



---

# The Bulletin

---

Number 41, Spring 2002

**"We are the priests of the profession.  
If not us, who?"**

**Fellow Jim Coleman,  
winner of the 2002 Gates Award.  
See page 26.**



---

*Highlights of Spring 2002 Meeting on Page 5*

---

American College of Trial Lawyers

**The Bulletin**

**CHANCELLOR-FOUNDER**

Hon. Emil Gumpert  
(1895—1982)

**OFFICERS**

STUART D. SHANOR, *President*  
WARREN B. LIGHTFOOT, *President-Elect*  
DAVID W. SCOTT, Q.C., *Secretary*  
JAMES W. MORRIS, III, *Treasurer*  
EARL J. SILBERT, *Immediate Past President*

**BOARD OF REGENTS**

<b>DAVID J. BECK</b> Houston, Texas	<b>CAMILLE F. SARROUF</b> Boston, Massachusetts
<b>PATRICIA C. BOBB</b> Chicago, Illinois	<b>JAMES P. SCHALLER</b> Washington, District of Columbia
<b>MICHAEL A. COOPER</b> New York, New York	<b>DAVID W. SCOTT, Q.C.</b> Ottawa, Ontario
<b>BRIAN P. CROSBY</b> Buffalo, New York	<b>STUART D. SHANOR</b> Roswell, New Mexico
<b>JOHN J. (JACK) DALTON</b> Atlanta, Georgia	<b>EARL J. SILBERT</b> Washington, District of Columbia
<b>FRANK N. GUNDLACH</b> St. Louis, Missouri	<b>TOM SLUTES</b> Tucson, Arizona
<b>DAVID O. LARSON</b> San Francisco, California	<b>PAYTON SMITH</b> Seattle, Washington
<b>WARREN B. LIGHTFOOT</b> Birmingham, Alabama	<b>MIKEL L. STOUT</b> Wichita, Kansas
<b>JAMES W. MORRIS, III</b> Richmond, Virginia	<b>DENNIS R. SUPLEE</b> Philadelphia, Pennsylvania
<b>EDWARD W. MULLINS, JR.</b> Columbia, South Carolina	<b>SHARON M. WOODS</b> Detroit, Michigan
<b>ROBERT A. YOUNG</b> Executive Director	

**COMMUNICATIONS COMMITTEE**

E. OSBORNE AYSCUE, JR., Chair, Charlotte, North Carolina  
JOHN A. BARLOW, Longview, WA  
J. J. CAMP, Q.C., Vancouver, BC  
RALPH I. LANCASTER, JR., Portland, ME  
JOHN S. MARTEL, San Francisco, CA  
CONRAD M. SHUMADINE, Norfolk, VA  
W. STANCIL STARNES, Birmingham, AL  
PETER F. VAIRA, Philadelphia, PA  
DAVID O. LARSON (Regent Liaison)

MARION A. ELLIS, Editor  
Telephone: 704-366-6599  
E-Mail: mae6825@bellsouth.net



American College of Trial Lawyers  
19900 MacArthur Boulevard, Suite 610  
Irvine, California 92612  
Telephone: (949) 752-1801  
Facsimile: (949) 752-1674  
E-Mail: nationaloffice@actl.com

COPYRIGHT © 2002

**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**

**T**his issue reflects a continuing effort to make your *Bulletin* more readable and more informative. Beginning with a new-look cover page, you will find a number of innovations, both in format and substantive content. They reflect the suggestions of many of you.

We have attempted to bring you more of the flavor of national meetings, which many of you

*(Continued on page 3)*

## FROM THE EDITORIAL BOARD

*(Continued from page 2)*

cannot attend. Thus, we have described the Spring Meeting program and, in a separate Notable Quotes section, have included some of the highlights from the program participants' remarks.

Many of your Province, State and Regional meetings, which more of you can attend, also frequently feature programs worth sharing with the rest of the College. If you can preserve those programs on videotape or audiotape and lend those tapes to the Editor, we can transcribe them and feature *your* meeting, just as we do the national meetings.

In this issue, we feature the work of the International Committee, as well reports of several initiatives the College leadership has recently undertaken.

Some of you may remember a time when *The Bulletin's* coverage of College activities was so

sparse that successive Presidents felt compelled to catalogue all the College's significant activities in their letters to the Fellows, lest they go unnoticed. By enhancing the scope of our coverage, we have enabled the President to focus his letters on matters he deems most important and pressing.

In this light, we call your particular attention to the last paragraphs of President Stu Shanor's current letter. The statistics he quotes should cause us all to stop and consider whether many of us tend to focus on worthy candidates for fellowship ten years later than we should be looking at them.

We continue to seek your comments, positive and negative, about your *Bulletin*. ♦

*Ozzie Ayscue, Chair*

*Communications Committee*

*ozzie.ayscue@hmw.com*

---

## NEW YORK MEETING SET FOR OCTOBER 17—23

**P**resident-Elect Warren Lightfoot has arranged a star-studded program for the 52<sup>nd</sup> Annual Meeting to be held on October 17-23 in New York City.

At presstime for this issue of *The Bulletin*, confirmed speakers were U.S. Supreme Court Justice Stephen Breyer, FBI Director Robert Mueller, English Master of the Rolls Sir Nicholas Addison Phillips, Phil Howard, author of *The Death of Common Sense*, and John McGoldrick, General Counsel of Bristol-Myers Squibb.

Other speakers will include Mary Jo White, Former U.S. Attorney for the Southern District of

New York (and a Fellow of the College), and Bryan Stevenson, a dynamic young African American lawyer in Montgomery, Alabama. White will talk about terrorism from a U.S. Attorney's perspective. She has joined the New York firm of Debevoise & Plimpton. Stevenson, whose entire practice is representing death row inmates, is chair of the Equal Justice Initiative of Alabama. Program events are being added to make this meeting one of the most outstanding in recent years.

Fellows' reservations forms for this meeting will be mailed in late June. ♦

## IN MEMORIAM



**Philip W. Tone**  
(1923 – 2001)

**P**hilip W. Tone, the 39<sup>th</sup> President of the American College of Trial Lawyers, former federal judge and former partner in Jenner & Block, died on November 28, 2001, at Manor Care Nursing Facility in Glenview, Illinois, because of complications from Alzheimer's disease. He was 78 years of age.

He was born in Chicago and grew up in Park Ridge, a town that he loved, where his selection as high school valedictorian and his football talent led to a scholarship at the University of Iowa. He received his undergraduate degree before being called into the Army in World War II. He was sent to Europe where he led a tank battalion. He served in the 743<sup>rd</sup> Tank Battalion under General Omar Bradley and his unit fought across France to Aachen, where the first Americans entered Germany. He was wounded in action and was furloughed to an Iowa hospital for recovery where, with a weekend pass, on March 10, 1945, he married his college sweetheart, Gretchen Altfilisch. Upon his recovery this 21 year old first lieutenant was sent to Fort Knox to train a battalion

of recruits whom he was scheduled to take to the South Pacific. Fortunately, the war soon ended.

At the end of the war he returned to the University of Iowa where he completed his law degree in 1948, had post graduate work at Yale and later served as a law clerk for United States Supreme Court Justice Wiley Rutledge. He commenced the practice of law in Chicago, joining what is now Jenner & Block, and was a partner until he was appointed to the United States District Court for the Northern District of Illinois in 1972. In 1974 he was appointed to the United States Court of Appeals for the Seventh Circuit where he served until 1980, when he returned to Jenner & Block to resume the practice of law.

His son, Jeffrey, observed: "He really loved the law. It was a combination of the intellectual challenge, the adversary process, the competition. I think one of the reasons he left the bench was that he missed that, he missed being with people."

His good friend, United States Supreme Court Justice John Paul Stevens, said that "tolerance, fairness, remarkable intelligence, professionalism

*(Continued on page 25)*

# LA QUINTA RESORT HOSTS COLLEGE'S 52<sup>ND</sup> SPRING MEETING

**H**onorable Ronald W. George, chief justice of the California Supreme Court, was the first of several distinguished speakers at the 52<sup>nd</sup> Spring Meeting on March 14-17 at La Quinta Resort and Club in La Quinta, California.

La Quinta, an idyllic canyon retreat in the Santa Rosa mountains of southern California, has hosted smaller College functions in the past. The recent addition of ballroom facilities made it suitable for the first time for a national College meeting. Indeed, the College will return there in March 2005.

The Spring Meeting program, arranged by President-Elect Warren Lightfoot, was the College's traditional mixture of the informative and the inspirational.

George, whose wedding ceremony was conducted by Judge Emil Gumpert, a family friend, and who now heads the largest court system in the United States, described how California courts are coping with growth and change.

United States District Judge Thomas Penfield Jackson, a Judicial Fellow, shared his insights on the challenges facing a typical Federal trial judge in coping with the growing variety of cases on his docket. He also shared some of his reflections on the recent Microsoft trial, over which he presided, and its aftermath.

Brian O'Neill, FACTL, lead trial counsel for the plaintiffs in the Exxon Valdez class action, painted a disturbing picture of the effect of the law's delays on the plaintiffs in that case.

