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THE BULLETIN

Civil rights leader and Fellow **Oliver W. Hill, Sr.** of Richmond, Virginia, received a special greeting from Queen Elizabeth II in Richmond on May 3, two days after his 100th birthday. His daughter-in-law Renee Hill looks on. The queen is smiling after Hill said, "Why don't you stick around for the party tomorrow?"

Con't on page 18

WE WANT YOU TO WRITE!

The Editorial Board of the Bulletin is accepting applications from Fellows who would like to try their hand at writing news articles for publication. We especially welcome those who have prior non-legal writing and editing experience. We will give you assignments, give you a deadline, confer with you in editing your submissions and give you a byline, attributing to you published articles that you wrote. We will maintain the existing independent Editorial Board, which oversees the Bulletin's structure and contents and addresses the editorial policy issues that arise from time to time. Examples of possible assignments include profiles of Fellows such as the one of Justice Jack Major that you will find in this issue, reports of regional, state and province events, particularly ones that you attend, and the brief obituary notices we carry in each issue.

— E. Osborne (Ozzie) Ayscue, Jr. **Chair, Board of Editors**
ozzie.ayscue@hmw.com

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.*

American College of Trial Lawyers
The Bulletin

Marion A. Ellis, *Editor*
Telephone: 704.366.6599
Email: mellis2019@carolina.rr.com

American College of Trial Lawyers
Dennis J. Maggi, CAE
Executive Director
19900 MacArthur Boulevard, Suite 610
Irvine, California 92612
Telephone: 949.752.1801 Facsimile: 949.752.1674
Email: nationaloffice@actl.com
Website: www.actl.com

FROM THE EDITORIAL BOARD

The cover of this issue speaks for itself. A photograph of wheelchair-bound Courageous Advocacy Award winner and Fellow Oliver Hill shaking hands with the Queen of England and inviting her to his 100th birthday celebration captured a once-in-a-lifetime vignette.

In this issue we report on the Spring meeting of the College at La Quinta.

Growing concern with the vanishing trial phenomenon was the subject of three addresses at the meeting, those of National Center for State Courts president Mary Campbell McQueen, Professor Marc Galanter and Justice Rebecca Kourlis. McQueen addressed what are assumed to be among the causes of the problem and Professor Galanter's statistical analysis of trends in federal district courts began to examine some of those assumptions. Justice Kourlis outlined the approach that her organization, the recently formed Institute for the Advancement of the American Legal System, is taking towards exploring possible solutions.

You may find Professor Galanter's statistics eye-opening, particularly those that indicate that the greatest casualty of the vanishing trial phenomenon he first identified and named is bench trials. Indeed, his statistics may tend to indicate that the shifting role of the judiciary from trying cases to managing dockets is a larger factor than we might have assumed. Some of the anecdotal evidence adduced at the conference to which Justice Kourlis referred, held after our Spring meeting and centered around the participation of Honorary Fellow Lord Harry Woolf, at which the College was represented, tended to suggest that firm trial dates, set soon after a case is filed before judges who know how to try cases, may be an effective way to reduce both cost and delay, regardless of the procedural rules under which the court operates.

We commend all three articles to your study. This is a problem the College is committed to trying to solve.

Threats to judicial independence have been a pervasive problem in the United States in recent years. We have come to accept the fact that, for better or worse, politics plays a major role in the appointment process in its federal judicial system. Indeed, controversial court decisions at both the trial and appellate levels are cynically analyzed in the media in terms of who nominated the

Con't on page 30

FELLOWS *and* GUESTS GATHER FOR SPRING MEETING AT LA QUINTA

Reminders of the College's origins abounded at the 57th Spring Meeting of the College at La Quinta Resort and Club in the Southern California desert.

Among the College's guests was **Phyllis Cooper**, widow of Grant Cooper, one of the founders and original members of the College and its 12th president (1962-63). She and her husband had hosted at their Los Angeles home the April 4, 1950 gathering at which Emil Gumpert first presented his idea of the College to a group of his friends.

The College presented the Samuel E. Gates Litigation Award to California Chief Justice **Ronald M. George** for his outstanding creativity and leadership in guiding the largest court system in the Western world. In his acceptance remarks George credited Judge Gumpert, a family friend, with steering him to law school and to a career on the bench, as well as officiating at his wedding. He also challenged the College to take an active role in educating the public about the proper role of the judiciary in a democratic society in the face of persistent threats to judicial independence.

The theme of judicial independence was echoed by the next speaker, **J. Parker MacCarthy**, Q.C., a general practitioner from Nanaimo, on Vancouver Island in the Straits of Georgia, a part of British Columbia, president of the Canadian Bar Association. He recounted the efforts of his bar to resist the Canadian government's changes in the process of selecting Federal judges that gave the appearance of departing from a merit-based appointment system.

The so-called vanishing trial phenomenon was the subject of the presentations of three speakers, **Rebecca Love Kourlis**, Executive Director of the Denver-based Institute for the Advancement of the American Legal System; **Mary Campbell McQueen**, President of the National Center for State Courts; and Professor **Marc Galanter** of the University of Wisconsin School of Law, whose 2004 paper first gave this trend a name.

Kourlis, who left the Colorado Supreme Court to found an Institute whose goals she defined for the audience, suggested that the loss of public confidence in the courts is related in great part to the failure of the civil courts to meet the needs of litigants.

McQueen outlined many of the suggested causes of the phenomenon. Professor Galanter presented a set of statistics that more closely defined the historical trends in the volume of jury and non-jury trials in the Federal courts in the United States as they relate to changes in the overall levels of trials and of trials in various kinds of litigation and in various parts of the country.

Ellen Hemley, Executive Director of the Boston-based Center for Legal Aid Education, last year's recipient of the Emil Gumpert Award for Excellence in Improving the Administration of Justice, described her organization's program to teach trial skills to legal aid lawyers and the use to which the College's $50,000 grant had been put.

Phoenix trial lawyer and National Football League referee **Ed Hochuli** ended the Friday program with an entertaining inside view, illustrated with film clips, of the life of an NFL official.

Early arrivals had been treated on Thursday afternoon to a two-part continuing education program ad-

dressing two challenging current issues. The first program, organized by Fellows **William McGuiness** of New York City and **Michael C. Russ** of Atlanta, who chair the College's Attorney-Client Relationships and Federal Rules of Evidence Committees respectively, was entitled "The Attorney-Client Privilege: Eroding or Evolving?"

The second, organized by International Committee chair **Carol Elder Bruce** of Washington, D.C., was entitled "GTMO and Detainee Due Process: Whither or Whether? Law and Public Policy in the Indefinite Detention of Uncharged Alien Terrorist Suspects."

The attendees danced Friday night away at the ACTL's House of Blues.

Saturday morning's program commenced with the induction of Canadian Supreme Court Justice **Rosalie Silberman Abella** as an Honorary Fellow. The priceless repartee between Justice Abella and her introducer, Past President **Ralph I. Lancaster,** who were obviously not strangers to one another, is reproduced verbatim elsewhere in this issue, as is Justice Abella's moving acceptance speech.

The College's first female officer, Secretary **Joan Lukey** of Boston, introduced American Bar Association President **Karen J. Mathis**, the third female president of that organization. Pointing out that eight ABA presidents had also been presidents of the College, Mathis outlined the ABA's current programs, many of which coincide with efforts of the College.

The Lewis F. Powell, Jr. lecture was delivered by Admiral **Bobby R. Inman**, Retired. He gave an insightful account of the deterioration of the United States' intelligence-gathering capabilities and its consequences. His assertion that intelligence-gathering is best done within the rule of law struck a responsive chord with his audience of trial lawyers.

The Saturday morning program ended with an entertaining, informative and audience-appropriate presentation by retired David Polk litigator **Chris Crowley**, co-author of the survival manual for fiftysomethings and beyond entitled *Younger Next Year* and its sequel, *Younger Next Year for Women*. Written from his own experience, their basic theme is that you cannot stop aging, but you can stop decay. He and his internist alternate chapters, with Crowley relating his sometimes raucously good-humored version of managing physical activity, diet and social engagement, his three keys to longevity, and his doctor following up with a medical explanation of the evolutionary physiology that underlies our propensity to age prematurely.

The inductees were treated to a breakfast at which they were introduced to the College, and they and their spouses were honored at a Saturday luncheon at which Past President **Charles B. Renfrew** related his impressions of the College. At the induction ceremony and banquet **William H. Haltom, Jr.** of Memphis, Tennessee gave an outstanding response on behalf of the inductees.

At the induction ceremony, the audience warmly applauded two special guests who had driven up from their duty station to attend the induction ceremony. They were newly minted Navy Seal Ensigns **Jonathan Johnson** and **B. J. Faldowski**, whose father, **Damon J. Faldowski** of Washington, Pennsylvania, was an inductee.

The highlights of the remarks of the various speakers, and in some cases their remarks in their entirety, may be found throughout this issue, in separate articles, in Notable Quotes and in Bon Mots.

Inductee Damon J. Faldowski (center) with son, B. J. on his left and B.J.'s friend, Jonathan Johnson.

JUSTICE *and* FELLOWSHIP

The following are Canadian Supreme Court Justice **Rosalie Silberman Abella's** poignant remarks in accepting an Honorary Fellowship in the College at the 57th Spring meeting.

Canadian Supreme Court Justice Rosalie Silberman Abella

I have always thought of trial lawyers as justice's apostles, and justice as democracy's centrepiece. I am not alone.

LAW AND JUSTICE IN THE PUBLIC EYE

Just look at any daily newspaper and you will see how pervasive the veins of justice are in the body politic. Last Sunday's *New York Times*, for example, had an article on the constitutional conflict between the President's power to deploy and direct troops and Congress' power to declare war and end it through spending cuts; an article on New York State's new law confining sex offenders beyond their prison terms; an article on the Hillary/Obama option for African Americans hoping to reinvigorate their civil rights momentum; an article on the seeming arbitrariness of the firings of federal prosecutors by the Bush administration; an article on how efficiently law firms who hire former NCAA investigators can investigate the NCAA; an article on the suppression of religious freedom in China; police/protestor clashes and arrests in St. Petersburg, Kosovo and Copenhagen; an article on India's new strict but impotent law banning child labour; an article on an injunction against the BBC minutes before it was to air a segment probing a possible financial scandal in the Blair government; coverups of sexual abuse in the Texas Juvenile Justice System, and on and on.

The public is clearly obsessed with law, with law's relationship to justice, and with justice's relationship with lawyers.

And just to show that culture can be justice's Boswell too, look

at the movies that won Oscars this year for Best Picture and Best Foreign Film. Both had huge justice themes. Martin Scorsese's *The Departed* took place in Boston and was about the difficulties for undercover police in fighting organized crime. Germany's *The Lives of Others* was about the secret police in East Germany, the Staasi, surreptitiously monitoring its citizens during the Cold War to ensure their political loyalty. One movie was about the limits of the State's law enforcement powers, and the other about the despair of living in a state that had too much of it.

Even on Broadway, there is an upcoming revival of Jerome Lawrence and Robert E. Lee's 1955 masterpiece *Inherit the Wind* about the 1925 Scopes Trial in Dayton, Tennessee. There too justice is the star, as the fictionalized incarnations of Clarence Darrow, William Jennings Bryan and H. L. Mencken use a courtroom as the forum for the titanic and timeless struggle between religious freedom and religious hegemony.

So justice is everywhere, it's on everyone's mind, and it's here to stay. And all of us are so lucky to be in the cast.

A NEW ERA IN CANADA

It was especially lucky for me to be in the cast in Canada, where what happened to justice since 1970, the year I graduated from law school, was nothing short of revolutionary after a century of legal somnolence. Legislatures across the country, encouraged by a public newly sensitized by the 60's to the inhibiting power of tradition, shone roving flashlights across their social landscapes. They exposed the inequities both created and hidden by the law's Pavlovian obedience to the neutrality of its own indifference. The response was a seismic reformulation of what constitutes the Canadian mainstream and who gets to join it. Canada launched a new journey which was, if not always about law, always about justice. We got official bilingualism and multiculturalism, gave persons with disabilities protected status in human rights codes, entered into serious dialogue with aboriginal people, welcomed waves of non-white immigrants, abolished the matrimonial property regimes that for centuries had kept wives on an economic continuum that ranged from invisible to inconsolable, and watched women ponder competing visions of security as they made the transition to a world with options.

And then, with the Charter of Rights and Freedoms whose 25th anniversary we jubilantly celebrate this year, Canada's justice journey became a justice juggernaut. We constitutionalized the protection of rights, gave independent judges the authority to enforce them, and introduced the public to a new, uniquely Canadian legal vision that rendered the status quo vulnerable to heightened expectations. It was, as a result, a controversial vision. It still is.

But out of the ashes of controversy emerged the phoenix of awareness — public awareness of who the judiciary was and what it did, and judicial awareness of who the public was and why what it thinks matters. We are both still learning, but the vision remains magnetically illuminating.

We strengthened our democracy by enhancing and guaranteeing its constituent rights and freedoms, and we enhanced our country by strengthening and guaranteeing its democratic values.

And today we even have four women on the Supreme Court, one of them our Chief Justice. But, I'm happy and proud to note that all five of the men on the Court got there on merit . . . .

A GROWING CONCERN

But notwithstanding how far Canada — and the United States — have come in asserting, protecting, debating and defining this work in progress we call justice, and as positively as I feel that despite episodic and inevitable tensions, North America remains committed to justice's centrality, I have a lingering and growing sense that justice is on the losing side in too many parts of the world.

This week marks the 60th anniversary of the start of the Justice Trial, or the Trial of the Judges, at Nuremberg. I cannot tell you how it feels to me to know that judges and lawyers in Nazi Germany were an indispensable part of the machinery of injustice, enforcing an unjust rule of law and destabilizing civility. Nuremberg was the Trial of our Lifetime, where justice was declared triumphant and rights were declared sacred.

But what has happened to justice and rights since we watched those lessons unfold?

Sixty years ago, in his opening address at Nuremberg, Robert Jackson warned:

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated.

Consider some of the events that have occurred around the world since then, notwithstanding the most sophisticated development of international laws, treaties, and conventions the international community has ever known, all stating that rights abuses will not be tolerated. We had the genocide in Rwanda; the massacres in Bosnia and the Congo; the violent expropriations and judicial constructive dismissals in Zimbabwe; the assassinations of law enforcers in Columbia and Indonesia; the slavery and child soldiers in Sudan; the repression in Chechnya; the cultural annihilation of women, Hindus and ancient Buddhist temples by the Taliban; the attempted genocide of the Kurds in Iraq; the rampant racism tolerated at the U.N. World Congress Against Racism and Intolerance in Durban, South Africa; and the world's shocking lassitude in confronting AIDS in Africa, a lassitude interrupted only when a Canadian, Stephen Lewis, donated his indefatigable compassion to the issue.

And now we add a disgraceful new chapter in global insensitivity as the world formulates a strategy of astonishing glacial and anemic proportions in Darfur. Notwithstanding what should have been the indelible lesson of the Holocaust, namely, that indifference is injustice's incubator, we felt entitled somehow to defer consideration of our international moral obligations and hide behind contraceptive terminology like "domestic sovereignty" or "cultural relativism."

As lawyers, I think we may have a tendency to take some comfort, properly so, in the possibility of subsequent judicial reckoning, such as occurred at Nuremberg. But is subsequent justice an adequate substitute for justice?

ABELLA'S STORY

I am the child of survivors. My parents spent four years in concentration camps. Their two and a half year old son, my brother, and my father's parents and three younger brothers were all killed at Treblinka. My father was the only person in his family to survive the war. He was 35 when the war ended; my mother was 28.

As I reached each of those ages, I tried to imagine how they felt when they faced an unknown future as survivors of an unimaginable past. And as each of my two sons reached the age my brother had been when he was killed, I tried to imagine my parents' pain in losing a two and a half year old child. I couldn't.

After the war, my parents went to Germany. In an act that seems to

The following exchange took place between Past President Ralph I. Lancaster, who was introducing Canadian Supreme Court Justice Rosalie Silberman Abella and inducting her as an Honorary Fellow of the College, and Justice Abella. You may surmise from the exchange that the two were not strangers to one another.

PAST PRESIDENT LANCASTER: I hold in my hand an eighteen-page abbreviated CV for Justice Abella, an abbreviated CV. Now, I know from personal experience that there is nothing more deadly dull than a speaker reeling off line after line of listed credentials. But after listening to Ed Hochuli's hilarious talk yesterday, I thought that probably you would want a little balance. So I decided to do it. Now, if I go too fast for those of you want to take notes, just signal and I'll slow down.

Actually the truth is that I'm not going to do that because the fellow sitting to my left would give me the hook. He likes to make sure that the College train runs on time, and I don't want to be on the track when he decides to take over.

But in order to earn my keep, I do have to at least touch on some of the high points for Justice Abella. So, Justice Abella was born—and because she's a friend, I won't tell you when—was born in a displaced persons camp in Germany. She came to Canada in 1950 as a refugee when she was four years

me to be almost incomprehensible in its breathtaking optimism, my parents transcended the inhumanity they had experienced and decided to have more children. I was born on July 1, 1946 in Stuttgart, a few months before the Trial of the Judges, and came to Canada with my parents in 1950, a few months after the Nuremberg trials ended — and the year the American College of Trial Lawyers was founded.

I never asked my parents if they took any comfort from the Nuremberg trials which were going on for four of the five years they were in Germany. I have no idea if they got any consolation from the conviction of dozens of the worst offenders. But of this I am very sure: they would have preferred by far that the sense of outrage that inspired the Allies to establish the Military Tribunal of Nuremberg had been aroused many years earlier, before the events that led to Nuremberg ever took place. They would have preferred, I am sure, that world reaction to the 1933 Reichstag Fire Decree suspending whole portions of the Weimar constitution; to the expulsion of Jewish lawyers and judges from their professions that same year; to the 1935 Nuremberg laws prohibiting social contact with Jews; or to the brutal rampage of Kristallnacht in 1938 — they would have preferred that world reaction to any one of these events, let alone all of them, would have been, at the very least, public censure. But there was no such world reaction. By the time World War II started on September 3, 1939, the day my parents got married, it was too late.

THE PRICE OF SILENCE

Millions of lives were lost because no one was sufficiently offended by the systematic destruction of every conceivable right for Jews that they felt the need for any form of response.

And so, the vitriolic language and venal rights abuses, unrestrained by anyone's conscience anywhere, in or out of Germany, turned into the ultimate rights abuse: genocide.

I do not for one moment want to suggest that the Nuremberg trials were not important. They were crucial, if for no other reason than to provide juridical catharsis. They were also an heroic attempt to hold the unimaginably guilty to judicial account, and showed the world the banality of evil and the evil of indifference. At Nuremberg, victims bore public witness to horror, and history thereby committed to memory the unspeakable indignities so cruelly imposed.

There is no doubt that some justice did in fact emerge in the aftermath of Nuremberg, and there are many connective dots of history leading to the present of which we can be proud. We have made remarkable progress and we are immeasurably ahead of where we were 60 years ago in many, many ways.

But we have still not learned the most important lesson of all — to try to prevent the abuses in the first place. We have not finished connecting history's dots. All over the world, in the name

old. Now, parenthetically for those of you who can't deal with complicated mathematics, if you'll see me afterwards I'll tell you how to calculate her birthday.

. . . .

[B]y my count, she has received twenty-six honorary degrees and is the only woman to receive the Distinguished Alumnus Award from the University of Toronto Faculty of Law. All of the foregoing, you understand, is at the time I wrote this, which was last month, so the figures probably do not reflect the true picture.

Now, there is, of course, one thing missing: Unlike Justice Sopinka, Justice Abella has, so far as I know, never played professional football, at least not yet.

