

# BULLETIN

NUMBER 16

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1994

## NEWS UPDATE

### CONFIDENTIAL POLLS

The confidential polls were mailed to all Fellows in States and Provinces with nominations. They were mailed in October requesting they be returned to the College office by December 1, 1993. Your participation in the nomination process is extremely important and you are urged to complete the poll if you have not already done so.

### NEW OFFICERS INSTALLED

The officers for 1993-94 were installed at the Annual Meeting of the College and comprise the Executive Committee. They are: Frank C. Jones, President, of Atlanta, Georgia; Lively M. Wilson, President-Elect, of Louisville, Kentucky; Thomas J. Greenan, Secretary, of Seattle, Washington; Charles B. Renfrew, Treasurer, of San Francisco, California; Fulton "Bill" Haight, Immediate Past President, of Santa Monica, California.

### ACTL HISTORY

The History Committee of the College seeks your help in locating any documents, momentos, photos and correspondence from the early years of the College (1950-1970). Please forward such items to the National office.

### 1994 SPRING MEETING IN ARIZONA

The 1994 Spring Meeting of the College is scheduled for April 17-20, 1994 at the Hyatt Regency Scottsdale Resort at Gainey Ranch in Scottsdale, Arizona. Inspired by the magnificent desert work of Frank Lloyd Wright, this magnificent resort offers a wonderful atmosphere that captures the spirit of the desert. This resort also offers recreation for everyone including golf, tennis, and a luxurious health spa. The Hyatt Regency Scottsdale is located 25 minutes by car from the Phoenix airport. Fly American Airlines into the Phoenix airport and receive the lowest possible airfares. Registration materials were mailed in late November. Register early as space is limited.

## A Brief Review of the History of the ACTL and Its Accomplishments

Honorable Lewis F. Powell, Jr.  
Associate Justice (Retired)

**T**he subject of my remarks this morning is the history and accomplishments of this College. In light of the College's many worthy attributes, not to mention the individual accomplishments of our distinguished Fellows, you may be concerned that I will still be talking by lunchtime.

I promise not to talk quite that long.

As you know, the College is the brainchild of the Honorable Emil Gumpert, now deceased. It began in a rather unusual way. More than forty years ago (on April 3, 1950), Emil Gumpert and Leslie Cleary were sharing a compartment on the Lark, the overnight train from San Francisco to Los Angeles. They were on their way to a meeting of the California State Bar Committee on Criminal Law and Procedure.

Emil<sup>1</sup> was suffering from a bit of insomnia. At about 2:30 a.m., he awakened Les Cleary and asked: "Les, have you ever heard of the American College of Trial Lawyers?" The response was about what one would have expected: "Hell no, and even if I had, I wouldn't want to be awakened in the middle of the night to talk about it." Emil, not quite subdued, responded:

Forgive me for disturbing you Les. But I am sure you have heard of the American College of Surgeons. Why shouldn't we have a comparable organization in the legal profession?

The next day, at the cocktail hour following the committee meeting, Emil reopened and pressed the proposal. Enthusiasm for the idea developed, perhaps not discouraged by the assumption of each committee member that he was a trial lawyer of some distinction.

It was agreed that Emil would reserve the name with the Secretary of State, and arrange a subsequent meeting.

When the group met again, later in May 1950, Emil arrived with attractive membership certificates on parchment-like paper for each of the nine Founders.<sup>2</sup>

Although there was still no constitution, no bylaws, and little more than the idea and the membership certificates, Emil was chosen President and Les Cleary Chairman of the Board. The newly designated officers signed the membership certificates.

Thus, from Emil Gumpert's midnight idea, the College of American Trial Lawyers was born. Al Mundt, the first Secretary-Treasurer of the College, prepared a constitution and bylaws, modeled after those of the American College of Surgeons.

The infant organization thereafter moved with deliberate speed. From the outset, it put aside the temptation to measure progress by sheer numbers. Selectivity, based on professional competency, was its hallmark.

Archie Mull, Jr., then President of the State Bar of California, was the first lawyer invited to join the founding group. A bouquet of red roses accompanied his formal invitation to membership, and whether persuaded by the roses or intrigued by the concept of the College, President Mull accepted.

<sup>1</sup>In this informal talk to lawyers, I think it appropriate to refer to Emil Gumpert simply by his first name. I am sure he would want it this way.

<sup>2</sup>Members of the committee were Grant B. Cooper, Glen M. DeVore, Norman H. Elkington, John T. Holt, Hale McCowen, Albert H. Mundt, Evette J. Younger, Leslie A. Cleary, and, of course, Emil Gumpert.

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American College of Trial Lawyers  
**BULLETIN**

**CHANCELLOR - FOUNDER**

Hon. Emil Gumpert  
 (1895-1982)

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# REFLECTIONS OF A PAST PRESIDENT

What was it like to roam from British Columbia to Florida, New Brunswick to Hawaii, and endless destinations in between? It was, simply stated, marvelous people everywhere--for the entire year.

Our stops in places we had never heard of were as memorable as our visits to well known resorts. We became Arkansas Travelers at the Red Apple Inn in Heber Springs, Arkansas; wandered beside the Blackfoot River outside of Missoula, Montana one glorious afternoon; saw Lake Okoboji, Iowa at flood stage and during a tornado watch; were drenched by wondrous thunderheads at the Inn of the Mountain Gods on the Mes-calero Apache Reservation in New Mexico; and many, many more. All with sometimes elegant and sometimes simple hotels and resorts, by lake and sea and mountain. But the great reception we received everywhere from endless, wonderful College Fellows and friends will remain with us forever. Would that all of you could have the experience.

During the year, we were able to start some things as well. Early on, to Bob and Janet Fiske's loss, and to our pleasure, we found ourselves covering for them while Bob concluded an endless summer in trial in Miami. In so doing, we were able to ask questions of the Fellows even before my London induction. We heard an ongoing concern, sometimes politely muffled, often direct and candid: "The profession is in distress, what is the College going to do about it?" "What can the Fellows do to utilize this great potential reservoir of talent and leadership at the local level?"

The leadership workshops in January confirmed what we had been hearing. A Board Retreat last April, followed by further Board action at our Washington Annual Meeting in September, have provided some responses to those questions.

We now have approved guidelines to permit the Fellows in the states and provinces to become involved in local issues through their committees. They can mount a project or a proposal within their areas if they see a need and have the desire to provide a solution. The guidelines merely provide the procedures, not the subjects, and certainly not the solutions. Next January's workshop leadership conferences will go into this in great detail.

We brainstormed at the national level as well. We now have a three-pronged effort

underway.

A new standing committee, titled tentatively "Professionalism", has been appointed. How do we return to the civility and acknowledged integrity of yesteryear--not just ethics, but a standard of conduct that sets a true professional on an unquestionably higher plain? This will be a major effort and the committee includes leaders within the College from both the bench and the bar.

Secondly, we have appointed a Long Range Planning Committee. Its ad hoc assignment will be to report to the Board at our Annual Meeting in Ottawa next September. The charge--to look at the "big picture" of trial practice, the administration of justice and the ethics of the profession, now and in the next decade or so. Then to explore them thoroughly and recommend courses of action. The Board will then select those that they believe we should undertake.

Finally, these national projects will have a price--not simply in time--and the Board does not feel we can support these out of our dues. We therefore have appointed a third committee charged with reporting at our Spring Meeting next April in Phoenix on ways that we can use our Foundation as a tax exempt funding base to raise an endowment sufficient to our new task. By next fall, we plan to have such a program in place.

A start, just a start, to building our capacity to provide leadership and expansion of our efforts at the national level. The changes will hopefully be slow and evolutionary and will never dilute the fellowship which is the hallmark of the College.

The "we" on the travel included, of course, my magnificent bride, Dodie. The "we" on College decisions and direction are a great, dedicated and hard working Board of Regents, including the Past Presidents in that generic term every step of the way. The "we" in the future is our new leader, Frank C. Jones, without whose superb ongoing help and counsel all of the above would not have happened. Every President deserves a backup like Frank.

Great people, great places all over North America, and an expanded focus for the College's enormously talented Fellowship. A wonderful year. We thank you, one and all, for the opportunity, for your friendship, and for this once in a lifetime experience.

Fulton "Bill" Haight



# PRESIDENT'S MESSAGE

Elsewhere in this issue of the Bulletin there is a message by Bill Haight entitled "Reflections of a Past President". As I stated at the Annual Meeting in Washington, D.C. Bill has surely been one of the great Presidents in the history of the College. As a result of his leadership, energy and creative activity, the College is in a stronger position today than at any time in its history. We owe him a great debt of gratitude.