Inevitably, reflections on the aftermath of September 11 permeated the remarks of several speakers. Canadian Bar President Eric Rice, Q.C., reflected on that event from the Canadian perspective.

Canadian Court of Appeal Justice Rosalie Abella, the daughter of Holocaust survivors, perceptively placed September 11 into the context of emerging unsolved world problems of the last fifty years.

United States Deputy Attorney General Larry Thompson described the Department of Justice's response to the challenges of terrorism.

CNN anchor Jeanne Meserve, daughter of late past president Bob Meserve, painted a disturbing picture of the inability of the Federal bureaucracy to respond effectively to the aftermath of 9/11.

Donald Kempf, FACTL, chief legal officer of Morgan Stanley Dean Witter, treated us to his collection of vignettes from movie portrayals of lawyers and judges, portrayals that ranged from the absurdity of Cousin Vinnie to the heroism of Atticus Finch.

Continuing a series of reflections of past presidents, we were treated to both the wit and insight of past president Ralph Lancaster.

Fellow Jim Coleman of Dallas gave an inspiring response as recipient of the Samuel E. Gates Litigation Award.

And finally, California Court of Appeal Associate Justice William Bedsworth, drawing on his own brush with death, delivered a pointed message on leading a balanced life that left every lawyer's spouse in the audience nodding in agreement.

(Portions of remarks by various speakers are featured elsewhere in this edition of *The Bulletin*.)

The more than 800 Fellows and spouses at the meeting were treated to a World War II theme party at the Palm Springs Air Museum, complete with modern-day personifications of the Andrews Sisters and General George S. Patton.

We inducted 88 new Fellows, on whose behalf Cathleen V. Compton of Little Rock, the spouse of a Judicial Fellow and the daughter of a Fellow, gave the inductees' response. And, thanks to the efforts of two spouses of Fellows, the traditional singalong was enhanced for the first time by songbooks, complete with music as well as words. ♦

## NOTABLE QUOTES

(EXCERPTS FROM THE 2002 SPRING MEETING PROGRAM AT LA QUINTA)

“In order for our courts to perform their core judicial function in our democratic system, it is incumbent on us to ensure that we deserve the trust and confidence of the public . . . [N]ever has this been more important than at the present, when recent events have both challenged and reinforced our obligation to adhere to the crucial role of the rule of law in our democratic society.”

*California Chief Justice Ronald M. George*

♦ ♦ ♦

“Those of us who were practicing in the ‘50’s and ‘60’s (a period my grandchildren refer to as the ‘olden days’) don’t have to go too far back in the attics of our minds to recall that there was no Rule 11. A deposition was arranged as to time, place and court reporter in a short telephone call, and agreement between attorneys did not have to be in writing. . . . Profanity and threats at depositions were rare, if not unheard of. Hardly anyone played ‘gotcha’ with their adversaries. Failure to answer or to meet discovery deadlines did not pose threats of sanctions or malpractice claims, because attorneys extended to each other the courtesy of having an opportunity to correct any scheduling or other non-substantial omission. . . . Those were truly more enjoyable days to be a lawyer – less rewarding financially, but much more rewarding spiritually, emotionally and environmentally.”

*James E. Coleman, Jr., in accepting the Samuel E. Gates Litigation Award.*

♦ ♦ ♦

“I am convinced that, although we are divided by borders, the North American public is united in its shared passion for justice . . . .”

*Ontario Court of Appeals Justice Rosalie Silberman Abella.*

♦ ♦ ♦

“Our [California’s] court system is the largest in the western world, surpassing the Federal system, with more than 1600 judges, supplemented with an additional 400 commissioners and referees.”

*California Chief Justice Ronald M. George*



Justice Rosalie Silberman Abella

♦ ♦ ♦

“The crash of four planes changed everything. We realized to our horror that while we were riveted on the hanging chads and butterfly ballots, terrorists were next door learning how to fly commercial airplanes into buildings. In less than two hours on the morning of September the eleventh, we went from being a Western world, luxuriating in conceptual conflicts, to being a Western world terrorized into grappling with fatal ones. This is not to say there were no terrifying plots unfolding internationally for our attention and consideration; it’s just that we seemed to lack a sense of their urgency. . . . We responded, but we did not anticipate. We ignored the evidence. Until the deadly destruction of the World Trade Center and the Pentagon, we seemed to feel that these palpable and overriding injustices would, in time, either work themselves out or merge into history. So, notwithstanding what should have been the indelible lesson of the Holocaust, namely, that indifference is injustice’s incubator, we felt entitled somehow to defer consideration of our international moral obligations and hide behind contraceptive terminology like “domestic sovereignty” or “cultural relativism.” So we had by September 11 no reliable

*(Continued on page 7)*

## NOTABLE QUOTES

*(Continued from page 6)*

enforcement mechanisms in place to enforce the rule of law internationally, and, more importantly, no reliable mechanism for developing a consensus as to what the minimal standards would be, below which we would not tolerate breaches. And so, when terrorism struck again, we were all unprepared again. . . . [A]t the end of the day, what irrevocably shocked the world about the horror of September 11 was how massively it violated our assumptions that our expectations about the Rule of Law were universally shared. . . . Whether these expectations were reasonable is not an issue. They were genuine. We felt safe. We no longer do.”

*Ontario Court of Appeals Justice Rosalie Silberman Abella.*

♦ ♦ ♦

“[I]n addition to our . . . efforts with respect to the prevention and disruption of terrorism, we want to continue to make certain that the essential character of our nation is not changed. We want to make certain that the passions that our citizens unfortunately and sometimes in a very inappropriate and criminal way . . . , that the passions do not boil over in ways that are unacceptable in our society.”

*Deputy Attorney General of the United States Larry Thompson.*

♦ ♦ ♦

“I am convinced that the American judicial system, when it operates to best effect, in those cases in which conditions are optimal, is perhaps the best expression of the Rule of Law yet devised by humankind. . . . I believe that the Federal judicial system is in need of a systematic way to accommodate birds of all feathers [all kinds of cases] —not only the ducks. Today, the problem for the district judge is that he is expected to fire at all of them.”

*United States District Judge Thomas Penfield Jackson, JFACTL*

♦ ♦ ♦

“You know these wonderful meetings of the College don’t just happen, but they are the product of a lot of hard work by Bob Young and his staff.”

*Past President Ralph Lancaster, reflecting on his Presidency.*

♦ ♦ ♦

“It is to the Fellows of this College that the nation and the court and the clients turn for leadership and devotion to duty. And the Fellows of this College respond. It is as true today as it has been in the past. . . . Fifteen fellows of the College have served as special prosecutors or as independent counsel when their state or their nation called upon them. . . . And I suspect that there are others in this room unknown



**Judge Thomas Penfield Jackson (L) and Past President Charles Renfrew**

to me who have just as courageously stepped to the plate in their own Province or State and rendered similar service.

“I have focused principally on those who have gone before us, with an occasional lapse here and there, but I do not want to leave this topic without recognizing one overriding and undeniable truth: While those I have named have felt the glare of the spotlight, willingly or unwillingly, I know full well that there are in this audience today an even greater complement of lawyers dedicated to the same bedrock principles, who day-in, day-out, in the words of Whitney North Seymour, ‘render service to clients, public and private, with a fidelity to their interests’ and contribute some of their talents to the public good through the organized bar and in other ways. Day-in and day-out you uphold the rule of law. Day-in, day-out, you meet the constant challenges to the profession. Day-in, day-out, you embody the best principles of our profession in your dedication to the improvement and elevation of the standards of trial practice, the administration of justice and the ethics of the trial branch of our profes-

*(Continued on page 8)*

## NOTABLE QUOTES

*(Continued from page 7)*

sion. And the vast majority of you do it out of the spotlight. Your role and your responsibility are of increasing importance in a world in which the fabric of human character has been stretched to such a perilously thin skein. In these times, you relish each other's company precisely because you have a firm sense of self. You know where you begin and you know where you end, and you know instinctively how to give back. And it would be unthinkable for me not to recognize the enormous contribution that each and every trial lawyer in this room has made to her or his community and the society in which we live."

*Past President Ralph Lancaster, reflecting in the history of the College.*

♦ ♦ ♦

"[A] second lesson that I have learned . . . is, 'Don't shoot yourself in the foot.' I may have done just that in the Microsoft case. In retrospect, I'm not sure I would have spoken publicly about the Microsoft case after it was over if I had known how vehemently my Court of Appeals would react to it. I am not repentant, however. I still believe that I had a Constitutional right to do what I did, that it was an appropriate thing to do and that I violated no canon of judicial conduct. I am hoping someday that I will have a forum and an opportunity to explain exactly why. I may, however, say that one of the reasons that I did undertake to speak to the press was that I had found the public misperception of my role about the case was rampant—particularly in the foreign press. And the coverage the case was worldwide. Many simply didn't understand that antitrust in the United States is a judicial problem, whether it should be or not. For those agreed with my decision, I was something of a cross between a prescient economic wizard and an avenging angel. For those who disagreed, I was portrayed as a self-styled überminister of economic probity who was conspiring with the forces of socialism to suppress free enterprise.

