

American College of Trial Lawyers

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The Image and Ethics of Lawyering

The Honorable William J. Bauer, Chief Judge, United States Court of Appeals for the Seventh Circuit, Chicago, Illinois delivered this address at the 1991 Spring Meeting of the American College of Trial Lawyers in Kauai, Hawaii.

When I was asked to speak to you on ethics, I didn't realize how severely the subject would cover the entire program. I'm really going to speak on the subject of the image and ethics of lawyering. I am a natural selection for this job: it was discovered that during twenty-four years on the bench I have never taken a penny, other than my judicial salary, for doing any of my legal duties. I suspect that there are those who think this makes me highly ethical — but the real fact is that no one offered me a penny over all those twenty-four years.

That seems to me to be proof positive of something I've thought for a number of years: that almost everything that passes for virtue in the adult population is either lack of temptation or poor health. In my case, it may be a combination of both.

I think there is a certain amount of confusion as to the standards that the members of our profession subscribe to. I listened to (the previous speaker) Brother Chapman, Q.C., discuss the fact that lawyers were on poor paper with certain people including Shakespeare and Thomas Moore. This is not anything new. It's been around for a long time but it seems to be getting more aggravated.

Way back before there was a United States, in 1770, His Majesty, George III, wanted a census of all the people in the colonies. I suspect it was to see how many people were available for tax purposes but I'm not sure.

At any rate, Grafton County, New Hampshire, is one of the more famous counties in the United States if only because it is the home of Dartmouth College. The county clerk of Grafton County made the census report. I have a copy of that report with me and I'll read you the pertinent information.

"Your Royal Majesty, Grafton County, New Hampshire, consists of 1,212 square miles. It contains 6,489 souls most of whom are engaged in agriculture, but included in that number are 69 wheelwrights, 8 doctors, 29 blacksmiths, 87 preachers, 20 slaves and 90 students at the new college. There is not one lawyer, for which fact we take no personal credit but thank an Almighty and Merciful God."

The problem of course is that the image of lawyers has been poor over all these years. I worry occasionally as to why this should be true. I've arrived at some conclusions and I will give them to you:

For one thing, there is something suspicious about us. We're the only people I know who don't really do anything; we don't produce anything, we don't manufacture anything, we don't heal people, we don't spin. In fact, we are the only people other than confidence men who live entirely by our wits — and there is certainly something suspicious about that. Moreover, it's all indoor work with no heavy lifting, so a good chunk of the antagonism that's directed against the legal profession is pure envy and jealousy. The rest of the world would like to join us.

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American College of Trial Lawyers BULLETIN

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Emil Gumpert
1895-1982

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REPORT OF THE IMMEDIATE PAST PRESIDENT



Charles E. Hanger

Since the last bulletin of the College the world has witnessed the commencement and conclusion of a United Nations' sponsored World War waged to achieve the liberation of Kuwait from an invading Iraqi Army. While the fallout from the military engagement has not fully settled, it is to be hoped, once again, that it will prove to be the war to end World Wars. Lesser disputes, particularly Civil Wars of ethnic, political or religious origin, continue to cause death and destruction around the world — whether by archaic spears or a dazzling assortment of lethal weapons. And then, the ongoing development in Eastern Europe — the dissolution of the Soviet Union by its own internal force — is rewriting the history of the modern world. Thus, the promotion and advancement of the rule of law continues to be our best hope to achieve and maintain world order. In this context we review the condition and progress of the College since the last President's Report.

Membership

Presently the College has 3,840 active regular fellows in the United States and Canada. We continue to search out and identify all qualified trial lawyers for membership. Our qualifications are fundamentally simple — we want trial lawyers who by experience, skill and ability have become outstanding practitioners at the bench and bar. Our annual workshops for state committee chairmen over the last 10 years have vastly improved the functioning of our state and province committees. At the regents level we review trial lawyers of good character and proven ability who generally have withstood the rigors of the annual poll. In Hawaii, in March we approved 168 new fellows. By coincidence, we lost 169 active regular fellows to death and emeritus standing.

To sum up, the College, as always, is not conducting a membership drive — it is attempting to enlist outstanding trial lawyers. The 1991 results seem just about right.

Awards and Recognition

Five of our national committees do the good work of selecting worthy recipients of the various awards that the College bestows. 1991 winners, whose awards were presented at Hawaii unless otherwise noted, were:

a) The National Moot Court competition team from College of William and Mary — Marshall — Wythe School of Law:

Ann Mayhew
Steven Nachman
Monica Taylor

Best Oral Advocate: Monica Taylor

b) The National Trial Competition Team from the University of Texas Law School:

Nick Pittman
Greg Reed
Mark Walters

Best Oral Argument: Greg Reed

The George A. Spiegelberg Award and the Kraft W. Eidman Award will be presented at the fall meeting in Boston on October 10-12, 1991.

c) The Honorable William W. Schwarzer, FACTL, Director of The Federal Judicial Center, received the Samuel E. Gates Award for his contributions to the improvement of the litigation process.

d) The Honorable Robert J. Lewis, Jr., Judge of the Kansas Court of Appeals received the Award for Courageous Advocacy for his service as a lawyer in defending an accused killer in Kansas serial murders during 1985.

e) The University of Texas Law School received the Emil Gumpert Award for Excellence in Teaching Trial Advocacy and a check for \$25,000 at a ceremony at the law school in Austin on September 20, 1991.

In addition, the College has made grants in 1991 to the National Judicial College, the National Association of District Attorneys and the National Institute of Trial Advocacy.

