



# The Bulletin

Number 40, Winter 2001—2002

## COLLEGE NAMES NEW OFFICERS

PRESIDENT SHANOR

SUCCEEDS SILBERT



LIGHTFOOT CHOSEN

NEW PRESIDENT-ELECT



SIX NEW REGENTS

At its October meeting in New Orleans, Board of Regents named new officers for the year. At the Annual Meeting of the Fellows six new Regents were elected, including the first women Regents in College history.

The unusually large number of new Regents resulted from a recent change in the College by-laws that relieves all the College officers of their regional duties. Before that change, the Secretary and the Treasurer had dual responsibilities.

Stuart D. Shanor of Roswell, New Mexico, is the new President, succeeding Earl J. Silbert of Washington, D.C., who remains on the executive committee as Immediate Past President.



**Warren Lightfoot**  
President-Elect

Warren Lightfoot, of Birmingham was named President-Elect. James W. Morris, III, of Richmond was elected Treasurer.

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## American College of Trial Lawyers

### The Bulletin

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(1895—1982)

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♦ ♦ ♦  
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## STATEMENT OF PURPOSE

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.



*"In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships."*

—Hon. Emil Gumpert, Chancellor-  
Founder, ACTL

## FROM THE EDITORIAL BOARD

In keeping with our efforts to make this publication more informative and relevant, you will find in these pages, in addition to an account of the Annual Meeting in New Orleans, expanded biographies of your new national leaders, who include for the first time two women Regents. In

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# THE PRESIDENT'S REPORT

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**Stuart Shanor,  
President**

## SHANOR TAKES REINS FROM SILBERT

This is my first report to the fellowship of the College since my induction as your President at the Annual Meeting in New Orleans. I am very proud to be the President of this College and fully appreciate the important responsibilities I have now undertaken on your behalf.

I follow in the footsteps of many great trial lawyers, and I will strive to maintain the stature and prestige of the College for which my predecessors all labored so zealously. We achieve that goal by bringing into our midst, as Fellows, the very best of the trial bar in each of our States and Provinces and by utilizing the great talent of our Fellows to provide an ethical and moral compass for the profession at large. We will not act or speak on every issue that may confront the profession, but we will speak out on those matters which go to the very heart of the trial practice.

Issues of judicial independence and preservation of the attorney-client privilege are issues which the College has addressed in the past and which remain high on the list of issues we can expect to address in the year to come. [Eds: See page

8 of this issue for the statement of the College, "Protecting Judicial Independence," adopted by the Board of Regents at the New Orleans meeting.]

### JUDICIAL INDEPENDENCE

With regard to judicial independence, we see the threat of the "cancer of money" infecting not only partisan elections of our judiciary but also infecting the procedures for appointment of members of the judiciary. I have asked our Judiciary Committee to undertake an examination of this issue and to develop a recommendation for how we can improve this facet of the justice system. The College must clearly condemn practices which diminish the trust and confidence of our citizenry in our judiciary, and we must provide the moral and ethical direction for extracting our system from the grips of those who would seek "to buy" influence.

### RESPONSE TO TERRORISM

We, as North Americans (both in the United States and Canada) have rallied behind our governments in the wake of the September 11th terrorist attacks. We have expressed justifiable faith in our institutions and in our leadership and have joined, wholeheartedly, in the pledge to bring terrorists to justice. The fear and anxiety created by those tragic events in September must not, however, cause us, unwittingly, to compromise the rights, freedoms and values which are so important to our constitutional system. We can already see evidence that tactics and procedures are being endorsed that may infringe on the fundamental rights of our citizens, including, specifically, the attorney-client privilege which this College has so zealously defended.

We must support our national interest in returning our countries to places of safety while at the same time identifying and speaking out against those excesses that may be unacceptable infringements on basic rights.

I have asked our Attorney-Client Relationship Committee to monitor the legislation, the rules and regulations and the procedural adjustments

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## COURAGEOUS ADVOCACY COMMITTEE ADOPTS NEW SET OF GUIDELINES

The Courageous Advocacy Award Committee has adopted new guidelines with the goal of encouraging Fellows to nominate more possible honorees, according to Chair Philip J. Kessler of Detroit and Regent Liaison David Beck of Houston.

"These guidelines should assist the Committee, as well as the Fellows, in identifying potential candidates deserving of this prestigious award," Beck said. "While lawyers and judges often perform their responsibilities under difficult and adverse circumstances, we are looking for those exceptional candidates who do so at the highest professional and ethical levels and under the most difficult of circumstances, often at great personal sacrifice. The past recipients and their accomplishments exemplify the high standard that this award represents."

The new guidelines are as follows:

There is no formula that will enable the Committee to evaluate trial lawyers for possible receipt of the Award for Courageous Advocacy. Accordingly, the Committee's approach to any candidate's evaluation is flexible. The Committee recognizes that there are a variety of characteristics demonstrated by a candidate's record which, in combination, may warrant his or her recommendation for the Award. The Committee also recognizes that there is no requirement that the Award be given with any particular frequency and that it should be reserved for the truly exceptional candidate whose record leaves no question that he or she should be given the Award.

In evaluating candidates, the Committee seeks to identify trial lawyers who have persevered in pursuit of an important cause despite substantial personal danger, fear, unpopularity, opposition or other extreme difficulties.

In its deliberations, the Committee believes that candidates may be worthy of the Award whether the cause the candidate advocated was one he or she sought out or was one that came to the candidate without purposeful action on the candidate's part. Ideally, the Award should be recommended based on relatively recent advocacy; however, a substantial passage of time since the advocacy occurred is not necessarily a bar, where a good reason for the passage of time is presented. The Award may be recommended posthumously in an appropriate case.

The Committee's recommendation that a candidate receive the Award is not a determination that the candidate has satisfied the College's rigorous standards for admission to fellowship. Nonetheless, through investigation, the Committee will attempt to assure that recommended candidates have adhered to the spirit of the highest ethical standards governing the profession.

The College has honored only twelve trial lawyers with its Courageous Advocacy Award since it was initiated in 1965.

President Whitney North Seymour of New York had urged the College to adopt the award to honor outstanding advocates and counteract negative public images of trial lawyers following the Dallas trial of Jack Ruby in connection with the death of President John F. Kennedy.

"Such an award should not be aimed at any



**David Beck**

*(Continued on page 13)*

# PROFILE



Earl J. Silbert

## IMMEDIATE PAST PRESIDENT SILBERT LOOKS BACK ON HIS SERVICE

When Earl Silbert received a letter inviting him to membership in the American College of Trial Lawyers, he almost discarded it. Silbert recalled, "I remember asking myself—why would I want to pay \$100 to join an organization I had never heard of?" Besides that, his budget was tight since he was on a government salary and he and his wife Pat had two young children in private school. "But for some reason, I don't remember why, I decided to join," he said. The year was 1978 and Silbert was U.S. Attorney for the District of Columbia, having handled, among many other cases, the prosecution of the Watergate break-in. At the time of his College nomination, Silbert said, "Most of the College members from D.C. were from insurance defense (medical malpractice and the like) and I did not know that bar well. I knew some, but not many."

After his induction in Chicago, Silbert quickly discovered that he enjoyed the camaraderie among the Fellows, and he was impressed with

the quality of those selected. "I wondered how I had made it through that rigorous selection process," he said. Silbert left government service in 1979 to join Schwalb, Donnenfeld, Bray & Silbert, P.C., a twenty-lawyer litigation boutique. In 1989 he was selected District of Columbia Chair. He became a Regent in 1993, Treasurer in 1996, President-Elect in 2000 and then became President at the College's 50th Anniversary meeting in October 2000 in Washington. In 1998, prior to becoming President-Elect, Silbert, with seven of his colleagues, moved his law practice to Piper Marbury Rudnick & Wolfe LLP.

During his 12 months as President, Silbert and his wife, who is a professional artist, traveled extensively on College-related business. "There is no question that the year went by in a hurry," he said. "It was an enormous privilege to serve an organization with the skill, talent, and experience of its members and to have the opportunity to participate in the College's work in several substantive areas." He said he tried to use his presidency "as others have, to make sure that the College membership is diversified and reflects the best of the trial bar, whoever they are in terms of gender, race or background, where they practice, or their areas of trial expertise." Silbert said the College stands out among various legal organizations because of the "enormous talent and skills among its membership, and having in its membership plaintiffs and defense counsel, prosecutors and defense counsel. . . . The College really has the potential to make significant contributions to the legal process in the courts because its members have all been there. The College members know what the problems are and are in a unique position to recommend meaningful improvements."

As President, Silbert initiated and continued College work on several important issues. "Judicial independence is an important issue as well as adequate pay for judges," he said. "There are major issues in the administration of criminal law arising out of the sentencing guidelines, which became effective about 13 years ago and, as a practical matter, shifted the sentencing power

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## NEW COLLEGE OFFICERS AND REGENTS

(Continued from page 1)

David W. Scott, Q.C., of Ottawa was chosen to continue as Secretary.

The new Regents are: Robert P. Armstrong, Q.C., of Toronto, Patricia C. Bobb of Chicago, John J. "Jack" Dalton of Atlanta, Edward W. Mullins, Jr. of Columbia, S.C., Dennis R. Suplee of Philadelphia and Sharon M. Woods of Detroit.

