NUMBER 55

WINTER 2007

THE BULLETIN

56th ANNUAL MEETING

A RESOUNDING SUCCESS

First to London 9/14-17 then Dublin 9/17-20, 2006

From the spirited musical greeting of a uniformed band welcoming them to stately Kensington Palace, the former home of Diana, Princess of Wales, to an impromptu *a capella* rendition of *Danny Boy* by a Nobel Laureate at the end of the last evening in Dublin Castle, the 56th Annual Meeting of the American College of Trial Lawyers in London and the follow-up conference in Dublin were memorable events.

More than 1,200 Fellows and their spouses attended the London meeting, the fifth the College has held in that city and the first since 1998. And 510 of them continued to the College's first ever meeting in Dublin, Republic of Ireland. It has become a tradition of the College periodically to return to London, to the roots of the legal profession in the common law world, and to visit another country in Europe afterwards.

The Board of Regents, including the past presidents, meeting in advance of the Fellows' London meeting, had represented the United States at an evensong service at Westminster Abbey, commemorating the fifth anniversary of 9/11. After the service, President Michael A. Cooper laid a wreath on the memorial to The Innocent Victims, located in the courtyard outside the West Door of the Abbey. The Regents

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NOTABLE QUOTE FROM *the* LONDON-DUBLIN MEETING

"Let us pray. Oh God, our help in ages past, our hope in days to come, at the beginning of this 56th[th] Annual Meeting of the American College of Trial Lawyers we bow our heads to acknowledge with humility and gratitude the blessings You have bestowed upon each of us. It is fitting indeed we believe that this meeting take place in the great nation that provided Magna Carta, the Petition of Right, the English Bill of Rights and other sources of the liberties that we who live in the United States and in Canada enjoy today. In addition to the good fellowship of this meeting, may we rededicate ourselves to the fulfilment and purposes of this College, the maintenance and improvement of the standards of trial practice, the administration of justice and the ethics of the profession. Amen."

Past President Frank C. Jones

Macon, Georgia

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.*

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FROM THE

Editorial Board

Periodically the College meets abroad, usually in London, followed by an extension of the meeting in another city. The 2006 annual meeting took place in London. It was followed by a shorter meeting in Dublin, Republic of Ireland.

The papers given at these two meetings were exceptional. In an effort to make them available in some form to all the Fellows who were unable to attend these meetings, we have chosen to treat each presentation in a separate article and to publish a few of them virtually verbatim.

Not surprisingly, more than a few speakers alluded to the test to which the Rule of Law is being put by the current outbreaks of terrorism throughout the world. The speakers' allusions to this contemporary problem were timeless in their application. Collectively, their remarks hold up a mirror for us to see ourselves as those on the other side of the Atlantic see us.

From Lord Thomas Bingham's eloquent parsing of the elements of the Rule of Law to the presentations in Dublin, unraveling some of the confusing history of strife in Ireland, we hope that you will find these articles illuminating.

In this issue we carry a note concerning President David Beck's initiation of periodic reports on the College's activities, to be sent by email to all those Fellows who have supplied the College office with an email address. With the advent of these reports, the *Bulletin*, which has never been a satisfactory vehicle for timely communications to the Fellows, can cover in more depth national meeting programs, profiles of Fellows and other less time-sensitive matters.

We continue to welcome your suggestions and contributions.

LORD CHIEF JUSTICE WELCOMES FELLOWS TO LONDON

The Right Honourable The Lord Phillips of Worth Matravers, Lord Chief Justice of England and Wales, an Honorary Fellow of the College, welcomed the group to London. A Lord of Appeal in Ordinary since 1999, Lord Nicholas Phillips became Master of the Rolls in 2000 and Chief Justice in 2005. He was made an Honorary Fellow at the 2002 annual meeting of the College in New York.

In the British judicial system, the Master of the Rolls heads the civil appellate branch and the Chief Justice the criminal appellate branch. The Lords of Appeal in Ordinary are the Law Lords, who are the final authority in the appellate system.

In welcoming the Fellows and their guests, Lord Phillips noted, "The special relationship between this country and the United States is one that is felt particularly keenly by lawyers. We share a common legal heritage and share a common devotion to the rule of law."

After observing with humor that the colonies had not always been treated so well by their mother country, he continued: "[W]e lawyers were not merely responsible for sending you convicts. We were the source of many who founded the American colonies and who are responsible for your assertion of independence."

Tracing the influence of the Inns of Court, he noted: "In the 18th century, and indeed long before, anyone who wished to practice at the English Bar had first to join one of the Inns of Court . . . . The Inn was not merely a place where lawyers learned their law. It was something of a social club, to which buccaneers such as Sir Walter Raleigh and Sir Francis Drake belonged. Raleigh it was who named the whole of the eastern seaboard, which he had explored from Florida to Newfoundland, "Virginia" in honor of Queen Elizabeth, the Virgin Queen . . . ."

Continuing, he explained, "One of my predecessors, Chief Justice Sir John Popham, was responsible in his spare time—and he obviously had more than I do—for getting together the expedition that founded the colony of Virginia pursuant to a charter granted exactly 400 years ago by James I. So it would be appropriate that I, together with your Chief Justice, will next April be unveiling a plaque in Jamestown to celebrate the 400th anniversary of the founding of that town."

Referring to his Inn, Middle Temple, he noted, "[W]e are proud that no less than five signatories to the Declaration of Independence and seven to your Constitution were members of our Inn. We are delighted that Chief Justice Roberts has accepted our invitation to become an Honorary Bencher, following in the footsteps of Chief Justice Warren Burger and Chief Justice William Rehnquist."

In closing, Lord Phillips referred to a subject that was on everyone's mind, sounding a theme that was to be repeated by many speakers: "In coming to this country you have boldly disregarded the risk of terrorist activity, the consequences of which risk you may have discovered at your check-in. It is, of course, a risk that we share with you, and we also share with you the duty to insure that the rule of law does not become a victim of terrorism. Both practitioners and judges live in challenging times."

PRESIDENT BECK
BEGINS PERIODIC EMAIL REPORTS

President David Beck

Taking advantage of the College's expanded capacity to use the internet for communication with its Fellows, President David Beck has begun to send periodic reports on ongoing College activities to each Fellow for whom it has an e-mail address. These reports, titled **President's Special Report,** will fill what has been a major gap in the College's means of communication with the Fellows between issues of the *Bulletin*. The first such report included the following topics:

- The inappropriate remarks, subsequently withdrawn, of a Deputy Secretary in the Department of Defense, criticizing attorneys representing Guantanamo detainees
- Appointment of Ad Hoc Committee on Judicial Compensation
- Activities of the Special Committee on the Vanishing Jury Trial
- Activities of the Ad Hoc Committee on Judicial Fellows
- Appointment of Federal Legislation Committee

Fellows who have an e-mail address that appears in the latest College directory, but who did not receive this first report, may wish to consult their in-house communication staff to make certain that filters in their own information systems are not screening out these communications.

For the benefit of those Fellows who have not furnished the College with an e-mail address, these reports will also be posted on the College's website.

Senior Law Lord Addresses
FUNDAMENTALS OF THE RULE OF LAW

The Right Honourable The Lord Bingham of Cornhill, Senior Lord of Appeal in Ordinary (the most senior of those more familiarly known as the Law Lords) and an Honorary Fellow of the College, addressed the annual meeting of the College in London. His remarks are so eloquent a statement of those fundamental principles that we refer to as the Rule of Law that we have chosen to print them in their entirety.

Lord Bingham of Cornhill

I hope you will bear with me if I do something unforgivable, which is to address a very big subject at the end of the morning. The consolation is that I shall necessarily address it very superficially.

The big subject is The Rule of Law. It has already been invoked by Chief Justice Roberts, by Lord Phillips and by Lord Goldsmith, and in this country it has just achieved statutory recognition, an Act of Parliament which says: "Nothing in this Act adversely affects the existing constitutional principle of the rule of law or the Lord Chancellor's existing constitutional role in relation to that principle." The Lord Chancellor is obliged on taking office to swear an oath to respect the rule of law.

One looks at the Act expectantly, hoping to find a definition, and there is none. Why not? One explanation perhaps is that it is so obvious what the rule of law is that there is really no need to spell it out, but that, I think, is a slightly unlikely explanation. Nobody now I think means by "the rule of law" what Professor Dicey meant by it when he coined the phrase in 1885, and there is a respectable body of thought that says that the expression is meaningless.

I quote one distinguished academic author, I think from the far side from here of the Atlantic, who said: "It may well have become just another one of those self-congratulatory, rhetorical devices that grace the public utterances of Anglo-American politicians. No intellectual effort," he continued, "need therefore be wasted on this bit of ruling-class chatter."

The alternative and perhaps preferable explanation of the lack of a definition is that it was all rather complicated and difficult to define, and it was better to leave it to the judges to decide what the rule of law meant, this existing constitutional principle, when and as questions arise. But, of course, the judges must give effect to it, if it is a constitutional principle, and the Lord Chancellor is no doubt susceptible to judicial review if he fails to respect the rule of law. So it is not open to the judges to dismiss this as meaningless verbiage, and I hope that I may be permitted quite briefly and summarily to suggest what perhaps the rule of law actually means.

I shall state one general proposition and then venture eight subrules. These may all strike you as so obvious and uncontentious and banal as

to merit no discussion. If that is so, then we can all celebrate our shared legal heritage. If, on the other hand, I say anything which you don't agree with, then it gives us something to argue about over lunch.

In a single sentence then, I would seek to sum up the principle as being that all persons and authorities within the state, whether public or private, should be bound by, and entitled to, the benefit of laws publicly and prospectively promulgated and publicly administered. I am stating that as a very general principle, acknowledging that, of course, as I must throughout, there will be exceptions and qualifications. But I think that that formulation captures the essence of John Locke's famous declaration: "Wherever law ends, tyranny begins," and also that not less famous of Thomas Paine: "In America," he wrote in *Common Sense*, "the law is king; for as in absolute governments the king is law, so in free countries the law ought to be king and there ought to be no other."

> "WHEREVER LAW ENDS, TYRANNY BEGINS."
>
> — JOHN LOCKE

So I turn to my eight subrules, which I shall treat rather in the nature of headlines or stations which an express train rushes through, leaving it difficult to do more than pick up the name of the station.

FIRST SUBRULE: the law must be accessible and so far as possible intelligible, clear and predictable. If we are all bound to obey the law after all, we have to know what it is. That sounds simple enough, but it is not perhaps quite as simple as all that, with thousands of pages of legislation being churned out every year, some of it not very easy to understand. The problem is to some extent compounded by a question to which Chief Justice Roberts has already alluded: the length, complexity and sometimes prolixity of judgments in courts at the highest level.

Now, I am on the whole, for reasons that I shall not develop, broadly, and I emphasise that, in favour of multiple opinions, but any court must recognize a very clear duty to deliver a clear majority ratio. I think that this subrule does inhibit excessive judicial innovation or adventurism, because it is one thing to develop the law in the direction it is going a little bit further, and it is another thing to set it off in a different direction altogether which renders the law unpredictable.

All these points, as I suggest, apply with even greater force to the criminal law than they do to the civil law, since somebody has to explain to a jury what the law is, and there is very little scope to develop the criminal law where the effect is to render something criminal which was not criminal at the time when the defendant did it. That, of course, in itself is a notable breach of the rule of law. *[Editor's note: Juries are used in Britain only in criminal and libel trials.]*

THE **SECOND** SUBRULE that I would hazard is this, that questions of legal right and liability should ordinarily be resolved by application of the law, and not the exercise of discretion. By "discretion" I mean administrative discretion or judicial discretion. Now Dicey, as we know, was very passionately hostile to giving administrators really any discretion. Most of us would not go that far I think today, and most of us again could think of examples—I certainly could—where one would be very sorry if an administrator were compelled to act in a given way simply because that was laid down by the statute and he had no room to allow for the hard or difficult case.

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Chief Justice Roberts Inducted at London

United States Supreme Court Chief Justice John Roberts, Jr. was inducted into honorary membership in the College at the London meeting.

Chief Justice Roberts

In introducing him, Past President Ralph Lancaster remarked: "A quick scan of your CV, Chief Justice Roberts, suggests a perhaps portentous path to your new office. Born in Buffalo, New York in 1955, . . you grew up in Long Beach, Indiana. In high school you were captain of the varsity football team. You wrestled. You sang in the choir. You co-edited the student newspaper. You took part in drama productions, and you were active in student government.

"You then matriculated at and graduated a year early at age twenty-one from Harvard with highest honors and with a well developed grounding for an abiding interest in history. Moving on to law school, you were managing editor of the Harvard Law Review, again graduating with honors in 1979 at age twenty-four, earning the regard and affection of fellow students of all ideological stripes.

"You subsequently served as law clerk for Judge Henry Friendly of the Second Circuit, and then, at age twenty-six, as law clerk for then Associate Justice William H Rehnquist, whom you have now succeeded as Chief Justice. From that clerkship you moved on at age twenty-six to become a special assistant to Attorney General William French Smith, and from age twenty-seven to age thirty-one you worked as an associate counsel to President Reagan in the White House Counsel's Office.

"Following that stint, you became Principal Deputy Solicitor General in the 34th to 36th year of your life. In between these extended periods of public service you found time to practice with a private firm in Washington, where you successfully added to the long string of cases you had argued before the Supreme

Court as Principal Deputy Solicitor General. You were appointed to the United States Court of Appeals to the DC Circuit in 2003 at age forty-eight. Nominated by the current President, you were sworn in as Chief Justice of the Supreme Court on September 29th, 2005 at age fifty, the youngest Chief Justice since John Marshall donned the robe in 1801.

"Like Marshall, you have taken the bench with both a record of great accomplishment and the promise of a remarkable tenure. Young enough to be the son of most of us on this dais, you are well suited to approach your responsibilities with an eye toward the challenges of the future.

"I am sure, however, that despite the long list of accomplishments I have just detailed, if asked, you would say that your greatest accomplishments were in wooing and wedding Jane Marie Sullivan in 1996 and in the subsequent adoption of your two children, Josephine and John. Jane Sullivan Roberts is a talented lawyer in her own right, presently practicing in Washington. Her resume includes service on the Board of Trustees of the College of the Holy Cross, from which she graduated . . . .

"Only those members of our profession who by their accomplishments have attained the highest degree of respect and eminence are awarded Honorary Fellowships. With these strict standards in mind, the Regents of the College have elected you, Chief Justice Roberts, an Honorary Fellow, an honor earned and well deserved.

"Our system depends upon the rule of law. You have been and you are a role model for lawyers and judges who embrace our profession with a sound sense of obligation and dedication. As a skilled advocate, you showed respect and high regard for the Court which you now lead well before you were elevated to your present position, and that respect and high regard were underscored when at the White House on the day of your swearing in your first remarks were directed not to the President, not to other high officials in the room, but to Justice Stevens and through him to the other members of the Court, as you thanked him for administering the oath.

"So it is that in recognition of your great contributions to public service and the justice system the Fellows of the American College of Trial Lawyers today extend our hands in fellowship to you. Today, we take great pride and great delight in bestowing upon you an Honorary Fellowship in the American College of Trial Lawyers."

Justice Roberts graciously accepted the honor, saying he was aware of the College's valuable work in promulgating codes of trial and pre-trial practice, promoting the administration of justice, working to enhance judicial and legal ethics and sponsoring trial and appellate moot court competitions.

In his further acceptance remarks, he invoked the example of his predecessor, John Marshall, in encouraging more unanimous opinions of the entire Court as a means of establishing and clarifying the law on those subjects addressed in its opinions.

His acceptance remarks were so laced with humor, that that humor is the subject of a separate article that follows.

This is the point I think at which most of you expect to hear a lawyer joke or two from me, and I have dispensed with those lately. I found the lawyers don't think they are funny and the non-lawyers don't think they are jokes.

THE HUMOR *of* OUR NEW CHIEF JUSTICE

This is my first foreign visit as Chief Justice, and I think it is entirely appropriate that it be to London. My first predecessor, Chief Justice John Jay, of course, was sent to London as a special envoy when he was Chief Justice to negotiate what became known as Jay's Treaty. When Jay returned, he discovered that he had not only been nominated, but elected Governor of New York. I think it tells a great deal about the status and stature of the early Supreme Court that Chief Justice Jay wasted no time in resigning his commission as Chief Justice.

I am very happy to be here in London. The place has a special spot in my own heart, because I was here last July, July of 2005, teaching, when I received a call from the White House asking if I could come back to Washington to talk with the President concerning a vacancy on the Court. Well, it turned out I could.

I have met Lord Phillips in Washington. I knew I would be seeing him here. As he mentioned, I am going to have an opportunity to welcome him to the United States next Spring to commemorate the 400th anniversary of the founding of Jamestown. I thought in the light of all that I ought to get to know him a little better. So I looked up a copy of a speech he gave this past July at the Lord Mayor's dinner for judges. He talked about the complexities of criminal sentencing pursuant to guidelines designed for capping the discretion of judges. He talked about and responded aggressively to attacks on judicial independence. Then he talked about budget realities and crumbling infrastructure and the need for courthouse repair. Lord Phillips, we can use each other's speeches I think, especially since they are more or less in the same language.

I completed my testimony before the Senate Judiciary Committee in connection with my nomination, and some of you may recall I spent a great deal of time in that testimony explaining how humble and modest I was, or I suppose more accurately, how I think humility and modesty are essential attributes for a proper judicial role. I wondered if it was a little too early to be accepting such high honor after assuring everybody I was humble and modest. Then I remembered what Golda Meir had said to someone. She said, "Don't be humble. You're not that great".

There was the occasion — it was really just the second week of oral arguments — where we had a light bulb forty feet above us in the ceiling explode. Counsel stopped in their tracks in argument. We eventually discovered it was just a light bulb. The next week I got my first note on the bench. As counsel arguing before the Court, I had always wondered what was in these notes. You would see a Justice scrawl a note, hand it to a bailiff, who would pass it to another Justice. I had no idea what it was. I was now about to find out. Some important constitutional point? Commentary on something a lawyer had said? Perhaps something I was supposed to be doing? So I opened the note and looked and it said, "Have you checked the other light bulbs yet?"

[L]et us fast forward from Marshall's era to June of 2005. It is the last day of the Supreme Court's term. Chief Justice Rehnquist is announcing the Court's disposition in a case. He begins by saying: "I have the judgment of the Court, an opinion in which Justices Scalia, Kennedy and Thomas have joined." He then goes on: "Justices Scalia and Thomas have filed concurring opinions. Justice Breyer has filed an opinion concurring in the judgment. Justice Stevens has filed a dissenting opinion, in which Justice Ginsburg joined. Justice O'Connor has filed a dissenting opinion. Justice Souter has filed a dissenting opinion, in which Justices Stevens and Ginsburg join."

In what were to be his last words from the Bench, Chief Justice Rehnquist said with his characteristic dry humor: "I didn't know we had that many justices."

Another of my predecessors, William Howard Taft, frequently visited London and spoke here. I mention him. It is his birthday today. Although he served both as President of the United States and Chief Justice, William Howard Taft remains most famous for being a very large gentleman, a very large and courteous one. The story is still told in Washington of the time he was riding on a trolley car and got up to give his seat to three women.

I think judging remains what I thought it was for some time, a process that my very first boss, Judge Henry Friendly, got just right. He said the essence of judging was captured by a story that was told about John Dewey. It was about an English village, of all things, and how the English villagers would guess the weight of a hog. He said they would take a log, balance it on a rock, put the hog on one end and then load stones on the other end of the log until it was perfectly balanced. Then they would try to guess the weight of the stones. My experience has been that is pretty much what judging is like.

Nobel Peace Laureate
Speaks On Conflict Resolution

[Nobel Peace Laureate John Hume spoke eloquently to the Dublin meeting of the College on conflict resolution among peoples and nations, using as his example the solution of the centuries-old conflict in Ireland, a conflict that most of us on our side of the Atlantic understand only vaguely. His remarks were so illuminating that we have chosen to print an edited version both of them and of his introduction by Fellow James M. Lyons of Denver, Colorado.]

JAMES LYONS:

As you probably have seen by now, Ireland is a land of great contradiction. There is tremendous beauty and peaceful countryside. There are also great tragedies and sorrow here. This is what led William Butler Yeats to describe Ireland as a "terrible beauty."

Since the famine of the mid-nineteenth century there has perhaps been no greater tragedy or sorrow in Ireland than the organized sectarian violence between the Catholic and Protestant communities in the north of Ireland. This is known here by the quaint Irish euphemism "the Troubles." The beginning of the Troubles depends on your point of view. Some say that they began in 1690 with the Battle of the Boyne, fought near Drogheda, not very far from where we are today. In that battle, William of Orange, a Protestant, defeated James of Scotland for the Throne of England, Scotland and Ireland. The Protestant victory is still loudly celebrated in Northern Ireland today.

Others say that the Troubles began in 1920 when Ireland was partitioned and Northern Ireland was created from the rest of Ireland as part of a treaty with Great Britain that led to the formation of the Irish Free State and then to the Irish civil war. Others would say that the modern Troubles began on January 30, 1972, when British paratroopers in Derry shot and killed unarmed Catholic protesters in an incident known as Bloody Sunday.

Regardless of these differing points of view, there is no question as to when the modern Troubles ended. That date is April 10th 1998, with the signing of the Good Friday Agreement, which created an elected assembly in Northern Ireland with power to be shared by both communities. The agreement was then put to a nationwide, island-wide referendum in May of 1998 and was overwhelmingly approved. The Good Friday Agreement was the result of years of patient and dedicated work by the British and Irish governments, the Clinton administration, supported by a bipartisan Congress and, most of all, the people and political leaders of Northern Ireland.

One of those leaders played perhaps the most essential role in the peace process. He is with us this morning, and his name is John Hume. John is a native of Derry, or Londonderry if you would prefer, and grew up in a large, poor Catholic family in the Bogside. Thanks to a scholarship, John was able to attend secondary school and college and became a high school French teacher in Derry. Committed to his community and sensing that economic success was the key to overcoming discrimination, John founded the credit union movement in Derry and then became politically active in the Catholic civil rights struggle in the late 1960's and 1970's.

John was a founding member and later leader of the SDLP, the Social Democratic and Labour Party, which is the largest Catholic party in Northern Ireland. He was elected to Westminster and also served in the European Parliament. In the late 1980's and early 1990's, it was John who initiated discussions with the British government

and with Gerry Adams, the leader of Sinn Fein, the so-called political wing of the IRA. This led to the Anglo-Irish Agreement of 1985 and to an IRA ceasefire.

But it was in the peace process in the mid 1990's that John became a truly international statesman. Working relentlessly both in and out of the public eye in Belfast, London, Dublin and Washington, John conceived, negotiated and crafted the historic concepts which are embodied in the Good Friday Agreement. It was here that I got to know him and respect him while I was serving as the President's special advisor in Northern Ireland.

John is truly one of the founding fathers of the new Northern Ireland and certainly one of the most important figures in modern Irish history. For his work, John and his Protestant counterpart, David Trimble, were awarded the Nobel Prize in 1998. John also was awarded the Gandhi Peace Price and the Martin Luther King Award. He is the only person in history to win all three of these peace prices.

John Hume

On a personal note, John is a lover of red wine and can compellingly convince you that it is the Irish who are responsible for the French wine industry. He is a gifted singer, a storyteller in the true Irish tradition and a living Irish treasure. Ladies and gentlemen, please welcome one of the great peacemakers of our time, John Hume.

JOHN HUME:

As we enter the new century and the new millennium . . . . we are living through one of the greatest revolutions in the history of the world, the technological, telecommunications and transport revolution, as a result of which we are living in a much smaller world. The peoples of the world are, therefore, living much closer together and in more direct contact.

One of the facets of that is the fact that you are actually sitting here today meeting in Ireland from so many parts of the United States. For the reason that we are living in a smaller world today we are in a stronger position to shape that world. And one of our major objectives, therefore, should be to take the necessary steps to create a world in which there is no longer any war or any conflict.

For that reason, we should study major examples of conflict resolution, identify their principles and create the circumstances to apply those principles to any area of conflict in the world.

The European Union . . . is the best example in the history of the world of conflict resolution and, therefore, the means of achieving it should be deeply studied. I very often tell the story of my first visit to Strasbourg in France when I was elected to the European Parliament in 1979. When I was there in the first week I went for a walk. I crossed the bridge from Strasbourg in France to Kale in Germany and stopped in the middle of the bridge and I meditated. I thought: "Good Lord, there is France and there is Germany. If I had stood here on this bridge 30 years ago," I said to myself, "after they ended the Second World War, the worst half century in the history of the world, with the slaughter of millions of human beings in two world wars and if I had said then: 'Don't worry,' I thought, 'the historical conflicts of the people of Europe are now all ended and in a number of years you will all be united in a European Union'," I thought to myself if somebody had said that then, they would have been sent to a psychiatrist.

But it has happened. And since the European Union is, therefore, the best example in the history of the world of ending wars and conflict, its principles should be studied. And when studied ,it will be found that the three principles at the heart of the European Union can in fact be applied to any area of conflict in order to achieve resolution. That is what I did. And when you study the three principles at the heart of the Good Friday Agreement in Northern Ireland, they are the three principles at the heart of the European Union.

What are they? **Principle number 1 . . . is respect for difference**. When conflict is examined anywhere in the world, . . . it is about difference, difference whether they are fighting about race, religion or nationality. And of course difference, whether it is difference of race, religion or nationality, is an accident of birth. No person in the entire world chose to be born. And they certainly did not choose to be born into any community, into any race, any nationality or any religion.

