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# ITA IN REVIEW

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# ITA IN REVIEW

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## **THE HONORABLE CHARLES N. BROWER'S REMARKS IN HONOR OF MR. EWELL "PAT" MURPHY AND MR. DAVID D. CARON**

by The Honorable Charles N. Brower

Tonight, as in other ways since their deaths earlier this year, just one month apart, we honor two former chairmen of the Institute for Transnational Arbitration—ITA, Ewell “Pat” Murphy, our founding chairman, and David D. Caron, our sixth leader.

Starting with our founder, I read a slightly adapted Chapter 1 of Genesis, the opening book of the Old Testament of the Bible:

In the beginning [the legal gods of Texas] created the [southwestern legal foundation] [but the foundation long] was formless and empty [as regards transnational arbitration], darkness was over the surface of [this void], and the spirit of one Ewell “Pat” Murphy was hovering over the surface of [it].

The “beginning” was 1947. Pat Murphy succeeded 39 years later, in 1986, in persuading the foundation, now the Center for American and International Law, to establish the ITA, which three years later, in 1989, presented the first of its annual workshops, which I, in fact, attended and the latest of which we have experienced today.

Pat’s life was truly a Horatio Alger’s story.<sup>1</sup> Born in 1928 in Washington, D.C., a descendent of a civil war general, he grew up in San Angelo, Texas, the county seat of Tom Green County and the site of Fort Concho and its buffalo soldiers.

He displayed excellence, leadership, and precocity from the start. Valedictorian of his class of 1943 at San Angelo High School. Then, following a year at San Angelo Junior College, he moved to the University of Texas, where he earned his B.A. with Honors in 1946 (at age 18!) and his LL.B., also with Honors, in 1948 (at the ripe old age of 20!).

In his last year at the law school he became what I suspect may be the youngest Rhodes Scholar in the history of the Rhodes Trust, and proceeded to study comparative constitutional law at St. Edmund Hall at Oxford University. True to Pat’s by then well-established form, he became President of St. Edmund Hall’s student

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<sup>1</sup> Horacio Alger, Jr. – Biography, [https://www.horatioalgersociety.net/100\\_biography.html](https://www.horatioalgersociety.net/100_biography.html).



body while also serving as coxswain of its crew. Pat graduated with a Ph.D. in 1951 (aged 23!). A year later he was commissioned a lieutenant in the United States (U.S.) Air Force, and was sent to Dhahran, Saudi Arabia, for two years as a Judge Advocate.

I pause here to note that Pat's assignment to Dhahran turned out to be fateful for the future ITA. Dhahran was the location of the Arabian-American Oil Company, known as ARAMCO; at the time owned by four American oil companies. The General Counsel of ARAMCO was one Bill Owen. It seems that Bill and Pat met there, and when Bill later retired and moved to Texas their friendship continued.

Bill had developed a serious interest in international arbitration, beginning with the fact that in the mid-1950's ARAMCO had arbitrated with the Kingdom of Saudi Arabia, claiming that the Kingdom's grant to Aristotle Onassis of the exclusive right to ship the oil produced by ARAMCO violated ARAMCO'S concession agreement. ARAMCO won that case, in which it happened to have been represented by White & Case LLP, my former law firm (though before I arrived there). Pat's friendship with Bill led to Bill becoming the second person to chair our advisory board (1989-1992), following Pat's stint as our first chairman (1986-1989). Older ITA members doubtless would reminisce with me about sitting with Bill over drinks of an evening following the day's events at our June workshop sessions; usually also with Bill's wife, a terrific lady who was both Bill's first wife and his third one (there was no fourth!).

But back to Pat. Following Saudi Arabia and the Air Force, Pat joined Baker Botts, where he spent the rest of his career at the bar and became known as "Mr. International Law" throughout Texas, and beyond. To cite his many achievements and awards, professionally; as a civic leader on many fronts; later as a teacher at both the University of Texas Law School and at the University of Houston Law Center; not to mention his warm and engaged personality; his exemplary family life; and his mentoring of so many, would take us past midnight and into tomorrow. One award, however, is of special relevance to the ITA. In 2008 the Institute decided to create an award "for exceptional civic contributions and extraordinary professional achievements in international arbitration." Most fittingly, it was then first bestowed on Pat and named in perpetuity the "Pat Murphy Award".