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General Committees

Ten of our standing committees work on substantive problems related to our practice as trial lawyers. Committee membership is open to all fellows of the College. The work of three of these committees is particularly noteworthy at the present time.

a. Judd Best of the District of Columbia chairs the Special Problems in the Administration of Law Committee. This committee has devoted a lot of energy to the so-called Biden Bill which was signed into law in December of 1990, in part, as the Civil Justice Reform Act. In compliance with this law, each United States District Court is required to furnish a plan to cut both the costs and the time required to try civil cases in the court. To assist in preparing its plan, the court is required to form an advisory committee of lawyers and others. The College's offer to provide fellows to serve on such committees has been accepted by the chief judges in over 90 percent of the districts. All plans are to be filed by the end of 1991 and committee meetings are proceeding apace.

Past President Tom Deacy is coordinating the plans and reports of the ninety-four district courts involved in this endeavor. It is expected that the administration of justice in civil cases will be improved and expedited by the effectuation of the Civil Justice Reform Act.

b. It is difficult to describe in a word the activities of the Federal Civil Procedure Committee ("College Committee"). The first focus on the College Committee is on the Rules of Practice and Procedure of the Judicial Conference of the United States. Its Civil Advisory Committee ("Advisory Committee") is chaired by the Hon. Sam C. Pointer, 1990 winner of the College's Samuel Gates Award. The Advisory Committee is considering amendments to several rules, including the ever-controversial Rule 11. The College Committee is actively assisting the Advisory Committee in considering which rules to change and how to change them. The subcommittee on Rule 11 has been actively pursuing a change from "shall" back to "may" with respect to the imposition of sanctions. Also a requirement of findings by the court would help shore up the due process questions surrounding the imposition of sanctions.

These are but two in a sea of proposed civil rule changes. The Advisory Committee has given fair consideration to the positions urged by the College Committee in the past. Under the leadership of the indefatigable Fran Fox of Boston we expect the College Committee to continue to impress its views upon the Advisory Committee. The bottom line is that certain rules will be changed — the College is working to achieve changes for the betterment of the administration of justice.

c. Chair Joan Hall of Chicago rescued the Alternative Dispute Resolution Committee from the doldrums in 1989. The result is the Handbook on the subject which was distributed to the fellows and the judges of the federal courts this summer. The book is a compilation of basic data about recognized alternate dispute methods — it is designed to help the trial lawyer who is new to the ADR game to become a more accomplished player.

Our remaining substantive committees continue to do good work. In a recent development relating to the *ad hoc* committee on the Advancement of the Rule of Law Abroad, its Chairman Henry Miller and Committee member Weyman Lundquist of San Francisco attended exploratory meetings in Moscow

with Russian lawyers about the condition of trial practice in the USSR.

Honorary Fellows

The College has extended two honorary fellowships which have been accepted by Chief Justice Antonio Lamer of Canada and Associate Justice David H. Souter of the United States Supreme Court. Each was inducted during the fall meeting of the College at Boston October 10-12, 1991. Chief Justice Lamer, will be the third honorary fellow from Canada, who succeeded former Chief Justice Brian Dickson who resigned from the Court in 1990. Justice Souter succeeds Justice William J. Brennan, Jr. on the United States Supreme Court.

The Summer Banquet

The traditional summer banquet, hosted by the College during the ABA annual meeting in Atlanta, was a rousing success. Our guests included bar presidents and representatives of twenty countries around the world, including four each from Moscow and Paris and five from London. Three hundred and forty people attended the dinner, including our honorary fellow Lord Chancellor Mackay, the Lord High Chancellor of England, with Lady Mackay.

At the reception the fellows were exposed to the foreign dignitaries, each of whom was assigned to a host fellow. Also present for dinner were John Curtin, the outgoing president of the ABA, and his wife Mary. It was my pleasure to introduce the officers, past presidents and regents of the College and our forty distinguished visitors, together with their spouses or friends. Bob Young and the staff made the arrangements which were flawlessly executed by the staff of the Ritz Carlton, Atlanta.

The evening events were long on bonhomie and the atmosphere was highly energized, particularly during the introduction of our guests. I expect that the congeniality will carry over to the 1992 dinner in San Francisco.

ABA Model Rule 1.6

In 1983 the College vigorously opposed proposed Rule 1.6(b)2 which would have permitted lawyers to reveal a client's confidence:

"... to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used; ..."

The rule, which had been proposed by the Standing Committee on Ethics and Responsibility, was defeated in the ABA House of Delegates by a vote of 207 to 129.

In 1991, at the ABA Atlanta meeting, the proposed amendment again was submitted to the ABA House of Delegates with the approval of the ABA Board of Governors. The College, led by Past President John Elam, appeared once more and argued in opposition and again the amendment was rejected by the House of Delegates by a decisive vote.

The Canadian Bar Meeting

There are about 140 Fellows situated in Canada. Last year we elected our first Canadian regent, Yves Fortier, Q.C. who will represent the Atlantic Provinces of Canada, Quebec, Puerto Rico and the States of Maine, Massachusetts, New

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Induction of New Fellows

The College welcomes the following Fellows who were inducted into Fellowship during 1991.

