



# THE BULLETIN

## NEW PRESIDENT DALTON: KEEP STANDARDS HIGH



*John J. "Jack" Dalton and wife Marcy. Photograph by Sister Moore, Atlanta.*

*T*he College's membership rolls are filled with lawyers who have handled high-profile cases since its founding in 1950, but not many can say that they represented a client who successfully enjoined the President of the United States.

Con't on page 10

## THE BULLETIN

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(1895-1982)

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*A current calendar of College events is posted on  
the College website at [www.actl.com](http://www.actl.com), as is  
a current compendium of the ongoing projects  
of the College's National Committees.*

# FROM THE EDITORIAL BOARD

The one edition of the Bulletin that is not filled with the proceedings at our two national meetings gives us an opportunity to feature creative contributions from Fellows. In this issue, you will find the history of the early career of a retired Judicial Fellow, submitted to us in his own hand, that evokes memories of simpler times when lawyers were generalists who learned at the feet of experienced mentors. You will also find an amusing, but wise, set of admonitions from a Federal District Judge about how not to ingratiate yourself with a busy court as well as an article on one Fellow's hobby.

We welcome contributions such as these. As always, we also welcome your suggestions about what you would like to see on these pages and volunteers who are willing to take on writing assignments.



## REGIONAL ROUNDUP

At a recent luncheon, the New Hampshire Supreme Court honored the College's New Hampshire State Committee for the trial skills training program it offers to staff members of two organizations, New Hampshire Legal Assistance and the Disability Rights Project.

The College program, undertaken through the leadership of State Chair Jim Wheat after discussions with the Court, was an effort to improve the trial skills of public interest lawyers in these two organizations.

Present at the luncheon, at which the College was presented with a plaque noting its contribution, were all the members of the Court, representatives of the College and representatives of the two organizations that were the beneficiaries of the program. Two members of the five-person Court, Chief Justice **John T. Broderick, Jr.** and Associate Justice **James E. Duggan**, are Judicial Fellows.

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# COLLEGE TASK FORCE AND LEGAL INSTITUTE JOINT REPORT ON SURVEY RESULTS *draws* NATIONAL ATTENTION

Fellows of the American College of Trial lawyers are substantially agreed that cost and delay are impairing the effectiveness of civil courts in the United States. This was the principal conclusion of a September 8, 2008 joint interim report issued by the College's Task Force on Discovery and the University of Denver-based Institute for the Advancement of the American Legal System.



This report, based on an online survey of Fellows of the College engaged in civil trial practice in the United States, has received substantial media attention. As of *Bulletin* press time, it had been the subject of articles in numerous national publications, including the *Wall Street Journal*, *ABA Journal Online*, *Judicature*, *Information Week* and the *National Law Journal*, and in at least two local publications.

The Interim Report, summarizing the results of the survey, together with a more detailed Executive Summary and selected textual comments of survey respondents, is posted on the website of both the College, [www.actl.com](http://www.actl.com), and the Institute, [www.du.edu/legalinstitute](http://www.du.edu/legalinstitute).

## THE ORIGIN OF THE STUDY

The College's Task Force grew out of presentations at the Spring 2007 national Fellows' meeting at La Quinta, at which several speakers documented and addressed



the phenomenon of the vanishing civil jury and non-jury trial. [See, Spring 2007 issue of *The Bulletin*.]

One of the speakers, former Colorado Supreme Court Justice **Rebecca Love Kourlis**, the Institute's Executive Director, attended a meeting of the College's Federal Civil Procedure Committee. After listening to the discussion, she offered the resources of her organization for a joint study with the College of this growing problem.

Situated at the University of Denver, the Institute is a national, non-partisan organization dedicated to improving the process and culture of the civil justice system through comprehensive and objective research and development of practical solutions to achieve a transparent, fair, cost-effective and accountable civil justice system.

In response to Justice Kourlis' offer, then President **David Beck** appointed an Ad Hoc Task Force on Discovery to work jointly with the Institute to explore the issue. The Task Force is chaired by Fellow **Paul C. Saunders**, New York. In the process of conducting their study, the Task Force and the Institute's staff have met in person a total of seven days, met several times by conference call and reviewed both existing literature and past efforts at reform. Four days of these meetings were hosted by the Institute at its University of Denver facility.

## HOW THE STUDY PROCEEDED

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The College gave the Task Force a broad mandate to examine the problems in the civil justice system and to make recommendations to address those problems. The Institute staff helped orient the participants with respect to the history of the Federal Rules of Civil Procedure and past attempts at reform. It familiarized them with existing academic literature that comments on or proposes changes to the Rules.

Research on earlier studies of the cost of litigation presented by Institute staff members challenged some of the participants' preconceptions about the impact of discovery and emphasized the importance of additional research. It was also apparent that the dynamics of litigation have changed since the earlier surveys they reviewed had been conducted.

Recognizing the need to proceed on the basis of fresh information, the Task Force and the Institute decided to administer a survey of active civil trial lawyers to test their preliminary hypotheses about the nature and extent of the problem and its causes and to create a data base for further study. The participants understood that decision-makers who might undertake to address the problem could not implement change based solely on anecdotal information and opinion.

With the College's permission, therefore, the Institute contracted with Mathematica Policy Research, Inc. to conduct an online survey of those Fellows of the College who engage in civil trial practice, agreeing to bear the full cost of such a survey.

The Task Force and the Institute staff drafted the questions for the survey with professional guidance from Mathematica to assure the survey's neutrality. Mathematica then tested the proposed survey questions with a pilot group of Fellows of the College and prepared it to be administered in electronic form.

The survey was conducted over a four-week period beginning April 23, 2008. It was sent electronically to all of the Fellows of the College other than Judicial, Emeritus, Honorary and Canadian Fellows who could be reached through the Internet. A remarkable 42% of the Fellows surveyed, 1,494 of 3,812, responded. Twenty-four percent of those responding represent only plaintiffs, 31% represent only defendants and 44% represent both. Not considered were the responses of 112 Fellows not currently engaged in civil litigation. The percentage of response itself indicated a high level of concern among Fellows of the College about the present state of civil trial courts.

## SURVEY RESULTS

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The Task Force and the Institute



decided that if the survey were to be limited only to questions relating to discovery, it might miss the context in which well-known problems with discovery occur and therefore risk failing to identify some of the sources of those problems. The survey thus was broadened to include questions about the Federal Rules of Civil Procedure in general and about pleading, dispositive motions, the role of judges in litigation, costs and alternative dispute resolution.

The results of the survey confirmed the wisdom of that approach. Although the more obvious problems in civil litigation manifest themselves in the discovery process, it became clear from the survey results that discovery is not the sole cause of the excessive costs and delays that have come to afflict the system.

The survey revealed that, although the civil justice system is not broken, it is in serious need of repair. Resolution of civil litigation has come to take too long and cost too much. Deserving cases are often not brought because the cost of pursuing them fails a rational cost-benefit test, while defendants likewise are often settling meritless cases because it would cost too much to litigate them. The obvious result is outcomes too often dictated by cost, rather than the merits of the substantive issues.

## DISCOVERY

Discovery, though a useful tool, now costs far too much and has tended to become an end in itself. The advent of electronic discovery has greatly exacerbated that problem. Eighty-seven percent of the respondents agreed that electronic discovery is too costly, and 76 percent agreed that electronic discovery issues are not well understood by judges. Although the survey respondents felt that all of the existing discovery devices are important, almost half, evenly divided between those who represent plaintiffs and those who represent defendants, believe that there is some discovery abuse in almost every case.

It seems clear that the respondents would like to see some major changes made with respect to discovery. The “tinkering around the edges” approach to changes in discovery rules in the past is seen to have been a failure. Fifty-three percent said that the cumulative effect of discovery-rule changes since 1976 has not reduced discovery abuse and that more radical changes are required.