Therefore, why should difference be fought about? It is something we should respect . . . . Difference is the essence of humanity, therefore, and it is not something we should ever fight about, it is something we should totally respect. That obviously sounds a very simple statement, but if it were to be accepted in the whole world and applied in the whole world it would make a major contribution to the end of conflict. That principle, when you look at it, respect for difference, is the first principle of the European Union.

Their **second principle is institutions which respect those differences**. There is a European Council of Ministers, and every country has a Minister. There is a European Commission, and every country has a Commissioner and staff in the Commission. And there is a European Parliament, and every country has representatives in that Parliament.

The third principle, of course, is a most important one, what I call **the healing process**. The representatives of all the people of Europe work together in their common interests, social and economic development. In other words, as I often say, they spill their sweat together, and not their blood. And as they do, they have broken down the barriers of centuries, and a new Europe has evolved and is still evolving.

When the Good Friday Agreement in Northern Ireland is looked at—and the talks leading to that agreement were chaired by Senator George Mitchell—when we look at that Good Friday Agreement in Northern Ireland, the same three principles are there at the heart of it. And that underlines the point I am making, that those principles could be sent to any area of conflict to resolve it.

Principle number 1: Respect for difference. The identities of both communities in Northern Ireland are fully respected in the agreement.

Principle number 2: Institutions that respect those identities. In order to do so an assembly is elected by a system of proportional voting, not by X voting but by proportional voting. And that ensures that all sections of the community are fully represented in the assembly. Then the assembly, by proportional voting as well, elects the government of Northern Ireland and ensures that all sections of the people have, therefore, representatives in government.

When those institutions are in place, the third principle, the healing process will go into action and will ensure that the representatives of all sections of our people will be working together in their common interests, social and economic development. Rather than waving flags at one another or using guns and bombs at one another, they will be working together in their common interests. Or they will, as I say often, be spilling their sweat and not their blood. And as they do that in Ireland, they will be breaking down the barriers

of centuries as our common humanity transcends our difference, and in a generation or two once this process gets under way, a new Ireland will evolve based on agreement and respect for difference.

Those are three very fundamental principles, but very profound, and indeed . . . they are the exact same principles at the heart, they are the exact same principles as those of the Founding Fathers of the United States of America.

I first learned those principles when I went to visit the grave of Abraham Lincoln and I saw written there the summary of that philosophy, which is a philosophy which, in my opinion, could create peace in the entire world today. That summary, in three words in Latin, is also written in America: *E pluribus unum*. In other words, from many we are one, the essence of our unity is respect for diversity.

> "Let us create a world . . . *e pluribus unum* . . ."

When the United States is looked at, the diversity of its people is enormous, given the many countries that the Founding Fathers of the United States came from. Yet the institutions of the United States respect diversity totally; presidents cannot be presidents for their whole life, only for a fixed period of time. The same principles apply to governors, to mayors, et cetera. In other words, the leadership of the United States, even though it is an enormous country, work together in their common interest. And that is very clear to anyone who visits Washington.

And that is a philosophy that the whole world needs today. And as I have already said, because we are living in a much smaller world, because of technology, telecommunications and transport, it is a world that we are in a much stronger position to shape. There is no doubt, therefore, that the European Union and the United States of America by coming together could give the best and most powerful leadership in shaping that world.

The time has come as we enter this new century and new millennium to create a world in which there is no longer any war or conflict, no longer a world in which human beings kill one another. And of course, the best way to achieve that is for the largest countries in our smaller world today to work strongly together to promote dialogue in areas of conflict, particularly about the three principles that I have mentioned, in order to create a world in which the areas of division will respect their differences, build institutions that do so and work together in their common interests.

I believe that this is the greatest challenge facing our generation, and naturally I hope that that challenge will be taken up and that we will have a world of the future in which there is no longer any war or any conflict. Let us create a world in which *e pluribus unum* is a summary of the philosophy of that entire world.

In order to do so, the leaders of the United States and the European Union should come together to set up an international body whose function would be the promotion of dialogue in the conflict regions of the world between the different sides and get them to agree to end their conflict and respect their differences and implement the three principles through the creation of permanent institutions that do so. . . .

[C]ould I just finish by expressing my deepest gratitude to the United States for the great support and help they gave to our Peace Process in Northern Ireland. George Mitchell, as I have already said, chaired the talks that led to our Good Friday Agreement. At present, Mitchell Rice is a representative of, President Bush in

Northern Ireland, and Jim Lyons, of course, has been the American observer on the International Fund for Ireland and the President's economic envoy to Northern Ireland.

Of course it is now taken for granted that the British and Irish governments work together to solve the Irish problem. But some time ago that never happened. The British Government insisted that Northern Ireland was an integral part of the United Kingdom and was it was nobody else's business. And for that reason we required enormous pressure to ensure that in order to solve the Irish problem both Governments would have to work together.

So, we had consistent friends of Ireland at political level in the United States who consistently sought the necessary steps to be taken to solve the Irish problem. The four leading men who played a major part in that became known as the four horsemen: The late Speaker, Tip O'Neill; the late Senator Daniel Moynihan from New York; Senator Edward Kennedy; and Governor Hugh Carey when he was a congressman. The four of them worked together and they got President Jimmy Carter, they persuaded President Jimmy Carter—I know because I kept talking to them regularly to get their support.

> "There are 25 Million Irish-Americans"

And President Jimmy Carter made the first ever statement that a President of the United States made about Northern Ireland. Up until then Presidents would not, because again it was an internal matter for their British friends. But Jimmy Carter made the statement and said the time had come for the British and Irish Governments to work together to solve the Northern Ireland problem and if they did so, the United States would support them economically.

I will never forgot a few years later when the two governments did meet and created the Anglo-Irish Agreement of 1985, my telephone rang the next day. Tip O'Neill: '"John?" "Yes, Tip. What is it?" "We keep our promises. We are setting up the International Fund for Ireland; we are supporting economically." That fund has created 25,000 jobs already in our poor areas in Northern Ireland and the border counties.

And of course President Clinton had Northern Ireland right at the top of his agenda. He was the first President to come onto our streets and speak to the people, and I will never forget when he came to my city. As I stood beside him as he spoke, the entire city was out in the streets before our City Hall listening to him. . . .

Ireland is a country that has the strongest links with the United States in the world, because we Irish are the biggest wandering people in the world. There are 25 million Irish-Americans, there are 5 million people living in Ireland. So as I say, we are very close, and for that reason you are obviously very, very welcome to Ireland today, and I am deeply grateful to your political leaders for the enormous support and help they have given us in creating our peace process and, as I have said, in ending forever a quarrel that began way back in the siege of my city, the city of Derry in 1689.

As I say, the principles at the heart of it, which are the principles of the European Union and indeed the principles of the Founding Fathers of the United States of America, I would like to see the leadership of the world now, which is the United States and united Europe coming together and ensuring that no such conflict occurs anywhere else in the world by, instead of sending armies to those areas of conflict, sending that philosophy, those principles, plus a group of people to promote the dialogue that will create the acceptance of those principles.

Sylvia Walbolt
Breaking Barriers

Although Sylvia Walbolt was the only woman in her law school class and the first woman to be hired by a well-known Tampa, Florida law firm, she never encountered the type of prejudice that she heard expressed by other women lawyers of the early 1960s. To the contrary, she felt welcomed at the firm and quickly rose to the top with the aid of four outstanding white male mentors, all Fellows of the College. As a result of her hard work, Walbolt in 1981 became the second woman in the College's history to become a Fellow and the first to be involved deeply in College activities. (The first, Amalya Kearse of New York City, was inducted in 1979, but almost immediately became a federal judge.)

Sylvia Walbolt

Walbolt says that it was more than a coincidence that she was given the chance to prove herself as a trial lawyer.

"It was really remarkable that a law firm of eleven white males, when there was not a woman trial lawyer around, at least in the South, was progressive enough to be willing to allow me to try to do trial work," she said. "They allowed me to make my way in that arena and really mentored me in a very positive way back in the day when we didn't use the term mentoring."

Walbolt was hired as a probate lawyer, but the firm had a program to rotate all the young lawyers through every department. "I was then rotated into the trial department and began to work with Tom Clark, a Fellow of the College, (who ultimately went to the Eleventh Circuit as a federal judge), and I just fell in love with the kind of work he was doing," Walbolt said. Later she worked with Reece Smith, another College Fellow and a former president of the American Bar Association, and then with College Fellow Broaddus Livingston (FACTL79). "We became a pretty good team," Walbolt said.

Later after she lost the hearing completely in one ear and three quarters in the other, she turned to the appellate side, where she began to work with another Fellow, the late Alan Sundberg. "He was another wonderful lawyer and mentor," Walbolt said.

As a young person she had never set out to become a lawyer and had no relatives in the profession.

"I went to law school because my father was a college librarian at the University of Florida," Walbolt said. "While I was still an undergraduate, I got a job, through his good offices, at the University of Florida law library. I came to know a lot of the professors, a lot of the students, and just became intrigued with the law. I took the LSAT just to see what would happen and did very well. I earned a scholarship and ended up going to the University of Florida Law School as one of the early women."

Just recently her mother told Walbolt that she had once attempted to enroll in law school in Illinois, but had been told women could not apply. "So I may have been living out my mother's dream, but I didn't know it," Walbolt said.

She was the only woman in her law school class and had no female professors. "I stood out like a sore thumb in the classroom, and because of

that I had to be prepared every day. If the professor called on me, I had to answer. Actually it helped me in the long run and I was able to do very well on the exams."

Walbolt still remembers the first case she ever tried with Reece Smith after being hired by Carlton Fields in 1963. It involved a personal injury arising from an industrial accident. "I'm dating myself but we were proud to receive a $250,000 verdict. At the time, that was the largest personal injury verdict in Hillsborough County (Florida). Times certainly have changed. A couple of years ago I argued and received a remittitur of $54 million on a $78.5 million award."

Walbolt said she had heard of the College before she was inducted, but following the tradition of the times, she wasn't nominated by any of the Fellows in her firm. She found out later that she had been nominated by Chesterfield Smith, a very prominent lawyer from Lakeland, Florida and a past president of the ABA.

She was inducted into the College in New Orleans by then President John Elam, who called her "a rose among the thorns" as the only female in the class of 1981. Her husband, Dan Walbolt, also a lawyer, later broke new ground as the only male attending the Wives' luncheon. The next year it was changed to the Spouses' luncheon.

"I was stunned to become a Fellow," Walbolt said. "It was an incredible thrill and without question the most meaningful professional experience I have had over my now more than forty-two years in the practice of law."

She served as chair of the very active Access to Justice Committee when it expanded its work to virtually every state and province in North America. In addition, she served on the Anglo-American Legal Exchange in 1999 – 2000, and as chair of the Florida State Committee, as well as of the Courageous Advocacy Committee.

Walbolt and her husband have one son, Dan Jr., now thirty-five, who established Best Evidence, his own mock jury and litigation support business, in Tampa and Miami when he was just twenty-six. The Walbolts lost a daughter, Leslie, to cancer at age thirteen in 1980. "Leslie suffered her illness with grace and acceptance and set a lasting example for all around her during this terrible time."

For relaxation, Walbolt takes to her garden, especially the one on a four-and-half-acre mountain retreat in Highlands, North Carolina.

"At the end of the day I go out and garden and I find that it is the one thing I do that I completely forget the office," she said. "I grow day lilies, hundreds of them. I don't have a favorite. I love them all. I've never met a day lily that wasn't my favorite."

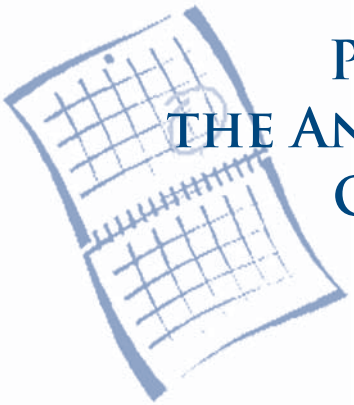
Walbolt was already known to some of the British delegates to the Exchange. She had previously been retained by the House of Lords to file an amicus brief in a Florida death penalty case involving a British subject. The House of Lords, which was not only a legislative body, but also a judicial body, had wanted the amicus brief, urging the Florida Supreme Court to accept international concepts of fair criminal trials, filed on its behalf. (The conviction was upheld, but the death sentence was reversed and subsequently commuted to life imprisonment. The case is still a cause celebre in England and was the subject of a special BBC broadcast in 2006.)

"Sylvia Walbolt,"says College Past President and Oklahoma Law School Dean Andy Coats, "is one of the most competent people I have known over the years. In my time in the leadership of the College, I learned that if I wanted some important task done well, all I had to do was persuade Sylvia to do it."

"Sylvia was with us on the 1999-2000 Anglo-American Exchange. Because of her grace and charm, She became very popular with the delegation. She presented a discussion paper on the subject of Devolution (the transfer of power or authority from a central government to a local government), which was a remarkable work and was exceedingly well received by our English and Scottish counterparts."

BIO: Sylvia Walbolt

■ Ms. Walbolt has practiced law with Carlton Fields for 43 years, is the former chair of its board of directors and its appellate practice group. ■ Besides election as a Fellow of the American College of Trial Lawyers, Mrs. Walbolt is a past president of the American Academy of Appellate Lawyers and was a member of the inaugural Appellate Certification Committee of the Florida Bar. ■ She is Board certified in appellate law. She frequently publishes and lectures on appellate practice, procedure and advocacy. ■ Mrs. Walbolt received the 2006 John Minor Wisdom Public Service and Professional Award, which is presented to a member of the American Bar Association for outstanding contributions to the equality of justice in the member's community, ensuring that the legal system is open and available to all. ■ She received the 2005 James C. Adkins Award, which is presented to a member of the Florida Bar who has made significant contributions in the field of appellate practice in Florida. ■ She is also the recipient of the 2005 William Reece Smith, Jr. Public Service Award, which recognizes individuals who have demonstrated exemplary achievements in public service, and the 2003 recipient of the George C. Carr Memorial Award, given by the Tampa chapter of the Federal Bar Association to recognize excellence in federal practice and distinguished service to the federal bar.



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But it surely is important that the bounds of any discretion should be defined and narrow, and that administrative discretions should be governed by statute. I think that this again is a subject that one could develop at considerable length. I think that most judicial discretions are very narrow because what is usually, and I think wrongly, described as a discretion is a judgment, and judges are, of course, required to exercise a judgment, as to whether a certain state of affairs exists or doesn't exist, but if they judge that it does or it does not, they have no discretion. It is then clear what they have to do, and I think myself that there is only a true discretion in a situation where a judge says to himself, "Well, I could do A or I could do B. Both would be perfectly defensible decisions. Which shall I do?" But I think it is important for the purposes of rule of law to recognize that there is no such thing as an unfettered discretion, whether administrative or judicial.

LAW MUST APPLY EQUALLY

THE **THIRD** SUBRULE that I would put forward is that the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation. Some categories, of course, do justify differentiation—children, prisoners, the mentally ill and so on—but not, to choose the famous example, those with red hair, and I think most of us would have little hesitation in condemning as a flagrant breach of the rule of law Statute 22, Henry VIII, chapter 9, which read: "It is ordained and enacted by authority of this present Parliament that the said Richard Rose shall be therefore boiled to death without having any advantage of his clergy." Richard Rose was the Bishop of Rochester's cook. It seems a rather extreme penalty for cooking a bad dinner.

It is not, of course, unknown in our own society until quite recent times that certain classes of citizens were subject to disabilities and disqualifications. Roman Catholics, Jews, dissenters, women have all suffered at various times. Most of these obvious injustices have been rectified. But a class that does require constant care and consideration, as I would suggest, is that of non-nationals. Of course, there are some respects in which non-nationals have to be differentiated—they don't have a right of abode—but I would invoke as a ringing statement pertinent to the rule of law the observations of my first Head of Chambers, Lord Scarman, in a decision in 1984: "Habeas corpus," he said, "is often expressed as limited to British subjects. Is it really limited to British nationals? Suffice it to say that the case law has given an emphatic 'No' to that question. Every person within the jurisdiction enjoys the equal protection of our laws. There is no distinction between British nationals and others. He who is subject to English law is entitled to its protection."

The principle has been in the law at least since Lord Mansfield freed a black in *Somerset's Case* in 1772. There is nothing here," he said of the legislation he was considering, "to encourage in the case of aliens or non-patriates the implication of words excluding the judicial review our law normally accords to those whose liberty is infringed." The requirement of the rule of law is I suggest clear, and it is an important principle that non-nationals, non-citizens, should not be the subject of adverse treatment, save on grounds directly related to their immigration status.

MY **FOURTH** SUBRULE: the law must afford adequate protection of fundamental human rights. Now some distinguished authorities would challenge that proposition, and it has been argued that the rule of law has really nothing to

do with fundamental human rights. It is to do with the promulgation of clear laws which must be observed. I would, for my part, take issue with that view. The preamble of the Universal Declaration of Human Rights assumes that human rights are protected by the rule of law, and I could not, for my part, accept that a state which savagely repressed or persecuted a minority complied with the rule of law simply because the transport of the persecuted minority to the concentration camp or the exposure of female children on the mountainside was the subject of detailed laws duly enacted and scrupulously observed.

This is, of course, an extremely difficult area, since there is no universal standard, and differing views are held as to what fundamental human rights comprise. One can only point to the death penalty as an example. Even the most fundamental of rights are blurred at the edges, but within a given society I think there is ordinarily some measure of agreement where the lines should be drawn. The courts are there to draw them, and the rule of law must— should— require legal protection of human rights which within a given society are regarded as fundamental.

FIVE. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve. Now this rule is not in any way directed to prejudice arbitration or other means of resolving disputes, but it does, I think, recognize that if everybody is bound by the law, they must in the last resort be able, if they've got an arguable case or defence, to assert or advance it in court. Given the expense of litigation in common law systems, this is a real challenge. I think it is a challenge that to some extent you in the United States have gone further to solve than we have with contingency fees, acceptance of *pro bono* obligations, class actions and so on, although it is fair to say that vigorous efforts have been made, not least by the Attorney General himself, to promote the same sense of obligation in *pro bono* litigation as you recognise, but we all know the jibe about justice being free to all like the Ritz Hotel. It is a reproach I think that we owe a very serious duty to try to repair.

SIX. Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith for the purpose for which the powers were conferred and without exceeding the limits of such powers. This will be seen by many as the core principle of the rule of law, and it is indeed fundamental. It is based, I think, on a simple proposition that neither the electorate nor representative democratic institutions ever give any government a blank cheque to do whatever the government or any officials want. The limits may be broad, but they are always there, and the function of the courts is to insist on their observance.

This, of course, leads to tension, which the Attorney General *[who spoke earlier]* has already acknowledged. He has also acknowledged that the rule of law requires that a decision should be complied with unless it is overruled or set aside or reversed by legislation. But this is, of course, a lesson of particular importance, as previous speakers have recognized, at a time such as the present, when governments, for good and wholly understandable reasons, want to go to the very limit of what they believe to be their lawful powers, and it is at this point that the role of the courts is, as I think, particularly critical in saying, "Thus far and no further."

LAW MUST AFFORD ADEQUATE PROTECTION

RULE **SEVEN.** Adjudicative procedures provided by the state should be fair and public. As an American judge quite recently said, "Democracies die behind closed doors." There will be no debate about the general desirability of publicity. Fairness in civil proceedings I think can ordinarily be achieved. It can become more problematical in formal criminal proceedings and other contexts, such as deportation, precautionary detention, recall to prison, refusal of parole, where a decision may expose a person to severe adverse consequences as a result of the decision made. That the decision-maker should be independent and impartial is so generally accepted as not to need emphasis.

What, then, are the core principles of fairness? That no final adverse decision should be made until the party has had an adequate opportunity to be heard. That a person potentially subject to any liability or penalty should be adequately informed of what is said against him. That the accuser should make adequate disclosure of material helpful to the other party or damaging to itself. That professional help should be available where the person cannot adequately protect his interests without it. That there should be an adequate opportunity to prepare answers to what is said on the other side. That a person charged with criminal conduct should be presumed innocent until guilt is proved.

The main problems, I think, have occurred outside the strictly criminal sphere, particularly in a situation where the state is in the possession of sensitive information, which it wishes to lay before a decision-maker, but which it is unwilling to disclose to the person at risk, at risk that is of an adverse decision, or to that person's legal representative. Thus the person at risk does not know the detail of what is said against him and is obviously hampered in replying. Parliament has described certain situations in which this may be done, identifying the situations in some detail and providing safeguards. Courts have accepted this situation as unfortunate but necessary.

More difficult I think is the situation where such a procedure is employed without express authority of statute, the subject of a recent divided opinion in the House of Lords. This is, as the Attorney General pointed out, a difficult and uneasy area. Any adherent of the rule of law must, I think, be uncomfortable, and I think at the very least we should all acknowledge a duty to scrutinize with the utmost care any departure from what we would all accept as ordinary and familiar principles.

I am not sure if my **EIGHTH** rule is contentious or not. It is that the rule of law requires compliance by the state with its obligations in international law. In hoping that it is not contentious, I can pray in aid an address by the first President Bush to a joint session of Congress in 1990, when he said that: "A new world is emerging, a world where the rule of law supplants the rule of the jungle, a world in which nations recognise the shared responsibility for freedom and justice, a world where the strong respect the rights of the weak. America and the world," he said, "must support the rule of law and we will."

The present President in his State of the Union address in January 2002, with an obvious eye on the international scene, spoke in somewhat similar vein: "But America," he said, "will always stand firm for the non-negotiable demands of human dignity, for rule of law, limits on the power of the state, respect for women, private property, free speech, equal justice and religious tolerance."

Core Principles *of* Fairness

British statesmen I think would echo these sentiments, but one has to acknowledge that it has not always been like that. At the outbreak of war in 1914 the Chancellor informed the German Reichstag that what Germany was doing was a clear breach of international law, but he said it was necessary and the situation would be rectified "once," he said, "we have achieved our military aims." In response, the British adopted a blockade of extremely doubtful legality, defending which the Prime Minister of the day, himself a very distinguished lawyer, expressed some impatience with what he called "juridical niceties."

Can law exist without democracy?

The Suez expedition or invasion of 1956 teaches important and valuable lessons. I am not going to express any view whatever about the lawfulness of the invasion of Iraq, but I would draw attention to four differences in this country between what happened in 1956 and what happened in 2003. First, in 1956 the Prime Minister of the day virtually acknowledged that what was being done was unlawful, and, echoing Mr. Asquith, with much less justification, made reference to "legal quibbles." Knowing that the very distinguished legal adviser to the Foreign Office, later a judge of the International Court of Justice and the European Court of Human Rights, had consistently advised that the proposed action was unlawful, he gave directions that he should not be informed of what was going on and issued an instruction to keep the lawyers out of it. No such remarks can be attributed to any leading statesman in this country in 2003.

The second distinction which I would mention is that in 1956 the Law Officers, whose duties it is to advise the government, were never formally consulted on the lawfulness of going to war. The government relied on the opinion of the Lord Chancellor, who in turn relied on a footnote in an article written by Professor Waldock. Professor Waldock was alive and well and living in Oxford. There was some doubt as to what the footnote meant, but nobody asked Professor Waldock, who would have disowned, it appears, the government's interpretation, had he been asked.

The third difference is that in 1956, despite recent memories of Nuremberg, the armed forces did not ask for an assurance that what was proposed was lawful. In 2003 in this country they did and received such an assurance.

The fourth distinction is that although in 1956 the Law Officers were never formally asked to advise, in fact, they did so. They advised that they could find no legal justification for what was proposed, but nonetheless said that they supported publicly and privately what was being done, and one of them apologized to the Prime Minister for giving too much weight to what he described as "legalistic considerations."

It would no doubt be naive to suppose that even today that major democratic states do not on occasions resort to legal casuistry to justify the use of force in doubtful circumstances, but I do not think, save perhaps *in extremis*, the government of such a state would today embark on a course which it acknowledged to be blatantly unlawful, or that those advising the government of such a state at a senior level would publicly support action for which they could find no legal justification.

In conclusion, there has been a debate whether the rule of law can exist without democracy. It has been argued that it can. To my mind that

LORD BINGHAM, con't from page 23

contradicts the fundamental premise underlying the rule of law. It depends on an unspoken but fundamental bond between the individual and the state, the governed and the governor, by which both sacrifice a measure of the freedom and power they would otherwise enjoy.

The individual living in society accepts that he or she cannot enjoy the unbridled freedom of Adam in the Garden of Eden before the creation of Eve and accepts the constraints imposed by laws properly made because of the benefits which on balance they confer.

The state, for its part, accepts that it may not do at home or abroad all that it has the power to do, but only that which laws properly made authorize it to do. I believe and I hope that most of you believe that the rule of law so defined, although a constitutional principle, is, in fact, a principle of such manifest and fundamental importance as to animate not only our professional lives, but our lives as members of our respective societies.

Thank you very much.

