



The Bulletin

Number 44, Summer 2003



*William R. Jones, Jr. Receives Gates
Litigation Award From Committee Chair
John Tucker*

Details on Page 3

Montreal,
Oct. 30 - Nov. 1,
page 25

In Memoriam,
James E. S.
Baker, page 11

New Executive
Director,
page 8

**American College of Trial Lawyers
The Bulletin**

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Hon. Emil Gumpert
(1895—1982)

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



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

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



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

—Hon. Emil Gumpert,
Chancellor-Founder, ACTL

**FROM THE EDITORIAL
BOARD**

In this issue we highlight the Fifty-Third Spring Meeting of the College held in Boca Raton in March. We hope that the excerpts from the remarks of the various speakers will give those of you who could not attend some food for thought. In particular, we have printed almost in its entirety the response of William R. Jones, Jr., the recipient of the Samuel E. Gates Award, at the time of the award.

Continuing our recent practice, we focus on the work of two more of the College's most active national committees, the Federal Criminal Procedure and the Federal Rules of Evidence Committees.

(Continued on page 15)

“WHO ARE WE?”

Remarks of William R. Jones, Jr. FACTL, of Phoenix, AR, upon the presentation to him of the Samuel E. Gates Litigation Award, established to honor a lawyer or judge who has made a significant contribution to the litigation process.

I am truly humbled by this day and this recognition. The day I was admitted to fellowship in the College was the pinnacle of my professional career. It was *the* professional honor to which I aspired. That the Samuel E. Gates Award has previously been bestowed upon some of the greatest legal minds we have known—makes today’s recognition beyond the scope of my wildest imagination. This is particularly true because the quality that this award honors—“contribution”—is something which for me is a given. I am truly grateful and humbled.

My father was a country lawyer in the hills of Kentucky. As a youngster, I learned from him that the greatness of these United States is, in significant part, based on the rule of law. The rule of law equalizes all individuals and distinguishes us from many, if not most, of the other nations in the world. It supports

our democracy and protects our citizens from a totalitarian rule. It allows us to live in peace and dignity and avoids the chaos we see throughout the world.

As a child, I learned something else from that small town lawyer as I sat around his one-room office. As a profession, we have been granted exclusive custody of a great public trust. Our fellow citizens have charged us with the task of being the guardians and trustees of our system of justice. We are responsible for protecting, shaping, nourishing and growing that justice system for all of our citizens. This message was not only my father’s, but was also eloquently delivered by the thoughtful faculty as I matriculated through the University of Michigan Law School—a faculty which included professor John Reed, a prior recipient of this award.

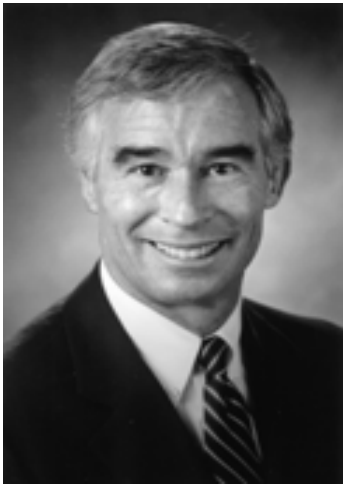
So it was that when I raised my hand and took the oath to become a lawyer, it had already been instilled in me that with the oath of the profession I was accepting an awesome responsibility. That is the responsibility of a public servant: the responsibility to do my small part to discharge our profession’s fiduciary duty to protect, shape, and grow our justice system so that all our citizens can prosper together as a free nation. So, you see, the basis for this wonderful award today stems from

The Gates Award citation for Mr. Jones in part follows:

“[O]utstanding trial lawyer . . . mentor . . . teacher of trial advocacy . . . Judge pro tem of both the Arizona Court of Appeals and the Supreme Court of Arizona . . . moving force behind important . . . legislation in products liability, attorney-client privilege, governmental liability, tort and worker’s compensation reform, medical malpractice, compulsory arbitration and the Arizona Rules of Civil Procedure, you have made special and significant contributions to the improvement of the litigation process. By your life and deeds you have honored our profession.”

(Continued on page 9)

THE PRESIDENT'S REPORT— ON THIRTY TRIPS SO FAR I FIND FELLOWS ACTIVE



Warren B. Lightfoot

It has been a great privilege for Robbie and me to get to know so many of you in our travels.

Everywhere we go, we have been met with warm hospitality and enthusiasm. Our Fellows and their spouses are not just gifted and successful people; they have so many dimensions unrelated to the law. I have always thought that lawyers give back more to their communities than members of any other profession; and extraordinary lawyers that they are, our Fellows and their spouses contribute extraordinarily.

Show me a charity, and I will show you a Fellow in a key position; show me a church or synagogue, and I will identify several Fellows who are deeply involved; look at a civic organization and you will find Fellows; name the

board members of any eleemosynary institution in your city, and you will have named at least one Fellow. One last comment about the spouses of our Fellows: it is the rare Fellow indeed whose standing and success is not owed substantially to the patience, support and judgment of a spouse. High stakes courtroom work is so very, very hard, and most of us recognize that there have been many times when our spouse's understanding has made the critical difference.

Since last fall Robbie and I have made thirty trips for the College, the last thirteen of which are summarized below. I judged the National Moot Court finals in New York City on January 30, and found that the competition is prospering under the able leadership of Paul Saunders and his committee.

On January 31, Secretary Mike Cooper and I met in New York City with Chief Judge Judith Kaye, JFACTL, exploring ways in which the College can work with the National Conference of Chief Justices (of which she is the current president) and the National Center for State Courts. That evening was the New England Fellows Annual Dinner in Boston, where Past President Mike Mone, Regent Joan Lukey and Massachusetts State Chair Phil Callan took turns at the podium.

Richmond saw a fine turnout on February 7 for the Virginia Fellows Black Tie Dinner, and State Chair Mike Smith and his wife Ellen Bain were our hosts. While in Richmond, I met with Roger Warren, President of the National Center for State Courts, and with Barbara Kelly from the Center.

February 20-23 was a good time to meet with the Fellows of South Carolina and

(Continued on page 13)

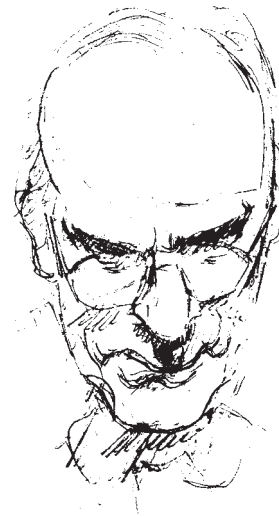
FIFTY-THIRD SPRING MEETING HELD IN BOCA RATON

Fellows of the College gathered on March 20-23, 2003 at the Boca Raton Resort & Club, Boca Raton, Florida, for the Fifty-Third Annual Spring Meeting. It marked the ninth time that the College had met in this locale.

The then recent invasion of Iraq and heightened terrorism alerts had a slight impact on attendance. Not unexpectedly, several of the speakers invited by President-Elect David W. Scott alluded to legal problems in combating terrorism, and one speaker chose this as the subject of her remarks.

In his remarks, entitled *Just What Are The Courts There For?* Simon V. Potter, President of the Canadian Bar Association, delivered a heartfelt plea for the preservation of trial courts as the final arbiter of disputes and the source of precedent in a common law system.

Edwin D. Williamson, Sullivan & Cromwell, Washington, D.C., a legal advisor to the United States State Department, and David J. Scheffer, Senior Vice President of the United Nations Association of the USA and former United States Ambassador-at-Large for War Crimes Issues, debated the pros and cons of United States involvement in the formation of the proposed International Criminal Court. Williamson, opposing involvement, argued that the court as it was created carried too great a risk of unwarranted prosecutions of American military and government personnel for political reasons. Scheffer, who was the United States' chief representative in the negotiations that led to the Rome Treaty, which created the Court, argued that protections



Edwin D. Williamson

against such risks were more than adequate and that the United States should continue to influence the shaping of the court by remaining at the negotiating table, rather than withdrawing.

American Bar Association President A. P. Carlton, Jr. of Raleigh, North Carolina, outlined the principal issues facing the legal profession: independence of the judiciary, independence of the legal profession and the common role of an independent judiciary and an independent profession in protecting the American system of government.

Kathleen M. Sullivan, Dean of the Stanford Law School and a noted constitutional scholar, chose as her topic *War and Civil Liberties*. She placed in its historical perspective the present tension between protection against terrorism and preservation of constitutional rights, outlining the conflicting theories of constitutional application that have arisen in times of national emergency. She went on to explore the lessons we have

(Continued on page 6)

Drawing courtesy of:
Marie Finkelstein, Toronto, Canada

53RD SPRING MEETING

(Continued from page 5)

learned from the past and to point out those areas that seem to warrant the most attention in dealing with the present conflict.

