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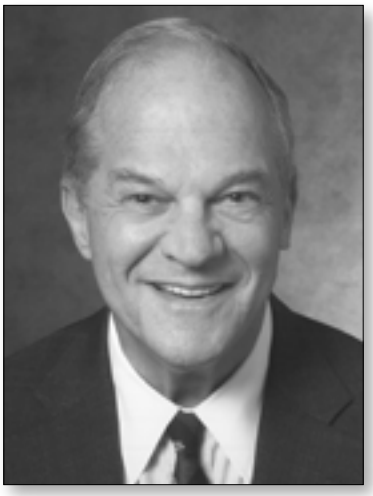
THE BULLETIN

PRESIDENT'S REPORT:

Travels Show College Diversity



Michael A. Cooper

Most of you, I believe, have seen the *New Yorker* cartoon cover by Jules Steinberg showing the United States and the Pacific as seen by a New York City resident. As your gaze crosses the Hudson River, the perspective is increasingly foreshortened until you reach California, which has been reduced to a thin sliver of land. My travels as President have shown me time and again how erroneous that perspective is. The College fellowship throughout the United States and Canada is as richly interesting and diverse as is the topography of our continent.

The Fellows Nan and I have met from Maryland to Hawaii and from Montreal to Mexico (where the Oklahoma Fellows meet every other year) are extraordinarily talented, committed professionals, and it is frosting on the cake that they are such good company (as, I hasten to add, are their spouses). It is very clear that they view fellowship as a great honor, a recognition by their peers that they are the best of the best of the trial bar, and are committed to its core values: skill, loyalty, independence of judgment, dedication, integrity and adherence to the highest professional standards, not just ethical minimums.

It has been particularly heartwarming to see state committees honor their most distinguished senior colleagues. In Scottsdale, the Arizona Fellows paid tribute to Tom Chandler, who is celebrating the fiftieth anniversary of his induction into the College in 1956 and who attributes his longevity to being able to "stay on the right side of the grass." I told Tom, who is 84, that he could not possibly have been in active trial practice for 15 years before

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Profile: Veryl Riddle... - see page 6

Fellows Will Gather In London and Dublin

U.S. Supreme Court Chief Justice John Roberts and Lord Scott of Foscote, a British Lord of Appeal, will receive honorary Fellowships in the College at the Annual Meeting in London, highlighting an outstanding program of speakers and social events, which will continue in Dublin for a post-meeting conference.

The London meeting will open Thursday evening, September 14 with the President's Welcome Reception at Kensington Palace Garden. During the next two days, speakers will include the Rt. Honourable Lord Peter Goldsmith, Attorney General of England and Wales; the Rt. Honourable Lord Thomas Bingham of Cornhill, an Honorary Fellow, Senior Lord of Appeal in Ordinary; Sir Sydney Kentridge, Q.C., barrister, an Honorary Fellow, Brick Court Chambers; Baroness Onora O'Neill of Bengarve, President of the British Academy; Robert Holmes Tuttle, U.S. Ambassador to the Court of St. James; Dick DeGuerin, distinguished American criminal attorney who is currently representing Tom Delay, former Congressman from Texas; and David Pannick, barrister and author of "Laughed Out of Court—Humour from the Bench."

Best oralists from the National Trial Competition and the Sopinka Cup also will be honored during the London sessions.

On Sunday, September 17, the scene begins to shift to Dublin where the post-meeting conference begins on Monday, September 18. Speakers will include the Honourable John L. Murray, Chief Justice of the Supreme Court of Ireland; the Honourable Rory Brady, Attorney General of Ireland; Dr. Anne Fogarty, professor at University College, Dublin; Dermot Gleeson, chair of Allied Irish Bank in Dublin; and John Hume of Northern Ireland, co-winner of the 1998 Nobel Peace Prize.

The Dublin conference will conclude on Tuesday, September 19 with a reception and dinner at Dublin Castle, which is more than a thousand years old.

As of press time there are 1,086 registrants for London, 560 for Dublin. ♦

In This Issue

*A current calendar of College events is posted on the college website at **www.actl.com**, as are a current compendium of the ongoing projects of the College's National Committees.*

FROM THE

Editorial Board

Three issues ago we began to publish a short biographical note on each Fellow who had died as a way of paying tribute to the rich legacy each left behind. You have responded by promptly reporting deaths in your locality to the College office, furnishing it with a copy of the Fellow's published obituary for the College archives. We have asked State and Province chairs to be responsible for seeing that this is done. In this issue we have been thus able to reconstruct a biographical note on all but one deceased Fellow.

The picture we see borders on the incredible. Of the thirty-six deaths we report, one died in his fifties, two in their late sixties (both of cancer), four in their seventies, twenty in their eighties and nine in their nineties! If there is a message there, it may be that there is a correlation between the engagement in life that is a part of being a trial lawyer and longevity.

We have had less response to another of our requests. We were so struck by the number of deceased Fellows who had served in World War II and by their stories that we asked you to give us the names of the living Fellows in your state or province who had served, so that we could interview them and do a feature article or a series of articles on their experiences.

Of the thirty-six Fellows' deaths we report in this issue, at least twenty-two of them served in some capacity in World War II, some of them fresh out of high school. Their obituaries disclose names like Remagen Bridge, the Battle of the Bulge, Saipan, Lingayen Gulf, Tinian and Okinawa and medals--Purple Hearts, Bronze Stars and Military Crosses. One even accepted the surrender of an entire German SS division!

Your response to date to our request to identify the members of the Greatest Generation among you has been less than overwhelming. Need we say more?

We welcome both thoughtful op-ed type articles and your suggestions for making ***The Bulletin*** more informative and useful. You can email them to **mellis2019@carolina.rr.com** or mail them to Marion Ellis at the address on the masthead.

Spring Meeting Encompasses

Terrorism v. Individual Rights, Stem Cell Research, Katrina Damage and Other Issues

A Thursday afternoon professional program on Current Developments in Civil Procedure, Evidence and Legal Ethics launched the 56th Spring Meeting of the American College of Trial Lawyers April 6-9 at the Westin Diplomat Resort & Spa in Hollywood, Florida.

The presentation of Regents **Gregory P. Joseph**, New York, and **Chilton Davis Varner**, Atlanta, was entitled Emerging Issues Under the Federal Rules of Civil Procedure: Darwinian Evolution or Intelligent Design? **D. Culver Smith III**, West Palm Beach, and **Lauren E. Handler**, Morristown, New Jersey, member and chair respectively of the College's Legal Ethics Committee, spoke on Recent Developments and Proposed Changes in Rules of Professional Responsibility. **Richard M. Zielinski** of Boston spoke on Recent Developments in Lawyer Malpractice.

On Thursday evening, the Fellows and their guests visited the traveling exhibit, *Tutankhamun and the Golden Age of the Pharaohs*, at the Fort Lauderdale Museum of Art.

The Friday morning session began with the latest in the Lewis F. Powell, Jr. lecture series. Past President **Griffin B. Bell** delivered the lecture, focusing on two cases in the United States Supreme Court in which Justice Powell's earlier experiences as a lawyer enabled him to make a significant contribution.

Canadian Bar Association President **Brian A. Tabor, Q.C.** urged the lawyers to do a better job of explaining themselves to the public.

Richard A. Goodman, MD, JD, MPH, director of the Public Health Law Program of the Center for Disease Control and Prevention, explained the history and work of that institution.

The acceptance speech of **The Honourable Mr. Justice Morris J. Fish** of the Supreme Court of Canada, who was made an Honorary Fellow, was a model of eloquence and humor.

Friday morning's session ended with a panel discussion on The War Against Terrorism vs. Individual Rights: Where Do We Draw the Line? Moderated by Regent **Thomas H. Tongue** of Portland, Oregon, the panel Included Senior Sixth Circuit Judge and FISA panel member **Ralph B. Guy, Jr.** of Ann Arbor, Michigan, Professor **John Oldham McGinnis** of Northwestern School of Law, The Honorable **Janet Reno**, former Attorney General of the United States, and Professor **Lawrence G. Sager** of the University of Texas School of Law.

An evening beach party capped off Friday's events.

Saturday's program began with a presentation on The First Amendment and Religious Expression by Professor **William P. Marshall** of the University of North Carolina School of Law. His presentation focused on the tension between the Establishment Clause and the Free Exercise Clause.

American Bar Association President **Michael S. Greco** of Boston addressed increasing governmental encroachment on the attorney-client privilege and the ABA's efforts to protect the privilege.

Bernard Siegel, Executive Director of the Genetics Policy Institute, described the nature of stem cell research. He carefully parsed out the distinction between therapeutic cloning to create stem cells for research and use in regenerative medicine, which most scientists support, and reproductive cloning, which is widely opposed on ethical grounds, and described the controversy that has resulted from the failure to distinguish between the two.

The stresses produced by the War on Terrorism were the focus of a second presentation on the meeting program. **Neal R. Sonnett**, Chair of both the ABA Task Force on Domestic Surveillance in the Fight Against Terrorism and the ABA Task Force on Treatment of Enemy Combatants and the ABA's official observer for Guantanamo Military Commission Trials, titled his presentation From Enemy Combatants to Domestic Surveillance: Challenges to the Bill of Rights.

The Saturday program concluded with a first-person account, illustrated by slides, by **David Meeks**, City Editor of the New Orleans *Times-Picayune*, who led a team of reporters and a photographer who stayed behind when the newspaper's staff was forced to evacuate in the wake of Hurricane Katrina. The *Times-Picayune* won Pulitzer Prizes in both public service reporting and breaking news reporting for its coverage of Katrina and its aftermath.

During the meeting, the winners of both the United States and Canadian moot court competitions and the best oralists in each were recognized.

Inductees attended both an orientation breakfast, at which they were introduced to the inner workings of the College, and, with their spouses and guests, a reception and luncheon in their honor, at which Past President **Earl J. Silbert**, Washington, D.C., gave his reflections on the College.

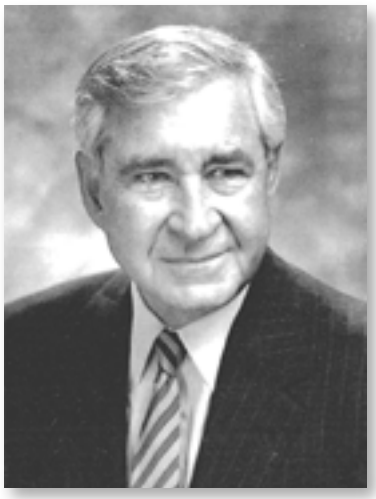
The Spring Meeting concluded with a banquet at which 52 new Fellows were inducted into the College. The moving response on their behalf was given by a fifth-generation lawyer, **Joseph B. Cheshire, V** of Raleigh, North Carolina. ♦

EDITOR'S NOTE:
EACH COMPONENT OF THE PROGRAM IS THE SUBJECT OF A SEPARATE ARTICLE IN THIS ISSUE.

SCENE FROM THE FRIDAY SESSION

Profile: Veryl Riddle

AGE IS NO BARRIER FOR FELLOW VERYL L. RIDDLE, 84, OF ST. LOUIS, MISSOURI.



Veryl Riddle

An exemplary lawyer who has worked tirelessly for reform in the administration of justice, **Veryl Riddle** came to believe more than 35 years ago that there was something wrong with the federal grand jury system. In 2006 his persistence finally paid off.

A high-profile corporate trial lawyer who had served as U.S. Attorney for the Eastern District of Missouri in the Sixties, he chaired a subcommittee of the College's Federal Criminal Procedure Committee that worked for years to have the Judicial Conference of the United States accept proposed revisions in the instructions that federal judges give to grand juries.

Earlier this year, the Conference approved the revised charge, and in June it was distributed to all federal judges in the nation.

"The new model grand jury charge emphasizes the crucial role of the grand jury in our criminal justice system," Riddle said. "The grand jury system was designed to be an independent body that does not belong to any branch of the government. Grand jurors must stand between the government and the person being investigated. They have a duty to ensure that indictments are only returned in circumstances where probable cause exists."

Riddle, who was inducted into the College in 1976 and is a former Missouri State Chair, said that for years attempted reforms had gotten nowhere when he was named to head the subcommittee in 1999. "A federal judge from Maine, [Judicial Fellow] George Singal, and I looked at many options to reform the federal grand jury system and finally determined that the most viable option for successful change was the implementation of a revised charge to be given to all grand jurors during their empanelment. The College approved our recommendation and submitted our proposed grand jury charge to the Judicial Conference of the United States." After several years and much consideration, the Conference adopted the new model grand jury charge in March 2005. Critically, the new charge alerts grand jurors that they must never be made an instrument of federal prosecutors.

College President Mike Cooper said, "The grand jury is a hallmark of the Anglo-American system of jurisprudence and the College is proud that Fellow Veryl Riddle has played an instrumental role in revising and improving the charge given to federal grand juries."

Riddle encountered a flagrant abuse of the grand jury in U.S. District Court in Kansas City, Missouri, in a politically motivated and highly publicized case related to alleged unlawful political contributions and misapplied bank funds. For example, the federal prosecutor would examine a witness in secret before the grand jury and thereafter hold a press conference on the courthouse steps.

This conduct, among others, e.g., pre-indictment delay, resulted in the District Court dismissing the indictment. The District Court judgment was affirmed by the Eighth Circuit in January 1976.

During the following years, Riddle encountered other abuses, including an alleged indictment of ITT Corporation for a felony in U.S. District Court in St. Louis. Whether ITT was indicted by the grand jury was a disputed fact and the U.S. Attorney represented to the trial and appellate courts that the grand jury did in fact intend to indict ITT. Because of this dispute, the Eighth Circuit panel ordered that the full transcript of the grand jury proceeding be delivered to the court and a copy to the defendant. The transcript disclosed that the jury did not intend to indict ITT. A distinguished visiting judge, a member of the three-court panel, concurred on the opinion of the court, "merely to emphasize that a different result might be reached if the grand jury transcript was not before us." Riddle said this case confirms the danger to our system of justice if the grand jury does not act independently and is nothing more than a rubber stamp for the U.S. Attorney and Department of Justice.

Leads Grand Jury Reform

The mild-mannered, soft-spoken, even-tempered Riddle is now in the 58th year of practicing law having started out in 1948 in the small town of Malden, in Missouri's "Boot Heel," just a few miles from the Mississippi River.

He was born and raised on a farm in the Bethany/Riddle Hill community of North Dunklin County. He began his education in a one-room school and regularly attended church and Sunday School at the Bethany Church. He graduated from Campbell High School in 1939.

During World War II, he served as an agent for the Department of Justice, identifying and monitoring enemy aliens who were suspected Nazi spies and saboteurs. Riddle worked closely with and exchanged information with his counterparts in the Army's Counterintelligence Corps. At their encouragement, he enlisted in the Army and was assigned to their unit. Soon after, the orders changed and the unit was assigned to protect ships carrying U.S. troops to Europe from Nazi U-boats. This required Riddle to work undercover as a longshoreman on the Hudson River in New York City.

He attended Southeast Missouri State University before transferring to Buffalo University and then to Washington University in St. Louis, where he received his law degree in 1948. After returning to his native county in the Boot Heel to open a law office, he was elected county attorney in 1950. Not long after that he began his antitrust practice, representing more than 50 local Missouri dairies against predatory practices of large dairies from in and out-of-state.

In 1966, he was named U.S. Attorney for the Eastern District of Missouri in St. Louis. "When I was asked by Senator Stuart Symington, I politely but firmly declined. Thereafter, members of the District Court suggested that I accept the appointment, so I did."

In 1969, prominent St. Louis lawyer Bob McRoberts asked him to leave the U.S. Attorney's office to join Bryan Cave, McPheeters & McRoberts, which at that time had 27 lawyers. Riddle quickly became a trusted lead trial lawyer for airplane manufacturer McDonnell Douglas, one of the nation's largest defense contractors, and other major clients, including Anheuser Busch and Emerson Electric. Over the years he watched the firm grow to more than 800 lawyers with 18 offices, including Los Angeles, Washington, D.C.,

VERYL RIDDLE, con't on page 8

London and Riyadh, Saudi Arabia.
As chairman of the firm's litigation department and lead counsel for McDonnell Douglas, Riddle spent many hours shuttling across the Atlantic on board the Concorde supersonic jet.

Bryan Cave partner Tom Walsh, also a Fellow, recalled that one of the highlights of Riddle's career came in 1973 when Riddle appeared for McDonnell Douglas before the U.S. Supreme Court. He obtained a favorable decision for the aerospace manufacturer in an employment discrimination action.

Former McDonnell Douglas general counsel John Sant said he could always rely on Riddle to give him unvarnished truth, no matter how negative it might have been.

Fellow Jim Ed Reeves, another former U.S. Attorney who has known Riddle for more than 50 years, said Riddle was responsible for "virtually wiping out" two crime bosses during his term as a federal prosecutor and that he was one of the first to fight white collar crime.

Riddle's law firm, now called Bryan Cave, honored him in 2002 by donating $250,000 in his name to Legal Services of Eastern Missouri. "The most appropriate way to pay tribute to the principles that characterize Veryl is to support an entity that embodies what he stands for," Bryan Cave chairman Walter Metcalfe said at the time. "We are proud to have a man of such high energy, focus, political courage and determination as one of our partners."

Former Regent Frank Gundlach of St. Louis' Armstrong Teasdale said, "Veryl, a product of a one-room schoolhouse, is an inspiration. While most in our profession have called it quits when they were 15 years his junior, Veryl continues to practice law, anticipating that the next phone call will bring a challenge to him. He continues to be the watchdog of the Missouri State Committee, insuring that all nominees meet the high standards of the College."