College Elects New Officers

David J. Beck of Houston, Texas was installed as the College's new president in London succeeding **Michael A. Cooper** of New York, New York

Mikel L. Stout of Wichita, Kansas is the incoming President-Elect

Joan A. Lukey of Boston, Massachusetts, Secretary

John (Jack) J. Dalton of Atlanta, Georgia, Treasurer

New Regents

Paul D. Bekman of Baltimore, Maryland

Michel Decary, Q.C. of Montreal, Quebec

Bruce W. Felmly of Manchester, New Hampshire

Robert A. Goodin of San Francisco, California

John S. Siffert of New York, New York

Awards, Honors and Elections

Honorable Ralph Artigiliere of Bartow, Florida has received the William M. Hoeveler Judicial Award given annually by The Florida Bar Standing Committee on Professionalism. Artigiliere is a judge on Florida's 10th Circuit. The award honors Hoeveler, a Judicial Fellow and a Senior U.S. District Court judge who enforced the Everglades cleanup for fifteen years and presided over the drug-smuggling trial of former Panamanian leader Manuel Noriega.

Charles L. Becton of Raleigh, North Carolina received a Pursuit of Justice Award from the American Bar Association Tort Trial and Insurance Practice Section. The award is given quarterly to recognize civil litigation lawyers who have shown outstanding merit and excelled as ensuring access to justice.

Sheila Block of Toronto, Ontario has been honored as Ontario Bar Association Litigator of the Year. She follows Past President David Scott and Earl Cherniak as the only other two trial lawyers so honored.

Donald Bayne of Ottawa, Ontario has received the G. Arthur Martin Criminal Justice Award from the Criminal Lawyers' Association, Toronto.

John A. Tarantino of Providence, Rhode Island has been re-elected as president of the Rhode Island Bar Foundation. He received the 75th Anniversary Alumni Award from Boston College Law School for service to the legal profession and the Ralph P. Semonoff Award from the Rhode Island Bar Association for Civility and Professionalism.

John J. "Jack" Chester has received the 2006 Honorary Life Fellowship Award from The Ohio State Bar Foundation. The award is given annually to the attorney whose career has exemplified dedication to the goals and values sought to be furthered by the Foundation, a lifetime of service to the public and integrity, honor, courtesy and professionalism.

Frank A. Ray of Columbus, Ohio has been chosen to receive the Distinguished Alumnus Award for 2006-07 from The Ohio State University Mortiz College of Law. The award will be given September 23 at the College's Barrister Club.

Julius L. Chambers of Charlotte, North Carolina has received the 2006 North Carolina Chief Justice's Professionalism Award. Chief Justice Sarah Parker presented the award to Chambers for "his selfless dedication and commitment to the principles of professionalism."

Broadus A. Spivey of Austin, Texas has received the inaugural Lifetime Achievement Award from the Texas Trial Lawyers Association. Hereafter it will be known as the Broadus A. Spivey Lifetime Achievement Award.

George C. Chapman of Dallas, Texas has received the 2007 Heath Award presented by the Dallas County Medical Society. The award is given annually to a law person who has provided outstanding leadership and service to medicine and the community of Dallas.

Joan A. Lukey of Boston, newly elected Secretary of the College, has received the Boston College 2006 Alumni Award of Excellence in Law. It is the third honor from the university for Lukey. She received the St. Thomas More Award in 2003 and the Founder's Medal in 2004.

Her Majesty's Attorney General Addresses London Meeting

URGES ATTACKING TERRORISM THROUGH THE CRIMINAL COURTS

"Traditionally in the United Kingdom, United States and Canada," observed Lord Peter Goldsmith, Lord Goldsmith of Allerton, QC, addressing the College's London meeting, . . . "we have shared a common status as liberal democracies in law-based states."

Lord Peter Goldsmith

"We approach our problems with a shared belief in the rule of law and the due process of law. Nothing has tested our commitment to these ideas, challenged our traditional view of law and due process, forced us to re-examine some of the concepts we had regarded as the bedrock of our society, as the challenge we have faced in the last five years from terrorism." Though he made no reference to the policies of any government other than his own, his remarks were clearly not unrelated to how the issues he discussed have been addressed in the United States and Canada.

A former Chairman of the Bar of England and Wales, Lord Goldsmith, Her Majesty's Attorney General, the chief legal adviser to the Government, had been a delegate to the 1999-2000 Anglo-American Legal Exchange sponsored by the College. Made a Life Peer in 1999 and a member of the Privy Council in 2002, his career, as Past President Charles Renfrew noted in introducing him, has included judicial experience as a Crown Court Recorder and a Deputy High Court Judge and has been marked by a devotion to the law as a profession, and not a trade, to human rights and to *pro bono* service.

After commenting on the common political and legal heritage of the common law countries on both sides of the Atlantic, he alluded to his government's search for more effective ways of dealing with commercial fraud by studying how other countries deal with this type of crime. He also addressed the issue of appropriate extradition of those accused of international crime (an issue raised, though he did not allude to it directly, by the United States' attempt to extradite British citizens accused of complicity in the Enron debacle).

He then moved on to a recurring theme among many of those who addressed the London meeting, the tension between combating terrorism and the preservation of human rights. Expressing the conviction that the best method of tackling terrorism is through the criminal courts, he went on to say, "Terrorists can be more difficult to find and evidence more difficult to track down, especially as we often have to move before plots are actually implemented. Law enforcement agencies and prosecutors, therefore, need all the tools that we can provide."

"We need," he asserted, "to keep examining how we can produce into court evidence of telephone calls which have been intercepted." At the moment, such intercepts are by statute not

admissible under British law. He went on to note that, "[T]here are good reasons for caution. We must balance the advantages to law enforcement against any risk of prejudicing the capabilities of our security and intelligence agencies through the compulsory disclosure of secret methods or capabilities. We must also avoid a situation in which the scarce resources of our agencies are unproductively channeled into procedures which ultimately achieve no real benefit for anybody, such as requiring the transcription of many hours of irrelevant conversations, particularly in foreign languages. Against those causes for caution there is potential benefit in both terrorism *and* serious crime."

Referring to the experience of the United States in prosecuting organized crime, he observed, " The top organized criminals are adept at not getting their hands dirty and not leaving evidential trails that can be used against them, but they have to communicate, and evidence gained from intercept can provide the proof of their involvement that would otherwise be missing. Intercept evidence will often provide strong cases against their lieutenants and therefore play an important role in leading to them giving evidence against their bosses in return for discounted sentences."

He expressed the hope that Britain will be able to draw on the United States experience to find solutions to the legitimate concerns of security, but also to enable prosecutors to use such evidence in its courts. He went on to express the fear that failure to solve this problem will foreclose a key tool for tackling both organized crime and terrorism.

Returning to the larger subject of combating terrorism, he said, "Striking the right balance is far from easy. . . . In the United Kingdom the Government is constantly being criticized both from left and right for striking the wrong balance. . . . [T]here are no obvious right answers. We must expect there will be a wide divergence of views on such difficult issues at every level of society, including within the judiciary. 9/11 was a heinous attack, not just on the United States, but on all civilized countries. It wasn't the first terrorist outrage, of course, to have occurred in which innocent people were targeted and killed, but I do believe that the attack on the Twin Towers, because of its enormity, the sophistication of planning, the ambitions of those behind it, has changed the landscape forever. So it is against that background and the subsequent atrocities that we have had to consider the most appropriate steps to protect our citizens from the threat posed by terrorism."

Noting that the primary responsibility for this falls on the Government, he observed that the response of the British government has been through Parliamentary legislation. The criminal laws were strengthened to create new offenses specifically tailored to meet al-Qaeda type terrorism. For example, the Terrorism Act of 2006 provides for the offenses that include encouragement of terrorism, including by means of glorifying terrorists, disseminating terrorist publications or attending terrorist training camps.

The hardest challenge, he noted, and the one that has led the Government into most legal controversy has been to deal with those it could not prosecute, dangerous nationals who could not be deported who have been detained and, more lately, restrictions placed on such individuals, subject to court scrutiny.

Lord Goldsmith singled out three principles his Government has sought to apply : "**First** and foremost," he asserted, "we have upheld our respect for the rule of law. The rule of law is at the heart of democratic systems. . . . So we have always striven to ensure that our actions are justified and supported by the law. Whether we have always got it right or not is a different matter, but we are clear too that as well as subjecting ourselves to the democratic process, to Parliament and the people, we accept the critical role of the courts in reviewing our action. Where courts have ruled, then we recognize that it is part of the rule of law

that we must obey." He noted, for instance, that when the House of Lords ruled that the power the Government had asserted in its 2001 Act was not compatible with rights in the European Convention, the Government, though sorely disappointed by the decision, brought forward legislation to replace "in more modest terms what the Law Lords had disagreed with."

He observed that Britain has always tested its obligations and actions against its international duties, which calls above all for it to comply with international obligations in respect of individual human rights. As for Great Britain, this has meant compliance with the half century old European Convention which, stripped to its essentials, "remains a statement of all that democracy stands for." "The rights it confers," he continued, "are essentially . . . respect for life, prohibition from torture and degrading treatment, freedom from arbitrary arrest, fair trial, freedom of thought and association, religion and speech, of privacy and property. . . . I cannot believe it would be right to give up these fundamental values on which our societies are based in our struggle to meet the challenge of terrorism. These shared freedoms and values represent our democratic way of life. These are liberties which were hard won over the centuries. They are the very liberties that the terrorists would destroy. We cannot give them the victory they seek by the way we seek to combat their evil."

MAINTAIN COMMITMENT *to* VALUES

The **second** principle he articulated was that Great Britain should maintain its commitment to fundamental values and freedoms. "Under the Convention some rights are absolute," he noted. "They are so fundamental that there cannot be any compromise on them. We take the view that the prohibition on torture is simply non-negotiable. The right to trial I regard as another of those fundamentals. So we have rejected ideas of reducing the burden of proof for terrorism offenses, allowing secret evidence in terrorism trials."

The **third** principle is the need for the Government's actions to be precautionate and necessary to meet the threats we face. He repeated his position that "the prosecution of criminal offenses should be the first line of defense against those who would attack our country. Whilst we have introduced new ways of protection and prevention which the government has regarded as essential, prosecution will remain our first resort. Only where it is not possible will other options be considered. One such option are the restrictions and controls which I referred to previously, but before such an order can be made, the test of necessity must be met. There is provision for judicial scrutiny. For the more stringent orders, a higher level of judicial involvement is provided for, but only a court can make the order. I think that illustrates that proportionality requires that stronger safeguards should exist to ensure the appropriate use of the toughest sanctions."

In conclusion, Lord Goldsmith asserted "I believe we continue to have as much to learn from each other now as we have in the past. Fundamental rights must be protected if we are to preserve our democracies. The fact that the balance between security and fundamental rights has traditionally been struck in one way does not mean there may not be other approaches which it is proportionate and necessary to adopt to meet a new threat. We need to keep searching for those approaches, liaising, drawing on the experience of other democracies facing the same challenge from across the world. Finding this balance is a difficult task, but there is so much at stake that giving up is not an option."

Texas Criminal Defense Lawyer DeGuerin on

REPRESENTING THE UNPOPULAR CLIENT

"Maintaining Honor, Integrity and a Sense of Humor While Representing the Scum of the Earth and Others Falsely Accused."

Dick DeGuerin

"I thought," began Texas criminal defense lawyer, Dick DeGuerin, a Fellow, "about naming my speech 'Ethically Applied Advocacy under Challenging Circumstances,' but I thought the other was a little more catchy. What we have heard here today and what we heard yesterday was a celebration of the rule of law under challenging circumstances."

"What I do," he continued, "and what we who are criminal defense lawyers do is . . . represent people who aren't always very popular, people who are looked upon as the scum of the earth, as I said, pimps, prostitutes, politicians, and people like David Koresch and people like Bob Durst, people who are accused of the most dastardly, the most gruesome and terrible crimes. We are like gladiators. We go into court and we take the unpopular cause and we fight for it. Let me tell you in addition to the challenge and because it is a right thing to do, it is also fun. I enjoy it."

"I would like to start by remembering something that was said almost 200 years ago. . . . Lord Henry Brougham wrote this: 'An advocate in the discharge of his duty knows but one person in all the world, and that person is his client. To save that client by all means and expedients and at all hazards and costs to other persons and amongst them to himself' -- you know, we are not real popular -- 'is his first and only duty; and in performing that duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on, reckless of the consequences, though it should be his unhappy fate to involve his country in confusion.'"

Lord Brougham's client, Queen Caroline, was acquitted, though the evidence he had presented might have resulted in the King's forfeiture of his throne. "[W]hat he said," observed DeGuerin, "remains today as a standard for our duty to our clients."

DeGuerin went on, in a presentation illustrated by slides, to recount his representation of David Koresch, the prophet of the Branch Davidians, over eighty of whom died in a celebrated 1993 confrontation with Federal agents outside Waco, Texas, which DeGuerin described as a breakdown in which expediency replaced the rule of law.

The next case he described began with the discovery in Galveston Bay of a headless, legless, armless torso washing up on the shore. The evidence pointed to Bob Durst, who became DeGuerin's client. DeGuerin related in graphic detail how, using scientific evidence and expert testimony, he had persuaded a jury that the deceased, a notoriously irascible man whom his mildly autistic client had befriended, had died in a struggle over a gun the deceased was trying to discharge, that his client had panicked and, fearing that no one would believe him, had disposed of the body.

DeGuerin ended his presentation thus: "We tend to forget that under very challenging circumstances the poor and the wealthy, the despised and the politicians do not have a champion. We are that champion. We cannot allow the rule of law to be whittled away. We cannot allow due process to go the way of expediency. I am proud of what I do."

Lord Scott Of Foscote
INDUCTED AS HONORARY FELLOW

Lord Richard Scott

At its annual meeting in London, the College inducted as an Honorary Fellow Lord Richard Scott, The Right Honourable Lord Scott of Foscote, a Lord of Appeal in Ordinary, one of the group of twelve members of the House of Lords known more familiarly as the Law Lords.

He became the thirty-third leading member of the British bar and judiciary to be made an Honorary Fellow. The first, inducted in 1952, was the then Chairman of the General Council of the Bar of England and Wales, The Honourable Sir Godfrey Russell Vick. Indeed, four of the fifteen living Honorary Fellows from Great Britain were participants in the London program.

It has been the custom of the College from time to time to invite to Honorary Fellowship persons who, to quote its bylaws: "By reason of contributions to and accomplishments in the profession have attained a high degree of respect in judicial or other roles in the profession or in public service."

Richard Rashleigh Folliott Scott was born on October 2nd, 1934 in Dehradun, India, the son of English parents. At the time of his father's retirement in 1942 on account of ill health, he was a lieutenant-colonel in the Gurkha Rifles, in which he had served for 28 years. Retiring to South Africa, Lieutenant-Colonel C.W.F. Scott bought a dairy farm in the Natal Midlands, and Richard Scott attended school there. He graduated from the University of Cape Town in 1954 with a Bachelor's degree in Law with distinctions in Roman Law and in Native Law and Administration. He then earned a Bachelor's degree with First Class Honors and in 1958 an LLB First Class with Distinction from Trinity College, Cambridge. From 1958 to 1959 he was a Bigelow Fellow at the University of Chicago.

He was called to the Bar, Inner Temple, in November 1959 and became a Bencher in 1981. He practiced as a barrister in the Chancery Bar from 1960 to 1983. He "took silk," that is became Queen's Counsel, in 1975. From 1980 to 1983 he was Attorney General to the Duchy of Lancaster, in effect the law officer of the Duchy. In 1982 he succeeded Sir Andrew Leggatt, also an Honorary Fellow of this College, as Chairman of the Bar. In November 1983 he became a High Court Judge in the Chancery Division and in the intervening 23 years he rose steadily through the ranks of the judiciary. In 1987 he was appointed Vice Chancellor of the Duchy and County Palatine of Lancaster with responsibility for Chancery High Court litigation in the north of England. In 1991 he was appointed to the Court of Appeal as a Lord Justice of Appeal and became a member of the Privy Council.

Unlike their counterparts in the United States, respected senior members of the British judiciary are called upon from time to time to conduct inquiries into matters of public concern or, in the words of the contemporary press, "matters of public scandal." Lord Scott is one of those persons. In November 1992 he was appointed to conduct a government-sponsored inquiry into the sale of arms to Iraq in the 1980s, into the British Government's role in those sales and into the various prosecutions that arose from them. That Inquiry consumed over three years and produced a five-volume report weighing, according to the press, 17 pounds. That report, widely known as the Scott Report of 1996, strongly critical of his Government's role in the affair, evidenced what was described at the time as "a tough independent streak." In 1994, while he was still conducting this inquiry, Lord Scott was elevated to Vice Chancellor of the Supreme Court, that is the Senior Judge in the Chancery Division, a post that required him both to hear first instance cases in the Chancery Division and to sit on appeals in the Court of Appeal.

In 1995 Honorary Fellow Lord Woolf of Barnes filed his preliminary report and in 1996 his final report entitled Access to Justice, recommending major reforms to the civil justice system in England and Wales, and Lord Scott was appointed Head of Civil Justice, charged with the responsibility of implementing those reforms. Then in 2000 he was appointed a Lord of Appeal in Ordinary and became a member of the House of Lords, where he sits today.

He holds two honorary doctorates and is an Honorary Member of both the Canadian Bar Association and the American Bar Association. He chaired the British delegation to the recent Anglo-American Exchange, of which the College was the sponsor.

He and his wife, Lady Rima Scott, have lived since 1964 at Foscote in Northern Buckinghamshire. He is a noted equestrian, and he rides to work daily in the House of Lords on a bicycle.

On a professional level Lord Scott is an accomplished and honored member of the highest rank of the British judiciary. On a personal level he is a man who was described by a party to the most recent Anglo-American Exchange as "the most charming man I have ever met." *(Lord Scott's acceptance remarks are reported on pages 34-36.)*

Past President Ralph I. Lancaster, Jr.
Introducing Chief Justice John Roberts

Young enough to be the son of most of us on this dais, you are well suited to approach your responsibilities with an eye toward the challenges of the future. Musing on this resume, one is tempted to ask oneself, "How did I live so long and do so little?"

Bon Mot

The Director of Presidential Personnel. Now, that is the person in the White House who is responsible for all of the presidential appointments. That is the person who, with every appointment, makes eleven enemies and one ingrate.

Regent Charles H. "Chuck" Dick
Introducing Ambassador Robert Holmes Tuttle

Bon Mot

Sach Oliver of Bentonville, Arkansas and University of Arkansas Law School in Fayetteville won the 2006 George A. Spiegelberg Award in the National Trial Competition. In his acceptance speech he described first meeting the two young women who eventually won the team competition "They wanted to know some country sayings that might help them relate to the jury. The first one was, 'That dog won't hunt." These girls had no earthly idea what that meant. . . . The second was Harry Truman's, 'The buck stops here." . . . . We (Oliver and his co-counsel) advanced in the tournament, and after several rounds we met up with these same two young ladies in the semi-final round, and I will be darned if Courtney didn't stand up in her closing argument, point at me and say, 'That dog won't hunt." She continued with very powerful argument and at the very end walked over to our counsel table, touched it and said, "The buck stops here." . . . Here is something [learned]: never give advice to the opposing counsel, no matter how pleasant they are."

Sach Oliver, Bentonville Arkansas

Accepting the George A. Spiegelman Best Oral Advocate Award

I am fond of a piece of doggerel, the author of which is unknown, but which was collected by Jacob M. Braude, which goes as follows: "You can always tell a barber By the way he parts his hair You can always tell a dentist When you are in the dentist chair And even a musician -- You can tell him by his touch You can always tell a lawyer But you cannot tell him much." I hope you haven't considered it presumptuous of me to try to tell you much today.

Lord Goldsmith

At the conclusion of his remarks

Can I also add my welcome to that that I know that Lord Phillips, our Lord Chief Justice, will already have extended to you on behalf of the Judiciary, but offer a further welcome on behalf of Her Majesty's Government. You will be aware that the fact that we need separate welcomes to you from different people to cover both Government and Judiciary has only been necessary since earlier this year. Until then, and indeed for 800 years, perhaps some would say 1400 years, a single person, the Lord Chancellor, could have welcomed you as head of the Judiciary, as a Minister of the Government and indeed as Speaker of the Upper House of Parliament. For centuries he was the living embodiment of all three branches of government. I very much hope you do not think it shows undue haste on our part to have taken a mere 220 years to have spotted the concept of separation of powers in the United States Constitution. We do not like to do things too quickly in this country, as you know.

Lord Goldsmith of Allerton, QC

Her Majesty's Attorney General

COLLEGE PUBLICATIONS UPDATE

The Task Force Committee on Cameras in the Courtroom, chaired by former Regent Dennis R. Suplee, has published a paper entitled Cameras in the Courtroom, which has been posted on the College website. This paper, which explores then-pending legislative proposals and sets forth the arguments for and against allowing cameras in the courtroom, was received by the Board of Regents as a resource for those who deal with this subject, and not as a statement of position on the part of the College.

A paper prepared in conjunction with the recent Anglo-American Legal Exchange sponsored by the College has been published by the Virginia Journal of International Law. Co-authored by Honorary Fellow The Right Honorable Lord Scott of Foscote, Delaware Supreme Court Justice Randy J. Holland and Regent Chilton Davis Varner, the paper is entitled "The Role of 'Extra-Compensatory' Damages for Violations of Fundamental Human Rights in the United Kingdom and the United States." It can be found at 46 Va.J.Int'l L. 475 (2006)

ACTL FOUNDATION ISSUES REMINDERS

ACTL Foundation board chairman Stuart D. Shanor reminds Fellows that the Foundation accepts in memoriam gifts made in memory of a deceased Fellow. "I will personally acknowledge the gift to the family of the decident if the donor of the gift will furnish me the appropriate information," Shanor said.

The Foundation board also will gratefully receive suggestions from the Fellows of worthy projects that contribute to the administration of justice, the ethics of the profession, professionalism advancement and improving the trial practice. Suggestions may be forwarded to Shanor who will then have a board member contact the Fellow to discuss the matter and to obtain information about the suggested recipient.

FEDERAL DISTRICT COURT ADOPTS COLLEGE CODES

By order entered September 14, 2006, the United States Court for the District of Puerto Rico adopted the College's Code of Pretrial Conduct and its Code of Trial Conduct and ordered them posted on the Court's website. The order, entered by Chief Judge Jose Antonio Fusté, asserted that the adoption of the Codes "will represent a positive step toward improving and elevating standards of trial practice, the administration of justice, and the ethics of the profession."

LORD RICHARD SCOTT ADDRESSES ROLE OF THE JUDICIARY IN THE WAR ON TERROR

[Lord Scott of Foscote, in responding to his induction as an Honorary Fellow, described his view as a judge of the role of the judiciary in times of national stress. His remarks, somewhat edited, follow.]

"Lawyers in this country . . . have a common problem in recognizing and responding appropriately to the legal implications of the steps being taken by our respective executives to deal with the scourge of terrorism and the threat of it, the dark cloud that hangs over us all. . . . [W]e all share a common legal heritage.

"Both our countries are inheritors of the common law and we both share the demand for legal recognition and protection of individual rights and freedoms . . . that can be traced to the Magna Carta, signed in the 13th century by King John. Clause 39 of the Magna Carta declared, with a translation from the original into modern English, that: 'No free man shall be taken, or imprisoned, or dispossessed, or outlawed, or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him except by the lawful judgment of his peers or by the law of the land.'

"This ringing declaration had nothing whatever to do with democracy. The barons who forced King John's signature were not democrats, but it was an assertion of rights and freedoms of the people of the land, and it was followed some 400 years or so later by a civil war and many years of turmoil, including the execution of a monarch, in order to establish that the executive, in those days, of course, the monarch, may not make laws, may not change the law of the land except with the consent of the people expressed through a sovereign and independent Parliament.

"We do, of course, know that in times of great national emergency the freedoms guaranteed by the Magna Carta may be temporarily set aside. We know that the law of the land may be changed to permit executive encroachment into individuals' rights and freedoms. In the '39-'45 war, power to intern without trial was given by Parliament to our executive in this country and it was exercised against many persons of whom little more could be said than that they had German-sounding names. I understand that similar powers were given to the executive in the United States and were exercised in relation to persons in that country with Japanese-sounding names.

"But this power of internment without trial, exercisable by the executive where necessary in the interests of national security, was a power whose exercise under modern notions of jurisprudence was capable of supervision

by the judiciary. One of the greatest and most influential dissents in our jurisprudence deriving from that time came from Lord Atkin in the House of Lords in a case called *Liversidge v Anderson*, asserting the duty of the judiciary to satisfy themselves that the executive were acting lawfully and within the powers conferred by Parliament when subjecting anyone to internment without trial. It is an accepted principle of jurisprudence in this country, and I don't doubt in the United States as well, that individual rights and freedoms are entitled to protection by the courts under the rule of law and cannot be flouted simply because in the opinion of the executive national interests will be served by the flouting.

"Legislation enacted by a sovereign Parliament may in this country make inroads into those rights, but subject to any such inroads, the executive is bound by law to respect those rights and the judiciary is bound to enforce that respect. It is the duty of the judiciary to do so. These principles hold good I am sure, as I have said, in the United States, but with the difference that in the United States, Congress lacks the sovereignty of our Parliament and can only legislate in accordance with the provisions of the United States Constitution. I, for my part, regard that as a valuable protection, and I believe the time is approaching or perhaps has already come when we in this country should look for a similar protection to that afforded in your country by your written constitution, but that is a debate for another day.

"I hope you will forgive me for referring to principles with which everyone here will be very familiar, and I have done so because of the topicality that these principles have attained in both our countries, and because of the attack upon the judiciary's implementation of these principles that has become regrettably current in this country.

