



The Bulletin

Number 43, Spring 2003



Speakers at New York City Annual Meeting
Included Justice Stephen Breyer (center), FBI Director Robert Mueller (top left), Mayor Michael Bloomberg (top right), Former U.S. Prosecutor Mary Jo White (bottom right) and Equal Justice Initiative Director Bryan Stevenson (bottom left).

American College of Trial Lawyers The Bulletin

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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

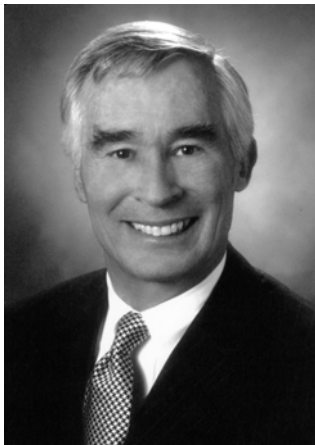
Continuing our attempt to give those Fellows who do not attend all our annual meetings some of the flavor of the events, a major part of this issue is devoted to the highlights of the 52nd annual meeting held in New York City in October.

The programs at the College's meetings have traditionally given the attendees, both Fellows and their guests, something other than the usual fare of professional meetings, something to take home with them as inspiration and as food for further thought.

We hope that you will find this account of the New York meeting well worth your time to read.

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THE PRESIDENT'S REPORT— A BUSY BUT ENJOYABLE SCHEDULE



Warren B. Lightfoot

As Robbie and I travel around this continent to College meetings, I have been particularly impressed with two aspects. One is how interesting and accomplished our Fellows and spouses are, wherever we go.

- ♦ In Montreal, Richard and Hildie Shadley, along with Lynne Kassie and her husband, Dr. Issie Weissglas, hosted the Quebec Fellows one evening and the next night showed us the very best of the old city's charm.

- ♦ In Great Falls, Montana, Steve and Bev Foster accompanied us on a long walk along the Missouri River (where Lewis and Clark portaged) and hosted a tour of the C.M. Russell Museum, followed by a delightful dinner for the Montana Fellows at the Lewis and Clark Exposition Center.

- ♦ Kansas City was a splendid place to visit with the Kansas Fellows, and the Deacys and Dick and Bonnie Honeyman went out of their way to look after us.

- ♦ The museum dinner in Columbus, Ohio, was an elegant evening; Roger and Pat Fry were our hosts and Carol and Alan Radnor showed us around Columbus.

- ♦ In Seattle Chuck and Peggy Gordon had each potential inductee individually introduced at a very enjoyable Washington Fellows dinner.

- ♦ In Portland I stayed at Mike and Mary Jo King's mountaintop aerie, and Mike adjourned a trial to give me a sound thrashing on the tennis court; the Oregon Fellows dinner was successfully arranged by Tom and Andrea Tongue and Paul and Carol Fortino.

- ♦ We had an excellent turnout in Jackson where Sonny and Carolyn Gwin were hosts for the Mississippi Fellows.

- ♦ Antoine's in New Orleans gave Herschel and Mary Richard a superb setting for the Louisiana Fellows dinner.

- ♦ A little snow was still on the ground in Princeton, where the New Jersey Fellows, led by Dick and Pam Brennan, always enjoy themselves.

- ♦ And Salt Lake City had a high percentage of its Fellows attend when Fran Wikstrom and Linda Jones hosted the Utah Fellows dinner.

♦ ♦ ♦

What a multi-dimensional group we have in our College! Some of us are musicians, some are artists, some are linguists, others are world class cyclists, many are skiers, some are accomplished hunters, all love history, literature and travel, and they all love the College.

(Continued on page 19)

STARS COME OUT FOR NEW YORK MEETING

September 11 was very much on the minds of the 1,123 Fellows and guests who gathered at the Waldorf-Astoria Hotel in New York City October 17-19 for the 52nd Annual Meeting of the College. For many, it was their first visit to New York since the attack on the World Trade Center.

The nave of the Cathedral of St. John the Divine was the scene of a welcoming reception. The gothic splendor of that magnificent structure was reminiscent of an earlier era when the great cathedrals of Europe were the center of religious and secular life.

Following the College's tradition, President-Elect Warren B. Lightfoot had gathered a group of thought-provoking speakers.

♦ Mayor Michael R. Bloomberg, welcomed the delegates and spoke of his city's miraculous recovery from September 11, paying special tribute to the role of the private bar in that recovery. His remarks about the impact of exorbitant tort judgments—about \$560 million in fiscal year 2001—on the New York City budget were widely reported in the press. He left the Fellows with a plea that they respond to this economic crisis as they had to the earlier 9/11 crisis.

♦ Robert S. Mueller III, FACTL, Director of the Federal Bureau of Investigation, spoke on the challenges in facing terrorism, how the FBI is responding to that challenge and how, as a society, we protect our homeland, our national security and our civil liberties.

♦ Mary Jo White, FACTL, former United States Attorney for the Southern District of New York, spoke on the criminal justice response to terrorism. Recounting the

terrorism cases that had been prosecuted in the Southern District of New York, beginning with the trial of those responsible for the 1993 World Trade Center bombing and including the 1998 bombing of the United States embassies in Kenya and Tanzania, as well as trials of twenty other terrorists whose plots were thwarted, she reflected on the things we have learned from those trials about the terrorist threat.

♦ The College bestowed an honorary fellowship on Lord Phillips of Worth Matravers, Master of the Rolls, who presides over the Civil Division of the Court of Appeal in London. With classic dry British humor, Lord Phillips recounted the history of his office, using some of his illustrious (and in some cases notorious) predecessors to illustrate his remarks.

♦ Philip K. Howard, lawyer, civic leader, head of the Coalition for the Common Good and the author of *The Death of Common Sense* and *The Collapse of the Common Good*, spoke of the problems his organization sees in our litigious society, notably how the fear of litigation is paralyzing society and impairing the ordinary exercise of judgment.

Law student competitions have traditionally been a major facet of the College's agenda. Winning teams from National Trial Competitions in the United States and Canada and the National Moot Court Competitions in both countries and the best oralists from each of those competitions were honored on the College program.

On Friday night the Fellows and their guests were treated to a live concert, entitled A Salute to Broadway, at a reception and dinner, followed by dancing in the Waldorf ballroom.

John L. McGoldrick, FACTL, Executive Vice President and General Counsel of

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NEW YORK MEETING

(Continued from page 4)

Bristol-Myers Squibb, led off the Saturday morning program. His penetrating observations and reflections on the profession from the vantage point of both advocate and client set the tone for several presentations that followed.

Henry G. Miller, FACTL, author, playwright, actor, teacher, raconteur, dancer, trial lawyer and former Regent, in a *tour de force*, delivered a monologue of excerpts from the trial summations of Clarence Darrow to illustrate the qualities that made Darrow a dominant figure in the history of American jurisprudence.

President Stuart Shanor individually recognized the retiring Regents and their spouses as their four years of service ended.

Bryan A. Stevenson, Executive Director of the Equal Justice Initiative of Alabama, gave a stirring account of his work, dedicated, as Past President Leon Silverman pointed out in his introduction, to representing in capital cases the poor, the weak, the deprived and the victims of discrimination.

The Saturday morning program ended with an address by Associate Justice Stephen Breyer, JFACTL, who reflected on his eight years on the United States Supreme Court and on the insights that experience has given him into the nature of our system of government.

The annual business meeting of the College, at which new Regents were elected, and the reorganization meeting of the Board of Regents, at which new officers were elected, followed the Saturday morning session. Elected were Warren B. Lightfoot, President, David W. Scott, Q.C., President-Elect, Michael A. Cooper, Secretary, and James W. Morris, III, Treasurer.

The College has made a concerted effort to make the induction of new Fellows more meaningful, recognizing that it is a once-in-a-lifetime event for the inductees. The officers

of the College hosted a breakfast where the inductees were introduced to the workings of the College. In addition, the inductees and their spouses and guests were entertained at a luncheon with the Regents and Past Presidents where they heard Dean Andy Coats of the University of Oklahoma School of Law describe the College from the perspective of a past president.

As the inductees filed on stage for the induction ceremony at the annual banquet, President Stuart Shanor read out the name of each. Then, with all the past presidents in attendance facing the inductees, Past President Coats read the time-honored induction charge, authored by founder and Chancellor Emil Gumpert.

Seth P. Waxman, former Solicitor General of the United States, responded on behalf of the inductees.

As goodbyes were said, many of the Fellows vowed to meet again at the Spring Meeting March 20-23 in Boca Raton. ♦



Session at Waldorf



NOTABLE QUOTES

FROM THE 2002 ANNUAL MEETING

ABOUT NEW YORK CITY

Thirteen months after the attack on the World Trade Center, New York actually is coming back strong. We have fiscal problems, but if you have some time, I would encourage you to go downtown and take a look at Ground Zero. You will see the terrible damage that was done, but you will more importantly also get a chance to see the rebuilding process. We, in an awful lot less time than anybody anticipated, at forty percent of the projected cost, with absolutely no loss of life, . . . recovered all the remains possible and cleared all the rubble. . . .

Everybody knows the problems of getting federal, state and local governments to work together. Well, in this case, they did work together. Everybody knows the problems of politics, and we live in a partisan world. All the partisanship was put aside. And people know the problems of labor and management. All of that was put aside, too. And so you really had everybody coming together, including the legal community.

*The Honorable Michael R. Bloomberg,
Mayor of New York City*



Mayor Bloomberg



It is an enormous pleasure for my wife and me to be here back in New York as your

guests in a style to which I must confess we are not accustomed, a pleasure, but a poignant



Lord Phillips

pleasure, because in this wonderful, bustling and apparently normal city it is impossible to forget for a moment the horror of the events of just over a year ago.

*Lord Phillips of Worth Matravers,
Master of the Rolls, accepting an Honorary
Fellowship in the College*



I am unabashed in saying to you that I love New York its pulse, its craziness, its crowded streets and subways, all of the hackneyed things which are nonetheless very real. It is, with all faults, one of the world's wonderful places, perhaps the greatest. . . . The town has been, as you know, scarred, shocked a year ago. I remember that day, as all of us do, and a particular image comes to my mind. This hotel [the Waldorf-Astoria] brackets two of this city's great streets, Park Avenue and Lexington Avenue, and by mid-morning, after we had figured out how to deal with our own employees and what was likely happening, I took a minute to just look out the window, and I'll never forget the scene, even this far North, of people streaming out those two great avenues, just walking North—

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NOTABLE QUOTES

(Continued from page 6)

many of them with the dust—the white dust of the horror on their clothes—quietly, slowly walking north. It’s an image I shall carry to my grave. It was a terrible time. But though shocked, this city is irrepressible and it’s indomitable. My subway is the Etrain. And it still proclaims its two end destinations as it did before, and one of those says, “World Trade Center.” And I suspect it always will do that, in a kind of a big Bronx cheer to those who thought they could dim the incandescence of this place.

John L. McGoldrick, FACTL, Executive Vice-President and General Counsel of Bristol-Myers Squibb

♦ ♦ ♦

RESPONSE TO TERRORISM

Terrorism and our war against it did not start on September 11, and it will not end anytime soon. . . .

[P]art of this challenge—perhaps the heart of the challenge—is detecting and disrupting attacks in an open and free society and doing so when the terrorists have become far more disciplined and far more sophisticated.