JUSTICE ABELLA: I must say that I also was extremely taken by Ed Hochuli's speech on football. And I thought that, therefore, what I would talk about is the role football has played in my thirty years as a judge.

Thank you. (Justice Abella returns to her seat, sits momentarily, then returns to sustained laughter.)

I guess it's a guy thing.

. . . .

It's a particular honor to be introduced by Ralph Lancaster not only because he is erudite and delicious, but because of a personal history. What most of you don't know is that many years ago I applied to join the American College of Trial Lawyers, and the person who was President at the time and wrote my rejection letter was Ralph Lancaster. It was, as you would expect, an extremely gracious rejection letter, but I want to read it to you because it shows you

of religion, national interest, economic exigency or sheer arrogance, men, women and children are being slaughtered, abused, imprisoned, terrorized and exploited. With impunity.

We have no international mechanism to prevent the ongoing slaughter of children and other innocent civilians, and no overriding sense of moral responsibility that informs us and helps develop a consensus for when responsive multilateral action is required to protect human rights. We have, in fact, no consensus on what our international moral responsibilities are, period, and that is why we are so desperately lacking in enforcement mechanisms, legal and otherwise.

Sixty years after Nuremberg, we still have not developed an international moral culture which will not tolerate intolerance and injustice. The gap between the values the international community articulates and the values it enforces is so wide that almost any country that wants to can push its abuses through it. National abusers don't seem to worry about whether there will be a "Nuremberg" trial later because usually there isn't, and, in any event, by the time there is, all the damage that was sought to be done has already been done.

Nations debate, people die. Nations dissemble, people die. Nations defy, people die.

We should never forget that it is not just what you stand for, it is what you stand up for.

THANKS — AND A CHALLENGE

My life started in a country where there had been no democracy, no rights, no justice. It created an unquenchable thirst in me for all three. You are the people who keep rights and justice safe. That means you are the people who keep democracy safe. Because of what you do, my journey that started in a Displaced Person's Camp was able to end up at the Supreme Court of Canada. Thank you for what you do, for doing it so courageously, and for making so many things possible for so many people.

Let me close my tribute to you with the words of my hero, George Gershwin. He died 70 years ago, but remains for me the best example of America's unique capacity for simultaneously - and joyfully - embracing the world at its most sophisticated and its most populist. And so, American College:

Of thee I sing, Baby,
Summer Autumn Winter and Spring, Baby,
Shining Star and Inspiration,
Worthy of a Mighty Nation,
Of thee I sing.

It is such a privilege to be an Honorary *Fellow* of the American College of Trial Lawyers.

the fierce loyalty that Ralph Lancaster has for the College. Here is what he wrote to me:

My Dear Mrs. Abella,

Thank you for your letter offering to join the American College of Trial Lawyers, North America's most prestigious legal organization. On behalf of the Board of Regents, I regret to inform you that your membership had been declined. Here in brief are some of the many reasons:

One, we note that no one has nominated you. This is fatal to your application. The necessary encomiums from prominent lawyers and judges supporting your candidacy are demonstrably absent. The letters from your sons, and especially your mother's moving endorsement, are very nice, but largely unhelpful.

Two, you are completely unqualified. We note that you practiced law for four years then became a Family Court Judge before entering what can only be described as an uninterrupted period of sustained controversy. Our lawyers only handle landmark cases. They make waves, not controversies. Their arguments are designed to persuade, not provoke.

Your arguments, Mrs. Abella, are very annoying, particularly the following two you raise in your letter to the College. The first is your suggestion that we are misrepresenting ourselves by calling ourselves a College. We simply do not accept your simplistic point that you cannot be a "college" without a football team. We chose the word "college" from the Latin word collegium, or collegial, which means "silver-haired and silver-tongued."

What brings us together is our common bond, fellowship, which brings me to your second gratuitous insult. We categorically reject your suggestion that the College is insensitive to women because we call our members "Fellows." It is simply not the case that only fellows become Fellows.

FELLOWS *to the* BENCH

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

S. DAVID FRANKEL, Q.C., Supreme Court of British Columbia

MICHAEL F. HARRINGTON, Q.C., Supreme Court of Newfoundland and Labrador (Trial Division)

CHRISTOPHER EDWARD HINKSON, Q.C., Supreme Court of British Columbia

THOMAS R. MULROY, JR., Circuit Court of Cook County, Illinois

KENNETH G. NIELSEN, Q.C., Supreme Court of British Columbia

LISA GODBEY WOOD, U.S. District Court, Southern District of Georgia

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We adopted "fellows" from the well-known hymn, For He's a Jolly Good Fellow, sung, I note, by men and women all over the world.

As you will see from our archives, we had briefly debated naming our members after an equally famous hymn, Amazing Grace, but many of our members were not happy about being known as "Grace."

As for your own proposal for a new name, while I acknowledge that this is essential in keeping with the spirit of the 1950s when the College was founded and is arguably somewhat more gender neutral, I have consulted with several others on the Board of Regents, and there seems to be little appetite at the time for calling ourselves "Mouseketeers."

Please do not let this letter deter you from your chosen path. This rejection does not mean that you are a lesser human being, merely a lesser lawyer.

Mary Lou joins me in wishing you every happiness.
Best personal regards,

Ralph Lancaster, Jr., Esquire.

PS: The only way I can think of to circumvent the merit-based requirements for membership in the College would be for you to become a Judge on the Supreme Court of Canada, but I think you and I both know that that will never happen.

So in order to become a member of the American College of Trial Lawyers, I became a Judge of the Supreme Court of Canada. How great is that?!!

INSTITUTE DIRECTOR CALLS *for* CIVIL JUSTICE SYSTEM REFORM

"We live in a society with a promise of justice for all. We count on our right to go to court to resolve our differences as well as prosecute crimes. It is a foundation of our way of life, even for those who do not end up in court, and the foundation is cracking."

Colorado Supreme Court Justice Rebecca Love Kourlis

"I believe," continued former Colorado Supreme Court Justice **Rebecca Love Kourlis**, "our civil justice system is being crippled under too much process and, unfortunately, paralysis is spreading throughout the system at a time when Americans are counting on their courts more than ever."

Executive Director of the Denver-based Institute for the Advancement of the American Legal System which she created, she was introduced by Fellow **James M. Lyons** of Denver thus: "From time to time, . . people come into our society and our lives with extraordinary talent. Some of those are born to public service, others are called to public service. [Becky Kourlis] is a rare combination in that she is both born and called into public service."

Daughter of a three-term governor of Colorado, a graduate of Stanford University and of its law school, the wife of rancher and former Colorado Commissioner of Agriculture Tom Kourlis and the mother of three children, she practiced law in Denver and in Craig, Colorado. Joining the state trial bench in 1987, she quickly built a statewide reputation for her skill, fairness and intellect. Appointed to the Colorado Supreme Court in 1995, she authored over 200 opinions and dissents and led significant reforms in several aspects of the Colorado court system.

In January 2006, Kourlis, whom Lyons described as "a crusader for judicial excellence and independence of our judicial system," left the bench to establish the Institute, believing that she could best serve the courts by working to rebuild the system from the outside. Its first product, *Shared Expectations:*

Judicial Accountability in Context, and a follow-up publication, *Transparent Courthouse: A Blueprint for Judicial Performance Evaluation*, have received national recognition.

COST AND DELAY

"There is a growing body of people," Kourlis observed, "who are dissatisfied with the service of the courts and the legal system, a growing body of people who think the system is too expensive, too costly, too inconsistent. Indeed, the most recent evidence to support the claim that Americans are losing faith in their courts can be seen . . . in the number of initiatives and amendments on ballots around the country in the last election that sought to address court dysfunction, or perceived dysfunction, by punishing judges."

"People settle cases under the hammer of time and money considerations because they don't trust the system. . . . You can probably think of dozens, if not hundreds, of other examples from your own experience," she told the audience, "cases where there were continuances, delays in resolution of motions, unnecessary discovery disputes, changing judges at the last moment, battles over minutia, and enormous expenditures of money. The picture isn't pretty."

INTENT OF RULES THWARTED

Calling for a "long, hard look in the mirror," she suggested that change could take many forms. She pointed, for instance, to how far we have come from the stated purpose of the 1938 Federal Rules of Civil Procedure, the "just, speedy and inexpensive determination" of disputes, noting that, "The Rules have never been reviewed as a whole to determine how far they have veered from the stated objective."

"Rather," she continued, "we have continued to append and amend–most recently with the rule on electronic discovery–to the point where the Rococo obscures the sound construction of the system. . . . Indeed, one attorney analogized it [the rule on E-discovery] . . .as 'tuning the violins on the Titanic'."

"Addressing details of implementation, assuming that more process is a good thing," she observed, "is much easier than stepping back and really thinking about what we want our system to achieve and at what cost. We engage, not in trial by jury, but trial by discovery. Only a small fraction of cases go to trial. . . . And litigants settle cases because they can't afford the time, the delay and the uncertainty."

Contrasting the criminal justice system where liberty, life and death are at issue, where pleading with particularity is required, at least for the prosecution, where there are no depositions except in truly extraordinary circumstances, no interrogatories, no requests for admission, but instead, disclosure requirements for the prosecution and to some limited extent for the defense, she asked the rhetorical question, "So why is the civil system so much more complex?"

She went on to cite as an example to consider, Oregon, where pleading with specificity is required in civil cases and discovery, particularly of experts, is limited. "Astonishingly," she reported, "our feedback on that system would indicate that plaintiff's attorneys, defense attorneys, judges, and clients are not just supportive, they're downright ebullient about that approach. It's much less expensive for all concerned. It allows parties to settle cases under the threat of a trial but with an eye to the facts and the law, not the relative marketability of experts to a jury. . . . It allows for more trials and the consequent benefits associated with jury resolution and appellate law. And maybe most interestingly, the lawyers with whom we met love the practice of law."

SYSTEMIC REFORM

Moving to the broader topic of systemic reform, she cited the "reinvention" in the 1990s of England's civil justice system under the direction of Honorary Fellow Lord Harry Woolf, asking, "Does that mean that they have a capacity to respond to changing times and we do not?"

"What would reform look like?" she asked. "First," she answered, "we must remake our system with a new commitment to openness and public service, . . a philosophy that our Institute describes as 'building a transparent courthouse.'. . . We must hold judges and the system

accountable for doing what they are supposed to do, applying the law, doing it fairly, economically and courteously."

She went on to define that part of the process as a mixture of five steps: "Selection and retention of judges based on merit, training of judges, evaluation of judges against clear performance criteria, pay sufficient to draw the best and the brightest into the judiciary and staffing appropriate to caseload."

Noting that there is a hunger out there for real solutions to these problems, she continued, "There's a seismic shift afoot . . . in the way that we look at our courts and at our judiciary. That shift can be harnessed for constructive, sustainable change or it can swing the pendulum clear out of the clock cabinet in one direction or another. At the Institute, we believe that our court system is essential to our way of life. It is not fulfilling its critical function. And the best way to defend it is to advocate for real change, change designed to serve all litigants, change designed to make the courts accountable for providing a fair, effective and efficient process for the resolution of disputes."

A CHALLENGE

Challenging the College, she concluded, "All of you are uniquely situated to make a difference. You are lawyers and judges who have your collective fingers on the pulse of the justice system at every level in the United States and Canada. You have access to the rules committees in your home states or to the legislative committees in state where the legislature has a role in rule-making. You have access to the Judicial Conference. You have the expertise and the credibility and the experience to know whereof you speak.

"I challenge you to have the courage to eschew labels that divide us, such as plaintiff's counsel, defense counsel, liberals, conservatives, and commit yourself to the passion that unites us, the passion for our system of justice. I challenge you to join us in the vital work of rebuilding trust in America's courts by supporting bold and innovative measures to transform our system."

"Of course," she cautioned, "you have to be willing to transcend the inertia associated with opposition to change. And you have to contend with the financial realities of a profession that is built on the status quo. We as lawyers do not intend to be motivated by these realities. We're sometimes even unaware of their presence, but they're there. But if you can overcome them, you can initiate the kind of change I'm suggesting."

"In return, we at the Institute commit ourselves to working tirelessly to prod, mediate, innovate or aggravate in ways designed to remake the system into one that serves all users."

[Editors' note: The College has subsequently created an ad hoc committee to cooperate with the Institute for the Advancement of the American Legal System in examining the state of the civil justice system.]

> "[T]he volunteer lawyers representing the Guantanamo detainees are a tribute to our profession. They deserve our respect and gratitude."
>
> ABA PRESIDENT KAREN J. MATHIS

2007-2008 OFFICERS NOMINATIONS ANNOUNCED

TO BE VOTED ON AT ANNUAL MEETING

At the Annual meeting in Denver in October, the officers nominating committee will nominate the following Fellows to serve as officers of the College for the 2007-08 year:

President	***Mikel L. Stout, Wichita, Kansas***
President-Elect	***John J. "Jack" Dalton, Atlanta, Georgia***
Secretary	***Gregory P. Joseph, New York, New York***
Treasurer	***Joan A. Lukey, Boston, Massachusetts***

These four and immediate Past President David J. Beck will constitute the Executive Committee for the coming year.

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

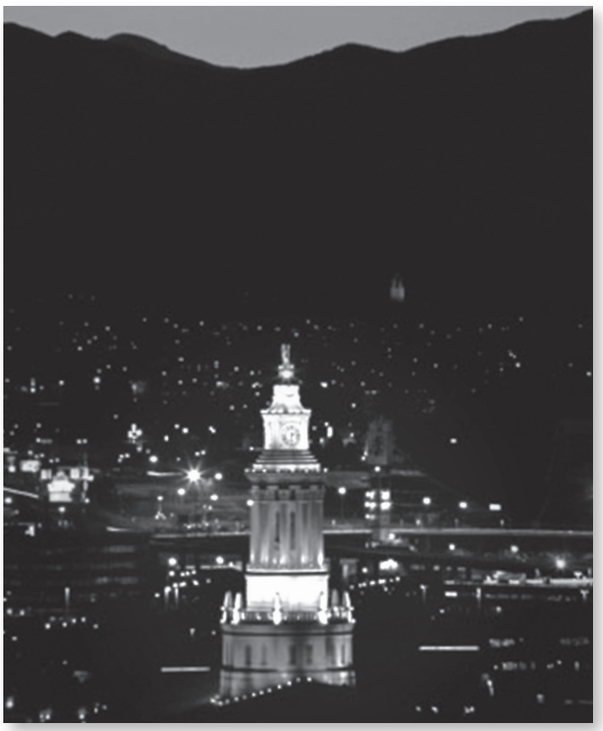
A Regents Nominating Committee has sent notices to all the Fellows and is currently at work selecting nominees to replace retiring Regents **Raymond L. Brown**, **Charles H. Dick, Jr., Brian B. O'Neill** and **Thomas H. Tongue**.

ROSTER UPDATE

Preparations for the 2008 edition of the ACTL Roster are underway. Address change notices will be sent to all Fellows in early July. Please mail any changes to the National Office so that we can update your listing. If you have changed firms or moved, please be sure to include your new e-mail address, telephone and fax numbers.

DENVER WELCOMES COLLEGE MEETING

American College of Trial Lawyers 2007 Annual Meeting in Denver, Colorado. Save the date: October 11-14. Visit www.actl.com for updates.



The Denver, Colorado skyline and mountains beyond

President **David J. Beck** and Denver Mayor **John W. Hickenlooper** will welcome Fellows to the 57th Annual Meeting Thursday, October 11 through Sunday, October 14 in Denver, Colorado. The general sessions, arranged by President-Elect **Mikel L. Stout** of Wichita, Kansas, will include the presentation of Honorary Fellowships to **Mary Robinson**, the former President of Ireland, and Madam Justice **Louise Charron** of the Supreme Court of Canada. The College also will announce the creation of the Sandra Day O'Connor Jurist Award with Justice **O'Connor** in attendance.

The Honorable **Deanell Reece Tacha**, Chief Judge of the Tenth Circuit Court of Appeals, will speak about her experience as a delegate to two judicial exchanges. Naturalist **Ralph Waldt**, author of "Crown of the Continent," will illustrate his talk on the majesty of the Rocky Mountains. Two points of view of global warming will be addressed by **Fred Palmer**, senior vice president of government relations of Peabody Energy, and **David Doniger** of the Natural Resource Defense Council. Student winners of the various moot court and trial competitions in both the United States and Canada will be honored.

The meeting will be held at the beautiful Hyatt Regency Denver at the Colorado Convention Center, 650 15th Street, Denver. Opened in December, 2005, the gleaming structure is perfectly situated in downtown Denver. Just outside the doors of the hotel lies the heart of the city's

business, shopping and entertainment districts.

Because of the abundance of diverse tours and side trips, the College has scheduled activities beginning on Thursday. You can experience Denver as only the ACTL Fellows can, with exclusive tours of NORAD, Coors Distillery and Red Rock Ampitheater, take a guided tour of Denver's Historic Watering Holes or a Cherry Creek Bike Tour, hike the Front Range, enjoy the Denver City Swing, including the Molly Brown House or go shopping at Cherry Creek.

Colorado Fellows have taken a special interest in showing off Denver and her environs. State Chair **Ann Frick** expressed her pride, "Every day my husband and I remark what a privilege it is to live in Denver. The weather, scenery, recreational activities and sports teams are unsurpassable. And now, Denver ranks in the top tier of American cities in terms of its entertainment, artistic and cultural offerings."

Thursday's Welcome Reception will take place at the Denver Art Museum. The ACTL has been granted special permission by the museum board of directors to expand its cocktail reception to the new Frederic C. Hamilton Building, designed by renowned architect Daniel Libeskind and opened in October, 2006. Libeskind has also been awarded what is currently the world's most well-known project, the master plan design for Ground Zero and the World Trade Center site.

While at the reception, Fellows and their partners are encouraged to explore the museum's diverse collection, including the special temporary exhibit "Artisans & Kings: Selected Treasures from the Louvre," with exquisite examples of craftsmanship and luxury in France during the century and a half leading up to the French Revolution.

Following Friday's general session, the Judicial Fellows and their guests will attend an invitation-only Judicial Luncheon at the Byron R. White United States Courthouse. The compelling story of the renovation of this marvellous courthouse, called a "Poem in Marble," will be shared with the attendees by Senior Judge and Judicial Fellow David M. Ebel, who will take them on a tour of the vast collection of personal memorabilia and manuscripts of the late Associate Justice of the United States Supreme Court Byron R. White. Justice White, a Colorado native and an Honorary Fellow of the College, played professional football for a year before winning a Rhodes Scholaship. His subsequent education at Yale Law School and his simultaneous professional football career were interrupted by World War II, in which he served as a naval intelligence officer in the Pacific Theater.

Are you ready for some football? Friday Night's Party in Invesco Field, home of the Denver Broncos, will honor Colorado's rich sport heritage. The College has rented the entire stadium for an evening of dancing, feasting, and even some punting and passing. This is a casual evening, and we encourage you to "sport" your favorite team's jersey, whether it is football, baseball, hockey, basketball or soccer that makes you stand up and cheer.

Saturday begins with the second General Session, followed by more optional tour activities. The Fellows and their guests will return to the Hyatt Regency for the annual black-tie banquet that evening. Over 100 new members will be inducted as Fellows and **Mikel L. Stout** will be installed as the 57th President of the College. Fellows and Inductees and spouses/guests will be seated by jurisdiction to share in the celebration

Mike O'Donnell, Colorado State Vice Chair, echoes Ann Frick's pride in Colorado by saying, "October is a particularly beautiful month in Denver and the surrounding mountain area. We hope many of the Fellows and their spouses will take full advantage of the fall foliage by making a side trip to the mountains before or after the Denver meeting."

