Our Mission

The Jefferson Society, Inc. is a non-profit corporation, founded on July 4, 2012 for the advancement of its members' mutual interests in Architecture and Law. The Society intends to accomplish these purposes by enhancing collegiality among its members and by facilitating dialogue between architects and lawyers.

Inside This Issue

The Jefferson Society, Inc.

c/o 2170 Lonicera Way
Charlottesville, VA 22911

ISSUE 15 April 2016

QUARTERLY JOURNAL OF THE JEFFERSON SOCIETY

Monticello

Know of Another Architect-Lawyer Who Has Not Yet Joined?

Send his or her name to Pres-Elect Mehrdad Farivar at mfarivar@mpplaw.com and we will reach out to him or her. All candidates must have dual degrees in architecture and law.

AUTHORS WANTED

Interested in writing an article, a member profile, an opinion piece, or highlighting some new case or statute that is of interest. Please e-mail Bill Quatman to submit your idea for an upcoming issue of Monticello. Contact: bquatman@burnsmcd.com

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President's Final Message

By Timothy R. Twomey, FAIA, Esq.
CallisonRTKL, Inc.

The year has gone quickly. Some highlights included the honor and thrill to sponsor five TJS members to become, and to attend their induction as, members of the Bar of the U.S. Supreme Court. I also was pleased to support TJS member Craig Williams, FAIA, Esq. in his successful application for acceptance to the AIA's College of Fellows. Some disappointments included not being able to get much traction yet on the creation of events or vehicles for TJS members to share their unique experience, insights and knowledge. Eric Pempus and the newly populated Program Committee have generated some great ideas that show signs of fruition, and a thoughtful discussion with incoming President Mehrdad Farivar along similar lines may yet lead to results in the coming year.

Proposed changes to TJS governance structures, both to the Board and its Officers, to be addressed at the upcoming Annual Meeting, are intended to provide stability over time to the Society while ensuring a constant flow of new members into leadership positions. It's a bit like "Goldilocks' situation" - you want folks in leadership positions long enough to give them real opportunities to accomplish goals but not so long that others are precluded from contributing their energies and ideas. I anticipate that the proposed changes will give TJS that necessary balance.

Finally, our membership list (you can see it on our web site) is still growing, though perhaps not at the same rate as in the recent past. We are a small subset of the larger industry, so we may be approaching the limit of those who qualify for membership. But I urge you to please send in the qualifying names of anybody you know who is not currently a member so they may be invited to join the Society. I am always surprised that there are others out there and would enjoy having them as members.

I want to thank Julia Donoho who again this year made the necessary arrange-

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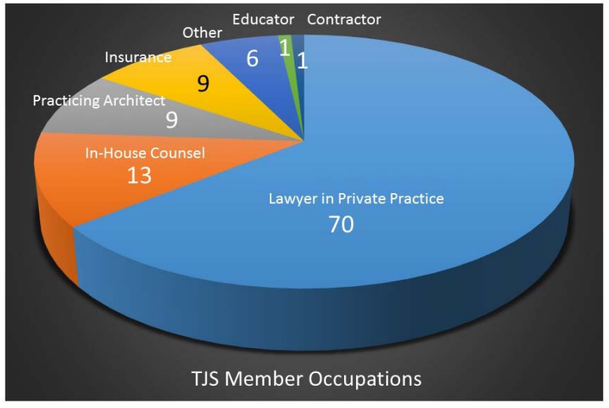
President's Final Message
(continued from page 1)

ments for our Annual Meeting. Elsewhere in this issue of *Monticello* is more information on the Annual Meeting. I look forward to seeing you there.

Also, I want to thank Bill Quatman for his leadership role in again publishing *Monticello* this past year. It's a lot of work, and we all appreciate it. This newsletter is the one vehicle that links us all together, provides news and information, and acts as a resource for each of us.

I also want to thank Suzanne Harness, our Treasurer again this past year. Her assistance goes far beyond the important matters of collecting dues, paying bills, tracking memberships and managing our accounts. She is also an important source of knowledge and history for the Society, as well as a thoughtful critic and ardent supporter of our actions and activities.

Thank you for permitting me to serve as your President this past year, and I congratulate Mehrdad Farivar, FAIA, Esq. on taking over as president following the 2016 Annual Meeting.



Who Does What? As of the date of this publication, we have 110 members of the Society. While we all share the common experience of going to architecture school and then law school, we have taken different career paths. As the pie-chart above shows, 64.2% of TJS Members are lawyers in private practice, followed by in-house counsel at 11.9%. Practicing architects and insurers are tied at 8.2%. We have one educator and one contractor member.

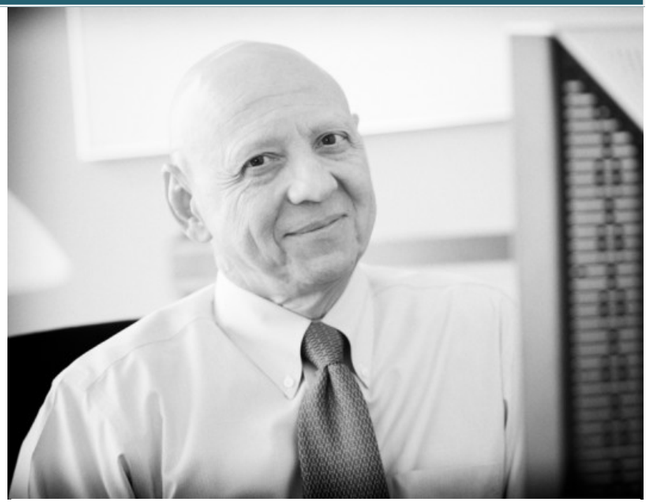
Actor Kevin Spacey to Keynote the AIA Convention

Fans of Netflix series *House of Cards* character Francis (Frank) Underwood will want to hear what Kevin Spacey has to say in Philadelphia on Thurs., May 19 (the morning after the TJS Annual Meeting). So don't stay out too late, as the keynote presentation by Oscar winner Spacey starts at 8:15 a.m. and the meeting space will be packed. In 2014, Spacey was named one of Forbes "Most Powerful Celebrities" and was the first online-only TV series star to make the list. Most recently, he was awarded an Honorary Knighthood by Her Majesty the Queen. His comments should be provocative and entertaining.

Jefferson Society Member Julia Donoho, AIA, Esq. Receives Pillar Award

On Feb. 25, 2016, Julia Donoho, AIA, Esq. was honored by the Beverly Willis Architecture Foundation at its Leadership Awards Gala, held in New York City at the Prince George Ballroom. Ms. Donoho of Windsor, Ca. received the leadership award for advancing the cause of women architects. Specifically, Julia was honored for her efforts to change the story of the AIA Gold Medal to include female architects and duos - first Julia Morgan and now Robert Venturi and Denise Scott Brown. The Beverly Willis Architecture Foundation ("BWAF") is committed to shifting the culture of the building industry so that the work of historical and contemporary women is acknowledged and recognized. Its founder, Beverly Willis, FAIA, is an artist, architect, author, film maker. After 40 years of art-architectural practice, Beverly founded the Beverly Willis Architecture Foundation to change the culture of the design and construction industry, making it diverse and providing true recognition for women. Julia is an architect and lawyer with her firm of Equinox Design and Development. She served in 2015 on the AIA National Strategic Council, is a past member of the AIA National Board of Directors (2013-14), and served for two years on as the AIA California Council Regional Representative (2013-15).

"It is humbling for me," Julia said, "and it seems to me that this recognition extends to a whole host of people who are changing the story of our professions, and it required the advocacy skill set that we develop as attorneys." Robert Ivy, FAIA complimented Julia's efforts, saying, "They turned in the most complete and scholarly and persuasive nomination package I've ever seen." Julia feels she would never have been on the National Board of the AIA, to be able to make nominations, if it were not for the work of BWAF. "Beverly Willis, FAIA, is the one who prompted me to step it up, and step into a leadership role. Beverly Willis designed the house of the Dean of my law school, and he insisted I meet her, so this is a big full circle." Julia notes that Ms. Willis and Past AIA National President Kate Schwenssen, FAIA were the first to talk about "the cold, hard statistics of zero gold medals in architecture to women," adding that, "the goals of BWAF go beyond shifting statistics. It not enough to get a name on the wall, but the legacy of these individuals needs to become part of the full discourse of contemporary and historic architects. We cannot allow the legacy of some of our greatest architects to languish in the shadows of history."



New Fellow R. Craig Williams, FAIA, Esq. was the second president of The Jefferson Society, and one of the twelve original founders. Craig is general counsel for HKS in Dallas, Texas.

Congratulations to TJS Member R. Craig Williams, FAIA!