Shanor was profiled in the Fall 2001 issue of *The Bulletin* and Silbert is the subject of a separate article in this issue (see page 5), but here are brief looks at the other officers and new Regents:

President-Elect Warren Lightfoot of Birmingham, Alabama is a 1960 graduate of the University of Alabama and of its law school in 1964. Now 63 years old, he has been Treasurer of the College and a member of the Board of Regents. Inducted into the College in 1984, he also has been president of the Alabama State Bar and the Birmingham Bar Association. He and his wife, Robbie, have two adult children.

Treasurer James Morris of Richmond, Virginia received his LL. B. from the University of Richmond in 1957 after undergraduate study at Virginia Military Institute and Randolph-Macon College. Inducted into the College in 1981, he has been a member of the College's Board of Regents since 1997 and has served as Virginia State Chair, chair of the Admission to Fellowship Committee and chair of the Investment Committee. He has also been president of the Richmond Bar Association and the Virginia Association of Defense Attorneys as well as president and chairman of the board of the Defense Research Institute.

Secretary David Scott of Ottawa, Ontario graduated from Loyola College in 1957 and received his LL.B. from the University of Ottawa in 1960. Inducted into the College in 1984, he is Chair of the Canadian Competitions Committee and has served as chair of the Ontario Province Committee. He was named Queen's Counsel in 1976 and has served as president of the County of Carleton Law Association and the John Howard Society of Ottawa-Carleton. He also was the recipient of the Advocates Society Medal in 1999.

Officers of the College, who must first have

served as members of the Board of Regents, are nominated by a committee comprised of all the Past Presidents of the College.

New Regents are nominated by a committee composed of three Regents, two Past Presidents and two Fellows-at-large. The new Regents are elected by the Fellows at the Annual Meeting.

Regent Robert Armstrong of Ottawa, Ontario was called to the bar of the Province of Ontario in 1967 and appointed Queen's Counsel in 1978. A 1960 graduate of Carleton University in Ottawa, he received an M.A. in political science in 1961 from the University of Toronto, studied at the London School of Economics and Political Science in 1961 and 1962 and received his LL.B. from the University of Toronto in 1965. Inducted into the College in 1983, Armstrong has been chair of the Ontario Province Committee and chair of the Canada-United States Committee. He also was one of the organizers of the Sopinka Cup, the College-sponsored national trial competition for Canadian law schools.

Regent Patricia Bobb of Chicago, Illinois was selected by *Time* magazine as one of the five "Outstanding Female Trial Lawyers in the Country" in 1983 and by *Glamour* magazine as one of the "10 Outstanding Working Women in the United States" in 1984. A graduate of New Mexico State University in 1969, Bobb received her J. D. from the University of Notre Dame in 1972. Inducted into the College in 1992, she has served as president of the Chicago Bar Association and a member of the boards of directors of several other legal organizations.

Regent John "Jack" Dalton of Atlanta, Georgia received his J.D. in 1967 from Northwestern University School of Law after completing his undergraduate education at Fairfield University in 1964. He is former president of the Northern District Bar Council in Georgia and served as board chair of the Atlanta Volunteer Lawyers Foundation. He was inducted into the College in 1985 and served as Georgia State Chair in 1997 and 1998. As the partner-in-charge of Troutman Sanders' litigation practice, he has tried multi-state, multi-agency cases for public and private companies operating in highly regulated environments.

Regent Edward Mullins of Columbia, South Carolina received his LL.B. from the University

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## NEW COLLEGE OFFICERS AND REGENTS

*(Continued from page 6)*

of South Carolina Law School in 1959 and his A. B. from the university in 1957. He has served as president of the South Carolina Defense Trial Attorneys Association and president and chairman of the board of the Defense Research Institute. As a Fellow of the College, he has chaired the South Carolina State Committee and the Committee on Special Problems in the Administration of Justice. Regent Dennis Suplee of Philadelphia, Pennsylvania was chair of the College's Pennsylvania State Committee in 1998-2000. He was admitted to the bar in 1967 after receiving his LL.B. from Pennsylvania Law School that year. His undergraduate degree is from St. Joseph's University. The author of several articles on pretrial and trial practice, Suplee has served as president of the

Philadelphia Association of Defense Counsel. He has made presentations at more than 60 trial practice programs (national, regional and local) over the last several years.

Regent Sharon Woods of Detroit, Michigan was inducted into the College in 1989 and served as chair of the Publications Committee from 1998 to 2000. She has been a member of the Committee on Federal Rules of Evidence and the Complex Litigation Committee. A 1968 graduate of the University of Detroit, she received her J.D. in 1971 from that institution and was admitted to the bar in Michigan in 1972. She has served as president of the Historical Society of the United States District Court for the Eastern District and Michigan state chairman for the Historical Society of the United States Supreme Court. She also is co-author of an article on coping with multi-plaintiff employment litigation which was published in the Journal of American Corporate Counsel Association in 1989. ♦



**Robert P. Armstrong, Q.C.**



**Patricia C. Bobb**



**John J. "Jack" Dalton**



**James W. Morris, III**



**Edward W. Mullins**



**David W. Scott, Q.C.**



**Dennis R. Suplee**



**Sharon M. Woods**

# COLLEGE ADOPTS STATEMENT PROTECTING JUDICIAL INDEPENDENCE

Drafted by the College's Judiciary Committee and approved by the Board of Regents, the statement that follows reaffirms the College's strong belief in the important to all of protecting judicial independence.

"We may, as trial lawyers, be distracted by seemingly uncontrollable world events but we know that adherence to the rule of law by an independent judiciary will preserve and protect important human rights," Judiciary Committee Chair George E. Feldmiller said.

"If this statement by the Fellows of this College helps show their faith and belief in the importance of protecting judicial independence, that alone will help convey to the public the cardinal importance of an ongoing commitment to the rule of law and of a fair and impartial justice system for all."



## PROTECTING JUDICIAL INDEPENDENCE

The American College of Trial Lawyers is dedicated "to maintaining and improving. . . the administration of justice." As advocates in an adversarial process, it is crucial that we have impartial justice administered by impartial judges. As lawyers we are "public citizen [s] having special responsibility for the quality of justice." In furtherance of these principles, we express our deep concern over recent attempts to encroach upon the necessary and appropriate independence of our judges and judicial system.

Our immediate concern is twofold. First, partisan and contested judicial elections in several states are increasingly eroding the public's perception that judges are impartial. Second, the resurgence of unfair criticism of the judiciary in the form of threats of retaliation and accusation against certain judges and courts by public officials, commentators and lawyers as a result of particular judicial decisions is impairing confidence in our judicial system.

It is the right of the citizens of the United States and of each state to determine the method by which judges are selected. The citizenry has expressed their preferences through a variety of ways both appointive-based and elective system. There is no way to select judges that has not been the subject of criticism and this continues today. It is not the province of the College to recommend one particular selection system. Rather it is our obligation to attempt to insure that no matter what the system, that only qualified, impartial judges are selected. There have developed aspects of particular systems, most notably partisan judicial elections, which adversely impact the public's trust and confidence in the impartiality and integrity of our judicial systems. In several major states, judicial elections have become partisan battlegrounds involving sensitive social and economic issues that may come before the courts. Responsible articles in the media have written of "the very best judges that money can buy" and have described the exorbitant amounts of money being raised to finance these judicial campaigns as well as the impact of negative campaigns and attack advertisements.

The adverse impact on the public's perception is clear. Poll after poll consistently show that an overwhelming majority believes that a judge's decision will be influenced in favor of the position of the contributors on a specific issue. This is not impartial justice. Two of our honorary fellows, Justices Anthony Kennedy and Stephen Breyer, have strongly warned that substantial campaign contributions are corrosive of judicial independence. Justice Kennedy observed: ". . . the law commands allegiance only if it commands respect. It commands respect only if the public think the judges are neutral and when you have figures like that, the judicial system is in real trouble." Justice Breyer has stated: "Independence doesn't mean you decide the way you want. Independence means you decide according to the law and the facts. [The] law and

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# JUSTICE SCALIA EXPLAINS "ORIGINALISM"

A highlight of the program at the annual meeting in New Orleans was a lively address, laced with humor, by U.S. Supreme Court Associate Justice Antonin Scalia, explaining his approach to constitutional interpretation, which he brands as "originalism."

In Scalia's view, what he labels originalism, interpreting the Constitution by ascertaining what it was intended to mean when it was adopted, was the orthodox manner of constitutional interpretation until the last fifty or sixty years.

He pointed to the Nineteenth Amendment, granting women the right to vote, to illustrate his point. In 1920 there was already an equal protection clause on the books. If anyone had thought that that clause precluded discrimination in voting rights on the basis of sex, there would have been no need for the Nineteenth Amendment. There was no need for the Nineteenth Amendment if the Constitution had then been viewed as a "living" document.

He brands the word "living" used in reference to the Constitution as a code word for the philosophy that is opposite to his "originalism." Rejecting the implication that his is a "dead" Constitution, he calls it, rather, an "enduring" Constitution.