Let me take a moment to discuss what we learned in our investigations post-9/11. The nineteen hijackers operated paradoxically while hidden in, one could say, plain view. . . . In the months preceding September 11, each one of



Robert S. Mueller III

them entered this country with valid visas, used our schools, flight schools, motels, restaurants, transportation systems to launch their assault. And in many ways they turned the liberties we most cherish in this nation against us. Now, unlike wars in the past, these enemies do not wear uniforms, do not operate within defined borders and, as we have seen, they will stop at nothing to further their goals, whether it means sacrificing innocent lives or even their own lives. . . .

[W]e will be judged by history, not just on how we disrupt and deter terrorism but also on how we protect the civil liberties and constitutional rights of all Americans, including those Americans who wish us ill. We must do both of these things, and we must do them exceptionally well. . . .

[W]e are an open and free country. We have attracted in over two hundred years of our history people from around the world. And we still want to do that. And when we do that—we have the freedoms, we have the freedoms of our Constitution—we are vulnerable. And as much as we can change the FBI, and we will, as much as we can intersect with the CIA, and we’ll do a better job, as much as we’ll work with our international counterparts to obtain intelligence and prevent the next attack, nonetheless, given the type of country we are—not a police state, open and free society—we are still vulnerable.

Robert S. Mueller, III, Director of the Federal Bureau of Investigation

♦ ♦ ♦

[W]hat that trial [the 1993 World Trade Center bombing trial] really brought home to us was how the world has been shrunk by international terrorism, how it strikes and slaughters innocent people everywhere and how very much alike we all are. . . . The second basic and early reality we learned from these prosecutions is that we can’t think that terrorism abroad directed at Americans and American interests isn’t somehow our problem here at home. It is. . . .

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ONE HUNDRED SIX FELLOWS INDUCTED AT NYC MEETING

ALABAMA: Michael L. Edwards, Birmingham; A. Danner Frazer, Jr., Mobile **ARIZONA:** Neil C. Alden, Harding Cure, Doug Seitz, Thomas L. Toone, Phoenix **NORTHERN CALIFORNIA:** John R. Hillsman, San Francisco; B. Clyde Hutchinson, Oakland **SOUTHERN CALIFORNIA:** James D. Otto, Long Beach **COLORADO:** Bill Lucero, Tucker K. Trautman, Malcolm E. Wheeler, Denver **DELAWARE:** Eugene J. Maurer, Jr., Wilmington **DISTRICT OF COLUMBIA:** John J. Buckley, Jr., Joe R. Caldwell, Jr., Mitchell S. Ettinger, Carolyn B. Lamm, Nicholas S. McConnell, Wick Sollers, Roger E. Warin, Seth P. Waxman, Washington **FLORIDA:** John M. Fitzgibbons, Tampa; John D. Jopling, Gainesville **GEORGIA:** Gordon A. Smith, Atlanta **HAWAII:** John S. Nishimoto, Honolulu **ILLINOIS:** Philip Harnett Corboy, Jr., Michael T. Hannafan, Brian T. Henry, Christopher T. Hurley, Jeffrey E. Stone, Chicago; Don M. Mateer, Rockford **IOWA:** James A. Gerk, Cedar Rapids; Max E. Kirk, Waterloo **KANSAS:** Daniel E. Monnat, Randy Rathbun, Wichita **KENTUCKY:** Richard W. Hay, Somerset **LOUISIANA:** Edwin Dunahoe, Natchitoches; Thomas L. Lorenzi, Lake Charles **MARYLAND:** Joe Quirk, Rockville; James L. Shea, Baltimore **MASSACHUSETTS:** Anthony M. Doniger, John Kenneth Felter, Andrew J. McElaney, Jr., Michael D. Weisman, Boston; Michael P. Angelini, Michael M. Monopoli, Worcester; John P. Pucci, Northampton **MICHIGAN:** Robert S. Harrison, Bloomfield Hills; Edward M. Kronk, Detroit **MINNESOTA:** Joseph W. Anthony, Michael V. Ciresi, Sally J. Ferguson, Bruce H. Hanley, Brian N. Johnson, William J. Mauzy, Minneapolis **MISSISSIPPI:** Brad Sessums, Jackson **MISSOURI:** Gary R. Cunningham, Springfield **NEBRASKA:** Ed Tricker, Lincoln **NEW**

HAMPSHIRE: Bjorn Lange, Concord; Jeffrey B. Osburn, Manchester **NEW JERSEY:** Kathy Flicker, Skillman **DOWNSTATE NEW YORK:** Judith A. Livingston, James A. Moss, William H. Pratt, William O. Purcell, James W. Quinn, New York **UPSTATE NEW YORK:** John C. Cherundolo, Bob Smith, Syracuse; Carl T. Hayden, Elmira; Charles O. Ingraham, Binghamton **NORTH CAROLINA:** Jeffrey J. Davis, Charlotte **OHIO:** John Czarnecki, Toledo; James R. Wooley, Elizabeth B. Wright, Cleveland **OKLAHOMA:** Paul D. Brunton, J. Patrick Cremin, Amy E. Kempfert, James K. Secrest, II, Tulsa; George S. Corbyn, Jr., Oklahoma City **OREGON:** Dennis H. Black, Medford; Stephen F. English, Stephen A. Houze, Portland **PENNSYLVANIA:** James W. Christie, Kell M. Damsgaard, Dale M. Heist, J. Bruce McKissock, Philadelphia; Michael J. Manzo, Thomas A. Matis, Arthur H. Stroyd, Jr., Pittsburgh **PUERTO RICO:** Jose E. Otero, San Juan **SOUTH CAROLINA:** J. Boone Aiken, III, Florence; Elizabeth Van Doren Gray, William C. Hubbard, Columbia; George J. Kefalos, Charleston; Charles H. Williams, Orangeburg **TEXAS:** Dicky Grigg, Austin **VIRGINIA:** Joseph A. Matthews, Jr., Roanoke; Glenn W. Pulley, Danville **WASHINGTON:** Todd W. Gardner, Renton; Bradley S. Keller, Seattle **ALBERTA:** W. J. Kenny, Q.C., Bill Sowa, Q.C., Edmonton **ONTARIO:** Jeffrey S. Leon, Paul J. Pape, Linda Rothstein, Toronto **QUEBEC:** Francois Daviault

Seth P. Waxman of Wilmer, Cutler & Pickering in Washington, District of Columbia, the former Solicitor General of the United States, gave the response on the behalf of the new inductees. ♦



For the first time in College history, each new Fellow was announced as he or she approached the induction ceremony at the October 2002 Annual Meeting in New York City. The inductees attended an informational breakfast, and they and their spouses or guests were honored at a luncheon with the Past Presidents, Regents and State and Province Chairs in attendance.



FELLOWS IN PRINT

Former Regent John S. Martel's novel *Billy Strobe* has now been released in a paperback edition. Originally released in September 2001 just after the 9/11 event, it is Martel's fourth novel.

John J. Thomason of Memphis is the author of *Lieutenant, Your Cap's on Backward*, a self-published 334-page paperback account of his experiences in 1953-55 with the Army Judge Advocate General's Corps in Germany. ♦

ANNUAL MEETING PHOTOS



Outgoing Regents and Spouses



Acting Executive Director Kathy Good (center) with Regent Jack Dalton and Marcie Dalton



Opening Reception at the Cathedral of St. John the Divine





**New President Warren Lightfoot
Receiving Maul from President Shanor**



Past President James Baker



Ellen & Stuart Shanor



Past President Leon Silverman

**College Secretary
Michael Cooper**



SIX NEW REGENTS ELECTED

Albert D. Brault (pictured right) of Rockville, Maryland, has been elected Regent for Maryland and District of Columbia, succeeding James P. Schaller. Brault is a partner in Brault, Graham, Scott & Brault. A Fellow since 1973, he received his undergraduate degree from Georgetown University in 1955 and his J.D. from the Georgetown University Law Center in 1958. His father, Albert E. Brault, was Regent of the College from 1972-76 and Treasurer from 1976-78. He died on June 13, 2002, at the age of 96.



Albert D. Brault



John L. Cooper

John L. Cooper (pictured left) of San Francisco is the College's new Regent for Northern California and Nevada, succeeding David O. Larson. Cooper is a partner in Farella Braun & Martel. A 1966 graduate of Purdue University with a degree in chemical engineering, he received his J. D. in 1969 from the University of Colorado.

Brian P. Crosby (pictured right) of Buffalo, New York, is now the Regent for Upstate New York and Ontario. He had succeeded Robert P. Armstrong upon Armstrong's elevation to the bench and was then elected for a four-year term. A 1967 graduate of Niagara University, the member of Gibson, McAskill & Crosby in Buffalo received his J.D. in 1970 from Fordham University.



Brian P. Crosby



Gregory P. Joseph

Gregory P. Joseph (pictured left) of New York City is the newly elected Regent for Downstate New York and Vermont, succeeding Michael A. Cooper, who was elected Secretary of the College. A 1975 honors graduate of the University of Minnesota Law School, he is a former chair of the Litigation Section of the ABA and served as an Assistant to U.S. Special Prosecutor in the investigation of U.S. Secretary of Labor Raymond Donovan in the early 1980s. Formerly chair of the litigation department at Friend, Frank, Harris, Shriver & Jacobson in New York, Joseph now has his own firm.

Joan A. Lukey (pictured right) of Boston was elected Regent for the Atlantic Provinces, Maine, Massachusetts, New Hampshire, Puerto Rico, Quebec and Rhode Island, succeeding Camille F. Sarrouf. A 1974 cum laude recipient of a J.D. from Boston College Law, she received her B.A., magna cum laude, in 1971 from Smith College. She is a member of the firm of Hale and Dorr of Boston.

Joan A. Lukey



Brian B. O'Neill

Brian B. O'Neill (pictured left) of Minneapolis is now the Regent representing Iowa, Manitoba, Minnesota, Missouri, Nebraska, North Dakota, Saskatchewan and South Dakota, succeeding Frank N. Gundlach of St. Louis. O'Neill is a 1969 graduate of the U.S. Military Academy who received his J.D., magna cum laude from the University of Michigan in 1974. He served as a captain in the Army prior to entering private practice in 1977. He has been a partner in Faegre & Benson in Minneapolis since 1981 and head of the firm's litigation group since 1993. (O'Neill replaces Richard G. Santi of Des Moines, Iowa, who was nominated for the post, but resigned for personal reasons. Pursuant to Section 5.6 of the Bylaws, the Board of Regents appointed O'Neill to serve until the next Annual Meeting.)

REGENTS APPROVE RETREAT RECOMMENDATIONS

The Board of Regents has approved in substantial part the recommendations made at a planning retreat held May 17-19, 2002 in Atlanta, Georgia.

The retreat, the third in the College's history, was organized by a committee chaired by Past President Lively M. Wilson. The participants considered reports and debated recommendations made by five committees in areas previously selected for discussion.

Forty-one Regents, Past Presidents and other Fellows participated in the retreat. Tom Clay, a principal of Altman Weil Pensa, acted as moderator.

The following are the questions or issues raised and the action authorized by the Board of Regents to address each.

WHAT IS THE FUTURE OF THE ADVERSARIAL PROCESS, PARTICULARLY AS IT RELATES TO JURY TRIALS, WHAT ARE THE RAMIFICATIONS OF THESE CHANGES FOR THE COLLEGE AND HOW SHOULD THEY BE MET?

State and Province Committees will be instructed through the Workshops and in writing that in assessing a candidate's qualifications, the College considers all experience in adversarial proceedings to be of importance.

A proceeding is to be regarded as "adversarial" if it includes opening statements, direct and cross examination and closing argument.

Jury trials should be given the most weight by local committees, but administrative proceedings, arbitrations and domestic relations matters should also be considered. Mediations should not be given any consideration.