Let me give you a brief "profile" of the College:

## (A) Membership.

As of November 1, 1993 our membership was as follows:

Fellows .....	3768
Emeritus Fellows .....	737
Judicial Fellows .....	287
Honorary Fellows .....	26
	4818

The different classes of membership are defined in Section 3.1 of the Bylaws. Some Fellows are active practitioners who are age 75 or older but have not chosen to take Emeritus Status; for example, we have a member in Kansas who continues to practice law at age 102 and who did not take Emeritus Status until last year. In fact, the "Emeritus" category includes a substantial number of active trial lawyers. Judicial Fellows became Fellows before being elected or appointed to judicial office, and quite a number have continued to be active in the affairs of the College. Even if all classes are included, the total of 4818 is only a little over one-half of one percent of the practicing lawyers in the United States and Canada.

I am convinced that the most important single ingredient to the continued success of the College is the integrity of the membership process. We must continue to nominate and elect only those persons who meet the qualification requirements, as set forth on page 325 of the 1993 Roster. This means limiting membership to trial lawyers who are "unquestionably and eminently qualified", and who are "outstanding and considered the best in a state (or province)", with high ethical and moral standards and excellent character being indispensable attributes. In the application of these requirements, the state and province committees should be especially vigilant in two respects:

(a) It is imperative that no qualified person be excluded from membership on account of race, sex, religion or national origin. The numbers of women and minority lawyers who have actively engaged in trial practice for more than 15 years are steadily growing, and state and province committees should make a special effort to be sure that qualified lawyers from their ranks are nominated; and

(b) The College is not limited to any one field of practice. All of those who meet the qualification requirements--whether plaintiffs' or defendants' lawyers in civil cases, prosecutors or defense lawyers in criminal cases, or lawyers who engage in truly adversarial practice in various specialized areas of practice--should be fairly considered.

## (B) General and Special Committees.

There are a total of 28 committees. Most are involved in carrying out one of the three purposes of the College (in addition to our fellowship): to enhance and improve the standards of trial practice, the administration of justice, and the ethics of the profession. I'll have more to say about the vital work that they are doing in subsequent issues of the Bulletin. Some other committees relate to the membership process and to internal affairs of the College.

In recent months, Bill Haight and I jointly appointed several new committees. They are:

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**"The most important single ingredient to the continued success of the College is the integrity of the membership process."**

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(a) Professionalism Committee. This committee, which is chaired by William J. Brennan, III, of Princeton, New Jersey, will seek to help restore a true spirit of professionalism in the American Bar. You will hear a great deal more about its activities during coming months;

(b) Long Range Planning Committee. Chaired by Past President Ralph I. Lancaster, Jr., of Portland, Maine, this committee is considering ways in which the College can more effectively carry out its purposes, and provide greater leadership at the national level. Among other things, it will consider numerous ideas that were generated at a retreat of the Regents and Past Presidents held this past April. The committee will attempt to produce a final report by the time of the Annual Meeting in Ottawa; and

(c) Fund-raising Committee. There clearly is a need for additional income if the College is to embark upon the type of ambitious projects that were suggested at the retreat. Chaired by Regent Wayne Fisher of Houston, Texas, this committee has been asked to devise a plan for the raising of capital funds for the Foundation, and if possible to submit the pro-



FRANK C. JONES

posed plan for consideration and possible action at the Spring Meeting in Phoenix in April 1994.

The College is now in its forty-fourth year. Other than a somewhat fragmentary account of the period from 1950 to 1973-74, there is no written history in existence. Accordingly, I have appointed a History Committee, which is chaired by Past President John Elam of Columbus, Ohio, and I have requested that it undertake the publication of a comprehensive history. In this connection, I ask for your help in two ways: first, please pass on directly to John Elam any items of information that you think would be of historical interest, including old photographs, program materials, anecdotal information, and the like; and second, the committee invites your suggestions as to the employment of a competent writer to prepare the history.

As stated, I'll have a good deal more to say about the various committees in coming issues.

## (C) Participation.

President-Elect Lively Wilson has appointed more than 600 Fellows to serve on state and province committees for the calendar year 1994. I recently completed the appointment of substantially more than 400 Fellows to serve on general and special committees for the year that began immediately after the Annual Meeting in Washington, D.C. including all of the 75 Fellows who contacted me, either directly or indirectly, and asked to be appointed to a committee.

This means that well over one-fourth of the active members of the College are serving on a committee--a commendable percentage of participation, I believe. If you would like to be appointed to a committee for the 1994-95 year, you should write President-Elect Lively Wilson and let him know of your willingness to serve and of the particular committee or committees in which you are most interested. He will make the appointments next summer.

Whether you are on a committee or not, I solicit your ideas and suggestions as to how the College can do a better job in serving its members, and in providing leadership for the profession and the public. Since I will be on the road a great deal, I request that you set forth your recommendations in writing and send them to me at my Atlanta office.

Frank C. Jones

## A Brief Review

CONTINUED FROM PAGE 1

The first out-of-state member, as well as further impetus and prestige, resulted from a chance meeting with Cody Fowler, then President of the American Bar Association, and in Los Angeles for a speaking commitment. The Founders of the College managed to corral Cody, and bring him to a duck dinner being hosted by Ray Robinson of Merced, California.

Cody did not have his usual crate of Florida oranges, but he was duly warmed up by California hospitality. When someone inquired if he was a trial lawyer, Cody — in his modest and inimitable way — responded:

Hell, I am the best damn trial lawyer in this bunch.

The group was so impressed by this self estimate that Cody was immediately inducted into fellowship. I pause here to note that the formalities of admission 25 years ago did not require the meticulous screening that one must survive today. I hasten to add that Cody would have been admitted under any regime.

In any event, he became a self-appointed roving ambassador for the College, proclaiming its merits but insisting upon fidelity to standards of admission higher than a self-proclamation of eligibility.

Cody was later to serve the College as President for two terms, an honor shared by no other Fellow.

In the early years, expenses of the College were financed by its then small band of Fellows who simply "chipped in", with Emil tossing in the largest chip.<sup>3</sup> Through the dedication and inspiration of Emil, with help from the ever hard-working Louise Genter, the College was firmly established by the late fifties. In 1960, after ten years of existence, it was organized and represented in every state, with a total membership of about 1,200.

The College numbers about 5,000 lawyers and judges from both the United States and Canada. But numbers reveal inversely the success of the College. Unique among the many organizations of the legal profession, the College is prestigious because of its smallness and selectivity based on merit.

Membership was limited to not more than one percent of the bar of each state and admission standards required at least 15 years of trial practice. The emphasis was on proven ability and fidelity to professional ethics. Fellowship in the College became a distinction coveted by most trial lawyers.

Yet, it is one which eludes those who affirmatively seek it, by any means other than demonstrated skill at the bar.

In a country which recognizes in no official way the historical English distinction between barristers and solicitors, there was a public need for an organization that stimulated and recognized high competency in

courtroom advocacy. Progress towards this end has been an achievement of the College. This was the concept which so excited Emil Gumpert 40 years ago that he awakened Les Cleary at 2:30 in the morning to share it with him.

Today, the College's awards and programs continue to advance Emil's dream. In particular, the annual award for excellence in teaching trial advocacy, which bears Emil's name, has recognized and supported the programs of a number of law schools. The College awards excellence wherever it is found, regardless of size or national prominence. Past recipients have ranged from the Harvard Law School in Cambridge, Massachusetts, to the Campbell University School of Law in Buies Creek, North Carolina. I note that, in all likelihood, the \$25,000 prize has inspired the programs at other schools as well.

The College's sponsorship of the National Moot Court Competition and the National Trial Competition further encourages the professional training of future advocates. These competitions allow law students to test their newly developed skills before some of the best jurists in the country.

In addition, the College's support for continuing education, through such programs as the National College of District Attorneys, promotes the goal of improving the justice system by improving the quality of the advocacy. And, through the Samuel E. Gates Litigation award, the College honors those who strive to better the system of justice. The award for Courageous Advocacy, so rarely given and therefore so high an honor, serves to recognize those advocates who have dared to take on unpopular causes to see that justice prevails.

The College also affects the administration of justice through work by its committees. Several committees and many dedicated Fellows of the College strive to improve the justice system by making recommendations regarding the various federal rules, the appointment of judges, and the ethical codes of conduct for the legal profession.

I know, too, that Fellows volunteer their time in other ways to influence more directly the provision of justice in their respective states. I have read about the program started several years ago by Fellows of the College in Massachusetts.<sup>4</sup> Over 50 Fellows volunteered as mediators in both the Quincy District Court and the Middlesex Superior Court. Using their experience as trial lawyers, these Fellows were able to help settle a remarkable percentage of the cases on which they worked, helping clear the backlog that existed on those courts.