When he's not working, Riddle likes to relax by playing golf, a game in which he held a low handicap for years, and by tending to his 200-acre family farm in the Boot Heel. In addition to his Missouri farm, he bought a 600-acre spread called Futurity Farm near Nashville, Tennessee, which his son, Very Riddle, Jr., now operates. Riddle also has three daughters, Kay, who lives near Phoenix, Jo of Los Altos, California, and Janet of Memphis.

"I get to the office about every day," Riddle said. "But I don't try any more jury cases." ♦

Bulletin Seeks Stories
FROM WWII FELLOWS

In anticipation of an article for a future edition, *The Bulletin* is seeking names and addresses of Fellows who served in World War II.

PLEASE SEND INFORMATION TO:
Ozzie Ayscue, chair of *The Bulletin* committee, at **ozzie.ayscue@hmw.com** or via regular mail at Helms Mulliss & Wicker PLLC, P.O. Box 31247, Charlotte, NC 28231-1247.

LETTER TO THE Editorial Board

Thank you for the article published in The Bulletin concerning Joseph Marguiles and his representation of a "detainee" at Gitmo. It answers the often asked question "Why would anyone want to be a lawyer?" If I had any unresolved doubts it resolved them for me.

Gerard F. Thomas, Jr.
Natchitoches, Louisiana, a member of the Louisiana State Committee

In Memoriam

THE COLLEGE HAS RECEIVED NOTICE OF THE DEATHS OF THE FOLLOWING FELLOWS:

Uhel Overton Barrickmann,'72,* Glasgow, Kentucky, died October 5, 2005 at age 85. A World War II Army veteran who fought in the Battle of the Bulge, he was sent overseas in1942 immediately after his bar admission. At age 25 he was appointed a judicial officer on a German war crimes court. A partner in the firm of Richardson, Gardner, Barrickman & Alexander, he had served as a Special Judge on the Kentucky Supreme Court, as a United States Commissioner for Mammoth Cave National Park and as United States Magistrate. He had also hosted a local television program, "Glasgow Wants to Know." He was named Kentucky's Lawyer of the Year in 1992 and was inducted into the University of Kentucky Law Hall of Fame a month before he died. Survivors include his wife, a daughter and three sons.

James C. Barton, Sr.,'88, Birmingham, Alabama, died April 17 at age 80. A graduate of the University of Arkansas and of its law school, he joined the Army Air Corps in 1943 and was a fighter pilot in World War II. He practiced with the firm of Johnston, Barton, Proctor & Powell and was a recognized expert in First Amendment law and a civic activist. He had served on the Eleventh Circuit Disciplinary Committee and he was honored by the Birmingham Bar, of which he had served as president, as its Outstanding Lawyer of the Year in 2002. An avid sportsman and outdoorsman and a champion for environmental reform, he had served as Special Deputy Attorney General of Alabama in to 70s to deal with environmental issues. A widower, his survivors include two daughters and a son.

Edward M. Booth,'76, Atlantic Beach, Florida, died May 27, 2006 after a three-year battle with brain cancer. Born in 1927, a graduate of the University of Florida and of its law school, he was a partner in the Jacksonville firm of Booth & Arnold. As state court prosecutor in his younger years, his work had been instrumental in the reform of local government. A lifelong physical fitness advocate, he had continued to work out long after his cancer struck. He is survived by his wife, a son and a daughter.

Robert L. Broderick,'65, Belleville (Swansea), Illinois, died December 26, 2003 of cancer at age 92. He earned his bachelor's and law degrees from Washington University in 1935 and practiced law with Greensfelder, Hemker and Gale in Belleville, Illinois until his death. Long active in scouting, he had served as president of the Mississippi Valley Boy Scout Council and had received the Silver Beaver Award. He had served on the Illinois State Chamber of Commerce and on the ethics committee of the Illinois Bar. A widower, his survivors include a daughter and a son.

Paul S. Brown,'73, St. Louis, Missouri, died April 5, 2006 at age 84. A World War II naval officer, he had served as landing boat officer and deck officer in the invasions of Saipan, Tinian, Leyte, Lingayen Gulf and Okinawa. He was valedictorian of St. Louis University Law School class of 1951. A founder of Brown & James, PC, he went to his office daily until the last few weeks of his life. He had taught six different subjects as a long-time adjunct professor at his alma mater, and had served as president of its Law Alumni Association. A former president of both the Bar Association of Metropolitan St. Louis and the Lawyers' Association of Saint Louis, he had received the latter's Award of Honor. He was an avid tennis player and has been president of the St. Louis Amateur Athletic Association. He is survived by his wife and a son.

Wood Brown III,'79, New Orleans, Louisiana, died May 11, 2006 at age 70 at his home in Mandeville. A graduate of Tulane and of its law school, where he was a member of the law review and of the Order of the Coif, he was a partner in the firm of Montgomery, Barnett, Brown, Read, Hammond & Mintz. He was a lifetime member of the American Law Institute and had been president of the Louisiana State Bar. He had served in the U. S. Army Reserve from 1958 to 1966

** Year of induction*

IN MEMORIAM, con't on page 10

and had served on the New Orleans Civil Service Commission. His survivors include his wife, two sons and two daughters..

Hon. Ramon M. Child,'77, Draper, Utah, died March 5, 2006 at age 82. An Air Force Cadet in World War II, he was a graduate of the University of Utah and of its law school. He had served as chair of the Utah Republican Party and as United States Attorney, and was an Administrative Law Judge for OSHA in Denver and then for the Department of the Interior in Salt Lake City until his retirement. He continued to ski and water ski into his seventies. His survivors include his wife, six daughters, four sons, thirty-one grandchildren and sixteen great-grandchildren.

John Jamison Cole,'68, St. Louis, Missouri, died March 27, 2006 of pancreatic cancer at age 87. A graduate of Washington University and of its law school, he joined the FBI during World War II, serving as a special agent on anti-communist and foreign espionage investigations in New York City. He was a partner in Armstrong Teasdale, LLP. He had served as chairman of the St. Louis County Board of Election Commissioners. Under his leadership voting machines were first used in the county. He was a founder and past president of the St. Louis County Young Democratic Club. His survivors include his wife and three sons.

E. T. Conmy, Jr.,'57, Fargo, North Dakota, died March 24, 2006 at age 93. Educated at Southern Cal and the University of North Dakota, he graduated from the law school at North Dakota in 1935, served as an officer in the U. S. Naval Reserve during World War II and had served as president of his local bar.

Perry D. Davis, Jr.,'78, Odessa, Texas, died June 12, 2005 at age 77. He enlisted in the Army Air Corps in September 1945 and at age 17 became the youngest officer on active duty. After his military service was complete, he attended the University of Texas, graduating Phi Beta Kappa, and the University of Texas Law School. At the time of his death he was senior and managing director of Shafer, Davis, O'Leary & Stoker in Odessa. He was an elder in the First Presbyterian Church of Odessa. A widower who had remarried, his survivors include his wife, a son and three stepsons.

Peter W. Fisher,'78, Novato, California, died August 5, 2005 at age 78. A graduate of UC-Berkeley, he earned his law degree at Hastings College of Law. He had served as a U.S. Navy aviation cadet and as a legal officer in the Navy's Civil Engineer Corps. A friend and former partner remarked that he looked a lot like Walter Cronkite, which gave him an edge in front of a jury. He had been founding partner of a San Francisco law firm and at the time of his death was of counsel to Brayton Purcell in Novato. His survivors include his wife and three sons.

John West Fleming,'69, Coral Springs, Florida, died January 31, 2006 at age 85. A 1941 graduate of the University of Florida, during World War II he served in the Naval Reserve and was a flight navigator for Pan American Airways. Upon his graduation from the University of Miami School of Law, he, his father and his brother established a law firm, which became Fleming, O'Bryan and Fleming. A former trustee of the University of Miami and president of the Broward County Bar, he was an avid sailor. His survivors include his wife, two sons and two daughters.

Donald McLeod Gillis, Q.C.,'75, Saint John, New Brunswick, Canada, universally regarded as the dean of the New Brunswick lawyers, died March 26, 2006 at age 90 after a brief illness. A 1937 graduate of Acadia University, he served in the Royal Canadian Artillery, 14th Battalion Infantry Division in World War II. He was the first Royal Canadian Army officer to cross the Rhine in the waning days of the war. In 1945 he was awarded the Military Cross by King George VI at Buckingham Palace for bravery under enemy fire. A 1946 graduate of New Brunswick Law School, he practiced law as a senior member of Gilbert, McGloan & Gillis until his 90th birthday. A former president of the Saint John Law Society and the New Brunswick Law Society, he had received an honorary degree from Acadia University and had been inducted into the Acadia University Sports Hall of Fame. His survivors include his wife, two sons and two daughters.

Daniel McNamara Gribbon,'78, Washington, D.C., died November 3, 2005 at age 88. A Phi Beta Kappa graduate of Case Western Reserve, he graduated from the Harvard Law School, where he was Case Editor of the Law Review, in 1941. Upon graduation, he clerked for Judge Learned Hand, then entered the Navy, where he was assigned to the War Plans Committee of the Joint Chiefs of Staff. After the war, he joined Covington & Burling, where he eventually chaired the firm's management committee. He had assumed senior counsel status at age 70 and remained a partner emeritus until the time of his death. A former chair of the Advisory Committee on Procedures for the Court of Appeals for the D.C. Circuit and the former president of the Metropolitan Club and the Historical Society of the D.C. Circuit, he argued many cases before the Supreme Court, including Upjohn v. United States. He is survived by two daughters, one of whom is Diana Gribbon Motz, Judge of the United States Court of Appeals for the Fourth Circuit. His son-in-law Senior District Judge J. Frederick Motz is a Judicial Fellow.

Edward A. Haight, Sr.,'58, Highland Park, Illinois. The College has recently been informed that Haight, an Emeritus Fellow, died January 2, 1998 at the age of 87.

David Franklin Harrod,'97, Athens, Tennessee, died May 7, 2006 at age 54. A graduate of Tennessee Technological University and of the University of Tennessee Law School, he had served for four years as a Circuit Court Judge, after which he became a founding partner of what is now Carter, Harrod & Willhite, PLLC. He has served on the local school board and on the boards of various civic organizations. His survivors include his wife, a daughter and two sons.

John F. "Jake" Howard,Q.C.,'82, Toronto, Ontario, Canada, died June 3, 2006. Born in 1924, after serving in the Canadian Navy, he graduated from the University of Toronto and took his law degree from Osgoode Hall in 1953. He was a member of the Advocates Society and the first recipient of the Douglas K. Laidlaw Medal for Outstanding Advocacy. He had served as a Commissioner of the Ontario Securities Commission and as Chair and then Honorary Chair of the Woodbine Entertainment Group. He was an exceptional athlete, an accomplished skier, fly fisher, golfer, sailor and horseman. His obituary described him as "having lived a full and accomplished life full of love, laughter and with almost all of his ambitions and wishes fulfilled." His survivors include his wife, two daughters and three sons.

H. E. "Gene" Jones,'69, Wichita, Kansas, died February 19, 2006 at age 82. A World War II veteran, he did his undergraduate work at Fairmont College (now Wichita State) and was a graduate of the University of Kansas School of Law. A partner at Herschberger, Patterson, Jones and Roth, he had served as president of his local bar and of the Kansas Association of Defense Counsel and was for years a trustee of the Kansas Bar Foundation. He was special counsel to the City of Wichita for 32 years. Of diminutive stature, he was known for his sense of humor and his enjoyment of life, as well as for his courtroom skills. His survivors include his wife, four daughters and a son.

Boris Kostelanetz,'53, New York, New York, died January 31, 2006 at age 94 of complications after a hip injury. Born in 1911 to a wealthy family in pre-revolution Russia, his family fled St. Petersburg and arrived in New York when he was 9. His brother Andre became a world-famous conductor. Beginning his career at 22 as an accountant, he enrolled at St. John's University Law School at night. Upon graduation, he joined the U. S. Attorney's office in New York and soon became an expert in prosecuting complex securities and tax crimes. As special assistant to the U.S. Attorney General in 1939, he helped expose the Mafia's ties to the movie industry, and he went on to prosecute a number of cases that led to the first convictions under federal statutes of crimes that had traditionally been left to the states. During World War II he served as chief of the War Frauds Section of the Department of Justice. In the early fifties, he served as special counsel to the Kefauver Committee that investigated, in one of the earliest televised Senate hearings, ties between the Mafia and government. Founding the firm of Kostelanetz & Fink, he became known as the dean of tax defense lawyers. His clients had included Imelda Marcos, James Brown and

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Lyndon Johnson protégé Bobby Baker. His survivors include a daughter and a son.

John B. Leonard,'75, Morristown, New York, died March 4, 2006 at age 83. He served in the U. S. Army in Europe for three years during World War II, receiving the Bronze Star. Graduating from St. Lawrence University and from Albany State Law School, he had twice served as a city judge, the second time for fifteen years, as counsel to the Ogdensburg Housing Authority for forty-six years and as a member of the St. Lawrence County Board of Supervisors for fourteen years. His survivors include his wife and four daughters.

J. Donald Lysault,'84, Overland Park, Kansas, died February 9, 2006 at age 82. A 1941 high school graduate, he was commissioned a Second Lieutenant in the U.S. Army Coast Artillery Corps at 19, served as an Army Transport Commander and was then assigned to duty with the War Department General Staff at age 22, the youngest person so designated in World War II. He was awarded he Army Commendation Medal with Oak Leaf Cluster for his service as Assistant Executive Officer of the Affairs Division of the War Department Special Staff. After the war he earned his undergraduate and law degrees from the University of Kansas, where he was first in his law class, Chief Justice of the Student Court, Editor-in-Chief of the Law Review and a member of the Order of the Coif. He was a past president of his county bar. His survivors include his wife, two sons and four daughters.

Hon. Hale McCown,'60, Fairborn, Ohio, died September 1, 2005 at age 91. A graduate of Hastings College and of Duke University Law School, where he was a classmate of Richard M. Nixon, during World War II, he served in the U.S. Navy as Fighter Director/Intercept Officer on an escort carrier. He earned, among others, six battle stars, a Philippine Liberation Medal and a Navy Unit Citation. Practicing law in Beatrice, Nebraska, he had served as chair of the House of Delegates and as President of the Nebraska Bar Association. He was a member of the American Law Institute and served on its council for thirty years. In 1965, he became the first Merit Plan appointee to the Nebraska Supreme Court, where he served for eighteen years. He had received the Outstanding Alumni Award from Hastings, the Charles S. Murphy Award for Outstanding Public Service from Duke Law School and the Legal Pioneer Award from the Nebraska State Bar. He is survived by his wife, Helen, who was his law school classmate at Duke, a daughter and a son.

Hon. Lloyd George McKenzie, Q.C.,'68, Vancouver, British Columbia, Canada, the original Fellow of the College from Victoria, died October 29, 2005 at age 87 following a stroke and a brief illness. He studied at the University of Victoria, graduated from the University of British Columbia and joined the Westminster Regiment in 1942. He saw World War II combat in Italy and in Holland, where at the end of the war he accepted the surrender of an SS Division. After the war, he was president of the first graduating class at the University of British Columbia law school. He had chaired the trustees of the University of Victoria. Appointed to the Supreme Court of British Columbia in 1974, he served for nineteen years. After his retirement, he became information officer for the British Columbia Supreme Court and Court of Appeal, dealing with the media. In 2003, he took chambers with Fasken Martineau & DuMoulin. A gardener, a voracious reader, he was described in a memorial tribute as truly Elizabethan in his interests. He was known for his sense of humor, once admonishing a young lawyer who was making an impossible submission to the court that he should not take Don Quixote literally. His survivors include his wife.

Thomas L. Morrissey,'75, Deal, New Jersey, died May 17, 2006 at age 90. A graduate of Rutgers and of Fordham University Law School, he began his legal career as law assistant to New York County District Attorney Thomas E. Dewey. He practiced with the Newark firm, Carpenter, Bennett & Morrissey (now McElroy, Deutch, Mulvaney & Carpenter, LLP) for five decades. In World War II he served as Combat Intelligence Officer to Fighting Squadron 2 on the aircraft carriers Enterprise and Essex in the Pacific Theater. During the Korean War, by then a

Lieutenant Commander, he returned to his Combat Intelligence post on the Essex. The Trial Attorneys of New Jersey had honored him with its Trial Bar Award and he had received a Lifetime Achievement Award from the Essex County Bar Association. A widower who had remarried, his survivors include his wife, a daughter, two sons and two stepsons.

Paul C. Parraguirre,'87, Las Vegas, Nevada, died December 26, 2005 at age 85. Descended from Basque sheepherders who immigrated from Extalar, Spain in the 1870s, the family worked to establish one of the largest sheep operations in Nevada. He attended the University of Nevada, Reno, where he was student body president, and UC-Berkeley, from which he graduated. He and his two brothers graduated from the University of Denver Law School together and were admitted to the Nevada Bar on the same day. He served as Deputy Attorney General of Nevada and Chief Deputy District Attorney, practiced law in Reno and Las Vegas for 35 years and served as judge of the 5th Judicial District Court. He had been president of the State Bar of Nevada and a trustee of the Nevada Law Foundation. He was a Captain in the Nevada Air National Guard. A hunter, fisherman, pilot and one of the last "good old cowboys," he was known as a consummate gentleman. His survivors include his wife, two sons and a daughter.

James P. Reardon,'88, Milwaukee, Wisconsin, died November 2, 2005 at age 69 after a courageous battle with cancer. A graduate of Marquette University and of its law school, he practiced with Kasdorf, Lewis and Swietlik, S.C. for forty-four years. He was a recipient of the Defense Research Institute's Exceptional Performance Citation and was a former president and board chairman of the Civil Trial Counsel of Wisconsin. He was a retired Lieutenant Commander in the U. S. Navy Judge Advocate Corps. His survivors include his wife, four sons and three daughters.