In the year of the 200th anniversary of the United States Supreme Court's opinion in *Marbury v. Madison*, Davison M. Douglas, Director of the Institute of Bill of Rights Law and Professor at the Law School of the College of William & Mary delivered an absorbing paper entitled *The Life and Legacy of Chief Justice John Marshall*.

The practical side of law practice was not ignored. Jeffrey Toobin, staff writer for *The New Yorker*, author, television personality and former editor of the Harvard Law Review, spoke on *The Sweet Torture of Dealing With The Press*. His presentation was laced with colorful and humorous examples, as well as practical advice on dealing with the press.

Pinch-hitting in place of Justice Alberto R. Gonzales, Counsel to the President, who could not attend on account of international developments, Regent David J. Beck delivered a lucid account of the litigation spawned by the collapse of Enron, commenting its impact on the courts and its potential impact on the legal profession.

The Samuel E. Gates Litigation Award went to William R. Jones, Jr., FACTL, whose moving response, *Who Are We?*, is reproduced in its entirety elsewhere in this issue.

Finally, to add a note of humor to the proceedings, Past President and Oklahoma College of Law Dean Andrew M. Coats introduced Lee R. West, Senior United States Judge for the Western District of Oklahoma and Robert H. Henry, Judge of the United

States Court of Appeals for the Tenth Circuit, who engaged in a spirited debate entitled: *Resolved: That Trial Judges are Superior to Appellate Judges—At Least One on One*.

Extracts from the remarks of various speakers are included elsewhere in *Notable Quotes*.

On the social side, the Fellows and their spouses were greeted on Thursday night at a welcoming reception, the venue for which included separate stations for each region to help Fellows and their spouses meet other attendees from their respective areas. A Salute to Montreal, a dinner-dance looking forward to the next annual meeting in Montreal, followed on Friday night. The black-tie induction ceremony and Spring Banquet were followed by dancing and a traditional sing-along.

The response on behalf of new inductees was given by Anne M. Bremner, Seattle, Washington. Her response was punctuated at the end by a College first: the inductees produced black berets and tossed them into the air in unison.

Among the inductees was Simon Potter of Montreal, Quebec, the President of the Canadian Bar Association, who had earlier addressed the meeting. Also attending was at least one well-known spouse, author Anna Quindlen, wife of inductee Gerald Krovatin, Newark, New Jersey. ♦



Anne M. Bremner

The College's monograph on Military Tribunals, approved by the Board of Regents at the Spring Meeting for selective distribution, has received widespread attention in light of the current discussion of treatment of alleged terrorists. It can be found on the College website actl.com.

NOTABLE QUOTES FROM THE 2003 SPRING MEETING

“Oh Lord, by whatever name we call you, be with us as we gather again to renew old friendships, to welcome new friends into our fellowship, to pause from the routine of our daily lives and to turn our minds to the great issues that perplex our profession, our world. Remind us that by your hand all things came to be, from the vast expanse of interstellar space to this fragile Earth, our island home; that you brought us forth from the primal elements and blessed us with memory, reason and skill; that you made us rulers of your Creation; and that when we turn against one another, when we lose sight of the Spirit that binds us all as your children, we betray your trust. In our present conflicts, watch over those whose duty it is to follow and obey and bring them safely home. Guide those whose duty it is to lead, that the voice they follow may be your voice. And finally, remind us again and again that we are but stewards of your Creation who must someday give account of our stewardship. Amen.”

Opening prayer, Fifty-Third Spring Meeting, Boca Raton, Florida, March 21, 2003

♦ ♦ ♦

“I believe that someone out there is trying to make us feel guilty about going to Court. Someone out there is trying to make us feel guilty about getting to trial and having a trial. . . . [I]t is a dangerous thing when parties are dissuaded by the system from getting their disputes before a judge. I do maintain that lawyers ought not to be told that their ethical duty is to lighten the load on the courts. Their duty is to advise and represent their clients. The duty of government is, should matters not settle, to provide

a proper and reasonably accessible forum for that representation to come to a pleading, before the judicial branch of government. . . . There is a reason for which court proceedings have for centuries have been held to be public, and open to all, barring exception. It is that the course of justice is of interest to more than just the litigants themselves. The way it operates and the results to which it arrives are of interest to all citizens in a free democracy. . . . [P]recedent, and the search for each next new one, is what makes the law, and it is what makes the law keep up with social and other changes in the world. It is not just that it is enjoyable for the trial lawyer. It is good for a democratic and dynamic society. . . . What kind of world awaits us if the courts, which are



Simon V. Potter

to make the precedents, actively discourage from their doors the very cases which will set those precedents? . . . We must be modest and know that a trial is not always in our clients' best interest, but we must see this through the knowledge that, if the parties do not really want to settle, court trials are superior to other forms of dispute settlement in the search for truth, in the quest for advancement of the law and in the demonstration to the public that there is a court system there waiting for them when they need it. It is not our duty to push clients

(Continued on page 26)

COLLEGE HIRES NEW EXECUTIVE DIRECTOR

President Warren Lightfoot has announced that the College has hired Dennis J. Maggi, CAE, as its new Executive Director, replacing Robert A. Young who resigned last October.

A business administration graduate of California State University at Sacramento and Certified Association Executive, Maggi (whose name is pronounced like “magic” without the c) brings fifteen years of experience as a professional association executive to the job. He started his new duties on June 16 at College headquarters in Irvine, California.

“All of you will enjoy getting to know this fine young man,” Lightfoot said. “He comes to us with a wealth of experience in association management.”

The president congratulated Gene Lafitte as chair of the search committee along with committee members, Lively Wilson and Andy Coats. All three are past presidents of the College.

Maggi served as assistant executive director of the College in 1995-96, which provided an opportunity for him to study the organization from the inside. From 1996 to 1999, he was executive director of the IPC California Circuits Association and IPC Western Re-



Dennis J. Maggi

gion, leaving there to become member and chapter relations specialist with the American Association of Critical-Care Nurses.

Prior to 1995, he was director of administration for the California Society of Health-System Pharmacists for five years. A very active member of his professional organizations, Maggi was installed as chair-elect on July 1 of the 1,000-member California Society of Association Executives for the 2003-04 term. He also is a member of the American Society of Association Executives, has served on several committees and currently is a member of its ethics committee.

“What I bring to the position at the College is a strong background in association management, governance and organizational management for not-for-profit (organizations),” Maggi said. “Another benefit that I bring is that I have a history with the College. Even though it was for one year, I have a good sense of what the College is about and what its goals and purposes are.”

Maggi spends his personal time with his wife of nineteen years, Michele, and their three daughters, Katelyn, thirteen, Lauren, ten, and Jennifer, eight. Katelyn, who has danced since she was 4 years old was recently accepted into the prestigious American Ballet Theater Company summer intensive program in Austin, Texas. Jennifer is involved in dance instruction, and Lauren is an avid soccer player. Maggi is a certified referee with the American Youth Soccer Association. His wife has worked part-time in children’s ministry and serves as historian for the Pacific School of Ballet in Laguna Hills. Maggi likes to play golf, run and read, mostly Christian authors (his latest, a book by Robert Whitlow) and spend time with his family on the beach. ♦



“WHO ARE WE?”

(Continued from page 3)

what has always been a natural part of my life. Contributing back to the profession and our society is a sacred obligation that goes hand-in-hand with the privilege of being a member of this honorable profession—and, my friends, it *is* an honorable profession no matter how hard some of its members may denigrate it with selfish and thoughtless words and actions.

This public trust bestowed on us is not irrevocable, however, and I fear that some of our profession have either forgotten or, sadly, were never instilled with the obligations of their position as public servants and trustees of this great justice system. I fear that those of our profession who have brought it into disrepute could cause us to lose some or all of our trusteeship. Indeed, even in these times we see our exclusive custodial position eroding, and with it, we also see the continual erosion of respect for the system. Disrespect of the justice system is, in a measure, disrespect for this great country.

Unquestionably, there are a variety of reasons that so many in our profession have abandoned their obligation to contribute. As with most of our societal problems, in my view the root of the problem lies in the home and in the dying art of communication. I use the term “home” very loosely. I am talking about youngsters not being schooled by their families, their peers, their teachers and professors and their colleagues regarding the true values and obligations of our lives in our society. By the dying art of communication, I refer, primarily, to the fact that we have allowed our lives to become so hectic that we do not sit down face-to-face with our families, our friends, our colleagues and our professional associates and talk openly about the values that have made us great as families; as law firms; as a society; and as a nation. We have not taken the time to remember that

when the final judgment of who we are and what we may have accomplished is made, it will not be based on how many cases we have won, but rather how we have fulfilled our obligations to others. We will not be judged on the number of billable hours or the bottom line. We will be judged, in part, on whether we worshiped at the idol of the almighty dollar or whether we served others by discharging our duties as the trustees and guardians of our great justice system.

