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THE BULLETIN

COLLEGE CREATES AWARD *to honor* JUSTICE O'CONNOR

Retired Supreme Court Associate Justice and Honorary Fellow **Sandra Day O'Connor** was present at the Annual Meeting in Denver to acknowledge and accept the College's creation of the Sandra Day O'Connor Jurist Award.

The College will present this award from time to time to a judge, federal or state, from the United States or Canada who has demonstrated exemplary judicial independence in the performance of his or her duties, sometimes in difficult or even dangerous circumstances.

The Board of Regents chose to honor O'Connor in this way in recognition of her twenty-four year tenure on the Supreme Court as its first female member and for her exemplary record of public service.

A medal bearing her likeness will be presented to each future O'Connor Jurist recipient. During the ceremony, O'Connor was also presented with a sculptured likeness of her, created by Past President **Warren Lightfoot**. She has since donated that bust to the Su-

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Letter to the Editorial Board

I read with interest your article about the vanishing civil trial (*Opinion: Before We Jump* by E. Osborne Ayscue, Jr., Summer 2007). I am familiar with issues that you mentioned and I have made several speeches about this over the last several years. It is surprising to me that the trial bar does not seem to be particularly concerned about what is happening. We are beginning to see lawyers with 10-15 years experience that call themselves trial lawyers and do not have a clue what they are doing in a courtroom.

You hit on the point that I believe is the core of the problem. Because there are so few experienced trial attorneys, the Bench is beginning to be occupied by judges who have zero experience in the management of a trial/case. These judges simply cannot see the discovery abuses and the excessive motion practice and do not understand that the purpose of the rules of civil procedure is to simplify trial preparation. The rules which eliminated 'fact pleading' and embraced 'notice pleading' will only work under the supervision of a trial judge who understands and manages the pre-trial. I do not know if it is too late to stop the train, but let's keep trying.

Alex W. Newton
Birmingham, Alabama

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

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FROM THE EDITORIAL BOARD

In this issue we feature the College's annual meeting in Denver. As usual, the speakers provided those in attendance with much to think about, and we have attempted to make available to all the Fellows who could not be there the substance of all the presentations.

In keeping with our past practice, we have therefore quoted liberally from all the presentations and have reprinted virtually verbatim two, those of Justice Sandra Day O'Connor and new Honorary Fellow Mary Robinson.

At the workshops last Fall, the state and province chairs were asked to appoint correspondents who could report their activities to us for possible publication. We have heard from one State Committee that has appointed someone to do so. That leaves only sixty states and provinces to go!

Recently, we solicited writers for the *Bulletin*. Since then, we have found a volunteer who will take over writing one of our most well-received features, the obituaries of deceased Fellows, in the next issue.

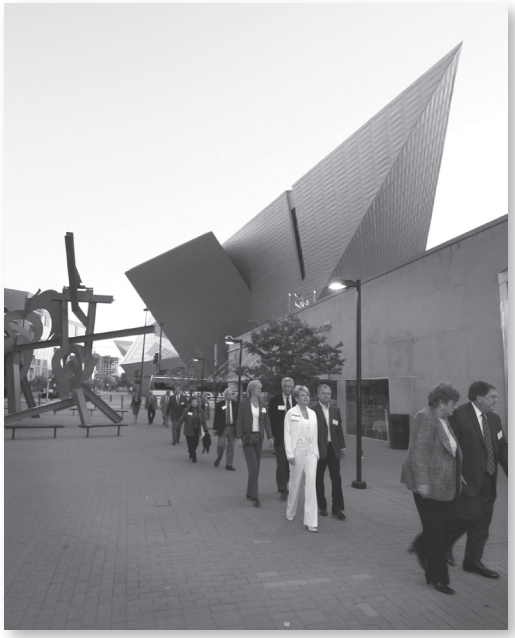
Some of you have asked how we go about putting the rest of the *Bulletin* together. First, we look for possible subjects for feature articles, which Editor Marion Ellis then writes. Marion was a co-author of *Sages of Their Craft*, the fifty-year history of the College published in 2000. He knows the College well. Many of you have met him at College meetings and indeed many of our story ideas came from conversations he had with some of you.

The articles reporting most of the presentations at our national meetings that involve legal subjects need of necessity to be written by lawyers. We do not want to misquote or misinterpret speakers of the caliber of those who address us at those meetings.

Con't on page 6

COLLEGE GATHERS IN MILE HIGH CITY *for* 57TH ANNUAL MEETING

Fellows and guests gathered in Denver, Colorado on Thursday, October 11, 2007 for the 57th Annual Meeting of the College. The Hyatt Regency Denver was the scene of the meeting.



Fellows and guests arrive at Denver Art Museum

The spectacular Denver Art Museum was the locale for the President's welcoming reception on Thursday night. Featuring the year-old Frederic C. Hamilton Building, an addition designed by famed architect **Daniel Libeskind** to reflect the Rocky Mountains, the museum was a perfect setting for the event.

Friday's program began with a welcome from Denver Mayor **John W. Hickenlooper**.

Lavinia Limón, President and Chief Executive Officer of the U.S. Committee for Refugees and Immigrants, accepted the Gumpert Award on behalf of her organization's subsidiary, the National Center for Refugee and Immigrant Children. Limón's presentation was an eye-opening look into the plight of a group of children that has remained largely out of the public eye. Her address, like many of the others from the meeting program, is summarized elsewhere in this issue.

In an address entitled "The American College and the Judiciary: A Valuable Exchange," Tenth Circuit Chief Judge **Deanelle Reece Tacha**, a three-time delegate to College-sponsored Anglo-American and Canada-

United States Exchanges, praised the College for sponsoring these exchanges.

In the course of the meeting, the winners of the Canadian and United States Moot Court and Trial Competitions and the best oral advocates from each were recognized by the College.

The highlight of the meeting was the creation of the Sandra Day O'Connor Jurist Award, the presentation of a bust of **Justice O'Connor** executed by past president **Warren B. Lightfoot** in honor of the occasion and Justice O'Connor's acceptance remarks, which are printed in their entirety elsewhere in this issue.

Professor **Shari Seidman Diamond**, the foremost authority on the American jury system, rounded out the Friday program with her presentation entitled, "Jurors: In the Courtroom and During Deliberations."

The College's Judicial Fellows attended a private luncheon and tour of the Byron R. White United States Courthouse at noon Friday.

Friday evening afforded an opportunity for Fellows and their guests to display the athletic jerseys of their own or their favorite teams at a party at INVESCO Field, home of the Denver Broncos. Regent **Raymond Brown** was resplendent in a Colts jersey, bearing his old number, generating a debate about whether the obviously new jersey was necessitated by the age or by the size of the original model.

Saturday's program began with the presentation by past president **David W. Scott,** Q.C., of an Honorary Fellowship to Madam Justice **Louise Charron** of the Supreme Court of Canada.

Past president **Michael E. Mone** presented an Honorary Fellowship to former President of Ireland and former United Nations High Commissioner for Human Rights **Mary Robinson**. Her address, "The Rule of Law: A Powerful Tool in Combating Terrorism," is reprinted in its entirety elsewhere in this issue.

In a change of pace, Dr. **P. Terrence O'Rourke**, M.D. used video clips of the songs and concerts of the Beatles to illustrate the various stages of life as outlined in **Gail Sheehy**'s book *Passages*.

Saturday's program ended with a debate between **David D. Doniger**, Policy Director of the Natural Resource Defense Council, and **Fredrick D. Palmer**, senior vice president of Peabody Energy, the world's largest privately-owned coal company. Their subject: "Global Warming: The Energy and the Environment."

The annual business meeting of the Fellows and the reorganizational meeting of the Board of Regents followed.

Ninety-four new inductees were introduced to the College at a breakfast on Saturday and, with their spouses or guests, at lunch that day.

The induction ceremony and annual banquet followed on Saturday night. **Leslie Fields** of Denver gave the response on behalf of the new inductees.

At the end of the evening, in a ceremonial change of command, **David J. Beck** turned over the gavel to his successor, **Mikel L. Stout** of Wichita, Kansas.

FROM THE EDITORIAL BOARD con't from page 3

We have a court reporter record and transcribe the proceedings at the two morning sessions. We also have a DVD of those sessions and of the induction ceremony and banquet. We proofread the transcript of the morning sessions against the DVD, checking for correct spellings and obscure references. (Google is a godsend here.) We transcribe the inductee's response from a tape recording made directly from the DVD.

The current chair of the editorial board then takes the corrected transcript of each speaker's presentation and, cutting and pasting, incorporates the jist of it, and in some cases all of it, into an article. We also mine the transcripts for notable quotes and bits of humor, which we scatter throughout the issue.

We edit one another's drafts so that two sets of eyes see everything we print before it goes to the editorial board, the Executive Committee and the staff for their scrutiny. We are confident that anyone who volunteers to do one of our articles would find it a worthwhile, informative exercise. We will be happy to e-mail the corrected transcript of the presentation of a speaker to anyone who wants to take a crack at turning it into an article for the *Bulletin*. The pay is not very good, but we will edit constructively to make certain that you have the hang of it and give you a byline credit for any article we publish.

We have gone from the first black and white 28-page issue that the current chair of the editorial board essentially wrote—or rewrote—Fall 1998, No. 32, to this issue, No. 58, which has enough color to stand out without straining our budget. The longest of the recent issues, reporting the London-Dublin meeting, ran to 88 pages. We have associated Liz Doten, who brought professional layout experience and who has helped us to improve the overall appearance of the publication.

Over the course of these ten years, with the concurrent advent of the College website, the *Bulletin* has been transformed from the College's not very timely newsletter into what we hope is a more substantive, informative magazine-like publication.

We believe that we have cut a pattern that works well and that, in the best tradition of the College, it is time for the participation of more Fellows in the creating each successive issue.

We would be happy to hear from any of you who would like to give writing for the *Bulletin* a whirl.

> We come together as lawyers to celebrate life and the rule of law which leads all to justice. Please, God, arm all of us with the strength and courage to seek and ensure equal and fair justice for all people. Help us to understand our special duty and solemn obligation as lawyers. Please provide us with the wisdom necessary to help those most in need of justice: the weak, the poor, the aggrieved. And, foremost, provide us with the will to do what is right even in the face of mighty opposition. . . . [W]e also give thanks for the basic gifts of life we so often take for granted: the food we eat, the air we breathe, the water we drink, and the precious freedom we enjoy. We finally pray that you watch over and protect all our airmen, sailors, soldiers and Marines, our country's sons and daughters who have gone in harm's way for their country. In God's name, Amen.
>
> **OPENING PRAYER, TEXAS STATE CHAIR KNOX D. NUNNALLY, WHOSE SON, A MARINE, HAS SERVED THREE TOURS OF DUTY IN IRAQ**

PAST PRESIDENT LIGHTFOOT *forges career* AS SCULPTOR

Past President Warren Lightfoot, who retired last year from his law firm in Birmingham, Alabama, has used his new freedom to pursue his hobby of sculpting portraits in bronze for clients across the country. His bust of Sandra Day O'Connor will be on permanent display at the United States Supreme Court in Washington, D.C.

"So many of my friends get to this point and wonder what they're going to do with their time," Lightfoot told *The Birmingham News*. "I loved practicing law, but I love doing this now."

He began studying sculpting at the age of 9, but decided on the law instead of art for a career. He took up the craft again about 13 years ago as a hobby.

"Lightfoot likens sculpting to crafting a cross-examination, which was his legal speciality," *The Birmingham News* story reported. "Both involve a process of preparation," he said, "just as a lawyer adds on layers of questioning before stepping into a courtroom, a sculptor adds on layers of clay and detail, with part of the process knowing when and what to remove and when the job is completed."

Some of his other commissions, which can cost up to $5,000, have included U.S. Senator Howell Heflin.

Past President Ozzie Ayscue observes that Lightfoot's studio space has obviously come a long way in ten years. "I spent the night with the Lightfoots during my presidency," he said, "and I distinctly remember Robbie Lightfoot complaining that Warren had found her kitchen counter a perfect work area for crafting the clay molds that he used to cast his bronze busts and had taken over her kitchen."

FELLOWS *to the* BENCH

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

JOHN C. CHERUNDOLO, Onondaga County Supreme Court, Syracuse, New York

CHRISTINE L. DONOHUE, Allegheny County Superior Court, Pittsburgh, Pennsylvania

O'CONNOR: JUDGES MUST BE INDEPENDENT

The following are the remarks of former Associate Justice Sandra Day O'Connor at the 2007 Annual Meeting of the American College of Trial Lawyers in Denver, Colorado on the occasion of the creation of the Sandra Day O'Connor Jurist Award and the presentation of a bronze bust of Justice O'Connor in honor of the occasion.

Sandra Day O'Connor

I am quite overcome to not only be here with all of you and to have a medal produced that will be given in the future, and to have an award named for me to be given in the future to jurists selected by you . . . . And I'm so touched that you have this bust made of me. . . .

I suggested to **Frank Jones** that in light of the close relationship so many of you have had through the years with the Supreme Court of the United States and with many of its members, that you might be willing to have this bust go, not to me, but to the United States Supreme Court. . . .

The Chief Justices are all in the Great Hall with white busts in those niches. I'm sure that you've seen them. And there are a few of former Justices, including my former colleague and treasured friend and your friend, **Lewis Powell**. So maybe that could go to the Court to be placed, I hope, near my old friend, Lewis Powell, . . . I should say my former dance partner. Now, Lewis thought he was a very good dancer, and he was. I'm not sure he was quite as good as my dear husband, John O'Connor, but we're not going to get into that.

As you've heard, **Judge Tacha** and I have returned from the recent completion of the Canadian-U.S. Legal Exchange. And for all the reasons she gave you, which were so beautifully expressed by her, I agree with her that the exchanges that the American College of Trial Lawyers has promoted with countries such as Canada and the United Kingdom have been enormously important.

We have to look back a little bit in history. As you have heard, we celebrated the 400th birthday of the founding of Jamestown

in Virginia this year–the first permanent English settlement in the United States. It brought us a few things that we care about. For one thing, we're all speaking English. And for another, when the Charter for the settlement in Jamestown was written in Great Britain, by barristers, actually – I don't know what they were doing writing the Charter, but they were – from the Middle Temple, it was to support the first venture capital operation in the New World. They thought they could send some settlers over and just pick up gold on the ground and, in the process, find a new route to the Pacific Ocean. They thought they would make a good deal of money.

Well, it didn't turn out that way. The settlers who were chosen were not chosen because they were good carpenters or builders or herdsmen or anything. They were chosen because they were well-to-do and they could pick gold up on the ground. And they suffered a lot. Within a year, over half the original seventy were dead. They drank water out of the James River instead of digging a well, and many of them just drank polluted water and died.

It was a very difficult settlement. But in addition to the English language, the Charter itself, drafted by our colleagues in Great Britain, said that the settlers would apply the English common law. In other words, the settlement in Jamestown established the concept of the rule of law, which stemmed from the Magna Carta and the common law and the system in Great Britain, and that was a priceless gift to the New World.

The settlement brought other things not quite so good along with it–and it's taken us more than 300 years to address them–such as the use of tobacco and the use and presence of slaves. That wasn't such a good inheritance. But through lawyers, over time, even those problems have been largely overcome, but they've been overcome by application of the rule of law and the judicial process.

In the American College, what we worry about today is peace in the world. We don't want to be engaged in wars around the globe. The best hope for peace in the world, it seems to me, still is the notion of the rule of law. To the extent that other nations accept that concept, we're going to move closer to peace. And that's why what you do at the College and what we do together matters more than it ever did in the past.

The American College of Trial Lawyers is the best we have to offer in this country in the legal profession. I've already told you why it is the legal profession and its concepts that are fundamental in the founding of our country and in the hope of the future. You are the best we have, and you have some marvelous, marvelous members, you have had in the past, you have now and you will have, and your role in maintaining contact with other nations with these traditions has been critical and will continue to be. And your working on other issues that affect lawyers more directly, like electronic discovery and things like that, I hope you'll find a way out of that morass. I bet you can.

We just have a lot to do still in this country to make our system work and to make the rule of law a norm in the rest of the world.

Now, even in our own country, we are neglecting to teach young people government and civics and the need for an independent judiciary to protect the vital freedoms in our Constitution given to all of us. And this knowledge is not inherited in the gene pool. We don't just pass that on genetically. We have to teach it, and we've stopped doing that. You have to help us make sure that we start to do it again.

I have been impressed recently with some levels of support around the country. As I have talked about the attacks on judges and the lack of understanding around the country, about the need for independent judges, I've been impressed with some of the responses.

Now, I read a recent little piece in *Judicature* magazine, and it was coauthored by a conservative lawyer and a very liberal one, Bruce Fein and Bert Newberg. And they said this: "Judicial independence in the United States strengthens broader liberty, domestic tranquility, the rule of law and democratic ideals. At least in our political culture, it has proved superior to any alternative form of discharging the judicial function that has ever been tried or conceived. It would be folly to squander this priceless constitutional gift to placate the clamors of political partisans."

Now, that put it pretty well, and that's where we are today, and

that's what I think all of us have to be concerned about. In my own efforts, which I thought I would devote some time to, since I'm retired, and when I'm not sitting on the Circuits – which I don't intend to do all the time, . . . even as nice as it is – I think that time spent in reminding all Americans of why the framers of our Constitution chose to work so hard in creating three branches: to ensure the independence of the judicial branch from the other two, to ensure that the other two branches of government would not seek retaliation against judges for decisions they might not like.

We are seeing it today in Colorado. We are seeing it in South Dakota. There are even efforts in my home state of Arizona to change a system that has produced one of the finest state judiciaries in the country. We're seeing efforts to curb that.

We have judicial elections in a majority of states today, partisan election of judges, with the raising of large amounts of campaign money. From whom? From lawyers, from business interests who care about results.

Now, this is a strange way to go about selecting an independent judiciary. And these things didn't occur right after the establishment of our country. Indeed, when the framers worked so hard to establish an independent judiciary, the common framework was that judges didn't make law; they *found* law. Law was out there somewhere, preordained, and it was the role of judges to find what it was.

Well, with Oliver Wendell Holmes and a few other luminaries, we changed that way of thinking and we realized that indeed in a common law system, judicial opinions on new questions become part and parcel of the law. And they weren't just finding it from out there somewhere. They were having to articulate it, and in some instances, it answered questions that hadn't been answered before.

And with that discovery came a greater pressure from the public to say, "Well, if judges are going to make law, we want to elect them." We didn't start out in this nation electing all our judges. That's a later phenomenon, and it's a very popular one today. . . .

I've been down to Texas and had a little conference down there to explore whether Texas would be interested at all in moving to a merit selection and retention election scheme. There's not much interest down there. I'm told on very good authority that at times in Texas, if there's an important case in a trial court, and two lawyers on either side, they sort of have the side agreement that each lawyer or lawyer's firm will make a contribution to the judge's campaign, so that it won't be one-sided. Now, what kind of a system is that, I ask you?