"The backcloth is, of course, the so-called War on Terror. The terrorist outrages that have taken place in both our countries and the threats or fears of repetition, have led to intense debate about the steps that can or should be taken in response to those threats.

"The steps that can be taken are circumscribed by the law and therefore by the judges whose duty it is to apply the law. That is what the rule of law means. . . . If the law is to be changed to allow additional executive encroachment upon individual rights and freedoms, it must be changed by whatever may be the constitutional means in the country itself. That too is what the rule of law requires.

"In this country there has been as a response to the terrorist scene, legislation making very serious inroads into fundamental rights and freedoms. We have had legislation, happily allowed to become defunct on account of its inconsistency with our treaty obligations under the European Convention on Human Rights, that permitted the indefinite detention of individuals on the suspicion of the Home Secretary that they presented a danger to public safety.

"This was indefinite detention, indefinite internment without trial. Those detained were not entitled to be told the information that had led to their detention, nor were they entitled to be told the source of that information. How could they deal with it? This legislation has received its quietus at the hands of the judiciary,

but been replaced by legislation of a less Draconian character that has not yet been tested fully before the courts....

"Now these extreme measures, whether of legislation or of executive, including police action, are presented to the public as necessary and justified in the prosecution of the war on terror and for the protection of the public, but . . . detained without trial are members of the public . . . . The argument must be, I suppose, that their rights and freedoms had to be sacrificed for the greater good, and that may happen in times of war and great national emergency, but it is a terrible sacrifice to demand of someone who is in no sense a volunteer, and in dealing with the threat of terrorism, there is undeniably a balance to be struck, and some freedoms may have to suffer.

"Some individuals may have to put up with some inroads into their freedoms and all for the greater good, but what must not be allowed to happen is the avoidance by the executive of the restraint of legality, of the restraint of the rule of law on what they can do and the steps they can take.

"There has never been a time since I became a law student in this country in 1955 when it has seemed more important for there to be an independent judiciary, able and determined to hold the executive to the rule of law and to insist on the availability of the justice system to protect individual rights against unlawful encroachment against those rights carried out by the executive in the name of public security or for any other perceived public good.

"In asserting that the basis of our common law culture is the recognition of the rights and freedoms of individual, I believe I am asserting a principle that every lawyer here today would consent to, and I find great comfort and support in numbers and in the knowledge that the lawyers and judiciary of the United States have the same commitment to the rule of law as do the lawyers and the judiciary in this country...."

Bon Mot

Lord Chief Justice Phillips
Welcoming the Fellows to London

I am not entirely sure that we deserve the warm friendship and support that you have always given us. In the days when our Sovereign purported to grant charters to found colonies on American territory, we did not treat you all that well. When we talk in this country of transportation of criminals, we tend to think of Australia. Not everyone knows that before we started transporting criminals to Australia, America was the preferred destination for these criminals. It was, apart from anything else, a much shorter voyage. Before your Declaration of Independence, we transported 30,000 convicted men and women to Maryland and Virginia. This led Benjamin Franklin to protest: "The instances of transported thieves advancing their fortunes is extremely rare, but of their being advanced to the gallows the instances are plenty. Might they not as well have been hanged at home?"

and Past Presidents honored committee chairs and past Regents at a Wednesday evening reception and dinner at the Royal Maritime Museum at the foot of the hill below the Royal Observatory, the site of the Prime Meridian, in Greenwich.

The tented opening reception on the grounds of Kensington Palace in London included a tour of a collection of the gowns worn by Princess Di, "the Peoples' Princess," on various public occasions. Some who wandered about the grounds in the gathering dusk came upon the hidden sunken garden that was her favorite place for quiet private meditation.

At the opening program session on Friday, the 15th, The Right Honourable The Lord Phillips of Worth Matravers, The Lord Chief Justice of England and Wales, an Honorary Fellow, welcomed the College to London, pointing out the many members of the British bar who had had a role in the founding of the American colonies. Like many of the speakers to follow, he closed by urging that the rule of law not become a victim of terrorism.

Indeed, the tension between the desire to bring to justice those terrorists bent on destroying their fellow men and adherence to the traditions of the rule of law shared by our three countries, Britain, Canada and the United States, was a thread that ran through many of the speakers' presentations. (The addresses of many of the program participants in London and Dublin are the subject of separate articles in this issue.)

Lord Phillips' welcome was seconded by Stephen Hockman, QC, Chairman of the Council of the Bar of England and Wales, the regulatory and representative body of the barristers in those countries.

The College inducted John G. Roberts, Jr., Chief Justice of the United States, as an Honorary Fellow. In an address laced with humor, he reached back to the days of John Marshall, who had done away with the British custom of rendering seriatim opinions in each case, and expressed the hope that his Court might again be able to find common ground on which it could issue more unanimous opinions.

The winning team in the National Trial Competition, Loyola Law School, Los Angeles, California, and the best oralist from that competition, Sach Oliver of the University of Arkansas School of Law, were recognized.

The Right Honourable The Lord Goldsmith of Allerton, QC, Her Majesty's Attorney General and a participant in the 1999-2000 Anglo-American Exchange, addressed from the point of view of the Executive branch of the British government the tension between the demands of combating terrorism and the need to adhere to the traditions of the rule of law.

Baroness Onora O'Neill of Bengarve, President of the British Academy, spoke on the philosophical underpinnings and practical applications of the doctrine of informed consent as it relates to medical research.

The Right Honourable The Lord Bingham of Cornhill, The Senior Lord of Appeal in Ordinary, the most senior of the Law Lords, an Honorary Fellow of the College who had chaired the British delegation to the 1999-2000 Exchange, closed the Friday morning program with an eloquent point-by-point analysis of what adherence to the rule of law requires.

After the Friday morning program the College entertained the delegates to the 1999-2000 and 2005-2006 Anglo-American Legal Exchanges at a reunion luncheon at the Connaught Hotel.

LONDON DUBLIN, con't from p37

On Friday afternoon, the College's Federal Criminal Procedure Committee presented a program exploring the measures taken in Britain in response to terrorism.

Reversing the usual order, the induction banquet took place on Friday night in the Great Room of the Grosvenor House, where David Beck of Houston, Texas succeeded Mike Cooper as president of the College and seventy-six new Fellows were inducted.

Responding on behalf of the new Fellows was Bernard Taylor, Sr. of Atlanta, Georgia, whose inspiring story of his journey from the streets of Chicago to a prestigious Atlanta law firm is the subject of a separate article in this issue of *The Bulletin.*

Retiring Regents Recognized

Saturday morning's program began with remarks by Robert Holmes Tuttle, United States Ambassador to the Court of St. James. The Right Honourable The Lord Scott of Foscote, Lord of Appeal in Ordinary and chair of the British delegation to the 2005-2006 Exchange, was inducted as an Honorary Fellow of the College. He chose to address the issues raised by the threat of terrorism from the vantage point of a senior jurist.

The Law School of the University of Manitoba, the winning team in the Sopinka Cup Competition, the Canadian National Trial Competition, and the best oralist in that competition, Anna Silver, were recognized.

Sir Sydney Kentridge, QC, an Honorary Fellow of the College, then spoke on "Judges and the Executive in England: A Necessary Tension?" His remarks centered on the fight against terrorism, in his case from the perspective of a senior member of the British bar.

David Pannick, QC, of Blackstone Chambers, London, delivered an address entitled "The Judgment of the Nuremberg War Crimes Tribunal: 60 Years On."

The last speaker on the Saturday morning program was Dick DeGuerin, a Fellow from Houston, Texas, who had represented both the Branch Davidians in their celebrated 1992 confrontation with the United States government and mildly autistic Bob Durst, who had accidentally killed an acquaintance, then panicked and deposited his dismembered body in the Gulf of Mexico. His address was entitled "Maintaining Honor, Integrity and a Sense of Humor While Representing the Scum of the Earth and Others Falsely Accused."

Retiring Regents, Albert D. Brault, Rockville, Maryland; John L. Cooper, San Francisco, California; Brian P. Crosby, Buffalo, New York, and Gregory P. Joseph, New York, New York were recognized for their years of service to the College, as were the retiring committee chairs.

Following tradition, the new inductees and their spouses and guests were entertained at a luncheon at Lincoln's Inn, where Past President James W. Morris, III, Richmond, Virginia treated the honorees to an account of his view of the College.

The London meeting ended with a reception at Somerset House, which has been transformed into

one of Europe's leading centers for culture and the arts. As the Fellows and their guests alighted from buses, they were ushered into a paved courtyard large enough to accommodate several football fields, the centerpiece of which was a dramatic water sculpture. There, two singers serenaded them from a balcony with operatic arias. Fellows and their guests mingled in the tents that ringed the plaza dispensing cocktails and hors d'oeuvres and wandered through the galleries in the Somerset complex, which houses works of art, including a huge collection of antique snuffboxes. A new exhibit, *Bejeweled by Tiffany,* traced the artistic products of that world-renowned jeweler through history.

Fellows gather for Saturday reception at Somerset House

The meeting ended on a tragic note. While most of the Fellows and their guests were enjoying their last evening in London, one of our number, Kevin Colleran of Lincoln, Nebraska, who had chosen to go jogging rather than attending the reception, tragically suffered fatal injuries when he was struck by a bus on a London street.

DUBLIN

Those Fellows who went to the follow-up meeting in Dublin had Sunday and Monday to explore Dublin and the surrounding countryside on their own. Those who arrived early enough on Sunday enjoyed the post-game celebration of fans from County Kerry, the winner of the Irish football finals, the Irish counterpart of our Super Bowl, which was played that afternoon in Dublin.

After an opening reception Monday evening at the Royal Hospital Kilmainham, the participants were dispersed to various venues around the city for dinner. Those who were privileged to dine at the Kings Inn, the historical counterpart of the Inns of Court in London, were introduced to snuff, presented in a silver snuffbox and deposited in a pinch on the back of one's hand, from which it could be inhaled.

O'Reilly Hall on the campus of University College Dublin was the scene of the Tuesday morning program, which began with an address by The Honorable Mr. Justice John L. Murray, Chief Justice of Ireland, a former member of the European Court of Justice, who took as his text the impact of globalization on the development of law.

He was followed by The Honorable Rory Brady, Attorney General of Ireland and a member of the Permanent Court of Arbitration at The Hague. Brady spoke on the unique historical development of arbitration in Ireland from pre-Christian Celtic settlement times to the present.

John Hume, honored with the 1998 Nobel Peace Prize, the Ghandi Peace Prize and the Martin Luther King Award for his role in bringing about a peaceful solution to the conflict in Ireland as it was embodied in the Good Friday Agreement of 1998, addressed the principles of conflict resolution and our need to create a world free of major conflict.

Dr. Anne Fogarty, Professor of James Joyce Studies at University College Dublin, spoke on the influence of a strand of images in Irish history on the writing of James Joyce, the pre-eminent Irish writer,

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in a lecture she entitled "A Little Green Flag: Joyce, Parnell and the Trauma of Memory."

The morning program ended with a good-humored presentation by barrister Dermot Gleeson, a former Attorney General of Ireland and Chairman of the Allied Irish Bank, which he entitled "The Angst of the Advocate: A Universal, Or Purely Local Condition?"

In the afternoon, a delegation of the College's leadership was received at Áras an Uachtaráin, the 18th Century Irish White House, by President Mary McAleese, the first president of the Republic of Ireland to be born in Northern Ireland. A law professor and a member of the bars of both Northern Ireland and the Republic of Ireland, she is in her second term as President.

The Dublin program ended with a farewell dinner in Dublin Castle, followed by after-dinner entertainment in Castle Hall by Liam Clancy, a pair of Irish folksingers. At the end of the evening, Nobel Laureate John Hume made his way to the stage, borrowed a microphone from the entertainers and closed the evening, and the conference, with an impromptu pitch-perfect rendition of *Danny Boy.*

Irish President Mary Mc Aleese (right forground) receives College delegation (left to right:) College Secretary Jack Dalton, Marcie Dalton, Jane Dee, President David Beck, Judy Beck, Past President Michael Mone and Margie Mone.

Bon Mot

Past President E. Osborne Ayscue, Jr.
Introducing Lord Scott of Foscote

When she heard that I was to introduce him, one lady of Lord Scott's acquaintance exclaimed, "You do know that he rides a bike, don't you?" Another with whom I consulted to confirm that he does indeed ride a bicycle through London traffic to work in the House of Lords added, "And he does not wear his helmet!" I will leave it to you to guess which of those two informants was his wife.

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Fox hunting and its adherents have not always enjoyed a good press in this country. Some years ago the New Statesman carried an article about people who go fox hunting. The article said this. I quote: "The hunting fraternity are notoriously lascivious, and in the season the night air of Melton Mowbray is loud with the sighs of adulterers." Melton Mowbray is in the middle of Leicestershire. It is in the middle of the corn country, the cream of English hunting country. . . . With perhaps a somewhat similar thought in mind Mr. Soapy Sponge, who I expect most of you will know is the eponymous hero of Mr. Sponge's Sporting Tours, a great novel by Certes, said this: "Women", he said, "never look so well as when one comes in wet and dirty from hunting." So one may take it that in Victorian times, the time when Certes was writing and putting these words into the mouth of Mr. Soapy Sponge, fox hunting was the equivalent of what we would now use Viagra for.

Lord Scott of Foscote
On Foxhunting

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My wife and I have a bull terrier, to whom we are sincerely attached. She is a lovely dog. She is very friendly, over-friendly with strangers, loves children, but she has one particular foible, and that is she is particularly jealous about her bones. Anyone who comes between our bull terrier and her bones is asking for serious trouble. The bones in our garden belong to her, and nobody else is allowed a bite. Well, now I had the privilege, as all of you did, of being here yesterday and listening to the addresses of Chief Justice Roberts, of our own Chief Justice, Lord Phillips, of Lord Bingham, and I listened to their brilliant, convincing exposition of the problems facing the legal systems and the lawyers in both our countries as a result of the terrorist atrocities to which both our countries have been subjected. Now, ladies and gentlemen, I felt a little bit like my bull terrier. That was my bone. I hope you will forgive me if, jealous of my bone, like my bull terrier, I give it a nibble or two as well.

Lord Scott of Foscote

Bon Mot

FELLOWS TO THE BENCH

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

STEVEN L. BELL
State of New Mexico District Judge

JOHN S. BRYANT
U.S. Magistrate Judge,
Middle District of Tennessee

EDWARD C. CHIASSON
Court of Appeal for British Columbia

GAIL M. DICKSON
Supreme Court of British Columbia

ANDREW J. GUILFORD
U. S. District Court
in Orange County, California

FRANK J.C. NEWBOULD
Superior Court of Justice for Ontario

WILLIAM B. SMART
Supreme Court of British Columbia

KEITH STRONG
U.S. Magistrate Judge in Montana

MARTHA LEE WALTERS
Oregon Supreme Court

THOMAS D. ZEFF
Stanislaus County
Superior Court in Modesto, CA

Letters to the Editorial Board

Thank you for the magnificent report on FELLOWS REPRESENTING GUANTANAMO DETAINEES (Summer 2006). What a great service to our country George Daly and Jeff Davis have rendered and are rendering; and I also suggest that your publication of this stirring report in such a prestigious publication is a major contribution by the College.

— Charles P. Storey, Dallas, Texas

I just received the Summer 2006 issue of the Bulletin and couldn't resist saying how that publication has improved . . . . It is well organized, appealing in appearance, enlightening, and enjoyable to read. As a result, it is now truly something to look forward to receiving. With reference to the latest issue, I am especially appreciative of the wonderful article about the National Trial Competition and the upcoming regionals. It is laid out in such a way that it catches the reader's attention, leaves the impression that the competition is truly important not only to the students but the College as well, and is bound to result in greater participation by the Fellows. As the past chair of the National Trial Competition Committee, and one who is still committed to that competition, I appreciate what you have done to encourage participation in the regional competitions.

— Hon. Phil Garrison, Springfield, Missouri

Ambassador Tuttle Addresses

UNITED STATES-GREAT BRITAIN RELATIONS

Ambassador Robert Holmes Tuttle, United States Ambassador to the Court of St. James, opened the Saturday morning program at the annual meeting of the Fellows in London. The former Director of Presidential Personnel in the Reagan White House, he was appointed to the ambassadorship in 2005.

In his opening remarks, Tuttle noted that in 2004 there were 2.4 million Americans visiting Great Britain for conferences and business meetings and almost 2 million more came for education and vacations. In 2005, 18,000 such visitors were American officials from federal, state and local governments. In the past year the President had come to the United Kingdom once and the Secretary of State four times.

Ambassador Tuttle

The United States currently accounts for half of all the international businesses establishing themselves in England, and United States companies add $30 billion annually to London's gross domestic product and employ nearly a quarter of a million people.

Expressing concern that the United States had never ratified the Extradition Treaty of 2003, which was intended to correct an imbalance in the standard of proof necessary for extradition, he noted that the United Kingdom had been honoring the treaty for three years, and the fact that the United States' Senate has not yet ratified it has become an unnecessary point of discord. In particular, the extradition of three employees of Nat West to the United States to face charges arising from the Enron implosion had manifestly been a source of friction between the two countries.

Noting that the President who appointed him understood the importance of a base of understanding between the two countries and had asked him to make public diplomacy a priority, the Ambassador reported that he and his wife had been on over 25 trips within the United Kingdom since arriving the previous year. They had met with students, stockbrokers, religious and business leaders, country music fans, conductors, engineers and artists, among others.

"Of course, we do not always agree with one another," he said. "I have faced some tough questions, and I have no doubt that that will continue. But even if we differ in approach or tactics, I feel that we consistently agree that the relationship between the United States and the United Kingdom is crucial. It is clear to everyone I meet that the world needs a strong transatlantic partnership if we are to deal with the issues that face us all over the globe, and I think that's why organizations such as yours are so important and the work on the specific issues that sometimes arise between our two countries."

"We call it," he continued, "thanks to that great wordsmith Winston Churchill, the 'special relationship,' but that's not some kind of a magic title. To me the special relationship is about people, a weaving together of diverse and disparate interests into a unique fabric, one that becomes richer and stronger for the differences in texture and pattern we all contribute."

Referring to the legal exchanges that the College has sponsored and to our periodic meetings in London, he concluded, "I hope you will also continue to consider this part of your work, to participate in the endless sequence of events that bring together people and ideas and really ultimately create the fundamental canvas on which we will all paint the transAtlantic relationship of the future."

Bon Mot

Had you asked me ten years ago if I ever saw me attending an event such as this in recognition of an award such as I have received, I would surely have said, "No.". . . I attended a high school for performing arts, so instead of taking chemistry, calculus or physics, I took classes in theatre, dance and music. I played Desdemona in Othello, sang alto two in the chamber choir and formed and choreographed for a dance company. Of course, like any petite, self-conscious female teenager, I played the tuba in band. Even on stilts as the ringleader at circus camp, law school certainly was not on my horizon. Nevertheless, as you all know, things change. Due to artistic differences, and after only one bar mitzvah performance, my ladies-only barber shop octet dismantled. My application . . . to Juilliard never got filled out, and my tuba, well, that thing was just too heavy to carry around, so I let it go. I didn't expect to place myself here. Looking back now, however, I can see a lot of parallels between my goals as a high schooler and my achievements now as a law student. Now, law, and particularly litigation, seems far less of a stretch for me. In high school I wanted to appear on Broadway, act with conviction and win the Oscar or a Tony. Now I live on Broadway--West Broadway--in Vancouver, I argue for or against conviction and I have won a great award, for which I get to deliver this acceptance speech, and I appear on not one but three big screens. So it's pretty close I'd say.

Sopinka Cup Best Oral Advocate Anna Silver

Explaining how she got to law school

Some tension there must be between judiciary and executive, but surely verbal assaults such as these create an unnecessary and unfortunate degree of tension. I do not refer to any personal discomfort the judges may feel of these criticisms. I do not think that the judges lose any sleep over them, either at night or in the afternoons.

Sir Sydney Kentridge

Addressing Attacks on the Judiciary by Members Of Parliament

I sat outside for the first day. . . . The FBI would not let me go inside. They said they were afraid I would be kidnapped and held for ransom. I said, "Look, these guys are religious. You might think they are religious nuts, but they are educated. They know the FBI would never ransom a lawyer."

Dick DeGuerin, FACTL

Describing his representation of the Branch Davidians at the Waco standoff

[B]efore I came here I made a little effort to trace my roots and to figure out where I would be in the Ireland of today. So I used, of course, Google, and I went in and I Googled my name, I went in and I put in "Ireland," "Monaghan," "Mone" (My family came from County Monaghan) and up came the Clontibret Gaelic Football Club. I couldn't figure out why that was, and then I realized that the roster contained about ten Mones. They had little biographies and I said to myself: "I wonder if any of these are related to me?" So I went in and I Googled on Fergus Mone, and it had a little biography of him and at the end it said: "A typical Mone, a know-it-all." We are not waiting for the DNA tests.

Past President Michael E. Mone

On his Irish ancestry

REGENTS APPROVE POSITION PAPER ON JUDICIAL INDEPENDENCE

Responding to repeated threats to the independence of the judiciary, both federal and state, the Board of Regents has adopted a statement of policy entitled ***Judicial Independence: A Cornerstone of Democracy Which Must Be Defended.***

Drafted by an ad hoc committee chaired by **Robert L. Byman**, of Chicago, this paper is intended both to set forth the College's position on the subject and to provide a basis for action at the state, province and national level whenever a threat to judicial independence manifests itself.

This paper lays out the fundamental principles of judicial independence as reflected in the United States in the Declaration of Independence, in the Constitution and in the Federalist Papers. It then goes on to identify some of the more common manifestations of threats to judicial independence and to identify the sources of such threats, including the public and the legislative and executive branches. The document ends with an admonition both to the College and to individual lawyers:

"Any perceived threat to judicial independence should summon the legal profession to action. Lawyers must constantly remind themselves that judicial independence is critical to a free society and must educate others who may have lost sight of that. Lawyers must recognize genuine threats to judicial independence and, when they arise, call attention to them and confront them.

"Beyond working to preserve a sound, fair and impartial court system, assaults on judicial independence must be addressed, both by lawyers as individuals and by the professional organizations they have created. And they must be addressed in a way that will both educate the public and meet the threat.

"Consistent with the purposes for which it was created, it is the policy of the American College of Trial Lawyers to undertake to address in an appropriate manner threats to judicial independence wherever they manifest themselves.

"The professional obligations of lawyers, individually and collectively, both to our system of justice and to those who serve it on the bench demand no less of us."

This document can be read and downloaded from the College website, www.actl.com.

FELLOWS IN PRINT

Steven J. Harper of Chicago is the author of ***Crossing Hoffa: A Teamster's Story***, published in June 2007 by the Minnesota Historical Society Press/Borealis Books.

STUDENT WINNERS HONORED IN LONDON

Winners of the National Trial Competition and the Sopinka Cup Competition were honored at the Annual Meeting in London, along with the Best Oral Advocates in each contest.

Kimberly Greene and **Courtney Yoder** of Loyola Law School in Los Angeles won the Kraft W. Eidman Award as the winning team in the National Trial Competition. **Sach Oliver** of the University of Arkansas Law School was the George A. Spiegelberg Award winner as Best Oral Advocate. (A portion of his remarks are included elsewhere in this issue.)

Eric Hachinski of the University of Manitoba in Winnipeg represented the winning team in the Sopinka Cup. His co-winner, **Lana Jackson**, was unable to attend. **Anna Silver** of the University of British Columbia in Vancouver was the Best Oral Advocate.

"My love of performance is completely in line with my young and growing abilities as an advocate," Silver said in accepting her award. "Law, therefore, as art is a theme that makes very much sense to me. Participating in the mock criminal trial appealed to the artist, competitor, intellectual and free spirit in me, all of which I have now come to realize are the lawyer in me."

(Left to right:) National Trial Competition Committee Chair Judge Phil Garrison with Kimberley Greene, Courtney Yoder, and Sach Oliver.

In Memoriam

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

The number following the name of each is the date of his or her induction into the College. As you will see, we have been unable to locate substantial biographical information on a number of these people. Some of them had been brought to the attention of the College office only when mail was returned long after their deaths. We remind State and Province Chairs and the partners of Fellows that prompt notification to the College office, accompanied by obituary information, will enable us to honor properly the memory of Fellows who have died. The Editors.

Jesse G. Bowles, '72, Cuthbert, Georgia, died January 28, 2007 at age 84. A graduate of the University of Georgia, where he played football under the legendary Coach Wally Butts, and a cum laude graduate of its law school, he began his practice in Cuthbert in 1946. In the 1950's he had served a short term as house counsel for Callaway Mills in LaGrange, Georgia. Appointed to the Georgia Supreme Court in 1977, he had served for four years, then returned to Cuthbert to practice law with his son. He had been the recipient of a Georgia Law School Distinguished Service Scroll and had chaired his county school board. He retired in 2002. His survivors include his wife, a son, a daughter, a stepdaughter and a stepson.

Larry O. Brady, '90, retired, Waco, Texas, died September 2, 2005.

Lawrence Chauncey Brown, '81, Minneapolis, Minnesota, died December 7, 2006 at age 70. A graduate of the University of Minnesota and a cum laude graduate of its law school, where he was a law review editor, he was retired from Faegre & Benson. He had served as a lieutenant in the United States Army and was honored by his local bar with its Professionalism Award in 1996. His survivors include his wife, a daughter and a son.

