



## **In Memory of**

Gregory K. Brown

Henry G. Rose

William A. Schmidt

## **With Additional Tributes**

Donald C. Alexander

James K. Cook

Elliot I. Daniel

John N. Erlenborn

Richard H. Fay

Michael S. Gordon

Thomas C. Graves

Jacob K. Javits

John R. Lindquist

James M. Nelson

Timothy S. Smith

Gary S. Tell

James T. Tilton

The College celebrates the lives of these Fellows, who passed after the date of our most recent annual meeting: Gregory K. Brown, Henry G. Rose, and William A. Schmidt.

This booklet also includes tributes for James K. Cook and James M. Nelson whose passing was reported in last year's booklet, but for whom tributes had not then been completed.

The College has undertaken a project to create similar tributes for all deceased Fellows. This booklet additionally includes those tributes for Donald C. Alexander, Elliot I. Daniel, John N. Erlenborn, Richard H. Fay, Michael S. Gordon, Thomas C. Graves, Jacob K. Javits, Timothy S. Smith, Gary S. Tell, and James T. Tilton.



### **HENRY G. ROSE**

Henry Rose, inducted as a Charter Fellow in 2000, died in 2023. The tribute for Henry Rose is under development and will be provided at a later meeting.



## **DONALD C. ALEXANDER**

Donald C. Alexander, who died in 2009 at age 87, became a Fellow of the American College of Employee Benefits Counsel (the “College”) in 2001. Don was a noted tax lawyer of considerable breadth who made significant contributions in the early implementation and subsequent development of the Employee Retirement Income Security Act of 1974 (“ERISA”) and advocated for sound national tax policy throughout his career.

Don graduated from Yale College in New Haven, Connecticut, receiving his A.B. with honors in 1942. He then served in World War II as a forward artillery observer and was awarded the Silver Star and the Bronze Star for his valor and bravery. In 1948, he received his law degree from Harvard Law School in Cambridge, Massachusetts, magna cum laude, where he edited the law review. Following graduation, he entered private practice as a tax lawyer at Covington & Burling in Washington, DC. Don subsequently moved to Cincinnati, Ohio, where he practiced first as a partner at Taft, Stettinius & Hollister from 1954 to 1966 and then as a partner with Dinsmore, Shohl, Coates & Deupree (later known as Dinsmore & Shohl LLP) until 1973. During this period, he authored numerous tax articles on a variety of topics, including family tax planning, taxation of professional associations, and charitable giving. He also served as a consultant to the U.S. Treasury Department in 1966 to 1968 and was vice chairman of the American Bar Association’s Section of Taxation in 1967 to 1968.

In May, 1973, Don was appointed Commissioner of Internal Revenue by President Richard Nixon. In that role he is especially remembered by the general public for his actions taken in response to the improper use of Internal Revenue Service (“IRS”) resources for political purposes. Several weeks after assuming his new position, Don announced that he had shut down the “Special Service Staff” of the IRS which had been investigating critics of Nixon and his Vietnam policies.

Soon after becoming the IRS Commissioner, Don took an active interest in ERISA’s development. It was not unusual for him to visit with Laurence N. Woodworth, Chairman of the Congressional Joint Committee on Taxation, to offer his views on strategic employee plans policy and drafting matters. Also, Don liked to meet with IRS staff consultants to the Joint Committee, College Fellows William Lieber and William Posner and actuary Ira Cohen, to discuss events of the day. After passage of ERISA on September 2, 1974, Don continued to offer his expertise during important regulations drafting sessions, making it clear at these meetings that he was to be viewed as another technician giving his input and not as Commissioner directing a specific result. Bill

Posner counted Don as one of his heroes.

College Fellow Alvin Lurie, then Assistant Commissioner, Employee Plans and Exempt Organizations ("EP/EO"), IRS, in describing IRS functions and structures relating to ERISA implementation, also lauded Don's leadership:

The Commissioner is Donald Alexander, ... our No. 1 pension man in IRS. Professionally, Don Alexander has got to be, in everyone's book, the top pension expert in the country at the present time. It never ceases to amaze me how, with all the unbelievably back-breaking tasks that that man shoulders, he stays completely on top of all the intricacies of the new ERISA legislation, and of my office's various activities in implementation of it. That should be very reassuring to you who work in this field, because it tells you of the personal commitment and dedication that the Commissioner himself brings to this newly-exploded area.

"An Overview of ERISA," Record of Society of Actuaries 1975, Vol. 1, No. 3, May 1975.

In remarks titled "A View from the IRS," made shortly before enactment of ERISA, Don discussed some of the challenges ahead, such as a heavy workload for ERISA guidance with 15 task forces already established to work on regulatory projects and more than 60 regulation projects to be undertaken. Shared responsibility by the IRS and the Department of Labor ("DOL") created the need to cooperate to manage potential problems with conflicting agency requirements. He was pleased by the creation of the then-new office of Assistant Commissioner of EP/EO, stating, "I think Congress is trying to tell us that in the field of employee plans and exempt organizations, we have a regulatory function, and not a revenue raising function." "The New Pension Law - Symposium" published in 9 Real Prop, Prob & Tr. J. 461 (1974).

The IRS under Don's leadership made significant strides to meet the intense demands. The Commissioner of Internal Revenue's 1975 Annual Report stated that 12 regulations and a variety of other pieces of guidance had already been issued to provide assistance in administering employee plans.

At a 1976 Congressional hearing addressing the administrative difficulties, cost, and confusion resulting from dual regulation of ERISA by IRS and DOL, changes were discussed to place some, if not all, responsibility for administering parts or all of ERISA on either IRS or DOL or an independent commission. In a letter to Senator Bentsen referenced at the hearing, Commissioner Alexander added his view that the "single most compelling area in need of improvement relating to the administration of ERISA is the prohibited transaction segment, and most particularly, the dual interlocking jurisdiction of the Internal Revenue Service and the Department of Labor." He proposed that DOL exclusively administer provisions dealing primarily with the conduct of fiduciaries,

while IRS would exclusively administer all prohibited transaction provisions and have sole jurisdiction to grant administrative exemptions. (Subcommittee on Labor Standards of the House Committee on Education and Labor, U.S. House of Representatives, Ninety-fourth Congress, second session, on Public Law 93-406 concerning General Oversight of ERISA, held on July 20, 1976.) Don held his position as Commissioner until February, 1977, when President Jimmy Carter appointed his replacement. A solution based in part on the concept proposed by Don came into reality with President Carter's Executive Order issuing the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978.

After leaving the IRS, Don served as a director of the U.S. Chamber of Commerce from 1984 to 1989 and worked in a series of New York and Washington law firms including Cadwalader, Wickersham & Taft. In 1987 he became Chair of the IRS Commissioner's Exempt Organization Advisory Group. In 1993, Don became a partner at Akin Gump Strauss Hauer & Feld in Washington, DC, where he remained active until a few weeks before his death in 2009. There he continued his wide-ranging tax practice, testifying frequently before Congressional committees, corresponding regularly with IRS and Treasury on policy and technical matters, and making public comment on IRS and other agency guidance. Don also served on numerous federal commissions including the Commission on Federal Paperwork, the Interior Department's Coal Leasing Commission, and the Martin Luther King, Jr. Federal Holiday Commission.

Don continued as a prolific writer publishing articles of note. For example, in 2003 he authored "Nonqualified Deferred Compensation and Retirement Savings: Where Are We? Where Should We Be?" published as part of an American Law Institute-American Bar Association course of study on deferred compensation (October 9-11, 2003), recapping the history of deferred compensation back to 1950 and subsequent developments through Enron and beyond, and posing policy questions for the future. In recognition of Don's talent and contributions as a writer, the Federal Bar Association Section on Taxation established the prestigious Donald C. Alexander Tax Law Writing Competition for law students, noting that throughout his career, Don was both a widely admired role model and an advocate for writing skills and style in tax law.

In an interview with the Harvard Law Bulletin (Summer 2005), Don expressed his interest in promoting tax research and the importance of sound federal tax policy. Asked what advice he would give new graduates, he said "Plan to do some public service at some time in your career. I think we all owe it to our country and our communities." Don's commitment to public service, even as he excelled as a legendary practitioner, is indeed remarkable, and his leadership in laying the foundations for ERISA's practical and effective implementation cannot be overstated.



## **GREGORY K. BROWN**

Gregory K. Brown, who died in 2023 at age 72, was known for his active participation and contributions in the area of Employee Stock Ownership Plans (“ESOPs”). Greg was inducted in 2000 as a Charter Fellow of the American College of Employee Benefits Counsel (the “College”).