For instance, initial disclosure, a relatively new device designed to reduce later discovery, does not appear to be accomplishing that objective. Only 34 percent of the respondents thought that such disclosure reduces discovery and only 28 percent said that it lowered litigation costs.

## PLEADING

Nearly half of the respondents said that notice pleading has become a problem because, absent more stringent pleading requirements, extensive discovery is required to narrow the claims and defenses to those genuinely in dispute. This problem is not limited to the complaint that initiates a civil lawsuit. More than 76 percent said that answers to complaints likewise do not narrow the issues. Fifty-seven percent said that with notice pleading, motions to dismiss on the pleadings are not effective in limiting claims and narrowing issues. This suggests that a further look at notice pleading and its relationship to the present motion and discovery rules may be in order.

## JUDICIAL SUPERVISION

An overwhelming majority, 89 percent, thought that a single judicial officer should handle a case from beginning to end. Where abuses do occur, judges are perceived to be less than effective in enforcing the rules. According to one respondent, “Judges need to actively manage each case from the outset to contain costs; nothing else will work.” Sixty percent also thought that trial dates should be set early in the case. There was, in summary, substantial agreement that judges should take more active control of litigation from beginning to end.

## LOCAL RULES

There was some disagreement about the impact of Local Rules. The respondents were evenly split as to whether Local Rules promote inconsistency and unpredictability or whether they provide necessary flexibility from one jurisdiction to the next. However, 62 percent strongly agreed that Local Rules are not always consistent with the Federal Rules. Local Rules were routinely described as “traps for the unwary” and many respondents think they should either be abolished entirely or made uniform.

## COST

The survey asked a number of questions about the cost of litigation, and the responses were not unexpected. Ninety-two percent said that the longer a case goes on, the more it costs and 85 percent thought that litigation in general and discovery in particular are too expensive. Sixty-four percent said that the economic models of many law firms encourage more discovery than is necessary. Expert witness fees are also a significant cost factor driving litigants to settle, ranking just slightly behind trial costs and attorneys fees in that respect.

## DISPOSITIVE MOTIONS

Those surveyed were of two minds about dispositive mo-

tions. A majority of those who represent plaintiffs felt that summary judgment motions are often used as a tactical device, while those who represent defendants thought otherwise. There was similar disagreement about whether judges often decline to grant summary judgment motions even if warranted and on whether such motions lead to cost and delay. Overall, however, a majority felt that judges take too long to decide dispositive motions, though that opinion varies widely from jurisdiction to jurisdiction.

## THE ROLE OF EXPERIENCE

As one might expect, the survey makes it clear that the system works best when experienced lawyers are involved, when collegiality is encouraged and when competent, experienced judges play an active supervisory role. Experienced lawyers use discovery less or work out disputes among themselves. Supervision by experienced judges was seen generally as a way to narrow the issues to those genuinely in dispute, focus discovery on those issues and generally steer the litigation towards a just, timely, cost-effective resolution.

## NEXT STEPS

The Task Force and the Institute recognize that it is the public that is entitled to a reliable, functioning civil justice system that

resolves civil disputes in a just, affordable and reasonably expeditious manner. The academic and research capability of the Institute, the practical experience and insight of the members of the College’s Task Force and of the Fellows who participated in the survey and the Institute’s generous financial support of this study have combined to place squarely before the public a problem that has been festering and growing.

They also recognize that any change must be the product of an effort that includes everyone with a stake in maintaining a functional civil justice system. The Rules Enabling Act governs the procedures for study and change in the civil justice system at the federal level. The structure of the federal system leaves to each state control of its civil justice system.

Recognizing this, the College’s Task Force and the Institute are beginning to study how other jurisdictions have addressed the problems highlighted by the results of the survey and are considering suggesting a set of principles that might be followed in crafting any changes to the present system. They intend to have completed their joint effort in time to render a final report before the Spring 2009 meeting in Puerto Rico.



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# MISSOURI LAW SCHOOL

## HONORS DEACY

Past President Thomas E. Deacy, Jr., Kansas City, Missouri, was honored by his alma mater, the University of Missouri School of Law, at an April 18 “American College of Trial Lawyers Day.”

A 1940 graduate, Deacy had created the Thomas E. Deacy, Jr. Trial Practice Endowment to expand the school’s trial practice offerings, provide more extensive training in trial practice skills and attract students interested in trial practice.

The occasion included a luncheon that included Fellows of the College and Missouri law students, followed by a trial demonstration, “Voir Dire in a Legal Malpractice Suit.” The participants in the demonstration, all Missouri Fellows, were Former Regent Spencer J. Brown, Kansas City, Mark T. Kempton, Sedalia, Maurice B. Graham, St. Louis, and Dale C. Doerhoff, Jefferson City. Other College Fellows and law students participated as panel members.

“Litigation and trying cases in court,” Deacy commented, “are very important in the

administration of justice. A trend away from trials is threatening this important aspect of the court system and needs to be turned around. Teaching law students these important skills will be helpful to the restoration of this practice. I hope this investment will help counter the trends to other methods of dispute resolution.”

A 1940 graduate of the Missouri School of Law, Deacy is a founding member of the Kansas City firm, Deacy & Deacy, LLP. President of the College in 1975-76, Deacy is its oldest living past president.

“Tom Deacy is truly a ‘trial lawyer’s trial lawyer,’” said law school Dean Larry Dessem. “He has set the standard for trial lawyers across the nation, and his leadership within the American College of Trial Lawyers has inspired and motivated attorneys and law students to strive for the excellence that Deacy’s career has epitomized.”



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## CORRECTION:

Schiavo was spelled incorrectly as Schaivo in a headline on the cover of the Summer 2008 edition of The Bulletin. It was spelled correctly throughout the accompanying article.



# TOP TEN WAYS TO MAKE A FEDERAL JUDGE CRINGE OR CHOKE OR CRY

We are indebted to Judicial Fellow Jack Zouhary, Toledo, Ohio, United States Judge for the Northern District of Ohio, for this humorous bit of wise advice for trial lawyers.

- 1.** Undocumented, miscited or misleading record references -- or play loose with legal precedent -- heck, if you are wrong, the Judge's law clerks will make the necessary corrections. If the transcript citation is not exact, surely it is somewhere in the hundreds of pages!
- 2.** Rambling briefs -- lengthy quotes -- lack of focus -- don't edit or organize -- filing request for more pages day before the brief is due -- that shows the Court how much time and thought you have put in your writing. And remember to emphasize the most trivial details or irrelevant law in all caps and bold font because the Court is unable to figure out what is really important.
- 3.** Cut and paste pleadings or filings -- refer to state Rules or wrong parties -- that will tell the Court you are a busy lawyer with many cases in other courts.
- 4.** Don't concede the obvious every case deserves a dispositive motion -- never file a focused motion for partial summary judgment -- narrow the issues for trial? Nah -- why make it easier -- better to confuse.
- 5.** Ignore Local Rule 37.1 (discovery disputes) -- battle every step of the way -- paper your opponent to death -- the Judge will be impressed with your combative spirit -- and your client will take great pleasure in your increased billing.
- 6.** Don't waste the time to read or understand the Case Management Conference (CMC), Scheduling, Trial Orders -- or any other Order -- heck, the Judge probably doesn't follow them or does not mean what's in them) anyway.
- 7.** Come unprepared for the CMC or pretrials or settlement conferences -- discuss the case with your client for the first time outside in the hallway -- don't take the time to be familiar with your Complaint or your Answer -- never evaluate your case until the Judge asks for your opinion in front of your client -- sure way to justify your hourly rate!
- 8.** Ignore the Federal Rules or the Local Rules -- for example, Civil Rule 41(a)(c): I need what before I file a dismissal? And Civil Rule 55(b)(2): I need what before a default is granted? And Local Rule 37.1(a)(1): What are "sincere, good faith" settlement efforts?
- 9.** Motions to Reconsider are really "Motions to Repeat" -- if the darn Judge didn't get it right the first time, maybe your second effort with the same arguments will sink in.
- 10.** Be late -- keep the Chamber staff, opposing counsel, court reporter, jurors waiting -- great way to make everyone appreciate how competent (and important) you are.