Justice Scalia (right) with Past President Ralph I. Lancaster, Jr.

He points to the Court's opinions on what constitutes cruel and unusual punishment, and the use of phrases such as "the evolving standards of decency that reflect a maturing society" as an illustration of the "living" Constitution approach. He argues that if the Framers really thought that the world would get progressively better and more enlightened, there would have been no need for the Bill of

Rights to establish minimal ground rules below which future society could not go. Evolving standards of decency, reflected in changing constitutional interpretation, would have made them unnecessary.

He argues that under his enduring Constitution, change should be effected through legislation, and not through constitutional interpretation, reflecting, "When I was young, we were as much a society of law as we are today. Americans have always been besotted with the law.... We love the law more than any society I know. But when I was young, the law meant what the people adopted. If there was some phase of life that really annoyed you... people would say, 'There ought to be a law.' People now say, when something is really outrageous, 'It's unconstitutional.'" And the law, he explains, is expanded by expanding the Constitution through the concept of substantive due process.

He rejects the argument that the living Constitution approach imparts flexibility, arguing that it produces rigidity, since it creates law that can be changed only by overruling prior precedents.

Likewise, he points out that this is not a debate between conservatism and liberalism. "The social conservatives" he asserts, "are just as willing to pour into the Constitution their prejudices as the social liberals are." To illustrate this, he pointed to two Supreme Court constitutional decisions handed down on the same day, *Romer v. Colorado* and *BMW v. Gore*, one that pleased the social conservatives and one the social liberals, both of which drew his dissent.

He also rejected the notion that the concept of an evolving Constitution always leads to greater freedom, noting that it was the vote of the two "originalists" on the Court that produced a five-to-four majority holding that the enhancement of a criminal sentence using factors not found by a jury beyond a reasonable doubt violated the defendant's constitutional rights.

With a touch of humor, he asserted that the

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## SCALIA

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best reason for a judge to favor the living Constitution approach is that "it makes you feel good because it is wonderfully self-affirming and liberating to know that the Constitution means whatever you think it ought to mean." To illustrate his point, he noted that his vote with the majority in the flag-burning case, affirming the First Amendment right of the defendant to desecrate the American flag, subjected him to a hummed rendition of "Stars and Stripes Forever" by his wife as she cooked his breakfast the morning after the opinion was handed down.

Justice Scalia's principal quarrel with the notion of an evolving Constitution relates to legitimacy. "If the Constitution is this empty bottle, it's not a legal document," he asserted. "It's an empty bottle into which the society is supposed to

pour its most basic beliefs, using substantive due process or whatever other gimmick you want, but that's all it is."

The Justice articulated his fear of where interpreting the Constitution the way contemporary society wants it to be interpreted will lead, saying, "[T]he purpose of the Bill of Rights is to tell the American people to take a walk when they are invading some of the rights set forth in [it]. My most important responsibility as a Justice is to tell the majority to go away, that they cannot do what they want to."

He concluded by asserting that once you leave the "old" Constitution, "the enduring Constitution...there is nothing else to stop you from sliding down to the bottom—the bottom being 'the Constitution means what the people want it to mean,' and that's a Constitution that is worthless. You don't need a Constitution to do what the people want. All you need is a Congress." ♦

## EIGHTY-TWO INDUCTED AT 2001 ANNUAL MEETING IN NEW ORLEANS

ALABAMA: Frederick G. Helmsing, Mobile; W. Lee Pittman, Birmingham ARIZONA: Gary L. Birnbaum, Phoenix; Barry M. Davis, Tucson; John A. Micheaels, Phoenix ARKANSAS: G. Spence Fricke, Little Rock; Paul McNeill, Jonesboro NORTHERN CALIFORNIA: Thomas D. Zeff, Modesto COLORADO: Alvin J. LaCabe and Forrest W. Lewis, Denver DISTRICT OF COLUMBIA: Carol Elder Bruce, Robert J. Higgins and Carter G. Phillips, Washington GEORGIA: Jerry A. Buchanan, Columbus; Wade H. Coleman, Valdosta; John A. Dickerson, Toccoa; Hylton B. Dupree, Jr., Marietta; W. Bruce Maloy, Atlanta; C. Neal Pope, Columbus; Alex Zipperer, Savannah IDAHO: Joseph D. McCollum, Jr., Boise ILLINOIS: Terry M. Grimm, Chicago IOWA: Michael J. Galligan and Jack Hilmes, Des Moines; Craig A. Levien, Davenport KANSAS: James D. Griffin, Overland Park LOUISIANA: Thomas M. Hayes, III, Monroe MARYLAND: Bruce Lawrence Marcus, Greenbelt; Susan T. Preston and Joshua R. Treem, Baltimore MASSACHUSETTS: John A. Agostini, Pittsfield; Lewis C. Eisenberg, Quincy MICHIGAN: David W. Christensen, Detroit MINNESOTA: Jack M. Fribley, Minneapolis; David C. Hutchinson, St. Paul; B. Todd Jones, Paul B. Klaas, Rebecca Egge Moos, Richard J. Nygaard and Greg Weyandt, Minneapolis MISSISSIPPI: James P. Cothren, Jackson; Bill Hammack, Meridian MONTANA: Dana L. Christensen, Kallispell; Dennis Patrick Conner, Great Falls; Carolyn S. Ostby, Billings; Ward (Mick) Taleff, Great

Falls NEVADA: David R. Grundy, Reno NEW MEXICO: Edward L. Chavez, Albuquerque DOWNSTATE NEW YORK: Jim Brown, John M. Calimafde and Roger J. Hawke, New York; Raymond J. Keegan, White Plains; Henry Putzel, III, New York UPSTATE NEW YORK: Paul J. Yesawich, III, Pittsford NORTH CAROLINA: David F. Kirby, Don Johnson McLamb and Edwin M. Speas, Jr., Raleigh OHIO: Richard A. Frye, Columbus; Peter H. Weinberger, Cleveland OKLAHOMA: Charles (Buddy) D. Neal, Jr., McAlester; Phil R. Richards, Tulsa OREGON: Ralph F. Cobb, Eugene PENNSYLVANIA: Edwin H. Beachler, Pittsburgh; Thomas Colas Carroll, A. Roy DeCaro, Kenwyn M. Dougherty, Susan K. Herschel, John W. Morris and James J. Rohn, Philadelphia; William S. Schweers, Jr., Pittsburgh; Robert E. Welsh, Jr., Philadelphia TENNESSEE: Zach Kelly, Jasper TEXAS: Gary Clark Crapster, Dallas VIRGINIA: Joseph A. Condo, Vienna; Craig T. Merritt, Richmond WASHINGTON: Harry H. Schneider, Jr., Seattle WISCONSIN: Charles Barnhill, Jr., Madison; William T. Curran, Mauston; David J. Harth and Donald K. Schott, Madison BRITISH COLUMBIA: Dan Webster, Vancouver MANITOBA/SASKATCHEWAN: Aaron A. Fox, Regina



Frederick G. Helmsing of Mobile, Alabama responded on behalf of the inductees. ♦

## FALL MEETING WRAP-UP

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### CUISINE IS THE STAR OF NEW ORLEANS MEETING

New Orleans cuisine was the star of the show at the 51<sup>st</sup> Annual Meeting on October 18-21 attended by a thousand Fellows and spouses. Receptions at the New Orleans Museum of Art and the Audubon Institute Aquarium of the Americas featured plenty of outstanding dishes prepared by New Orleans chefs, including Paul Prudhomme, who made a special appearance.

Friday's session started off with 7 a.m. national committee meetings followed by a general session that featured a presentation of the Kraft W. Eidman Award to Thea Dalkalitsis and J. Carlton Mitchell of Stetson University School of Law, the winning team in the National Trial Competition. Mitchell was chosen as the winner of the George A. Spiegelberg Award as the Best Oral Advocate in the competition.

Next on the agenda was recognition of the winning team of Stephen Christie and Paul Grower of the University of Manitoba in the Canadian National Trial Competition, the Sopinka Cup.

Past President Ralph Lancaster then presented an Honorary Fellowship to the Honourable Mr. Justice Michel Bastarache of the Supreme Court of Canada. Justice Bastarache responded with a

speech entitled, "The Canadian Experience with Duality: Two Legal Systems and Two Official Languages."

Addresses by Robert E. Hirshon, president of the American Bar Association, Alexander Sanders, president of the College of Charleston, and United States Supreme Court Justice Antonin Scalia rounded out Friday's session. (Coverage of Scalia's talk is on Page 9.)

Saturday's session opened again with committee meetings at 7 a.m. and an inductee orientation breakfast at 7:30. At the general session, the winning team of Jeremiah Kowalchuk, Robert Falser, Mike Reid and Sukhi Sidhu of the University of Alberta in the Canadian National Moot Court Competition, the Gale Cup, was recognized. (Excerpts of Reid's response as Best Oral Advocate in the competition are on Page 19.)

