

American College of Trial Lawyers

NUMBER 15

SUMMER BULLETIN

1993

NEWS UPDATE

EMIL GUMPERT AWARD PRESENTED TO WIDENER UNIVERSITY

President Fulton Haight presented the 1993 Emil Gumpert Award to Widener University School of Law in Wilmington, Delaware on May 21, 1993. At the commencement ceremonies, President Haight presented on behalf of the Board of Regents and the Fellows a check for \$25,000 and a plaque noting the law school's excellence in teaching of Trial Advocacy.

JUSTICE WILLIAM J. BRENNAN, JR. TO RECEIVE SAMUEL E. GATES LITIGATION AWARD

Associate Justice William J. Brennan, Jr. (Ret.) will be presented the Samuel E. Gates Litigation Award at the Annual Meeting of the College in Washington, D.C., September 19-22, 1993.

1993 ANNUAL MEETING SEPTEMBER 19-22, 1993

The J.W. Marriott Hotel in Washington, D.C. will be the site of the 1993 Annual Meeting. Registration materials will be mailed late June. Please see article inside for more details on page 8.

ACTL SUMMER BANQUET DISCONTINUED

The Board of Regents recently voted to discontinue sponsoring a dinner in the summer in connection with the ABA Annual Meeting. There will be no ACTL dinner this August in New York. The success of the College Spring and Fall Meetings and declining attendance at the Summer Banquet were the reasons for the change.

The Law--A Moral Aristocracy

By Dr. James T. Laney

(Dr. James T. Laney, President of Emory University in Atlanta, Georgia addressed the Fellows of the American College of Trial Lawyers at its Spring, 1993 meeting in Orlando, Florida. His speech is reprinted here.)

I feel very privileged to address such a distinguished group, to which I feel close because two of the people on the platform this morning are trustees of Emory. One of them is the incoming president, Frank Jones, and the other is Senator Sam Nunn. Taking these two and my friend Griffin Bell as the measure of this distinguished organization, I hold you in the highest esteem. I'm very mindful of what you represent, the quality of your careers, and the contribution you make to the Bar and to American society at large.

You are a moral aristocracy, let me say that right up front. You represent the bastion of

"You are a moral aristocracy"

civilization against the onrush of chaos. You are the embodiment of the kind of concern that I want both to applaud and to endorse. And I share my remarks with you as I would share them with fellow educators, or members of the medical profession, or the clergy or elected officials. What I want to reflect on concerns you, particularly, as the leaders of your profession, and indeed concerns all of our learned professions. It is the breakdown in the public trust, not only by elected officials but by all of us in professions--the trust of upholding the common good that is larger than our own individual welfare. To say that public trust is in jeopardy would be an understatement. Turn on any radio talk show, and the anger and cynicism, the vitriol,

that pours out over the air waves is shocking. It's even shocking if you agree with the speaker!

This issue of public trust is one that I think must be addressed by our society, beginning perhaps with the universities. They have been put under lights in the last year or so. They have been embarrassed by self-indulgent perks in sloppy if not illegal cost accounting. And they've come under terrible criticism, withering scorn, for not putting students first but putting professional careers first.

Then, too, we are all at our wits' end over the whole issue of medical costs rising at a compound rate of twenty percent a year, and how to bring this under control. What's more, cynicism about health care arises not just because some are left out of the system and will cost too much to bring in, but because many who decried and opposed third-party payments twenty years ago have become very wealthy as a result of them.

I need not remind you of the great anger at Congress and the widespread feeling that Congress cannot rise above special interests to address the larger whole, the public good--whether it is the debt, the defense, or the social fabric of our country.

Even institutional religion has not escaped the loss of public confidence. It, too, has had its scandals, from the abuse of clerical trust in counseling sessions to the obscene money schemes of televangelists. And of course the law--always a fit target for caricature and criticism--yes, the law was seen to be identified in the last few years with all the excesses of Wall Street and the decade of junk bonds, corporate takeovers, and greed.

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American College of Trial Lawyers BULLETIN

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(1895-1982)

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I say all of this not so much to wring my hands with you but to ask, how has this happened? Are we as a people really becoming more venal? Are we less moral? Interestingly, among the students I know the voluntary spirit to serve has never been higher. And when I meet with law and medical students I find that they're eager! Of course they want a good career, of course they want to succeed -- but they also want to serve. So it is not that virtue is lacking. The problem, I think, is the image of the professional has been sullied. There has been a subtle but very powerful change in the way we view things, the way we organize our lives, and the way we justify our ends. Young people coming into our firms and our group practices in medicine and our universities find lucrative rewards that carry their own seductiveness.

But the public is disenchanted. It is not just our manner of operation and organization that's in question but the way we define our goals; the way we talk about our motivations; the rewards that we seek; the culture that surrounds us--the culture of our professions.

I think all of us would agree that all aspects of American life have become very much like commerce, and that we have become all too preoccupied with the bottom line. Certainly that is true of the universities. But I recall going to speak not long ago to a group of alumni in Washington, D.C. I had a good story to tell: enrollment, finances, giving, research grants--all the things that usually contribute to the success of a university--all were strong and on the rise. I told all of these things, I hope with appropriate modesty, but hoping also that the alumni would get the point. When it was over I realized that there was a good deal of dissatisfaction with what I had said. I had not talked about the purpose of education. I had not talked about the ideals that down through the years have animated the younger generation and have made society a decent place to live. I had not talked about what should motivate life or what we should aspire to. I had really just bragged. I'd bragged about our institution in competition with other institutions.

But the university is not simply in competition with other institutions. Each university and each college is a very special community that stands for cherished ideals that have been passed down to us. They stand not merely for making money and achieving fame. They stand for protecting things, and honoring things, and helping a younger generation find the importance of that. But where will the younger generation find that importance if they don't see it embodied in us?

