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## **ACCoLades**

*Collegiality Newsletter of the  
American College of Construction  
Lawyers*

*Issue #54 November 5, 2020*

### **PRESIDENT'S UPDATE**

I am typing this on the evening of November 2, as the results of our Presidential election creep in. The reality of the deep divisions among Americans is inescapable. The hyperbole in the discourse is depressing. It is with that as a backdrop, I begin to draft this note. As I think of our College, what strikes me is the contrast between it and what I see across most of our country – in the College, we embody an institution with members from across the country, and, indeed, across the world, of diverse backgrounds and political persuasions, who universally approach each other with affection, respect, and an open-mind to

radical ideas. This reality warms my heart and makes me particularly proud to be a part of this organization, particularly now. While I suspect our political differences rival those of any other non-partisan group, just as we leave our egos at the door when we gather, we never lose sight of our affection and respect for one another. For that I am thankful (it is November, after all), and proud to call each of you my Fellows.

Our Fellowship is growing once again this year with the election of ten new Fellows from California to Massachusetts and many points

in between. I could not be more proud of the work our Membership Committee (Anne Gorham, Albee Bates, Helmut Johannsen, Steve Lesser, and Allison Snyder), who undertook as thorough an investigative and vetting process as I have ever witnessed. Thanks to their hard work, we are blessed with a strong class of new Fellows, each of whom has clearly demonstrated the skills, experience, service to the profession, and high standards of professional and ethical conduct our bylaws require for membership. It is often said that the admission of new Fellows is the most important thing we do for the good of the College, and thanks to Anne, Albee, Helmut, Steve and Allison for making it possible for your Board to act on these nominations with confidence in their decisions. To the “Class of 2021,” welcome—we are thrilled to have you and proud to add you to our ranks.

The status of the 2021 Annual Meeting remains undecided, although your Board will make a decision on this in the coming weeks. Thank you to the vast majority of you who responded to the survey regarding your feelings

about attending an in-person meeting. From my point of view, the most definitive question in the survey was the question regarding the conditions which must exist for you to attend. 85% of those responding stated that they would attend only if “a vaccine is available to me that has been demonstrated to be effective.” It appears clear now that no such a vaccine will be widely available by March, although it is less clear what the state of play will be in June, for which we have secured potential alternative dates. As it stands now, the hotel is willing to significantly reduce our room guarantee and associated minimums for the March dates, but not the June dates, but we have not yet begun real negotiations about a June event. Stay tuned, as we hope to know more in the coming weeks.

What was particularly heartening about the survey results was that 95% of us are likely to participate in the CLE sessions if held remotely, and more than 75% plan to attend committee meetings, our annual In Memoriam session, and the induction ceremony for new Fellows. Jim Schenck and our committee chairs have been hard at work on a program that can work in

either an in-person, or virtual setting, and can pivot if we go “live” and a speaker backs out. In addition, we plan to have several sessions for spouses to get together as well, including, of course, the introductions of New Fellows’ spouses to the group. Finally, special thanks and kudos to Jim for planning, organizing, and hosting several educational seminars via Zoom over the last few months. I’m quite sure that when Jim signed up to be our Program Chair, he did not envision the year that we have all experienced; he deserves our sincere appreciation and thanks for all he has done.

Our next Board meeting will be held on December 4, and like every other Board meeting since Tucson, will be convened via Zoom. If you have an item you wish the Board to consider, please drop me a note, and I’ll add it to our agenda.

Happy Thanksgiving, everyone, and thanks for your support and encouragement over the past several months.

