

# American College of Trial Lawyers

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## PRESIDENT'S REPORT



Philip W. Tone

The first fall Annual Meeting of the College is at hand. As you know, the Annual Meeting has traditionally been held in August, the Saturday before the ABA meeting, at the place the ABA is meeting. Beginning this year, the College's Annual Meeting will be held in the fall, as a free-standing three-day event. We'll be in New Orleans at the Fairmont and Windsor Court Hotels, gathering for a reception and dinner Thursday night, November 2, and concluding Saturday night, November 4, with a black-tie dinner. The annual induction of newly-elected Fellows, which in past years has occurred at the College's August dinner, will take

place this year, and in future years, at the Saturday night dinner of the Fall Meeting. This year approximately 140 new inductees will be admitted as Fellows. During the day Friday and Saturday, there will be outstanding professional programs. On Friday afternoon a variety of tours will be available to all.

### 1990 SPRING MEETING

The traditional Spring Meeting of the College will be in March of 1990 at Palm Desert, California, where a very successful Spring Meeting was held in 1988. Again, this will be a three-day meeting, with the usual excellent professional and social programs.

I hope as many Fellows as possible will attend both the Fall and Spring Meetings, but holding two meetings each year, as we will in the future, may allow Fellows who have trial or other commitments at the time of one meeting to attend the other. We have every indication that the change in schedule has been well received by the Fellows, and that both meetings will be well attended in this and future years.

### SUMMER BANQUET

The College will continue to have its August Saturday night black-tie dinner in conjunction with the American Bar Association meeting, as it did this year. That dinner will be smaller than it has been in the past, largely because it will not include the induction of new Fellows, which brings not only the inductees but their spouses and friends. In Honolulu the attendance was about 300, which made for a very pleasant and uncrowded occasion at which we were able to provide table and place assignments for all. Justice Antonin Scalia was inducted as an Honorary Fellow and accepted with an entertaining talk. Also in attendance were Supreme Court Justices Byron R. White and Anthony Kennedy and many foreign dignitaries, and their spouses.

### HONORARY FELLOWS

Chief Justice William H. Rehnquist was inducted as an Honorary Fellow of the College at a ceremony in his chambers, held at the time of the Annual Meeting of the Supreme Court Historical Society last spring. As noted above, Justice Scalia was later inducted in Honolulu.

### PUNITIVE DAMAGES REPORT

Demand for the Report on Punitive Damages of the Committee on Special Problems in the Administration of Justice, published earlier this year, has been high, from both the bar and the bench. The punitive damages problem remains

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# American College of Trial Lawyers

## BULLETIN

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1895 - 1982

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American College of Trial Lawyers  
8001 Irvine Center Dr., Suite 960  
Irvine, California 92718  
Telephone: (714) 727-3194

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very much alive after the Supreme Court's decision in *Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.*, 109 S. Ct. 2909 (1989), holding that punitive damages are not barred by the excessive fines clause of the Eighth Amendment while leaving open the due process issue, which the Court held had not been properly raised in that case. Committee Chairman Charles B. Renfrew's summary of the College Committee's report appears elsewhere in this Bulletin.

### RICO STUDY

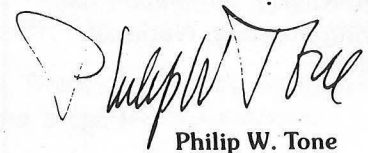
The next project of the Committee on Special Problems in the Administration of Justice may be a review of the development of the law under RICO and the formulation of a proposed College position on RICO to be submitted to the Board of Regents. RICO has been the subject of a number of scholarly studies, seminars and programs in recent years, and proposed reform legislation has been before Congress in the last several terms. It is not contemplated that the Committee will duplicate any of the extensive work that has already been done but rather that it will produce a proposed position paper for the College, based on the existing studies and the expertise of the members of this very distinguished committee.

