TRIAL ADVOCACY IN THE 21ST CENTURY GLOBAL VILLAGE

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I. Introduction

President and First Lady McGroder, Fellows, families and guests: it is a huge honor and a humbling experience to be Dean of this Academy. I counted, and I have attended eleven Dean's addresses since becoming a Fellow. They were all great speeches and after being named Dean last April, I read about 15 others, trying to figure out what I should talk about today. It was pretty intimidating for the son of a bread salesman.

In 1945 my father returned from WWII, part of the Greatest Generation that defeated fascism, and then reshaped the last half of the 20th century. Dad firmly believed that education and competition were the keys to success in life, and with only a 10th grade formal education himself, it is pretty safe to say he was never more proud than when I graduated from law school, the third of his three kids to earn a college degree and the first lawyer in the family.

My Dad loved to sit for hours at the kitchen table and argue with me about world affairs. His view of the world was shaped by his service in the Fifth Medical Battalion of Patton's Third Army and that in turn helped shape my world view. Of course, this is like millions of other American stories, but I still marvel – and I am incredibly grateful – that the son of a bread salesman from Grand Rapids, Michigan can become Dean of the International Academy of Trial Lawyers.

The subject for my Dean's address today is the role of trial advocacy in what the late Canadian scholar Marshall McLuhan famously called "the global village," which he predicted in the 1970's would be built on an electronic nervous system…or what we now know as the internet. First, because I appreciate the incredibly good fortune that made this possible, I want to look back at some of the people and events instrumental in bringing me here. Second, I will take a look at the current state of dispute resolution systems and the rule of law around the world, focusing on the impact of information technology. Finally, I will attempt to explore what I see as the future of trial advocacy in the 21st century global village.

That future will likely challenge many of the values we hold most dear. It will probably cause some discomfort and disagreement, but I am optimistic, and I hope that when I finish you will all be optimistic as well.

II. *Looking back*

In the spring of 1973 Lee Kreindler delivered his Dean's address. It was brilliant and it was bold, and reading it shortly after I became Dean provided much of the inspiration for this address.

Lee reported about his service as Dean with the following words:

> **"as many of you know I undertook the responsibilities of Dean with a particular subject in mind; the role of lawyers, and the Academy itself in working toward world peace, through law, and, more particularly, in the expansion of jurisdiction of the international court of justice."**

That is staggeringly audacious. To think the ICJ might become a forum to promote world peace by enforcing the rights of individuals, and that the fellows of this Academy might play a significant role in causing that to happen, was the trial lawyer equivalent of Kevin Costner's character in "The Field of Dreams" believing the voice that told him "if you build it, he will come."

At about the time Lee was delivering his Dean's address; I was a junior at the Defiance College in Defiance, Ohio. I had finally accepted that I was never going to make it to the "show" and be a catcher in the major leagues, so I shifted to inter-collegiate speech competition. I had the good fortune that a professor by the name of Jan Younger pulled me from an introductory class in persuasion and taught me, and all of us on his national championship speech and debate teams, how to put together a prima facie case, how to use evidence in the construction or destruction of an argument, and what Aristotle meant when he said an advocate should use all the available means of persuasion – in Greek terms ethos, pathos and logos – roughly translated as virtue, emotion and logic.

Coach Younger sent us forth from a small liberal arts college in rural northwest Ohio with a lasting commitment to the value of competition and the adversary process, in the pursuit of truth and intellectual excellence.

Coach Younger was the second best thing that happened to me at Defiance College. Meeting JoAnne was, of course, the best. As most of you know,

we married and moved to Miami in 1974, where I attended law school at the University of Miami and entered the practice of law.

For most of my 35 years of law practice I have been a professional schizophrenic, moving between the U.S. trial bar on the one hand, and the world of domestic and later international arbitration on the other.

I am blessed to be part of a law firm created by Bill Colson and Bill Hicks. Both were fellows of this Academy; Bill Hicks was President in 1986. Colson Hicks Eidson has been privileged to represent some of the most wonderful clients, handled some of the most fascinating cases, and enjoyed some of the greatest successes any trial law firm could imagine.

In the process we learned the skills of the trial advocate that were largely unique to the United States in the last half of the 20th century. We learned Irving Younger's "ten commandments of cross examination." We grew up with Bill Colson's "instant final argument." Most important, we were given the enormous privilege to become colleagues and learn from such fantastic trial lawyers as all of you and the fellows of the other great trial bar organizations.