- *John Heisse, President*

## **FUTURE MEETINGS OF INTEREST**

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

### 32<sup>nd</sup> Annual Meeting

March 18-21, 2021

Belmond Charleston Place  
Charleston, South Carolina

## **NEWLY ELECTED FELLOWS**

Following a detailed investigation by our Membership Committee and a detailed review and discussion by the Board of Governors, the Board voted to elect the following to Fellowship in the College (in alphabetical order):

1. Sarah B. Biser  
New York, NY
2. Gregory L. Cashion  
Nashville, TN
3. Christopher S. Dunn  
Nashville, TN
4. Marion T. Hack  
Los Angeles, CA
5. William M. Hill  
Boston, MA
6. Daniel P. King  
Indianapolis, IN
7. Andrew W. Manuel  
St. Louis, MO

8. Eric L. Nelson  
Roswell, GA
9. Ronald R. Stuff  
Cave Creek, AZ
10. Robert J. Symon  
Washington, DC

The ACCL would like to extend a heartfelt congratulations to the New Fellows and we look forward to learning more about them in our upcoming January issue of ACCoLades.

## **MENTORSHIP CORNER**

**Hon. Carol Park-Conroy** - Prior issues of ACCoLades featured articles from Fellows who are grateful for the mentoring they received. As someone who is regarded as a mentor, I have some thoughts I want to share about the mentoring experience.

Mentoring in our profession happens all of the time. Sometimes it is structured, with career development enhancement as the objective. But more often, mentoring simply results from circumstances in which a more experienced lawyer helps guide a less experienced lawyer to achieve greater success by reaching a better

decision on a particular course of action.

Mentoring is important. Why? Because mentoring by experienced lawyers helps less experienced, usually younger, lawyers reach their full potential in virtually any aspect of our profession. It is an investment in individual personal and professional development, turning good lawyers into better, more productive lawyers, and honing their leadership skills. And, while not everyone may want a mentor, I think it is more likely than not that lawyers who have had good mentors along the way have achieved more because of the mentoring experience.

What exactly does a good mentor do? Four basic things: (1) a mentor listens; (2) a mentor shares comparable or analogous skills, knowledge, experiences and expertise; (3) a mentor guides a mentee to his or her own decision making; and (4) a mentor provides encouragement and support. As to the first, a mentor is a good listener, one who also asks probing questions in an attempt to understand the true nature of the underlying circumstances. A

mentor develops a dialogue or discussion, not a debate, with the mentee. As to the second, a mentor shares relevant experiences and offers tips, suggestions and ideas as appropriate. As to the third, a mentor provides counsel and guidance to a mentee, instead of dictating any particular course of action. Lastly, as to the fourth, a mentor keeps an eye on the mentee, providing encouragement and support for both successes and failures.

What makes a good mentor? It is a lot to expect a mentor to have the relevant skill, knowledge, experience and expertise and to be able to listen, share, guide and encourage a mentee. But I think there is still more to be expected. A good mentor should also be respectful of the mentee, sincere in offering advice and guidance, enthusiastic about his or her role as a mentor, practical in approach, a good match personally, and a reliable supporter of the mentee. These are the attributes of the mentors to whom the Fellows previously expressed their gratitude in ACCoLades.

## **COLLEGIALITY CORNER**

**Josh Leavitt** - I am, for the fourth year running, a national co-chair of PLI's Commercial Real Estate Institute (November 16 and 17) and for more years running than I can count, I will be a panelist on the Institute's construction law panel. I also spoke on "Technological Advances and the Resulting Risks Challenges and Impacts on Construction Projects" at the ABA Public Contract Law Section's virtual annual meeting. On a personal note, our youngest daughter started freshman year at Ohio State and with our other two daughters all living out of the house now Ilene and I are transitioning to "empty nesterhood."

**John Ahlers** - I was ranked number one Super Lawyer in the state of Washington. An acknowledgment for which I am very humbled and appreciative, unusual because these awards are generally the province of personal injury lawyers. The distinction is likely due, in my view, to a lot of friends in the bar for whose vote I'm very grateful and probably age related... :-)

**Tony Meagher** - We have some late-breaking family news. Kim and I are grandparents for the first time. Emerson "Emmie" Blair Meagher was born at 2:30 p.m. on Saturday, October 24, 2020. She was 8 lbs., 13 oz. and 21.5 inches long. Our son Tyler and daughter-in-law Payton are doing great.