ALBERTA

Calgary

J. PATRICK PEACOCK

ALASKA

Anchorage

LEROY J. BARKER

ALABAMA

Birmingham

LEON ASHFORD

Montgomery

T. W. THAGARD

ARKANSAS

Little Rock

RICK BEARD

JAMES BRUCE McMATH

ARIZONA

Tucson

JOHN W. McDONALD

BRITISH COLUMBIA

Vancouver

PAUL D. K. FRASER

GEORGE K. MACINTOSH

KENNETH C. MACKENZIE

Victoria

DONALD A. FARQUHAR

CALIFORNIA

Burlingame

JOSEPH W. COTCHETT

Costa Mesa

MILFORD W. DAHL

Los Angeles

ROBERT N. STONE

Orange

STUART T. WALDRIP

Pasadena

GEORGE E. MOORE

San Diego

CHARLES H. DICK

San Francisco

ALSON R. KEMP

PAUL V. MELODIA

ROBERT P. TAYLOR

COLORADO

Boulder

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CARL S. RAUH

HENRY F. SCHUELKE

BURTON A. SCHWALB

JAMES E. SHARP

HON. DAVID H. SOUTER

WILLIAM W. TAYLOR

MARNA S. TUCKER

JOHN W. VARDAMAN

DELAWARE

Wilmington

BEN T. CASTLE

FLORIDA

Gainesville

TOBY S. MONACO

Miami

MICHAEL NACHWALTER

Orlando

JOHN M. ROBERTSON

Panama City

LYNN C. HIGBY

West Palm Beach

FRED A. HAZOURI

GEORGIA

Atlanta

CHARLES E. CAMPBELL

HAROLD T. DANIEL

JOSEPH B. (BARNEY) HAYNES

Augusta

THOMAS W. TUCKER

IOWA

Mason City

DAVID E. FUNKHOUSER

IDAHO

Boise

RICHARD E. HALL

Idaho Falls

M. B. "BUCK" HILLER

Pocatello

W. MARCUS W. NYE

ILLINOIS

Chicago

JOHN W. ADLER

THOMAS J. BURKE

VINCENT J. CONNELLY

PAUL E. FREEHLING

E. MICHAEL KELLY

STEPHEN D. MARCUS

GORDON B. NASH

JAMES P. RYTHUR

RICHARD G. SCHULTZ

ANN C. TIGHE

JEROME H. TORSHEN

INDIANA

Indianapolis

W. SCOTT MONTROSS

JAMES H. VOYLES

ROBERT F. ZOCCOLA

KANSAS

Wichita

ARDEN J. BRADSHAW

KENTUCKY

Bowling Green

WHAYNE C. PRIEST

Louisville

CHARLES "MIKE" CRONAN

Paducah

THOMAS B. RUSSELL

LOUISIANA

Baton Rouge

DANIEL R. ATKINSON

Lake Charles

JOHN B. SCOFIELD

New Orleans

JOHN C. COMBE

Opelousas

LESLIE J. SCHIFF

Shreveport

CALDWELL ROBERTS

MASSACHUSETTS

Boston

DAVID A. BARRY

ROBERT V. COSTELLO

JOAN A. LUKEY

Northampton

HARRY L. MILES

Pittsfield

RONALD E. OLIVEIRA

Springfield

EUGENE J. MULCAHY

Worcester

CHARLES B. SWARTWOOD

MARYLAND

Greenbelt

FRED R. JOSEPH

MICHIGAN

Birmingham

ROBERT B. WEBSTER

Bloomfield Hills

WILLIAM R. BUESSER

Detroit

EDMUND M. BRADY

Flint

JEROME F. O'ROURKE

Grand Rapids

WILLIAM J. WADDELL

Saginaw

J. MICHAEL FORDNEY

MINNESOTA

Minneapolis

JERRY W. SNIDER

St. Paul

THOMAS P. KANE

Wadena

CHARLES R. KENNEDY

MISSOURI

Clayton

ALAN E. POPKIN

Kansas City

JOHN W. COWDEN

Poplar Bluff

JAMES E. SPAIN

St. Louis

J. WILLIAM NEWBOLD

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MISSISSIPPI

Clarksdale
CHARLES M. MERKEL
Jackson
JOHN B. CLARK
JIMMIE B. REYNOLDS
Oxford
ALFRED E. MORETON

NORTH CAROLINA

Asheville
ROBERT B. LONG
Charlotte
A. WARD McKEITHEN
Concord
W. ERWIN SPAINHOUR
Greensboro
JOSEPH W. MOSS
Winston-Salem
JAMES H. KELLY

NEBRASKA

Lincoln
CON M. KEATING

NEW HAMPSHIRE

Concord
JAMES E. DUGGAN
Manchester
JOSEPH M. McDONOUGH

NEW JERSEY

Atlantic City
JAMES L. COOPER
Newark
RAYMOND M. BROWN
FREDERICK B. LACEY
WILLIAM J. O'SHAUGHNESSY
Westmont
WARREN W. FAULK

NEW MEXICO

Santa Fe
JOHN B. POUND

NEVADA

Fallon
DENNIS E. (MIKE) EVANS
Las Vegas
JOHN D. O'BRIEN

NEW YORK

Albany
JOHN T. DeGRAFF
Binghamton
RICHARD B. LONG
Liberty
BERTRAM W. EISENBERG
New York
DAVID M. BRODSKY
RUSSELL E. BROOKS
PAUL J. BSCHORR
JEREMY G. EPSTEIN
RONALD P. FISCHETTI
THOMAS FITZPATRICK
BARBARA S. JONES
ALAN LEVINE
JOSEPH T. McLAUGHLIN
BETTINA B. PLEVAN
EDWARD M. SHAW

(New York, New York continued)

JOHN R. WING
JAMES D. ZIRIN
Syracuse
WALTER L. MEAGHER
Warsaw
CHARLOTTE SMALLWOOD-COOK

OHIO

Cincinnati
MICHAEL D. EAGEN
Cleveland
RANDALL L. SOLOMON
Columbus
TERRANCE M. MILLER
PAUL O. SCOTT
Dayton
CHARLES J. FARUKI
Lima
LAWRENCE S. HUFFMAN