Never once have I take for granted the incredible opportunities afforded me by my past and present partners, and the camaraderie of the trial bar, particularly this Academy, is unparalleled.

We also learned from jury consultants and other professionals about such things as the value of presenting logical arguments and evidence to so-called "left-brained" jurors and emotional arguments and evidence to "right-brained" jurors…and we are just now beginning to use neurological sciences to understand the decision making process.

From a group of actors we learned the skills of the theatre, such as voice projection and inflection, facial and body expressions, and I learned about the "ten word telegram" where I came to understand the power of eye contact and simple compelling language as persuasive tools. I'll be happy to share that with any of you over a drink sometime.

We have all learned first-hand that an independent judiciary populated by independent judges and well trained advocates not beholden to the

government or powerful private interests is essential to a liberal democracy where justice is truly made available to all.

In the process we were also privileged to earn a very good living.

But before joining Colson Hicks Eidson, I started as a construction lawyer. I learned about the history and role of arbitration in the U.S. as an "alternative" to the civil justice system for the construction industry. We young lawyers in the construction bar volunteered to serve as arbitrators. We were not paid. It was part of our tutelage. At that time I knew nothing about the role arbitration had come to play in the resolution of disputes between people from different countries. I learned that only after I became a fellow of this Academy, traveled the world with many of you, and made some crazy decisions like teaching at the National University of Mongolia.

I have learned a lot about civil justice systems around the world in the past few years – but mostly I have learned about the importance of arbitration as the preferred dispute resolution method for civil disputes among people from different nations…which brings me to the second part of this address.

III. Current state of dispute resolution systems and the rule of law around the world and the impact of arbitration, globalization and information technology on those systems

Even before Lee Kreindler was dreaming about the ICJ as a world court for enforcement of individual human rights, other lawyers, including most prominently a Dutch lawyer named Pieter Sanders, were imagining international arbitration systems.

Those lawyers were every bit as audacious as Lee…and they were remarkably successful. They built the foundations for the present systems of international commercial and international investment arbitration. Professor Sanders, who died last year at the age of 100, is widely credited as the father of the 1958 New York convention on recognition of arbitration agreements and enforcement of arbitration awards. More than 145 nations have committed their courts to compel agreements to arbitrate and to enforce arbitration awards whatever their nation of origin.

Just to provide some perspective, the judgment of a U.S. court is basically enforceable only in the courts of the United States. On the other hand,

because of the success of the New York Convention, an arbitration award entered in any country is enforceable in the courts of 145 countries, including every court in every state in the U.S., by summary proceedings.

Not long after the New York convention, the Washington convention of 1965 created an arbitral forum housed in the World Bank in Washington where claims could be brought against governments for expropriation without compensation or other unfair or discriminatory treatment of investments by foreign nationals. Sovereign governments are now often ordered by arbitral tribunals to pay compensation to private citizens and corporations for violations of these treaty commitments. Hopefully someday these treaty arbitrations will include claims on behalf of less conventional investors like, for example, an international trade union that invests in developing nations to protect the rights of workers there but for now they only protect capital investments.

These international arbitration systems are under constant and sometimes legitimate attack, but neither is in serious danger of extinction. In his State of the Union message this year President Obama announced that negotiations between the U.S. and the EU toward adoption of a multi-lateral investment treaty like NAFTA are nearing completion. If adopted, it will almost certainly include investment treaty arbitration for resolution of investment disputes…and there will be many.

It is lawyers who conceived and created these systems – but for the most part they were not ***trial*** lawyers. Today, thousands of lawyers serve as advocates, arbitrators and managers of international arbitration forums – but for the most part they are not ***trial*** lawyers. For the past 20 years thousands of lawyers have traveled to Vienna in March and donated their time as part of the Willem C. Vis International Commercial Arbitration Moot, to train law students in the advocacy skills of international arbitration. In 2012 the Vis moot hosted 285 teams from 71 countries and hundreds of lawyers to teach and serve as arbitrators – but for the most part they are not ***trial*** lawyers.

In my view it is long past time for trial lawyers to follow Lee Kriendler's guidance and enter that world, contributing our enormous time, talent and treasure to the advocacy and dispute resolution that takes place in these arbitration systems.