**Jack Dalton**, who accepted the gavel from President **Mike Stout** in Toronto, was first chair in 1981 when his client, Ted Turner, brought a First Amendment and antitrust suit against President Ronald Reagan and the three major television broadcast networks to gain access for cable network CNN into the White House press pool.

"The White House Press Office and the three broadcast networks that were deathly afraid of 24 hour news coverage on cable froze us out of the White House," Dalton said. "After a year we successfully got the CNN camera into the White House press pool, giving CNN and the cable industry the credibility for news reporting they sought."

Dalton's law firm, now Troutman Sanders of Atlanta, was with Ted Turner from the beginning of his media empire.

"Ted was exploiting a local Atlanta television station by putting its signal up on satellite and beaming it back to cable homes around the U.S.," Dalton recalled. "Turner was always growing its networks, film libraries, and sports teams' coverage, so we had a lot of fun and unique cases."

Thirteen years after the White House access case victory, Dalton represented CNN in another unusual First Amendment case

when the network was accused of defying a federal judge's order and telecast excerpts of a taped telephone conversation between the incarcerated former Panamanian President General Manuel Noriega and his lawyer.

"We lost at the criminal contempt trial, but it was an unprecedented set of circumstances to take to trial. Unnamed sources, the government's role in securing the tapes, claims of privilege, prior restraint, and the ability of a judge to preside over a criminal contempt trial when he not only issued the prior restraint order, but spoke on camera to the press about his order—the case had it all, except an acquittal of course!"

### BECOMING A LAWYER

Dalton never set out to become a trial lawyer. In fact, he had no dreams of actually practicing law at all. When Dalton was growing up in New York City, his businessman father had been impressed with the type of training lawyers received and recommended it to his son.

"It wasn't so much you had to practice law, but that you could use the training anywhere," Dalton said.

So after receiving his undergraduate degree from Fairfield University in Connecticut, Dal-

ton enrolled at Northwestern Law School in Chicago.

"I got a summer clerk's job between my second and third year at a firm of about 20 lawyers in Chicago. The firm did a lot of trial work, mostly representing insurance companies."

On his first day, Dalton showed up early only to find out he had no assigned duties; so the hiring partner, who was to begin a trial that day, took Dalton to court with him. It was the first time in his life that Dalton had been in a courtroom. "I was observing a couple of very good trial lawyers," he remembers. "After three or four days I concluded that these guys were having a lot of fun. They enjoyed what they were doing. It was a contest, and I thought, for the first time, 'I could do that.'"

To pursue his new interest, Dalton signed up for a noncredit course in trial advocacy that had just been created by Robert F. Hanley, a College Fellow and later one of the founders of the National Institute of Trial Advocacy. The course met at 9 a.m. on Saturdays for 8 or 10 weeks that fall.

"You had to show up in a suit and tie like a real lawyer. We went through everything from the initial client interview to the mock trial," he said.

One of the course requirements

was to recruit volunteer jurors for the final Saturday's trial, and Dalton recruited his future wife, Marcy Egan. "I don't know whether she voted for or against me that Saturday, but about a year later she answered a much more important question with a 'yes!'" he says. They recently celebrated their fortieth wedding anniversary.

Dalton received his law degree in 1967, practiced in Chicago for a while and then entered the Army. Upon his discharge in 1969, he and Marcy moved to Atlanta, her childhood home.

That was when Dalton met former Georgia governor Carl Sanders and joined his newly formed firm as its ninth lawyer.

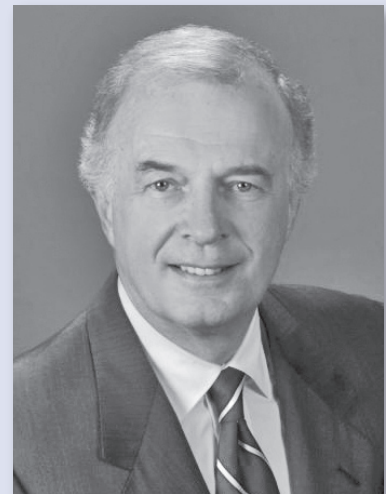
## LEARNING OF THE COLLEGE

Dalton first became aware of the College during that summer job at the law firm in Chicago. He noticed that one of the partners, John Gorman, was then the only lawyer in the firm who had a plaque of his College membership on his office wall.

"I thought it must be something special," Dalton recalled. "He was very courtly and well respected. I later realized that if I were ever lucky enough to be invited into that group I would have to be the equivalent of John Gorman and Bob Hanley.



# JOHN J. "JACK" DALTON



## EDUCATION

B.B.A., Fairfield University, 1964

J.D., Northwestern University, 1967

## EXPERIENCE

Partner, Troutman Sanders LLP,  
1973-present

Inducted, American College of Trial Lawyers, 1985; Served as Treasurer and Secretary before being named President-Elect, 2008; served on committees—Award for Courageous Advocacy, Complex Litigation, Emil Gumpert Award, Regents Nominating. Chaired committees—Georgia State, Regents Nominating.

## OTHER MEMBERSHIPS AND AWARDS

Fellow, American Bar Foundation

Atlanta Bar Foundation

Founding Master and Officer, American Inn of Court, Lumpkin Inn of Court, Georgia School of Law

Northern District of Georgia Federal Bar Council, Former President

Atlanta Bar Association, former director

CLE Lecturer and Author

2008 Recipient, Atlanta Bar Association's Professionalism Award

Super Lawyer selection by Law & Politics and Atlanta Magazine (2004-2008); recognized in The Best Lawyers in America in Business Litigation (1983-2007); Named to Georgia Trend magazine's Legal Elite in business litigation, (2004, 2005, 2006); Recognized in America's Leading Lawyers for Litigation by Chambers USA (2003, 2004, 2005, 2006)

And I set about being their kind of trial lawyer.”

Another role model was Allen Lockerman, a Fellow in Atlanta and a partner in Dalton’s law firm.

Nineteen years later, Dalton was 42 years old when he was inducted into the College in 1985, and Sanders hosted a luncheon at the firm to celebrate.

### PRACTICE OF LAW CHANGED

“I came along when you were able to try lots more cases,” Dalton said. “There were times when you were given a manila folder the day before a calendar call and told to go down to the courthouse and try the case. But what I remember most about those experiences was that having the finality of the trial was what mattered to people. Sure they wanted to win, but mostly they wanted their day in court. Of course that doesn’t happen much any more. Cases get bogged down now by discovery, motion practice, and expense.”

### PLANS FOR HIS PRESIDENCY

Dalton has a clear agenda for his year as president. “Our qualification process to elect only the best and outstanding trial lawyers is essential,” he says. “We have to be dedicated

to continuing to meet our standards and not compromise so that we keep the College and its commitment to excellence paramount.”

Another major goal is simply to continue to provide an atmosphere of good fellowship. “We are a group that was founded to enjoy each other’s company as well as recognize talent. I want to make sure that when we gather, we continue to be glad about being together. The way we have done that in the past is to refrain from those events or policies that may create displeasure that can oftentimes exist in bar groups or in politics.”

“Our objective also must continue to be improving the way cases are tried by calling on the many skills of our Fellows,” he continued. “The College ought to be speaking about things it knows well and those are the trial of a case and the requirements of our judicial systems and our judiciaries. We have been and will continue to be supportive of an independent judiciary in both U.S. and Canadian courts. The College also can aid our citizens in helping them understand the fundamental balance among the branches in our governments. If you don’t have an independent judiciary, we risk having a system that is viewed by the public as untrustworthy, and a system that may indeed become so.”

Another of his goals is to encourage the College’s committees to work more closely together. “There are things that some of our committees are currently doing alone that could be enhanced by collaboration with other committees.”