OKLAHOMA

Oklahoma City
DREW NEVILLE

ONTARIO

Ottawa
HON. ANTONIO LAMER
Toronto
SHEILA BLOCK
AUSTIN M. COOPER
EDWARD L. GREENSPAN
THOMAS G. HEINTZMAN
JOHN I. LASKIN
SIDNEY N. LEDERMAN
JOHN LORN McDougall
Windsor
HARVEY T. STROSBERG

OREGON

Portland
DAVID C. LANDIS
DAVID B. MARKOWITZ
KENNETH D. RENNER
ELDEN M. ROSENTHAL
CHARLES H. TURNER

PENNSYLVANIA

Harrisburg
DAVID E. LEHMAN
Lancaster
CHRISTOPHER S.
UNDERHILL
Philadelphia
DAVID F. BINDER
JAMES D. CRAWFORD
LEONARD DUBIN
H. ROBERT FIEBACH
JOSEPH V. PINTO
THOMAS B. RUTTER
Pittsburg
ROBERT J. CINDRICH
GILES J. GACA
West Chester
THOMAS O. MALCOLM

QUEBEC

Montreal
GUY PEPIN

RHODE ISLAND

Providence
ROBERT B. MANN

SOUTH CAROLINA

Charleston
WADE H. LOGAN
JOSEPH H. McGEE
A. ARTHUR ROSENBLUM
G. DANA SINKLER
J. RUTLEDGE YOUNG
Columbia
EDWARD W. MULLINS
JACK B. SWERLING
Greenville
WILLIAM M. HAGOOD

TENNESSEE

Knoxville
THOMAS S. SCOTT
DALTON L. TOWNSEND
Nashville
WALTER W. BUSSART
CHARLES H. WARFIELD

TEXAS

Abilene
DAVID R. COBB
Dallas
R. CHRIS HARVEY
SCHUYLER B. MARSHALL, IV
Houston
ROBIN C. GIBBS
J. CLIFFORD GUNTER
WILLIAM E. MATTHEWS
San Antonio
GERALD H. GOLDSTEIN

UTAH

Salt Lake City
PAUL S. FELT

VIRGINIA

Norfolk
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It is much like something I observed in the some fifteen years I spent as a prosecutor. I came to the conclusion that the worst political mistake you could make is to announce a drive against white collar crime. What the people are particularly concerned about are street crimes. As to white collar crimes, they really want to know how to get in on it. I'm not so desperately sure they want it snuffed out like a candle.

On a more serious note, one of the things we do is to set up standards for our profession that seem rather foolish and we do this on a regular basis. I have one or two examples. One comes from a magazine put out by the American Judicature Society called "the Judicial Conduct Reporter." I have a copy of the 1990 Fall edition. The magazine deals with problems with the ethical standards of the judiciary — and remember that members of the judiciary are almost all drawn from the ranks of the lawyers and our profession sets the standards for both.

At any rate, the article says: "In another case involving political conduct, the supreme court of New Jersey publicly reprimanded two state superior court judges for attending the Governor's Inaugural Ball. In its opinion, the court noted that New Jersey has a strong tradition of total separation of judges from politics. In New Jersey, judges and politics do not mix; not at all, in either fact or appearance."

Where do these people come from? This may be the only jurisdiction in the United States where God intervenes to make judicial appointments.

Incidentally, one of the judges who was reprimanded attended the Inaugural Ball with her husband who was co-chairperson of the ball, so the rule separates husband and wife. I consider that not only an ethical problem but an action virtually immoral in itself.

At any rate, one of the problems we face is that the public does not recognize the difference between a moral code and a legal code. And that starts the problem off on the wrong foot. Any government that purports to enforce a moral code is in trouble from the very beginning; there is a distinct difference between a legal code and a moral code.

We suggest to ourself that we should become involved in the great moral issues of our time. I wish to question as to how we define the great moral issues of our time and on which side should we fall?

Currently, we have watched for years the great debates on the subject of abortion — certainly one of the great moral issues of our time. On which side is righteousness to be found, on which side shall the law come down, on which side shall we become involved as lawyers?

I have no answer to the question. It depends on your point of view. I listened just now to Judge Lewis as he discussed, among other things, capital punishment. He said he had finally come down on the side against capital punishment. I am pleased that he did not do this as a moral issue but a legal one. He thinks there is a possibility of an error intervening in the process, that we might make a mistake, that we might kill someone who didn't commit the crime for which he stood charged, and that position I am willing to accept. But things are not in a proper sense a defined moral principle unless you can say that all right thinking people, all people of conscience take the same position on the subject and if it is not, then it is not in a proper sense, a moral issue that we can address as a profession. We can, I suspect, argue either side of the question — which is

what we do. But I don't think it is necessary that all moral people should take one side and anyone who takes a different side is immoral. What you also heard from our previous speaker was that the community at large identifies the lawyer with the cause that he represents. And, as he pointed out, in the community in which he lived the people were so strongly convinced of his client's guilt that they pushed off on him their detestation of the acts committed by his client. That is one problem we seek to overcome.

Another problem is that the public does not understand that what is immoral may not necessarily be illegal. As a modest illustration of this fact, you can stand by as an individual member of society and watch a woman drown without moving a finger to save her and not have violated a single law; unless, of course, you are a life guard. The individual can stand by and watch a speeding truck head for a small child who can't get out of the way, not do a thing to intervene and not violate a single law. And neither of the conducts I described are considered moral in any sense of the term. I consider to watch another person drown or to watch a child be struck by a speeding car when you could intervene to be the ultimate in immorality. But we cannot legislate, we cannot make conduct along those lines illegal.