QUEEN, con't from cover

Hill, who was born on May 1, 1907, was honored at a black-tie birthday dinner on May 4 attended by hundreds, including Virginia Governor Tim Kaine, five former Virginia governors and the Chief Justice of Virginia's highest court, Leroy Rountree Hassel, Sr. The U.S. Senate also passed a resolution honoring Hill on his birthday.

The College honored Hill in 2001 with its Courageous Advocacy Award for a lifetime of work in civil rights. He retired in 1998 after practicing law for nearly sixty years.

Hill earned his undergraduate degree and law degrees from Howard University in Washington, D.C. in 1933, second in his class only to Thurgood Marshall. He began practicing law in Richmond in 1939 and won his first civil rights case in 1940, working with Marshall and two other lawyers.

In the early 1950s, Hill was co-counsel in dozens of civil rights lawsuits in Virginia. One of those cases, *Davis v. County School Board of Prince Edward County*, became one of the five consolidated cases decided in *Brown v. Board of Education.*

In honoring Hill at the 100th birthday party, College Past President James W. Morris III of Richmond noted that Hill had started his career in a segregated society. "Into this strode the great Oliver Hill, armed with courage and a law degree and what for the time was an idealized view of the Constitution and of the likelihood that the white majority would change. And he and his compatriots proceeded to dismantle the system piece by piece, the capstone of their efforts being of course *Brown v. Board of Education.*"

Morris recounted several of Hill's victories and closed with the tribute: "So, on your 100th birthday Oliver, on behalf of myself and I know many here, without reservation I apologize to you for our failures and I thank you, not only for helping blacks and all minorities to get closer to the promise of our constitution, but also for saving us—the majority—from ourselves, by reversing these evil laws and their ignoble tolerance by white people."

* * *

The citation that accompanied the Courageous Advocacy Award given to Hill at the Spring 2001 meeting of the College at Boca Raton reads in part: "Your unwavering pursuit of equality helped to spark the strong, vibrant civil rights movement that continues today, but this award, and all that it represents, could not be given without recognition that the goals of that movement are not fully realized. Your illustrious career is an inspiration to those who cherish our constitutional rights and freedoms and to all trial lawyers challenged by difficult, unpopular and dangerous cases."

MORE THAN 300 *at* 11TH CIRCUIT CLE PROGRAM

An overflow crowd of more than 300 judges and practitioners attended a CLE program on ethics on May 3-5 sponsored by the College at the 11th Circuit Court of Appeals Judicial Conference in Atlanta.

Sponsored by a grant from the ACTL Foundation, the program featured five videotaped vignettes from a hypothetical lawsuit arising out of a covenant not to compete. Each was followed by a panel discussion of the ethical and professional issues presented by the case.

All panelists were Fellows, including Chief Judge and Judicial Fellow **Callie Granade** of the Southern District of Alabama, **Barry Richard** of Tallahassee, Florida, and **Chilton Varner** of Atlanta.

The video and study materials will be made available to law schools and Inns of Court at no cost and will contain an acknowledgement of the role of the ACTL Foundation in its production.

Bon Mot

Some years ago, [Past President] Jimmy Morris was asked to present a plaque to a Supreme Court of Virginia Justice. And he called the Justice up to the podium to present the plaque to him, and he said, "Your Honor," he said, "It reminds me of the story of the Judge who was taking his wife on a cruise. They had been working towards this cruise for many, many years, and the wife was very excited. And as they approached the ship, the Judge says to his wife, "I wish I had brought our piano with us." And she says, "Why in heaven's name would you want to take our piano on the trip?" He said, "No, I don't want to take the piano on our trip. Our tickets are on the piano."

And Jimmy says, "And your plaque is on that piano."

— President David J. Beck

* * * * * * * * * * *

[A] frog . . . went to a fortune teller, and the fortune teller says, "Well, you're going to meet a very beautiful girl who is going to be so interested in you that she's going to want to know everything about you." And the frog is very pleased and says, "Oh, will I meet her at the party?" "No," says the fortune teller, "in BIO 101."

— Professor Marc Galanter, introducing his dissection of the vanishing trial phenomenon

* * * * * * * * * * *

Chris is flamboyant, he's passionate, he's hilarious, he's the ultimate people person. He talks about the virtues of social engagement at keeping you younger. He self-describes himself as a habitual hugger, and he brought hugging to Davis, Polk– even hugging his male partners. He says at first they started to stiffen up and they would shake and they would quiver, but eventually they started doing it–everybody except the Tax Department. . . . Although Chris exercises regularly today, he is not a self-righteous, sanctimonious twit. Just last month we were in Denver, and we were having a very late dinner with Chris and Hillary and our mutual friends. And we sat down and the waiter came over. I'm seated right next to Chris, and Chris orders a double martini with a glass of chardonnay as a chaser–just in case the waiter is too slow coming back for the second round. Well, I was impressed, and I was reassured, because now I know that I'll be able to drink at the age of seventy-two as long as I keep hitting that 6 a.m. spin bike.

Bon Mot

— Ann B. Frick, Colorado State Chair, Introducing Chris Crowley, author of the Boomer's Bible, "Younger Next Year"

National Center *for* State Courts President Addresses Decline *in* Jury Trials

Mary McQueen, President of the National Center for State Courts, quoting Massachusetts District Court Judge William Young, observed that no other legal institution sheds greater insight into the character of American justice than our jury system.

Mary McQueen

Addressing the threats to that system, she noted that, "While filings have dramatically increased by more than a 100 percent in the last 25 years, jury trials in our state courts' criminal cases have decreased by over 15 percent and in civil cases by over 32 percent." This trend, she noted, also applies to the Federal Courts.

"During the same time period," she continued, "we've witnessed another troubling decline, the public's respect and confidence in the justice system." Paraphrasing Alexander Hamilton in Federalist Paper 17, she observed that nothing contributes more to the public's respect and esteem for government than the effective administration of justice.

The Center's jury studies discovered over 20 years ago that citizens who serve on a jury have greater confidence in and respect for courts and lawyers than their peers who have not, and more recent national and state public opinion polls echo those findings. "Jury service and respect for justice are inextricably linked when we study the values that our visionary founders embraced," she noted.

Among the checks and balances built into our system as they apply to the judicial system are checks and balances on judicial administration: "Reasoned explanations for applying the rule

of law, verbatim transcripts of proceedings, automatic review, citizen participation on judicial conduct commissions and judicial performance evaluations, but, most importantly, citizen participation in the jury system."

Again quoting Judge Young, she continued, "One could scarcely imagine that the Founders would have created a system of courts with appointed judges were it not for the assurance that the jury system would remain. In a government of the people, the justice of the many cannot be left to the few. Like all government institutions, our courts draw their authority from the will of the people to be governed. The involvement of ordinary citizens in court decisions provide legitimacy to the law and more importantly to its outcome, justice."

"The greatest threat to judicial independence," she concluded, "may not come from external criticism and verbal attacks, but internally from our willingness to allow the American jury system to vanish."

Addressing the various hypotheses for why the jury system is in decline, she listed:

• Pretrial proceedings are more complex and costly, and judges either micromanage or do not manage the pretrial process.

• Discovery takes too long, is too broad, costs too much, all of which contribute to the time and the length of trials.

• Parties are averse to the risk of going to trial.

• Sentencing guidelines and determinant sentencing in criminal cases create a penalty for going to trial.

• Increased judicial management creates more incentives for judges to dissuade parties from trial.

• Judicial performance systems rate judges poorly if they have a high trial rate.

• Legislative enactments removing the right of jury trial and the creation of regulatory tribunals have created a secondary judicial system— administrative law judges, judges without juries.

• The popular election of judges may temper aggressive management of pretrial proceedings.

• Resource constraints, whether it be the amount of support staff, the number of judges or of courtrooms.

• The quality of the bench— incentives to become private judges or arbitrators.

• Increased use of alternative dispute resolution.

• The increased use of summary judgment.

• Juror pay. In some states it hasn't been changed since statehood.

• A perception of an abuse of voir dire, use of jury consultants, manipulation of what most thought was an open and reviewable, transparent process.

Consequences of the vanishing trial, she observed, include increased privatization of dispute resolution with its negative impact on the development of common law precedents and public standards for conduct, which, in turn, reduces the public's trust and confidence in the judiciary. This, in turn, contributes to a perception that there are two types of justice, one for the rich and one for the poor. It takes away the public's perception of receiving its day in court. It reduces the public's confidence in fairness, the ability to get a jury of one's peers. And it diminishes a pool of attorneys with trial experience.

McQueen ended by urging the College to join with the National Center in sponsoring a series of state and regional jury summits to initiate a call to action to preserve the jury system.

AWARDS, HONORS *and* ELECTIONS

John M. Oakey, Jr., of Richmond, Virginia has received the Lewis F. Powell Pro Bono Award from the Virginia State Bar Association.

Daniel T. Rabbitt of St. Louis, Missouri has received the 2007 Award of Honor of The Lawyers Association of St. Louis. He also won the Missouri Bar Foundation Lon O. Hocker Memorial Trial Lawyer Award in 1975.

Karl Blanchard, Sr. of Joplin, Missouri and Veryl L. Riddle of St. Louis, Missouri were honored with an Award of Merit bestowed by the Missouri Fellows of the College. Blanchard and Riddle are the fourth and fifth recipients of the award, which was established in 1988. Previous honorees were Past President Tom Deacy, Richard C. Coburn and Rush H. Limbaugh.

George W. Soule of Minneapolis, Minnesota has been selected as 2007 Burton Award winner for co-authoring an article in the Defense Research Institute's In-House Defense Quarterly, Fall 2006 issue. The Burton Awards are given by the Burton Foundation to 30 partners from the nation's top one thousand law firms. The foundation is a volunteer, not-for-profit academic organization concentrating on legal writing.

Past President E. Osborne Ayscue, Jr. of Charlotte, North Carolina has received the H. Brent McKnight Renaissance Lawyer Award from the North Carolina Bar Association.

James C. Roberts of Richmond, Virginia has received the annual Tradition of Excellence Award from the General Practice Section of the Virginia State Bar Association.

Carlton "Tex" Hoy of Sioux Falls, South Dakota has received the first ever Lifetime Achievement Award from the South Dakota Trial Lawyers Association.

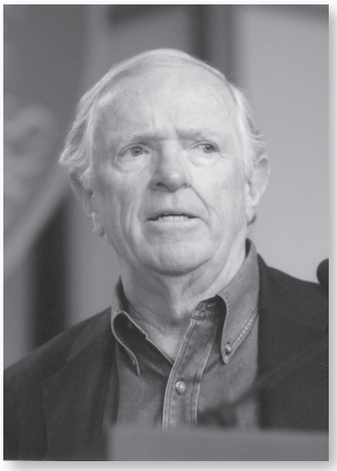
J. Eugene Balloun of Overland Park, Kansas has received the Distinguished Service Award from the Kansas Bar Association.

"[T]here are 1.1 million or so lawyers in the United States. Of that number, 400,000 of us are baby-boomers. And we will be leaving the full-time practice of the law within the next ten years. We can't simply write those people off. Are we going to continue to use their talents? Or are we going to send them out to the golf course? You'll be hearing in a little while from Mr. [Chris] Crowley about how you are going to remain young for so many more years. I suggest to you that we want to use this initiative [the ABA Second Season of Service initiative] to connect able-bodied wonderfully educated lawyers with . . . pro bono and other volunteer opportunities. . . ."

ABA PRESIDENT
KAREN J. MATHIS

"BABY BOOMER'S BIBLE" *author* FLINGS CHALLENGE

"Seventy percent of all aging is voluntary. You do not have to go there. It is not biologically mandated. . . . That's a wild claim, and it's absolutely true. . . . The other one is almost more important: fifty percent of all the serious illness and accidents that you have from the day you turn fifty until the day you die you can skip altogether, with all the pain and misery and expense and lost joy that go with them."



Chris Crowley

Chris Crowley, trial lawyer turned self-styled ski bum turned author, introduced his address with that challenge. With a successful twenty-five year legal career under his belt, Crowley retired early from the legal profession, deciding that he wanted to lead more than one life, and moved to Aspen at age 55. And along the way he and his doctor co-authored a book, *Younger Next Year*, that has become known as the "Boomer's Bible." It was followed by an equal-time sequel, *Younger Next Year for Women.*

In alternating chapters, Crowley and Henry S. Lodge, M.D., his New York City internist, explain their rules of fitness, nutrition and connection that can lead to a happier, healthier life. Their thesis: aging is inevitable, but *decay* is optional.

"If you read and follow the lessons in his book," asserted Colorado State Chair **Ann B. Frick** in her introduction of Crowley, "you will never again lie about your age; rather, you will wear it as a badge of honor."

THE MESSAGE— GROW OR DECAY

In a presentation laced with irreverent humor, Crowley laid out his argument. "[W]e have this extraordinary signal system living inside our bodies, billions and billions of signals all day long to every cell, far more than all the internets and all the spy planes and whatnot in the sky, constant bombardment of signals going back and forth, very complex. But the message is always very simple, one of two things: every cell all day long being told, 'Either grow or atrophy, grow or decay.'"

"And the reason that we get old at some point," he continued, "is that the default signal in the absence of anything else is to decay and go to pieces. And that sets up a tide of aging in our bodies that seems very strong: every year a little fatter, a little more apathetic, a little less sexual, a little less fun, a little more sore, more prone to fall down. It's a damn sad story and I'm sorry to remind you of it. The tide seems very strong, because it is so inexorable, waiting to sweep you upon the rocks where the gulls and the crabs are waiting to eat your big, fat gut, but it's not."

THE NEW SCIENCE

"The nice thing about the new science. . . is that if you send a counter-signal over the same system, a growth signal, it can overcome the tide and be about the same person you were at forty-five or fifty until you're eighty and beyond. . . . You really, really can. The tragic news, however, is that the master signal for change is movement; you've got to go out and do stuff. It cannot be done while you're watching TV or even sitting in a room like this."

After explaining the evolutionary biology that designed the human species for a life in what he described as the "Darwinian crucible of survival," a life we no longer lead, he predicted, "Clearly we'll have to have a new system, and we will get one as an evolutionary matter. It will, however, take several million years, and there probably are people in this impatient room who will not want to wait."

EXCERCISE: THE IMPERATIVE

This led to his first basic rule: "[T]he master signal for growth and youth is motion. . . . [T]he great imperative we give, the . . . single most important one, is that you ought to exercise hard six days a week.". . .

Medication? "[A] a good statin drug will reduce your risk of heart attack and stroke by about twenty-five percent. . . . Serious daily exercise will reduce it by fifty percent. [T]his is not about being an athlete. This is about leading a decent life and having some fun. . . . We all live so darn long in this country because the medicine is so good, but the quality of life is so bad for most people. . . . Everybody is slobberingly obese, idle, feeling bad. You're going to live forever because of the medicine . . . but, whether it's going to be fun or not, if you're going to have a 'second season of service,' you're going to want to feel good and have some energy."

Crowley went on to describe the necessity for both aerobic and weight training. "You do the aerobics for your circulatory system and your heart and lungs, so that you can move and you don't die or [get] Alzheimer's, but the weight training . . . has much more to do with the quality of life than almost anything. . . . All walking is a series of linked falls all your life, but when you get older, you recover less. When you do this weight training, . . . with the newly attuned neurotransmitters, you're less likely to fall because you see what's happening. Your sense of where you are is improved. Your quads are strong enough so that you can catch yourself. You're much less likely to fall down."

The risk of not doing so? "Fifty percent of women who fall down and break their hip will never walk independently again, and twenty percent of them will be dead in a year."

For lack of time, Crowley skipped over the second aspect of his book, nutrition of a body still programmed for the life of our hunter-gatherer ancestors.

CONNECTEDNESS

The third: "It's . . . also enormously important to stay connected to other people . . . . We have three brains. We're lucky to have one, I know, but we have three. There's a little reptilian brain or physical [brain] at the top of your spine that regulates all motion–breathing, heartbeat, diving off the high board. . . . On top of that we have the limbic or emotional brain. We're lucky to have it, and it lets us relate to one another, puts us in rooms like this and lets us cooperate, hunt

together, pray together, create societies and so on. The third one is the big thinking brain."

"Only two percent of us is uniquely human, our thumbs and our thinking brain. Everything else is off the shelf. And we think, especially lawyers I think, but our rational brain, it's the only thing. And if you get emotions out of it, life would be better and we would all be more like lawyers. . . . The fact is that limbic or mammalian brain puts a spin, a marker, an influence, on every single thing you do, think, smell, be. It is at the core of who we are. We are designed to work together and we ignore it at our peril. . . . If we get isolated, which is a great risk especially for older men–women less so–, . . . it's a terrible peril. If you have a heart attack and go home to an empty house, you're four times as likely to have a second heart attack and die as if you go home to a family. We are hardwired to be involved together. As you get older, you have to be more involved with other people."

* * * *

Responding for an audience almost entirely composed of people in the age range to which Crowley's remarks were addressed, College President **David Beck**, remarked, "I think it's fair to say that in a few minutes most of us will be heading to the gym."

COLLEGE OPPOSES PROPOSED LIMITATIONS ON GUANTANAMO DETAINEES' COUNSEL'S ACCESS

The Board of Regents recently issued a statement opposing the protective order proposed by the Government in connection with appellate review of the determinations by military tribunals that detainees at the Guantanamo Bay Naval Station are enemy combatants.

In 2004 the District Court had entered a comprehensive protective order governing the conduct of counsel representing detainees in the then-pending habeas corpus proceedings. The Government had then proposed more restrictive limits on counsel in connection with review in the District of Columbia Court of Appeals. The proposal would limit counsel to three visits with the client, limit counsel's access to classified information to that information the Government had determined counsel had a "need to know" and subject written communications between counsel and detainee clients to review and to redaction to the extent the communications did not fall within a narrow definition of "legal mail."

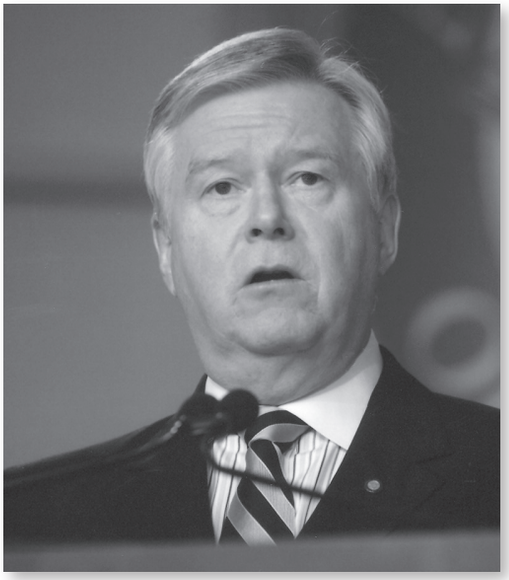
The College took the position that the protective order previously entered in the District Court represented "an appropriate balancing of national security needs and the requirements of counsel to provide effective representation." It asserted that the proposed limitation to three visits would not, in the unique circumstances of the detentions at Guantanamo Bay, permit achievement of the reasonable objectives of counsel. Furthermore, the proposed limitation on access to classified information would enable the Government to withhold portions of the record from counsel, restricting counsel's ability to seek a reversal of an "enemy combatant" determination by a military tribunal, and the proposed power to scrutinize and redact privileged communications would obviously impair the attorney-client relationship.

The Board of Regents asserted that the proposed limitations had "not been shown to be either required or appropriate" and that, taken together, the limitations would "severely hamper the effective representation of detainees by counsel."

The Government subsequently withdrew its request to limit visits of counsel. As of press time, the Court had not ruled on the remaining motion.

BAR ASSOCIATION PRESIDENT ADDRESSES JUDICIAL INDEPENDENCE *in* CANADA

The following edited remarks of **J. Parker MacCarthy**, Q.C., delivered at the College's Spring meeting, address both the structure of the Canadian judicial system, an appointive, rather than an elective one, and the problems of perceived judicial independence that can arise under even a traditionally merit-based system.