As I noted on that occasion, addressing Pat via a video recording, his favorite philosopher was Jose Ortega y Gasset, who had penned the following:

We distinguish the excellent man from the common man by saying that the former is the one who makes great demands on himself, and the latter, who makes no demands on himself.<sup>2</sup>

Continued then, as I now conclude this part of my remarks this evening, as follows: Honor be to you, Pat, the quintessentially "excellent man"!

I turn now from our unforgettable founder, who died earlier this year in his 90th year, to my beloved first law clerk in The Hague (1984-1985) and lifelong friend, David D. Caron. David, the ITA's sixth leader, died a month after Pat Murphy at age 65, depriving all of us of the fruits of his future activities, which might have extended another 25 or more years.

David, too, was, like Pat, a Horatio Alger's story.<sup>3</sup> His parents were quite simple folks who emigrated from Quebec, Canada, to Connecticut. David was the youngest of three children. Up until the age of 12 he was known as the "class clown". That changed forever, however, when his father suffered a crippling stroke when David was 12 years old and the burden of helping both of his parents fell most heavily upon him. His older brother, already at college, quit his studies to work and help support the family for a while. His sister, the middle child, was within a year and a half of graduating from high school. Immediately, and ultimately, it was all up to David from age 12 to age 18.

In the summers he worked in the shade-grown tobacco fields outside of Hartford, Connecticut, laboring under the burning sun and the relentless humidity. Those fields produced wrapper leaves for cigars. His graduating class voted David the most studious, the most mature, and the most likely to succeed.

With, as his brother has told me, "like, really, no money at all, whatsoever", David applied to the Coast Guard Academy, which would give him a free college education, and cadet's pay in addition. These, together, would enable David to prosper professionally and relieve his family of any need to support him. So, apply he did, and

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<sup>2</sup> JOSE ORTEGA Y GASSET, *THE REVOLT OF THE MASSES*, (trans. Anonym.) (New York W.W. Norman & Co., 1932) p. 63.

<sup>3</sup> *Supra* note 1.



his application was rejected! Why? Apparently, the academy would not accept anyone as a cadet who had a severe underbite. His lower front teeth projected beyond his upper front teeth, which apparently was not acceptable in a future officer. What to do? The only solution was to suffer one's jaw to be surgically broken and reset. David underwent the procedure at age 18 an extremely painful experience, which, as his wife Susan recalls, caused him during the ensuing summer to receive his nutrition mainly through a straw! If anyone ever had doubted David's resolve to advance in life, this fact, which I learned only after his death, must resolve any such doubt.

At the Academy David prospered, graduating not only with honors, but also as the commander of the Cadet Corps, the anointed leader of the entire student body. He, too, thus showed the highest leadership qualities from an early age.

Yet, more challenges faced him. His first assignment as a freshly minted Ensign was on the "Polar Star", an icebreaker, where he served as navigation and diving officer. When we first met in The Hague in 1984 and he told me this, I said "surely you did not dive in arctic waters!" His dry reply was "of course I did, for example when a propeller would be fouled." He then proceeded to relate to me a memorable incident when he came rather too close to losing his life while diving in the arctic. Ever the rock solid, steady soul that David was, that experience did not prevent him from taking his wife and children on diving vacations in later years.

His second assignment, in San Francisco, I have always felt influenced him to attend law school at Berkeley. But not before post-coast guard service, however, he spent a year in Cardiff, Wales, on a Fulbright scholarship, obtaining a master's degree in marine law and policy. As he related later to an interviewer, he was told that to "fit in" in Wales, he would have to either (i) play rugby or (ii) sing. Though built well for rugby, he chose to sing with the Cardiff Polyphonic Choir.

