

American College of Trial Lawyers

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The American College of Trial Lawyers in Ethiopia

By Fulton Haight and Philip W. Tone

Last fall, former President Jimmy Carter, on one of his trips to Africa to visit countries with ongoing problems on which he or his Foundation might be able to assist, met with the Interim President of Ethiopia, Meles Zenawi, whom he had known for several years. During their meeting, President Carter offered assistance from the Carter Center on several of such problems. Among them were the need to rebuild the legal system that the recently defeated dictatorship had severely damaged and the need to conduct trials of the many prisoners charged with war crimes in a way that would satisfy internationally accepted standards of due process.

On his return to the United States, President Carter asked his former Attorney General, Griffin Bell, for advice on whom to send to advise on these problems. Judge Bell, after conferring with American College of Trial Lawyers President Robert B. Fiske, Jr., recommended us, and we agreed to go on behalf of the College and the Carter Center. At the request of President Carter, the Carnegie Corporation generously funded both our trip to Ethiopia and a preparatory trip to Washington and Atlanta.

RECENT ETHIOPIAN HISTORY

We knew little about Ethiopia and even less about its legal system when we were contacted by Judge Bell. In the five weeks before our actual departure, however, we managed to achieve a reasonable level of knowledge, which enabled us to function fairly effectively once we arrived in Addis Ababa.

Ethiopia, unlike almost all other African countries, was never colonized by the European powers. Through most of this century it was governed by Emperor Haile Selassie, who ruled a basically feudal kingdom until the military took control of the government in 1974 and he, by then in his 80's and without heirs, was placed under house arrest. He died soon after under suspicious circumstances.

In 1977, Mengistu Haile Mariam emerged as President from the military junta that had been controlling the country. Mengistu (in Ethiopia the given or first name is used for shortened identity) proved to be a ruthless dictator, whose countless victims included, from time to time, erstwhile supporters, some of whom have been found recently in mass graves. Soon after he took over Ethiopia's government, Somalia, a contiguous neighbor to the south, undertook an invasion of Ethiopia, with aid from the former Soviet Union. When the United States declined to provide further military assistance to Ethiopia, Mengistu turned to Moscow, which switched sides and supported Ethiopia against Somalia. Ethiopia became a Marxist-Leninist state, at least in name, and over the next 12 years, eleven billion dollars in Soviet military aid was provided to the Mengistu government. After repelling the Somalians with the aid of Russian arms and Cuban troops, Mengistu found himself facing a mounting insurgency from within his own country, primarily from the two northern provinces of Eritrea and Tigrea.

After the Soviet Union discontinued aid to the Mengistu government in 1989, the insurgents, working with captured Russian equipment, gradually assumed control of the country. They were led by present Interim President Zenawi, who had left medical school at

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American College of Trial Lawyers BULLETIN

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Addis Ababa University in his early twenties to join the Tigrean insurgent forces and he eventually become their commander. The insurgents eventually surrounded the capital and, on May 22, 1991, Mengistu fled to asylum in Zimbabwe. This was just before a peace conference, arranged by the U.S. Undersecretary of State for African Affairs, Herman Cohen, was to begin in London. Meles' troops occupied the capital, Addis Ababa, on May 27, 1991, without opposition, capturing government records intact.

The London peace conference, attended by the leadership of several insurgent factions, resulted in tentative agreements that were reaffirmed and formalized at a conference in Addis Ababa in July. A provisional government led by Meles was formed, and commitments were made for elections in 1993.

The defeat of Mengistu had left several thousand prisoners from his regime under detention awaiting the charges and trials that were to be the responsibility of the new provisional government. This was the situation we were to address.

PREPARATION FOR THE PROJECT

We were originally scheduled to go to Ethiopia early in December. When that fortuitously proved unacceptable timing for our Ethiopian hosts, we were able to arrange three days of briefing in Washington, D.C. and an afternoon at the Carter Center in Atlanta.

In Washington, we met with Professor James Paul, the former Dean of the law school in Addis Ababa and now with Rutgers University; Paul Henze, of the Rand Corporation; Alex de Waal, of Africa Watch; Jeffrey Clarke, of the National Endowment for Democracy; and Terrance Lyons, of the Brookings Institute. We also met at the State Department with Undersecretary for African Affairs Herman Cohen and his colleagues, Robert Hodek (former Charge d'Affaires in Ethiopia) and Martin Cheshmer.

We then flew to Atlanta, where we had a very cordial and productive meeting with President Carter, which Mrs. Carter joined toward the end of the session.

ETHIOPIAN ITINERARY

On Friday, January 3, 1992, we departed from Chicago together and flew to Frankfurt, where we changed planes and continued to Addis Ababa — overall some 20 hours in the air. On arrival at the Ethiopian capitol Saturday night, we were met by an Embassy car that took us to the Hilton Hotel. Throughout our visit, the Embassy staff provided assistance, guidance and, when necessary, transportation.

When we were planning the trip, there was some mention of possible accommodations at the Embassy. That proved unnecessary. We stayed in a fine Hilton Hotel in the center of the city. The hotel restaurants were excellent, as were other continental restaurants in the city. Security was a factor to be considered, but never a concern. The young army personnel were well dispersed and on the several occasions when we were alone in the city, one of them was always nearby.