J. Parker MacCarthy

Thomas Jefferson understood the seminal importance of an independent judiciary. "The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depend so much on an upright and skillful administration of justice," he wrote, "that judicial power ought to be distinct from both the legislative and executive and independent upon both.". . . .

[W]hen I had the privilege of becoming the President of the Canadian Bar Association . . . , judicial independence was . . . one of my priorities, but little did I know that this would take center stage in my country so dramatically this past year.

Prime Minister Stephen Harper's Conservative government in Canada has made "law and order" one of his main agenda items. Since the Fall, the Federal government has taken steps that have raised the concern that they are stacking the decks of the Federal judicial appointments process to satisfy their political philosophy. This has required the Bar and the Bench to respond vociferously to protect the integrity of the judicial system. . . . . Your report last September on *Judicial Independence: the Cornerstone of Democracy Which Must Be Defended*, was both timely and prophetic.

There are no elected judges in Canada. All judges are appointed. They have security of tenure to a mandatory retirement age of 75 years if they are a Federal appointee, and usually the provincial government's appointees at the Provincial Court levels have tenure until age 70.

Canada's Constitution provides the provincial governments have

jurisdiction over the appointment of judges to their respective provincial and territorial courts. These lower courts deal with family law matters, small claims, civil matters, and by far the greatest percentage of criminal matters.

Canada's Federal government has authority over the appointment of Superior Court trial judges throughout Canada, including those of the Trial Division of the Federal Court, the Provincial Courts of Appeal, the Federal Court of Appeal, and also the Supreme Court of Canada.

ADVISORY COMMITTEES ESTABLISHED

Prior to 1988, the Federal Minister of Justice made appointments to the Superior Courts, following personal consultation. In the mid 1980s, Prime Minister Trudeau's Liberal government made several controversial partisan appointments prior to an election. The Canadian Bar Association stepped in and prepared a report on the method of appointment of judges that would emphasize merit in the selection process.

Thereafter, Prime Minister Brian Mulroney's Progressive Conservative government established Judicial Advisory Committees, based on our Canadian Bar Association's reports and recommendations. These Judicial Advisory Committees were conceived as a necessary buffer against what had the potential of being a strictly political, partisan process. . . .

[U]ntil last November, each committee was composed of seven members, one from the Federal judiciary, three selected directly by Canada's Federal Minister of Justice, and one each recommended by the Attorney General, the Law Society, and the Canadian Bar Association in all of the particular provinces or territorial jurisdictions. . . . [T]he Law Societies are the self-regulating bodies for the legal profession in each of the provinces and territories.

The goal of the committees was to reach decisions about the qualifications of judicial candidates by consensus, and because the Federal Justice Minister was allowed only three appointments out of a committee of seven, he could not control the recommendation stage of the appointment process for partisan purposes.

Committees would provide the Justice Minister with a list of highly-regarded and recommended candidates from which the appointments were made, and the Federal Justice Minister had the final say on who was appointed to the Bench, no matter what the advice from the Committees was. But the advisory committees were still key, since they identified the pool of candidates from which the Minister would make his choice.

This appointment process has worked well. It is a human endeavor, but one that has garnered the respect of the legal profession and, more significantly, the Canadian public.

CHANGES WEAKEN SYSTEM

Now, however, much of the merit of the process has been significantly undermined by the current government's unilateral change to the structure and the procedures of the Judicial Advisory Committees. Last November, when the then Minister of Justice, Vic Tays, unilaterally announced the changes; it was [done] without consultation. Neither the Canadian Bar Association, the Law Societies, nor the Canadian Judicial Council, which is comprised of the Chief Justices and the Associate Chief Justices from the Superior and Appellate Courts in each province, were given an opportunity to make submissions on the changes–no consultation.

The Canadian Judicial Council, together with the Law Societies and the CBA are the most knowledgeable about the pool of candidates, judicial independence, and, most importantly, the role of the judiciary in preserving the rule of law. . . . And this lack of consultation . . . violated the well-established convention of prior consultation. . . .

[I]n a nutshell, the Minister of Justice had increased the committee members that he directly appoints from three to four and is disallowing the vote of the committee's judicial member except in a case of a tie, although how any committee could arrive in a tie when there are seven voting members still mystifies me.

This new structure gives the Minister's appointees the majority of votes on the committee, allowing the government free rein to recommend judges who are likely to satisfy the goals of the government, and the partisans are beginning to fill the ranks of those advisory committees. Canadian media report that at least 16 of the first 33 non-police members . . . chosen for 12 of the committees by the Justice Minister were government partisans. Among the new government's nominees is a well-known legal academic who has authored a book entitled "How The Supreme Court of Canada Has Undermined Our Law and Democracy.". . .

Beyond rejigging the voting patterns on Judicial Advisory Committees by adding political and ideological partisans, the government has added a new twist that is sure to further the government's "law and order" bent. On each committee, one member appointed by the Minister of Justice will be a law enforcement representative. Last week one of the Canadian television networks says that in a few provinces, retired law enforcement officers are also being named to fill the other government chairs on some of the committees, thereby giving extra emphasis to the police voice. . . .

Including police representatives on Judicial Advisory Committees is unwise for several reasons. First, it is estimated that criminal trials constitute less than 5 percent of the court cases tried by federally appointed judges. Why do we need police representation on advisory committees that will select judges who deal primarily with civil disputes? Second, we give police extraordinary power in society, including arrest, search, seizure and detention. But we also have imposed checks and balances on those powers. An independent judiciary is one of those checks. Finally, we question the wisdom of adding a designated interest group to a committee whose prime function is to recommend candidates based on merit. If you open the door to one group, why not another?

JUDICIAL RESPONSE

The new judicial appointment committee changes have so disturbed the judiciary that, in an uncharacteristic candor, a few judges have raised their voices to speak out publicly. In her role as head of the Canadian Judicial Council, our Chief Justice . . . the Right Honorable **Beverly McLachlin,** last November called on the then Minister of Justice to begin immediate consultation with the judiciary, the Canadian Bar Association, and the Law Societies. Retired Supreme Court . . . Justice **Claire L'Heureux-Dubé** criticized the new process, saying personal ideology of the judicial candidate should not be part of the process. And former Chief Justice . . . **Antonio Lamer** accused the Prime Minister of trying to "muzzle" the judiciary by baldly acknowledging that he wants judges who are tough on crime. *[Editor's note: All three of the aforementioned Justices are Honorary Fellows of the College.]*

Now, if you look at the statements by the Prime Minister, you can understand. Mr. Harper told the House of Commons, "We want to make sure that we are bringing forward laws to make sure we crack down on crime and make our streets and communities safer. We want to make sure that our selection of judges is in correspondence with those objectives."

The government was not as candid about its intentions when it first announced the changes last November. In fact, at that time, the justice officials went to great lengths to say just entirely the opposite. They characterized the changes as a move to increase public consultation, rather than the introduction of government ideology. When the Prime Minister admitted during a questioning period in the Canadian Parliament that the change would further his government's agenda, Canadian media moved the story to the headlines. . . .

Now, the Canadian Bar Association's overriding concern is the impact on the public credibility of our judiciary. When individuals are summoned to court, they have a right to expect an unbiased, impartial, and independent trial.

In light of the controversy, some members of the judiciary have recommended a boycott of the new committee process, but . . . it is much easier to work from within the tent than outside it. . . . [W]e at the Canadian Bar Association remain committed to the merit process, and we will continue to work hard to bolster public confidence in an im-

partial, independent judiciary. . . .
I want to make it very clear that I must compliment both the former Minister of Justice, Vic Tays, and the present Minister of Justice, Rob Nicholson, for the quality of the appointments they have made to date. The Honorable Christopher E. Hinkson, Q.C., and the Honorable S. David Frankel, Q.C., both of Vancouver, members of the British Columbia Bar and Fellows of your College, were just appointed one week ago as judges to the Supreme Court of British Columbia. Those are unassailable selections; those people would be on anyone's list and should be on anyone's list. But obviously anything that creates a perception of a loss of judicial independence will place the integrity of the Canadian legal system at risk.

Canada and the U.S. share many common concerns and many common issues. No wonder, as the underpinning of both our nations is similar–democracy built on three separate and independent pillars of government, the legislative, the executive and the judicial, . . checks and balances throughout the system. Weaken any one of these pillars, and democracy itself is threatened.

The past five and a half years have presented extraordinary challenges to both of our democracies. Our governments have put in place tough laws to help confront threats to the security of our western society. The stated purpose of those laws is to protect our key values. The judiciary has the responsibility to insure that in our zeal to protect our way of life, we do not disregard the fundamental protections that insure the accused due process and that the innocent are not wrongfully convicted.

The judiciary remains the last bulwark against many threats around us. Tinkering with judicial independence is dangerous at the best of times, and these are far from the best of times.

Perhaps Thomas Jefferson gave the best advice of all: "Should we wander from the essential principles of our government in moments of error or alarm," he said, "let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty and prosperity."

"The past five and a half years have presented extraordinary challenges to both of our democracies. Our governments have put in place tough laws to help confront threats to the security of our western society. The stated purpose of those laws is to protect our key values. The judiciary has the responsibility to insure that in our zeal to protect our way of life, we do not disregard the fundamental protections that insure the accused due process and that the innocent are not wrongfully convicted. The judiciary remains the last bulwark against many threats around us. Tinkering with judicial independence is dangerous at the best of times, and these are far from the best of times."

Canadian Bar
Association President
J. Parker MacCarthy, Q.C

Con't from page 3

judge or judges who participated in the adjudication. We hear little about this issue from our Canadian Fellows. Furthermore, many of our Fellows from the United States know too little about the structure of the judiciary before which our Canadian Fellows practice. For these reasons, we have included an extensive summary of the address of J. Parker MacCarthy, President of the Canadian Bar Association, who addressed both subjects.

Canadian Justice Rosalie Silberman Abella's stirring remarks in accepting an honorary fellowship are a must-read item as is the remarkable address of Admiral Bobby Inman, tracing the decline in the intelligence-gathering capabilities of the United States.

As usual, the meeting was laced with great good humor. We have captured as good bit of it for your entertainment. The exchange between Past President Ralph I. Lancaster and Justice Abella was worth the price of admission to the entire meeting and both NFL referee and trial lawyer Ed Hochuli's inside account of the relation between players, coaches, owners and game officials and William H. Haltom, Jr.'s response on behalf of the inductees had the audience in stitches.

Ellen Hemley's description of how her organization used the $50,000 grant that accompanied its Emil Gumpert Award may prompt you to seek a way to join its effort to enhance the trial skills of Legal Aid lawyers throughout the United States.

Many of you have become accustomed to seeing now-retired Canadian Supreme Court Justice Jack Major, a Fellow before he ascended to the bench, at most of our meetings over many years, when he was on the program and when he was not. Continuing our series of profiles of interesting Fellows, we recount his remarkable career in this issue.

Bon Mot

I decided once I met Harry [his internist], who told me all this stuff, to go and start a spinning class . . . . So here I am at the gym. I signed up for a year at a shocking cost, and I've got the spin class scheduled. It's 6:30 in the morning and I'm feeling very, very shy because I'm very old, I'm forty pounds overweight, and I do not look becoming in my bike costume. The instructor, an alarmingly pretty woman with a Euro accent, sees me in my helplessness and comes over and shows me what to do. The bike has a huge flywheel in front and a brake to make it easier or harder. It's hard to get on; it's impossible to get off. The room fills with beautiful creatures in their twenties and thirties, one or two old numeros, but no one vaguely as old as I am.

The music starts, a din with a heavy, compulsive beat. The instructor has a bike. She starts yelling, "Get up. Get down. Slower. Faster. Resistance!" You crank the thing up. My quadriceps, which I thought were strong, start to scream. How many seconds can this go on? It actually goes on for about three minutes, but I don't. Did I mention that the walls are all mirrors? Well, they are. I just caught a sight of my own face. I am so frightened that I sit down hard. My face is a bad purple and I'm sweating in a way that suggests the onset of serious illness–not good health. After that I only do some of the stuff, but I hang on. I stayed there all the forty-five minutes until it was over. My color is still peculiar.

As I totter around the room at the end, this woman comes over -- "Nice going. First time?" "How could you tell?" I give her a wan smile. She nods and says again "Nice going." I stumble home, bathe and go to bed. It is now 7:45 a.m. My day is over. It is good that I'm retired. I could not go to work like this.

— Chris Crowley describing his first aerobics class

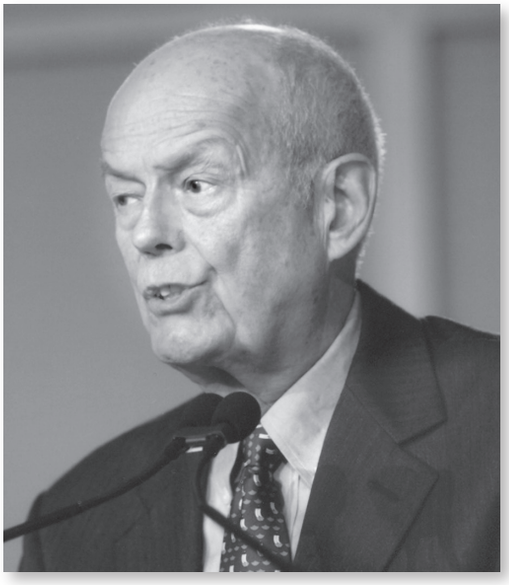
Bon Mot

POWELL LECTURER

gives his views on

"INTELLIGENCE PAST" *and* "INTELLIGENCE PRESENT"

In 1993, the College established a lecture series honoring College Past President and Associate **Justice Lewis F. Powell, Jr.**, the 99th Justice of the United States Supreme Court. The eighth lecture was given at the Spring 2007 meeting of the College at La Quinta by Admiral **Bobby R. Inman**, United States Navy, Retired. The former Director of the National Security Agency and former Deputy Director of Central Intelligence, he is now the holder of the Lyndon B. Johnson Centennial Chair in National Policy at the University of Texas. In the 1980's in the Reagan administration, Admiral Inman chaired a commission looking at terrorist threats to United States embassies around the world, and in the early 1990's he was Vice Chair and Acting Chairman of the President's Foreign Intelligence Advisory Board in the George H. W. Bush administration. This remarkable address was, for reasons that Admiral Inman explained in closing, delivered entirely extemporaneously.



Bobby R. Inman

Let me plunge into "Inman's view of intelligence past and intelligence present."

POST WORLD WAR II

First, the period of 1946 to 1958: That was a period for forming the intelligence agencies which have performed during these sixty years, creation of the Central Intelligence Agency [and] ultimately the National Security Agency.

The task given them by those who had governed during the World War was: to build encyclopedic knowledge on the entire outside world, every country, every continent, never knowing where the next crisis might come: from the human intelligence side, to focus, to the *clandestine* side, on the best, the most effective efforts of entreating people to spy for the United States for information that could not be obtained by *overt* observation and a very large and largely effective overt human intelligence capability, mostly within the Foreign Service of the United States, people with language ability, understanding the cultures of the countries where they were assigned, to observe, engage, interact, and report what they saw happening in the outside world, and to push the frontiers of technology, from the early days of taking photographs from balloons in the Civil War to the modern era of the U2, high-altitude aircraft, the SR71, and then pushing on to lay the groundwork for satellite technology.

But most important, in that era, the early days of the Cold War, some of the brightest people in this country felt the urge to do public service in the intelligence agencies, to ensure that we were not again blind to the dangers that were underlined by Pearl Harbor.

FROM PLATEAU TO DECLINE

We reached the plateau about 1958. We had created a very large organization, a series of organizations, and encyclopedic knowledge on much of the world. That plateau was maintained for about six years. Then in 1964, as we had moved overtly into the Vietnam conflict, the decision was made that we needed much more daily tactical intelligence to support the conflict. It was not achieved by adding additional resources, but, rather, [by] beginning to give up the base for maintaining the encyclopedias.

First went all in-depth coverage of Latin America in '65, Africa in '66, Western Europe in '67. Added to that was a decision President Johnson took on advice from Treasury that balance of payments was a critical problem we had to do something about it. So he sent a letter to every ambassador saying their most important role was to reduce the official American presence in their country.

Every president repeated that letter until President Reagan, and between 1967 and 1981, we removed forty percent of those overt human observers, political, economic, cultural affairs, commercial attaches, military attaches, and the cover billets for the clandestine services.

TECHNOLOGY

We did in that period make some major technology gains: the first satellites to collect imagery and have it returned. It had in this day and age a Rube Goldberg aspect. Satellites would be launched, circle in lower orbit, take pictures, and then, when the first so-called "bucket" had been completed out over the North Pacific, it would be expelled from the satellite, and an aircraft flying would attempt to grapple the parachute as it floated down. The bottom of the North Pacific is still littered with buckets that were not caught, so we're not sure of what all we missed in that time frame.

Later in the '70s, technology enabled direct relay, relay satellites, electro-optical coverage, so we had the ability always in fair weather and daylight, and then eventually sometimes in poor weather and nighttime, to get images of what was going on around the face of the globe, but the loss of talent from '65 to '81 was extraordinarily difficult to overcome.

ATTEMPT TO REBUILD

President Reagan arrived with some understanding of this and with the instruction to rebuild. I got the challenge of putting together a five-year program for going about rebuilding and found that the support structure, the infrastructure had been drawn down so much that there were limits of how many people you could train even if you could recruit talent.

But there was a different challenge. This is the era that follows Watergate and the Church and Pike Committees [Congressional committees that investigated alleged misuse of domestic intelligence gathering]. The same level of talent that had flowed in the '50s and '60s simply wasn't interested in coming to do public service in the military, or particularly in the intelligence agencies, and I think from hindsight that a lot of people came on board who were, with the best motivation, civil servants without the cutting edge that we critically needed.

COLD WAR ENDS

That only lasted, that rebuilding, for four years. The intelligence budget has always been hidden within the Department of Defense, and as the defense budget goes up, there's breathing room, and when it comes down, the intelligence budget is cramped along with the rest. Many people don't realize the actual peak of rebuilding in the Reagan years was 1985, and then it started down, accelerated by the end of the Cold War.

The period from 1993 to 2001 is marked by an accelerating period of reduction of resources, but also one very significant change. Up to that time frame we had still maintained the view that the intelligence world should be focused on what was going on twenty-four hours a day, seven days a week. A different standard was created. The Cold War was over. "We don't need to do that. Eight hours a day, five days a week is fine."

My favorite story from that era comes late in the period. Bright, young photo interpreter at the National Geospatial Agency had gone camping over the weekend,

came back late Sunday night, got a few hours sleep, went in early Monday morning, looked at the imagery that had been relayed down from satellites over the weekend and said, "Oh, India's getting ready to do a nuclear test."–which they had done Sunday afternoon. You get what you pay for.

RISE OF TERRORISM

World Trade Center: First bombing occurred in 1993. Some resources were reshuffled to worry about terrorism, but I can find no evidence, either from the Executive Branch or Congress, of any significant addition of resources. A greater problem became the leaking of secrets in ways that reveal how the information was collected. One of the most damaging occurred in 1998. Cruise missiles had been fired into Afghanistan and Sudan after the attacks on the U.S. embassies in Nairobi and Dar es Salaam. When asked by the media, a very senior member of the Administration responded when asked, "Well, how do we know Al-Qaeda was involved?" His response, broadcast around the world by the reporters, was that we knew because we were listening to their communications, and within a week, all those communications had disappeared.

In December, December the 10th, 2001, there was palpable excitement in Washington. Bin Laden had been cornered at Tora Bora and would be bagged that night. A journalist asked, and I still don't know who he asked, "How do we know he's there?" And the response, again broadcast around the world, was, "Well, we heard his voice." His voice has never been heard again in communications.