A professional program consisting of a panel discussion on "Representing a Non-American Corporation Before an American Jury" was next on the Saturday agenda. Moderator Mark H. Alcott, chair of the International Committee, presided over a panel that included trial consultant Dr. Douglas A. Green of New Orleans and Boston Fellows Joan A. Lukey of Hale and Dorr, Joseph D. Steinfield of Hill & Barlow, J. Owen Todd of Todd & Weld and Richard M. Zielinski, also of Hill & Barlow.

United States Appeals Judge Richard S. Arnold then delivered the Lewis F. Powell, Jr. Lecture entitled, "Mr. Justice Powell and the Doctrine of Precedent." ♦

### PAST PRESIDENT'S FOUNDATION FUNDS LAW PROFESSORSHIP

A generous gift from the Frank G. Raichle Foundation, a 1919 University at Buffalo graduate, has allowed UB Law School to establish its first named professorship. Raichle, who died in 1986, was President of the College in 1966-67.

"Frank Raichle was a jewel in the crown of our trial bar and he has left a wonderful legacy," Fellow Terry Connors of Buffalo said. ♦

## JUDICIAL INDEPENDENCE

*(Continued from page 8)*

the facts do not include deciding according to campaign contributions."

Our government works best when representatives of the separate branches show respect and restraint in their interbranch relationships.

Threats of retaliation against the judiciary for a particular decision, such as threatened impeachment, withholding adequate personnel and economic resources from the judicial branch or threatening to strip a court's jurisdiction ill serve the public interest and trespass on judicial independence.

The judiciary is a separate and equal branch of our government. Intrusion by the executive and legislative branches into the independence of the judiciary for perceived partisan advantage offends our fundamental concept of separation of powers. The Founding Fathers recognized that "[t]he complete independence of the courts of justice is peculiarly essential in a limited Constitution." The long-recognized hallmark of this independence is the ability of judges to perform their responsibilities "without fear or favor." The judge's assignment is to administer justice according to the rule of law and to protect the rights of the people both as to each other and from excesses of the other branches of government.

Judicial independence is a means to the end of justice for all. Independence makes a system of impartial justice possible by enabling judges to protect and enforce the rights of the people and by allowing judges, without fear of reprisal, to strike down actions of the legislative and executive branches which exceed their constitutional powers. Independence is *not* for the personal benefit of the judges, but for the protection of the people. It does not encompass irresponsible judicial actions or conduct deleterious to the appearance of justice.

Judicial independence implies at least two reciprocal obligations. "First, the judges must free themselves not only from the crasser forms of obligation or commitment, but also, so far as humanly possible, from the ties of personal and group loyalties and implied commitment. A judge

whose decisions are influenced by politics is putting the independence of the courts at risk." Second, judicial independence also implies a reciprocal obligation on judges to decide "according to law," according to a continuity of reasoned principle found in the words of the Constitution, statute, or other controlling instrument, in the implications of its structure and apparent purposes, and in prior judicial precedents, traditional understanding, and like sources of law. Judges who do not comply with these obligations weaken support for independence and invite popular distrust and legislative intrusion.

Judges are not legislators with robes and must put aside personal and partisan convictions when they assume the role of judging. The occasional rogue or maverick judge whose personal ambitions give the appearance of partisanship or partiality to his or her judicial conduct and opinion tarnishes the public's respect. Much like the umpire or referee whose flamboyant conduct on the field or court detracts from the appearance of impartiality, the judge who demonstrates partiality deserves censure.

The College shares Justice Cardozo's view that the Bench and Bar are all engaged in "the common task, the great and sacred task—the administration of justice." Our Code of Trial Conduct calls upon us to become involved in the method, selection and retention of judges (Rule 1 l(b)) and to "defend or cause to be defended judges who are subjected to unwarranted and slanderous attacks, for public confidence in our judicial system is undermined by such statements concerning the character or conduct of judges. It is the obligation of lawyers who are also officers of the Court to correct misstatements and false impressions, especially where the judge is restrained from defending himself or herself," (Rule 16(b)).

There are more than 25,000 federal and state court judges throughout the country. They range from justices of the United States Supreme Court and from justices of the highest court of each of the 50 states to those who daily preside over trials of criminal, civil and family law matters. Some sit in majestic courtrooms surrounded by portraits of other justices who have gone before them;

*(Continued on page 13)*

## JUDICIAL INDEPENDENCE

*(Continued from page 12)*

others must preside over cases involving an individual's freedom and property in shabby surroundings in aging cities. Still others conduct trials in county courthouses where they are well-known and enjoy the respect of the local citizens. Many, of course, are overworked. Whatever the courtroom setting, the judge is "a highly visible symbol of government under the rule of law."

The overwhelming majority of our judges are dedicated to their work of administering justice, mostly for inadequate compensation and frequently with inadequate support and surroundings. It is unfortunate that there is scarce support among the citizens or the legislators to remedy

these inadequacies and a remarkable lack of understanding as to the significance of the judicial role. Alexander Hamilton observed that the "ordinary administration of criminal and civil justice . . . being the immediate and visible guardian of life and property . . . contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence for the government. Indeed, in the words of Chief Justice John Marshall, the role of the judiciary "comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all." Recalling our own role as "public citizen [s] having special responsibility for the quality of justice," we should affirmatively and continuously seek to defend the independence and good reputation of the judiciary. ♦

## ADVOCACY COMMITTEE

*(Continued from page 4)*

particular types of cases but at the basic principle so as to recognize and encourage community support for those who courageously carry out the highest and most difficult professional obligations," Seymour said in his letter to the Regents recommending the establishment of the award.

He pointed out, "The need for such defense varies with the times. Ten years ago there was a great problem in finding lawyers to defend Communists; today, in some areas, it is hard to get competent counsel to defend civil rights cases."

Indeed, civil rights defense was involved in the first award which was given to Richmond lawyer George E. Allen for his defense of Fred Wallace. An African-American who was a Harvard Law School student, Wallace had been working during the summer with a Richmond law firm that had brought suit on the behalf of black parents to integrate public schools in Prince Edward County. He was in the Prince Edward courthouse to deliver a message to a local judge when he was stopped by police. A scuffle ensued and Wallace subsequently was charged with six misdemeanors

and with felonious assault with intent to kill.

Despite warnings, Allen agreed to represent Wallace. After a protracted court proceedings, Allen succeeded in negotiating a settlement that eliminated the felony charge and three misdemeanor charges against Wallace and reduced the fines on the remaining misdemeanors to \$300.

Wallace later wrote to Allen, "Without your help, I have little doubt that I would now be in jail and that all the years of my training would be wasted."

In addition to Kessler and Beck, members of the Award for Courageous Advocacy Committee are: James L. Applegate, Cheyenne, WY; Thomas M. Crisham, Chicago; Barnes H. Ellis, Portland, OR; Hon. Eldon E. Fallen, New Orleans; Trudie Ross Hamilton, Waterbury, CT; Bruce E. Hansen, Rochester, NY; David T. Hashey, Q.C., Fredericton, NB; Robert P. Johnstone, Indianapolis; Gordon J. Kuski, Q. C., Regina, SK; Martin J. McGreevy, Asbury Park, NJ; John M. Nelson, Chickasha, OK; L. Peter Parcher, New York City; George (Buddy) E. Schulz, Jr., Jacksonville, FL; Max D. Stern, Boston (a former recipient of the award); and William W. Vaughn, Los Angeles. ♦

## THE PRESIDENT'S REPORT

*(Continued from page 3)*

which have been the product of the war on terrorism so that the College may be a voice of moderation in the process by which our government develops the tools to deal with this new threat.

### NEW ORLEANS MEETING

For those of you who were not able to attend the meeting in New Orleans, I can tell you that it was a terrific meeting with wonderful speakers and exciting venues for our major events. Other articles in this *Bulletin* will give you a glimpse of the meeting. The New Orleans meeting was also a tribute to the resolve, the spirit and the patriotism of the Fellows of this College. Those who had registered for our meeting were undaunted by events, and I am proud to report that there were very few cancellations in wake of the September 11th events. In fact, those who canceled did so because of professional commitments, and not because of intimidation by terrorists. This is the spirit that brought us together as Fellows in New Orleans and this is the spirit which has sustained the College through its 51 years of existence.

### "LOCAL" MEETINGS

One of the responsibilities of the President of the College is to visit the meetings held by the Fellows in the various States and Provinces and to attend the regional meetings. Ellen and I are looking forward to visiting as many States and Provinces as possible during the forthcoming year. Of course, scheduling conflicts will inevitably arise and, in that case, an effort will be made to have another officer of the College take the place of the President. These visitations allow those who are unable to attend a national meeting have the opportunity to discuss with a national officer matters important to the work of the College. Last year, during my year as President-Elect, Ellen and I had the great privilege of attending some state and regional meetings that Earl and Pat Silbert were not able to attend. We attended two wonderful regional meetings, the Tenth Circuit Regional held in Kansas City, Missouri and the Northwest Regional held in Whitefish, Montana. We also were able to attend State Meetings of the South-

ern California Fellows, the Kansas Fellows, the Iowa Fellows and the Texas Fellows. All of these meetings were extremely well attended, drawing, in the case of regional meetings, 150 people or more and, in the case of state meetings, 80 people or more. These are wonderful meetings where the group of attending Fellows is small enough that in the course of a weekend or an extended weekend one can greet and come to know most, if not all, of those present.

