Ocean to the Pacific Ocean through the newly opened Panama Canal, and then travelled down the coast of South America, stopping in the major ports. My grandparents’ money for fare ran out when they arrived in Callao, Peru. So that’s where they got off, and that’s why I am Peruvian-born and raised and Jewish, or “Jeruvian” for short: by happenstance.

Why Industrial Engineering, and why Lehigh? The engineering part was planned: my family was in the textile business in Peru so, like my father before me, after high school, I was sent off to the US to get an engineering degree so I could return to Peru and work in the family business. Except that by the time I graduated from Lehigh, political instability and violence



had driven my parents to relocate from Peru to Miami, where I returned to after graduating from Lehigh. So despite the best laid plans, I was an Industrial Engineer sans industry, and in Miami not Lima was...by happenstance.

And why Lehigh? Because the guy that was dating my sister went there and said it was nice. Happenstance.

So, why the law degree and why construction law? While the bankruptcy of Eastern Airlines, where I had worked and was developing nicely in various engineering-related positions for about 8 years, did not cause me to lose my job immediately (like most of my over 30,000 coworkers), the writing was clearly on the wall that I needed to look for another job. And there was more to it. As a young professional and head of a young household (which already included a 1 year old that used a lot of diapers and consumed a lot of baby formula, and then another, and another one – 3 in total), I lived through years watching an iconic US company get systematically dismantled and in the process, irreparably impact entire communities, many people who had spent their lives

at the airline and now would have little or nothing to show for it.

Having so little control and finding myself in the middle of that situation drove me to look for a way to try to have more of a say in my future. That (as well as a dare from my mother) led me to attend law school at night while working at the bankrupt airline during the day.

Becoming a lawyer because of a labor strike that drove my employer to bankruptcy qualifies, I suggest, as happenstance.

And construction law? On my first day at a large, prominent Florida firm that hired me when I graduated from law school in 1992, the head of the litigation department gave my CV a cursory review and told me that since I had an engineering degree, I would be assigned to the Construction Law department. Therefore, I became a construction lawyer... (all together now) by happenstance!

Reflecting on the series of unplanned and largely uncontrollable events that have ended up being milestones in my life, I have learned to welcome and celebrate happenstance as opportunities to live and experience that for which I have no training other



than everything that I've learned along the way by the opportunities that happenstance has provided to me. Amazing opportunities, like being a Fellow of the American College of Construction Lawyers.

Here's to happenstance!

Anjun Agarwal



First, a heartfelt thank you to everyone who played a part in my election to the ACCL, I am truly honored and privileged. You won't regret it!

The story of my life traverses 6 countries (and counting), over 15 cities, a wife who is my foundation, two

boys who are my pillars, and our dog (Lulu) who is the cherry on top of our family. I was born in Calcutta, India where I spent the first three years of my life. After the birth of my younger brother, our family moved to Singapore where I spent the next 5 years. From there, we moved across the border to Malaysia where we spent the next 4 years. In the late 80's, our family made a big move from Malaysia to Toronto, Canada. I spent 12 years in Toronto. I became a Canadian citizen and graduated from the University of Western Ontario. I am die-hard Toronto sports fanatic, I will forever cheer my Maple Leafs, Blue Jays, and Raptors no matter where in the world I am!

In 2001, I moved to the Bay Area in California to attend law school. I lived in the Bay Area till this past July. California is the place I have lived the longest and call it "home." I met my wife, Archana, while I was in law school (she is not a lawyer!). My two boys, Aakash (13 years old) and Raaghav (11 years old) were born in San Francisco. I have lived and worked in San Francisco/Bay Area for the last 22 years and feel it's the one of most amazing places in the world to live. I also obtained my American citizenship