Through these and other activities, the College strives to achieve the goal set for it by

Emil Gumpert: to be a professional organization designed not to promote the self-glorification of its members, but to serve the cause of justice.

Those of us who were inducted into Fellowship by Emil all remember — indeed who could forget — the deep emotional experience of standing before the podium, with fellow inductees, as Emil addressed us.

I doubt that the literature of our profession contains any more eloquent statement of the roll and duty of a trial lawyer than Emil Gumpert's induction address.

In closing, I remind you of Emil's words:

"You, whose names are freshly inscribed upon our rolls, have, by your mastery of the art of advocacy, by your high degree of personal integrity, your maturity in practice and your signal triumphs at the bar of justice, earned the honor about to be conferred upon you.

By your ability, learning and character you have added lustre to the legal and judicial annals of your state and nation, and have helped to strengthen and preserve the mighty fabric of our law.

We are confident that in the days to come, the lofty objects and purposes of this organization will be further advanced by the application of those rare qualities and virtues which nature, fortune and laborious days have bestowed upon you."

As did Emil, I commend you all not only for your success as trial lawyers, but for your commitment to Emil's high ambition: conspicuous service to the cause of justice under law.

I'd like to conclude by thanking you for naming a lecture series in my honor. I shall always be proud of my association with the College. And, at the personal level, I shall always cherish my friendships with the lawyers and judges of this fellowship.

Honorable Lewis F. Powell, Jr.  
Associate Justice (Retired)

<sup>3</sup>Although records are not available to me, I understand that other dedicated early members who contributed to the financial solvency of the College included Al Mundt, Ed Bronson, Grant Cooper, and Jesse Nichols.

<sup>4</sup>See Robert J. Ambrogi, *Trial Lawyers To Help Ease Case Backlog*, Massachusetts Lawyers Weekly, January 14, 1991, at 1.



## 1993 CANADA-UNITED STATES LEGAL EXCHANGE

In the early 1980's, the College, building on the initiative and cooperation of Chief Justice Warren Burger, began to plan for an Exchange between the United States and Canada. Planning came to fruition in 1987. A distinguished judicial complement headed by Chief Justice Rehnquist and Chief Justice Brian Dickson was joined by seven Fellows of the College from Canada and seven Fellows from the United States. The Exchange was so successful, due in large part to the chairmanship of Ralph Lancaster, that sentiment began to build for a second Exchange.

The second Exchange convened in mid-August in Ottawa and Montreal. This was followed approximately one month later with a week in Charlottesville, Virginia and Washington, D.C. The judicial participants headed by Justice Anthony Kennedy and Justice John Sopinka were Jean-Louis Baudouin, Court of Appeal of Quebec; Richard M. Bilby, District Court of Arizona; Constance R. Glube, Chief Justice, Supreme Court of Nova Scotia; Cynthia H. Hall, Circuit Judge, Ninth Circuit; William T. Hart, District Court of Illinois; Ricardo H. Hinojosa, District Court of Texas; Malcolm M. Lucas, Chief Justice, Supreme Court of California; Kenneth M. Lysyk, Supreme Court of British Columbia; John W. McClung, Court of Appeal of Alberta; Michael J. Moldaver, Ontario Court of Justice; Lynn Ratushny, Ontario Court of Justice; Laurence H. Silberman, Circuit Judge, D.C. Circuit; and Walter K. Stapleton, Circuit Judge, Third Circuit.

The Fellows of the College that participated were Robert P. Armstrong, Q.C.; William J. Brennan, III; John J. Curtin, Jr.; Robert B. Fiske, Jr.; Wayne R. Chapman, Q.C.; Jack Giles, Q.C.; Fulton Haight; Frank C. Jones; Gene W. Lafitte; E. Peter Newcombe, Q.C.; J. J. Michel Robert, Q.C.; David W. Scott, Q.C.; Claude R. Thomson, Q.C.; and Lively M. Wilson.

The substantive program covered a broad range of topics of common interest to both countries and required substantial preparation and participation by all of the participants. They ranged from "Access of Justice" to "Discrimination" to "Courtroom Automation" and even to "Office Staffing and Management". It is probably accurate to say that none of the discussions led to a consensus on any subject, but they did result in an exchange of ideas and a better understanding of what works and what doesn't in each country.

The program highlight was undoubtedly the last session held in Washington, D.C. The Exchange considered the impact of the First Amendment and the Canadian Charter of Rights and Freedoms on hate crimes and pornography. Issues were presented in a moot court format in the Ceremonial Courtroom of the United States District Court in Washington, D.C. All of the judicial participants sat in the case. As Justice Sopinka described it, it was a "hot bench". The Canadian case was argued by Fellows Jack Giles of Vancouver, British Columbia and J. J. Michel Robert of Montreal. The United States case was argued by Floyd Abrams of New York, New York and Henry Miller of White Plains, New York. As this bulletin goes to press the matter remains under submission.

Lest you think the entire time was devoted to the substantive program, be assured that significant opportunities were provided for diversion. The University of Virginia hosted a dinner for the participants in the Rotunda. We were the guests of Chief Justice Lamer of the Canadian Supreme Court for dinner in Ottawa and Chief Justice Rehnquist responded with dinner at the Supreme Court in Washington, D.C. In addition, we enjoyed the hospitality of the participants and Fellows in the homes in both Washington, D.C. and Ottawa. This built a collegiality and friendship that, if the last Exchange is an example, will last a lifetime.

Finally, the Exchange was recognized as a significant contribution by the College toward the fulfilling of its goals of improving the administration of justice, the skills of trial advocacy and the ethics of the profession.

Summing up the Exchange, Justice Kennedy gave high praise to the College when he said:

One of the most impressive things I heard at this exchange was a remark of one of our Canadian lawyers when we were talking about ethics. And he said to me, "It is very real, it is very clear, it is very visible that I am an officer of the court and that is what sustains me in my constant striving to maintain ethical standards."

It seems to me that this is the rule of the American College of Trial Lawyers. You are there in the courts. You can explain to young lawyers, lawyers whom I hope you bring in droves to sit at your counsel table even if you have to charge a client something for that. This is what you can show young lawyers because here is where there is an official inquiry into your performance. It is not hidden in board rooms and corporation consultations.

And the American College of Trial Lawyers, it seems to me, in pursuing its activities, can pursue the idea of ethics of civility, of decency, of respect for our professional system.

Lively M. Wilson  
Chair  
Canada-U.S. Exchange



Members of the 1993 Canada-United States Legal Exchange Team are pictured in front of the Federal Judiciary Building in Washington, D.C. The members are (seated L to R) The Hon. Ricardo H. Hinojosa; The Hon. John W. McClung; Claude R. Thomson, Q.C.; Lively M. Wilson; The Hon. Anthony M. Kennedy; The Hon. John Sopinka; Fulton Haight; Frank C. Jones; Robert B. Fiske, Jr.; The Hon. Cynthia H. Hall. (Standing L to R) J. J. Michel Robert, Q.C.; John J. Curtin, Jr.; The Hon. Walter K. Stapleton; The Hon. Michael J. Moldaver; The Hon. Kenneth M. Lysyk; The Hon. Lynn Ratushny; The Hon. Malcolm M. Lucas; Robert P. Armstrong, Q.C.; The Hon. Richard M. Bilby; E. Peter Newcomb, Q.C.; Jack Giles, Q.C.; The Hon. Jean-Louis Baudouin; Wayne R. Chapman, Q.C.; William J. Brennan, III; Gene W. Lafitte; The Hon. Constance R. Glube; The Hon. Laurence H. Silberman; David W. Scott, Q.C.; The Hon. William T. Hart.

## A SHINING LIGHT

by John C. Elam

The American College of Trial Lawyers has the great privilege and honor in presenting the Samuel B. Gates Litigation Award to Justice William J. Brennan, Jr. Justice Brennan became an Honorary Fellow of this College in 1958. He addressed the College at that time on the appropriate subject for us of "Changes in Trial Tactics". After nearly 34 years of distinguished service as an Associate Justice of the United States Supreme Court, Justice Brennan has retired.

Our own Fellow, Bill Brennan III, has stated "To understand Justice Brennan, one first needs to know something of his mother and father. Both of his parents came as Irish immigrants to the United States. His father stoked boilers as a stationary fireman in Newark, New Jersey. A leader in the early labor movement, he ultimately became commissioner of public safety where for 13 years he gave fidelity to the people of Newark."

Bill also described Justice Brennan's mother: "His mother was equally remarkable--never weighing more than 90 pounds, Agnes Brennan was a woman of sinew and steel who raised her eight children to mirror her values of hard work, respect for others and devotion to the church. Widowed for 35 years before her death in 1965, she was a daily example of constancy and courage to her children and those fortunate enough to know her."