THE RESPONSE

9/11, Afghanistan, Iraq, North Korea, and Iran, all of these have prompted a major surge of investment in the intelligence community, but on a base of an infrastructure that had again been drawn down dramatically. The good news is that the flow of applications from extraordinarily bright youngsters who want to be part of this is very reminiscent of the 1950s. My worry as I talk to some bright youngsters who I know, who I have encouraged to go that path, is they're very excited by the work, but as they encounter that upper middle management bureaucracy, they get discouraged. So they still have a challenge.

The answer was "reorganize." I'm on record. I testified before the Brown Commission in January 1996, my former old boss, Secretary of Defense Harold Brown, and I proposed radical surgery:

- Create a Director of National Intelligence;
- Dismember CIA as it existed;
- Create an Intelligence Operations Agency to compose all the clandestine human ingtelligence collection and non-lethal covert operations; anything paramilitary moved to Special Forces in the Department of Defense;"
- To put together all the analytical elements in one organization with a focus on geographic breadth and quality, and to separate them from collectors, so that they are not under pressure to make the collectors look good in reaching their judgments;
- On the counter-intelligence side, to separate the FBI into the element comparable to Scotland Yard, which would support the criminal judicial system, a critical part of our judicial system and on the counter-intelligence side to mirror MI-5. I simply believe the British are far more effective in dealing with the problems with the manpower applied.

As you can see, I offended just about everybody with my proposals. Dr. Brown figuratively patted me on the head and said, "Those are interesting ideas, but we're going to do evolution, not revolution." Well, in 2003, they moved to revolution, but with limits, created the Director of National Intelligence, did not alter the agencies, did not bring together the clandestine collection activities.

But most importantly, the one I left out: I had argued in 1996 the need to rebuild the Foreign Service, the need to dramatically increase the overt human observers. That was our greatest failing, not clandestine human intelligence, but the overt side. When 2001 occurred, I wrote an Op-Ed about that, and I'll come back to it later. It remains the great shortfall that we have not yet moved to rebuild our overt human intelligence capabilities.

PROSPECTS OF SUCCESS

Will this new process work? I apply the same rule here as I also think about the Department of Homeland Security, and that's why I look back at history: Department of Defense was created in 1947, National Security Act, separate Air Force. Even with the relative coherence of the Army

and the Navy and the Marine Corps, when the Korean War came in June of 1950, the Department of Defense was absolutely unprepared to deal with it. And it continued to stumble until President Truman persuaded General Marshall, who had already served as Secretary of State, to go take over the Defense Department. Finally by 1952 it was working effectively–five years.

THE RULE OF LAW

Let me turn last–and I realize I'm running overtime–to intelligence and the rule of law. I have lived as a young Director of Naval Intelligence through the Church and Pike period of investigation, and, as I found myself about to assume the duties as the Director of National Security Agency on the 5th of July 1977, one of the major challenges was to try to restore confidence both within NSA and with the public about its mission. Indeed, as I went around the country, what I found an inevitable question was, "Is NSA spying on us?"–the concern that the government was using these great assets to spy on its citizens.

So I concluded, while I had enjoyed enormously the absence of any publicity for my public service to that time, that it was necessary to speak out. I was encouraged in doing that by four very important people who had served during World War II in this field: Justice Powell, Justice John Paul Stevens, who had been in the Naval Security Group, Lloyd Cutler, who had served, was then serving, as Counsel to President Carter, and by the Journalist Joe Kraft, who had served as an eighteen year-old in the Army Security Agency. And they all four generously over time gave me advice and encouragement to try to find a way to help the public understand the criticality of these missions but that we were not spying on U.S. citizens.

And this brought me to a critical problem that came very early: Presidential warrants for collection of foreign intelligence within the United States. I had been the Director only a few days when a stack of papers arrived on my desk for me to sign, going down for President Ford, I'm sorry, for President Carter to sign the new warrants; ones last signed by President Ford were about to expire. It was explained that the telecommunications agencies required these to cooperate with the government. They wanted to make sure they were covered, so I sent them forward.

And the instant reaction from the White House staff was this was an effort to trap President Carter, to have something to blackmail him with, like Mr. Hoover allegedly had done with past Presidents. I was infuriated, recalled them, and said, "When the warrants expire drop the coverage." And six weeks went by. And we did indeed do that, and suddenly I began to get calls: "Where's the coverage on X country? That's very important stuff." And my response was, "No warrant, no coverage." And I was encouraged, "Well get them down there quickly and they'll be signed and you can resume coverage."

But I concluded there had to be a better way, so I went to see Senators Joe Biden and Warren Rudman and went to my wise counselors in the judicial system, and out of those dialogues came the Foreign Intelligence Surveillance Act and the FISA Court. I was persuaded, and I remain persuaded, that it's possible for the intelligence agencies to do what needs to be done for the national security of this country within the law, but you have to work to make sure the laws are up to date and provide you the coverage you need.

There was a big debate when that came up about whether this was going to unnecessarily impact on the inherent powers of the President as Commander in Chief. And here, notwithstanding a push from the White House, Judge [Griffin] Bell {the then Attorney General] gave strong support, and the bill was enacted.

9/11 CALLS FOR A CHANGE

I have looked at the period after 9/11, when President Bush immediately directed the National Security Agency to see, "Are there any other potential hijackers here?" and when on the precedent of the previous thirty years, he gave the warrant authorizing that activity. I have no quarrel with that action as a proper response to crisis, because in constructing the FISA Court, I didn't have the imagination to think of a world where people would hijack aircraft in this country after weeks, months, of planning, training, traveling, and use them as missiles to fly into buildings. There was no provision for crises.

But I have a lot of problems with not moving to modify the FISA Laws to be able to deal with crisis

situations with the experience of 9/11. The Vice-President has a very strongly different view. He believes that the Court was an unnecessary distraction from the inherent powers of the presidency. I don't want to get into the debate about the powers of the President. I'm not a lawyer, but I remain persuaded that when the intelligence agencies have clear laws and the process for either congressional or judicial review, they perform better and the interests of the country are well-served.

A MATTER OF CONSCIENCE

Finally, in closing, why am I doing this important lecture extemporaneously instead of from a text? In October 2001, I wrote an Op-Ed about the failings shown by 9/11 in our human intelligence capabilities, and I recommended a major effort to rebuild the overt human intelligence capabilities in the Foreign Service.

I got two responses: From the Secretary of State, through one of his senior officials, that that was much too big a challenge. They couldn't possibly undertake it.

And I got a letter from the General Counsel of the Central Intelligence Agency telling me that because I had once served there, I should have submitted my editorial to CIA for prior review. I refused to do that as a matter of conscience, and that's why today you get an extemporaneous Lewis Powell speech.

Thank you.

COLLEGE TAKES POSITION ON FEDERAL JUDGES' PAY

At its Spring Meeting, the Board of Regents approved the publication of a position paper entitled *Judicial Compensation: Our Federal Judges Must Be Fairly Paid.*

Produced by an ad hoc committee chaired by Robert L. Byman of Chicago, the paper responds to the assertion of United States Supreme Court Chief Justice John Roberts that the current salary levels of Federal judges are nothing less than "a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary."

The paper asserts the College's position that:

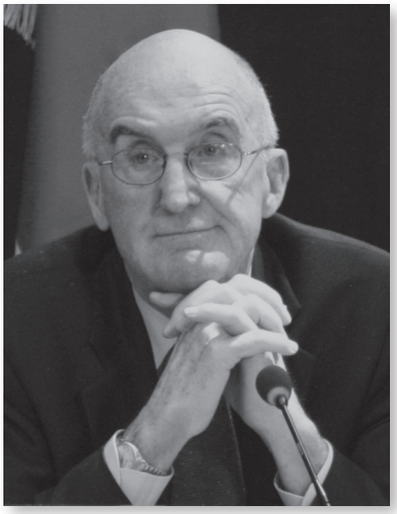
- An independent judiciary is critical to our society, and fair compensation is essential to maintaining that independence.
- The current levels of judicial compensation are not fair and their inadequacy is having an adverse impact on the administration of justice in the federal courts. Judges are leaving the bench at an alarming rate and judicial vacancies are increasingly being filled from a narrowing demographic that diminishes its diversity.
- Federal judicial salaries should not be linked to Congressional salaries.

The College's position paper goes on to suggest that to be fairly compensated, federal judges should be paid twice what they are now earning.

The entire paper may be downloaded from the College website, **www.actl.com.**

AFTER RETIREMENT: CANADA'S JACK MAJOR *steps into* AIR INDIA CONTROVERSY

Although he retired as a Justice of the Supreme Court of Canada on December 25, 2005, **John C. "Jack" Major** has not had time to rest on his laurels. Instead he has stepped into the leading role as commissioner in the investigation of a possible coverup in Canada's most intriquing case—the 1985 bombing of Air India Flight 182 where 329 persons died, 280 of them Canadian citizens.



John C. "Jack" Major

An unsuccessful criminal prosecution in 2003-2005 cost the Canadian government more than $140 million. In May 2006, following acquittals, Major, 75, was asked by Prime Minister Stephen Harper to act as a special commissioner to conduct an inquiry into the bombing.

"This Air India case has been a political football for years," Major said in an interview for this article. "We hope to finish the evidence by December. It was really the first act of airline terrorism in modern times."

After the two persons were acquitted as co-conspirators on March 16, 2005, there was a general uproar in Canada, and the government promised a full inquiry. In January, just a month after retiring from the Supreme Court, Major was asked to head the effort.

"I didn't realize what a challenge it would turn out to be," he said. "It has turned into extremely critical condemnation of all aspects of airline security in Canada."

Major's role has been expanded to make recommendations on how to improve communication between law enforcement and intelligence.

Major served on the Court of Appeal of Alberta only 16 months before being appointed to the Supreme Court. He is truly a legal heavyweight in Canada. During his 13 years on the Supreme Court he participated in more than a thousand cases, including assisted suicide, the death penalty and Quebec separation.

Although he has risen to the top of the legal profession in his country, Major

did not set out to become a lawyer. Growing up in small towns in rural Ontario, his only contact with lawyers was watching them in traffic court.

He went to college with no set plans. He took a business administration course, but says laughingly he could never figure out debits and credits. After graduation with a degree in commerce in 1953 he had only one interview and it went so badly he never tried again. That's when he decided upon law school and graduated in 1957 from the University of Toronto.

He joined Bennett Jones Verchere, an 18-member firm in Calgary, and slowly worked his way into becoming the firm's top litigator. Although he won many major cases in his 34 years at the firm, Major says, "My best cases seem to be ones that I have lost." One that still irritates him could probably have been won on appeal, but his clients decided not to take that route. "I'm getting annoyed just talking about it now," Major said.

All three of Major's and his wife Helene's sons became lawyers, and their daughter has a Ph.D. in art history from Stanford University.

Major has always been a recreational athlete, having run in marathons and 10-mile races, and he still runs three miles three or four days a week. His only other major hobby is reading, mostly histories and contemporary politics. He just recently finished Conrad Black's biographies of Franklin D. Roosevelt and Richard M. Nixon.

When he was inducted into the College in 1982, Major became only the third member from Calgary. "I was impressed by the notion that [Founder Emil] Gumpert had that the College is a fraternal society and that the work we do is bitterly contested between counsel. That is quickly forgotten and replaced with collegiality and respect."

Past president **David Scott** of Ottawa remembers Major as a faithful attendant at College meetings while still a sitting judge on the Canadian Supreme Court. "He attended without fanfare as an ordinary Judicial Fellow and is an example to all Judicial Fellows of the benefits which the College has to offer," Scott said. "While on the court, Justice Major was the 'lowest key' and 'highest penetrating' questioner during oral argument amongst the judges. It was obvious that he had an intensely practical career as an advocate which spilled over into his life on the Court. He was best at uncovering the most pragmatic and workable answer to esoteric questions and the answer was always provided in intensely readable form."

Fellow **Pat Peacock** of Calgary, a longtime friend of Major's, adds: "He had the enviable ability of narrowing issues in all areas of life to one or two decisive questions. He was a quick study and his judgment was invariably sound. He did not suffer fools gladly, but was never demeaning or insulting. His sense of humor and acerbic wit are legendary. He was, and remains, profoundly interested in all things legal, political, business or social. A telephone call or visit with Jack Major was, and still is, a philosophical, educational, reminiscent, and entertaining experience."

NOTICE:

The College's newly adopted position on advertising by lawyers is available on actl.com.

COLLEGE INDUCTS 115 AT MARCH MEETING

ALABAMA:
Gregory B. Breedlove, Mobile

ARIZONA:
Vaughn A. Crawford, Phoenix

ARKANSAS:
David M. Donovan, Little Rock
Mariam T. Hopkins, Little Rock
W. H. Taylor, Fayetteville
William A. Waddell, Jr., Little Rock

NORTHERN CALIFORNIA:
Thomas G. Beatty, Walnut Creek
Stephen G. Blitch, Oakland
John D. Cline, San Francisco
Paul D. Gutierrez, San Francisco
Harold J. McElhinny, San Francisco
Ann C. Moorman, Berkeley
Matthew D. Powers, Redwood Shores
Andrew R. Weiss, Fresno

SOUTHERN CALIFORNIA:
Jeffrey S. Behar, Long Beach
Alan K. Brubaker, San Diego
Charles P. Diamond, Los Angeles
Steven L. Harmon, Riverside
Michael L. Lipman, San Diego
Carl Bradley Patton, Carlsbad

COLORADO:
Natalie Brown, Denver
Gregory B. Kanan, Denver

DELAWARE:
Richard Galperin, Wilmington
Bernard A. Van Ogtrop, Wilmington

DISTRICT OF COLUMBIA:
Christopher B. Mead, Washington
Steven J. Routh, Washington

FLORIDA:
Patricia E. Lowry, West Palm Beach
John J. McLaughlin, Tampa
Eugene K. Pettis, Fort Lauderdale

GEORGIA:
Henry D. Fellows, Jr., Atlanta
Andrew J. Hill, III, Athens

HAWAII:
Mark J. Bennett, Honolulu
John R. Lacy, Honolulu

ILLINOIS:
Charles C. Hughes, Decatur
Robert J. Napleton, Chicago

INDIANA:
Mark W. Baeverstad, Fort Wayne
Donald E. Knebel, Indianapolis
Daniel J. Sigler, Columbia City

IOWA:
James R. Hellman, Waterloo

KANSAS:
David J. Rebein, Dodge City

KENTUCKY:
Truman L. Dehner, Morehead
Michael J. Schmitt, Paintsville

LOUISIANA:
Robert Glass, New Orleans

MARYLAND:
Steven F. Barley, Baltimore
Daniel F. Goldstein, Baltimore
Daniel R. Lanier, Baltimore

MICHIGAN:
James C. Thomas, Detroit
Timothy P. Verhey, Grand Rapids

MINNESOTA:
Robert J. Hennessey, Minneapolis

MISSISSIPPI:
Cynthia H. Speetjens, Madison
John G. Wheeler, Tupelo

MISSOURI:
James P. Frickleton, Kansas City
Thomas J. Magee, St. Louis,
Joseph J. Roper, Kansas City
N. Scott Rosenblum, Clayton
Matt J. Whitworth, Kansas City

NEBRASKA:
Kirk S. Blecha, Lincoln
Mark A. Christensen, Lincoln

Gerald L. Friedrichsen, Omaha
Maria R. Moran, Omaha
Gary J. Nedved, Lincoln
Gail S. Perry, Lincoln
Robert F. Rossiter, Jr., Omaha

NEVADA:
David Roger, Las Vegas

NEW HAMPSHIRE:
Wilbur A. Glahn, III, Manchester
Michael C. Harvell, Manchester

NEW JERSEY:
John P. McDonald, Somerville
John D. North, Woodbridge

NEW MEXICO:
Ben M. Allen, Albuquerque
Mark J. Klecan, Albuquerque

DOWNSTATE NEW YORK:
Mark J. Stein, New York

NORTH CAROLINA:
Leslie C. O'Toole, Raleigh

OHIO:
James E. Brazeau, Toledo
David P. Kamp, Cincinnati
Michael W. Krumholtz, Dayton

OKLAHOMA:
Jesse J. Worten, III, Bartlesville

PENNSYLVANIA:
Damon J. Faldowski, Washington
Thomas R. Wilson, West Chester

TENNESSEE:
William H. Haltom, Jr., Memphis
Noel F. Stahl, Nashville
Douglas A. Trant, Knoxville
Thomas A. Wiseman, III, Nashville

TEXAS:
Barry Abrams, Houston
Joseph R. Alexander, Jr., Houston
Rickey J. Brantley, Fort Worth
Thomas K. Brown, Houston
Milton C. Colia, El Paso
Tim Evans, Fort Worth
Lawrence L. Germer, Beaumont
Albon O. Head, Jr., Fort Worth
William A. Hicks, Cisco
Gregory S.C. Huffman, Dallas
V. Bryan Medlock, Jr., Dallas
George T. Shipley, Houston
Donald C. Templin, Dallas
Carol Jean Traylor, Fort Worth
Robert W. Weber, Texarkana

UTAH:
Sharon A. Donovan, Salt Lake City
Neil A. Kaplan, Salt Lake City

VERMONT:
James W. Murdoch, Burlington

VIRGINIA:
Irving M. Blank, Richmond
Craig S. Cooley, Richmond
H. Aubrey Ford, III, Richmond

WASHINGTON:
Christopher L. Otorowski, Bainbridge Island
Brian T. Rekofke, Spokane
James A. Smith, Jr., Seattle

WEST VIRGINIA:
Thomas J. Hurney, Jr., Charleston
Edward C. Martin, Charleston

CANADA

ALBERTA:
Kenneth G. Nielsen, Q.C., Edmonton

ATLANTIC PROVINCES:
Clarence A. Beckett, Q.C., Truro

ONTARIO:
Paul B. Schabas, Toronto,
Eric R. Williams, Ottawa

QUEBEC:
Pierre Cantin, Quebec
Guy J. Pratte, Montreal
James A. Woods, Montreal

MEMPHIS INDUCTEE

names

ROLE MODELS

It is customary at the Annual and Spring Meetings of the College for a representative of new Inductees to respond on behalf of all of the inductees. At the Spring 2007 meeting at La Quinta, the response was given by **William H. Haltom, Jr.** from Memphis, Tennessee. His remarks follow.

William H. Haltom, Jr.

When I was a little boy growing up in the Baptist church that my father pastored in North Memphis, our congregation would gather together on Wednesday nights for something called mid-week prayer meeting.

Now, a mid-week prayer meeting was much less formal than a Sunday morning service. There wasn't a choir behind my father; there wasn't a music minister; there wasn't even an organist; there wasn't a group of Deacons presenting what was called in Baptist circles an "Amen corner" for my Dad. Rather, at the appointed hour my Dad would walk up to the front of the congregation with an opening prayer and then he would ask a question. And it was the same question every week. The question was: "Would anybody here tonight like to testify?"

Now, let me quickly add for those of you who are not from the Evangelical Church that the term "testify" in the Evangelical Church is something very different from what you and I are used to. Dad never put anybody under oath, no Deacon ever cross examined anybody. But what happened when you testified was this: It was an invitation for members of the church to stand up and briefly tell their story and talk about how blessed they were to be a part of the congregation.

Sometimes the story started off kind of sad. People would talk about adversity they had in life. People would talk about maybe an illness, maybe the loss of a loved one. Sometimes the story started off happy because they would talk about getting a good job. But invariably the testimony always ended on a wonderful and happy note because invariably the brother or sister would

always say, "I feel so blessed by God to be a part of this great church."