Notwithstanding these statements of policy, local committees have the latitude to take into account local standards in defining trial experience. For example, in some in-

stances, lead responsibility for complex, major litigation or multi-district cases should be considered.

Bearing in mind the impact of changing demographics, what should the criteria for membership in the American College of Trial Lawyers be? How should the College attract more women, minorities and advocates from other disciplines?

Workshops for State and Province Chairs are to emphasize that they should structure their State or Province Committees and expand their search for nominees so as to maximize the probability of identifying qualified women, minority and public sector trial lawyers for consideration for Fellowship in the College.

The State and Province Committees will be instructed by the Executive Committee to develop procedures whereby watch lists are created to identify and follow rising stars in the trial practice who have 12 years of trial advocacy experience so that the lawyers so identified, if qualified at the time of satisfaction of the 15 year requirement for active trial practice, may be immediately processed through the nomination stage.

The President-Elect and his successors are instructed to include in the membership of the State and Province Committees women, minorities and public sector lawyers who are in a position to identify qualified women, minority and public sector lawyers in those jurisdictions where qualified lawyers in these classifications may have been overlooked.

HOW SHOULD THE COLLEGE CONFRONT THE CURRENT CONDITIONS INSOFAR AS MAINTAINING ITS TRADITION OF COLLEGIALLY IS CONCERNED?

The College will maintain a current inventory of local projects conducted at the State and Province level. The inventory will

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RETREAT LEADS TO ACTION

(Continued from page 14)

consist of a detailed description of each project suitable for use by others.

The College leadership will embark on a process of persuading State and Province Committees to initiate and maintain a local project(s) by, inter alia:

- ◆ circulating the project ideas generated by the inventory to the Committees with particular emphasis on “best practice” projects
- ◆ including a “local project” segment at the Workshops
- ◆ recognizing peculiarly successful local projects in some appropriate manner at the Spring and/or Annual meetings on a regular basis
- ◆ requiring the Committees to report to the Board of Regents annually as to local projects currently in place.

While the national leadership must continue to monitor and approve local projects and activities in the name of the College, the approval process should not be so ill-timed, inflexible or bureaucratic as to discourage initiative. Local projects and related initiatives, including the publication of positions on matters of the standards of trial practice, the administration of justice and the ethics of the profession, are, subject to these conditions, to be encouraged.

THE DEVELOPMENT OF OPPORTUNITIES FOR INVOLVEMENT BY FELLOWS IN COLLEGE ACTIVITIES AND THE RAISING OF THE COLLEGE’S PROFILE.

In order to further the College’s stated mission, to provide additional opportunities for involvement by Fellows in College activities and to raise the College’s profile, State and Province Committees will be strongly

encouraged to engage in additional activities and to communicate more effectively with the State and Province judiciary, law schools, bar associations and other law-related organizations.

The President of the College will express to the Chair of the Conference of Chief Justices and the President of the National Center for State Courts, and the State and Province Committee chairs should express to the chief justices in their respective States and Provinces, the College’s willingness and ability to assist in projects and programs aimed at maintaining and improving the standards of trial practice, the administration of justice and the ethics of the profession.

The State and Province Committees will be encouraged to enlist Fellows in projects and programs that further the College’s mission, such as trial advocacy programs, moot appellate court and trial competitions, and ADR programs. The National Office will collect and distribute information regarding projects and programs that have proven effective in furthering that mission or hold promise of doing so.

Steps are to be taken to communicate more widely and more effectively reports and statements of position or views issued by the President, Board of Regents, General Committees and State and Province Committees.

Draft Committee reports and statements, when submitted for approval, shall be accompanied by specific recommendations for distribution and also for implementation such as, where appropriate, meeting with representatives of the judicial, executive and legislative branches.

DEFINING THE IMAGE AND RAISING PUBLIC AWARENESS OF THE COLLEGE.

The Executive Committee should acknowledge that the College is under-appreciated by the local/provincial element of our “public,” as perceived by those Fellows who live and practice there and take positive, but dignified, action to enhance the reputation of

(Continued on page 16)

RETREAT LEADS TO ACTION

(Continued from page 15)

the College with this public and increase in them an awareness of the College, our standards, goals and activities.

Since our Fellows are well known and admired among this aspect of our public, the Executive Committee should implement a comprehensive program in these localities to identify the College with those admired lawyers and to use this connection to inform of our standards, goals and activities.

FURTHER ACTIONS

In addition to approving the foregoing, the Regents took several other steps in response to issues raised at the retreat.

A motion to lower the threshold for admission to fellowship from fifteen years to twelve years was defeated. The purpose of this motion had been to address the chronic problem of late identification of worthy candidates that has resulted in the average nominee's having practiced twenty-seven years before he or she is nominated for fellowship. Instead, the Regents adopted the policy recited above that encourages State and Province Committees to maintain watch lists of promising candidates who have been

in practice for twelve years, so that their candidacy can be considered promptly after they become eligible for consideration.

At the retreat significant questions were raised whether the Emil Gumpert Award, originally established when few law schools offered training in trial advocacy, had outlived its usefulness. The Regents concluded that the award should not continue in its present form, and the Executive Committee was directed to study the genesis of the award, specifically to determine whether it should be continued and the form it might take if it is continued.

In addition, the Executive Committee was authorized to establish a committee to study the international exchanges and their future as established programs of the College. That committee, which has since been appointed, is chaired by former Regent James P. Schaller. It will consider whether the international exchanges should be continued, including: (i) with which countries they should be held, (ii) how frequently they should be held, (iii) who should be invited to attend, (iv) how their cost should be borne, and (v) how their purpose and accomplishments can be communicated more effectively to the Fellows.

The Regents also voted to place an outline of the policies that grew out of the retreat on the agenda for each Board meeting so that the College's progress in the implementation of these policies can be measured. ♦

FELLOWS TO THE BENCH

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

John A. Agostini to Associate Justice of the Massachusetts Superior Court.

Peter M. Blauvelt as Sterling Town Justice, Rochester, New York.

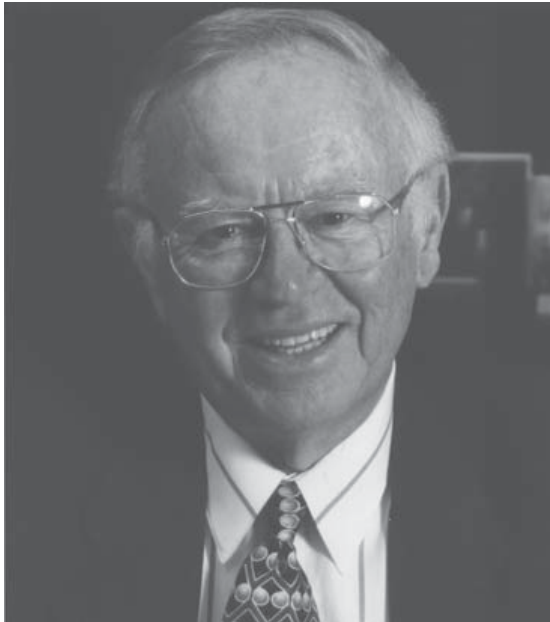
Sam Hanson to Associate Justice of the Minnesota Supreme Court.

Peggy A. Leen to United States Magistrate Judge, Las Vegas, Nevada.

Ronald B. Leighton to United States District Judge, Tacoma, Washington.

William H. Lamb to the Supreme Court of Pennsylvania. ♦

IN MEMORIAM



John C. Elam
March 6, 1924–December 26, 2002

John C. Elam, the thirty-first president of the American College of Trial Lawyers, died on December 26, 2002 at the age of 78. He had been battling an aggressive brain tumor for a number of months.

Born in Fort Wayne, Indiana, he grew up in Fort Thomas, Kentucky. His career in the law had its genesis in an incident in which he was kept after school by his algebra teacher, who was also the high school debate coach. Deciding that he could do as well as the debaters whose rehearsal he sat through, he joined the debate team and soon thereafter decided to be a lawyer.

Though his education was interrupted by World War II service in the U. S. Army, that service had its rewards. Visiting a nearby womens' college on a weekend pass from Fort

Bragg, he met a young North Carolina student named Ginny Mayberry, who was to become his wife and lifelong companion and confidant.

Returning to the University of Michigan on the GI Bill, he earned his undergraduate degree in 1948 and his law degree the following year. He then went to work as an associate in the Columbus, Ohio firm of Vorys, Sater, Seymour and Pease, then a ten-lawyer firm he was later to lead for thirty-one years.

A loyal Michigan alumnus in an Ohio State town (the bottom of his swimming pool was decorated with a Michigan seal), a staunch Democrat in a Republican town, he nevertheless quickly made a place for himself. He chaired both the local Chamber of Commerce and United Way, as well as heading a variety of other community organizations, including his local school board.

His law practice steadily evolved from workers compensation and insurance defense work to product liability defense to corporate litigation. In the course of his career he was principal trial counsel in many high-profile cases.

He was elected president of his local bar early in his career. A long-time member of the American Bar Association's governing body, the House of Delegates, he was an organizing member of the ABA Litigation Section in the 1970s, and he rendered distinguished service on the ABA Standing Committee on Federal Judiciary, the committee that conducts an independent peer review of each nominee to the federal bench. He also served on the Boards of the American Judicature Society and the United States Supreme Court Historical Society.

Elected to fellowship in the American College of Trial Lawyers shortly after he completed his fifteenth year of practice, he became a member of its Board of Regents nine years after his induction, Treasurer of

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IN MEMORIAM

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the College after three years on the Board and President-Elect the following year. He became President of the College when he was fifty-six years old.

Sensing the need for more consistency in the College's operations, he initiated regional training sessions for new Regents and state and province chairs, a practice that quickly evolved into today's annual chairs workshops.

The role for which he is best remembered is his leadership of the College's successful opposition in the ABA House of Delegates to the attempt of the ABA's Kutak Commission to insert into the new Model Rules of Professional Responsibility an exception to the traditional principle of lawyer-client confidentiality.

He also chaired the committee that supervised the writing of *Sages of Their Craft*, the fifty-year history of the College, published in 2000.

John Elam was an exception to the assumption that one cannot manage a major law firm and, at the same time, maintain a high-profile full-time trial practice of one's own. During his tenure as presiding partner of Vorys, Sater, it grew from twenty-two lawyers to two hundred seventy-five. In a firm held together, not by a written partnership agreement—the firm has none—but by collegiality and tradition, it is a credit to his leadership that during his thirty-one year tenure no partner left the firm's Columbus office for another firm.

A man of strong convictions, he once challenged the organized bar either to enforce its traditional rules against client solicitation or change them to sanction the growing practices to which it was turning a blind eye.

Short of stature, his physical vitality and robust sense of humor were legendary. The sound of his explosive, high-pitched laugh was a sure sign that he was somewhere around. He once commented, "If you can't laugh at yourself, you're dead." To a newly

nominated president-elect he whispered, "This proves that if you lose a big enough case, you can get elected president of almost anything." He relished invigorating a meeting of the Board of Regents by injecting a challenging assertion he knew would get a rise out of one of his colleagues and trigger a lively debate. His classic toast was "To Friendship." His characteristic exhortation: "Go for it; we're on a roll!"

Before his death, his firm had honored him by creating and endowing the John C. Elam, Vorys, Sater Designated Professorship at the Ohio State Law School in honor of his work and his professionalism. The professorship was established to provide support for the work of a distinguished scholar and teacher who, at an early stage of a professional career, had already emerged as an academic star.