Please don't misunderstand. I am not suggesting that we abandon our jury trial system or the other independent judicial branches of liberal democratic governments. They are critical components of liberal democracies and the rule of law. I am merely observing that arbitration is by far the predominant method of dispute resolution for civil and commercial disputes in the international realm, and that these arbitral systems would benefit from greater participation by the best and the brightest of the trial bar – particularly the fellows of this Academy…

Now, what could possibly have convinced me to include such sacrilege in the Dean's address to the best trial lawyers in the world, when I know many of you have fought against arbitration imposed in the U.S. consumer and employment context for years? It is because I fear that battle is lost.

I have spent huge amounts of time the past few years working with the South Florida maritime bar, including some of my partners, first trying to avoid, and then trying to make sure the arbitration provisions that the cruise industry is using to avoid South Florida juries at least provide a reasonably fair and accessible forum for resolution of disputes under the Jones Act to protect injured seafarers. I don't know whether we will succeed, but there really is no choice unless we are to abandon these decent, hard-working people when they are injured in service to the cruise industry.

It is this experience and my observation of two enormous trends during the last quarter of the 20th century that convinced me to include this call to action today.

In the first trend, the Supreme Court of the United States has transformed the U.S. federal arbitration act into a class action reform and tort reform tool far more effective than Congress or any state legislature ever imagined. Whatever one's view of the Supreme Court's decisions, there is no denying their impact on the U.S. trial bar. Claims our clients once pursued or defended before judges or juries, individually and as class claims, are now maintainable, if at all, only in arbitration.

In the second trend, Windows 95, the Intel processor and the internet ushered in the information technology revolution. It changed things for trial lawyers and arbitration practitioners alike, both domestically and internationally.

In his 2001 Dean's address, Jim Bostwick talked about some of the changes and fears the information technology revolution engendered among lawyers, particularly trial lawyers. He said:

> **The post-modern world is intrinsically tied to the universal use of the digital computer. Whether one is morphing illustrations for use in court, researching complex medical issues or sending rocket probes into space, all of this involves instantaneous communication and information retrieval among people everywhere. The world has shrunk, shrink-wrapped in an electronic membrane. Only a click separates us from people across the globe. This communication revolution is fast rendering national boundaries and other geographical notions obsolete. The Academy has responsibilities that are not just local but international in scope.**

Jim was right, but he only touched on the extent of the transformation. To truly understand its impact, I think it will help to look at the world of education. One of the most fascinating people in education today is Sir Kenneth Robinson. Sir Ken is the former Director of Arts Education at the University of Warwick, and is now an internationally known advisor on education in the arts. If you follow the TED conferences, you may have seen some of his presentations. He is a TED rock star. I am going to share a segment from one of those presentations in a moment, and to highlight its relevance I want to focus on one aspect of his lecture "Bring on the Learning Revolution."

Sir Ken says that the generational divide created by the information technology revolution is the greatest generational disconnect in the history of mankind. He is not just talking about long hair, loud music and tattoos. Entire relationships are established and nurtured over the Internet by people who grew up with the worldwide web. We may think the Manti Te'o story was an obvious hoax because nobody could fall in love with someone he had never met in person. Our children and grandchildren don't find that hard to understand at all. Just watch the series "Catfish" on MTV and you will see that this is an increasingly common form of hoax in the 21st century.

Sir Ken's message is that if we hope to bridge this massive generational gap, we must identify and "disenthrall" ourselves from ideas that were formed to meet the circumstances of a prior century. In the following segment, he turns to a quotation from Abraham Lincoln to make his point…

> **"Innovation is hard because it means doing something that people don't find very easy for the most part because it means challenging what we take for granted…things that we think are obvious. The great problem for reform or transformation is the tyranny of common sense. Things that people think that…well they can't be done any other way because that is the way they have always been done. I came across a great quote recently from Abraham Lincoln whom I thought you would be pleased to have quoted at this point. He said this in December 1862 to the Second Annual Meeting of Congress. I ought to explain that I have no idea what was happening at the time. We don't teach American History in Britain. We suppress it. You know, this is our policy. So no doubt something fascinating is happening in December 1862 which the Americans among us will be aware of. But he said this 'The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion.' I love that. Not rise to it, rise with it. 'As our case is new so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country.' I love that word. Disenthrall. You know what it means? That there are ideas that all of us are enthralled to which we simply take for granted as the natural order of things…the way things are. And many of our ideas have been formed not to meet the circumstances of this century but to cope with the circumstances of previous centuries that our minds are still hypnotized by them. And we have to disenthrall ourselves of some of them. Now, doing this is easier said than done…It is very hard to know what it is that you take for granted…and the reason is that you take it for granted."**

So…as Sir Ken might ask, what are we trial lawyers born and raised in the 20th century taking for granted about trial advocacy in the 21st century that we don't know we are taking for granted?