One of the things we do is to take members of our profession who are personally involved in criminal conduct and describe it as unethical conduct. In the city of Chicago there has been an ongoing investigation known as Operation Greylord. It has received a tremendous amount of publicity throughout the United States. It has involved both members of the judiciary and members of the practicing bar. What is interesting is to hear their conduct discussed as "unethical legal behavior." That's fairly much like suggesting that a lady who carves up her husband with a steak knife is guilty of bad table manners.

What those connected in Operation Greylord committed were crimes. What they did were things that should not have been done by anyone, members of the legal profession or any other occupation. To give bribes or take bribes for doing or not doing government jobs is not a matter unique to the legal profession. What bothered the observers was, I suspect, the same thing that happened during the great Watergate investigation: the fact that someone was committing a crime and was a lawyer. It is not that they were not living up to their obligations as lawyers, but the people involved in Watergate, just as those involved in Operation Greylord, were not functioning as lawyers but were functioning as out-and-out crooks.

One of the great problems facing practicing lawyers, a dichotomy they face constantly, are loyalties that seem in opposition to each other. The fiduciary relationship you have to your client and the kind of quasi-fiduciary relationship you have to the court itself may cause problems — the duty to represent your client fairly, fully, forcefully and your duty of candor to the court. At the same place, the duty of candor to the court gives way to your duty to represent your client; that is, tell the truth but not too much, to be candid but not too candid. You must know when the profession requires you to know when to shut up and this creates a terrible problem.

In the city of Chicago, there was a great trial lawyer known to many people here. He was John Coglin, Sr., a strong screaming Roman Catholic who attended mass every Sunday. He had a number of children — most of them turned out to be

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lawyers, and excellent ones. One morning he was leaving mass and one of the Irish ladies in the parish stopped him and said, "Mr. Coglein, do I understand that you are a lawyer?" He said, "Indeed I am." She said, "How can you as a good Christian man represent those murderers, rapists and things?"

John had a hearing aid and he fiddled with it and said, "Pardon me, Madam, my hearing aid may be a little on the fritz, but if I understand you correctly the answer is for money. What is it your old man does for a living?"

Now you can see, John had arrived at that position where he answered questions put to him in the shortest possible terms because he was short of temper. There is, of course, an entirely different answer to that question as you and I know. You or John could say, "The reason I am representing people who are charged with crime is because it is my professional responsibility to do so. It is in a real sense my duty to you, and people like you, to represent people charged with a crime."

That's what he could have said because that really is the ethical standard of our legal profession.

One of the other ways that we shoot ourselves in the foot in the legal profession and aggravate the feelings people have about what we do for a living is the tendency to move from being a lawyer representing a client to a public relations man for the client or the cause espoused by the client. It is an identification, not just with the client in the courtroom, but identifying with the client's total picture.

Let me tell you of a couple of things that have irritated me over the years and have gotten to the point when they irritate me severely.

There have been many times when the Supreme Court of the United States has pronounced a decision that I disagreed with rather profoundly. I have learned to shut up about it, to mention it only to my wife, perhaps my secretary, and then go on. But I do not ascribe to those people in Washington any base or immoral reasons for doing what they do in taking a different position from my own.

I have seen lawyers approach a television camera after the announcement of a decision in a case in which they were either involved or abstractly interested, and announce that as a result of this decision, civilization as we know it has come to a screeching halt, that at least five members of the Supreme Court are immoral or stupid and probably both. That contributes little or nothing to the attitude that the public might have about lawyers or the law or the judges who are drawn from our ranks.

We are not supposed to espouse the public relations position of a client, we are supposed to represent that client's best interest in his dealings with the people, in his dealings with the court system.

And this identification creates problems that continue when one of us goes on the bench; a number of judges carry with them a lot of baggage.

It is difficult to strip oneself of such baggage. No one divorces themselves from their own experiences entirely. Bearing that in mind, when we get on the bench we should not ascribe to lawyers any venal position, any stupidity or base motives — unless we can demonstrate they are guilty of a crime. We should treat them as equals, striving with us for the same purpose, justice for the people they serve. That's all judges are supposed to do.

When I stood before the bench all those years I was a trial

lawyer, and I said "Your Honor," I did so to remind myself of my own and now I listen to that with a reminder that when the lawyer says "Your Honor" I should be on my honor. Less than that I should not give him. He and I, she and I, are there for the same reason: to serve justice in serving his or her client.

What we should be doing as an ethical matter is making people aware of what we do by practicing our profession. Not simply by public relations work, I am not as concerned about how the public feels about us as individuals as I am about whether the public will continue to respond with respect to the legal system. And to follow what we are doing to make sure that rules, regulations and the findings of the various courts are followed. Let me give you an illustration of what I mean, and I return for that to the Watergate affair.

Most of us remember in 1974 when for the first time in American history the President of the United States was compelled to resign his position. When I say compelled, I mean he really had no other choice. He was then the most powerful man in the most powerful country in the world and yet, because of the force of public opinion, produced by the rulings of the Supreme Court, he was compelled to resign.

I remember very well the arguments that went on about him and the various discussions, all of a legal nature. Then the tapes that ultimately demonstrated his unfitness to hold that office were ordered released by a unanimous decision of the Supreme Court. And when those tapes were released, it was the beginning of the end.

It is interesting to think back now on the fact that President Nixon didn't fight the ruling. He recognized that, like everyone else, he was subject to the rule of law.

The day he resigned, there were a number of us watching the events on television. It was one of the saddest and most tragic events in the history of the United States. There was a television camera panning Pennsylvania Avenue that night. A news commentator stood on the front lawn discussing what was probably going on in the White House. Every now and then a traffic policeman would go by on a motorcycle, and cars went back and forth; there was not one single tank to be seen, not one bayonet unsheathed and the most powerful man in the world resigned his office without a shot being fired. There is nowhere in this whole world that could have happened except here in the United States.