I mean, I think we have to do something about this. That isn't what we stand for or what you stand for, and we need to educate young people. And I'm trying very hard to put together a program that will be addressed to seventh, eighth and ninth graders. Middle school is when the light bulb starts to turn on in the mind and they begin to get it, and that's the time I think to get *them* interested. And we want to make an interactive program that will enable a student with a computer to plug into a permanent free website and to play the role of judge and decide some actual issues and then check and see how the courts did it, and to play other roles, that of an advocate or perhaps a juror, and to learn about what we're talking about and why it matters.

This is a complicated project, but with education, I think we can begin to make a difference. But we also have to remember the problems that we have in the various states that still have partisan election of judges, with massive amounts of money changing hands.

I thank all of you for everything you do. You do make a difference in our legal profession. I totally agree with Deanell Tacha [an earlier speaker], that you have and are making a difference, and I too thank you for everything you do, that you have done, that you've done today to honor my name and legacy. I treasure that more than you will ever know.

Have a good meeting, and continue doing lots of good things.

MARY ROBINSON MADE AN HONORARY FELLOW

FIRST WOMAN PRESIDENT OF IRELAND

At its annual meeting in Denver, the College awarded an Honorary Fellowship to Mary Robinson, an Irish barrister, the first woman President of Ireland and later United Nations High Commissioner for Human Rights.

In making the award, past president Michael E. Mone, a second-generation Irish-American, remarked, "[T]oday we honor a woman who brings a record of great service and achievement. A list of her achievements would take the rest of the morning . . . ."

The daughter of two physicians, she was born in County Mayo, Ireland, educated at Trinity College, studied law at Kings in Dublin and Harvard Law School. "As an Irish barrister and as a member of the English Bar," Mone continued, "she sought to use law as an instrument of social change, arguing and winning landmark human rights cases before the courts of Ireland and the European Court of Human Rights. A dedicated European, she founded the Irish Center for European Law at Trinity College, where she taught and where, in 1998, she was honored with election as Chancellor of the University."

"Seeing politics as an extension of her legal work for human rights, she became a Senator, where she advocated for the rights of women and families, also establishing leadership in promoting Ireland's role in the European Community."

"In 1990, Robinson was elected as the first woman President of Ireland. The Irish presidency is head of the State, not head of government, but Mary Robinson saw her position as President as giving her what our President Teddy Roosevelt called a bully pulpit. She used, not political power, but the same power of persuasion that had made her an outstanding barrister. Her voice in Ireland for the advancements of human rights, the status of women, and the rule of law changed Irish society. No one in Ireland has been more responsible for elevating the role of women in Irish society than Mary Robinson."

"She, along with others, played an important role in moving the peace process in Northern Ireland forward. She was never content to serve merely as a figurehead President."

"Following the Irish presidency, she served for five years as the UN Commissioner on Human Rights, dealing with some of the most serious issues of human rights in the world, and she now serves as president of Realizing Rights, The Ethical Global Initiative, whose mission is to make human rights a compass by which global society is just, fair and benefits all. She did this all while raising three children."

"Mary Robinson, as President of Ireland, occupied the lovely Irish White House in Phoenix Park. For two centuries, Ireland's greatest and most tragic export was her children, who left to form the Irish Diaspora that spread throughout North America and the rest of the world. When Mary Robinson became President of Ireland, she lit a candle in the window of the Irish White House to call home Ireland's sons and daughters. They answered the call, and Ireland in the last ten years, for the first time in 200 years, has had more people arriving than people leaving. They have joined in making Ireland one of the most vibrant societies and economies in Europe. That candle still burns in the window

of the Irish White House, and Mary Robinson, along with that symbol and along with so much she has done, had a role in changing, not only Irish society, but the recognition of human rights in the world."

"As the grandson of Irish immigrants," Mone concluded, "I am enormously proud today to present on behalf of the American College of Trial Lawyers an Honorary Fellowship to Mary Robinson, the first Honorary Fellowship awarded by the College to a citizen of Ireland."

Robinson's eloqquent acceptance remarks, entitled "The Rule of Law: A Powerful Tool in Combating Terrorism," are reprinted elsewhere in this issue.

bon mots

Lewis was an excellent dancer, and I had the privilege of dancing with him several times. He once asked me to speak at a meeting of the Richmond Bar Association. When he introduced me, he said, "Now, on my tombstone it will say: 'Here lies the first Supreme Court Justice to dance with another Justice.'"

Associate Justice Sandra Day O'Connor,

Speaking of the Late Associate Justice and College Past President Lewis F. Powell , Jr.

COLLEGE ELECTS NEW OFFICERS

Mikel L. Stout of Wichita, Kansas was installed as the College's new President in Denver, succeeding David J. Beck of Houston, Texas.

John J. (Jack) Dalton of Atlanta, Georgia is the incoming President-Elect

Gregory P. Joseph of New York, New York will serve as Secretary

Joan A. Lukey of Boston, Massachusetts will serve as Treasurer

NEW REGENTS

Paul T. Fortino, Portland, Oregon

Phillip R. Garrison, Springfield, Missouri

Christy D. Jones, Jackson, Mississippi

Paul S. Meyer, Costa Mesa, California

THE RULE OF LAW: A POWERFUL TOOL *in* *Combating* TERRORISM

The Honourable Mary Robinson, a barrister, former President of Ireland, former United Nations High Commissioner on Human Rights and a leading international human rights advocate, was made an Honorary Fellow of the American College of Trial Lawyers at its October 15, 2007 annual meeting in Denver, Colorado. These are her remarks on that occasion.

The Honourable Mary Robinson

President David Beck, ladies and gentlemen, I am indeed delighted and honored to accept honorary fellowship in the American College of Trial Lawyers.

And I'd like to thank President Beck and also Michael Cooper, who first contacted me about this, and the Board of Regents, for this signal honor and indeed for their patience in renewing the invitation so that I could come here personally and accept today.

I'd also like to thank Michael Mone for his very kind words. As he said to you -- and we talked about this earlier -- he has strong Irish roots, and I think he has a touch of the Irish blarney, as well.

I very much enjoyed the presentation of Madame Louise Charron, and I was glad she mentioned a former colleague of hers on the Supreme Court, Louise Arbour, who is now my successor as UN High Commissioner for Human Rights. And I'm a little puzzled, because during my time in the United Nations, a Canadian woman was also serving as Deputy Secretary General, Louise Fréchette. Do you have to be called "Louise" to be a very prominent woman in Ca-

nadian life?

It's, in fact, quite a while since I practiced as a trial lawyer, but I remember after I was elected President in December 1990, every few months I would have a terrible nightmare that I was appearing before the Irish Supreme Court and I hadn't read my brief, and I really woke up in a cold sweat, and I still sometimes have that nightmare. I just hope this award won't trigger it again in the coming months.

The last case I pleaded was not, in fact, before an Irish court. It was in October 1990, towards the end of a hard-fought presidential campaign and, to the consternation of some of my loyal supporters, I broke off from the campaign to go to Luxembourg to plead a case before the Court of the European Union. It was a case on behalf of two married women, Mrs. Cotter and Mrs. McDermott, who had been discriminated against, or so they claimed, unsuccessfully, that they were discriminated against by the Irish Social Welfare code, because when they became unemployed, they got less in unemployment benefits and for a lesser period than married men.

And we did succeed in that case, and the Irish government, and therefore I'm afraid the Irish taxpayer, had to pay up something, 200 million Irish punts in those days. So it wasn't a bad case to sort of fold my tent on.

I've chosen today to talk briefly about the Rule of Law, a powerful tool in combating terrorism. It's a tough subject, but someone has to do it. And the truth is that the values and processes associated with the Rule of Law are questioned by many people today.

We live in times of new threats to human security and public order. Terrorist groups are prepared to attack anywhere at any time without regard for innocent lives. Failing and failed states are unable to secure even the most basic structures of governance, leading in many countries to violent conflict, mass migration and increased poverty.

I saw this very vividly at the beginning of September, when I led a number of women leaders -- there were eight of us -- to eastern Chad on the border of Darfur to listen to women and their stories of being chased out of their villages, their husbands killed, gang raped, and yet when they came to the camps in eastern Chad, they still weren't safe.

The proliferation of weapons of mass destruction, dramatic changes in the global climate that we hear about, the HIV and AIDS pandemic and international criminal syndicates which traffic everything from small arms to the most vulnerable human beings, all require new approaches. Some question whether the law can help to meet these threats. They ask that the respect for the Rule of Law should be somehow put aside or diluted in order to confront such challenges more effectively.

Our job as lawyers is to make the case that it is precisely these dangers and the changing, more interconnected, world we live in that makes strengthening respect for the Rule of Law so important. Why? Because without the Rule of Law, government officials aren't bound by agreed standards of conduct. Without the Rule of Law, the dignity and equality of all people isn't affirmed, and their ability to seek redress for grievances and fulfillment of societal commitments is limited. Without the Rule of Law, we have no way to ensure meaningful participation by people in formulating and enacting the norms and standards which organize society.

But we acknowledge that to be effective, legal systems must be able to respond to changing circumstances which put individual freedoms and public order at risk.

I'd like to focus my remarks today on how we, as lawyers, committed to promoting respect for the Rule of Law, should respond to one of these threats, and that threat is terrorism. How can we be strong in confronting and bringing to justice those who carry out terrorist acts while holding to our core values, including our commitment to respecting the Rule of Law and defending fundamental human rights?

I've said on many occasions

over the past six years - since the terrible attacks in this country that we now capture by the term "9/11" - that language is vital in shaping our reactions. The words we use to characterize an event may determine the nature of our response.

In the immediate aftermath of the 11th of September 2001, while still serving as the United Nations High Commissioner for Human Rights, I came to New York, I went to Ground Zero, I met the bereaved families, the FEMA workers, the many volunteers. And I went into my office and sat with my colleagues, as we formulated what would be the approach, the response, under international human rights law. Based on this work, I described those attacks here in the United States as constituting crimes against humanity. I stressed the duty on all states to find and punish those who planned and facilitated these crimes.

It's worth recalling why this description was appropriate. The 9/11 attacks were mainly aimed at civilians. They were ruthlessly planned and their execution timed to achieve the greatest loss of life. Their scale and systematic nature qualify them as crimes against humanity within existing international jurisprudence.

But, as we know, despite efforts to frame the response to terrorism within the framework of "crimes" under national and international law, an alternative language emerged post 9/11. That language, which has shaped to a much larger extent the response at all levels, has spoken of a "War on Terrorism." As such, it has brought a subtle change in emphasis in many parts of the world. Order and security have become the overriding priorities.

As in the past, the world has learned that emphasis on national order and security often involves curtailment of democracy and human rights. Misuse of language has also led to Orwellian euphemisms, so that "coercive interrogation" is used instead of "torture" or "cruel and inhuman treatment." "Kidnapping" becomes "extraordinary rendition."

I should make it clear that characterizing major terrorist attacks as crimes against humanity doesn't rule out the possibility for an appropriate military response, such as the invasion of Afghanistan when the Taliban refused to hand over Osama bin Laden and his associates. However, the conflicts there, and in particular the subsequent decision to go to war in Iraq, have reinforced the perception of a War on Terrorism which goes beyond the rhetorical use of the term. I have used the term "war" many times, a "war on poverty," a "war on want," a "war on hunger." But the "war on terrorism" is not meant in that sense.

The reality is that by responding this way, the United States has, often inadvertently, given other governments an opening to take their own measures, which run counter to the Rule of Law and undermine efforts to strengthen democratic forms of government. The language of war has made it easier for some governments to introduce new repressive laws, to extend security policies, to suppress political dissent and to stifle expression of opinion of many who have no link to terrorism and are not associated with political violence.

When I was serving in the United Nations, Hans Correll was the Legal Counsel, and he made a similar point at a recent international conference on "*International law in flux*." I'd like to quote what he said. "To suppress terrorism is not a war. You cannot conduct a war against a phenomenon. As a matter of fact, to name the fight against terrorism a war was a major disservice to the world community, including the state from where the expression emanates. The violations of human rights standards that have occurred in the name of this so-called war, no matter how necessary it is to counter terrorism, have caused tremendous damage to the efforts of many to strengthen the Rule of Law."

Yet despite these negative global consequences, many still believe strongly that such measures were necessary to guard against further terrorist attacks. The security argument maintains that the terrorist attacks in New

York, in Madrid, in Sharm El Sheikh, in Bali, in London and elsewhere were so heinous, so unprecedented, that new strategies, and sometimes exceptional measures, were required. In other words, fundamental principles underlying the Rule of Law could be put on hold to address the more urgent threat.

As Judge Richard Posner has suggested, and I quote him, "The scope of our civil liberties is not graven in stone, but instead represents the point of balance between public safety and personal liberty, the balances struck by the courts interpreting the vague provisions of the Constitution that protect personal liberty, as it is constantly being restruck as perceptions about safety and liberty change. The more in danger public safety is thought to be, the more the balance swings against civil liberties. That is how it is, and that is how it should be."

But what is the limit? How far can the balance swing against the core principles underlying the Rule of Law? Comments like Judge Posner's could imply that the security imperative outweighs all other considerations. I don't believe that. Six years after 9/11, I believe we must evaluate such assumptions and ask ourselves if all the measures taken have been justified and consistent with the Rule of Law and if they have, in fact, been effective in combating terrible acts of terrorism.

Were the decisions taken by the United States government, for example, to hold detainees at Guantanamo Bay without Geneva Convention hearings; to monitor, detain and deport immigrants against whom no charges have been made; or to put in question long-held commitments, such as forbidding the use of torture ‚justifiable actions to protect the American people?

I fear that the authority of law has been undermined in many important ways over the last six years. The question facing us today is, How are we to respond to the situation, and what steps can we, and must we, take to restore and protect the international Rule of Law?

I'm actually hopeful that things are beginning to change for the better. There is a swing back in realizing that a lot of damage has been done, that the mistakes of the past six years are beginning to be recognized and some steps taken, including by the courts in this country, to redress that damage.

What is needed now is a broader approach. As a guest in this country, I just offer my thoughts -- that we need, in fact, legislation that reaffirms the United States' adherence to the Geneva Conventions, to the UN Convention Against Torture, and to the McCain Amendment, which establishes an absolute ban on cruel, inhuman and degrading treatment of all detainees in U.S. custody or control by any U.S. personnel. It would be important to remove any provision which seeks to grant broad immunity from liability for war crimes right back to September 2001. The Rule of Law requires that there be accountability for serious wrongdoing by those responsible.

On the international stage, new efforts to reassert the importance of the Rule of Law in the struggle against terrorism are also, I'm glad to say, emerging. For example - the Club of Madrid, a club of former heads of state and government, exalted has-beens like myself! - convened a summit called the International Summit on Democracy, Terrorism and Security two years ago, on the first anniversary of the terrible train bombings in Madrid. The purpose of the Summit was to build a common agenda on how the community of democratic nations could most effectively confront terrorism while maintaining commitment to civil liberties and fundamental rights.

The Summit brought together many leading experts who examined the underlying factors of terrorism, the effective use of the police, the military, the intelligence services and other national and international agencies to prevent and fight terrorism. Our aim was to construct a strategy against terrorism based on the principles of democracy and international cooperation and on strengthening civil society against extremists and violent ideologies.

The resulting Madrid Agenda, which you can find on the website of the Club of Madrid (www.clubmadrid.org), makes a compelling case, not only for more effective joint action against terrorist organizations – so it's very strong in countering terrorist organizations -- but also the need to increase resources aimed at tackling the humiliation, the anger and frustration felt by many that can be manipulated, as we know, to draw recruits for terrorist action.

There is also a relevant initiative of the International Commission of Jurists. I serve on the board of the ICJ, and I'm sure a number of you are also supporters of the ICJ. It gathered together 200 members in Berlin in 2004 and adopted a Declaration on Upholding Human Rights and the Rule of Law. You can find that Declaration at www.icj.org. I believe that it does actually restore the balance which was lost in the aftermath of 9/11. It's a declaration that should hang in law offices and judges' chambers around the world. It's the Rule of Law charter to counter the imbalances of what has sometimes been called "the new normal."

And arising out of this initiative, the ICJ established an Eminent Jurists Panel - on which I'm proud to serve - composed of eight jurists from all regions and legal traditions. The panel is chaired by Arthur Chaskalson former Chief Justice of South Africa. We conducted hearings in some 20 countries. I took part in hearings in Washington, D.C., relating to the United States in September a year ago. I was in Moscow in January for another hearing. And we've gathered all this material, which again is on the website of the ICJ. We will meet in Geneva in January '08 to try to formulate a report, which looks at the trends, looks at the way in which the dipping of standards -- I have to put it that way -- in this country have such a knock-on effect in so many other countries that don't have similar checks and balances: the independent courts, the trial lawyers like yourselves, the academics and a Congress that can sense the mood of a people and begin to renew commitments.

So, in conclusion, I would say with sadness that over the past six years the view that governments will ultimately only rule by power and in their own interest, rather than by law and in accordance with international standards, has been strengthened significantly.

Bodies like the American College of Trial Lawyers must do more to challenge that approach. They must use -- you must use -- your collective voice to maintain the integrity of international human rights and humanitarian law norms in the light of heightened security tensions, not just because it's the right thing to do, but because it's the most effective strategy in countering the forces which fuel terrorism.
We are the professional lawyers. I speak now as an honorary member of the American College of Trial Lawyers, who know through our professional experience how vital it is to maintain and safeguard the Rule of Law and the principle that no executive office of government is above the law.

These are anxious and confusing times, when public fears are easily aroused by possible threats and references to threat levels. As we have seen, the role of the courts is vital in scrutinizing any measure taken. But the courts themselves need support and vocal advocacy on their behalf when their independence or judgments come under increasing attack.

As Judge Chaskalson has warned, and I quote him, "We have to be vigilant from the very beginning. If you concede the first step, every next step will lead to the further erosion of the Rule of Law and disregard of human dignity."

So I really thank you for the honor, and, as I said at the beginning, I hope it doesn't give me any new nightmares.

Thank you very much indeed.