On Sunday, January 5, we took a short tour of the city. There were relatively few vehicles except for taxicabs and government trucks, but, as was true throughout our visit, many people were on the streets. The civilians were very friendly and appeared to be on good terms with the EPRDF (Ethiopian Peoples Revolutionary Democratic Front) soldiers who, with their AK-47 rifles, were to be seen throughout the city. There had been no operating police force since the revolutionary forces took over.

We were invited to a late-afternoon reception at the home of James Haley of the U.S. Embassy, where we met Embassy personnel, including Charge d'Affaires Mark Baas, and a number of Ethiopian guests. We talked with several government ministers, including Minister of Justice, Shiferaw Michael, with whom we talked at length. He said that some time previously he had sent a proposed plan for the reestablishment of a judicial system to the Legal Committee of the Council of Representatives, which was considering the matter. Several people told us, during the reception and later, that the provisional government is being operated by a few very capable men and women, but that they were running behind on many matters.

The next morning, we received a telephone call from Dawit Yohannes, who introduced himself as Legal Advisor to the President. He sent a car to take us to a noon meeting with him at the Ministry, which would be a preliminary step to a meeting with the President. Like all of the Ethiopian officials we met, Dawit spoke excellent English. He was friendly and

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PRESIDENT'S MESSAGE



Robert B. Fiske, Jr.

This has been both an unusual and busy year for me as President of the American College of Trial Lawyers. Four days after being inducted as President in Boston last October, I left for Miami, Florida to begin what was supposed to be a three month — but ended up as a nine month — trial, which concluded a few days before Hurricane Andrew. However, despite this lengthy trial, Janet and I were still able to attend most of the College functions during the year. We are very grateful to President-Elect Bill Haight, Secretary Frank Jones and Treasurer George Cotsirilos who filled in for us at the meetings we could not attend.

The College functions through the work of both State/Province and general substantive committees and through three separate levels of meetings. The meetings occur at the national, regional and state/province level. Some Fellows attend all three types of meetings; some attend only the state or regional meetings. Each in its own way makes a meaningful and important contribution to the work of the College, both in terms of the substantive programs that are conducted and in the collegiality that they foster among the membership.

The national meetings are well known to all Fellows. Since 1989 we have had two each year: one in the Spring and one in the Fall. Within a few weeks we will be holding this year's Annual Meeting in London and Paris. The concept for these meetings has been to continue to conduct the Spring Meeting in a resort-type atmosphere, such as Hawaii, Palm Desert or Boca Raton and to hold the Annual Meeting in the fall in a metropolitan city, which provides an opportunity for the local Fellows to showcase special features of their city. Previous fall meetings have been held in New Orleans, San Francisco and Boston. The 1993 Fall Meeting will be in Washington, D.C. and we expect to hold the Fall Meeting in 1994 in a Canadian City.

Lesser known perhaps to the full mem-

bership of the College is the ever-expanding scope and extent of regional and state/province meetings. This past year there were a total of eight separate regional meetings which bring together Fellows from several states or provinces, and a total of twenty-six separate state/province meetings bringing together the Fellows in that particular state or province. These meetings presented a wide variety of programs, including by way of example, a discussion of the recent changes in Rule 26 by the Hon. Sam Pointer of the Middle District of Alabama, Chairman of the Advisory Committee on the Federal Civil Procedure Committee; a presentation of a mock pre-trial mediation session; a discussion of the Texas system for electing state judges; a discussion of the issues raised in the OTS proceeding against Kaye Scholer; a discussion of new techniques in computer driven presentations of demonstrative evidence; and a discussion by the Hon. William C. Lee, of the Northern District of Indiana, with his own acapella accompaniment, of the legal and judicial implications of the works of Gilbert and Sullivan. Each of these meetings also included dinners and other social events which allowed Fellows and their spouses to come together and share the collegiality which is the hallmark of our fellowship. Having the chance to attend so many of these meetings gives the President of the College a first-hand view of the extremely important contribution these meetings make to the vitality of the College.

The State and Province Committees, in addition to organizing the regional and state meetings, have as their primary function the recommendation to the Board of Regents of proposed new Fellows in the College. Throughout this year, as in the past, the leadership of the College has stressed to these Committees two important concepts: (1) that the Committees should not be merely passive recipients of proposals which are voted up or down, but should be actively involved in searching out and bringing forward the best trial lawyers in their respective jurisdictions; and (2) in the course of doing that the Committees should be actively looking for diversity, both with respect to the nature of the trial practice involved and in searching

for members to increase the number of women and minority lawyers in the College. It is gratifying to report that progress has been made in this area, although much remains to be done.

The work of the general committees, which is organized along various substantive areas of importance to the trial bar, is an equally important part of the work of the College. Elsewhere in this Bulletin are separate reports on the activities of the Emil Gumpert Award Committee, the Courageous Advocacy Committee, the National Trial Competition Committee, the National Moot Court Competition Committee and the Committee on Federal Civil Procedure. Also reported separately in this Bulletin is a description of the program on court congestion held at the Spring Meeting and a description of two innovative programs designed to reduce court congestion in Massachusetts and Pennsylvania. These programs present excellent opportunities for Fellows who are anxious to get involved with the work of the College both in those states and in other states where we hope similar programs will be initiated.