And that is because of the peoples' belief and insistence that we are all subject apt the rule of law.

The Supreme Court like all the other courts in the United States has neither purse nor sword. We rely entirely on public opinion to do what we say and to require others to do as we say, entirely. The executive branch has the sword, the legislative the purse, but none of these people have seen fit, or did see fit, to reject the decisions of the Supreme Court and go off on their own. That proved to me that the system worked.

What we could be doing is telling the world at large that we are indeed an extremely ethical profession, that the ethical rules that we have regulate conduct of lawyer to lawyer, or lawyer to client, and lawyer to the court. And that those rules vary with the situation. Like the Constitution itself, they are flexible enough to meet new situations and we are constantly groping to improve our ethical standards and our ethical outlook and to make the world aware of what our ethical standards are.

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Hampshire and Rhode Island. In the near future we expect to have our second United States/Canada Exchange, the first having occurred in 1987. Our Canadian Fellows have repeatedly demonstrated great enthusiasm for the College.

Faye and I were delighted to attend as honored guests at the Canadian Bar Meeting in Calgary in August. Other honored guests included several of the distinguished foreign guests that we had entertained in Atlanta. After these two events the world seemed demonstrably smaller, and the universal acceptance of the rule of law seemed somewhat closer at hand. Close enough, perhaps, to support a fair resolution in 1992 of the historic disputations between French Canadians and the Government of Canada.

The Annual Meeting

The fall meeting at Boston was resplendent with colors, 1,030 fellows and spouses, two new honorary fellows and timely and interesting programs. Along with the aforementioned Yves Fortier, Andy Coats (Oklahoma City), "Ozzie" Ayscue (Charlotte) and Bill Vaughn (Los Angeles) signed on to four-year terms as regents. Leaving the board after yeomen service were Sam Adams (Boston), Ralph Stockton (Winston-Salem) and Paul Renner (Denver) who joined the elite group of former regents of this College. New officers for 1991-1992 are shown on the masthead of this Bulletin. On Saturday, 140 new inductees were treated to an impromptu address about the history and lore of the College, vintage Leon Silverman and a provocative induction response by new Fellow Joe Cotchett of

Burlingame, California at the Saturday Banquet. The tone for the aforementioned talks was set at the morning session when Justice Souter delivered a memorable and eloquent response in acceptance of his honorary Fellowship. Boston has joined New Orleans and San Francisco as near perfect venues for the annual fall meeting of the College.

Aloha

By October 12, 1991 I handed over the gavel to Bob Fiske of New York. Faye and I have reaffirmed our conviction that this College is *sui generis* among professional and social associations. It continues to accomplish good works within the profession, the courtroom and the government. It is distinguished by good Fellows and good Fellowship.

Particular thanks to Bob Young, David Sachs and the staff for their professionalism and innumerable assists; to the executive committee, the regents and past presidents for being there; and to the state and general committees and their chairmen for keeping things moving, and many other courtesies.

We look forward to the coming year — to new inductees, new meetings, challenges and achievements, and a special meeting in London, Paris and Versailles.

Hope to see you there.

Charles E. Hanger

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What we also could be doing, among other things, is telling the public that the reason this is the finest country in the history of the world is because of lawyers. This is the only country in the world that was talked into existence. I take nothing away from those brave men who fought in the Revolutionary War. But not for one moment do I believe that they could take on what was then the most powerful nation in the world and wrestle it to the ground by military strength.

Our great victories, if you remember, were a retreat from Brooklyn Heights, a retreat from New York, we didn't freeze to death at Valley Forge and, at the end, we finally made it to Yorktown where a British commander tendered his sword to a French officer and was directed to hand it to George Washington.

What kept those people in the field fighting what seemed to be a losing battle was a concept, an idea, something they had been taught by lawyers; lawyers, by the way, who had learned that idea of freedom from English lawyers. The traditions and freedoms that they were fighting for were really the traditions of freedom of the English and the provinces of Canada.

As a result of that, they kept the spark alive so that at the end of the war when the Empire of France, the Empire of Spain, and the great maritime power of Holland were all aligned on our side, England decided it was no longer worth fighting and ceded to us our freedom. And it was our professional ancestors

who drafted the Declaration of Independence, our professional ancestors who drafted the Constitution of the United States, and eventually a lawyer who drafted the Emancipation Proclamation. Every single piece of freedom we have and enjoy is the result of courageous lawyers standing before courageous judges and demanding that these documents, which are not self-executing, mean what they say.

This is the greatest nation in the world because it is the only nation established where people, free people, govern themselves under rule of law. Anything that interferes with that concept is unethical. Our ethical standards are really to make sure that those concepts are carried into full being, that we can say when we finish our professional lives that while we have recognized that perfect truth and perfect justice can never be found, we will be damned if we will be satisfied with less and so we have conducted ourselves as lawyers.

We as trial lawyers know that the whole system of decency and freedom depends on us and yes, indeed, we are ethical and yes, indeed, this group represents the highest ethics of the greatest profession in the world.

I am pleased you asked me to be with you to discuss this. Our image will improve, I think, with more people like you making sure that the public knows what we are doing. Thank you very much.