The 2016 Jury of Fellows elevated 149 AIA members and 9 international architects to its prestigious College of Fellows for achieving a standard of excellence in the profession. Out of a total AIA membership of over 88,000, less than 4% of its members are distinguished with this honor. Craig received notice of his fellowship in a letter from the Chancellor of the College of Fellows on Jan. 29, 2016. The 2016 Class of Fellows will be honored at an investiture ceremony at the 2016 National AIA Convention at 4:00 p.m., on Friday, May 20th in the Irvine Auditorium at the University of Pennsylvania in Philadelphia. Craig is an avid motorcyclist, who earned his M.Arch. from The University of Texas and his J.D. from Southern Methodist. He is active in the AIA's Large Firm Roundtable. "I see myself as an architect who happens to be an attorney," Craig often says. "My core passion is still architecture, but I also enjoy helping architects with the business side of their practice." Craig is past co-chairman of the Texas Society of Architects Governmental Affairs Committee, and was chairman of the Professional Liability Committee of the Dallas Chapter of the AIA for 12 years. Congratulations to Craig and to his family on this wonderful honor.

Action Items for Annual Meeting.

The TJS Nominating Committee has come up with the following slate of candidates for Officers and for the four (4) Director positions which will be vacated:

OFFICERS:

For President: Mehrdad Farivar, FAIA, Esq.

For Sec'y-Pres. Elect: Suzanne H. Harness, AIA, Esq.

For Treasurer: Donna M. Hunt, AIA, Esq.

DIRECTORS: (4 openings)

Suzanne H. Harness, AIA, Esq.

Chuck R. Heuer, FAIA, Esq.

Rebecca McWilliams, AIA, Esq.

Jose B. Rodriquez, AIA, Esq.

In addition, there are 7 proposed By Law changes to be voted on by the Members:

1. Reduce the Board from the current 11 Directors to 9, each serving 3-year staggered terms with three new members elected each year; and authorize the Board to adjust current term lengths to achieve the staggered 3-year terms as soon as practicable.
2. Create a new four-member "Founders Group," to serve as a non-voting advisory committee to the Board of Directors.
3. Increase the term of President to two (2) years to allow for more continuity.
4. Create a new one (1) year Vice President position for the Past President, so as to provide counsel to the current President.
5. Replace the current Secretary/President-Elect position with Vice President/President-Elect to allow one (1) year for the President-Elect to assist the current President and learn the role of President, without serving a dual role as Secretary.
6. Increase the term of Treasurer to two (2) years. Create a new one (1) year position as Treasurer-Elect, to provide one (1) year for the Treasurer-Elect to learn the duties of Treasurer and to assist the current Treasurer.
7. Revise the Executive Committee to include the President, Vice-President/President-Elect, Vice President/Past President, Secretary, and Treasurer and to allow the Board to make other revisions to the By Laws as needed to effectuate the changes above.

PENNSYLVANIA: COMPLIANCE WITH BUILDING CODE IS NOT AN ABSOLUTE DEFENSE

In this 2015 case, an injured pedestrian sued the owner and operator of a bar and parking lot after a drunk driver's mini-van jumped a 5-inch tall concrete wheel stop and struck her while she was on the sidewalk, pinning her to the building. The trial court granted summary judgment to the defendant property owner and the pedestrian appealed. The landowner argued that his duty was coextensive with the building and zoning codes, and he discharged that duty because the wheel stops complied with the applicable zoning ordinance governing commercial off-street parking. The trial court agreed with this defense, stating that: "a possessor of land is not the insurer of the safety of his patrons and must only take reasonable measures to control the conduct of third persons." Importantly, no Pennsylvania court had ever held that a business owner was negligent for failing to install vertical bollards in addition to wheel stops. The trial court said it was "not inclined to do so here."

The trial court agreed that the owner had complied with all applicable codes and said that, "to impose a duty upon property owners above and beyond these standards would defeat the purpose of having such standards in the first place." The appeals court cited to the duty to protect business invitees against intentional or negligent acts of third parties as expressed in *Restatement (Second) of Torts* § 344. In reversing the trial court, the Superior Court concluded that, as a matter of law, the property owner had a duty to exercise reasonable care to protect its business invitees from all harmful third party conduct reasonably anticipated due to either the place or character of the business, or the landowner's past experience. Evidence showed that the landowner had four painted, concrete post bollards to protect a well casing on the southeastern corner of the same property. This gave rise to an inference that the owner recognized the risk of cars jumping the curb and, therefore, "had actual or constructive knowledge of a foreseeable risk of harm to business invitees walking on the sidewalk."

As to the defense of compliance with building codes and zoning ordinances, the Superior Court said, "Compliance with a law or administrative regulation relieves the actor of negligence *per se,* but it does not establish as a matter of law that due care was exercised." Compliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable person would take additional precautions, the Court held.

Even though this case did not involve a design firm, designers need to be aware that the law may hold them to design additional measures for safety above what is required by the building code, when a reasonable design professional would have taken greater precautions. The case is *Truax v. Roulhac*, 126 A.3d 991 (Pa. 2015), appeal denied, 129 A.3d 1244 (Pa. 2015).

VIRGINIA: Engineer Liable For Negligent Design Even Though It Relied On Manufacturer's Recommendation

The Owner (a church) hired William H. Gordon Assoc. as Engineer for a "rain tank" system (a holding tank for rainwater), to be buried ten feet below ground and paved over for parking. The Owner also hired Gordon to provide "Construction Coordination." The contract required the Engineer to "provide assistance to the Client and/or Client's representative during construction including review of shop drawings and answering questions, as required." The Engineer's "Standard Terms and Conditions" said the Engineer, "shall be entitled to rely on the accuracy and completeness of work and information supplied by third parties, the Client and his authorized representative and the public record." Another clause contained a standard of care as, "that degree of care and skill ordinarily exercised under similar conditions by reputable members of our profession practicing in the same or similar locality and in compliance with any applicable codes, statutes and/or regulations." The Construction Contract provided in relevant part: "3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor," and 3.12.7 "The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect." The Owner also hired a third-party inspector, to oversee the installation of the rain tank. ***So far, so good, right?***

Prior to installation, the Contractor submitted an RFI about the suitability of the rain tank for the location, given the high water table, including questions about installation and performance. In response, the Engineer did not address the installation issues, and addressed performance issues by referring to the manufacturer's drawings. The completed rain tank and the parking lot above it collapsed, delaying the scheduled occupancy of the church and parking lot by a full year. The Owner refused to pay the Contractor, who sued. The Owner then joined the Engineer and third-party inspector (who settled out before trial, leaving the Engineer.

The Owner's and Contractor's experts both testified that the Engineer breached its standard of care by failing to conduct due diligence regarding the suitability of the rain tank design, incorporating specifications from non-engineers into its own plans without verifying them, providing ambiguous plans, and failing to respond appropriately to questions during construction. The Engineer argued that the Construction Contract shifted liability for the rain tank failure and remediation work to the Contractor, releasing the Owner and Engineer from responsibility to pay for the remediation work.

The trial court awarded the Contractor $893,059 for retainage and costs to remove and replace the rain tank system. Of this sum, the Owner was granted judgment against the Engineer for $490,634, plus an additional $846,648 for delay (which included $569,260 in extended construction loan interest). The Engineer appealed, supported by an amicus brief filed on behalf of ACEC, NSPE and various local and regional affiliates who argued that the trial court

(continued on p. 6)

Virginia (cont'd from p. 5)

did not use the appropriate standard to evaluate the Engineer's services.

The amicus brief proposed that Engineer satisfied its duty of care by relying on the representations of the rain tank's manufacturer, and had no duty to conduct its own independent tests. "Neither Virginia nor any other state had through legislation or the common law imposed such a duty on design professionals," the Brief stated. The amicus parties also argued that in evaluating the standard of care, the Court should make it clear "that design professionals do not violate the applicable standard of care so long as they reasonably rely on information provided by product manufacturers."

On appeal, the Virginia Supreme Court held that the construction contract required the Contractor to perform in accordance with the Engineer's submittals, and be held liable for issues arising from deviations from those submittals. However, "[t]he Engineering Contract did not transfer liability for shortcomings in [the Engineer's] plans to [the Contractor] merely by virtue of [the Contractor] using the plans in its construction work ... Rather, the plans and contract left no design discretion to [the Contractor and] forbade [the Contractor] from making any design changes without [the Engineer's] express written consent. The third-party inspector had sent an email stating: "everything has been done in accordance with the plans, specs, manufacturer's recommendations, and we have no outstanding deficiencies." Thus, the Court did not find any fault with the Contractor's work.