Robert W. Ritchie,'86, Knoxville, Tennessee, died April 28, 2006 at age 67, of cancer. A graduate of Western Kentucky University and the University of Tennessee School of Law, he served three years in the U. S. Army Judge Advocate General Corps before founding his own firm, which became Ritchie, Dillard & Davies. He had represented defendants in more than twenty-five states. A chair for three years of the College's Federal Criminal Procedure Committee, he was principally responsible for the College's 2000 Report and Proposal on Section 5K1.1 of the U.S. Sentencing Guidelines. He had served as president of the National Association of Criminal Defense Lawyers and the Knoxville Bar Association, which gave him its highest award in 1997, and was a co-founder of the Tennessee Association of Criminal Defense Lawyers. His survivors include his wife, a daughter and a son.

James E. Rocap, Jr.,'65, Indianapolis, Indiana, a former Regent of the College, died January 21, 2006 at age 88. A graduate of Notre Dame and the Indiana University Law School, he served during World War II in the European Theater as a Captain in Air Combat Intelligence. After a seven-year stint as a state court prosecutor, he went into private practice with his father, his brother and, later, his son. He was the founder of the St. Pius X Council and the Monsegnor Downey Council of the Knights of Columbus and was named Notre Dame Man of the Year by the Notre Dame Club of Indianapolis. His survivors include his wife, four daughters and three sons.

Senior United States Circuit Judge Max Rosenn,'68, Wilkes-Barre, Pennsylvania, died February 7, 2006, two days after his 96th birthday. He earned his undergraduate degree from Cornell at 19 and his law degree from the University of Pennsylvania Law School. After a decade in private practice, he became an assistant district attorney, a post he left to serve as a Judge Advocate in the U. S. Army in 1944. He also served as Pennsylvania Secretary of Public Welfare, as chair of the Pennsylvania Human Relations Commission and of the state's Executive-Legislative Task Force to restructure the delivery of human services. When Hurricane Agnes devastated his home and left his courthouse largely under water in 1972, he chaired the Flood Recovery Task Force, donning hip boots to wade his way into the courthouse. Appointed to the Third Circuit Court of Appeals by Richard Nixon in 1970, he took senior status in 1981, but continued to sit and, indeed, was reading briefs and draft opinions in his hospital room two weeks before he died. He was among the first on his then all-male court to con-

IN MEMORIAM, con't on page 14

sistently hire female law clerks. Years ago, his former law clerks endowed a Law & Humanities lecture series in his honor. His survivors include two sons.

Fernando Ruiz-Suria,'78, San Juan, Puerto Rico, died in March at age 90. A graduate of the University of Puerto Rico and of its law school, he had been president of the Puerto Rico Racing Board, a member of the Puerto Rico Board of Bar Examiners and chair of the Civil Justice Reform Act Advisory Group for the District of Puerto Rico.

Warren F. Sheets,'80, Gallipolis, Ohio, died February 19, 2006 at age 81. Born on a farm, his education begun in a one-room schoolhouse, he joined the U.S. Army upon graduation from high school. A Private First Class in the Timberwolves of the 413th Infantry, 104th Division, he was severely wounded at the Battle of Remagen Bridge. Discharged with a Purple Heart and a Bronze Star, he attended Rio Grande College on the GI Bill, married his high school sweetheart and graduated from Ohio Northern University Law School in 1950. He practiced law in his native county for fifty-five years, serving three terms as prosecuting attorney. His obituary noted that he "remained active in politics as a staunch Democrat to the end." His survivors include his wife, a daughter and two sons.

Richard W. Smith,'73, Staunton, Virginia died May 21 at age 86. A 1941 graduate of Washington & Lee University, he saw action at Guadalcanal, in New Guinea and at Cape Gloucester, New Britain as an officer in the First Marine Division. After graduating from the University of Michigan Law School, he practiced with the Staunton firm that is now Timberlake, Smithy, Thomas & Moses until his retirement. He had served on the Virginia State Bar Council, chaired the VSB Disciplinary Board, been president of his local bar and a vice-president of the Virginia Bar Association and chaired the Virginia Law Foundation. He was the recipient of a Distinguished Alumnus Award from Washington & Lee. He had served on the Staunton City council, where he was vice-mayor and mayor, and had served as Senior Warden of his church. His survivors include his wife, three daughters and a stepson.

Marvin E. Thompson,'78, Russell, Kansas died April 11, 2006 at age 85. A graduate of the University of Kansas and of its law school, he practiced with the firm of Thompson, Arthur & Davidson until his 2002 retirement. He had been president of the Kansas Bar Association and had served on his county zoning commission for a number of years. A remarried widower, his survivors include his wife, a daughter, a son and three step-daughters.

Mart R. Vogel,'69, Fargo, North Dakota died August 19, 2005 at age 93. A descendant of some of the earliest settlers of western Minnesota, he graduated from North Dakota State and from George Washington University Law School. After a term as Assistant U. S. Attorney, he established the region's largest law firm, known simply an "The Vogel Firm." In 2003 the American Inns of Court awarded him its Professionalism Award for the Eighth Circuit. His survivors include his wife and two sons.

Wayne Arlo Williamson,'82, Portland, Oregon died February 28, 2006 at age 84 from injuries suffered in a fall. After graduating from the University of Oregon in 1943, he served as sonar officer on a destroyer escort in the North Atlantic during World War II. After graduating from Stanford Law School, he joined the firm now known as Schwabe, Williamson & Wyatt. He was named Oregon's Distinguished Trial Lawyer of 1992 by the American Board of Trial Advocates. His survivors include his wife, a daughter and two sons.

Paul J. Yaneff,'78, Sioux City, Iowa died January 19, 2006 at age 82 after a lengthy illness. Following service as a sergeant in the Army Air Corps in World War II, he graduated from Morningside College and later earned his law degree from Drake Law School. A long-time partner in the firm of Yaneff & Cosgrove, he had served as president of the Iowa Young Lawyers Association and of his county bar. He became a lifelong fan of the New York Yankees when he was chosen to act as the personal bat boy for Babe Ruth during his barnstorming days in the 1930s. His survivors include his wife, two daughters and three sons. ♦

Officer and Regent Nominations Announced

TO BE VOTED ON AT ANNUAL MEETING

At the Annual Meeting in London in September, the officers nominating committee will nominate the following Fellows to serve as officers of the College for the coming year:

President	**David J. Beck** Houston, Texas
President-Elect	**Mikel L. Stout** Wichita, Kansas
Secretary	**Joan A. Lukey** Boston, Massachusetts
Treasurer	**John J. "Jack" Dalton** Atlanta, Georgia

These four and immediate past president Michael A. Cooper will constitute the Executive Committee for the coming year.

Paul D. Bekman, Baltimore, Maryland, **Michel Decary**, Q.C., Montreal, Quebec, Canada, **Bruce W. Felmly**, Manchester, New Hampshire, **Robert A. Goodin**, San Francisco, California and **John S. Siffert**, New York, New York will be nominated for vacant seats on the Board of Regents. Bekman, Decary, Felmly, Goodin and Siffert will replace retiring Regents Albert D. Brault, Brian P. Crosby, Joan A. Lukey, John L. Cooper and Gregory P. Joseph in their respective regions.

Under the College bylaws, a Regents Nominating Committee, chaired by a member of the Board of Regents and composed of two additional Regents, two Past Presidents and two Fellows at large, nominates candidates for the Board. This year's committee was chaired by Regent **Thomas H. Tongue**. Regents are elected at the business meeting of the Fellows following the Saturday morning program at the Annual meeting.

The Board of Regents elects its officers upon nomination by the Past Presidents at a reorganizational meeting immediately after the election of new Regents. Only a Fellow who has served as a Regent is eligible to be nominated as an officer of the College. ♦

New Interactive Website Is Online

The College's new interactive website, actl.com, is now online with features that include a **"Fellows Only"** section to allow secure communication between Fellows. We can now register for meetings and pay dues through the site.

In addition, the new site boasts a searchable database permitting lawyers, clients, judges and members of the public to find Fellows in their state or province.

Check it out at www.actl.com

Fifty-two Fellows Inducted at Spring Meeting

ALABAMA:
Walter E. McGowan, Tuskegee

ARKANSAS:
J. Michael Cogbill, Fort Smith

NORTHERN CALIFORNIA:
Thomas J. Donnelly, Walnut Creek
Robert T. Haslam, Menlo Park

SOUTHERN CALIFORNIA:
Dean J. Kitchens, Los Angeles
James D. Riddet, Santa Ana

COLORADO:
Michael J. Gallagher, Denver
Keven Shea, Denver

CONNECTICUT:
John J. Houlihan, Jr., Hartford
Paul D. Williams, Hartford

DISTRICT OF COLUMBIA:
Mark D. Wegener, Washington

FLORIDA:
Darryl M. Bloodworth, Orlando
Kimberly A. Cook, Miami
Carey Haughwout, West Palm Beach
Larry Hill, Pensacola

INDIANA:
Robert T. Keen, Jr., Fort Wayne
Scott L. Starr, Logansport

KANSAS:
Paul J. Morrison, Olathe
Robert L. Pottroff, Manhattan

LOUISIANA:
Judy Y. Barrasso, New Orleans
J. Michael Small, Alexandria

MARYLAND:
Joel A. Dewey, Baltimore
Charles E. Iliff, Jr., Pasadena
Dale P. Kelberman, Baltimore

MASSACHUSETTS:
Francis J. Lynch, III, South Easton

MISSOURI:
Robert T. Adams, Kansas City
Kenneth W. Bean, St. Louis
Monte P. Clithero, Springfield
Thomas W. Wagstaff, Kansas City

NEW HAMPSHIRE:
Mark A. Abramson, Manchester
Mark L. Sisti, Chichester

NEW JERSEY:
Michael J. Marone, Morristown
Stephen O. Mortenson, Springfield

DOWNSTATE NEW YORK:
Philip J. Catapano, Garden City

NORTH CAROLINA:
Joseph B. Cheshire, V, Raleigh

OKLAHOMA:
John F. McCormick, Jr., Tulsa

PENNSYLVANIA:
Howell K. Rosenberg, Philadelphia

TENNESSEE:
Jef Feibelman, Memphis
Albert C. Harvey, Memphis

TEXAS:
M. C. Carrington, Beaumont
Joseph C. Hawthorn, Beaumont
Chris Reynolds, Houston
Paula Fisette Sweeney, Dallas

VIRGINIA:
Stephen A. Northrup, Richmond

WASHINGTON:
C. Matthew Andersen, Spokane,
Rudy A. Englund, Seattle
Douglas A. Hofmann, Seattle
Donald P. Marinkovich, Seattle

WEST VIRGINIA:
Dan James, Keyser

MANITOA/SASKATCHEWAN:
Gordon McKinnon, Winnipeg

ONTARIO:
Roslyn J. Levine, Q.C., Toronto
Alfred A. Mamo, London

Joseph B. Cheshire, V *of Raleigh, North Carolina gave the response for the inductees.*
A portion of his remarks follows on the next page.

Cheshire Responds For Inductees

One of the College's traditions is for an inductee to respond for his or her class of inductees, following their induction. This year's response was given by ***Joseph Blount Cheshire V****, a criminal defense lawyer from Raleigh, North Carolina, a fifth-generation lawyer. A portion of his remarks follows.*

We are all trial lawyers in this organization. I don't know all of the new inductees, and I don't know all of the Fellows of the College, but I do know trial lawyers. I know that each one of us has a story that we could tell about how we became a trial lawyer, and I know that each one of my Fellow inductees' stories would be better than mine. But I want to take you on a little journey of how I became a trial lawyer and what I think being a trial lawyer means and why I think it's so important. . . .

Joseph Blount Cheshire V

In 1651 my father's family emigrated to what was to become the United States to escape serious religious discrimination. In the early Twentieth Century, my mother's family emigrated from Russia after suffering much death and devastation at the hands of the Communists. Those are two things that drove my mind to want to be a trial lawyer.

In 1836, Joseph Blount Cheshire was licensed to practice law in the State of North Carolina. There has been a Joseph Blount Cheshire continuously licensed to practice law in the State of North Carolina now for 170 years.

But it was in 1962, at the age of fourteen, that I decided to be a trial lawyer. I was at a little school in Massachusetts, . . . and I read The Diary of Anne Frank. I read that book at fourteen years old, and I cried. I cried throughout the whole reading of that book. I cried during the study of that book.

And while I read that book, I remembered my own family's battles on behalf of the poor, disadvantaged, among our people in North Carolina, how the preachers and lawyers in my family - that's all we've ever been - fought against religious intolerance; how the Bishop of North Carolina [his great grandfather], who was also a lawyer, integrated his churches before anyone else in the nation; how they founded colleges for African-American people in the 1800's in the face of much hatred and many indignities; how my father stood and led the charge to integrate the Bar of the State of North Carolina.

And I read Anne Frank, and I thought about my mother's family and how they suffered at the hands of a totalitarian government. Anne Frank is who made me decide to commit my life, as each of you in this room has done, to the Rule of Law, in order that I, and all of us, could dedicate our lives to protect our people, our democracy, our freedoms against all of those that would take those precious freedoms and precious hope away and to prevent with all our will and all our skill the unimaginable horrors that man will, if allowed, commit on other men.

To do this, I decided at fourteen years old that I would be a trial lawyer, not just a lawyer, but a trial lawyer. I have now practiced trial law for thirty-three years. I have been a plaintiff's lawyer, an insurance defense lawyer, a prosecutor, and, for most

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his election—unless he had tried his first case at the age of 19 (which, parenthetically, is the age at which my father, who never attended college, graduated from Fordham Law School). Tom confessed that he had received a dispensation from the 15-year requirement.

In Baltimore one month later, I was privileged to be present when the Maryland Fellows presented a lifetime achievement award to Mel Sykes, who was described as a "lawyer's lawyer" (and not only because he has represented lawyers and law firms) and for whom the affection and respect of the Maryland Fellows was almost palpable. Mel Sykes is that truly vanishing breed, the trial lawyer who is a solo practitioner. In his eighties, Mel is in the office every day.

These tributes have exemplified for me the intergenerational nature of the legal profession, and particularly the trial bar. We have been taught to extend a hand to those coming behind us. Fellows discharge that obligation by participating in College-sponsored trial and appellate moot competitions, teaching trial skills to public interest lawyers and mentoring younger lawyers in and out of their firms. We feel a similar obligation to salute those older lawyers who came ahead of us, who were *our* mentors and who played such a large role in enabling us to achieve whatever professional distinction, including most notably College fellowship, we enjoy.

"WE HAVE BEEN TAUGHT TO EXTEND A HAND..."

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At the state, provincial and regional meetings I've attended, I have listened as well as shared in the festivities. And I have heard story after story of the wave of distrust of the courts, often verging over into hostility, that is being fomented in so many parts of our nation. The stories take different forms, but the distrust and hostility to the judiciary they portray is essentially the same, as is the advantage sought by individuals who would reduce the courts from bastions of independence to submissive reflectors of the political passions of the day.

In Pittsburgh, Chief Justice Ralph Cappy of the Pennsylvania Supreme Court told me of the campaign that had resulted in the defeat of a highly respected judge in a retention election. The vote was a misdirected public protest against a legislative increase in the salaries of governmental officials, including judges, but more notably including the legislators themselves. The legislators were seemingly beyond criticism, but not the judges.

A few years ago, the Oregon Legislature attempted to bring the judiciary under its thumb by using its power of the purse to reduce the judicial budget appropriation. In Arizona, which has a merit-selection judicial appointment process, the Legislature sought unsuccessfully to subject judicial appointments to Senate confirmation and periodic legislative reconfirmation. And these are just a few examples.

This continuing onslaught against a fair, impartial and conscientious judiciary is not confined to the states. In late April, the Chairman of the House Judiciary Committee and a senior member of its Senate counterpart introduced bills to establish an "Inspector General of the Judicial Branch," with authority "to conduct investigations of possible misconduct of judges" and "to conduct and supervise audits and investigations." The timing of the introduction of these bills is puzzling, for a commission chaired by Justice Breyer of

the Supreme Court of the United States is due to release a report this summer after a year-long investigation of the adequacy of the judiciary's self-policing efforts through the Judicial Council in each Circuit.

The College has been handicapped in responding to these threats to the judicial branch by the lack of a professional staff and a legislative affairs office. But we have taken steps to enable the College to be more timely and effective in responding. As I reported to you by letter on May 9, the Judiciary and Outreach Committees have devised a program pursuant to which I have personally written to each state Chief Justice offering the College's assistance in this area. A Fellow has been designated in each state to follow up with the Chief Justice to see how the Fellows in that state can be most effective in defending the judiciary against unwarranted attacks. The College has needed a rapid response capability, and we are well on the way to creating it. A similar communication will be sent to the Chief Judge of each U.S. Court of Appeals and District Court. The College owes a debt of gratitude to Ned Madeira, Chair of the Judiciary Committee, who has devised the program, and to Liz Mulvey, Chair of the Outreach Committee, who has been instrumental in implementing it.

The College has long had the resolve to defend our federal and state judges from unfair and unwarranted attacks. We are well on the way to creating a tactical capability to carry out that resolve. ♦

Lauri McGowan, President Michael Cooper, Inductee Walter E. McGowan, Tuskegee, Alabama, and his parents, Mary D. and Johnnie G. McGowan, at inductee dinner.

Humor From the Annual Meeting

AS USUAL, THE FALL MEETING OF THE COLLEGE WAS LACED WITH GOOD HUMOR.