Greg graduated in 1973 from the University of Kentucky in Lexington with a B.S. in business and economics and in 1976 earned a J.D. at the University of Illinois College of Law in Champaign. The Employee Retirement Income Security Act of 1974 (“ERISA”) was passed while Greg was in law school. Greg recognized that the

increased demand for attorneys and the good fit with his background created a great opportunity to practice in the employee benefits area.

Greg spent his entire career in Chicago. The opportunities soon panned out. ESOPs had been codified in ERISA and in his first year of practice as an associate attorney at McDermott, Will & Emery in 1976, Greg became a valuable firm resource as he tackled the new “tax credit ESOPs.” He left McDermott in 1980 and worked as an associate attorney for Mayer, Brown & Platt (later known as Mayer Brown) from 1980 to 1984.

His connections led him to meet and then work with College Fellow Jerry Kaplan who also worked with ESOPs. Greg joined Jerry as a partner at Keck, Mahin & Cate (later stopped operations) from 1984 to 1993. The Tax Reform Act of 1984 brought the first of many changes in the tax law for ESOPs, which kept Greg busy learning about the developing ESOP law and informing and advising ESOP lenders and clients.

He had several other stops in his career as a partner: Oppenheimer, Wolff & Donnelly LLP (later part of Fox Rothschild LLP) from 1994 to 1997, Seyfarth, Shaw, Fairweather & Geraldson (later Seyfarth Shaw LLP) from 1997 to 2000, Gardner Carton & Douglas LLP (later part of Faegre Drinker Biddle & Reath LLP) from 2000 to 2006, Katten Muchin Rosenman LLP from 2006 to 2014, and Holland & Knight LLP starting in 2014. In 2020, Greg became a shareholder at Polsinelli PC and worked there until his death.

Known especially for his work on ESOPs for both domestic and international employers, Greg also specialized in ERISA fiduciary matters, tax-qualified retirement plans, ERISA litigation, and executive compensation matters. He represented closely-held businesses and publicly traded companies on employee benefits matters. One of Greg’s career highlights was helping a small-cap publicly traded company use the surplus from its terminated overfunded defined benefit pension plan as seed money for an ESOP.

A highly respected and sought-after speaker, Greg was a constant presence in bar and ESOP organizations and frequently acted as an expert witness. Over his career, Greg often stepped up as a leader. A member of the Board of Directors of The ESOP Association, he chaired its Legislative and Regulatory Advisory Committee from 1997 to 1999. He chaired the ESOP subcommittee of the American Bar Association ("ABA") Section of Taxation Employee Benefits Committee and was active in the Employee-Owned S Corporations of America, The ESOP Association, the International Pension & Employee Benefits Lawyers Association, and the National Center for Employee Ownership. Greg was a member of the Chicago Bar Association, where he was the chairman of the employee benefits committee from 1988 to 1989.

An important contributor to the scholarship in the ESOP area, Greg was co-author of the highly regarded Tax Management Portfolio on ESOPs, (354 T.M., ESOPs) published by the Bureau of National Affairs (later, Bloomberg Industry Group), a go-to resource relied upon by the ESOP bar.

Remembered for his leadership, training of younger lawyers, professionalism, and friendship, Greg loved the practice of law and mentoring attorneys. Colleagues respected him as a tremendous resource to the benefits community, a fine lawyer and teacher noted for his intellect and wit, who was held in high regard by those who knew him. Whenever Greg was involved, the job would be done in the best possible way and he was always happy to share his expertise even if he was not involved in the matter. When colleagues had a technical question, Greg always picked up the call and was happy to provide a helpful response. Attorneys fondly recalled him being on the other side of transactions and across the table at ABA subcommittee meetings discussing the most recent ESOP cases.

He was happily known for his devotion as a Kentucky Wildcats fan and was an avid world traveler. A giant in his profession, he was approachable, gentle, caring, and thoughtful, known to always greet everyone with a smile and a great sense of humor. His legacy was honored by the establishment of the Greg Brown Memorial Fund, supporting a multi-year, collaborative research and scholarship effort to foster and promote the growth and ongoing sustainability of employee ownership arrangements, including ESOPs. See <https://www.nceo.org/GregBrown>

Sources include "Interview with Greg Brown" found at ESOPMarketplace.com: <https://www.esopmarketplace.com/esop-advisor-hof-greg-brown.html>





## **JAMES K. COOK**

James K. Cook, who died in 2023 at age 96, was an early practitioner and leader in the evolving area of employee benefits relating particularly to union plans under the Employee Retirement Income Security Act of 1974 (“ERISA”). Jim was inducted in 2000 as a Charter Fellow of the American College of Employee Benefits Counsel (the “College”).

A member of the “greatest generation,” Jim was drafted at age 18 into the military, served in the Army-Air Force intelligence during World War II, and in the Allied occupation of

Germany. Jim graduated in 1949 with a degree in economics from Oberlin College in Ohio and earned his J.D. in 1956 from Saint Louis University School of Law.

Upon graduation from law school, Jim began his legal career with a St. Louis, MO bank trust department. That same year Jim was a founding partner of Schuchat, Cook & Werner, a union side labor law firm in St. Louis. Known for treating his fellow attorneys with respect and collegiality, Jim continued to work with the other founding partners to develop and expand the firm over the years. From the beginning of the firm, Jim became the employee benefits “department” when labor unions and employer associations were establishing multiemployer pension and welfare plans. Jim strongly believed that the marvel of the Taft-Hartley Act (also known as the Labor Management Relations Act of 1947) which established jointly-trusted benefit plan funds was that the union and employer representatives could put aside their, at times, adversarial relationship when they entered a trust fund meeting to perform trust fund business. In representing these boards of trustees, Jim understood that the basis of a strong attorney-client relationship was trust. Jim’s knowledge of the law and innate courtesy to all parties earned him the respect and confidence of both the union and management trustees.

A creative ERISA attorney, Jim focused his work with union plans providing various benefits for working people and their families. Jim worked with many retirement funds as they grew from relatively small into much larger plans with diversified investments and participant-directed investing. He educated participants about the advantages of retaining accounts in the employer plan after leaving employment rather than taking an immediate distribution or making a rollover. As the multiemployer plan world grew with ERISA, Jim helped establish some of the first multiemployer 401(k) plans. He also helped clients develop supplemental unemployment funds to assist workers who faced periodic unemployment.

Jim was a leader in the legal community as well as for labor and management representatives in the challenging implementation of



ERISA. He was a founding member of the Employee Benefits Committee of the Labor Law Section of the American Bar Association (“ABA”), served as its union co-chair from 1975-1978, and was an active member for many years. In the early days, Jim recalled that the Benefits Committee consisted of about 30 members who met once a year. Thanks to the work of Jim and others, the Benefits Committee added many professional activities and grew its meeting attendance to over 250. Jim also served as the union co-chair of the Legislative and Administrative Oversight subcommittee and co-chair of the Committee on Pension, Welfare and Related Plans. In addition to being a College Fellow, Jim was elected to the College of Labor and Employment Lawyers.

A beloved senior partner in his firm, his calm reassuring voice was welcomed when difficult issues were faced by the clients or attorneys. He was a friend and mentor to the other ERISA attorneys in his firm, including College Fellows Jim Singer and Rhona Lyons who indicated that Jim was known in the firm and the larger legal community for his hard work and integrity in the practice of law. Jim gave freely of his time when outside attorneys called to consult on ERISA matters. College Fellow Howard Shapiro, who spent time with Jim on the Benefits Committee, called Jim a treasure for his contributions to the employee benefits community and an inspirational force who, with unflappable charm and grace at all times, mentored many young attorneys.

A man of many interests and outside activities, Jim’s contributions to his community included helping establish the St. Louis-based World Bird Sanctuary (formerly the Raptor Rehabilitation Center). College Fellow Susan Katz Hoffman recalled him as a good friend and an avid and competitive tennis player. He was regarded as not only a great lawyer, but a good and special human being, known particularly for his support of union workers.



## **ELLIOT I. DANIEL**

Elliot I. Daniel, who died in 1987 at age 42, served in the government as an employee benefits attorney leader in providing guidance on the then-new Employee Retirement Income Security Act of 1974 (“ERISA”). Elliot was inducted in 2000 as a Charter In Memoriam Fellow of the American College of Employee Benefits Counsel (the “College”).

Elliot graduated from Brooklyn College and received a J.D. from the Boston University School of Law. After law school, he worked in New Jersey at Prentice-Hall (which later became part of Wolters Kluwer), which at that time published weekly tax law updates.

Elliot began his career with the IRS in the early 1970s, just as ERISA was nearing enactment. With ERISA came an entirely new and complex set of protections for plan participants, generally known as “prohibited transactions” provisions, set up under IRS and Department of Labor (“DOL”) shared jurisdiction. Congress added these provisions to address the important concerns about the dangers to plan participants’ benefits from conflicts of interests by those handling employee benefit plans.