For those of us who learned our obligations from our parents, teachers, our professors and our mentors, it is almost second nature to say “yes” when we are asked to participate in the improvement of the justice system or of our profession. I suspect that the majority of our profession, *when asked*, would also step forward and lend a helping hand. The question is one of leadership. Any significant change requires two factors: First, a leader; and Second, a cause. We have the leaders. In fact, a significant percentage of the leaders of our great profession will be attending this meeting over the next several days. It is to you that I make my plea to identify the causes and lead the way to healthy change which will set us on a course of improving what is already the greatest justice system in the world.

Identifying the causes is not difficult. We as a profession cannot sit idly by when the media attacks and pillories our judiciary because an unpopular decision is not in keeping with what the media wanted. How difficult is it for our bar associations to form committees of highly respected practitioners to respond to unjustified media criticism of those judges who cannot speak for themselves? And when those in our Legislatures duck difficult issues of public policy because they are controversial, how difficult would it be for us as a profession to remind those distinguished representatives that with their abdication of responsibility, they have forfeited their right to complain of “judicial activism” when these matters of public policy are decided in the courts?

(Continued on page 10)

“WHO ARE WE?”

(Continued from page 9)

When our courts are clogged with lawsuits, how difficult would it be to sit down with our colleagues and design a compulsory arbitration system that not only disposes of 90% of those cases while still preserving the right to a jury trial? That system can be staffed, to a great extent, by lawyers who volunteer their time and save the public tens of millions of dollars of tax money.

When we are plagued by a crisis in our healthcare system which might or might not be partially caused by a slow and expensive judicial process, can we not reason together to change our rules to make that system more expeditious and less expensive while preserving the rights of those who are legitimately injured by the fault of another? Must our greed exceed the public's need for healthcare?

When we price ourselves in such a manner that we become unreachable to the average citizen because of cost, why are we not working with various agencies to make available alternative legal services with oversight by the profession? For instance, does the average domestic relations case even belong in the traditional justice system? In our jurisdiction, less than 8% of domestic relations cases have attorneys on both sides. Why not find alternatives? The public is finding alternatives, whether they are adequate or inadequate. Why don't we assure that they are adequate? Can we not examine whether or not the vast majority of these cases even belong in the civil justice system? Can the litigants and their families not be better served by an allied profession that includes counselors and psychologists? Would such a system do any better at preserving families than the stressful litigation system?

Are our tort laws efficiently addressing the need to fairly compensate those who are truly injured through the fault of another, without overcompensating or duplicating

compensation? Can we provide the same fair compensation without all of the costs?

We also need to ask ourselves whether we as a profession are providing the leadership to address these and other issues with intellectual honesty. Why not approach our law schools and demand that its students be taught these contributory values, and that the ethical rules are minimum standards of behavior, not aspirations? Why do we leave the teaching of these values and the addressing of these issues to folks who have never been in a courtroom or experienced the obligations of representing a client in a life and death situation?

There is enormous intellect and capability sitting in this room today. I dare say that with the brainpower and influence of those here today, there are precious few problems with our justice system that could not be addressed and effectively improved. The causes are there and the leadership is here. I suggest that we have a personal obligation to merge the leadership with the causes and get the job done.

Avoiding the temptation to worship at the idol of the almighty dollar may well mean that I will not leave a great financial legacy to my beloved wife and children. When I look in the mirror, however, I do not see a balance sheet. I see a person who can say he has done his best to fulfill the obligations of the public trust bestowed upon him as a member of this *honorable* profession. I would hope that each member of the College will share with me the question I ask myself on almost a daily basis as I grow older—Who Am I and What Am I Really All About?

Again, all of the Fellows have my undying gratitude for this recognition. ♦

William R. Jones, Jr.
March 22, 2003



IN MEMORIAM



James E. S. Baker
May 23, 1912--January 22, 2003

James E. S. Baker, of Chicago, the 29th President of the College, died of heart failure on January 22, 2003 at the age of ninety. A combat veteran of World War II and a retired antitrust trial lawyer, for the last several years of his life, Baker had devoted much of his time to the College and to his favorite pastime of golf.

“The College was always front-burner to him, and I don’t think he missed a whole lot of what was going on within the ACTL,” his son, John L. Baker, said. In the twenty-odd years since the end of his presidency, Baker had been a faithful participant in meetings of the Board of Regents until the last meeting before his death.

He had become President of the College in 1979 when President-Elect Samuel E. Gates of New York City died shortly before he was to be installed. For many years there-

after, Baker, whose wife, Eleanor Dodgson Baker, had died in 1972, frequently escorted Gates’ widow, Philomene Gates, to College functions.

Baker had also served as Secretary of the College from 1977 to 1979 and as a Regent from 1973 to 1978.

Under his presidency, the College filed an *amicus curiae* brief in the United States Supreme Court in *Upjohn v. United States*, supporting the application of the attorney-client privilege to corporate litigants. He had also urged expansion of College membership in Canada, and it was during his tenure that College leaders considered and ultimately rejected the suggestion that its headquarters be moved to Chicago to share the same building with the American Bar Association.

His presidency marked a significant increase in the visibility of College officers in the states and provinces. Between the two of them, Baker and then President-Elect John Elam attended forty-five College functions during Baker’s year as President. “Their main goal was to build enthusiasm for membership and national initiatives out there in the states,” John Baker said.

James E. S. Baker was born on May 23, 1912 in Evanston, Illinois and grew up in Wilmette. He graduated from Northwestern University in 1933 with a degree in chemical engineering and from Northwestern Law School in 1936.

He was valedictorian of his high school, undergraduate and law classes. After receiving his law degree, he joined the then small Chicago law firm of Sidley & Austin, where he would spend the rest of his career, as an associate, a partner and later as counsel to the firm. He was a fifth-generation lawyer: his father, grandfather, great-grandfather and great-great-grandfather all were lawyers.

Participating in one of the nation’s first NROTC units while at Northwestern, he was

(Continued on page 12)

IN MEMORIAM

(Continued from page 11)

commissioned in the United States Naval Reserve in 1933 and, like many of his contemporaries, remained active in a reserve drilling unit during and after law school to supplement his income. Along with many of his unit, he was called to active duty in August 1941 to flesh out the crew of the *USS Pelias*, then being converted from a commercial vessel to a submarine tender in the Brooklyn Naval Yard. At sea in October, transiting the Panama Canal in November, taking on ordnance and supplies in San Diego and San Francisco, the *Pelias* arrived in Hawaii on November 27, 1941 and was at anchor at Pearl Harbor on December 7. The submarine base, where it was anchored, was left virtually unscathed in the Japanese attack.



**James Baker
in 1937**

After the Battle of the Coral Sea, the *Pelias* was home-ported in Australia for two years, maintaining and repairing a squadron of twelve fleet submarines. The only officer with legal training in the area, he was also made Judge Advocate General for the US forces in Western Australia.

By 1944, he was the Executive Officer, and later was the skipper, of the attack transport (APA), *USS New Kent*, delivering combat troops to Okinawa and the Philippines and, finally, occupation troops to Japan. His was the only APA in a squadron of four that

survived the invasion of Okinawa; the other three, hit by Kamikazes, sank with a huge loss of life.

Discharged from active duty, in 1946 he returned to Sidley & Austin, which had promised all its returning associates a job after the war. He quickly developed a trial practice, principally in antitrust matters, and he headed the firm's litigation department and its summer intern program for many years. His clients included the William Wrigley Jr. Company, and he was the personal attorney of "Mr. Cub," Ernie Banks. Each year, he followed the Cubs to Spring training in Phoenix, putting his two sons in school there for the duration of the season. He was also heavily involved in the engagement that led to the breakup of AT&T, a client of the firm.

Known for his ability in both the courtroom and at the bargaining table, he had mastered the art of winning while keeping the respect of his adversaries. He retired in the early 1990s from a firm that is now among the nation's largest.

In addition to his service to the College, Baker was active in legal, civic and university support organizations. He was past president or chairman of the Northwestern University Law Alumni, Stanford Parents Club, Chicago Law Association, the North Lake Shore Drive Association and the Northwestern University John Evans Club. In his one venture into politics, he lost the race for mayor of Wilmette by one vote. A son, Graham, predeceased him, as did his wife. He is survived by his son, John, himself a retired naval officer, a granddaughter, Diane, and a grandson, Charles.