A while back I had a conversation with the senior partner of one of the most venerable firms on Wall Street. It was over dinner and we had a chance to talk about a number of

things. I asked him about his firm's *pro bono* policy, and he said, "You know, it's interesting you should ask that. When I came into the firm decades ago, around the time of the Second World War, every one of us, from the top to the bottom, had to participate in a *pro bono* program. We all had to do it ourselves. There were no proxies." He said, "As we've gotten bigger, and as time has become more valuable, and as people have seen themselves become more important, we find that even the youngest in our firm are actually hiring proxies to do *pro bono* work."

Now this approach to the tradition of *pro bono* work continues to make charitable contribution to the city of New York. I'm not arguing that it doesn't. But what is missing is the sensibility of the corporate lawyer. What is missing is an understanding of that other side of society that law and justice must somehow protect and uphold. What is missing is that daily awareness in one's own life that there's a plethora of experiences out there that really need to inform our values and our understanding. What's missing is some moderation in billable hours.

I understand the complications of life. I understand the pressures on all of us. I understand how it is that we've come to this point. But I also understand that unless the key members of our respective professions also see that the public good is something that we are charged to protect, then we really are in trouble.

As I've tried to reflect on this change in the way we look at things, this point of view that has mandated that we are all competitors, it occurs to me that the philosopher who helped guide us to our impasse may also help guide us out. That hoary philosopher who has left such an imprint upon our culture is Adam Smith. Adam Smith, as you know, saw that freedom and individual enterprise and hard work were best undertaken without government interference, or interference from the church, or from any other putative authority. The freedom of anyone to take a risk and make the investment and reap the rewards is the greatest engine of motivation ever conceived. And he was right! Whole societies have prospered as a result of this philosophy. I understand and applaud that. There's nothing like the great engine of American economy when it is really humming, and it's the envy of the world. All the peoples of the world want to have our kind of freedom and opportunity.

But there is another side to Adam Smith. For that invisible hand bending the achievements of individuals toward the benefit of all does enhance the economic good, yes--but not necessarily the whole society. Because society is more than the economy. I reminded that Adam Smith wrote not only

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PRESIDENT'S MESSAGE

In 1950, southbound on the "Lark", the overnight intercity commuter of the time, California lawyer, Emil Gumpert, unable to sleep, conceived the idea of an elite organization of trial lawyers. He envisioned a group modeled after the then existing and much respected American College of Surgeons. It would be composed of only the very finest trial lawyers, admitted only by invitation, and kept very select by a restriction in numbers from every state. Emil's goal was fellowship--fellowship of the very finest trial lawyers in each state and the nation. He became so enthused, he woke the lawyer traveling with him, and they stayed up the rest of the night discussing it.

The concept was an immediate success. Drawing the top trial lawyers from around the country, it spread quickly throughout the United States. Newly appointed Chief Justice Earl Warren was among other notables who attended our national banquet in New York three years later.

As the fledgling American College of Trial Lawyers took shape, respect and influence quickly followed. With the creation of the national Board of Regents, the College assumed "one voice," speaking on the administration of Justice, Ethics and Professionalism. To ensure the College included only outstanding Fellows, State Committees were appointed to send candidates forward to the national Board for consideration. These Committees have been, since their inception, specifically prohibited from speaking for or on behalf of the College, even on local matters. This "one voice," the objective agenda, and, most essentially, the quality of the Fellows remain our strength and remain unique in the profession.

"Whatever the future may hold for the College, Emil's original concept of the Fellowship of the finest trial lawyers will be maintained."

Whatever the future may hold for the College, Emil's original concept of the Fellowship of the finest trial lawyers will be maintained. However, as we approach the twenty-first century, the legal profession has

changed. Some would say it is in revolution or even that it is no longer a profession but has become a very lucrative business. Advertising, approved by the Supreme Court, the intrusive media attention to major trials,

"The legal profession has changed. Some would say it is in revolution."

and the spiraling overhead which makes the billable hour the unwanted focus of our practice are the more obvious concerns. Even issues of Civility and the Adversary System itself are in debate: at current fee schedules, legal services are, realistically, no longer available to the "unrich"; the Criminal Justice System is badly bent with the latest estimates indicating two million Americans will be in our prisons by the year 2000; and certainly, as a result of all of the above and more, the image of trial lawyers is near the very bottom of every opinion poll. Even the former President of the United States used criticism of trial lawyers as a sound bite in his re-election campaign.

The Board of Regents of the College met in Washington, D.C., the last weekend in April in a special Retreat to discuss these problems and more, and how they impact the College.

We began with a full discussion of College achievements and projected goals. There are many. Our Standing Committees serve to assist Federal Government Advisory bodies in the development of rules of procedure. We sponsor and honor National Trial Competitions and National Moot Court Competitions. We have provided seed money to start up NITA (National Institute of Trial Advocacy) and the NCDA (National College of District Attorneys), and honor the trial advocacy programs in the nation's law schools in the name of our late Chancellor, Emil Gumpert. Many members of the High Courts of three countries have been honored as Honorary Fellows of the College. We have produced influential monographs on numerous subjects over the years--most recently on Punitive Damage, Tort Reform and Alternative Dispute Resolution. Our national programs draw the Nations and the legal professions most eminent speakers.

Our achievements at the National level are substantial. At the same time, it must be recognized that the problems facing the legal profession reach, in some form, into



FULTON HAIGHT

every State and courtroom in the country. At the April Retreat, the Board of Regents first confirmed Emil Gumpert's concept that the outstanding quality of our Fellows was our greatest resource. The State Committees and

"The State Committees and the Board of Regents must continue to take whatever time is necessary to induct only the finest trial lawyers into the College."

the Board of Regents must continue to take whatever time is necessary to induct only the finest trial lawyers into the College. We then addressed the question of how we should address the problems of the profession.

On these and subsequent decisions, the Past Presidents were provided with voting rights along with the Regents. The subject matter warranted it. Fourteen Past Presidents were in attendance to give a historical perspective and an in-person analysis of how the College might respond to what was viewed as a crisis in the profession. The other eight had either been interviewed or had provided written position papers on the same subjects.

As a result of these discussions and votes, the Executive Committee was authorized, by an almost unanimous vote, to draft procedures and policy guidelines to begin a very gradual and, if possible, evolutionary process of having the State Committees begin to

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function on appropriate matters within their States. Assuming these procedures are approved at our annual meeting this fall in Washington, D.C., they will form the basis for next January's Workshops for the State and Province Chairs, and implementation could begin as early as next year in those States that choose to exercise this new capacity.