Elliot and others were tasked with putting the difficult new law into action and providing guidance. On the IRS side, Elliot was one of a small group of IRS Employee Plans staffers assigned to implement the prohibited transactions excise tax provisions under Code section 4975 of the Internal Revenue Code. Those tax provisions overlapped others under ERISA sections 406, 407, and 408 under Title I. The new prohibited transactions law was elaborate and interwoven with well-defined terms, more ambiguous terms, and yet-to-be-issued agency exemptions. Some of the new sections in Title I of the law identified prohibited transactions between employee benefit plans and “parties in interest” as well as allowed for granting administrative exemptions to these rules by the DOL. The excise tax provisions applied to almost, but not wholly, identical prohibited transactions for “disqualified persons” who were almost the same as, but not identical to “parties in interest” and also gave exemption authority to the Department of Treasury. The intricate new legal landscape left many practical questions for benefit plans that fell to the agencies and required a good deal of coordinated agency work between the IRS and DOL.

To ease the jurisdictional coordination issues, in 1978, the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) was issued by Presidential Executive Order and, among other steps, transferred certain of the prohibited transactions authority for section 4975 from Treasury to the DOL. In 1979, Elliot and many others from the IRS prohibited transactions staff were transferred from the IRS

to DOL to handle the DOL's enhanced role in the developing prohibited transactions area of the new law.

Elliot had a variety of responsibilities at the DOL in the 1980s and was recalled by one College Fellow as a "legendary figure." His duties included service as the Assistant Administrator for Fiduciary Standards, in acting or formal capacities, with responsibility for prohibited transactions exemptions, regulations, and opinions under Part IV of Title I of ERISA. He also was Assistant Administrator and Associate Director for Regulations and Interpretations, again in acting or formal capacities.

One of the most prominent pieces of guidance he worked on was the "Maldonado Letter" pertaining to a client of College Fellow Kirk F. Maldonado, which was signed by Elliot on March 2, 1987, as Associate Director for Regulations and Interpretations. The letter was well-known as one of the first articulations of the important settlor/fiduciary distinction under which actions of an employer in the design, establishment, and termination of a plan (known as "settlor" functions) were found to relate to the business activities of the employer as distinguished from actions of fiduciaries. Under the letter, settlor expenses generally were not properly payable by an employee benefit plan.

Highly respected by colleagues, Elliot was remembered as one of the people who put the foundations of ERISA in place and whose contribution to the development of the law could not be overstated. In his honor, the DOL established the Elliot Daniel Award, given annually to an outstanding employee. His dedication to work was admired by colleagues - nothing stood in Elliot's way and he brought enthusiastic delight in rising to challenges at work. Colleagues found that he had a kind heart and could always be approached with a problem. A true public servant, his contributions helped plans comply with the new law and helped protect participants' benefits.



## **JOHN N. ERLENBORN**

John N. Erlenborn passed away in 2005 at age 78. A member of the United States Congress who helped shepherd the Employee Retirement Income Security Act of 1974 (“ERISA”) through the House of Representatives, he was inducted as a Charter Fellow of the American College of Employee Benefits Counsel in 2000.

The future representative briefly attended the University of Notre Dame in 1944 before enlisting at age 17 in the U.S. Navy during World War II. Following his military service, he attended Indiana University, the University of Illinois, and Loyola

University Chicago. He studied engineering, but switched disciplines and obtained his law degree from Loyola University Chicago School of Law in 1949.

After graduating from law school, he joined the firm of Perry and Elliot in Wheaton, Illinois. In 1950, he was appointed Assistant State’s Attorney for DuPage County, Illinois. In 1952, he left the State’s Attorney’s office and, with his high school friend and future Judge William Bauer, formed the firm of Erlenborn and Bauer, also in DuPage County. In 1956, he was elected as a State Representative in the Illinois House of Representatives and served until 1964.

Elected to the U.S. House of Representatives in 1964, he served for 20 years in a suburban Chicago district. During his entire tenure in Congress, Representative Erlenborn served on the House Education and Labor Committee, eventually rising to become the ranking Republican member of that Committee. Beginning in 1968, this Committee began considering comprehensive reform of the laws governing pension plans and other employee benefit arrangements.

On September 12, 1972, NBC aired a special entitled “Pensions: The Broken Promise” which harshly criticized the U.S. private pension system, focusing on tragic cases of aging workers who were left, at the end of a life of labor, without pensions, without time to develop new pension rights, and on occasion without viable income. The program highlighted situations in which companies had terminated workers shortly before they were about to vest in their pensions or filed for bankruptcy without adequately funding pensions. See *National Broadcasting Company, Inc., Petitioner, v. Federal Communications Commission and the United States of America, Respondents, Accuracy in Media, Inc., Intervenor*, 516 F.2d 1101 (D.C. Cir. 1975) which includes a transcript of the NBC program. <https://law.justia.com/cases/federal/appellate-courts/F2/516/1101/419564/>

After the NBC special aired, Representative Erlenborn and others in Congress felt increased public demand for action. Representative Erlenborn acknowledged that NBC had brought to light defects in the pension system that needed to be addressed. Although the system had failed some workers, he noted that the existing system had brought retirement security to many others. He advocated for reform of the existing private pension system to remedy the defects and enhance the future of the retirement system. Representative Erlenborn made it his mission to pass appropriate legislation to achieve these goals.

An acknowledged conservative stalwart known for championing the interests of management and business, Representative Erlenborn nonetheless had close friends on both sides of the aisle and was universally respected for his understanding of pensions. He applied his skills towards moving ERISA through the House of Representatives. An outspoken critic of ERISA's dysfunctional dual overlapping administration by DOL and IRS that was put in place to placate Treasury and Labor's dispute over which agency should be in control, he said, "I think the House would be made to look foolish if we passed legislation... adopting two sets of laws in the same area, providing two different Departments of Government with concurrent jurisdiction for administration and forcing those who are administering ...plans to go to two different governmental agencies on the same questions." U.S. Senate; Wm. S. Hein Subcommittee on Labor of the Committee on Labor and Public Welfare, Legislative History of ERISA, P.L. 93-406, p. 20 (1974). His efforts to remedy overlapping jurisdiction by the DOL and IRS were not successful at the time of ERISA's enactment.

He continued to be at the center of employee benefits legislation for the rest of his time in the House. Overlapping jurisdiction did become an urgent problem to remedy. He was equally outspoken and passionate as the work to divide responsibilities between the two agencies was being discussed in Congress. Challenging a colleague who was advocating that the Treasury role be maintained, he said, "Wouldn't you agree with me the most important thing is to maintain the existence of sound plans and to see that retirement and other welfare benefits get to the working men and women of this country rather than to protect the jurisdiction of the Treasury Department or the Labor Department or any other governmental unit?" Reorganization Plan No. 4 of 1978 (ERISA) Hearing before a subcommittee of the Committee on Government Operations, House of Representatives, 95th Congress, 2nd session, p. 3356, Sep. 12, 1978. He saw this issue resolved in the Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978).

Another example of his dedication to employee benefits law came in response to situations in which uninsured multiple employer welfare arrangements ("MEWAs") had collapsed without adequate funding to provide promised benefits. An amendment to ERISA's preemption provision was enacted in 1983 to allow states to regulate MEWAs. This legislative change was known at the time as the "Erlenborn amendment."

Based on his dedicated efforts in the House to achieve reform, Representative Erlenborn was often considered an important founder of ERISA in the House. Fittingly, his fishing boat on the Potomac River was christened the “Miss ERISA.”

While the passage of ERISA was his signature congressional achievement and stands as a lasting memorial to his remarkable career, his accomplishments were numerous. Among them were his co-sponsorship of the Black Lung legislation to aid coal miners with this disease.

Representative Erlenborn decided not to run for an 11th term in 1984. His son David acknowledged that his father, regarded as a consummate professional with a gentle nature, had become “disappointed that decorum among members of Congress was breaking down.” Upon completion of his tenth term as a Congressman, he joined the Washington, DC, office of the Chicago-based law firm Seyfarth, Shaw, Fairweather and Geraldson (in 1999 known as Seyfarth Shaw LLP) as a partner. In the 1980s, he was appointed to the board of directors of the Legal Services Corporation, a non-profit organization established by Congress that funds legal help to the indigent, by President George H. W. Bush and later President William Clinton, serving as its interim President from 2001 to 2003. He was a special advisor to the Pension Benefit Guaranty Corporation in 1985 and 1986 as well as a member of the Labor Department’s ERISA Advisory Committee from 1985 to 1988. He also served as president of the U.S. Association of Former Members of Congress and went to Eastern Europe in the early 1990s to assist emerging democracies in developing electoral systems.