"What I said to the press was sincerely intended to reflect favorably on the federal judiciary and to bring no discredit upon it. And in essence what I did say was that, as a federal trial judge, I had no economic philosophy about monopolies, whether they were good or bad. My job was to consider the evidence, to

decide what happened and then read the cases to learn what significance to attach to them—to the facts. Whether the result made economic sense was someone else's responsibility."

*United States District Judge Thomas Penfield Jackson*

♦ ♦ ♦

"The lack of speed in this litigation [the Exxon Valdez class action] has turned out to be a second tragedy, compounding the lack of control these people [the plaintiffs] feel over their lives. Many of the fishermen that were with us in 1989 are dead, divorced, bankrupt, and many of the fishing and native communities are adrift. . . . Man-made disasters affect people deeply in a different way than natural disasters do, and a judicial resolution is often necessary to the healing process. These Alaskans are still waiting for their measure of justice. . . . One hundred eight of my personal Valdez clients have died during the last thirteen years, . . . and there are about 1,000 other claimant fishermen who are now dead just as a result of the passage of time. . . . [H]ere we saw the slow, expensive determination of a civil action. . . . [T]he case is a monumental failure of our justice system."

*Brian O'Neill, FACTL, trial counsel for the plaintiff class, commenting on the still unresolved Exxon Valdez class action, which arose out of a March 1989 maritime accident.*

♦ ♦ ♦

"I will say that Congress, at least, broke stereotype and actually got together and did something in a timely fashion. They passed airport security legislation quickly—that is atypical. But that other ogre so familiar in Washington, the Washington bureaucracy, seems to be returning to form, resisting change, no matter how necessary it might be. That is not to say that nothing has been done. The Office of Homeland Security was created, the military is organizing a new homeland command, the Department of Health and Human Services . . . has established [the] new Office of Public Health and Preparedness, and the FBI . . . says now its number one priority is to fight terrorism. But forty-three different federal agencies still have a piece of the homeland security pie. It doesn't make sense that the Immigration and Naturalization Service, the Border Patrol of Customs and the Coast Guard should all have a piece of border security. And their functions are interlocking;

*(Continued on page 9)*



## NOTABLE QUOTES

*(Continued from page 8)*

sometimes they're overlapping; sometimes they're totally disconnected. Does it make any sense that after Tommy Thompson has said that contamination of the food supply is his number one terrorist concern that we have twelve different agencies administering as many thirty-five laws that make up the federal food safety system?

"Most people feel that if we are going to have an effective homeland security regime that Tom Ridge is going to have to take that organizational chart that right now resembles an elaborate Tinkertoy construction, and he's going to have to change this into a real machine. And already there are early signs of trouble. Training first responders, for example -- for several years some of this has been done by an agency within the Justice Department called the Office of Domestic Preparedness. It isn't a huge program by Washington standards at all. And Tom Ridge proposed in the 2003 budget that that money and those programs be moved from Justice to the Federal Emergency Management Agency or FEMA. It seems to make a lot of sense. FEMA does some first responder training itself. Its disaster response efforts over the years have given it relationships with first responders at the state and local level. But you would think that Tom Ridge was trying to steal somebody's dogs. The Department of Justice is yelping about this, their supporters on Capitol Hill are yelping, and some of their constituencies, like the sheriffs, are all yelping about this. Ridge says he will succeed; he'll be able to do this. But other people are saying otherwise, and you can't help but wonder if he can't do this, if he can't move that one little piece of the Tinkertoy, how is he going to be able to effect larger changes?"

*CNN Washington Anchor, Jeanne Meserve, commenting on post 9/11 anti-terrorism measures.*

♦ ♦ ♦

"Another obstacle in designing an effective homeland security regime is that the goal of Security often runs smack into other things we hold dear as Americans, for instance, the right to know. . . . Both sides here have a legitimate argument. Somehow we have to find balance and rationality and common-sense. . . . We have to thrash problems like this out to devise a system that gives us meaningful security,

not placebos like those Guardsmen in the airport with their guns, but does it in a way that doesn't insult or injure basic values. It is going to be a new tough job."

*CNN Washington Anchor, Jeanne Meserve*

♦ ♦ ♦

"You are people of easily discernible and already repeatedly demonstrated talents. There will always be a great demand for your skills, and there will be times when those demands will require sacrifice on your part. There will be times when those sacrifices will be huge. My sole purpose in recounting for you today my rather distressing medical history is to try to insure that you will recognize those demands as sacrifices, and not just unthinkingly let them become a lifestyle. I have seen too many of our contemporaries get sidetracked in the practice of law. It's very easy in the profession we've chosen to lose sight of the forest because the trees are blocking your view. We have frightening suicide and alcohol rates -- in part at least because we work so hard for success that we often lose sight of the reason we wanted to be successful. The caseload demands more and more of us until our loved ones become people we fit in to whatever time is available between appearances, trials, partnership meetings and negotiations.

"Folks, by definition, we are involved in contests every day. And winning the contest becomes understandably very important. But you can't let it become all-important. You leave behind what's all-important the minute you back out of your garage. Sure, you'll have important cases, and I certainly don't mean to suggest that money is the only reason you're practicing law. But it's money that keeps you interviewing clients at nine o'clock at night or re-writing contracts all weekend. And it's money that drives you to juggle a caseload so big you haven't had a vacation in three years. And it's money that will, if you're not careful, leave you an echo of the miner Robert Service described eighty years ago when he wrote, 'I wanted the gold, and I sought it, I scabbled and mucked like a slave. Was it famine or scurvy -- I fought it; I hurled my youth into a grave. I wanted the gold, and I got it -- came out with a fortune last fall, -- yet somehow life's not what I thought it, And somehow the gold isn't all.'

"That will be you if you aren't careful—

*(Continued on page 10)*

## NOTABLE QUOTES

*(Continued from page 9)*

assuming, that is, that you live long enough to get to that point. Assuming that a heart attack or a stroke or a traffic accident or a disgruntled client or a lousy little bacteria riding a hot streak on a ten-thousand-to-one shot doesn't take you out first. You worked so long and so hard to get to the top of the mountain that it would be a shame not to enjoy the view. Do it. Give yourself some time off. Don't keep putting it off until you finish that big case or business picks up or you resolve that partnership problem or you retire. Enjoy it now. Live your life so that if you have to say goodbye to your loved ones in a hospital room as I did, you can tell them as I did, I wouldn't trade my forty years for anybody else's eighty. If you don't, you're a fool. And I can't believe you got here being a fool. So go back to the office on Monday and have your secretary block out some vacation weeks and tell her or him those weeks are not to be filled in ever, for any reason, no matter what you say. Go home and call your children. If you're lucky enough to have them at home, take them out for a pizza and talk to them. Sit down with your spouse and look through the wedding album. Folks, I'm not asking you to prepare to meet your Maker. I'm not asking you to sell all your belongings and join an Ashram. I'm asking you to invest a little, tiny bit of the commitment that you have been giving your clients for all these years in yourself and your family, and I'm asking you to do it now. Don't wait until you're lying in a hospital room somewhere telling God that, if he'll just get you through this one triple bypass, you're going to change your life. Do it now. You deserve it.

"Look around you. Look at the company you're keeping here. How many people from your fifth grade class have gotten this far. That's success, folks. Measure yourself by your fifth grade class. Don't look around the room and measure yourself by these superstars. That's like getting into the all-star game and feeling bad because you're not Barry Bonds or Roger Clemens. You are a success. There may be other mountains you want to climb, but you are at the top of the mountain. Now, enjoy it. By any reasonable definition of the word, you are a success. I don't care if you are the youngest member of this organization or six months from retirement -- however old you are, you have postponed this too long.

Three thousand people in the World Trade Center thought they had plenty of time. If you can't profit from my example, profit from theirs—because success that isn't shared is like food that isn't eaten. It's just like it never happened. It's just like it was never there. Protect what you've accomplished. Protect it by enjoying it and sharing it with your friends and family. Take a cruise, raft a river, fly to Paris for lunch, teach your granddaughter to fish. Whatever it is that will give you the happiness that you have deserved and earned and probably never allowed yourself, do it. Do it now, tomorrow at the latest."

*Associate Justice William W. Bedsworth, California Court of Appeal, Santa Ana Division*

♦ ♦ ♦

"Now, for the leaders in our profession to call for changes or to call into question these new laws was a challenge, and it was delicate work because, as we know clearly, our governments had public support, including public support in our own profession, for strong measures, and we had to understand that it was impossible for us as lawyers to act as if nothing happened on September 11, or to pretend that freedom could hold the same priority as it had a month ago before. The challenge was to deal with what our people were living through and to develop and keep a sense of proportion in the sense of history. The challenge was to help our governments get it right, to aim squarely at the target, the terrorists, to find our best point of balance so that what had to be could be done, but with the least damage or sacrifice of people's individual liberties. And both our organizations in that spirit made submissions to government and in both cases it was non-partisan and expert and practical and without self interest. Lawyer-client confidentiality, we made clear, was not a favor for lawyers; it is a basic requirement for access to justice.