Immediate Past President ***James W. Morris, III****, upon being called on to introduce a speaker.*

President **Michael A. Cooper**: Our first speaker will be introduced to you by a very familiar face, our immediate past president, Jimmy Morris.

Mr. Morris: Thank you, Mike. You just made your first mistake as president of the American College of Trial Lawyers. I have felt so deprived in my not being the center of attention this year that I vowed that if I ever got hold of this microphone again I would never give it up.

LOOK FOR BON MOTS THROUGHOUT THIS ISSUE OF *The Bulletin.*

Fellow and Firm Snatch Victory from Defeat:

ACCESS TO JUSTICE PRO BONO CASE

*[Former Regent **Dennis R. Suplee** and his firm, Schnader Harrison Segal & Lewis LLP, undertook a difficult political asylum case through the College's Access to Justice Committee. This is Suplee's account of that case.]*

Lost before the Immigration Judge, lost before the Board of Immigration Appeals, lost in the Court of Appeals, Supreme Court review denied, supplemental mandamus denied in District Court. That was the record of the lawyers representing the asylum seeker.

And yet . . . .

For me and my colleagues at Schnader, the case began with a call from the College's Access to Justice Committee, asking if we would be willing to assist HIAS, a Philadelphia public-interest immigration legal services agency, in an asylum case. The facts presented a plausible case for granting asylum. Ivory Coast citizen Katiatou Camara had long been active in an opposition political party, the RDR. The Ivorian government blamed RDR for a 2001 coup attempt, which led to a violent crackdown on RDR leaders, members and suspected supporters. RDR members, taken from their homes at night, were found dead in the street the following day. Government telephone hotlines encouraged citizens to report "assailants" critical of the government. The arrest, and in many cases death of those denounced resulted.

Ms. Camara and her husband had developed marital problems. When she asked him to leave, he threatened to inform the government about her political activities. Thereafter, she was harassed by security forces, which twice came to her house in the middle of the night, pounded on the door and demanded that she come out. Though they had eventually left, she decided not to wait and see what would happen the third time. Fearing for her life, she fled with her two teenage daughters, Khady and Mariam, ultimately to the United States, where in December 2002 she sought asylum based on a well-founded fear of persecution because of her political activities. She and her children were placed in a series of detention facilities -- sometimes together, sometimes not -- until her case ended.

The Immigration Judge who heard her application had found her testimony credible, but found no objectively well-founded fear of future persecution, which the asylum statute required. The Board of Immigration Appeals ("BIA") affirmed.

At that point I received a call from the Access to Justice Committee asking if we could help the HIAS lawyers represent the Camaras. I said "yes." It is remarkable how many things we do simply because we are asked.

My appellate partners Nancy Winkelman and Bruce Merenstein took the lead in the appellate courts, I did so in the district court and HIAS attorney Ayo Gansallo did so on the administrative level. The Court of Appeals granted the motion for a stay of removal pending issuance of its mandate which had accompanied our review petition, a small but important procedural victory.

We treated the case as if we were representing a paying client, with three partners playing appel-

late court judges in a moot court. In spite of our best efforts, the Court of Appeals, relying on the narrow applicable standard of appellate review, affirmed denial of the asylum petition in a non-precedential opinion. It appeared that the case was over; a petition for certiorari from a patently unremarkable opinion seemed a very long shot. Then things got worse. The stay was still in place--the Court of Appeals had not yet issued its mandate--but the government deported the Camaras. By the time we learned this, they were already out of the country.

The deportation we had sought to stop was now a *fait accompli*. A motion for sanctions because the government had acted prematurely would give little solace. Ultimately, though we could not foresee it, the premature deportation was the key to securing asylum.

"THEN THINGS GOT WORSE."

To avoid the increasing civil unrest in the Ivory Coast, the Camaras had been escorted by two U.S. deportation officials to Senegal, where they were placed in the custody of local authorities for return to the Ivory Coast. When Ivorian officials, preoccupied with their own country's increasing internal unrest, refused to take custody of the Camaras, the Senegalese authorities put them on a plane back to JFK two days later.

Upon disembarking, Ms. Camara made a new claim for asylum for herself and her children. Suddenly we had options. Although the original stay of deportation was still in place, the Court of Appeals' imminent issue of its mandate would end that stay. We asked it to stay issuance of its mandate pending the Supreme Court's ruling on our petition for *certiorari*. Our stay motion was granted the very day that the mandate would have issued, another small but important procedural victory.

Meanwhile, the government refused to process Ms. Camara's new asylum petition, contending that her only procedural option was to seek to reopen in the BIA the appeal from her original petition, showing changed circumstances, rather than returning before the Immigration Judge.

We filed a mandamus complaint in the District Court to compel the government to process Ms. Camara's new petition, accompanying it with another motion for a stay of deportation pending a ruling on the merits. The stay was granted. Now there were two stays in place, one from the Court of Appeals, the other from the District Court.

It appeared clear that Ms. Camara was entitled to have her new asylum petition processed. By taking her and her children across the U.S. border and leaving them in Senegal, the government had carried out the original order of deportation. Now she was back and entitled to start anew. The District Court, however, then surprised us when it denied our mandamus petition and terminated its stay of deportation.

With the District Court stay no longer in place, we feared the government would again jump the gun and deport the Camaras in disregard of the Court of Appeals' stay. Telephone inquiry disclosed that an instruction had been given to deport them and that Ms. Camara and her children were being transported to the airport. After frantic phone calls and letters faxed to an array of government officials, the deportation instruction was countermanded; the Court of Appeals' stay would be respected.

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The 2006 National Trial Competition:

A REWARDING EXPERIENCE FOR OVER 200 COLLEGE FELLOWS

Scenes from the National Trial Competition in Dallas, Texas.

The case of *McGee v. School Board of Dallas County* involved a wrongful death claim for twelve-year-old Rebecca McGee. In January and February 2006, the parties took the case to trial. However, unlike other cases the McGee case was tried hundreds of times in thirteen different courthouses around the country. The National Trial Competition used this fictional case as the problem for the regional competitions held in 13 states. Teams of students from over 150 law schools in the United States served as the trial lawyers in the regional competitions. (Four law students participate in each trial, with two students from a particular school comprising the team which represents one of the parties.) Two teams from each region then advanced to the March 22-25, 2006 final competition in Dallas.

The National Trial Competition has been co-sponsored by the College and the Texas Young Lawyers Association since 1975 when David Beck of Houston, then a Texas young lawyer, conceived the idea. Over the years it has grown not only in participation but also in stature so that it is recognized by many as the country's pre-eminent trial competition for law students. The competition is viewed by the College as an opportunity to assist and participate in the practical training of law students in trial practice. The Texas Young Lawyers do a wonderful job organizing and running the competitions. The work of the College in these activities is the recruitment of schools and Fellows. Both functions have a significant effect on the success and credibility of the competition.

Each of the regional competitions is hosted by a law school located within the region. Historically, the host schools have taken the lead in recruiting local attorneys and judges to serve as critiquing and presiding judges. (Three lawyers serve as judges in each trial, with one lawyer presiding as judge and two lawyers sitting in the jury box. Each of the lawyers score the skills displayed by the students.) A few years ago, then Virginia state chair Mike Smith successfully recruited a number of Fellows to assist with their regional competition. In 2005, the Fellows in Florida, under the leadership of Rufus Pennington, III, enlisted more than 30 Florida and Georgia Fellows to serve as judges.

In late 2005 and early 2006, the College's National Trial Competition Committee

undertook to encourage other states to replicate the participation achieved in Virginia and Florida. Committee chair Phil Garrison and Doug Farnsley of Louisville, contacted the state chairs in those states where law schools would be hosting regional competitions. After countless e-mails and telephone calls, approximately 225 Fellows from across the United States signed up to assist and then participated as critiquing and presiding judges in the 2006 regionals. In many cases, Fellows traveled great distances and from neighboring states to the competitions. For example, thirty-seven Mississippi Fellows traveled to the regional held in Oxford. Ray Brown reported that two Fellows who had lost their homes in hurricane Katrina drove six hours to assist with the competition. The Washington regional included five Fellows from Oregon, four Fellows from Idaho, and fifteen from Washington. The regional in Kansas involved Fellows from that state as well as Oklahoma and Missouri.

In many states, including Florida, Kansas, Mississippi and Washington, local Fellows organized receptions and dinners which added to the fellowship and collegiality generated by participation in the competition.

Coaches and host school contacts expressed their appreciation for the job done by Fellows as presiding and critiquing judges. One coach in particular commented, "We had the best judges I have seen at NTC regionals. I felt confident all judges had actually tried cases! Congratulations for a job well done." A second coach stated, "Judges and critiquers were generally of a high quality. Above average based on 15+ years in 3 different regions."
This year a record 150 of the 180 accredited law schools participated in the competition. In 2005, the Committee was determined to make an all-out effort to recruit new schools to the competition. Chairman Garrison and Frank Gundlach of St. Louis embarked on a comprehensive campaign to increase participation, which included enlisting past Presidents, Regents and Fellows from all over the country to make contact with schools who had not been participating to explain the competition to them, and to urge them to participate. As a result of their hard work 15 new law schools signed up for the 2006 competition. Many schools indicated that one of the significant factors that influenced their decision to enter this year was the assurance that the students would be judged and critiqued by ACTL Fellows.

Coaches and host school contacts expressed their appreciation for the job done by Fellows as presiding and critiquing judges.

This year at the Finals in Dallas, Texas, Loyola Law School, Los Angeles won the $10,000 Kraft W. Eidman first place award funded by Fulbright and Jaworski, and the University of Maryland School of Law received the $5,000 second place award funded by Beck, Secrest and Redden of Houston.

As would be expected, the College Fellows enthusiastically responded to the call to assist at the regional competitions and later at the national finals in Dallas. It is clear that the participating law schools place a high value on their students being judged by Fellows of the College. It is also clear that the Fellows who were involved enjoyed the experience tremendously, both from the standpoint of assisting in quality trial advocacy training, and by reason of the camaraderie of participating with other Fellows. Joan Lukey, who served as a judge in the New Hampshire regional, spoke for all who participated when she noted, "It was great fun. What incredibly talented teams I was privileged to judge!" The Committee extends its deep appreciation to those Fellows who took leadership roles in the 2006 competitions and to all Fellows who participated. The Committee also looks forward to the continued participation of Fellows in future competitions. ♦

Canadian Justice Made An Honorary Fellow

Justice Fish receives honorary fellowship from Past President David Scott.

Introducing and inducting The Honourable Mr. Justice Morris J. Fish of the Supreme Court of Canada as an Honorary Fellow, Past President David W. Scott, Q.C. described him as a man of "energy, imagination, reverence for art, love of learning and sense of community, a superb judge, a wonderful person, indeed . . . a mensch."

Born in Montreal, Justice Fish holds a BA and a degree in civil law from Montreal's McGill University. A much-decorated prize-winner and scholar, he did post-graduate work at the University de Paris and worked for some years as a journalist, a reporter and editorial writer with the *Montreal Star*.

He practiced for twenty-five years in the Montreal firm of Cohen, Leithman, Kaufman, Yarosky & Fish. Appointed to the Quebec Court of Appeal in 1989, he served on that court for thirteen years until his elevation to the Supreme Court of Canada.

In an acceptance speech marked by erudition and laced with humor, he described his pleasure in being made an Honorary Fellow of the College:

"[I]t is . . . a particularly meaningful award to me, and for two reasons, one temporal, the other substantive. I was called to the bar in 1964 and soon after that aspired to membership in this wonderful organization. Year after year, I toiled, I did my best, and your call didn't come. On the 25th anniversary to my call to the Bar, June 29, 1989, the receptionist rang me on the intercom, and said, 'Morris, there's a very important call for you.'

"I thought then that it was David Scott calling - at long last - to invite me to become a member of this august organization. Alas, it was the Prime Minister! My heart sank. The Prime Minister asked whether I would accept an appointment to the Court of Appeal and, with some hesitation, borne largely of my wait in vain for membership in this organization, I did nonetheless accept.

"That's the first reason why it is so meaningful to be here at long last. . . . The second reason why this day is so meaningful to me, Mr. President, is that the College represents in my view the champagne of professional associations. It has a highly developed sense of style, but at the same time a commitment to substance, a commitment to the improvement of the administration of justice in every field, and not simply in this country, and in Canada, but elsewhere as well."

Tracing a history of denial of the right to counsel in Canada, he attributed the resolution of that problem to the adoption of the Canadian Charter of Rights and Freedoms and the efforts of professional organizations of the stature of the College.

Justice Fish becomes the fourteenth living active or retired Canadian Justice to be made a Fellow or an Honorary Fellow of the College. ♦

BON MOT:
Past President ***David W. Scott, Q.C.****, introducing Canadian Supreme Court Justice* ***Morris J. Fish***

His former partner, Harvey Yarosky, himself a distinguished Fellow of this College and a wonderful lawyer, spoke with great affection of Justice Fish during a recent encounter that he and I had together. He chuckled at the memory of his old colleague's first day in the firm as a young lawyer, when he arrived at the office sporting a beard which he had grown during travels in Europe. He asked the great man [the senior partner in the firm] whether his beard would present a problem. "No," replied Mr. Cohen, "provided you don't wear it during working hours."

Justice Fish*, Responding*

Thank you, David. The story about my beard, as you would expect, is absolutely true. I was so deeply hurt that, as you can see, I haven't taken a haircut since.

Justice Fish *concluding his remarks*

During the High Holidays some years ago in a small village in eastern Europe, the congregants were deep in prayer. There was one fellow who seemed to be beating his breast with particular fervor. The man in the neighboring pew said, "Harry, you're a horse thief. Everyone in the town of Rafalufka in the District of Voline knows that you are a horse thief. How have you the effrontery in the House of the Lord to beat your breast with such piety?" Harry said, "Well, as you well understand, no matter how fervently you pray, no matter how devoutly the entire congregation prays, in this county over the next year there will be a certain number of horses stolen. Is it so terrible that I should ask the Lord for my fair share?"

Fellow Fellows, male and female, honorary and ordinary, over next week, people in this country and in Canada will be praying with particular devotion for peace on earth, for good will to men. However devoutly they pray, a certain number of disputes in this country, and in mine, will remain unresolved except by litigation. There will be trials in every domain. I wish each and every one of you your fair share!

Past President ***Gael Mahoney***, ***Justice Fish***, Connaught Mahony, Lyn Brown and Regent ***Raymond Brown*** at the Spring Meeting.

We asked the District Court to reconsider the denied mandamus petition, a pointless move unless the judge is willing to take a hard second look and has the humility to admit a mistake and the self-confidence to reverse himself if, upon taking a second look, he realizes that he got it wrong the first time. We had such a judge.

Ten days later, the District Court judge withdrew his first Order, granted the mandamus petition, and reinstated the stay pending disposition of the new asylum petition–once again, just a procedural victory, but an important one and just in time, since two weeks later the Supreme Court denied our certiorari petition, following which the Court of Appeals ended its stay.

The Government ultimately followed the District Court's Order and processed Ms. Camara's new asylum petition. Recognizing and respecting the HIAS lawyers' vastly greater experience and expertise in handling hearings before immigration judges and having some concern that the appearance of big-firm lawyers might be counterproductive, we discussed strategy for the new hearing with our HIAS colleagues but left it to them to represent the Camaras at the hearing. This time, the same Immigration Judge granted the asylum petition.

Finally, a win on the merits! No appeal. Ms. Camara and her daughters are now living in New York.

Few cases produce such a sense of professional satisfaction. Perhaps when you are asked to take on a representation by the Access to Justice Committee, your answer, too, will be "yes." ♦

Notable Quote

Past President **Warren B. Lightfoot**, Invocation at the Opening Session

May we pray. Heavenly Father, we ask for your blessings on this meeting. We ask that you guide our thoughts and deliberations as we reflect on our obligations as professionals and as citizens of the world.

These are trying times for our two countries and for countries other than our own, for our profession, and for professions other than our own.

As we go about this meeting, and our lives apart from this meeting, help us always to keep uppermost in our minds the ancient admonition of the Prophet Micah that we are to do justice, to love mercy, and to walk humbly with you.

Amen.

Awards, Honors and Elections

Lewis R. Sifford of Dallas is the new president-elect of the American Board of Trial Advocates. He has been a member of ABOTA's board of directors since 1995 and has served as treasurer for the past three years. He was president of the Dallas chapter in 1994.

Paul Freehling of Chicago has been selected by the Illinois State Bar Association's Academy of Illinois Lawyers to be a member of its 2006 class of Laureates. The Academy was founded in 1999 to "enhance the honor and dignity of the bar of Illinois by recognizing lawyers who personify the greatness of the legal profession." To qualify for the Academy's Laureate Award, a candidate must be a member of the Illinois State Bar Association, have practiced law primarily in Illinois for 25 years and have a proven record of commitment to "the highest principles of the legal profession through a pervasive record of service to the law, the profession and the public." The Academy has honored approximately 75 lawyers so far.

Lewis W. Fryman of Philadelphia was re-elected as chair of the Pennsylvania State Ethics Commission. He was appointed to the commission in March 1998, reappointed in March 2001 and elected as chair in May 2002. Fryman is chair emeritus of Fox Rothschild in Philadelphia and a former Regent of the College.

George Bramblett, Jr. of Dallas, Texas has received the 2005 Larry Schoenbrun Jurisprudence Award from the Anti-Defamation League.

Paul D. Brunton of Tulsa has received the Lord Erskine Award from the Oklahoma Criminal Defense Lawyers Association. Presented at the annual meeting of the Oklahoma Bar Association, the award honors a member of the criminal defense bar who has steadfastly placed preservation of liberty over personal gain. Brunton is the 13th recipient of the award since it was established in 1982. Deceased Fellow Patrick Williams was the last Tulsa lawyer to receive the honor.