COLLEGE INDUCTS 94 AT DENVER MEETING

UNITED STATES

ALABAMA:
Walter W. Bates, *Birmingham,*
Edward R. Jackson, *Jasper,*
Donna Sanders Pate, *Huntsville,*
Fred W. Tyson, *Montgomery*

NORTHERN CALIFORNIA:
John M. Drath, *Oakland,*
Robert T. Lynch, *San Francisco*

COLORADO:
Leslie A. Fields,
Fernando Freyre, *Denver*

DELAWARE:
Allen M. Terrell, Jr., *Wilmington*

DISTRICT OF COLUMBIA:
Thomas F. Cullen, Jr., *Washington*

FLORIDA:
Joseph M. Matthews, *Coral Gables*

GEORGIA:
N. Karen Deming,
Bruce H. Morris, *Atlanta,*
Patrick T. O'Connor, *Savannah*

ILLINOIS:
Roy L. Carnine, *Mount Vernon,*
Carlton D. Fisher,
David C. Hall, *Chicago,*
Larry E. Hepler, *Edwardsville,*
Thomas R. Hill,
Steven M. Kowal,
Allen N. Schwartz, *Chicago*

IOWA:
H. Daniel Holm, Jr., *Waterloo,*
Paul D. Lundberg, *Sioux City,*
Randall J. Shanks, *Council Bluffs,*
Mark L. Zaiger, *Cedar Rapids*

KANSAS:
Steven C. Day, *Wichita,*
Brian C. Wright, *Great Bend*

KENTUCKY:
Tyler S. Thompson, *Louisville*

LOUISIANA:
Harry J. (Skip) Philips, Jr., *Baton Rouge*

MARYLAND:
Paul F. Strain, *Baltimore*

MASSACHUSETTS:
James J. Marcellino,
Barbara L. Moore, *Boston*

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Frederick D. Dilley, *Grand Rapids*

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Jon M. Hopeman, *Minneapolis,*
Lawrence R. King, *St. Paul,*
Edward M. Laine,
John W. Lundquist,
James A. O'Neal,
Timonthy R. Schupp,
Ronald J. Schutz,
Jim Schwebel,
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Barbara A. Zurek, *Minneapolis*

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John G. Corlew, *Jackson*

NEVADA:
LeAnn Sanders, *Las Vegas*

NEW JERSEY:
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Newark

NEW MEXICO:
W. Mark Mowery,
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DOWNSTATE NEW YORK:
Richard C. Cahn,
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John M. Nonna,
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Gary W. Osborne,
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Mart Tisdal,
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PENNSYLVANIA:
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Pittsburgh,
R. Nicholas Gimbel,
Robert L. Hickok,
Linda Dale Hoffa,
Philadelphia,
Daniel B. Huyett,
Reading,
David R. Johnson,
Maureen P. Kelly,
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Brian J. McMonagle,
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H. Sam Mabry, III,
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Andrew J. Savage, III,
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William F. Cronin,
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WEST VIRGINIA:
Elliot G. Hicks,
Charleston

WISCONSIN:
William F. Bauer,
Madison,
Thomas J. Graham, Jr.,
Eau Claire,
Mark P. Wendorff,
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BRITISH COLUMBIA:
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Saskatoon

ONTARIO:
David M. Humphrey,
Douglas C. Hunt, Q.C.,
Elizabeth J. McIntyre,
Philippa G. Samworth,
Toronto

THE INDUCTEE RESPONSE WAS GIVEN BY LESLIE A. FIELDS OF DENVER.

O'CONNOR, con't from cover
preme Court building in Washington, D.C.

Michael A. Pope of Chicago, chair of the Sandra Day O'Connor Award Committee, explained that the award was being created in hope of reversing a trend toward denigration of judges.

"Sadly, such an award is timely and much needed," Pope said. "Members of the judiciary are frequently under sustained attack in jurisdictions across the United States and Canada. These attacks, interestingly enough, are not directed against judges who have failed to follow the law or wrongly decided a case. Rather, in most instances, the judges in question have properly applied the law and the facts and even been affirmed on appeal. It is the outcome of these cases that some people disagree with, and they then seek to organize a widespread attack on that judge or on members of the judiciary as a whole."

Pope called attention to the recent ballot initiative in South Dakota that attempted unsuccessfully to eliminate judicial immunity, the notorious "Jail-For-Judges" campaign, and to the then-current attempt to mobilize a negative vote against all the Pennsylvania judges involved in retention elections, ostensibly because they accepted a pay raise granted by the legislature. Through such movements, he noted, determined politically active groups have turned the respected role of the judiciary into just another dirty political campaign.

"Worse yet," Pope said, "our elected legislators in many instances are exacerbating this mob mentality, knowing that judges are ethically restrained from publicly defending their decisions in the press. It is our hope that through the work of this committee, the College in some small way can reverse or impede this pernicious trend by regularly honoring judges who do their job properly."

The committee hopes to receive nominations for the award from Fellows of the College, as well as from judges and practicing lawyers throughout the United States and Canada.

In introducing O'Connor, Past President **Frank C. Jones** of Macon, Georgia said, "Sandra Day grew up on a cattle ranch that straddled the border of Arizona and New Mexico. She and her brother, **Alan Day**, described what life was like on this harsh, but beautiful, land in a delightful book entitled, *Lazy B* —that's the name of the ranch — which was published several years ago."

Jones continued, "In reflecting on the ranch life many years later, Justice O'Connor wrote, 'We like to think we benefited in many ways from our ranching experiences, that openness, generosity and independence were ingrained in each of us.' "

Jones noted that O'Connor received her undergraduate and law degrees, both with high honors, from Stanford University, but that despite her outstanding academic record, no California law firm would employ her as an attorney, although one did offer her a secretarial position.

"That's hard to believe today, but it's a true story," Jones said. "In retrospect, however, I believe that this was a very fortunate turn of events for her and for our nation. She wound up in Phoenix, Arizona, and there she had a highly diverse and successful career that was very valuable in her later service on the highest court."

O'Connor became a trial lawyer in private practice, a deputy county attorney, an assistant attorney general of Arizona, a trial judge, a member of the Arizona State Senate, where she was elected as majority leader, and a state appellate judge.

"I think, in the course of this diverse career, she developed keen insight into the proper functioning of each of the several branches of government," Jones said.

On July 7, 1981, O'Connor was nominated to the Supreme Court by President **Ronald Reagan.** She was confirmed by a Senate vote of 99 to 0 on September 21 and took her seat on September 25, 1981.

Jones pointed out that Justice O'Connor was inducted as an Honorary Fellow of the College soon after her appointment and has been an enthusiastic Fellow and supporter ever since. "For example," he noted, "she chaired the Anglo-American Legal Exchange some years ago, and according to my recollection, has appeared on the programs of at least five national meetings."

O'Connor and the late Associate Justice **Lewis Powell**, who also served as a president of the College, have the distinction of being the two former Supreme Court Justices whom the College has chosen to honor through the striking of a medal, a great distinction.

Jones observed, "If anything, Justice O'Connor seems to have been even more active since her retirement than she was during the Court years. She is the Chancellor, for example, of the College of William and Mary. She serves as a trustee of the Rockefeller Foundation and is on the Advisory Board of the Smithsonian. She was Honorary Chair of America's 400th Anniversary celebration at Jamestown, Virginia this past year, and I am told that the Queen of England came to take part in the events at her invitation. She served on the Iraq study group. She is co-chair of the national advisory council of the campaign for the civic mission of schools."

Another honor bestowed on her, Jones said, was the establishment earlier in 2007 of the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown University Law Center. The purpose is to educate the public about judicial independence, the importance of a fair and independent judiciary in our constitutional framework.

In conclusion, Jones emphasized that O'Connor is still an active federal judge, having served since her retirement on panels of the 2nd, 9th and 8th Circuits. In the months to come she was to serve on panels in the 1st, 4th and 10th Circuits.

"She has been extraordinarily generous in responding to invitations to speak around the nation and abroad," Jones said. "She commented recently in an interview, 'I need to retire from retirement,' and said that she does plan to slow down and to say 'no' more often. We are fortunate indeed that she said 'yes' in response to this invitation."

Justice O'Connor's acceptance remarks are reprinted elsewhere in this issue.

We have an excellent program this morning, so I will resist the view of Oscar Wilde who said, "I like to do all the talking myself; it saves time and prevents argument." As I was trying to bring together some thoughts for the beginning of the program this morning, I talked to my wife, Judy, and I said, "Judy, did you ever in your wildest dreams think that someday I would be speaking before all these wonderful trial lawyers and judges? Did you ever think that in your wildest dreams?" And she looked at me and said, "Honey, you've never been in my wildest dreams."

President David J. Beck,
introducing the opening session of the College's 2007 annual meeting

bon mots

"Joe Montano . . . was my mentor for seventeen years before he retired. Joe is a Fellow of this organization . . . .Joe was Chief Highway Counsel for the Department of Transportation for many years . . . . He left the state to go into private practice where he became the first Hispanic partner in a major corporate law firm in Denver. From Joe, I learned that from the humblest of beginnings one can achieve great success, overcoming racial intolerance, economic disadvantages and seemingly insurmountable obstacles. In this day and age, when so much emphasis is placed on diversity in our profession, I am so proud to say that as a black woman I learned so much about the law from this incredibly gifted Hispanic lawyer who, when he graduated from law school, granted, many years ago, could not find anyone to give him a job. I learned yesterday for the first time what great company he was in, just as Sandra Day O'Connor also could not find a job out of law school."

LESLIE FIELDS, DENVER, RESPONDING FOR HER CLASS OF INDUCTEES

LAW WON OUT *over* JOURNALISM: JOHN G. CORLEW

Average Fellow: To illustrate the depth and breadth of the College's Fellowship from time to time The Bulletin will write about a typical Fellow. This issue features John G. Corlew of Jackson, Mississippi, who was inducted at the 2007 Annual Meeting in Denver.

John Corlew

When asked why he decided to become a lawyer, **John Corlew** explains: "I majored in journalism in undergraduate school and the chairman of the department suggested that I go to law school. He used the example of **Fred Graham**, who became a noted journalist after obtaining a law degree."

Corlew, who received his B.A. from Ole Miss in 1965 and his J.D. from Vanderbilt in 1968, said he changed his mind about going into journalism and decided upon a career in law. All this despite being managing editor of the *Vanderbilt Law Review.*

Corlew remembers his first trial vividly. "I represented a fraternity brother whose boat burned without insurance. He said he had asked for the insurance from an insurance agent, but did not get that type of coverage. The agent denied that. I lost a jury verdict. The trial judge allowed the case to go to the jury despite what I believe in retrospect was the fact that I sued the wrong party."

His most memorable case proved to him the power of a jury: "I represented a homeowner after Hurricane Camille

in 1969. It was in federal court in Biloxi. Coverage for flood damage was not available and my client only had wind coverage and several feet of water in his house."

He had already tried one Hurricane Camille case, recovering a modest verdict for wind damage after meticulously attempting to prove the difference between wind and water damage.

In the second case, his expert witness, retired from the Corps of Engineers, testified that this house, despite having substantial amount of water damage, had been ravaged by wind before the water arrived.

"He made a very convincing case that the high velocity winds created low pressure outside the house causing it to in effect explode outward," Corlew said. "There was visible evidence of this in a window air conditioning unit, which was lodged in a tree approximately eight feet off the ground and a lead-weighted parrot, which had been in the house and come to rest several hundred yards away in a tree high above the highest level of water. We carefully proved the totality of damages from wind and water and what we could clearly identify as wind damage. When it came time to argue, my instinct was to take the conservative logical approach, but I instead argued for all of the damages. The jury returned the policy limits within minutes and I believe I appreciated for the first time the power of the jury as an engine of justice."

Asked to comment on the current status of trials, Corlew said, "We all know that trials have become too expensive and that courts have become too administrative. Despite that, I believe that trials, whether jury or non-jury, are the ultimate in dispute resolution, civil and criminal. Settlements are made and pleas negotiated because the trial is there as a last resort. I have had very limited experience with binding arbitration. The experience was poor. The arbitration was as expensive, if not more expensive, than trial. There is a dignity associated with, and respect for, the judicial system as a decision-maker. That aura is lost in arbitration. A future without trials is a bleak prospect to contemplate. The College is an aggressive advocate for the judicial system, and resolution by trial, and should continue to be."

"When you told me I was being considered for membership in the American College of Trial Lawyers, at first, I did not believe it. And when I realized you were not kidding, my disbelief turned into humility. To me, recognition by the College of a lawyer's skills is one of the most meaningful things which can happen to a lawyer. When I was a young lawyer, I used to look at the published roster of the College, when my senior partner received annual publications, and think, "Here are the lions of my profession, and I know some of them." I was just proud to know them, not really thinking I might become one of them. My senior partner held that group in such high esteem that the only thing he displayed on his wall in his office was his American College of Trial Lawyers plaque. Not his diploma, not the fact that he went to Harvard, nothing but that plaque. That said it all to me.

LETTER FROM A NEW INDUCTEE TO HIS STATE CHAIR

EXPERT EVALUATES JURORS *during* DELIBERATIONS

"From the jury's point of view, when they come into a courtroom, they're trying to solve a problem."

Shari Seidman Diamond

So began the annual meeting continuing legal education presentation of **Shari Seidman Diamond**, the Howard J. Trienens Professor of Law and Psychology at the Northwestern School of Law.

The foremost contemporary empirical researcher in the jury process and in legal decision-making, Diamond is best known to lawyers for her research involving the Arizona Jury Project, in which actual jury deliberations were recorded on camera and analyzed, and for the American Bar Association's American Jury Project.

"[F]or many people," she continued, "the jury is . . . a cultural icon, but, of course, it is also a favorite scapegoat. . . . Another image of the jury is as naive and easily manipulated, also biased and incompetent as a decision-maker, and on the other side of it, a repository of folk wisdom and common sense. There is a mixture of images out there. My own image of the jury is a little bit of the common folk wisdom, but more to the point for today's conversation, it is an active problem-solver.

"When I began studying the jury, . . . I have to confess

that I was like one of those old-time scientists who thought that hummingbirds couldn't fly. But there you are, faced with a hummingbird that can fly. And so what I discovered in many years of looking at the jury is that the jury does an amazingly good job. . . . [T]he challenge was to figure out how and why the jury is able to do it."

Seidman's presentation focused on three subjects: 1. the challenges for jurors; 2. how jurors deal with their task, both in the courtroom and during deliberations; and 3. the dilemma posed by the "embedded expert," the juror who brings to the jury room particular knowledge about a material aspect of the case.

The Arizona filming project, which provided Diamond with much of the data on which she relies, was sponsored by the American Bar Foundation, with some funding from the State Justice Institute, the National Science Foundation, and Northwestern University. The innovative Arizona judiciary had instituted a controversial experiment that permitted jurors to talk about the case among themselves in the course of the trial.

As part of that evaluation, cases were randomly assigned either to permit jurors to talk about the case in the course of the trial or to tell them that they could not. The jurors were videotaped in the jury room, during mid-trial discussions if they were then permitted to discuss the case and during deliberations. Jurors were told that the videos of their deliberations would remain confidential, but that those who objected to the filming could opt out. Only about five per cent did so.

The range of cases involved was representative. Post-trial questionnaires were collected from the judges and attorneys. This was the first opportunity researchers had had to have a systematic look at jury deliberations.

"[F]rom the jurors' point of view," Seidman explained, "the courtroom is a kind of a challenging place. I know you all are familiar and comfortable in the courtroom, but for most jurors, coming into the courtroom is an unusual experience. It's not what they're used to. From their point of view, it's inhabited by professionals who have strange customs and speak in very odd ways, and they're going to ask the jurors to make a really important decision.

"What makes it worse is that the jurors are quite conscious of the fact that people are going to try and persuade them of things — witnesses and attorneys — and, oh, by the way, they may intentionally not be telling the truth all the time. The judge is the one who gets a pass on this. . . . The judge doesn't always get a pass. Usually the judge is the one that they think they can trust. But they're very observant. . . . The jurors watch the judge, and they want to see if the judge is paying his bills or not paying attention or not being very attentive to what they have to listen to. . . . And so what goes on in the courtroom for the jurors is more than what is going on on the podium or even in argument from the attorneys.

"They [lawyers] bring in the evidence. Instead of giving straight facts, they're dramatizing it, . . . [T]hey [jurors] understand that it's theater. . . . They also watch the parties. [There was] an instance where the attorney assured the jurors that the plaintiff might have to get up and walk around. Well, one of the jurors actually kept track of how . . .long the plaintiff was able to sit in the chair. . . . And this is a quote from this deliberation. 'Never got out of the chair. You know, I was moving more than she

DIAMOND, con't from 25
was. And my butt hurt. She sat like a rock, didn't she?'

"[T]he attorneys don't get off either . . . . So during the jury deliberations, we had a number of observations. In fact, in 30 of the 50 cases, there were observations about [things] that we considered to be off-stage, that is, things that wouldn't appear in the ordinary appellate transcript. . . . [H]ere is a reaction to the attorneys that really was 'on-stage.' This was about closing arguments. 'So what I found hard was listening to them at the end. I don't know what trial they were in.'

"I know most good trial lawyers think that they are respectful of the juries. This is really important to be respectful of them, because they're very sensitive to slights. And what our research shows is that they notice quite a bit, so that it makes sense to treat them as if they're attentive.

"In Arizona, the jurors are permitted to submit questions for the witnesses in the course of the trial, and they provide some insight about what jurors are thinking. Attorneys who have experienced questions during trial sometimes are not all that enthusiastic beforehand. And generally speaking, once they've had some experience with it, become more enthusiastic. Even the questions that the jurors submit which the judge doesn't permit to be addressed to a witness are questions that inform the attorneys about what's on the jurors' mind during the course of the trial.

"As it turned out, in our study and in other studies, about three-quarters of the questions are questions that can be submitted to a witness, because it's the right witness and it's consistent with the rules of evidence, and about a quarter of them can't be. But attorneys learn from those other questions. The jurors don't mind when their questions are not answered. . . . They understand the rules of the game, and they understand that some of their questions are not going to be . . . answered.

"Despite the controversy over questions that are submitted to jurors, . . . I think that is, in fact, the trend, which actually was true at common law, where the jurors were permitted to submit questions. The jurors' questions are not random questions. They tend to ask more questions for witnesses who give lengthier testimony, and they ask more questions for witnesses the judge has identified as important witnesses in the case. They ask questions from almost half of the experts who testify, so that they are honing in. And they tend to focus on legally relevant issues . . . . T]hey have an intuitive sense, in these tort cases at least, of where the evidence is calling into question things that are going to matter.

"What kinds of questions do they ask? Well, about 28 percent of their questions are about filling in the gaps. They're trying to figure it out. An active decision-maker is one who's trying to figure it out so they can get it right.

"The interesting insight, I think, about what jurors are thinking that comes from these questions [questions asked of witnesses] is the extent to which the jurors use these questions to cross-check. . . . [F]rom the jurors' point of view, they're worried about the people they can't trust, they're worried that the witnesses aren't going to be honest with them. They know that they're facing conflicting testimony. So nearly half of the questions were efforts to cross-check, to understand why we should trust the claim of the witness, what other evidence might we be looking at that would help us, not evidence that the witness couldn't testify about, but the meaning, of how the expert,

for example, knew what she said she knew.

"These are questions seeking information. There are relatively few questions that have the appearance of advocacy in them. The juror is in a different role than the advocate. The juror doesn't ask mostly questions that are an advocate's role. They're trying to understand.

"[A]ctual deliberations . . . rarely begin without ambiguity as well as disagreement. Somebody almost inevitably calls for a vote. But in the most cases, that first vote is derailed, and it's derailed because somebody raises an issue, asks a question, says, 'I'm not ready to vote, I need to look at this, I want to check out the exhibits, let me see the instructions.' . . . And voting, when they do vote, it occurs on a whole host of issues. So, for example, they may vote on whether there really was an obstacle in the way of the defendant that blocked his vision, and had nothing to do with a final vote. It's just a component vote. So they may vote on a number of things. That's what deliberations actually look like."

Diamond went on to explain that the majority of juries' remarks in deliberations did not display a valance toward one side or the other. "About a quarter of the jurors were jurors who individually expressed an extreme position. That is, they consistently sided with the plaintiff and mentioned only pro-plaintiff things, or they consistently sided with the defense and said only pro-defense things. So you might want to know who those jurors are who are expressing the pro-plaintiff, pro-defendant extreme positions, what I call the 'extreme' jurors. We've been looking at the data now to see if we can identify the characteristics of jurors who are more likely to be extreme, and we haven't found any real pattern to background characteristics that are associated with this extreme view."