David in fact spent a lifetime singing, with a beautiful second bass voice. He and Sean Murphy, now president of the American Society of International Law (ASIL), loved to tell the story of when David and his wife Susan spent a sabbatical year in Washington, D.C., the first year that David presided over ASIL. Sean was driving them





downtown and in passing the National Cathedral he pointed it out to them. When David responded “yes, I know the National Cathedral because as a cadet I sang there with the Academy's Glee Club at the memorial service for President Truman”. Sean burst out with “just how old are you, David?” David and his Coast Guard Academy Glee Club also sang later at the second inauguration of President Nixon. While stationed in San Francisco, David sang with the Oakland Symphony Orchestra. I first experienced his singing voice when he clerked for me at the Iran-United States Claims Tribunal and sang at the church wedding of a Dutch tribunal law clerk to an American, who later also clerked with us, in Scheveningen. As you will see, David's singing became a trademark of his service everywhere.

As a student at Berkeley, David fell under the tutelage and mentorship of the legendary professor Stefan A. Riesenfeld, who proclaimed David “the best student I have ever taught!” He graduated Order of the Coif, won the Thelen Marrin Prize for outstanding student scholarship, was the Editor-in-Chief of the school's "Ecology Law Quarterly" and was a member of the ASIL's Executive Council Ex Officio as the head of the International Law Students Association.

After graduating from Berkeley, David and I came into each other's lives when I arrived in The Hague and David clerked for me at the Iran-United States Claims Tribunal. While working very hard at that job he managed to attend The Hague Academy of International Law and become only the 25th American, up to that time, to earn the Academy's coveted diploma. David also earned during that period the Dutch advanced degree of Doctorandus at the University of Leiden, which was followed five years later by his being awarded at the same University his Doctorate in International Law. He left me after nearly two years to be a Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany.

Though thereafter he took up his post at Berkeley, which he held with increasing renown for 26 years, early being chaired as the C. William Maxeiner Distinguished Professor of Law, he returned frequently to The Hague Academy. Only two years after leaving the Tribunal, in 1987, he returned to the academy as the director of





studies (English); a quite unusually swift step-up. In 1995 he returned there again as the director of research (English), and then returned in 2006 to give a series of important lectures entitled "A Political Theory of International Courts and Tribunals".<sup>4</sup>

David would typically sing to his students, whether at Berkeley, The Hague Academy, or elsewhere, who especially were entertained by his stunning imitations of Elvis Presley, adapting the words to the audience, for example, "Amazing Grades" and "Grade Me Tender."

Along his academic road, David was frequently engaged in practice and in public service. Apart from chairing the ITA's Advisory Board, David served as President of the ASIL, on the Board of Editors of the American Journal of International Law. He also played important roles with the Marshall Islands Nuclear Claims Tribunal and before the Eritrea-Ethiopia Claims Commission. He served as a Commissioner of the United Nations Claims Commission and chaired the World Economic Forum's Global Agenda Council on The International Legal System, among many other activities.

While still at Berkeley, David increasingly became a much sought-after expert witness, advocate, and arbitrator in prominent international arbitrations, so much so that he qualified as a Barrister—a member of the Bar of England and Wales—and was invited to join 20 Essex Street Chambers in London, renowned for its work in public international law and international dispute resolution. Always playful, David proudly displayed his wig in his Berkeley office and his later ones.

Through these later Berkeley years David and I schemed to have him achieve his life's highest ambition, to be an international judge in The Hague.

First, however, in 2013 David was chosen to be the Executive Dean of the Dickson Poon School of Law at King's College London. It was the ideal deanship, as Sir Dickson Poon, a Hong Kong businessman, had just donated 20 million British Pounds to King's College for the purpose of improving its law school. David's principal task was to spend the money wisely and achieve Sir Dickson's goals; which indeed David did.

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<sup>4</sup> David D. Caron, *Towards a Political Theory of International Courts and Tribunals*, 24 BERKELEY J. OF INT'L L. 401 (2007).