Judicial Fellow **Ralph Artigliere** of Bartow, Florida has received the Willson American Inn of Court Professionalism Award. He is the first judge to receive the annual honor, which recognizes adherence to the highest standards of professional conduct as well as significant contributions to the cause of professionalism.

Raymond L. Brown of Pascagoula, Mississippi is the recipient of not one, but two major honors--the Mississippi Bar's 2006 Lifetime Achievement Award and membership in the Mississippi Sports Hall of Fame, joining such notables as Dizzy Dean, Dr. Cary Middlecoff, Walter Payton, John Vaught, Charley Conerly and Dave Ferris.

Scott A. Powell of Birmingham, Alabama has been elected president of the International Society of

AWARDS, HONORS AND ELECTIONS, con't on page 28

Barristers. He is the society's 42nd president, the fifth from Alabama and the second from his law firm, having been preceded by Fellow Alex W. Newton in 1979.

Bud Roegge of Grand Rapids, Michigan has received the Donald R. Worsfold Distinguished Service Award from the Grand Rapids Bar Association for "outstanding leadership and service" to the association, the legal profession and his community.

R. Terrence Ney of Fairfax, Virginia (JFACTL) has received the Award for Excellence in Civil Litigation from the Virginia Association of Defense Attorneys. It is the highest award the association bestows.

Terrence M. Connors of Buffalo, New York has received the New York State Bar Association 2006 Attorney Professionalism Award. It is given to a New York state attorney who exemplifies the highest standards of professionalism. Connors is the first attorney from the western New York region to receive this award.

Melvin J. Sykes of Baltimore, Maryland has received the first ever Lifetime Achievement Award from the Maryland State Committee. At the age of eighty-one, he is still actively practicing.

Henry M. Coxe, III, a partner in Bedell, Dittmar, Pillans & Coxe, Jacksonville, Florida has become the 58th president of the Florida Bar. ♦

Gumpert Award Followup:

DAKOTA PLAINS LEGAL SERVICES MAKES USE OF COLLEGE AWARD

Dakota Plains Legal Services, the first recipient of the newly constituted Emil Gumpert Award, has completed content development for the website to be made available to several Indian tribes in South Dakota.

The organization, which provides legal services on nine Indian Reservations in the Dakotas, has developed extensive legal materials covering both procedure and substantive law.

Among these materials are a *pro se* set of packets for filings in tribal court. Each *pro se* packet contains a brochure explaining how parties can represent themselves in tribal court, a brochure addressing the area of the law with which the *pro se* litigant needs help, instructions on how to complete the form and a completed sample form the *pro se* litigant can use as a guide. DLPS reports that all of the materials developed as a result of the Gumpert Award are currently being used in paper form and that the website should be completed and available by this summer.

Headquartered in Mission, South Dakota, Dakota Plains Legal Services was established in 1967. It was chosen for the Gumpert Award from among 46 nominees scattered throughout the nation. ♦

New Regents

J. Donald Cowan, Jr., of Greensboro, North Carolina is the new Regent representing Virginia, West Virginia, North Carolina and South Carolina. A 1965 graduate of Wake Forest University, he received his J.D. from the Wake Forest School of Law, with honors, in 1968. In addition to being an adjunct professor of trial practice at Duke University School of Law, Cowan is a member of Smith Moore LLP, lectures annually to North Carolina state trial judges on trial practice and evidence. A past president of the North Carolina Bar Association, he is a member of the ABA's House of Delegates.

Francis X. Dee of Newark, New Jersey, is the new Regent representing Delaware, New Jersey and Pennsylvania. A graduate of Manhattan College, Dee received his J.D. from Catholic University and his LL.M. in labor law from New York University. Prior to joining Carpenter, Bennett & Morrissey (now McElroy, Deutsch, Mulvaney & Carpenter), he was labor counsel to Litton Industries and a trial attorney for the National Labor Relations Board, Region 22. He is a past chairman of the Labor and Employment Law Section of the New Jersey State Bar Association and a member of its Litigation Section.

Philip J. Kessler of Detroit, Michigan is the new Regent representing Kentucky, Michigan, Ohio and Tennessee. In March of this year, he was named chairman of Butzel Long, where he began his career thirty-four years ago and recently had served as president. A 1972 graduate of the School of Law of the University of California at Berkeley, Kessler received his bachelor's degree, with distinction, from the University of Michigan. He is a life member of the U.S. Court of Appeals, Sixth Circuit Judicial Conference and state chair of the U.S. Supreme Court Historical Society.

Chilton Davis Varner of Atlanta, Georgia is the new Regent representing Alabama, Florida and Georgia. A senior partner at King & Spalding, Varner was appointed to the Federal Civil Rules Advisory Committee in 2004, where she participated in the committee's recent drafting of amendments governing electronic discovery. A native of Opelika, Alabama, Varner is a Phi Beta Kappa graduate of Smith College in Northhampton, Massachusetts, she then earned her J.D., with distinction, Order of the Coif, from Emory University School of Law. In 1983, she became the second woman partner at King & Spalding and the first woman partner in the litigation practice group. She was a member of the American delegation to the 2004-2005 Anglo-American Legal Exchange. ♦

of my life, a criminal defense lawyer, representing now white collar crimes and a tremendous amount of death, capital punishment, work. And again, I have learned to love trial lawyers, and I know trial lawyers, and I am so proud that you have selected me and the rest of these inductees to stand with the best lawyers in this nation.

When I was at the airport coming here yesterday, I had a crisis, and I couldn't get here until yesterday. Ten minutes before the plane took off, I received a telephone call from the nursing home where my Dad is. My Dad is a five foot six inch giant of a man. He has the intellect and moral certainty of few men I have ever known. In his entire sixty-four years [of law practice], he averaged over fifty percent of his billable hours in pro bono work. They told me he had taken a terrible turn for the worse, and my heart told me I needed not to come here, and I needed to go to him.

Discomfort at easy answers

And then I said, my mind said, "What would your Dad want, Joe? How proud would he be of you? How proud would he be that someone selected you to give this speech, this man who loves the law, loves the rule of law, and loves how in our great country the rule of law is paramount to the people in this room to protect that rule of law for all people." And so, I am here. I am a little sad, but I am uplifted by the speeches I heard today on this stage and by the very presence of being with you all.

I carry with me this little blessing that my Dad loves all the time, and on the plane I pulled it out and I read it again to myself for the millionth time. And I realized that that little blessing said more about what a trial lawyer is than I could ever say. And so, I had this really fancy speech that I wrote, and spent a lot of time doing it, so it made me seem like a fancy lawyer. And I just took it and put it away and I handwrote this . . . rambling and disjointed little talk. I want to end it with you with this blessing that I have modified a little bit to help show the people in this room that aren't trial lawyers, and to help to show the ones of us that are, what we are and why we are and why we have been given the blessing and the gift that we have been given, which carries with it such an enormous obligation:

We have been blessed with discomfort at easy answers, blessed with discomfort at half truths and superficial relationships, so that we may live deep within our hearts and the hearts of our countrymen and women. We have been blessed with anger at injustice and oppression and exploitation of people, so that we may work for justice, freedom and peace. We have been blessed with tears to shed for those who suffer from pain, rejection, starvation and war, so that we may reach out our hands and our minds and our hearts to comfort them and turn their pain to joy. We have been blessed with enough foolishness to believe we can make a difference in this world, so that we attempt what others claim cannot be done.

On behalf of all of us here, on behalf of all of the inductees, thank you all from the bottom of my heart, and the people of this nation's heart, for giving your lives to the Rule of Law and the cause of justice. And thank you for considering us to stand with you and your number. As I know my Dad is proud of me, you have allowed us all to be proud of each other. Blessings to you all and all you love and all you pray for. ♦

Editor's note: ***Joseph Blount Cheshire, IV****, Esq., 87, died Friday, April 14, 2006, six days after his son delivered this response.*

Griffin Bell Delivers Seventh Powell Lecture

Past President ***Griffin B. Bell*** *delivered the seventh Lewis F. Powell, Jr. Lecture at the Spring meeting of the College. His presentation focused on Associate Justice Powell's role in two cases,* Snepp v. United States*, and* University of California Regents v. Baake*, each involving issues of national interest. In both, Bell observed, Powell authored opinions in which his "unique experience as a lawyer equipped him for his role."*

Past President Griffin Bell

The Powell Lectures honor Justice Powell, the twentieth President of the College and the ninety-ninth Justice to sit on the Supreme Court of the United States, "as a citizen, as a lawyer and as a jurist."

Past President Griffin Bell, who was the Attorney General of the United States when both these cases were litigated, was uniquely positioned to comment on Justice Powell's role in them.

Snepp, a former CIA agent stationed in Saigon, Vietnam, had published a book, entitled *Decent Interval*, an account of this country's hasty retreat from Saigon that criticized the alleged abandonment of the South Vietnamese citizens who had aided United States forces there. In publishing the book, he had breached his employment agreement not to publish any information related to the Agency without submitting his manuscript for pre-publication review.

The government brought suit, seeking a declaration that Snepp had breached his contract, an injunction requiring him to submit future writings for pre-publication review and the imposition of a constructive trust for the government's benefit on all his profits from the book.

The government had conceded that the book did not disclose classified information. The trial court had granted relief on all three claims, but the appellate court had reversed on the constructive trust claim. The Supreme Court granted certiorari on both parties' petitions and, in a 6-3 decision, disposed of the case in a *per curiam* opinion without oral argument.

Justice Powell was one of the majority that found that the government had a compelling interest in protecting both the secrecy of information important to the national interest and the appearance of confidentiality essential to the effective operation of the foreign intelligence service. The Court pointed out that an agent relying on his own judgment about what

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information is detrimental might reveal information that the Agency could have identified as harmful, including information derived from other countries that might compromise or endanger the personal safety of their agents.

Bell reminded the audience that, as an Air Force officer with a trial lawyer's training, Justice Powell had been assigned to the secret British project, code-named "Ultra," that had broken the Nazi German code in World War II and had then controlled the use of the intelligence derived therefrom so as to avoid disclosing that the code had been broken. Hence, Powell brought to the case practical knowledge and experience of the special significance of Snepp's employment contract as a foreign intelligence agent.

Bell observed that *Snepp* demonstrated "the wisdom of placing judges on the Court who have worldly experience that leads to an understanding of the practical workings of the law and the government."

Powell and *Bakke*

The second case, *University of California Regents v. Baake*, also called forth Justice Powell's earlier experience. Baake, a white student, had challenged a special admissions program involving set-asides or quotas for the admission of minority students to a state medical school.

Justice Powell provided the fifth vote in five-four decisions on the two principal issues, and his opinion on those issues controlled a 156-page decision that contained six separate opinions. He concluded that a system that reserved a set number of places in a class for minority applicants was unlawful and that Baake should be admitted. He did not, however, agree with position that race could not be considered in public university admissions. His opinion sanctioned an approach that Bell described as "somewhere between a quota and an aspiration," one, he noted that had provided a practical solution to a problem that had sharply divided the nation.

"For many years," Bell pointed out, "he [Powell] was on the Richmond, Virginia school board and then on the Virginia state school board during the years when the southern region was accommodating its school systems to *Brown v. Board of Education* and the subsequent Supreme Court opinions." Powell is widely credited with a major role in keeping the Richmond schools open during this period.

That experience, Bell noted, informed Powell's approach to the issues in *Baake*. Powell later told a biographer that he regarded *Baake* as the most important decision he wrote in all his years on the Court.

Twenty-five years later, in the litigation regarding admission policies at the University of Michigan, without addressing the issue whether it was controlling precedent, every Justice, regardless of his or her position, accepted Powell's view that student body diversity is a compelling state interest that can justify the use of race as a factor in university admissions.

Bell concluded by observing of Powell, "His career as a lawyer and a jurist demonstrates a life devoted to citizenship and patriotism and one that reflects great credit on this College, the legal profession, and on our country.

"We can only hope that we will see his like again."

The text of this and the previous Powell Lectures may be found in the public section of the College website, *www.actl.com*. ♦

BON MOT:
Past President ***R. Harvey Chappell, Jr.****, introducing*
Past President ***Griffin B. Bell***

Our speaker will be the Honorable Griffin B. Bell. He is a classic example of a speaker who needs no introduction, but he will receive one nevertheless.

• • • •

I report to you a matter I have heard second-hand - I was not there - but he led an American delegation to a gathering in Madrid, Spain, in 1980. It dealt with security and cooperation in Europe, and what with all the languages being spoken, . . . the participants had headphones, and whenever someone was speaking a language with which they were familiar they would take the headphones off. When Griffin approached the podium, people took their headphones off, because English was to be spoken. And he spoke for a few minutes, and then one British observer turned to his companion, and said, "I say! Are you listening to this fellow?" The other fellow said, "Yes, I am." Then the first one said, "I can hardly understand what he is saying. What language is it?" The second fellow said, "I really don't know, but I suspect he is from one of our former colonies."

• • • •

I got to know Judge Bell very well by reason of the coincidence that when he became the Attorney General of the United States, I became Chairman of the American Bar Association's Standing Committee on the Federal Judiciary, and for the better part of two years we had some interesting experiences. President Carter, of course, wanted all of his nominees to sail through, and it was the duty of the committee, of course, to see that each one was at least minimally qualified. So, we had a pretty good two years.

There were times when there was a basic difference of opinion. I remember distinctly this person who was nominated and was first investigated by one of our committee members and found to be "Absolutely Not Qualified." So I sent out another committee member to investigate, and he reached the same conclusion. I sent this message up to the Attorney General's Office and I thought that that might be the end of it.

One day I received an announcement that they were having a Senate hearing, so I drove to Washington. And it was rather embarrassing. I had to sit at the table with the nominee in that room with his family and friends, with Senators who were supporting him and tell them very bluntly, "This person should not be a federal judge."

The Committee was very cordial to me, and when I left, I thought that maybe the point had been made. I drove back to Richmond. I later found out, by the time I was crossing the 14th Street Bridge in Washington, this person was already a Federal judge!

It had bothered me over the years, admittedly, not very many got through who didn't receive at least a "Qualified," but it still bothered me, and once in a while I had some interesting discussions with our speaker, but I finally dropped the subject when I stopped to realize that there weren't that many of them, and of the ones that were left, as far as I knew, no more than two or three had gone to jail!

BON MOT:
*Past President **Griffin B. Bell**, Responding to the introduction*

Harvey, thank you very much. You have actually treated me better than the last time I was introduced in the College by Leon Silverman. Leon said that he thought that I was a pretty fair Attorney General in that I had processed over 200 judgeships … and only four of my judges were in the penitentiary! But Harvey has now reduced that to two or three, and I do appreciate that.

• • • •

I want to also clean up a story about the conference in Madrid. What actually happened there was this: They offered simultaneous translation. I made a speech - each head of a delegation had to make a speech - and my speech was directed at the Soviet Union, who were present, and the head of the British delegation said to someone, "I couldn't understand a word he was saying until I switched to the French channel."

Committee Structure Fine-Tuned

Upon the recommendation of an ad hoc committee chaired by President-Elect **David J. Beck**, the following changes to the College's committee structure were approved by the Board of Regents at its Spring meeting:

1. With a few exceptions, national committees should have a designated vice-chair and attendance at committee meetings and participation in committee work should be documented and reported periodically to the Executive Committee, so that members who fail to participate can be replaced.

2. The description of the Communications Committee was revised to make clear that it is to serve as an editorial board for all College publications other than the Bulletin to insure consistent adherence to the College's high standards in all its publications.

3. The charge of the Outreach Committee was clarified, and it was assigned responsibility for the College website.

4. The existing Legal Ethics and Professionalism Committees were merged into one Legal Ethics and Professionalism Committee.

5. The scope of the National College of District Attorneys Committee was broadened to include liaison with other related groups.

6. The Ad Hoc Committee on Relations With the Judiciary was merged into the Judiciary Committee, and that committee's mission was broadened.

7. The mission of the National Trial Competition Committee was broadened.

8. The following committees were created: Courageous Jurist Award Committee; Federal Legislative Committee, and Special Problems in the Administration of Justice (Canada) Committee. In addition, the Regents directed that a survey be made of the interest in establishing a Committee for Public Defenders.

From Enemy Combatants to Domestic Surveillance:

CHALLENGES TO THE BILL OF RIGHTS

[Editor's note: The College has a long history of not flinching from airing controversial issues so that its members can be better positioned to make their own informed judgments about them. Recent examples are national programs that included presentations on the debate over the United States' withdrawal from participation in the proposed International Criminal Court, the litigation over the 2000 presidential election, the impeachment of President Clinton and the first-person experience of counsel for a Guantanamo detainee. The following is an address given at the Spring Meeting of the College by Neal R. Sonnett. The presentation was so fact-intensive and time-sensitive (many references are to things that were happening at the time the address was given, April 8, 2006), that we saw no way to report it accurately and fairly other than, with light editing of extraneous matter, to let it speak for itself. As is the case with every speaker at College programs, the opinions expressed are those of the speaker. As always, The Bulletin welcomes correction of facts and expressions of opinion on the issues Mr. Sonnett addresses, either in the form of letters to the editor or op-ed type articles.]

[Y]our president-elect . . . asked me to speak about my work as chair of these two task forces [ABA Task Forces on Treatment of Enemy Combatants and on Domestic Surveillance] and my observations as the ABA's observer in Guantanamo. . . .

Neal R. Sonnett, Chair of the ABA Task Force on Domestic Surveillance in the Fight Against Terrorism, Chair of the ABA Task Force on Treatment of Enemy Combatants and Official ABA Observer for the Guantanamo Military Commission Trials.