Mr. Erlenborn retired from Seyfarth Shaw in 1995. He then went on to serve as an adjunct professor in the business school at Georgetown University from the time of his retirement until 2005.

William Bauer, former Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, considered him his “best friend” from the time they worked together at an Ovaltine factory and a laundry and hitchhiked together across the Midwest, noting upon his passing that he “was absolutely foursquare. I would trust him with anything.” In the Spring 2006 volume of the John Marshall Law Review, which was dedicated to Mr. Erlenborn, Judge Bauer wrote a tribute which included the following passage:

“His work revolutionized the way companies are required to care for their employees both during their period of employment and their retirement. Both management and labor owe a great debt of gratitude to this outstanding public servant.”



## **RICHARD H. FAY**

Richard H. Fay, who died in 1989 at age 46, was active at the frontlines of the legislative development of the Employee Retirement Income Security Act of 1974 (“ERISA”). Richard was inducted in 2000 as an In Memoriam Fellow of the American College of Employee Benefits Counsel (the “College”).

Richard graduated in 1960 with an economics major from Babson Institute (name changed in 1969 to Babson College) in Wellesley, MA and earned his law degree in 1964 from the University of Maine School of Law in Portland, ME. Prior to going to Washington, Richard was Assistant Dean and lecturer at the University of Maine Law

School.

Moving to Washington, DC in the mid-1960s, he held a number of jobs, including work on the staff of the U.S. House Education and Labor Committee and in the offices of then-Rep. William D. Hathaway (D-Maine). He served as legislative assistant for Senator Edmund S. Muskie (D-Maine) from March 29 to December 1, 1971. As legislative assistant to Sen. Gaylord A. Nelson (D-Wis) who had been chair of the Senate Finance Committee’s Subcommittee on Private Pension Plans, he participated in and contributed to the legislative development of ERISA. Richard gained invaluable knowledge of the legislative story behind ERISA as well as in depth knowledge of the details of the law.

After ERISA was signed into law, Reed Smith Shaw & McClay LLP (name changed to Reed Smith LLP in 2000) hired Richard in 1975 to work in the firm’s Pittsburgh office. Richard became a partner and later transferred to the DC office. He practiced in the employee benefits and pension area there until his death.

After enactment of ERISA, Congress monitored the effects of the new law and considered whether adjustments and improvements were needed. Richard testified before Congressional subcommittees many times over his career. For example, on February 2 and 3, 1976, Richard appeared as a member of the Employee Benefits Division of the American Bar Association Section of Taxation in Joint Hearings before the Subcommittees on Private Pension Plans and Financial Markets of the U.S. Senate Committee on Finance and Select Committee on Small Business. He helped describe practical problems and expenses faced by small businesses dealing with new requirements and the developing understanding of the law. For example, plan sponsors had to draft retirement plan documents to comply with the new law, but then repeatedly revise those plans after “piecemeal” issuance of guidance. New annual plan reporting on “hours of service” referred to “regulations



[that were] a subject of controversy” such that “highly competent practitioners [had] trouble with them.” His testimony brought the senators a vivid picture of the challenges of compliance by plans with the new law.

His involvement in the forefront of the developing new law continued in other forms. During 1978 to 1982, he served as an Employer Representative to the Advisory Committee of the Pension Benefit Guaranty Corporation (“PBGC”), which had been authorized by ERISA. Supported by the business community, his nomination was recommended by Ian Lanoff, Administrator of the Pension and Welfare Benefit Program in the Department of Labor and by Senator Nelson. In 1986, he chaired the Employee Benefits Council of the U.S. Chamber of Commerce. He also acted as a consultant to the U.S. Senate Select Committee on Small Business. One College Fellow recalled that Richard once explained why he was so involved with benefits legislation by saying that his definition of “hell” was for there to be legislative activity going on and he was not a part of it.

A member of the American Bar Association Section of Taxation, Committee on Pension, Welfare and Related Matters, and Committee on Employee Benefits, he generously shared his “at the table” experience and expertise as a lecturer and author. Richard spoke extensively throughout the country at conferences on employee benefit plans, including those conducted by the American Law Institute-American Bar Association Committee on Continuing Professional Education. He authored the chapter “Fiduciary Responsibility” of the book entitled “A Practical Guide to the New Pension Reform Legislation” (S. Glasser, ed. 1975) and a chapter on employee benefit plans of a book entitled “Tax Reform Act of 1976.” Richard also served as a member of the Advisory Board on Employee Benefit Plans of the Bureau of National Affairs (the Bureau of National Affairs was acquired by Bloomberg, L.P. in 2011 and later known as Bloomberg Industry Group).

A bright and energetic lawyer, Richard’s impressive contributions to the scholarship and understanding of ERISA were greatly appreciated by the employee benefits community. A Richard H. Fay Memorial Scholarship Fund was established at University of Maine School of Law. See <https://www.mainelawcommunity.org/s/184/16/interior.aspx?sid=184&gid=1&pgid=989>



## **MICHAEL S. GORDON**

Michael S. Gordon passed away in 2004 at age 70. A talented attorney who helped shape pension reform and advocated for retirees, he was inducted as a Fellow of the American College of Employee Benefits Counsel (the “College”) in 2001.

Mike received his undergraduate and law degrees from the University of Chicago in 1952 and 1955, respectively. Upon graduating from law school, he began his career as a lawyer with the Department of Labor (“DOL”) in Washington, DC. In 1962, the DOL assigned Mike as its legal adviser

to the Presidential Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, a cabinet-level task force established by President John Kennedy to study the nation’s private-sector pension system and employee benefit plans. In that role, Mike first encountered and began to consider how to solve the many problems facing the private pension system. In 1965, after the Presidential Committee issued a report recommending sweeping reforms to the laws governing private pension plans, Mike began to draft a federal pension law establishing vesting and funding standards as well as strong fiduciary protections applicable to private pension plans.

Mike left the DOL in 1970 to join the staff of College Fellow Jacob Javits, a Senator very active in pension reform and the-then ranking minority member of the Senate Labor Committee. From 1970 to 1975, Mike served as minority counsel on pensions for the Senate Committee on Labor as well as the Public Welfare Subcommittee on Labor. Senator Javits had introduced a pension bill in 1967 similar to the one Mike had crafted during his stint with the DOL. Working with the senator and others on the Committee, Mike merged ideas from both his own earlier draft and the 1967 bill into a blueprint that eventually would evolve into the Employee Retirement Income Security Act of 1974 (“ERISA”).

Mike’s contributions to the passage of ERISA went well beyond merely drafting legislation. Senator Javits charged him with staff responsibility for energizing the grassroots demand that Senator Javits believed necessary to overcome the interests opposed to extensive federal regulation of pension plans. Mike applied his talents and accomplished the task against formidable odds. He conceived the brilliant strategy of organizing Senate Labor Subcommittee hearings around testimony that highlighted what came to be known as the “horror stories” that helped lead to the enactment of ERISA. Those hearings captured the attention of the public and the media and inspired numerous articles, a “60 Minutes” TV program, and an NBC award-winning TV program called “Pensions: The Broken Promise.”

Commentators have referred to Mike's role in the creation of ERISA as draftsman, engineer, and architect. Of course, no single person can legitimately claim any of those titles, and his colleagues attest that Mike, always modest, never did. But ERISA undoubtedly would have been a far different and weaker bill without Mike's tireless leadership and perseverance.

Mike spent the last three decades of his life combining private legal practice with public service. Year in and year out, whether a Democrat or a Republican occupied the White House, Mike was among the handful of private practitioners whose views policymakers repeatedly sought. Several generations of congressional staff on both sides of the aisle enlisted Mike's help as they struggled to understand employee benefits issues.

Mike pursued the private practice of law through his own small firm, representing multiemployer plans, corporations, and non-profits. He also represented individual employees when he thought they had been wronged, often in cases other attorneys had turned down.

In 2002, Mike was an integral part of the formation of the National Retiree Legislative Network ("NRLN"), a Washington-based grassroots coalition of retiree and older worker organizations. Not surprisingly, the NRLN's focus mirrors that of ERISA: "Making sure that promises are kept and reasonable expectations built upon those promises are not disappointed." Mike served as general counsel and chief legislative strategist for the NRLN until his passing in 2004.

Mike contributed generous amounts of his time to the advancement of organizations and causes relating to employee benefits. For roughly two decades, he served as chair of the Board of Directors of the Pension Rights Center. In celebration of the Center's 35th anniversary, the Michael S. Gordon Fellowship program was established in his honor. This program brought prominent retired pension lawyers to the Center as volunteers. In addition, Mike chaired the BNA (later part of Bloomberg Industry Group) Pension & Benefits Reporter Advisory Board for almost 30 years. He also served as a member of the Pension Research Council of the University of Pennsylvania's Wharton School of Business and as a technical advisor to the Coalition to Preserve Retirement Security. He wrote and commented on numerous articles reflecting on ERISA and its legislative history. He was always delighted to put aside whatever else he was doing to speak with a colleague about why a particular provision of ERISA read one way rather than another, which political actors had a stake in the provision, and how particular political and language compromises were negotiated along the way.