Her final topic was "embedded experts." She pointed out that we have eliminated most of the occupational exclusions, exemptions, and people now sit on juries where they have expertise which is relevant to the case at hand. We are increasingly seeing people not only with legal expertise, but also engineers, nurses and medical technicians, many, many people serving on the jury who have relevant professional, occupational expertise. It turns out that these embedded experts are much less likely to be "extreme" jurors.

"They seem to have a more complicated view of the evidence," she continued. "They aren't all on one side or all on the other side. Now, that's in one way a valuable resource and in another way an uncontrolled potential influence. After all, they are not sworn experts. They might not even have the degree of expertise that would qualify them as an expert, and they are certainly not subject to cross-examination by the opposing counsel." . . . Well, . . . jurors are told . . . 'You will decide the facts from the evidence presented in court. . . . But jurors are also told, 'Consider all the evidence in light of reason, common sense, and experience.' And so, you come to the courtroom, you come to the jury room with some relevant expertise, which is part of your experience."

About 20 per cent of the jurors in the Arizona experiment had expertise or background that was relevant to the case.

"Jurors are occasionally confused about this mixed message that we get. . . . We don't tell the jurors actually what they can do in most ju-

DIAMOND, con't from 27

risdictions. . . . Now, the question is, what kind of juror behavior is appropriate? And because of the Arizona study, we got interested in this because we saw a number of these instances. . . . There is no right or wrong answer to this question, I am afraid. . . . I don't know how you tongue-tie an expert in a jury by telling them that they can't use that part of their brain in expressing an opinion. I think it's very hard to get this to work. . . . What I would suggest . . . is that it's appropriate to alert the other members of the jury to this characteristic of the jurors who may be on there, and that it's their opportunity to question the jurors if they think that they are expressing some opinions that are based on their background or experience. So we alert the jurors. 'Please remember that your fellow jurors, whatever their backgrounds, have not been subjected to the testing of cross-examination, so you'll have to evaluate.'

"So finally," she concluded, "what do we know about juries? Well, there's a modern trend to recognize that whether you like it or don't like it, the jurors are active decision-makers, they are trying to figure things out, that recognizing that involves giving them the tools that they can use to do the best job they can. And it is away from the 'potted plant' image, that you just stick in a whole bunch of evidence and then add a dousing of instructions and then, after you've watered the potted plant, it will grow green shoots.

"So, the challenge is to achieve a balance between equipping and informing jurors while providing appropriate guidance."

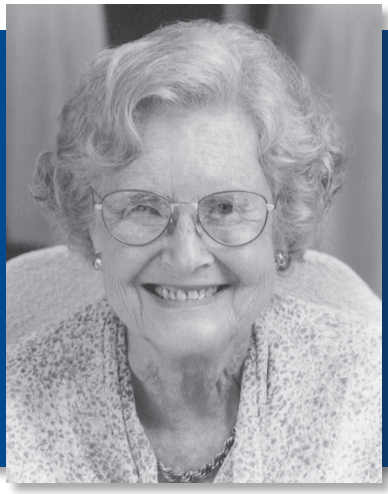
Professor Diamond closed by asking the audience to fill out questionnaires setting out various fact situations involving impacted experts, questionnaires that she had used with other audiences, to use in refining her research into this uncharted area of dealing with modern juries.

bon mots

And our mayor, that being me, is one of the few elected officials around here who actually isn't a lawyer. Now, I will point out that my grandfather in Cincinnati back in the early 30s, Smith Hickenlooper, was in his day the youngest judge ever appointed to the Circuit Court of Appeals. And I will also say that my next-door neighbor, in childhood – our families were best friends – was a young man named Douglas Baird who still teaches, I believe he's still teaching, at the University of Chicago, and teaches a class in contract law and refers back to his youth when there was a very competitive kid next-door who sometimes, because of changing conditions, believed that the rules of the whiffleball or touch football games should be changed in some way to accommodate those changing conditions. And in their family – I didn't know this until a few years ago; a former student of his informed me of this – these were referred to as "Hickenloopholes." He would use this in his introductory lecture for contracts about the malleability of all language.

Denver Mayor John W. Hickenlooper,
welcoming the College to Denver

PHYLLIS COOPER: *Last surviving* CHARTER MEMBER DIES



Phyllis Norton Cooper, the last surviving charter member of the College, died December 5, 2007 in Los Angeles. She was 92.

Cooper was the widow of Grant Cooper, one of the founders of the College and its president in 1962-63. The founding meeting was held on April 4, 1950 at Grant and Phyllis Cooper's home in the fashionable Hancock section of Los Angeles. At the time, Phyllis Cooper was included as an honorary member.

A graduate of the University of Southern California Law School in 1938, Phyllis Cooper was one of only 200 women lawyers in the state at the time of her induction into the College.

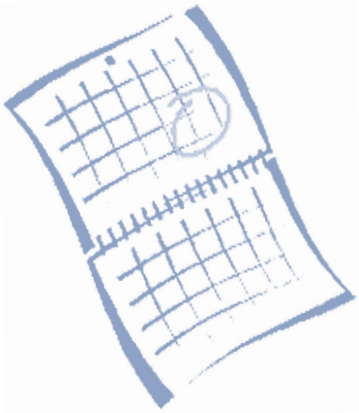
She was a 1935 graduate of USC where she was vice president of the student body, elected as Helen of Troy, a member of the Mortar Board, the Amazons, the USC debate team and Alpha Chi Omega. During the spring of her senior year, she married Grant B. Cooper, a widower with two little girls.

She practiced law with the law firm of Cooper and Nelson, during which time she argued a case before the California Supreme Court.

The first woman to be president of the USC Law Alumni, she also was the first woman to be president of the USC General Alumni Association.

Active in a number of arts, music and charitable organizations, she received the USC Alumni Service Award, the Half Century Trojans Distinguished Service Award and was the first woman inducted into the USC Half Century Trojans Hall of Fame in 2006.

She is survived by three daughters, two sons, 12 grandchildren and 16 great-grandchildren.



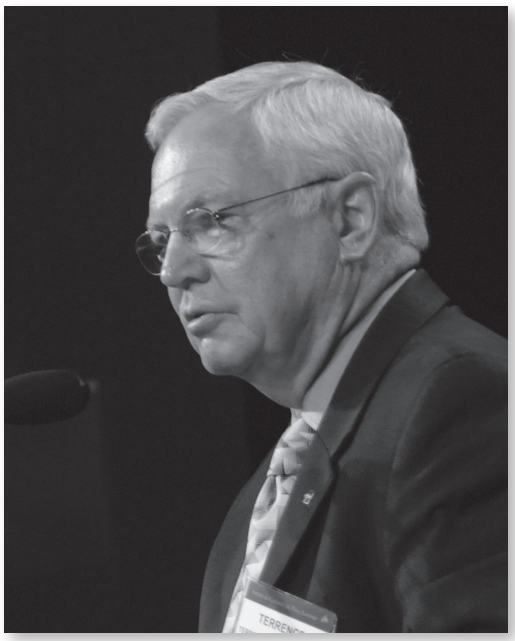
UPCOMING NATIONAL MEETINGS

2008 Annual Meeting, September 25-28 – Toronto, Ontario
2009 Spring Meeting, February 26-March 1 – Fajardo, Puerto Rico
2009 Annual Meeting, October 8-11 – Boston, Massachusetts
2010 Spring Meeting, March 4-7 – Palm Desert, California
2010 Annual Meeting, September 23-26 – Washington, D.C.
2011 Spring Meeting, March 3-6 – San Antonio, Texas
2011 Annual Meeting, October 20-23 – San Diego, California

SPEAKER RELATES BEATLES' MUSIC TO LIFE CYCLES

The Long and Winding Road

The College has a tradition of including in its programs topics not related to the law that both entertain and leave the audience with something to take home and think about. This was such a presentation.



Dr. P. Terrence O'Rourke

"I don't know that the College has ever in its history had a presentation by a speaker with continuous musical accompaniment, " remarked College president **David J. Beck** at the end of the entertaining address of Dr. **P. Terrence O'Rourke** at the Denver annual meeting.

In what he described as "a bit of a change of pace from the scholarly legal presentations" that had preceded him, Dr. O'Rourke, in a combined refresher course in human psychology and a nostalgic trip for Beatle fans, used video clips of the music and experiences of the iconic Beatles to illustrate his theory that in their short professional career they went through the stages of adult development that Gail Sheehy describes in her book *Passages* and that the music that they created and performed reflected the stages that they were in.

Chief medical officer of Centura Health, Colorado's largest family of hospitals and health care services, Dr. O'Rourke is responsible for the quality of patient care and of patient safety throughout that organization. Trained as a general surgeon with an emphasis on surgical oncology, he is a graduate of Georgetown University and of the University of Michigan medical school, where he also did his residency.

For a good portion of his career he had been on the staff of Penrose St. Francis Hospital in Colorado Springs, serving as the medical director of its cancer center, as well as serving variously as chief of surgery, chief of staff, and a member of its board of trustees. A member of the American College of Surgeons, he is the recipient of the Sword of Hope Award of the American Cancer Society.

In introducing him, College past president **Stuart D. Shanor** observed, "It is said that a dedicated physician embodies the skills of multiple disciplines: science, sociology, psychology. And so it is with our next speaker, the dedicated healer, a teacher, a humanitarian, a leader, and uniquely an entertainer."

O'Rourke began by reminding the audience that Sigmund Freud in his classic 1900 work, *Interpretation of Dreams*, outlined stages of development in infancy and early childhood — oral, anal, genital — and theorized that most of our personalities are set by the time we start grade school. That view was first challenged in the early 1950s by Eric Erickson in *Childhood in Society*, in which he theorized that development continued at least into the early adult years.

"Another psychologist, Daniel Levinson," O'Rourke continued, "did a prospective study and followed forty-eight adult males in Pennsylvania for a number of years and concluded that they went through predictable and recognizable stages of development. He eventually wrote a book called, *The Seasons of a Man's Life*. While he was still collecting data and writing his book, he lectured on the topic.

"A young reporter from *New York Magazine*, Gail Sheehy, attended one of his lectures, became intrigued with the subject, wrote a magazine article and subsequently wrote a book of her own called *Passages* . . . . Her book became a best seller; it is listed on the Library of Congress list of the most influential books of the 20th Century.

"She outlined six stages of development. The first of those she called 'pulling up roots.' It occurs in the late teenage years. It's the first time you leave home. It's a time you're trying to establish your own identity. And there's a multiplicity of identities: career, philosophical, cultural, political, peer group, sexual identity, and so forth. So, a time of a lot of turmoil.

"The next phase, which takes most of the rest of the decade of the twenties, she called 'the trying twenties.' It's a time of trying to succeed at whatever objectives you have chosen in that prior period. For many of us, that would be making our careers, starting our careers and becoming successful in our careers, but it could just as easily be riding a motorcycle around the world or some other objective.

"Around thirty is a time of self-assessment. She calls it 'catch thirty.' It is a period of saying, 'Is this what I really want to do for the rest of my life?' If I'm in a relationship, 'Is this the person that I want to live the rest of my life with?' 'Is this where I want to live?' and so on. So, a brief period but a time of a lot of change.

"The next period is another stable period. She used the term 'rooting and extending.' It's again a time of trying to achieve the goals that you've set out, but with additional accountability and responsibility.

"And then you go right into the mid-life crisis. She pegged that around thirty-five, called it the 'deadline decade.' I think both of those words are important. 'Decade' because it is not just a short period of a few weeks or a few months, but frequently several years. 'Deadline' because of the importance of time, and two

O'ROURKE, con't from 31
dimensions to time. One is that time is running out, and all of those fantasies that we might have of winning a Nobel Prize, being the president of the United States — or Ireland — or becoming a billionaire or what have you, playing center field for the Yankees, that those things are likely not to occur. Also that there's not enough time, that time is running out, not enough time to do all the things that you want to do.

"And you then emerge from that mid-life crisis at a fork in the road. And the two forks are 'renewal' or 'resignation.' 'Renewal' is looking at yourself and saying, 'I'm okay. Maybe I didn't get everything that I wanted, but I'm happy with where I am.' And you move off into the latter half of your adult life. 'Resignation' is saying, 'If only I had worked hard, if only I had a different spouse, if only perhaps I was in a different law firm, then I would have met all those objectives.' And so, you go back, recycle, and in some cases continue to recycle through all of the earlier stages.

Leaving his mature audience contemplating which of those two forks they had taken, O'Rourke then undertook to convince the audience of his theory that these stages of life were illustrated by the evolution of the Beatles and their music.

The first song, *Please Please Me*, released in early 1963, was the Beatles' first Number 1 hit. There was, he noted, a very adolescent quality to it, all about self-gratification. To illustrate his point, he traced the history of the Beatles from their origin when John Lennon, Paul McCartney, George Harrison and Ringo Starr, came together, through their formative years, playing in seedy clubs in Hamburg, living in poor conditions while they forged their identity.

Then he moved to what he termed a "trying twenties" song, *It Won't Be Long*. The line from that song, "I'll be good like I know I should," he described as pretty typical of what one does during that period. The Beatles' breakout had come in October of 1963, when they appeared on a program called "Sunday Night at the London Palladium." They then had a royal command performance at the Prince of Wales Theatre, came to the States, were on the Ed Sullivan show three times and became very popular in the United States and then throughout the world.

"During 1964 and '65, there were times that out of the top ten songs on Billboard, six, seven, eight of those songs would be Beatles songs. They really became a worldwide phenomenon. They had movies. They had a variety of albums and records and a very hectic, busy life-style."

The next song O'Rourke played, John Lennon's song *I'm a Loser*, he saw as a part of the Beatles' "catch thirty" period, their first period of self-assessment. "John was fed up, basically, with their life-style. They were constantly on the go. They were prisoners in their hotel rooms wherever they went. They couldn't go out without being mobbed, and he was tired of it, and even contemplated suicide on a couple of occasions. And this song, *I'm a Loser*, was his way of communicating that to the group. They all did that. A lot of times, the music that they wrote was just talking to each other."

Two specific incidents of rejection had fueled this reaction. When they passed up a dinner invitation from Imelda Marcos, she "began a publicity campaign against them, and the Beatles had to sneak out of the country in the middle of the night because of the threat that they were going to be arrested the following day."

The other episode grew out of a Lennon interview with an American newspaperman. "The newspaperman had asked him about the influence of the Beatles on the American youth, and John Lennon said that he was disappointed that the Beatles had a greater influence on some of the youth

than Jesus Christ. When the story was published, the folklore is that John Lennon said that they were more important than Jesus Christ, and that evoked a strong reaction in some parts of this country. They were banning the Beatles songs on the radio and having parties where they burned the Beatles records and so on."

This was the first public rejection for this group that had experienced only success, and that led to a decision to stop touring. O'Rourke then showed a video clip of their last concert, on August 29, 1966, at Candlestick Park in San Francisco. The Beatles' public career in the United States had lasted only two and one-half years.

June of 1967 "really was the apex of the Beatles' career in terms of their happiness," he related. "They had all bought manor homes in the English countryside. John Lennon had been married in 1962 and had a five-year-old son. George Harrison and Ringo Star were also married. Paul had a long-term relationship with an English actress named Jane Asher. They had time off. They made more money than they ever thought they would. They were becoming leaders, not only in music, but in dress and culture and even political thinking to some extent. And they were very, very happy."

"From their music, they were becoming more sophisticated. You'll see [in an accompanying video clip] there's members of the London Symphonic Orchestra playing on this song. And they were incorporating many different instruments and many different techniques into their studio recordings. This is 1967, the so-called 'summer of love.' The song fits right in with it. This was Woodstock and Haight Asbury. They had released *Sgt. Pepper* earlier in this month. And it was really a very wonderful time for the Beatles, but it didn't last very long." This had been their all too brief "rooting and extending" period.

Implicitly conceding that no theory is perfect, O'Rourke looped back to the words of a 1965 song to illustrate the mid-life crisis, the "decade deadline."

First, Brian Epstein, their manager and counselor, committed suicide. Then came their first professional flop, the Magical Mystery Tour. "It was going to be both a movie and an album, and the idea was that they were all going to go on a bus and ride around England and film whatever happened. Unfortunately, nothing happened, so the movie was pretty dull and got bad reviews, didn't attract many viewers, and the album likewise was not successful."

They then went on a trip to the Far East that was a disaster. "They then had a news conference. They were very frank and said that it was a mistake that they had gone. And many people thought the Beatles were done, that they would no longer function as a group. There was quarreling within the group, they lost their creativity, and that basically they were finished."

And then, in August of 1968, they released what was really their masterpiece, *Hey Jude*. This, O'Rourke postulated, was the "renewal" song. "John Lennon had met Yoko Ono, was involved in a relationship, was divorcing his wife Cynthia. And one afternoon, Paul McCartney gave John Lennon's son, Julian, a ride home in his Aston Martin. On the way home, Julian poured his heart out to Paul about how sad he was that his parents were divorcing, that life would never be the same, and that life was not worth it. Paul tried to console him, and then between the time when he dropped him off at his home and drove to his own flat, . . . he had written a song which was originally titled *Hey Jules* and then was changed to *Hey Jude*.

"The story really is about self-worth, even in the face of adversity in a community that would support you. Paul's

O'ROURKE, con't from 33

own word today is, although the journey must be shouldered alone, the strength of the community sees the singer through. Pretty powerful song. There's a great line in here when he says, 'It's just you, hey Jude, you're good.' And that's what he was trying to say. He emphasized it with the music. It started out with Paul helping himself on the piano. Over the next couple of stanzas, the Beatles all came in and then gradually through the Coda, some forty instruments from the London Symphonic Orchestra were added, representing how the community was integrated into the music."

After that, the Beatles broke up. "Really, there was no reason for them to stay together. They had achieved success way beyond their wildest dreams, and the stress of being together was just too much. . . . John Lennon announced privately that he was going to leave the Beatles in late 1969. And Paul [McCartney] then, in April 1970, publicly said that he was leaving the Beatles, and the Beatles never again performed together."

Concluding, O'Rourke observed, "The Beatles are one of those polarizing entities. You either loved them or hated them. Very few people were neutral. If you're one of those Beatlemaniacs that has all the albums and still has a poster of John Lennon someplace in your basement, I hope you've enjoyed this bit of nostalgia."

" If you're one of the Beatles-haters, who blame the Beatles for most of what's wrong with society, drug usage, the promiscuity — and there's probably some validity to that — I would encourage you the next time that a Beatles song comes on the radio, *Hey Jude, Yesterday, We Can Work It Out, Let It Be*, listen to the words and see if you cannot understand how these four lads from Liverpool became the 'folklaureates' for a generation."

bon mots

I'm used to following some of the most distinguished speakers of our time, but I agree with my seatmate that going last at this meeting and having to follow the Beatles is a bit much. Although, I might comment that from what I heard on the television today, Paul's [McCartney's] divorce may be adding to global warming. . . .