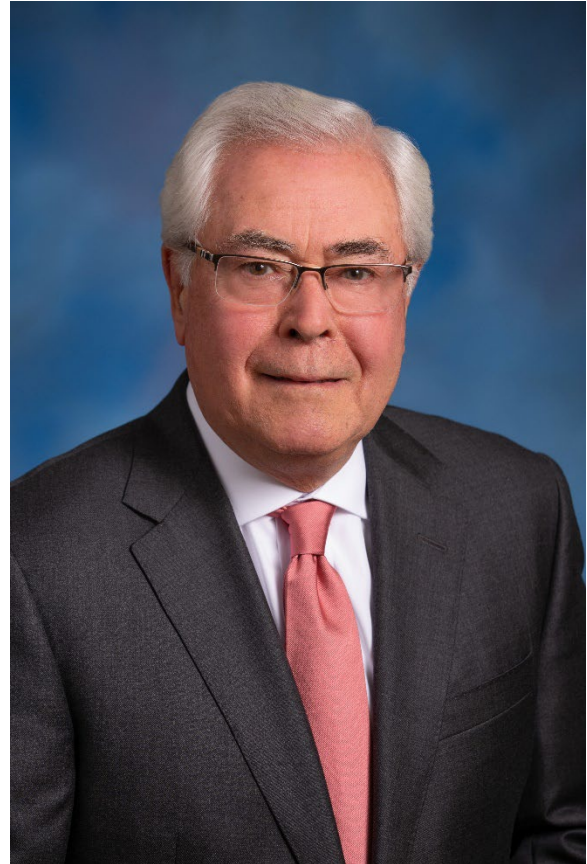


and now have two passport options when traveling:)

The latest chapter in my life story has taken us back to Singapore as of July 2022. I was asked to take a new position with my company and after a family vote, we decided to begin a new adventure as expats living abroad! The last 6 months have been a combination of excitement, adjustment, homesickness, and pure happiness. Unlike me, my wife and kids had never lived outside of California so this was a big move for them. After an initial period of getting our feet under us, we are thriving here. For those who have been to Singapore, you know how safe, clean and “easy” it is. For those who haven’t had the chance, you now have a reason to visit and a place to stay! I don’t know how long this chapter of our life will be, but we are taking advantage of living in the gateway to Asia. We love to travel as a family and have already been to Bali (twice) and Langkawi (Malaysia) in our short time here. Next on our hit list: Japan, Maldives, Philippines, Laos, Sri Lanka, and Bhutan!

I really look forward to meeting everyone in Bonita Springs!

Phillip G. Alber



My name is Phillip Alber. I was born in Lansing, Michigan in 1948 and grew up in a diverse blue collar neighborhood while enduring 12 years of Catholic education. My experience in the construction industry started in high school when I worked summers as a carpenter. When able, I escaped to Ann Arbor and attended the University of Michigan (Go Blue) in the heyday of protests against the Vietnam war, the implementation of the Civil Rights Acts



of 1964 and 1968, the arrival of The Pill and the founding of the Women's Liberation Movement. It was an exciting time. I survived, graduating with a degree in Economics in 1971. I then worked for a year in retail, first in California and then New Jersey, returning to Michigan and to attend Wayne State Law School and graduating in December 1974. I started my practice in an insurance defense firm. When the economy went into recession in the late 70's I became the lawyer to represent companies in connection with claims on surety bonds. In 1985 I left the insurance defense firm and began exclusive representation of contractors, sureties and other companies in the construction industry. Over the last 40 + years I have devoted my practice to all aspects of the construction industry. In addition to the representation of clients in the middle of a dispute, I have also served as a mediator and arbitrator in construction related matters.

Carl J. Circo



It is a great pleasure to introduce myself and my wife, Bobbi Johnson, to my ACCL colleagues. Bobbi and I met at the University of Nebraska during our senior years and married after just a few months, shortly before we both graduated. We are native Nebraskans, and we spent the first several years after we married in Lincoln, Nebraska. Bobbi is a teacher by profession, but she retired a few years ago. We eventually moved to New York City for two short but exciting years. At that time, we had three adopted children. After adopting number four, we headed back to the Midwest. We lived in the Kansas City area for just over two decades, where our family eventually grew to eight adopted kids, with 43 foster children spending time with us over many years.