Hon. James J. Carthy, '75, Coboconk, Ontario, Canada, a former Justice of the Ontario Court of Appeals, died August 7, 2006 at age 73. A Bencher of the Law Society of Upper Canada for fourteen years, he was appointed to the Ontario Court of Appeal in 1988. He was the co-author of an annual Ontario practice manual. He is survived by his wife, two daughters and two sons.

J. Paul Coleman, '81, Herndon, Coleman, Brading & McKee, Johnson City, Tennessee, died in 2006 at age 81. He was a graduate of Cumberland and of its school of law. He had served on the Board of Governors and as a vice president of the Tennessee Bar.

Kevin Colleran, '88, Lincoln, Nebraska, died September 18, 2006 in London, England of injuries sustained when he was struck by a vehicle two days earlier. He was in London attending the 2006 Annual Meeting of the College. He had attended St. Benedict's College and graduated from the University of Nebraska. He was a graduate with distinction from the Nebraska School of Law, where he was executive editor of his law review and a member of the Order of the Coif. A partner in the Lincoln firm of Cline, Williams, Wright, Johnson & Oldfather LLP, at the time of his death he was involved in litigation on behalf of Guantanamo detainees. His survivors include his wife, a daughter and a son.

G. Alan Cunningham, '71, Minneapolis, Minnesota, died April 20, 2006. A graduate

of the University of Minnesota and of its law school, he was associate editor of his law review and a member of the Order of the Coif. A pioneer in both product liability and environmental litigation, he had been head of the General Litigation group at Faegre & Benson. Born in 1926, he had retired in 1995. His survivors include his wife and four sons.

H. Francis DeLone, '67, Philadelphia, Pennsylvania, retired from Dechert, LLP, a graduate of Harvard College and of the University of Pennsylvania Law School, who was born in 1915, has died.

Jule W. Felton, Jr., '76, Atlanta, Georgia, retired, a graduate of the University of Georgia and of its law school and a past president of the State Bar of Georgia, died January 17, 2007 at age 74.

Hon. John J. Fitzpatrick, '82, Toronto, Ontario, Canada, died August 9, 2006 after a long illness. Born in 1914, he graduated from St. Michaels College, University of Toronto in 1939. A flight lieutenant pilot with the Royal Canadian Air Force Transport Command in World War II, he flew the world from Greenland to Burma. A post-war graduate of Osgoode Hall, he was a past president of the Advocates Society. He was appointed to the Supreme Court of Ontario in 1982. He is survived by his wife of 61 years, six daughters and two sons.

Paul MacDonald Green, '76, Green & DuBois, PC, San Antonio, Texas, died September 14, 2006 at age 72 after a difficult struggle with COPD/emphysema. He received his undergraduate and law degrees from the University of Texas. A retired Army JAG Colonel, he had been stationed in Paris. He had been president of the Texas Association of Defense Counsel. His survivors include his wife and two daughters.

Elton R. Gritzfeld Q.C., '88, Regina, Saskatchewan, Canada, died December 9, 2006 of cancer at age 76. A graduate of Luther College in Regina, he received his undergraduate and law degrees from the University of Saskatchewan. He was a bencher of the Law Society of Saskatchewan and its president in 1983. He is survived by his wife and four daughters.

Robert H. Hahn, '74, Bamberger, Foreman, Oswald & Hahn, LLP, Evansville, Indiana, has died. Born in 1925, he was a graduate of Evansville College and of the University of Indiana Law School.

Robert W. Hartnett, '77, Mannsville, New York, died September 2, 2006 at age 82. A World War II Army veteran, he graduated from St. Bonaventure University and the law school of Syracuse University. A former president of the Upstate Trial Lawyers Association, he had retired in 1997. He was a delegate to the 1964 Democratic National Convention. His survivors include his wife, three daughters and six sons.

Jess B. Hawley, Jr., '68, Hawley Troxell Ennis & Hawley, LLP, Boise, Idaho, a Regent of the College from 1982 through 1986, died November 22, 2006 at age 92 while he was preparing to go to his office. As a freshman at the University of Idaho, he was a member of the football, basketball, swimming and tennis teams. Transferring to Notre Dame, he graduated cum laude. Working for the Department of Commerce in Washington, he attended Georgetown Law Center at night, graduating with honors. Enlisting in World War II, he emerged a captain in the Army JAG Corps. He founded and was the first president of the Idaho Law Foundation. He was honored by the Idaho State Bar in 1990 as its Most Distinguished Lawyer. The grandson of the ninth governor of Idaho, he had held numerous state and bar positions. His survivors include his wife, two daughters and two sons.

Hon. Robert Seymour Hill, '77, Benton, Illinois, a retired state judge, died June 9, 2006 at age 82. An Army staff sergeant in World War II, he was wounded in the Battle of the Bulge, earning a Purple Heart, a Bronze Star and a Combat Infantryman's Badge, Graduating from the University of Illinois College of Law, he was a state deputy attorney general before returning home to practice. He was elected to the bench in 1976. He was president of the Benton Public Library Board for sixteen years and for fifteen years edited the newsletter of his state bar's Civil Practice and Procedure Section.

Hon. Douglas W. Hillman, '69, Montague, Michigan, a retired United States District Judge, died February 1, 2007 at age 82. An Air Force pilot in World War II stationed in Italy, he earned his undergraduate and law degrees from the University of Michigan and had practiced law for thirty years before being appointed to the bench in 1979 by President Carter. The founder of the Michigan Trial Skills Program, now called the Hillman Advocacy Program, he had recently been honored with the State Bar of Michigan's Frank J. Kelley Distinguished Public Service Award. He retired from the bench in 2002. He is survived by his wife and a daughter.

Morton J. Holbrook, Jr., '61, Owensboro, Kentucky, a graduate of the University of Kentucky and Harvard Law School who had retired from the practice in 1994, died August 26, 2006 at age 91.

Donald Hubert, '94, Chicago, Illinois, died November 27, 2006 at age 58 of a heart attack while on vacation in Puerto Vallarta, Mexico. A former president of the Chicago Bar Association, he was a graduate of Loyola of Chicago and of the University of Michigan Law School. He had often represented the City of Chicago in high-profile cases. His bar had awarded him its John Paul Stevens Award for lifetime efforts to improve the justice system. A widower, his survivors include a twelve-year-old daughter and a stepson.

Herbert Lee Hyde, '95, Asheville, North Carolina, died October 15, 2006 at age 80 of leukemia. A legendary figure in North Carolina politics and legal circles and an acclaimed orator who often quoted Shakespeare, Mark Twain, Will Rogers and the Bible, he had responded on behalf of the College inductees at the 1995 annual meeting. Born poor in a one-room log cabin in the mountains of North Carolina, he had joined the U. S. Naval Intelligence in World War II at age 16, serving in the South Pacific. Attending Western Carolina University on the GI Bill, he was editor of the school newspaper and president of the student body. He was in the first group of Root Tilden Scholars at New York University Law School, having persuaded the selection committee to waive its requirement that an applicant be single on the representation that he could not afford to bring his wife to New York. During a 52-year legal career he had served in both houses of the North Carolina General Assembly, been the state's Secretary of Crime Control and Public Safety and chair of the North Carolina Democratic Party. He is survived by his wife, four daughters and two sons.

Donald M. Jardine, '66, Jardine, Logan & O'Brien, Lake Elmo, Minnesota died in 2005. He was born in 1915.

Thomas F. Johnston, '87, Armstrong Allen PLLC, Memphis, Tennessee, a graduate of the University of Virginia and of its law school, died May 1, 2006 at age 75.

Charles A. Kimbrell, '68, retired, Rome, Georgia, died August 16, 2006.

Victor H. Kramer, '68, retired, Washington, District of Columbia, died January 8, 2007.

Born in 1913, he was a graduate of Harvard College and of the Yale Law School.

Hon. Robert O. Lesher, '73, Tucson, Arizona, a former Arizona Supreme Court Justice, died May 10, 2005 at age 84. A graduate of the University of Arizona Law School, he was a captain in the US Army in World War II, serving in the European Theater. He is survived by a son and a daughter.

William Gordon Luckhardt, '87, retired, Healdsburg, California, died September 14, 2005.

Theodore Lockyear, '83, Lockyear & Kornblum, Evansville, Indiana, died in 2004. Born in 1929, he was a graduate of Vanderbilt and of its school of law.

Honorary Fellow Robert Alexander MacCrindle, '74, Paris, France, died March 15, 2005 at age 77. He took a first class degree at King's College London, served in the Royal Air Force in World War II and received an LLM from Cambridge after the war. He became a Queens Counsel at age 35. In the late 1970s he declined an appointment to the bench and left London to join the Paris office of Shearman & Sterling, where he practiced for the rest of his life. He was survived by his wife, a daughter and a son.

Joseph A. Millimet, '69, Manchester, New Hampshire, died November 3, 2006 at age 92. A graduate of Dartmouth and of the Yale Law School, he served as an antisubmarine officer in the Coast Guard in World War II. He was a former president of the New Hampshire Bar Association, served as chair of the Commission to Revise the New Hampshire Constitution, a member of the New Hampshire Board of law Examiners and a commissioner to the National Conference of Uniform State Laws. He drafted the landmark legislation that created the first state lottery in the United States and served as chair of the state Democratic Party. He was the recipient of an honorary Doctor of Laws degree from his alma mater. He had retired in 1994 at age 80. His survivors include three daughters.

Richard C. Mitchell, Sr., '75, Mitchell, Mitchell & Palmer, Oswego, New York died October 21, 2005 at age 91. He was a graduate of Dartmouth College and of the Cornell Law School, where he was a member of the Order of the Coif.

J.C. Mitchell, '69, Mitchell, Mitchell & Bradley, Marion, Illinois, died September 4, 2006 at age 81. His college education was interrupted by World War II. Enlisting in the Air Force, he was the navigator of a troop carrier for parachutists that was three times struck by enemy gunfire. Discharged as a second lieutenant, he returned to college, eventually graduating from the law school of the University of Illinois at Champaign. Having tried retirement, he had resumed practicing with his son and had four cases pending at the time of his death. A lifelong golfer who celebrated his 50th wedding anniversary by taking his wife to the British Open Tournament in Scotland, he was injured in a fall on his home course, fell into a coma and died six weeks later. His survivors include his wife, a daughter and a son.

E. Clark Morrow, '65, Of Counsel to Morrow, Gordon & Byrd, LTD, Newark, Ohio died January 20, 2007. Born in 1908, he was a graduate of Dennison University and of Case Western Reserve School of Law.

Donald J. O'Brien, Sr., '64, retired, Indian Head Park, Ohio, died in 2002. A graduate of DePaul School of Law, he was born in 1913.

Patrick W. O'Brien, '75, Mayer Brown Rowe & Maw, LLP, Chicago, Illinois, a graduate of

Northwestern and of its law school, has died.

J. Norman O'Connor, Sr., '70, Senior Counsel to Donovan & O'Connor LLP, North Adams, Massachusetts, died November 14, 2006 at age 83. His college education was interrupted by World War II, in which he served as a captain in the Marines, seeing combat on Saipan, Tarawa and Guam with the 5th Amphibious Corps. He was a graduate of Holy Cross and of Boston College Law School. His survivors include his wife, two sons and five daughters.

James H. Pankow, '79, Jones, Obenchain, Johnson, Ford, Pankow & Lewis, South Bend, Indiana, a graduate of Purdue and the University of Indiana Law School, died March 29, 2006 at age 80. His survivors include his wife, a daughter and five sons.

William J. Parker, '79, Harlin Parker, Bowling Green, Kentucky, died January 19, 2007 following a brief illness. A graduate of Western Kentucky, Bowling Green College of Commerce and Vanderbilt Law School, he was a past president of the Kentucky Bar Association and a past chair of its Continuing Education Commission. He is survived by his wife, two daughters and two sons.

A. Lane Plauche, '68, Plauche, Smith & Nieset, Lake Charles, Louisiana, died August 9, 2006 at age 86. A graduate of Tulane and of its school of law, he was a member of Phi Beta Kappa and the Order of the Coif and was an editor of his law review. He had been member of the United States Circuit Judge Nominating Committee for the western Fifth Circuit, president of the Southwest Louisiana Bar and a member of the Board of Governors of the Louisiana State Bar.

Richard L. Schrepferman, '82, retired, Denver, Colorado, a graduate of the University of Colorado at Boulder and of the University of Denver Law School, died November 7, 2005. He was born in 1928.

Ian Gilmour Scott Q.C., '84, Toronto, Ontario, Canada, died October 10, 2006 at age 72. A labor lawyer educated at St. Michael's College at the University of Toronto and Osgoode Hall Law School, he had been a member of the Provincial Legislature and for five years Attorney General of Ontario. Described as the "social conscience of the Liberal cabinet," in the words of the current attorney general, he "utterly transformed Ontario's justice system and played an indispensable role in . . . the life of his government." He introduced Ontario's first Freedom of Information Act, brought in North America's first pay equity legislation and created an independent panel to recommend judicial appointments. He had suffered a debilitating stroke in 1994 that left him paralyzed on his right side and suffering from severe aphasia, but had insisted on continuing to live in his own home with the assistance of a housekeeper. His survivors included two sisters and three brothers, one of whom is College Past President David Scott.

Harvey M. Silets, '78, Chicago, Illinois, died January 27, 2007 at age 75. A partner in Katten Muchin Rosenman LLP, he was a high-profile criminal tax lawyer. He had served as president of the Seventh Circuit Bar Association and of the Federal Bar Association of Chicago. A former Illinois State Chair, he had also chaired the College's Federal Criminal Procedure Committee. He was the first recipient of the Jules Ritholz Memorial Merit Award presented by the Committee on Civil and Criminal Tax Penalties of the Tax Section of the ABA. He had defended Teamsters boss Jimmy Hoffa, mobster Allen Dorfman, Operation Greylord Judge John Reynolds and former Cook County Treasurer Edward Rosewell. Named one of the nation's

top ten litigators by the National Law Journal, he was a cum laude graduate of DePaul University and the law school of the University of Michigan. He had served in the U.S. Army and had been chief of the tax division of the US Attorney's office in Chicago. His survivors include a wife, a son and two daughters.

Robert McDavid Smith, '73, Birmingham, Alabama, died September 11, 2006 at age 85. A graduate of the University of North Carolina, he served as a captain in the Pacific Theater in World War II and was awarded a Bronze Star. He was valedictorian of his law school class at the University of Alabama, class president, a member of ODK and of his law review. He received an LLM from the Harvard Law School. Practicing with Lange, Simpson, Robinson and Somerville, he had a long and distinguished career. He had been a board member of the Ford Foundation and chair of the ABA Committee on Legal Education. He is survived by his wife, a daughter and two sons.

Charles R. Sprowl, '70, retired, Winnetka, Illinois, a graduate of the University of Michigan and of its law school, died August 7, 2006, two weeks short of age 96.

Jack Robert Sullivan, '73, Dearborn, Michigan, died November 25, 2006 of Motor Neuron Disease (MND) at age 81. A World War II Army veteran who fought in the Battle of the Bulge, he received a Purple Heart and was awarded a Certificate of Merit Citation in Recognition of Conspicuously Meritorious and Outstanding Performance of Military Duty. A graduate of Detroit College of Law, he retired from Feikens, Dice, Sweeney & Sullivan in 1985. His survivors include his wife, two sons and a daughter.

Paul Robert Vaaler, '73, Grand Forks, North Dakota, died December 27, 2006 at age 83. A graduate of the University of North Dakota School of Law, he had retired from the practice in 2000. A widower, he is survived by a daughter and a son.

Floyd L. Walker, '72, Pray, Walker, Jackman, Williamson & Marler, Tulsa, Oklahoma, died December 13, 2006 at age 88. After high school, he worked in a milk plant and then as a letter carrier until he joined the Army Air Corps Aviation Cadet Program. A bombardier on a B-24 Liberator, he flew 26 missions over occupied Europe. Actor Jimmy Stewart was his first squadron commander. His 26th mission ended in a crash landing in Sweden, where he was interned for five months. He returned home with an Air Medal with four oak leaf clusters and a Distinguished Flying Cross. A graduate of the University of Tulsa College of Law, which honored him with its Lifetime Achievement Award, he had been president of his local bar and the Oklahoma State Chair. The University of Tulsa honored him as a Distinguished Alumnus in 2002. He is survived by his wife, a son and four daughters.

David B. Worthy, '86, Hilton Head Island, South Carolina has died.

John Curtis Wright, '95, Dortch, Wright & Wright, Gadsden, Alabama, died December 26, 2006.

Howard S. Young, Jr., '70, Young & Young, Indianapolis, Indiana, a graduate of the University of Chicago and of the University of Indiana School of Law, died in 2004. He was born in 1913.

REGENTS AUTHORIZE TEXAS POSITION ON JURY INSTRUCTION INVOLVING LAWYERS

The Board of Regents has approved a resolution proposed by the College's Jury Committee as follows:

"The Board of Regents applauds the efforts to amend Tex. R. Civ. P. 226a to require state court judges in Texas to explain to the venire our adversary system of justice, the importance of trial lawyers to that adversary system, and the ethical obligations of trial lawyers to zealously represent their clients, and strongly urges all State and Province Committees to employ similar efforts, where applicable, to encourage their respective state courts and their federal district courts to explain during voir dire in a clear and concise way the nature of our adversary system and the important role of trial lawyers in that system."

It is the policy of the Board of Regents to authorize State and Province Committees to take positions on local issues affecting the administration of justice if the Board deems them to be consistent with an established policy of the College.

"NOTABLE QUOTE FROM *the* LONDON-DUBLIN MEETING"

"I am deeply grateful that the American College of Trial Lawyers sponsors this competition. Without your organization this learning process would not be possible. The competition literally propels students years ahead of those students who do not participate. Imagine if after every trial you were in the jury stayed afterwards and gave you constructive critique. After enough critiques you would have a grasp of all of your strengths and weaknesses to make you a better trial lawyer. What I described is exactly what we experience as competitors. You cannot place a value on that experience, and there is no law school in the nation that offers that extensive trial experience in their curriculum. I hope all of you will seek out to volunteer your time and continue to judge a regional or national competition.

"[W]hat did . . . my mentor teach me that I think distinguished me? He has taught me how to present myself with confidence and humility in the same stroke, and I am trying to make that a practice in my life, as I have been able to portray that when I am giving a presentation. He has taught me that it is one thing to accomplish greatness. It is another to share your greatness, share your accomplishments, your stories and hardships. I beg of you seek out a young legal mind that you believe has potential and remember: without someone like you as a mentor, someone such as myself may never realize their true potential."

Sach Oliver

University of Arkansas School of Law, Accepting Best Oral Advocate Award

Lon Hocker, College's Oldest
PAST PRESIDENT, DIES

Lon Hocker, Jr., 96, passed away at his home in Woods Hole, Massachusetts, where he had lived since his retirement in the 1960s, on January 31. Inducted in 1951, he became a Regent in 1957 and president-elect in 1959. In 1960 he became the tenth president of the College, succeeding Samuel P. Sears of Boston.

Past President Lon Hocker

As the fifty-year history of the College, *Sages of Their Craft*, noted, he was among the first of the College presidents who represented a transitional generation within the legal profession. Trained by mentors who came from the nineteenth century tradition of sole practitioner generalists, Hocker's generation were law school graduates with more formalized training who were members of multi-lawyer firms.

Hocker's own father was known as "the king of the trial lawyers" in St. Louis. He is memorialized by the Lon O. Hocker Award, a coveted award given each year by the Missouri Bar to the outstanding trial lawyer in the state, selected by an anonymous panel of state judges.

Young Hocker was born in St. Louis, Missouri, and graduated from Princeton. While in college, he was a member of the United States fencing team. He was Midwest sabre fencing champion for several years.

A graduate of Washington University Law School in St. Louis, early in his career he had been president of the St. Louis Bar and of the International Association of Insurance Counsel. A partner in the St. Louis law firm of Hocker, Goodwin & MacGreevey and a director of numerous corporate and nonprofit boards, his varied career ranged from trials to arguments before the United States Supreme Court.

In World War II, he served in the Navy from 1944 to 1945 as commanding officer of LST 889 in the Pacific Theater. As recently as 2004, he had traveled to a reunion of the members of his crew.

In 1955, he was appointed Chief Hearings Counsel for United States Senate Subcommittee on Constitutional Rights, whose task it was to undo the erosion of individual constitutional rights in the McCarthy era.

He ran twice for major public office, first in 1956, as the unsuccessful Republican nominee for governor of Missouri and then, in 1960 as Republican nominee for United States Senator from Missouri, a campaign for which he was drafted after the original nominee died two months before the election. He undertook that campaign shortly after taking the reins of the College with the encouragement of members of the Board of Regents. At his annual convention in 1961, the principal speaker was Missouri Governor John M. Dalton, who had defeated him five years earlier.

Hocker's presidency was marked by a running debate with Founder-Chancellor Emil Gumpert about the direction and purpose of the College. Hocker wanted the College to have a role in change, including reform in the administration of justice. Gumpert wanted to focus on improving the fraternal nature of the College, envisioning a trial bar more like the English barristers.

Always an avid sailor, Hocker had attended Culver Summer Naval School as a teenager. When he retired from law practice in the 1960s, he moved to Woods Hole, Massachusetts, where over the years he had a series of small boats. They included an 18-foot sailboat that folded in half like a clam for ease of towing and a 26-foot sailboat that he bought as a bare hull, filled with 6,000 pounds of lead shot as ballast, and towed east from Arkansas to Woods Hole, where he finished the decks and extensive woodwork himself.

Interested in water conservation, for years the Hockers had a windmill, which Mr. Hocker erected on their property to recycle the water they used for their lawn. He was a member of the Woods Hole Golf Club and the Church of the Messiah in Woods Hole, and sang in the greater Falmouth mostly all-male men's chorus.

His last active participation in the College came in 1993, when he both attended the planning retreat called by then President Fulton Haight in Washington, D.C., and later that year came to the 1993 annual meeting, also in Washington, with his wife. Past president Ozzie Ayscue, who was then a relatively new Regent, recalls that Hocker seemed energized to find that the College was by this time fulfilling the role that he had envisioned for it over thirty years earlier.

Lon Hocker died after a long period of declining health. In addition to his wife of nearly seventy years, Esther, he is survived by a daughter, Priscilla Hocker Claman of Weston, a son, Lon Hocker III of Hilo, Hawaii, five grandchildren and twelve great-grandchildren.

A funeral service was held in the Church of the Messiah, Woods Hole, on Saturday, February 10, 2007.

Donations may be made in Hocker's memory to the Cape Cod Chapter of the American Red Cross, 286 South St., Hyannis, MA 02601.

James Joyce Scholar Addresses Work Of
IRELAND'S PRE-EMINENT WRITER

"His [Joyce's] character Stephen Daedalus who, like Joyce himself, attended University College Dublin, at the end of "A Portrait of the Artist As a Young Man" declares . . . that in leaving Ireland he was going forth, as he declares, and I quote from the novel: 'To forge in the smithy of my soul the uncreated conscience of my race.' The quest for distance from Ireland is, however, at the heart of the many contradictions that define Joyce's work."

So began the lecture of Dr. Ann Fogarty, Professor of James Joyce Studies at University College Dublin, one of the world's leading scholars on James Joyce and his writings, addressing the College's meeting in Dublin and speaking at O'Reilly Hall on the University campus.

Dr. Ann Fogarty

It has been the custom of the College to enrich the programs of its national meetings with occasional engaging presentations on subjects not directly related to the law. Fogarty's presentation, given on the campus of James Joyce's university in the city that was the locus for much of his writing, linking his writing to Irish history, was such a presentation.

Describing the pattern of Joyce's adult life, she continued: "He deliberately moved from what he saw as the stagnation and indignity of a colonial city, his native Dublin, struggling fitfully to achieve its identity and to win a measure of freedom at that period at the turn of the 20th century from British rule. . . . He created the greatest works of fiction of the 20th century: Dubliners, A Portrait of the Artist As a Young Man, Ulysses and then finally Finnegan's Wake while wandering, often shiftlessly, sometimes by necessity, between European cities, including Trieste, Paris and Zurich and moving incessantly within those cities from stopgap abodes and from one apartment to another. . . . His life ended [in 1941] amidst much uncertainty. . . . Joyce died prematurely in neutral Switzerland in a continent being torn apart by a bloody and devastating war. Yet exile was Joyce's chosen vocation and his path to redemption. The wanderings and displacements of his life were chosen ones."

Her talk, which she entitled A Little Green Flag - Joyce, Parnell and the Trauma of Memory, focused on one rich and very localized strand of images on which Joyce drew and to which he himself contributed very richly, a strand of images centering on the romantic myth of Irish 19th Century politician Charles Stuart Parnell. A Protestant landowner, Parnell acted as a catalyst for nationalist aspirations in 19th Century Ireland and spearheaded

a drive for freedom for local autonomy, known as the Home Rule movement, a movement against British colonialism.

"Parnell's career," she explained, "was . . . beset by personal tragedy and he also fell prey to the internal political divisions in Ireland in the period and to the rival moral claims of the Catholic Church. . . . As is well known, Parnell's career . . . came unstuck when his long-standing clandestine affair with . . . the wife of an English MP became public knowledge after her husband . . . filed a petition for divorce. In Ireland, as in Victorian England, there was a gulf between private morality and the official codes of propriety; secrecy was condoned, but not the open flouting of conventions."