When David [President David Beck] called me a few weeks ago and asked me if I would make the response tonight, I immediately said, "Yes" and "Thank you." And then after I hung up, I thought, "Oh my God. I'm a trial lawyer, so I'm not shy. I love to speak." So to speak to hundreds of the greatest trial lawyers of America, I felt a little bit like the story about the man at an early age of life survived the Johnstown flood. And all his life he wrote about it, wrote articles about it, gave lectures about it. And when he died and went to heaven St. Peter met him, and he said, "Welcome to heaven." He said, "Thank you very much." And St. Peter said, "If there's anything we can do to make your stay here more enjoyable, you just tell us." And he said, "Well you know, when I was a young man I survived the Johnstown flood." And St. Peter said, "Oh yes, we are very well aware of that." And he said, "During my life I wrote articles about it. I lectured about it and maybe the folks in heaven would like to hear that story." And St. Peter said, "We will put that together."

Well, a few days later they announced that there was going to be a lecture in heaven, and this man that survived the Johnstown flood was going to lecture. And literally thousands of souls gathered into this great auditorium and St. Peter was going to introduce him. And just as the program was about to start St. Peter waved to the man and he said, "By the way, you see that man on the front row with the long white beard? That's Noah."

Well, that's the way I feel tonight. And so I began to think what I was going to say in response, and I decided the best thing for me to do, harkening back to those Wednesday nights of long ago, is to testify. And let me briefly give you my testimony:

I am a first generation lawyer and very proud of that. I come from a long line of preachers, not just my Dad, but my great-grandfather, my uncle. All the men in my family, as my wife, Claudia, can tell you, all the men in my family are preachers. My late mother wanted to be a preacher as well, but we were Southern Baptists, and the Southern Baptists are not equal opportunity employers.

And so I grew up with the conviction that I was going to some day be a minister like my Dad and all the men in my family. But a funny thing happened to me on the way to seminary: I met three trial lawyers. And I met them all when I was a little boy. And it's interesting how I met them. The first trial lawyer I met came into my home on a September night in 1957. He wasn't invited in. He didn't break in, but he suddenly appeared in black and white on a Sylvania TV screen. His name was Perry Mason.

Perry Mason was the first trial lawyer I ever met. I didn't know what trial lawyers were until I saw Perry Mason. And he had two remarkable attributes that I began to notice. One, Perry always represented innocent clients. And number two, Perry always won. And he didn't just win, he won big. Perry was a criminal defense lawyer who did not believe in the weenie reasonable doubt defense. The way Perry won at trial was that he proved who the actual killer was, because, incredibly enough, the actual killer always came to the trial and sat in the gallery.

Now this is simply a hypothetical, but if I'm down visiting my friend David Beck in Houston and I get into some altercation in a bar and kill somebody and somebody else is charged and David is defending him, I'm not coming back to Houston for the trial. But with Perry Mason the real killer always came to the trial, and that's how Perry always won, because he was the greatest cross examiner of all times. You see, Perry's cross examination didn't just wear down the witness on the witness stand. You and I can do that. He would wear down the real killer in the back of the courtroom to the point that Perry's cross examination would be interrupted dramatically with the real killer standing up saying, "Stop it Mr. Mason. He didn't do it. I did it." It was magnificent. He was the first trial lawyer I ever met.

But on that September night when I was five years old, I met the second trial lawyer of my life. He also came on my television screen. His name was Hamilton Burger. Hamilton Burger was the prosecutor on the Perry Mason Show. Hamilton Burger had the

Con't on page 47

IN MEMORIAM

We have received word of the deaths of the following Fellows. The numbers following their names indicated their year of induction into the College. We continue our request that the person notifying the College office of the death of a Fellow include an obituary for the College records.

Bibb Allen '68, Birmingham, Alabama, a partner in Christian & Small, died March 17, 2007 at age 85. Enlisting in the Army Air Corps in World War II, he flew over 100 missions in the Aleutians and the European Theater, receiving seven Bronze Stars, the Distinguished Flying Cross and the Belgian Croix de Guerre. Returning to college, he graduated from Auburn and from the University of Alabama School of Law, where he was a member of the law review, the Order of the Coif and ODK. He had served as president of his local bar, of the Alabama Bar Association and of the Alabama Defense Lawyers Association and had been a member of the ABA House of Delegates. He was the author of a treatise on Alabama law and had taught for forty years at Birmingham Law School. He had been honored as Lawyer of the Year by the Birmingham Bar. His survivors include his wife, a son and a daughter.

Ronald W. Banks '92, Rapid City, South Dakota, a retired founder of Banks, Johnson, Colbath & Kerr, died January 19, 2007 at age 75 of cancer of the liver. A graduate of the University of South Dakota and of its law school, he had served in the United States Navy during the Korean War. His survivors include his wife, three sons and one daughter.

David Berger '60, Philadelphia, Pennsylvania, founding partner of Berger & Montague, died February 22, 2007 of complications arising from pneumonia at age 94. One of the pioneers of plaintiffs class action lawsuits, he had handled high profile cases, including ones arising from the Three Mile island nuclear accident and the Exxon-Valdez oil spill. Born in 1912 to Jewish immigrant parents, he was valedictorian of his law class at the University of Pennsylvania and a member of the law review and the Order of the Coif. He remained at the law school for two years and assisted in drafting the first Restatement of Torts. He also clerked on the Third Circuit Court of Appeals. Serving on three aircraft carriers in the South Pacific and later on the staff of Admiral William F. "Bull" Halsey in World War II, he had survived the 1942 sinking of the USS Hornet. He was awarded the Silver Star and was discharged with the rank of commander. He had served as city solicitor of Philadelphia and as Chancellor of the Philadelphia Bar. He had also been a member of the committee that drafted the Federal Rules of Evidence and had served on various boards, including the body that created the predecessor to Amtrak. His survivors include two sons.

Daniel B. Bickford '76, Westford, Massachusetts, retired from the Boston firm Gaston Snow Ely & Barton, died in January 2005.

John H. Blish '81, Rumford, Rhode Island, retired from the Providence firm Blish & Cavanagh, died February 11, 2007 at age 69. A graduate of Brown

University and the University of Michigan Law School, where he was associate editor of the law review and a member of the Order of the Coif, his survivors include his wife and two daughters.

Virgil Bozeman '63, Moline, Illinois, of counsel to Bozeman, Neighbor, Patton & Noe, died March 9, 2007 at age 94. He was educated at the University of Illinois and Southern Methodist School of Law.

Adelard L. Brault '70, Front Royal, Virginia, a retired lawyer, died February 13, 2007. His survivors include his widow.

Peter D. Byrnes '79, Seattle, Washington, a commercial litigator and founder of Byrnes & Keller LLP, died June 14, 2007 at age 68 after a four-year battle with multiple myeloma. A graduate of the College of William and Mary and of the University of Michigan School of Law, where he was a member of the Order of the Coif and an editor of his law review, he had served on the Council of the Antitrust Section of the American Bar Association and as first vice president of the International Society of Barristers. Among his more notable cases was his representation of seven seafood processing companies harmed by the Exxon Valdez oil spill. He is survived by his wife and four daughters.

William W. Cahill, Jr. '70, Timonium, Maryland, retired after a long career at the Baltimore firm, Saul Ewing LLP, died February 20, 2007 at age 79. A founder and the first board chair of the Maryland Office of Public Defender, he was a graduate of Loyola College and of the Georgetown University Law School. He had served as president of the Baltimore Bar Association and six terms on the Board of Governors of the Maryland State Bar Association. His survivors include his wife and three daughters.

Alan J. Davis '86, Philadelphia, Pennsylvania, a partner in Ballard Spahr Andrews & Ingersoll LLP, died of pulmonary failure on May 9, 2007 at age 70 after a short illness. Raised in a row house, the son of a machinist and union organizer and a social worker, he was a graduate of the University of Pennsylvania and of the Harvard Law School, where he was editor of the law review. His career ran the gamut from the successful defense of a mob boss in a racketeering prosecution to prosecuting mob bosses and investigating city prisons as assistant district attorney to then Philadelphia District Attorney, now Senator, Arlen Specter. He later served as city solicitor under several mayors and was perhaps best known for his role in representing the city of Philadelphia in high-profile labor negotiations during crucial times in its recent history. His survivors include his wife, a daughter and a son.

J. Robert Elster '84, Winston-Salem, North Carolina, a partner in Kilpatrick Stockton LLP, died unexpectedly in his sleep of natural causes on May 15, 2007 at age 69. A graduate of Rice University, he had served in the Marine Corps before entering law school at Duke University. He had written and lectured on numerous topics and had been an adjunct law professor at Wake Forest Law School. He is survived by his wife, a son and a daughter.

Perry Lucian Fuller '67, Winnetka, Illinois, a retired partner in the Chicago firm, Hinshaw Culbertson LLP, died May 10, 2007 from complications from heart surgery at age 84. His undergraduate studies were interrupted by World War II, in which he served as a strategic bomber pilot in the United States Marines in the Pacific Theater. A graduate of the University of Nebraska and of its law school, he was recalled to active duty during the Korean War, serving as an aviation instructor and a military prosecutor. He had

handled a number of high-profile civil cases. A prolific writer, he had chaired the Gavel Awards Committee of the American Bar Association. He had served as the president of the Law Club of Chicago and the Society of Trial Lawyers and had served on numerous state and local governmental boards as well as being active in numerous civic and charitable organizations. He was an early lecturer in trial practice at the University of Chicago Law School and had been co-chair of the NAACP Legal Defense Fund's Chicago Steering Committee. A widower, his survivors include a daughter.

William F. Gardner '83, Birmingham, Alabama, a labor lawyer and a partner in Cabiness, Johnston, Gardner, Dumas & O'Neal, died May 15, 2007 at age 73. He was a Phi Beta Kappa graduate of the University of Alabama and of the University of Virginia Law school, where he was a member of the Order of the Coif. He had written extensively and was also a Fellow of the College of Labor and Employment Lawyers. His survivors include his wife and two sons.

Kenneth C. Groves '78, Denver, Colorado, died February 18, 2007 at age 70. Educated at the University of Nebraska and the University of Colorado School of Law, his survivors include three children.

Eugene S. Hames '68, Denver, Colorado, of counsel to Wood Reis & Hames, PC, died November 23, 2006 at age 86. He was a graduate of the University of Colorado and of its law school, where he was a member of the Order of the Coif. His survivors include his wife, a daughter and two sons.

George M. Henzie '66, Los Angeles, California, who had retired in 1999 after fifty years of practice, died December 28, 2006 at age 86 after a long illness. A graduate of Stanford, he served for four years on a minesweeper in the Pacific during World War II. Returning to law school, he was on the board of editors of the first Stanford Law Review. He is survived by his wife and two sons.

Hon. John C. Hohnhorst '01, Twin Falls, Idaho, a state court judge, died February 3, 2007 at age 54 while awaiting a lung transplant. A graduate of the University of Idaho and of its law school, he had been president of the Idaho State Bar. After twenty-three years in private practice, he was appointed to the bench in 2001. His survivors include his wife, two daughters and a son.

R. B. Kading, Jr. '80, Boise, Idaho, died February 19, 2007 at age 76. After graduating from the University of Oregon, he spent three years as an Air Force officer before returning to law school at the University of Idaho. The descendant of grandparents who were among the first settlers in Idaho, he flew his own plane and skied throughout the West. A widower who had remarried, his survivors include his wife, a son and two daughters.

Keith E. Kaiser '92, San Antonio, Texas, a member of Cox Smith Matthews, died April 21, 2007 at age 63. A graduate of Texas Tech University, he was a field artillery officer in Vietnam, winning a Bronze Star. A graduate of St. Mary's School of Law, where he had been an adjunct professor and president of the law school alumni association, he had served on the governing council of the State Bar of Texas. His survivors include his wife and a daughter.

Mark O. Kasanin '82, San Francisco, California, a partner in Bingham McCutchen LLP, died May 18, 2007 at age 77 of cancer. A graduate of Stanford,

where he was a member of Phi Beta Kappa and of the Yale Law School, he had served in the United States Navy after law school. He had served for ten years as a member of the Civil Rules Advisory Committee of the Judicial Conference of the United States. His survivors include his wife and two sons.

John E. Keale '74, Newark, New Jersey, counsel to McElroy, Deutsch, Mulvaney & Carpenter, died February 2, 2007 at age 82. A graduate of Fordham Law School, he had served as a gunner in the Army Air Corps in World War II. He had received numerous awards, including the James J. McLaughlin Award presented by the Civil Trial Section of the New Jersey State Bar for demonstrated civility, legal competence and professionalism. His survivors include his wife, a daughter and four sons.

John R. "Jack" Martzell '86, New Orleans, Louisiana, a partner in Martzell & Bickford, died May 23, 2007 at age 70. A graduate of Notre Dame and of its law school, he had served on the editorial board of his law review. After clerking for two Federal District Judges, one the late J. Skelly Wright, he had been Executive Director of the Louisiana Commission on Human Relations, Rights and Responsibilities. He had been president of the Louisiana Trial Lawyers Association and had served in leadership roles in numerous legal organizations. His survivors include a daughter and four sons.

John Samuel McEldowney III '96, Galveston, Texas, a partner in Greer, Heerz & Adams, LLP, died August 30, 2006 at age 64 after a lengthy battle with cancer. He was a graduate of Baylor, where he played both baseball and basketball, and of its law school. He had served on the Galveston College Board of Regents and for years coached American Legion and Connie Mack baseball teams. He had been honored by the creation of the John S. McEldowney Fund, a foundation created to award law school scholarships in his name. His survivors include his wife, two daughters and two sons.

Landon Roberts '77, Asheville, North Carolina, of counsel to Roberts & Stevens, died April 28, 2007 at age 85. A graduate of the University of North Carolina at Chapel Hill, his law school career was interrupted by World War II. Commissioned an Ensign on his 21st birthday, he served on a patrol craft in the Pacific Theater for four years before returning to Chapel Hill to complete his legal education. A member of the North Carolina Board of Bar Examiners, he had served as president of his local bar and as a member of the Board of Governors of the North Carolina Bar Association and was a charter member of the North Carolina Association of Defense Attorneys. His survivors include his wife and two daughters.

Garvin F. Shallenberger '73, Laguna Beach, California, died September 26, 2006 at age 85. He received his undergraduate degree from the University of Montana, where his father was a physics professor. An intelligence officer in the United States Army in World War II, he attended law school at Boalt Hall at the University of California. Practicing at the time in Los Angeles, he was one of the original members of the board of the Los Angeles Dodgers. In 1950, he had moved to Laguna Beach, where he practiced until his retirement. He had been president of his local bar and of the State Bar of California and was a founder of ABOTA. He had been honored with a Distinguished Alumni Award by Boalt Hall and was the recipient of the Judge Learned Hand Human Relations Award from the National American Jewish Committee. His survivors include his wife, a daughter and a son.

Lawrence R. Springer '85, Youngstown, Ohio, a partner in Comstock, Springer & Wilson, died April 30, 2007 at age 70. A graduate of the College of Wooster and of Michigan Law School, he had been a member of the Board of Governors of the Ohio State Bar.

John R. Tharp '95, Baton Rouge, Louisiana, counsel to Taylor Porter Brooks and Phillips, died of a heart attack on March 28, 2007. Born in 1941, a graduate of Louisiana State University and of its law school, had served on several local civic boards. His survivors include his wife and three sons.

Frank J. Warner Jr., '85, Albany, New York, a retired partner in Ainsworth, Sullivan, Tracy, Warner & Ruslander, died January 23, 2007 at age 86. A graduate of Cornell and of its law school, he had served nearly three years with an Air Force heavy bomb group in various islands in the South Pacific. A former president of his local bar, he had been active in the local school system. A widower, he is survived by three sons.

Thomas Wolf '80, Rochester, Minnesota, a partner in O'Brien & Wolf, LLP, died March 29, 2007 from the effects of a stroke at age 77. A graduate of Loras College and of the University of Minnesota Law School, where he was editor of the law review, he had practiced law for over fifty years. In 1996, he received a lifetime achievement award from the Academy of Certified Trial Lawyers in Minnesota. His survivors include his wife two sons and two daughters.

Hon. William Zeff '50, Modesto, California. An article about Zeff, who was the last surviving member of the original class of College inductees, appears elsewhere in this issue.

FELLOWS GIVE TRIAL DEMONSTRATION FOR DOCTORS

The Downstate New York Committee presented a program to about 75 emergency department physicians on May 2 at the Bellevue Hospital in New York City on how they can expect to be examined at trial. Jim Brown organized the presentation, which was a segment of a regular series of lectures on law and medicine.

The mock trial exercise featured two of the senior residents serving as witnesses, with Brown serving as both plaintiff's and defendant's counsel.

longest losing streak in the history of American jurisprudence. Hamilton Burger and Perry Mason tried one case a week from September of 1957 through May of 1966. They took the summers off, but that's thirty-six trials a year for ten years. Hamilton lost three hundred thirty-six consecutive trials, all on national television. One can only imagine what Nancy Grace [the hostess on Court TV] would say about Hamilton Burger.

Now when I was a little boy I wanted more than anything to grow up to be a trial lawyer like Perry. I wanted to always represent innocent clients and I wanted to win week after week after week on national television, proving who the real killer was. But I am now in my thirtieth year of law practice, and I will tell you that my hero is not Perry Mason. My hero is Hamilton Burger. Here was a man who lost one trial a week on national television to Perry Mason and never lost his job as District Attorney!

Which leads me to a third trial lawyer I met when I was a child. He came into my life at the Northgate Theatre at a shopping center in North Memphis in 1962. His name was Atticus Finch. Atticus Finch had something in common with Perry Mason and something in common with Hamilton Burger. Like Perry, he had an innocent client named Tom Robinson, but like Hamilton he lost. I will never forget the scene in the movie after the jury had returned a verdict against Tom Robinson. Atticus Finch slowly packed his briefcase and began to walk out of the courtroom. The African American citizens of Maycomb spontaneously rise in his honor. There are two little kids in the gallery, Scout and Jem, and Reverend Sikes, the minister of the community, the African-American community, (he) awakened Scout and Jem and, addressing Scout by her proper name, said, "Miss, will you stand up. Your father is passing."

It was at that moment I knew I wanted to be a trial lawyer. I really wanted to be a trial lawyer, but you see it was a secret I had to keep because everybody in the family was expecting me to be a minister. And this is where my testimony closes. It closes on June 10, 1964, my twelfth birthday. On my twelfth birthday my mother made for me all my favorite food: fried chicken, fried corn on the cob, fried peach pie. We were Southern Fried Baptists; that's what we ate.

And then she gave me my birthday present. I opened it up. It was a Bible. It wasn't just a Bible. It was a Scofield Reference Bible, just like my Daddy preached from every Sunday. And it came with a big string attached, because my mother said, "Son, you are going to use this for the rest of your life because you are going to be a minister like your Dad." My heart sank. I couldn't tell her about Perry Mason. I couldn't tell her about Hamilton Burger. I couldn't tell her about Atticus Finch, so I just said, "Thank you."

Later that night I went to my Dad. And I said, "Dad, thank you for the Bible, but I have a secret to tell you. Mom expects me to be a minister and I want to be a lawyer." And my Dad looked at me and he said, "Your mother is right." Now my heart really sank, because on my twelfth birthday I was going to disappoint my mother *and* my father. But then he said this: "You take that Bible that Mom gave you. You look in the Sixth Chapter of Micah (that was referred to just now in the invocation) and look and see what it says." And so I did.

And it said, "What does the Lord require of us but to do justice, to have mercy, and to walk humbly with our God." And then my Dad said this. "I believe that your mother is right and that you are going to be called to a life of ministry. Some people are called to lives of ministry as ordained ministers. Some people are called to lives of ministry as teachers or architects, and maybe, maybe, there's a life of ministry in the law."