Quietly engaging in manner and a consummate gentleman, he had a way of seeking out new Fellows of the College, particularly new members of the Board of Regents, and making them feel at home. Past President Ralph I. Lancaster, Jr. reflected, "Jim loved the College and was ever alert to make sure that younger generations of Regents and Officers adhered to the purpose and beliefs of its founders." ♦

THE PRESIDENT'S REPORT

(Continued from page 4)

North Carolina at Sea Island, Georgia, and our visit was made all the more enjoyable by Jim Pressly and Jim Williams, State Chairs for South and North Carolina respectively, and by Regent Ed Mullins and his wife Andrea.

Snow was everywhere in Ottawa on February 28 when we were there for the Sopinka Cup Finals. President-Elect David Scott and his wife Alison took care of us, and the Canadian Competitions Committee did a fine job under the leadership of Chair Michel Decary and Regent Brian Crosby. We had simultaneous translations of the trials in French and English, a feature rarely seen in our Alabama courts.

Our March 20-23 Spring Meeting in Boca coincided exactly with the beginning of the Iraq War, and some attrition resulted. Aside from that, we had a fine meeting, and everyone seemed to enjoy the evenings as well as the fine professional program arranged by President-Elect David Scott.

Immediately after Boca came the National Trial Competition Finals in Houston on March 28-30, capably orchestrated by Chair Cliff Gunter and his wife Katie. This committee is a dedicated group of Fellows and they converged on Houston from all over the country to serve as judges and jurors.

On April 10 Robbie and I were back in the East at the Downstate New York Fellows Black Tie Dinner, where Chair Alan Levine put together a splendid evening. We left the next day for Seaview, New Jersey for a regional meeting of the New Jersey, Pennsylvania and Delaware Fellows. Chair Dick Brennan presided admirably over a fine turnout, and I learned that it is difficult to follow Regent Dennis Suplee to the podium.

Crisscrossing the country for our next meeting, we joined the Southern California Fellows for an elegant evening at the California Club in Los Angeles. We were house guests of Past Regent Tony Murray and his

wife Kathleen, our dear friends of many years, and Chair Don Mike Anthony assembled an impressive group at the dinner, including Regent Tom Slutes and his wife Vickie.

Back in the Deep South, on May 1-3 Robbie and I, along with Regent David Beck and his wife Judy, attended a regional meeting of the Texas, Mississippi, Louisiana and Arkansas Fellows in Biloxi, Mississippi at the Beau Rivage Casino on May 1-3, where Chair Sonny Gwin and his wife Carolyn put together an interesting program. We followed that event with the Alabama Fellows' Black Tie Dinner in Montgomery, Alabama on May 3 with Chair Richard Gill presiding and Regent Jack Dalton and his wife Marcy in attendance.

Our last trip as I write this report was one of our very best. Walt Sinclair and Kristin Hoff hosted a dinner for the Idaho Fellows in Boise on May 10, but, more than that, they thoroughly looked after us and Regent Payton Smith and his wife Patsy for two delightful days, showing us spectacular museums and a magnificent gorge of the Snake River where raptors can be seen dining on ground squirrel hors d'oeuvres.

By the time you read this, our campaign against the ABA's proposed liberalization of Model Rule 1.6 will be well underway. We will be calling on Secretary Mike Cooper and Treasurer Jimmy Morris to spearhead our efforts in this regard, and we will combine our efforts with the eloquence of Fellows Ben Hill, Bill Paul and Larry Fox in the House of Delegates.

Also by the time you read this report, we will have a new Executive Director in Dennis Maggi. Dennis, his wife Michele and three daughters live ten miles from our ACTL headquarters in Irvine, and he comes to us with a wealth of experience and a fine track record at other organizations he has served.

Some of you may remember Dennis from his one year with us back in the mid-nineties as assistant to then director Bob Young.

(Continued on page 14)

THE PRESIDENT'S REPORT

(Continued from page 13)

Dennis is an engaging and highly talented young man, and all of us are delighted to have him join the College family. We look forward to many years together.

Finally, Robbie and I hope to see many of you in Montreal in October. It promises to be one of our best meetings, both from the standpoint of the professional program and evening events, as well as the best prices we have had in over a decade. I hope you will join us for a splendid meeting, and I look forward to seeing you. ♦

President Warren B. Lightfoot

FEDERAL CRIMINAL PROCEDURE COMMITTEE AMONG COLLEGE'S MOST ACTIVE

The role of the Federal Criminal Procedure Committee goes to the heart of one of the two major areas of trial practice. The charge of the Committee, currently chaired by James L. Eisenbrandt of Prairie Village, Kansas, is to monitor the operation of the Federal Rules of Criminal Procedure and other federal criminal procedures, to determine the adequacy of the operation of those rules and procedures, to evaluate proposed changes and make recommendations regarding them and to initiate its own proposed changes where it perceives a need for change.

Few Federal laws have had more impact on federal criminal procedure than the 1984 United States Sentencing Guidelines. In 2000, the College's Board of Regents endorsed and published the committee's *Report and Proposal on Section 5K1.1 of the United States Sentencing Guidelines*, advocating that motions for downward departures for substantial cooperation

should not be limited to motions by the Government, but should also be available on motion of the court or the defendant.

In 2001, the College published the committee's *Proposed Modification to the Relevant Conduct Provisions of the Guidelines*, seeking to limit the use of uncharged and acquitted conduct in federal sentencing proceedings. Both reports were subsequently published in the Georgetown University Law Center's *American Criminal Law Review*.



James L. Eisenbrandt

(Continued on page 15)

FEDERAL CRIMINAL PROCEDURE COMMITTEE

(Continued from page 14)

The Committee worked with the College's Committees on Federal Rules of Evidence and Attorney-Client Relationships on a monograph entitled *The Erosion of the Attorney-Client Privilege and Work Product Doctrine in Federal Criminal Investigation*. That work was published by the College in March, 2002. It has since been published in a national journal. 41 *Duquesne Law Review* 307 (2023).

This year, the Board of Regents approved for publication the Committee's *Proposed Codification of Disclosure of Favorable Information Under Rules of Criminal Procedure 11 and 16*. This important paper advocates the codification of the prosecution's constitutional obligation to establish a unified definition of favorable and impeaching evidence and to provide for such disclosure to the defense at a meaningful time in criminal proceedings. The *American Criminal Law Review* also plans to publish this work.

These position papers, reflecting as they do the thoughtful views of leading criminal trial lawyers, and carrying the imprimatur of the College, are major contributions to current literature on these subjects.

At the Spring Meeting in Boca Raton, the Board of Regents approved the recommendation of the Foundation of the American College of Trial Lawyers, made on the suggestion of the Committee, that it be autho-

rized to make a grant of \$20,000 to fund scholarships to the National Criminal Defense College. These scholarships are to be used for training in trial skills of public defenders, with a particular emphasis on death penalty defense.

The Committee continues to monitor a proposal by the Departments of Justice and Treasury requiring lawyers to file Suspicious Activity Reports concerning clients' financial transactions under certain circumstances. The Committee hopes that the College will be in position to have input into the rulemaking process in advance of its official promulgation.

The Committee continues work on several other projects, including revisions to legal standards for corporate criminal liability in light of *United States v. Arthur Andersen* and a proposal for uniform application in the federal courts of Rule 17(c), authorizing pretrial subpoenas for documents. Pretrial subpoena practice presently varies widely from district to district.

The Committee is also considering a project to study problems and issues arising from self-representation. Increasing numbers of terrorism-related prosecutions make it likely that handling trials in which the defendant chooses to represent himself will continue to be a significant issue for federal district courts. ♦



FROM THE EDITORIAL BOARD

(Continued from page 2)

We reported the death of past president James E. S. Baker as the last issue was going to press, too late to include a memorial to him. He was so quietly unassuming that

many of us who came along after his presidency had no idea of his history until after his death. You will find a memorial to him, yet another of "the greatest generation" who is no longer among us, in this issue.

We continue to seek both your comments and suggestions about what you would like to see in *The Bulletin*. ♦

BOARD OF REGENTS COM



Seated: Michael A. Cooper, Secretary; David W. Scott, Q.C., President-Elect; Warren Treasurer; Stuart D. Shanor, Immediate Past President

Standing: First row: Mikel L. Stout, Dennis R. Supplee, Sharon M. Woods, Robert B. Edward W. Mullins, Jr., Lively M. Wilson*, R. Harvey Chappell, Jr.*, Thomas E. Deac Lancaster, Jr.*, and Gene W. Lafitte.*

Back row: Earl S. Silbert*, John J. Dalton, Michael E. Mone*, Brian P. Crosby, Payton Renfrew*, Albert D. Brault, Brian P. O'Neill, Gregory P. Joseph, John L. Cooper, E. C.

Absent: Lon Hocker*, Alston Jennings*, Gael Mahony* and Frank C. Jones.*

* Past President

CONVENES AT BOCA RATON



The Board of Regents, including the Past Presidents, meets for three or four days in advance of each national College Meeting.

In addition to considering each nominee to fellowship separately, the Regents hear reports from the President, the Executive Committee and each national committee and generally transact the business of the College.