"In the wake of the divorce scandal," she continued, "Parnell's immediate political followers, the Irish Parliamentary Party, split fatefully in December 1890 and voted to oust him from his command of the party. He lost his position as their leader in the Westminster Parliament and also came under attack by the Catholic Church in Ireland, which condemned him for his conduct, thereby undermining his power base in the country. The man who had been hailed as the uncrowned king of Ireland . . . was now rejected by many of his formerly fervent supporters."

"The calamitous fall and death of Parnell," she related, "thus occurred when James Joyce was about nine years of age. The events left an indelible impression on him. . . . Joyce's very first composition was a satirical poem, et tu Brute, . . . denouncing those who toppled Parnell from power. Parnell, thus, is not only a crucial figure for an understanding of 19th Century Irish nationalist politics, but he is also at the very well-springs of Joyce's creativity from that moment: From the fall of Parnell, Joyce begins to write."

"It is clear," she explained, "that Joyce is attracted to the potency and aura of Parnell and he is attracted to the political philosophy of self command and independence for which Parnell fought. Equally, . . . Joyce was fascinated by the contradictions that gather around a mythic, albeit flesh-and-blood figure such as Parnell. He can use Parnell at once as a mirror onto Irish society, as a way of examining the hold that the past has over the present and also as a basis for an ever-changing array of stories . . . ."

Irish Symbolism Shapes Joyce's Writing

"His most memorable account of the myth of Parnell takes place during the famous Christmas dinner scene in chapter 1 of A Portrait of the Artist As a Young Man, Joyce's semi-autobiographical novel describing his childhood, adolescence and student days in Dublin. . . . The account of the Christmas dinner in the Daedalus household . . . in A Portrait of the Artist As a Young Man follows . . . [is] a trajectory from middle class bourgeois order to chaotic and disruptive memory. . . . At one point . . . we are regaled with a neat overview of the food on offer at the festive Christmas table and the atmosphere with which it is linked: . . .

'[T]he green ivy and red holly made you feel so happy. And when dinner was ended, the big plum

pudding would be carried in, studded with peeled almonds and sprigs of holly, with bluish fire running round it and a little green flag flying from the top'." . . .

"The recurrence of the colours green and red," she explained," reinforce the sense of comfort and of seasonal order, especially experienced by a young boy at the Christmas dinner table. But the image of the little green flag on the top of the plum pudding is a signal that this is not a novel by Dickens and that we have somehow moved out of naturalism. This image is a discordant one . . . . The little green flag, an odd floating reminder of Irish nationalism, has displaced the sprig of holly usually placed on the top of the pudding. Politics, it is intimated, has seeped into every aspect of private and public life in Ireland at the turn of 20th century and also asserts itself in graphic and disturbing ways. The lines of demarcation between things have become blurred in the wake of Parnell's death. . . . The little green flag acts . . . as a portent of disturbances to come."

"If the downfall of Parnell was brought about by a split in the Irish Parliamentary party, then Irish society as Joyce depicts it in A Portrait of the Artist As a Young Man is doomed constantly to re-enact that split. Stephen sees his family as divided and riven into Parnellite and anti-Parnellite camps. The difficulty for Stephen is not only the problem of political division in and of itself, but also the fact that the trauma of this particular debate precludes the possibility of any kind of ordered or coherent memory. . . . The ending of the disrupted Christmas

dinner scene is one of the most searing moments in Joyce's depiction of the legacy of Parnell. It concludes with the following sentence: 'Stephen, raising his terror stricken face, saw that his father's eyes were full of tears.'"

Fogarty went on to describe a different image of Parnell in Joyce's monumental work, Ulysses. "If you go today to the top of O'Connell Street," Fogarty reminded," the main thoroughfare in Dublin, you will encounter a monument to Charles Stewart Parnell which was erected . . . in 1911 . . . .The inscription on the obelisk is an excerpt from one of Parnell's most extreme speeches:

'No man has a right to fix a boundary to the march of a nation. No man has a right to say to his country: 'Thus far shalt thou go and no further. We have never attempted to fix the ne plus ultra to the progress of Ireland's nationhood and we never shall.'"

"In contrast," she continued, "to the defiance of this speech inscribed on the obelisk, Parnell . . . is not on a plinth or a pedestal, but he is close to ground level, overshadowed by the triumphant, but also ominous obelisk with its charged words. Joyce's work likewise refuses to monumentalise Parnell . . . . It returns constantly to the myth of the heroic or romantically doomed leader and uses it in order to probe the traumatic undercurrents and psychic divisions in Irish society. Parnell is linked by Joyce with the deadly ghostly legacy of nationalism and with the utopian potential of the same political movement. . . . Parnell's quest for Home Rule for Ireland is converted by Joyce into a search for freedom by other means. The unyielding heroism of Parnell and his tragic humanity are transmuted into the substance and revolutionary forms of Joycean art."

"Joyce," Fogarty concluded, "may question aspects of Parnell's legacy, but he pointedly adopts his libertarian vision in the boundless licence, dynamic energy and the limitless inventiveness of his own writing. Joyce, in effect, becomes Charles Stuart Parnell the second."

Bon Mot

Brendan Behan had wonderful success as a playwright . . . . But there was another side to Brendan Behan . . . . He was a member of one of our home-grown organisations, . . . the Irish Republican Army, or better known as the IRA. . . . He fell into disrepute with that organisation. He had breached one of its code of ethics or something similar. In any event, his comrades decided that he would be the subject of a court martial. . . . Behan at this stage was a well-known character in the city of Dublin and abroad, in New York and so forth, was well known to the media. Word of this imminent trial got out. The trial took place. Brendan ignored his former colleagues. Word got out onto the street to the journalists that he had been sentenced to a very, very severe sentence. A journalist who was puzzled as to what would happen eventually tracked Brendan Behan down to a public house in the city of Dublin, went up to Brendan, who was drinking a pint of Guinness, and wanted to know . . . what he thought of this situation. Brendan looked at the journalist, glanced back at his pint of Guinness, paused, reflected and looked up at the journalist and said: "Listen, its very simple; I was charged in absentia; I was tried in absentia, and as far as I am concerned, they can shoot me in absentia."

The Honorable Rory Brady
Attorney General of Ireland

I find it very hard to bring to mind any of the many cases I have lost where there wasn't a judge seriously implicated in the disaster one way or the other. . . . Someone once said that when you meet a friend of yours who has been made a judge, it is a bit like meeting an old girlfriend that you didn't marry: When you meet again, everything is very cordial, everything is just the same, but everything is far from the same.

Dermot Gleeson
On Judges

I have a story to tell about the Vatican in Rome. . . .[I]t relates to a trip to the Vatican by an Irishman from the west of Ireland, first time out of the country. And he goes to the Vatican, where he meets his cousin, who is a Bishop. And he says to the Bishop: "Listen, is there any chance I could see the Pope's private rooms?" So the Bishop says: "You leave it to me, I will organize that." So he brings him up to the Pope's private quarters. The Pope is not there . . . . He gets past the Swiss Guards, brings him into the Pope's private room, and there on a table is a gold mobile phone. So this guy from the west of Ireland, from Mayo, says: "What's that?" So his cousin, the Bishop, says: "Oh, that's a gold mobile phone." "I know that," he says, "but what does it do?" "Oh, " he says, "that's a very special mobile phone." He says: "Why?" "Well, you can phone God directly from that phone." He says: "Really? How much does it cost?" He says: "Well, it is 100,000 a minute." . . . Six months later he is . . . walking through his native Mayo on a bleak, rainy day and he has an urgent need to avail of the facilities. He sees a cottage, goes to the cottage, knocks on the door and says: "Do you mind if I use your facilities, I am in urgent need of it?" And it was a priest. The priest said: "Of course you can," brings him in, lets him use the facility. He comes back out . . . and there on a table in the corner is a gold mobile phone, a cellphone I think you call it. So he looks at the priest and says: "What's that?" He says: "Its a gold cellphone, a gold mobile phone." He says: "What do you use it for?" "Oh, he says, I use that, I can phone God directly with the cellphone." He says: "Really? And what does it cost?" "Oh," he says, "its 10 cents a minute." So he says: "You know, the last time I saw one of those I was in the Vatican, and it was 100,000 a minute." He says: "How come its so cheap here?" So, with this the priest looked at him and said: "Son, that's very simple. Here in Ireland its a local call."

The Honorable Roy Brady
Attorney General of Ireland

IRISH BARRISTER DESCRIBES LAW PRACTICE IN IRELAND

The Angst of the Advocate: a Universal or a Purely Local Condition?

One of the purposes of the College's periodic meetings in other countries is to allow the Fellows to become acquainted with the practice of law beyond the borders of Canada and the United States. Dermot Gleeson, universally respected throughout Ireland, appointed Queens Counsel at age thirty and believed to have been the youngest barrister anywhere in the common law world in modern times to receive that recognition, is a former Attorney General of Ireland and is currently Chairman of Allied Irish Bank, Ireland's largest public company. An edited version of his presentation on the practice of the barrister in Ireland follows.

One of the recurrent preoccupations of transatlantic discourse is the question of the extent to which North American and European societies differ in their culture or their values. And these comparisons never fail to fascinate. They range from looking at the gastronomic idiosyncrasies, the differences in dress codes at one end of the scale, to different attitudes to solving the great problems of the world at the other end.

In terms of the way our societies are organized, the customary comparisons are, I suppose, by now well known and well worn: Americans work longer hours and for more years than Europeans. Europe tends to have more extensive social provision, welfare benefits and maternity leave, longer holidays. More Americans as a percentage of the population go to church on Sundays than do Europeans, but then more Americans as a percentage of the population go to jail than do Europeans, so I am not quite sure where the balance lies there. Americans are much more generous in the way they provide private endowment for institutions such as universities, and we hold sharply different views, I suppose, on issues like the death penalty, private ownership of firearms and so on.

On the other hand, if you view matters in vocational terms, there are clearly disciplines that are indistinguishable in their European and North American manifestations. Science . . . knows no boundaries and electrons and microcondria are indistinguishable the world over. And, I suppose, the dentists and cardiac surgeons and, for that matter, plumbers and truck drivers, can transfer their skills easily to from North America to Europe and vice versa. . . .

Where then on the spectrum do the lawyers fit in between the completely transferable scientists and the dangerously transferable works of the comedians and the advertising agents? To what extent do you recognize the pitfalls of my life, the highs and lows, the aggravations, the satisfactions that populate the life of an Irish barrister? The obscure and rather cryptic title of this part of your program really conceals that much simpler question. . . .

Are the concerns, the worries, the challenges, the burdens, the trauma that face an Irish barrister, are they merely the product of local conditions or are there aspects of my professional life which are recognizable to a larger professional audience, the legal audience from your huge jurisdiction represented by the distinguished representatives of the College? Are there some elements of a common professional experience?

Let me start by describing something of the overall context in which I work. And some of this will be very familiar to you, some of you may not know about it. Ireland is country of four million people, there are five and a quarter million people on the island as a whole. As someone observed earlier, something approaching 30 million citizens of the United States claim Irish ancestry of one sort or another.

Dermot Gleeson

We are a common law country. The legal profession is divided into two branches, very similar but not absolutely identical to the distinction in the United Kingdom. Firstly, solicitors who practice in firms correspond more closely to the American attorney model, and then barristers, who are all sole practitioners–partnerships or firms are all forbidden. Chambers on the English model are not developed here, and a barrister is hired by a solicitor, never by the client. We do not deal with the public except in very rare circumstances, we do not engage with them. We do two things: specialist legal advisory work and the conduct of cases in court. In the higher courts in Ireland we have a virtual monopoly; solicitors are entitled to rights of audience, but they rarely, rarely exercise them.

There are about 7,000 solicitors in Ireland and there are about 1,800 barristers, and the barristers are divided into two ranks: about 1,500 junior counsel and then about 300 senior counsel, of whom the Chief Justice was formerly one, the Attorney General is still one and so am I. I suppose of those 300, some of them are partly retired, and I suppose there are about 200 active barristers.

We have the great advantage of having solicitors to insulate us from our clients. Apart from specialist commercial cases, we by and large do not have pretrial depositions. Effectively we conduct litigation by ambush, which greatly adds to the gaiety and excitement of our daily lives I can tell you. Most barristers still wear wigs in court, although they are no longer compulsory in this jurisdiction - they are compulsory for judges. The average Irish barrister, a busy Irish barrister, would expect to be in court, I would say, something between 150 and 180 days a year, virtually every working day while the courts are sitting.

Let me mention some of the values that we esteem. Collegiality is, I suppose, an important value in a small jurisdiction. Unremitting warfare in the courtroom and the maintenance of civil and even warm personal relations outside the courtroom are something we value–the capacity to disagree without being too disagreeable, I suppose. Another feature, I suppose, of barristers is that we do most of our work in public. We are picked by solicitors, who are different from the lay clients in the sense that they are lawyers themselves, so they are a knowing purchaser of our service, which has its problems.

Barristers are spared the obligation to have to cultivate clients or solicit clients in the

way that solicitors' firms sometimes have to. Some barristers will pay a lot of attention to solicitors, but that is considered unprofessional if carried too far. We never give interviews about clients' business. It is unprofessional conduct to give any media interview of any kind and we have extraordinarily strict rules about self advertisement and advertising of any kind. Some advertisement is allowed in the United Kingdom, but none here.

When I started 36 or 37 years ago it was an offense against the professional rules to have a name plate outside your office. That was considered advertising. You became known in court, and business cards have only been permitted in the last five years, putting your name on the top of your notepaper only for the last 15 years. I still don't have a business card and I still don't put my name on the top of the notepaper. These are considered quaint and strange habits by people from the rest of the world.

CORE CHALLENGES REMAIN THE SAME

One of the ways you can analyze the barrister's life is saying: 'What are the obstacles to winning cases?' The traditional and cynical view is that first amongst the obstacles to winning the cases is your own client, and that that somewhere down the list is the client on the other side and farther down the list is the barrister on the other side. By right at the top of the list, I am afraid, is the judiciary. That is the real obstacle to winning cases in my experience. In fact I find it very hard to bring to mind any of the many cases I have lost where there wasn't a judge seriously implicated in the disaster one way or the other.

The relationship between judges and the bar is different, I suppose, in a small jurisdiction. There are about 50 judges in the superior courts, eight judges on the Supreme Court and 35 judges or so on the High Court. It is in front of those judges that senior counsel like me practice, and only those judges. You know all of them, and there is a curious psychological relationship. They are friends, but they are not friends. . . .

The judiciary are appointed by the Government and all appointed to age of retirement, which is either 65 or 70. There are four levels of court. I have mentioned the top two levels. There are about 120 judges at lower levels, so the total judiciary of Ireland is still less than 200 people. This is a tiny jurisdiction even in European terms, let alone US terms. Of course all this barristering and all of this judging takes place in an economic climate which is uniquely positive in Ireland at present and some of you will be aware of this.

This is not a time for an economic lecture, but six or seven years ago the Irish economy was growing at eight percent, nine percent, and in one year eleven percent. We are back now to about five and a half percent this year and may do six percent next year. But that is still, in Western terms, very significant growth. Our corporate tax rate, as some of you may know, is twelve percent and that has a big part to play in the success of this country. Thirty years ago average income per head in this country was thirty percent below the European average, and now, apart from Luxembourg, income per head in Ireland is the highest in the European Union, higher than the Germans, higher than the Italians, higher than the French and higher than the United Kingdom.

The other features of our lives, I guess, are

common and will be familiar to you, difficulties which we face: The multiplication of paper, the role of technology and controlling information in the courtroom, the enormous problems presented by easy access to every precedent in the world through legal databases and the use of the Internet.

But the core challenges in our lives remain the same, the techniques of persuasion; how do you persuade the judge that your formulation of the key question should be his as well? . . . .

This jurisdiction is extremely open to the citing of American authority, principally in the area of constitutional law and American precedent. . . . [A] considerable amount of American precedent is taught and we watch with interest the division in your Supreme Court between Justices Breyer and Stevens and Kennedy and Ginsburg, and Sandra Day O'Connor before she retired, who favor looking at foreign precedent, and the trenchant views of Justice Scalia, who referred I think in *Foster v Florida* to "foreign moods, fads and fashions" and the attempt by some jurists to impose them upon Americans. That is wonderful language, and we watch that space with interest. . . .

A consistent feature of barristers' work is semantic analysis, the use of language, the analysis of language, the language of rules, of statutes, of contracts. There is always a particular fascination for lawyers in simple rules that contain hidden meanings. . . . Let me mention one last phenomenon that dogs the life of the professional advocate in this jurisdiction. If there is any test to whether the angst of the advocate is a local condition or something we all share then this is, I guess, the litmus test. One of the banes of my profession is what has been described in this jurisdiction as the principle of delayed eloquence and, above all, this represents the angst of the advocate.

It is the iron law of physics and psychology that says on a day when you are losing everything in court and are humiliated and are put down by some brilliant remark by your opponent or possibly even from the bench, the killer repost never occurs to you at the time; it comes to you when you are putting the dog out that night or when you wake up screaming. That is the problem of delayed eloquence, and it is far and away the worst aspect of the barrister's life.

Let me say that the purpose of these rather random reflections has been to explore the idea that there is some commonality in courtroom experience and that advocacy is a way of life I suppose. It is by turn elevating and exhilarating and absorbing and then repetitious and wearisome and grinding and frustrating. It seems to suit particular personality types. It provides intellectual challenges, highs and lows, euphoria and depression in equal measure.

Really great advocates serve humanity

And some of our number go beyond it, they get away from, I suppose, the apocrypha unorthodoxies of the professional barrister's life and go into public life, a proud tradition in your country as in ours. Since the Irish State was founded in 1922, more than half our Prime Ministers have been barristers, coming from a tiny professional group. And beyond that, advocates sometimes lend their formidable powers of persuasion to higher causes, international causes, and I suppose it is worth reminding ourselves that we, the advocates in Ireland or in North America, are very untypical of human life at the start of the 21st

century. Everyone in this room and every one of my colleagues, beyond any doubt, falls into the top one percent of human beings who have ever lived in terms of material possessions.

And beyond America and beyond Ireland and beyond Europe there is another world where forty percent of the population of the world still live on less than two dollars a day and where twelve million children will die of avoidable diseases this year and 100 million children do not go to school and never will. Sometimes the skills and powers of persuasion of the advocates, the really great advocates amongst us are put at the service of humanity in larger and imperfect ways as well.

Let me leave those sobering reflections and say that when I started as a barrister 36 or 37 years ago, one of the stern pieces of advice you get is that this is a profession where you have to take the rough with the smooth. Well, by any standards being asked to address this distinguished audience qualifies, I assure you, as a bit of the smooth.

College Hires Meeting Planner

Peggy Lamberton, CMP, has joined the staff of the American College of Trial Lawyers as of November 26, 2006 as the Meetings and Conference Manager. Peggy, along with Suzanne will share the responsibilities of the College's meetings.

Peggy comes to the College with 13 years' of experience in planning and executing meetings and conferences for the Global Marketing Departments of several leading medical device corporations. She planned, and executed on site, all aspects of hundreds of events in the U.S. and Canada, and produced meetings, incentive programs, conferences, and advisory board meetings in Europe and Latin America. Peggy's ability to converse in Spanish and French facilitated planning programs in France, Argentina, Chile, México, and even in Brazil. Peggy's special interest is in strategic planning to promote Adult Learning.

In 2004 Peggy earned her CMP (Certified Meeting Professional) certification. This is awarded by the Convention Industry Council, and it certifies competency in twenty-seven areas of meeting and trade show planning and execution. Throughout her career, Peggy set a continual career learning and improvement path. She is an active member of MPI (Meeting Professionals International) and in 2007 / 2008 will serve on the local chapter's Board of Directors. She attends industry-related educational conferences and does a lot of reading to keep current on meeting and education future trends.

When not involved in meeting planning, Peggy helps her husband, Chris, in his Scottish Clan and Tartan Information Center and Clan Stewart activities. She and Chris attend about five major Scottish Highland Games per year. Peggy lives with her husband in Santa Ana, California.

Human Rights Advocate
PRAISES NUREMBERG TRIBUNAL

David Pannick, Q.C.

"The Nuremberg Tribunal exemplified the rule of law. It ensured a fair trial in the most difficult of circumstances, and it retains a strong contemporary relevance when politicians today . . . are tempted, sometimes understandably tempted, to abandon the rule of law under the pressure of the appalling crimes of those who wish to destroy a free society."

David Pannick, QC, a leading barrister in the field of human rights and public law, thus began his presentation to the 2006 annual meeting of the College in London. Pannick had been a delegate to the 1996 Anglo-American Legal Exchange sponsored by the College. He spoke on the eve of the 60th anniversary of the judgment rendered by the Nuremberg Tribunal.

Pannick gave credit to United States President Harry S. Truman for insisting, over the emotional objections of the British and the Russians, that justice should be done and that it should be seen to be done in dealing with the leaders of Nazi Germany after World War II.

"The primary achievement of the Nuremberg Tribunal," Pannick observed, "was to apply the principle of the rule of law in the most extreme circumstances. However appalling the crimes of the defendants, however great the temptation to seek vengeance for the wrongs that they had done, the Tribunal manifested the fundamental principle of a civilized society that the accused were entitled to a fair trial in which they had the opportunity to answer the charges, and in which the judges would convict them and sentence them to punishment only if satisfied on the evidence that they were guilty."

"It is difficult," he continued, "to think of a more powerful statement of rejection of all that Nazi Germany stood for and a more positive expression of the values to be applied in the post-war world. . . . In truth what was in store was a fair trial on the charges of waging aggressive war, war crimes and crimes against humanity."

"{T]he trial," Pannick noted, "was fair in practice as well as in theory. Of the twenty-two individual defendants, three were acquitted and another seven were spared execution and sentenced to terms of imprisonment. During the trial, the Tribunal made rulings to protect the interests of the defense, for example, on the disclosure of documents."

In Pannick's view, the second great achievement of Nuremberg, "was to conduct so momentous a trial, covering such a wide historical terrain, so efficiently and to do so in a country

devastated by six years of war." "[T[he Nuremberg Tribunal" he continued, "gave judgment just a year and a month after the end of the war. The efficiency was even more extraordinary given the historical and geographical scope of the evidence, the need to translate all the documents and all the oral evidence, the need to accommodate principles of the German legal system and the need for cooperation, sometimes strained cooperation, between the British, the American, the Russian and the French judges, two from each country, and prosecutors from very distinct legal systems."

Pannick explained that the Charter which established the Tribunal stated three important principles of international law that have been accepted ever since: first, that international law prohibits the planning and the waging of aggressive war, war crimes and crimes against humanity; second, that international law does not impose duties only on states; individuals who carry out wrongful acts are also responsible in international law; and, third, that it is no defense that the defendant was obeying the orders of a superior, although this may be a mitigating factor.

Three Important Principles

"The Nuremberg principles," he continued, "have led to two main developments in international law as to the jurisdiction to prosecute those accused of international crimes. First, there has been a general recognition, accepted by the federal courts in the United States, that an individual state has the right to try an individual present in its jurisdiction in its criminal courts for alleged war crimes or crimes against humanity, wherever those crimes may have been committed. The second development since Nuremberg is in the creation of an international court to try cases where defendants are accused of international crimes. It took . . . over fifty years, until 1998, for such a body to be created at the Rome Convention, and the International Criminal Court began its work in the Hague in 2002."

In closing, Pannick contrasted the conduct of the Nuremberg Tribunal with the trial then in progress in the Iraqi High Tribunal. "Next month," he noted, "the Iraqi High Tribunal will give judgment in the first trial of Saddam Hussein and his top aides for their alleged role in the killing of 148 villagers from Dujayl, north of Baghdad, in 1982 after a failed assassination attempt against the Iraqi President. There was a ten-month trial of Saddam Hussein and his co-defendants. It was disrupted by the murder of three defense lawyers, the departure of two Chief Justices, boycotts by the defense team and a shouting match between Saddam and the judges. One of the defendants presided over the former Revolutionary Court, which allegedly oversaw the execution of many of the victims, and after one dispute during Saddam's trial, the Kurdish presiding judge told the co-defendant, 'Be quiet and sit down, stupid.'"

"The achievements of the Nuremberg Tribunal," Pannick concluded, "in the most difficult of circumstances in dispensing justice to those who least deserved it and the development of international law for which the Tribunal was responsible becomes, I think, more impressive with each passing year."

Retiring Regents and Chairs Honored At London Meeting

RETIRING REGENTS AND CHAIRS OF STANDING, STATE AND PROVINCE COMMITTEES WERE HONORED AT THE LONDON MEETING WITH PLAQUES FOR THEIR SERVICE.

Retiring Regents: Albert D. Brault of Rockville, Maryland, John L. Cooper of San Francisco, California, Brian P. Crosby of Buffalo, New York, Gregory P. Joseph of New York, New York.

Retiring Chairs of Standing Committees: Elizabeth K. Ainslie of Philadelphia, Pennsylvania, Christine A. Carron, Montreal, Quebec, William B. Crow of Portland, Oregon, John R. Trigg of Denver, Colorado, Jim Brown of New York, New York, Nancy J. Gellman of Philadelphia, Pennsylvania, Thomas G. Heintzman, Q.C., of Toronto, Ontario, David O. Larson of San Francisco, California, Joseph D. Steinfield of Boston, Massachusetts, J. Walter Sinclair of Boise, Idaho, Lauren E. Handler of Morristown, New Jersey, R. Harvey Chappell, Jr. of Richmond, Virginia, Hon. Phillip R. Garrison of Springfield, Missouri, Alan G. Greer of Miami, Florida, R. Joseph Parker of Cincinnati, Ohio, Joseph W. Anthony of Minneapolis, Minnesota, and Michael W. Smith of Richmond, Virginia.