[T]he report that the American College issued in March 2003, some 18 months before the Military Commission trials ever began, on military commission trials, and the recommendations that were made . . . was one of the finest I have ever seen on these issues, and the supplemental report that was issued last October is equally erudite. . . .

I'm happy to talk about Rule of Law issues and Bill of Rights issues, because in my judgment, and I'm not alone, since 9/11 there has been a steady . . . ero[sion of] basic civil liberties and core constitutional rights in the name of fighting the . . . War Against Terrorism. . . .

[T]he . . . hundreds . . . of detainees held at Guantanamo, without charges - all but ten of them - and the treatment of those detainees, in direct . . . violation of international treaties, deprived of basic due process except for the good work of 350 *pro bono* lawyers, . . . would not have any chance to be heard and to test the basis for their detention, the creation of a military commission system . . ., the revelation most recently that our government has been engaged in domestic surveillance, that is, warrantless snooping and eavesdropping on American citizens, in direct violation of the Foreign Intelligence Surveillance Act. . . .

I want to talk about why they are important and what is going on and why we, as lawyers, play such an important role in protecting and preserving the Bill of Rights and fighting against any erosion of liberties. . . .

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The treatment of the Guantanamo detainees is an issue that has created scorn and criticism from all over the world and from our closest allies. It has produced criticism from the International Committee of the Red Cross, not only publicly criticizing the conduct of the United States in Guantanamo, but calling for it to be closed. World leaders such as Tony Blair are calling it an anomaly and calling for its closure. . . .

[I]n the 2004 round of cases, *Hamdi* and *Padilla* and *Rasul v. Bush, amicus* briefs were filed from all over the world. When we have cases here that generate an *amicus* brief from 175 members of Parliament, from the Commonwealth Lawyers Association, from the International Bar Association, from a coalition of international non-governmental organizations, from former diplomats, from former appellate judges, from retired military officers, and even from the defense lawyers who are detailed to represent the detainees who have been charged by Military Commission, then you know that there's something wrong with what's going on there. . . . The Administration's actions at Guantanamo have damaged our reputation abroad, caused serious tensions with our allies and violated a fundamental principle of international law that has long protected American soldiers serving abroad.

ONLY FIVE PERCENT CAPTURED BY U.S.

Despite the trio of cases in 2004, the government continues to act in a way that makes little sense and continues to violate basic norms of due process under the Rule of Law. When Justice O'Connor said that the government was wrong in the detention of Hamdi without . . . giv[ing] him an opportunity to challenge the basis for his detention, after they lost that case, they decided that he was no longer an enemy combatant and they let him go home.

When *Padilla*, which had to wend its way up through the courts twice, was nearing a determination by the Supreme Court of the United States, and the government decided that they might lose, they simply declared him no longer an enemy combatant and indicted him in the Southern District of Florida on criminal charges. And as you know, the [Supreme] Court declined to hear the case for that reason.

And when *Rasul v. Bush* held that the Guantanamo detainees do have a right to file habeas corpus petitions, the government didn't pay much attention. They continued and continue to this day . . . to stonewall and to resist every effort to get fair and full hearings for those Guantanamo detainees. They do that by calling these Guantanamo detainees . . . "the worst of the worst.". . .

[T]his round of litigation . . . and other lawsuits . . . has forced the government to turn over documents . . . to reveal the truth about who is at Guantanamo. We now know, for example, based on the government's own documents and two studies, one by National Journal, the other by Seton Hall Law School, that most of them were not picked up on the battlefield. . . . Eighty-six percent of the people at Guantanamo were "sold" to the U.S. troops by Pakistanis and Northern Alliance warlords at a time when the U.S. government was distributing flyers saying, "Get rich; turn in a terrorist." We paid bounties for many of the folks who are now sitting in Guantanamo.

Only five percent were captured by the United States.

Eighty percent are not Al-Qaeda. Fewer than ten percent are considered by the government's own

documents to be "high-value" targets. Much of the evidence against the detainees has come from *other* detainees who made accusations after interrogation methods that have come under severe scrutiny and criticism. In fact, one detainee at Guantanamo has informed on and pointed the finger at sixty of his fellow detainees. . . .

[S]ince the President's military order back in November 2001, five years ago, only ten of these detainees have ever been charged with crimes to be brought before military commissions, and eight of them just last year, and none of them have had any more than preliminary proceedings.

What we have in the Military Commission system is a system that simply doesn't work. . . .

Shortly after the President's order, the House of Delegates of the American Bar Association passed overwhelmingly a recommendation that called upon the Administration, if it was going to institute military commissions, to do so under the Uniform Code of Military Justice, the finest military justice system in the world, and with full rights under the International Covenant on Civil and Political Rights, including representation by counsel of choice, with adequate time and facilities to prepare the defense, the assistance of an interpreter, that is, effective assistance of an interpreter, the prohibition of *ex post facto* application of law and an independent and impartial tribunal. . . . What we got was a system made up out of whole cloth that does not at all resemble our military justice system, that has made even some former military prosecutors balk.

Indeed, last year there was a leak of internal e-mails in which the prosecutors were complaining that they could not continue . . . .in these Military Commission trials because they believe that the system was fixed, that it was designed not to guarantee full and fair trials . . . .

The rules here are made up on the fly. Just this week there were several rule changes. In a colloquy between one of the Military Commission defense lawyers and the judge about what kind of laws would be applied, and the presiding officer was forced to say that he didn't really know, that he might look at American criminal law, he might look at the laws of war, that he might look at international law, and he certainly would look at Commission law, which are these regulations, these military instructions that have been devised by the civilians in the Department of Defense, assigned by the General Counsel.

I have had the privilege of being an observer for the American Bar Association at these hearings. I have been down there on two occasions, in August 2004 when they first began and at the end of February, the beginning of March, when they resumed again after having been on hold for a while because of injunctive relief granted by some courts. . . .

Let me outline just a few of the problems: In August 2004, when these started, there were three different trial guides that were handed out, all of which had different interpretations of the rules. The presiding officers and the members are hand-picked by the appointing authority, and almost every one of them has been challenged at one point or another in *voir-dire* proceedings by the detailed defense counsel.

Most of the people are charged with conspiracy, not even a war crime. . . . [I]ncompetent translations . . . have been provided. The interpretation was awful when I was there in 2004. It seemed to be a little better when I was there earlier this month, but just this week the government failed entirely to provide a Farsi interpreter for one of the people who spoke Farsi. That was his major language.

No right to self-representation of counsel. This now has been argued three times, and nobody can make their mind up whether or not there should be or should not be self-representation. In every other court in the world one has the right—at least in civilized courts-- to represent himself or herself. And yet, the rules here do not allow for it, despite

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the fact that there have been briefs filed by both the prosecution and the defense urging it, and now, three *amicus* briefs . . . . And still, there has not been any definitive decision.

The resources given to the defense are still way out of whack with the resources given to the prosecution. When I was there in 2004, there was generally one lawyer, perhaps two lawyers, sitting at defense table and there were two rows of tables with prosecutors. Now, the last time I was there, there were three rows of tables for prosecutors, but there are promises that the defense is going to get some more resources, but it's still heavily tilted in favor of the prosecution.

The rules allow for exclusion of the detainee and civilian lawyers whenever . . . classified or sensitive materials . . . are introduced into evidence. . . . [M]any civilian defense lawyers are reluctant to become involved in the case because of ethical obligations and their obligations to their client, even though the chief prosecutor has indicated informally to the observers who were there at the last round of hearings, that they thought that they could get away without presentation of classified or sensitive information.

Until two weeks ago, the prosecution could introduce evidence that was derived from torture. And when I was there at a news conference in which the Public Affairs Officer on March 1st or the 2nd acknowledged that, I and the other observers responded very strongly that in a country that decries torture, that says, "We do not believe in torture and will not engage in torture," for this nation not to have a simple exclusionary rule that says "you cannot admit any evidence derived from torture" is beyond the pale. We made some progress, because ten days later the General Counsel of the Department of Defense advised that such a Military Commission rule was about to be promulgated.

Now, lawyers . . . have been notified that the rule on whether or not they can be monitored in their conversations with their clients is now being changed, and they will be subjected to much closer scrutiny and monitoring of attorney-client privileged conversations.

That shouldn't come as a surprise since the revelation by the *New York Times* in December of last year that the President had authorized the NSA to conduct wireless domestic wiretapping and eavesdropping without seeking court approval under the Foreign Intelligence Surveillance Act.

Legal Task Force Investigates

As soon as that revelation was made, Mike Greco [president of the ABA] decided that it was important enough to appoint a task force to review the issue quickly. I was honored that he asked me to chair it. He appointed a very diverse group of people, including a former director of the FBI and federal judge, Bill Sessions, former General Counsel of the NSA and the CIA, people who are expert in constitutional law and international law.

We very quickly came to unanimous recommendations that overwhelmingly passed the ABA House of Delegates this past February that called on the President to abide by our constitutional system of checks and balances, to respect the roles of Congress and the courts in protecting national security consistent with constitutional guarantees, and we opposed any future surveillance that did not comply with the Foreign Intelligence Surveillance Act.

We have not asked that surveillance be stopped.

We have simply asked that the President comply with the law . . . .

We have a Foreign Intelligence Surveillance Act that has worked since 1978. . . . Judge [Griffin] Bell . . . testified on that Act, and in fact, it was signed when he was Attorney General and Jimmy Carter was the President. When he testified, he said that FISA "sacrifices neither our security nor our civil liabilities and assures that the abuses of the past will remain in the past and the dedicated, patriotic men and women who serve this country in intelligence positions will have the affirmation of Congress that their activities are proper and necessary."

In the signing statement, . . . President Carter said, "This bill, FISA, would assure field agents and others involved in intelligence collection that their acts are authorized by statute, and if a person's U.S. communications are concerned, by a court order, and it will protect the privacy of the American people."

FISA worked. More than 19,000 warrants have been sought since 1978 and only five have been rejected by the FISA court. That structure of constitutional checks and balances is vital to safeguard the people's liberty and constitutional freedoms. . . .

[A]fter the Attorney General testified last month before the Senate Judiciary Committee, he followed up with a letter that clarified his testimony. . . . He said when he was testifying before Senator Specter's committee, that he was only referring to that specific NSA program that the President had publicly acknowledged, and not to any other NSA program. Now, that should tell you that there are other NSA programs that he didn't want to get into talking about.

[T]he government, in two pieces of litigation in federal court, has refused to respond to lawyers' requests and magistrate judges' orders to disclose whether or not the lawyers have been overheard talking to their clients, on the grounds of national security . . . .

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BON MOT:
Neal R. Sonnett, Miami, Florida

I really am preaching to the choir when I talk about those issues and it made me a little bit nervous. It reminded me of how I felt when I tried my first case as an Assistant United States Attorney in Federal Court in Miami. Those were the days when you actually had a chance to talk to prospective jurors. So there I was in front of the jury pool questioning them about whether they could be fair and impartial, and I picked out one little lady in the front row, and I said, "Ma'am, do you know me?" She said, "Yes, I know you! I know you to be the biggest thief in the City of Miami!" An inauspicious way to begin your legal career, I must say. I thought I'd better get off that topic, so I pointed to the defense lawyer, and I said, "Well, do you know the gentleman who is representing the defendant?" She said, "Oh, yes, I know him too! If there's a bigger thief in the City of Miami than you, it's him!" Then the judge called us to sidebar. He leaned down, and in a whisper, in a very stern whisper, said, "Now look, I want to tell both of you lawyers one thing. If either one of you asks that lady if she knows me, I will hold both of you in contempt of court!"

Times-Picayune Editor Gives Bird's Eye View of Katrina

David Meeks

"WE PUBLISH, COME HELL OR HIGH WATER" read the T-shirt that New Orleans *Times-Picayune* city editor David Meeks proudly displayed to the audience at the College's Spring meeting.

After Katrina had passed, the newspaper staff had been forced by rising waters to evacuate the city of New Orleans. With the reluctant consent of his editor, Meeks, then the sports editor, had assembled an unlikely team—the music critic, the art critic, the religion writer, a couple of city desk reporters and a photographer—who insisted on staying behind to cover the devastation wrought by Hurricane Katrina, confiscating one delivery truck for transportation.

For their, and indeed, the entire staff's coverage of that natural disaster, the *Times-Picayune* was awarded a Pulitzer prize.

In a presentation laced with humor and documented with slides that communicated the overwhelming visual aspects of the event, Meeks led the audience through the Katrina saga.

The night before the storm, the staff put the Monday edition of the paper to bed, an edition that was never delivered. During the gap between the storm and the ensuing flood, the staff, using a generator, began to compile stories of the storm.

After the storm had passed, two staff members made their way along the levees by bicycle, following the path of the oncoming water. They were the first to see and report the breach in the 17th Street Drainage Canal that flooded the city. The lake front levees had held, but water, forced upstream by the storm into canals designed to drain rainwater downstream from the city, breached the wall of that canal, allowing Lake Ponchartrain to drain into the city.

The group that remained behind covered the story by truck--until it gave out--and by boat. They used the still operative phone of an elderly couple to transmit their stories. For several days, the paper was posted only online. There would have been no one to whom a printed paper could be delivered. Thereafter, it was printed in Baton Rouge. It was six weeks before printing could resume in New Orleans.

The devastated area in New Orleans was seven

times the size of Manhattan. One hundred forty of 180 square miles had two feet of water or more. The combined homes destroyed exceeded the combined total for Mississippi, Alabama, Texas and Florida in all the storms in 2005. More than 1,200 people died, most of them drowned in their own homes.

In the wake of the storm, the *Times-Picayune* reviewed its earlier articles that had pointed out the flaws in the flood protection system and how they could be fixed. "Not only is protecting New Orleans from storm surges possible, it's not even overcomplicated," Meeks noted. "As is often the case in America, it's not a question of ability, but a question of will."

"One third of the nation's oil and gas supply comes from south Louisiana, forty per cent of its seafood," he continued. " It has the highest concentration of historic districts in the United States. It is a major city at the mouth of our largest river. We do not think it is a question that New Orleans should survive. It *has* to survive."

Alluding to the honors that the *Times-Picayune* has received for its Katrina coverage, he remarked, "We will never lose sight of why these honors are coming. It is somewhat sobering because we will always recall what it is that is driving these awards."

Concluding, he said, "This has been a very difficult thing for us to go through. The nation certainly has been there for us. I want you to understand that we have an ADD culture in this country. It is very hard for us to deal with hurricane recovery because we think everything gets fixed in a few months. It's going to take a long time, but there are a lot of good Americans in New Orleans who are intent on getting it done. . . . Please do not forget about us." ♦

KATRINA RELIEF FUND

GROWS TO $121,000

A total of $121,076.22 has been donated to the Katrina Disaster Relief Fund through the Foundation of the American College of Trial Lawyers, according to Foundation President Stuart Shanor.

"All of these funds have now been distributed to responsible organizations in Louisiana and Mississippi which have dedicated their efforts to the rebuilding of the judicial systems in those two states," Shanor said, "with particular emphasis on aiding those of our brethren at the bar who required assistance in reestablishing their practices. I believe this is another in the many stars in the cap of the College. Thanks to all of those of you who gave so generously to this worthy cause."

BON MOT:
David Meeks, City Editor of the New Orleans Times-Picayune*, On Hurricane Katrina*

Typically, if you tell a journalist he is going to spend the weekend in a room full of 500 lawyers, it's time to say you lost all your notes in the flood!

• • • •

There's a joke that goes around New Orleans [post-Katrina], when you run into somebody, they say, "Well, how did you do?" That means, "How did your house do?" The joke is a man once asked me, "How did you do?" and the response was, "We did great. We got three feet of water." He said, "How could you say you did great if you got three feet of water?" The reply was, "Well, in this storm you either got water, or you got in-laws. We got water!"

[O]n Thursday, just two days ago, . . . the Attorney General testified before the House Judiciary Committee and acknowledged that he might have the legal authority to order the wiretapping without a warrant on communications solely between Americans within the United States. . . .

Some say: "Who are we to criticize the government, a government that is trying to protect us in a time of conflict and war?" Well, I'll tell you who we are! We are lawyers who defend liberty and preserve freedom. That is our responsibility as lawyers, and the lawyers of American Bar and the American College, and other groups like the National Association of Criminal Defense Lawyers, have been living up to those responsibilities, the responsibilities that we all have to guard against this kind of insidious encroachment, to ensure that the citizens of this great nation understand and reject the false choices that they are being asked to make between security and liberty.

I can never forget the words of Justice Brandeis in 1928 in the *Olmstead* case. He said, "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."

These problems aren't going to go away, and one of the reasons I'm so happy to be here is I know that I'm before a group of people that have worked through their careers to protect and preserve the Bill of Rights and the promise of our Constitution.

More than a century ago, Daniel Webster said it well: . . . "Justice is the great concern of man on earth. It is the ligament which holds civilized beings and civilized nations together." And then, he said, "Whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures or contributes to raise its lofty dome still higher in the skies connects himself in name and fame and character to that which is and must be as durable as the flame of human society."

That is our great heritage in these days of threats to the Bill of Rights. It is also our great challenge.

Thank you very much. ♦

College Brochure Published

Responding to a long-felt need to identify itself to outsiders, to describe itself accurately and to distinguish it from other trial lawyer organizations, the College has recently published a descriptive brochure.

The twelve-page pocket-size brochure describes the College and explains its selection procedures and criteria, its organization and governance, its activities, its publications and its awards.

A copy has been sent to each Fellow. It is intended that the brochure be given wide circulation among those with whom the College interacts, particularly the judiciary, the wider bar, legal academia and the press. To that end, additional copies are available from the College office upon request, and Fellows are urged to use them in communicating about or conducting College-related activities.