As the College's level of activity has increased, the Executive Committee has managed more and more of its ongoing affairs between meetings, consulting with the entire Board, including the Past Presidents, on policy issues.

John B. Lightfoot, President; James W. Morris, III,

William Fiske, Jr.*, Leon Silverman*, Andrew M. Coats*,
Richard A. Foy, Jr.*, Griffin B. Bell*, Patricia C. Bobb, Ralph I.

William Smith, Joan A. Lukey, Tom Slutes, Charles B.
Osborne Ayscue, Jr.*, and David J. Beck.



MICHAEL A. COOPER ELECTED SECRETARY

Michael A. Cooper of Sullivan & Cromwell in New York City became the new Secretary of the College at its 2002 Annual Meeting, succeeding David W. Scott of Ottawa, Ontario.

A graduate of Harvard University in 1957 and Harvard Law School in 1960, Cooper is a former president of the Association of the Bar of the City of New York (1998-2000). Co-chair of the Lawyers' Committee for Civil Rights Under Law in 1993-1995 and involved in numerous other bar activities, he was chair of the College's Federal Rules of Evidence Committee from 1992 to 1997.

Cooper and his wife, Nan, who is an archeologist, live in a more than century-old

house on East 72nd Street in Manhattan with their standard poodle, Cisco. In their spare time, the Coopers collect art and artifacts, particularly tribal pottery from the American Southwest, where Nan has worked on archeological digs.

In addition, the Coopers are great fans of ballet, specifically the New York City Ballet, of which he is a director. "I never cease to marvel at the combination of athleticism, musicality and grace in a great ballet dancer," Cooper says. ♦



Michael A. Cooper

FIFTY YEARS AGO

According to College records, Boris Kostelanetz of Kostelanetz & Fink, New York City was inducted into the College in 1953. College records indicate that he is the sole survivor of his inductee class. Two of the original inductees survive. They are William Zeff of Modesto, California and Phyllis Cooper of Los Angeles, California, wife of past president Grant Cooper. In addition, two members of the class of 1951

are still on the College rolls, Raoul Magana of Los Angeles, and Past President Lon Hocker of Falmouth, Massachusetts.

In all, forty-three Fellows who were inducted into the College in its first ten years, the latest of whom were inducted forty four years ago this year, remain on its rolls. ♦



NEWS AND VIEWS

Missouri Fellows put on a trial demonstration in April at the Law School of the University of Missouri-Columbia. Dean R. Lawrence Dessem coordinated the event, called American College of Trial Lawyers Day at MU Law School. Former Regents Spencer Brown and Frank Gundlach participated, along with past Missouri State Chair Mark Kempton and current Missouri State Chair Jim Vertel.

♦ ♦ ♦



President Warren Lightfoot (above left), and his wife Robbie with Fellow Gerald R. Stockman and his wife Kathleen at the Pennsylvania, New Jersey and Delaware regional meeting at Seaview on April 11-13.



(From left to right) Fellows Richard Zielinski, Michael Keating, and Charles Harvey

Richard Zielinski of Boston was chair of a College program called Training Skills Session for Legal Aid Lawyers this past winter in Boston. He is shown with two other Fellows involved in the training, Michael Keating of Boston and Charles Harvey of Portland, Maine. About fifty Legal Aid attorneys from all over New England participated. ♦

“The Constitution is like a diet; it is there to help you resist temptation.” Dean Kathleen Sullivan.

“When it becomes abundantly clear that someone is going to jail, be damn sure it is your client, and not you.” Judge Lee R. West, quoting Edward Bennett Williams.

“Duty is what one expects of others.” Canadian Bar President Simon V. Potter, quoting Oscar Wilde.

REGIONAL ROUNDUP

(A SUMMARY OF SIGNIFICANT REGIONAL ACTIVITIES REPORTED TO THE BOARD OF REGENTS AT THE 2003 SPRING MEETING IN BOCA RATON)

♦ ♦ ♦

DELAWARE, NEW JERSEY AND PENNSYLVANIA (Regent Dennis R. Suplee)—Western Pennsylvania Fellows conducted a moving private induction ceremony for Shelley Stark, who has been disabled by a stroke.

♦ ♦ ♦

ATLANTIC PROVINCES, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, PUERTO RICO, QUEBEC AND RHODE ISLAND (Regent Joan A. Lukey)—Each of the Chairs in the region has adopted the practice of distributing College reports and statements of position to the Chief Justices in their respective states and provinces. The Massachusetts State Committee conducted a three day training program for public interest lawyers in which 13 Fellows participated.

♦ ♦ ♦

UPSTATE NEW YORK AND ONTARIO (Regent Brian P. Crosby)—David Gouldin, the new Chair of the Upstate New York Committee, has appointed an Access to Justice Subcommittee.

♦ ♦ ♦

ALASKA, ALBERTA, BRITISH COLUMBIA, IDAHO, MONTANA, OREGON AND WASHINGTON (Regent Payton Smith)—The Montana Access to Justice Committee decided to grant two scholarships to attend NITA training sessions. The Idaho State Committee has embarked on a mentoring project. The Oregon Fellows, with the permission of the Executive Committee, submitted an *amicus* brief to the

Supreme Court of Oregon urging that funding for public defenders not be terminated.

♦ ♦ ♦

KENTUCKY, MICHIGAN, OHIO AND TENNESSEE (Regent Sharon M. Woods)—The Michigan State Committee plans to conduct a CLE seminar for public interest lawyers.

♦ ♦ ♦

DISTRICT OF COLUMBIA AND MARYLAND (Regent Albert D. Brault)—The Maryland State Committee is considering creating fellowships at local law schools for trial advocacy training.

♦ ♦ ♦

NORTH CAROLINA, SOUTH CAROLINA, VIRGINIA AND WEST VIRGINIA (Regent Edward W. Mullins, Jr.)—The Virginia State Committee conducted a CLE seminar for public interest lawyers in which 22 Fellows participated as lecturers. The seminar included an address by Virginia Supreme Court Justice Barbara M. Keenan and remarks by Past President Harvey Chappell on the delivery of oral argument. The seminar was conceived by former Virginia State Bar President Michael W. Smith of Richmond, FACTL, in concert with other Fellows. The South Carolina State Committee's CLE program for public interest lawyers in July marked the fifth such program. The South Carolina State Committee is also updating a roster of all South Carolina Fellows of the College since its organization. ♦



COLLEGE INDUCTS EIGHTY-SEVEN AT SPRING 2003 MEETING

ARKANSAS: Judson Kidd, Little Rock; John V. Phelps, Jonesboro; Eddie H. Walker, Jr., Fort Smith
NORTHERN CALIFORNIA: James P. Bennett, Karen L. Snell, San Francisco; Steve Hayes, San Jose; Patrick Jay Osborn, Dennis R. Thelen, Bakersfield; Michael G. Woods, Fresno
SOUTHERN CALIFORNIA: Kevin H. Brogan, Louis P. Petrich, Los Angeles; Jim Crandall, Irvine; Richard C. Goodman, Newport Beach; Eleanor A. Stegmeier, Costa Mesa
COLORADO: Kevin J. Kuhn, Greenwood Village; John M. Richilano, Denver
DELAWARE: James S. Green, Wilmington
FLORIDA: David P. Ackerman, West Palm Beach; Dennis K. Larry, Pensacola
GEORGIA: Robert B. Remar, Atlanta
INDIANA: Michael C. Keating, Evansville; Martin W. Kus, La Porte
IOWA: Ed Remsburg, Mark L. Tripp, Des Moines
LOUISIANA: Glenn G. Goodier, Kenneth H. Laborde, Gerald Meunier, New Orleans
MAINE: Wendell Large, Portland; Julian L. Sweet, Lewiston
MARYLAND: Michael J. Baxter, Robert L. Ferguson, Jr., Andrew D. Levy, Baltimore; James R. Chason, Towson; Joseph E. Moore, Ocean City; James L. Otway, Salisbury; Paul T. Stein, Rockville; Gregory K. Wells, Largo; Robert Jay Weltchek, Lutherville
MASSACHUSETTS: John T. Montgomery, Boston
MICHIGAN: Lawrence G. Campbell, Detroit
MISSOURI: Brent W. Baldwin, St. Louis; Kirk J. Goza, Robert A. Henderson, Kansas City
NEBRASKA: Clarence