The first holder of this chair is Professor Sharon L. Davies, a nationally known authority in criminal law and procedure and a devoted classroom teacher.

At his memorial service his long-time partner, Edgar A. Strause, past presidents

Leon Silverman and Ralph I. Lancaster, Jr. and United States District Court Judge and long-time friend John D. Holschuh, all Fellows of the College, and Chief Justice Thomas J. Moyer of the Ohio Supreme Court rose to pay him tribute.

He is survived by his wife of 57 years, Ginny Mayberry Elam, daughters, Mary Jane Elam, Nancy Elam and Patti Elam, son, John W. "Chip" Elam, and seven grandchildren. ♦



Sharon L. Davies

THE PRESIDENT'S REPORT

(Continued from page 3)

It is a wonderful experience to see how much common ground all of us have and to witness the extraordinary camaraderie among our Fellows and guests wherever we go.

The second aspect that has struck me during our visits is how little information many of our Fellows have about the *work* of our great institution. Our organization is extremely busy on many fronts.

One of our most outstanding programs is Access to Justice: furnishing Fellows to represent the poor in important litigation. Dan Kolb of New York City got this one going and Sylvia Walbolt of Tampa has succeeded Dan without missing a beat. We want Access chairs in every state and province, so if you are interested, please contact your state or province chair. There is no higher calling than volunteer Fellows serving as advocates for those who otherwise would not be represented.

Another great use of our talented Fellows is teaching trial skills to public interest lawyers. Terry Tottenham of Austin, chair of our Teaching of Trial and Appellate Advocacy Committee, conceived of this program and implemented it in Texas. Now the idea is spreading all across the continent, with every state and province chair having received from national headquarters a Tottenham packet, ready-to-use training materials for this worthy cause. Let your state or province chair know if you are interested.

States and provinces have established mentor programs, judicial education programs, and programs for teaching trial skills and ethics to young lawyers and to law students. In addition to conducting national moot court and national trial competitions, we formally recognize unselfish contributions to our justice system, courageous advocacy, civility, and professionalism. We publish scholarly papers in an effort to support good changes and to forestall ill-advised changes in rules and procedures as they relate to trials,

including such subjects as *Daubert*, twelve person juries, the attorney-client privilege, sentencing guidelines, trial of high profile cases, punitive damages, non-published opinion citations and trial innovations. We file *amicus* briefs and take public positions on such issues as the attorney-client privilege and judicial compensation. George Chapman's Professionalism Committee completed an aspirational Code of Pretrial Conduct—a companion piece to our Code of Trial Conduct—which will be included in our blue roster book beginning in January 2004.

As many of you recall, the College has been in the forefront on at least two occasions when the ABA has debated expanding the circumstances under which a lawyer can or should reveal client confidences. Twice we have been successful in keeping Model Rule 1.6 from being changed to allow more divulgence by lawyers. Now the debate has surfaced again, and in a more dangerous form. By the time you read this letter, the ABA House of Delegates may have voted on the issue. I can assure you that the College's voice will have been heard in the meantime. And it already has. On November 12, 2002, Past President Charlie Renfrew of San Francisco testified at a public hearing conducted by the ABA Task Force on Corporate Governance, and eloquently stated the College's position against allowing client confidences to be revealed except as presently permitted by Model Rule 1.6. The written testimony submitted by Charlie was prepared by Alan Radnor of Columbus, Ohio, and John McElhaney of Dallas, present and former chairs, respectively, of our Legal Ethics Committee. Our Treasurer, Jimmy Morris, has spearheaded the College's efforts in this regard, and our position in the House of Delegates will be advocated by Fellows Ben Hill of Tampa and Bill Paul of Oklahoma City.

Even more insidious is the regulation promulgated by the SEC under the Sarbanes-Oxley Act. Although the legislative history of the act clearly shows that Congress intended

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THE PRESIDENT'S REPORT

(Continued from page 19)

lawyers' reporting responsibilities to be inside their client corporations (up the ladder), the regulation requires a noisy withdrawal if inside reporting is ineffective. Such a noisy withdrawal would virtually insure an SEC investigation of the corporation in question. Again, the College has fought the change. Alan Radnor again answered the College's call and drafted the position paper that was ultimately submitted by ACTL Secretary Mike Cooper on our behalf.

Both attempts to impinge on lawyer-client confidences are extremely troubling. Not only would they place lawyers in untenable positions (with conflicting standards at the state and federal level), but they disserve the public. The very people who could benefit from wise counsel will no longer seek it because of fear the conversation will be divulged. Fortunately, a number of organizations are speaking out as we are.

So you can see that your College is always busy, always working hard to enhance and improve the administration of justice. In addition to the consideration of candidates for fellowship, the work of the College is carried out by over one thousand very tal-

ented Fellows who serve on our committees. To inform our Fellows about all these activities, we are considering a six to eight minute informational videotape outlining the College's ongoing efforts to accomplish our mission. At our coastal workshops at Williamsburg and San Diego last November, some of the chairs were so impressed with the volume and caliber of the College's ongoing efforts that they wished aloud our new inductees could hear about the work of the College. A video might help inform not only our inductees but our membership generally, and might generate interest in committee service. Every Fellow who has requested to be on a committee has been appointed to one, and nearly always to his or her first choice.

Finally, in closing, let me thank you for this great opportunity to serve as your President. It is time consuming but highly rewarding, and most of all, it lets me appreciate every day what fine people our Fellows are, how much each has to offer, and the high degree of collegiality that runs throughout our institution. Our selection process is designed to ensure that we induct only those lawyers with the very best professional and personal qualities. Our visits among you confirm the spectacular success of our system. ♦

EXECUTIVE DIRECTOR YOUNG RESIGNS

Robert A. Young,
Executive Director
of the College, resigned effective
October 1, 2002.

A committee chaired by past president Gene W. Lafitte of New Orleans, Louisiana has commenced the search for a permanent replacement for Young.

An Air Force veteran and a former assistant director of the Louisiana State Bar Association, Young's theme parties quickly became a College tradition at its national meetings. He had served the College since 1984.

The Executive Committee has appointed Kathy Good, a member of the staff since 1996, as Acting Executive Director. ♦

American College of Trial Lawyers

2002—2003 GENERAL COMMITTEE CHAIRS

ACCESS TO JUSTICE AND LEGAL SERVICES, Sylvia H. Walbolt (St. Petersburg, FL)
ADJUNCT STATE, Richard P. Campbell (Boston, MA)
ADMISSION TO FELLOWSHIP, John S. Siffert (New York, NY)
ALTERNATIVES FOR DISPUTE RESOLUTION, James D. Zirin (New York, NY)
ATTORNEY-CLIENT RELATIONSHIPS, Chilton Davis Varner (Atlanta, GA)
AWARD FOR COURAGEOUS ADVOCACY, Trudie Ross Hamilton (Waterbury, CT)
CANADA-UNITED STATES, Paul D.K. Fraser, Q.C. (Vancouver, BC)
CANADIAN COMPETITIONS, Michel Decary, Q.C. (Montreal, QC)
COMMUNICATIONS COMMITTEE, E. Osborne Ayscue, Jr. (Charlotte, NC)
COMPLEX LITIGATION, Lawrence T. Hoyle, Jr. (Philadelphia, PA)
EMIL GUMPERT AWARD, George F. Short (Oklahoma City, OK)
FEDERAL CIVIL PROCEDURE, Robert L. Byman (Chicago, IL)
FEDERAL CRIMINAL PROCEDURE, James L. Eisenbrandt (Prairie Village, KS)
FEDERAL RULES OF EVIDENCE, William T. Hangle (Philadelphia, PA)
FINANCE AND COMPENSATION, David W. Scott, Q.C. (Ottawa, ON)
HONORARY FELLOWSHIP COMMITTEE, Charles B. Renfrew (San Francisco, CA)
INTERNATIONAL COMMITTEE, Charles H. Dick, Jr. (San Diego, CA)
INVESTMENT COMMITTEE, James W. Morris, III (Richmond, VA)
JUDICIARY COMMITTEE, George E. Feldmiller (La Quinta, CA)
LEGAL ETHICS, Alan T. Radnor (Columbus, OH)
LEWIS F. POWELL, JR. LECTURES, Griffin B. Bell (Atlanta, GA)
NATIONAL COLLEGE OF DISTRICT ATTORNEYS, Harry L. Shorstein (Jacksonville, FL)
NATIONAL MOOT COURT COMPETITION, Paul C. Saunders (New York, NY)
NATIONAL TRIAL COMPETITION, J. Clifford Gunter, III (Houston, TX)
PROFESSIONALISM COMMITTEE, James L. Magee (Seattle, WA)
SAMUEL E. GATES LITIGATION AWARD, John H. Tucker (Tulsa, OK)
SCIENCE AND TECHNOLOGY IN THE COURTS, David L. Grove (Philadelphia, PA)
SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE, J. Donald Cowan, Jr. (Raleigh, NC)
TEACHING OF TRIAL AND APPELLATE ADVOCACY, Terry O. Tottenham (Austin, TX)

STATE COMMITTEE CHAIRS

ALABAMA, Richard H. Gill (Montgomery); ALASKA, Dave Oesting (Anchorage); ARIZONA, Michael A. Beale (Phoenix); ARKANSAS, Frederick S. Ursery (Little Rock); COLORADO, Joseph C. Jaudon, Jr. (Denver); CONNECTICUT, J. Daniel Sagarin (Milford); DELAWARE, Richard E. Poole (Wilmington); DISTRICT OF COLUMBIA, John M. Bray (Washington); DOWNSTATE ILLINOIS, Murvel Pretorius, Jr. (Peoria); DOWNSTATE NEW YORK, Alan Levine (New York); FLORIDA, John A. DeVault, III (Jacksonville); GEORGIA, Paul W. Painter, Jr. (Savannah); HAWAII, Sidney K. Ayabe, (Honolulu); IDAHO, J. Walter Sinclair (Boise); INDIANA, Gary J. Clendening (Bloomington); IOWA, James P. Hayes (Iowa City); KANSAS, Jerry R. Palmer (Topeka); KENTUCKY, Robert Spragens, Jr. (Lebanon); LOUISIANA, Herschel E. Richard, Jr. (Shreveport); MAINE, Barry K. Mills (Ellsworth); MARYLAND, Kenneth Armstrong (Rockville); MASSACHUSETTS, Philip J. Callan, Jr. (Springfield); MICHIGAN, William A. Sankbeil (Detroit); MINNESOTA, Steven J. Kirsch (St. Paul); MISSISSIPPI, Lucien C. Gwin, Jr. (Natchez); MISSOURI, James J. Virtel (St. Louis); MONTANA, Karen S. Townsend (Missoula); NEBRASKA, James M. Bausch (Lincoln); NEVADA, James R. Olson (Las Vegas); NEW HAMPSHIRE, Cathy J. Green (Manchester); NEW JERSEY, Richard E. Brennan (Florham Park); NEW MEXICO, Harold L. Hensley, Jr. (Roswell); NORTH CAROLINA, James T. Williams, Jr. (Greensboro); NORTH DAKOTA, Jane C. Voglewede, (Fargo); NORTHERN CALIFORNIA, Robert A. Goodin (San Francisco); OHIO, W. Roger Fry (Cincinnati); OKLAHOMA, D. Kent Meyers (Oklahoma City); OREGON, Paul T. Fortino (Portland); PENNSYLVANIA, Christine L. Donohue, (Pittsburgh); PUERTO RICO, Alvaro R. Calderon, Jr. (San Juan); RHODE ISLAND, John W. Kershaw (Providence); SOUTH CAROLINA, James B. Pressly, Jr. (Greenville); SOUTH DAKOTA, Thomas G. Fritz (Rapid City); SOUTHERN CALIFORNIA, Don Mike Anthony (Pasadena); TENNESSEE, James M. Doran, Jr. (Nashville); TEXAS, George W. Bramblett, Jr. (Dallas); UPSTATE ILLINOIS, Walter Jones, Jr. (Chicago); UPSTATE NEW YORK, David M. Gouldin (Binghamton); UTAH, Francis M. Wikstrom (Salt Lake City); VERMONT, Karen McAndrew (Burlington); VIRGINIA, Michael W. Smith (Richmond); WASHINGTON, Charles G. Gordon (Seattle); WEST VIRGINIA, A. L. Emch (Charleston); WISCONSIN, Wayne E. Babler, Jr. (Milwaukee); WYOMING, J. Kent Rutledge (Cheyenne).