The procedures will, of course, be designed to preserve Emil Gumpert's original concept of the objective College agenda. They will also provide ongoing supervision of these efforts by the Executive Committee and the Regents. In considering this broadened reach by the College, we must bear in mind that we are not a bar association and our members are active in many other legal organizations. We do not intend to duplicate that effort.

While our greatest resource is the quality

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of the Fellows, that resource converts into enormous respect for the College name. It will be the use of that name in conjunction with the name of the state or province that is being considered here. It will be made available on a very limited and controlled agenda.

It is obviously essential that the fine name of the American College of Trial Lawyers be protected and maintained.

We also must recognize that Emil Gumpert's "one voice" will now potentially be joined by 60 others in the states and provinces. The integrity and consistency of College statements and action will be an absolute

"We must bear in mind that we are not a bar association and our members are active in many other legal organizations. We do not intend to duplicate that effort."

priority. How the various States might choose to utilize this capacity can only be speculated upon at this point. It will not be allowed to be used, however, for political purposes, a subjective agenda, or in any area where the interests of the various elements of the trial profession would be in conflict.

We would intend this broadened College reach to happen very gradually. Many issues that need to be addressed at this time are in large part subject to local solutions. They would require a greatly enhanced effort by the Fellows in those States that choose to address them. This may mean subcommittees within the States working under the State Committees. In advance of the startup effort, the lines of supervision will need to be carefully put in place.

The Board also approved, in principle, the possible appointment of a set of National Committees and Commissions to begin to

address the overall problems in the profession, and hopefully, but not necessarily, develop programs and procedures for their solutions which may be implemented in future years.

Amongst the possible Commissions are: a Long Range Planning Committee to anticipate problems in the profession and suggest possible solutions. We can no longer wait for events and react; a Commission to study the problems with the Criminal Justice System including or even focusing on the sentencing guidelines and eventually developing proposals to address what appears to be a crisis situation impacting the entire trial system; a Commission to study the basic causes for the negative image of the legal profession and develop proposals that could result in corrective measures; and, conceivably, although an enormous undertaking, a study of how legal services would be made affordable to all Americans in the next century.

Over the ensuing years, we could possibly undertake to develop White Papers or monographs on subjects such as Advertising, Relations with the Media, Judicial Appointment Procedures, and other troubling areas where a College position paper could be persuasive on the profession as a whole. These programs could extend well into the next century.

The long-term goal is to fight back on behalf of the profession. This is a laudable order. It would set the College on a course of action which, in the view of the Board, is appropriate if we are to respond to the current problems in the profession. The support of the full Board, Regents and Past Presidents alike, was overwhelming on all of the decisions made at the Retreat in April. We know it will not be easy, and will be a long course, but it is a course we believe we should undertake to meet the responsibility we carry to the Administration of Justice and this great organization.

INDUCTION OF NEW FELLOWS

The College welcomes the following Fellows who were inducted into Fellowship at the 1993 Spring Meeting in Orlando, Florida.

CALIFORNIA

Johnnie L. Cochran, Jr.
Los Angeles
Elliott D. Olson
Santa Monica
Michael F. O'Donnell
Santa Rosa

COLORADO

Lee David Foreman
Denver

CONNECTICUT

Thomas W. Boyce, Jr.
New London

FLORIDA

Michael C. Maher
Orlando

GEORGIA

Edward T. M. Garland
Atlanta

IDAHO

Nick M. Lamanna
Priest River

ILLINOIS

Thomas M. Breen
Chicago

Edward R. Durree
Peoria

James L. Donohue
Rockford

IOWA

Thomas J. Bice
Fort Dodge

KENTUCKY

Asa P. Gullett, III
Hazard

LOUISIANA

G. William Jarman
Baton Rouge

MARYLAND

Paul D. Bekman
Baltimore

MASSACHUSETTS

Richard A. Gargiulo
Boston

MICHIGAN

Paul A. Rosen
Detroit

William K. Holmes
Grand Rapids

MINNESOTA

John M. Sheran
Mankato

MISSISSIPPI

George Quinn Evans
Jackson

NEBRASKA

Michael J. Mooney
Omaha

NEVADA

Frederic R. Starich
Reno

NEW JERSEY

Marc Z. Edell
Short Hills

NORTH DAKOTA

Donald R. Hansen
Fargo

OHIO

Robin G. Weaver
Cleveland

H. Louis Sirkin
Cincinnati

PENNSYLVANIA

T. Warren Jones
Erie

Christopher W. Mattson
Lancaster

James F. Mundy
Philadelphia

RHODE ISLAND

Peter A. DiBiase
Providence

SOUTH CAROLINA

Robert A. McKenzie
Kenneth M. Suggs
Columbia

SOUTH DAKOTA

Charles M. Thompson
Pierre

VIRGINIA

J. Rudy Austin
Roanoke

WISCONSIN

Robert A. Slattery
Michael R. Wherry
Milwaukee

Thomas D. Bell
New Richmond

CANADA

ATLANTIC PROVINCES

Thomas B. Drummie, Q.C.
Saint John, New Brunswick

ONTARIO

W. Ian C. Binnie, Q.C.
Toronto, Ontario

PRAIRIE PROVINCES

Hershel Edward Wolch, Q.C.
Winnipeg, Manitoba

ACTL CALENDAR OF EVENTS

STATE MEETINGS

1993

June 18

NORTH CAROLINA Annual Dinner
Biltmore Forest Country Club
Asheville, NC

SOUTH DAKOTA Luncheon
Sioux Falls, SD

MARYLAND Dinner
Oakland Manor/Columbia, MD

June 24

MONTANA Dinner
McKays on the River/Missoula, MT

June 25

FLORIDA Dinner
Dolphin Hotel/Orlando, FL

July 8-11

NEW MEXICO Meeting
Inn of the Mountain Gods
Ruidoso, NM

August 13-15

IOWA Meeting
Village East Resort/Okoboji, IA

September 10-11

ILLINOIS Meeting
Evanston Golf Club/Chicago, IL

September 11

COLORADO/WYOMING Dinner Dance
University Club/Denver, CO

September 24-25

INDIANA Meeting
The Pointe/Bloomington, IN

September 30

MISSOURI Annual Dinner
Noonday Club/St. Louis, MO

November 19

OREGON Dinner
Multnomah Club/Portland, OR

December 3

MISSISSIPPI Dinner
Jackson Country Club/Jackson, MS

December 4

LOUISIANA Dinner
Windsor Court Hotel/New Orleans, LA

1994

February 4

VIRGINIA Black-Tie Banquet
TBD

February 5

VIRGINIA Brunch
TBD

(1994 continued)