The debate [about global warming] challenges, it separates friends. If this were another era, David Scott would've challenged me to a duel over lunch the other day when we were discussing this topic. . . .

In the Boulder paper this week, it was announced that in Arapahoe, Colorado, the ski area had its earliest snow in 61 years. And, you know, if I were arguing that side of the case, I would consider that a bad sign. Maybe this was a new Ice Age we don't know about. . . .

The first speaker will be David Doniger, who lives in Washington, D.C. He's the policy director of the Natural Resources Defense Council, or NDRC. Your program says National. It is Natural Resources Defense Council. David is a lawyer, and he's worthy of this fellowship in his attitude toward his law practice. He told me that he had argued a case before the United States Supreme Court, Chevron v. NDRC. He also, in the spirit of this College, felt compelled to inform me that he lost six to nothing. [Three justices did not participate.]

Past President James W. Morris III, introducing a panel discussion on global warming

RETIRING REGENTS *and* CHAIRS HONORED AT DENVER MEETING

Retiring Regents and chairs of standing state and province committees were honored at the Denver meeting with plaques for their service.

RETIRING REGENTS:
Raymond L. Brown, Pascagoula, Mississippi, **Charles H. Dick, Jr.,** San Diego, California, **Brian B. O'Neill,** Minneapolis, Minnesota, **Thomas H. Tongue,** Portland, Oregon.

RETIRING CHAIRS OF STANDING COMMITTEES:
William McGuinness, New York, New York, **Richard C. Hite,** Wichita, Kansas, **Jeffrey S. Leon,** Toronto, Canada, **John M. Anderson,** San Francisco, California, **Ronald Welsh,** Houston, Texas, **Michael C. Russ,** Atlanta, Georgia, **Ralph I. Lancaster, Jr.,** Portland, Maine, **Carol Elder Bruce,** Washington, District of Columbia, **Edward W. Madeira, Jr.,** Philadelphia, Pennsylvania, **Hon. Barbara M. G. Lynn,** Dallas, Texas, **Peter S. Gilchrist, III,** Charlotte, North Carolina, **Frank G. Jones,** Houston, Texas, **Elizabeth N. Mulvey,** Boston, Massachusetts, **Paul T. Fortino,** Portland, Oregon, **Thomas G. Heintzman,** O.C., Q.C., Toronto, Canada.

RETIRING STATE AND PROVINCE CHAIRS:
Alaska-**Matthew K. Peterson,** Anchorage; Arizona-**Robert E. Schmitt,** Prescott; Arkansas-**Robert M. Cearley, Jr.,** Little Rock; Southern California-**Paul S. Meyer,** Costa Mesa; Delaware-**Bartholomew J. Dalton,** Wilmington; Florida-**Sidney A. Stubbs,** West Palm Beach; Upstate Illinois-**Stephen D. Marcus,** Chicago; Kentucky-**Frank P. Doheny,** Jr., Lousville; Massachusetts-**Richard T. Tucker,** Worcester; Nevada-**J. Bruce Alverson,** Las Vegas; New Jersey-**Peter L. Korn,** Springfield; New Mexico-**Terry R. Guebert,** Albuquerque; Ohio-**Gerald J. Rapian,** Cincinnati; Oklahoma-**Michael P. Atkinson,** Tulsa; Rhode Island-**Michael P. DeFanti,** Providence; South Carolina-**R. Bruce Shaw,** Columbia; Tennessee-**Sidney Gilreath,** Knoxville; Vermont-**John T. Sartore,** Burlington; Washington-**Evan L. Schwab,** Seattle; Wyoming-**Tom C. Toner,** Sheridan. CANADA: British Columbia-**Geoffrey Cowper,** Q.C., Vancouver.

SPEAKERS DEBATE ROLE OF COAL *in* ENERGY PRODUCTION *and* GLOBAL WARMING.

David D. Doniger, a lawyer and Director of the Natural Resource Defense Council, and Frederick D. Palmer, also a lawyer and Senior Vice President of Government Relations for Peabody Energy, the world's largest shareholder-owned coal company, engaged in a public debate at the Denver meeting.

David D. Doniger

The debate centered on coal as the major engine for the production of essential energy in this United States and at the same time the largest producer of carbon in the atmosphere.

Doniger served for eight years during the Clinton administration in the Environmental Protection Agency and has been involved both in formulating policy and in litigation on environmental issues.

Palmer, a private practitioner for eight years, is a former assistant to Congressman Moe Udall and the former CEO of the Western Fuels Association.

In introducing the two speakers, Past President **James W. Morris III** noted that the debate over global warming implicates science, politics and even philosophy. The very existence of a problem has been the subject of debate. The degree of danger and the timeline is hotly debated. Learned scientists disagree on the scientific factors involved. The debate pits citizens against citizens. It pits nation against nation.

"The demands for energy will increase," Morris observed. "Energy fuels the countless advances in our society and the quality of our life, but the issue can be phrased by others as to whether we are dealing with the preservation of a standard of living or indeed the preservation of life itself. What sacrifices will be made and who will make them?"

Leading off, Doniger observed, "This has been a year of extremely rapid change in the global warming issue. The sci-

ence debate really is over. The Nobel Prizes yesterday really represent that. There's nobody really questioning that human emissions of carbon dioxide and other greenhouse gases are causing the world to warm. The question is really what to do about it."

"The legal debate," he asserted, "is largely over. . . . [In] *Massachusetts v. EPA*, . . . the Supreme Court affirmed that under the U.S. Clean Air Act there is authority to control pollution that causes global warming, that carbon dioxide is a pollutant just like carbon monoxide or sulfur dioxide. They're all chemicals thrust into the atmosphere that are subject to the controls under the Clean Air Act if the administrator of the EPA considers that the science demonstrates that there's harm. What's going on now is a very strong policy debate, first at the state level.

"So what's really at stake? Most of the scientists, including those honored with the Nobel [the day before this presentation], . . . the companion award to the science panel that went with Vice President Gore's award, stress that we must stop the average temperature of the globe from rising by more than another 2 degrees Fahrenheit above where it is now. That happens to correspond to a 2-degree Celsius increase from the levels before the beginning of the Industrial Revolution. To get above these levels puts at risk a great deal of environmental and public health harm."

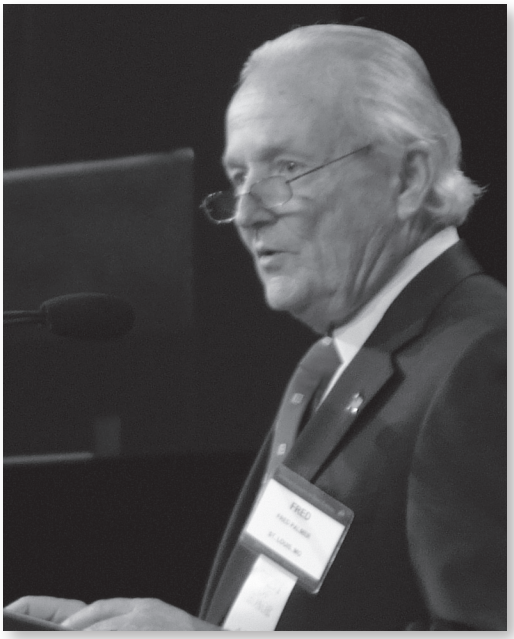
Doniger went on list some of the impacts of global warming, pointing out that many of the effects of pollutants already in the atmosphere are already in the pipeline, and that "it makes a great deal of difference how much more pollution we put into the atmosphere in terms of how high the temperatures and the impacts will go."

He went on to assert that there is "a growing policy consensus that we need a different approach. Voluntary approaches championed by this Administration have failed to make any real difference in the amount of emissions that our country is responsible for. There is a growing consensus that we need a mandatory approach. That consensus in one way, in a partnership, the U.S. Climate Action Partnership announced earlier this year, . . . now grown to more than 30 companies and six of the top environmental groups supporting national legislation to put a cap on emissions, reduce the emissions over time, and use the marketplace, so-called emissions trading, to achieve those results at the lowest possible cost."

Doniger noted that, "We used this approach to curb acid rain. We've used it for 20 years, and it works. We've used this approach to curb the pollutants that damage the ozone layer, and it works. And this partnership has agreed on rather ambitious targets, near-term emission reductions and the need to reduce American emissions by 60 to 80 percent by the middle of this century."

He noted that "the policy vacuum creates tremendous uncertainty for companies trying to plan their investments. How do you make a choice among fuels and technologies for power plants that will be around for 50 years if you don't know whether there's going to be a strong-or a weak-or no-carbon policy in that period? It can make a very good investment look very stupid if the policy changes five years or ten years into the life of that plant. So, with the federal vacuum, it has been filled, in part, by state action. There's a lot of litigation under way . . . ."

"One of the manifestations . . . ," he asserted, "is that the coal rush is ending. There was, four, five, six, eight years ago, a conclusion in the energy industry that they ought to stop building natural gas plants. They're not ready to build new nuclear plants. They would build lots



Frederick D. Palmer

SPEAKERS DEBATE, con't from 37

of new coal plants. The risks, perceived risks, associated with that are now taking their toll, so that the coal rush is ending. Many new coal plants have been blocked. My organization and others are trying to block new commitments to coal plants unless they have a technology called carbon capture and storage, where you take the carbon which would otherwise be going into the atmosphere as CO2, capture the gas and pump it back under the ground. . . . . and we actually favor this technology to the extent that coal is going to continue to be used."

Noting that waiting to start this policy will result in disruptive reductions done at such speed as to exact a much higher toll on the economy in the future, Doniger said, "[W]e favor to start now. We really favored starting ten years ago, but we kind of lost it there. The sooner the start, the smoother the transitions can be."

Doniger pointed to pending legislation to increase fuel economy standards and require a greater proportion of wind energy and other renewables, as well as legislation directly addressed to global warming, bills which would require a high percentage of reduction of carbon emissions by a stated time, as signs of progress. He predicted quick action in 2009, no matter which person is elected president.

Conceding that the United States cannot solve this problem by itself, he noted that we are tied with China as the world's largest emitter, but that our per capita emissions are much higher and that we have been at this for fifty years longer than has China. The other countries, he asserted, are waiting for us to act. "And when we lead, they will follow," he said.

He reminded the audience that the Montreal Protocol, signed a little more than twenty years ago to protect the stratospheric ozone layer, includes binding obligations on both industrial and developing countries that have "marched together to phase out 95 percent of the ozone-depleting chemicals that threaten to erode the barrier that protects us from skin cancer." He asserted that it is "a world success story of cooperation between both industrial and developing countries. We did it there, and we can do it again."

Continuing, he pointed to ongoing negotiations to succeed the Kyoto protocol and ongoing litigation in various forums.

Referring specifically to the coal-fired power industry, he asserted, "[I]n addition to building wind energy facilities and in addition to energy efficiency measures, which can cut down the need we have for electricity without sacrificing the comforts and services that we want, . . . we recognize that there are going to be more coal plants built. But we favor them being built with this technology which provides that you could have the electricity without the global warming pollution if you stick that pollution back geologically underground."

He concluded by urging the audience, "[Y]ou can help. You're very influential people. Speak out on federal and state legislation. You can also put your skills to work in global warming litigation."

Fred Palmer, speaking for the coal industry, asserted that there were propositions asserted by Doniger with which he agreed and some with which he disagreed.

He asserted that it is an overstatement to say that the science is set. "Certainly there is a consensus in certain parts of the scientific community on the impact of CO2 emissions on global warming and global climate change, but particularly as we get this into a legal mode, and we are going to be in the legal mode . . . there's going to be a lot of arguing about the science."

Conceding that humans of course impact climate, he asserted that, "[T]here will be ongoing debate over the amount, the timing, the severity, both positive externalities and negative externalities, because at the end of the day, this is about people."

He noted that the preceding week, "[A] judge in England entered an order in a case having to do with the distribution of Vice President Gore's video to students under a law that applies there that prohibits partisan and political material from being disseminated. It allowed . . . the video to go forward, but required there basically to be a warning label put on it that said the video is, in fact, partisan and political, and made nine specific findings of misstatements or incorrect statements of material fact, including this proposition

of melting sea ice and increasing sea levels."

"However, having said that," he asserted, " I'm not here today to talk about the science of climate change. I'm here today to talk about coal, and in that context, I'm here to talk about the great reason coal can meet our environmental and national security needs, including a path for resolving issues relating to CO2. . . . I am a lawyer and I'm representing Peabody, and . . . it is our goal to be an active participant in creating a legal framework so that we can use coal in many new and different ways, along with its traditional market, electricity, with zero emissions. That is our goal, and that's where we're headed."

"So why do we use coal," he continued, "and why is coal so controversial? Well, we use it because we have it. Twenty-seven percent of the world's supply is in the United States, and fifty percent of our electricity is generated with it. . . . It's low cost. It's abundant. It's domestic. It's secure and it's increasingly clean."

As for new technology to reduce carbon emissions from the use of coal, Palmer argued that the rest of the world will follow only if the United States develops a technology to use coal with zero emissions. "And the only way to develop that technology," he asserted, "is to have a healthy industry and want people to invest in it instead of treating them in a punitive way and saying, 'We don't want this anymore.'"

Palmer pointed out that the world's demand for energy will continue to increase and that there are many economic and policy reasons for meeting that demand. He then discussed at length the comparative merits of various fuels used to generate electricity, including issues of supply and international political instability. He pointed out the downside of making electricity more expensive. "[U]se it wisely, we must. Use it better, we must. On the path to zero emissions, absolutely. Can we not get out of the box? No. Can we cap it? No. . . . The world population is increasing, the standard of living is increasing. It will continue to increase. . . . Hundreds of millions of people have come out of poverty in the last five years in China using more energy. . . . Energy demand is going to continue to go up and up and up."

"So, turning to the positive," he argued, "coal to liquids, coal to gas, coal to electricity, all with carbon capture and sequestration can give us a path to true energy independence: always available, affordable energy to grow our economy, allow our people to live their lives, allow your children and their children to live as well as or better than you have, and to take pressure off the caldron of the Middle East leading to these huge conflicts that we are putting so many lives and treasure into. That's the thesis.

"[A]re new coal plants being built? Absolutely, they're being built here. These are highly profitable plants are going to be built. . . . Do we need policies to manage carbon? Yes. I'm not suggesting we don't. But we need to build these coal plants now. And that's why. Because of the NERC reliability assessment which says we have a problem: This is the increase in generation and the increase of the demand, and they obviously don't match. They say we have a problem coming at us pretty quick because we're not putting in enough base load capacity, coal and nuclear, to meet our demand, which you all are driving. . . . [I]t's all of us collectively driving this, and we have a reliability problem."

Palmer's solution: "You put in these coal plants today that we need for reliability, state of the art, clean coal technology, fifteen percent lower CO2 emissions. You develop carbon capture and sequestration through our future effort . . . You develop the technology to retrofit what we have on the ground today to achieve the great vision of zero emissions from coal units. Sequestration, we have 3.5 trillion tons of sequestration capability, which is a lot more than the coal that we have. [B]ut we need to make sure that a legal framework exists so that when we can sequester the carbon, as opposed to theoretical, will we have the ability to do it? We [need to] get federal R&D tax credits and the like to have a long-term carbon management program to meet the concerns of the American people and the world community that will deal with this, and then we'll export this technology overseas."

COLLEGE INSTALLS MADAME JUSTICE LOUISE CHARRON AS HONORARY FELLOW

Madame Justice Louise Charron, the first Franco-Ontarian (a citizen of Ontario whose native tongue is French) to be appointed to the Supreme Court of Canada, was inducted as an honorary fellow of the College at its annual meeting in Denver.

Madame Justice Louise Charron

Born in Sturgeon Falls in far northern Ontario, where her family has lived for several generations, she is a 1976 graduate of the University of Ottawa. She was called to the Bar of Ontario in 1977 and practiced in a general practice from until 1980. She then became a prosecutor in the Crown Attorney's Office for a period of five years. She taught law at the University of Ottawa Law School as an assistant professor from 1985 to 1988.

In 1988 she became a trial judge in the district court in what became the Supreme Court of Ontario 1988. She had sat as a deputy judge of Nunivut, the eastern Arctic district, where she presided in cases in Pond Inlet and in Clyde River in the Arctic North of Canada. In 1995, she was appointed to the appellate court in Ontario, where she sat until 2004, when she was appointed a judge of the Supreme Court of Canada.

In introducing her, past president David W. Scott, QC, noted that Justice Charron has a reputation as an outstanding mistress of the written judgment in both French and English, elegant and persuasive in her use of both languages.

While serving as a prosecutor in the Crown's Office, she met her husband, Bill Blake, who was serving as a police officer. They worked together as prosecutor and investigator on a number of cases. They have three children, one son a gradu-

ate of Harvard, who taught at the University of Delaware and is presently in law school.

Successively, a lawyer in private practice, a prosecutor, a law professor, a trial judge, an appellate judge, and now a judge of the Supreme Court of Canada, she is the latest addition to a strong contingent of women judges on the Canadian Supreme Court, where four of the nine judges are women.

In accepting the Honorary Fellowship, she paid tribute to the trial bar: "Even though I have been a judge for nineteen years now, I still regard my years as a trial advocate, most of which were spent doing criminal prosecutions, as the most exciting and in many respects the most fulfilling years of my career. And in truth, I have to admit that it surprises me that I feel this way, because when I did move on — I wanted to at the time — and I have truly loved and still do love, being a judge in each incarnation, nonetheless, my years in court as a trial advocate remain truly special. . . . [F]rom a professional standpoint, I believe I still regard my years as a trial advocate as most fulfilling probably because of their intensity. . . . [T]hat's the period of time where I learned the most. . . . [I]n no other role have I felt more part of the action."

Focusing her remarks on the need for teaching of professionalism and ethics, she observed, "I'm an optimist. . . . [T]he problems that we face today are not new; they're simply resurfacing in different ways with changing societal conditions. They're also not insurmountable, because thousands and thousands of lawyers practice their craft every day in accordance with their true calling, and we've all learned in the last decades how to conquer these problems. . . . Much remains to be done."

She related how a young lawyer to whose organization she was recently scheduled to speak had asked her, "Could I respectfully suggest, if you haven't chosen a topic, would you talk about the importance of ethics in the profession, but particularly could you tell us what it means?"

Continuing, she observed, "[T]here is a need for guidance on questions of ethics and questions of professionalism. . . . [L]et me assure you, as a former law professor and as a judge, that these tools [the College's teaching materials on the subject] are crucially important. You cannot teach legal ethics and professionalism in the abstract. . . . {W]ithout more, a strictly theoretical lecture on ethics and professionalism usually triggers what I call the 'helium-filled balloon syndrome.'. . . You know the feeling when you hear a dynamic speaker talk about feel-good ideas in principle. It's as if the speaker was pumping helium into a balloon and letting balloons go up in the air. Everybody feels uplifted. But if you walk out of that room, quite often, and you say, 'That was great,' and someone asks you, 'What was that about?', well, you'd have a hard time explaining what it is.