PROVINCE COMMITTEE CHAIRS

ALBERTA, J. Patrick Peacock, Q.C. (Calgary); ATLANTIC PROVINCES, George W. MacDonald, Q.C. (Halifax, NS); BRITISH COLUMBIA, Richard R. Sugden, Q.C. (Vancouver); MANITOBA/SASKATCHEWAN, E. William Olson (Winnipeg, MB); ONTARIO, Chris G. Paliare (Toronto); QUEBEC, Lynne D. Kassie (Montreal, QC).

FROM THE EDITORIAL BOARD

(Continued from page 2)

It has become the practice of the leaders of the College to hold periodic planning retreats. These retreats provide an opportunity to examine every aspect of the College's programs, the way it is organized and the way it functions, to make sure that it remains true to its mission and relevant in a rapidly changing world. You will find on these pages a report of the latest such retreat, held last May in Atlanta, and of the actions of the Regents coming out of that retreat.

You will also find an account of the College's response to the latest assault on attorney-client confidentiality, this time in the

form of proposed Securities and Exchange Commission regulations under the Sarbanes-Oxley Act of 2002.

Along with the usual features of the Bulletin is one new feature, a more comprehensive report on state, province and regional activities of the Fellows.

Sadly, we also report the deaths of two past presidents of the College, John C. Elam of Columbus, Ohio and James E. S. Baker of Chicago, Illinois, as well as of Gerry Segal, widow of past president Bernard G. Segal, Philadelphia, Pennsylvania and of former Regents, Irving R. "Buddy" Segal, Philadelphia, Pennsylvania, and Beverly W. Pattishall, Chicago, Illinois.

As always, the editorial board welcomes your comments, suggestions and contributions. ♦

AWARDS MADE IN STUDENT COMPETITION

The winners of four student legal awards sponsored by the College in the United States and Canada were honored during the 2002 Annual Meeting in October at New York City.

The team of Terra Leigh Brown, William J. Dennison, II, and Christopher L. LaVigne of Northwestern University School of Law won the Kraft W. Eidman Award in the National Trial Competition. The award is made possible by a grant from Fulbright & Jaworski, L.L.P. of Houston. LaVigne also received the George A. Spiegelberg Award as Best Oral Advocate. This award is supported by a grant from Fried, Frank, Harris, Shriver & Jacobson of New York City.

Almira Esmail and Tim Livingston from the University of Victoria School of Law made up the winning team in the Sopinka Cup Competition. Esmail gave a response as the Best Overall Advocate.

The University of California Hastings College of Law team of Robert Hodil, Mohammad Keshavarzi and Joel Muchmore won the National Moot Court Competition. Celeste Drake of the University of California School of Law, the runner-up team, was recognized as the Best Oral Advocate.

Winning the Gale Cup Moot Competition in Canada was the team of Noah Klar, Karen Park, Dena Varah and Stephanie Wakefield from the University of Toronto School of Law. Park was named Best Oral Advocate. ♦

Christopher L. Lavigne and President Shanor



REGIONAL ROUNDUP

(A SUMMARY OF SIGNIFICANT ACTIVITIES REPORTED TO THE BOARD OF REGENTS AT THE 2002 ANNUAL MEETING IN NEW YORK CITY)



DELAWARE, NEW JERSEY AND PENNSYLVANIA (Regent Dennis R. Suplee)—Christine L. Donohue of Pittsburgh has been named the first female Pennsylvania State Chair in the history of the College.

ATLANTIC PROVINCES, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, PUERTO RICO, QUEBEC AND RHODE ISLAND (Regent Camille F. Sarrouf)—Lynne D. Kassie of Montreal has been named the first female Quebec State Chair.

ARIZONA, HAWAII, SOUTH CALIFORNIA (Regent Tom Slutes)—A new Hawaii State Chair, Sidney K. Ayabe, is determined to recharge the Fellowship in that state. Arizona Fellows hosted a visit by Treasurer Jimmy Morris in May 2002.

COLORADO, KANSAS, NEW MEXICO, OKLAHOMA, UTAH AND WYOMING (Regent Mikel L. Stout)—The first female Fellow from Oklahoma, Amy E. Kempfert of Tulsa, was inducted at the 2002 Annual Meeting, one of five Oklahomans to become new Fellows. An ambitious regional meeting is planned for the Stein Erickson Lodge in Deer Valley, Utah during the Fall of 2003.

CONNECTICUT, DOWNSTATE NEW YORK AND VERMONT (Regent Michael A. Cooper)—The Access to Justice Pro Bono Project is conducted principally through the Downstate New York Fellows. There are several cases pending, one relating to the detention of immigrants and material witnesses and another addressing the confinement, under quasi-penal conditions, of mentally ill patients. Regent Cooper reported his attendance

at a State dinner in Shelburne, Vermont, attended by nearly all the Fellows in that state.

ARKANSAS, LOUISIANA, MISSISSIPPI AND TEXAS (Regent David J. Beck)—Copies of the material in the Trial Skills Course for public interest lawyers, ramrodded by Terry Tottenham of Austin, TX, have been made available to each State and Province Chair. Texas has divided its committee into geographical subcommittees and non-State Committee members have been asked to join these groups. A regional meeting was held in Natchez, MS in the Spring of 2002.

MISSISSIPPI Fellows have compiled an historical roster of all past and present Mississippi Fellows, indicating their law firms, induction dates and other vital information. The first African-American from Arkansas was inducted at the 2002 Annual Meeting.

Treasurer Jimmy Morris attended the ARKANSAS State Fellows meeting in Fayetteville on behalf of President Stuart Shanor.

UPSTATE NEW YORK AND ONTARIO (Regent Brian P. Crosby)—Ontario put forward for induction a strong and diverse selection of candidates, including one woman, six different practice backgrounds.

ALASKA, ALBERTA, BRITISH COLUMBIA, IDAHO, MONTANA, OREGON AND WASHINGTON (Regent Payton Smith)—All States and Provinces have had annual dinners and a well-attended Regional Meeting was held in Seattle. Montana has been very active, with only two vacancies in the allowable 1 percent of the bar.

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REGIONAL ROUNDUP

(Continued from page 24)

NORTHERN CALIFORNIA AND NEVADA (Regent David O. Larson)—Forty participants attended a NITA-style trial advocacy program for advocates in the public arena. The first such program was organized by Jim Goodman of San Francisco, with support and assistance from State Chair Rick Watters of Fresno. Northern California Fellows held their annual dinner in January 2002, with President and Mrs. Shanor attending.

NEVADA held its first ever State dinner, honoring its Chief Justice and attended by many judges. Treasurer Jimmy Morris represented President Shanor at the dinner.

ILLINOIS, INDIANA AND WISCONSIN (Regent Patricia C. Bobb)—Regent Bobb was guest at a well-attended Indiana State dinner in



Carolyn and Rick Santi, Peggy and Frank Gundlach, President Stuart Shanor and wife Ellen at the Iowa State Meeting

Indianapolis. Diversity is improving in Illinois which now has eight women Fellows, including an African-American, and State Chair Walter Jones, Jr. of Chicago is African-American. Past President Jim Baker attended the annual Illinois State dinner in Chicago.

KENTUCKY, MICHIGAN, OHIO AND TENNESSEE (Regent Sharon M. Woods)—Tennessee

State Chair Jim Doran of Nashville hosted a dinner, which was attended by President-elect Warren and Robbie Lightfoot. The Tennessee State Committee is working on introducing a program utilizing the Trial Skills Manual for Public Interest Lawyers. Michigan State Chair Phil Kessler has supervised organizing the State Committee into subcommittees with a view to more effective generation of activities. Also in Michigan, a project is underway to develop a program for the teaching of advocates on computerized facilities which are in place but not being utilized because trial counsel are unfamiliar with their use.

ALABAMA, FLORIDA AND GEORGIA (Regent Jack Dalton)—A tri-state meeting at the Cloisters was highly successful, including two half-days of CLE. In Florida, the Trial Advocacy Skills Program for Public Interest Lawyers is in place and the program is being launched in Georgia.

DISTRICT OF COLUMBIA AND MARYLAND (Regent James P. Schaller)—In the District, Fellows are involved in a mentoring program with DC law students at court as well as working with law schools on advocacy programs and providing judges for the moot court competition. A dinner was held in the Grand Hall of the Supreme Court of the United States, attended by President and Mrs. Shanor and hosted by Chief Justice William Rehnquist. In Maryland, the State Committee members have made presentations at the University of Baltimore Law School, involving nine Maryland Fellows, on subjects related to ethics in litigation. A successful joint Maryland/District of Columbia meeting was held in eastern Maryland.

NORTH CAROLINA, SOUTH CAROLINA, VIRGINIA AND WEST VIRGINIA (Regent Edward W. Mullins, Jr.)—The first female Fellow from South Carolina, Elizabeth Van Doren Gray of Columbia, has been inducted. In Virginia, a trial skills seminar was held in

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COLLEGE HONORS RETIRING REGENTS AND COMMITTEE CHAIRS

Five retiring Regents, twelve General Committee Chairs and forty-three State or Province Chairs were honored for their service at the 2002 Annual Meeting in New York City.

Regents: Hon. Robert P. Armstrong of the Court of Appeal for Ontario, Toronto; Frank N. Gundlach of Armstrong Teasdale, L.L.P., St. Louis, Missouri; David O. Larson of Lewis, D'Amato, Brisbois & Bisgaard, L.L.P., San Francisco; Camille F. Sarrouf of Sarrouf, Tarricone & Flemming, P.C., Boston; and James P. Schaller of Jackson & Campbell, P.C., Washington, District of Columbia.

General Chairs: Mark H. Alcott of New York City, International Committee; Mark W. Buyck, Jr. of Florence, South Carolina, National College of District Attorneys Committee; George C. Chapman of Dallas, Texas, Professionalism Committee; W. J. Michael Cody of Memphis, Tennessee, Attorney-Client Relationship Committee; William B. Dawson of Dallas, Texas, Science and Technology in the Courts Committee; Thomas HR Denver of San Jose, California, Alternatives for Dispute Resolution Committee; Kevin J. Dunne of San Francisco, Special Problems in the Administration of Justice Committee; Gregory P. Joseph of New York City, Federal Civil Procedure Committee; Philip J. Kessler of Detroit, Award for Courageous Advocacy Committee; Daniel F. Kolb of New York City, Access to Justice and Legal Services Committee; Hon. William J. Rowan, III of Rockville, Maryland, Adjunct State Committee; and David W. Scott, Q.C. of Ottawa, Ontario, Canadian Competitions Committee.