Not everyone is able to attend a national meeting of the College every year and these so called "local" meetings provide the important opportunity for the Fellows of the College to gather, renew friendships, become acquainted with national officers and Regents and learn about the opportunities for participation in College matters. During my year as President, I hope to encourage more and more state and regional meetings.

It has been my observation that enthusiasm for the College is directly related to participation in social activities with other Fellows and spouses and that the most successful local meetings are the ones that involve more than just a luncheon or a dinner of the Fellows. Many of the States and Provinces have meetings which commence on Friday evening, followed by recreational activities and a final dinner on Saturday evening. Most of the regional meetings convene on Thursday evening and involve professional programs on Friday and Saturday mornings, recreational activities in the afternoons and a final gathering on Saturday evening. I strongly encourage all Fellows to add their voice to my request that the State and Province committees give top priority to scheduling one or two gatherings each year and to participating in the planning of a regional meeting at least every two years.



Our College is alive and well. Earl Silbert has passed the torch of the presidency to me at a time when the College has had a strong year of accomplishment and when it has the opportunity to provide strong leadership of the profession on a variety of important fronts in the year to come. Please help me, as your President, make the College all it can possibly be in terms of fellowship and leadership. ♦

*Stuart Shanor, President*



## DAKOTAS FELLOWS HOLD FIRST MEETING

President Earl Silbert of Washington, D.C. and Regent Frank Gundlach of St. Louis were the speakers at the first ever joint meeting of the North Dakota and South Dakota Fellows on September 28-29 in Rapid City.

Thirty-eight Fellows, spouses and guests enjoyed a Friday evening reception at the Rapid City home of South Dakota State Chair Don Shultz. Then the group, which included North Dakota State Chair Dave Peterson, traveled to Mount Rushmore for a dinner and an evening lighting ceremony.

On Saturday, the group members traveled to the Crazy Horse Monument where they were escorted to the face. A reception hosted by the sculptor's widow, Mrs. Ruth Ziokowski, followed at the sculptor's studio.

After a business meeting, the Fellows and their spouses and guests, including Bob McKercher and his wife of Saskatoon, Saskatchewan, attended a banquet, which featured an appearance by "President Teddy Roosevelt" and a program of patriotic music.

The Rapid City gathering also marked the first

formal meeting of the South Dakota Fellows. In 2000, Orlin Backes of Bismarck, then State Chair for North Dakota, organized the first formal meeting of the Fellows in North Dakota and it was attended by then President Mike Mone.

Plans are underway for a joint 2002 meeting in North Dakota of the Fellows in the two Dakotas, Saskatchewan and Manitoba. ♦



**Historic ND-SD Meeting  
In front of the Crazy Horse Monument, (L-R)  
Frank Gundlach, Dave Peterson, President Earl  
Silbert, Orlin Backes and Don Shultz.**

## OHIO FELLOWS HOLD ANNUAL DINNER DANCE

About 120 Fellows and spouses enjoyed the Ohio Fellows Annual Dinner Dance on October 27 in the historic atrium of the Ohio State House in Columbus. Among those participating were: (standing L—R), Hon. Thomas J. Moyer, Chief Justice of the Ohio Supreme Court, Sally McDonald, Fellow John C. McDonald [former Ohio State Chair], Nancy Cupps and Fellow David S. Cupps [retiring Regent]. (Seated L—R), Mary Moyer, Fellow George Gore of Cleveland [the retiring Ohio State Chair] and Janet Gore. ♦



## NEW INDUCTEE ESCAPES HARM IN TERRORIST ATTACK

One of the 82 inductees into the College at the New Orleans meeting had an unusual story to tell the Fellows and guests.

Roger Hawke of Sidley Austin Brown & Wood in New York was working at his desk on the 54<sup>th</sup> floor in Tower One of the World Trade Center when terrorists crashed a hijacked airliner into the building.

"The building was swaying to such an extent I thought it was coming down," said Hawke, who also was in the same building when a terrorist bomb exploded in the basement in 1993. "I was thinking to myself, 'I wonder what it is going to be like to fall fifty floors,' in a building that was toppling over."

Debris was raining down as Hawke and about a dozen others on the 54th floor started down the stairs.



Roger Hawke

"We were inching our way down," he said. "The group was very orderly. We had to make room for injured people coming down with severe burns and firemen who were coming up carrying heavy loads."

Somehow Hawke and the others from the 54<sup>th</sup> floor made it out safely. But he recalled, "Thinking back on this horrible episode, the first thing I think about and I suppose I will for the rest of my life was the firemen who came into building and were going up the stairs as we were going down the stairs. They were there to save us and they were left behind, hundreds of them."

Looking back on the episode, Hawke said, "Things that had seemed so important before didn't seem important afterward. What is very important is your family, grandchildren."

Terrorists aim to create fear in American minds, but Hawke said, "I think the thing to do, as the President has said, is move ahead with our lives, and this assembly here is an example of that. I think if we can carry forward like that and put aside fear, then we will have won and the terrorists will not have succeeded." ♦



## FELLOWS IN PRINT

Fellow John S. Martel of San Francisco, a former Regent, has another new novel, his fourth, on the market. *Billy Strobe* is the story of a man who overcomes huge obstacles to become a lawyer in a quest to clear his father's name. E. P. Dutton, 404 pages.

Fellow Henry G. Miller of White Plains, NY, also a former Regent, has just published *On Trial: Lessons from a Lifetime in the Courtroom*. Independent Publishers Group, 192 pages. ♦

# American College of Trial Lawyers

## 2001—2002 GENERAL COMMITTEE CHAIRS

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ADJUNCT STATE, Hon. William J. Rowan, III (Rockville, MD)  
ADMISSION TO FELLOWSHIP, John S. Siffert (New York, NY)  
ALTERNATIVES FOR DISPUTE RESOLUTION, Thomas H. Denver (San Jose, CA)  
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NATIONAL MOOT COURT COMPETITION, Paul S. Saunders (New York, NY)  
NATIONAL TRIAL COMPETITION, J. Clifford Gunter, III (Houston, TX)  
PROFESSIONALISM COMMITTEE, George C. Chapman (Dallas, TX)  
SAMUEL E. GATES LITIGATION AWARD, John H. Tucker (Tulsa, OK)  
SCIENCE AND TECHNOLOGY IN THE COURTS, William B. Dawson (Dallas, TX)  
SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE, Kevin J. Dunne (San Francisco, CA)  
TEACHING OF TRIAL AND APPELLATE ADVOCACY, Terry O. Tottenham (Austin, TX)

# STATE COMMITTEE CHAIRS

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ALABAMA, D. Leon Ashford (Birmingham); ALASKA, Dave Oesting (Anchorage); ARIZONA, Michael A. Beale (Phoenix); ARKANSAS, Frederick S. Ursery (Little Rock); COLORADO, Lee D. Foreman (Denver); CONNECTICUT, J. Daniel Sagarin (Milford); DELAWARE, Arthur G. Connolly, Jr. (Wilmington); DISTRICT OF COLUMBIA, Donald T. Bucklin (Washington); DOWNSTATE ILLINOIS, Murvel Pretorius, Jr. (Peoria); DOWNSTATE NEW YORK, Bettina B. Plevan (New York); FLORIDA, John A. DeVault, III (Jacksonville); GEORGIA, H. Jerome Strickland (Macon); HAWAII, Peter C. Wolff, Jr. (Honolulu); IDAHO, Kenneth B. Howard (Coeur d' Alene); INDIANA, David C. Jensen (Hammond); IOWA, Richard G. Santi (Des Moines); KANSAS, Richard L. Honeyman (Wichita); KENTUCKY, Robert Spragens, Jr. (Lebanon); LOUISIANA, Donald R. Abaunza (New Orleans); MAINE, Charles Harvey (Portland); MARYLAND, Paul D. Beckman Baltimore; MASSACHUSETTS, Philip J. Callan, Jr. (Springfield); MICHIGAN, Philip J. Kessler (Detroit); MINNESOTA, Brian B. O' Neill (Minneapolis); MISSISSIPPI, Lawrence D. Wade (Greenville); MISSOURI, Mark T. Kempton (Sedalia); MONTANA, Stephen H. Foster (Billings); NEBRASKA, Wayne J. Mark (Omaha); NEVADA, Donald J. Campbell (Las Vegas); NEW HAMPSHIRE, Russell F. Hilliard (Concord); NEW JERSEY, Richard E. Brennan (Florham Park); NEW MEXICO, Harold L. Hensley, Jr. (Roswell); NORTH CAROLINA, Robert B. Cordle (Charlotte); NORTH DAKOTA, David L. Peterson (Bismarck); NORTHERN CALIFORNIA, Richard C. Watters (Fresno); OHIO, W. Roger Fry (Cincinnati); OKLAHOMA, James M. Sturdivant (Tulsa); OREGON, Thomas H. Tongue (Portland); PENNSYLVANIA, C. Clark Hodgson, Jr. (Philadelphia); PUERTO RICO, Alvaro R. Calderon, Jr. (San Juan); RHODE ISLAND, Dennis J. McCarten (Providence); SOUTH CAROLINA, James B. Pressly, Jr. (Greenville); SOUTH DAKOTA, Donald R. Shultz (Rapid City); SOUTHERN CALIFORNIA, Don Mike Anthony (Pasenda); TENNESSEE, James M. Doran, Jr. (Nashville); TEXAS, Roy L. Barret (Waco); UPSTATE ILLINOIS, Walter Jones, Jr. (Chicago); UPSTATE NEW YORK, Walter L. Meagher, Jr. (Syracuse); UTAH, L. Sullivan (Salt Lake City); VERMONT, Peter B. Joslin (Montpelier); VIRGINIA, Ronald M. Ayers (Roanoke); WASHINGTON, Charles G. Gordon (Seattle); WEST VIRGINIA, A. L. Emch (Charleston); WISCONSIN, Roy S. Wilcox (Eau Claire); WYOMING, Richard E. Day (Casper).