The qualities and strengths of the parents are clearly reflected in the son. With that heritage, Justice Brennan has had an absolutely spectacular professional career. Our award today mentions that Justice Brennan was, early in his career, an outstanding trial lawyer; a named partner in one of New Jersey's oldest and most respected firms; a distinguished trial judge; a justice of the New Jersey Supreme Court where he spearheaded a nationwide drive to clean up court congestion and delays in litigation and finally an incredible career on the Supreme Court of the United States. He has truly made a significant contribution to the improvement of our litigation process which is the basis for the Gates Award.

Our award, however, only scratches the surface of Justice Brennan's career. His record on the Supreme Court of the United States is absolutely breathtaking. He used his many skills and particularly his advocacy skills on the Supreme Court of the United States. It is almost unbelievable to also realize that in his nearly 34 years on the court, he *personally* authored more than 1200 written opinions. His impact and his importance to our profession goes far beyond mere numbers. Justice Brennan was able to uniquely combine two outstanding qualities: first, he never wavered from his principles in protecting the rights of the individual under the constitution and at the same time, used the highest skills of an advocate through his charm and what has been described as a mischievous Irish grin to accomplish great results. One cannot read the tributes to him from other members of the Supreme Court at the time of his retirement without realizing the great affection in which he is held by all his colleagues, which is a far cry from Justice Holmes' response when asked to describe the relationship on the court in his time. He said that they were "nine scorpions in a bottle".

Chief Justice Rehnquist stated "Bill Brennan's ability as a judicial craftsman and his willingness to accept "half a loaf" if that were necessary to obtain a Court opinion played a large part in translating what had at first been dissenting views into establishing jurisprudence." He later stated "But just as important to the court as his judicial philosophy, Bill Brennan brought to the work of the court a personal warmth and friendliness which prevented disagreement about the law marring the good personal relations among the justices."

Justice Thurgood Marshall was also glowing in his tribute. "He more than any other man that I have worked with combined a gifted understanding of the law with a rare appreciation of social relations. His keen ability to forge a majority was more apparent in the drafting process--as he pruned a paragraph here or redrafted a thought there to accommodate his colleague's concerns." Justice Marshall also



The Hon. William J. Brennan, Jr., Associate Justice (Retired), Supreme Court of the United States and Honorary Fellow (R), receives a standing ovation as he is presented the 1993 Samuel E. Gates Litigation Award. Pictured on the dias with Justice Brennan are (L to R) Frank C. Jones, President-Elect; The Rev. Nathan D. Baxter, Dean, Washington National Cathedral; and John C. Elam, ACTL Past President who presented the award to Justice Brennan.

referred to Justice Brennan's faithfulness to a consistent legal vision as to how the constitution should be interpreted. That vision was based on an unwavering commitment to certain core principles, especially first amendment freedoms, and basic principles of civil rights and civil liberties.

His strengths on the court were recognized much earlier. When Justice Brennan completed his first ten years on the court, then Chief Justice Earl Warren stated "His belief in the dignity of a human being--all human beings--is unbounded. These beliefs are apparent in the warp and woof in all his opinions."

In fact, there is a common thread running through all the tributes of former law clerks, friends, fellow members of the court. He used his great advocacy AND COMMITMENT to accomplish change and his great diplomacy skills and even his Irish humor to forge consensus.

One example listed by many as his greatest contribution to our democratic system was the opinion he authored for the Supreme Court in *Baker v. Carr*. Thirty-three years ago, in a very different political climate, Justice Brennan in his opinion said one person had one vote and the Constitution requires political boundaries to reflect that truth.

In spite of his high achievement and position, Justice Brennan has retained a personal warmth, an infectious spirit and simplicity which not only is reflected in the comments of his fellow justices, his clerks, the press, and his family, but in fact in the comments of everyone who have had contact with him. He has been able to always exhibit a personal interest in individuals and that interest extends perhaps most particularly to those most disadvantaged in our society.

During the long years of his tenure, there were great philosophical changes on the Supreme Court of the United States. While he had earlier formed the majority, in more recent years, even with his skills,

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## TRANSITION — BAR TO BENCH

by *The Hon. John Sopinka, Supreme Court of Canada*  
(Address given at the 1993 ACTL Annual Meeting)

A prominent senior member of the bar of India who had refused an appointment to the bench was asked by a friend to explain his decision. "Very simple," retorted the barrister, "I would rather speak drivell for half a day than listen to it all day."

While this is an overly-cynical explanation, many prominent litigators do not find the bench attractive and decline a judicial appointment. The tradition in Canada for many years was that a senior member of the bar had a duty to accept an appointment to the bench. Our trial and appeal courts were populated by the countries top litigators. This is becoming less and less true. Prominent counsel often find the bench unattractive and do not consider there is any obligation to accept an appointment. I believe that this is and has been the case in the United States to a greater degree and for a longer period of time.

Having made the transition comparatively recently, I have had a chance to reflect on the relative merits of the two lifestyles. What are the pros and cons? I will leave aside the question of remuneration which, although a factor, should not, in my view, be a significant one.

When the call comes, the decision has to be made in a very short time frame. Whether the work and life of a judge will suit the candidate will be largely a matter of conjecture. There is no trial period in which to evaluate the relative merits of the bench and bar. Once accepted, at least in our country, it is practically irreversible. The first impulse is to accept. One of our great barristers who did just that, and a few days later managed to have the appointment rescinded, told me, "Your first reaction is to think of the prestige, the title and that people will know that you have been adjudged worthy of high office. That wears off very quickly and you think, 'My God, what have I done!'" The title is perhaps less of a drawing card in the United States. In Canada, judges of our court and many superior courts are called "My Lord" or "Your Lordship". They are officially designated as the "Honourable Mr./Mme. Justice". To some this is very important. One of our Ontario judges prized the title so highly that his wife called herself "Mrs. Justice X". Frankly, the title is not that important. Indeed, sometimes it can be an embarrassment, as, for instance, when walking to the shower at the golf club in a state of complete undress and some idiot addresses you as "My Lord". The origin and value of the title are perhaps best illustrated by an apocryphal story. The Honourable Mr. Justice Ghes was picking a jury when he noticed that one of the jurors was listed Colonel Jones. The judge asked him,

"Colonel, did you serve in World

War II?"

"Nope."

"Did you serve in the Korean War?"

"Nope."

You certainly don't look old enough, but did you serve in World War I?"

"Nope."

"Well, sir, what does the 'Colonel' in front of your name mean?"

"Judge, it's just like the 'Honourable' in front of your name. It don't mean nothing."

One of the questions that I am most frequently asked by lawyers who are contemplating the bench is, "Don't you miss the drama, the sport and the fun of the courtroom?" I have to admit in all candour that this was something that gave me pause. I practiced litigation for 28 years and had the good fortune to be involved in some exciting cases with many great advocates. There was lots of drama but also we had fun. Litigation can be very wearing if you're not having fun. Even the initial step of being retained was like a fresh shot in the arm. One day I got a call from a U.S. lawyer from Paris who advised that he was the personal lawyer for His Royal Highness the Agha Kahn. He told me that I was on a short list of 3 lawyers, one of whom would be selected to represent HRH in Canada in a libel action arising out of the book "The Agha Kahn". Naturally, I was flattered. He then proceeded to tell me that the other two names were prominent Canadian lawyers and would I care to comment. He said, "There is one name in particular — Julian Porter." "No," I replied. "I would not wish to comment on another lawyer's competence. Why Julian was a student of mine!"

To illustrate the drama and the fun, perhaps you will permit me to relate my experience in two cases.

### Nelles

Toronto has one of the finest children's hospitals in the world. It is known as Toronto Sick Kids. In early 1981, young children who were patients in the cardiac ward of the hospital began to die mysteriously. The children, who had serious heart defects, all died on the night shift and were found to have large doses of digoxin in their blood. In some cases, digoxin was not prescribed. The coroner and the police were called in and over 21 children were considered to have been victims of foul play. As a result of tremendous public pressure to bring the perpetrator to justice, Susan Nelles, one of the nurses who was present on the shift during which the deaths occurred, was charged with murder. After a preliminary hearing in which Nelles was discharged because the evidence was insufficient, the Attorney General ordered a Royal Inquiry. Acting on behalf of Nelles, I had

commenced a malicious prosecution law suit against the police and the Attorney General and his agent. But this was a long shot. The public inquiry became the focus of the legal proceedings. Children had been murdered according to the available evidence and the only suspect had been discharged. The build-up to the testimony of Susan Nelles was something I have not witnessed before or since. She had never uttered a single word in public about the case. She had not testified at the preliminary hearing. The public would hear her story for the first time. She herself was a diminutive figure. Less than five feet tall, she had suffered greatly. Apart from being incarcerated for a time where she was constantly taunted as "baby killer", her father, a devoted pediatrician, had died shortly after her discharge. Her family had expended a good part of their life savings on her defense and the inquiry was the only reasonable chance of recoupment. The proceedings were nationally televised. There was dead silence in the crowded hearing room as millions of television viewers waited for her first utterance.