Mock, Oakland
NEW JERSEY: Gerald Krovatin, Newark
OHIO: Theodore M. Grossman, Cleveland; William H. Kaufman, Lebanon
OREGON: W. Eugene Hallman, Pendleton
PENNSYLVANIA: Nora Barry Fischer, Pittsburgh
RHODE ISLAND: R. Daniel Prentiss, Providence
SOUTH CAROLINA: Ann M. Stirling, Charleston
TENNESSEE: Saul C. Belz, Memphis; Morris Hadden, Kingsport; J. Brook Lathram, Dorothy J. Pounders, Memphis
TEXAS: Robert C. Bennett, Dale Friend, Houston; George B. Butts, Austin; Mark T. Davenport, Dallas; Howard P. Newton, San Antonio; Ray Stoker, Jr., Odessa
UTAH: Francis J. Carney, L. Rich Humpherys, Ellen Maycock, Salt Lake City
VIRGINIA: Elaine Charlson Bredehoft, Reston; John T. Cook, Lynchburg; Warren David Harless, Richmond; Edward B. Lowry, Charlottesville
WASHINGTON: Anne Melani Bremner, Kathy A. Cochran, Seattle; Vickie K. Norris, Everett; Leslie R. Weatherhead, Spokane
WISCONSIN: George Burnett, Green Bay; Ric Domnitz, Don Prachthausser, Milwaukee; James R. Jansen, Ward I. Richter, Madison
BRITISH COLUMBIA: Michael Carroll, Q.C., Murray A. Clemens, Q.C., Gerald W. J. Ghikas, Q.C., Vancouver
ONTARIO: Geoffrey Adair, Stephen M. Grant, John A. McLeish, Toronto
QUEBEC: Francois Aquin, Max R. Bernard, George R. Hendy, Simon V. Potter, Montreal ♦

AWARDS, HONORS AND ELECTIONS

FLETCHER L. YARBROUGH of Dallas, Carrington Coleman's Managing Partner, received the distinguished 2002 Torch of Conscience Award from the American Jewish Congress. The award is presented annually to men and women whose qualities of moral courage, love of liberty, and service have contributed to the betterment of community and nation.



Fletcher L. Yarbrough

♦ ♦ ♦

JAMES E. COLEMAN, JR. of Dallas, who received the College's Samuel E. Gates Litigation Award in 2002, was honored with the Dallas Bar Foundation's Fellows Award for his outstanding contributions to the legal and civic communities.

♦ ♦ ♦

RICHARD E. BRENNAN, State Committee Chair for New Jersey, has received the 2003 Judge Alfred E. Clapp award for contributions to continuing legal education in the State of New Jersey.

♦ ♦ ♦

College Fellows dominated a survey in the May 26 *Corporate Crime Reporter* asking white-collar criminal defense attorneys at the nation's 100 largest law firms whom they would retain if under investigation. All of the top lawyers listed were members of the College. They were **Dan Webb** of Winston & Strawn in Chicago; **John Kecker** of Kecker &

Van Nest; **Reid Weingarten** of Steptoe & Johnson; **Brendan Sullivan** of Williams & Connolly; **Robert Bennett** of Skadden, Arps; **Thomas Green** of Sidley & Austin; **Earl Silbert** of Piper Rudnick; **Daniel Reidy** of Jones, Day; **Robert Fiske** of Davis, Polk; **Theodore Wells** of Paul, Weiss; **Plato Cacheris** of Baker & McKenzie; and **Robert Morvillo** of Morvillo, Abramowitz.

Silbert and Fiske are former Presidents of the College. Morvillo, former State Chair for Downstate New York, was featured in the *New York Times* on June 19 as Martha Stewart's lawyer. *The Times* called him "a dean of the white-collar defense bar."

♦ ♦ ♦

JERVIS SPENCER FINNEY of Baltimore has received the prestigious Professional Legal Excellence Award for the Advancement of Public Service Responsibility from the Maryland Bar Foundation. He is now counsel to the new governor of Maryland.

♦ ♦ ♦

MICHAEL A. POPE of Chicago has been elected chairman of the board of trustees of the National Judicial College in Reno, Nevada. He will become only the second layman to chair the board of the prestigious organization which educates more than 2,000 judges each year.

♦ ♦ ♦

SYLVIA H. WALBOLT, chair of the board of directors of Tampa law firm Carlton Fields, has been named by the St. Petersburg Chamber of Commerce as one of the inaugural inductees into the Pinellas County Business Women's Hall of Fame.

(Continued on page 23)

AWARDS, HONORS, ELECTIONS

(Continued from page 22)

♦ ♦ ♦

Past President **CHARLES RENFREW** of San Francisco was cited in the *New York Times* as the lone dissenter on a three-member arbitration panel that recommended \$625 million in legal fees for lawyers representing New York state in a settlement with tobacco companies. Renfrew wrote in his dissent that the legal fees “represents over \$13,000 per hour for every hour spent on the New York case by each lawyer, regardless of experience or skill.” The award is under appeal.

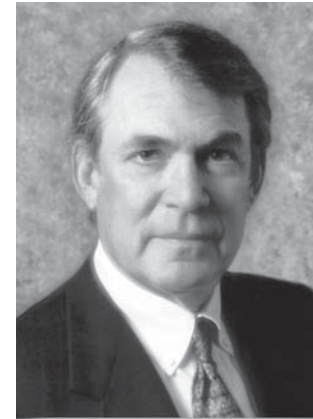
♦ ♦ ♦

The S. Thomas Chandler Public Service Award Endowment at the James E. Rogers College of Law at the University of Arizona has reached its goal. Named for **SAMUEL THOMAS (TOM) CHANDLER**, the award was

created in 1999 by the students at the school to provide exit scholarships for graduating students who plan to pursue careers in public service. Chandler, who graduated from the Arizona law school in 1946, served on the ACTL Board of Regents in the late 1960s and early 1970s.

♦ ♦ ♦

ROBERT F. RITTER, chairman and president of St. Louis law firm Gray, Gray & Graham, is the 2003 recipient of the Award of Honor from The Lawyers Association of St. Louis.



Robert F. Ritter

FELLOWS IN PRINT

William C. Miller of San Francisco is the author of *Long Pig*, a 296-page comic novel published by Lost Coast

Press. Although Miller has written on a wide variety of legal subjects, this is his first novel. ♦



CORRECTION:

Clay Clement of Santa Rosa, California was the lead coordinator of the first NITA-style trial advocacy program for advocates in the public arena in the North California and Nevada Region. The Spring 2003 edition of *The Bulletin* erroneously identified Jim Goodman of San Francisco as the organizer.

COLLEGE MANUALS REVISED AND PUBLISHED ONLINE

Both the *Manual for State and Province Committees and Chairs* and the *Manual for General Committees* have been substantially revised and republished.

Both are available for reference online at the College's website, www.actl.com, and they can be downloaded or printed off the website in PDF format. Read together with the College Bylaws, which are posted on the website, as well as printed in the College roster, they are a comprehensive outline of how the College functions. Reading them is a must, not only for those in leadership positions or who are members of committees, but also for any Fellow who wishes to understand how the College operates and to contribute to its mission.

The *Manual for State and Province Committees*, revised under the leadership of College Treasurer James W. Morris, III, sets out in detail how the College is to operate at the local level. It includes all the procedures and policies that relate to identification, nomination, consideration and approval of proposed new Fellows, as well as to all other College activities at the state or province level.

The *Manual for General Committees*, also revised under the leadership of Morris, sets forth the College's policies concerning general committee activities. Addendum A is a description of the various College committees. Addendum B, entitled *Financial Guidelines for General Committees of the American College of Trial Lawyers*, establishes the procedures and policies of the College on budgeting for committee expenses, expense reimbursement and meeting and publication expenses.

Addendum C, *Publication Guidelines for General Committees of the American College of Trial Lawyers*, establishes the procedures to be followed in creating College publications. They cover the entire process from conception of a proposed paper through the initial and final approval process to publication and distribution.

Addendums B and C can be separately downloaded or printed from the website for easy reference.

In a similar effort, President-Elect David W. Scott, Q.C. has authored revised guidelines for Regents which have been published only to the Board.

These revised works, made necessary by the increased level of activity of the College, are the product of a huge effort led by Fellows Morris and Scott. ♦

"Timing is extremely important to the success of a rain dance." Judge Lee R. West, quoting cowboy philosopher Baxter Black.

"Appellate judges: those who come onto the field of battle after the war is over and shoot the wounded." Judge Lee R. West.

"Just because you get reversed doesn't necessarily mean you were right." Judge Lee R. West.

MONTREAL AWAITS FELLOWS IN THE FALL; 54TH ANNUAL MEETING PLANNED BY PRESIDENT-ELECT DAVID W. SCOTT, Q.C.

*By President-Elect David W. Scott
Borden Ladner Gervais LLP
Ottawa, Ontario*

The annual meeting of the College will be held in Montreal, Quebec, Canada, on Thursday, October 30 through Saturday, November 1, 2003, at the Fairmont Queen Elizabeth Hotel. Montreal has experienced a dynamic renewal and growth in the last few years and is now clearly the most exciting venue in Canada and one of the most attractive in North America.