### DISCOVERY IS RAMPANT

“There is one troublesome issue that I feel our Fellows may wish to address right away,” he says. “The difficulty trial lawyers and their clients face now is a structure hampered by a discovery process that is too cumbersome and too expensive. The College is equipped to help define the tough questions created by this extensive pretrial quagmire. We can’t do that it in one year, and probably not even in several years, but the College’s unified voice should be appropriately offered.”

### PERSONALLY

In his leisure time, Dalton plays golf, enjoys driving around in his classic fire engine red 1963 Mercedes 190SL convertible and taking weekend trips with his wife to the family’s mountain home in Highlands, North Carolina.







# AWARDS, HONORS *and* ELECTIONS

**Kevin J. Kuhn** of Denver, Colorado has been elected president of the Faculty of Federal Advocates. The organization was founded 10 years ago by U.S. District Court Judge Richard P. Matsch to help increase the level of advocacy and professionalism in the District of Colorado Courts.

**Ronald J. Schutz** of Medina, Minnesota has been named chair of the Minnesota Commission on Judicial Selection by Gov. Tim Pawlenty.

**Alan Duncan** of Greensboro, North Carolina has received the J. Robert Elster Award for Professional Excellence from the North Carolina Association of Defense Attorneys. Elster, who is deceased, was also a Fellow.

## ACTL FOUNDATION RECEIVES MAJOR BEQUEST

### *Estate of San Francisco Fellow Bernard Petrie*

Bernard Petrie, a 1983 College inductee from San Francisco who died August 26, 2007, just before his eighty-second birthday, has named the Foundation of the American College of Trial Lawyers a beneficiary of his estate.

His bequest is the largest single gift to the College's Foundation in its history.

The grandson of Russian immigrants and son of the late Yetta Fridman and Milton Petrie, a nationally-known retailer, investor and philanthropist, Bernard Petrie was a graduate of West Point and of the University of Michigan Law School, where he was an editor of the law review. After serving as an associate in law firms in New York City and San Francisco and as Assistant United States Attorney for the Northern District of California, he had practiced in his own law office for forty-five years. A colorful individual who led an active social life,

his annual Bastille Day party was a notable San Francisco event.

A civic activist, he had served as a member of the Board of Governors of the San Francisco Symphony, the Board of Visitors of Stanford Law School and the California Judicial Nominees Evaluation Commission and had served on several local bar association committees. At the time of his death he was a member of the Committee of Visitors of the University of Michigan Law School and a Trustee of New York University School of Law. He was also past president of the Smith-Kettlewell Eye Research Institute and a life member of the California Tennis Club. He was President of the Carroll and Milton Petrie Foundation, Inc. He had been an active member of the American Law Institute, serving on several of its committees.

His survivors include two half sisters.

## A REGENT'S HOBBY:



Phillip R. Garrison©

*Private Moment*, a reflective moment captured by photographer and Regent **Phillip R. Garrison** of Springfield, Missouri.

Garrison, a former judge on the Missouri Court of Appeals, Southern District, now practices Civil Litigation with Shughart Thomson & Kilroy, P.C. Garrison enjoys photography, particularly, architectural, fine art, landscape, portrait, and western.

Each year Garrison travels to Frontier Days in Cheyenne, Wyoming to explore his craft as a “behind the scenes” photographer. One of his western photographs earned him a “Best of Show” at the Quick Silver Show at the Old West Museum in Cheyenne. By the way, the man walking in the photograph is **Sam Daniel**, a Tulsa attorney and a member of the ACTL.

The Bulletin is interested in hearing about unusual hobbies of other Fellows.



# COLLEGE SPONSORS LOOK AT VANISHING JURY TRIAL

Federal and state trial and appellate judges from around the nation gathered on January 24-26 in Dallas for a College-sponsored National Symposium to address the long-term consequences of the vanishing jury trial.

The Symposium was a continuation of the College's efforts to address what if anything could be done about these issues.

In addition to the judges, participants included general counsel from major companies, a media representative, and others for a total of about 40 meeting at the Center for American and International Law in Dallas.

**Mike Smith** of Richmond, Virginia, chair of the College's Jury Committee, was in charge. Jury Committee members attending and serving as facilitators of the discussion groups were **Kevin Dunne** of San Francisco, California; **Walt Sinclair** of Boise, Idaho; **Terry Tottenham** of Austin, Texas; **Liz Mulvey** of Boston, Massachusetts; and Regent **Bruce Felmlly** of Manchester, New Hampshire.

The five discussion groups produced a number of recommendations that were presented to the Board of Regents at its Spring meeting and again at the recent Fall meeting in Toronto. The recommendations were:

## A. JUDICIAL SYSTEM

1. Engage the leadership of the federal and state judiciary about the nature and urgency of the erosion of the jury trial as the core of our constitutional dispute resolution method.
2. Trial judges and court managers need to understand that a trial is not a "failure of the system." Trying jury cases needs to become important to judges.
3. Develop and publicize "fast tracks" for the speedy and inexpensive resolution of smaller claims.
4. Increase judicial involvement in docket/discovery management, and develop suggested case management systems to enhance judicial management with focus being on trial.
5. Discovery is becoming an end, not a means to an end. The cost and inconvenience of discovery is driving cases out of the system. Develop steps to avoid excessive discovery and discovery disputes; focus on electronic discovery.
6. The role of expert witnesses needs to be re-examined.
7. Changes to the jury trial itself. Make it easy for more people to serve. Make it harder for people to avoid jury duty.
8. Reconsider the role of the 12-person jury

## B. PUBLIC INVOLVEMENT

1. We need education. Appoint a national prominent leader and standard bearer, such as Sandra Day O'Connor, to assist in carrying the message.
2. Develop clear, persuasive talking points that highlight the loss of the jury trial: one set for the judiciary and system insiders, and one set for the public and clients. Get top-notch PR assistance.
3. Develop relationships with legislative, industry and media representatives who can carry the "message" about the value of jury trials.
4. Develop an action plan in each state.
5. The public must understand the necessity and responsibility of serving as jurors. They need to become more aware of the importance of the justice system.

The College's Foundation, chaired by **Stu Shanor**, provided a grant to fund this project.



# THE WAY IT WAS

By **Hon. James M. Porter** (Retired in 2001, but still sits on assignment when needed),  
Cleveland, Ohio. Inducted 1979.

*From time to time we enjoy printing the reminiscences of some of our older Fellows. James M. Porter, Cleveland, Ohio, Retired Judge of the Cuyahoga County Common Pleas Court, was inducted as a Fellow in 1979. His recollections of his early career, submitted to us in his own hand, will evoke for many a sense of nostalgia for a world that, for better or worse, in most places no longer exists.*



*James M. Porter*

## JOB SEARCH, FIFTIES STYLE.

It was over fifty years ago that I joined the law firm of M.G. & H.H. Johnson (a ten-man office) at 164a Union Commerce Bldg. I was fresh out of Michigan Law School and a walk-on at MB&HH.

Cleveland was in the Golden Age of legal business, post World War II, and the town was a beehive of industrial and corporate activity and growth. It was a good time to be a lawyer—if you had a job.

I contacted MB&HH by simply walking in the door on the 16<sup>th</sup> floor over the 1956 Christmas holidays. The Union Commerce Building housed almost all the major law firms: Jones Day was on the 17<sup>th</sup> floor, Squire Saunders the 18<sup>th</sup>, Baker Hostetler, the 19<sup>th</sup>, Arber Hadden, the 11<sup>th</sup>, etc. . . .

The silver-haired receptionist/switchboard (PBX) operator told me to wait as I presented my credentials. Soon, I was ushered in to the offices of Robert W. Wheeler, a mid-level partner. He perused my resumé and letter of introduction from a Michigan law professor. He indicated they might be interested, but usually only hired Harvard men. In any event he inquired about the remainder of my law school days, my Law Review work and at what salary I would expect to start. I told him that \$450 per month (or \$5,400 per annum) seemed to be the going rate.