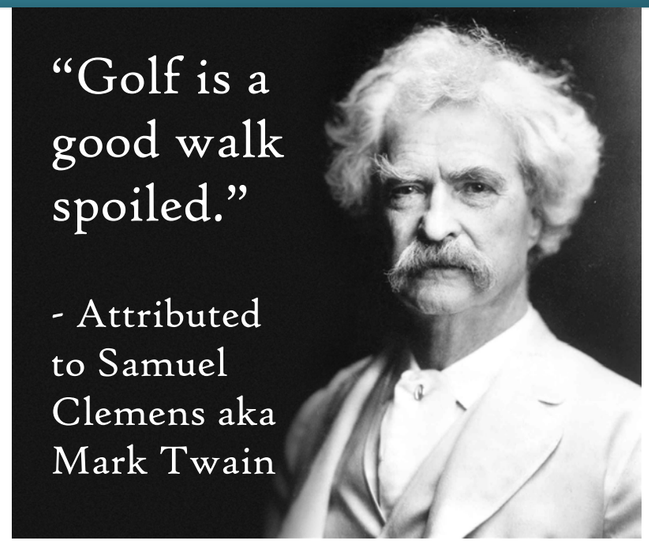
The Court noted that the state licensing law (18 VAC § 10–20–760) does not permit an engineer to seal plans unless "performed under the direct control and personal supervision of the professional," and noted that an expert witness testified that the Engineer had violated that law when it incorporated the manufacturer's unverified literature into the design, which it later sealed. The Court found numerous other breaches of the standard of care, including the Engineer's total failure to respond to suitability concerns raised in the RFI, and relying on information from standard manufacturing literature to respond to performance concerns. The Court affirmed the bulk of the judgment, reversing only as to the award of construction loan interest which was not incurred as a result of the breach of contract (a deduct of $569,260). See, *William H. Gordon Assoc., Inc. v. Heritage Fellowship*, 2016 WL 550371 (Va. Feb. 12, 2016).

New Report on Liability of Design–Build For Road Projects

In December 2015, a new report titled, "Liability of Design–Builders for Design, Construction, and Acquisition Claims" was published by the National Cooperative Highway Research Program, for which the Transportation Research Board (TRB) coordinated the research. The report was prepared by several industry leaders and was edited by James B. McDaniel, TRB Counsel for Legal Research Projects and the principal investigator. The comprehensive treatise covers topics including principles of construction and design liability, contractor's vs. designer's standard of care, the *Spearin* Doctrine, express design warranties, rights of third parties to sue designer, and the impact of contract language on claims, such as limitation of liability clauses. The 101-page report discusses case law relevant to design liability, particularly in design–build contracts, including the extent to which a high level of pre-contract design and a high level of discretion regarding design decisions or project acceptance may affect an agency's ability to transfer design liability. It also provides examples of contract language relevant to design liability (including performance standards, indemnification provisions, insurance requirements, warranties, and disclaimers regarding design furnished by the project owner).

In a very useful table format, the report provides information about state laws relevant to liability and anti-indemnity laws, including sovereign immunity, certificates of merit, and statutes of limitation and repose.

The report is available at onlinepubs.trb.org/onlinepubs/nchrp/nchrp_lrd_068.pdf



Judge Quotes Mark Twain on Golf

We ran across this quote in an Indiana court case and just had to share it. The case involved a dispute between a golf course and Yamaha, who makes golf carts. The purchaser installed its own GPS systems in the carts, which ran the batteries down, prematurely. A lawsuit ensued in which Yamaha moved for summary judgment on its limited warranty and waiver of consequential damages.

The learned judge (obviously a golfer) wrote:

"Mark Twain once said that golf was a 'good walk spoiled.' That was back in the day when golf was exclusively a walking sport. If someone was going to treat themselves, they might splurge on a looper who would lug their clubs around, keep a keen eye on wayward shots and read greens. But some-time in the last thirty years, that began to change. Golf carts became the rage, and walking the course largely went the way of the 1 iron, the metal spike, and drivers with heads smaller than the average cantaloupe. With progress comes litigation. This case is a dispute between Yamaha Golf Carts and the Swan Lake Golf Resort. Swan Lake contends that Yamaha breach a warranty when it sold them bum golf carts."

As to the GPS systems, the court added:

"For the uninitiated, GPS is another innovation in the sport of golf. A computer screen is mounted in a golf cart and by activating the system it allows the player to know the exact yardage to the green and the pin (and for duffers, it allows them to know how far away a water hazard is, for example). It's a bit ironic, but even the cart-mounted GPS units have gone the way of the Edsel in the advent of hand held units. In any event, Swan Lake had already invested almost $400,000 in the GPS system—more than it had invested in the golf carts themselves."

The court upheld Yamaha's waiver of consequential damages, but found a genuine issue of disputed fact prevented summary judgment. The case is *Swan Lake Holdings, LLC v. Yamaha Golf Cart Co.*, 2010 WL 3894576 (N.D. Ind. Sept. 27, 2010).

TEXAS: Another Economic Loss Doctrine Victory!

The Owner (A&H) hired Bell Industry to design and install energy-efficient improvements, including a geothermal loop, for A & H's office project. Bell, in turn, contracted with GPM to design the geothermal loop. A & H had no contract with GPM. A&H first sued Bell and settled that claim. A&H then sued GPM for negligent design, despite no contract. GPM moved for summary judgment on the basis that the Texas economic loss rule barred A & H's negligence claim. The trial court agreed and A&H appealed. In upholding the ruling for the engineer, the Texas Court of Appeals held that the economic loss rule barred the negligence claim against GPM "because A & H and GPM are contractual strangers" and "because GPM, as a design professional, had an independent duty to exercise skill and care commensurate with the requirements of its profession." The Court said the economic loss rule was particularly fitting in this case "where permitting A & H to sue GPM for economic loss would disrupt the risk allocations that A & H negotiated with Bell, and that Bell, in turn, negotiated with GPM." Although Bell had agreed to indemnify A&H, GPM limited its liability with Bell by contract. "Holding GPM liable to A & H through a separate tort action would judicially renegotiate the private risk allocations to which the parties contractually bound themselves." *A & H Prop. v. GPM Eng'g*, 2015 WL 9435974 (Tex. App. Dec. 23, 2015).

MEMBER PROFILE: JOSH FLOWERS

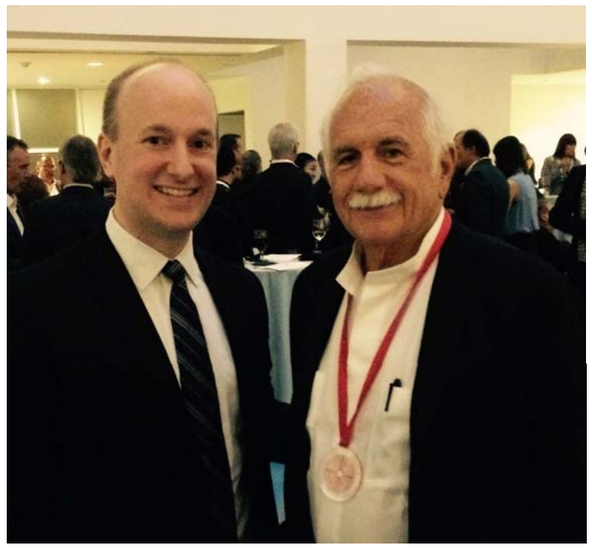
Joshua Flowers, Esq., AIA
Hnedak Bobo Group
Memphis

Josh Flowers got his degrees in architecture (magna cum laude) and law from the University of Tennessee. Like most of us, he worked at a small architectural firm after graduation where he had a chance to work on everything that happened in the office. “My favorite part of the process was working with contracts,” he told us, “and I talked to a mentor who encouraged me to go to law school. After that, I worked for a law firm that focused on construction law where most of the attorneys had backgrounds in architecture, engineering or construction.” Josh now works as in-house counsel for HBG, a Memphis-based architectural firm that specializes in hospitality design.

What’s the best part of his job? Josh said, “I love helping people in our firm become licensed, especially the very complicated cases like international degrees or people without accredited degrees who have many years of experience. I remember how challenging it can be for someone who is just out of architecture school to navigate all the rules and regulations of the licensure process, so it is very satisfying to find solutions to those obstacles.”

Josh is very active in the AIA, locally and nationally. During the recession, when a lot of young architects were laid off and started their own firms, Josh worked with the local AIA chapter to advise members on forming a company, compliance with practice laws, and negotiating client contracts. He also served as President of AIA Memphis in 2012 and served as the knowledge director for the AIA National Young Architects Forum (YAF). For the last few years, Josh has served on the YAF national advisory committee and currently serves as the 2016 Chair. In 2013, Josh launched “YAF Fireside Chats” at the AIA national convention. The sessions featured young architects who are leading the profession in a variety of ways. Josh was recognized for his work by receiving the Institute’s Young Architect’s Award in 2014.