I have a suggestion. Many of us in this room will remember that about 20 years ago nearly every trial lawyer conference included at least one speaker who tried to help us deal with the Generation-X juror. Remember that? How should we construct arguments and present evidence to win over jurors who grew up with the instant gratification of TV legal series like L.A. Law? We thought we were really avant-garde, didn't we? How lame is that? Television? Really? Are we still trying to solve that problem today when most young adults are more comfortable communicating on Facebook, Skype and Twitter than they are carrying on a face-to-face conversation? Television is fighting just to remain relevant among youth today…and it is losing the fight.

So, as the civil jury trial becomes increasingly more rare, doesn't it seem less essential that we adapt our skills of advocacy to communicate with those fewer and fewer young people who are summoned to serve as jurors in our courtrooms – or who will soon be our judges – and much more essential that we adapt our skills of advocacy to communicate with the millions of younger people who live large parts of their lives in cyberspace because that is where much serious and important advocacy will take place in this century?

I am going to talk more about that shortly, but please bear with me. I need to pause briefly to make some observations about the rule of law in a way that we do not often discuss it because, as Sir Ken says, it really is hard to know what we are taking for granted.

In late November of last year, the World Justice Project, an independent non-profit created at the initiative of Bill Neukom, former General Counsel of Microsoft and later president of the American Bar Association released its rule of law index 2012. The rule of law index covers 97 countries, representing over 90 percent of the world's population. This index is organized around nine concepts: (1) limited government powers; (2) absence of corruption; (3) order and security; (4) fundamental rights; (5) open government; (6) regulatory enforcement; (7) civil justice; (8) criminal justice; and (9) informal justice. The index scores and rankings are drawn

from a general population poll of over 97,000 lay people, and a poll of 2,500 experts from around the world.

The outcome of this exercise is the world's most comprehensive measure of the extent to which countries adhere to the rule of law – not in theory but in practice.

So…how did we do? The United States ranks 22nd among the 97 nations covered in the category of civil justice. This is what most of us in this room do for a living, and it is the subject of this address. 22 out of 97. Pretty sobering. Canada and the UK were 13th and 11th, respectively. Not bad but not great either.

One of the most provocative legal thinkers today is Jan Paulsson. He is the author of a book entitled "Denial of Justice" and, like the World Justice Project, he has gathered a great deal of evidence that many court systems around the world simply do not work. He is now a professor at the University of Miami School of Law, my alma mater.

In a speech he first delivered in 2007, Professor Paulsson declared

> **States all over the world unhesitatingly subscribe to numerous conventions and declarations reflecting near universal consensus to the effect of forbidding such things as slavery, discrimination against women, child labour, or persecution based on religion or race.**
>
> **This vision is an illusion. Worse, it is a fraud. To refer to it as unrealistic idealism would be to let ourselves off too easily, in effect claiming for ourselves good intentions. The fact is that we may be participating – at least negligently and perhaps complicitly – in what I am tempted to call the fraudulent consensus on the rule of law.**

Paulsson suggests that instead of encouraging developing nations to adopt beautiful constitutions and conventions, it may be better to assume a world where nothing is enforceable and where property and individual rights are

totally insecure and then look instead for what he calls "**enclaves of justice**" – modest examples where some aspect of the rule of law is flourishing… and then try to replicate them.

Paulsson shares some examples.

Singapore has lifted itself from poverty and has shed one of the most corrupt judicial systems in the world becoming – in one generation – a nation with perhaps the most respected judiciary on earth – primarily by recruiting judges on merit and paying them extremely well. **Singapore's courts are an enclave of justice.**

Mongolia – my personal favorite – has instituted numerous reforms since 1991 when the Soviet empire dissolved. But the simplest and most effective of them – believe it or not – is the establishment of an accurate and transparent docket of cases. **Transparency of the court docket in Mongolia is an enclave of justice**.