Mr. Wheeler did not seem shocked at this and upon seeing me out, indicated they would be in touch. I returned to my senior studies.

By letter dated February 18, 1957 to me in Ann Arbor (I still have it) Mr. Wheeler advised that they would like to interview me again and would pay my expenses to Cleveland. Upon my visit in early March, I met with John H. Watson, Jr. (the principal senior partner) and Mr. Wheeler, who interviewed me for 20-30 minutes. Then Mr. Wheeler excused me and asked me to call back in one-half hour. I did so. He offered me the position to start in September 1957 after my summer graduation. I did not accept immediately, calling my Uncle John, a bachelor lawyer, for advice. "Take it, you darn fool – you are a liability not an asset – maybe they will make a lawyer out of you." was his advice, and so I did.

I took the bar exam in July 1957 . . . and joined the firm in September.

## LAW PRACTICE IN THE FIFTIES

MB&HH was one of the oldest firms in town. It was founded by Homer H. Johnson, an 1885 graduate of Oberlin and Harvard Law (1888), the year he started the firm. He had been an Oberlin classmate of Charles Martin Hall, who invented aluminum

and founded Alcoa, a client of the firm. The firm also represented White Sewing Machine since 1888 plus White Motor and numerous old-line Cleveland corporations. I worked primarily for John Watson and Bob Wheeler at whatever needed doing. Watson, a bachelor, was the son of the former Chief Justice of the Vermont Supreme Court and an old fashioned Yankee, who arrived at the office in his chauffeur-driven 1938 Packard exactly 8:30 a.m. each morning. Bob Wheeler was the son of Wayne Wheeler, who, I later learned, was a temperance leader of his day and responsible in large part for passage of the Volstead Act. John Scott, Sr., the other senior partner with Watson, was the trial lawyer and former President of the Cleveland Bar Association. His son, John Scott, Jr., about seven years my senior, soon became my friend, confidant and mentor.

The firm's facilities were spacious, comfortable, furnished in late 19<sup>th</sup> Century simplicity. Modern conveniences were kept to a minimum. There was no air-conditioning. The library was well kept, with reports dating back to the earliest Ohio cases. There were two spittoons, well-situated. Office hours were 8:30 a.m. to 5:30 p.m., except Saturday, when we quit at 4:00 p.m. On Saturday in the summer we broke at noon, since Mr. Watson tended to his rose garden on those afternoons.

Billing procedures were simple. Since we were so small, we kept no time charges. Bills were sent out once a year on New Year's Day, when the partners met and decided how much to bill "for services rendered," and how to split the profits. Watson is reputed to have said: "What else is there to do on New Year's Day?"

Each lawyer had a secretary or shared one: dictation by shorthand, old manual typewriters (Smith Corona/Underwood, etc.), before the days of electric typewriters. If there was an error on the original document, each carbon copy had to be erased and corrected at the same point. There were no Xerox machines – not invented yet.

The firm maintained a medieval "letterpress," which meant that each letter (and page thereof) that left the firm had to be run through this device on some kind of wet-paper linen under pressure, which recorded an imprint by volume and page, so that in one place the firm had a chronological history of every letter that left the office.

## THE EDUCATION OF A YOUNG LAWYER

My first assignments at the office were menial: reading the *Daily Legal News*, filing CCH reporter supplements and substitute pages and assorted library work,



proof-reading and trips to the Recorder's office, the Federal or State courts, for filing or to check the docket. As silly as this sounds, I didn't mind this. I soon found what all the books were for and how they worked. I was introduced to works I had never heard of: *Words and Phrases*, the key number digests, the Revised Code and so on. On trips to the Courthouse, I soon got to know the desk clerks, particularly at the Probate Court, the Common Pleas Assignment Room and the Federal Court Clerk's office. These staff people were uniformly helpful if you treated them with respect and sought their advice.

Well, finally, or at the same time, I got some serious research work on a case that eventually ended up in the U. S. Supreme Court, *U.S. v. White Motor Company*. This introduced me to antitrust law, which I never took in law school but which was to dominate my career in years ahead. . . . The Department of Justice sought to civilly enjoin White Motor from maintaining exclusive territories for its distributors and dealers of White trucks, claiming violations of the Sherman Act as unreasonable restraints of trade. . . . The Government won in the trial court on summary judgment . . . . I went to Washington, D.C. with John Watson on the B & O overnight and hired an experienced Supreme Court advocate, Gerhard Gesell. White won on its appeal . . . in that the Supreme Court reversed and sent

it back to hear evidence because "it did not know enough of the stuff of which these restrictions were made." . . . A consent decree disposed of the case. . . .

Many a day, all day, I spent at the Cleveland Law Library in the old Lakeside Courthouse, using their vast research tools not available in the MB&HH library. The library was run at the time by Art Fiske, a scholar and docent, generous with his time, who frequently pointed me to the right stack of books to continue my research. I spent so much time there, that Art and his sister, Alice, frequently included me in their luncheon trips to Mills famous cafeteria on Euclid Avenue. I sometimes wonder if our modern computers offer the same assistance and advice as the Art Fiske's of their day. . . .

### A WORLD OF GENERALISTS

I got to work on significant acquisitions in the late 50s and early 60s for White Motor and White Sewing. My work was done at the meanest level (drafting, proofreading, notarizing, reviewing contracts, bills of sale, sidetrack agreements, assignments, etc.). All the same, this began to give me an appreciation and understanding of business and commercial activities, how deals were structured, plus corporate legal work with in-house counsel and executives. This was to stand me in good stead, since I continued to work on

acquisitions and mergers (some 30) over the following years. Because the firm was so old, it had much probate and trust work for long-time clients. Thus, Bob Wheeler got me involved in trust and estate work. I soon learned how to probate an estate, release assets, prepare Federal and State tax returns, prepare inventories, render accountings and all the miscellaneous activities that go into that field, including the preparation of wills and trust instruments. Without helping myself, I was fast becoming a generalist, which I never regretted. This left little time for my own trial work, but that would come soon enough.

### THE END OF AN ERA

Finally, our two senior partners John Watson and John Scott, Sr. died 8 months apart in 1962. They were long preceded by Homer Johnson's death at age 98. This was a sad time. These men and their colleagues and families had all been very kind to me and my young family. John Watson left me \$15,000 in his will, which enabled us to buy our first house. He remembered every member of his staff as well with a bequest. But more than that, they went a long way in helping me "become a lawyer," as Uncle John would say. My apprenticeship was probably over, but you never stop learning. . . .



# IN MEMORIAM

*In this issue we note the passing of eleven Fellows known to us to be veterans of World War II and three veterans of the Korean Conflict, several of whom were decorated for valor. We also lost one participant in the prosecutions at Nuremberg, one Fellow who played the role of a judge in The Firm, one who had represented Pete Rose in his troubles with major league baseball, one who had been a member of the Ronald Reagan presidential transition team, a former Justice of the Supreme Court of Canada, a state senator whose death prompted an order that the flags in his state be flown at half mast, a Fellow who hosted a radio program entitled "Interludes of Poetry" and another who was a noted photographer. Unfortunately, the College received late notice of the deaths of eight Fellows, so that more than rudimentary information about some of them was no longer retrievable.*

**Carter R. Allen** (75), Waynesboro, Virginia, died July 10, 2008 at age 86. A West Virginia native, he graduated from Marshall College in 1943 and immediately entered the US Navy. A gunnery and material officer on a destroyer, he participated in major engagements that included the Gilbert, Marshall, Eniwetok and Marianas Islands, Hollandia, New Guinea, Palau, Leyte, Mindoro and Luzon and the invasion of Okinawa. A post-war graduate of Washington & Lee School of Law, he practiced law for fifty-four years, starting as a solo practitioner and ultimately becoming the senior partner in a firm currently known as Allen & Carwile PC. He had served as Commonwealth Attorney in Waynesboro for fifteen years and as city attorney for a total of twenty-five. A past president of his local bar, he had been an elder and a deacon in his Presbyterian church and had served as the president or director of numerous community organizations and various banks and lending institutions. Noted for his sense of humor, he was an avid tennis player for most of his life. A widower, his survivors include three daughters.