February 11

RHODE ISLAND Dinner
TBD

March 3-6

SOUTH CAROLINA Meeting
The Cloister
Sea Island, GA

REGIONAL MEETINGS

1993

June 11-13

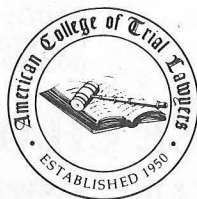
**DELAWARE/NEW JERSEY/
PENNSYLVANIA Regional Meeting**
Marriott's Seaview Resort
Absecon, NJ

June 18-19

NORTHEAST Regional Meeting
(Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont,
Atlantic Provinces, Quebec)
Algonquin Hotel
St. Andrews, New Brunswick

IF YOU WOULD LIKE MORE
INFORMATION ABOUT ANY OF
THESE MEETINGS PLEASE CALL
THE ACTL NATIONAL OFFICE.

(714) 727-3194



July 18-20

NORTHWEST Regional Meeting
(Alaska, British Columbia, Idaho,
Montana, Oregon, Washington)
Salishan Lodge
Salishan, OR

August 15-18

TENTH CIRCUIT Regional Meeting
Jackson Lake Lodge
Grand Teton National Park

October 20-22

SIXTH CIRCUIT Regional Meeting
The Greenbriar
White Sulphur Springs, WV

NATIONAL MEETINGS

1993

September 18-22

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

1994

March 27-30

ACTL Spring Meeting
Westin La Paloma
Tucson, AZ

September 15-18

ACTL Annual Meeting
Chateau Laurier
Ottawa, Canada

1995

September 21-24

ACTL Annual Meeting
Marriott Rivercenter
San Antonio, TX

OTHER MEETINGS

1993

August 3-7

**American Bar Association
Annual Meeting**
New York, NY

August 15-18

Canada-U.S. Exchange
Ottawa, Canada

August 19-20

Canada-U.S. Exchange
Montreal, Canada

August 22-25

**Canadian Bar Association
Annual Meeting**
Municipal Convention Center
Quebec City, Canada

September 12-17

Canada-U.S. Exchange
Washington, D.C.

1994

January 6-9

Eastern Chair Workshop
The Omni Hotel
Charleston, SC

January 20-23

Western Chair Workshop
La Quinta Hotel
La Quinta, CA

1993 STATE AND PROVINCE CHAIRS

ALABAMA

Edgar M. Elliott, III (Birmingham)
(205) 250-6603

ALASKA

Marcus R. Clapp (Fairbanks)
(907) 479-3161

ARIZONA

William R. Jones, Jr. (Phoenix)
(602) 263-1714

ARKANSAS

N. Dale Price (Little Rock)
(501) 372-4144

CALIFORNIA (NORTHERN)

Paul A. Renne (San Francisco)
(415) 981-5252

CALIFORNIA (SOUTHERN)

Alan N. Halkett (Los Angeles)
(213) 485-1234

COLORADO

Daniel J. Sears (Denver)
(303) 860-8100

CONNECTICUT

Anthony M. Fitzgerald (New Haven)
(203) 777-5501

DELAWARE

Rodman Ward, Jr. (Wilmington)
(302) 651-3020

DISTRICT OF COLUMBIA

Plato Cacheris (Washington)
(202) 775-8700

FLORIDA

Julian D. Clarkson (Tallahassee)
(904) 224-7000

GEORGIA

Manley F. Brown (Macon)
(912) 742-8981

HAWAII

John S. Edmunds (Honolulu)
(808) 524-2000

IDAHO

Richard C. Fields (Boise)
(208) 345-2000

ILLINOIS (DOWNSTATE)

Richard F. Record, Jr. (Mattoon)
(217) 234-6481

ILLINOIS (UPSTATE)

Wm. Bruce Hoff, Jr. (Chicago)
(312) 782-0600

INDIANA

Thomas R. Lemon (Warsaw)
(219) 267-5111

IOWA

H. Richard Smith (Des Moines)
(515) 243-7611

KANSAS

Jack L. Lively (Coffeyville)
(316) 251-1300

KENTUCKY

Frank P. Doheny, Jr. (Louisville)
(502) 585-8000

LOUISIANA

Jack C. Caldwell (Lafayette)
(318) 232-3929

MAINE

George Z. Singal (Bangor)
(207) 942-4644

MARYLAND

Jervis S. Finney (Baltimore)
(410) 685-1120

MASSACHUSETTS

Camille F. Sarrouf (Boston)
(617) 227-5800

MICHIGAN

Joseph L. Hardig, Jr. (Bloomfield)
(313) 642-3500

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Gene P. Bradt (St. Paul)
(612) 227-8056

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(402) 475-4240

NEVADA

John D. O'Brien (Las Vegas)
(702) 382-5222

NEW HAMPSHIRE

James R. Muirhead (Manchester)
(603) 625-6464

NEW JERSEY

John L. White (Woodbury)
(609) 845-8855

NEW MEXICO

Harold L. Hensley, Jr. (Roswell)
(505) 622-6510

NEW YORK (DOWNSTATE)

Jed S. Rakoff (New York)
(212) 820-8000

NEW YORK (UPSTATE)