For most of those years raising the family, we lived on an acreage just outside the metropolitan Kansas City



area where, in addition to caring for children, horses, dogs, cats, potbelly pigs, sheep, goats, and one extremely stubborn llama, we made many lifelong friends. Bobbi eventually settled in professionally as the head of the Theology Department at a private preparatory school where she primarily taught Social Justice. I practiced law, briefly in litigation, and then in commercial real estate, which ultimately led to a concentration on the transactional side of construction projects. During this time, we sponsored refugees from Vietnam, El Salvador, and Guatemala. The many and varied youth sporting events, high school plays, and other family activities now blend into a blissful haze of memories. We did not travel much in those days, although Bobbi regularly took students and our children (and occasionally me) on school trips. Particularly as the family matured, Bobbi and I began to add as many conference trips as we could fit in, and our interest in travel increased.

When I converted from law practice to law teaching at the University of Arkansas School of Law in 2003, we moved to Fayetteville, Arkansas. The academic life, along with an empty nest, gave us more time to travel. Our two favorite trips were to

Cambridge in the U.K., where I taught a course on transnational construction projects, and Rome, where I found a new academic love—teaching literature and law with a great friend from the University’s English Department. Over the years, Bobbi and I have developed a passion for opera, and when we travel to major cities, we always check the local opera company’s schedule.

We now have five grandchildren in Lee’s Summit, Missouri and Overland Park, Kansas. We spend the academic year at our condo in Fayetteville, and the school breaks at our condo on the Country Club Plaza in Kansas City.



Allen W. Estes

My name is Allen W. Estes, III. I was born in San Francisco, CA in 1974. I spent the first ten (10) years of my life as a military brat. As a military brat I got a chance to spend some of my life in Germany (Frankfurt) and many states in the US (Kentucky, Kansas, Washington, California and Texas). I spent my pre-teen and teenage years 10 – 17 going back-and-forth between



California and Washington State. I would spend the school year in California with my mother and then summers in Washington with my father. Since I was born in California and spent the most time in California as a kid, I consider myself a Californian, even though I relocated as an adult to Washington in 2002 and have been living in Washington ever since. In 2019 I moved to Hawaii part time (Winter and part of the summer). When the pandemic hit and I spent pretty much all of 2020 and half of 2021 in Hawaii practicing law over the phone and Zoom like most other lawyers in the US. I fell in love with Hawaii, specifically the Big Island. I spend the majority of my time living in Washington State. I have three kids (ages 16, 14 and 10) who love music and/or basketball and I try to make all of their concerts and games. When I am not working, I spend time with my kids and my significant other, Sandra. I enjoy movies (Star Wars fan), world travel, cooking and collecting/drinking wine in my spare time. Some of the places which I enjoy most in the world include Spain, Monaco, Italy, Greece and France.



Collegiality Corner

John W. Ralls

"Hay tamales"



The Ralls Family enjoys keeping the tradition of Llamina's family alive of making tamales for holiday dinners

and gifts. Making tamales is laborious but they are great fun to assemble with a lively group. Our neighborhood friends are now game and we have the joy of catching up with all the kids coming home from college.

Ava Abramowitz

"Relevant research"

Ava offers a copy of a report that his co-researcher and she submitted to the educator's blog. The research is built on Neil Rackham's and John Carlisle's 1978 paper "The Behaviour of Successful Negotiators." The paper attends a question: Can the same research methodology be applied to mediation?. If you think it will be of interest to the Fellows please contact Ava by email or call her at 703-779-7483.

Jeffrey A. Ford, Esq.

New Life

Jeff Ford has retired from Peckar & Abramson at year end and opened a



solo practice , Ford ADR. Jeff will be offering his services as a mediator, arbitrator, and project neutral. His new contact information is Ford ADR, 8150 N Central Expressway, Suite 835, Dallas, Texas 75206; email jeff@fordadr.com; phone 214-676-5446.