State Committees: David H. Marsh of Birmingham, Alabama, William B. Smith of San Francisco, California, James M. Lyons of Denver, Colorado, Philip S. Walker of Hartford, Connecticut, David J. Hensler of Washington, D.C., William C. Lanham of Atlanta, Georgia, Martin Anderson of Honolulu, Hawaii, Michael E. McNichols of Lewiston, Idaho, Stephen L. Williams of Terre Haute, Indiana, James D. Griffin of Overland Park, Kansas, Ernest L. O'Bannon of New Orleans, Louisiana, Steven D. Silin of Lewiston, Maine, Kathleen Howard Meredith of Pasadena, Maryland, Richard A. Kay of Grand Rapids, Michigan, Philip A. Pfaffly of Minneapolis, Minnesota, E. Brooke Ferris, III of Laurel, Mississippi, James R. Wyrsch of Kansas City, Missouri, Dana L. Christensen of Kalispell, Montana, Michael F. Kinney of Omaha, Nebraska, Martha Van Oot of Concord, New Hampshire, John S. Siffert of New York, New York, Joseph V. McCarthy of Buffalo, New York, John Robbins Wester of Charlotte, North Carolina, Richard H. McGee of Minot, North Dakota, Chris Kitchel of Portland, Oregon, Carmen P. Belefonte of Media, Pennsylvania, Eugene F. Hestres of San Juan, Puerto Rico, Michael G. Sarli of Providence, Rhode Island, Edwin E. Evans of Sioux Falls, South Dakota, Emerson Banack, Jr. of San Antonio, Texas, Elliott J. Williams of Salt Lake City, Utah, Stanley G. Barr, Jr. of Norfolk, Virginia, Susan S. Brewer of Morgantown, West Virginia, Stephen M. Glynn of Milwaukee, Wisconsin.

Province Committees: Kenneth F. Bailey, Q. C. of Edmonton, Alberta, Michael F. Harrington, Q.C. of St. John's, Labrador, W. Niels Ortved of Toronto, Ontario, Michel Decary, Q.C. of Montreal, Quebec.

COLLEGE LEADERS ATTEND 9/11 MEMORIAL EVENSONG AT WESTMINSTER ABBEY

In London for the Fall Board meeting, the Board of Regents and Past Presidents of the College and their spouses represented the United States and Canada at a commemorative memorial evensong at Westminster Abbey on Monday, September 11, 2006.

Lord Bingham of Cornhill, Senior Lord of Appeal in Ordinary, an Honorary Fellow, had suggested that the College leaders represent their countries at the service, which honored all those who died five years earlier on 9/11/2001, including a number of British subjects.

The security checks to which travellers are now subjected were a constant reminder of the events five years earlier and of the subsequent terrorist attacks on English soil and indeed throughout the world.

Greeted at the West Door by Canon Robert Reiss and Lord Bingham, the entourage was seated in the ancient choir stalls for the service, and its presence was acknowledged at the beginning of the service.

"Worship has been offered here daily," read the service program, "for over a thousand years by clergy and lay people—first in a monastic community—and since 1560 by members of the present collegiate foundation. . . . . [for] a congregation drawn from all over the world."

The stately Church of England service began as a boys choir, striking in its ethnic diversity, entered the church chanting. The service began with a with a Psalm, a song from the Hebrew Scriptures, followed by an Old Testament reading from Isaiah, "No more shall the sound of weeping . . . ," a chant, a reading from the Gospel of Matthew, "Blessed are the peacemakers," another chant, a Creed and thereafter an anthem, providing, as the program suggested, "time and space to meditate on God, the world, ourselves."

And, at the end, a prayer "before we return to God's service in a busy world."

At the end of the service, the group processed outside to the Memorial for the Innocent Victims, a round, slightly domed tablet embedded in the pavement of the Abbey courtyard just inside the fence, close by a busy street. Dedicated in 1996, its most prominent word: "Remember," followed by "all innocent victims of oppression, violence or war."

The fence outside the courtyard was packed with curious onlookers. After the Canon had offered appropriate prayers, College President Michael A. Cooper responded and laid a wreath on the Memorial in memory of those who had died five years before.

Expressing his gratitude on behalf of the attending Fellows, Cooper remarked, "This day has a special significance for all Americans, and particularly for those of us from New York City . . . . We remember the World Trade Center Victems in sorrow, but we also remember the scores of men and women who were killed in the underground and on a bus in London last year, and the too many innocent victems in other countries. Ours is a profession dedicated to preserving peace through application of the rule of law, thereby reducing, if we cannot altogether eliminate, the taking of innocent lives."

Among those who represented the College was Past President James W. Morris, III. Afterwards, he reflected: "We were all deeply touched by the moving tribute to the victims of 9/11 on the fifth anniversary of the tragedy. The College was particularly honored that our president, Mike Cooper, was invited to lay the wreath in memory of the fallen and to speak eloquently for us all in the courtyard of the most historic and beautiful churches in the world."

"Later in the week, when all the Fellows had arrived," he continued, "one of our tour busses passed the Abbey, and all on board shared the warmth and pride when the Memorial and 'our' beautiful wreath were pointed out to them. We are all grateful to Lord Bingham, Canon Reiss, the angelic choir and others who made it possible for our College to participate in such a memorable way in paying honor to those who were lost."

PANEL DISCUSSES BRITAIN'S RESPONSE TO TERRORISM

In conjunction with the Annual Meeting in London in September the College's Federal Criminal Procedure Committee presented a timely and thoughtful panel discussion about Britain's response to terrorism. The panel was organized by committee members Martha Boersch, Chuck Meadows and chair Elizabeth Ainslie, who acted as moderator.

The panel members were Timothy O'Toole, the head of the London Underground; Sue Hemming, Britain's lead prosecutor of anti-terrorism cases; Keir Starmer, a prominent British barrister who has handled significant civil rights issues in the context of terrorism prosecutions; and Donald Bayne, a Canadian defense lawyer who has been deeply involved in Canadian terrorism issues such as extraordinary rendition.

By Elizabeth Ainslie
Chair, Federal Criminal Procedure Committee

Timothy O'Toole, managing director of the London Underground, is an American, and an American lawyer at that. In his capacity of managing director of the Underground, he was responsible, on July 7, 2005, for dealing with the bombings in London that left four bombers and 52 innocent civilians dead. His remarks included a fascinating description of the activities of transit and police authorities on that day, and he spoke with pride of his staff who, confronting "something humans aren't supposed to confront," managed to evacuate 250,000 people from the Underground in less than an hour.

O'Toole also described the regular drills and other preparation engaged in by the "Blue Lights," or London Resilience Group, the team of authorities charged with coping in the event of disaster, whether natural or manmade. He stressed that this planning and coordination was essential, and worked well in the aftermath of the July bombings; for instance, he remarked, the Metropolitan Police who were the "Gold Control" force that day, already knew what the staff of the Underground was going to do, so they "didn't need to meddle."

O'Toole said that in his experience, there is nothing so dangerous as authority without expertise.

Sue Hemming, the lead prosecutor of terrorism cases in the United Kingdom, described her office and her function, as well as the status of various terrorism prosecutions now underway. Her office is the Counter-Terrorism Division of the Crown Prosecution Service; the Counter-Terrorism Division encompasses eleven lawyers who handle exclusively prosecutions of terrorism cases, war crimes, hate crimes and Official Secrets violations. These eleven lawyers handle the basic prosecution chores and, in some prosecutions, are joined in the later stages by barristers from the private bar who become part of the prosecution team for purposes of trial.

Hemming said that no prosecutions are expected arising out of the July 2005 bombings, but an investigation into the circumstances of those bombings is ongoing for the purpose of law enforcement education and public awareness. She also described the status of the prosecutions arising out of the August 2006 arrests based on charges of a conspiracy to explode

devices concealed in liquids on U.S.-U.K. airliners.

In that connection, Hemming stressed that British law provides for detention without charges for a *maximum* of 28 days, and the prosecutor or the police must periodically apply to a judicial authority for continued permission during that 28 days before any suspect may be further held in custody. At least 17 of the 24 people originally arrested in the airliner conspiracy have been charged with offenses, including conspiracy to commit murder, preparing acts of terrorism, possessing articles useful for terrorist activities, and possession of information with respect to terrorist activities and failure to give that information to the authorities. The later three offenses have been created since 2000.

Hemming and others on the panel stressed that terrorist offenses in the UK are prosecuted, as nearly as possible, the same as non-terrorists crimes. In the UK, the police need only to have a "reasonable suspicion" in order to arrest an individual and no prior court approval is required. The individual is then charged if, according to the Code of Crown Prosecutors, law enforcement has a "reasonable prospect of conviction."

Traditional Notions *of* Human Rights

Keir Starmer, the third speaker, has built an enviable reputation, in a relatively few years, as a champion of those caught up in terrorism prosecutions, particularly those who are subjected to the relatively new device of "control order." Mr. Starmer outlined the four major pieces of legislation passed by Parliament to contain the threat of terrorism in the United Kingdom. In 2005 Parliament passed legislation, in response to a House of Lords decision that declared Britain's Guantanamo-like detention of terrorism suspects illegal, and this Act set forth sanctions, applicable to both UK citizen and non-citizens, whereby an individual may be removed from his home and placed in an apartment distant from his home, under curfew up to 18 hours per day, and subject to electronic monitoring and other control devices while not under curfew; the control orders are in place for up to 12 months at a time, renewable, and their legality is currently being tested in the courts.

The control order program, according to Starmer, raises a number of issues: how, for instance, may we expect prosecutors to resist the temptation to use programs such as this instead of traditional prosecutions, where traditional prosecutions require so much more work and a higher quantum of evidence? And at what point do these control orders amount to punishment (e.g., house arrest) in the absence of conviction? And is it consistent with traditional notions of human rights and due process to allow the government to rely on secret evidence in justifying an individual's continued detention?

On this last point, Starmer explained that members of the British bar may be named as "special advocates" on behalf of individuals who are subjected to control orders. However, a special advocate is greatly hampered by the fact that there is no attorney-client relationship to speak of because he has not been retained by the detainee, has no instructions from him, is not generally in a position to ask the detainee for the relevant facts. Moreover, although the special advocate is permitted to participate in the judicial hearing that determines the legitimacy and duration of any control order, at some point in the proceeding the special advocate is politely invited to leave the room and the prosecutors thereafter present the heart of their evidence to the judge *ex parte*.

Donald Bayne, a prominent criminal defense lawyer in Ottawa, Canada who spoke about Canada's response to terrorism, began with quotations from Lord Hoffmann, one of the Law Lords who wrote in the House of Lords decisions declaring the indefinite detention of terrorist suspects illegal, to the effect that terrorist violence does not "threaten the life of the nation" but rather, the real threat to the life of the nation comes from laws such as these. Bayne thus urged that the only legitimate way to respond to terrorism was not to abandon the traditional safeguards of due process but rather to proceed against terrorist suspects in accordance with our traditional criminal legal procedures.

Bayne outlined the provisions of a number of statutes enacted in Canada, which has been touched by international terrorism although it has not yet sustained any direct attacks such as those in New York, London, Washington and Madrid among others. One of the subjects touched on by Bayne was the use of "public inquiries" such as the Arar Investigation, in which Bayne himself represented the Royal Canadian Mounted Police. The Arar inquiry arose out of a terrible incident in which a Canadian citizen living in Yemen and Boston, was arrested, and then sent from Boston to Montreal from where he was sent to Syria; in Syria he was held for a year and subjected to torture. The issue in the public inquiry in Canada was to what extent had Canadian law enforcement assisted the United States in sending this individual to Syria? As Bayne pointed out information-sharing is, as we now realize, not always a good thing.

Other topics discussed during the program were: British practices in normal criminal prosecutions where revelation of anti-terrorists police procedures might jeopardize ongoing anti-terrorism investigations; the extent, if any, to which additional technological screening procedures can enhance the physical safety of the citizenry; and the problems that arise from the claim by a detainee that sending him "home" will subject him to torture in his own country of origin.

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(DVDs of the program are available free of charge, by emailing a request to Elizabeth Ainslie, eainslie@schnader.com.)

"NOTABLE QUOTE FROM *the* LONDON-DUBLIN MEETING"

"When men and women are brought into the civil or criminal courts for whatever reason, they should be able to turn for assistance at what may be the critical moments of their lives to a trained body of advocates, independent and fearless, who are pledged to see that they are protected against injustice and that their rights are not wrongly invaded from any quarter."

Steven Hockman, QC

Chairman of the Council of the Bar of England and Wales,

quoting Nicholas Birkett in welcoming remarks

PRESIDENT OF BRITISH ACADEMY DISCUSSES INFORMED CONSENT

"Some Limits of Informed Consent: Nuremberg or Helsinki?"

Baroness O'Neill

"Philosophers and lawyers," began Baroness Onora O'Neill, professor of philosophy and President of the British Academy, "have a few things in common, and one of the things is that we talk quite a lot about informed consent."

A graduate of Oxford and Harvard, where she earned her PhD, a member of the House of Lords and a prolific writer and lecturer on a broad variety of subjects, she quickly distinguished the lawyer's concern with avoiding liability through informed consent with the broader ethical concerns implicated by conventional informed consent procedures.

Her address centered on two landmark documents: the Nuremberg Code of 1947, developed in the wake of the revelation of the hideous abuses on human subjects in the name of medical experimentation in Nazi Germany, and the later Declaration of Helsinki, promulgated by the World Medical Association, which deals with both medical research and, by implication, the practice of clinical medicine.

The Nuremberg Code, drafted by doctors, provides: "The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent, should be so situated as to be able to exercise free power of choice without the intervention of any element of force, fraud, deceit, duress, over-reaching or other ulterior form of constraint or coercion, and should have sufficient knowledge to make an understanding and enlightened decision."

Baroness O'Neill pointed out that that prescription proved inadequate because it allowed what would now be called "implied consent." What was deemed important was that the person be in a situation to make a free choice, "not that they actually do so." The Nuremberg Code also came to seem "inadequate in other ways," she pointed out, "because there is so little stress on the information that the potential research subject or patient or other person in a situation where consent is required must be given."

"When we turn to the Declaration of Helsinki, the 2004 version," she continued, "we find a much more ambitious doctrine of informed consent, one in which the notion of information is continually stressed." It provides: "The subjects must be volunteers and informed participants in the research project. In any research on human beings each potential subject must be

adequately informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study and the discomfort it may entail. The subject should be informed of the right to abstain from participation in the study or to withdraw consent to participate at any time without reprisal. After ensuring that the subject has understood the information, the physician should then obtain the subject's freely-given informed consent, preferably in writing. If the consent cannot be obtained in writing, the non-written consent must be formally documented and witnessed."

"I suggest," she continued, "that what we have seen across these fifty years in discussions of informed consent is a movement to demand ever more specific consent and ever more explicit processes of consenting, so that we have a move from a world in which it was acceptable that a rather general description of what was to be undertaken should be provided and the process could be implicit, as indeed, of course, much consent in medicine remains."

She gave as an example: "You are to have a blood test. You are sitting with a physician. No new document is given to you. Stretch out your arm and thereby consent. Now are we going in the right direction? Is the insistence on very specific consent and very explicit processes of consenting the direction in which we should have gone? Let me observe, first, that it is strictly impossible to meet either criterion to the full. You cannot ever have consent that is wholly specific. You could always add more detail, more information, and those of you who have met consent forms that are not merely as long as your arm but many, many pages longer will, I think, agree that it is getting beyond a joke."

"It is said," she elaborated, "informed consent is required in these many other contexts because it is the way in which we show respect for individual autonomy. If you push a little bit and ask people what they mean by 'individual autonomy,' they very often have in mind something fairly minimal like the capacity to choose, and indeed that is generally something that is usefully operationalised by informed consent procedures of some sort or another. But if you ask a bit further, 'How is more lengthy and more explicit and more detailed consent better?' I think the answer is very obscure."

Noting that sociologists have done a little bit of retrospective study to discover whether what passes for informed consent is indeed "informed," she observed, "The evidence is, I am afraid, pretty devastating. Take, for example, your ordinary randomized clinical trial of a new drug. The evidence is that a month after deciding to participate, if you ask a participant, 'Why were you in that arm of the trial?,' to which the only correct answer can be, 'Well, it was a randomized trial, so I don't know. My doctor doesn't know. The researcher doesn't know.' 50% to 70% of participants say, 'Oh, my physician thought it was best for me.' That is not informed consent, and there is an enormous, overwhelming amount of information that we are laboriously seeking bogus consent and, as I have suggested, for illusory reasons."

Expressing the opinion that we should not give up on consent altogether, she referred back to the Nuremberg Code, which she suggested gave us a rather better picture of why consent is important: "The point of consent is that it is a waiver. It is to ensure that there is no element of force, fraud, deceit, duress, over-reaching or constraint or coercion. . . . Procedures needed to ensure that these fundamental violations of human rights have not taken place are surely essential, but by losing sight of the ultimate justification of consent as a waiver of what would otherwise be fundamental and serious obligations, a very selective waiver, I think we lose sight of why consent matters, and we then embark upon a road by which we

imagine that better consent is more deeply informed. We forget about the limits of the cognitive capacities of real live people, including patients and research subjects, and we end up with something for which no very good justification can be given."

"One may think," she observed, 'Well, isn't it better to be safe than sorry, to have enormously elaborate, detailed and specific consent procedures than to have inadequate procedures?' Surely we can all agree with that platitude, but we have to pause and consider the empirical evidence, and I think the evidence is that these enormously elaborated procedures are not securing genuine consent. They may be securing a way in which physicians and researchers can be sure that they are protected from liability, but that is a very heavy price for others to pay for a procedure that they feel has least of all enabled them to exercise individual autonomy in any worthwhile sense."

Concluding, she remarked, "I would leave you with the challenge for lawyers to find a way in which the question of liability could be addressed without fuelling this extraordinary culture of bogus consent in trading in information that cannot be understood by those on the receiving end. I do not think it reasonable that we should expect subjects in clinical trials to understand the scientific methodology that lies behind the research design or the institutional affiliations of the researchers. These are important matters which a regulatory system can address, but they are not suitable things for inclusion in supposed consent forms."

"NOTABLE QUOTE FROM *the* LONDON-DUBLIN MEETING"

"Our nations are united by a rich political heritage, in particular our unswerving commitment to the democratic ideal, but in addition as lawyers we share common roots. The law in which the Founding Fathers had confidence was English common law, brought with settlers as part of their culture and adopted to suit the social and economic conditions of what was then the colony. Even the very act of rebellion was founded in the common heritage of Magna Carta and the common law, and as Supreme Court Justice Anthony Kennedy has noted, and I quote: 'The American constitutional system was inspired by fundamental confidence in law as a liberating force. When we declared independence, we conceived of our cause, we found our identity, we justified our rebellion in legal terms.' The laws of each of our countries are, as a result, a testament to the closeness of our legal systems and the extent we borrow, lend, reborrow in statute law and case law. There are many examples where the ideas first formed in one country have fertilised a new solution to modern problems in another."

Lord Goldsmith of Allerton

Her Majesty's Attorney General

Bon Mot

After the Second World War, the Electrolux Company, a European company, decided it would try and break into the virtual monopoly which the Hoover Company of America enjoyed in terms of vacuum cleaners in North America, and they made their plans. They made a fatal error in these plans by engaging the services of . . . London advertising agency to prepare their sales and marketing campaign for North America. That agency came up with a slogan for vacuum cleaners which sounded unexceptional to European ears, but which had a very different resonance in the United States and which killed the campaign stone dead. Some of you may be old enough to recollect that that famous campaign slogan was: "Nothing sucks like Electrolux."

Dermot Gleeson

Irish Barrister and Chair, Allied Irish Bank
On the subject of interchangeability of language and culture

. . . . . .

There is in both our jurisdictions a proud tradition of dismantling the illogicality of distinctions that judges draw and there are many examples of this. . . . Back in about the 1860's a really remarkable case came before a German court in, I think, Schleswig Holstein . . . . The facts are important, and they are somewhat delicate, so you will forgive me if I go into them in some little detail. A girl of about 15, a beautiful young woman, . . . a high- born woman related to the royal family, was orphaned and taken into the care of her maiden aunt. And the maiden aunt brought her up very strictly. They lived in a wonderful castle and she was isolated and protected from the rest of the world, and she received the best tuition that Europe could supply, taught the classics and foreign languages and mathematics and music and so on. Private tuition, the very best.

The young music teacher felt her education should be extended a bit on some rather more personal topics, and a passionate affair developed between the girl at the age of about 17 and the music teacher, who was aged about 20. This was kept private from the strict-minded aunt until on one summer's afternoon the aunt was walking in the grounds of the castle and came to a summer house and there beheld the shocking sight of the couple in what in another European language is described as flagrante delicto.

The aunt was rendered speechless by what she saw, but not motionless, and what she did was bring her parasol down very hard on the exposed posterior of the music teacher. The couple had theretofore depended for contraception on some remarkable self control that this young man had exercised, but the self control did not survive the application of the blow from the parasol. Conception occurred and nine months later a healthy infant was born, and some year or so after that the Supreme Court of Schleswig Holstein wrestled with the tricky legal question of where in succession to the throne the infant was to be placed. In a remarkable judgment that looked at issues of causation and mens rea and actus reus the court decided, in a decision never since followed, that the aunt was the father of the child.

Dermott Gleeson

Bon Mot

. . . . . .

[T]he Director of Presidential Personnel. Now, that is the person in the White House who is responsible for all of the presidential appointments. That is the person who, with every appointment, makes eleven enemies and one ingrate.

Regent Charles H. "Chuck" Dick

Introducing Ambassador Robert Holmes Tuttle

NOTABLE QUOTE FROM *the* LONDON-DUBLIN MEETING

"The war against terrorism is the war of a law-abiding nation and its law-abiding citizens against lawbreakers. It is, therefore, not merely a war of the state against its enemies; it is also a war of the Law against its enemies."

Lord Goldsmith

Quoting recently retired Israeli Supreme Court President, Aharon Barak

New College Website Manager on Board

Scott Bryan, an experienced website manager from Newport Beach, has been hired as the College's first Web and Communications Manager.

Bryan came on board November 1, 2006 to manage actl.com as well as to serve as staff liaison to the Outreach and Communications committees. Bryan, a 1996 graduate of Whitworth College in Spokane, Washington with a bachelor of arts in communication and rhetoric, comes to the College from his job as web service consultant for a prominent Newport Beach marketing and advertising firm. Dedicated to lifelong learning, he is half-way through earning his master's degree in adult learning theory with an emphasis on applied information technology.

He was raised in Gloucester, Virginia and will celebrate his tenth wedding anniversary in September. He and his wife, Kathryn, have two daughters, Julianna and Alexandra. Bryan enjoys spending time with his family playing at the beach, sailing, going for hikes and bike rides. He delights in evenings with friends over delicious food, Port wine, aged cheeses and chocolate.

Bryan's goal for **actl.com** is for the website to be an intuitive and essential resource which educates, informs, unites and prepares Fellows in the execution of their craft and the enjoyment of the association. His three immediate online initiatives are for Fellows to be able to register for events, electronically complete and submit forms and easily navigate and find items of interest. He invites you to introduce yourself and discuss items of interest by emailing him at sbryan@actl.com.

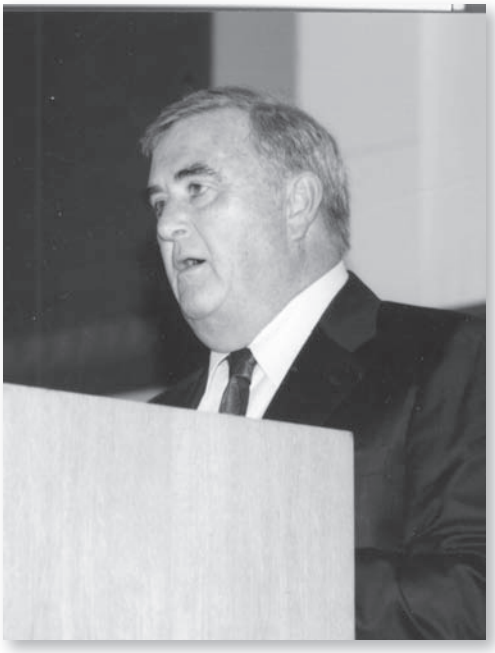
Republic Of Ireland Chief Justice Speaks On

GLOBALIZATION OF LAW

"The fact that I am addressing American lawyers as a judge of a foreign Supreme Court," began Ireland Chief Justice John L. Murray, "and . . . as a judge who sat in Luxembourg for eight years as a member of the Court of Justice of the European Union, which then had jurisdiction over fifteen countries, and now twenty-five countries, is perhaps indicative of the era in which we live, . . . the era of globalization. Globalization has by no means left the administration of justice and the law untouched. Just as in other means of endeavour, there is an incremental growth in the globalization of the ideas and concepts of justice."

One of the most distinguished legal minds in Ireland, Justice Murray qualified as a barrister in 1967, specializing in commercial, civil and constitutional law. He served as the Attorney General of Ireland on two occasions, the first in 1982 and then between 1987 and 1989. He was then appointed to the European Court of Justice, where he served in Luxembourg with great distinction until he was appointed as a Justice of the Supreme Court of Ireland, Ireland's constitutional court, in 1999. In 2004 he was appointed the Chief Justice of that Court.