● American College of Trial Lawyers

1992 ANNUAL MEETING AND SEMINAR ANNOUNCEMENT

ACTL Annual Meeting
October 29 - November 1, 1992
Grosvenor House Hotel
London, England

LONDON

ACTL Professional Seminar
November 1 - 4, 1992
Le Grand Intercontinental Hotel
Paris, France

PARIS

PRE-MEETING OPTIONAL GOLF TOUR

SCOTLAND
OCTOBER 23 - 28, 1992

GOLF COURSES: Glen Eagles, Carnoustie, St. Andrews

POST-MEETING OPTIONAL TOURS

TOUR I — Avignon, Cannes, Monte Carlo — November 4-11, 1992
TOUR II — Barcelona and Seville, Spain — November 4-11, 1992
TOUR III — Montbazou, Strasbourg, Reims — November 4-13, 1992
TOUR IV — Prague, Budapest, Vienna — November 4-14, 1992

Tours offered through SPECTRA TRAVEL, LTD.

1992 ANNUAL MEETING AND SEMINAR ADVANCE ANNOUNCEMENT INFORMATION

REGISTRATION

This announcement is an advance notification of the 1992 Annual Meeting and Seminar. Registration materials with complete details will be sent to all Fellows in early May, 1992. Registration will be sent out with a three week period in which to send the registration materials to the College National Office. On the specified deadline, all registration forms will be opened randomly and assigned a registration number up to capacity. This will enable all Fellows to have an equal chance to register without possible delays in mail service. **NO REGISTRATION CAN BE ACCEPTED PRIOR TO THAT MAILING.** The lottery system established by the Executive Committee for this special meeting is the only way that registration can be fairly handled with limited space for all functions and the tremendous interest in this special meeting. All details will be outlined in the materials in May. Be sure and forward the appropriate forms immediately when you receive them in May.

HOTEL RESERVATIONS

All hotel reservations will be handled by the College National Office on housing forms that will be provided in the registration materials in May, 1992. This will enable the best possible rates to the Fellows. Hotel accommodations should not be made independently.

ANNUAL MEETING — INDUCTION IN LONDON

The Annual Meeting of the College is scheduled for London and the Induction of Fellows will take place at the Annual Black Tie Banquet in the Great Hall of the Grosvenor House Hotel on Saturday, October 31, 1992. The Annual Meeting and business session of the College is also scheduled for Saturday, October 31, 1992 at 11:00 a.m. in the Great Hall of the Grosvenor House Hotel.

PRE AND POST TRIPS

The post Annual Meeting seminar in Paris is fully coordinated as a College sponsored seminar. This will have a separate registration and will feature a closing Black Tie Banquet in the Palace of Versailles on November 3, 1992. Space for the meeting and all functions is limited. Registration for the Paris Seminar will be first reserved for those who have registered and been confirmed for the London Annual Meeting. Unless space remains unused for the Paris Seminar, you will be required to register for the Annual Meeting in London in order to attend any of the Paris Program. No separate registration for Paris will be accepted.

Optional Pre and Post trips are briefly outlined on the other side of this announcement and are being offered exclusively for the Fellows of the College by SPECTRA TRAVEL OF LONDON AND PARIS. All details of these tours will be fully described in the registration materials in May, 1992. The tours are subject to minimum participation requirements. They will be strictly optional packages offered as a service. No College functions are planned for these optional tours.

GENERAL INFORMATION

This Annual Meeting marks the first time in seven years the College will have sponsored a foreign destination meeting. President-Elect Bill Haight is working on a very exciting professional program for both London and Paris and advance details of the program will be outlined in the materials in May, 1992.

This announcement is to provide advance notice of the plans being made for this special Annual Meeting this Fall. The timing of the meeting was based on availability of hotel space in both locations, better rates in the Fall, and more attractive airfares.

Full details on all the hotels offered in each location, rates, registration fees, schedule of events, optional ground tours being offered in each city, pre and post trips will be available in the materials in May, 1992.

College News

MASSACHUSETTS FELLOWS MEDIATION PROJECT REDUCES COURT CASELOAD

Over 70 Massachusetts Fellows of the ACTL are participating in a mediation program which is about to enter its third year. Chaired by Joseph D. Steinfield of Hill & Barlow, the program began in January of 1990, and throughout that year members of the College devoted two full days each week to the mediation of civil cases, for the most part disputes involving \$50,000 or less. The overall mediation settlement rate was 52 percent, and in a survey of attorneys who appeared before the mediators, 77 percent believed that the program worked "exceptionally well." By the end of 1990 a lengthy backlog of civil cases had been reduced to the point where mediation could be reduced to two days per month.

Meanwhile, having heard about this program, Massachusetts Superior Court Justice James F. McHugh requested that these mediation services be offered in Middlesex Superior Court where, as of mid-1990, some 8,500 pre-July 1, 1988 cases remained pending. In response to this request, the Massachusetts Fellows organized a much more ambitious

program of mediation to deal with complex commercial and tort cases which, if tried, would require not less than two weeks of trial time. The Superior Court program began in January of this year, on the basis of one full day each week, and has continued throughout the year with the addition of a second day in the months of November and December. As of October 9, 1991, 33 such cases had been referred to the program for mediation. Of that group, 24½ (74 percent) settled before trial, most of them at the mediation itself and a few between the mediation and trial. Judge McHugh describes the benefits of the program as "enormous", estimating that the settled cases would have consumed approximately 50 judge weeks. Both he, Massachusetts Superior Court Chief Justice Robert Steadman, and Massachusetts Chief Justice Paul J. Liacos have expressed their thanks to the Fellows who have assisted the courts by contributing substantial amounts of time to the mediation of these cases. Based on the success of the program to date, and on the fact that those who have mediated cases have uniformly enjoyed doing so, the program will continue in 1992 on an expanded basis.