### ANGLO-AMERICAN LEGAL EXCHANGE

The Eighth Anglo-American Exchange, which the College has helped to support, took place this year. Eight judges and lawyers from each country participated. The subject of this Exchange was civil procedure. The American team consisted of Justices Sandra Day O'Connor and Anthony Kennedy of the United States Supreme Court, Judge J. Clifford Wallace of the Ninth Circuit, Chief Justice Ellen Peters of the Connecticut Supreme Court, Paul Verkuil, Bernard Aidinoff, Past President Morris Harrell and the writer. The British team includes Lord Hugh Griffiths and Lord Nigel Bridge, both of whom are Law Members of the House of Lords and Honorary Fellows of the College, and other judges and lawyers. The first session was held in England in July, the second in Washington and Williamsburg in late September. This exchange, like those in the past, has made valuable contributions toward the improvement of the systems of justice in both countries.

Because the Annual Meeting of the College has been moved to the fall, and the change took effect this year, my term in office has been extended an additional three months. I am grateful to my successor, Ralph Lancaster, for his generous assistance in many things, which has made my extended tour of duty especially pleasant. He will be assuming the office of President in November in New Orleans. He will carry that responsibility in addition to the critically important position of Chairman of the American Bar Association Committee on the Federal Judiciary.

Over the past many months Gretchen and I have enjoyed being with many of you at regional and state meetings throughout the country. We look forward to the pleasure of seeing all of you who will attend the meeting in New Orleans.

  
Philip W. Tone

# College Report On Punitive Damages

By Charles B. Renfrew

On March 3rd the Board of Regents approved the Report on Punitive Damages of the Committee on Special Problems in the Administration of Justice. The report represented over a year's work by the Committee, which was ably assisted by Professor Roger Henderson of the College of Law of the University of Arizona in Tucson. There has been a substantial amount of attention devoted to the issue of punitive damages and its use in the civil justice system in recent years, and there has been significant activity by state courts and state legislatures on this subject. The Committee, as a result of its studies, however, felt that there were still problems which required resolution. The report contains a number of specific recommendations:

- A. Civil awards of punitive damages should be retained, but only in carefully limited situations.
- B. Punitive awards should not be surrogate for compensatory damages.
- C. The standard for culpability should require a conscious and egregious invasion of the rights of others.
- D. The quantum of punitive damages should be limited by a flexible formula based on the amount of compensatory damages.
- E. The burden of proof for punitive awards should be that of clear and convincing evidence.

- F. Vicarious responsibility for punitive damages should only obtain where there is complicity by the principal in the conduct which gives rise to the punitive award.
- G. Pleadings regarding punitive damage claims should not be permitted to contain a monetary amount.
- H. Discovery of evidence regarding a defendant's wealth or financial condition for the purpose of proving the amount of a punitive award should not be permitted without a prima facie showing that there is a legal basis for such an award.
- I. Bifurcated trials should be employed to avoid prejudice to defendants where evidence of wealth or financial condition is admissible only on claims for punitive damages.
- J. Distribution of punitive awards should not be diverted to persons or entities other than the plaintiff.

With respect to the problem of duplicative awards of punitive damages for the same act or course of conduct, the Committee did not have a specific recommendation but concluded that most of the problems there may be resolvable by a federal solution, either through a multi-district or a national class action approach.

The report was printed and disseminated to all of the Fellows of

the College, the American Law Institute and the American Bar Association. It was also sent to all Federal Judges, all Chief Justices of State Supreme Courts and Associate Justices, all State Court of Appeals Presiding Judges and Associate Judges, various law libraries and Bar Associations in selected major cities and counties. In addition, many hundreds of copies were sent out upon request to a number of other interested parties. Copies are still available.

While the United States Supreme Court this spring held that the Eighth Amendment's prohibition against excessive fines does not preclude the imposition of punitive damages (*Browning-Ferris of Vermont v. Kelco Disposal, Inc.*, 109 S. Ct. 2909 (1989)), the Court did not reach the due process issue, because it had not been adequately raised below. Four of the Justices indicated that the role of punitive damages in our civil justice system may need to be examined in order to improve the administration of justice in this country.

As cases progress through the judicial system raising these issues, the timely issuance and wide dissemination of the report on punitive damages by the College may well be of assistance to those who ultimately determine the role of punitive damages in our legal system.