Canadian Bar President Urges More Openness

"I believe as lawyers we haven't made enough of an effort to open up and to explain ourselves to the public," observed Brian A. Tabor, Q.C., President of the Canadian Bar Association, in addressing the College's Spring meeting.

Dealing "more with the cut of the cloak that we all wear as professionals than with the fabric itself," he urged lawyers to do a better job of explaining themselves because "the public needs to understand that we're a unique community of professionals dedicated to making a significant difference in their lives."

"In a climate defined by the war on terrorism," he asserted, "our governments are under tremendous pressure to clamp down on our freedoms. So I also remind members of the public that a viable, independent Bar is the best defense against arbitrary measures by the State and from attacks on the Rule of Law."

Quoting Canadian Chief Justice Beverley McLachlin, he continued, "An independent, active and courageous bar and an independent and courageous bench are vital to finding a lasting and just balance that will preserve our essential liberties."

Noting a slight improvement in the attitude towards lawyers in a recent poll, he observed, "People might finally be starting to abandon the myths and recognize the realities of who lawyers are and what we really do. And if that's actually the case, then we as leaders need to strike while the iron is hot."

He cited as a example to follow the recent opening to public scrutiny of the process of selecting members of the Supreme Court of Canada, which had enabled Canadian citizens to learn a great deal about the role of the judiciary, observing, "I believe it was this higher level of knowledge and familiarity, generated by the new process, that helped push judges' trustworthy ratings dramatically higher" in this same poll.

"I think there is a lesson in this for lawyers," he continued. "The more the public knows about us and what we do, the more likely they will see the value we provide, and the more willing they will be to extend to us their trust. And trust is the key element upon which hinges a true shift in public attitudes and expectations."

Continuing, he observed, "I believe as lawyers we haven't made enough of an effort to open up and to explain ourselves to the public. Our profession, with its own Bar admission standards, regulations, and internal discipline, codes of conduct, long resembled a secret society. We spoke in Latin phrases, crafted our own codes, governed our own affairs and disciplined our members according to our own rules. That kind of exclusivity can be addictive. It's kind of nice to be part of an enclave, but unless it's handled responsibly and transparently in the public interest, the privilege is threatened."

"Maybe the most important thing for lawyers to remember," he asserted, "is that we have every right to be proud, to be proud of who we are,

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and no need to be defensive. As both dedicated professionals and community leaders, we deserve to feel good about our contributions to society and to talk openly about them."

"There will always be people who criticize or attack us for their own purposes," he continued. "No amount of publicity will discourage these hard-core antagonists. With some exceptions, they are not the ones who matter. The people who matter are the rank and file citizens who actually hire us to help solve their problems, to structure their affairs and who look to us to lead in the governance of our society. These are the people whose attitudes and expectations we can shift if we approach them honestly, openly, and tell them our stories truthfully and straightforwardly, help them understand what lawyers do and why it matters so much, particularly today."

"I believe," he concluded, "the only things holding us back or keeping us from turning around public perception are our self imposed limits on our confidence and our imagination." ♦

Moot Court Competition

WINNERS AND BEST ORALISTS HONORED

The members of the winning team in the Canadian Gale Cup Moot Competition were **Jean-Emmanuel Beaubrun**, **Jean-Michel Labrosse**, **Daniel Laine** and **Dominic Martin** of the University of Sherbrooke, Sherbrooke, Quebec.

The winner of the Dickson Medal as the best oralist in the Canadian moot was **Aida Shahbazi**, a member of the team from York University, Osgoode Hall Law School, Toronto, Ontario. Before coming to Canada, Ms. Shahbazi, who was born in Iran, had lived in Turkey and Switzerland. In accepting the award, she said:

"I found it to be a very challenging task to say [in arguing on the assigned issue in the moot] that it's okay for our government to take away people's rights in particular contexts. The Canadian Charter . . . has a caveat in it . . . that says that we can limit rights, but it has to be [for] a reasonable and a demonstrably justified reason . . . ..

*Regent **Brian P. Crosby** presents Best Oral Advocate award in Gale Cup Moot Competition to **Aida Shahbazi**.*

When I went before the panel of judges, I was very happy to see that they challenged me quite a bit. They asked a number of very difficult questions, and it took a lot to justify. . . . [I]t is a great challenge to convince the judiciary that a right should be limited. I'm very thankful for that because . . . I was born in Iran, and I have been in countries where individual rights are not respected. It is . . . such a pleasure for me to live in a society that respects individual rights and to be part of a profession that has been entrusted with safeguarding these rights."

Mark Thompson was the winner of the Fulton W. Haight Award as the best oralist in the United States competition. A member of the team from the University of Memphis Cecil C. Humphreys School of Law, he observed, "Balancing the law and legal reasoning against advocacy and zealous representation is extremely difficult to do skillfully, and when it got particularly difficult or frustrating for me and my teammates, we asked, 'Why are we doing this?' And my coach would respond with a quote: 'We always reach for what is beyond our grasp. It is in our nature. Otherwise we would be in a sea of mediocrity.'"

National Moot Court Competition Committee Chair ***Frank A. Jones*** *presents Fulton W. Haight Award to* ***Mark Thompson****.*

President ***Mike Cooper*** traveled to Durham, North Carolina to present the National Moot Court Competition honors to Duke Law School's ***Audry Casusol***, ***April Nelson*** and ***Sara Wickware***. It was the first time Duke Law had won the competition. ♦

Attorney-Client Privilege Under Attack:

ABA President Addresses Issues Facing Profession

***Michael S. Greco**, the current President of the American Bar Association, addressed the College's Spring Meeting.*

Analyzing the effects on the attorney-client privilege of coerced waiver under current Department of Justice policies and the United States Sentencing Guidelines, ABA President **Michael S. Greco** described them as "a dangerous threat, not only to corporations, but to all Americans, to our profession, and to our democratic form of government."

The internal compliance programs of corporations and investigations are being hampered, he asserted, by the lack of written records that are no longer being kept out of fear that they cannot be protected. Counsel now face obstacles in advising clients how best to comply with the law based on a full and frank discussion of all potentially relevant compliance issues. Companies are being forced to threaten dismissal of employees who do not waive the attorney-client privilege in order to demonstrate the company's cooperation in an investigation.

The result: "When clients feel obliged to clam up, they end up substituting their legal judgment for that of their counsel, often with disastrous results. Not only is potentially damaging information not brought to light, but potentially exculpatory information is also hidden."

Commenting on the effect of this trend on the public, he asserted, "Erosion of the privilege hinders efforts to ensure thorough documentation of compliance with laws and regulations that are designed to protect all of us, from product and workplace safety regulations to laws designed to protect investors from fraudulent or misleading business practices. This is not just a lawyer's issue. It is an issue that affects every person with a stake in our nation's economic health. The harm caused by these misguided policies is felt throughout our economy and throughout our country. . . . Erosion of the attorney-client privilege inadvertently creates a perverse incentive to see no evil, hear no evil, speak no evil."

The effect, he observed, of this and other recent governmental intrusions into the profession, such as the unsuccessful attempt of the Federal Trade Commission to regulate lawyers under the Graham-Leach-Bliley Act of 1999, has been to marginalize lawyers, to the detriment of their clients.

He pointed to one victory, the recent agreement of the Sentencing Commission to delete the waiver

provision from the Guidelines, and one setback, the Bankruptcy Reform Act of 2005. The latter requires a debtor's attorney to certify the accuracy of the debtor's bankruptcy schedules of assets and liabilities, to certify the debtor's ability to make future payments under reaffirmation agreements and to identify himself as a debt relief agency, subject to a variety of intrusive regulations. These requirements have forced bankruptcy lawyers to hire investigators and appraisers to verify the information provided by clients, increasing the debtor's costs and making pro bono representation unreasonably risky.

The Justice Department, he noted, still adheres to its policy of demanding waiver of the privilege.

STATEMENT OF UNIVERSAL CORE PRINCIPLES OF THE LEGAL PROFESSION

On another subject, Greco described a November 2005 meeting of Bar presidents and leaders from around the world that led to the adoption of a "Statement of Core Principles," setting forth the basic principles that bind members of the legal profession throughout the world. That statement, unanimously adopted by representatives of the forty nations in attendance and since endorsed by the ABA, reads:

The legal profession throughout the world, in the interest of the public, is committed to these core principles:

1. An impartial and independent judiciary, without which there is no rule of law;
2. An independent legal profession, without which there is no rule of law or freedom for the people;
3. Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial and independent judiciary; and
4. That these core principles shall not yield to any emergency of the moment.

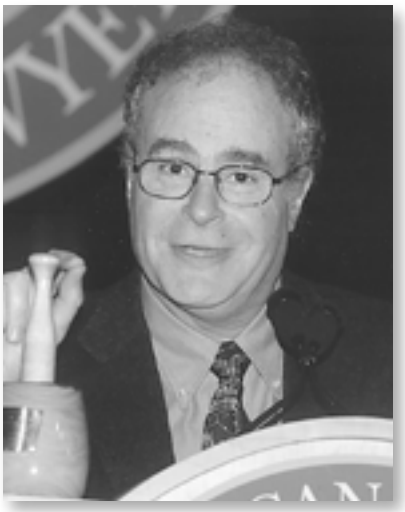
He concluded by recounting his remarks to that international meeting, in which he said: "[A]ny attack on the legal profession in my country is an attack on the legal profession in your country, and any harm to the people in one country is harm to the people of all countries and to humankind, and that is why the profession must be united throughout the world. Lawyers must stand united to combat those attacks and to advance a view of the law as an agent of progress and justice, and not as a tool to support repression, inequality, or the privileges of the few over the rights of the many." ♦

Republications and Website Postings

The text of the address of Barbara J. Rothstein, Director of the Federal Judicial Center, on judicial independence, which was the subject of the lead article in the last issue of *The Bulletin*, had been posted in its entirety on the College website.

The College's monograph entitled "Corporations Revisited: Lessons of the Arthur Andersen Prosecution" is scheduled for republication in the American Criminal Law Review.

Professor Analyzes Religion Clause Cases



William P. Marshall

"Welcome to the culture wars, because that's what this topic is all about."

William P. Marshall, Kenan Professor of Law at the University of North Carolina at Chapel Hill, thus introduced his discussion of the Supreme Court cases involving religion. Marshall spoke on "The First Amendment and Religious Expression" at the Spring Meeting in Hollywood, Florida.

"When the Supreme Court decides a case" he continued, "as when it did the Ten Commandment cases, or "under God," or on any other [such] area . . . , you hear on one side very nuanced, passionate arguments: Either what has gone on or what's happening [is] . . . an attempt to establish a set religious tradition, filled with insensitivity towards religious minorities and intolerance, or, on the other side, [it] . . . is a marginalization, if not hostility, towards religion, abandonment of our basic cultural heritage, the preeminence of a materialistic, amoral culture, insensitivity, and intolerance towards religious believers. And every time a case comes down, the losing side acts like it's 'Apocalypse Now.'"

Marshall's thesis is that neither side is actually wrong and neither side is actually right in this debate. "The problem is that both sides are talking past each other," he asserted. "This divide that we see between secularism and religiosity are not really in conflict at all. They actually complement each other . . . ."

Tracing the history of Establishment Clause cases from *Everson v. Board of Education* through the many cases that have drawn "incredibly thin lines in the Court's jurisprudence," he attributed that result to the "inherent tension in the religion clauses themselves. . . . The Establishment Clause appears to suggest that government cannot favor religion. The Free Exercise Clause suggests that the government cannot *dis*favor religion."

One could, he noted, read the Establishment Clause to say that government cannot support religion of any type, and yet religious symbols are deeply engrained in our culture. We are not going to get rid of things like Thanksgiving or the names of San Francisco, Corpus Christi or Zion National Park.

The rationale for the Establishment Clause came from conservative Christianity, which believed that the way to preserve religion was to keep government away from it. Furthermore, he pointed out, religion can be divisive, the government often gets it wrong and our commitment to religious pluralism and tolerance of minorities would be undercut by a governmental preference for one religious sect. On the other hand, he observed, too great a commitment to secularism, which marginalizes religion, can seem to be dogmatic in its own way. He used the conflict over the teaching of evolution as an example of this, though he hastened to say that he was not suggesting that it not be taught.

Using the example of the religious component of the post-9/11 memorial service in New York, he asserted, '[T]he message that we need to have here is that our adherence to secularism should be deep, but it should not be overly zealous. We have to understand that the commitment to secularism is only a veneer of neutrality because it is actually only a second-best neutrality."

This leads to, he asserted, to, "[A]n understanding, that when government-endorsed religious practices are struck down, that doesn't mean it's hostility towards religion, that protecting religion is at the heart of this approach. And . . . when the Supreme Court decides all of these controversial cases, and the arguments come up that this expresses hostility, the answer is not so much that we are a secular culture, although that's part of it. The answer is, 'We are a secular culture because of our commitment to religion,' and I think that gets lost in the popular debate."

Marshall concluded by asserting, "[T]he argument that I'm making is that maybe this muddled doctrine that we're coming up with is really the best way to balance and accommodate the competing interests that are so deeply engrained in our constitutional approach to religion. . . . I think the fact that, if you take a look at all the Religion Clause decisions, one side has not won them all and one side has not lost them all, and that mix is as good as anything for the future of religious stability and the message that the Religion Clauses are intended to convey." ♦

BON MOT:
*Past President **James W. Morris III**, introducing Professor William P. Marshall*

He has written 53 law review articles. I told him that in a room of trial lawyers it's unlikely that the group of us together had read 53 law review articles.

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BON MOT:
Professor William P. Marshall

Not only have probably not all of you combined have read 53 articles, but I would venture to say that probably not 53 people have read my law review articles, so it works out quite nicely.

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David Beck came to me this morning, and said "What an audience really wants to know is, How is it that the Supreme Court can uphold some nativity scenes and strike other nativity scenes? What is the secret behind that?" It's something called the "Two Reindeer Rule," that if you have at least two reindeers with the nativity scene, it's constitutional, and if you don't . . . . It 's actually written as a footnote to the First Amendment. I don't know if any of you have seen that!

Genetics Policy Institute Director

Distinguishes Stem Cell Research and Therapeutic Cloning from Reproductive Cloning

Bernard Siegel

Helping a high school daughter with a paper about Dolly, the cloned sheep, led Florida attorney Bernard Siegel down a path to litigating against a religious cult that claimed to have cloned a baby, to his creation of the Genetics Policy Institute and his convening a United Nations Science Conference to educate a global constituency on the distinction between therapeutic cloning and reproductive cloning. Siegel spoke on "Inside the Stem Cell War" at the College's Spring Meeting.

Litigation that Seigel instituted established that the claim of the Raelian Movement to have cloned a baby was a publicity stunt. In the aftermath of the litigation, two scientists, one the "father" of Dolly, the sheep, the other a distinguished stem cell researcher, approached him to form an organization for freedom of scientific research for legitimate scientists.

After meeting with scientists and leaders in the biotech industry to understand the problem, Siegel closed his law practice and created the nonprofit Genetics Policy Institute. He recruited an advisory board with twenty-five of the leading stem cell scientists in the world.

Basic to his effort was an understanding of stem cell research, a part of what is called regenerative medicine, treating diseases and medical conditions by rebuilding damaged body tissue with cells. Scientists had been working with adult stem cells for years when in 1998 a Wisconsin medical researcher discovered human embryonic stem cells, cells that have the ability to turn into other types of cells and body tissue.

There are two sources of stem cells, those extracted from surplus embryos left over from in-vitro fertilization treatments and cells created by putting a donor's skin cell into a donated egg whose nucleus has been removed. The embryonic stem cells, placed in a growth solution, have an infinite capacity to divide, as do the skin cells placed in the donated egg.

The latter process produces a stem cell line that matches the donor's DNA, which in theory may someday enable scientists to manufacture "repair kits" to replace body tissue damaged by disease or from other causes with cells that match the DNA of the person being treated.

Siegel said the controversy over this process and the resistance to it springs in part from the use of the term "therapeutic cloning" to describe the process of replicating stem cells. Universal opposition to human reproductive cloning, which most people oppose for good reason, has spilled over into opposition to therapeutic cloning and has resulted in a demonizing of this form of research. Siegel termed the latter "an assault on public health."

Much of the opposition has come from religious conservatives who fail to make this distinction. It has become what Siegel terms a "wedge issue" in American politics.

In 2003 the United Nations was debating whether to ban by treaty both reproductive cloning and therapeutic cloning, a proposal backed by a well-organized, well-financed campaign. Siegel's institute organized a United Nations Science Conference on the subject that played to a packed house.

Siegel ended his presentation to the College by showing the message that the late Christopher Reeve, a quadriplegic, videotaped for this conference:

"[A]s representatives to the U.N., all of you hold positions of enormous responsibility. You are perceived as the voice, not only of the countries you represent, but as the collective moral voice of the world. . . . Everyone I know of, including the scientists you will hear from today, opposes the cloning of babies and the pursuit of reproductive cloning. But every leading scientist seeking cures calls for stem cell research to advance. Therapeutic cloning . . . offers real hope. . . . Countries around the world are grappling with this issue and deciding that the purpose of government is to do the greatest good for the greatest number of people. Countries can ban reproductive cloning and still live up to their obligation to provide the best medical technology to all citizens. . . . I have a real concern that a great medical advance might be lost to humanity should the United Nations recommend a treaty that would prohibit this research. So my prayers are with you and I hope - I hope that you will make the right decision, a decision based on secular law and morally sound scientific knowledge that will provide hope to millions suffering all over the world."