The Committee on Attorney/Client Relationships, working with the Committee on Federal Criminal Procedure, submitted an *amicus* brief to the 9th Circuit Court of Appeals in the case of *United States v. Lopez* on the issues involved in the so-called "Thornburgh Memorandum". The College took the position that the Model Code of Professional Responsibility, when adopted as part of the Court rules of the District Court, is binding on government lawyers. The appeal was argued in May, and is *sub judice* as of the date of this Bulletin.

The Canada/United States Committee is in the process of preparing for another Canadian/U.S. Exchange in 1993 under the leadership of Chief Justice Rehnquist and Chief Justice Lamer. We expect that a portion of the Exchange which will be held in the United States will take place in Washington as part of the program for our Fall Meeting.

The Committee on Complex Litigation is working with Hon. William Schwarzer, head of the Federal Judicial Center, to revise the Manual on Complex

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Litigation. This is an important project for which this committee of the College is perfectly suited. It is particularly timely in light of the current amendments to the Federal Rules of Civil Procedure.

The Committee on Criminal Procedure is working on a proposal to allow defendants to waive a jury without the consent of the Government and a proposal to standardize the procedure for Jencks Act productions throughout the United States. It is also considering proposals to alleviate hardships resulting from use of the civil forfeiture statutes.

As an outgrowth of the national conference held in Orlando, Florida this past spring on Federal/State Judicial Relationships, the Judiciary Committee is working to develop a model program for federal/state judicial cooperation. A group of Georgia Fellows is developing this program which the Judiciary Committee will then make available to interested Fellows and judges in other parts of the country.

The Legal Ethics Committee is in the process of revising and updating the College's Code of Trial Conduct, as well as continuing to provide a leadership role in the development and presentation of programs on legal ethics which have been, and will be, put on at various College meetings throughout the country.

The Committee on Special Problems in the Administration of Justice is continuing to review the pilot programs in the various district courts which are being formulated under the Civil Justice Reform Act with the active participation of members of the College on almost every Committee. It is also continuing its analysis of issues relating to Civil RICO which will be the subject of a future Committee report.

The most dramatic activity of the newly-formed Committee to Advance the Rule of Law Abroad is reflected in the report, elsewhere in this Bulletin, by President-Elect Bill Haight and Past President Phil Tone on their mission to Ethiopia at the request of former President Jimmy Carter to assist President Meles in developing a fair and effective procedure for conducting trials of prisoners charged with war crimes.

In addition the Committee, following its organizational meeting in Palm Desert last March, has initiated contact with various organizations engaged in similar work including the Central and East European Law Initiative (CEELI) a project of the American Bar Association. In August the Committee received, and responded to, a request from CEELI to comment on the draft laws re Advokatura in Russia which was designed to provide, by Legislation, an indepen-

dent bar in the Russian Federation. In addition, through the efforts of this Committee we are pleased to have, as part of the Paris program this fall, an address by Vjacheslav M. Lebedev, Chief Justice of Russia, on the Current State of Legal Process in Russia.

In closing, I would like to express my appreciation to Bob Young and the staff of the College, and to all of the many Fellows of the College who have devoted their time to the important activities which are continuing to make such a meaningful contribution to the administration of justice. In particular, I would like to express appreciation to President-Elect Bill Haight, who not only carried out in superb fashion the traditional President-Elect responsibility of organizing the programs at the Spring and Annual Meetings, but also on a day-to-day basis handled many other matters. It has been a great year. Janet and I have had a wonderful time with all of you at the many functions we have attended. The College is an exceptional organization and we can all look forward to its continuing vitality under Bill's leadership.

Robert B. Fiske, Jr.

Future ACTL National Meetings

1993

- **Mar. 7-10**
ACTL Spring Meeting:
Hyatt Grand Cypress,
Orlando, Florida
- **Sept. 18-22**
ACTL Annual Meeting:
J. W. Marriott Hotel,
Washington, D.C.

1994

- **Mar. 27-31**
ACTL Spring Meeting:
Westin La Paloma,
Tuscon, Arizona
- ACTL Annual Meeting
to be announced.

1995

- ACTL Spring Meeting
to be announced.
- **Sept. 21-24**
ACTL Annual Meeting:
Marriott Rivercenter,
San Antonio, Texas

College News

NORTHWESTERN WINS 1992 EMIL GUMPERT AWARD

The American College of Trial Lawyers is not only interested in improving the advocacy and trial skills of its members, but also works to improve the quality of teaching trial advocacy in the law schools of the United States and Canada. The Emil Gumpert Committee is charged with the task of recommending to the College Regents, on an annual basis, a law school that the Committee judges to merit the College's Award for Excellence in teaching trial advocacy. The College gives tangible recognition to excellence in teaching trial advocacy by a monetary award (currently \$25,000) to law schools which are deemed by the College to have outstanding programs in trial advocacy. The awards are made in honor of the late Honorable Emil Gumpert, Chancellor-Founder of the American College of Trial Lawyers. The 1992 winner of the Gumpert Award is the School of Law at Northwestern University, Chicago, Illinois. A list of the 29 previous recipients is contained in the Blue Roster Book.

Periodically, a pamphlet describing the award and the method of consideration and application is mailed to law school deans throughout the country. Law schools that desire to be considered for the award submit to the College an application which is a thorough description of their trial advocacy courses following College guidelines set out in the pamphlet.