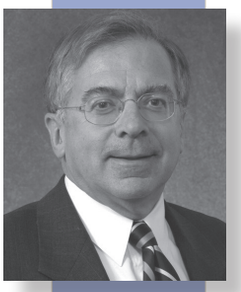
I share that testimony with you for this reason, not to tell you I have some unique calling from above. I do not. I think we all have the great ability every day to help people in need, help people whose lives are in dispute, and it is so noble to speak for people and to be their advocate. So that is my testimony tonight. It is not under oath, but it is from the heart, and on behalf of my class it is a great honor to be a part of this wonderful organization.

Thank you very much.

MEET THE NEW REGENTS

Paul D. Bekman

A Fellow since 1993, Paul D. Bekman of Baltimore, Maryland has served as chair of the Maryland State Committee as well as a leader in numerous other bar-related organizations. He has been president of the Bar Association of Baltimore City, the Maryland State Bar, the Maryland Bar Foundation, the Maryland Trial Lawyers Association and the Maryland Chapter of the American Board of Trial Advocates. He attended the U.S. Air Force Academy before receiving a B.A. in 1968 and J.D. in 1971 from the University of Maryland.

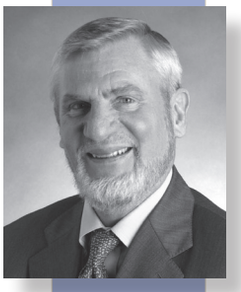


Michel Decary, Q.C.

Inducted into the College in 1993, Michel Decary of Montreal, Quebec was chair of the Quebec Provincial Committee from 2004 to 2006. In 1998 he was selected, with Ian Binnie (JFACTL), who is now a judge of the Supreme Court of Canada, as co-head of the legal team in charge of defending the first Canada-U.S. Free Trade Agreement. A lecturer at McGill University and at the Laval University Programme de formation du college des administrateurs des societes, he has lectured at the University of Montreal Law School. A 1964 graduate of the University of Montreal, he received his LL.L. from there in 1967 and completed the course requirements of the Master's Program in Law and Economics in 1970 from McGill University.

Bruce W. Felmly

A member of the College since 1990, Bruce W. Felmly of Manchester, New Hampshire has served as state chair for that state. He was president of the New Hampshire Bar Association in 1995-1996 and serves in a number of legal organizations. He also was appointed chairman of the New Hampshire Supreme Court Long-Range Planning Task Force, which published its report, A Vision of Justice, in 2004. A 1969 graduate of the University of Rhode Island, he received his J.D. in 1972 from the Cornell Law School.



Robert A. Goodin

Inducted in 1995, Robert A. Goodin of San Francisco, California has been chairman of the San Francisco Neighborhood Legal Assistance Foundation and the Bay Area Legal Aid. He has lectured at the National Institute for Trial Advocacy and the Hastings College of Trial Advocacy. A native of Berkeley, he graduated from Harvard University in 1968, served as a lieutenant in the Navy from 1969 to 1971 and received his J.D. from Boalt Hall School of Law at the University of California in 1974.

John Sand Siffert

After becoming a Fellow in 1996, John Sand Siffert of New York, New York served as chair of the New York Downstate Committee and of the Admissions to Fellowship Committee. A former Assistant U.S. Attorney in the Southern District of New York, he also has been president of the Federal Bar Council's Inn of Court. A 1969 cum laude graduate of Amherst College, he received his J.D. in 1972 from Columbia University.

Bon Mot

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The first time I decided to venture into a weight room it was in Aspen, where they tend to hide them in spas which looked deceptively normal at street level–lots of expensive shrubs, lots of glass, a pretty girl just inside to take your dough and sign you up for a year. It happens very fast. The girl takes your credit card and says, "I'm Chanterelle, by the way. Let me show you the pool." And she does. And it's nice–the machines and the stationary bikes, it all looks nice.

And you get down to business: "Do you have a weight room?" A cloud passes over Chanterelle's face. "Sure. Sure. Let's go take a look." A hurried glance back at the counter and the mouthed words, "Run his card." Then down the runner's steps into an underground room that looks like a cross between the engine room of a World War I destroyer and a dominatrix' mudroom–lot's of tile and mirrors, drains on the floor so they can hose it down when they're done. Huge steel machines with black pads all over them, lifting machines, twisting machines, machines to pull the teeth out of a Caterpillar tractor. And sleek wires connecting this and that, tying up pretty girls to make them grunt. And young men too with weird veins running all over their arms and necks like fat worms underneath their skin, veins like macaroni on acid, and biceps that look like they've been blown up.

This is a scary place. "Listen you probably have a lot to do, I'll just---" "No, no," Chanterelle says quickly. "You've already paid. You're dressed. Let me just get Lance. Oh, Lance." Up hulks this guy with a deep tan and more teeth than you've ever seen in one mouth before, sort of good-looking, but something is terribly wrong. His body does not make sense.

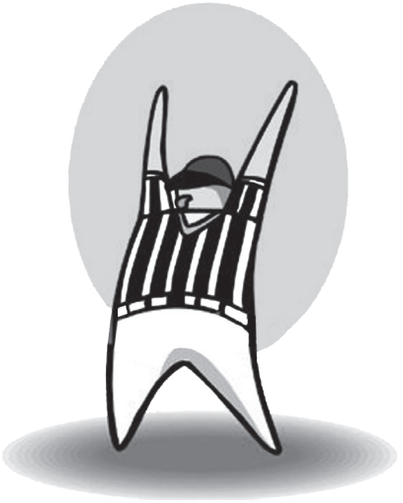
This guy says "Hi, let me show you around." Lance or Biff or Hawk starts the rap about his Technique, but you are not listening. You are staring nervously at his body, because it's becoming entirely clear to you that he is almost certainly an android and the manufacturer has skipped the little life-giving details that are so important. Maybe a foreign manufacturer too because he's dressed funny. His little red shorts look much too small on his huge thighs. And he's wearing a sleeveless T-shirt with enormous armholes through which it is impossible not to see his pecs or whatever they're called. And his armpits, his armpits are the deepest and furriest you have ever seen. You could raise wolverines in there. You want to take a step back so you won't drip testosterone all over your sneakers. You want to get the hell out."

Bon Mot

— Chris Crowley describing his first visit to a weight room

HUMOR *as* SURVIVAL TOOL *of an* NFL REFEREE/TRIAL LAWYER

Ed Hochuli, a founding partner of the Phoenix firm, Jones, Skelton & Hochuli, ended the Friday morning program at the College's Spring meeting with an entertaining account of the life of an National Football League official.



A seventeen-year NFL official, he has worked 16 NFL playoff games in as many seasons, five championship games and two Super Bowls and was an alternate Super Bowl referee three times.

Before College Regent and former Baltimore Colts player **Raymond L. Brown** had gotten far into his introduction, it had become obvious that humor is a survival tool for a successful NFL official.

"To NFL players," Brown began, "Ed Hochuli is a 'zebra.' He wears a black-and-white-striped shirt, and, to NFL players, the less they see of him in a game the better. He's been an NFL official since 1990. Beginning as a back judge, he moved up fast to become a referee in '92. The referee runs the show. He wears the white cap, has the microphone, and makes the announcements on penalties. Ed is also a trial lawyer. He is proof that it's dangerous to give a trial lawyer a microphone in front of a large crowd. . . . "

"Ed began officiating at the bottom, umpiring Little League baseball in 1970. He obviously thrives on abuse because he rose rapidly, officiating high school, junior college, Big Sky, and Pac 10 college games, and now professional football. . . ."

"Freddie Arbanas, Kansas City Hall of Famer, who lost an eye and kept playing for a while with a glass eye, told Ed that when he loses his other eye, he's going to take Ed's job. But Ed told me he has never made a bad call, right, Ed?"

"In a Dallas Cowboy game, Ed called a personal foul on a Dallas player, nullifying a nice Dallas gain on a crucial third down. Bill

Parcells, the Dallas coach, disagreed and went ballistic. As Ed moved the ball back from the line of scrimmage at the 50 down to the 35, taking away that nice gain, and taking away an additional 15 yards, Parcells was in a rage. Among a barrage of unprintable expletives was, 'Hochuli, you stink.' Ed threw the yellow flag again, called unsportsmanlike conduct, stepped off 15 more yards down to the 20, turned towards Parcells, and, without turning on his mike for the crowd to hear, cupped his hands to his face and yelled, 'Bill, how do I smell from here?' Is that true, Ed?"

ED HOCHULI: "I'll get the microphone in a minute."

"Before he flags me for delay, I am proud to present to you a man whom judges should envy, if only for the fact that in his high-profile weekend job, appeals from his rulings are decided on the spot. You may never have applauded a referee before, but you can do it now."

Hochuli's presentation was illustrated periodically with video clips, most of them with the dialogue "bleeped out" for reasons that were readily apparent to the audience. Typical of his monologue were the following:

ON COIN TOSSES

There [on video] is the honorary captain for this particular Super Bowl. People recognize him? Y.A. Tittle. Very good. I'm impressed. You know, I love it when I've got an audience that's a little closer to my age. I speak to some groups now, and Y.A. Tittle? Never even heard of the name, much less recognize the face. It's happening on the field. Brian Erlacher came up to me this year during a game: "Ed, it is so cool. You know, I've been watching you on TV since I was a kid and here we are together." I said, "That comment is going to cost you 15 yards on this next play."

But in any event, he [Tittle] is the honorary captain for that coin toss. Mind you, we've practiced for two hours, so everything ought to go smooth. But does it ever? We're standing, there's about 20 seconds to go and Mr. Tittle turns to me in the center of the field, and we're standing there waiting, and I've got a guy on the sideline who cues me when we're ready to go, that the TV comes live. And about 20 seconds to go, Mr. Tittle turns to me and says to me, "Ed, I get the coin, don't I?"

I said, "Mr. Tittle, I'm sorry, but I can't give you the coin. It goes to the Hall of Fame." He says, "Ed, I promised it to my great grandson." I said, "But Mr. Tittle…" He says, "Ed, I'm going to put it in a program and frame it, and I promised it to him." I said, "Mr. Tittle, you don't understand. You see these two security guards standing there on the sideline? After the coin toss, I give them the coin and it goes to Canton, Ohio. And every coin from every Super Bowl is sitting in the Hall of Fame. I can't give you the coin." He said, "Ed, but my great grandson, I promised it to him."

And I stopped and I thought to myself, "Now, there's something wrong if Y.A. Tittle, you know, Y.A. Tittle, for those of you who don't know, he's the Tom Brady or the Peyton Manning or the Brett Favre of the '50s. He was the man. I was thinking to myself, "Y.A. Tittle ought to get this coin." I turned to the cameraman standing right next to me and I said, "Don't zoom in on the coin." He said, "Huh?" I said, "Just don't zoom in on the coin."

I reached in my left pocket and pulled out my trusty silver dollar that I used all year long to toss at the beginning of the coin tosses. Y. A. Tittle's grandson got the coin that was actually tossed in Super Bowl XXXVIII. And the coin that's sitting in the Hall of Fame got no closer to the coin toss than my right pocket.

But the NFL's rules, one of them is that except for the Super Bowl, no one can toss the coin except the referee. I don't know why it's a rule but it's a rule, and we get fined and graded if we break the rules. Well, as we walk out for the coin toss for this game, this year, President Bush is led out there by a security guard. I walked up and I shook his hand.

I said, "Mr. President, it's a real honor to meet you, sir." Does he say to me, "Thank you, it's nice to be here?" No. First words out of his mouth are, "When I toss the coin, do you want me to catch it or let it hit the ground?" I said, "Mr. President, you can do whatever you want to do. I'd prefer if you let it hit the ground, but you just let me know." And as you can see in that picture, you can see who is tossing that coin. Fortunately the NFL let me get away with that one.

ON NFL PLAYERS

These guys are amazing– the talent. I watched Joe Montana one time throw a pass away. He was about to get sacked. He just heaved it out of bounds. And Jerry Rice went up and caught it. And Joe turned to me and he says, "I was throwing the ball away."

And Brett Favre. Some of you know . . . there's sort of a thing between Brett Favre and Warren Sapp. Now, Warren Sapp is a defensive lineman, a big gentleman. We'll see a picture of him in a moment. This rivalry goes on between the two of them. I was working a game in Green Bay a couple of years ago, and Brett had scrambled out to the right and he was trapped, and he was going to cut back inside. He wasn't going to be able to throw the ball. And he plants with his outside, starts cutting back like this, but he's still looking at these guys out here.

Now, I'm right here four yards behind him, and I see Warren Sapp coming from the other direction full speed. And Brett's not going to see him, and I know what's going to happen. And I think to myself, "We're going to be okay. We've got -- the ambulance comes out, takes the dead body off the field, and we can go on with the game."

Sure enough, there's the collision like you would expect, but what I didn't expect was Brett was off the ground just like that, face mask to face mask, screaming in Warren Sapp's face at the top of his lungs, "Is that as hard as you can hit, you blankety blank, blank, blank?" Now, the very next play Brett throws a touchdown.

This is a true story, absolute Gospel. Two years later I saw Brett at a training camp. We go to training camps every year. And I said, "Hey, do you remember that game a couple years ago?" And he kind of smiled and he says, "I've watched it on tape many times. I don't remember a single play from the entire game. I got a concussion on that play, and that was the end."

Brett's a fun guy, and frankly most of the players are. This was a game where he had played the most consecutive number of games by a quarterback in the history of the league. He broke the record. And they told me before the game, "When this happens we're going to stop the game, it was a national televised game, and you're to make a presentation to him, award him the football for this accomplishment. Sure enough, this was great, and I did. So we're stopped on national TV, and as I hand the football to Brett, what does Brett say? He says, "Ed, go deep, I'll hit you."

Terrell Owens, TO, anybody hear of him? Well, maybe so. Before a game, we're standing out there and the teams are just warming up, and the quarterbacks are just throwing, loosening up their arms. Receivers are running down and catching them and jogging back. And I'm walking around the field, and all of a sudden, TO comes walking, all of a sudden he starts yelling at me , "Ed, you're blind, blah, blah, blah, blah." As he gets up close, he stops and breaks into a smile and he says, "Just practicing."

ON PERSPECTIVE

It's all about perspective. I was watching my granddaughter playing whiffle ball in the backyard a little while back. She would throw the ball up and she would swing the bat and she would miss it. And I stood there looking out the window and saw her do this a few times. And I finally did the grandfatherly thing and I went out there and I said, "Sweetheart, let me help you."

And she says, "I'm okay, Papa, I got it." And I said, "No, I know it's hard to do." She says, "You don't have to help, I got it." I said, "Sweetie, I know it's hard to do." She says, "Papa, you don't understand. I'm not the batter, I'm the pitcher."

With the right perspective, everything works out. I like to think about the blind man with the seeing eye dog as he's walking across the street. I was standing in Phoenix the other day and I saw this happen. Unfortunately, the dog led the blind man against the light across the street. The light wasn't green for him. Horns were blowing and tires were screeching and people were swerving, and miraculously the blind man with his dog got safely across the street. As they pulled up and got up onto the sidewalk, I see the blind man reach in his pocket, and he starts pulling out a dog biscuit. And I was standing right there. I said, "Excuse me, sir, you may not realize but your dog crossed against the light and very nearly got you killed. I would think the last thing you would want to do is reward him by giving him a dog biscuit." And he smiled. He says, "Oh, no, I know what he did. But you see, I'm going to give him a dog biscuit so I can find out where his mouth is so I can kick him right in the a__."

Similarly Junior Seau, then playing for the San Diego Chargers, had a perspective on me. The play had just ended and Junior was coming in just a moment late. So to avoid hitting the pile that would have been late hit, he kind of went over the top of the pile, which was right where I was, and just broadsided me and wiped me out. "Oh, Ed, I'm sorry, I'm sorry." He's helping me up off the ground. "That's okay, Junior, that's okay, you just got me in my blind spot." He says, "Oh, right between the eyes, huh?"

ON COACHES

Dan Reeves before a game: I see him and he's smiling at me and he's all pleasant. "Ed, I want to tell you, I know I lose my temper out there sometimes and I apologize in advance. It's just –" "Whatever, Coach, no problem, you know." We shake hands; he's real nice. Well, sure enough, about the middle of the second quarter there's an issue and he wants to talk. And so I go over to the sideline. And he's just losing it, just going berserk. And I stood there quietly. And I didn't say a word until finally he stopped to take a breath and I said, "Is this one of those times you were talking about before the game, Dan?"

Yes, the coaches are a treat. And like I said, maybe coaches make it easy to deal with judges—maybe that's what it is—because you do. Your patience is tried sometimes, but you just have to put up with it. Here's a picture of the NFC Championship game a year ago. Mike Holmgren. We had a play in the game, and without going into any detail, he wanted to talk, as you can see. And so I went over to the sideline. I always go talk to them when they want to talk. I tell them before the game, "You want to talk to me, I want to talk to you." You know, they're frustrated and sometimes they just need to vent. And I went over to Mike, and he's going, and he's spitting, you know, the way they go when they get--and he can't string three English words together to form a sentence. It's just, he's so out of control. And I stood there for about 10 or 15 seconds, and finally I just turned and walked away. And the next day he was quoted in the paper, and they asked him about that particular play, and he said, "You know," he said, "Ed Hochuli came over to talk to me about it. And I think that he did me a big favor. He had the judgment and the wise sense to know nothing good was going to come of that, and it was time to just walk away and leave."

And it's kind of like as trial lawyers, we have to know when to ask the next question of the witness and when to just sit down and shut up. And I think this is probably a good time for me to just sit down and shut up.

GALANTER EXAMINES STATISTICS BEHIND VANISHING TRIAL PHENOENON

"If told that actually trials are rapidly disappearing from the American legal scene, most Americans would be incredulous. Yet there's an abundance of data that shows that trials, federal and state, civil and criminal, bench and jury, are all declining precipitously."

Marc Galanter

Wisconsin Law School Professor **Marc Galanter**, author of a 2004 article that gave a name to the vanishing trial phenomenon, shared some of his statistical findings at the College's Spring 2007 meeting.

He observed that, although society and the legal system grew over the last one hundred years, and the *portion* of cases that terminated in trial decreased, the actual *number* of trials had remained steady or even increased. Starting about twenty years ago, however, the number of trials started to decrease rapidly.

Galanter's statistical analysis, based only on the Federal courts, begins in 1962. In that year, there were roughly an equal number of civil bench trials and civil jury trials. Illustrating his points with graphs, he pointed out that from 1962 until the mid-eighties the number of trials increased, peaking in 1985 at a level twice that of 1962. Much of the increase during that period was attributable to bench trials. Indeed, 1985 appears to be the first year in that period in which there were approximately as many jury trials as bench trials.

After 1985, the number of trials generally taperd off slightly for the next four years. Then in 1990 the number of trials began to fall precipitously. By 2005, there were only about two-thirds as many trials as in 1962. There were only slightly

fewer jury trials than in 1962, but there were drastically fewer bench trials. Indeed, in 2005 there were approximately two jury trials for every bench trial.

LITIGATION EXPLOSION/ TRIAL IMPLOSION

Galanter then pointed out that there were about 50,000 cases terminated in Federal courts in 1962, but that by 2005 there were about 270,000 terminations. In short, case terminations went up by a multiple of more than five, while the number of trials decreased by about a third. We have moved from a situation in which about one in nine cases filed led to a trial to a situation in which about one in seventy now goes to trial.

"The Federal data is more comprehensive," he continued. "The trends are easier to visualize, but the trends that I describe are evident in criminal as well as civil matters and in state courts as well as Federal courts, and actually elsewhere as well. Even in the administrative process and in the world of ADR, where you're getting a shift from arbitration to mediation, this kind of avoidance of trial seems to be going on very generally."

This is all the more striking, Galanter pointed out, because virtually everything else in the legal world has been growing–more law, more regulation, more authoritative legal material of all sorts. The legal profession has grown from about 385,000 lawyers in the early sixties to 1.1 million today. The amount of spending on law has risen from about forty cents of every hundred dollars of gross domestic product to $1.60 of every $100 of a now greatly expanded GDP.