**Bob Peckar** - The New Jersey Law Journal has announced that I am a 2020 recipient of their Lifetime Achievement Award. The "ceremony" (virtual, of course) will be November 4. My comment about this award is that I am of course honored and flattered to receive this recognition. This coming February I will have been admitted for 49 years. Throughout that time I have considered service to the profession as an essential aspect of my career and therefore the award from the Law Journal is all the more appreciated. Of course, I have more than a little pride about how the law firm I founded in 1978 has grown and prospered. And, finally, my "lifetime" in the law is hardly over! I continue to enjoy practicing construction law and being a part of the construction bar—a group distinguished by its dedication to its clients and collegiality.

You may or may not know that my avocation is oil painting. Over the years I have had three one-person shows and my paintings are in several significant collections. Recently a painting I did after the tragedy of 9-11, based upon my experience of walking Ground Zero

two weeks after 9-11, was added to the Artists Registry of the National September 11 Memorial and Museum:

<https://www.911memorial.org/connect/communities/artists-registry>

The painting is entitled "Aftermath" and it reflects my experiences and memories of that very upsetting day.

**John McGuinn** - A couple of milestones recently. September marked my 20th year of retirement. And I turned 80 years old on October 29th, so I am now officially entering my ninth decade. Jim Groton and I share the same birthday, but not year.

Having learned how to use Zoom for the ACCL acclimatization hours, I have gone a little overboard. In October I hosted the 58th anniversary reunion of the class of 1962 from St. Procopius College on Zoom. We decided to hold our reunions every year rather than every five years, for reasons which are obvious. It was a lot of fun, and a lot of work because it turned out that a significant number of my classmates are "pre-digital". In August I co-hosted the 55th

reunion of the class of 1965 from the U. of Illinois College of Law on Zoom. I am the only U of Illinois law graduate in ACCL, surprisingly (to me).

**Larry Schor** - No matter how many brief "side trips" one takes to historical sites in the DC- Maryland-Virginia area, there are always surprising treats that some friend knows about for one to visit. Susan and I were told about the Blandford Church in the military cemetery at Petersburg, Virginia and finally took advantage of visiting it. The most famous things to see are the 17 "Tiffany Windows" actually created under contract with Louis Tiffany himself in the early 1900s. The windows cost \$350 per window and there was one for each of the official Confederate states and some for those that were involved on both sides, such as Maryland. They are not stained glass that was painted but the color was added as the glass itself was being finished. Most of the primary saints are pictured in different backgrounds reflecting the different states in their windows. They were marvelous to see as was the over 300 acre cemetery where many Civil War soldiers are buried in mass graves as well as

individuals from the town's own citizens, who are also interred in different sections opened before the Civil War. I suggest that you take a look at the church and cemetery online for some real art to enjoy If you cannot get there yourself.

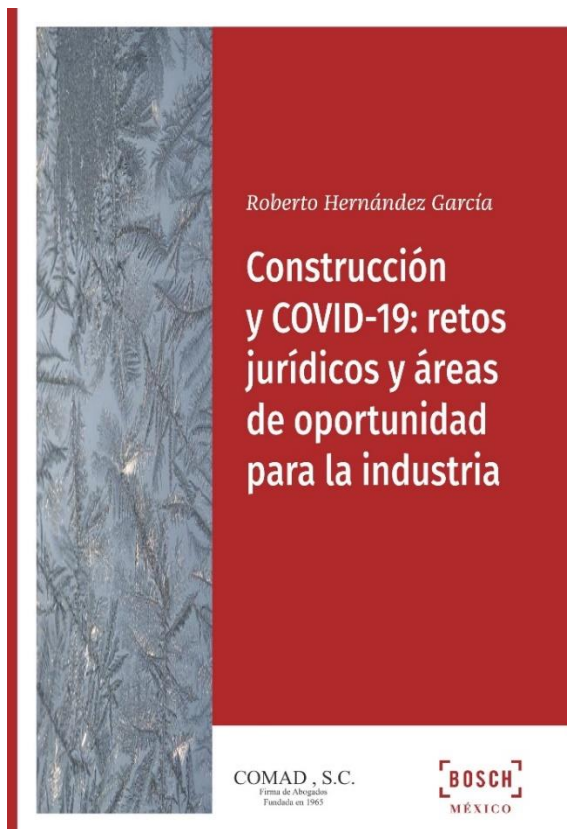
**Joe Pierce** - Here in Sonoma County, California, we have spent much of the summer and fall watching the weather reports and keeping belongings and important papers ready to leave quickly to dodge the wildfire of the moment. We moved here from New England in 2016. In 2017 the Tubbs Fire blew in from Napa County overnight and came to within about 5-6 miles of us. The fire had already turned away from our location before we woke up in the morning. Last year the Kincaid Fire was stopped about 10 - 12 miles to our north. We were evacuated for about a week, but suffered no damage. This year the Glass Fire was also about 12 - 13 miles away, but we were never required to leave. The Glass Fire was caused by "dry lightning," which means a traditional thunderstorm, but one in which there is so much heat that the rain all evaporates before it hits the ground. Sonoma County sustained