State and Province Chairs: Donald Abaunza, Louisiana (New Orleans); D. Leon

Ashford, Alabama (Birmingham); Ronald M. Ayers, Virginia (Roanoke); Roy L. Barrett, Texas (Waco); Paul D. Bekman, Maryland (Baltimore); Donald T. Bucklin, District of Columbia (Washington); Donald J. Campbell, Nevada (Las Vegas); Wayne R. Chapman, Q.C., Atlantic Provinces (Saint John, New Brunswick); Arthur G. Connolly, Jr., Delaware (Wilmington); Robert B. Cordle, North Carolina (Charlotte); Richard E. Day, Wyoming (Casper); Lee D. Foreman, Colorado (Denver); Stephen H. Foster, Montana (Billings); Silas E. Halyk, Q.C., Manitoba/Saskatchewan (Saskatoon); Charles Harvey, Maine (Portland); Russell F. Hilliard, New Hampshire (Concord); C. Clark Hodgson, Jr., Pennsylvania (Philadelphia); Richard L. Honeyman, Kansas (Wichita); Kenneth B. Howard, Idaho (Coeur d'Alene); David C. Jensen, Indiana (Hammond); Peter B. Joslin, Vermont (Montpelier); Mark T. Kempton, Missouri (Sedalia); Philip J. Kessler, Michigan (Detroit); C. Clifford Lax, Q.C., Ontario (Toronto); Wayne J. Mark, Nebraska (Omaha); Dennis J. McCarten, Rhode Island (Providence); Walter L. Meagher, Jr., Upstate New York (Syracuse); Brian B. O'Neill, Minnesota (Minneapolis); David L. Peterson, North Dakota (Bismarck); Bettina B. Plevan, Downstate New York (New York); Richard G. Santi, Iowa (Des Moines); Richard E. Shadley, Q.C., Quebec (Montreal); Donald R. Shultz, South Dakota (Rapid City); Phyllis A. L. Smith, Q.C., Alberta (Edmonton); James M. Sturdivant, Oklahoma (Tulsa); H. Jerome Strickland, Georgia (Macon); Alan L. Sullivan, Utah (Salt Lake City); Thomas H. Tongue, Oregon (Portland); Lawrence D. Wade, Mississippi (Greenville); Richard C. Watters, Northern California (Fresno); Roy S. Wilcox, Wisconsin (Eau Claire); and Peter C. Wolff, Jr., Hawaii (Honolulu). ♦

AWARDS, HONORS AND ELECTIONS

The Supreme Court Historical Society Board of Trustees has voted to name its lecture series in honor of Leon Silverman, who was President of the College in 1982-83. More than \$270,000 has been raised and pledged to endow the Silverman Lecture Series. The five-lecture series in 2002 focused on the Supreme Court in times of national emergency.



Leon Silverman

Past President Frank C. Jones of Atlanta is currently president of the Society, succeeding Silverman in that post. Past President Ralph Lancaster is National Membership Chair. Silverman was President of the Society for eleven years.

♦ ♦ ♦

Julius Chambers of Charlotte was among seven persons who received North Carolina's highest civilian honor, the North Carolina Award, on November 19, 2002 in ceremonies at the North Carolina Museum of History in Raleigh.

Chambers, a noted civil rights lawyer and recipient of the College's Courageous Advocacy Award in 1994, is a former chancellor of North Carolina Central University in Durham. Prior to that, he was chief legal counsel for the NAACP Legal Defense Fund in New York City.

♦ ♦ ♦

Robert L. Davis of Cincinnati, a former Ohio State Chair, has received the John P. Kiely Award from the Cincinnati Bar Association. This award recognizes a trial lawyer for possessing outstanding trial skills and

demonstrating the highest degree of professionalism, civility and ethical standards. This annual award is presented by the Professionalism Committee of the Cincinnati Bar Association in honor of Attorney John P. Kiely, who was a Fellow in the College, as was his father, John A. Kiely. Davis is the second recipient of this award; the first was Leo J. Breslin, deceased, who was also a Fellow in the College.

♦ ♦ ♦

Malpractice lawyer, Jack Olender, hosted the 17th Annual Olender Foundation Awards at the Ronald Reagan Building and International Trade Center on December 4. Honorees included retired D.C. Court of Appeals Judge Julia Cooper Mack; Joan Claybrook, President of Public Citizen; the late D.C. Superior Court Judge Luke C. Moore; and Catherine Gugala, the reigning Ms. Wheelchair America.

♦ ♦ ♦

Paul Kastler of Raton, New Mexico, a past State Chair, has received the New Mexico Professionalism Award from the New Mexico State Bar Association. The ceremony was held during the annual convention July 25-27 at Sedona. The award is given to attorneys or judges who, throughout long and distinguished legal careers, have, by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism.

♦ ♦ ♦

Jay H. Feldstein of Pittsburgh, Pennsylvania, a founding partner of Feldstein Grinberg Stein & McKee (FGSM), P.C., is the recipient of its 2002 Professionalism Award from the Civil Litigation Section of the Allegheny

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AWARDS, HONORS, ELECTIONS

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County Bar Association. The award, which was established in 1998, is presented annually to one of its members in recognition of many years of faithful adherence to the highest standards of the legal profession. In addition, the award is designed to promote professionalism within the legal community and to honor a colleague whose career not only exemplifies, but also personifies professionalism.

♦ ♦ ♦

William C. Hubbard of Columbia, South Carolina has been elected president of the American Bar Endowment. A partner in the Nelson Mullins firm, he serves as chair of its Business Litigation and Employment Law Group. He also received the Order of the Palmetto in 2002, the highest civilian award given by the Governor of South Carolina.

♦ ♦ ♦

Henry L. King of Davis Polk & Wardwell, New York City was featured in a *New York Times* article last November as the “savior” to plead the case of the fiscally pinched Cathed-

ral Church of St. John the Divine as it tries to lease and develop vacant portions of its 13-acre grounds.

♦ ♦ ♦

Robert F. Horan Jr., Virginia Commonwealth Attorney of Fairfax, Virginia, and Paul B. Ebert of Manassas, Virginia, are the prosecuting attorneys in the two Virginia cases arising out of the recent sniper attacks in the Washington, D.C. area.

♦ ♦ ♦

James R. Wyrsh of Wyrsh Hobbs & Mirakian, Kansas City, Missouri, has been chosen as Practitioner of the Year by the University of Missouri-Kansas City Law School Alumni Association. ♦



James R. Wyrsh

REGIONAL ROUNDUP

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March 2002. In North Carolina, an impressive CLE seminar was conducted under the auspices of Don Cowan of Winston-Salem.

IOWA, MANITOBA, MINNESOTA, MISSOURI, NEBRASKA, NORTH DAKOTA, SASKATCHEWAN AND SOUTH DAKOTA (Regent Frank N. Gundlach)—The first female Fellow from Iowa has been inducted. Jane C. Voglewede

of Fargo has been chosen the first female Chair of the North Dakota State Committee.

Fellows from North Dakota, South Dakota and Saskatchewan held a joint meeting.

Minnesota State Committee has its first female and first African-American members.

Regent Gundlach attended the Nebraska State Committee annual dinner along with President-Elect and Mrs. David Scott. ♦

FELLOWS TO GATHER IN BOCA RATON

A glittering array of speakers will highlight the Spring 2003 Meeting of the College March 20 through March 22 at the Boca Raton Resort.

Arranged by President-Elect David W. Scott, the program includes U.S. Senator Bob Graham, Presidential Counsel Alberto R. Gonzales, Canadian Bar Association President Simon Potter and Jeffrey Toobin, legal affairs writer for *The New Yorker*.

Professor Davison M. Douglas of The College of William and Mary Law School will speak on the life of Chief Justice John Marshall. Edwin D. Williamson of Sullivan & Cromwell's Washington, D.C. office will speak against the alignment of the United States with the International Criminal Court. Federal Judges Robert H. Henry and Lee R. West will be speaking in a humorous vein on the relative merits of trial and appellate judges. ♦

IN MEMORIAM

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

Foster D. Arnett, Knoxville, Tennessee; Clinton R. Ashford, Kaneohe, Hawaii; Joseph M. Butler, Rapid City, South Dakota; Hammond E. Chaffetz, Chicago, Illinois; Charles B. Cohler, San Francisco, California; Glenn W. Denham, Middlesboro, Kentucky; Hon. Raymond Drozdowski, Camden, New Jersey; Past President John C. Elam, Columbus, Ohio; John D. Eldridge, Augusta, Arkansas; G. Richard Ellis, Kokomo, Indiana; Vernon L. Goodin, Berkeley, California; John W. Hackett, Jr., Toledo, Ohio; Edwin A. Heafey, Jr., Oakland, California; William L. Howland, Portsmouth, Ohio; J. Warren Jackman, Tulsa, Oklahoma; Carman E. Kipp, Salt Lake City, Utah; William F. McKenna, Los Angeles, California; James "Moon" Mullen, Charlotte, North Carolina; Fred C.

Newman, Tucson, Arizona; Louis Paisley, Cleveland, Ohio; Former Regent Beverly W. Pattishall, Chicago, Illinois; H. Holcombe Perry, Jr., Albany, Georgia; George S. Pickwick, Mount Vernon, New York; Allan S. Reynolds, Sr., Norfolk, Virginia; Former Secretary Irving R. "Buddy" Segal, Philadelphia, Pennsylvania; John W. Sims, New Orleans, Louisiana; Reed A. Stout, Salt Lake City, Utah; Donald P. Thomasson, Cape Girardeau, Missouri; Norman A. West, Fairfax Station, Virginia; Houston G. Williams, Casper, Wyoming; John W. White, Concord, Massachusetts.

♦ ♦ ♦

As *The Bulletin* was going to press, we received word of the death of James E. S. Baker, Chicago, Illinois, the thirtieth president of the College. A memorial to past president Baker, who died on January 22, 2003, will appear in the next issue. ♦

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The particular terrorists charged and convicted in the Southern District of New York cases were all Islamic extremists who defiled the highly honorable religion of Islam by the doctrine of hate and evil they preached and the acts they carried out in the name of the terrorists' own self-created religion. Killing innocent civilians obviously isn't sanctioned under Islam or any other legitimate religion. . . .

[I]mmigrants have made this country what it is, and we never want to lose that. But we must get greater control over who enters and who stays in our country. In doing so, we must not act unlawfully, but we must not shy away from tighter laws and more rigorous enforcement of existing laws. It is a critical national security issue. . . .



Mary Jo White

[C]an a terrorist defendant either before September 11 or afterwards receive a fair trial in an American courtroom consistent with the rule of law? My answer is most definitely, "Yes." But some defense attorneys, of which I am one now, but not who has this view, and others have argued that even prior to September 11, defendants accused of acts of international terrorism directed against Americans cannot receive a fair trial in an American courtroom consistent with the rule of law. . . . I firmly disagree. As difficult as these cases were to investigate and try, and they were, the one

thing I'm surest of is that our judges, juries, prosecutors and defense attorneys bent over backwards to follow and fairly apply the rule of law to achieve justice. In my view they succeeded, and it is a great tribute to our system that they did. . . .

[T]he threat of terrorism is real; it is long-term, which under our rule of law in my view justifies most, if not all, of the enhanced powers and measures that have been adopted after September 11, including those in the U.S.A. Patriot Act. Our courts will tell us soon whether that's so or not, at least with respect to some. And that's a good thing. The judiciary is critical in this. . . .

[S]ome secrecy in the war on terrorism is both lawful and necessary in my view. But secrecy is presumptively dangerous to an open society and poses a significant threat to the rule of law, which to thrive must operate in the open, subject to public scrutiny and debate, whenever it can. . . .