*Eric Rice, Q.C., President of the Canadian Bar Association.*

♦ ♦ ♦

"The Honorable Mr. Justice Kirby of the High Court of Australia said in October in a speech that terrorism has been a scourge this world over in every one of the last hundred years. The societies that have been most successful against terrorism have refused to play into the terrorists hands. They have maintained a fairness of purpose and deliberation

*(Continued on page 11)*

## NOTABLE QUOTES

*(Continued from page 10)*

that adhere to democracy and the rule of law. These are the ways, he said, to maintain support and confidence in society to protect citizens over the long

haul. Emergency calls might be required at certain times, but every erosion of liberty must be thoroughly justified.”

*Eric Rice, Q.C., President of the Canadian Bar Association. ♦*

# MISSOURI FELLOWS HONOR JUDGES

**F**ellows living in the Eastern District of the Missouri Appellate Court honored the chief judges from their district with a black-tie dinner on January 16 at St. Louis. Shown here are: (L-R) Hon. William Jay Riley, a Judicial Fellow from Omaha who was appointed to the Eighth Circuit in August 2001 and who was able to attend as a guest; Hon. Stephen N. Limbaugh, Jr., Chief Judge of the Missouri Supreme Court; Hon. James R. Dowd, Chief Judge of the Eastern District of the Missouri Court of Appeals; Hon. Bar-

bara Wallace, Presiding Judge of the St. Louis County Circuit Court; Regent Frank N. Gundlach; Hon. Jean C. Hamilton, Chief Judge of the U.S. District Court, Eastern District of Missouri; Hon. Margaret M. Niell, Presiding Judge of the Circuit Court of the City of St. Louis; and Hon. Roger L. Wollman, Chief Judge of the Eighth Circuit Court of Appeals. Fellows Daniel Rabbitt and Gerry Carmody arranged the dinner, and Jim Virtel, as the senior member of the Missouri State Committee, was the master of ceremonies. ♦



Missouri Appellate Court  
Eastern District Chief Judges Honored

## SUPREME COURT REFUSES TO HEAR CASE ON JUDGES' PAY

The U.S. Supreme Court on March 4 denied a writ of certiorari in *Williams, et al v. United States*, dashing hopes for court-ordered cost-of-living adjustments (COLAs) to federal judges for the years 1995-97 and 1999.

The College had filed an *amicus curiae* brief in the case urging the Supreme Court to grant the writ.

The Supreme Court's rules require the votes of at least four Justices to accept a case for review, and the vote on March 4 fell one short. Justices Stephen G. Breyer, Antonin Scalia and Anthony M. Kennedy dissented from the denial of review.

According to the *New York Times*, the Court let stand a 2001 ruling by the D.C. Court of Appeals that Congress did not act unconstitutionally when it blocked raises for judges that would otherwise have taken place automatically four times in the last six years.

The appeals court held that the lawmakers had not violated the provision in Article III of the Constitution that guarantees to federal judges "a compensation which shall not be diminished during their continuance in office."

The College's *amicus* brief had argued 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 *Times* quoted the opinion of the dissenters, written by Justice Breyer: "This case is not about what judges' labor should be worth. It is about a Congressional decision in 1989 to protect federal judges against undue diminishment in real pay by providing cost-of-living adjustments to guarantee that their salaries would not fall too far behind inflation."

The case was brought as a class-action suit by twenty federal judges, led by Spencer Williams, a senior district judge in San Francisco.

In the 1994 budget crisis, President Clinton suspended all federal raises. Congress passed resolutions blocking the congressional, judicial and executive raises in 1995-97 and 1999, although ordinary civil servants received their increases. That led to the judges' lawsuit.

The judges won a ruling in July 1999 in federal District Court in Washington, but the District of Columbia Court of Appeals voted 2-to-1 to overturn that ruling.

Federal judges did receive a 3.4 percent COLA on January 1, 2002, bringing the salaries of district judges to \$150,000; Court of Appeals judges to \$159,100; associate Supreme Court justices, \$184,400; and the chief justice, \$192,600.

The College has consistently supported measures to insure that federal judges are adequately compensated. ♦



# COMMITTEE CONSIDERS E-COMMERCE EFFECTS

**F**or the past two years, the International Committee, acting under the leadership of Committee Chair Mark Alcott, has been examining ways electronic commerce may come to affect the practice of trial lawyers. The expansion of e-commerce has been so obvious and pervasive it was apparent to the Committee that there are significant legal issues posed by this new form of commercial activity that transcend national boundaries.

The Committee initially was curious to know how courts might exercise *in personam* jurisdiction based on conduct in cyberspace. A review of recent case law disclosed that American courts seemed to have little difficulty applying traditional notions of due process when called upon to determine jurisdictional questions. Reported cases have described the vast range of Internet “activity” that may or may not support jurisdiction over the person. At one end of the spectrum is the purely (or relatively pure) passive web-site that just “sits” in cyberspace, waiting for people to find it and initiate their own communications with the site. Predictably, courts have had a relatively little difficulty concluding that the creation and maintenance of a passive web-site does not create jurisdiction. At the other end of the spectrum is the use of web-based technology to reach out affirmatively (by means of software or traditional advertising) to entice consumers to communicate (and avail themselves of the products/services) with the web-site operator. Predictably, courts have not had a difficult time rationalizing the exercise of jurisdiction here. Jurisdictional issues in these situations have been resolved by asking the tried and true question whether somebody was “doing business” in a foreign jurisdiction, either on a general or case-by-case basis. The real problem, as always, has been that large, gray area in between the extremes.

Commerce—let alone electronic commerce—

has become increasingly globalized. It was apparent to the Committee that different cultures and different legal systems might well approach these issues in very different ways. Even modest reflection upon the subject raised serious concern about the possibility that a Canadian or United States citizen might be subject to judgment by a foreign court for money damages supposedly resulting from a “defamatory” comment posted on a web site. The recent exposure of Yahoo! Inc. to criminal prosecution in France for allowing a web-based auction of Nazi memorabilia is but another example of ways that traditional common law notions of jurisdiction are being displaced. In that particular case, a federal district court in California had ruled that Yahoo! was under no obligation to comply with French law regulating Internet content, but a French court disagreed, exercising jurisdiction based on the fact that the website was accessible in France. Having pondered even a few examples such as these, the Committee formed a Task Force to study two threshold issues—choice of law and *in personam* jurisdiction.

The Task Force’s first project was to conduct a thorough literature search. Members quickly were impressed with the scholarly analysis that already has been devoted to the choice of law and jurisdictional implications of cyberspace. These are not simply “U.S. or Canadian problems.” Considerable attention has been devoted to the topic by thoughtful people around the world. Materials reviewed by the Task Force include substantial research and analysis by the International Chamber of Commerce ([www.iccwbo.org](http://www.iccwbo.org)), the World Trade Organization ([www.wto.org](http://www.wto.org)) World Intellectual Property Organization ([www.ecommerce.wipo.int](http://www.ecommerce.wipo.int)), the United Nations Commission on International Trade Laws (“UNCITRAL”) (*see* [www.batnet.com](http://www.batnet.com)), the Internet Law & Policy Forum ([www.ilpf.org](http://www.ilpf.org)), and the Global Business Dialogue on Electronic Com-

(Continued on page 14)

## E-COMMERCE

(Continued from page 13)

merce—an assemblage of chief executive officers from the largest businesses around the world ([www.gbde.org](http://www.gbde.org)). These organizations all have ongoing programs that are addressing the natural tension between promoting the expansion of e-commerce and the maintaining a sense of “fair play” in the exercise of jurisdiction and choice of law for dispute resolution.

The most significant work-product reviewed by the Task Force is a report by the American Bar Association’s “Jurisdiction in Cyberspace Project.” This document is an encyclopedic work that deals comprehensively with jurisdiction and



**Mark Alcott,  
International Committee Chair**

choice of law issues presented by electronic commerce. The compendium is the result of a two-plus year initiative sponsored by the ABA’s Section of Business Law. It can be located on line at [www.abanet.org/buslaw/cyber](http://www.abanet.org/buslaw/cyber). The editorial outline for this report is in the form of a matrix, addressing substantive legal issues and also analyz-

ing how those issues affect various industry segments of electronic commerce.

The Task Force also has been monitoring proceedings of the Hague Conference on Private International Law ([www.hcch.net](http://www.hcch.net)), which since 1992 has been working on the development of a treaty to regularize the enforcement of foreign judgments. That initiative originally had been encouraged by the United States in an attempt to obtain the enforcement of domestic judgments in foreign jurisdictions. The U.S. traditionally has enforced foreign judgments without enjoying reciprocity. As diplomatic efforts proceeded, a draft Hague Convention on Jurisdiction and the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters resulted. The draft treaty contained provisions to normalize attachment of *in personam* jurisdiction. Initial support for the Convention gave rise to optimism for its future.

The current working draft of the Convention legitimizes a contractual “choice of forum” clause, especially in business-to-business transactions. Nevertheless, the enforceability of such a clause would be governed by the law of the forum where a plaintiff elects to file suit, and if a defendant is engaged in “commercial activity” within the territory of that particular forum state, then issues such as “conscionability,” contracts of adhesion, and other applicable “public policies” may be determined by local law. Tort liability could be imposed by the courts of any country in which “the injury arose.” Importantly, the primary purpose of the treaty has been to produce judgments that will be enforced around the globe, which theoretically could result in court decisions of considerable moment being brought to the United States or Canada for enforcement, even though the judgment is grounded on legal principles that offend our traditional notions of fair play.