**Will J. Bangs** (82), a Fellow Emeritus from Boston, Massachusetts, retired from Choate, Hall & Stewart, LLP, died July 4, 2005. A graduate of Michigan State University and of the University of Michigan Law School, he was born in 1923.

**Bryant M. Bennett** (68), a Fellow Emeritus from Lafayette, California, retired from Bennett, Samuelson, Reynolds & Allard, died May 31, 2008 age 88. A graduate of UC Berkeley and of Boalt Hall School of Law, where he was editor-in-chief of the law review and a member of the Order of the Coif, he was an agent in the Criminal Investigative Division of the US Army during the post-war occupation of Germany. He had been president of the Alameda County Bar Association and vice-chair of the Executive Committee of the State Bar of California. His survivors include his wife, a son and a daughter.

**Walter M. Bjork** (55), a Fellow Emeritus, retired to Scottsdale, Arizona, died November 24, 2006.



Born in 1914, he had graduated with high honors from the University of Wisconsin School of Law at age 21. An assistant district attorney in Madison, Wisconsin before World War II, he was a captain in the US Army, winning a Bronze Star for leading a counterattack that saved the lives of many men in his division. He had also been a Judge Advocate in the Nuremberg Trials. He was for years the chief trial attorney in the Madison firm Roberts, Roe, Boardman, Bjork, Suhr, Curry & Field. He argued twenty-four appeals before his state supreme court, winning all but one. After leaving private practice, he became corporate counsel for Dairyland Insurance Company and Sentry Insurance Company. He had at various times been both police commissioner and fire commissioner in Madison. A widower who had remarried, his survivors include his wife, two sons, a step-son and a step-daughter.

**Darrell T. Braidwood, Q.C. (77)**, a Fellow Emeritus from Maple Ridge, British Columbia, retired from Sutton Braidwood, died June 23, 2008 at age 90. He earned bachelors and masters degrees from the University of British Columbia, and was a graduate of both Osgoode Hall and Vancouver Law Schools. He was a life bencher and a former Treasurer of the Law Society of British Columbia and had served as a member of the Canadian Bar Association Council and as chair of the CBA Insurance Law Section. Active in community affairs, he had been president of the University of British Columbia Alumni Association and of the Vancouver Board of Trade, in which latter position he had traveled extensively on worldwide trade missions. His survivors

include his wife, a daughter and a son.

**George E. Brand, Jr. (70)**, a Fellow Emeritus and former Regent from Grosse Pointe Park, Michigan, died June 25, 2008 at age 89. A Phi Beta Kappa graduate of Dartmouth College and the University of Michigan School of Law, he had begun his practice with his father, before joining the Detroit firm Butzel Long, where he became a managing partner and, in 1962, the first chairman of the firm. A decorated Navy veteran of World War II, he was the forward air strike director in the invasion of Guadalcanal. He was described by one of his partners as a lover of life who was a reckless downhill skier, with a badly shattered leg to prove it, and who often drove his sports car with the top down on snowy days. His survivors include his wife, two daughters and a son.

**Louis G. Close, Jr. (81)**, retired managing partner of Whiteford, Taylor & Preston, Baltimore, Maryland, died October 5, 2008 of complications from Alzheimer's disease at age 73. A graduate of Washington & Lee and of the University of Maryland School of law, his survivors include his wife, three daughters and a son.

**Al J. Cone, (83)**, a Fellow Emeritus from Ocala, Florida, died August 22, 2008 at age 87. He spent most of his professional life as a member of Cone, Wagner, Nugent, Johnson, Roth and Romano. A World War II veteran, he graduated from the University of Florida School of Law, taught there briefly, then joined an insurance defense firm. Leaving that firm, he created a leading plaintiffs' litigation firm, a number of whose alumni, including



a current member of the Florida Supreme Court, moved on to the bench. He was the first president of the Florida Academy of Trial Lawyers (now the Florida Justice Association), which has created both an Al J. Cone Lifetime Achievement Award and an Al J. Cone Advocacy Institute for young lawyers in his honor. His survivors include his wife, two daughters and three sons.

**Hon. W. Frank Crawford** (82), a Judicial Fellow from Memphis, Tennessee, died April 17, 2008 at age 81 of lung cancer. Having served as a paratrooper for a year, he entered Union University and received his law degree from the University of Tennessee. He had sat on the Tennessee Court of Appeals for twenty-six years, for twelve of which he was the chief judge. He had practiced law in Memphis and in Henderson, where he was city attorney, and for the Tennessee Valley Authority before going on the bench. In private practice, his most celebrated case was his representation of Elvis Presley's physician before the Tennessee Board of Medical Examiners after the singer's death. On the bench, he wrote many important opinions, the most well-known being the majority opinion that ruled that the Tennessee statute making homosexual acts a crime was unconstitutional. In 1992 he landed a speaking role in the movie *The Firm*, playing the part of the judge who swore in the young attorney played by Tom Cruise. His survivors include his wife, a daughter and three sons.

**Richard D. Cullen** (88), Victoria, Texas, a member of Cullen, Carsner, Seerden & Cullen, LLP, died July 8, 2008 after several months' illness at age 81. Accidentally blinded in his right eye at age 7, he

accepted his disability as a challenge. A member of Nebraska's state high school championship football team, he turned down a football scholarship to the University of Nebraska, attempting unsuccessfully to enlist in the Army. He then enrolled in the University of Notre Dame, and shortly thereafter he was drafted into the Army. Returning after his military service, he was editor of the Notre Dame yearbook and Grand Knight of the Knights of Columbus, and he won the "Dome Award," the highest honor bestowed on a Notre Dame student. He was a cum laude graduate of both undergraduate and law school at Notre Dame. In Victoria, he had led a wide variety of civic, charitable and religious organizations, as well as his local bar. His survivors include his wife, two daughters and two sons.

**Louis-Philippe de Grandpré, C.C., Q.C.** (73), St-Lambert, Quebec, a founder of Tansey, de Grandpré et de Grandpré, died January 24, 2008 at age 90 of pneumonia. A graduate of College Sainte-Marie, he studied law at McGill University. At age 29, eight years after he was called to the bar, he was diagnosed with syringomyelia, a rare and degenerative neurological condition. Virtually paralyzed on his right side, unable to write by hand and hampered by a limp, for the rest of his life he dictated all his briefs to his long-time secretary. A civil litigator, he had served as president of the Montreal Bar, the Quebec Bar and the Canadian Bar Association. Then, in 1994 he was appointed to the Canadian Supreme Court. After serving for three and one-half years, he left the bench and returned to private practice, where he came to be regarded as the mentor of many younger lawyers.



He had been made a Companion of the Order of Canada and a Grand Officer of the National Order of Quebec. His survivors include his wife, two daughters and two sons.

**John F. Dunn** (72), a Fellow Emeritus from Boston, Massachusetts died November 1, 2002 at the age of 94. He began practicing with his brother in the firm of Dunn & Dunn, specializing in medical malpractice cases. He later was with the firm of Dunn & Rogers and with the firm of Charles J. Dunn, Jr. His survivors included three sisters and two brothers.

**Hon. Andrew Jackson “Jack” Ellis, Jr.** (85), died at his farm home in Beaverdam, Virginia, on October 12, 2008 at age 78 of lung cancer. After graduating from Washington & Lee and from its law school, he had served in the Army’s Judge Advocates Corps in France. He then returned home to Ashland, Virginia, where until 1970 he practiced law, serving at various times as mayor and as commonwealth’s attorney. In 1970, he became county attorney for Hanover County and joined the Richmond firm Mays & Valentine, where he practiced until his retirement. After his retirement, he served as an interim judge of the Hanover Juvenile and Domestic Relations Court. A former president of the Ashland Chamber of Commerce, and a former trustee of J. Sargeant Reynolds Community College, he had served on numerous civic and business boards. His survivors include his wife, two sons and a daughter.