Locally, he started the AIA Memphis Leadership Program to help young architects create a plan for their careers and form mentorship relationships with experienced architects and community leaders. The program received support from the YAF, which focuses on architects during their first 10 years of licensure. “I continued working with the YAF, first in my region working with Associate AIA members and students to organize an Emerging Professionals Design Symposium to work with organizations making an impact through design including the Rural Studio at Auburn University, Tulane City Center, and the Gulf Coast Community Design Studio. We are now working on the third Symposium which will take place in Fayetteville, Arkansas this fall.” This year YAF is focusing on helping the next generation of architects meet the challenges of the future workforce. “We are presenting a track of 10 sessions at the 2016 AIA National Convention in Philadelphia to explore the future of practice,” he said.



Josh with 2015 AIA Gold Medalist Moshe Safdie

Josh’s wife Kate teaches kindergarten through fifth grade music. The couple enjoys their hometown of Memphis, which Josh says is: “a very fun city with all kinds of music, great barbecue and wonderful historic architecture.” On that point, he is a fan of 2014 Pritzker Architecture Prize winner Shigeru Ban’s Japanese Pavilion for the Hannover Expo, located in Hannover, Germany. His favorite architect is a bit closer to home, Sambo Mockbee, AIA Gold Medal winner and founder of the Auburn University Rural Studio program.

As to his advice for a new grad considering law school, Josh is sensitive to the financial commitment. He has worked with many young architects who are currently struggling with student loan debt. He cautions emerging professionals about going back to school for any degree if it means accumulating significant debt that will limit their options in the future. “I encourage emerging professionals to gain work experience in different settings to learn what works for them and complete their architecture license. That experience can help determine if their desired career path requires another degree.”

AIA leaders including TJS members Julia Donoho and Josh Flowers with Monterey Design Conference speakers Merrill Elam, Bernard Tschumi and Carme Pinos

Welcome New Jefferson Society Members!

We welcome the following:

NEW MEMBERS:

109. Alexander van Gaalen, AIA, Esq.
c m peck inc
Pasadena, CA

110. Bryan R. Phillips, AIA, Esq.
Holland & Knight
Washington, D.C.

Jefferson on Presidential Politics . . .

What would Thomas Jefferson think of the 2016 raucous U.S. political scene? He might have approved. Jefferson once wrote to James Madison on Jan. 30, 1787: "I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical." (*Papers of Thomas Jefferson, Vol. 11.* Princeton: Princeton Univ. Press, 1955, p. 93.) As to those running for the Oval Office, Jefferson had this piece of advice: “I know well that no man will ever bring out of that office the reputation which carries him into it. The honey moon would be as short in that case as in any other, and it's moments of extasy would be ransomed by years of torment and hatred.” Thomas Jefferson letter to Edward Rutledge, Monticello, Dec. 27, 1796.

. . . and on Bad Architecture!

“I just returned but three or four days ago from a two months trip to England. … Their architecture is in the most wretched style I ever saw, not meaning to except America where it is bad, nor even Virginia where it is worse than in any other part of America, which I have seen.” May 4, 1786 letter to John Page. (Thomas Jefferson: A Chronology of His Thoughts, Rowman & Littlefield Pub., 2002, p. 73).

ILLINOIS: Architect Not Liable for Implied Warranty of Habitability on Condo Project

This lawsuit alleged breach by an architect of "the implied warranty of habitability" due to latent defects in the units and common elements of a 128-unit condominium complex. The condo association filed suit against the architect, the developer-seller, the original and successor contractors, and a handful of subcontractors and suppliers. The plaintiffs claimed repair costs exceeding $4 million and alleged that the developer was insolvent, as was the original contractor. Illinois law generally imposes an implied warranty for latent defects in new construction only against builders or builder-sellers. The trial court found that the condo owners failed to state a claim against the project architect and the owners appealed. The Court of Appeals noted that Illinois law recognizes three public policy reasons for adopting the implied warranty of habitability doctrine: 1) the modern home buyer is unusually dependent upon the competency and honesty of the builder rather than on the buyer's own ability to discern latent defects, 2) the buyer is making the largest single investment of his or her life, and, 3) in fairness, the repair costs of defective construction should be borne by the builder-seller who created the latent defects. Case law has extended the warranty to a developer-seller with respect to defects in a new condominium complex, and to a contractor that created latent defects by disregarding the architect's plans for a multilevel home addition. But no Illinois case had yet applied the warranty to an architect or engineer.

The Court said, "Engineers and design professionals such as the Hirsch architectural firm provide a service and do not warrant the accuracy of their plans and specifications . . . In fact, breach of implied warranty of habitability claims against design professionals have already been rejected in Illinois and most other jurisdictions." The Court added: "Furthermore, the principle that an architect does not warrant or guarantee perfection in his or her plans and specifications is a long standing principle," citing cases from Colorado, Florida, Michigan New Jersey, Wyoming and Minnesota, adding that the Minnesota Supreme Court characterized the efforts of architects and engineers as "inexact sciences." The Court concluded: "Thus, two principles become clear from the case law. First, the implied warranty of habitability of construction is traditionally applied to those who engage in construction. Second, architects do not construct structures, they perform design services pursuant to contracts which set out their obligations and courts have consistently declined to heighten their express contractual obligations by implying a warranty of habitability of construction." The Court noted, "There is no allegation that this architect took part in the construction or the construction-sale of real property and therefore, we find that this architect should not be subject to the implied warranty of habitability of construction." The case has some great quotes about the architect's standard of care and should help Illinois firms to defend claims. *Bd. of Managers of Park Point at Wheeling Condo. Ass'n v. Park Point at Wheeling, LLC*, 2015 IL App (1st) 123452, appeal pending (Mar Term 2016).

OFFICIAL NOTICE – MEMBERS ONLY

Thomas Jefferson Society Annual Meeting

Date and Time: Weds., May 18th, 6:30 – 9:30 p.m.

Location: XIX at Hyatt at the Bellevue, 200 S. Broad Street, Philadelphia, PA (19th Floor)(see photo, above)

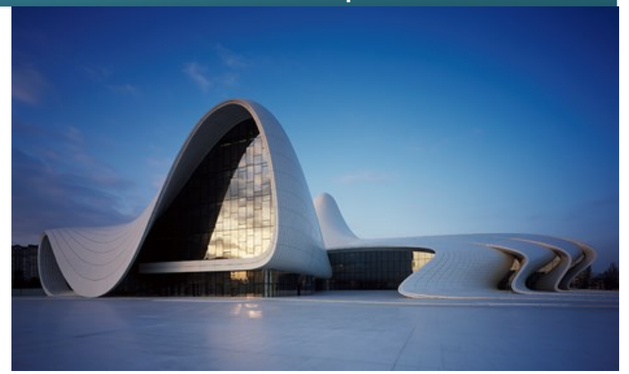
Cost: $75 per person (Members Only); check to "TJS" c/o Suzanne Harness, 2750 N. Nelson St., Arlington, VA 22207

Cocktails 6:30-7:30 p.m.; Dinner 7:30 p.m. with Annual Meeting following

RSVP to: Julia Donoho, AIA, Esq. by May 12, 2016
jdonoho@legalconstructs.com

TJS Annual Meeting & Dinner

Join us for the 4th Annual Meeting and Dinner on the 19th Floor of Hyatt at the Bellevue in Philadelphia. XIX (Nineteen) is one of the city's the highest rated restaurants, offering an unparalleled dining experience from its spectacular rooftop setting overlooking the City of Brotherly Love. XIX offers a seasonally changing menu specializing in seafood. Each dish portrays the freshest available regional products prepared to perfection. From the windows, you can watch the sunset or just gaze at the city lights. After a relaxing cocktail reception (sponsored by RIMKUS), we will enjoy dinner, followed by the Annual Meeting and election of Officers and Directors. Thank you to Julia Donoho, once again, for organizing what will surely be another memorable dinner and evening with your fellow members of the Society.



The Heydar Aliyev Center by Zaha Hadid Architects in Baku, Azerbaijan

Groundbreaking Architect Zaha Hadid Dies at 65

Iraqi - British architect Zaha Hadid, whose fluid and organic designs won awards around the world, died in Miami on Thursday, March 31, 2016 at age 65. She contracted bronchitis earlier that week and suffered a sudden heart attack while being treated in the hospital, her office reported. Ms. Hadid was the first woman to win the Pritzker Prize, architecture's highest honor. Born in Baghdad in 1950, Ms. Hadid studied mathematics at the American University of Beirut before starting her architectural studies in 1972, at the Architectural Association in London. By 1979, she had established her own practice. She was also a partner in the Office of Metropolitan Architecture with Rem Koolhaas. She taught at Harvard, Yale, Columbia, the University of Illinois, and other institutions.

Along with being the first woman to win the Pritzker, she was the first to be awarded the RIBA Gold Medal, Britain's top architecture prize, which came in 2015. One news article stated: "Ms. Hadid epitomized an era when architects became global brands. Her brand promised buildings of extravagant sculptural invention, spectacles of curving, swooping, unprecedented forms. She represented the epitome of the art of so-called parametric design, by which architects, aided by sophisticated computer pro-grams, could animate buildings into new shapes."