[A]s we engage in this public debate, which is so critical about all of the issues associated with the war against terrorism, we must distinguish between what is constitutional and lawful and what, even if constitutional and lawful, in these times of heightened threats, should or should not be done as a matter of sound policy. . . . [F]or example, it remains to be definitively decided by the Supreme Court, I personally believe that the law permits the government to hold INS detainees without disclosing their names. But I also believe it is a very unwise policy decision to do so—both as a matter of fairness and as an effective counterterrorism strategy. . . . [T]he price of that secrecy in this instance may well be too high. If we lose our credibility, both here and around the world, we can badly undermine our ability to fight terrorism. We risk having our partners in the world coalition who are fighting the global war against terrorism with us balk and withdraw their support if we are perceived to be acting arbitrarily, unfairly and against the rule of law. Terrorism is global, and the fight

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against it, if it has a prayer of being successful, must also be global.

Striking the optimal balance between national security and civil liberties. . . is a hard, nuanced and critical task. . . . We need the very best people to be entrusted with the enhanced powers that are necessary to effectively combat terrorism after September 11. I strongly believe that when we do use the criminal justice system to prosecute terrorist defendants, we must not compromise our own fundamental values. As proud as I am of the record of convictions in the Southern District of New York terrorism prosecutions, I'm even prouder of the eminently fair trials that each of those defendants, in my view, received in every one of those cases. All of the Constitutional safeguards given to every other category of criminal defendant should be accorded to every terrorist defendant as well. If they are not, we have compromised, diluted our own principles of fairness and due process in order to deal with terrorism. We must not do that, or we are the ultimate and the big losers.

Mary Jo White, Former United State Attorney for the Southern District of New York

♦ ♦ ♦

THE LITIGIOUS SOCIETY

In the long run, New York's economic outlook is bright, but in the short run, which for better or worse happens to coincide with my first term as mayor, we face a very serious challenge. The bottom line is the City's projected budget deficit next year is approximately \$5 to \$6 billion. And unlike . . . the state or the federal governments, we can't run a deficit to cover our shortfall. We actually legally have to have a balanced budget. And our ability to close that deficit without making serious cuts in basic services is hampered by a growing, but largely hidden drain on the



Mayor Bloomberg

City's budget: exorbitant tort judgments. During fiscal 2001, New York City paid out approximately \$560 million in tort judgments and settlements. Or viewed in the context of the City's overall \$5 plus billion deficit, a full 10% of our problems are tort judgments. That amount . . . has increased during the last two decades by 2,300%. If, for example, we could cut that \$550 million in half, we could pay the salaries of 5,000 more teachers or firefighters or police officers. . . .

If the City does something wrong, it should pay. But it shouldn't bear more than its real fault. It shouldn't be at the whim of the jury to make absurdly inflated awards to plaintiffs. When juries saddle city government with such judgments, they are hurting themselves and all of us. . . .

After 9/11, the legal profession responded superbly on the first count, generously helping our city and its people. On the second count, on ending business as usual, specifically on checking the flow of millions in tort judgments away from city services, to coin a phrase, the jury is still out. It's up to you to lead the way towards the right verdict.

*The Honorable Michael R. Bloomberg,
Mayor of the City of New York*

♦ ♦ ♦

Our mission of Common Good is not tort reform, although we're very sympathetic to tort reform and I suppose that's subsumed

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within our mission. Tort reform focuses on crazy verdicts and . . . it is important to put caps on those, if for no other reason because of the huge opportunity cost. But to us, the harm to America is not the occasional wild verdict . . . but the distrust of the system of justice that's now infected our entire culture. For every crazy lawsuit, for every threat of a crazy lawsuit, there are millions of judgments not made or not made reasonably in America today because of the distrust of the system of justice. It is literally corroding the fabric of our culture and paralyzing common institutions. Americans no longer feel comfortable doing what they and you know is the right thing to do day-by-day. . . .

My group . . . commissioned the Harris Poll to do a survey of physicians nationwide. The chairman of Harris Poll had never seen numbers so high as the numbers of distrust of the system of justice. Seven eighths of the doctors said they did not fairly trust the system of justice to achieve a reasonable result and . . . admitted to ordering tests they did not believe were needed; referring patients to specialists that they did not think were needed; giving medicines to patients that they did not think were needed, even doing invasive procedures that they thought were unnecessary because they felt it essential to put something on the record that they had done in case there was a lawsuit. . . . The best study . . . about six years ago, estimated at that time defensive medicine squandered about \$50 billion a year in unnecessary practices. . . . The worst thing according to the Institute of Medicine and other patient quality advocates is that the physicians are no longer willing to be honest and candid. They don't disclose mistakes and near misses, so you can't improve medicine. Professionals are unwilling to express uncertainty to each other, so that they won't get advice, and of course it has chilled patient relations. . . . [M]ost doctors refuse to

**Philip K. Howard**

use email because it leaves a record someone might use in case there's a lawsuit. . . . [T]he ultimate irony is perhaps that bad doctors use the legal system to avoid being accountable. . . .

People don't respond to the *probability* of a terrible thing

happening to them; they respond to the *possibility*. . . . Oliver Wendell Holmes once defined law famously as the prophecies of what courts will do. . . . Benjamin Cardozo said that what law does is uphold the standards of right conduct that are expressed in the mores of the time. People feel comfortable doing what's right and nervous doing what's wrong because the law stands for something. But today in America people are nervous doing *anything*. . . . People can't do what they know is right, because we no longer have a legal system that will affirmatively protect them if they do the right thing. . . .

We have to restore the authority of judges to draw the boundaries of reasonable legal disputes, to return to concepts like proportion and risk/reward relationships and the other things that the common law did over time. . . . He must make these kinds of choices, because otherwise society as a whole begins to become dysfunctional. . . .

Suing is a use of state power. . . . One angry person, by threatening a claim, basically can use state power to bully the rest of society. . . .

[W]hat's missing are indeed the key components of the system of justice—the idea of proportion, predictability and, I submit, also fairness. They're all missing because we're unwilling as a society to make the value judgments We cannot avoid our

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values. . . . as a profession and we can't avoid our values in establishing a legal system.

Philip K. Howard, Head of the Coalition for the Common Good and author of The Death of Common Sense and The Collapse of the Common Good

♦ ♦ ♦

PROFESSIONALISM

His record bespeaks to me of something that Jefferson and the Founding Fathers had in mind: that our public officials would be people who had succeeded in some other vocation, that would give part of their lives to serving the public in holding various public offices.

Past President Griffin B. Bell, introducing The Honorable Michael R. Bloomberg, Mayor of New York City

♦ ♦ ♦

[W]hat we really want is excellence. Excellence in all things, in the great, in the small, when it counts, when it doesn't count, when all can see it and when none can see it. This is the first and great marketing tool I think it's one of the things that's very important about this College, because it is embodied in the core values of this College, which need to be spread. And clients, like juries, notice more than you think the little things. Clean paper, as I like to call it. Every once in a while, I get a resume, and I'm astonished that people would send out a resume with a typo in it. It's not because the typo is important in itself; it's what a professor of mine used to call the thirteenth stroke of the crazy clock. It's not that it's wrong, but it casts doubts on the other twelve. . . .

Of course, we want excellence, but what you may miss is we want wisdom, we genuinely want independence and fearless

candor, complete and utter integrity, responsiveness and core values of civility and honor. As I say, I think this College stands for these things, that's all the way we want to conduct ourselves. And I'm here to tell you it's good business. Your clients want them. . . .

[W]e genuinely crave, but do not always get clear, unvarnished counsel, your advice, your wisdom, plainly stated. Why don't we get it? I would offer that at some level you're afraid. You think we want to hear only good news. . . . [I]t's much less true than you think. We really want your best advice. . . .

Excellent lawyers, such as people in this room, grow out of being excellent human beings. And to be excellent human beings, we cannot be too one-dimensional. We need to know the rules of evidence . . . but it's far from enough. We must find ways to establish a culture that permits your lawyers to do what I submit that all of you have done somehow, gain broad human experience. Whether that



John McGoldrick

means reading Chaucer, laying down bunts, running for office or running marathons or lazy reflecting doesn't matter. But there needs to be a place in the life of trial lawyers where they get something besides being trial lawyers. . . . I

worry about young people coming into the profession who get the wrong idea, who get the idea that single-minded and total devotion to work is what will make you best at what you do. There needs to be this breadth of human experience. . . . I am enormously concerned about how the cream of our American law schools—which is to some degree the cream of our society—comes out

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and ends up spending a number of years in many places being “document lawyers.” . . . I am sure some are turned off and turned away who would be wonderful lawyers and wonderful trial lawyers. We’ve got to figure out how the discovery maw is eating people and eating our system to a significant degree and fix it without losing the benefits. That’s your task.

John McGoldrick, FACTL, Executive Vice President and General Counsel of Bristol-Myers Squibb

♦ ♦ ♦

[T]he Waldorf-Astoria is a far ways away from Pusan, South Korea, which is where my mother and father came from about thirty years ago to Canada to seek a better life. And since coming here, my mother has never looked back. The reason for that, she has told me, is because of the treatment of women in her day in Korea . . . She always told me to treat others well and learn to earn the respect of other people. And having spent time with you, what has really struck me is the warmth of the College and the Fellows of the College and the members and all the guests here and how welcoming you have been. And this has meant a lot to me because we lost my mother just shortly before I graduated. I guess I do believe that good things do come out of everything that does happen. So I guess, in a way, she is watching. And I know this would have made her happy.

Karen Park, accepting the Dickson Medal as the best oralist in the Gale Cup, the Canadian Moot Court Competition

♦ ♦ ♦

[T]his . . . last and final excerpt [from the Leopold/Loeb trial] . . . shows all the five qualities I’ve already enumerated for you. He [Clarence Darrow] finds his *villain*, the

Prosecutor Mr. Savage. He has his *conviction*, because he detests capital punishment. He shows his *courage*, because everybody wants to kill these two boys. He *finds the larger issue*, the need for mercy in human relations, and he certainly showed his *compassion*, because if you can have feelings for these two miscreants, you can have feelings for anyone. But I submit that there was one more quality that



Henry Miller

we have yet to identify which does explain the reason for his dominating reputation. . . . And finally, and to me, the most important thing that we can learn is, he truly was large. . . . He never stopped learning. He never stopped growing. He never stopped reading. He knew much,

and his largeness shone through. He could give a lecture, and did, on Walt Whitman. He lectured on Tolstoy. He was Chair of the Biology Club in Chicago. He was ready for the Scopes trial. He debated once with Henry George, the economist of the single tax theory. . . . He never stopped searching to understand what some would say is the “un-understandable” human condition. And I’ve been asked, “What can you conclude, and can you encapsulate what it is you think we can all learn, be we advocate or just human being, what we can learn from Clarence Darrow? Can you do it in a sentence?” Well, I think I can try. . . .” Clarence Darrow, with all his faults, teaches us the wisdom of expanding our own humanity to its fullest capacity.

Former Regent Henry G. Miller, FACTL, on Clarence Darrow

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As lawyers, as people who litigate, people who challenge legal problems, social problems, moral problems, I know there are many people in this room who understand the idea that you can say things that make a difference in the lives of people. . . . [W]ith a law degree, . . . comes this wonderful opportunity to stand up and be an advocate and to do things that change the way people function. I think that privilege, . . . that opportunity also comes with some responsibility. The Biblical injunction is, "To whom much is given, much is required." . . . [A] lot of you have thought about that. But I believe that all of us are actually placed in a way and empowered with the skills that allow us to say things and do things that actually can create justice, can change lives, can save lives, can create hope.