Mike's colleagues and friends admired both his intellectual ability to master extraordinarily complex issues and his political skill in presenting those matters to members of Congress. He combined a keen intelligence, creativity and wisdom with decency, integrity, a generous spirit, and

compassion. He had a deep passion for the principle for which he had dedicated his working life: Promises made by employers must be kept. He had a rare talent for making others want to do the things in which he so strongly believed. He was a true champion for millions of workers and retirees.



## **THOMAS C. GRAVES**

Thomas C. Graves, who died in 2023 at age 88, earned distinction as one of the most respected Employee Retirement Income Security Act of 1974 (“ERISA”) attorneys in the Kansas City employee benefits community. Tom was inducted in 2001 as a Fellow of the American College of Employee Benefits Counsel (the “College”).

Tom graduated with a B.A. in history from William Jewell College in Liberty, Missouri in 1957 and a J.D. from the University of Missouri at Kansas City School of Law in 1960. Tom began his legal career in the U.S. Army Judge Advocate General’s Corps. After a tour

of duty in Vietnam in the early 1960s, he continued to serve in the U.S. Army Reserve, retiring as a Colonel in 1987.

As an employee benefits trust officer from 1964 to 1975 for the First National Bank of Kansas City (in 1985 known as Boatman’s First National Bank of Kansas City and in 1999 as part of Bank of America after a series of mergers and reorganizations), Tom built his knowledge of the employee benefits world with invaluable real-world experience. From 1975 to 1984, he worked in employee benefits legal support services and consulting for Meidinger & Associates (merged in 1984 with William M. Mercer, Inc., part of Marsh McLennan, and renamed and reorganized over the succeeding years) employee benefits consulting firm experiencing and working through issues in implementation stage of the then-new ERISA.

Moving to law firm practice as an employee benefits attorney, he was of counsel and partner at the Morrison & Hecker law firm from 1984 to 2002. After a firm merger, he was partner of the Stinson Morrison & Hecker LLP (after 2019, known as Stinson LLP) law firm from 2002 to 2007 and served as Vice-Chair of its Employee Benefits Practice Division.

Tom worked at Haynes Benefits PC starting in 2007 as a shareholder in Lee’s Summit, Missouri, a suburb of Kansas City. Coming in with more than 40 years of experience, Tom advised plan sponsors regarding the establishment, operation, and termination of employee benefit and executive compensation plans, including retirement, health, and other group welfare plans. He handled day-to-day administration questions as well as complex mergers and acquisition benefit issues. Tom retired from active practice of law in 2018, but continued to be a valued resource to lawyers within his firm.

Tom shared his wealth of knowledge as an active leader, speaker, writer,

teacher, and general contributor to the greater employee benefits bar. Tom served as Chair of the American Bar Association Tax Section's employee benefits subcommittee regarding military leaves. In 1986, Tom, together with others, including College Fellows John L. Utz and Alson R. Martin, helped found what became the Employee Benefits Institute ("EBI"), which provided an annual employee benefits conference in the Midwest. An active and long-time educator, Tom taught courses for Certified Employee Benefit Specialist ("CEBS") certification from 1981 to 1999. (The CEBS program was established in 1976 by the International Foundation of Employee Benefit Plans and The Wharton School of the University of Pennsylvania.) He was active in other employee benefit organizations, including the American Benefits Council and the International Society of Certified Employee Benefit Specialists.

Known by friends and family for unwavering positivity and generous spirit, he volunteered in his community enriching the lives of those around him. Clients held him in high esteem. One client shared the reason they could "sleep at night" was that they knew that "Tom [had] taken care of all of ERISA's tortuous requirements." Known by colleagues as being thorough in his practice, dedicated to his clients and the practice of law, and honorable, Tom was a role model. One of his former colleagues noted about Tom, "that's how an attorney should practice law."



## JACOB K. JAVITS

Jacob K. Javits, who served New York in the United States Senate for 24 years and became one of the most respected and influential political figures in the nation, passed away in 1986 at age 81. In 2000, the American College of Employee Benefits Counsel (the "College") inducted him as an In Memoriam Fellow.

The son of immigrants, he was born into abject poverty in New York City in 1904. As a child, he helped his family sell dry goods from a pushcart in the street. Despite the challenges of poverty, he became president of his class at George Washington High School. While taking

night courses at Columbia University, the future senator worked testing pipes at a factory in Elizabeth, NJ and selling printing supplies. He graduated from New York University School of Law in 1926. He and his brother Ben then formed the firm of Javits & Javits.

During World War II, he volunteered to work as a civilian in the Army's Chemical Warfare Department in Washington. Commissioned as an officer in 1942, he traveled overseas to help plan the invasions of Europe and Japan. By the time he left the Army in 1945, he had risen to the rank of lieutenant colonel and had earned the Legion of Merit, an honor awarded for exceptionally meritorious conduct in the performance of outstanding services and achievements.

In 1946, the future senator began his political career by running for an Upper West Side seat in the U.S. House of Representatives that a Republican had not held for more than two decades. He won, and after four terms as a House member, ran in 1954 for New York State Attorney General. Given little chance to defeat the Democratic candidate, Franklin D. Roosevelt, Jr., he won again. Two years later, he was elected to the United States Senate. Widely regarded, by admirers and detractors alike, as one of the most intelligent, industrious, and effective members of the Senate, he served for four terms. In a poll conducted by Congress Watch, a Ralph Nader organization, Capitol Hill aides voted Senator Javits the brightest and second most influential member of the Senate.

In 1967, Senator Javits introduced his first pension bill. That year, opposition to the bill was widespread and vocal. Corporate America called it "socialist" regulation, and the banks took the same view. Many labor unions believed that the proposed pension reforms would destroy the actuarial soundness of their pension plans.

In a comprehensive review of the early versions of pension reform bills,



the September 1974 issue of "Nation's Labor" attacked Senator Javits on a personal level: "To sum up—there was not a single major interest group that favored the entire package of reforms. Javits was a dreamer, a voice in the wilderness, an impractical do-gooder who didn't understand the needs of the economy at all. In theory—sure—everybody was for safety and security for the working man; just as everyone's for motherhood. But practically nobody saw the Javits proposals as any solution to anything. Far more saw it [sic] as the dissolution of everything the funds had built."

In his 1981 autobiography, the former senator succinctly described the almost complete lack of political support for federal pension reform: "As we started drafting a new bill, I began to hear from trade unions, pension trustees, banks, insurance companies, actuaries, and people who set up pension plans. Most of the business people advised me to stay out of the issue; they said it was a can of worms that would cause me endless trouble and alienate my friends and supporters, and I should just lay off."

Although pension reform had almost no conventional political support, Senator Javits doggedly made pension reform his mission. Worker support for reform increased. The media carried mushrooming reports of widespread worker alienation, including incidents of rampant absenteeism and deliberate worker sabotage in automobile assembly plants and elsewhere. Worker dissatisfaction stemmed not only from monotonous and highly impersonal factory and office routines, but also from what some workers derisively dubbed broken promises of the private pension system, i.e., the so-called "horror stories" associated with workers devoting their entire working lives to an employer and then losing their pensions because of lengthy vesting schedules or severely underfunded pension plans.

Senator Javits believed that both the complaints about unfair pension plans and the dehumanized work routines stemmed from the same source: out-of-date management thinking about the employees' role in private enterprise. In his view, the insistence of business leaders that only lengthy vesting schedules would ensure the retention of valuable and experienced workers did not square with the high degree of labor mobility that hallmarked modern industrial life. By adhering to such outmoded views, he believed, business actually undermined the attractiveness of private pensions to workers and thereby eroded the value of a key incentive for employee retention. Senator Javits concluded that reform of the private pension system was essential to revitalize American capitalism and the economy.

Because he believed it was the right thing to do, Senator Javits persisted in relentlessly pushing forward pension reform legislation against all odds and potentially to his political detriment.

And he knew exactly how to achieve his goal. He charged future College

Fellow Mike Gordon, then on the Senator's staff, to energize the grassroots demand that Senator Javits believed necessary to overcome the interests that were opposed to extensive federal regulation of pension plans. Mike conceived the brilliant strategy of organizing Senate Labor Subcommittee hearings around testimony that highlighted the "broken promises" arising out of the private pension system. Hearing reports in the media, the American public in turn communicated to their representatives their outrage at the many cases of workers who had spent a lifetime with one or two companies only to retire without pensions.