Not surprisingly, since Paulsson is a world-renowned expert in international arbitration, he says investment treaty arbitration is forcing countries to improve their domestic civil justice systems in response to claims brought against them under these treaties. He says **Treaty based arbitration is an enclave of justice.**

I firmly believe our own China Program and Ireland Program are also examples. Neither one seeks to export our civil justice system. Rather, we seek to establish enduring relationships among our fellows and delegates in these countries. Through these relationships we believe our programs advance the rule of law in modest but long-lasting ways. The China Program and the Ireland Program are **enclaves of justice**.

Some of you may know that I have a dream for another IATL program. I would like to see one young Pakistani lawyer and one young Indian lawyer each year, stay in the homes of fellows who live in the same city so Academy fellows and families can jointly engage them with each other and with the U.S. legal community. It is my dream that an IATL India/Pakistan program might someday be **an enclave of justice**.

So, if the 21st century global village is going to be populated mainly with enclaves of justice connected by an electronic tether, what is the role of the trial advocate?

Sorry it took me so long to get here, but this is the heart of my speech, so please stick with me for a little while longer.

IV. Trial Advocacy in the 21st Century Global Village

As the 21st century moves from adolescence to youth, I believe that trial lawyers like us can continue to play an important role in resolving civil disputes. But we can do this only if we decide to participate in transnational dispute resolution as it exists in reality…and this reality is defined more by arbitration and by information technology than it is by the civil justice systems we have called home for so many years.

Some of us who have served on both the admissions committee and the international relations committee of the Academy have sometimes wondered if the phrase "international trial lawyer" is something of a misnomer. There are no international jury trials.

So is there really an international trial lawyer? If so, what does this person look like and where does she practice her profession? Does she speak only English or must she be multilingual? If so, what languages other than English must she speak? Where was she educated and must she have a license? If so, who has the authority to grant that license and what are the professional rules applicable to admission and service as an international trial lawyer? Does she practice her craft before national courts or "courts" like the international court of justice and the international court of criminal justice that are really a mixture of courts and arbitral tribunals? Does she appear before private international arbitral tribunals? Does she ever even have to appear physically, or can she practice her entire career in the virtual world created by the internet and other technologies that provide the digital backbone for the global village, where video links and simultaneous language translation will soon be ubiquitous?

Interesting questions?

I hope so…but how do we find the answers?

One of the foremost experts today on transnational regulation of the legal profession, the immediate past Dean of George Washington University law school, is Paul Schiff Berman. He points out that legal historians have studied the British colonial period as one of the best examples where multiple legal regimes occupied the same social field for a sustained period of time – a period that turned out to be the first phase of the current globalization of the world economy. So I decided to look at the organization of advocates during the years of the British Empire to see what, if anything, it might tell us something about how to organize advocates in the 21st century.

The International Council of Advocates and Barristers (ICAB) is the umbrella organization of barristers and advocates from the UK and many former colonies, organized to promote and preserve those ancient principles most essential to the independent trial bar as it developed before and during the centuries of Britain's colonial rule.

The principles ICAB promotes are not surprising. They include a commitment to the skills of advocacy; careful training through mentoring and tutelage to develop those skills; a fierce commitment to independence through organizational structures such as law libraries, chambers and bar councils; and ethical principles that emphasize the obligation to the civil justice system itself (i.e., the courts) over the obligation to specific clients. They are very proud of their commitment to the "cab rank" rule which compels them, without fear or favor, to represent parties regardless of how unpopular they may be in the community outside the justice system.

But what is the civil justice system in a 21st century global village? What will the great global legal organizations of the 21st century adopt as their core principles? For thousands of years philosophers have tried to define justice, and I certainly can't try to review those efforts here. Not without putting you all to sleep. But just to prove that you really can find almost anything on the Internet and that not everything you find is worthless, I want to share with you a short YouTube animation prepared by a delightful young professor at Northern Illinois University, Dr. Reynaldo Ty. It tries to answer the question:

"What has justice meant in different historical times?"

Let's talk about the history of the concept of justice. Alright? Justice meant something different in the ancient, medieval, modern, & postmodern texts.
Confucius talked about the love of humanity, not doing to others what we don't want others to do unto you; doing good to good & justice to evil.
Buddha said we should care for all.
Socrates said that rulers must care for the welfare of the people.
Aristotle said that equals must be treated equally & unequals unequally in proportion to their inequality.
In the Medieval times, Aquinas said justice goes from the higher divine to the lower natural & human realms.
In the modern times, John Locke said we must not interfere with liberty.
For Bentham, we must care for the greatest happiness for the greatest number of people.
John Rawls deductively developed an abstract theory according to which justice is fairness.
Chomsky used the principles of justice as the starting point to fight against injustice.
In summary, justice meant different things during different historical periods: from the ancient times to medieval, modern & post-modern times.