Zaha Hadid (1950-2016).

PENNSYLVANIA: Negligent Misrepresentation Exception to the Economic Loss Doctrine Keeps Architect In the Case

A subcontractor for a university convocation center filed suit against an architect for negligent misrepresentation, alleging that it incurred numerous problems due to a faulty roof design. The architect sought to join the general contractor, steel contractor, and engineer, then filed a motion for judgment on the pleadings based on the statute of limitations and the economic loss doctrine. The trial court granted the architect's motion and the sub appealed.

The Superior Court reversed, holding that architects are potentially subject to liability for negligent misrepresentation claims when it is alleged that a design professional negligently included faulty information in its design documents. The steel supplier and its engineer both raised concerns about the architect's roof design during preconstruction meetings, warning that the entire design of the roof system was faulty and that "the header beams that supported the roof trusses were drastically undersized." During construction, the steel supplier issued a letter that the "never-before-utilized" design was faulty, which the architect denied. Eventually, the architect agreed that the trusses could not accommodate the construction loads as designed. The subcontractor experience a myriad of problems, including three work shut-downs and substantially increased costs. Eventually, the sub laid off its crew and left the job-site. The architect argued that the sub's claim was barred by the economic loss doctrine, as adopted by the Pa. Supreme Court in *Bilt–Rite Contractors, Inc. v. The Architectural Studio,* 866 A.2d 270 (Pa. 2005). The *Bilt–Rite* decision adopted Section 552 of the Restatement (Second) of Torts, which creates a cause of action if a negligent representation that is relied upon by the third party causes economic harm. While the Court agreed that, "Pennsylvania law generally bars claims brought in negligence that result solely in economic loss," it also recognized a narrow exception in Section 552 of the Restatement.

(Photo, above) The last issue of *Monticello* sent TJS editor Bill Quatman on a search for a bottle of Jefferson's Ocean bourbon. After ordering a bottle on-line, Bill saw this display at the liquor store a block from his house! At half the price!

The Court concluded that the allegations that the architect's design documents constituted "negligently-supplied false information" were pled with the appropriate level of specificity to state a cause of action for negligent misrepresentation under Section 552." Accordingly, the trial court's order granting judgment on the pleadings was premature and was reversed. See, *Gongloff Contracting, L.L.C. v. L. Robert Kimball & Assoc.,* 119 A.3d 1070, 1072-81 (Pa. Super. 2015).

CALIFORNIA: ACEC California Issues Call to Action on A/E Duty to Defend

Ca. Senate Bill 885, sponsored by ACEC California, prohibits contracts that require licensed design professionals, including professional engineers, land surveyors, architects, and landscape architects, to defend claims made against other persons or entities involved in construction projects. The bill amends Section 2782 of the Calif. Civil Code (the anti-indemnity statute) by adding a new section to address contracts with design professionals. The bill makes clear that design professionals only have the duty to defend claims that, "arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of the design professional." The bill contains an exception for reimbursement by a design professional for "reasonable defense costs incurred by other persons or entities, limited to the design professional's degree of fault, as determined by a court or arbitrator."

Contract clauses in violation of this section will be deemed void and unenforceable. ACEC California asked its member firms to "go on record as supporting this effort, thus contributing to a better business environment for engineers and land surveyors." (No mention of architects). The new Section will effect contracts entered into after Jan. 1, 2017, if passed.

TJS Members on the Move!

At the end of February, TJS Member Ashley Inabnet, AIA, Esq. and his law partner, Scott Jones, closed their firm Inabnet & Jones, LLC in Mandeville, LA. Ashley has joined the firm of Salley Hite Mercer & Resor, LLC, in downtown New Orleans. The firm handles A/E Professional Liability Defense and will be opening a small office in Covington where, Ashley will be based. Ashley has his B.Arch. from Louisiana State University and obtained his J.D. from Loyola. We wish the best of luck to Ashley, whose new contact information is:

J. Ashley Inabnet, AIA, Esq.
Salley Hite Mercer & Resor, LLC
365 Canal Street
Suite 1710
New Orleans, LA 70130
Phone: 504-566-8800
Email:

Have You Moved Or Changed Jobs?

Let us know so we can update our membership roster, website and help you spread the news!

Email changes to:
sharness@harnessprojects.com

CALIFORNIA: Certificate of Merit Not Required in Federal Court; Engineer Owes Duty to Bidder

A contractor for a pipeline on a municipal sewage construction project relied on an engineering firm's geotechnical baseline report, but later encountered unexpected soil conditions. The contractor sued the lead engineer/project manager for breach of professional duty, negligent misrepresentation, and "tort of another," alleging misrepresentation of the site soil's suitability for horizontal directional drilling. The engineer/project manager moved to dismiss for failure to state claim. The U.S. District Court for the Northern District of California denied that motion and held that the contractor properly stated a claim under California law.

The engineer's Geotechnical Baseline Report was furnished to potential bidders, intending that contractors would rely on the reports and drawings. The low bidder contracted with the City but encountered mud and flowing sands instead of stable soil formations described in the geotechnical report. Based on the engineer's recommendation, the City rejected change order requests for extra costs and, instead, terminated the contractor, who sued the engineer and demanded arbitration with the City. In ruling for the contractor, the trial court stated: "California courts have repeatedly found construction design professionals potentially liable to third party consumers with whom they had no direct relationship," citing to the *Beacon* condo case (327 P.3d 850). [See July & Oct. 2014 issues of *Monticello*] The soil report was intended "to provide information for prospective bidders," the contractor alleged, which stated a case for negligent misrepresentation. As to the claim for "Tort of Another," the court said that since two viable torts remained, the "tort of another" claim also endured.

As to the lack of a certificate of merit, as required by California law in an action for negligence against a professional engineer, the trial court held that was "nothing more than a procedural hurdle," and, therefore, did not apply in this diversity case. *Apex Directional Drilling, LLC v. SHN Consult'g,* 119 F. Supp. 3d 1117 (N.D. Cal. 2015).

2016 Membership Dues are Due Now!!!

If you have not paid your dues, please write your check for a mere $50 payable to "The Jefferson Society" and mail it to our Treasurer, Suzanne Harness, at this address:

Harness Law, PLLC
2750 North Nelson Street
Arlington, Virginia 22207

If you send a firm or company check, be sure your name is written on the memo line.

If you have already paid your dues, "Thank You" for your promptness and your support of The Jefferson Society.

ARIZONA: Multiple Appeals Result in Ruling that Neither Building Code Nor Licensing Law Create a Cause of Action Against Builder

Homeowners who were not the original purchasers of their home sued the original builder for costs to repair a retaining wall that, according to their engineering firm, was failing and in danger of collapsing and/or causing a landslide. Plaintiffs claimed breach of implied warranty, negligence, consumer fraud, and fraudulent concealment. The trial court dismissed the suit; the Court of Appeals affirmed in part, reversed in part. The Arizona Supreme Court granted review and vacated part and remanded to the trial court. Back in trial court again, the builder moved to dismiss the negligence claims, which was granted, and the homeowners appealed. The second time in front of the Court of Appeals, the court affirmed, finding there was no public policy-based tort duty arising from municipal building code or statutes and regulations governing residential contractors, and absent a duty, the homeowners could not sue the homebuilder for negligence. One judge dissented.

The key language from the case that might be of interest to design professionals is where the Court of Appeals looked at "public policy" to see if there was any support for recognition of a duty of care under the municipal building code or in Arizona statutes and regulations governing residential contractors. The homeowners claimed that they fall within the class of persons protected "by Arizona's public policy framework which mandates specific design and construction standards for safe residential construction," namely the City of Phoenix version of the UBC. However, Building Code § 101.2 specifically disclaims any intent to protect or benefit a particular group or class, stating, "[T]he purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code." The conclusion that the Code does not support imposition of a public policy-based duty for purely economic loss is supported in decisions from Alabama and Utah, with Nebraska ruling the opposite. The contractor licensing laws also did not create a cause of action, since they have a broad, general purpose: "to protect the public health, safety and welfare by licensing, bonding and regulating contractors engaged in construction."

A quite lengthy dissent argued that the homeowners suffered the very type of harm the Building Code and related statutes and regulations were designed to prevent. The case is *Sullivan v. Pulte Home Corp.*, 354 P.3d 424 (Ariz. Ct. App. 2015), review denied (Jan. 5, 2016).