The program is presently still in the planning stages but you should know that the Premier of the Province of Quebec has been invited to speak at the opening, the Honourable Louise Arbour of the Supreme Court of Canada will be inducted as an Honorary Fellow and, as usual, there will be a strong and interesting program made up of members of the judiciary and the academic communities of the United States and Canada, with a traditional flavour of subject matter which will include not only the law but also societal subjects of interest to Fellows.

The Thursday night reception will be held at the Queen Elizabeth. The Friday night gala, with a Halloween theme, will be held at the Windsor station, a marvelous 19th century building which has been converted from a railway station in the old style into an eclectic venue for gala events. On Saturday night, we will return to the Windsor station in a more formal setting for the induction ceremony and

the annual dinner. The judicial Fellows of the Province of Quebec thought that it would be a nice idea to have a luncheon for judicial Fellows. This will be held on Friday at the University Club.

The meeting will be followed by an optional tour to Quebec City for two days. Departure will be from the hotel itself, which accesses the central railway station, for travel by train to Quebec with two days in the Chateau Frontenac Hotel, one of the most elegant buildings in North America. Quebec City needs no advance billing, enjoying as it does some of the finest restaurants in the world in a highly cosmopolitan and historically interesting environment. Returning by train from Quebec to Montreal, we will again access the Queen Elizabeth and allow Fellows and their guests to return home conveniently from Montreal.

It is anticipated that there will still be a very favourable exchange rate as between the Canadian and U.S. dollar and thus, this visit, with very favourable rates at the Queen Elizabeth Hotel, will not only be attractive culturally for visiting Fellows, but the price will be right as well!

♦ ♦ ♦

Registration materials for the Montreal meeting and tour information, including the post-meeting tour, can be printed from the College website www.actl.com. ♦



David W. Scott

NOTABLE QUOTES

(Continued from page 7)

away from this recourse, just to unburden the courts.”

Simon V. Potter, FACTL, President of the Canadian Bar Association

♦ ♦ ♦

“[I]n early February 1801, John Marshall, at the age of 45 was sworn in as Chief Justice of the United States Supreme Court. . . . [O]ver the course of the next 34 years [he] would completely transform the Supreme Court’s role in the American polity. . . . Marshall suffered through the brutal winter at Valley Forge, along with General Washington and the troops of the Continental Army, who came in from across the colonies. In the crucible of that experience at Valley Forge, Marshall developed the notion that he was an American first and a Virginian second. That nationalist sensibility would help frame Marshall’s political and judicial philosophy for the remainder of his



Davison M. Douglas

life. . . . By the end of Marshall’s tenure as Chief Justice, the Supreme Court had decisively established for the nation a legal foundation of a strong federal government and solidified the Court’s central role in that federal government. . . .

What accounts for John Marshall’s success as Chief Justice? Marshall could not claim to be more learned in the law than his fellow Justices on the Supreme Court. . . . Moreover, Marshall did not enjoy the advantage of serving on the

Court with Justices who were also Federalists. . . . First and foremost, Marshall’s success can be attributed to his extraordinary intellect. . . . The clear, precise quality of his mind was reflected in legal opinions that . . . ‘moved progressively from premise to conclusion with the logic and rigor of a geometric proof.’ . . . Marshall also possessed boundless energy. . . . [I] think we must also attribute to Marshall’s success his substantial personal qualities. Marshall was a gregarious man who possessed what we might call today the common touch. . . . His personal charms and vitality undoubtedly served him well as Chief Justice. . . . John Marshall loved the law, but he also loved all of life. . . . President John Adams, late in life, remarked, ‘John Marshall was my gift to the American people.’”

Professor Davison M. Douglas, School of Law of the College of William and Mary

♦ ♦ ♦

“My seven simple rules that will help you be true as well as accurate and help us [the media] be true:

1. Substance, not procedure. . . . The first question I am going to ask you is . . . ‘did your client do it?’ This is a strategy worth keeping in mind if you really believe you have a strong case on the facts. . . .
2. The client, not the lawyer. . . . There is a limited appetite among journalists for the words of lawyers. . . .
3. You are better off making origami out of hundred dollar bills than hiring most public relations firms. . . . Get a member of your team who has a little experience with the press and a lot of common sense and have that person answer your questions. “You’ll save a lot of money and you may even learn something in the process. . . .
4. Don’t just answer, ask. . . . We

(Continued on page 27)

NOTABLE QUOTES

(Continued from page 26)



Jeffrey Toobin

always talk to lawyers. We talk to witnesses. We talk to principals. . . . Sometimes they talk to me. . . . Sometimes we know plenty. . . . Asking questions can [also] be a thoughtful way of saying ‘No comment.’ . . .

5. Your best friends are ‘circumstantial evidence’ and ‘proof beyond a reasonable doubt.’ . . .

6. When in doubt, go big. . . . instead of addressing the specifics [Y]ou could always try to change the subject to the ‘larger questions at issue.’ . . .

7. A simple ‘no comment’ is often the most appropriate and most productive response. . . . I want to know whether your guy is guilty or whether your client is liable. . . . The fact is that once you get into a conversation with a journalist, there is often nothing you can say on or off the record that is going to help your client. . . .

“Your time is a precious commodity. You can spend it shooting the breeze with me or preparing your cross-examination. The latter will benefit your client infinitely more. . . . Being an attorney is an honorable and difficult job. Being a public relations

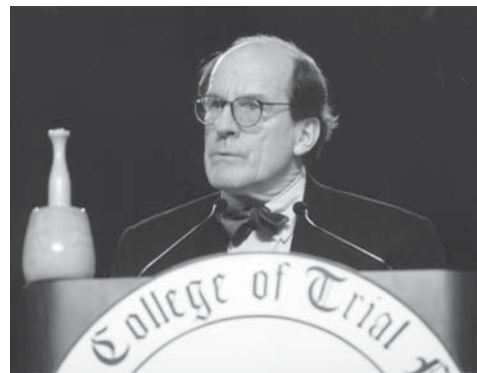
pitchman is not. The best way to be a great lawyer is to be a great lawyer.”

Jeffrey Toobin, Television Commentator and Staff Writer, The New Yorker

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“I think there is a lot of leeway for an aggressive prosecutor and an aggressive [International Criminal] Court to, in effect, second guess a state court. . . . One of the key insights in American political philosophy, shared widely among the framers of the Constitution and reflected throughout the text of the Constitution is that institutional safeguards must be in place to avoid abuses of power. Relying on the virtue of the individual officers is not enough. . . . [I] simply do not believe that we can tolerate the threat of the second-guessing of decisions that are so vital to our national security. I think we could be comfortable that our system will produce lawful decisions and adequately provide for the punishment for those who do not abide by the Rule of Law.”

Edwin D. Williamson, Sullivan & Cromwell, Washington, DC, advisor to the State Department, speaking against the International Criminal Court



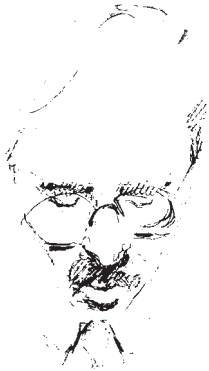
Edwin D. Williamson

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(Continued on page 28)

NOTABLE QUOTES

(Continued from page 27)



David J. Scheffer

Drawing courtesy of:
Marie Finkelstein, Toronto, Canada

“The fundamental purpose of this Court is to address the atrocities of our time, of our generation, that we are witnessing in our lifetimes. . . . There has to be a better way of addressing those mass crimes—what I call atrocity crimes—genocide, crimes against humanity, serious war crimes—those are atrocity crimes. They have to be addressed effectively, efficiently and with honesty and with the political will of governments. . . . ‘The list of due process rights guaranteed by their own statute of the International Criminal Court is, if anything, somewhat more detailed and comprehensive than those in the American Bill of Rights, not better, but more comprehensive. It cannot be denied that the Treaty of Rome contains the most comprehensive list of due process protections that have so far been promulgated.’ [quoting the late Monroe Lee, State Department Legal Adviser in the Ford Administration] On the principle of complementarity: “The Court is not a Court of first instance [U]nder the procedures of the Court, it looks to the national level first to do its job, and it only looks at the case for purposes of full investigation and consideration of prosecution if the national Court system has been unwilling, incapable or unable, genuinely unable, to take up the matter. . . . [I]t would

take an extreme act of incompetence on the part of our legal system for any American to ever stand before the bar of the International Criminal Court. . . . [W]e have such opportunity as a nation to be so influential diplomatically, yet we squander that when we withdraw from the very instruments that the rest of the world so fervently believes in and which would not be so threatening to us if, in fact, we were part of the process. And I say that because I think trial lawyers have to believe in the principal of engagement. And as a country, we too have to believe in the principal of engagement internationally—not just with military power.”