It is an irony of history that support for a Hague Convention on the enforcement of judgments began to build just as e-commerce began to take hold around the globe. Suddenly, advocates for the expansion of electronic commerce encountered a strong European preference for jurisdiction

(Continued on page 15)

## E-COMMERCE

*(Continued from page 14)*

attaching wherever goods were delivered, while commercial interests voiced an equally strong preference for the “law of the source.” Further, proponents of an open, unrestricted cyberspace grew concerned about the imposition of liability in foreign countries based on torts, such as defamation or interference with contractual relations, committed on the Internet.

An additional factor complicating progress on the draft Hague Convention is the fact American patent and trademark interests are on the opposite side of the jurisdictional issue from those with significant copyright concerns. Copyright holders support an expansion of jurisdiction that would give a new weapon against overseas copyright infringement. In contrast, patent and trademark forces have expressed great concern about resolving intellectual property issues in courts outside the United States. The result of all these divergent views has been an erosion of support for the draft Convention, and today the Convention appears stalemated, while diplomats from the 52 countries that have been working on the draft treaty continue searching for compromises.

Representatives of the United States and other countries actively promoting electronic commerce are exploring ways that the draft Hague Convention might be reduced in scope, perhaps dealing only with the enforcement of judgments based on “business-to-business” contracts that contain a choice of forum provision. That approach would leave jurisdiction in consumer contracts and torts unresolved. And it is unclear whether European interests will agree to scale back the scope of the Convention if there remains any question whether the “law of the destination” will control in consumer transactions. The International Committee plans to continue monitoring diplomatic initiatives aimed at producing a Hague Convention on these jurisdictional issues.

Other Task Force members are: Charles H. Dick, Jr. of San Diego, Joan Lukey of Boston, David Noteware of Dallas, Thomas “Jerry” Greenan of Seattle and Francis X. Grossi, Jr. of Padua, Italy. Fellows with an interest in this participating in the work of the Committee’s Task Force are encouraged to contact Committee Chair Mark Alcott. ♦

---

## FELLOWS IN THE NEWS

College Fellows are nearly always in the news and recent events have proved no exception.

Fellow Jim Brosnahan of San Francisco, a past winner of the College’s Samuel E. Gates Award for contributions to trial and appellate advocacy, is representing John Walker Lindh, the American Taliban.

Past President Earl Silbert is representing former Enron Chairman Kenneth Lay. Past President Bob Fiske and New York Fellow Daniel

Kolb are representing Enron’s auditor, Arthur Andersen. Past President Griffin Bell, a former U.S. Attorney General, served on the Webster Commission to review the FBI’s security measures.

(If you have news of Fellows in action that you think should be included in future issues of *The Bulletin*, please email them to: Marion A. Ellis, Editor. His email address is: [mae6825@bellsouth.net](mailto:mae6825@bellsouth.net).) ♦



California Chief Justice Ron George (L) had a pleasant surprise for Fellows at the 2002 Spring Meeting in La Quinta, California. It was a photograph of College Founder Emil Gumpert and George taken on January 30, 1966, in Beverly Hills on the occasion of Judge Gumpert's performing the wedding for George and his wife, Barbara.

---

## FELLOWS IN PRINT

**F**ellows Kevin F. O'Malley of St. Louis and Judge William C. Lee of Fort Wayne, Indiana, have recently published the 5<sup>th</sup> Edition of O'Malley, Grenig, and Lee *Federal Jury Practice and Instructions* (West Group). This is now a nine-volume treatise on jury instructions in federal court totaling over 6,600 pages.

Fellow Robert D. Rachlin authored a chapter entitled "Finland's Jews and the Final Solution" for a book entitled *Reflections on the Holocaust*, published by the Center for Holocaust Studies of the University of Vermont. The book, published September 2001, is a Festschrift in honor of Raul Hilberg, former University of Vermont professor and international Holocaust authority. ♦



# EIGHTY-EIGHT FELLOWS INDUCTED AT SPRING 2002 MEETING

**ARIZONA:** Phil Gerard and Elliot G. Wolfe, Phoenix; **ARKANSAS:** Donald H. Bacon and Cathleen V. Compton, Little Rock **NORTHERN CALIFORNIA:** Paul A. Brisso, Eureka, Madelyn Chaber, San Francisco, Vincent Galvin, Jr., San Jose, Michael A. Kelly, San Francisco, Richard J. Stratton, San Francisco, Zachary E. Zwerdling, Eureka **SOUTHERN CALIFORNIA:** Bruce A. Broillet, Santa Monica, Gerald Chaleff, Los Angeles, Michael M. Gless, Long Beach, Janet I. Levine, Los Angeles, Dean Steward, Capistrano Beach, Robert K. Warford, Manhattan Beach **COLORADO:** Scott B. McElroy, Boulder **FLORIDA:** John W. Bussey, III, Orlando **GEORGIA:** Edward D. Tolley, Athens **INDIANA:** R. Thomas Bodkin, Evansville, Mary Nold Larimore, Indianapolis, Randall R. Riggs, Indianapolis, Wendell W. Walsh, South Bend **IOWA:** Nan M. Horvat, Des Moines, Richard M. Tucker, Iowa City **KANSAS:** Steve Robison, Wichita; **MAINE:** William J. Kayatta, Jr., Portland, Steven D. Silin, Lewiston **MARYLAND:** Trudy Bartel, Baltimore, Henry E. Dugan, Jr., Timonium, James P. Gleason, Jr., Rockville, Thomas D. Murphy, Rockville, William J. Murphy, Baltimore **MASSACHUSETTS:** Michael D. O'Keefe, Barnstable **MICHIGAN:** Kathleen L. Bogas, Bloomfield Hills, Stephen R. Drew, Grand Rapids; **MINNESOTA:** Donald M. Lewis, Minneapolis **MISSOURI:** J. Bennett Clark and Robert S. Rosenthal, St. Louis **MON-TANA:** A. Clifford Edwards, Billings **NEBRASKA:** Steven E. Achelpohl and E. Terry Sibbersen, Omaha **NEVADA:** Randall Jones, Las Vegas **NEW HAMPSHIRE:** James C. Wheat, Manchester **NEW JERSEY:** Stephen (Skippy) Weinstein, Morristown **OHIO:** J. Michael Monteleone, Cleveland, Robert G. Palmer, Columbus **OREGON:** J. Michael Alexander, Salem **PENNSYLVANIA:** William S. Schweers,

Jr., Pittsburgh **RHODE ISLAND:** Mark B. De-cof, Providence **TENNESSEE:** Richard Buchignani, Memphis, John A. Day, Brentwood, John C. Knowles, Sparta **TEXAS:** Larry D. Carlson, Dallas, Otis Carroll, Tyler, John B. Greer, III, Texarkana, John Howie, Dallas, R. H. Wallace, Jr., Fort Worth, Mark S. Werbner, Dallas **VIRGINIA:** Donald H. Clark, Virginia Beach, Paul B. Ebert, Manassas, Michael E. Harman, Mary M. H. Priddy, Glen Allen, Thomas G. Slater, Jr., Richmond **WASHINGTON:** Gary N. Bloom, Spokane, Dean Brett, Bellingham, Timothy P. Cronin, Spokane, Mabry C. De Buys, Seattle, James B. King, Spokane, Thomas A. Lemly, James S. Rogers, Irwin H. Schwartz, Seattle **WISCONSIN:** Eric J. Van Vugt, Milwaukee, D. James Weis, Rhinelander **WYOMING:** Terry W. Mackey, Cheyenne **ALBERTA:** Alan D. Hunter, Q.C., and Alan D. Macleod, Q.C., Calgary **ATLANTIC PROVINCES:** Bruce Out-house, Q.C., Halifax **BRITISH COLUMBIA:** Geoffrey Cowper, Q.C., Gail M. Dickson, Q.C., David W. Gibbons, Q.C. and William B. Smart, Q.C., Vancouver **ONTARIO:** John B. Laskin, L. David Roebuck, Bonnie A. Tough and Benjamin Zarnett, Toronto **QUEBEC:** Christine A. Carron and Claude-Armand Sheppard, Montreal.