Law Grad Sues Thomas Jefferson School of Law For Fraud

In May 2011, a 37-year old female who graduated with honors in 2008 (at the start of the recession) filed a class action against her law school for Unfair Business Practices, False Advertising, Intentional Fraud, Violation of the Consumer Legal Remedies Act, and Negligent Misrepresentation, seeking over $50 million in damages, plus injunctive relief. She claimed that she enrolled at Thomas Jefferson School of Law (TJSL) after *U.S. News & World Report* rated the school as one of the best graduate schools, indicating that 80% of the students were employed nine months after graduation. For comparison, Yale Law School, rated the No. 1 law school in the nation by *U.S. News*, has a postgraduate employment rate of 88.2%, according to 2016 statistics. However, after sending out over 150 resumes, she only got one job offer. Unable to find a job as an attorney that paid more than non-legal jobs, she sued the law school. "TJSL is more concerned with raking in millions of dollars in tuition and fees than educating and training its students," she alleged, adding that, "For more than 15 years, TJSL has churned out law school graduates, many of whom have little or no hope of working as attorneys at any point in their careers." She claimed that the average student debt at TJSL of over $135,000 is among the highest in the nation, while bar passage is lower than 50%, well below average. The plaintiff said the school misrepresented its post-graduation employment statistics of 70-90%, although these included part-time jobs, and work outside of the legal profession. "Law schools are cranking out graduates at an unprecedented rate," she claimed, adding that the number of students taking the LSAT rose 20.5% between 2007-2009, and that over 43,000 law degrees were awarded in 2010, an increase of 11% from a decade ago.

On March 24, 2016, a San Diego jury ruled 9-3 against the graduate, since civil cases in California don't require a unanimous jury vote. The school defended itself by arguing that the graduate had at one point turned down work and by contending that many of its graduates have successful careers in law.

THOMAS JEFFERSON
SCHOOL OF LAW
SAN DIEGO • CALIFORNIA

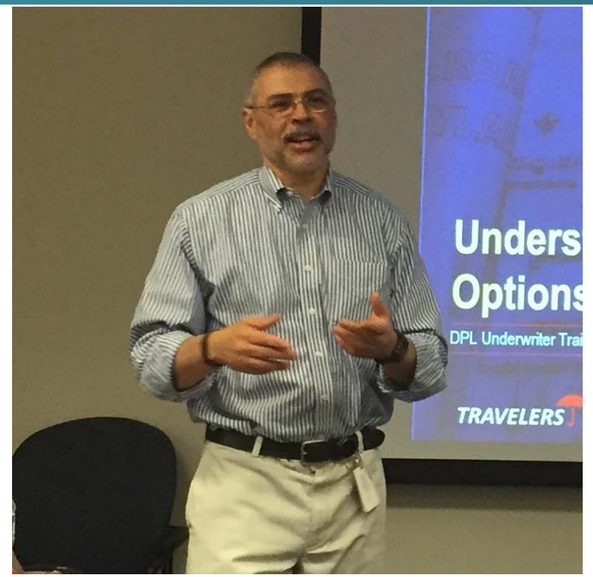
The Thomas Jefferson School of Law in San Diego, Ca. was founded in 1969 and has an enrollment of 1,120 and a faculty of 103.

This is the first such case to go to trial accusing a law school of using inflated post-graduation employment figures and salaries to defraud applicants. Graduates of law schools filed more than a dozen proposed class-action lawsuits in 2011 and 2012 alone, according to *The Wall Street Journal*. These suits claimed that the schools defrauded graduates into thinking employment prospects were better than they really were.

TJSL Dean Thomas Guernsey said the jury affirmed that the school didn't falsify its post-graduation employment statistics. "Today's decision by the jury further validates our unwavering commitment to providing our students with the knowledge, skills and tools necessary to excel as law students, pass the bar exam and succeed in their professional careers," the dean said. The case is *Alaburda v. Thomas Jefferson School of Law, et al.*, Superior Court of San Diego County, Ca. and can be read at this link http://www.legalethicsforum.com/files/alaburda_v_tjsl-complaint.pdf

MEMBER PROFILE: JOE JONES

Travelers
Hunt Valley, MD



Joe Jones, AIA, Esq., doing one of his favorite things, teaching about professional liability risks.

Joseph H. Jones, Jr., AIA, Esq. says that his path to architecture and law wasn't a life-long plan. "It just happened!" Joe is from a family of contractors and always tells people that, "With all those blueprints around the house I was destined to be an architect!" Law always interested him because of the history and research involved. Candidly, he admitted that: "My decision to attend law school was prompted by seeing so many of my friends lost their jobs as architects during the recession in early 90s." But he adds, "The recession did not force me into law school, however, it gave me a reason to go to law school. I thought about veterinary college but I hate to see anything in pain, so law school won out." No pain in law school, Joe, right?

Mr. Jones received his Bachelor of Architecture from Virginia Tech, where his sibling and two cousins had attended, so he was very familiar with that university. "I also loved the rural setting in the mountains of Southwest Virginia and the small town environment. The College of Architecture has a very good reputation and a good size so that there was a lot of diversity of student backgrounds, but you also got to know a lot of people," Joe said. "And it was over four hours from home. Far enough away that my parents would not stop by all the time unannounced, but close enough they could get there with ease in an emergency."

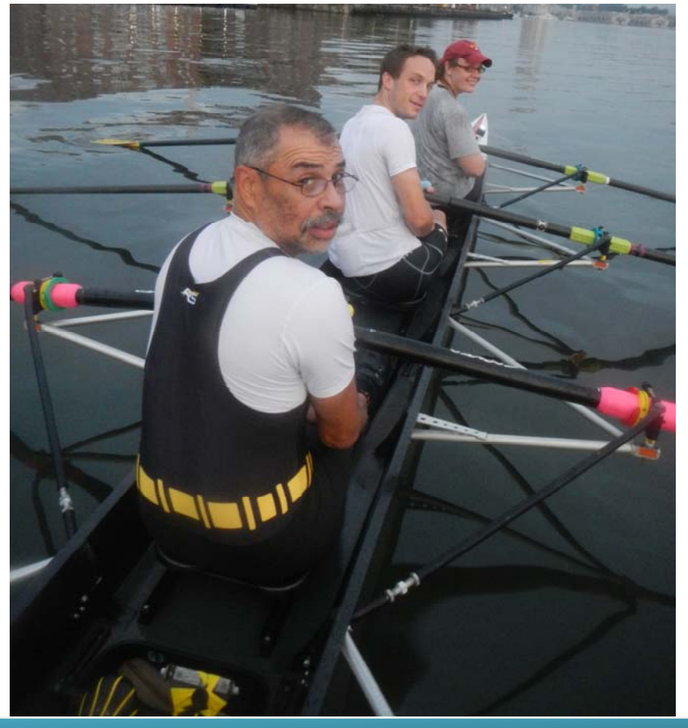
For law school, Joe chose the College of William and Mary, founded in 1693, the second oldest college in the nation, behind Harvard, founded in 1636. William and Mary is located in Williamsburg, Va., just 20 miles away from the place Joe grew up, and his older brother received his law degree there in the 70s. "But the three most important factors in my decision were: First, the school was relatively small so easy to get to know the professors and develop relationships with classmates. Second, the history of the law school (American's first law school) and location in historic Williamsburg. And, third, my parents lived 30 minutes away so lots of free meals."

After graduating from Virginia Tech, Joe worked for an architectural firm in Baltimore. "The firm had a number of very good architects on staff who took the time to take me under their wing and show me how much I still needed to learn if I wanted to be a good architect." By the end of law school, however, Joe had no interest in working for a law firm. "The architectural firm I worked for before law school started doing a lot of work internationally. My last year in law school they contacted me and said: 'We don't know what kind of attorney you are, but you are a really good architect, so we like to have you back!' That gave me the opportunity to work and travel internationally… and get to fly business class instead of coach," Joe said.

Today, you'll find Joe Jones at Travelers Insurance, where he is the Director of Risk Management for Professional Liability.

Many TJS members know Joe for his former role with Victor O. Schinnerer, where he helped organize the annual Meeting of Invited Attorneys. In his new role at Travelers, Joe helps develop programs and resources that design professionals, accountants, lawyers and real estate professionals can use to identity and manage potential risk when providing professional services. "It is a great combination of my architectural and legal backgrounds," he told us.

"I use to speak frequently at the AIA national convention but now I focus on speaking at state and local AIA events. Time is precious now, and I don't speak at as many AIA events as I once did." For the young architect pondering law school, Joe says, "Do it!! The law school experience and education is amazing."



The best part of his job? Joe said, "I love working with our clients. They usually have very interesting questions and needs. It is a challenge for me to help them resolve their issues. I love the interaction regardless if it is a phone conversation or a presentation at the client's office. I learn a lot and I believe I am helping them as well." Joe then made a true confession: "I also am a bit of a geek and love statistical information. I analyze a lot of data and creating charts and graphs looking for patterns and trends is fun."