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# GALE CUP BEST ORAL ADVOCATE WINNER SPEAKS

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*Excerpts from the Response by Mike Reid, winner of the Best Oral Advocate in the Gale Cup Competition, to the College on October 20, 2001 in New Orleans. Reid is a native of Brantford, Ontario and a graduate in chemical engineering from the University of Alberta in Edmonton. Upon graduation from the university's law school next year he will clerk with the Court of Queen's Bench and the Court of Appeal for Alberta.*

Thank you Mr. Armstrong, and good morning.

Had you asked me earlier this year, never in my wildest dreams would I have imagined being here this weekend, enjoying this tremendous opportunity; particularly at one point during our practice rounds leading into the Gale Cup.

On this particular occasion, we had the good fortune of having three Justices of the Court of Appeal of Alberta volunteer their time to sit as judges in one of our final practice rounds.

The Gale Cup is a criminal law appeal moot, we take a Supreme Court of Canada case and pretend that we are appealing to a fictional higher level of court. The case was a criminal law case. The accused in the case had been convicted of first-degree murder, and there was alleged error at the trial (as there usually is with these moots).

I was one of the two Respondents on our team. We were representing the prosecution (or the "Crown" as we call it up north). My fellow Respondent, Sukhi Sidhu, was responsible for arguing whether or not there had been an error at trial, and she did this with elegance and skill.

And then there was me. It was my job to convince the Court to use section 686(1)(b)(iii) of the Criminal Code of Canada to overlook, or "cure" any error that might be found at trial. In order to do this, I had to convince the Court that there was no reasonable possibility that the verdict would have been any different had the error not been made in the first place. If I was able to do this, then the Court would uphold the verdict, dismiss

the appeal, and there would be no need for a re-trial.

I got about 90 seconds, maybe two minutes, into my submission, outlining the law on section 686, when all of a sudden..."But, Mr. Reid," said one of the Justices of Appeal, "Mr. Reid, how can be certain that the verdict would have been the same if the error hadn't occurred?"

"Because!" I cried out, "Because juries are made up of *reasonable* people, and they make *reasonable* decisions!"

The Justices stopped...and they turned and looked at each other...and then looked back at me...

Now, I had never been laughed at by a judge before, let alone three, and I have to say it was rather disconcerting. It certainly gave me pretty good idea that my submissions didn't hold a lot of water.

Eventually, the chuckling subsided, and after being slapped around the courtroom for 10 or 15 more minutes, the practice round ended, and the Justices gave us their feedback. And then our coach, Mr. Tom Ross, a litigator with the firm of McLennan Ross in Calgary and Edmonton, gave us his feedback.

He took me aside and said, "Mike, do you really believe that juries are made up of reasonable people who make reasonable decisions?"

"Well, no, not anymore."

"Well, then why are you arguing it that way? Why do *you* think the verdict wouldn't have changed?"

"Well," I said, "because there's a lot of evidence.

"Well then say that," he said. "You don't have to like the side you're on, in a perfect world you do... But you have to believe in what you're arguing, otherwise no one else is going to. You have to go into that courtroom with the law on your side and the facts in your hand and convince the Court why they should see the issue the same way you do...and your heart's got to be in it."

*(Continued on page 20)*

## GALE CUP

*(Continued from page 19)*

That was but one piece of advice, out of many, that I received from Tom Ross. Were it not for Tom Ross, I would not be here today, enjoying this remarkable weekend.

It is that practical component, that wealth and breadth of knowledge and experience, that is a necessity in helping a young law student begin to develop into a young lawyer.

As students we rely on law school, where they teach us legal doctrines, and how to research cases, and how to compare and contrast them. But for that practical side, students like me rely very heavily on people like Tom Ross...and on people like all of you.

So today, in addition to thanking the American College of Trial Lawyers for this wonderful weekend.

And in addition to thanking my fellow team members, Sukhi Sidhu, Robert Falser, Jeremiah

Kowalchuk, and our coach, Tom Ross, I'd also like to take this opportunity to thank each and every one of you, out there, who devote countless hours to helping my generation develop and hone those skills we will need to shepherd this profession with competence and diligence as we inherit it.

And if you're not involved with this generation I speak of, then I strongly encourage you to get involved. Phone up your local law school and offer to be a practitioner coach on a moot, or volunteer to be a judge in a practice round, or be a mentor.

The knowledge and experience you can impart will be so respected and so appreciated, it will amaze you.

So, thank you for this fabulous weekend, thank you for letting me speak to you this morning, and I wish each and every one of you a safe year ahead.

Good day. ♦

*Mike Reid*

## OPENING SESSION PRAYER

(PAST PRESIDENT E. OSBORNE AYSCUE, JR. DELIVERED THE FOLLOWING PRAYER AT THE OPENING SESSION, OF THE 51<sup>ST</sup> ANNUAL MEETING IN NEW ORLEANS, OCTOBER 19, 2001)

*Oh Lord, by whatever name we call you, be amongst us as again we gather, advocates from two great nations sharing a common legal tradition, to enjoy the fellowship of old friends, to welcome new colleagues into that fellowship, to enjoy this great city, to turn our attention from our daily pursuits to the great issues facing our world and to ponder what our role as advocates in a free society calls each of us to do.*

*We come sobered by the troubling events of the past weeks.*

*Give us the vision to see that the world to which we awakened on September 12 is a world to which too many of your children in other lands have awakened every day of their lives.*

*Give us the resolve to restore order to your world, to reestablish the rule of law, to address not just the wrongs done to us, but also those done to the rest of the mankind.*

*Give us the patience to allow the rule of law to work its course.*

*Give us the courage to learn from mistakes of the past, to remind ourselves and our fellow countrymen that if, in our zeal to bring justice to those who would destroy us, we compromise the great principles of law that have set us apart, they, and not we, will have won.*

*Give us understanding that all of us, as advocates in a free society, have a role to play in bringing these things to pass, an understanding that we have no right to be mere spectators in our troubled world.*

*And finally, remind us that this is your world, that the laws you have entrusted to us are your laws and that we are but stewards who must someday give an account of our stewardship.*

*Amen. ♦*



## FROM THE EDITORIAL BOARD

(Continued from page 2)

another article, immediate past president Earl Silbert reflects on his year in office.

We continue to highlight the work of College committees who are using your stature, your dues money and the efforts of many of you to serve the profession. In this issue you will find a description of the work of the Courageous Advocacy Committee, including a profile of the kind of heroic effort it seeks to honor and a call for nominations.

Also reported are two major contributions of the Judiciary Committee: a statement of the College's support of judicial independence, and an *amicus curiae* brief in the pending litigation concerning the compensation of federal judges, both approved for dissemination by the Board of Regents.

We plan to add several new features, some of which are reflected in this the third issue of the "new" *Bulletin*. Thus, we have added an item called "Fellows in Print." In it we plan to note the published literary efforts of Fellows. Although

**"We plan to add several new features, some of which are reflected in this the third issue of the 'new' *Bulletin*."** your Editorial Board has concluded that printing book reviews is beyond the scope and purpose of a newsletter, we do want you to know what the writers among you are doing. We

have added a brief description of the College adjacent to the masthead so that readers who are not Fellows will understand the source of the publication.

*The Bulletin* has long noted the appointment or election of Fellows to the bench. We want to expand that to include other significant achievements of Fellows. Many of you extend the influence of the College and bring credit to the College through other leadership roles in the profession and in public life. A number of incumbent state or province Chief Justices, one sitting Governor

and one United States Senator are Fellows. Many of you are presidents of your state bars. A number of Fellows have led the American Bar Association, including six of the last twelve of its presidents, and last year six members of its Board of Governors were Fellows. All but five of the chairs, including the incumbent chair, of the ABA Standing Committee on Federal Judiciary, the independent, non-partisan group that has for fifty years given lawyers a voice in the vetting of candidates for the federal bench, have been Fellows, as have many of its members. Most of the Independent Counsels appointed to investigate alleged wrongdoing in government have been Fellows.

We think that your knowing about their roles is important. And so, we want to know when any one of you is elected to a major office in a bar organization or receives a significant professional honor. As a matter of policy we will confine the offices we so recognize to state bar presidencies and major national leadership positions.