Charles Sink

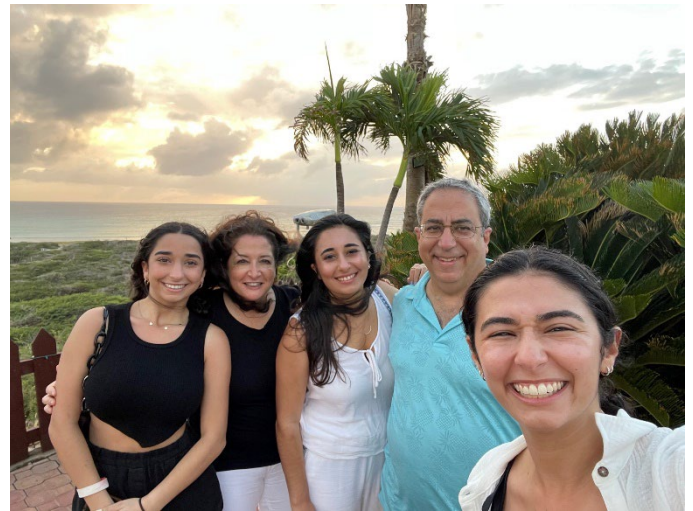
Great travels



In late 2022, I toured several national parks in Arizona, Utah, New Mexico, and Texas. I hope everyone has a chance to see the Grand Canyon, Bryce and Zion Canyons, Big Bend Park, and Carlsbad Caverns. But, make sure you get to Antelope Canyon; you will be sure to have a new picture for your screen saver for your phone or laptop