**James W. Evans** (78), Harrisburg, Pennsylvania, retired from Mette, Evans & Woodside, PC, died

July 25, 2008 at age 82. After serving in the US Marine Corps in World War II, he earned his undergraduate and law degrees from Dickinson College. He specialized in medical malpractice defense. He is best remembered in Harrisburg for his leadership in the creation of Harrisburg Area Community College and the revitalization of the decaying downtown of the capital city of Pennsylvania. The Pennsylvania Defense Institute had named him its Lawyer of the Year in 1997, and he had been the recipient of numerous awards for his civic service.

**Francis A. Even** (77), a Fellow Emeritus from Chicago, Illinois, a retired partner in Fitch Even Tabin & Flannery, died May 25, 2008 at age 87. The fifth of seven children, he was a graduate of the University of Illinois. In World War II, he served as a major in the Third Infantry Division, 10<sup>th</sup> Engineer Combat Battalion, in North Africa, Sicily, Italy, France, Germany and Austria. Remaining interested in military history, he wrote two books about the World War II period. In 2004, he was awarded the Legion of Honor by the French government in recognition of his service in the liberation of France. Discharged from the Army, he worked as a test engineer for General Electric while attending George Washington School of Law at night on the GI Bill. After graduation, he returned to his native Chicago, joining its oldest law firm, founded in 1859. His practice focused on intellectual property. He had served as the chair of the Patent, Trademark and Copyright Section of the Illinois State Bar Association, as a member of the Board of Managers of the American Patent Law Association and as president of the Patent Law Association of Chicago. He had also served as president of his local suburban

school board. His survivors include his wife and two daughters.

**Clarence Fried** (68), a Fellow Emeritus from Fort Lauderdale, Florida, who was born in 1908, died in 2000.

**Joseph V. Gartlan, Jr.** (75), Mason Neck, Virginia, died July 18, 2008 of sepsis at age 82. A graduate of Georgetown University and of its law school, he had served in the US Naval Reserve during World War II before entering college. Until his retirement from practice in 1986 to devote his time to the Virginia legislature, he had practiced law in Washington, D.C. with Melrod, Redman & Gartlan. Elected to the Virginia Senate in 1972, he served seven terms and at the time of his retirement from that body was its second senior member. Described by the *Washington Post* as a heartfelt liberal in a conservative General Assembly, he was known as a champion of the environment and the rights of the mentally ill, women, children and the poor. He had chaired the multistate Chesapeake Bay Commission, which coordinates environmental policies among Maryland, Virginia and Pennsylvania. A skilled orator, his farewell address in the Virginia Senate drew a standing ovation. At his death Virginia Governor Timothy Kane ordered that state's flags flown at half mast in his honor. His survivors include his wife, two daughters and seven sons.

**James M. Glasgow, Sr.** (79), Union City, Tennessee, died June 9, 2008 at age 88. A member of ODK, a graduate of the University of Tennessee School of Law and a World War II Air Corps veteran, he had served as a state assistant attorney

general for nine years before returning to private practice in the firm of Elam, Glasgow & Chism. He had served in both the House of Delegates and the Board of Governors of the Tennessee Bar Association and had chaired Tennessee Supreme Court Commission on Specialization and the Tennessee Bar Foundation. He represented the State of Tennessee in *Baker v. Carr*, the United States Supreme Court case that which established the principle of one man, one vote. His survivors include his wife, a son and two daughters.

**Paul Matthew Hawkins** (77), of Hawkins & Parnell, LLP, Atlanta, Georgia, died September 27, 2008 of lung cancer at age 74. A graduate of Emory University and of its law school, he was a past State Chair in the College, the former president of the Old War Horse Lawyers Club and a founding trustee of The Georgia Trust for Historic Preservation. He was a recipient of the Georgia State Bar Tradition of Excellence award. His survivors include his wife and four children.

**Jack E. Horsley** (58), Mattoon, Illinois, died May 15, 2008 at age 92. A graduate of the University of Illinois and of its law school, he served as an Army Judge Advocate General in the European Theater in World War II, achieving the rank of lieutenant colonel. He had served as president of his local bar and of the local school board. A prolific writer, he was a contributing editor for a variety of medical-legal publications and a frequent correspondent of successive presidents of the College. He also authored numerous books. For almost twenty years he was the host and narrator of a nightly program



on his local radio station entitled “Interludes of Poetry.” He had recently been named a Laureate of the Academy of Illinois Lawyers. Thrice a widower, his survivors include a daughter, a son and an adopted daughter.

**Allyn Overton Kreps** (85), a Fellow Emeritus from Glendale, California, died September 9, 2008 at age 78 of complications from Parkinson’s Disease. A graduate of Harvard, he had served as a naval officer in the Korean Conflict before earning his law degree from Stanford. He practiced with O’Melveny & Myers in Los Angeles, when, after managing California Democrat Alan Cranston’s campaign for the united States senate, he had served for four years of Cranston’s Washington staff. After returning to California, where he practiced until his 2005 retirement, he had chaired a bipartisan commission to recommend candidates for federal judgeships and U.S. Attorneys. His survivors include his wife, two sons and two daughters.

**John D. Levine** (80), of counsel to Dorsey & Whitney, LLP, Minneapolis, Minnesota, died unexpectedly on October 13, 2008. Born in 1936, he had graduated from Carlton College and Yale School of Law. As counsel to the firm, he had participated in new lawyer training and trial advocacy workshops. Indeed, he had been working with young trial lawyers in his firm on their deposition skills the day before his death. As a partner, he had served on his firm’s management committee and had headed its trial department. His strong commitment to pro bono work had led him to

help found the Legal Advice Clinics, now called Volunteer Lawyers’ Network, with which he had been involved for thirty years. He had received a Distinguished Service Award from the Hennepin County Bar Association. His survivors include his wife, a son and a daughter.

**Roger J. Makley** (92), Dayton, Ohio, died September 12, 2008 at age 74. He had recently been diagnosed with cancer and had suffered a stroke. A graduate of Georgetown and of its law school, he had been a United States Attorney and had served as a federal magistrate for seven years in the seventies. A high-profile white collar defense lawyer, who had been involved in many celebrated cases, he was best known for his representation of major league baseball player Pete Rose in his dealings with the baseball league and with the IRS. He had served as president of the Dayton Legal Aid Society and was on the recruiting committee for the Dayton School of law, where a room had been named in his honor. At the time of his death he was practicing with Boucher & Boucher Co. His survivors include his wife, three daughters, one son and two step-sons.

**James M. Manire** (67), a Fellow Emeritus from Memphis, Tennessee and a former Tennessee State Chair, died July 27, 2008 at age 90. After attending the University of Virginia, he volunteered for the US Navy in 1940 and served as the commanding officer of minesweepers and destroyer escorts in the Atlantic, Mediterranean and Pacific Theaters. Discharged as a lieutenant commander, he returned to law school at Virginia,



where he was editor in chief of his law review. A past president of his city, county and state bars, and a lifetime member of the Sixth Circuit Judicial Conference, he had served as city attorney of Memphis and as a professor of law at Memphis State. He had been honored by his local bar with its Lawyer's Lawyer Award and recognized by the University of Memphis Law School as a Pillar of Excellence. His survivors include his wife, two sons, a daughter and a step-daughter.

**Donald P. McLaws** (76), a Fellow Emeritus from Calgary, Alberta, Canada, died June 12, 2008 at age 94. Retired from Parlee McLaws, an outgrowth of his father's firm, which he had joined after finishing law school in Edmonton, he had spent his last years in a retirement care center. During his career, he had acted as president of the Law Society of Alberta, president of the Calgary Stampeders and president of the Calgary Golf and Country Club. A widower, he is survived by two sons and two daughters.