In the end, her evidence was accepted, the Commissioner ruled that she should not have been charged and he recommended compensation. She now lives with her husband and three children in the small Ontario town where her father had his practice.

### Continetta Horn

In the late 60's, I was retained by Princess Continetta Horn and some other members of the Mohawk Band at Cornwall to defend them on a charge of obstructing police officers. Continetta Horn was also charged with having a weapon dangerous to the public peace. The charges arose out of a blockading of the bridge between Cornwall and the United States by members of the Mohawk Band. They were objecting to a new practice which required them to pay duty when shopping in the United States. They drove their cars on to the bridge, turned them off and removed the keys. A member of the National Film Board who was filming all this suggested to Continetta Horn that the cars would be towed away unless the tires were slashed. He proceeded to lend her his film knife and she was in the process of slashing tires when accosted by the police. Pictures were taken of her wielding the film knife. Some 80 members of the band and we all appeared in court in Cornwall.

When I looked around the courtroom, it was apparent to me that it would be difficult for the police officers to be able to identify which accused did what. I suspected that what the police officers would do would be to make a careful note of the individual as he

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## Transition

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was arraigned and correlate that with the acts noted in the police officer's notebook. I therefore suggested to the Crown Attorney that the police officer should be excluded when the individual accused was arraigned. The Crown Attorney was violently opposed to this and I asked to see the judge. When I explained this to the judge he thought the request reasonable and so ordered. After a hurried conference, the Crown Attorney dropped all charges except those against Continetta Horn and her brother. After cross-examining the police officers, it was unnecessary to call the accused and both Continetta Horn and her brother were acquitted.

I was most flattered when I was advised by leaders of the band that I had been appointed a sub-chief. They presented me with beads that were symbolic of that office. I was rather less pleased when I found that in traditional Indian fashion I was given a title which in a rough sort of way was descriptive of the activity which had led to my appointment. My title was "Chief Babbling Brook".

In contrast, the court is a much tamer life. I disagree with some of my colleagues that a judge must behave like a monk. Many of the restraints on conduct and speech are self-imposed and are unnecessary. In my view, a judge must remain part of society rather than withdrawing from it.

And yes, you can still have fun on the job.

Early in my stint on the court I often got impatient with counsel's formulation of the argument. It was tempting to fix it up. On one such occasion, I thought counsel was spoiling a good point and I suggested a better way of expressing it. "Yes, My Lord. Your Lordship said it much better than I could have." The Chief Justice snorted, "O.K., counsel. One down, eight to go."

In another case, we had agreed to hear two cases together raising the same point. For some reason, they got separated and by the time the second case reached us we had decided the first and the court split 6-3 with the Chief Justice in the minority. Counsel in the second case was in the unenviable position of arguing that the dissent was right. And while the argument brought tears to the eyes of the dissenters, the majority remained completely unmoved. As counsel became more and more passionate in his argument (which under our rules is restricted to an hour), the Chief Justice said "I know, I know, Mr. Cherniak. I tried to persuade them of what you say but I couldn't so why do you think you can?" "Well," shot back Cherniak, "You had more than 1 hour."

Occasionally, we even have a bit of drama. A few years ago, the boyfriend of a young pregnant woman from Quebec, who was the father of her child, obtained an injunction from the Quebec courts prohibiting her from

having an abortion. The case landed on our court in the middle of the summer recess. Inasmuch as nature would replace the injunction in a short period of time, judges were summoned from various parts of the world to hear this appeal. In the middle of the argument, the Attorney General of Quebec rose to announce that the appellant had had an abortion performed in defiance of the injunction.

As for the work itself, no good lawyer should have any concern about adjusting. Lawyers who are accustomed to writing briefs and opinions to clients adapt quickly to judgment writing.

It is true, however, that there is no on-the-job training. One day you are a lawyer and the next day you may be deciding a murder case. Take, for example, my first case. I wasn't supposed to sit until September having been sworn in on June 23rd. On June 24th I received a call from the Chief Justice who stated that there was a little appeal from Ontario with a nice evidentiary point, and would I like to sit on the case. It turned out to be *R. v. Morin* involving the brutal murder of a young girl. The young son of the next door neighbor was charged. At trial, his counsel took the unusual step of pleading not guilty, but in the alternative, not guilty by reason of insanity. He was acquitted at trial but the Court of Appeal had ordered a new trial.

I read the papers thoroughly and sat on the appeal. When we retired to conference, as is our custom, I fully expected to hear all the views of my more experienced colleagues before I ventured an opinion. To my surprise, I found that the junior judge must speak first. I ended up writing the judgment which I found to be a thoroughly stimulating experience.

In our country, the role of the judge has changed dramatically with the adoption in 1982 of the *Canadian Charter of Rights and Freedoms*. Before the *Charter*, it was generally accepted that a judge should decide a case on the basis of the materials presented by the parties. Neither a judge's personal views nor current public opinion entered into the decision-making process. Granted, judges are not machines and something of the judge's upbringing, experiences and beliefs is bound to creep in, but the constant struggle is against it. Under the *Charter*, the role of the judge has become more politicised and the decisions we make were previously the exclusive prerogative of the legislature — a situation that U.S. courts have lived with for some time. Deciding matters such as mandatory retirement, the constitutionality of obscenity laws or laws relating to abortion attracts the active attention of diverse interest groups in society. Does this mean that, apart from being aware of public opinion and what is going on in society, decisions are now to be made on this basis, or on the

traditional grounds? I strongly believe that is the latter. There are powerful sources in society that make this difficult. Public pressure groups wage loud and intense public campaigns designed to influence the course of justice. This phenomenon is aptly illustrated in the novel "Bonfire of the Vanities" by Thomas Wolfe. While no doubt exaggerated, the story illustrates the vulnerability of the administration of justice to public pressure. The hero, or villain, is accused of a crime which raises racial tensions. As a result of concentrated public demonstrations, the accused is buffeted and pilloried by the District Attorney, the Assistant District Attorney and everyone else associated with the justice system except the judge who stands up for impartial justice and is deprived of his job for his pains.

We have illustrations of this to a lesser degree in Canada. There are demonstrations that charges of a certain kind must be laid against a suspect. They often involve lawyers as spokespersons. Before trial, demonstrations are carried on to persuade the court to convict of the most serious charge. After the trial, there are demonstrations against the judgment or verdict. Indeed, proceedings may be taken against the judge for injudicious language. All of this is permitted, and justly so, by our guarantees of free speech and concept of open justice. But I wonder what effect it has on those who are expected to carry out their duties dispassionately and by obedience to the precept that "the law is not a respecter of persons". That does not mean that the law does not respect people but rather that one defendant or accused is like another irrespective of rank, race, creed or sex. Does the judge succumb to the pressure and avoid public opprobrium and perhaps a trip to the Judicial Council by reaching a decision that is not based solely on what has been put before him or her but with one ear to the public clamour and out of concern for his or her personal reputation?

The forces in society that seek to bend the course of justice to a particular point of view find the ultimate solution in addressing the appointment process. It is urged that judges should be appointed because they represent a particular constituency or point of view. If judges are appointed to represent a constituency, they cannot observe the precept that justice is not a respecter of persons. A judge is appointed to represent the community as a whole. Naturally, it is desirable that the court be representative of the makeup of society. This serves to instill confidence in the decisions of the court. Accordingly, factors such as ethnicity or sex are material considerations in the context of applying overriding consideration of demonstrable legal ability.