Ultimately, Congress listened to their constituents. Remarkably, the Senate voted 85-0 and the House 407-2 in favor of the passage of the Employee Retirement Income Security Act of 1974 ("ERISA").

After his retirement from public service in 1981, former Senator Javits remained active. Known for his dedication to public service and courage in the face of personal adversity in his later years, he once remarked, "You must remember, my own philosophy is that you don't belong only to yourself. You have an obligation to the society which protected you when you were brought into the world, which taught you, which supported you and nurtured you. You have an obligation to repay it." Consistent with this mantra, he served as an adjunct professor of public affairs at Columbia University's School of International Affairs. In addition to teaching, he continued to travel to Washington, spending several days a month there as an adviser to Secretary of State Alexander M. Haig, Jr. and to some of his former colleagues on the Senate Foreign Relations Committee.

During the last years of his life, he received numerous accolades. The federal government's largest office building in New York State, the 41-story tower at 26 Federal Plaza in lower Manhattan, was formally renamed the Jacob K. Javits Federal Building in his honor in April 1981. In 1983, President Ronald Reagan presented him with the Presidential Medal of Freedom, a medal awarded annually since 1945 to Americans who made exceptionally meritorious contributions to the nation. He was named the 1983 recipient of the Charles Evans Hughes Gold Medal, named for the former Chief Justice of the United States, in recognition of courageous leadership in governmental, civic, and humanitarian affairs. In December 1984, New York City's new convention center was named the Jacob K. Javits Convention Center of New York.

When asked about his legacy, he replied that he hoped to be remembered for his participation in changing the outlook of the country. Elaborating, he named three legislative measures for which he had been a strong advocate: the War Powers Act, which limits the ability of a president to make war without Congressional approval; the law establishing the National Foundation on the Arts and the Humanities, which provides federal funds for cultural projects; and ERISA.

Upon Jacob's passing in 1986, then President Reagan said: "Throughout his many years in the Senate, Jacob Javits was known for his intellect, for his integrity, for his dedication to the people of New York and the nation and for the sheer joy he took in every day of his work. Jacob Javits remained to the end a man in love with life."



## **JOHN R. LINDQUIST**

John R. Lindquist, who advocated for changes in retirement plan law and was a key leader in the employee benefits bar, died in 1989 at age 67. A standout practitioner in retirement plan tax law both before and after enactment of the complex Employee Retirement Income Security Act of 1974 ("ERISA"), John was inducted as a Charter In Memoriam Fellow of the American College of Employee Benefits Counsel (the "College") in 2000.

John earned his B.S. in 1943 from Northwestern University and from 1943 to 1945 served our country as a naval officer on a destroyer in the Pacific Theater in World War II. His most vivid memory of that time was of a battle in which his ship was attacked by kamikaze aircraft. John received his J.D. in 1948 from Northwestern University School of Law (in 2015 renamed Northwestern University Pritzker School of Law).

In 1948, he joined the Chicago firm of McDermott Will & Emery. In his 35 years with the firm, John specialized in the tax laws applicable to retirement plans, representing clients of all sizes. Over the period from 1954 to 1973, John built his firm's employee benefits practice. After enactment of ERISA, which both built on and modified prior law, John continued to lead that department and served on the firm's management committee from 1972 until his retirement in 1983.

John, whose practice area dealt with special tax breaks for retirement benefits in plans that "qualified" by meeting tax law requirements, was on the frontlines of pension change as one of the advocates for key pre-ERISA legislation to extend "qualified" plan rights. An example is his testimony on behalf of his firm raising concerns about limits on benefits for self-employed and smaller businesses before the May 11 and 12, 1960 Senate Committee on Finance hearing, "Pension Plans for Owner-Managers of Corporations," regarding H.R. 10. The bill was eventually enacted as the Self-Employed Individuals Tax Retirement Act of 1962 (Public Law 87-792), pivotal legislation that permitted self-employed individuals to establish tax-qualified retirement plans. He also appeared before Congress on several other occasions over the years, such as on behalf of the Profit Sharing Council of America before the Subcommittee on Private Pension Plans of the Committee on Finance on the subject of private pension plan reform on July 11, 1973.

His extensive experience was shared with others in publications and in speaking. His role as an authority helping the profession understand the

law is evident in his article, "The Pension Remodeling Act of 1974," 52 Taxes 873 (1974), in which John discussed the then-new law ERISA and his prediction that the future of the private pension system would be in either the general area of defined contribution plans or employer-sponsored Individual Retirement Arrangements ("IRAs").

John's leadership in the field also extended to professional groups including the Chicago Bar Association (Chair of the Employee Benefits Committee from 1970 to 1971), the American Bar Association ("ABA") Real Property, Probate and Trust Law ("RPPT") Section (Section Council 1977-1983) (RPPT later was renamed as Real Property, Trust and Estate Law), and the American Bar Retirement Association (Director and Trustee 1982 to 1986). He participated in the Illinois State Bar Association and, in 1976, chaired the Midwest Pension Conference. John also contributed his talents as a public member of the Illinois Legislature's Illinois Public Employees Pension Laws Commission (1978 to 1984). Efforts as a proponent (with others) for formation of an ABA Employee Benefits Section, while unsuccessful, triggered formation in 1981 of the ABA's Joint Committee on Employee Benefits ("JCEB"). The JCEB was established to coordinate employee benefits activities and efforts to share knowledge about the new law among several ABA Sections with involvement in employee benefits law. In the early years of the JCEB, John served as a JCEB representative of the ABA RPPT Section. The JCEB played a central role in the formation of the College.

College Fellow Peter Kelly, mentored by John during the period from 1973 through 1981, noted John's remarkable helpfulness and strengths as a leader in the employee benefits bar. John's depth of knowledge and tremendous record of participation over years of developing pension law gave him made him an invaluable teacher. Well-respected for his leadership, expertise, and experience, John also was known by colleagues for his kindness.



## **JAMES M. NELSON**

James M. Nelson, a litigator honored for his contributions to the Employee Retirement Income Security Act of 1974 (“ERISA”) area of the labor and employment bar, passed away in 2023 at age 66. He was a Fellow of the American College of Employee Benefits Counsel (the “College”), having been inducted in 2009.

Majoring in political science, Jim earned his B.A. from the University of Arizona in Tucson in 1979 and his law degree from the University of Arizona College of Law (in 1999 renamed the James E. Rogers College of Law) also in Tucson in 1982, where he

co-founded and served as Comment and Note Editor on the Arizona Journal of International and Comparative Law.

Jim began his career as an attorney in Phoenix, AZ at Shimmel, Hill, Bishop and Gruender, P.C. (1982-1987). He moved on to Sacramento, CA as partner at Diepenbrock, Wulff, Plant & Hannegan, LLP (later closed) (1989-1998), Downey Brand Seymour & Rohwer LLP (later, Downey Brand LLP) (1999-2002), and Seyfarth Shaw LLP (2002-2008).

He joined Greenburg Traurig, LLP’s Sacramento office in 2009, where he co-chaired the firm’s national ERISA and Employee Benefits Litigation Group and served as Chair of the firm’s Sacramento office’s Labor and Employment Practice. Clients consulted him for employee benefits counseling, litigation risk reduction strategies, complex employee benefits litigation and appeals, and his expertise in the treatment of independent contractors as employees.

Jim was credited on the briefs for Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust for So. Cal., 508 U.S. 602 (1993), which helped to clarify withdrawal liability in pension plans.

He was named a Fellow of the College of Labor and Employment Lawyers in 2010. He was also elected as a Fellow of the American Bar Foundation. Active at both the regional and national levels, Jim was a member of the College Board of Governors (2012-2018), including service as Assistant Secretary (2014-2016) and as a member of the College’s website/listserve committee. He co-chaired the Health and Welfare Benefits Subcommittee of the American Bar Association Labor and Employment Section’s Employee Benefits Committee and was a long-time co-editor of the Employee Benefits Committee Newsletter. From 1988-2010, he participated on the Planning Committee of the Tulane University Law School Multistate Labor and Employment Law Seminar.

In the true spirit of service as a Fellow of the College, Jim also mentored students to “pay it forward” as an adjunct professor at the John Marshall Law School in 2011, teaching the Survey of Welfare Benefits Plan Issues in the LL.M. Employee Benefits Program. With a smile in her voice as she thought of Jim, College Fellow and Professor Katie Kennedy (later at the University of Illinois Chicago School of Law) said that Jim’s law students loved him, especially for his remote teaching while aboard his sailing ship. He closed emails to them with “Fair winds!”