The proposal to ban therapeutic cloning by treaty thereafter failed by one vote. ♦

*Fellow **Alan Greer** and wife, US District Judge Patricia Sykes, with Lyn Brown and Regent **Raymond Brown** at Spring Meeting.*

PANEL EXPLORES LINE BETWEEN

Winning the War On Terrorism and Preserving Individual Rights

Within a week of the 9/11 attacks, Congress had authorized the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed or aided the terrorist attacks or harbored such organizations or persons."

Introducing a featured panel to address where we draw the line between winning the War on Terrorism and keeping our individual rights, moderator **Thomas H. Tongue** reflected that this is "a different kind of war, a war fought both abroad and at home."

The first panelist to speak, former Attorney General of the United States **Janet Reno**, responding to a question from the moderator, expressed the opinion that the events of September 11 were not the result of inadequate laws. In her view, they were the result of failure of intelligence, a failure to make connections, to "connect the dots," using information we now know was available. In short, she termed it a failure of "good old-fashioned investigation," with cooperative efforts that cut across boundary lines, while recognizing the distinction between a foreign intelligence investigation and a criminal investigation and protecting Fourth Amendment rights.

Following up on this theme, she noted, for instance, that the FBI still does not have the physical tools, the automation, necessary to achieve this result. She expressed the opinion that, for this reason, the laws enacted in response to 9/11 have not made us any more secure.

She observed that we are not going to be able to assure the American people that we can prevent everything, but she cautioned against using new laws as substitutes for "good old-fashioned investigation that gets to the heart of the matter and takes the appropriate steps based on protecting our Constitution and the laws it has supported."

The second panelist, Senior Sixth Circuit Judge **Ralph B. Guy, Jr.**, who served for eight years on the Foreign Intelligence Surveillance Act Review Court and authored the only written opinion that court has issued, explained the workings of the court, including its interpretation and implementation of the wall between foreign intelligence and domestic criminal investigations in authorizing foreign intelligence surveillance.

The third panelist, Professor **John Oldham McGinnis** of Northwestern University School of Law, was asked about the constitutional basis for post-9/11 presidential authorization of domestic surveillance without FISA orders, military tribunals to try enemy combatants, detention of United States citizens without charge, transportation of non-citizens from country to country and detention of enemy combatants in Guantanamo Bay without effective access to United States courts.

In response, Professor McGinnis noted that the conflict here is over the reach of the War Powers, implemented by the post 9/11 Congressional resolution, at least with respect to Al-Qaeda and related organizations, and the extent to which the other legislation, such as FISA and legislation outlawing torture, limits those powers.

Noting that there are plausible arguments on both sides, he expressed the opinion that the Administration could have avoided the conflict that led to the Supreme Court rulings requiring access to the courts for detainees by creating a process for dealing with detainees. Likewise, he characterized the failure of the Administration to seek broadened surveillance powers from Congress as a mistake of prudence, given the lack of clarity on the issue.

He strongly suggested that these issues should be resolved by Congressional action.

In responding to the questions posed to Professor McGinnis, the last panelist, Professor **Lawrence G. Sager** of the University of Texas School of Law, made the following points:

1. If there were no pressure on the government to cheat on the rights we hold dear, there would be no need for constitutions and the means to enforce them.

2. Under the pressure of specific dangerous times like those in which we find ourselves, constitutional commitments will need to be sculptured at the margins. To the degree we yield on those commitments, however, we should do so slowly, carefully and under pressure of a demonstrated need to do so, and not wholesale and reflexively.

3. When matters of constitutional values and rights are at stake, we must value heavily and lean heavily on our courts to perform both a constitutional oversight function to make certain that the Constitution is not compromised and a gate-keeping function to insure fair judicial determination of who is an enemy alien and who is a criminal.

Noting that there is nothing startling about these propositions, he observed that "what is startling is the degree to which modern events have pitched our national government, in some ways, rather against each of those propositions."

He went on to express that opinion that no plausible case had been made for the Administration's position that the Constitution does not run to the detainees, that it does not require inquiry into whether a detainee is or is not an enemy combatant, that the Supreme Court's jurisdiction to consider a detainee case was stripped retroactively by an act of Congress or that national security required circumvention of FISA.

He ended by noting that "an important part of what is under threat is our constitutional identity. When we worry about national security, we need to worry about our constitutional identity, not as distinct from foreign competition, but as part and parcel of national security." ♦

Former Attorney General Janet Reno

Regent Tom Tongue and Professor Lawrence Saber

Senior Judge Ralph B. Guy, Jr.

State and Province Roundup

The Downstate New York Committee has hosted its first mentoring program for ten Columbia Law School students who have shown an interest in trial advocacy and moot court work and who were designated by the school. Fellows volunteered to be mentors. The program will be expanded to other law schools in 2007.

The first ever Fellows dinner in Ottawa was held in January at the Rideau Club with twenty members, Honorary Fellows and Judicial Fellows in attendance. They included Canadian Chief Justice **Beverley McLachlin** and Supreme Court Justices **J.E. Michel Basterache** and **Louis LeBel**, all Honorary Fellows, and Justice **Ian Binnie**, a Judicial Fellow. Joining the group were Chief Justice **John Richard** and Justice **Ed Sexton** of the Federal Court of Appeal, Justice **Simon Noel** of the Trial Division of the Federal Court, and Justice **Gerald Morin** of the Superior Court of Ontario, all Judicial Fellows. Past President **David Scott** handled the introductions. Observers from abroad included College Secretary **Jack Dalton** from Atlanta, Georgia, and Regent **Brian Crosby** from Buffalo, New York.

West Virginia Fellows sponsored the WV Invitational Trial Competition at the West Virginia University College of Law and presented the winner's cup and cash prizes. The winners, **Dara Accord** and **Christine Reagan**, are shown with Circuit Judge **Jack Alsop**, who judged the final round.

A total of over 100 North Carolina Fellows and guests gathered in Charleston, South Carolina in February for their annual weekend, organized by State Chair **John R. "Buddy" Wester** and vice-chair **Edward M. Speas, Jr.**, that included two mornings of substantive programs. Fourth Circuit Judge **Allyson K. Duncan**, that court's first African-American woman, gave an overview of how her court functions and her own set of practical suggestions for appellate counsel. Laced with humor, her presentation began with a joke she attributed to her Chief Judge, **William W. Wilkins**: "How may appellate judges does it take to screw in a lightbulb? Just one. She holds the lightbulb in place while the universe revolves around her." And she ended with her "overarching cardinal rule," "Waste our time, settle on Friday afternoon, we will never forget you!" **John H. Connell**, Clerk of the North Carolina Court of Appeals, described how his court operates, President **Michael A. Cooper** reported on the state of the College and Fellows Speas and **Robert W. Spearman** gave an update on a ten-year old case involving public school funding. Regent **J. Donald Cowan, Jr.** continued his long-standing tradition of presenting a three-hour summary of recent state and federal court decisions relating to trial practice.

In September, the Alabama Fellows, in cooperation with the Alabama Law Foundation, gave a one-day Trial Advocacy Seminar for thirty-five staff lawyers of Legal Services Alabama. The College's Foundation provided partial funding and all five of the College's Alabama Judicial Fellows participated in "view from the bench" presentation. College Fellow lecturers were **Michael L. Edwards**, **Jere F. White, Jr.**, **John N. Leach, Jr.**, **Robert D. Segall** and **Samuel H. Franklin**. The Judicial Fellow participants were Judges **W. Harold Albritton**, **John V. Denson**, **Callie V.S. Grenade**, **Robert B. Harwood, Jr.** and **Truman Hobbs**. In thanking the Alabama Fellows, the Executive Director of LSA wrote, "I literally had three of our 20-plus year attorneys say it was the best CLE they had ever attended and our younger attorneys were totally speechless afterwards."

Under the auspices of the Texas Access to Justice Commission, the Texas Fellows conducted the 2006 Texas Trial Academy, a five-day hands-on training program for Legal Services lawyers. Thirty-three Texas Fellows participated in the program, which was organized by Fellow **John J. "Mike" McKetta, III** of Austin. The Commission, created by the Texas Supreme Court and chaired by Fellow **James B. Sales**, had asked the Texas Fellows to conduct the Academy. In a resolution, the Commission thanked the Texas Fellows for their "generosity and farsightedness in recognizing the importance of well-trained lawyers to represent poor and low-income Texans." ♦

Role of Center for Disease Control and Prevention Explored

Richard A. Goodman

Descended from a World War II organization created to fight malaria by killing mosquitoes, today's Center for Disease Control and Prevention is the world's premier agency for health promotion, disease prevention and preparedness. Its activities range from emerging infectious diseases, through environmental threats, lifestyle choices, be they tobacco or obesity, injuries and the problems of an aging population to bioterrorism and forensic epidemiology.

Richard A. Goodman, MD, JD, MPH, co-director of the Center's Public Health Law Program, reminded the audience at the College's Spring meeting that the agency first came into the limelight in 1976 when a nurse at a VA hospital in Philadelphia called a CDC epidemiologist to report two unexplained cases of severe respiratory illness. Subsequent investigation that day revealed that eighteen people who had attended an American Legion convention had died in an eight-day period and that an additional 71 people had become acutely ill, all with the same symptoms. Ultimately, approximately 150 cases of what became known as Legionnaires Disease were identified.

The right of the states to regulate public health as an exercise of the police power was affirmed in *Jacobson v. Massachusetts*, 197 US 11 (1905), upholding a fine imposed on Jacobson, who refused to be vaccinated for smallpox. The authority of the United States to coordinate public health resides in Article 1, Section 8 of the Constitution, the general welfare clause.

A network of epidemiologists at state and local public health departments across the country identify and report to CDC outbreaks that are acute and unexpected and require immediate action. It is then the role of the CDC, using accepted scientific methodology, to determine whether a true epidemic exists and to develop a scientifically rational basis for control of the problem.

Goodman called attention to the April 4, 1981 message of an immunologist at UCLA, who had seen four unexplained cases of a rarely seen type of pneumonia, to a CDC field epidemic intelligence service officer in Los Angeles, reporting, "There is something going on with pneumocystis carinii and pneumonia in homosexual men. Would you look into it?" The initial June 5, 1981 CDC report, identifying five cases, said, "We don't know what to make of this cluster of cases. Is it a statistical artifact or does it signify something more important?"

He illustrated the methodology of CDC for identifying that this was a true epidemic, and not coincidence, by relating that hospital discharge records all over the country were then combed for cases of pnemocystis carinii pneumonia and

CDC, con't on page 56

CDC, con't from page 55

Kaposi's Sarcoma, which had also surfaced early in the outbreak. "This was the beginning of our true conscious recognition of the HIV/AIDS epidemic," Goodman reminded the audience.

Goodman used a CDC study of fatal farm tractor accidents, analyzing them by such factors as time of the year, time of day and the age of the operators, to illustrate the application of CDC analysis in a non-disease context.

A 1984 outbreak of salmonella, in which 751 people became ill in a small town in rural Oregon as a result of deliberate contamination, was the first well-documented and publicly reported incident of bioterrorism. An earlier, less well-documented incident involved a cluster of deaths in a hospital.

The emergence of a larger bioterrorism threat, typified by the 2001 anthrax attacks, has given rise to what Goodman described as "the use of epidemiologic methods as part of an ongoing investigation of a health problem, for which there is suspicion or evidence regarding possible intentional acts or criminal behaviors and factors contributing to the health problem."

As an example of the meshing of the disciplines of law enforcement and public health in the face of a growing terrorism threat, he pointed to a procedural agreement among the New York City Department of Health, the New York City Police Department and the FBI establishing a protocol for doing joint interviews that respect the Fourth Amendment rights of persons interviewed.

In concluding, he pointed out the obvious implications of these developments for practicing lawyers. The CDC's public health law website is www.cdc.gov/phlp. ♦

BON MOT:
David Meeks, City Editor of the New Orleans Times-Picayune, On Hurricane Katrina

[I]n the Ninth Ward . . . the water surged at such a rapid rate that one man had called 911, and they asked him for his address, and he said, "I don't know. I'm moving down the street in my house right now."

Past Presidents and Regents at Spring 2006 Meeting

First Circuit Region Meets In Puerto Rico

Under the leadership of state chair **Eugene F. Huestres**, the region comprised of the Atlantic Provinces of Canada, Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island met March 2-5, 2006 at the El Conquistador Resort at Los Croabas, Puerto Rico.

Regent **Joan A. Lukey** and College Secretary **John J. "Jack" Dalton** were among the participants.

The program was a model of substantive content that other Regions might well consider emulating. The speakers included: United States Judge for the First Circuit Court of Appeals **Juan R. Torruella**; Associate Justice **Francisco Rebollo-Lopez** of the Supreme Court of Puerto Rico, and **Francisco Javier Blanco**, a Harvard-trained architect and the former Executive Director of the Puerto Rico Conservation Trust.

Adequate funding for courts urged

Sr. Javier Blanco discussed the conflict between private property rights and the welfare of the community on an island 35 miles wide by 100 miles long that is home to 3.8 million people, one of the most dense populations on Earth. While one-third of its population is on food stamps and the median income is one-third that of the United States, there are 1.8 million vehicles on the island. Every year, some 30,000 acres of farmland are lost to construction.

The combined effect of this, he pointed out, is degradation of the environment and the loss of natural areas, with the resulting degradation of the quality of life. Tracing the history of how this came about, he outlined a proposal to balance the competing interests that might become a model for developing countries.

Justice Rebollo-Lopez, a former trial lawyer, reflected on the "Vanishing Trial" from a judicial point of view. Taking the College's report on this subject as his point of departure, he reflected that, though it is entirely appropriate that cases that should be settled be settled and that there is nothing wrong with a judge becoming a "case manager" in such cases, "[T]he important thing is not the number of trials a judge holds, but if he guarantees to the parties that come before him the right to have a trial in every case that really requires one. What cannot be tolerated is a judge that does not want, at all, to hold trials and forces the parties to settle their cases. That judge --if he can be called that-- is not a case manager; he is a tyrant and a lawyer who should have never been appointed to the bench."

Thus, he concluded, the system is in dire need of both competent skilled trial lawyers *and* judges. He noted that initially trial departments were the ugly ducklings of large law firms. When the volume of litigation began to increase, they were without skilled trial lawyers, and the litigation boutiques became ascendant. He noted that in Puerto Rico, the most experienced trial lawyers had gotten their experience in criminal trial work and in Legal Services programs and then became lateral entrants into the large firms.

As for experienced trial judges, he urged the College to promote adequate funding for the courts and the selection of trial judges who possess both trial experience and a proper understanding of the crucial role of the civil jury trial in the American system of government. Recalling his own experience as a trial lawyer appearing before judges with no trial experience, he observed

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that even at the appellate level he had found that judges with no trial experience lacked an understanding of the nuances that affect the outcome of t trial. "I can . . . tell you," he said, "that it is indeed a nightmare . . . to try to explain to a person who has never practiced trial law what, . . . for example, constitutes a pre-trial conference in a civil case or a probable cause hearing in a criminal one. They just don't understand you. They have never participated in one. . . ."

"As in all aspects of life," he concluded, "a balance must exist. I have nothing against law professors, tax or corporate lawyers or even politicians becoming members of the judiciary. An appellate court, however, cannot only be composed of them, no matter how intelligent and cultured they are. Lawyers with experience in the practice of law must also be considered. It certainly makes a difference when an appellate court has, at least, a trial lawyer among its members."

The third speaker, First Circuit Judge Juan R. Torruela's address, a plea for a "living Constitution," was entitled A Clash of Legal Cultures. It was, in effect, a rebuttal to Associate Justice Antonin Scalia's theory of "originalism," on which the Justice has addressed the College and on which he had recently spoken in Puerto Rico. Lest it lose its cohesiveness in editorial summarization, the Editors intend to publish Judge Torruela's articulate paper on this challenging subject in its entirety in the next issue of *The Bulletin*. ♦

Notable Quote

Past President **E. Osborne Ayscue, Jr.**, delivering the Invocation at the Spring Banquet

For the beauty of this place and of this day, for old friendships renewed and new ones begun, and especially for those who tonight we welcome into our fellowship, for this food and this drink, O Lord, by whatever name we call you, we give you thanks.

Grant that we, Fellows and our guests, may take with us a renewed awareness of the growing challenges we face in an ever-shrinking world, a renewed sense that these are our challenges and not someone else's, a renewed sense of our obligation as advocates to understand those challenges, to make certain that our fellow citizens understand them and to address them.

And finally send us away with a renewed understanding that if, in our zeal to bring to justice those who would seek to do evil to their fellow man, we compromise the great principles that have set our two nations apart, we will have betrayed our heritage, and they will have won.

Amen.

Photos From the Spring 2006 Meeting

l to r: Past President Jimmy Morris, Secretary Mikel Stout, Regent Phil Kessler, Past President David Scott and Phil Stevenson, husband of Regent Joan Lukey.

Janell McCormick, Inductee John F. McCormick, Jr., Molly Hoyle, Fellow Lawrence T. Hoyle at Inductee Reception.

Atlantans Bill Norwood, Regent Chilton Varner, Morgan Varner and Deane Norwood.

President-Elect David Beck and Regent Chuck Dick.

Nan Cooper, Jane Morris and Leanne Stout.

Past Presidents Warren Lightfoot, Jimmy Morris and Earl Silbert, with President-Elect David Beck in the background.

A meeting of the Communications Committee. Foreground, Former Regent Payton Smith, Regenl Liaison Chuck Dick, Committee chair and Past Regent David Larson. Standing Past President Ralph Lancaster and committee member Jack Giles.

President Mike Cooper and Honorary Fellow Justice Morris Fish.

The Bulletin

of the

American College of Trial Lawyers

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Irvine, California 92612

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 invitatation 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