# ACTL CALENDAR OF EVENTS

## STATE MEETINGS

### 1994

**January 27**  
**NEW YORK Dinner**  
 Le Cirque  
 New York, NY

**February 4**  
**VIRGINIA Black-Tie Banquet**  
 Commonwealth Club  
 Richmond, VA

**February 5**  
**VIRGINIA Brunch**  
 Commonwealth Club  
 Richmond, VA

**February 11**  
**RHODE ISLAND Dinner**  
 Hotel Viking  
 Newport, RI

**March 3-6**  
**SOUTH CAROLINA Meeting**  
 The Cloister  
 Sea Island, GA

**March 11**  
**SOUTHERN CALIFORNIA State  
 Committee Black-Tie Dinner**  
 City Club  
 Los Angeles, CA

**April 29-May 1**  
**OKLAHOMA Meeting**  
 Shangri-La Resort  
 Grand Lake, OK

**August 12-13**  
**IOWA Meeting**  
 Village East Resort  
 Lake Okoboji, IA

## REGIONAL MEETINGS

### 1994

**January 14**  
**NEW ENGLAND Dinner**  
 TBD/Boston, MA

**May 25-27**  
**TEXAS/LOUISIANA/MISSISSIPPI  
 Meeting**  
 Lafayette Hilton and Towers  
 Lafayette, LA

**November 17-20**  
**FLORIDA/GEORGIA/ALABAMA  
 Tri-State Meeting**  
 The Cloister  
 Sea Island, CA

### 1995

**June 16-18**  
**NORTHEAST REGIONAL Meeting**  
 Newport, RI

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 THE ACTL NATIONAL OFFICE.

(714) 727-3194



## NATIONAL MEETINGS

### 1994

**April 17-20**  
**ACTL Spring Meeting**  
 Hyatt Regency Gainey Ranch Resort  
 Scottsdale, AZ

**September 22-25**  
**ACTL Annual Meeting**  
 Chateau Laurier  
 Ottawa, Canada

### 1995

**April 6-9**  
**ACTL Spring Meeting**  
 The Ritz Carlton  
 Amelia Island, FL

**September 21-24**  
**ACTL Annual Meeting**  
 Marriott Rivercenter  
 San Antonio, TX

### 1996

**March 7-10**  
**ACTL Spring Meeting**  
 Westin La Paloma  
 Tucson, AZ

## OTHER MEETINGS

### 1994

**January 6-9**  
**Eastern Chair Workshop**  
 The Omni Hotel  
 Charleston, SC

**January 20-23**  
**Western Chair Workshop**  
 La Quinta Hotel  
 La Quinta, CA

**January 27**  
**44th National Moot Court  
 Competition Final Rounds**  
 New York, NY

**February 4-6**  
**Emil Gumpert Award Committee Meeting**  
 Windsor Court Hotel  
 New Orleans, LA

**March 17-19**  
**National Trial Competition Final Rounds**  
 Dallas, TX

### 1995

**January 12-15**  
**Eastern Chair Workshop**  
 The Ritz Carlton  
 Palm Beach, FL

**January 19-22**  
**Western Chair Workshop**  
 The Ritz Carlton  
 Laguna Niguel, CA

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### TEACHING OF TRIAL AND

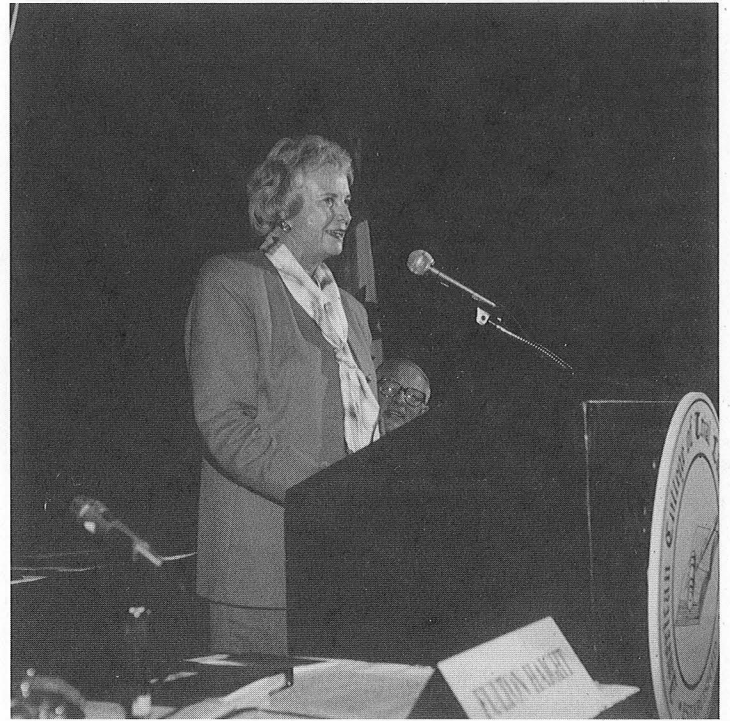
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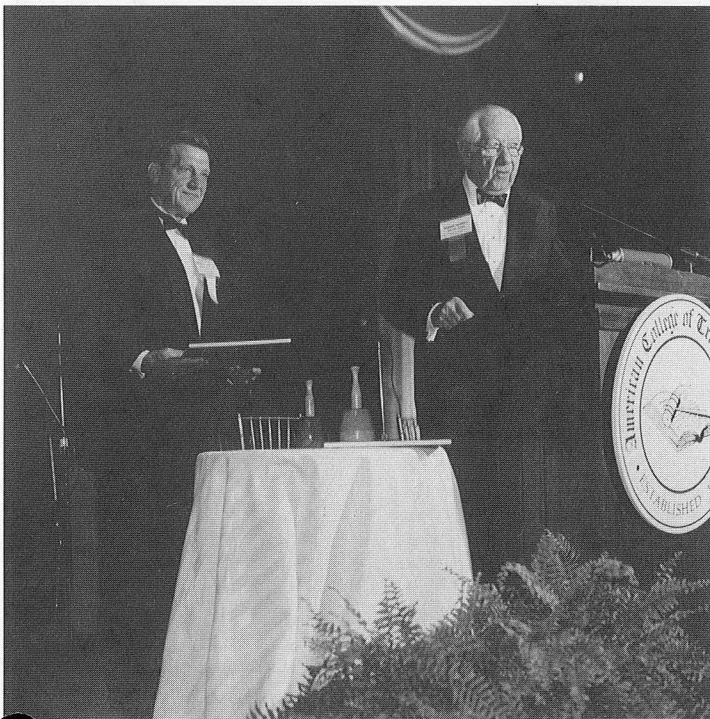
## PHOTO HIGHLIGHTS OF 1993 ANNUAL MEETING



The Hon. Janet Reno, Attorney General of the United States, gave an address on "The Role of the Attorney General."



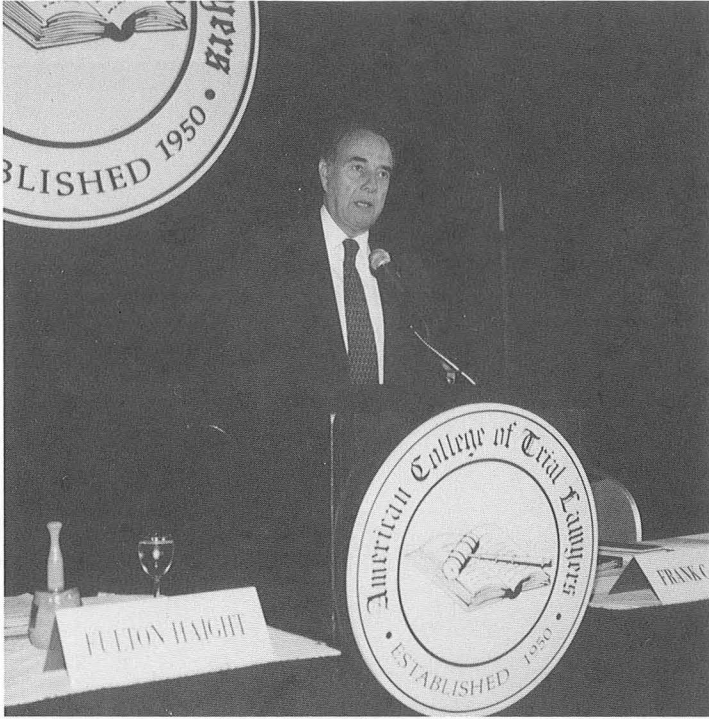
The Hon. Sandra Day O'Connor, Associate Justice, Supreme Court of the United States, spoke on the Law and Technology at the Annual Meeting.



Morris Harrell, Past President (R) performs the Honorary Induction Ceremony for the Hon. Justice Gerard V. La Forest, (left), Supreme Court of Canada at the Annual Banquet in Washington, D.C.



The National Building Museum was the location for the Induction Ceremony at the Annual Banquet. Past President Ralph I. Lancaster, Jr. conducted the Induction Ceremony and Walter G. Chuck of Honolulu, Hawaii gave the response on behalf of the new Inductees.