about 10,000 lightning strikes in a big storm, with very little accompanying rain. It did rain where we live, but most of the county got none. Dry lightning storms are rare, but not without precedent. In retrospect, the snow and ice of New England don't seem all that bad. We are mitigating our risk, we think, by moving about 20 miles to our south, into an area that seems less vulnerable to the fires of the future.

**Roberto Hernández** - Finally the baby arrived. My second book as sole author: "Construction and COVID-19: Legal challenges and opportunities for the industry" came out in October 2020. This book, published by Wolters Kluwer Spain and Bosch, includes a legal analysis of the impact of COVID-19 in the industry, matters that were raised as a consequence of this new disease, and challenges for the industry. The book was introduced by the Dean of the Universidad Panamericana and a very respected engineer in Mexico and USA. I got many ideas from several fellows of the ACCL so thank you very very much for your help in letting me achieve this goal.



I'm attaching a copy of the book cover below.



**Howard Ashcraft** - I have been appointed as an Associate Fellow of the Saïd Business School at Oxford University where he leads the Commercial Leadership Module in the MSc in Major Programme Management. I also continue teaching as an Adjunct Professor at the Stanford University Department of Civil and Environmental Engineering.

**Bob Smith** - I am happy to report that The History of the University of Wisconsin System, authored by

my wife, Pat Brady, has been published.

<https://uwpress.wisc.edu/books/5785.htm>

**Thomas Stipanowich** - I've come out with two new publications that might be of interest to ACCL members:

"Arbitration, Mediation and Mixed Modes":

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3689389](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3689389)

"Multi-Tier Dispute Resolution in the U.S.":

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3601337](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3601337)

Recent talks include:

- "American Perspectives on Construction ADR," Society of Construction Law of Vietnam /VIAC, June 19, 2020
- Keynote, 25th Anniversary Program, California Dispute Resolution Council, Oct. 23, 2020
- "Ten Points for Future Legal Professionals," Jed Melnick Symposium on Presumptive ADR and the Law, Cardozo School of Law, Oct. 23, 2020

- "Coming to Terms with Mixed Modes," International Academy of Mediators / Hong Kong Mediation Centre Conference on International Commercial Mediation in Asia, Oct. 27, 2020
- "Abraham Lincoln: Negotiating Emancipation," Symposium on Presidential Leadership in Times of Crisis, Caruso School of Law, Pepperdine, Oct. 29, 2020
- Panel, "The New Singapore Convention on Mediation," International Bar Association "IBA Virtually Together 2020 Conference, Nov. 5, 2020

My very best wishes to all of you for a happy and healthy autumn season. In the last two weeks we have had snow, -20 below temperature, followed by 70-degree sunshine. Never a dull moment in Montana.

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## **EDITOR'S NOTE**

Hello and best wishes to all of you. I recently watched the College's presentation on remote arbitrations hosted by Jim Schenck with speakers Allen Gibson and Clif Shapiro. It was informative and presented many good ideas. My experience with electronic mediations and arbitrations recently shows me that the College is really at the cutting edge of a lot of these ideas. This is another example of not only how useful the college is but how much there is to learn!