Carroll J. Mealey (Albany)
(518) 462-5301

NORTH CAROLINA

William Kearns Davis (Winston-Salem)
(919) 722-3700

NORTH DAKOTA

Orlin W. Backes (Minot)
(701) 852-2544

OHIO

David S. Cupps (Columbus)
(614) 464-6318

OKLAHOMA

Burck Bailey (Oklahoma City)
(405) 232-0621

OREGON

John H. Kottkamp (Pendleton)
(503) 276-2141

PENNSYLVANIA

Richard M. Rosenbleeth (Philadelphia)
(215) 569-5608

PUERTO RICO

Rafael R. Vizcarrando (San Juan)
(809) 753-3113

RHODE ISLAND

A. Lauriston Parks (Providence)
(401) 421-2154

SOUTH CAROLINA

G. Dewey Oxner, Jr. (Greenville)
(803) 240-3200

SOUTH DAKOTA

Arlo Sommervold (Sioux Falls)
(605) 336-3890

TENNESSEE

Robert R. Campbell (Knoxville)
(615) 546-9611

TEXAS

Kleber C. Miller (Fort Worth)
(817) 336-9333

UTAH

H. James Clegg (Salt Lake City)
(801) 521-9000

VERMONT

R. Joseph O'Rourke (Rutland)
(802) 773-3444

VIRGINIA

Robert F. Brooks (Richmond)
(804) 788-8455

WASHINGTON

James A. Vander Stoep (Chehalis)
(206) 748-9281

WEST VIRGINIA

Herbert G. Underwood (Clarksburg)
(304) 624-8000

WISCONSIN

Gregory B. Conway (Green Bay)
(414) 437-0476

WYOMING

William S. Bon (Casper)
(307) 235-6681

ATLANTIC PROVINCES

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David W. Scott (Ottawa)
(613) 237-5160

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ADJUNCT STATE

John S. Martel (San Francisco)
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James W. Morris, III (Richmond)
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(513) 357-9340

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FEDERAL CRIMINAL PROCEDURE

Peter Vaira (Philadelphia)
(215) 979-3000

FEDERAL RULES OF EVIDENCE

Michael A. Cooper (New York)
(212) 558-3712

FINANCE AND COMPENSATION

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(404) 572-4600

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David K. Robinson (Pasadena)
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(609) 924-6000

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

Beale Dean (Fort Worth)
(817) 332-1391

NATIONAL MOOT COURT COMPETITION

Denis McNerney (New York)
(212) 701-3300

NATIONAL TRIAL COMPETITION

David J. Beck (Houston)
(713) 659-8140

LEWIS F. POWELL, JR. LECTURES

Gene W. Lafitte (New Orleans)
(504) 581-7979

SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE

John T. Marshall (Atlanta)
(404) 572-6600

TEACHING OF TRIAL AND APPELLATE ADVOCACY

Frank N. Gundlach (St. Louis)
(314) 621-5070

PUBLICATIONS COMMITTEE

Edward J. Rice, Jr. (New Orleans)
(504) 581-3234

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Robert L. Clare, Jr. (New York)
(212) 848-8175

THE ABOVE LISTS ARE PROVIDED FOR EASY REFERENCE AND COMMUNICATION.

COMMITTEE NEWS UPDATE

STANDING COMMITTEES

Admission to Fellowship

Recommendations by this committee were made to the Board of Regents and Past Presidents concerning: 1) A By-Law interpretation pertaining to an informally adopted residency requirement. 2) Eligibility of appellate lawyers. 3) Eligibility of "big case" lawyers with a limited number of trials. 4) Elimination of the "AV" rating requirement. Official Board action was taken on each of these issues, including by-law amendments where needed. Board action tracked committees' suggestion in most major respects. This Committee is chaired by James W. Morris, III, (804) 344-8300.

Attorney-Client Relationships

In January, 1992, the College, through this committee, submitted an amicus curiae brief in the case of *United States v. Lopez* opposing the Thornburgh Memorandum and urging the applicability of ethical standards to government lawyers. The brief was principally authored by Walter Barthold of New York City. The Ninth Circuit recently decided *Lopez* favorable to our position. It appears as though the government will seek further review. This Committee is chaired by Fredric H. Kauffman, (402) 474-6900.

National Moot Court Competition



Members of the 1992 National Moot Court Team from Vanderbilt University School of Law are congratulated by leaders of the College at the Annual Meeting in Orlando. Pictured are: (L to R) Frank C. Jones, President-Elect; Carolyn Reed Douglas; Kristine N. McAlister; John Stenger, Regent Liaison to ACTL National Moot Court Committee; L. Elizabeth Bowles; Fulton Haight, President.

Canada-US

Canada-US Exchange planned for August 1993 in Canada and September 1993 in Washington, D.C. The Committee is planning a study of the implications of North American Free Trade on the legal profession and possibility of cross-border legal practice. This Committee is chaired by Claude R. Thomson, Q.C., (416) 868-3445.

Complex Litigation

Two subcommittees were formed to: 1) Review the *Manual for Complex Litigation* and report recommendations for additions, deletions or alterations, and 2) prepare outlines and reports on certain kinds of complex litigation to supplement the manual. Project undertaken at the request of Judge William W. Schwarzer, Director of the Federal Judicial Center. This Committee is chaired by Robert G. Stachler, (513) 357-9340.

Federal Rules of Civil Procedure

The Committee reviewed proposed changes to Rules 23, 26(c), 43, 45, and 68. Recommendations pending. Chairman Kenneth Sherk reports that contrary to some reports, the College has not "endorsed" the up front disclosure mandated in proposed new Rule of Civil Procedure 26(a)(1). Rather, and after working closely with the Advisory Committee on Civil Rules of the Judicial Conference, the College's Federal Rules of Civil Procedure Committee and the Board of Regents felt we could not oppose the proposal at the Supreme Court or in Congress. This because we worked long and hard to point out objectionable language in the many preliminary proposals most of which have been eliminated. Believing that under the Biden Bill (Civil Justice Reform Act of 1990) and the resulting pilot projects undertaken in a number of District Courts would ultimately lead to some form of mandatory, up front discovery, we confined our efforts to making the best of the situation. In short, we have worked within the rule making process and have given it our best shot. Believing that some form of up front discovery will come whether we like it or not, we simply worked within the system.