In his prior life, Joe was Assistant Counsel in the AIA's Contract Documents Program for three years and remains a contributing author for the Architect's Handbook of Professional Practice. What buildings that inspire him? Joe said: "That's a tough question. I tend to favor buildings that are elegant, innovative, and most important, fulfill their purpose. At the top of the list probably has to be Saarinen's Dulles International Airport. Simple and very elegant design. But I do miss the little buses that use to take you directly to your airplane!" His favorite architect? "I get that question a lot from friends and my response is always the same. My favorite architect is likely the one I don't know about. We are surrounded by elegant and innovative architecture that meet the needs of the client and the community. Yet most of us do not know who they are. The Average Joe Architect is my favorite. That architecture likely has never won an award. But their architecture meets the needs of their clients. That to me is what architects are supposed to do." We agree.

MEMBER PROFILE: BRYAN R. PHILLIPS

Bryan R. Phillips, AIA, Esq.
Holland & Knight
Santa Fe, N.M.

Bryan received his B.S. in Architecture from the Catholic University of America and went on to obtain a Masters in Architecture from the University of Texas Arlington. "I became an architect because I never really considered being anything else when I was growing up. I am wired to be an architect!" he told us. His first job out of architecture school was working for HKS in Dallas after receiving his M. Arch. from UTA. "I was a staff architect in the construction documents department, working on a large hospital / medical office building complex near San Antonio." After spending twelve years as a practicing architect, Bryan obtained his J.D. from the George Mason University School of Law in Arlington, Va. What drove him to enroll in law school? Bryan responded: "My architecture career was spent in large firms, where I felt frustrated as I progressed through the ranks since I was spending less time drawing and more time being involved in project and team management." In the early 90's, he was on a large team working on a three million s.f. government building that was in claims almost as soon as construction commenced. "I spent a lot of time with construction lawyers who, it seemed to me, did not know a lot about construction. The combination of architecture and law was intriguing (and a recipe for staying employed at the time!), so I applied to George Mason's night program which was only a half dozen subway stops from my project," he said.

Bryan learned from working with the construction lawyers just how little he knew about the business of architecture and the risks inherent in the practice. "I hope the state of architectural education is different from when I was a student because my recollection is that we spent perhaps a single class period leafing through the A201 in the professional practice class." Bryan clerked full time with Holland & Knight's Construction Law Practice Group during the last year of law school, and has been with H&K since then. After litigating delay and building defect cases for about eight years, Bryan said he realized that he does not have the DNA for litigation. "Only the first phase of litigation was interesting to me; investigating why the project went badly or why the building did not perform.

Bryan, Elizabeth and their two sons, Avery and Keane, age 14 and 11, with their dog "Jester." Elizabeth is a former prosecutor who is now a certified Life Coach, specializing in female attorneys seeking advice.

For the past ten years, I have had a purely transactional practice, drafting and negotiating contracts for nearly every imaginable type of project delivery." Holland & Knight supports telecommuting and, since Bryan does not go to court anymore, he moved his family from Washington, D.C. to Santa Fe, New Mexico in 2013. "I have always maintained my architecture license and partnered with a general contractor in Santa Fe soon after I arrived here three years ago. We won the award for Best Design; Whole House Remodel from the Santa Fe Area Home Builders Association in 2014."

The best part of his job? Bryan replied, "Getting the parties through a tough negotiation without scorching the earth is very satisfying. I believe the best contract is a fair one that clarifies the risks and unites the parties in having the best project possible. I enjoy being a construction lawyer most days, but my true calling is architecture. I am blessed to be able to practice architecture as a hobby and not rely on it for my income; I can pick my projects and clients which is a luxury that many architects cannot afford."

Seven TJS members at an AIA Large Firm Roundtable Legal Committee meeting in Washington, D.C. Included are Craig Williams, John Works, TimTwomey, Roger Kipp, Donovan Oliff, Brodie Stephens, Mark Kalar.

Bryan is occasionally asked by the AIA Contract Documents Committee to perform a final review of new forms before they are released. He also enjoys attending the AIA Santa Fe lunch every month at Restaurant Martin!

Bryan's wife, Elizabeth, and he have a daughter, Katie, at Virginia Commonwealth University in Richmond. Their two sons, Avery and Keane, are 14 and 11 years old, respectively. Elizabeth is a former prosecutor and was counsel to a Chapter 7 trustee in bankruptcy for many years. She became a certified Life Coach a few years ago; she specializes in female attorneys who are figuring out that Big Law may not be the be all - end all. The couple and two sons live in Santa Fe, where Bryan says he is "free of the Beltway and the humidity. If you have ever been to Santa Fe, you know it is a really cool place; it has a small-town feel even though it is the state capital with 400 years of history."

He finds inspiration in Louis Kahn's Kimbell Museum of Art. "Like most great architecture, it needs to be experienced in person to fully appreciate," he told us. His favorite architects are Santiago Calatrava and Tadao Ando. When asked if he had any advice for a young architect thinking about law school, Bryan said, "I would urge a young architect thinking about law school to do two things; first to talk with a construction lawyer to dispel any misconceptions he or she may have about the actual practice of law, and second, try to participate as much as possible in the Construction Administration phase of projects. In my opinion, the CA phase is really where an architect learns the interplay between owner, architect and contractor, and where many of the problem projects derail."

Thomas Jefferson's Quest to Prove America's Natural Superiority

The March 7, 2016 issue of *The Atlantic* magazine ran this story, reprinted here, in part:

French theorists said that American native species were inferior to European plants and animals—the former President went to great lengths to show that they were wrong. In January 1786, Thomas Jefferson — the American minister plenipotentiary in Paris — wrote several letters back home, asking his correspondents to send him "the skin, the skeleton and the horns of a moose." Jefferson is famed as one of America's founding fathers and the third President of the United States. But he was much more than just a politician: he was a (slave-owning) farmer and gardener, an architect and bibliophile, and an inventor. He was also a scientist, interested in everything from meteorological records and lunar observations to native trees and fossil bones. In Paris, in between negotiations of commercial treaties, arranging loans and composing diplomatic dispatches, Jefferson purchased the latest scientific books, visited famous gardens and met the greatest thinkers and scientists of the age. He also quickly found himself in the midst of a scientific battle that to his mind was of the greatest political and national interest. His weapons were native North American trees, weights of mammals, a panther pelt, and the bones and skin of a moose.

For years, Jefferson had been furious about a theory that the French called the "degeneracy of America." Since the mid - eighteenth century several French thinkers had insisted that flora and fauna degenerated when "transplanted" from the Old to the New World. They noted how European fruits, vegetables and grains often failed to mature in America and how imported animals refused to thrive. They also insisted that American native species were inferior to European plants and animals.

One of the offending scientists was Georges-Louis Leclerc, Comte de Buffon (Buffon), the most famous naturalist in the world. In the 1760s and 1770s Buffon had written that in America all things "shrink and diminish under a niggardly sky and unprolific land."

As Buffon's theories spread, the natural world of America became a symbol for its political and cultural significance — or insignificance, depending on the point of view. Hoping to restore America's honor, and elevate his country above those in Europe, Jefferson set out to prove that everything was in fact larger and superior in the New World.

At the end of the War of Independence, Jefferson began to write *Notes on the State of Virginia* (the only book he ever published) in which the flora and fauna of the United States became the foot-soldiers in his battle against Buffon. Operating on a theory that bigger means better, Jefferson listed the tallest American trees and provided the weights of bears, buffalos and panthers. Even the weasel, Jefferson wrote, was "larger in America than in Europe."

Jefferson was so obsessed "to convince Mons. Buffon of his mistake" that he brought a large panther skin from America to France in preparation for his fight. During a dinner shortly after his arrival, Jefferson boasted to Buffon that the Scandinavian reindeer was so small that it "could walk under the belly of our moose." Determined to prove his point, he then asked friends and acquaintances to send him details of 'the heaviest weights of our animals . . . from the mouse to the mammoth.'

Even the weasel, Jefferson wrote, was "larger in America than in Europe." Jefferson also boasted that the Scandinavian reindeer was so small that it "could walk under the belly of our moose."

It took him a long time for Jefferson to convince someone back home to procure a moose for him. He received information on sizes, the promise of some antlers but no skeleton materialized. In the end it was General John Sullivan, the governor of New Hampshire, who sent a troop of twenty soldiers west into Vermont with the order to find a particularly majestic one. They shot a moose that was standing a proud seven feet high at the shoulder, but they had trouble carrying it back through the deep snow and out of the wilderness, and the carcass of the moose fell apart mid–way.