## Future ACTL National Meetings

### 1989

- Nov. 2-5 Annual Meeting:  
Fairmont & Windsor Court Hotels,  
New Orleans, Louisiana

### 1990

- Mar. 4-7 Spring Meeting:  
Marriott's Desert Springs Resort,  
Palm Desert, California

- Aug. 4 Summer Banquet:  
Chicago, Illinois

- Oct. 16-21 Annual Meeting:  
Fairmont & Mark Hopkins Hotels,  
San Francisco, California

### 1991

- Mar. 10-13 Spring Meeting:  
Westin Kauai, Kauai, Hawaii

- Aug. 10 Summer Banquet:  
Atlanta, Georgia

- Oct. 10-13 Annual Meeting:  
Westin Copley Place,  
Boston, Massachusetts

### 1992

- Mar. 15-18 Spring Meeting:  
Marriott's Desert Springs Resort,  
Palm Desert, California



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# College News

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## NATIONAL OFFICE

The National Office of the College relocated on July 1, 1989 to: 8001 Irvine Center Drive, Suite 960, Irvine, California 92718. Please note this change to insure that all correspondence reaches the National Office. The new telephone number is (714) 727-3194. The office FAX number is (714) 727-3894. Irvine is located approximately 45 miles south of Los Angeles in Orange County.

## 1990 ROSTER

The 1990 Roster of the College will be mailed to all Fellows in late January 1990. With the change in the Annual Meeting and Installation of Officers now conducted at the Fall Meeting this information will delay the final printing until after the first of the year.

## POLLS FOR NEW NOMINEES

In November confidential polls for new nominees will be mailed to all Fellows. All polls should be completed and returned to the National Office in Irvine as promptly as possible. It is especially helpful to the Regents that any candid comments regarding nominees be included on the polls. Your comments on the polls are always held in the strictest confidence. Your participation in this important process is appreciated.

## 1990 ACTL SPRING MEETING

The 1990 ACTL Spring Meeting is scheduled for March 4-7, 1990 in Palm Desert, California at the Marriott Desert Springs Resort. It is anticipated that the third golf course will be completed and a new restaurant added to the seven on property already. Registration materials and hotel information will be mailed to all Fellows in early December, 1989.

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# Calendar of Events

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## 1989

- **Oct. 5-8** Rocky Mt. States Regional Meeting, Oklahoma City, Oklahoma
- **Oct. 13-15** Delaware, New Jersey & Pennsylvania Fellows Regional Meeting, Hershey, Pennsylvania
- **Oct. 28** Connecticut Fellows Dinner, New Haven, Connecticut
- **Nov. 2** ACTL Board of Regents Meeting, New Orleans, Louisiana
- **Nov. 2-4** ACTL Annual Meeting, New Orleans, Louisiana
- **Nov. 29** New York Downstate Dinner, New York

- **Dec. 1** Mississippi Fellows Dinner, Jackson, Mississippi
- **Dec. 2** Louisiana Fellows Dinner, New Orleans, Louisiana
- **Dec. 8** Oregon Fellows Dinner, Portland, Oregon
- **Dec. 12** Fed. Rules Civil Procedure Com. Mtg., Phoenix, Arizona

## 1990

- **Jan. 11-13** Eastern Chairmen's Workshop, Naples, Florida
- **Jan. 19-20** Emil Gumpert Committee Meeting, San Antonio, Texas

- **Jan. 25-27** Western Chairmen's Workshop, Laguna Niguel, California
  - **Feb. 7-14** ABA Midyear Meeting, Los Angeles, California
  - **Feb. 22-25** South Carolina State Meeting
  - **Feb. 25-Mar. 3** ACTL Board of Regents Meeting, Los Angeles, California
  - **Mar. 4-7** ACTL Spring Meeting, Palm Desert, California
  - **Apr. 20-22** Arkansas Fellows Meeting, Heber Springs, Arkansas
  - **May 3-6** Southwest Regional Meeting, Coronado, California
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