♦ ♦ ♦

Cathleen V. Compton of Little Rock, Arkansas, responded on behalf of the inductees. ♦



# CALENDAR

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

2002

<p><b>June 1–3</b> Executive Committee Meeting JW Marriott Washington, DC</p>	<p><b>August 2–3</b> Iowa Fellows Summer Meeting Bos Landen Conference Center and Resort Pella, IA</p>	<p><b>September 19</b> Vancouver Fellows Annual Black Tie Dinner Vancouver Club Vancouver, BC</p>	<p><b>October 31–November 3</b> Eastern Chairs Workshop Colonial Williamsburg Williamsburg, VA</p>
<p><b>June 7–9</b> Oklahoma Fellows Meeting Hyatt Hill Country Resort San Antonio, TX</p>	<p><b>August 10–14</b> Canadian Bar Association Meeting London, ON</p>	<p><b>September 20</b> Indiana Fellows Annual Dinner Woodstock Country Club Indianapolis, IN</p>	<p><b>November 9</b> Ohio Fellows Annual Dinner Columbus Art Museum Columbus, OH</p>
<p><b>June 14</b> Kentucky Fellows Annual Luncheon Metropolitan Club Covington, KY</p>	<p><b>August 23–24</b> Executive Committee Meeting La Fonda Hotel Santa Fe, NM</p>	<p><b>September 21</b> Michigan Fellows Annual Black Tie Dinner Ritz-Carlton Hotel Dearborn, MI</p>	<p><b>November 21–24</b> Western Chairs Workshop Hotel Del Coronado Coronado, CA</p>
<p><b>June 14</b> Texas Fellows Luncheon Hotel Crescent Court Dallas, TX</p>	<p><b>September 5</b> Georgia Fellows Black Tie Dinner Piedmont Driving Club Atlanta, GA</p>	<p><b>September 27–28</b> Wisconsin Fellows Annual Meeting and Banquet Fluno Center Madison, WI</p>	<p>December 2 Southwest PA Fellows Annual Christmas Dinner Carlton Restaurant Pittsburgh, PA</p>
<p><b>June 14–16</b> Northeast Regional Meeting Black Point Inn Prout's Neck, ME</p>	<p><b>September 6</b> Nebraska Fellows Golf Outing and Dinner TBA Omaha, NE</p>	<p><b>October 5–6</b> Kansas Fellows Annual Fall Meeting Fairmont Hotel Kansas City, MO</p>	<p><b>December 4</b> Washington State Fellows Annual Christmas Dinner Broadmoor Golf Club Seattle, WA</p>
<p><b>June 15</b> Tennessee Fellows Dinner Mountain City Club Chattanooga, TN</p>	<p><b>September 6–8</b> New Mexico Fellows Meeting Hyatt Regency Tamaya Resort Near Albuquerque, NM</p>	<p><b>October 13</b> Executive Committee Meeting The Waldorf-Astoria New York, NY</p>	<p><b>December 5</b> Oregon State Fellows Annual Dinner Heathman Hotel Portland, OR</p>
<p><b>June 21</b> Florida Fellows Annual Dinner Boca Raton Resort &amp; Club Boca Raton, FL</p>	<p><b>September 12</b> Missouri Fellows Annual Dinner TBA Kansas City, MO</p>	<p><b>October 13–16</b> Board of Regents Meeting The Waldorf-Astoria New York, NY</p>	<p><b>December 6</b> Mississippi Fellows Annual Black Tie Dinner TBD</p>
<p><b>June 21</b> District of Columbia Fellows Annual Dinner Columbia Country Club Washington, DC</p>	<p><b>September 14</b> DC and Maryland Fellows Joint Meeting Great Hall Supreme Court of the United States Washington, DC</p>	<p><b>October 17–20</b> Annual Meeting The Waldorf-Astoria New York, NY</p>	<p><b>December 7</b> Louisiana Fellows Annual Dinner TBD</p>
<p><b>July 28–30</b> Northwest Regional Meeting Four Seasons Olympic Seattle, WA</p>			

## 2003

<p><b>January 17–19</b> Emil Gumpert Committee Meeting The Ritz-Carlton Hotel New Orleans, LA</p> <p><b>February 7</b> Virginia Fellows Annual Meeting TBD</p>	<p><b>February 20–23</b> North Carolina and South Carolina Annual Meeting The Cloister Sea Island, GA</p> <p><b>March 16–19</b> Board of Regents Meeting Boca Raton Resort and Club Boca Raton, FL</p>	<p><b>March 20–23</b> Spring Meeting Boca Raton Resort and Club Boca Raton, FL</p> <p><b>July 31–August 3</b> Northwest Regional Meeting Jasper Park Lodge Jasper, Canada</p>	<p><b>October 26-29</b> Board of Regents Meeting Montreal, Canada</p> <p><b>October 29--November 1</b> Annual Meeting Fairmont Hotel Montreal, Canada</p>
--	--	---	---

## BLASTS FROM THE PAST— LOOKING BACK 10 AND 25 YEARS AGO

### TEN YEARS AGO

In 1992, the College held its annual meeting in London and Paris. Fulton W. “Bill” Haight was installed as President in London and began a push for more activities by state and province committees of the College. The meeting concluded with a seated dinner in the Hall of Battles at Versailles.

### TWENTY-FIVE YEARS AGO

In 1977, the College’s Annual Meeting was held in Chicago, where Kraft W. Eidman of Houston was installed as President. That same year the College became embroiled in recommended changes in

the attorney-client privilege portion of Model Rules of Professional Conduct.

The ABA’s Kutak Commission held hearings and the College opposed two major provisions that would require lawyers in certain instances to divulge what they had learned from confidential communications with clients, both individuals and corporations.

A task force from the College, headed by John Elam of Columbus, participated in a debate before the ABA House of Delegates to argue against changes that would dilute attorney-client relations.

Eventually those changes were not adopted.  
(From *Sages of Their Craft, the First Fifty Years of the American College of Trial Lawyers.*) ♦

## REGENTS RETREAT TO CONSIDER FUTURE

The Board of Regents has scheduled a retreat in mid-May to conduct a thorough examination of every major aspect of the College and its programs. Topics to be discussed range from the future of the adversarial trial process and its impact on the College to the maintenance of collegiality in a growing organization.

Several years in the planning, the retreat will

include the Board of Regents, the past presidents and one or more members of the committee assigned to study each topic. Those committees have prepared and circulated papers to provide a basis for discussion.

Previous retreats have served to ensure that the College maintains its relevance in the face of a changing profession. ♦

# THE PRESIDENT'S REPORT



Stuart Shanor,  
President

**A**s trial lawyers, we derive great satisfaction and inspiration from observing the next generation master the skills of advocacy. I have had numerous wonderful experiences since taking office last October, but three events have been particular highlights of these last six months. These activities, in which the College is a participant and of which it is a sponsor, truly advance one of the primary missions of the College, the improvement of the trial practice. The College is a co-sponsor with the Association of the Bar of the City of New York of the National Moot Court Competition. With the Texas Young Lawyers Division it is sponsor of the National Trial Competition. And the College bestows the Emil Gumpert Award, which includes a \$50,000 stipend, on the most deserving law school trial advocacy program. More recently, the College has increased its role with respect to the Gale Cup Competition and the Sopinka Cup Competition, the Canadian competitions for appellate and trial advocacy, respectively.

My remarks in this message are directed primarily toward the United States events, because I had the honor of being personally involved with each of these events. Scheduling conflicts pre-

vented me from participating in the Canadian competitions, and President-Elect Warren Lightfoot and Past President Lively Wilson represented the College at those events.

Many of you may not know that the President of the College sits as a judge on the panel of judges that hears the final arguments in the National Moot Court Competition and that the President of the College is the presiding trial judge at the finals of the National Trial Competition. Thus, in January, I sat on the Supreme Court, of which Judge John Walker of the Second Circuit Court of Appeals was the presiding judge, of the National Moot Court finals, and heard two splendid teams argue a very current constitutional issue. These young law students were, of course, the best of the best, but they reflected the skills of more seasoned lawyers. The panel of judges was very tough and unrelenting. With great composure, presence of mind and oral advocacy skills, these law students faced the most difficult court that they will ever face in their careers.

In April, I served as the presiding judge at the final trial in the National Trial Competition. Again, the participating law students were the best of the best, but they exemplified trial skills being mastered by law students in law school advocacy programs throughout the United States and Canada. The skills they were called on to demonstrate included pretrial motion argument, opening statements, direct and cross examination, closing argument and handling difficult witnesses. Again, I witnessed trial practice skills that were already honed and sharpened and ready for application to that real case.

Finally, at the end of April, I traveled to Philadelphia to present the Emil Gumpert Award to Temple Law School in recognition of its outstanding trial advocacy program. The selection of the recipient of this award is done by a College committee which thoroughly investigates and evaluates law school programs, including onsite inspections, and compares them to those of other

*(Continued on page 21)*

## THE PRESIDENT'S REPORT

*(Continued from page 20)*

law schools. Obviously, Temple was judged to have the best program, and it certainly was most deserving of the Emil Gumpert Award. However, the Temple program exemplifies what is being done in law schools all across the country in terms of teaching trial advocacy skills. In my address to the Temple faculty and students, I quoted from Chief Justice Warren Burger who once said that "trial skills cannot be learned in the law schools and cannot be taught by professors." I made note of the fact, however, that, with the changing landscape of the trial practice, neither the private nor the public sector of the bar is able to give young lawyers the introduction and exposure to trial practice that many of us, fortunately, received in the early years of our practice in another day and time. What I observed first-hand at these competitions and in reviewing the Temple Law School program was an example of what the law schools have done to fill the void. It is my observation that, contrary to the comment of Chief Justice Burger, trial skills *can* be taught in the law schools and trial skills *can* be taught by professors.