David J. Scheffer, Senior Vice President, United Nations Association of the United States of America, former United States Ambassador-at-Large for War Crimes Issues and the Chief Negotiator Representing the United States at the Rome Conference, speaking in favor of the International Criminal Court

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“When I raised my hand and took the oath to become a lawyer, it had already been instilled in me that with the oath of the profession I was accepting an awesome responsibility. That is the responsibility of a public servant; the responsibility to do my small part to discharge our profession’s fiduciary duty to protect, shape, and grow our justice system so that all our citizens can prosper together as a free nation. . . . I fear that some of our profession have forgotten or, sadly, were never instilled with the obligations of their position as public servants and trustees of this great justice system. . . . When I look in the mirror, I do not see a balance sheet. I see a person who can say he has done his best to fulfill the obligations of the public trust bestowed upon him as a member of this honorable profession.”

*William R. Jones, Jr.,
Gates Award Winner*

(Continued on page 29)

NOTABLE QUOTES

(Continued from page 28)

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“Today we face a fundamental challenge to our profession. We must strike a balance between accommodating necessary and appropriate change, while not eroding the independence of our profession. I think we are going to be dealing with ethics issues . . . for another five to ten years in the ABA House of Delegates. . . . I believe we made the right decision in August of 2000 when we refused to do what we were being asked to do, to amend the ABA Model Rules to allow the legal profession, like the accounting profession, to engage in other lines of business. . . . [W]e need to stick by our guns . . . and maintain our professional independence Unlike our friends in the accounting profession, we chose not to go in two directions at once. . . . We refused to sacrifice professional independence on the altar of marketplace expediency. . . . I know



A. P. Carlton, Jr.

the College’s position on the attorney-client privilege and the exceptions to it. I invite you to the debate. . . . I believe that our experiment with the narrowly drawn exception to the attorney-client privilege has failed, and that it is time for the Model Rules to return to the future.”. . . We are uniquely situated and are obligated as part of the American social contract to protect American justice and fundamental American rights. . . . This apparent freelance prosecution of suspects may be helpful in our war on terrorism, but

we cannot violate the basic tenets of our system of justice in the process. . . . [This] is about who we are as a people and the best and the most efficient route to truth. High emotions and tampering with our fundamental rights is like drinking and driving. They just don’t mix.”

A. P. Carlton, Jr., Raleigh, North Carolina, President of the American Bar Association

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“Are we beginning to see a shift in public policy that somehow may undermine our ability to represent our clients, may undermine the attorney-client privilege and, frankly, may alter in some way the historical principles that have really insulated lawyers from liability for well over a hundred years? . . . I think we can reasonably anticipate that there are going to continue to be attacks on the attorney-client privilege, and there will continue to be efforts made to erode the attorney-client privilege. . . . Equally important, the public policy clash raises the fundamental question of who is going to regulate our profession.”

Regent David J. Beck, Houston, Texas, commenting on the fallout from the Enron case

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“I would like to suggest that the best view lies somewhere in between . . . that it is better [in combating terrorism] to start with a very strong presumption that we follow constitutional default rules unless clear and compelling reasons exist to depart from them, and that we depart from them only in as narrow circumstances as possible, in which the two branches less likely to be . . . “men of zeal,” the Congress and the courts, define them as clearly and precisely and publicly as possible. . . . trying to have

(Continued on page 30)

NOTABLE QUOTES

(Continued from page 29)

a strong presumption in favor of ordinary constitutional rules, subject only to those exceptions that Congress delineates clearly in advance or that the courts review in a manner that requires justification—full justification—compelling, clear and convincing justification. . . . [I]n this new international context, we must remember that the eyes of the world are upon us, and that what we demonstrate through our own behavior toward the rule of law and the commitments of liberty and equality and due process are the ones by which we hope other nations will be guided—the ones we have hoped to export to other nations. . . . [I]f we are to remember the view of the Founding Fathers that says we should be a

city on the hill, one in which we exemplify the best and serve as a beacon to others, then it's all the more important that in the world of international criminal justice we exemplify the best in our own.”



Kathleen M. Sullivan

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Kathleen M. Sullivan, Dean, Stanford University School of Law



IN MEMORIAM

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

George W. Ball, San Francisco, California; George E. Bushnell, Jr., Grosse Pointe, Michigan; Peter W. Butler, Q.C., Vancouver, British Columbia; James S. Carter, Albany, New York; Walter G. Chuck, Honolulu, Hawaii; Allen D. Churchill, Edwardsville, Illinois; James C. Downing, Middletown, California; Delverne A. Dressel, Towson, Maryland; Francis W. Flannigan, Bristol, Virginia; Honorable E. J. Flinn, Halifax, Nova Scotia; Daniel W. Fouts, Greensboro, North Carolina; Carl C. Gillespie, Tazewell, Virginia; Charles L. Gowen, St. Simons Island, Georgia; John N. Hauser, San Francisco, California; John Howie, Dallas, Texas; Lee S. Kreindler, New York, New York; Moses Lasky, San Francisco, California;

Daniel E. McKelvey, Jr., Spokane, Washington; Earl B. Mitchell, Jr., Enid, Oklahoma; Richard T. Meehan, Sr., Bridgeport, Connecticut; Lem Overpeck, Spearfish, South Dakota; Edwin R. Roberts, Spokane, Washington; Edward J. Ruff, San Rafael, California; William H. Schrader, Bradenton, Florida; Honorable Lewis C. Smith, Leawood, Kansas; A. Grant Sprecher, Ardmore, Pennsylvania; Robert V. P. Waterman, Sr., Davenport, Iowa; Sherwood W. Wise, Jackson, Mississippi; Edwin J. Wilson, Long Beach, California; John S. Wirthlin, Cincinnati, Ohio.

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Waterman was a Regent of the College and was its Secretary from 1984 to 1986. Bushnell was president of the American Bar Association in 1994-95. ♦

COLLEGE'S INFLUENCE FELT IN FEDERAL RULEMAKING PROCESS

The College, through its Committee on the Federal Rules of Evidence, has recently contributed significantly in the Federal rulemaking process to the dialogue on two major current issues.

In 2002, the Board of Regents had authorized the publication of a monograph entitled *Opinions Hidden, Citations Forbidden: A Report and Recommendations of the American College of Trial Lawyers on the Publication and Citation of Nonbinding Federal Circuit Court Opinions*. That work, principally authored by committee chair William T. Hangley of Philadelphia, urged that the practice of many appellate courts of both issuing unpublished opinions and forbidding their citation be reexamined. The report was subsequently published at 208 Federal Rules Decisions 645 (2002).

At its May 15 meeting, the Federal Advisory Committee on Appellate Rules approved a proposed new Federal Rule of Appellate Procedure 32.1, which would provide that all appellate opinions, including “unpublished” or “non-precedential” ones, may be cited for persuasive purposes. When the Evidence Committee learned that such a new rule was to be considered, it offered extensive comments to the Advisory Committee.

Earlier, the Advisory Committee had solicited public comment on a proposed amendment to Federal Rule of Evidence 804(b)(3) that would have: (i) articulated the constitutional requirement that an out-of-court declaration against penal interest offered to inculcate the defendant in a criminal case be supported by “particularized

guarantees of trustworthiness,” and (ii) required corroborating evidence before declarations against penal interest (as distinguished from declarations against proprietary or other interests) could be admitted in civil trials. The College, through its Evidence Committee, favored the first change, but opposed the second. At its meeting of April 25, the Advisory Committee modified the proposed rule to delete the civil corroboration requirement, thus agreeing with the College’s position.

Before they become effective, both proposed rules must navigate the long process required by the Judicial Code: review by the Standing Committee on Rules of Practice and Procedure, approval by the Judicial Conference, approval by the Supreme Court and Congressional review.

The College’s Federal Rules of Evidence Committee is one of three such College committees that regularly monitor and contribute to the work of the Federal advisory committees that deal with the rules of civil procedure, criminal procedure and evidence. ♦



William T. Hangley

The Bulletin

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19900 MacArthur Boulevard, Suite 610
Irvine, California 92612

TABLE OF CONTENTS		
From the Editorial Board, 2	Board of Regents Photo, 16	College Manuals Revised, 24
The President's Report, 4	Cooper Elected Secretary, 18	Fall 2003 Meeting, 25
Spring Meeting in Boca Raton, 5	Fifty Years Ago, 18	In Memoriam, 30
Notable Quotes, 7	News and Views, 19	Federal Rulemaking Process, 31
College Hires Executive Director, 8	Regional Roundup, 20	Who Are We? Remarks of William R. Jones, Jr., 3
In Memoriam, James E.S. Baker, 11	College Inductees, 21	
Fed. Criminal Procedure Cmte, 14	Awards, Honors, Elections, 22	

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