So, there you have it. 3000 years of the philosophy of justice in a one minute YouTube animation. Pretty impressive, huh?

But still – what will the civil justice system be in a **21st century** global village?

I am not a philosopher, but I do have a thought to share. In every court in the State of Florida above the judge appear the words

"We who labor here seek only truth."

What if it is as simple as hundreds or even thousands of enclaves of justice that exist to offer dispute resolution in specific corners of the global village based on a core commitment to the search for truth within that corner of the world?

If so, what does that mean for us in this room?

I think it presents some fascinating opportunities for us.

For example,

- What if a small, experienced group of advocates – like some of you – were to form a virtual international chambers based around a commitment to offering the highest quality services as both advocates and decision makers to some segment of the world community at large and what if your primary commitment was to a system of dispute resolution that sought to resolve disputes by searching for truth, above all other goals?
- What if, patterned after British chambers, the advocates for all parties to disputes and even the judges who will decide those disputes were "housed" in the same virtual chambers?
- What if these advocates rejected the need for national licensing and instead looked to international professional organizations for legitimacy in much the same way that the worldwide web consortium exists separate from governments and has managed to keep the Internet relatively free from most government interference and control while it has connected hundreds of millions of people from all over the globe electronically?
- What if this small group of advocates trained younger advocates and converted those tools developed during the last century in our courtrooms to dispute resolution that might take place partially or entirely in a virtual world where communication will be dominated by the tools of the newest generation?

Here is a test. How many of you know what a meme is?

"Meme" is a term created by the evolutionary biologist Richard Dawkins. He coined it to describe an idea in the language of genetics. A gene is transferable, it replicates itself, combines and mutates based on Darwin's theory that the fittest survive. A meme today is an idea that is transferable.

It combines and replicates itself – most often on the Internet – according to a similar set of natural rules. If it is a successful meme, it sticks in the minds of those who see and hear it. It becomes part of the language of the Internet.

LOLcats is one of the most successful memes on the Internet today. It transcends linguistic barriers and cultures. Youth in Russia, China and the world over know what LOLcats are. When they see the cat, they know the cat is saying something ironic and usually funny. It is pretty easy for them to translate using Google-translate or other such tools.

If we want to communicate with young people, understanding and learning how to employ tools like memes may well be invaluable…but memes are just one example. Be it Instant messaging, Skype video conferencing, or any such tools second nature to the internet-savvy generation, there is a world of ideas on the Internet that are unknown or under-utilized by the legal profession.

Let me try to get a little more specific.

What if Jim Bostwick, Jack McCoy and Bobbie Pichini from the U.S., Michael Stitt from Northern Ireland, and some of the other great medical legal trial advocates from all continents formed a virtual chambers – let's call them "medical legal advocates without borders" – to provide dispute resolution services to the transnational medical community? There are people trying to promote medical travel so that patients from one country will travel to another country where a particular surgical procedure is world class quality but far less expensive. The absence of a dispute resolution mechanism restrains the growth of this industry because people responsible for paying the bills are reluctant to push patients to elect a less expensive, more exotic surgical option. Maybe a world class surgical center in Costa Rica, South Korea or India would consider including arbitration provisions in their contracts with foreign patients so that if disputes arise they could be resolved by the world class advocates and judges who make up the virtual chambers of the medical legal advocates without borders.

This would not likely benefit Jim, Bobbie, Jack, Michael or others of their stature, but it might become a small enclave of justice committed to the highest quality of justice in one small corner of the 21st century global village – the transnational medical community. Who knows, maybe a hybrid form of online jury process could be created calling on a virtual community to help decide disputes between patients and health care providers and this could be incorporated into such an arbitration enclave of justice. EBay India experimented with this and maybe we could expand on that experiment, coming full circle to incorporate one of the core commitments of the U.S. civil justice system…the jury.

Some of this may seem like fantasy, but some is definitely not. Before I finish I would like to share with you an experience I had recently. I served as an arbitrator in one of those investment treaty arbitration cases I mentioned earlier. It was brought by Italian owners of marble and granite mines in South Africa. The claim was that the affirmative action mining laws and regulations adopted after the fall of the apartheid regime violated an investment treaty between Italy and South Africa. The claims challenged one of the most important principles upon which the constitution of the new government was based.