**William R. Murphy** (74), a Fellow Emeritus from New Haven, Connecticut, a graduate of Yale University and of its law school, where he was executive editor of his law journal, has died. Born in 1927, a U. S. Navy veteran of the Korean Conflict era, he was retired from Tyler Cooper & Alcorn.

**John E. North** (73), Omaha, Nebraska, a member of McGrath North Mullin & Kratz, PC, LLO, died May 6, 2008 at age 82. A World War II veteran, he had served in the Naval Air Corps. After earning his law degree at Creighton and

an LLM with distinction at Duke, he taught at Creighton School of Law for eleven years. He was a frequent contributor to law reviews and the author of two books on Indiana evidence and procedure. He had chaired the Nebraska State Bar House of Delegates and was a Fellow of both the American College of Trial Lawyers and the American College of Trusts and Estates Counsel. His survivors include his wife, two sons and five daughters.

**Wendell Pendleton** (75), a Fellow Emeritus from Wake Forest, North Carolina, who was born in 1917, has died. He had practiced with Pendleton & Bernard in West Palm Beach, Florida.

**Ernest H. Pool, Jr.** (70), a Fellow Emeritus from Ottawa, Illinois, died April 10, 2008 at age 85. A World War II veteran, he served as a combat infantry officer in 411<sup>th</sup> Regiment of the 103<sup>rd</sup> ("Cactus") Division of the 7<sup>th</sup> Army in the European Theater. Twice wounded, he was awarded a Purple Heart with an oak leaf cluster and a European Theater Medal with two battle stars. Graduating from the University of Illinois and its College of Law, he had practiced in a firm known at the time of his retirement as Pool & Lee. His survivors include his wife and two daughters.

**Dana M. Raymond** (75), a Fellow Emeritus from New York, New York, retired from Baker Botts, LLP, died August 3, 2008 at age 89. A magna cum laude graduate of the University of California at Berkeley and of Columbia Law School, he was a patent lawyer who had represented the electrical



engineer who invented FM radio in his successful prosecution of a multitude of alleged infringers.

**Mitchell S. Rieger** (80), Chicago, Illinois, a long-time partner in the firm of Schiff Hardin, died July 27, 2008 after suffering a stroke at age 85. Commissioned a naval officer the day he graduated first in his class from Northwestern University in 1944, he served in the Pacific Theater. An avid photographer, he purchased a twin-lens Rolliflex camera at a shop in Shanghai and volunteered for duty aboard a ship that made its way around the world from Hong Kong to Charleston, South Carolina, recording the journey on film. He spent the rest of his life traveling with his camera and documenting his travels, and in 2007, he had published a compendium of his best work. After Harvard Law School, he joined the US Attorney's office, serving as chief of the tax and criminal divisions and then as first assistant in the Chicago office before joining Schiff Hardin. He remained a partner in his firm to the date of his death. Twice divorced, his survivors include his third wife, a daughter, two step-sons and four step-daughters.

**Bill Sowa, Q.C.** (02), Edmonton, Alberta, died April 24, 2008 at age 67 of a brain tumor. A senior partner in Fraser Milner Casgrain LLP, his survivors include his wife, two sons and two daughters.

**Paul Edward Stallings** (83), Houston, Texas died June 19, 2008 from complications related to myelodysplastic syndrome, a blood disorder, at age 69. A Phi Beta Kappa graduate of the University of Texas, he served for three years as a naval supply officer before returning to the University of Texas Law School, where he was a member of the

law review. A partner at Vinson & Elkins, he had served on the firm's management committee for two decades. He had received the Anti-Defamation League's Jurisprudence Award, recognizing his dedication to professional ethics and his community. Known as a legal scholar and collector of books, he was also a passionate outdoorsman. He established his political orientation early by climbing to the roof of his parents' house at age fourteen to nail up an Adlai Stevenson campaign poster. In a recent interview, he had stated, "Professionalism is excellence in all things big and small; wisdom, scholarship and independent judgment; dedication and sustained, relentless preparation; fierce candor; zealous advocacy; integrity; responsiveness and courtesy; charity toward the less fortunate, and faithful adherence to the core values of civility and honor." His survivors include his wife, two sons and a daughter.

**Charles P. Storey** (69), Dallas, Texas, Senior Counsel at Carrington Coleman, died July 14, 2008 at age 85 of a heart attack. He was the son of Robert G. Storey, the long-time Dean of SMU Law School, a past president of the American Bar Association and first assistant prosecutor to Robert Jackson at the major Nuremburg war crimes trials. Charles Storey was a graduate of the University of Texas and of its law school. His education had been interrupted by World War II, in which he was an Army Air Force pilot, stationed in Italy. Before joining Carrington Coleman, he had been a partner in Storey Armstrong Steger & Martin. He had been president of the Dallas Bar Association and a director of the State Bar of Texas and for ten years chaired the board of the South-

western Legal Foundation, which his father had founded. He had served on the boards of directors of numerous insurance companies and banks and had served in leadership positions in the YMCA, including the Executive Committee of the World Alliance of YMCAs, headquartered in Geneva, Switzerland. He had also served as president of the Greater Dallas Council of Churches, the Children's Development Center and the Dallas Day Nursery Association, as well as serving on the boards of many other charitable entities. He had received the Justinian Award from the Dallas Lawyers Auxiliary in recognition of his distinguished service to the community. His survivors include his wife and three sons.

**Gordon Earl Tabor** (90), a senior partner in the Tabor Law Firm, Indianapolis, Indiana, died September 2, 2008 at age 64. He went to Arizona State University on a tennis scholarship, but returned to Indiana after a year, graduating from Butler University and then from the University of Indiana School of Law. A plaintiff's personal injury and wrongful death lawyer who practiced with his two brothers, he had been president of the Indiana Trial lawyers Association and vice-president of the Indianapolis Bar. He was a charter member and diplomat of the American Board of Trial Advocates, and had served on its national board and received its Presidential Award of Merit. He had served on the Ronald Reagan transition team and had been part of a delegation to the Soviet Union in 1992. His survivors include his wife, two daughters and a son.

**Donald P. Traci** (81), a Fellow Emeritus from Cleveland, Ohio, late of Spangenberg, Shibley,

Traci, Lancione & Liber, died in October 2006 at age 79. A graduate of Holy Cross and a magna cum laude graduate of the Cleveland-Marshall School of Law, he had served as president of the Board of Catholic Education, Cleveland, of the Catholic Lawyers Guild of Cleveland, of the Board of Trustees of Cardinal Newman College and the Cuyahoga County Bar.

**Trammell E. Vickery** (73), a Fellow Emeritus from Atlanta, Georgia, retired from Troutman Sanders, died in 2007. A graduate of Emory University and of its law school, he was born 1932.

**Mark D. Wegener** (06), vice-chairman of Howrey LLP, Washington, D. C., died June 6, 2008 of cancer at age 59. A resident of McLean, Virginia, he was a graduate of Central College in Pella, Iowa and of Rutgers Law School. He was the co-chair of his firm's global litigation practice and his firm's representative on the Greater Washington Board of Trade. At the time of his death he was a member of the College's Complex Litigation Committee. His survivors include his wife, two daughters and a son.

**George M. Weis** (75), a Fellow Emeritus from Allison Park, Pennsylvania, died June 21 at age 80. A graduate of Duquesne University and of the University of Pittsburgh Law School, he served as a first lieutenant in the 43<sup>rd</sup> Infantry Division during the Korean Conflict. He had practiced law in the Pittsburgh firm, Weiss & Weiss with his father and three brothers, one of whom, Thomas F. Weiss, is also a Fellow Emeritus. His survivors include his wife and five children.



**THE BULLETIN**  
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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.



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