Josh Leavitt and Family

In Aruba Beating the blizzard in Chicago

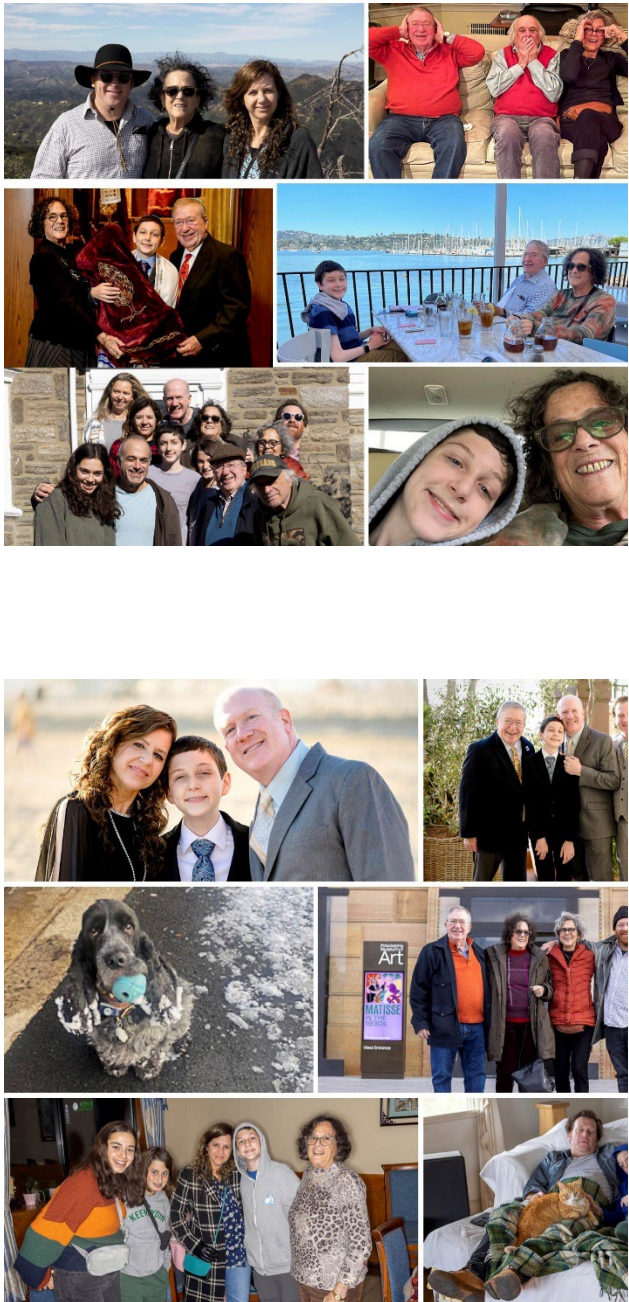


Don Gavin and Family



Ken Kupchak and Patty

The Art of Giving



Patty and I helped raise over \$33,300 for Friends of Hakalau Forest NWR through Hawaiian Airline's 2022 Holoholo Challenge. We also hosted our National Wildlife Refuge's Manager at our Families Thanksgiving Feast!

As a Board Member of the Coalition of Refuge Friends and Advocates, I am working to empower the nation's hundreds of Refuge Friends groups to share with Congress the detrimental impact on their respective Refuges of



the 25 percent reduction of Refuge Staff Nationwide over the last decade.

Visit your local Refuges and see for yourself. Talk to their staff, if you can find one, and see how they are stretched beyond the limit causing cascading damage to the unique resources each was created to protect.

Mele Kalikimaka, Hauoli Makahiki Hou!

***Rouvy MacPherson's 70th
birthday party***

***(Thanks to Jeff Cruz for
the great pictures!)***



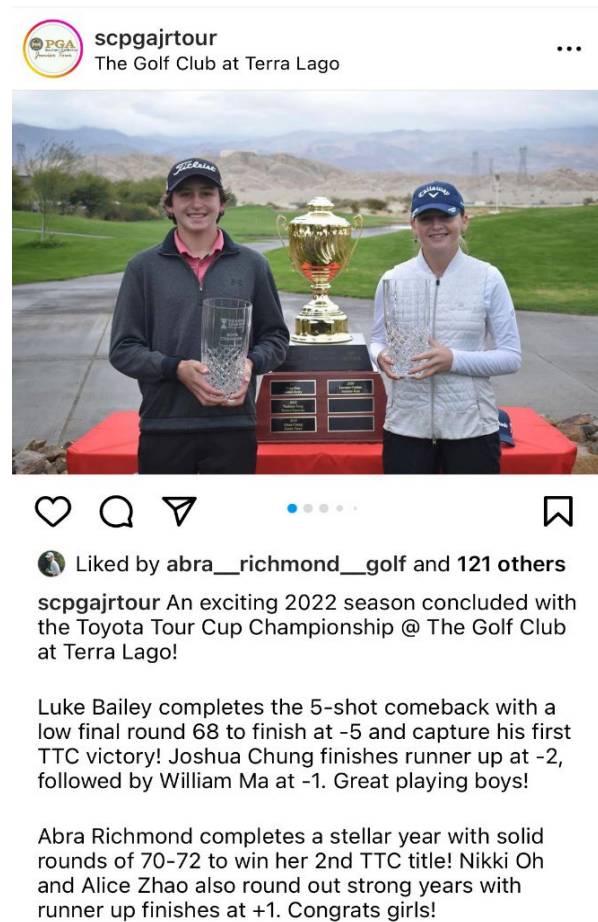
Marion T. Hack

Congrats to Abra!!

*Our daughter Abra won a big golf
tournament – the Toyota Tour Club*



Championship. See attached photo from Insta



Patricia Thompson

Jack's Letter (Patricia's husband).

"Dear Ones at Christmas and Hanukkah at the Start of the 2023 New Year:

On an Ohio morning sixty years ago I was sitting in my seventh grade class squinting at a 12-inch black and white television to see if Ohioan John Glenn would be the first non-Russian to orbit the Earth. He made it.