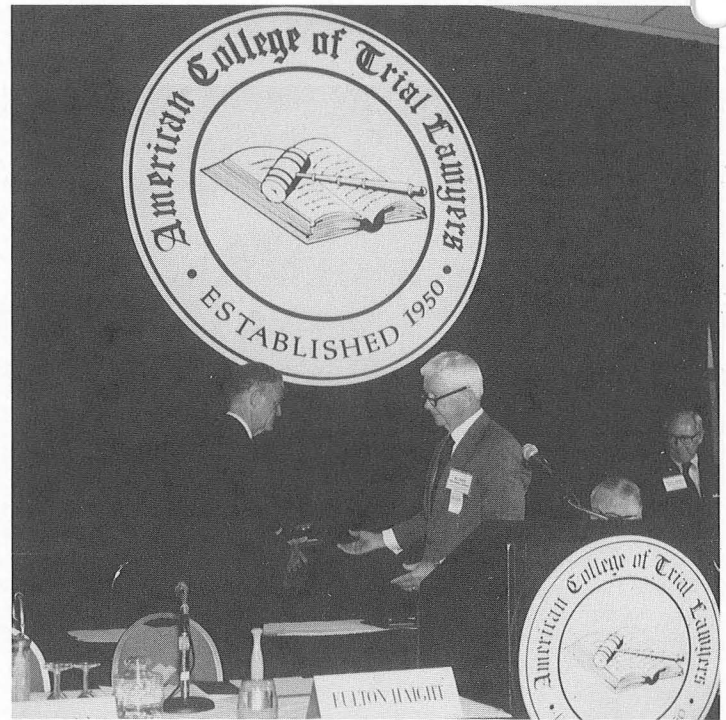
The Hon. Bob Dole, Minority Leader, United States Senate, comments on issues facing our nation in 1993.



The Hon. John Sopinka, Supreme Court of Canada, spoke on the transition from the Bar to Bench. His remarks are published in this Bulletin.

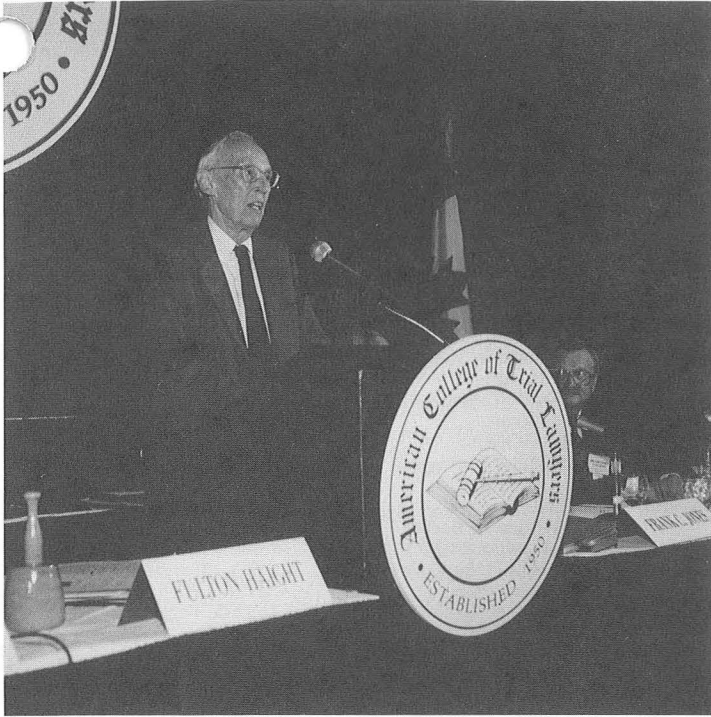


Retiring ACTL General Committee Chairs were presented plaques at the Annual Meeting in Washington, D.C. Recognized were: (standing from L to R) William B. Brennan, III, Legal Ethics Committee; Denis McInerney, National Moot Court Competition Committee; Beale Dean, National College of District Attorneys Committee; Claude R. Thomson, Q.C., Canada-United States Committee; Sylvia H. Walbolt, Award for Courageous Advocacy Committee. Not pictured but present and recognized was Francis H. Fox, Federal Rules of Civil Procedure Committee.

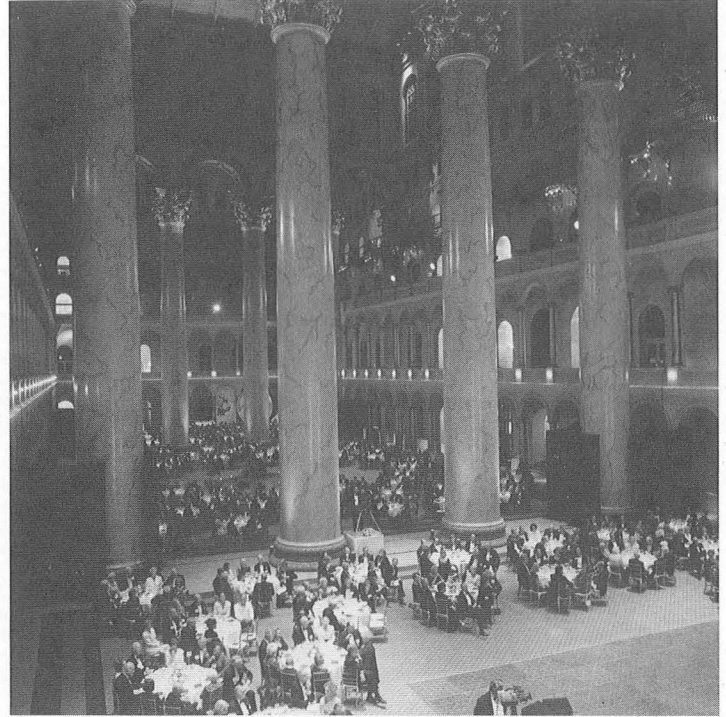


Fran Fox (L) is presented a plaque by President Bill Haight (R) for his years of service as Chair of the ACTL Federal Rules of Civil Procedure Committee. Mr. Fox has been appointed to the United States Judicial Conference's Advisory Committee on Federal Rules of Civil Procedure.





The Hon. Lewis F. Powell, Jr., Associate Justice (Retired), Supreme Court of the United States and Fellow and Past President of the American College of Trial Lawyers, gave a brief history of the American College of Trial Lawyers. His address is published in this Bulletin.



The National Building Museum was site of the 1993 General Banquet with more than 1,000 Fellows and Spouses attending.

### Shining Light

CONTINUED FROM PAGE 6

he was frequently unable to forge a majority. He became a dissenter, but he never faltered in advancing his personal ideals and his great concern for the individual. He truly stands for the highest principles and ideals of advocacy.

His son stated that Justice Brennan's concluding remarks in a lecture given at the Georgetown Law Center expressed the core of the man and what he has meant to the Court, the country and to all of us. It seems equally fitting today to quote what Justice Brennan said on that occasion:

"It is time to close. My theme has been that the revolution of rising expectations the world over has vast implications for constitutional law but that the role of the Court will remain that of interpreting it to hold true to its great design. The quest for the freedom, the dignity and the rights of man will never end. The quest, though always old, is *never old*, like the poor old woman in Yeats' play. 'Did you see an old woman going down the path?' asked Bridget. 'I did not,' replied Patrick, who had come into the house just after the old woman left it, 'but I saw a young girl and she had the walk of a queen.'"

Justice Brennan, with your commitment and distinguished service on the Supreme Court of the United States, you have truly been a shining light to our profession. You do us high honor with your presence today in accepting the Samuel B. Gates Award.

Comments by John C. Elam to the Hon. William J. Brennan, Jr. (Retired) on presentation of the 1993 Samuel B. Gates Litigation Award.

### Transition

CONTINUED FROM PAGE 8

In this regard, while we in Canada admire the openness of the appointment process in the United States, we hesitate to imitate with much enthusiasm the confirmation hearing. While the public learns a great deal about the candidate, his or her background and appearance, constant attempts (mostly unsuccessful) to obtain a forecast of how the judge will decide important issues of the day are a feature we would not wish to emulate. Furthermore, the confrontational atmosphere of some of the hearings causes us to wonder whether the prospect of such a hearing acts as a deterrent to many good candidates.

In this brief sketch of the pros and cons of accepting judicial appointments, I have tried to be impartial. The discussion may not point to a decision favouring one or the other. Let me finish on a more partial note. Most of us, here, spent years arguing the law and complaining when it didn't agree with us. It struck me as a fitting finale to a legal career to try to improve some of those principles that I complained about. The American College of Trial Lawyers has an admirable record for its devotion to the excellence of the bar. Promotion of excellence on the bench is equally worthy of its efforts. With its vast pool of legal talent, it can and should become the happy hunting ground for appointments to the bench.

**HAPPY NEW YEAR  
FROM  
THE ACTL STAFF**

# INDUCTION OF NEW FELLOWS

The College welcomes the following Fellows who were inducted into Fellowship at the 1993 Annual Meeting in Washington, D.C.