We also want to inform you of deaths of Fellows and of appointments to the bench. Please therefore notify Bob Young in the national office of any significant honor, election to major office, elevation to the bench or death of any Fellow. If there is a relevant news article, please include a copy of it in your communication to Bob.

We have asked the state and province chairs to send us reports of state, province or regional meetings. We want those of you who did not attend to know what you missed. We will also consider printing original papers any of you may care to submit, though we prefer not to print works that have already been printed elsewhere. We encourage letters to the editor.

Last, we want to know what about the *Bulletin* you like or do not like, particularly what you would like to see in *The Bulletin*. Please let us hear from you. ♦

Ozzie Ayscue, Chair  
Communications Committee  
ozzie.ayscue@smithhelms.com



## WORK IN PROGRESS

### FEDERAL RULES OF EVIDENCE COMMITTEE:

#### **Unpublished Opinions**

The Federal Rules of Evidence Committee, chaired by William T. Hangley of Philadelphia, Pennsylvania, is in the process of completing a position paper regarding "Unpublished Opinions." This is a practical and scholarly look at the problems associated with the controversial practice of our courts in designating opinions which are not to be published and which are not endorsed as precedential. This position paper will be an important contribution to the literature on this issue.

### NATIONAL MOOT COURT COMPETITION COMMITTEE:

#### **Increasing Participation by Fellows**

The National Moot Court Competition Committee, chaired by Paul Saunders of New York, is engaged in actively placing Fellows of the College as Judges in the regional competitions of the National Moot Court Program. This is a program that is co-sponsored by the College and the Association of the Bar of the City of New York. The regional contests are held during November, December and early January and culminate in the national competition among selected teams at the end of January. If you are called upon to serve as a Judge in one of these regional contests, or if you are called upon to present the Silver Bowl to the

Best Oral Advocate or the Lewis Powell Medalion to participants, please take this opportunity to make sure your audience is informed about the College.

### PROFESSIONALISM COMMITTEE:

#### **Code of Pretrial Conduct**

The Professionalism Committee, under the leadership of George Chapman of Dallas, Texas, is in the process of completing a Code of Pretrial Conduct to provide guidelines for lawyers in the conduct of discovery and other pretrial activities. This Code of Pretrial Conduct, when completed, will be a corollary to the College Code of Trial Conduct.

### TEACHING OF TRIAL AND APPELLATE ADVOCACY COMMITTEE:

#### **Advocacy Skills for Public Interest Lawyers**

The Teaching of Trial and Appellate Advocacy Committee, under the leadership of Terry Tottenham of Austin, Texas, is developing a model program for teaching trial tactics to public interest lawyers. It is the mission of this Committee to assist State and Provinces in adapting this program to local circumstances and to involve Fellows in the teaching of advocacy skills to those lawyers who may not otherwise have the resources to avail themselves of other types of training programs. ♦

## RECENTLY REPORTED DEATHS

*The College has been notified of the deaths of the following Fellows:*

Morton G. Galane of Las Vegas, Nevada.

Stephen Moulton of Boston, Massachusetts.

As *The Bulletin* was going to press, we were notified of the death, after a long illness, of Philip W. Tone of Chicago, Illinois, who was President of the College in 1988-89. ♦

## SCENES FROM NEW ORLEANS MEETING



ABA President Robert Hirshon (left)  
with Earl Silbert



Pat Silbert, Alex Sanders and  
Edward Mullins (from left to right)

## FELLOWS TO THE BENCH

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The College is pleased to announce the following judicial appointments of Fellows:

DENNIS BALL, Q.C., to the Court of Queen's Bench for Saskatchewan, Canada.

PAMELA SHELL BASKERVILL to Judge of the 11<sup>th</sup> Judicial Circuit, Petersburg, Virginia.

JAMES E. DUGGAN to associate Justice, new Hampshire Supreme Court.

SAM E. HADDON to District Judge, District of Montana, Great Falls, Montana.

ROBERT F. JULIAN to Justice, State of New York, Supreme court Chambers, Utica, New York.

JAMES M. PORTER of Cleveland, Ohio to Judge, The Court of Common Pleas, County of Cuyahoga.

WILLIAM J. RILEY of Omaha, a recent Nebraska State Chair, to Circuit Judge, United States Court of Appeals for the Eighth Circuit.

ROBERT M. TALCOTT of Los Angeles to Judge of the State Bar Court, Los Angeles, California. ♦

## LETTER TO THE BULLETIN

*To: Editors*

Professor John W. Reed should be congratulated for his article, "Believing is Seeing" in the 2001 Fall issue of The Bulletin. It is the best summary I have read about how our profession is degenerating before our very eyes. He is accurate in describing the law as not so much a profession

as it is a business with economic considerations driving the decision-making processes. Unfortunately, I do not share his optimism about being able to recover our "sometimes lost" idealism—idealism with which every one of us entered upon the study of law and entered the profession. I doubt that many of us are as proud of being lawyers as we were in the past.

*Fellow Garry L. Kahn, Portland, OR ♦*

## WORKSHOPS PREPARE COMMITTEE CHAIRS, NEW REGENTS

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One of president Stuart Shanor's first official acts as President was to convene two workshops, one in the West and one in the East, for Regents, state and province chairs and national committee chairs.

Held shortly after each Annual Meeting, these workshops are designed to acquaint new Regents and committee chairs with their duties. The workshops begin with a general introduction to the organization and governance of the College and how it functions.

Then in a separate session national committee chairs discuss such subjects as budgeting, procuring project approval, reporting requirements, record keeping and the standards of performance expected of them. They participate in a dialog about the role of each committee, methods of operation that have worked for the various committees and particular problems or needs that need to be addressed. In these sessions, experienced chairs share with new chairs strategies and procedures that have worked for them.

At the same time, in a separate session, state and province chairs and new Regents are instructed in such subjects as the nominating process, the standards to be applied in identifying candidates for fellowship, strategies for identifying suitable candidates, the process of investigating proposed candidates, what the Regent expects of his or her chairs, how nominations are processed at the national level and the mechanics of the process from beginning to end.

Then, in a general session the attendees are introduced to the national office and staff. Following this, a representative of each national committee describes for the entire group his or her committee's assigned role and its recent and present projects.

The new Regents then participate in a separate instruction session in which they learn all that is expected of them during their term of office.

This year, the second day of the workshop was devoted to a discussion of the subjects proposed to be dealt with in a Board retreat next Spring. The Regents will use the notes from these sessions to help refine and flesh out the agenda for that retreat. Subjects dealt with ranged from the impact of changing demographics on the College, to maintenance of collegiality in a growing organization, to what Fellows need from the College to the College's image and its influence on the profession.

State and province chairs left the workshops with new insights for effectively guiding their committees in seeking new members and in carrying out the rest of their duties, as well as with an informed understanding of all the activities the College is carrying on at the national level.

All the attendees will return to their respective committees with a wealth of information and institutional knowledge designed to make them more effective in carrying out the work of the College over the coming year. ♦

## WANTED: A FEW GOOD WEBPERSONS

In anticipation of the expansion of the College website and the College's database, President Shanor intends to appoint an advisory committee to work with the staff on this project. The project will implicate matters such as content and access.

If you have experience in this area and are willing to offer your help, please email Stu Shanor at [sshanor@hinklelawfirm.com](mailto:sshanor@hinklelawfirm.com) with a copy to Bob Young at [RAY89@aol.com](mailto:RAY89@aol.com). ♦

## PROFILE

*(Continued from page 5)*

from the judges to the prosecutors. The College has published scholarly reports on policies of the guidelines that really have had, in our view, a significant regrettable adverse impact on the fairness of the administration of justice." He also emphasized the College's work in strongly recommending, in a published monograph, the use of a 12-person jury in civil cases and in creating both a manual for handling mass tort cases and a code of pretrial conduct, the latter two of which are current projects of the College nearing completion. Although Silbert's father, Coleman, was an outstanding lawyer in Boston, Earl almost decided not to follow in his footsteps.

***Although Silbert's father, Coleman, was an outstanding lawyer in Boston, Earl almost decided not to follow in his footsteps.***

"While in college I had done a lot of social service work with underprivileged kids and had thought of becoming a teacher. I kept this in mind for a number of years,

even after graduating law school." After graduating from Harvard College, Silbert acceded to his father's wishes and enrolled at Harvard Law School where his father had gone also. He graduated cum laude in 1960 and went to work for the Tax Division of the U.S. Department of Justice in Washington. "Working for the government was attractive," he said. "In addition, I had grown up in Boston, gone to school in Boston, and I thought it made sense to try another city."

He became Principal Assistant U.S. Attorney in 1972 in D.C. just in time to become the lead prosecutor in the Watergate break-in case, which remains the most interesting one in his career. "Many an investigation has a hundred or a thousand turns and twists," he recalled. "Watergate had not only the turns and the twists, but it was set in a political context, which made trying to investigate and prosecute the case a lot more difficult, with intense media interest that also compli-

cated it." Asked what he believed was the lingering legacy of the Watergate affair, Silbert said, "The imperial presidency was rejected at the time of Watergate and has not returned. It would be regrettable if it did. In fact, the real question is whether the pendulum has swung too far the other way and the office of the President has been excessively demeaned. Watergate also resulted in a loss of trust in government because of its abuses, a loss of trust Government officials today have to work hard and continually to try to overcome."