The applications are then referred to the Committee members. The Chair, after conferring with the College's State Chairman where the school is located, appoints two non-alumni Fellows in the vicinity of the applying law schools to make on-site visits to the law school and observe the trial programs first hand. The on-site evaluators submit separate written reports to the Committee.

The Committee meets annually to consider the reports of the on-site evaluation along with the applications. At the meeting, the Committee hears presentations by assigned Committee members on each law school, considers the on-site evaluators' reports and makes its recommendation of a winner which it submits to the Board of Regents for their approval.

Once the Regents approve the recommendation of the Committee, the College notifies the winning law school. The award, consisting of an appropriate plaque and a \$25,000 check, is presented to the law school at a suitable ceremony by the President of the College. The College regent for the area, as well as the Committee Chair, generally attend this presentation.

The Emil Gumpert Committee currently is studying applications from the following law schools: University of Missouri at Kansas City, Widner, the University of Idaho and Gonzaga University School of Law at Seattle, Washington. The Committee will meet in early 1993 to review the applications and make its recommendation to the Regents.

The Committee encourages all State Chairs and individual fellows to contact their alma maters or local law schools and encourage schools to apply for the Emil Gumpert Award. Application guidelines are available from the College's office.

UNIVERSITY OF GEORGIA WINS MOOT COURT COMPETITION

The final rounds of the 42nd Annual National Moot Court Competition were held on Thursday, January 16, 1992 at the Association of the Bar of the City of New York. Associate Justice Anthony M. Kennedy presided. Also on the Panel was former President Leon Silverman, substituting for President Fiske who was on trial. Twenty-eight schools advanced to the final rounds of the National Competition which is co-sponsored by the College and the Young Lawyer's Committee of the Association.

The University of Georgia School of Law was named the winner of the final rounds. The members of the championship team were Gregory A. Gunter, Mark A. Lewis and Julia O. Lynch. A team from Vanderbilt University School of Law placed second in the competition.

The runner-up award for the best brief was presented to the University of Nebraska College of Law. The award for the best individual oral argument went to Mark A. Lewis from the University of Georgia School of Law. Julia O. Lynch, also from the University of Georgia, received the award for the runner-up best individual oral argument.

NORTHWESTERN WINS NATIONAL TRIAL COMPETITION

The American College of Trial Lawyers is one of the sponsors of the National Trial Competition Committee, a competition that this year involved approximately 120 law schools throughout the United States. The College was not only supportive of the Competition during its formative stages seventeen years ago, but also it has continued to support the Competition over the years in two principal ways: (1) by encouraging its Fellows to participate; and (2) by presenting the George A. Spiegelberg Award to the best oral advocate and presenting the winning law school with the Kraft W. Eidman Award, which includes a monetary award of \$5,000 and a silver bowl.

The Competition was held this year in San Antonio, Texas on March 19-21. Twelve Fellows served as presiding judges during the preliminary rounds and served as jurors in the final round. Northwestern University School of Law from Chicago was named the national champion.

Interestingly, this is the second year in a row that the same law school which won the Emil Gumpert Award for its trial advocacy program saw its students emerge as the winners in the National Trial Competition. In 1991 the University of Texas Law School won both the Emil Gumpert Award and the National Trial Competition.

ACTL Publication Committee

Fulton Haight, President 1992-1993 will be creating a new Publication Committee and requests any Fellows with expertise in this area or interest in serving write or call him by November 15, 1992.

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AWARD FOR COURAGEOUS ADVOCACY

At the Annual Meeting in London the College will present one of its most prestigious awards — Award for Courageous Advocacy. Through a rigorous nomination and investigation procedure conducted by the Award Committee, names of potential recipients were solicited throughout the country from Fellows and general bar groups. Given by the Regents only eight times in 27 years, the honor this time will go to Max Stern, Esq., a lawyer from Boston.

While defending a man accused of drug crimes, as Court-appointed counsel, Mr. Stern discovered and exposed a corrupt practice whereby Boston policemen repeatedly falsified affidavits to obtain search warrants. Mr. Stern not only exonerated his own client in court, but his painstaking investigation of many drug cases led to the eventual conviction of the dishonest police officers and a needed reform of the

criminal justice system, pursuant to recommendations made by a special commission (chaired by FACTL James D. St. Clair) appointed as a result of the evidence uncovered by Mr. Stern. In the process, both his life and livelihood were threatened, and he suffered public vilification by the Mayor and other officials.

Previous winners of the Award have been:

Hon. Robert J. Lewis, Jr., 1991
Stanton Bloom, 1990
William R. Gray, FACTL, 1985
Robert W. Meserve, FACTL, 1979
Barnabas F. Sears, FACTL, 1975
Leon Jaworski, FACTL, 1975
George E. Allen, FACTL, 1965

PROGRAMS TO RELIEVE COURT CONGESTION

The issue of the Bulletin which you received earlier this year described in some detail the Massachusetts Fellows Mediation Project which was organized by FACTL Joseph D. Steinfeld. The program, together with a "Judge Pro Tem" program in the Commonwealth of Pennsylvania, was a featured part of the program on court congestion at the Spring Meeting of the College in Palm Desert.