Interestingly, most, if not all, of the better trial advocacy programs in the law schools also draw on members of the practicing bar as adjunct professors and as coaches for competition teams. This is where we as Fellows of the American College of Trial Lawyers come in. What better, more fulfilling, more satisfying endeavor could there be for one of us than to contribute to the creation, the molding if you will, of the next generation of trial lawyers? This is our special calling, and it is something that each one of us can do on a local level.

Our service need not be only teaching a course in a law school. It can also take the form of programs for younger practicing lawyers such as public interest lawyers or others who may not have the resources to attend this type of program or may not have access to mentors with the level of skills that the members of this organization bring to the table.

The program developed by the College Committee on the Teaching of Trial and Appellate Ad-

vocacy is a perfect model for the type of program that I have in mind. I would urge all Fellows in the College to take personal responsibility for forming a nucleus of teachers and, in coordination with your state or province committees, volunteering to take on teaching assignments such as those suggested in this message. Do not forget that as you undertake this type of endeavor you will have the opportunity to inculcate a new generation with the ACTL Code of Trial Conduct and with lessons of a lifetime in civility and professionalism.

♦ ♦ ♦

Ellen and I have had the most extraordinary experiences as we have traveled back and forth across the United States and Canada, visiting the meetings of the Fellows. We have been warmly greeted and hospitably entertained at each stop. We will forever cherish the new friendships we have made and the memories of the places we have seen. We truly do have a new horizon in our lives. However, the most important thing to us has been the fact that we have not just been welcomed to your midst. We have really felt that it was important to you that we were there. You have genuinely made us feel that the presence of a national officer at your meetings is important. And that makes all the difference in the world to the Shanors.

I must add one word of lament. The average age of the Fellows in the College does not seem to be getting any younger. At the last Board of Regents Meeting where candidates for fellowship in the College were considered, we noted that the average age of the nominees was 54 and the average time in practice was 27 years. These statistics do not portend well for the future vitality of the College.

Retirement now comes for many at an earlier age, and the rigors of the active trial practice in this day and age have caused many of our Fellows to pass the baton to younger lawyers. The College needs as members younger lawyers of wide diversity in order that we might retain our position as

*(Continued on page 22)*

## THE PRESIDENT'S REPORT

*(Continued from page 21)*

the preeminent trial lawyer organization. We need your help in identifying and nominating deserving young trial lawyers who should be in the College. There are many who, by their mid 40s, have achieved the level of skill and experience to

be worthy of fellowship. We should be searching out these lawyers and bringing them into our midst. They will add luster and energy to our gatherings.

Please do your part. ♦

*Stuart Shanor, President*

---

## NORTHEAST FELLOWS HONOR THE FRYMANS

The Fellows of the Northeast Region honored former Regent Lou Fryman and his wife Rhoda for past service to the College at an April 27 dinner in Wilmington, Delaware.

Fryman received a standing ovation when he was presented with a special plaque from Regent

Dennis Suplee, aided by New Jersey Chair Richard Brennan and Fellow Art Connolly of Delaware.

Fellows from the region who had died during the year also were honored with a moment of silence. ♦

---

## TRIAL SKILLS COURSES ARE BEING OFFERED—MATERIALS AVAILABLE

The Fellows in several states, working through their State Committees, have recently conducted trial skills courses for public interest lawyers. The most recent program, given by the Texas Fellows under the leadership of Terry Tottenham of Austin, Texas, chair of the Teaching of Trial and Appellate Advocacy Committee, attracted much positive response.

Conducted in the Kraft W. Eidman Courtroom at the University of Texas Law School on March 1, the program exposed the participants to twelve distinguished Fellows of the College, including Tottenham, Regent David Beck, former

Regent Wayne Fisher and Federal District Judge Barbara Lynn.

Fellows in New York and South Carolina had earlier held similar training sessions.

Typically, budgetary restraints make it difficult for trial lawyers working for public interest organizations to get this type of training.

The Board of Regents at its Spring meeting unanimously endorsed a statement strongly encouraging State and Province Committees to consider offering such programs in their own areas. To aid this effort, a package of the materials from the Texas program is being made available to each of them. ♦

# JUDICIAL INDEPENDENCE AFFIRMED IN PENNSYLVANIA

In early January, 2002, the Executive Committee approved the request of the Pennsylvania State Committee to issue a statement in support of judicial independence to counter harsh criticism of an Eastern District of Pennsylvania judge who granted in part the habeas corpus petition of a man convicted of killing a police officer.

**The Background.** On December 9, 1981, Officer Daniel Faulkner was shot and killed in Center City Philadelphia as a result of events that started with his stop of a vehicle owned by William Cook. The evidence tended to show that, as Officer Faulkner struggled with Cook, he was shot in the back by Abu-Jamal, Cook's brother; that Officer Faulkner managed to turn and shoot Abu-Jamal in the chest; and that Abu-Jamal then stood over the officer and shot him four more times, once between the eyes, as he lay defenseless on the ground.

Abu-Jamal was tried and convicted by a Court of Common Pleas jury and sentenced to death. Efforts in state court to overturn the conviction and sentence were unsuccessful.

Over time the case became an international cause célèbre.

On the one hand, Abu-Jamal's supporters, including prominent Hollywood celebrities, argued that he is innocent and, in any event, should not have been sentenced to death. The Paris City Council voted to make him an honorary citizen. On the other hand, supporters of the victim contended that Abu-Jamal is "a cop killer," for whom nothing less than the death penalty would be adequate.

**The Judge's Ruling.** On December 18, 2001, Judge William H. Yohn, Jr., issued a 272-page Opinion in which he rejected 28 of 29 grounds for relief asserted in Abu-Jamal's habeas corpus petition. The Judge ruled in Abu-Jamal's favor on one ground only: that the jury charge and verdict form created a reasonable likelihood that the ju-

rors believed that they were precluded from considering a mitigating circumstance unless they found unanimously that such circumstance was present. Accordingly, the Judge ruled that if the Commonwealth did not provide a new sentencing hearing within 180 days, Abu-Jamal's sentence should be life in prison.

**The Public Reaction.** As a result of such ruling, Judge Yohn drew harsh criticism from both sides, but particularly from those aligned with the police. In widely reported comments, the victim's widow described Judge Yohn as "a sick and twisted person." The President of the Fraternal Order of Police described the ruling as "an entire abortion of justice."

**The Proposed Statement.** The statement proposed by the State Committee, and approved by the Executive Committee, did not comment upon the correctness of Judge Yohn's ruling, but explained the importance of the principle of judicial independence.

In spite of the virulence of the initial reaction, the attacks upon Judge Yohn abated within several days. Accordingly, the State Committee decided not to issue its statement, thereby reviving the controversy; the Committee may well issue the statement when public attention is again focused on the case at the time of the sentencing hearing.

The Regents are open to requests for permission to take action of this sort where the Fellows in a State or Province believe that one of the principles the College supports is under attack. ♦



## REPORTED DEATHS

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

Malcolm Archbald of Santa Barbara, California; Lee E. Bains of Bessemer, Alabama; A. Camp Bonds, Sr., of Muskogee, Oklahoma; Caywood J. "Dag" Borrer of San Bernardino, California; Don C. Brown of Riverside, California; Joseph D. Bulman of Bethesda, Maryland; H. R. Burnham of Anniston, Alabama; Robert Bond "Bob" Byrd of Morganton, North Carolina; Thomas D. Caldwell, Jr. of Wormleysburg, Pennsylvania; Thomas Colas Carroll of Philadelphia, Pennsylvania; Charles E. Channing, Jr. of Lanham, Maryland; John L. Collins of Lansing, Michigan; William T. Covington, Jr. of Charlotte, North Carolina; Jimason J. Daggett of Marianna, Arkansas; James O. Dukes of Gulfport, Mississippi; Honorable William L. Dwyer of Seattle, Washington; J. Pelham Ferrell of Phenix City, Alabama; Duane D. Fitzgerald of Bath, Maine; David Goldwater of Las Vegas, Nevada; Ernest W. Graves of Jackson, Mississippi; Darrell L. Ha-

vener of Englewood, Colorado; Lyman G. Hughes of Dallas, Texas; Richard Hunter of Waukesha, Wisconsin; Samuel E. Klein of Philadelphia, Pennsylvania; Raymond G. Lamb of San Dimas, California; Mr. Justice Paul Lamek of Toronto, Ontario; James A. Lane of Ogallaia, Nebraska; Howard M. McBee of Norman, Oklahoma; James H. McKenzie of Prescott, Arkansas; Charles R. Melli, Jr. of Paramus, New Jersey; William P. "Rocky" Mueller of Chappell, Nebraska; Samuel W. Murphy, Jr. of Boca Grande, Florida; Robert F. Novis of Toms River, New Jersey; Bruno J. Pateras of Montreal, Quebec; Gerald S. Rufer of Fergus Falls, Minnesota; John D. St. Clair of Millbrae, California; Jerome G. Shapiro of New York, New York; Hon. Stanley C. Soderland of Seattle, Washington; Former Regent John H. Stenger of Buffalo, New York; Jerome H. Torshen of Chicago, Illinois; Forrest L. Tozer of Chicago, Illinois; Sherman S. Welpton, Jr. of Los Angeles, California; Justice Byron Raymond White of Washington, District of Columbia; Francis J. Wilcox of Eau Claire, Wisconsin; Hon. Henry Woods of Little Rock, Arkansas. ♦

## BRIAN P. CROSBY CHOSEN NEW REGENT

The Board of Regents, acting on the recommendation of the nominating committee, has selected Brian P. Crosby of Buffalo, New York, as a new Regent to replace Robert Armstrong of Ottawa, Ontario, who was recently appointed to the Court of Appeal for Ontario.