If any Fellow has any questions about the evolution of our Committee's decision not to oppose, and essentially to live with, the final proposed revision, please call or write me.

Members of this Committee presented a CLE seminar on proposed changes to the Federal Discovery Rules and Rule 11 at the ACTL Spring Meeting in Orlando, Florida. This Committee is chaired by Kenneth J. Sherk, (602) 257-5383 replacing Fran Fox, who was recently appointed to the Advisory Committee by Chief Justice Rehnquist.

Federal Rules of Evidence

The Committee submitted comments on a proposed amendment to Rule 412 to the Advisory Committee on Evidence Rules of the Judicial Conference of the United States. Committee Chair will testify on May 6, 1993 at a public hearing of the Advisory Committee on the proposed amendment. This Committee is chaired by Michael A. Cooper, (212) 558-3712.

National Trial Competition



The 1992 Winning Team in the National Trial Competition from Northwestern School of Law are pictured at the Spring Meeting of the College in Orlando, Florida. Pictured from (L-R) are: Fulton Haight, President; Katherine T. Kennelly; Mark R. Niemeyer; Judith M. Krieg and Regent Thomas J. Greenan, Liaison to the ACTL National Trial Competition Committee. The school also received the Kraft W. Eidman Award and Mark Niemeyer received the George A. Spiegelberg Award as Best Oral Advocate.

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Emil Gumpert

This committee would like to encourage all Fellows to consider their local law schools for this award. Contact Payton Smith, Chairman at (206) 628-7767 for more information.

Legal Ethics

The Committee reports that: 1) A proposed substantial revision of the Trial Code has been substantially completed by a subcommittee and will shortly be submitted to the full committee for consideration. 2) Committee Chairman Bill Brennan has been appointed as one of the 30 Advisors to the Reporters of the American Law Institute's Restatements of the Law Governing Lawyers. 3) Mitch Rieger is keeping track of the status of the states' adoption of the Model Rules of Professional Conduct, particularly Model Rule 1.6 regarding permissible disclosure of client confidences. This Committee is chaired by William J. Brennan, III, (609) 924-6000.

Teaching of Trial Advocacy

The Committee commended local Rhode Island attorneys for getting the teaching of trial advocacy program off the ground at the new law school in Rhode Island. This Committee is chaired by Frank N. Gundlach, (314) 621-5070.

STATE AND PROVINCE**Colorado**

The Colorado Fellows have instituted the Alfred A. Arraj Advocacy Award to be presented to a young litigator who exhibits those qualities most admired by the late Chief Judge of the Colorado U.S. District Court.

Kansas

The Kansas Fellows are sponsoring a monetary award and plaque at the University of Kansas Law School and Washburn University Law School for the outstanding trial advocate commencing Spring 1993.

South Carolina

The South Carolina Fellows are sponsoring guest speakers on trial advocacy at University of South Carolina Law School.

INFORMATION ON COMMITTEE PROJECTS, PROGRAMS AND MEETINGS SHOULD BE SENT TO THE NATIONAL OFFICE IN IRVINE, CA.

NATIONAL LEADERS WILL SPEAK AT 1993 ANNUAL MEETING

The 1993 Annual Meeting of the College is scheduled for September 19-22, 1993 at the J.W. Marriott Hotel in Washington, D.C. Registration materials will be mailed to all Fellows in late June.

Professional Programs

"The Annual Meeting of the College this year will have one of the finest professional programs we have ever been able to offer. Supreme Court Justice Sandra Day O'Connor; Attorney General Janet Reno; and Supreme Court Justice Lewis Powell (Retired) (a former President of the College) have accepted invitations to speak. Invitations have also been extended to President Bill Clinton, and to Senator Bob Dole, and it is hoped that they will also be able to speak. President-Elect Frank Jones has done a superb job in planning this outstanding program".

Social Events

The social events planned provide a wonderful atmosphere in which to greet old and new friends. A gala theme night offering an elaborate buffet dinner and dancing will be held at historical Union Station. The Annual Banquet and the induction of new Fellows will be held at the National Building Museum, erected in 1883 as a memorial to the Veterans of the Civil War.

Schedule of Events**Sunday, September 19, 1993**

- 1:00 p.m.- 7:00 p.m. Registration/Information
- 7:00 p.m.- 8:00 p.m. Welcoming Reception
- 8:00 p.m.-10:00 p.m. Dinner

Monday, September 20, 1993

- 7:00 a.m.- 8:30 a.m. General Committee Meetings
- 8:00 a.m.- 5:00 p.m. Registration/Information
- 8:00 a.m.- 8:30 a.m. Continental Breakfast
- 8:30 a.m.-11:30 a.m. General Session
- 1:00 p.m.- 5:00 p.m. Optional Tours
- 7:00 p.m.-11:00 p.m. Cocktails/Buffer Dinner/
Dancing

Tuesday, September 21, 1993

- 7:00 a.m.- 8:30 a.m. General Committee Meetings
- 8:00 a.m.- 5:00 p.m. Registration/Information
- 8:00 a.m.- 8:30 a.m. Continental Breakfast
- 8:30 a.m.-11:30 a.m. General Session
- 11:30 a.m.-12:00 p.m. ACTL Annual Business Meeting
ACTL Reorganization Meeting
of the Board of Regents and
Installation of New Officers
- 12:30 p.m.-2:30 p.m. Inductee Luncheon
- 12:30 p.m.-2:30 p.m. Inductee Spouse Luncheon
- 1:00 p.m.- 5:00 p.m. Optional Tours
- 7:00 p.m.- 7:45 p.m. Reception
- 7:45 p.m.-11:00 p.m. Induction of New Fellows
Formal Banquet

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1993 ACTL ANNUAL MEETING OPTIONAL TOURS

A variety of optional tours will be offered during the meeting and include:

Monday, September 20, 1993

WELCOME TO WASHINGTON

A wonderful riding tour serves as a perfect introduction to our nation's capitol. You will see the Capitol, the Supreme Court, the Library of Congress, the White House, Union Station, Bureau of Engraving and Printing, Jefferson Memorial, Lincoln Memorial, Vietnam Memorial, Georgetown, Embassy Row and more!