The Pennsylvania Judge Pro Tem program was conceived by the Hon. Ralph J. Cappy, formerly a Judge on the Pittsburgh Court of Common Pleas, more recently a Justice of the Pennsylvania Supreme Court. The program started in Allegheny County (which includes Pittsburgh) in the summer of 1989. Two hundred of the leading trial lawyers in Allegheny County were qualified and sworn in as Pro Tem Judges. By consent of the parties the more than 800 cases in which damages of less than \$25,000 were sought were assigned to these "Pro Tem" Judges. More than 500 of these were settled and approximately 140 additional cases were tried by either jury or non-jury. To preserve the right of appeal, a supervising judge participated with the Pro Tem Judge in reviewing any post-trial motions. In fact, only three such motions were filed and no appeals were taken from any of the decisions.

This same program was repeated with even greater success in the summers of 1990, 1991 and 1992.

Based on the success of the program in Pittsburgh a similar program was instituted in Philadelphia in the summer of 1991, the major difference being that in Philadelphia the program extended to all cases pending in the Philadelphia Common Pleas Court where there was a backlog of 44,000 cases, 28,000 of which were "major cases" involving amounts greater than \$25,000.

Approximately 40 of the leading trial lawyers in Philadelphia (the vast majority of whom were members of the College), pre-screened by both plaintiff and defendant trial lawyers associations and the administrative judges, were qualified and sworn in by the court. They were asked to designate periods of two weeks or more during the summer in which they would be willing to preside. Their names, time periods and court rooms were published in the local law journal. Lawyers whose cases were awaiting trial in the general trial pool could have the cases removed and tried (either bench trial or jury trial) before any of these judges agreed upon by both sides. In the summer

of 1991, a total of 247 cases were tried to conclusion by the Pro Tem Judges; only 32 post-trial motions were made and in only three of these cases were appeals taken to the intermediate appellate court. Moreover, as Judge Cappy explained the program, an incidental benefit of having the Pro Tem Judge trial capability was that an additional 1,000 cases settled above the amount ordinarily anticipated.

In 1992, the second year of the Judge Pro Tem program, 217 cases were assigned to the 40 Pro Tem Judges. Thus far, 153 have been disposed of by way of trial and settlement. The total effect on the backlog of cases in the Common Pleas Courts has been to eliminate approximately 1,000 cases from the docket.

Justice Cappy of the Pennsylvania Supreme Court, along with Administrative Judge BonavitaCola and Judges Diaz and Gafni, who were involved in the day-to-day administration of the program, all agree that the program has been a complete success. During the coming year one Pro Tem Judge has volunteered a full year of his time for the purpose of resolving professional negligence cases which were filed on or before October 1990. It is hoped that with that Pro Tem Judge, and with others who will be participating in the program, professional negligence cases can be made current, i.e., ready for trial within one year of filing by December 31, 1993.

The lawyers selected in both programs as Pro Tem Judges were officially sworn in, participated in a one-day seminar, and were given the use of a court room, an official court reporter and the regular court staff. An important part of the program is that they wear robes and act in every way appropriate to assure that, as one participant in the program described it, none of the juries involved were aware that these judges were not "real judges". Many of the judges have used summer associates as law clerks which has proved to be an extremely popular addition to the law firm's summer program.

The panel discussion describing each of these programs was video taped and a reduced version of the tape has been prepared which is available in the College office for any State or Province Committee which is interested in initiating either one of these. Fellows should also feel free to contact Joseph Steinfeld in Boston or Regent Ralph W. Brenner in Philadelphia for further information. They both have considerable written material prepared describing each of these programs, as does the College office, which is available on request.

Committee Reports

THE FEDERAL CIVIL PROCEDURE COMMITTEE

This Committee has been very busy for the past several years surveying all the Federal Rules of Civil Procedure as they were, and continue to be, examined by the Advisory Committee on Rules of Practice and Procedure of the Judicial Conference. The Committee has been meeting twice a year and has communicated views to the Advisory Committee on the proposals which they are, at the particular time, considering. The Committee has also made proposals of its own for changes to the Rules.

In addition, the Committee has participated in the public hearings conducted by the Standing Committee from time to time. When there have been yet additional hearings or proceedings, as for example with respect to the study of Rule 11 which has proceeded through numerous drafts, regularly scheduled meetings and further special hearings, it has participated with written recommendations and oral testimony, where appropriate.

The Committee keeps in touch with various other professional groups which are interested in the continuing rule-making evolutions.

It should be noted that given the enormous number of proposed changes being considered by the Advisory Committee, and the sometimes rapid rate at which proposals progress, our Committee has, under the guidance of the Regents, carried out dual function. On some of the more significant proposed changes, where the Regents have had time to formulate a position on behalf of the College, the Committee has assisted that function and communicated the views of the College to the Advisory Committee, the Standing Committee or whatever the appropriate body was. This has happened with Rule 11 and occasionally some other matters. As to the other proposed changes, the Committee has been authorized to communicate its own views to the Advisory Committee or other addressee. When this is done, it coordinates with the President and others from the Board of Regents so that the Regents are kept informed. The Committee is careful to describe the views expressed as being those of an experienced committee of trial lawyers, consisting of 22 or 23 members, but not necessarily the views of the College itself. This process has been in place for four or five years.

The Committee's position on Rule 11 was described in the last issue of the Bulletin. Since then the Committee has expressed its views on the controversial discovery and disclosure proposals involved in the proposed amendments to Rule 26. Some of the proposals which were the most unfortunate have been modified to ameliorate the problems. Other proposed changes seemed useful to the Committee. And there were some matters which the Committee opposed which, nonetheless, remained intact.