"So I have this analogy that I kept repeating to myself as an educator, that you've got to attach, you've got to have these balloons to uplift, but you've got to attach the strings firmly in the ground. And I think that particularly applies to matters such as ethics and professionalism. The concepts only connect when they're firmly rooted in the practice. Hence the necessity for tools such as the ones you create. I strongly encourage you to create even more — more material, and sometimes more probing material, of ethical considerations that arise in the practice of law.

"The more difficult questions have no easy answers. There's quite often not just one correct answer. And you are the ones who know what ethical problems arise in the course of practicing law, in particular trial advocacy, because you live those experiences. More importantly, you're the ones who can provide guidance in finding answers to these problems that can't be found in books. They're discovered through experience."

To illustrate her point, she referred to material written by Canadian Fellow Earl Cherniak. In it, he explained in practi-

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cal terms the application of the ethical rule that a lawyer cannot counsel or be a party to the fabrication or presentation of false evidence. He described the dilemma that arises in everyday practice in the preparation of witnesses, particularly a client, in drawing a line between telling the client what the client needs to know about the law and facts known to the lawyer to direct his mind and memory to the relevant areas that he must testify to and crossing the line, where the lawyer's advice becomes counseling the client to give a version of the facts different from the truth. That, he states, is where the advocate's honor is most tested, since invariably such interviews take place in the privacy of his office.

His materials contained practical fact situations to illustrate his point. His advice on where to draw the line: "The best that can be said is that if discussing the law will likely result in a client changing his evidence to meet it, it cannot be done."

As she continued to discuss these issues informally with the group of young lawyers she was addressing, one young lawyer said, "You know, we have guidance in our firm as to how we should conduct interviews and everything, but I never understood why that was so until this afternoon."

"Judging," she continued, "from many discussions I've had over the years, mostly with law clerks and young graduates, in my view, the instruction in the fields of legal ethics and professionalism is often wanting. Many of my clerks have indicated their only -- their only exposure to that was to a mandatory bar admission course, a take-home exam that they'd fill out. And in discussion with them, they all needed advice on 'What does it really mean in our practice?' [W]e should try to reach our audience more, be they students of law schools or continuing education programs, and work together in trying to weave this into the instruction."

Concluding, she urged the College, "It's our responsibility, each and every one of us . . . to provide the necessary leadership in these areas. And you are most well suited to do it . . . . So I commend you all for your extremely valuable contribution over the last almost six decades, and your continuing efforts to ensure that lawyers continue to fulfill every day the honorable duties they have to their clients, to the courts, and ultimately to society."

HIGHLIGHT:

Past President David Scott presents Honorary Fellowship to Honourable Madame Justice Louise Charron.

Justice Charron is my neighbor. We live downtown, and she lives about a block away, has moved there since her appointment in 2004. And the neighbors know that there is a Supreme Court judge living in that house. So when I walk to work, I always wave as though — she's, of course, gone to court — but I wave, anyway, just so the neighbors will know that I know the judge of the Supreme Court who lives in that house. . . .

[I]n the Crown's [Prosecutor's] Office, she met her husband, Bill Blake, who was a serving police officer. They worked together as prosecutor and investigator on a number of cases and became friends and ultimately a relationship developed and they married. In their last case . . . it is reputed Bill Blake said, "The accused got sixteen years, and I got life."

Past President David W. Scott, Q.C., introducing Madame Justice Louise Charron

bon mots

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When I saw the list of speakers for this weekend's meeting, I felt particularly honored that I had been invited alongside two women that I have long admired for their principled and independent voices, the Honorable Sandra Day O'Conner and the Honourable Mary Robinson. Of course, among their numerous accomplishments, as we all know, these women share one remarkable feat. Sandra Day O'Connor as the first woman appointed to the Supreme Court of the United States, and Mary Robinson as first woman President of Ireland, have each broken through the glass ceiling. Because they have done so, it's widely believed that this has eased the path for the women that follow in their footsteps. That's true to a large extent.

However, I'm here to tell you there's a downside to it, as well. Because of women like them, it's common, it's just normal, for a woman to achieve whatever her ambition and good fortune would bring together. In my case, what could it possibly be to anyone that I'm the seventh woman on the Supreme Court of Canada. Our Chief Justice has been happily occupying the post of Chief Justice, as well. You know, it gets worse. I'm not even the first woman named Louise who was appointed to our Supreme Court. Louise Arbour was there before me. I got her hand-me-down as a gown. . . .

The Honourable Madame Justice Louise Charron, Accepting an Honorary Fellowship

bon mots

IN MEMORIAM

We want to do justice to the lives of every Fellow who has passed from among us. Our tributes to them have been perhaps the most well-received feature of recent issues of **The Bulletin**. *Despite our best efforts, the College's recent request for address updates produced information that, in addition to the deaths of sixteen Fellows for whom we had been sent published obituaries, nineteen Fellows whose deaths had not previously been known to the College had died, one of them in 2000, seven years ago. We have done the best we could from College membership records, old directories and the Internet to gather information about these nineteen. Our tributes to them are, nevertheless, less complete than we would like them to be. In the interest of doing justice to deceased Fellows, we request that when any one of you becomes aware of the death of a Fellow, you send a copy of the obituary to the College office, copying the appropriate State or Province chair, so that the College, your local committee and* **The Bulletin** *can acknowledge the death promptly. We owe that to one another.*

Henry P. Andrae (69), a Fellow Emeritus from Jefferson City, Missouri, died January 8, 2008 at age 93. A graduate of the University of Missouri and of its law school, his law practice was interrupted by World War II. Entering the Army as a private, he rose to the rank of captain, served on the staff of General Douglas MacArthur in the Philippines and Japan and was awarded a Legion of Merit. Returning from military service, he formed the firm of Hendren & Andrae, LLC, in which he practiced until his retirement. He had served in the Missouri House of Representatives both before and after World War II. Active in civic affairs, he had chaired or co-chaired a number of local bond campaigns. An avid outdoorsman, he had fished, shot or golfed in 54 countries and in all 50 states. A widower, his survivors include three daughters.

Matthew J. Broderick (80), Philadelphia, Pennsylvania, died August 30, 2007 at age 79. A graduate of the University of Pennsylvania and a magna cum laude graduate of its law school, he was a member of the Order of the Coif and of the editorial board of his law review. He had practiced all his career with Dechert, LLP and its predecessor firms.

Michael H. Cain, C.M., Q.C. (85), a Fellow Emeritus from Chicoutimi, Quebec, died September 12, 2007 at age 78. A senior lawyer of Cain Lamarre Casgrain Wells, he received his undergraduate and law degrees from McGill University. His survivors include his wife, a daughter and a son.

Phyllis N. Cooper (50), Studio City, California. The passing of the wife of College founder Grant Cooper is noted in a separate article in this issue. She had last attended the Spring 2007 College meeting at La Quinta.

John Jay Corson IV (82), a Fellow Emeritus from McLean, Virginia, died March 27, 2007 at age 71 of congestive heart failure. A graduate of the University of Virginia and of its law school, he had served three years in the Air Force Judge Advocates General Corps in Turkey and in Virginia before

joining the predecessor firm of McGuire Woods, from which he retired in 2000. He was a past president of the Virginia State Bar and of the Virginia Association of Defense Attorneys and had served in the ABA House of Delegates for six years and as a Commissioner in Chancery in the Fairfax County Circuit Court for eight years. His survivors include a son and three daughters.

Jack B. Coulter (73), a Fellow Emeritus from Roanoke, Virginia, died September 13, 2007 at age 83 of complications following back surgery. He had attended Washington and Lee University until the outbreak of World War II, when he entered and graduated from the United States Naval Academy. He completed tours of duty on the heavy cruisers USS Vicksburg and USS Manchester in the South Pacific Theater and after the war, participated in the Bikini atomic bomb trials aboard the battleship USS Pennsylvania. A graduate of Washington and Lee law school, he had practiced law until 1975, when he was appointed a Circuit Judge. After his retirement in 1989, he had been associated with Coulter & Coulter in Roanoke. An active community leader, he had served on the local school board, and as president of the W&L Law School Association. He had led the creation of the Roanoke Valley War Memorial. A lifelong student, he had earned a Masters of Judicial Process from the University of Virginia. His survivors include his wife, a brother, two sons and a daughter.

Frank Douglass (89), Dallas, Texas, died November 23, 2007 at age 74. An Eagle Scout who had worked his way through college as a roustabout and roughneck in the oil and gas fields around his home, he was a cum laude graduate of Southwestern University in Georgetown, Texas. After serving in the Air Force in the Korean Conflict, he attended law school at the University of Texas. An astute businessman who helped found two banks and numerous oil and gas ventures, he was one of the early lawyers to be certified as an oil and gas specialist in Texas. He had been honored by his undergraduate university with its Distinguished Alumnus Award and with numerous awards from legal organizations in his field of specialty. He was also an early volunteer in his local legal services program. A founding partner in the Austin firm Scott, Douglas & McConnico, LLP, he had practiced from his firm's Dallas office since 1991. His survivors include his wife, a sister, three sons, a daughter and two stepsons.

Hon. Justice E. Robert A. Edwards (92), a Judicial Fellow from Vancouver, British Columbia, a Judge of the Supreme Court of British Columbia, the trial court of general jurisdiction, died October 5, 2007. He was born in 1933.

Jack W. Flock (77), Tyler, Texas, died October 18, 2007 at age 94. A graduate of Tyler Junior College and the University of Texas Law School, he was a naval officer in World War II. His destroyer participated in landings on Bougainville, Green and Emirau Islands. He was awarded a Bronze Star for his service. Since returning to civilian life, he had practiced with Ramey & Flock, PC and its predecessor firms for his entire career. He had served his community in many capacities, including playing in the community band, and had served on the Board of Trustees of his undergraduate alma mater for twenty-four years, twice winning its Distinguished Alumnus Award. His wife survives.

Craig W. Gagnon (89), a Fellow Emeritus retired from the Minneapolis, Minnesota firm, Oppenheimer, Wolff & Donnelly, in which he had served as a member and past chair of its executive committee, died February 16, 2008 at age 67. A graduate of the University of Minnesota and valedictorian of his law class at William Mitchell, whose board of trustees he had chaired, he had also been involved in both banking and real estate. An avid hunter and fisherman, his office was for many years decorated with an eight-foot-tall Kodiak bear, a hunting trophy. His survivors include his wife, five daughters, one son, two step-daughters and two brothers.

Frank Joseph Glankler, Jr. (78), Memphis, Tennessee, died November 21, 2007 at age 81. A Marine in World War II, he was awarded a Purple Heart. He attended Vanderbilt University and then went to law school

at night at Southern University College of Law. A founder of the firm of Glankler Brown, PLLC, his obituary notes that "his most cherished induction was in 1978 in the American College of Trial Lawyers." His survivors include his wife and ten children.

John P. Hauch, Jr. (83), a Fellow Emeritus from Haddonfield, New Jersey, retired chair of Archer & Greiner, PC, Camden, New Jersey, died June 20, 2005. He did his undergraduate work at Dickinson and Texas A&M and earned his law degree at the University of Pennsylvania. He had served in the Army Air Corps in World War II.

John M. Hollis (73), a Fellow Emeritus from Virginia Beach, Virginia, retired from the Norfolk firm Willcox & Savage, PC, died January 23, 2006. Born in 1923, his undergraduate and law degrees were from The College of William and Mary.

Patrick F. Kelly (76), Wichita, Kansas, a retired United States Judge for the District of Kansas, died November 16, 2007 at age 78 after a long illness. A graduate of Wichita State University and of the Washburn University Law School, he served in the Air Force as Assistant Staff Judge Advocate before entering private practice. Appointed to the bench in 1980, he was a colorful figure. His ruling in the 1991 "Summer of Mercy" abortion clinic protests, banning protestors from blocking the entrance to an abortion clinic and ordering U.S. Marshals to provide security, resulted in death threats, a confrontation with protestors on his front lawn, round-the-clock protection and a strained relationship with his church. Well-known for his sense of humor, Judge Kelly kept an abortion protestor's sign reading "Don't Re-Elect Kelly" in his library. A staunch proponent of judicial discretion, he once held the Sentencing Guidelines unconstitutional. He had also presided over a widely publicized toxic shock syndrome case against the manufacturer of tampons.

Hon. Alfred Y. Kirkland (67), Elgin, Illinois, a retired judge of the United States Court for the Northern District of Illinois, died in March 2004. Born in 1917, he had served in the United States Army in World War II and had been President of the Illinois State Bar Association before his appointment to the bench.

George F. Kugler, Jr. (70), a Fellow Emeritus from Haddonfield, New Jersey, died August 1, 2004. A graduate of Temple and of the Rutgers law school, he had practiced with the Camden, New Jersey firm of Archer & Greiner, PC.

John D. LaBelle (66), a Fellow Emeritus from Manchester, Connecticut, died November 1, 2006. Born in 1915, he was educated at Colgate and the George Washington University Law School. Before his retirement he had practiced with the Manchester firm of LaBelle, LaBelle & Naab, PC.

The Right Hon. Antonio Charles Lamer, retired Chief Justice of Canada, an Honorary Fellow from Ottawa, Ontario, died November 24, 2007 at age 74 from heart disease. Born in east-end Montreal, he attended College St.-Laurent and received his law degree from the Université de Montréal. He had served in the Royal Canadian Artillery before entering law school. A practicing criminal lawyer and a professor of law, he was appointed to the Quebec Superior Court and to the Queen's Bench of the Province of Quebec in 1969. Before his first appointment to the bench, he had been chairman of the Quebec Society of Criminology, a member of the Board of Directors of the Canadian Human Rights Foundation and chairman of the Law Reform Commission of Canada. In 1978 he was elevated to the Quebec Court of Appeal and he was then appointed to the Canadian Supreme Court in 1980, two years before the Charter of Rights and Freedoms was enacted. A civil libertarian, a prolific writer and an influential thinker, he was regarded as a principled guardian of judicial independence. He became Chief Justice in 1990, served in that capacity for ten years and retired from the bench in 2000. During his tenure, the Supreme Court wrestled with many major issues of the day-abortion, euthanasia, aboriginal and minority rights

and the possible secession of Quebec. After his retirement, he was a senior advisor to Stikeman Elliott and a professor of law. He was the recipient of many honors and an honorary bencher of Lincolns Inn. In private life, he was known as an informal man with a common touch who could often be seen on a public bench, eating a hotdog and chatting with ordinary citizens who had no idea who he was. His survivors include his wife, Danièle Tremblay-Lamer, herself a judge of the Federal court, a son and two step-children.

Russell E. Leasure (63), a long retired Fellow Emeritus from Tucson, Arizona, died November 15, 2007. He had served as an officer in the U.S. Army in World War II.

Sherman V. Lohn (72), a Fellow Emeritus from Missoula, Montana, retired from Garlington, Lohn & Robinson, PLLC, died December 10, 2007 at age 86 after a short illness. His education at the University of Montana interrupted by World War II, he served in the U. S. Army, then returned to complete his undergraduate and law school education. He also earned an LL.M. from the Harvard Law School. A former State Delegate in the ABA House of Delegates, he had also been a director of the American Judicature Society and a member of the Senior Advisory Board of the Ninth Circuit Court of Appeals. He had been honored by both his undergraduate and law schools and had received the William J. Jameson Award for Professionalism. A remarried widower, his survivors include his second wife, a daughter, two sons and two brothers.

Robert W. Lutz (76), a Fellow Emeritus from Chilton, Wisconsin, retired from Lutz, Burnett, McDermott, Jahn & King, LLP, died September 25, 2007. Born in 1925, he was a graduate of the University of Wisconsin and of its law school.

Thomas English McCutchen III (00) a partner in McCutchen, Blanton, Johnson and Barnett, LLP, Columbia, South Carolina, died February 17, 2008 at age 59 of pancreatic cancer. A graduate of The Citadel and of the University of South Carolina Law School, he had served on numerous civic boards and on the Board of Governors of the South Carolina Trial Lawyers Association. He was also a member of the South Carolina Supreme Court Committee on Character and Fitness. His survivors include his wife, a daughter, a son, two sisters and his father, a Fellow of the College and a former State Chair.

Stephen Perry Millikin (86), a Fellow Emeritus from Greensboro, North Carolina, retired from Smith Moore LLP, died October 29, 2007 at age 81. After a summer in college, he entered the United States Navy at age 17. After service in various places in the South Pacific Theater, he was assigned to a destroyer escort, which at the end of hostilities was dispatched to clear mines in the vicinity of Shanghai, China. A graduate of the University of North Carolina at Chapel Hill, and an honors graduate of its law school, he was associate editor of his law review and a member of the Order of the Coif. He later served as president of the UNC Law Alumni Association and was honored with his local bar's pro bono award. His survivors include his wife, three children and two step-children.

Francis D. Morrissey (78), Chicago, Illinois, long-time partner at Baker & McKenzie, died October 11, 2007 of a metastasis melanoma at age 77. Starting on the road to the priesthood at St. Mary's of the Lake University, he switched to law and graduated from Loyola of Chicago, where he was editor of his law review. After retirement from his firm, he taught at John Marshall Law School, where he assembled a group of students known as the "Morrisey Scholars" to write articles on legal ethics and he served pro bono as counsel to the Archdiocese of Chicago. He had served as president of the Illinois Board of Law Examiners and of the National Conference of Bar Examiners. A remarried widower, his survivors include his second wife, a son and a daughter.

Edmund Peter Newcombe, Q.C. (75), a lifelong partner in Gowling LaFleur Henderson, Ottawa, Ontario, died January 31, 2008 at age 83. Educated at Ashbury College and McGill University, he served in the Canadian Armed Forces in World War II. A past Ontario Province Chair in the College, he was actively engaged in many community and charitable organizations. Past President David Scott described him as "an absolutely perfect gentleman whose professionalism placed him high above his peers at the Bar." His survivors include his wife, two sons, a daughter and a sister.

Tally D. Riddell (70), a Fellow Emeritus from Quitman, Mississippi, died January 15, 2008 at age 95. A graduate of the University of Mississippi and of the George Washington University Law School, he was a veteran of World War II. He had served as a state senator, as chairman of the State Educational Finance Commission, as a trustee of Institutions of Higher Learning of the State of Mississippi, as president of the Mississippi Economic Council and president of the Mississippi State Bar Association. A past president of the Ole Miss Alumni Association, he had been inducted into the Ole Miss Hall of Fame. His survivors include his wife, a daughter, a son and two sisters.

William C. Robinson (75), Butler, Pennsylvania, retired from Henninger & Robinson, died August 35, 2007 of pulmonary fibrosis at age 87. A graduate of Wesleyan, he had served as a meteorologist in World War II before earning his law degree from the University of Pennsylvania. His survivors include four daughters, a son and a sister.

George Hardy Rowley (75), a Fellow Emeritus from Tennille, Georgia, died in October 2006. A deck officer in the U. S. Navy in World War II, he was a graduate of Yale and of the Harvard Law School. Before his retirement he had practiced law in Greenville, Pennsylvania.

W. Patrick Ryan (81), a Fellow Emeritus from Stamford, Connecticut, retired from Ryan, Ryan, Johnson & Deluca, LLP, died July 27, 2007. Born in 1930, he was a graduate of Fordham and of its law school.