"[A]ll this growth of law and lawyers is mirrored by a similar expansion of law in the public consciousness. In that consciousness, the image of the trial remains very central, and the decline of actual trials remains a well-kept secret. Since I began calling attention to this phenomenon a few years ago, I've encountered all kinds of expression of surprise and disbelief from citizens and students and from many judges and lawyers. And, of course, the media's fixation on trials, fictional and otherwise, combines with myths about the litigation explosion and so forth to make this decline invisible to the public and in some measure to legal professionals as well."

As an aside, Galanter noted, "[T]he only other thing in the legal world that seems to be shrinking while everything else multiplies is the number of definitive pronouncements of law at the peak of the judicial system. . . . [T]he Supreme Court of the United States decides fewer cases even, while the body of statutes and case law and regulation becomes ever larger. The Supreme Court is deciding less than half as many as 20 years ago, less than a quarter of the number of cases it decided in the early part of the 20th Century. So, as lawyering and legal doctrine multiplies, decisive adjudication seems to be waning along with the trial."

RISE OF CASE MANAGEMENT

Returning to his analysis of the vanishing trial, he observed, "Since the 1980s, what we see is a real transformation of the judicial product: a great increase in judicial case management, judges focusing on the early stages of litigation, intensified judicial promotion of settlements, substantial increase in summary judgment and other non-trial adjudications, outsourcing to ADR firms, and a corresponding shift both in the calculations of the parties and their lawyers, and, very importantly, in the ideology of judges, who began to see their role as resolving disputes, rather than presiding over trials."

Illustrating the latter point, Galanter displayed a graph showing the stage at which the cases that were filed in Federal court in the period he examined departed the system. In 1963, slightly over half the cases filed were terminated with no court action. That rough percentage prevailed until about 1985, but by the early nineties, it had dropped to the range of twenty percent, where it remains. In short, far fewer litigants are settling cases before filing motions to dismiss or conducting discovery, usually under judicial case management.

On the other hand, the percent-

age of cases terminated after "court action" (motion or discovery, or both, together with judicial case management), but before pretrial has risen from about twenty percent in 1963 to almost seventy percent. "[J]udges, he concluded, "are investing their time and effort in case management." The percentage of cases terminated during or after pretrial, but before trial has decreased slightly. The percentage of cases terminated by trial has dropped precipitously.

TRIALS PER JUDGE PLUMMET

Equally telling in Galanter's analysis of the changing role of judges was his graph showing the number of civil and criminal trials per Federal judge during this period. In 1962, the average Federal District Judge tried about twenty-one civil cases and about eighteen criminal cases. In 2005, those numbers had fallen to about six of each! Consequently, by 2005, jury trials accounted for the termination of only about 1% of civil cases and bench trials accounted for only another one half of one percent. He pointed out that even the latter figure is deceiving because some of these trials are conducted by senior judges and magistrate judges, and the Federal statistics count as a "trial" every hearing at which contested evidence is received, so that, for instance, Daubert hearings are classified as "trials."

One result of the early intervention of judges as case managers and the decline of trials, Galanter noted, is that the average judge has much less trial experience than his predecessors, and there is a shrinking pool of lawyers with trial skills and experience.

CHANGE

Continuing his analysis, Galanter pointed out that in 1962, half the trials and eighty percent of the jury trials were tort cases. In 2005, only twenty two percent of the jury trials were tort cases. One in every seventy tort filings reaches trial, one in a hundred a jury trial. The level of contract-based cases has remained fairly steady at around twenty percent of civil trials, declining slightly in the nineties. Civil rights cases, which started off nearly invisible in 1962, are now the largest category of trials, well over thirty-five percent. Add in prisoner petitions and these cases are about half the 2005 trials, an impressive figure, Galanter notes, given how vulnerable these cases are to summary judgment and other types of dismissal.

He also observed that further analysis of various types of cases that affect their getting to trial–the types of parties, the stakes, problems of proof, dependence on expert witnesses–will prove illuminating.

REGIONAL DIFFERENCES

He went on to point out that, although the decline in civil trials has been a general phenomenon, it has been more precipitous in some Federal circuits than in others. District courts in the Fourth Circuit, for instance, dropped from the second highest rate of jury trials in 1985 to the lowest in 2005. Analysis on a district-to-district basis is yet to be accomplished. Galanter noted that more sophisticated analysis of such data, focusing on such things as regional differences, will prove valuable, as will analysis of state court case statistics.

THE CHALLENGE

Galanter concluded his presentation with the following challenge: "I hope that I've persuaded you that if we want to understand what explains the persistence of trials about some topics and in some places and the attrition of trials in others, we need to undertake a systematic examination. There are many ingenious explanations that have been advanced, and there are ways to test them, but the process takes time and resources. I'm suggesting that a thorough inquiry into this vanishing trial phenomenon is a demanding undertaking.

"Would it be worthwhile? Well, we would understand more than we do now and perhaps be able to do something about it."

[T]oday we even have four women on the Supreme Court of Canada, one of them our Chief Justice, but I'm happy to say—and I think it must be said—that all five of the men on our court got there on merit.

— Canadian Supreme Court Justice Rosalie Abella

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But I just wanted to leave you with a little story about a very famous English Barrister, Lord F. E. Smith, later Lord Birkenhead. F. E. Smith was arguing a case before a judge, and the judge expressed great puzzlement about his argument. And he said , "I just don't understand where you're going, Counselor." And Smith says, "Well, let me see if I can, can review this for you, My Lord." So he goes through very precisely and carefully goes through his argument, to which the judge says, "I'm afraid, Counselor, I'm none the wiser." And Smith says, "Yes, My Lord, but surely better informed."

— Professor Marc Galanter closing his presentation

Bon Mot

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A pre-eminent counsel, David [Scott] has represented the highest profile clients in Canada, including a former Prime Minister, and truly he is an icon of the Canadian legal community. But perhaps what makes David most immediately recognizable, at least in my eyes, is you can always see him sporting his signature bow tie.

Now, I thought, "How do I become an icon?"

Bon Mot

So, David, I've been going to Brooks Brothers, and I've been buying bow ties. And I'm getting a collection of them. But I'm going to need a little bit of pro bono time from you to learn how to tie the bow tie.

— Canadian Bar Association President J. Parker MacCarthy, Q.C., acknowledging his introduction by Past President David W. Scott, Q.C.

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[W]hen I go visit meetings of various Fellows, we talk about trying lawsuits, what it's like trying a lawsuit in this jurisdiction, in that jurisdiction. And there seems to be a common perception that trying a case in Texas is very, very different than it is in most parts of the country. And I've even heard that the Texas system supposedly is bizarre, unique, interesting, and so on. It reminds me of a story involving one of our Fellows, Joe Jamail, who was trying a death case. He represented the widow. He was trying to recover a lot of money from this jury, and he asked the jury for a lot of money. And the defense lawyer got up and quite appropriately was trying to hold the damages down. That was the whole theme of the jury argument by the defendant's counsel. And the defense counsel said, "Ladies and Gentlemen, it reminds me of when I was a young boy. . . . . I had a date on Saturday night. And I asked my father for twenty dollars so I could take my date out on Saturday night–but I only really wanted ten dollars.". . . He sits down. Mr. Jamail gets up and says, "Ladies and Gentlemen, you have now seen firsthand the kind of people we're dealing with. Here's a lawyer that lies to his own daddy."

— President David J. Beck

CALIFORNIA CHIEF JUSTICE *receives* GATES AWARD

California Chief Justice Ronald George became the twentieth recipient of the Samuel E. Gates Litigation Award at the Spring meeting of the College at La Quinta.

Justice Ronald George

Established in 1980 to honor a lawyer or judge who has made a significant contribution to the improvement of the litigation process, the award is given in memory of the late Samuel E. Gates, who died in 1979, shortly before he was to assume the presidency of the College.

Previous winners of this award have included Harvard Law School Dean and Solicitor General Erwin N. Griswold and Associate Justice William J. Brennan, Jr. Gates' widow, Philomene Gates, was among the audience at the presentation ceremony.

The citation that accompanied the award reads as follows:

"Ronald M. George, by your forty years of public service as a Prosecutor, a Judge, a Justice, and Chief Justice of California, you have distinguished yourself in many ways. As a prosecutor and trial judge in numerous high-profile and important criminal cases, the moving force behind the reorganization of the California State Court System, a tireless advocate for reform of Court funding and facilities improvements, and as a leader of efforts to assure legal representation for the poor, you have made immense contributions to the improvement of the litigation process and the administration of justice.

"By your sacrifice and selfless giving, your tireless efforts to improve the administration of justice and your many accomplishments, you have honored our profession.

"With gratitude, respect, and admiration, the Fellows of the American College of Trial Lawyers present to you the Samuel E. Gates Litigation Award at La Quinta, California, the 9th day of March, 2007."

David J. Beck, President

A graduate of Princeton University and Stanford Law School, George has been a public servant for some forty years. As a prosecutor, he argued eleven cases in the California Supreme Court and six in the United Supreme Court. He was a part of the team that prosecuted Sirhan Sirhan for the murder of Robert Kennedy.

Appointed to progressively higher levels of the California courts by governors from both political parties, Ronald Reagan, Jerry Brown, George Deukmejian and Pete Wilson, as a trial judge he presided over numerous high-profile cases including that of the infamous Hillside Strangler, Angelo Buono.

He was elected California Trial Judge of the Year in 1983. Appointed an Associate Justice of the California Supreme Court in 1991, he was appointed Chief Justice of California in 1996. As such, he presides over the largest judicial system in the Western world. With 1600 judges, California's judiciary is twice the size of our federal judiciary.

Upon being appointed Chief Justice, George established three top priorities for improving the California State Court System: shifting court funding from the local to the state level, consolidating a dual-level trial court system, and improving court facilities and infrastructure.

He has been described by Chief Judge Judith Kaye of the New York Court of Appeals, a Judicial Fellow, as the hardest working state court judge in the United States.

Chief Justice George has served as Chair of the National Conference of Chief Justices, Chair of the National Center for State Courts and President of the California Judges Association and he has served as a member of the Judicial Conference of the United States.

Among his many awards and recognitions are the William O. Douglas Award, the William Rehnquist Award, the Learned Hand Award and the St. Thomas Moore Medallion.

In his response, Chief Justice George called attention to the growing chorus of criticism of judges at every level for setting aside their personal beliefs and deciding cases on the basis of the law and the facts, rather than bowing to popular opinion and to the trend that threatens to turn the election of judges into contests between interest groups. He called on the College to exert its influence to educate the public about the proper role of the courts under the rule of law.

George is no stranger to the College. He was a delegate to the College-sponsored 1999-2000 Anglo-American Legal Exchange and he and his wife, Barbara, were married by College founder Judge Emil Gumpert, a family friend, in 1966. Indeed, in his acceptance remarks George gave Judge Gumpert credit for encouraging him to go to law school and to seek his first appointment to the bench.

GUMPERT AWARD RECIPIENT THANKS COLLEGE

"They are not doing it for the money . . . they are doing it for something else, . . . basically a deep-seated belief in the rule of law, in a system that is really committed to justice in the way its courts are administered, the way its judges deliberate. It is a deep-seated belief in the notion of equal justice for all and access to equal justice. And access to justice is the cornerstone."

Ellen Hemley

At the Spring meeting of the College, **Ellen Hemley**, Executive Director of Legal Aid University of Boston (now the Center for Legal Aid Education), winner of the 2006 Emil Gumpert Award for Excellence in Improving the Administration of Justice, so described the motivation of the thousands of legal aid lawyers across the country.

In introducing Ms. Hemley, Gumpert Committee chair **Joseph D. Cheavens** of Houston pointed out that since her graduation from Northeastern School of Law in 1981, she herself has literally devoted her professional life to furnishing legal services to the poorest of the poor.

The Center, which she helped to found, provides continuing education, training and networking for legal aid/equal justice lawyers all across the country.

"Many legal need studies," she continued, "have been done all around the country, documenting the fact that only around twenty percent of those who are eligible for legal services can access the services that we provide. So the fact that you all have supported us [with the $50,000 Gumpert grant] has becomes even more meaningful."

Hemley explained that about twelve years ago federal funding for the then twenty-five year old national system of training and continuing education and support centers for legal services lawyers had been eliminated. The local training effort that she then directed had thereafter grown into one of regional scope. Then, two years ago, recognizing that such training was not available anywhere else in the country, she spearheaded the creation of the Center.

In the past year, in addition to its original programs in Boston, the

Center has:

- Opened a satellite campus at the Seattle University School of Law to furnish training to legal aid lawyers on the West Coast.
- Run its first national program, called "Community Lawyering" at that location.
- Planned three more institutes to be offered there this Summer, which will become a regular part of the Center's program
- Partnered with the Gulf Coast states of Alabama, Mississippi, Louisiana, Texas and Florida to run a number of programs, including one for advocates dealing with the aftermath of Hurricane Katrina.
- Started a year-long project, working with four legal aid programs in Mississippi to create a statewide call center to be the center of the delivery system in Mississippi.
- Expanded the Center's online campus to enable people in other parts of the country that cannot get to one of the Center's facilities to have access to what it does.
- Established a Leadership Institute.
- Worked with a group of lawyers in Louisiana on FEMA training.

Of those working with Hurricane Katrina victims, Hemley observed, "What was particularly startling for those of us coming from up North was how many of these people themselves had lost their homes, lost their offices, but were still tirelessly working on behalf of the hundreds and hundreds of clients who were coming into their often makeshift offices."

She pointed out one worker, Rainy Thompson, a New Orleans native, who had originally signed up for one of the Center's online courses when she was a new lawyer working in Jackson, Mississippi. After the storm, she "went home to be with her family who had all lost everything and wanted to bring her talents and skills as a Legal Aid Lawyer back home where she could help people who had lost so much and were trying to rebuild their city. . . working to try to educate other lawyers about how to make the case for these clients."

Hemley went on to relate how the proceeds of the Emil Gumpert Award had been utilized: "When we were nominated for the Emil Gumpert Award, we thought . . . about what . . . we could do that was particularly suited to the American College, and we thought about this litigation training that we had been revamping. There is a four-day training that we used to do in person. We wanted to make this training available to legal aid lawyers across the country who wouldn't necessarily be able to come together. So we redid it so that it's now what we call a hybrid version. There's an online component, in-person component. . . . A lot of our lawyers were afraid of litigation. It's just scary to them, so they weren't following cases through. They weren't addressing the right issues. The course that we developed now allows them to bring affirmative litigation cases and to pursue these cases vigorously."

The Center created three videos. The first deals with Exhaustion, Preclusion, Removal and Abstention and the second with Sovereign Immunity and the 11th Amendment, important issues in many legal aid cases.

The third one is a video in which two legal aid lawyers argue a Motion to Dismiss on behalf of each of the parties of the case before United States Judge William Young of the U.S. District Court in Boston. At the conclusion of the arguments, Judge Young comes down from the bench, takes off his robe, and debriefs the case with the attorneys. Another part of the video involves a dialogue with the court clerk.

Each of these videos is accompanied by teaching materials to be used in live discussions with the participants.

"This," remarked Ms. Hemley, "is the kind of thing that we never could have done without your support. We expect that we will be able to train hundreds and hundreds and hundreds of legal aid lawyers starting this summer."

Entering its second year, the Center will continue to build its regional campuses. It is trying to build a national board, and it is building national teams of faculty and course designers to continue to expand its curriculum.

"I want to end," she concluded, "by telling you really from the deepest part of my heart on behalf of my organization and on behalf of the thousands of legal aid lawyers across the country that what you've done for us has really made a huge difference. We will continue hopefully to work closely with the American College."

LAST OF 1950 FELLOWS DIES

Retired Stanislaus County Judge **William Zeff** died at his Modesto, California home on February 17, 2007 after a brief illness. According to the 50-year history of the College, *Sages of Their Craft,* he was inducted by the College organizing committee on June 29, 1950. A lifelong friend of College founder Emil Gumpert, he is the last survivor of the original class of College inductees.

Born in Philadelphia in 1911, he moved to Modesto in 1918. He graduated from Modesto Junior College in 1931 and from the Hastings College of Law at the University of California in 1934. A partner of College founding member Leslie A. Cleary, he had served as an assistant district attorney until World War II. After serving three years as a lieutenant in the Coast Guard, he returned to private practice after the war.

First appointed to the bench in 1965, he served on the bench until 1979, including serving three terms as presiding judge. He had been president of his county bar association and a member of the California Bar Association's Board of Governors.

"He was my kind of hero," said retired Judge Gerald Underwood of Modesto, who served with him. "He was fair to everybody, honest and a hard worker. He ran a tough court, and he was always more prepared than the lawyers appearing before him."

Zeff is survived by his wife of 62 years and three children. One son, College Judicial Fellow Thomas Zeff (2001), is now a judge of the Stanislaus County Superior Court.

WASHINGTON SCHOOL OF LAW WINS MOOT COURT CONTEST

The University of Washington School of Law won the 57th annual National Moot Court Competition among 28 teams in February at the New York City Bar Association headquarters. Team members were **Candice Tewell, Aaron Thomson** and **Dustin Buehler**.

Texas Wesleyan School of Law took second place with team members **Matthew Rhoads, Natalie Roetzel** and **Johannes Walker.**

Best Brief honors went to the George Mason University School of Law team of **Kimberly Bierenbaum, Rocklan King** and **Anthony Schiavetti**. Best runner-up brief was that of Texas Wesleyan.

Best speaker was **Natalie Roetzel** of Texas Wesleyan and the runner-up was **Dustin Buehler** of the Washington team.

President David Beck was among the judges for the contest, which the College co-sponsors with the Young Lawyers Committee of the New York City Bar.

KATHY GOOD RETIRES

On June 30, 2007 Kathy Good retired from the American College of Trial Lawyers after 11 years of service. Kathy was hired on April 22, 1996 as a secretary and provided support for then Executive Director Robert A. Young. In her 11 years of service Kathy has become intimately involved and knowledgeable of the College and its activities. In September of 2002 Kathy became the interim Executive Director and served in that position until June 2003. Kathy's current responsibilities include working with the President and President-Elect on the appointment of the all the College's Committee structure, serving as staff liaison to the Emil Gumpert and Heritage Committees, supporting the administrative responsibilities of the Foundation of the American College of Trial Lawyers and assisting the States and Provinces with their history projects.

Executive Director Maggi recalls hiring Kathy Good in 1996 when he served as Assistant Executive Director. He reported that "it was a pleasure to work with Kathy at the beginning of her career with the College and I was pleased to hear that she was still with the College upon my return. Kathy has worked closely with me during the past couple of years and has provided support to several of the College's Presidents and never wavered on her dedication to the College. She will be missed by me, the staff and the leadership of the College who she has worked so closely with. We all wish her well in her retirement and next season of her life."

[T]he reason that we changed our name [from Legal Aid University], is sort of interesting. We didn't know it was unlawful to call yourself a university if you are not a degree-granting institution. So, when that was brought to our attention, several of the lawyers on my Board of Directors tried to argue that this was really not a problem, but there was one lawyer who prevailed. And so we went through a long process of changing our name. And now we are the Center for Legal Aid Education, which I actually think is a better name. We got sort of tired of people asking us how our football team was doing and what our school colors were.

—Ellen Hemley, Boston, Massachusetts,
Executive Director of the Center for Legal Aid Education,
2006 Emil Gumpert Award Winner

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THE BULLETIN
of the
AMERICAN COLLEGE OF TRIAL LAWYERS
19900 MacArthur Boulevard, Suite 610
Irvine, California 92612

STATEMENT OF PURPOSE

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

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

HON. EMIL GUMPERT, CHANCELLOR-FOUNDER, ACTL