On the general issue of disclosure, the Advisory Committee's drafts had gone through several stages since the concept was introduced a few years ago. Our Committee, especially through our Discovery Subcommittee, kept track of the twists and turns. Cognizant of the pressure brought by Congress on the Judiciary to address discovery abuse, expense and delays,

it was perceived that some mandatory disclosure was likely to be enacted. We attempted to work with the Advisory Committee to make the concept as sensible and unthreatening as was feasible. We think the present proposal, if promulgated by the Supreme Court, is manageable. It requires each party to list the names and addresses of individuals likely to have discoverable information "relevant to disputed facts alleged with particularity." It also requires a description by category and location of documents "relevant to disputed facts alleged with particularity." We do not interpret the proposed changes as requiring the disclosing party to ferret out smoking-gun memoranda and present them to the other side.

Some of the rules changes already enacted in pilot districts and early implementation districts go beyond that and will, perhaps, cause more problems. We are disappointed that neither the Advisory Committee nor the Standing Committee saw fit to require that disclosures be staggered, with the disclosure of the party bearing the burden of proof coming 30 days or so before the opponent's. We tried to persuade those committees to our view, but their consensus was that the trial judge could make such orders if appropriate in the particular case.

Perhaps the most significant part of the proposed disclosure/discovery rule changes is the extent to which the parties themselves must come up with proposed schedules and the extent to which the judge will be involved in receiving and acting upon those proposals. Concerning discovery limitations, sequencing, and timing, the parties will have their litigatory fate in their own hands. In this regard, it should be noted not only that the schedules proposed by the parties would likely be adopted by the judge, but various provisions (for example revised Rule 29) allow the parties by stipulation to alter the various limitations the new rules will provide. Intelligent crafting of schedules and resort to the supervisory authority of the judge where the parties cannot agree will be the order of the day.

The Advisory Committee will meet again in November, 1992. Our Committee will have met in October, at which time we will know whether the present proposals have emerged intact from the Judicial Conference and, if not, just what changes have been wrought. We will also address the new agenda which the Advisory Committee will set for itself. That agenda will include a proposal for a complete revamping of Rule 23 and various proposals seeking to enhance public access to discovery materials. This latter point covers not merely public attendance at depositions and public ability to obtain copies of discovery documents but also the entry of protective orders cloaking settlement agreements and various pretrial disclosures with secrecy. In addition, the Advisory Committee may revisit Rule 68 and fee shifting after an offer of settlement.

Fellows having views on any of these issues should make them known to Chairman of the Committee, Fran Fox of Boston, Massachusetts.

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forthcoming, outlining the government's concept of a new legal system, a Special Prosecutor's Office and the appointive power. He covered in a general way the government's tentative plans for selecting and assigning a Special Prosecutor, Assistant Special Prosecutors and judges for the war crimes trials.

At the end of the meeting, Dawit said that President Meles would not be available until Wednesday, January 8, because Tuesday would be Christmas Day in Ethiopia. (Christianity came to Ethiopia in the Fourth Century.) He said he would have someone contact us on Christmas morning to arrange for a tour of the city and the surrounding country.

At the conclusion of that tour the next morning, our guides took us to the Addis Ababa Restaurant, where we enjoyed an Ethiopian luncheon. The food consisted of highly seasoned meats served in and eaten directly from a large bowl placed in the center of the round table, with soft, unleavened bread as the eating utensil. A local honey wine accompanied the food. A wonderful experience and one we were pleased to survive.

The next day, we were advised that we were expected at President Meles' offices at 4:00 p.m. His offices were in a government building well guarded by EPRDF soldiers.

The President greeted us graciously. We met alone with him and Dawit Yohannes. The discussion started fairly slowly, with President Meles and Dawit (in what we were told later was the conventional approach) apparently waiting to hear what we had to say first. We described our backgrounds and our preparation for assisting in the development of their plans to handle the prosecutions under the observation of human rights representatives. We offered to advise in whatever capacity they wished in planning for the trials.

President Meles said that one of the problems they faced was that his people did not respect the courts because of their experience under the Mengistu regime. He said he wanted to show them what justice really was, by demonstrating that even the leaders of a dictatorship could be brought to justice eventually.

He then went into the judicial selection process. The possibility of using judges from the Mengistu regime was discussed. It was the President's view that those who had belonged to the WPE (Workers Party of Ethiopia) party should not serve as judges during the interim period. We later learned that the draft proclamation on Judicial Administration prohibits their serving. Although we understood the reason for this, we pointed out that if former WPE members could not serve, the result might be a shortage of experienced and competent judges qualified to handle the trials.

We suggested that the judges who had been party members might be individually investigated to determine which of them in fact had been supporters of the Mengistu regime and which of them appeared to have joined the party to protect themselves and their families. Eventually, President Meles indicated that he thought such an approach might be justified, at least if it was determined that without these people there would not be enough experienced and qualified judges to try the cases.

President Meles also mentioned the possibility of using retired judges. We agreed that they should determine whether there are some retired judges who would be able to serve.