College Fellow Doug Selwyn (and co-editor with Jim of the Employee Benefits Committee Newsletter) recalled that Jim often authored articles in which he opened with humorous musings from federal rules, regulations, and case law to life itself, especially from the helm of his sailboat. In Jim’s article in the December 2019 Employee Benefits Committee Newsletter,\* he compared employee benefits law and sailing “The Pacific Puddle Jump,” a journey of some 3,400 miles. Somewhere past Hawaii at the outer range of weather report transmissions, Jim posited: “If this were a 13th Century paper map, the cartographer would have drawn dragons and sea serpents into the white space signifying the unknown. If this were the late 1980s[,] a cite to the original Section 89 proposed regulations [controversial Internal Revenue Code nondiscrimination rules relating to employee benefit plans that were later repealed] may have appeared here.”

Continuing, he said that “Passage navigation, like defined benefit plan actuarial work, is less about hitting a precise target than it is about not being off target in the wrong direction .... So, like the actuary, one wants to pick up the Trade Winds somewhere well west of the Marquesas and it would be bad to be pushed east toward or past them.”

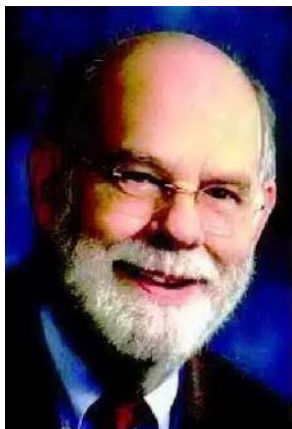
A prolific writer, Jim shared his knowledge in articles throughout his career on a wide range of ERISA topics. His writing included the 1991 looseleaf, “Health and Welfare Benefit Plans: Legal Guide to Planning and Management” (Butterworth Legal Publishers).

Jim was active in his community, including his 10 years of service as a Board member of the Greater Sacramento Chapter of the ALS [amyotrophic lateral sclerosis] Association. Perhaps the best measure of Jim was his active interest in and equal treatment of every person he met, no matter what rank or station.

\*available at

[https://web.archive.org/web/20210418185456/https://www.americanbar.org/groups/labor\\_law/publications/ebc\\_news\\_archive/holiday-2019-issue/pushing-relates-to/](https://web.archive.org/web/20210418185456/https://www.americanbar.org/groups/labor_law/publications/ebc_news_archive/holiday-2019-issue/pushing-relates-to/)





## **WILLIAM A. SCHMIDT**

William A. Schmidt, who died in 2023 at age 75, built a distinguished career as a lawyer whose practice focused on employee benefits under the Employee Retirement Income Security Act of 1974 (“ERISA”). Bill was inducted in 2000 as a Charter Fellow of the American College of Employee Benefits Counsel (the “College”).

Bill graduated in 1970 with a B.A. from the University of Virginia and earned his J.D. in 1973 from the University of Virginia School of Law. He began working at Connecticut General Life Insurance Company (later part of Cigna) in Hartford, CT, and subsequently, in

the early 1980s, served as an attorney in the Office of the Solicitor, U.S. Department of Labor (“DOL”) in Washington, DC. While in Washington, he earned his LL.M. degree in 1983 from Georgetown University Law Center.

During the early years of his career, he participated in developing guidance on the fundamentals of ERISA. One of his projects at DOL was helping to draft key regulations defining “plan assets” under ERISA which clarified the circumstances under ERISA section 404(c) when a participant would be considered to have exercised control over an individual account (meaning plan fiduciaries would not be liable for losses). This exception from fiduciary liability became an important incentive for employers to adopt defined contribution plans, such as Internal Revenue Code section 401(k) plans.

After government service, he became a partner at Akin Gump Strauss Hauer & Feld LLP; then at Paul, Hastings, Janofsky & Walker; and then at Kirkpatrick & Lockhart LLP (later, K&L Gates) where he practiced for more than 20 years before retiring. His practice areas included securities law, employee benefits, executive compensation, investment management, hedge funds, and alternative investments.

Even in private practice, Bill’s work helped establish ERISA law, such as the issuance to his client of the groundbreaking SunAmerica advisory opinion (Advisory Opinion Letter 2001-09A from Louis Campagna, Chief, Division of Fiduciary Interpretations, Pension and Welfare Administration (Dec. 14, 2001)).

Bill testified before ERISA Advisory Council Working Groups, including on July 17, 2002, the Working Group on Fiduciary Education and Training, where he suggested more DOL guidance about fiduciary education. Bill observed that “most fiduciaries want to be compliant” and stressed the need for “standards that are predictable, consistent and well articulated.” Bill indicated that an important way to improve

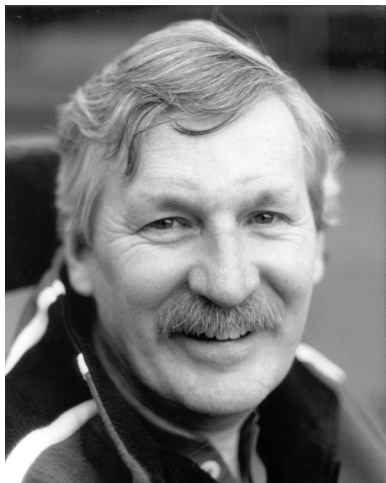
fiduciary performance was to improve the quality of services provided by vendors. “The quality of service is only going to get raised if the plan sponsors are demanding. Plan sponsors are only going to demand if they realize that ultimately they’re at risk.” He also testified on September 20, 2006, to the Working Group on Plan Asset Rules, Exemptions and Cross-Trading.

He taught as an adjunct professor at the Georgetown University Law Center and served as a frequent speaker at ALI-ABA conferences. Bill was a well-respected and sought-after editor and advisor to leading industry publications — the Probate & Property Employee Benefits Update, the Benefits Law Journal, the Journal of Pension Planning and Compliance, and The Investment Lawyer.

One of Bill’s areas of focus and scholarship included the developing use of mutual funds in Internal Revenue Code section 401(k) plans as well as ERISA section 404(c) diversification requirements. His outline, entitled “ERISA Development Relating to Mutual Fund Distributions,” SC49 ALI-ABA 57 (Feb. 5, 1998), was cited for its description of the application of prohibited transaction rules and exemptions to investments in mutual funds. See *Boeckman v. A.G. Edwards, Inc.*, 461 F.Supp.2d 801 (S.D. Ill. 2006).

Known as a wonderful man who was a great mentor to many, Bill also was a man of many interests. He was a leader and volunteer in his community, where he served on Board of Zoning Appeals in Greene County, VA.

As a lawyer who helped to interpret and apply ERISA in its formative years, his foundational work and later scholarship left its mark on the law.



## **TIMOTHY S. SMITH**

Timothy S. Smith, who died in 2000 at age 52, served in the government at the beginning of the Employee Retirement Income Security Act of 1974 (“ERISA”) and then in private practice as an employee benefits attorney and litigator who helped develop pension law. Tim was inducted in 2000 as a Charter In Memoriam Fellow of the American College of Employee Benefits Counsel (the “College”).

Tim graduated in 1971 with a B.S. and in 1972 earned a Masters of Architecture degree from the University of Michigan in Ann Arbor,

MI. While getting his Masters of Architecture, Tim became interested in urban planning and politics and decided that the key to effective urban planning was through elected officials. He saw law school as a tool to help him make those changes. He earned a J.D. in 1975 from the University of Michigan Law School.

Tim spent his entire career as an employee benefits attorney and started at the critical beginning period of ERISA. In 1976, he began work at the Employee Plans Division of IRS Employee Plans and Exempt Organizations working under College Fellow Alan Lebowitz who created a new group to address prohibited transactions under ERISA’s new section 4975 of the Internal Revenue Code. That group, which included College Fellows Carol Gold and Elliot Daniel, was tasked with creating guidance on this challenging provision intended to protect benefits of plan participants against conflicts of interest by those in charge of private pension plans. After the Presidential Executive Order issuing the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) changed agency working responsibilities under the new law, Tim moved to the Department of Labor where he continued to work in the prohibited transactions area.

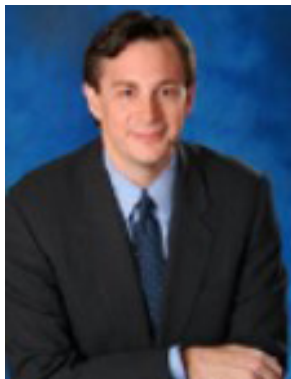
After his government service, Tim worked at Feder & Edes (which became Feder & Associates) in Washington, D.C. as an associate and then a partner (circa 1979-1993). At Feder, he advised numerous union health and pension plans on ERISA issues. College Fellow David Levin recalled that his colleague Tim frequently was actively involved drafting briefs in important ERISA litigation, e.g., *Brock v. Walton*, 794 F. 2d 586 (11th Cir. 1986). That case helped refine the understanding of exemptions from ERISA section 406(a)(1)(B)’s prohibition on plan loans to plan participants. The exemption requirements found in ERISA section 408(b)(1) included that the loans bear a “reasonable rate of interest.” The U.S. Court of Appeals held that a “reasonable rate of

interest” on loans to pension plan participants may be different from “the prevailing or market rate of interest.”