Crosby of Gibson, McAskill & Crosby, is a 1967 graduate of Niagara University and received his J.D. from Fordham University in 1970. He

then served as a captain, Judge Advocate, in the Marines from 1971-73. He was selected among the "Best Lawyers in America, 1995-2001" in personal injury and malpractice law.

He was inducted into the College in 1996.

Under Section 5.6 of the College Bylaws, Crosby will serve until the next Annual Meeting, when the post will be filled for a four-year term by election of the Fellows. ♦



## IN MEMORIAM

*(Continued from page 4)*

and diligent representation of his clients' causes characterized his practice." Friends for a half century, both Stevens and Tone were among the finalists for the vacancy created on the United States Supreme Court upon the retirement of Justice William O. Douglas.

Judge Tone's practice with Jenner & Block was long and productive and a special memorial service was held at the law firm on November 30, 2001, at which time many of his partners and friends paid tribute to his many talents as a lawyer, a citizen and a friend. Jerold Solovy, Chairman of Jenner & Block, said that Judge Tone "insisted that legal writing can't be mean spirited because not only is it uncivil, but it is not good advocacy on behalf of clients. To this day, in my legal briefs, I strike the word 'false' when referring to the opponent's argument and replace it with the word 'incorrect,'" all as instructed by Judge Tone.

As President of the American College of Trial

Lawyers he was an enthusiastic leader and traveler for the College, whether at regional meetings or abroad. Judge Tone and Gretchen, enjoyed their various trips for College functions including, particularly, the induction of then Prime Minister Margaret Thatcher as a Fellow of the College. On that occasion the Prime Minister called attention to the beautiful silver on the table at No. 10 Downing Street and she said, "We got the silver out of the vault to honor America."

Judge Tone, the son of a lawyer and judge, naturally followed his father and his uncle into the law and, in turn, all three of his children became lawyers.

Survivors include his wife of 56 years, Gretchen, his sons, Jeffrey and Michael, and his daughter, Susan Pierce, and eight grandchildren.

Judge Tone happily will be remembered for his leadership of the College and for his three passions, namely, his family, the law and golf.

*R. Harvey Chappell, Jr.  
Richmond, Virginia. ♦*

## AMERICAN COLLEGE OF BARRISTERS CHANGES NAME

A number of Fellows have recently received invitations to join an organization called the "American College of Barristers," headquartered in Raleigh, North Carolina. Noting the similarity of the name to that of the American College of Trial Lawyers, several invitees expressed concern to the ACTL leadership about the possibility of confusion.

After investigation, the ACTL Executive Committee directed that a communication be sent, demanding that this organization cease and desist from using a name and mark similar to that of the ACTL.

In response to a letter from Fellow J. Donald

Cowan, Jr., who practices in Raleigh, to the American College of Barristers, the ACTL was informed that that organization was already in the process of changing its name to the "College of Master Advocates and Barristers," with the designation "An International Honor Society" and that it will issue new certificates bearing that name to its members.

The American College of Trial Lawyers has vigorously protected its name against the use of confusingly similar names by other legal organizations. It is indebted to the Fellows who brought this instance of potential confusion to the attention of the College's leaders. ♦

# “PRIESTS OF THE PROFESSION” —JIM COLEMAN

Calling members of the College “the priests of the profession” James E. Coleman, Jr. received the Samuel E. Gates Litigation Award at the Spring Meeting on March 15 at La Quinta, California.

“If not us—who?” Coleman said, lamenting the fact that the legal profession had deteriorated since he began practicing law in 1952.

In a stirring speech that called for restoration of professionalism and civility, Coleman, a Fellow from Dallas, outlined changes that have led to a diminished image of lawyers.

“I believe the root cause is the disappearance of idealism in the profession,” he said. “The more I’ve thought about it, the more convinced I’ve become—you cannot have a true profession without idealism. Like you can’t have a real marriage without love—you can’t have a partnership without trust—you can’t have a faith without belief—and you can’t have a profession without idealism.

“You cannot have a true profession if the members do not believe they are engaged in a high calling. They must believe the purpose of the profession rises above money, fame, or self aggrandizement. To be a profession, the members must respect others who are also serving the high calling of the profession. To be a profession, the

---

*“You cannot have a true profession if the members do not believe they are engaged in a high calling.”*

---

members must feel they are privileged to represent the profession and to be associated with other people who are of like mind and purpose. A true profession has no junkyard dogs, no obstructionists, no mercenaries, no gotchas, no intimidators, no rude bullies, because there is no idealism associated with any of those characteristics.”

After describing the factors that lead to the demise of professionalism and civility, Coleman proceeded to outline his recommendations for improvement.

“First, we can encourage the law schools to teach a full course in professionalism that emphasizes the meaning and responsibilities of being a lawyer,” he said. “If the practice of the law is to



James E. Coleman, Jr., recipient of Samuel E. Gates Litigation Award

remain a profession, this may be the most important course on the law school curriculum.” His law school alma mater, The University of Virginia Law School is considering such a program, he said, and the Texas Center for Legal Ethics and Professionalism has plans to encourage other law schools to institute similar programs.

Coleman said other changes could be to ex-

*(Continued on page 27)*

## “PRIESTS OF THE PROFESSION”

(Continued from page 26)

pand the influences of organizations such as the American Inns of Court to bring younger lawyers in contact with dedicated, idealistic professionals, and state and local bar associations could require CLE credits in courses on civility and ideals of the profession.

*“The serpent in our paradise is our indolence in perpetuating and passing from one generation of lawyers to the next the idealism of the profession.”*

“And finally,” he said, “we can constantly remind each other how much we need to emphasize the idealism of the profession and project what a wonderful life it would be to practice law in

accordance with the tenants of those ideals.”

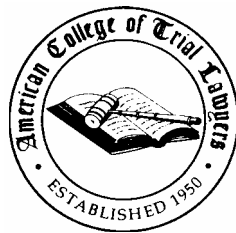
The College or the American Bar Association could adopt the Big Brother/Big Sister model for teaching the ideals of the profession to younger lawyers, Coleman said.

“A lunch once a month, a visit to your office, an invitation to your house for dinner—anything

that would involve the older lawyer with the younger lawyer, so they could talk about the idealism of the profession: the true meaning of being a lawyer; how society has depended so heavily upon lawyers in the past; the virtue and honor that are the real trademarks of a good lawyer.”

Reform is badly needed, Coleman said: “The serpent in our paradise is our indolence in perpetuating and passing from one generation of lawyers to the next the idealism of the profession. We can change this! We are the priests of the profession. If not us—who? And remember, as you help young lawyers grow, as you work for ethics, civility, and honor; your influence will merge, with the good influences of lawyers of past generations, into the eternal stream of a true profession—ripe with idealism. What sculpture is to marble, idealism is to the legal profession.”

The College created the Samuel E. Gates Litigation Award in 1980 in honor of Samuel E. Gates of New York City who was President-Elect of the College but died before he was able to take office in 1979. The award, which is given only in exceptional cases and not on an annual basis, honors a lawyer who had made a significant contribution to the improvement of the litigation process. ♦



## FELLOWS TO THE BENCH

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

**ROBERT P. ARMSTRONG** to the Court of Appeal for Ontario, Toronto, Ontario, Canada.

**RALPH ARTIGLIERE** to State Circuit, Bar-

tow, Florida.

**LARRY R. HICKS** to United States District Court for the District of Nevada.

**CAROLYN S. OSTBY** to United States Magistrate Judge for the District of Montana, Great Falls, Montana. ♦

---

# The Bulletin

of the

American College of Trial Lawyers

19900 MacArthur Boulevard, Suite 610

Irvine, California 92612

BULK RATE  
U.S. POSTAGE  
**PAID**  
Charlotte NC  
Permit No. 3840

---

## *Table of Contents:*

From the Editorial Board, 2	Fellows in the News, 15	Trial Skills Courses Offered, 22
New York Meeting Set, 3	Ron George and Emil Gumpert photo, 16	Northeast Fellows Honor Frymans, 22
In Memoriam, 4	Fellows in Print, 16	Pennsylvania Judicial Independence Affirmed, 23
College's 52nd Spring Meeting, 5	New Inductees, 17	Reported Deaths, 24
Notable Quotes, 6	Calendar, 18	New Regent Chosen, 24
Missouri Fellows Honor Judges, 11	Blasts from the Past, 19	American College of Barristers Changes Name, 25
Supreme Court Refuses Judges' Pay Case, 12	Regents Retreat, 19	Fellows to the Bench, 27
Committee Considers E-commerce, 13	President's Report, 20	The Priests of the Profession, 26