A CAPITOL IDEA

Visit the U.S. Capitol and see "nooks and crannies" not seen on the public tour. Highlights include Legislative Chambers, the Rotunda, and the Old Supreme Court Chamber. Next visit the Supreme Court where you will be enlightened with the fascinating history and function of the building.

NATIONAL CATHEDRAL & DUMBARTON OAKS

Visit the world's sixth largest cathedral. Visit the stone carver's cottage. Learn about the architecture and the preservation of this magnificent work of art. Then stroll through gardens designed by the renowned landscape architect Beatrix Farrand on the enormous 18th century estate of Dumbarton Oaks in Georgetown.

ART IN THE AFTERNOON

This tour includes visits to the National Museum of Women in the Arts, the National Gallery of Art and Freer Gallery. Lunch is included.

GEORGE WASHINGTON'S VIRGINIA

Ride along the Potomac River to Mount Vernon. Visit the historic mansion, museum and the lovely grounds. Next Woodlawn Plantation, a Georgian-styled mansion which was a wedding gift from George Washington to his nephew, Lawrence Lewis.

Tuesday, September 21, 1993

WELCOME TO WASHINGTON

A wonderful riding tour serves as a perfect introduction to our nation's capitol. You will see the Capitol, the Supreme Court, the Library of Congress, the White House, Union Station, Bureau of Engraving and Printing, Jefferson Memorial, Lincoln Memorial, Vietnam Memorial, Georgetown, Embassy Row and more!

HOMES OF HISTORIC GEORGETOWN

A narrated riding tour introduces you to historic Georgetown. Visit three lovely private homes and meet the owners who will provide a glimpse of life in this quaint neighborhood.

HISTORIC OLD TOWN ALEXANDRIA

Visit a quaint, historical section of Virginia situated along the Potomac River. Tour Christ Church, the Carlyle House, Gadsby's Tavern and Inn. See George Washington's townhouse, the Old Presbyterian Meeting House and more.

WASHINGTON ELEGANCE

Visit Washington's premier neighborhood — Kalorama — home to many of Washington's elite. Next tour the Phillips Collection composed of 20th century impressionistic paintings housed in a late Victorian brownstone home. Receive a special curatorial tour of the Woodrow Wilson House, a Georgian Revival mansion capturing the lifestyle of the elite in the 1920's. Afternoon tea is included.

THE SHOPPING EXCURSION

A unique shopping adventure at Washington's unusual and distinctive outlets in and around Dupont Circle. "Unmissables" features 18th and 19th century American treasures. "H.H. Leonard's Mansion on O Street" features an eclectic blend of artwork, antiques and collectibles where everything in the house is for sale. Afternoon tea is included.

The Law--A Moral Aristocracy

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The Wealth of Nations, from which this idea of the invisible hand is taken, but also *The Theory of Moral Sentiments*. In that other book he speaks about the bonds of friendship and the role of community, the place of trust and the importance of sympathy and the ability to stand in others' shoes and understand their plight and their pain, their aspirations and their hope. Smith understood the importance of humanizing virtues, which make life tolerable, and rich, and full.

The learned professions of law, the clergy, and medicine represent the need of society for special skills, to be sure. But they also represent the need for commitment to the larger good of the whole—not just to the client or the patient or the parishioner or the student. We have succumbed to the seduction of Adam Smith's first proposition, that everyone should simply seek his or her own personal interest, and that an ordered and just society would result. But this is inadequate. Adam Smith knew it was inadequate. And I think when we look at the issue of public trust today we see that it is inadequate.

How do we as a society achieve the power, energy, entrepreneurship, competitiveness, and rewards that go with one side of Adam Smith, without losing the humanity, the generosity of spirit, the justice, the sense of the common good that go with his other side? This is the conundrum we face in America.

“The issue is how we,
as representatives of
our professions, can
sustain and enlarge
the public trust”

The issue is how we, as representatives of our professions, can sustain and enlarge that public trust, that larger good.

When I thought about speaking to you, I thought about those members of the bar who are not only my friends but also my counselors. Those to whom I go to seek advice on my most difficult issues, those with whom I share my greatest confidences are not clergy friends, not fellow educators. They're lawyers, some of whom are members of this great association. Our society traditionally has depended upon the law for the integrity of our social fabric as well as our institutions. Alexis de Tocqueville, that remarkable young French aristocrat who traveled around this country 160 years ago, said that the profession of the law is the only aristocracy that can exist in a democracy without doing violence to its nature. Yet Tocqueville himself knew what would happen to an aristocracy when it lost its legitimacy, as the French aristocracy

of the *Ancien Régime* lost its justification.

What is the legitimacy for any aristocracy, for any elite? Over the long run, and especially in a democracy, what gives an elite its strength and luster and power has to come from virtue. It has to come from those qualities that all of us admire—not simply envy but admire.

Some of you may have read a recent book called *The Radicalism of the American Revolution* by Brown University professor, Gordon Wood. The radicalism he speaks about is the incredible opportunity that the common citizen had after the Revolution to go into business or trade and make some money. The freedom, the sense of kicking over the traces of pedigree and class structure that in colonial America still obtained unleashed, unparalleled energy and individual ambition. This was the economic revolu-

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its strength and luster
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tion of *laissez-faire* individualism that had the power to transform the face of a whole continent.

But there was another, parallel revolution, as we all know: the political revolution that gave the context for liberty and justice and the respect for the decent opinion of fellow citizens. That revolution is the same kind of revolution of value that we need today. It looks beyond the here and now. And I'd say its embodiment is in our founding fathers, in particular George Washington.

I'm not making George Washington a saint; I'm not saying he didn't have self-interest; I'm not saying he didn't have ambition. He had those—in spades! But his understanding of his own interest made it larger than mere pecuniary gain. His understanding of what would constitute his own fulfillment was America writ large. He identified himself with the commonweal. He forewent the ordinary recompense that would have gone with being the general of the Continental Army. And he transmuted his ambitions, which were enormous, into the capacity to inspire.