Calendar of Events

1992

- **Jan. 16-18**/Western Chair's Workshop: Westin La Paloma Tucson, Arizona
- **Jan. 24-26**/Eastern Chair's Workshop: Ritz Carlton Hotel Palm Beach, Florida
- **Jan. 24**/Virginia Fellows Annual Banquet: Commonwealth Club/Richmond, Virginia
- **Jan 29-Feb. 5**/ABA Mid-Year Meeting: Dallas, Texas
- **Jan. 30-Feb. 2** South Carolina Fellows Meeting: The Cloisters/Sea Island, Georgia
- **Mar. 8-14**/ACTL Board of Regents Meeting: La Quinta Hotel La Quinta, California
- **Mar. 15-18**/ACTL Spring Meeting: Marriott's Desert Springs Hotel/Palm Desert, California
- **May 2-3**/Connecticut Fellows Meeting: Marriott Hotel Newport, Rhode Island
- **May 7-10**/Southwest Regional Meeting: Inn at Spanish Bay Pebble Beach, California
- **May 21-24** Alabama/Florida/Georgia Regional Meeting: Marriott's Grand Hotel/Point Clear, Alabama
- **June 5-7**/Pennsylvania/New Jersey/Delaware Regional Meeting: Marriott's Seaview Resort Absecon, New Jersey
- **June 19**/North Carolina Dinner: Dunes Gold & Beach Club Myrtle Beach, South Carolina
- **July 26-27**/Northwest Regional Meeting: Chateau Whister Canada
- **Aug. 6-13**/ABA Annual Meeting: San Francisco, California
- **Aug. 8**/ACTL Summer Banquet: San Francisco, California
- **Aug. 13-16**/10th Circuit Regional Meeting: Colorado/Wyoming/Kansas/New Mexico/Utah/Oklahoma/Grand Teton Lodge Yellowstone Park, Wyoming

- **Aug. 23-26**/Canadian Bar Association's Annual Meeting: Halifax/Nova Scotia, Canada
- **Oct. 28**/ACTL Board of Regents Meeting: Hyde Park Hotel London, England
- **Oct. 28-Nov. 4**/ACTL Annual Meeting: Grosvenor House Hotel/London, England/Le Grand Hotel/Paris, France

1993

- **Mar. 7-10**/ACTL Spring Meeting: Hyatt Grand Cypress Orlando, Florida
- **July 18-20**/Northwest Regional Meeting: Salishan Lodge Salishan, Oregon
- **Aug. 7**/ACTL Summer Banquet: New York, New York
- **Sept. 18-22**/ACTL Annual Meeting: J. W. Marriott Hotel Washington, D.C.

NOTE: Calendar changes frequently and dates should be checked with ACTL office when scheduling events.

PRESIDENT'S MESSAGE



Robert B. Fiske, Jr.

Elsewhere in this Bulletin is a full report from Past President Chuck Hanger on the activities of the College during his 1990-91 tenure. A few brief additional words are in order as to plans for 1992.

You have received notice of the Spring Meeting which will be held from March 15 to 18 at the Marriott Desert Springs in Palm Desert, California. Those of you who have been there before can attest that the outstanding professional program that has been planned by Bill Haight will be conducted in extremely pleasant surroundings. Looking further ahead, the Annual Meeting will be held in 1992 in London from October 28 to 31 followed by a three-day meeting (November 1 to 4) in Paris with the final banquet at the Palace of Versailles. Because of the anticipated large response to this meeting, we are planning a lottery system to assure that the available places will be allocated as equitably as possible. Further details can be found in this bulletin.

As Chuck Hanger's report indicates, the Standing Committees of the College are hard at work. The Federal Civil Procedure Committee and the Federal Rules of Evidence Committee have submitted position statements on Rule 11 of the Federal Rules of Civil Procedure and Rule 702 of the Rules of Evidence at the meeting of the Committee on Rules of Practice and Procedure of the Administrative Office of the U.S. Courts Committee on November 21. The principal positions taken on Rule 11 are to change "shall" to "may"; make monetary awards payable only to the clerk of the Court in all cases; and to require sanctions to be supported by clear and convincing evidence. "The College supported a proposed amendment to

Federal Rule of Evidence 702 which limits the use and increases the reliability of expert opinion testimony on scientific and technical issues." Further reports are being proposed on other proposed amendments for submission at future meetings.

The College has submitted an amicus brief, prepared by the Committee on Attorney-Client Relationships, on the issues involved in the so-called "Thornburgh memorandum." The brief, filed with the Ninth Circuit in the case of *United States v. Lopez*, takes the position that the Model Code of Professional Responsibility when adopted as part of the Court rules of the District Court is binding upon government lawyers.

The Committee on Special Problems in the Administration of Justice is finishing a report on RICO which will be presented to the Board of Regents at the Spring Meeting. As noted in Chuck Hanger's report, the Committee is also coordinating the efforts of the numerous Fellows across the country who are serving on District Court Advisory Committees under the Civil Justice Reform Act. One of the primary areas of concern which this Committee is addressing is the increasingly disturbing inability of civil litigants throughout the country to get cases tried because of the press of criminal — particularly criminal drug — cases.

Another issue of the Bulletin will be sent to all of you later this spring to bring you up to date on the work of these and other Committees, as well as other activities of the College. In the meantime, Janet and I hope to see as many of you as possible at Palm Desert.

Robert B. Fiske, Jr.

Future ACTL National Meetings

1992

- Mar. 15-18

Spring Meeting:
Marriott's Desert Springs Resort,
Palm Desert, California

- Oct. 28-Nov. 4

Annual Meeting:
Grosvenor House Hotel,
London, England
Le Grand Hotel,
Paris, France

1993

- Mar. 7-10

Spring Meeting:
Hyatt Grand Cypress Resort,
Orlando, Florida

- Sept. 18-23

Annual Meeting:
J. W. Marriott Hotel,
Washington, D.C.