Back in 1962 rocket boosters shot that Mercury capsule into space. We just finished a year of booster shots launching us into a vaccine space at our local CVS. Let me tell you how we're doing in Miami 200 miles south of Cape Canaveral:

After a heart attack, two stents, two knee replacements, and hand surgery I don't recognize the man in the mirror, but I feel great, playing and briskly walking 9 holes of golf every weekday. My favorite joke this year: "I saw my psychiatrist this week. He asked, "What's the problem?" I said, "No one listens to me." So he walks to his waiting room and says, "Next!" Another problem is I'm 71 and can't remember whom I told this joke.

Do you feel like no one is listening to you? In 1999 the FBI issued a report linking school shootings to video games. Now it's hard to find a mass shooting not linked to video games. I am still working on that issue. Please pray. Perhaps they'll listen now.



Son John continues to flourish in his nearby condo and his public relations/crisis management firm. His employers love him. He makes friends, like his saintly mother.

Turning to the saint: Patricia has been surprised by the joy of being a "third party neutral" which means she presides as a mediator or arbitrator to resolve disputes between fighting folks. Not that long ago she was discouraged that her number of cases had shrunk. She is now swamped with cases. Be careful what you pray for. Jesus said, "Blessed are the peacemakers for they shall be called children of God." Exhibit A: Patricia, one of His children. After 46 years of marriage she is still my best friend. Her worst mistake was bailing me out of jail once--in law school--of all places.

I spent a lot of time this year wondering why certain people were doing certain stupid things. I should have stopped wondering and just remembered this from the great American humorist, Will Rogers: "You know horses are smarter than people. You never heard of a horse going broke betting on people."

Ted Williams was arguably the greatest baseball hitter of all time, despite serving five years of his prime as a Marine pilot during World War II

and the Korean Conflict. On a combat mission in Korea enemy anti-aircraft fire ignited Williams' plane. His commander flew alongside and pointed up. Williams took the advice and flew higher. The lack of oxygen extinguished the flames. His commander? John Glenn.

The next time you feel you don't matter to anyone, that no one listens, please know you have the opportunity to be a John Glenn to some Ted Williams. We all know a person in trouble. You can change that life and even save that life by encouraging him or her to fly higher. God said to David and to all of us, "Before I formed you in the womb I knew you." Some say no one is indispensable. Nonsense. He designed you to be indispensable to others. Your kindness and your life have helped Patricia and me fly higher.

Merry Christmas, Happy Hanukkah, Happy New Year, you indispensable one.

Love, Jack"



Editor's Note

Roberto Hernández-García

One of the fantastic opportunities that I have as an editor of ACCLADES, is to have contact with the new fellows every year, before all the members of this great association meet them in person at the Annual Meeting.

Such contact means that I ask them to provide their personal introduction for its inclusion in this collegial newsletter.

A common situation that we have found is that new fellows do not have clarity on the way that they have to provide their “formal” introduction for the purposes of the association, and the “personal and informal” introduction that we expect at the ACCLADES.

When I receive their “personal and informal introduction” I have the first opportunity to see the great person behind the great lawyer. Human beings that have worked hard in order to become who they are today, and who always, in a humble way, present themselves, their families and their joys in life (such as Lisa shows us the

happiness of life in the picture of the cover.)

This year was no different. Our new fellows are again the perfect fit for this outstanding association that sooner than later becomes a family for its members.

By this means we give our warmest welcome to Lisa, Arjun, Phillip, Mark, Jerry, Carl, Allen and Wyatt, who I am sure will be “bombarded” during our soon-to-happen meeting in Florida, with the kindness and collegiality that characterizes the ACCL and its members.

In another note, it is fantastic to see that after the complicated years that we lived because of the infamous bug, our members have returned to see their families, travel, enjoy friends and life, and that has no price!

Of course, I want to express our gratitude to John Bulman for his great leadership during this year, and congratulate Shelly Ewald for becoming the President of this jewel of association.

Finally, I wish you a very happy, healthy and blessed 2023 for you and your beloved ones from Mexico City where I hope to receive you all one day!