We honor him as the father of our country, not simply because he was the first in war and first in peace, but because he had exemplary integrity and steadfastness and a remarkable lack of self-seeking, even with his ambition and his desire for honor and glory.

Jefferson was much the same. In a letter to his friend Madison, Jefferson confided, “I would rather be ruined in fortune than in my

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countrymen's esteem." We need to emblazon words like that in the halls of our colleges and courthouses. These were men of great ambition, but they saw themselves in grander terms than individual advancement.

One of the things by which we identify a learned profession is its concern for more than making money. All of the professions, to be sure, carry with them appropriate rewards. And this is to be expected. The honor of a career is to be desired. But I think that we must show that the governance of life requires more than mere *laissez-faire* operations for pecuniary rewards. We have to stand for something more than that if we are to regain the confidence of the American people. The engine of productivity and entrepreneurship in business will make America great only if it is coupled with this other side that we see in Washington and Jefferson.

In his book *Democracy in America*, Tocqueville admired a people who bonded together to help each other, forming guilds and granges and schools and churches, and investing themselves in ways that don't carry direct repayment, but embellish the general culture, and bring their own kind of reward. This is why America is great. It's not just great because of General Motors. America is great because of the character of its people. And the character of its people helps make General Motors great!

The guardians of the legal profession have a very special opportunity and privilege to renew this understanding and present it to American society at large. That is why I want to call this great establishment an elite aristocracy. That is why I want to call you moral guardians.

The public wants to hold the law in honor and respect, and they want to know basically that people like you will uphold their rights and dignity. And it is people like you who will participate in community enterprises beyond your own limited sphere of personal interest.

What I am saying may have a certain sentimental and maybe even nostalgic ring. So I want to share with you a story of the most clear-headed and realistic businessman I've ever known, a man who, when he died, was a billionaire on the Forbes list of the wealthiest people in the world. He was someone I'd gotten to know very well because he had been very generous to Emory University, and I respected him in every regard. But I never knew him at any moment to be sentimental in his judgment about life or about what was required.

Two years ago we wanted to propose that this man, Wayne Rollins of Atlanta, give us ten or fifteen million dollars for a School of Public Health. So we prepared a meeting in which we would present to him what we thought was an absolutely irresistible case for why he should help us. We went to him

and told about all the good we'd be doing around the world through the School of Public Health--the importance of public health in the large scheme of things. I thought we made an absolutely convincing case.

After we finished we waited to get his first reaction. And he leaned back and said, "In general I'd say I support your proposal. But my greatest concern today, I want to tell you, is what's going on in our inner cities." He said, "We cannot continue to live in this country with the kind of marginalization that's happening among so many of our citizens, with the crime and the drugs and the poverty and the short life span. It is absolutely impossible for us to live in one country, side by side."

I said, "Well, I'm not sure we're prepared to address that issue today, Mr. Rollins. That's far grander and more ambitious than anything we had in mind." And we left, sobered and somber.

But his words haunted me, and over the next few months I and some of my colleagues began to think: you know, a well-endowed institution like Emory University, with its facilities and human resources, really does have a larger responsibility to the whole city than just to its students, to the research community, or even to the delivery of health care for so many of Atlanta's citizens. Finally we decided that we wanted to try to address in a very defined fashion in part of the city of Atlanta some of the social problems Mr. Rollins had mentioned. It was risky, and it was also controversial, because it would divert time and energy from programs that the faculty already had vested interest in.

Soon after we made that decision, I had breakfast with former President Jimmy Carter, who serves on our faculty. I told him what we had been thinking and what we had decided. He was uncommonly silent for a moment. Then, he said, "If you would agree, I would like to devote my time on the faculty to this." And of course we agreed. We were delighted that we could find a colleague and sponsor who carried that much weight and influence and energy.

The next day I went to see Mr. Rollins, to tell him that Emory had decided to try, within a very limited sphere, to tackle the issues that he had raised, with such arresting power. Then I said that former President Jimmy Carter had decided to participate in this as a major project of his and of The Carter Center of Emory University. Mr. Rollins smiled broadly and said, "You know, I didn't vote for President Carter. I didn't much like him in the White House. But," he said, "I think he has done an extraordinary job since he left. He is a fine man, a good man, and I'm encouraged by this." I left the country that afternoon on a scheduled trip. The next day, Wayne Rollins died.

I say this not for some sort of melodramatic flourish, but to say what a remarkable thing that Mr. Rollins had some sense that what he had identified as a highly successful, hard-headed businessman, was at least going to be addressed, in some fashion, seriously. President Carter has developed this effort into The Atlanta Project, which has gone far beyond anything we had dreamed, and now it may even be going national. Wayne Rollins made a billion dollars, but The Atlanta Project may be his greatest legacy.

If I were to ask the members of the American College of Trial Lawyers who the most influential members of the bar have been in their lives, if you were honest you would probably not pick the ones who had the most lucrative careers, but the ones who had the greatest impact upon who you are and your values. And that's the impact that you, in turn, are having. As a moral aristocracy, you carry that weight and influence. I'm

"We've got a big job ahead of us to stem the tide of materialism in our professions, to change the purpose, the culture, from the bottom line to the public trust"

grateful that people of your caliber and commitment are in your positions. We've got a big job ahead of us to stem the tide of materialism in our professions, to change the purpose, the culture, from the bottom line to the public trust. If we attempt this with seriousness, both in our colleges and in our professions, America will change. It's going to have to change with your help.

Thank you very much.

About the author...

James T. Laney has been president of Emory University since 1977. His principal field of scholarship is ethics and the moral life. A native southerner, Dr. Laney attended school in Memphis, Tennessee, and received a Southern Regional Scholarship to Yale University, from which he graduated with honors in economics in 1950. He attended Yale Divinity School, graduating again with honors in 1954. Dr. Laney also earned his Ph.D. degree from Yale where he was a D.C. Macintosh Fellow. He is an ordained United Methodist minister, he is a member, honoris causa, of Phi Beta Kappa and Omicron Delta Kappa.