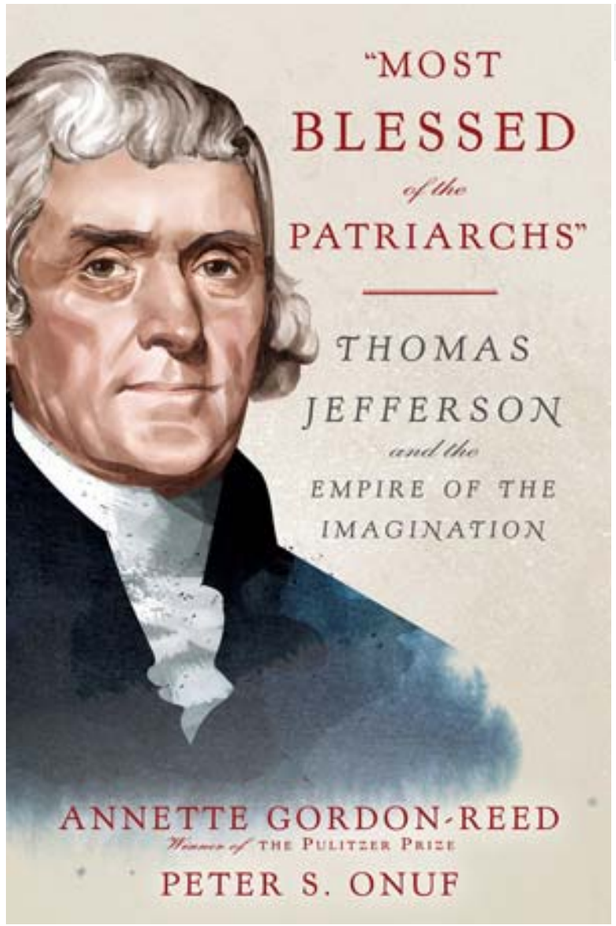
The next difficulty was the preparation of the animal, which was done according to Jefferson's detailed but amateur instructions. The flesh putrified and the men failed to keep the bones in the skin as Jefferson had requested. The whole process, Sullivan wrote to Paris, was "a very troublesome affair." The cost for the entire enterprise was enormous but Jefferson spared no expense. The moose finally arrived—after many delays — in Paris in October 1787 but it was in a sorry state. When Jefferson

opened the crate it exuded a terrible smell: The bones were decaying and the fur had come off the skin. The next disappointment was that the moose had been killed after its annually shedding of the antlers. Never mind, Jefferson's suppliers had thought and craftily added antlers from another (but much smaller) moose — which "may be fixed on at pleasure," they explained.

Though the specimen was not ideal, after inspecting the crates, Jefferson forwarded it on to the royal collections where Buffon was the superintendent. Jefferson later recounted that the French naturalist examined the moose and promised to "set these things right" in the next volume of his *Histoire Naturelle*, but this correction never came to pass because Buffon died six months later.

Over the next decades and buoyed by the continent's scale, Americans invested nature with patriotic sentiment. The Rockies were more impressive than the Alps, they insisted, just as John Adams declared the river Thames 'but a rivulet' compared to the majestic Hudson. Primeval forests, vast plains, and huge waterfalls were linked to the national character and to the uniqueness of America. Among the most spectacular discoveries were the Big Trees in the Sierra Nevada. The giant sequoia, just like Jefferson's moose, became an expression of the nation's strength and manifest destiny. The very wildness of America's rugged mountains and glorious forests was the embodiment of a nation that had freed itself from the shackles of tyranny. America, Jefferson claimed, was "made on an improved plan," while Europe was only "a first idea, a crude production, before the maker knew his trade."

[A bit of trivia: *The Atlantic* magazine was founded in 1857 as *The Atlantic Monthly*. Its founder's name was *Francis Underwood*. Any fans of "House of Cards"?]



New Book Lends Insights into Mr. Jefferson.

The April 10, 2016 *New York Times Book Review* featured the newly published book "*Most Blessed of the Patriarchs, Thomas Jefferson and the Empire of the Imagination*," by authors Annete Gordon-Reed and Peter S. Onuf (Liveright Publishing, New York). The publisher describes the book as "A groundbreaking work of history that explicates Thomas Jefferson's vision of himself, the American Revolution, Christianity, slavery, and race." Jon Meacham, author of the 2013 best-selling book "*Thomas Jefferson: The Art of Power*" praised the new book, saying: "With characteristic insight and intellectual rigor, Annette Gordon-Reed and Peter Onuf have produced a powerful and lasting portrait of the mind of Thomas Jefferson. This is an essential and brilliant book by two of the nation's foremost scholars—a book that will, like its protagonist, endure."

The publisher writes that Thomas Jefferson is often portrayed as a hopelessly enigmatic figure — a riddle — a man so riven with contradictions that he is almost impossible to know. Lauded as the most articulate voice of American freedom and equality, even as he held people — including his own family — in bondage, Jefferson is variably described as a hypocrite, an atheist, or a simple-minded proponent of limited government who expected all Americans to be farmers forever. Now, Annette Gordon-Reed teams up with America's leading Jefferson scholar, Peter S. Onuf, to present an absorbing and revealing character study that dispels the many clichés that have accrued over the years about our third president. Challenging the widely prevalent belief that Jefferson remains so opaque as to be unknowable, the authors — through their careful analysis, painstaking research, and vivid prose — create a portrait of Jefferson, as he might have painted himself, one "comprised of equal parts sun and shadow."

Tracing Jefferson's philosophical development from youth to old age, the authors explore what they call the "empire" of Jefferson's imagination — an expansive state of mind born of his origins in a slave society, his intellectual influences, and the vaulting ambition that propelled him into public life as a modern avatar of the Enlightenment who, at the same time, likened himself to a figure of old — "the most blessed of the patriarchs." Indeed, Jefferson saw himself as a "patriarch," not just to his country and mountain-like home at Monticello but also to his family, the white half that he loved so publicly, as well as to the black side that he claimed to love, a contradiction of extraordinary historical magnitude.

Divided into three sections, *"Most Blessed of the Patriarchs"* reveals a striking personal dimension to his life. Part I, "Patriarch," explores Jefferson's origins in Virginia; Part II, "Traveller," covers his five-year sojourn to Paris; and Part III, "Enthusiast," delves insightfully into the Virginian's views on Christ-ianity, slavery, and race. We see not just his ideas and vision of America, but come to know him in an almost familial way, such as through the importance of music in his life.

The publisher claims that *"Most Blessed of the Patriarchs"* fundamentally challenges much of what we've come to accept about Jefferson, neither hypocrite nor saint, atheist nor fundamentalist. Gordon-Reed and Onuf, through a close reading of Jefferson's own words, reintroduce us all to our most influential founding father: a man more gifted than most, but complicated in just the ways we all are.

The book is available on amazon.com for $18.08.

Drawing of Thomas Jefferson from the new book, *"Most Blessed of the Patriarchs: Thomas Jefferson and the Empire of the Imagination."*

A Contested Convention? Jefferson Won on the 36th Ballot!

Those watching the Republican Convention this year Cleveland, Ohio may want to bone up on the election of 1800. The official U.S. Presidential Election was held from Fri., Oct. 31 to Weds., Dec. 3, 1800, but Thomas Jefferson was not elected by the people in that vote. He was elected in February of the following year by the House of Representatives in a run-off election held to resolve a tie vote in the Electoral College between Jefferson and his vice presidential candidate, Aaron Burr. Officially, Vice President Thomas Jefferson defeated President John Adams, but an odd political move pitted Jefferson against his running mate Burr in the final vote. In the popular vote, Democratic-Republican (and Vice President) Jefferson won 74.19% to Federalist President John Adams' 25.81%. However, the two parties tied 65 to 65 in the Electoral College until the last state to vote, South Carolina, chose eight Democratic-Republicans to award the election to Jefferson and Burr. This is when things got interesting, and confusing. Under the original U.S. Constitution, members of the Electoral College were authorized to vote for *two names* for President. Jefferson was the candidate for President while Aaron Burr was the candidate for Vice President. With the two-vote rule, the Democratic-Republicans had planned for one of the electors to abstain from casting his second vote for Aaron Burr, which would have led to Jefferson receiving one electoral vote more than Burr. The plan, however, was mishandled, and each elector who voted for Jefferson *also voted for Burr!*

This resulted in a tied electoral vote! The election was then put into the hands of the House of Representatives. After 35 votes in the House, in which neither Jefferson nor Burr obtained a majority, Thomas Jefferson was finally elected president on the 36th ballot.

The members of the House of Representatives balloted as states, and there were 16 states. A majority of 9 was required for victory. While it was common knowledge that Jefferson was the candidate for president and Burr for vice-president, many Federalists in the House were unwilling to support Jefferson, their principal political opponent, so they voted for Burr. Over the course of seven days, from February 11 to 17, 1801, the House cast a total of 35 ballots, with Jefferson receiving the votes of 8 state delegations each time — one short of the necessary majority. On Feb. 17, 1801, on the 36th and final ballot, Jefferson was elected president. This odd election is the topic of the song "The Election of 1800", from the hit Broadway musical *Hamilton*.