John E. S. Scott (81), Detroit, Michigan, has died. A graduate of Albion College and of the Wayne State Law school, where he was a member of the law review and Order of the Coif, he practiced with Dickinson Wright PLLC. He had received the second annual Excellence of Defense Award from the Michigan Defense Trial Council, whose president he had once been. He had chaired the Legal Aid and Defender Association of Detroit and the Michigan Appellate Public Defender Commission and was a life member of the Sixth Circuit Judicial Conference and a member of the CPR Panel of Distinguished Neutrals.

Richard Nelson Solman (75), a Fellow Emeritus from Caribou, Maine, died November 14, 2007 at age 74 from complications arising from cancer. A graduate of a combined degree program at Boston University, he was admitted to the bars of Massachusetts and Maine at age 22. An Army veteran, he practiced with the firm of Solman & Hunter PA. A licensed pilot, he had been president of this local bar and of the Maine Trial Lawyers Association and a Fellow of the International Academy of Trial Lawyers. His survivors include his wife, two sons, a daughter a brother, a sister and two step-children.

Don V. Souter (72), a Fellow Emeritus from Belmont, Michigan, died November 5, 2007 at age 84. Attending Grand Rapids Junior College and the Naval V-12 program at Marquette, he served aboard a minesweeper in World War II. A Michigan Law School graduate, he practiced with the Grand Rapids firm Chollette, Perkins & Buchanan. A civic activist, he was known as a dedicated "anti-billboard fanatic," a writer of letters to the editor and a grass-roots political activist. His skiing career, in later years with the 70+ Club, was cut short by a skiing accident when he was 82 years old. His survivors include his wife, a son and a daughter.

Richard F. Stevens (81), Allentown, Pennsylvania,

a member of Stevens & Johnson, died July 22, 2007. Born in 1931, he was a graduate of Muhlenberg College and of the University of Pennsylvania Law School.

Charles Sumner Tindall, Jr. (71), a Fellow Emeritus from Greenville, Mississippi, of counsel to Lake, Tindall LLP, died January 5, 2008, six days short of the 96th birthday. An honors graduate of the University of Mississippi and of its law school, he was editor of his law journal. A lifelong scholar, he had earned a masters degree from Yale Law School and had been an assistant professor at the law school at Mississippi. He had served in World War II as a captain in the Air Force JAG Corps and had been a member of many civic and business boards. His survivors include his wife, two sons and a brother.

John Graham Tucker (54), a Fellow Emeritus from Beaumont, Texas, retired from Orgain, Bell & Tucker, LLP, died January 14, 2008 at age 100. A graduate of Lafayette and of the Harvard Law School, he practiced law for over 60 years, always wearing his signature bow tie, and was recently honored by the Beaumont Foundation of America as a "Southeast Texas Legend." A widower, his survivors include three daughters.

Hurshal C. Tummelson (70), a Fellow Emeritus from Urbana, Illinois, retired from Tummelson, Bryan & Knox, of which he was a founding partner, died January 11, 2008 at age 84. A graduate of the University of Illinois Law School, he was a World War II veteran, a navigator who flew combat missions with the 8th Air Force in the European Theater. His survivors include his wife, three daughters and a sister.

Neil Edward Ugrin (93), Great Falls, Montana, of Ugrin, Alexander, Zadick & Higgins, PC, died on Christmas Eve at age 62 after a long illness. A graduate of Carroll College, where he was student body president, and of the University of Montana Law School, he had been the College's Montana State Chair and president of the Montana chapter of ABOTA. His survivors include his wife and two daughters.

J. Clayton Undercofler 3d (89), a Fellow Emeritus from Phoenixville, Pennsylvania, retired from the Philadelphia firm Saul Ewing, where he had once served as managing partner and chair, died November 14, 2007 at age 66 of cardiac arrest. A graduate of Villanova Law School, he began his career in the U.S. Attorney's office, then went into private practice. He chaired the board of the local public transportation authority for five years and had served on numerous other civic boards. His survivors include his wife and two sons.

Hon. William H. Welch (84), a Fellow Emeritus from Florence, Massachusetts and a retired Massachusetts Superior Court Judge, died October 4, 2007. He was a graduate of Holy Cross and of Harvard Law School.

Hon. Warren D. Welliver (68), a Judicial Fellow from Columbia, Missouri, retired Missouri Supreme Court Judge, died October 29 at age 87. A graduate of the University of Missouri and of its law school, he had served on the Supreme Court for twenty years. A state senator before ascending to the bench, he had served as president of the Missouri Bar Association and on many civic and governmental boards and was the recipient of numerous honors, including a Distinguished Alumni Award from his law school. His survivors include his wife and two daughters.

Hon. George E. Woods (73), a Judicial Fellow and a retired judge of the United States Court for the Eastern District of Michigan, died October 9, 2007 at age 83. A graduate of Ohio Northern University and the Detroit College of Law, he had served as a criminal investigator in the U.S. Army in the Pacific Theater in World War II. He had served as U.S. Attorney for the Eastern District of Michigan and as a Bankruptcy Judge before taking the District Court bench. His survivors include his wife and three daughters.

STUDENT WINNERS HONORED *in* DENVER

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

Dustin Buehler, Candice Tewell and **Aaron G. Thomson** of the University of Washington School of Law in Seattle won the National Moot Court Competition. **Natalie Roetzel** of Texas Wesleyan University School of Law in Fort Worth was the Best Oral Advocate.

Donna Polgar and Karen McCaig of York University Osgood Hall Law School in Toronto made up the winning team in the Sopinka Cup. Polgar was the Best Oral Advocate.

Keya Rajput and **Joshua Jones** of Chicago-Kent College of Law were members of the winning team in the National Trial Competition. Rajput was the Best Oral Advocate and as such the recipient of the George A. Spiegelberg Award.

Gale Cup team winners were **Geoff Grove, William Hutcheson, Jason Reynar** and **Christopher Tucker** of York University Osgood Hall Law School. Reynar was the Best Oral Advocate.

bon mots

I report to four sole practitioners in criminal law. I am their articling student. One of these men . . . is a Fellow of this College. On his way out of the office yesterday, he kindly stopped at my door to wish me luck, and he said, "Don't worry, Donna. Just because you're going to be addressing hundreds of the most accomplished, prestigious, brilliant and talented trial lawyers in North America, you don't have anything to worry about. When you're standing up there and they're all looking at you and listening to you and assessing whether or not you're really worthy of this great honor that you're getting, you shouldn't be nervous at all. I'll see you when you get back. Good luck." And with a smirk and a wave, he was gone.

Donna Polgar, winner of the Best Overall Oralist Award in the Sopinka Cup Competition

WEB INSTRUCTIONS:

HOW TO PERSONALIZE YOUR LISTING ON THE COLLEGE WEBSITE

By **Scott Bryan**
ACTL Web and Communications Manager

The College urges all Fellows to register their contact information on the College website, so that your profile will then be accessible to anyone who visits www.actl.com. You will want your listing to be current and informative, and only you, using your login name and password can edit your profile, including adding links to your firm's website and to your personal professional biographical information. (If you are not computer literate, you can get someone to help you with the entries.) To add to or update your profile, follow this quick and intuitive process:

Go to www.actl.com, and in the upper rights corner of the webpage, click on "Fellow Login" and enter your login name and password. Once you have logged in, click on "Customize your profile." On the screen that appears you will then see entries labeled: "Firm Website," which provides a link to your firm's website; "Attorney Profile," which provides a link to whatever profile you may have on a website; and "Practice Area," which allows you to designate your area of practice.

To supply or update a link to your firm's website, click on the "edit" button at the top of the page and on the screen that then comes up, fill in or correct your firm's web address in the space labeled "Firm website." You will note that you can also make additions or corrections to any other entry on that page while you have it open. You can check to make certain that the firm website link is properly installed by clicking on the green globe to see that your firm's website then appears on your screen. When you are finished checking the accuracy of all your entries and adding links, click on "submit." You will then see a window with the message "Information updated successfully." Click on "OK" and your edited profile will reappear on the screen.

To create a link to a personal website, click on "More info," and then on "Personal." You can then fill in your firm's website or a personal website address by clicking within the appropriate box on the screen that appears and entering the web address. You can also indicate your practice area(s) on this screen by holding down the "Control" key on your keyboard and left-clicking on as many areas as are applicable. You can also use this screen to indicate your preferred mode of receiving communications from the College. When you have entered the desired information, click on "update. " Click "OK" on the window that then appears and your edited profile will again appear on the screen.

When you have done this, you can view your entire profile as edited before closing that screen. You can then log out.

If you log onto the College website, click on "Attorney Directory" and insert your name in the search function, you will see the contact information that is available to the public, as opposed to the more expansive private information that is available to the College from the entries you have made.

bon mots

My husband is great at giving me advice, and yet he missed the mark yesterday. Knowing how nervous I was about having to speak in front of all of you, he suggested that I go to a movie, and the movie he suggested was Michael Clayton. If you haven't seen the film, it's about a trial lawyer who has a nervous breakdown and starts taking all his clothes off in a deposition. Needless to say, it did not calm my nerves.

Inductee Leslie Fields, Denver, responding for her fellow inductees

MEET *the* NEW REGENTS

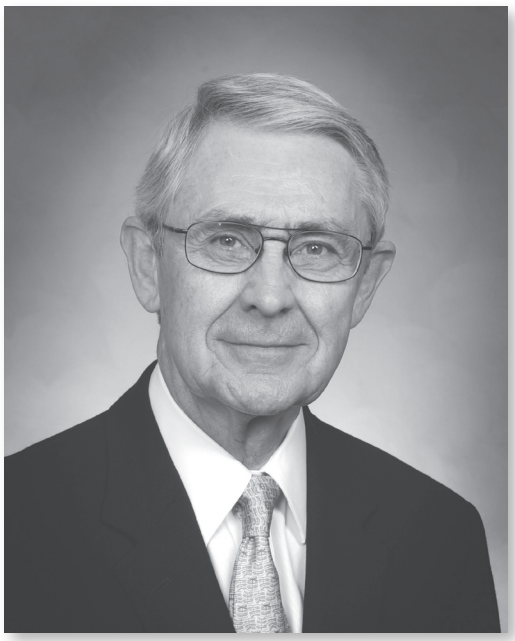
Paul T. Fortino

Paul T. Fortino

Paul Fortino, a partner at Perkins, Coie of Portland, Oregon, was inducted into the College in 1998 and has served as State Chair of Oregon. He has also served on the College's Outreach Committee and chaired the Gates Committee. He is a past president of the Federal Bar Association, past president of the Oregon Association of Defense Counsel and a former delegate to the Ninth Circuit Judicial Conference. He recently received a Learned Hand Award. A 1967 graduate of the University of Michigan, Fortino received his J.D. in 1975 from the University of Notre Dame Law School where he graduated summa cum laude and was Notes Editor of Notre Dame Lawyer. He was a labor relations specialist with Ford Motor Company, 1967-68, Chief Trial and Defense Counsel with the U.S. Navy, Thirteenth Naval District, in Seattle, Washington, 1975-78, and executive assistant to the Judge Advocate General, Washington, D.C., 1978-1980.

Phillip R. Garrison

Inducted into the College in 1990, Phillip R. Garrison has served on the Missouri State Committee; the National Trial Competition Committee of which he was chair from 2003 until 2006; the Judiciary Committee; the Teaching Trial & Appellate Advocacy Committee; the Ad Hoc Committee on Committee Structure; the Essay Contest Committee; the Task Force on Cameras In The Courtroom; the task force on Discovery in conjunction with the Institute For The Advancement of the American Legal System; and the Regents Nominating Committee. From January 1993 until September 2007, he served as a Judge of the Missouri Court of Appeals, Southern District, during which time he authored approximately 800 opinions of the court, served as Chief Judge, and



Phillip R. Garrison

served on the Appellate Reapportionment Commission which drew new boundary lines for the House and Senatorial districts for the State of Missouri. In September 2007, he left the bench to return to private practice with the Kansas City firm of Shugart, Thomson & Kilroy in its Springfield, Missouri office, where he is practicing civil litigation. Garrison graduated from Drury University in 1964 and from the University of Missouri Law School with a J.D. in 1966.

Christy D. Jones

A member of the College since 1997, Christy D. Jones, a partner at Butler, Snow, O'Mara, Stevens and Cannada of Jackson, Mississippi, has served on the Mississippi State Committee for five years and on three general committees of the College—Federal Rules of Evidence, Jury and National Trial Competition. She has been chair of the Mississippi Law Institute and the Drug and Device Committee of the Defense Research Institute. As a member of Merck's national defense team for Vioxx, she tried a number of the cases that led to the recent global settlement. She completed her undergraduate education at the University of Arkansas in 1974, where she was a member of Phi Beta Kappa. She received her J.D. in 1977 from the University of Arkansas Law School, where she graduated with high honors and was managing editor of the Arkansas Law Review.

Christy D. Jones

Paul S. Meyer

Paul S. Meyer

Since becoming a Fellow in 1992, Paul S. Meyer of Costa Mesa, California has served as chair of the Admissions to Fellowship Committee, chair of the Southern California State Committee and vice-chair of the Award for Courageous Advocacy Committee. A former senior homicide prosecutor, Meyer has served as Director at Large for the Orange County Bar Association and on the board of directors for the Center of Lawyering and Trial Advocacy of Chapman University. He has lectured for the U.S. Department of Justice, the National Association of Medical Examiners and several other professional organizations. He received his B.A. and J.D. from UCLA where he served as Chief Articles Editor of the Law Review, and was a member of the Order of the Coif.

GUMPERT AWARD GOES TO TRAIN LAWYERS TO REPRESENT REFUGEE *and* IMMIGRANT CHILDREN

"Some 8,000 immigrant children . . . are incarcerated each year after they come to the United States. They are the victims of abuse and neglect, and yet they have to navigate the most incredibly complex maze of legal problems involving the interaction of state and federal law. What the National Center does, and how it will use our money, is to train pro bono lawyers and legal aid lawyers in the representation of these children as they struggle to deal with a very complex legal system."

Lavinia Limón

Joseph D. Cheavens, Houston, Texas, Chair of the Emil Gumpert Award Committee thus described the work of the 2007 winner of the Emil Gumpert Award, the National Center for Refugee and Immigrant Children.

The Center proposes to use the $50,000 cash grant that accompanies the award to create the Emil Gumpert Resource Center for abused, neglected, and abandoned immigrant children.

In introducing **Lavinia Limón**, President and CEO of the U.S. Committee for Refugees and Immigrants (USCRI), the parent organization of the National Center, he noted, "She has literally devoted her life and career and considerable skills to assisting those immigrants and refugees in need of assistance."

A graduate of the University of California at Berkeley who has spent nearly 35 years working on behalf of immigrant refugees, Limón began working with the resettlement of Vietnamese refugees in the wake of the Vietnam War. Before joining the USCRI in August of 2001, she had served as the Director of the Office of

Refugee Resettlement in the Department of Health and Human Services in the Clinton Administration.

The mission of USCRI, a private nonprofit organization which has been advocating on behalf of uprooted people, regardless of their nationality, race, religion, ideology, or social group since 1911, is to protect and serve refugees and immigrants by defending their rights throughout the world. Domestically, it has resettled over 250,000 refugees since 1975, and both directly and through 35 partner agencies and has served hundreds of thousands of immigrants located across the United States. These services include legal immigration services, English as a second language, employment assistance, translation, health programs and many other programs of acculturation and orientation.

She described the Children's Center as a relatively new program for USCRI. "Our project, the **National Center for Refugee and Immigrant Children,** works on behalf of 8,000 children a year who flee to this country from Latin America, Asia, Africa, and other parts of the world.

"But who are these children? The small children, the young children are brought by smugglers, friends, and strangers. The older children navigate their own way, often victims of traffickers. They are fleeing family disintegration, domestic abuse, societal neglect, gang violence, hunger, disease, and other mistreatment.

"They are apprehended at the border and detained in 37 detention facilities located nationwide. Most are released after a few weeks or months to distant relatives and friends and expected to show up at immigration court. But they have no right to an attorney, and so the project works to help find an attorney for them."

To illustrate the work of the Center, she told the stories of two sisters, ages 7 and 11 whose mother had died, who had left Guatemala to escape a violent alcoholic father and violence in their community. They had come north on their own, walking, hitchhiking rides, begging food from strangers, hiding in shadows. On a small scrap of paper, they had the name and address of a distant relative in North Carolina.

It took them months to get through Mexico and to reach the border, where they were arrested and put in detention. The North Carolina relative agreed to take them in, and their case was referred to the Center.

"But when we helped match a pro bono attorney, he met with them, and they were virtually mute. They'd been so traumatized by their experience at home and during the journey, they could not actually speak a full sentence. So Center staff located in Raleigh, North Carolina, recruited a bilingual counselor and therapist to work with the girls. Their attorney got their case continued, and the girls made slow but steady progress. Eventually, they were able to tell the judge about their persecution and fear of return and were granted asylum."

"I can guarantee you," she concluded, "that without an attorney and without the work of the bilingual counselor, these children would have been sent home. And I'm happy to report now that they're doing well in school, making friends, and thriving in their new environment."

A second client she described was an older teenage boy who came to the U.S. from Guatemala. His mother was murdered when he was three, and he was orphaned at eight when his father died in a work-related accident. He moved among friends' and family members' houses but dropped out of school in the fourth grade.

He was often harassed; gang members tried to recruit him. With no parents to protect him, he left for the United States with a cousin and a friend, but during the trip, the two other boys abandoned him. He spent six months in Mexico trying to find a way north. Finally, he made it across the border and was apprehended and detained and then sent to Maryland, where

GUMPERT AWARD, con't from 55

he had a friend.

The Center staff helped arrange pro bono counsel, and he was granted special immigrant juvenile status, a particular status that very few attorneys, including immigration attorneys, know about. He is now attending high school.

After describing the work of USCRI, the parent organization, and the plight of refugees globally, she concluded: "USCRI . . . does not believe that you can protect people without justice, so the creation of the Children's Center fell naturally within our mission. Everyone believes that children must be protected, but their first line of defense is clearly the exercise of their legal rights. For us, receiving the Emil Gumpert Award, dedicated to maintaining and improving the administration of justice, confirms that even these children, abandoned or orphaned, illegal or undocumented — choose your word — deserve dedicated, competent and compassionate legal representation while their fate is being decided.

"Under the current political climate regarding undocumented aliens, we are grateful to the American College of Trial Lawyers for this extremely courageous stance. . . . We know that many — and they state very clearly — many in the anti-immigrant groups believe that if you just treat these people badly enough, that they will go home.

"This award bolsters our confidence that we are performing a vitally important service for extremely vulnerable children in a professional manner with significant results."

Noting that, "Without the willingness of attorneys across the country to volunteer their services to the Center, we cannot do our work at all," she closed by extending an invitation to members of the College to join and agree to represent a needy child. The Center's website is www.refugees.org.