Bryan Stevenson

And because of that I am very excited about what this group, what this organization, what this institution, represents. . . .

We incarcerate more people per capita than any country on the planet. And that incarceration trend has had devastating consequences to

many poor communities and many communities of color. In minority communities the rise of incarceration rates has been especially disastrous. . . .

[T]his tremendous rise in incarceration and prosecutions has not been accompanied by a rise in defense services, resources for the poor. I see the consequence of that all the

time. . . . [I]n our capital cases we see the. . . . consequences of poor representation in too many cases: trials that last less than a day; voir dire that is conducted in twenty minutes; penalty phase hearings that last less than two hours; capital trials where the lawyer makes no presentation of witness or evidence at either phase. We even handle cases where the lawyer makes no closing argument at the penalty phase of a capital trial. And the consequence of that kind of system creates concern, unreliability. There is no right to counsel in this country for people who are on death row after their cases are affirmed by the state appellate courts. . . . There are hundreds of people on death row in this country who are literally without legal representation and are dying for lawyers. . . .

I believe that to say things that make a difference you have to understand that part of the problem is poverty, part of the problem is race and a history of racial apartheid. Part of the problem are all the conflicts and tensions in our society on a whole host of issues, but ultimately the essential problem is in my judgment hopelessness, this willingness to accept that we cannot do more, we cannot do better. And if there's anything I think we need to create justice, make justice real, it's hope. . . .

I believe we have to be willing to say "I'm here" when justice is challenged, when inequality is present, when unfairness and unreasonable conduct is determining some situation critical to the quality and health of our society. Lawyers, people with vision, people with hope, people who understand the power and responsibility of things, saying something that can make a difference, have to be willing to say "I'm here." I don't accept that race bias in the administration of criminal justice is inevitable, that it cannot be challenged, that it cannot be confronted. I do not accept that all we can do with the hopeless and the despised and rejected is to put them in prisons forever or to execute them. . . .

I know that in this extraordinary institution, in this incredibly influential organization, there are lots of you who have said "I'm

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here,” and I’ve really come thank you for that expression of presence, that expression of vision, because we’re living at a time when we need that voice. . . .

*Bryan A. Stevenson, Executive Director,
Equal Justice Initiative of Alabama*



I hear the speakers this morning, all of them saying to you “You’re here today because you think that working in my office as a lawyer is not the whole story of my professional life. . . . [A] profession in Roscoe Pound’s words, is characterized by a spirit of public service. And when I hear those messages come across this morning, I want to stand up and cheer, because that means maybe we can do it. And from my selfish point of view, unless you keep doing it, which you will, and unless you persuade dozens of others to do it, which you will, and unless you tell the law students that are up here, “Hey, eighteen hours a day in the office, I’m sorry, they’re wrong to put you there for eighteen hours a day at the office, and that’s true for your own good and the profession’s own good. It’s true for the community’s own good, because we have an obligation as lawyers to do a little bit more than that with some of our time.” . . . I think that’s your job and it’s my job.

*Associate Justice Stephen Breyer,
United States Supreme Court*



I think, the outpouring of advice (about what to say on this occasion) speaks deeply of the affection and reverence that the Fellows hold for this institution, and I am 100% confident that every member in this room can recall her or his own induction, and each of us new inductees will too. . . .

It’s our role models, what they stood and

strived for, how they lived their lives, that keep us going, that keep us at our craft, that inspire us to conduct our own professional lives in ways that we hope will make us all role models for others who follow in our way. . . .

In 1951 Justice Robert Jackson, former Attorney General and Solicitor General and fresh back from his tenure as Chief U. S. Prosecutor in the Nuremberg war crimes tribunal, wrote an article about trial advocacy. And Jackson closed with a parable that he said often ran through his mind as he viewed the procession of lawyers who passed before him.

Once upon a time, . . . three stonemasons were asked, one after the other, what they were doing. The first, without looking up, answered, “I am earning my living.” The second replied, “I am shaping this stone to pattern.” The third, lifted his eyes and said, “I am building a cathedral.”

So it is with the men of the law at labor before the courts. The attitude and preparation of some show that they have no conception of their effort higher than to make a living. Others are dutiful, but uninspired, in trying to shape their little cases to a winning pattern. But it lifts up the heart of a judge when an advocate stands at the bar who knows that he is building a cathedral.

All of us who join the College tonight aspire to build a cathedral, and we delight in the fellowship of an institution that values that aspiration as no other.

*Seth P. Waxman, former Solicitor General
of the United States, responding on behalf
of the inductees*



JUSTICE BREYER ON THE SUPREME COURT
IN OUR CONSTITUTIONAL SYSTEM

[A]s I look out, I do think, “This is the room in which *Brown v. Board of Education*

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was decided.” And I do see as I look out across that room who is in that courtroom: everyone is in that courtroom, people of every race, every religion, every point of view. . . . But nonetheless, it is a remarkable thing, you see, which I experience emotionally, which I’ll never get tired of, to see how people who disagree so strongly about so many issues, and they do disagree, and they feel it deeply, have decided to come into that courtroom and decide those differences under law, instead of in the street. . . .

We had plenty of controversial decisions last year and the year before and the year before that. One was called *Bush v. Gore*. Another had to do with prayer in the schools. Another had to do with the abortion rights of women. . . . My goodness, how strongly these people felt about those decisions. And yet, none of us thought for a minute that they wouldn’t be followed. Indeed, . . . it didn’t cross our minds, or at least if it did, we dismissed it pretty quickly. And the remarkable thing about those decisions. . . was what *wasn’t* the problem and *wasn’t* said, namely that they’d be followed by people who disagreed very, very strongly with their merits. . . . [T]hat change . . . didn’t just come from a document called the Constitution of the United States or nine judges or one hundred eight judges from the Supreme Court. That came through a hundred and some odd years of history, a civil war, eighty years of segregation in the South and lots, lots more. And that is our inheritance there, which I experience emotionally under the rubric of the rule of law. . . .

[P]eople all the time talk about democracy. Does democracy work in the United States of America? And I have to say in my particular seat on the Court, my impression day after day is it works a lot better than many give us credit for. . . . We have a system. . . . It’s very complex, but we all know it.

It’s called what I think of as a kind of conversation. . . . We start to talk. Who starts to talk? Well, professors. They’re always first. Second, different groups, people interested in



Justice Breyer

civil liberties, people who are manufacturers, people who are studying the issues in the academy. Where do they talk? In articles, in specialized journals, in newspaper articles in the paper and at meetings. . . .

[W]hat are people talking about in those committees? They are talking about details. They are talking about how to improve this, how to improve that And eventually the legislature gets into the act and they respond to the newspapers and they respond to testimony and counter-testimony, and perhaps there’s an agency that will begin to have a rule and then Congress and fifty state legislatures will step in. I’m describing a mess, but I’m also describing a conversation and I’m also describing how eventually public policy in the United States gets made and remade and remade again. . . . [I]f you want a better decision out of *us*, we’d better come into the act later, rather than sooner, in those areas where there is a lot to be said on both sides. If we get there too quickly and too broadly, there is a greater risk that we will force people to go down a track that later proves wrong. [W]e are part of a very complex process, and I call that the democratic process, and I see it going on all the time and one of the most difficult parts of my job, I think, is to decide when. . . it is better to write with a broader, brighter line, a broader brush and a brighter line, and when to hold back so that this democratic process, this national conversation, can work itself out. . . .

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[A] member of our Court . . . gets to see the Constitution as a whole. That's a task. As an appellate judge, I would see a little bit of it, sometimes over here, sometimes over



**Justice Breyer &
Past President Lively Wilson**

there. As a judge on my Court, it's my daily diet, and because it's my daily diet, I cannot rest with, "Well, first we consider this phrase, and then in isolation we'll consider some other phrase." I don't mean to say I have some terrific well worked out theory of the Constitution. I do mean to say that it forces you. . . . to try to find an approach that sees that Constitution as a single document. When seen as a single document, what does it do? . . . [W]hat it does, writ large, what it does, simplified and seen as a whole, is nothing more than what I learned in the twelfth grade. This is a document, short as it is, that basically says, "We are going in the United States of America to create a government, but a certain kind of government." What kind? (1) A rule of law; (2) A basically democratic method for making decisions; (3) A division of power so that no one gets too powerful, neither the federal government, because it has three parts, and

you have the states, nor the state government, state/federal division of power, separation of powers, protects basic liberty and guarantees a certain amount of equality. Alright? Very simple. There it is. No different from what Thomas Jefferson said. . . .

[I]t seems to me an awfully large number of people in the United States . . . think that the Supreme Court of the United States makes a lot of decisions about how people should behave and what's good for them. That's not what we think we do. We think we are interpreting a document that sets up a framework for government. What kind of a government? The kind of a government that I've just described. . . . It is the kind of government where people who benefit from basic freedom, who have a degree of equality and have democratic political institutions, will themselves make the community decisions that are necessary for people living together in harmony in the United States. In other words, it's not us, it's not the judges, it's not the courts; it's them, the people. And our job is to make certain that that framework is secure. . . .

[I]f people don't understand, and particularly if school children don't understand, then citizens won't understand that . . . we're working with a document that says, "If you do not participate in this process, Ordinary Citizen, we will not have the government that the Constitution creates." . . . [I]t is a document that foresees participation; it is a document that doesn't decide; it is a document that foresees others deciding through a democratic process.

*Associate Justice Stephen Breyer,
United States Supreme Court, JFACTL*

♦ ♦ ♦

BITS OF HUMOR

Mayor Bloomberg is a graduate of Johns Hopkins University. And he has an MBA from Harvard Business School. And thereupon he came to New York, as many before

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NOTABLE QUOTES

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him have, to seek his fortune. . . . He found it.

Past President Griffin B. Bell, introducing Michael R. Bloomberg, multimillionaire philanthropist and Mayor of New York City

♦ ♦ ♦

Mark Twain once said that few things are harder to put up with than the arrogance of a good example.

Former Solicitor General of the United States Seth P. Waxman, responding on behalf of the inductees

♦ ♦ ♦

I come from an industry where we design computers so that when you want to turn it off you click on the “on” button. Why we do that, I don’t know. But then all of you come from an industry where when you write a 20,000-word document, you call it a brief. So, don’t make fun of me.

Michael R. Bloomberg, Mayor of the City of New York ♦

COLLEGE OPPOSES PROPOSED SARBANES-OXLEY REGULATION

In keeping with its policy of defending the sanctity of the confidential relationship between attorney and client, the College has filed a statement opposing the proposed Securities and Exchange Commission regulation that would require the “noisy withdrawal” of counsel for a publicly held company in certain circumstances.

The regulation was proposed to implement Section 307 of the Sarbanes-Oxley Act of 2002. Approved by the Executive Committee, the statement was prepared by the College’s Legal Ethics Committee and College Secretary Michael A. Cooper.

The proposed regulation would require a lawyer to report “evidence” of a client’s material securities law violation up the chain

of command within his issuer client. If this report did not receive appropriate response, the lawyer would have been required to withdraw as counsel and to notify the SEC that he or she had withdrawn for ethical reasons.

The College saw this both as a threat to the attorney-client privilege and an unprecedented and unnecessary intrusion by the federal government into what has traditionally resided in the regulatory province of the states and their respective judiciaries.

In response to the objections voiced by many interested parties, including the College, the SEC delayed action on this portion of its proposed rules and extended the time for public comment. ♦

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A current calendar of College events is posted on the College Website at www.actl.com