We then discussed the appointment of the Special Prosecutor. In addition to emphasizing the need for early appoint-

ment, we expressed our opinion that President Meles should be removed as completely as possible from the appointment process. Acknowledging that Presidential appointment was the original concept in our government, we discussed, as illustrative of the problem of Presidential appointment of the prosecutor, the Nixon-Richardson episode, which led to the special-prosecutor statute placing the appointive authority in the Attorney General. President Meles was knowledgeable about that entire event, as he was about several other United States political matters that were mentioned during our meeting.

He said he did not want to have anything to do with the trial, and that he wanted to get the prosecutions started as soon as possible and finished before the Interim Government turned the country over to the permanent Constitutional Government, an event that would take place in about one and one-half years. He wanted to get the trials completed before the end of the current year so the country could move ahead.

We talked about having several panels of judges, perhaps three, assigned to handle only the detainee prosecutions. A regular court system with other judges would be established concurrently. (Ethiopia has traditionally had a continental judicial system, with the trial court consisting of three judges.)

As to the trials of the detainees, we recommended that 25 or 30 of the most serious and strongest cases be identified and tried first. We talked about the emotions the trials might bring out among the people at large, and the need to anticipate this public reaction. We had been told that the detainees would, in all probability, hire their own defense counsel, and, with some humor, which we assumed alluded to the source of their financial resources, President Meles concurred and said that they had the funds to do so.

We brought up the subject of plea bargaining as a way of disposing of cases in which the death penalty would not be sought, which might be appropriate after a number of trials had established the government's capacity and determination. Plea bargaining was foreign to the Ethiopian legal system, and we had to explain what it was and how it functioned in the United States. The possible use of plea bargaining appeared to interest President Meles. We subsequently sent literature from the Federal Judicial Center addressing plea bargaining.

We were left with the impression that President Meles did not have any reservations about the use of the death penalty in appropriate cases. We believe it was he, although it may have been Dawit Yohannes, who said pointedly that the death penalty is in their Penal Code.

At the end of the meeting, we were asked to meet with the Legal Committee of their Council of Representatives the next evening, at 6:00. Dawit said that the Committee had prepared drafts of proclamations dealing with Judicial Administration and a Special Public Prosecutor, and that the draft proposals were being translated from Amharic into English so they could be made available to us. They said they would like to have our views on the drafts before their presentation to the Council of Representatives. This presentation was scheduled to occur on Tuesday, January 14, with what they believed would be fairly rapid action to follow.

The next evening we met with the Legal Committee, comprised of Mohammed Abdurahanan (who appeared to be the

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chairman), Dawit Yohannes and Biwia Abajabal. They began giving us the English drafts of the Proclamations. They asked us to get back with our comments by FAX (since we were leaving the next day) as soon as possible. We spent about an hour and a half in a very friendly discussion of the human rights issues and the quality of the legal system they hoped to develop.

During our week in Addis Ababa, we had appointments with other government ministers and officials. The Minister of Justice, in particular, was helpful and made a considerable effort to assist us. Our final appointment was with the Dean of the Addis Ababa University Law School. This school, founded during Haile Selassie's reign, has produced over 1,000 graduates who would form the nucleus of the new legal system. Many of them had fled during the Mengistu regime, but some were left and some of the ex-patriots were expected to return.

After our meeting with the Dean, we departed on Ethiopian Airlines for London, where we would stay overnight and then complete our journey home. On the plane, we analyzed and discussed the drafts of the Judicial Administration and Special Public Prosecutor proposals we had been given by the Legal Committee. We resumed our work at the airport hotel the next morning before taking our respective British Air flights home to Chicago and Los Angeles, where we arrived Saturday afternoon.

On Sunday, conferring with one another by telephone, we drafted our recommendations and comments on the two draft proposals, which we then FAXed to Mark Baas, the Charge d'Affaires in the Embassy in Addis Ababa. He later reported that an Embassy messenger had delivered them to Dawit Yohannes on Monday.

IMPRESSIONS AND CONCLUSIONS

We believe our trip, after a slow start, was very worthwhile. Nonetheless, our evaluation is cautious. Our preparation had left us with the belief that the problems we were going to encounter would center around the ethnicity disputes which have plagued Ethiopia. The Amharas (25%-30% of the population) dominated the country for several centuries before the Mengistu regime. The Oromos (30%-35%), because of their numbers, are in a position to dominate government, at least in several of the provinces. The Tigreans, President Meles' ethnic group, have had a prominent role in the overthrow of the dictatorship in the provisional government, but because of their numbers (10% to 12%) would seem to be dependent on coalition to be an influence in the national government. On the scene, ethnicity did not seem to be a serious problem. The President's Legal Advisor, Dawit, is an Amhara — and the Legal Committee of the Council of Representatives, with which we met, is ethnically diverse. Certainly, at the level at which we were meeting people, ethnicity was under control.

We were very impressed with the individuals we met in government throughout our entire week. They are, without exception, very intelligent, able, self-confident, and capable of discussing issues without becoming either hardened in their own view or easily swayed to a new view. They were open and objective in the discussions. President Meles was temperate in his comments, and when appropriate, flexible, throughout our meeting. His comments on human rights and his expressed desire to put together a legal system that will prove his coun-

try to be a country of laws and not of men appears to be genuine. He is a very unusual man and Ethiopia is very fortunate to have him as its leader at this critical time.

The question on which opinions seemed to differ is whether there are enough qualified, experienced judges who were not members of the WPE to constitute a judiciary that will perform effectively in the conduct of these trials under international observation. Weighing all we heard, our cautious opinion is that there are.