After Watergate, Silbert became the U.S. Attorney for the District of Columbia with 155 Assistant U.S. Attorneys working under him in the office which handles both federal and local crime. Now his practice consists mostly of white collar defense work, government-related enforcement matters, both civil and criminal, legal malpractice, ethical issues, and advice to law firms and lawyers.

For recreation, Silbert, who will turn 66 next March 8, has a secret life as an amateur hockey player. "I grew up in Boston and so I started skating as a little kid," he said. "I have been playing pond hockey or some form since I was probably 8 or 9 or 10 years old." He wears Number 2 as a wingman in the royal blue and white uniform on a team called Caravan in a 45-and-older league in Washington. The six teams in the league play each Sunday during a 20 game season. In addition to hockey, Silbert likes to play tennis and work around the house, both in Washington and at the family's summer place in New Hampshire that Pat renovated. "I'm one of these people who cuts their own grass," he said. "I wash my own car and I split my own firewood. I enjoy it." ♦

***For recreation, Silbert, who will turn 66 next March 8, has a secret life as an amateur hockey player.***



# CALENDAR

*NOTE: Calendar changes frequently and dates should be checked with ACTL office before scheduling events.*

**2002**

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**January 11**

Northern California Fellows Dinner

**January 22**

Executive Committee  
Admirals Club of American Airlines  
Dallas/Fort Worth Airport  
Dallas, TX

**January 31**

National Moot Court Competition  
Final Rounds  
New York, NY

**February 1**

Massachusetts Fellows  
Midwinter Dinner  
Four Seasons  
Boston, MA

**February 1**

Virginia Fellows Annual Banquet  
Commonwealth Club  
Richmond, VA

**February 1**

Northeast Regional Winter Dinner  
Four Seasons Hotel  
Boston, MA

**February 14-17**

Tri-State Meeting  
(Florida, Georgia, Alabama)  
The Cloister  
Sea Island, GA

**February 21-24**

NC & SC Joint Annual Meeting  
The Cloister  
Sea Island, GA

**February 22-23**

Gale Cup Moot Competition  
Osgood Hall  
Toronto, ON

**March 1-2**

Arkansas Fellows Annual  
State Meeting  
Inn at the Mill  
Fayetteville, AR

**March 5**

Eastern Pennsylvania Fellows  
Annual Dinner  
Pyramid Club  
Philadelphia, PA

**March 8-9**

Sopinka Cup Competition  
Ottawa, ON

**March 10**

Executive Committee Meeting  
La Quinta Resort and Club  
La Quinta, CA

**March 10-13**

Board of Regents Meeting  
La Quinta Resort and Club  
La Quinta, CA

**March 14-17**

Spring Meeting  
La Quinta Resort & Club  
La Quinta, CA

**April 3-6**

National Trial Competition  
Final Rounds  
Austin, TX

**April 26-27**

PA, DE, NJ Regional Meeting  
Location To Be Determined

**May 3-5**

Arizona Fellows Spring Meeting  
Hilton Sedona Resort and Golf Club  
Sedona, AZ

**May 9-12**

DNY, CT, VT Regional Meeting  
Elbow Beach Hotel  
Bermuda

**May 16-19**

Board Retreat  
Ritz-Carlton Reynolds Plantation  
Atlanta, GA

**June 2-3**

Executive Committee Meeting  
Washington, DC

**June 7-9**

Oklahoma Fellows Meeting  
San Antonio, TX

**July 28-31**

Northwest Regional Meeting  
Four Seasons Olympic  
Seattle, WA

**August 2-3**

Iowa Fellows Summer Meeting  
Bos Landen Conference Center  
and Resort  
Pella, IA

**August 13**

Executive Committee Meeting  
Admirals Club of American Airlines  
Dallas/Fort Worth Airport  
Dallas, TX

**September 12**

Missouri Fellows Annual Dinner  
Kansas City, MO

**October 13**

Executive Committee Meeting  
The Waldorf-Astoria  
New York, NY

**October 13-16**

Board of Regents Meeting  
The Waldorf-Astoria  
New York, NY

**October 17-20**

Annual Meeting  
The Waldorf-Astoria  
New York, NY



## 2003

**March 16-19**

Board of Regents Meeting  
Boca Raton Resort and Club  
Boca Raton, FL

**July 31-August 3**

Northwest Regional Meeting  
Fairmont Jasper Park Lodge  
Alberta, Canada

**October 29-November 1**

Annual Meeting  
Fairmont Hotel  
Montreal, Canada

**March 20-23**

Spring Meeting  
Boca Raton Resort and Club  
Boca Raton, FL

**October 26-29**

Board of Regents Meeting  
Montreal, Canada

## RETIRING REGENTS AND COMMITTEE CHAIRMEN

At the October meeting in New Orleans, plaques of recognition for service were presented to three retiring Regents, chairs often standing committees and seventeen state or province committee chairs as follows:

REGENTS—David S. Cupps of Columbus, Ohio, Louis W. Fryman of Philadelphia and Thomas R. Lemon of Warsaw, Indiana.

STANDING COMMITTEES—Emil Gumpert Award, Raymond L. Brown of Pascagoula, MS; Canada-United States, Earl A. Cherniak, Q.C., of Toronto; Federal Criminal Procedure, John P. Cooney, Jr., of New York, NY; Federal Rules of Evidence, Alan J. Davis of Philadelphia; Judiciary, Edward W. Madeira, Jr. of Philadelphia; Legal Ethics, John H. McElhaney of Dallas; Admission to Fellowship, Paul S. Meyer of Costa Mesa, CA; Samuel E. Gates Litigation Award, Sylvia H. Walbolt of Tampa; National Moot Court Compe-

titution, Mary Jo White of New York, NY; and National Trial Competition, Michael A. Williams of Denver.

STATE AND PROVINCE COMMITTEES—Arkansas, Floyd M. Thomas, Jr., of El Dorado; Arizona, Ted A. Schmidt of Tucson; California, Charles H. Dick, Jr. of San Diego; Connecticut, James R. Fogarty of Greenwich; Florida, Alan G. Greer of Miami; Illinois, Thomas W. Alvey, Jr. of Belleville and Ann C. Tighe of Chicago; Kentucky, John M. Famularo of Lexington; Massachusetts, Martin S. Cosgrove of Quincy; New Jersey, Francis X. Dee of Newark; New Mexico, John B. Pound of Santa Fe; Ohio, George Gore of Cleveland; Puerto Rico, Francisco G. Bruno of San Juan; South Carolina, Edward W. Mullins, Jr. of Columbia; Tennessee, Thomas S. Scott, Jr. of Knoxville; Washington, James M. Danielson of Wenatchee; and West Virginia, Fred Adkins of Huntington. ♦

## MARYLAND / D.C. JOINT MEETING

About 40 Fellows and spouses gathered for a joint meeting of the Maryland and District of Columbia State Committees on Nov. 9-10 in Easton, MD. The meeting was held in conjunction with the Maryland Waterfowl Festival.

Professional actor Paul Morella performed a one-act play on the life of Clarence Darrow. Fellows Ken Armstrong and the Hon. William J. Rowan, III of Rockville, MD and David Webster of Washington, DC organized the event. ♦

**The Bulletin**  
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## COLLEGE WEIGHS IN ON JUDICIAL PAY

On the recommendation of the College's Judiciary Committee and with the approval of the Board of Regents, the College recently filed an *amicus curiae* brief in *Williams, et al v. United States*, Plaintiffs in that case are present and former federal judges who seek a determination that they had a vested right to cost of living adjustments ("COLAs") for the years 1995-97 and 1999. In each of those years Congress blocked their right to such COLAs.

Drafted by Alexander Kerr, a committee member from Philadelphia, the brief urges the Supreme Court of the United States to grant a writ of certiorari to review the decision of the District of Columbia Court of Appeals, denying the plaintiffs relief. Fellow Edward J. "Ned" Madeira, Jr. of Hoyle, Morris & Kerr in Philadelphia is chairman of the judiciary committee.

Existing legislation had provided that federal judges would receive COLAs in any year in which the salaries of a major category of federal employees were adjusted under the Federal Pay Comparability Act. In the affected years, the overwhelming majority of federal employees received COLAs, but Congressional resolutions, signed by

the President, blocked federal judges from participating in these increases.

The Compensation Clause, Article III, Section 1 of the Constitution of the United States, provides that the compensation of federal judges may not be diminished during their continuance in office. The brief points out that the framers of the Constitution had recognized that an independent judiciary, whose compensation could not be diminished, was essential to the effective separation of powers that lies at the heart of civil liberties in the United States.

The College's brief argues that the decision of the lower court both violates this Constitutional provision and is inconsistent with prior holdings of the Supreme Court.

The petition for certiorari is pending as of the time the *Bulletin* goes to press.

The College has not hesitated to file *amicus* briefs in important cases in the past. One successfully attacked Department of Justice regulations that would have exempted government attorneys from the application of state ethics rules precluding contact with represented persons. Another successfully urged the reversal of a circuit court ruling that the attorney-client privilege does not survive the client's death. ♦