Tim loved the outdoors, which helped lead to the decision to relocate to the West coast. He worked at Davies, Roberts & Reid in Seattle, WA from 1993 to 1997 as of counsel, where he joined their ERISA and governmental plan practice. At Davies, Tim had a broad practice in employee benefits law as a counselor and litigator. He counseled multiemployer, multiple employer, and single employer pension, defined contribution, health, disability, and other benefit funds, located in more than a dozen western states. As a litigator, he was part of the lead defense counsel team in *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006 (1997), a landmark class action case that addressed benefits for workers not on the books as employees. For Davies attorneys, Tim also was a mentor, serving as a wise resource for those who consulted him on questions of strategy and who sought his practical point of view.

Tim was an active member of the American Bar Association Labor and Employment Law Section’s Employee Benefits Committee, serving for many years as a Co-Chair of its Fiduciary Liability Subcommittee. Tim was one of the Chapter Editors for the first edition of “Employee Benefits Law” of the Employee Benefits Committee of the Section of Labor and Employment Law of the ABA, published by the Bureau of National Affairs, Inc. (later part of Bloomberg Industry Group) in 1991.

Active in politics, social justice actions, and community building, Tim was remembered as a remarkable human being who was courageous in the face of personal adversity. Known as a kind, gentle, good-humored, and dedicated man, he left his mark on the developing law.



## **GARY S. TELL**

Gary S. Tell, who died in 2011 when only 44 years old, achieved distinction as a public and private sector employee benefits lawyer. He was a Fellow of the American College of Employee Benefits Counsel (the “College”), having been inducted in 2014 as an In Memoriam Fellow.

Gary received his A.B. magna cum laude in political science in 1989 from Brown University in Providence, RI and his J.D. in 1992 from the University of Chicago Law School.

Spending his entire career in Washington, DC, he started in 1992 at Groom and Nordberg, Chartered (which evolved to become Groom Law Group, Chartered). From 1995 to 1999, Gary was a Trial Attorney with the U.S. Department of Labor’s (“DOL’s”) Office of the Solicitor, Plan Benefits Security Division. In that role, he assisted the Pension and Welfare Benefits Administration (renamed the Employee Benefits Security Administration in 2003) with investigations and handled Employee Retirement Income Security Act of 1974 (“ERISA”) litigation across the country. The Secretary of Labor presented Gary with several Exceptional Achievement Awards, including an award for his drafting of amicus curiae briefs on a wide variety of ERISA issues, ranging from preemption to the scope of liability under the statute.

In 1999, he returned to private practice at O’Melveny & Myers LLP, where he became a partner in 2004, and practiced until his death in 2011. Gary earned distinction as both a leading ERISA litigator and as a sought-after advisor to plan sponsors and financial institutions on ERISA fiduciary matters. Among Gary’s most notable cases was *McCullough v. AEGON USA, Inc.*, 585 F.3d 1082 (8th Cir. 2009), a case that helped define how participants could bring lawsuits against plan fiduciaries for breach of fiduciary duties and for engaging in prohibited transactions relating to the payment of fees and use of proprietary investments in pension and profit-sharing plans. Gary helped lead the litigation and the appeals in the case.

Contributing much to the legal scholarship on ERISA fiduciary responsibility and pension plan investments, he wrote for the New York University Institute on Federal Taxation and was a contributing editor for “ERISA Fiduciary Law,” a treatise published by Bloomberg BNA (later renamed Bloomberg Industry Group). One of his most significant writing contributions was as co-editor of the “ERISA Litigation Reporter” (published by Thomson Corporation, which in 2008 became Thomson Reuters Corporation) from about 2008 until his death. College Fellows David Gordon and Robert Eccles founded this publication and, impressed by Gary’s abilities and contributions, personally selected Gary

as a co-editor to succeed them.

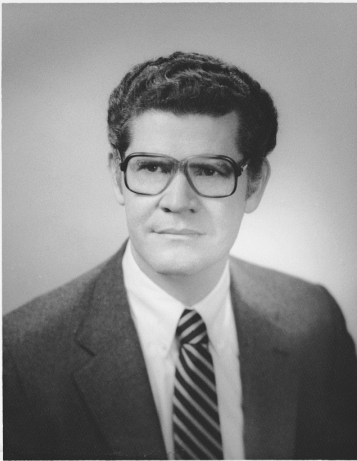
Gary also spoke frequently on those topics at professional gatherings, including the American Bar Association (“ABA”) Joint Committee on Employee Benefits and the ABA Business Law Section. He appeared at the Annual ERISA Litigation Conference and conferences on ERISA fiduciary law sponsored by Thomson Reuters (and its predecessors) and on pension plan investments sponsored by the Practicing Law Institute.

From 2008 to his death, Gary served as a Co-chair of the Civil Procedure Subcommittee of the Employee Benefits Committee of the ABA Labor and Employment Law Section.

A talented, hard-working lawyer, Gary was described by friends and colleagues as witty, humble, brilliant, wonderfully upbeat, positive, kind, and warm. Colleagues recalled that he made practicing law fun and was always able to inject the perfect amount of humor when it was needed most. Even his adversaries in litigation noted Gary’s civility and the complete absence of acrimony in their dealings.

In his last months, Gary envisioned a scholarship program for law students to encourage them to consider public service by working in ERISA litigation as interns. The scholarships would help young lawyers facing financial hurdles who might otherwise forgo public service to pursue other paths toward benefits careers. Gary’s wishes later would be realized by the creation of the Gary S. Tell ERISA Litigation Scholarship Foundation, which began awarding scholarships for DOL internships in 2014. For more information about the Foundation, see: <https://www.gstscholars.org/>

College Fellows David E. Gordon and Paul J. Ondrasik were Gary’s College nominators. College Fellow Robert N. Eccles contributed to the College nomination.



## **JAMES T. TILTON**

James T. Tilton, who died in 1993 at age 49, was nationally recognized for his knowledge and contributions to the profession in the employee benefits and deferred compensation practice areas. Jim was inducted in 2001 as an In Memoriam Fellow of the American College of Employee Benefits Counsel (the “College”).

Jim graduated with a B.A. in 1966 from Duke University in Durham, NC and a J.D. in 1969 from Emory University School of Law in Atlanta, GA.

Jim’s first stop as a lawyer was with Sutherland, Asbill & Brennan LLP (part of Eversheds Sutherland starting in 2017) in Atlanta in 1969. Focusing his practice on professional corporations and employee benefits, he then practiced in Chattanooga, TN at Buhrman, Tilton, and Speed and in Saginaw, MI at Joseph and Wolf (later part of Braun Kendrick Finkbeiner P.L.C.). Jim joined Hunton & Williams LLP (later known as Hunton Andrews Kurth LLP) in Richmond, VA in 1981 and became a partner in 1984. He transferred to the firm’s DC office around 1990.

Jim’s early interest in executive compensation and employee benefits blossomed with the passage of the Employee Retirement Income Security Act of 1974 (“ERISA”). He enjoyed understanding and developing concepts and ideas, including working with new legal developments regarding employee stock ownership plans and securing deferred compensation without current taxation. Highly-respected in his benefits practice, he was described as strong, dynamic, and very intelligent and knowledgeable.

As a dedicated and long-time member of the American Bar Association Tax Section’s Employee Benefits Committee, its Personal Service Corporation Committee and Task Force on Asset Reversions and Transfers, Jim contributed to the understanding of employee benefits concepts in the profession. Active in promoting understanding of issues in the employee benefits legal community, Jim spoke for the American Law Institute-American Bar Association on Plan Terminations in 1981 and many other continuing legal education programs. He co-authored several articles on employee benefits matters, including executive compensation.

Despite Jim’s obvious passion for benefits law, a colleague recalled Jim’s true love as being politics. His keen interest in politics continued throughout his life, including active involvement in running campaigns.



A dedicated teacher and mentor, Jim helped many lawyers learning ERISA and employee benefits law how to think and to ask questions about every aspect of matters on which they were working. Creative and clever, he would look at a rule that mandated or prohibited something and ask “Is there some other way?”

One lawyer who described Jim as being instrumental in her career development, noted that he was a perfectionist, extremely patient, and always took the time to explain the rules and rationales as well as the importance of writing in plain English and not legalese. Jim found opportunities, such as passing along authoring an article for a major tax publication, to foster other lawyers’ careers. Setting the standard with his perseverance and excellence in practice, Jim gladly helped other lawyers develop their skills.