Also, there seems to be some doubt as to the existence of investigative capacities necessary to bring the cases together effectively. It was not possible for us to reach an independent conclusion on this question, given not only the limited time and resources available to us but also the language barrier that separated us from the evidence.

Either the timing of our trip turned out to be ideal or our presence, with President Carter's sponsorship, stimulated activity on the subjects on which we advised. Probably there was a little of each, but in any event we found the Government in the process of drafting proclamations dealing with judicial administration and the office of Special Prosecutor, and our input seemed to be welcomed.

We have, of course, no way of knowing whether this past trip will complete our mission. In our meetings with the President and the Legal Committee, we discussed returning in a few months, if they felt there was a strong need for our assistance.

Addendum:

We understand that the following developments have taken place since the above was written:

In the months since our departure, the ethnic and political conflicts in Ethiopia have escalated. President Meles, for several months after our visit, focused all of his attention on regional elections to be held throughout the country electing office holders in the various thirteen provinces and the City of Addis Ababa. The governmental structure that he has attempted to create is not unlike our original thirteen colonies. It is our understanding that he intended each of these provinces to be an independent state with its own government, system of laws, police force, and ethnicity. His concept was to make an asset of the different ethnic groups in Ethiopia by allowing them their own languages and customs on a regional basis, thus reversing the Mengistu regime's stifling of ethnic diversity. Because the Oromos constitute the largest, best organized and most aggressive ethnic group, they would probably dominate many of these regional governments if elections followed ethnic lines. The Oromos do in fact have their own party, the OLF (Oromo Liberation Front), which of course had a substantial representation in the Council of Representatives.

What has occurred is a dramatic reduction in the number of detainees. While there, we were given detainee numbers ranging from 5,000 to 75,000, most of them military. We were told a few months ago that the number of civilian detainees had been reduced to between 150 and 250 and the number of military detainees to substantially less than 1,000. There since may have been further reductions.

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Information about what has taken place in Ethiopia in recent months has been somewhat conflicting. Free elections were held in the provinces, but they were less than successful because of difficulties in organizing them and the unwillingness of the Oromos to participate. We understand that after the elections, the OLF withdrew its members from the Council of Representatives.

In late August, the Council of Representatives at last adopted the Judicial Administration and Public Prosecutor procla-

mations needed for the trials of detainees. We have recently received a copy of the proclamations, as adopted, from Daw Yohannes with a letter expressing a continuing interest in our suggestions and advice.

The future of democracy in Ethiopia is uncertain, but we remain hopeful. The government remains in the hands of very competent people of good will, and we hope that they will be able to overcome the very serious problems caused by ethnic diversity and lack of resources.

Calendar of Events

1992

- **Oct. 1**/Missouri Fellows
Dinner: Hickory Hills Country Club
Springfield, Missouri
- **Oct. 9-11**/Regional Meeting:
Maryland/D.C./West Virginia
Martingham Hotel
Harbortowne, Maryland
- **Oct. 17**/Michigan Fellows
Dinner
- **Oct. 23**/District of Columbia
Annual Dinner: Congressional
Country Club
- **Oct. 29**/ACTL Board of
Regents Meeting: Hyde Park Hotel
London, England
- **Oct. 29-31**/ACTL Annual
Meeting: Grosvenor House Hotel
London, England
- **Nov. 1-4**/ACTL Professional
Seminar: Le Grand Hotel
Paris, France
- **Nov. 13**/Oregon Fellows
Annual Dinner: Multnomah Athletic
Club
- **Nov. 19**/Downstate New York
Annual Dinner: The Four Seasons
Restaurant/New York, New York

- **Dec. 4**/Mississippi Fellows
Annual Dinner: The Country Club
Jackson, Mississippi
- **Dec. 5**/Louisiana Fellows
Dinner: TBA
- **Dec. 8**/New Jersey Fellows
Annual Christmas Party: Lahiere's
Restaurant/Princeton, New Jersey



1993

- **Jan. 14-17**/Western Chair's
Workshop: The Lodge at Pebble
Beach/Pebble Beach, California
- **Jan. 22**/Virginia Annual
Black-tie Dinner: Commonwealth
Club/Richmond, Virginia
- **Jan. 28-31**/Eastern Chair's
Workshop: The Cloisters
Sea Island, Georgia

- **Feb. 18-21**/South Carolina
Fellows Meeting: The Cloisters
Sea Island, Georgia
- **June 18**/North Carolina
Fellows Annual Dinner: Biltmore
Forest Country Club
Asheville, North Carolina
- **June 18-19**/Northeast
Regional Meeting: Algonquin Hotel
St. Andrews, New Brunswick
- **July 18-20**/Northwest
Regional Meeting: Salishan Lodge
Salishan, Oregon
- **Aug. 7**/ACTL Summer
Banquet: New York, New York
- **Aug. 13-15**/Iowa Fellows
Meeting: Village East Resort
Okoboji, Iowa
- **Aug. 15-18**/Tenth Circuit
Regional Meeting: Grand Teton
Lodge
- **Aug. 15-18**/Canada-U.S.
Exchange: Ottawa, Canada
- **Aug. 19-20**/Canada-U.S.
Exchange: Montreal, Canada
- **Sept. 12-17**/Canada-U.S.
Exchange: Washington, D.C.

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