

## **A salute to the Flaschner on its 40th anniversary**

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Opinion by: Hon. John M. Greaney, *retired Supreme Judicial Court justice*

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As a retired justice of the Supreme Judicial Court, I am happily freed from the professional reserve expected of the judiciary so that I can trumpet the Franklin N. Flaschner Judicial Institute, a vital self-help judges' organization that completed — without a hint of celebration — its 40th anniversary at the end of February.

Although rarely in the limelight, the institute is nevertheless critical to promoting the highest standards of judicial professionalism, which is the centerpiece of the fair administration of justice.

For example, with neither fanfare nor press releases, this past December the institute collaborated with Chief Justice Ralph D. Gants of the SJC and Chief Justice Mark V. Green of the Appeals Court to host a truly noteworthy Appellate Bench-Bar Conference.

All seven justices of the SJC, all but one of the 24 judges of the Appeals Court, and well over 150 attorneys attended the Flaschner-convened summit.

Even more commendable than the exceptional participation of both courts was the way the Flaschner Institute identified the issues of greatest interest to the appellate bar for discussion: It took the time to ask.

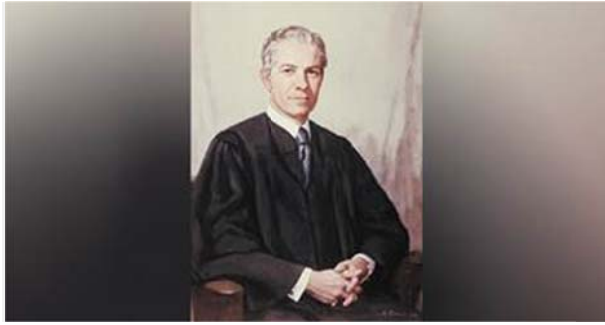
The institute sent an extensive survey to every attorney who had filed an appearance in either appellate court since July 2015.

In their email alerting the bar that the Flaschner Institute's survey would be coming, Chief Justices Gants and Green encouraged members of the appellate bar to use open-ended comment boxes to express their opinions, anonymously, emphasizing that they wanted to hear the personal views of individual attorneys in their own words.

The chief justices should be congratulated for their curiosity (and courage). The bar took their invitation seriously, submitting 1,497 written comments, most of which, if not entirely complimentary, were earnest testimonials of the bar's actual experience appearing before the SJC and Appeals Court.

Like appellate briefs, the candid survey responses prepped the chief justices on the wide range of issues — large and small, personal and procedural — of interest and concern to the bar that the courts should hear and consider.

Unlike oral argument, however, after keynote remarks by both chief justices and two leading members of the bar, the conference convened into seven discussion groups in which the bench and bar had equal and ample opportunities to discuss the sometimes divergent points of view on the topics that experienced appellate attorneys had identified as most pressing.



*Chief Justice Franklin N. Flaschner, for whom the Flaschner Judicial Institute is named*

Although the Appellate Bench-Bar Conference’s final report will surely suggest actionable recommendations, the dialogue that the Flaschner Institute facilitated, in itself, served a vital purpose.

The entire appellate bench and many of the most active and experienced members of the appellate bar convened as individual justices and lawyers, each clearly invested in our system of justice and together manifesting their collective commitment to supporting the SJC and the Appeals Court’s delivery of justice on behalf of both clients and the public at-large.

For Chief Justices Gants and Green to support and encourage the Flaschner Institute to solicit the opinions of every attorney who filed an appearance in their courts since 2015 and invite them to the bench-bar conversation is, I am confident in saying, unprecedented in either court’s history.

This is not the Flaschner Institute’s first “first.” Throughout its four decades the institute has been recognized frequently as a progressive force in the administration of justice, such as when, during my tenure on the bench, it won the American Bar Association’s premier State Judicial Education Award.

Summarizing the institute’s many other awards, accolades and notable “firsts” would be, to cite Shakespeare, like turning the accomplishments of many years into an hourglass.

Instead, I rely on another former member of the SJC, Oliver Wendell Holmes, who identified the institute’s vital purpose in his famous address, “The Path of the Law.”

In that speech, delivered in 1897 while an associate justice, Holmes explained that the reason why “people will pay lawyers to argue for them ... is that in societies like ours the command of the public force is entrusted to the judges in certain cases, and the whole power of the state will be put forth, if necessary, to carry out their judgments and decrees.”

Indeed, the quality of justice in Massachusetts depends on the quality and professionalism of individual judges, in individual cases. Judges are, after all, the people who must actually dispense justice.

In essence, Justice Holmes explained why Massachusetts judges formed the institute as an extracurricular and voluntary judges' organization dedicated to continuing their individual and collective professional development through "self-help" efforts. They named the institute in honor of Chief Justice Franklin N. Flaschner, who, before he died unexpectedly in the mid-1970s, had inspired rank-and-file judges not only to identify their training needs but also to organize their own ongoing programs during off-court hours to improve their expertise and skills on the bench.

The objective, therefore, of the Flaschner Judicial Institute's various offerings is not to focus on the court system writ large, but rather to assist individual judges stay abreast of the law and adjudicate cases involving individual rights and strong community interests with competency and objectivity.

To that end, the institute's curriculum addresses all aspects of a judge's professional development, at all stages of his or her career. There are programs for new judges. There are programs for all judges on substantive law, evidence and procedure.

There are courses that focus on judicial ethics, courtroom control, and the judge's "presiding" role. There are skills training courses, programs on judicial writing, and the like. There are also sensitivity and other programs that expose judges to the many pressing — and vexing — social issues, which inevitably end up in court.

Practitioners are not aware of the full range of the Flaschner's self-help activities. With the exception of the institute's publications sold to the bar (such as the annual "Massachusetts Guide to Evidence" and the popular "Massachusetts Jury Trial Benchbook"), the Flaschner Institute and its contributions to the administration of justice in Massachusetts are largely "out of sight, out of mind" to the bar at-large and the general public.

Appropriately so, the institute mirrors the same self-effacing temperament that the Code of Judicial Conduct expects of those still on the bench who energize its ambitious agenda of programs, of which the aforementioned Appellate Bench-Bar Conference is just one of many commendable examples.

True to form, the Flaschner Judicial Institute decided to forgo any self-congratulatory announcements or celebrations to call attention to its 40th anniversary.

Gladly, I am no longer similarly constrained from saluting the institute's past, present and future service to the administration of justice in Massachusetts.

Having served as both a trial and appellate judge who frequently participated in the Flaschner Institute's programs during my tenure on the bench, I know firsthand that its

continuing education programs promote the highest standards of professionalism throughout the Massachusetts judiciary.

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