I was nominated by the government of South Africa. The arbitrator nominated by the claimants was one of the most prominent international arbitration specialists in the world. He serves as an arbitrator on the Iran-U.S. arbitration claims tribunal. The chair of the tribunal was an English barrister, who is a world renowned international law specialist and professor at Oxford. I was totally out of my league.

The case was fascinating but for today, my purpose in telling you this is that when we held hearings in the case at the Peace Palace in The Hague, the lawyer who argued the case on behalf of the claimants was a barrister who shares chambers with the chairman of the tribunal. That might cause concern about the fairness of having one party represented by an advocate who regularly has lunch with and who shares offices with the head of the tribunal, but you should also know that the lawyer who represented the government of South Africa and was responsible for my appointment was Jan Paulsson, the man I quoted earlier, a friend of mine. Later this month

I will appear as advocate for a party in yet another case, this one against the government of Poland, where the chairman of the tribunal I served with in the South Africa case is serving as the chair of a three member tribunal.

Sound incestuous? There are many people who criticize the international arbitration system as a "good old boys" club and I won't pretend it is perfect, but I am proud to participate as an advocate in some cases and as an arbitrator in other cases. Although the field continues to be dominated by what a friend calls "male, pale and stale" European and North American lawyers who are mainly from large multi-national law firms, that is slowly changing and not only are younger, more diverse professionals participating, many prominent international arbitrators are increasingly operating in small firm settings or from law school faculties.

Next week I will advocate on behalf of Pittsburg investors against the government of Poland and the hearing will take place in Istanbul. I don't know if we will win, but like you, I still love the competition of trial advocacy and these forums are forcing me to learn new systems and new rules. Most important they are making me try to adapt the tools I learned from Bill Colson and Bill Hicks to these new forums and these decision makers.

Like Bill Colson and Bill Hicks, my father and my college speech coach were both deeply committed to the value of competition and the adversary process. I am grateful for the influence they all had on me. But my father used to say he thought competition was the purest form of cooperation. That has always been my favorite example of F. Scott Fitzgerald's famous idea about holding two contradictory thoughts at the same time, but another example is when one is able to embrace a revolutionary innovative approach to problem solving but at the same time respect and treasure the lasting truths of the past. In the words of Lincoln, to disenthrall oneself from the dogmas of the past developed for the circumstances of another century, while maintaining those self-evident truths that remain valid and essential to solving problems.

In a great passage from the recent movie "Lincoln" Daniel Day Lewis portrays our greatest president engaging in just such an exercise, returning

to the wisdom and logic of Euclid to fashion a new dogma for the equality among men that was declared at the founding of our nation but not endorsed in our Constitution. Here is that scene:

> **Euclid's first common notion is this. Things that are equal to the same thing are equal to each other. That's a rule of mathematical reasoning. It is true because it works. Has done and always will do. In his book, Euclid says this is self-evident. You see, there it is, even in that 2000 year old book of mechanical law, it is a self-evident truth that things that are equal to the same thing are equal to each other.**

It has always been a source of enormous pride that our greatest president was first a trial lawyer.

Adapting the role of trial advocates to the massive changes presented by the 21st century global village will require that we rise with the occasion and disenthrall ourselves from the inadequate dogmas of the last century while at the same time remaining true to the self-evident truths of the greater past.

Recognizing one from the other is difficult, confusing and the need to change can be frightening. More than a decade ago Jim Bostwick helped us acknowledge that technology is frightening, but most things are less frightening when what has happened before has been wonderful. In my case that includes my almost 39 years of marriage with JoAnne. She has been incredibly flexible in the face of some pretty ridiculous adventures I thought might help me cope with the massive changes of the 21st century global village and I thank and love her deeply for sticking with me… although she did make me go to Mongolia for a week and check out the living arrangements before she got on the plane and joined me there.
I also want to thank our son Kyle. In his 24 years he has already encountered more personal demons than I have in my 61 years and he remains the sweetest human being I know. He introduced me to Sir Kenneth Robinson and patiently explained memes to me, while I have tried to instill some discipline in him. He has not yet fully succeeded; nor have I. But his patience and help with this speech was invaluable and it was a wonderful way for us to reconnect after 4 very long years apart.

And finally I want to thank all of you for giving me this honor and for listening to me ramble about the future of trial advocacy. Whatever that future does hold, I sure hope I will continue to share it with all of you.

Thank you.

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