Being already a barrister and a member of a leading London Chambers, David soon found himself made a bencher of the inner temple and—surprise, surprise—singing with the Parliament Choir, composed almost exclusively of members of the House of Commons and the House of Lords, slightly augmented by a few added worthies. While at King's College, David's star continued to rise still higher in the firmament of international law. In the summer of 2015 he was elected to the prestigious Institut de Droit International as one of only seven or so Americans then so honored, and shortly thereafter was appointed as judge *ad-hoc* of the International Court of Justice (ICJ), one of only four Americans ever to serve in that capacity.

Then, as of the 2nd of December 2015 David's dream, and mine for him, was finally realized: he was appointed by the U.S. to succeed me as a titular judge of the Iran-United States Claims Tribunal and arrived in The Hague to assume that office. It was the happiest moment of his professional life and for me the success of a long campaign. We were both overjoyed. Even then, David's successes continued, as soon he was appointed again, this time by the U.S., as judge *ad hoc* at the ICJ, thereby becoming the only American ever to be so appointed more than once.

Then David was struck down on the 20th of February this year by septicemia.

Both Pat and David recall to my mind the following quotations from three quite different writers, which to me characterize their lives:

1. Pat's favorite philosopher, Ortega y Gasset: "An 'unemployed' existence is a worse negation of life than death itself."<sup>5</sup>
2. Johann Wolfgang von Goethe, the German author of the classical period: "Duty means loving that which one makes imperative upon oneself."<sup>6</sup>
3. Abraham Lincoln, when barely 23 years old, announced in the March 9, 1832 issue of the "Sangamo Journal" his candidacy for the Illinois State Legislature: "Every man is said to have his peculiar ambition. Whether

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<sup>5</sup> ORTEGA Y GASSET, *supra* note 2.

<sup>6</sup> Attributed to Johann Wolfgang von Goethe.



it be true or not, I can say for one that I have no other so great as that of being truly esteemed of my fellow men, by rendering myself worthy of their esteem.”<sup>7</sup>

With this word, penned also by Johann Wolfgang von Goethe, I speak for all of us in respect of Pat and David:

In the face of the great superiority of another person  
there is no means of safety but love.

Pat and David, we loved you then, we love you now, and we will love you evermore.



**THE HONORABLE CHARLES N BROWER** has been a Judge of the Iran-United States Claims Tribunal in The Hague since 1983 and has served as Judge Ad Hoc of the Inter-American Court of Human Rights. He has been Acting Legal Adviser of the United States Department of State, Deputy Special Counsellor to the President of the United States, and a member of the United States Secretary of State's Advisory Committee on Public International Law, of the Register of Experts of the United Nations Compensation Commission and the Panels of Arbitrators and Conciliators of the International Centre for Settlement of Investment Disputes. He is a past President of the ASIL and Chair of the Advisory Board of the ITA. He is a former partner and Special Counsel at White & Case LLP in both New York City and Washington, D.C., where he handled litigation in federal and state courts throughout the U.S., including jury trials, bench trials, and appeals, in a wide range of civil, administrative, and criminal proceedings, while specializing during the last 30 years in the handling of disputes involving States or State entities before international courts, tribunals and commissions. He is also a member of 20 Essex Street Chambers in London. In 2009 Judge Brower was awarded the American Society of International Law's Manley O. Hudson Medal for "pre-eminent scholarship and achievement in international law ... without regard to nationality," and in 2010 received the Stefan A. Riesenfeld Award of the University of California Berkeley School of Law (Boalt Hall) in recognition of "outstanding achievements and contributions in the field of international law." In 2015, he became the fourth recipient of the Global Arbitration Review's Lifetime Achievement Award.

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<sup>7</sup> Abraham Lincoln, *First Political Announcement*, SANGAMO J., Mar. 9, 1832, <http://www.abrahamlincolnonline.org/lincoln/speeches/1832.htm>.



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