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The Emil Gumpert Award Committee seeks applications for the award on a continuing basis. It looks to Fellows of the College to suggest to it and to nominate organizations which advance the administration of justice.

bon mots

[T]alking to . . . federal judges, . . . invariably the issue of the sentencing guidelines came up. And it reminds me of a story in which a woman was convicted of stealing a can of peaches. And she appeared before the judge, and the judge says, "How do you plead?" and she says, "I plead guilty, Your Honor." And he says, "Now, you've stolen a can of peaches, and under our sentencing guidelines, I must sentence you to one day in jail for every peach you have stolen. Do you understand that?" She says, "I do, Your Honor." "Do you still want to plead guilty?" "I do." "Is there anything you would like to say before I formally pronounce sentence?" She said, "No, Your Honor." Her husband at that point says, "Your Honor, may I say something?" And the judge said, "Well, that's a little bit out of the ordinary, but, yes, I'll let you say something." "Your Honor, before you sentence my wife, you need to know two things. One is that I was an eyewitness to her crime. And the second thing you need to know is, she also stole a large can of peas."

President David J. Beck

AWARDS, HONORS *and* ELECTIONS

The late civil rights lawyer **Oliver W. Hill** of Richmond, Virginia, has been voted Greatest Virginian of the 20th Century. "Virginians do not bestow such recognition lightly," Past President Jimmy Morris of Richmond said. "Madison was selected for the 18th Century and John Marshall for the 19th. George Washington was number one over all." Hill, who received the College's Courageous Advocacy Award, and who was pictured shaking hands with Queen Elizabeth II on the cover of the Spring 2007 issue of the Bulletin, died August 7, 2007, at the age of 100.

Nancy Gertner, Judge of the U.S. District Court in Boston, Massachusetts, will receive the Thurgood Marshall Award at the Annual American Bar Association Convention on August 9 in New York City. She is the second woman to receive the award. Supreme Court Associate Justice Ruth Bader Ginsburg was the first.

Past President **Robert B. Fiske, Jr**. of New York, New York, has been selected to receive the 2008 Fordham-Stein Prize. Fiske is perhaps best known for his work as special prosecutor in the Whitewater controversy from January-October 1994. Named after prominent Fordham Law alumnus Louis Stein, the award renders public recognition to the positive contributions of the legal profession to American society. Previous winners of the award have included six members of the United States Supreme Court and three lawyers who have served as Secretary of State.

Sylvia Hardaway Walbolt of Tampa, Florida, the second woman inducted into the College, has received the Tobias Simon Pro Bono Service Award, the highest public honor the Florida Supreme Court confers on a private lawyer.

W. Erwin Spainhour of Concord, North Carolina, has been elected president of the North Carolina Conference of Superior Court Judges.

Walter E. McGowin of Tuskegee, Alabama is the subject of a feature story in the January 2008 issue of The Alabama Lawyer. He is the first African-American to be a member of the American Board of Trial Advocates in Alabama.

The Alabama Defense Lawyers Association has renamed its Young Lawyer's Trial Academy the ADLA Bibb Allen Memorial Trial Academy in honor of the late **Bibb Allen** of Birmingham, Alabama. A founder of the ADLA and a past president of the organization, Allen died on March 17, 2007.

CHIEF CIRCUIT JUDGE EXTOLS *Value of* COLLEGE SPONSORED LEGAL EXCHANGES

The College has periodically devoted some of its resources to sponsoring legal exchanges, principally among the common law countries from which its members come. These exchanges have principally involved justices, judges and lawyers (most, if not all, Fellows) from the United States, Canada and Great Britain. By their very nature, the number of participants in these exchanges is limited. In order to accommodate free exchange of ideas among members of the highest courts of the participating countries, few of the papers prepared in connection with the exchanges are published. Tenth Circuit Chief Judge ***Deanell Reece Tacha*** *has been a member of the United States delegations in two Anglo-American Exchanges, 1999-2000 and 2004-05, and the most recent Canada-United States Exchange. We thought it useful and informative to make available to the entire membership an edited version of her address, delivered at the College's 2007 annual meeting in Denver.*

Deanell Reece Tacha

I am here to thank you for the great service that you do to the legal profession. You are the hosts for a powerful professional exchange. Quite simply, you are the only entity . . . who could host this invaluable exchange.

The Exchange is, of course, a series of very important collaborations with colleagues from the rest of the world, and most notably recently for me, from Canada and the United Kingdom. It is very important. It creates lasting friendships and communication links.

The College has made this possible. On the surface, it might just appear to be trips and exchanges in the most superficial sense of the word: lovely locations, extraordinary hospitality, and very hand-picked company. But, in fact, it is the most thought-provoking, insightful, and challenging, substantive set of discussions I have ever been involved with anywhere.

I am convinced that these exchanges in a very real way set a tone and course for the legal profession and the law in each of the countries involved. . . .

Since 1999, I have participated fully in six week-long exchanges, so . . . in a very real and personal way, I owe the American College a great big "thank you." My life as a federal judge has been enhanced and enriched by those exchanges.

But my gratitude is much, much more extensive than my personal experience and enrichment. Instead, my involvement in these exchanges compels me to thank you on behalf of the entire federal judiciary and those members of the state judiciary who have participated. . . . You have used the privileges of your high professional calling to serve the greater good of the legal community by convening exchanges that make a substantive difference in the practice of law, the courts, and society at large.

The exchanges are a lasting legacy to the legal profession in this country and those countries with whom we exchange. It is, quite simply, much, much more than week-long occasional trips, for those trips are the catalyst for profound, in-depth examination of topics that then, I am convinced, become the agenda for the legal profession in the United States, the United Kingdom, and Canada for years to come. What is unique? Well, many international judicial and law-related exchanges occur around the world, but I am not aware of any that throw together the leadership of the judiciary with some of the finest lawyers in each country's trial bar to address the most pressing issues relating to the law and the legal system for this time and for the future.

It is a sad fact of our lives these days that because of conflicts and the need to ensure transparency and public accountability, it is very, very difficult to find venues where judges and lawyers can talk together openly, freely, candidly about their concerns, the concerns that affect the fabric of the legal profession, and even, if I may be so bold, the very future of the Rule of Law in our nation and throughout the world.

Why do they work? Well, some reasons are tangible and some are quite intangible. One tangible one is, as you have already heard, the full engagement of the very highest-placed judges in the country's involved. On the exchanges in which I have participated, I, with all due respect to the other justices, . . . think Justice O'Connor is the spiritual head of the exchanges, and certainly the impetus for many of them. She was on the most recent Canadian-American Legal Exchange, but I have also traveled with Justices Kennedy, Thomas, Breyer, Scalia, and, most recently, our new Chief Justice, Chief Justice John Roberts.

And in the case of the Anglo-American Exchange, Lord Bingham, Lord Woolf, Lord Phillips of Matravers, . . . to name a very few. And in Canada most recently, the really spectacular Chief Justice of Canada, Chief Justice Beverley McLachlin, several members of their Supreme Court.

But it's not just who they are, it's how they participate. They participate in every session. They are deeply engaged in the discussions, and they are part of the full dialogue. It would not be such a success without the leadership of the American College, and I have to give credit to the leaders of the Exchanges that I was on: Ozzie Ayscue, Michael Cooper, David Scott, but all the representatives, the Chilton Varners of the American College, have been full and active participants. And I would be remiss indeed if I didn't give credit to Dennis Maggi and his staff, who do such a prime job.

The format is inspiring. There are no outside speakers, no talking heads . . . . There are very brief papers presented, and even drafted, by the participants themselves. What makes it work is the wealth of experience and intellect that sit down at the table for a full week and contribute to the high level of the discussions and the remarkable blend of theoretical and policy concerns with pragmatic application by those who apply it.

Now, at a group like this, there are simply no shrinking violets. Everyone participates. It's sort of my "let it rip" concept. Everyone is in there with very different views, candidly expressing them, thoughtfully interacting, modeling collegiality and modeling what it is to be a professional. Even the presence of a lot of Supreme Court justices seems to have no chilling effect at all on those

robust discussions. Now, it's very hard to find a group like that.

There are, of course, the intangible factors of dining and living together for a week, and watching the two Chief Justices sing in a sing-along, and trying to see our Chief Justice keep up with Sharon Tremblay in the French Canadian songs. . . .

But that is not the important part. The important part is the agenda. As I have said, I believe they are agenda-setting. Here is where I implore you to make certain, and you can do it along with all of us in the judiciary, make certain that these week-long discussions proliferate throughout our profession. They should become calls to action for addressing issues that demand our attention if we are to preserve and build a professional culture that maintains the values we treasure, while also adapting to the challenges of our time. That is the real exchange. It is the larger conversation on topics that call out—in fact, scream—for the attention of lawyers and judges alike, concerns shared equally by our colleagues in the United Kingdom and in Canada.

The agenda or the list of topics that the American College brings to the table in these exchanges is a template for this call to action for the bench and the bar for years to come.

So what is that agenda? Well, I'm going to give you a very quick litany. I wish I could elaborate on each of these topics, but . . . I promise I won't do that. The mere litany of the topics covered illustrates how the exchanges are agenda-setting. I will give you only a few.

In 1999, the attention of the American legal profession was focused on proposals for rules governing multi-disciplinary practice. Remember that? Our English colleagues, of course, have had many years of experience with multi-disciplinary practice. I remember so clearly looking around that discussion table and seeing the skepticism on the faces of my American colleagues. Well, events in the United States overtook us, but I think that I saw that skepticism reflected out from that Exchange throughout the whole American legal profession in the events that occurred. And as you know, those Model Rules were defeated, and we are still prohibited from multi-disciplinary practice.

Also think about 1999. Technology had just exploded on us, and the courts were certainly not ready in any of our countries. So we began a topic that has continued through 2007 of what effect technology is going to have on the courts. How are we going to, how will we adapt our discovery? How will we adapt our filings, filing briefs, all other things that go with technology in the courts?

Then, as now, an independent judiciary . . . is on the top shelf . . . . At that time in 1999 and still in 2004, the United Kingdom was looking at new ways to select judges and appoint them, and a brand-new role for the Lord Chancellor. Well, we had had a lot of experience with models of judicial selection and appointment, so we exchanged on some of those.

But to fast-forward to the more recent exchanges, Justice O'Connor's words about the attacks on the judiciary, particularly in this country, resound in the United Kingdom and in Canada. And the role of the American College in being what David Scott describes as a watchdog and a responder — a first responder to those criticisms — is so important, and never, never more needed than now. . . .

You who are the leaders of the bar can help. It's not really about the judges. It is about educating the public about why an independent judiciary is a cornerstone of the Rule of Law, one of the central, central components of a free society. That's been on the table at each exchange.

Now, in 1999, in a sort of ironic twist of history, we sat in this beautiful conference room at [the Inner Temple], and I shall never forget the sense that maybe I was going back 200 years, because we were having a discussion about devolution of power to states, because the United Kingdom was devolving Scotland and Wales. . . . Two hundred-plus years later, they're having to learn how to deal with federalism. But here in our country, remember those years around 1999? Federalism was certainly on the top shelf of the agenda of the United States Supreme Court.

Jury trials, jury selection. . . . [I]t's been on the table. Control of professional and judicial conduct, changes in the nature of the market for legal services. That was 1999 and 2000.

9/11 occurred. The next exchange was a very sobering one, the 2004 one . . . , and the topics changed. The topics changed to very much more attention to international tribunals, international crime, terrorism and, in this most recent exchange, how to balance civil liberties, the protection of civil liberties with our security concerns.

I remember sitting down at the 2004 Exchange with our colleagues from the United Kingdom and realizing the enormous strength of the tradition of the common law and the freedoms to which we have become so accustomed and we take so for granted. Because 9/11 not only terrified us, it made us not take it all so for granted. And sitting there with our colleagues from across the Atlantic drove it home, a very important common law tie and bond that we can not take for granted.

We also in that Exchange talked about the Woolf Report. And you all know that in the United Kingdom, Lord Woolf was the leader of a lot of changes in discovery and use of experts in the United Kingdom. We were trying to learn to live with Daubert. . . .

And now, the 2007 Canadian Exchange . . . I will very briefly talk about the topics there, but I want to give you a picture of one day in that exchange. Picture, if you will, standing on the shore at Jamestown, watching a replica of the Godspeed go by on the 400th anniversary of Jamestown that Justice O'Connor so brilliantly chaired. And watching the Lord Chief Justice of the United Kingdom, the Chief Justice of the United States, and the Chief Justice of Canada, Justice O'Connor, Justice Breyer, the Treasurers of the four English Inns, 300-plus representatives of the American Inns of Court, and wonderful lawyers and judges from all those common law countries gathered on the shore at Jamestown to celebrate the Rule of Law.

My friends, I've never had a higher professional moment, nor have I been inspired to go on with these themes and to talk about them everywhere I can. That was the spring side of the Canadian-American Exchange, where we focused on what does the Rule of Law really mean? For it's become a mantra around the world, that we who live it need to give it articulable definition. We need to understand both professionally and emotionally what the cornerstones are, what we need to be advocating, what it is we mean when we talk to the world about the Rule of Law.

Justice O'Connor is, of course, the world's best spokesperson for that, because it means different things to Aboriginal peoples; it means different things to prisoners of war; it means different things to immigrants. Think about it. Can you define for yourself the absolute necessities of the Rule of Law? We need to each be able to do that. We were given the chance to hear from Aboriginal and Native American folks about their view about that, and from a prisoner of war about his view of that.

We're still talking about technology, and I can tell you that top on the list of subjects that deal with technology is the whole question of E-discovery. And, frankly, everybody's worried about discovery, and that's on the table big-time right now, because the judges around the country are saying, "There's way more discovery than there needs to be: it's escalating the costs of litigation; we've got to do something about it, and E-discovery may make it worse instead of better." Only those of you who are leaders of the bar can help us think this through. What is libel? What is slander? What is defamation? What do we do out there on the web?

Certainly the question of reliance on the law of other nations in contrast to domestic law is still an issue on the table, and the United States Supreme Court is considering that issue as we speak. Independence of the judiciary, civil liberties in a time of security, all on the table.

This time, we had a fascinating discussion of wrongful convictions, innocence projects . . . . There is a lot of worry about how we deal with what we're

learning in biotechnology, DNA, and all of the issues related to medical evidence. So, lots of concerns on the table.

The availability and access of justice, and we're not just talking about for the poor. The concern is that the courts are not as available as they once were for much, much different people. Middle America and the middle-income folks of all these countries are struggling with access to justice questions. And at this Exchange, we talked a lot about providing assistance for self-representation: what are the appropriate rules for lawyers in self-representation courts, and also, of course, the role that we must play, not only for middle-income folks, but for the continuing need for those . . . who simply can't get their own representation.

Now, I have saved the last topic that we talked about . . . on this last Exchange for my final topic, and it was reserved for the final topic at the Canadian-American Exchange, because in my view, this may be the most serious issue right now on the tables of lawyers and judges. It is: "Who will be the lawyers and judges of the future? Are young lawyers infused with the passions that we came to this profession with? Do they like being lawyers? Will they be willing to sacrifice enough to be judges?"

There is great unease out there in the profession, because the model of billable hours that has become the model for most of the legal profession in the countries involved has, we are concerned, deprived young lawyers of the opportunity to be working, functioning parts of their communities, to be parts of their families, to be involved in public service, to have the passions that we came to this profession to be part of.

I ask you each to go back . . . to when we all went to law school. Go back and ask yourself, "Why was it I went to law school?" I know what your answers are. Of course we wanted to make a decent living. For some of us, it's not very decent anymore, but that wasn't why we went to law school. We went to law school to make a difference. We went to law school because we thought we would be guardians of the Republic, because we had inherited this great legacy of a free society where we have an independent bench and bar, because we were following in the tradition of those great lawyers who founded this Republic. That's why we went to law school. We thought we could help people. We thought we would be parts of our community. We thought we would be respected. That's why we went to law school.

If we are to leave a legacy for another generation, no, not just of our profession, but of a free people, we need to bring back to the people in this profession a sense of that passion, a sense of that commitment to the greater good, a sense of being part of their communities, serving in universities and 4Hs and Boy Scouts and Girl Scouts and immigrant relief societies. Whatever it is, serving on school boards, being part of the community, because you know the statistics; the lawyers are no longer there very much.

We need to examine this profession, because we will make it what it will be in the future.

You, the members of the American College of Trial Lawyers, are in . . . I think, the single best place to help start reinfusing into the lawyers and the judges in this nation, and more particularly those who might aspire to be part of this profession, a sense of, "We can make a difference. We are those people who inherited those abilities to do civilized debate, to solve our controversies in a civilized and humane way, to be parts of our community."

The real Exchange is to take these wonderful moments that you host and take them on the highways and byways of the United States and Canada and the United Kingdom and say to the world that, from the Magna Carta on, we have been the guardians of a profession that will make a difference and leave a legacy for another many generations, my two new grandbabies, leave a legacy of a free people with an independent bench and bar. If not you, who will do it?

So I view you as . . . going beyond your great privilege and delivering an Exchange that will make a difference for the future.

Thank you.

bon mots

I was a rookie, dazzled and more than a little intimidated by the prospect of debating "the law" with Supreme Court Justices, Law Lords, and Chief Justices. They don't send you any kind of manual telling you what's permissible and what's not at an Anglo American Exchange. But Judge Tacha, with her characteristic amiability and great courtesy, took me under her wing and showed me the ropes. First, she showed me the path to the ladies' room in the Inner Temple, which is somewhat of a secret. Second, she advised me on the level of deference that I should afford Justices Scalia and Breyer. Her view: "Just enough, and then let it rip."

Regent Chilton Davis Varner, introducing her fellow Anglo-American Exchange delegate, Chief Judge Deanell Reece Tacha

"I had a very proper English grandmother, and almost as soon as I knew my ABCs, she had me writing "thank you" letters, thanks to everyone who had ever done anything for me. And I remember in particular one Valentine's Day, which fell on a Sunday. Now, my grandparents lived several hundred miles away from me, but on that Sunday, the local postman in my little town of 300 people in Kansas came to my door and delivered the Valentines from my grandparents. Well, they had arrived on Sunday and the post office wasn't open, and there was my postman. So I called my grandmother to thank her and to tell her, you know, how much I appreciated the Valentines that day. And, of course, her first words were, "Write a thank you letter to the postman." I said, "Grandma, he's just doing his job." Well, my grandmother's retort has remained a watchword for me since that day. She said, "No, Deanell, that is not his job. His job is to put the mail in the mailboxes during the week, and that is it. Instead, your mailman understands that he can use the privileges of his job to serve the people of the community far, far beyond the requirements of his job. Well, today," my grandma said, "that service is making you and me happy by delivering your Valentine. You write him a thank-you letter."

Today I have a great opportunity, and it is to deliver in person a "thank you" letter to the American College of Trial Lawyers. I am here to thank you for the great service that you do to the legal profession. You are the hosts for a powerful professional Exchange. Quite simply, you are the only entity — the only entity — who could host this invaluable Exchange. . . . I view you as my postman, going beyond your great privilege and delivering an Exchange that will make a difference for the future. Thank you."

TENTH CIRCUIT CHIEF JUDGE DEANELLE REECE TACHA

THE BULLETIN
of the
AMERICAN COLLEGE OF TRIAL LAWYERS
19900 MacArthur Boulevard, Suite 610
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STATEMENT OF PURPOSE

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

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