Citing Pericles' 430 BC funeral oration for the dead soldiers of the Peloponnesian Wars: "Our Constitution is called a democracy because power is in the hands not of a minority of the people but of the whole people", he traced the rule of law forward from the first hazy conceptual embryo of a formal law to the post-Homeric age. "It was in the ensuing Hellenic world," he continued, "when the first efforts were made to inscribe in permanent and public form rules which formally had the more insubstantial status of custom. That



Chief Justice Murray

is the spring from which the idea of the rule of law in organized society emerged, spread to the Roman world, from where it flowed inexorably over the centuries across Europe and eventually to the New World, so that the idea of law, although in a constant state of evolution, is today the lifeblood of the modern liberal democratic state."

Observing that "the fertilization of society by concepts and ideas from afar is not a novel experience," he noted, however, that "it is the immediacy and pervasiveness of the forces of globalization across the world which marks out this modern phenomenon from anything that has happened in previous eras. A Sri Lankan student can instantly access the databanks of American and European universities, at the click of a mouse a US professor can compare ideas with his colleagues in Europe and Australia, and judges trawl through websites of supreme and constitutional courts throughout the world."

"Courts," he continued, "particularly supreme or constitutional courts, are more than ever looking at how complex jurisprudential problems are resolved in judicial decisions of foreign countries and being inspired by the rationale which underlines such resolutions, as well as the academic writings which surround them. Comparative law is an increasingly rich source of inspiration for judges throughout the world."

"The terrain on which this phenomenon naturally develops," he observed, "is that of fundamental rights, or rather, on the fundamental aspects of fundamental rights, such as the death penalty, the rights of minorities, issues of positive discrimination, problems raised by the developments in the field of biological and genetic science which touch on sensitive aspects of human existence, freedom of conscience, public policies towards schools, religious confession, the status of the family and so on and including due process, which is a touchstone of fairness of trial in the determination of rights and liabilities. It is at this level that the comparison of jurisprudential experience has tended to engage and develop."

"The flow of information across the worldwide web," he continued, "tells us that many of the same socio-legal issues which pose challenges for modern societies occur in all modern societies irrespective of the systems. If law is the science which we claim it to be, it cannot be viewed as having strict national boundaries. There is no such thing as German physics, Chinese geology, Canadian chemistry. American democracy is good not so much because it is American, but because it is democratic."

"I suppose," he reflected,"one has to truthfully qualify that by saying that, in contrast to the natural sciences, it could be said that the law is crystallized in each country under the influence of pressure of historical and social forces which are often peculiar to that country. But that should be seen as an advantage, providing a more fertile soil in the pursuit of the primary aim of comparative law, as in all sciences, the search for knowledge fashioned from the experience of others."

He went on to note, "Because globalization affects all the areas of our social and political fabric, it also arouses fears. The impact of globalization on the administration of justice or the evolution of so-called judicial cosmopolitanism has given rise to some divergence of approach and indeed controversy reflecting a fear of cultural or constitutional pollution."

Comparative Law *is* Inspiration

At one end of the spectrum, he pointed to Article 39 of the Bill of Rights of the Republic of South Africa, adopted in 1996, which provides that, when interpreting the catalogue of rights in that Bill, the courts: "Must take into consideration international law and may take into consideration foreign law." At the other end of the spectrum, he pointed to the ongoing debate in the United States about the citation of foreign precedents.

"There is, nonetheless," he observed, "fundamentally an important issue of principle at stake. The role of foreign sources of law in constitutional interpretation directly engage the legitimacy of interpretation based on such sources. There is a good deal of substance in the concerns which Justice Scalia has expressed, at least, and I emphasize this, in the terms in which he poses the problem, particularly when he criticized his colleagues for relying on conventions and other international treaties to which the US itself has not subscribed. To use foreign law or foreign sources as a naked means of importing legal concepts and values

into national constitutional law would be likely to undermine the legitimacy of a constitutional or supreme court by attributing meanings and values to a constitution which do not stem from, and are not indigenous to that constitution itself."

Justice Murray suggested a middle ground: "I think between the Antipodean poles of this argument there is another avenue in which enriching our judicial knowledge and functions by recourse to case law of other countries need not be seen as a Trojan Horse distorting national constitutional interpretation, one in which the citizens of the system are not called to endure inclinations, empiricisms of foreign fashions . . . As Professor Sagrobelski, a well-known Italian jurist, put it: 'The judicial object is principally one of internal law. It is like resorting to a friend rich in experience to solve difficult problems who helps one think more clearly, widens perspectives and enriches arguments, brings to life points of view perhaps otherwise ignored.' Or, in the words of Aharon Barak, Chief Justice of Israel, when he stated: 'Comparative law serves me as a mirror. It allows me to observe and understand myself better'."

SOVEREIGNTY LIES *with* THE PEOPLE
— PERICLES

"There are," Murray continued, "concepts that are common to constitutions: the independence of the judiciary, the separation of powers, due process. These are not purely national concepts. The depth and scope of these concepts as they respond to the pressures of modern societies are ones which the courts have to confront, if not regularly certainly from time to time."

He referred back to the words of Pericles and quoted Justice Robert Jackson's statement in *West Virginia Board of Education*: "The authentic purpose of a constitution is to remove certain matters from the vicissitudes of political controversy by placing them outside the reach of majorities or functionaries sanctioning them as legal principles to be applied by the courts. The right of every person to life, to liberty, to property, to the freedom of speech, to the freedom of the press, to the freedom of worship and of meeting and of other fundamental rights cannot be subjected to the vote. They do not depend on the result of any voting."

"Pericles," he observed, "recognized that sovereignty lies with the people. These are values common to democratic constitutions, they are principles that are run through or that are golden threads in the fabric of any society based in the rule of law and these are common principles which all constitutional courts, all supreme courts with a constitutional remit have to confront. I would have no difficulty, and I doubt to see any court so committed would have difficulty in citing Pericles or Justice Jackson or looking to how other courts define the limits and ambits of the attribution of constitutional powers between the various organs of government."

"So," he continued, "citing them could hardly be said to imperil the legitimate expectation of any constitution that is anchored on the same premise, and so I do not think this necessarily compromises the identity of one's own constitution. It is part of the grand dialogue which takes place today in this globalized world between supreme courts, among supreme courts, both judicially and extra-judicially."

Commenting on the College's program, he observed, "Academic centres meeting such as this contribute to the dialogue on the great themes of constitutional law, and they are one of the most fruitful interlocutors in that dialogue. So it is more at an abstract level that we speak of trans-national communication knowledge, concepts and ideas of

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New Fellows Total 76 at Annual Meeting

ALABAMA: **Nicholas B. Roth**, Decatur

ARIZONA: **Peter Akmajian**, Tucson, **Ed Hendricks, Sr.**, Phoenix

NORTHERN CALIFORNIA: **Michael P. Bradley**, San Francisco, **Daniel J. Furniss**, Palo Alto, **Lane Liroff**, San Jose, **Otis McGee, Jr.**, **Cynthia McGuinn** and **Robert A. Van Nest**, San Francisco

SOUTHERN CALIFORNIA: **Michael J. Lightfoot** and **Donald M. Re**, Los Angeles

DISTRICT OF COLUMBIA: **Lanny A. Breuer, E. Anthony Figg, Mark J. MacDougall, Patrick M. Regan,** Washington

FLORIDA: **W. L. Kirk**, Orlando

GEORGIA: **Charles H. Brown**, Statesboro, **Hubert C. Lovein, Jr.**, Macon, **Bernard Taylor, Sr.**, Atlanta, **Lisa Godbey Wood,** Savannah

HAWAII: **Melvyn M. Miyagi,** Honolulu

ILLINOIS: **Sheila Finnegan, John B. Kralovec** and **Terrence J. Lavin,** Chicago, **Thomas E. Jones,** Belleville, **Jerome E. McDonald**, Mount Vernon

INDIANA: **Kevin P. Farrell,** Indianapolis

KANSAS: **Donald W. Vasos,** Fairway

LOUISIANA: **W. Arthur Abercrombie, Jr.,** Baton Rouge

MARYLAND: **Gerard P. Martin,** Baltimore, **Phillip R. Zuber,** Upper Marlboro

MASSACHUSETTS: **Peter A. Mullin** and **Robert L. Ullmann**, Boston

MICHIGAN: **Webb A. Smith**, Lansing

MINNESOTA: **Martin R. Lueck** and **Stephen J. Snyder,** Minneapolis

NEBRASKA: **Daniel M. Placzek,** Grand Island

NEW HAMPSHIRE: **Richard Guerriero,** Concord

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justice. The national judge remaining true to his or her constitutional principles is the filter through which universally discussed ideas enlighten, but do not of themselves determine, the interpretation of his or her own constitution, in which must always be found the essential ingredients for the justification of his or her judicial conclusions. In this sense, the search for knowledge and enlightenment outside national boundaries seems to me to be entirely legitimate."

"Justice is not, and democracy was not," he concluded, "born just one day in one place; it is something that has to be continuously regenerated and confronted and identified and continuously defended as it is exposed to pressures that arise as society evolves and changes. . . . I do not believe that judicial solutions to complex problems can be found always and exclusively through the sometimes myopic lens of purely national perspectives. We should and we can in the search for solutions be willing to enrich our knowledge and wisdom from sources wherever they are to be found."

Finally, he quoted Justice Ruth Bader Ginsburg, who observed when addressing a body of constitutional lawyers: "Our perspective on constitutional law should encompass the world. We are the losers if we do not foreshare our experience with and learn from others."

DOWNSTATE NEW YORK: **Robert J. Anello, Henry B. Gutman, Bruce G. Habian, Larry H. Krantz, Thomas A. Moore, Bernard W. Nussbaum** and **Tai H. Park,** New York

UPSTATE NEW YORK: **Harold A. Kurland,** Rochester, **Joseph J. Schoelllkopf, Jr.**, Buffalo

NORTH CAROLINA: **James R. Fox,** Winston-Salem, **Marsha L. Goodenow,** Charlotte, **David W. Long,** Raleigh

OHIO: **John P. Gilligan** and **Robyn Jones Hahnert,** Columbus

OKLAHOMA: **Mark E. Bialick,** Oklahoma City, **Ted Sherwood,** Tulsa

OREGON: **Richard C. Busse, Daniel F. Knox** and **Michael H. Simon,** Portland

PENNSYLVANIA: **Everett A. Gillison, Michael J. Holston, H. Laddie Montague, Jr.** and **Dean F. Murtagh,** Philadelphia, **Ned J. Nakles, Jr.,** Latrobe, **Bernard R. Rizza,** Pittsburgh, **Carol Nelson Shepherd,** Philadelphia

SOUTH CAROLINA: **Thomas C. Brittain** and **O. Fayrell Furr, Jr.,** Myrtle Beach

TENNESSEE: **Dwight E. Tarwater,** Knoxville

VERMONT: **Thomas E. McCormick,** Burlington

WEST VIRGINIA: **Allan N. Karlin,** Morgantown, **Edward M. Kowal, Jr.,** Huntington

CANADA, ALBERTA: **Daniel J. McDonald, Q.C.,** Calgary

ATLANTIC PROVINCES: **Eric Durnfold, Q.C.** and **Ronald A. Pink, Q.C.,** Halifax

BRITISH COLUMBIA: **Dinyar Marzban, Q.C.,** Vancouver

ONTARIO: **Alan J. Lenczner, Q.C.** and **James Lockyer,** Toronto.

Bernard Taylor, Sr.

of Atlanta, Georgia gave the response for the inductees.

A portion of his remarks follow on page 82.

Inductee Response: Bernard Taylor, Sr. of Atlanta, Georgia

It is an honor to be asked to respond on behalf of this class of inductees.

I am also honored to be able to work in this great profession alongside some of the greatest minds and biggest hearts ever to grace a courtroom, and many of you are in this room tonight. Who among us does not appreciate and maybe even long for the recognition that comes from being named a Fellow of the American College? But lest we get caught up in the headiness of it all, we should keep in mind Ernest Hemingway's wise advice when he said, "We are all apprentices in a craft where no one becomes a master."

As I prepared for tonight's event, I spent some time considering what it is that we all have in common. Immediately words like "passion," " skill," "dedication," "education," "experience" and "maturity" all came to mind. All of those are certainly apt descriptions, but none of those words seemed to capture the essence of what it's really like to be a successful trial lawyer. The word I was looking for was "joy" because we all know that when we look deep into our hearts, we are forced to admit that we are trial lawyers because we love it. We love it because our work brings us great joy. It is that love and joy that we are all here tonight to celebrate. So as I respond on behalf of the inductees, now Fellows, I just want to reflect upon some of the many opportunities we have to experience love and joy in our work. There is certainly the joy of winning for our clients, the joy of being an able advocate for the downtrodden, the joy of mentoring others, the joy of sharing the benefits of our good fortune, in other words, the joy, true joy, of being a trial lawyer.

Many of the important legal issues that have been decided in America, Canada and here in England were resolved due to the art, craft and ability of trial lawyers: the right to vote, the right not to be discriminated against, the right to due process. I could go on and on. Our field of law is unlike any other, and with it comes responsibilities unlike any other. So, in becoming Fellows, we accept the charge you have laid upon us tonight. And in accepting that charge, we

recognize that we have a responsibility to breathe life into the law and to also provide a basis for those impacted by the law to have respect for it and faith in it.

We all have experienced the pure joy of winning a major case because of our abilities to craft strategies and themes that make the complex seem simple and the mundane exciting. But nothing compares to the joy that comes from winning the respect, love and gratitude of the downtrodden when we are able to tip the scales of injustice that far too often fall like a lead weight on those who can least bear that burden. Make no mistake, what we do in the community is as important as what we do in the courtroom. Community service has been a major part of our history as lawyers. It is one of the very foundations on which the American College of Trial Lawyers was built. As Fellows we do proudly accept the charge to advocate for those unable to advocate for themselves. In our various practices and respective firms, we are all proud of our records of servant leadership. We have raised awareness and money for community projects, tutored children, built homes and torn down barriers. We have reached out to diverse groups of people who have no voice. We don't do that because of recognition it brings. Rather, we seek opportunities to advocate for those who can't because it is simply the right thing to do. Sometimes it is our financial support that makes the difference between suffering and thriving. There are times when our role is as crucial as unlocking the gates that separate the "have-nots" from the "have-lots." There is no contribution too small, no kindness too insignificant and no battle unworthy of the fight if it improves our communities and strengthens our families. Often just beneath the surface of suffering lies joy, waiting to be unleashed, and we are the leaders who can make that happen.

We Teach What We Most Need *to* Learn

I came into the profession late in life. After spending ten years on the street of Detroit, Michigan as a police officer, I decided at the age of thirty to fulfill a lifelong dream to become a trial lawyer. My student life began at a time when most people think they have completed the majority of their formal learning process. I discovered quickly that my learning had only begun. For the past twenty-five-plus years I have dedicated myself to being a student of that craft that I learned to love, that has brought me such joy. The lessons have been constant and plentiful. Sometimes they have been life-changing. Occasionally they have been painful. At other times they have been puzzling, but always they have been worthwhile. Even in those times when I have lost a case, I have never lost a lesson. Now I approach each case, not just to win, but also to learn. And then as we learn, we have an obligation to teach, just as we have each looked up to a colleague, a wiser, more experienced lawyer to mentor us, so should we be mindful of those who look up to us now.

Now is our time to experience the joy of mentoring. You have no doubt heard the expression, "We teach what we most need to learn." Mentoring then is not entirely altruistic. On the contrary it is mutually beneficial, and yet it is an important part of our legacy to share the hard-won lessons that have made us the successful trial lawyers we are today.

Now, one of my mentors was a former Fellow of this College. He is now deceased. His name is Earl May. Some of you may recall Earl. Earl and I worked together for many years. During the course of that time Earl confided in me that as a white South Georgia boy, he didn't always have a positive experience with race relations in Georgia. But Earl and I tried a lot of cases together and during the course of that period of time we became friends. We became more than that. Earl became a father to me. If I have one regret tonight, it is that Earl cannot be here to share in this honor, because it belongs to him as much as me.

One of the most important lessons Earl impressed upon me is this: no matter how well educated you are, no matter how many cases you win, no matter how much money you make, without integrity and ethics one simply cannot be a great trial lawyer. Sharing the lessons of our experiences and insights is just another way to share the joy of being a trial lawyer. Another important lesson I hope to impart to those who follow me as well as those that follow them is that we must embrace our differences if we are to insure the integrity, strength and admiration of our profession in the future.

I remember well a young black boy from Detroit who became a ward of the state. Without a stable home life, chances were not very good that he would grow up on the right side of the law. But thanks to those who loved him, mentored him, and yes, advocated for him, he grew up to be a trial lawyer. The trial lawyer he became stands before you tonight to provide the response on behalf of the inductees in this room. I know first-hand the impact of using my God-given talents. I understand first-hand the reward of dreaming big, of working hard to find my way. I certainly appreciate first-hand the impact a caring mentor can have. But above all I know this: We stand here tonight as Inductees, Fellows, friends, comrades, because of the choices we have made and the impact we have had. We have chosen wisely thus far. As we accept this honor being conferred upon us tonight, I hope it inspires each of us to continue to choose wisely. Our induction as Fellows is not a way to set our careers in stone. On the contrary, it is in fact the springboard to an even greater life. Let us leave here empowered to bring joy to our communities, to share the joy of learning with our colleagues and the joy that comes from embracing our differences in ways that make us all stronger.

My Fellow Inductees, now Fellows, thank you for the honor of allowing me to respond to you tonight. And thank you for loving our profession and our craft. God bless.

UNWARRANTED ATTACKS ON THE JUDICIARY CHALLENGE THE FUNDAMENTAL SUPREMACY OF LAW

LEADING BARRISTER SIR SYDNEY KENTRIDGE ON JUDGES AND THE EXECUTIVE IN ENGLAND: A NECESSARY TENSION?

"The tension created by judicial review is acceptable, because it demonstrates that the courts are performing their role of ensuring that the actions of the government of the day are being taken in accordance with the law. The tension is a necessary consequence of maintaining the balance of power between the legislature, the executive and the judiciary upon which our constitution depends." With this quotation from a lecture given some years ago by now retired Chief Justice Lord Woolf of Barnes, Sir Sydney Kentridge began his discussion of the rising criticism of the British judiciary.

Recognizing that under the continuing threat of terrorism, the fulfilment of that role by the judiciary has become more onerous and that the judiciary has been subjected to an increasing level of criticism, he observed, "It seems to me that the reason for the unfortunate and unjust criticism of the courts by the executive, and it must be said by other politicians, including those in opposition, is a simple failure to understand the differing roles of the executive and the courts."

Sir Sydney Kentridge

As a young barrister in South Africa, Kentridge, an Honorary Fellow of the College, was a part of the trial team that defended Nelson Mandella in his treason trial. He later represented the family of Stephen Biko in the inquiry into his death in police custody, conducting an examination so gripping that it was later depicted in a stage play. Now a leading barrister in England, Kentridge was once described by the then Lord Chancellor at a meeting of the College in 1998 as "a jewel of the British Bar." And College President Michael Cooper, introducing him, remarked, "I can sum up my feelings about him by saying that over the 46 years since I finished law school, and during my years in law school, I have met many lawyers all over the United States, much of Canada, Europe, the United Kingdom, Wales, Scotland, Ireland and other parts of the world, and Sydney Kentridge is simply the most remarkable lawyer that I have ever met. . . . He is a legend in his lifetime."

Kentridge prefaced his remarks by noting that he was in a position to say some things about the tension created by

KENTRIDGE, con't from page 85

the threat of terrorism that the judges, including the one who had immediately preceded him on the program, were not in position to say.

Before 1998, he noted, though human rights had, in fact, been part of the common law of England for centuries, and, in general, governments of the United Kingdom had respected these rights, they were not part of Britain's statute law, and Parliament and the executive were therefore not bound by the 1951 European Convention on Human Rights. That changed in 1998 when the United Kingdom Parliament passed the Human Rights Act. By that Act, the European Convention on Human Rights was, in effect, incorporated into the law of the land. Under the Act, however, Parliament still is supreme, and no court can strike down an Act of Parliament.

A Failure *to* Understand

"If a court finds that an Act of Parliament is in conflict with the Human Rights Act," he noted, "all it can do is to make a declaration to that effect, but actions of any public authority below Parliament must comply with the Human Rights Act, and that includes all arms of the executive government from the Prime Minister and cabinet ministers down to the licensing officer of a municipality, and if they haven't complied with the Act, their actions are struck down. Given the broad nature of those rights, the judicial review powers of British courts have broadened and correspondingly the potential for conflict between the courts and the executive has also increased."

"[F]or the most part," he continued, "these rights are not absolute. . . . [T]he rights of the individual must sometimes be weighed against and yield to the interests of the community as a whole. . . . [T]he question whether a departure from the rights of the individual is justifiable as necessary in a democratic society is a question not for the decision of the executive, but for the decision of the judges, and . . . secondly, not every right stated in the Human Rights Act is subject to such limitations. Some of them are absolute."

Major change in conflicts between the executive and the judiciary was brought about by the events of 9/11 in the United States and by the bombings in London on July 7, 2005. "In the era of the suicide bomber," he observed, "new measures of defence were called for, including new laws and new administrative controls. . . . [O]ne thing which I suggest has not changed is the constitutional function and duty of the judges to protect the individual against any unlawful exercise of executive power." Quoting one of the greatest English judges of the 20th century, Lord Atkin, he said: "In accordance with British jurisprudence, no member of the executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of his action before a court of justice. . . . And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive."

The tension he noted has largely arisen in recent times from cases concerning residence and asylum seekers who are suspected of involvement in terrorist or terrorist-related activities, but who cannot be prosecuted for want of evidence admissible in a criminal court. The British courts struck down certain attempts by the executive to confine such persons, triggering attacks on the judiciary. He described as "extraordinary" the reaction of some members of the executive to some of these decisions.

Conceding that across the Atlantic judges are often criticised by politicians at a level of vituperation which the British could not possibly match, he observed that, "It has always been open to our

government, as to any of us, to criticize judgments, but the tradition has been restraint. Lord Irvine, a former Lord Chancellor, and also incidentally an Honorary Fellow of this College, deprecated ministers speaking about decisions they didn't like, said it undermined the rule of law and he added: 'I think that maturity requires that when you get a court decision that favours you, you don't clap, and when you get a court decision against you, you don't boo.'"

Lord Irvine was responding to the then Home Secretary's statement following a decision in which a court had held against him on the issue of the human rights of asylum seekers, in which he had said: "I'm personally fed up with the situation where Parliament debates issues and the judges then overturn them." Indeed, Kentridge pointed out an instance in which the Prime Minister himself had stated that a judge's ruling was "an abuse of common sense." In that instance, the Court of Appeal in affirming "commended the judge for an impeccable judgment."

Whatever the merits of the judgment, Kentridge observed, "[I]t is disquieting that what came close to a personal attack on the judge should have come from the top level of government." "Some tension there must be between judiciary and executive," he went on, "but surely verbal assaults such as these create an unnecessary and unfortunate degree of tension. . . . It seems to me that the reason for the unfortunate and unjust criticism of the courts by the executive, and it must be said by other politicians, including those in opposition, is a simple failure to understand the differing roles of the executive and the courts. Needless to say, the judiciary has the same concern as everyone else for the safety and security of the country in dangerous times. The judges in this country have always been sensitive to the needs of national security, but the courts should not be looked on as if their role was to be junior partners in the government of the country. The tradition of British justice, as stated by Lord Atkin, does not permit that. It is wrong and dangerously wrong to accuse the judges of provoking a constitutional conflict."

The threat to society has, Kentridge noted, led some to ask whether this tradition is one which we can afford in this time of emergency. Reaching back to 19th Century South African history, he described an incident in which the government had arrested a local chieftain believed by it to have some responsibility for serious unrest in the colony. The government sought to justify the arrest, for which there was no clear legal authority, by pleading that the disturbed state of the country necessitated it. Lord de Villiers, the then Chief Justice of the Cape, rejected that plea, saying: "The disturbed state of the country ought not to influence the court, for its first and most sacred duty is to administer justice and not to preserve the peace of the country. The civil courts have but one duty to perform and that is to administer the laws of the country without fear, favour or prejudice, independently of the consequences which ensue."

Kentridge closed his presentation by remarking, "In my respectful opinion, the present judiciary of this country has acted and is acting in the tradition exemplified by the judgments I have quoted. Our judges do not seek praise for doing their duty, but one would have hoped that they would have escaped abuse. . . . In a judgment two or three years ago in an appeal here concerning a British national interned at Guantanamo Bay, Lord Phillips, our present Lord Chief Justice, referred to the great legal tradition shared by the United States and the United Kingdom. He expressed the belief that the United States courts have the same respect for human rights as our own, and I venture to say that that belief has been borne out by the decisions of the United States Supreme Court in such recent cases as *Rasul*, *Hamdi* and *Hamdan*, and this common tradition of ours is emphasised and strengthened by your choice of London as the venue for your conference. We are glad that you are here."

THE BULLETIN
of the
AMERICAN COLLEGE OF TRIAL LAWYERS
19900 MacArthur Boulevard, Suite 610
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Statement of Purpose

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by 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