## ALABAMA

W. Michael Atchison  
Birmingham

## ARKANSAS

John R. Elrod  
Siloam Springs  
Tilden P. Wright III  
Fayetteville

## CALIFORNIA

Patrick J. Becherer  
Oakland  
James E. Brown  
Bakersfield  
John L. Cooper  
San Francisco  
John S. Gilmore  
Sacramento  
Melvin R. Goldman  
San Francisco  
Thomas E. Holliday  
Los Angeles  
James L. Hunt  
San Francisco  
Vincent J. Marella  
Los Angeles  
Stephen C. Neal  
Los Angeles  
Debra E. Pole  
Santa Monica  
Michael D. Sennett  
Santa Rosa  
Richard C. Watters  
Fresno  
Michael J. Weaver  
San Diego

## COLORADO

R. Brooke Jackson  
Denver  
Carol M. Welch  
Denver

## CONNECTICUT

Francis H. Morrison III  
Hartford  
James K. Robertson, Jr.  
Waterbury

## DELAWARE

R. Franklin Balotti  
Wilmington

## DISTRICT OF COLUMBIA

E. Lawrence Barcella Jr.  
Washington  
Francis D. Carter  
Washington  
Jo Ann Harris  
Washington  
Robert F. Muse  
Washington  
Roger E. Zuckerman  
Washington

## FLORIDA

T. Sol Johnson  
Milton  
George E. Schulz Jr.  
Jacksonville

## GEORGIA

Jefferson D. Kirby III  
Atlanta  
Kice H. Stone  
Macon  
Terrance C. Sullivan  
Atlanta

## HAWAII

Walter G. Chuck  
Honolulu  
William C. McCriston  
Honolulu

## IDAHO

Merlyn W. Clark  
Boise

## ILLINOIS

Wm. Kent Brandon  
Carbondale  
Joseph R. Davidson  
Granite City  
Geoffrey L. Gifford  
Chicago  
Steven P. Handler  
Chicago  
Gregory C. Jones  
Chicago  
J. Dennis Marek  
Kankakee  
Robert W. Neiryneck  
Bloomington  
Keith V. Rockey  
Chicago  
Richard M. Roessler  
Belleville  
Thomas F. Ryan  
Chicago  
Robert M. Stephenson  
Chicago  
Mary Stowell  
Chicago

## INDIANA

Norman T. Funk  
Indianapolis  
David M. Mattingly  
Indianapolis  
Richard W. Morgan  
South Bend  
John D. Nell  
Indianapolis

## KANSAS

Donald W. Bostwick  
Wichita  
Leigh C. Hudson  
Fort Scott

## LOUISIANA

Jack C. Benjamin  
New Orleans  
Cyrus J. Greco  
Baton Rouge

## MAINE

Charles A. Harvey, Jr.  
Portland

## MARYLAND

Francis B. Burch, Jr.  
Baltimore  
Judith R. Catterton  
Rockville

## MASSACHUSETTS

Philip J. Callan, Jr.  
Springfield  
Joseph L. Kociubes  
Boston  
Thomas F. McEvilly  
Leominster  
Stephen Moulton  
Boston

## MICHIGAN

William A. Sankbeil  
Detroit  
Larry C. Willey  
Grand Rapids

## MINNESOTA

Jeffrey J. Keyes  
Minneapolis  
Edward J. Matonich  
Hibbing  
Joe Everett Thompson  
Willmar

## MISSISSIPPI

Roger T. Clark  
Gulfport  
Gerald H. Jacks  
Cleveland  
Leonard B. Melvin, Jr.  
Laurel  
Michael W. Ulmer  
Jackson

## MISSOURI

Karl W. Blanchard, Jr.  
Joplin  
Kenneth C. Brostron  
St. Louis  
William L. Davis  
St. Louis

## MONTANA

Richard F. Cebull  
Billings  
Stephen H. Foster  
Billings  
Neil E. Ugrin  
Great Falls

## NEBRASKA

Terrence D. O'Hare  
Omaha

## NEVADA

Thomas D. Beatty  
Las Vegas  
C. Stanley Hunterton  
Las Vegas  
William E. Peterson  
Reno  
C. Frederick  
Pinkerton III  
Reno

## NEW JERSEY

Michael R. Griffinger  
Newark  
Harvey Weissbard  
West Orange  
Theodore V. Wells, Jr.  
Roseland

## NEW MEXICO

John R. Cooney  
Albuquerque  
William S. Dixon  
Albuquerque  
Terry M. Word  
Albuquerque

## NEW YORK

Thomas C. Burke  
Rochester  
Forrest N. Case Jr.  
Albany  
Benjamin Gim  
New York  
Gregory P. Joseph  
New York  
David Alan Murante  
Rochester  
Sanford P. Tanenhaus  
Binghamton  
Mary Jo White  
New York

## NORTH CAROLINA

Robert B. Cordle  
Charlotte  
Larry S. McDevitt  
Asheville  
William F. Womble, Jr.  
Winston-Salem

## OHIO

Bruce M. Allman  
Dayton  
Sandra J. Anderson  
Columbus  
Richard M. Kerger  
Toledo  
Orville L. Reed, III  
Akron

## OKLAHOMA

Michael Burrage  
Antlers

## OREGON

William A. Barton  
Newport  
Steven Hoke Corey  
Pendleton  
James H. Gidley  
Portland  
Thomas H. Tongue  
Portland

## PENNSYLVANIA

Daniel M. Berger  
Pittsburgh  
Andrew L. Braunfeld  
Norristown  
John A. Caputo  
Pittsburgh  
Andre' L. Dennis  
Philadelphia  
Jay H. Feldstein  
Pittsburgh  
Allan H. Gordon  
Philadelphia  
David L. Grove  
Philadelphia  
Wallace J. Knox, II  
Erie

## SOUTH CAROLINA

Bonnie Brigrance  
Leadbetter  
Philadelphia  
James W. Hudgens  
Spartanburg  
Albert Q. Taylor, Jr.  
Greenville

## SOUTH DAKOTA

Robert D. Hofer  
Pierre

## TENNESSEE

John S. Bryant  
Nashville  
Michael E. Callaway  
Cleveland  
W. Thomas Dillard  
Knoxville  
J. Houston Gordon  
Covington

## TEXAS

Forrest Bowers  
Lubbock  
Richard L. Griffith  
Fort Worth  
William T. Hill, Jr.  
Dallas  
Jerry P. Jones  
Dallas  
Richard A. Sayles  
McKinney  
Glenn A. Sodd  
Corsicana

## UTAH

Gordon Willis Campbell  
Salt Lake City  
Dale J. Lambert  
Salt Lake City  
Robert D. Maack  
Salt Lake City  
Rodney G. Snow  
Salt Lake City  
Brooke Cotter Wells  
Salt Lake City

## VERMONT

John J. Zawistoski  
Rutland

## VIRGINIA

Thomas E. Albro  
Charlottesville  
Richard Waters Davis  
Radford

## P. Donald Moses

Staunton  
John W. Zunka  
Charlottesville

## WASHINGTON

John G. Bergmann  
Seattle  
Duane Lansverk  
Vancouver

## Donald H. Mullins

Seattle  
Nick S. Verwolf  
Bellevue

## WISCONSIN

Gerald J. Bloch  
Milwaukee  
Patrick O. Dunphy  
Milwaukee  
E. Michael McCann  
Milwaukee  
John S. Skilton  
Madison

## CANADA

### ALBERTA

Alexander D. Pringle, Q.C.  
Edmonton

### BRITISH COLUMBIA

Kathryn E. Neilson, Q.C.  
Vancouver

### ONTARIO

Brian A. Crane, Q.C.  
Ottawa

Alan D. Gold  
Toronto

Julian Porter, Q.C.  
Toronto

C. Scott Ritchie, Q.C.  
London

### QUEBEC

Pierre Cimon  
Quebec

Michel Decary, Q.C.  
Montreal

### PUERTO RICO

Antonio M. Bird, Jr.  
San Juan

Francisco G. Bruno  
San Juan

Alex Gonzalez  
San Juan

Eric A. Tulla  
San Juan



# COMMITTEE NEWS UPDATE

## STANDING COMMITTEES

### Samuel B. Gates Litigation Award Committee

After extensive review and deliberation, the committee selected Justice William J. Brennan, Jr. to be the recipient of the Samuel Gates Litigation Award for 1993. The award was presented to Justice Brennan at the Annual Meeting in Washington, D.C. on September 20, 1993. The presentation, which was made by John Elam, was indeed a very moving experience which included various statements made by other members of the Supreme Court at the time of Justice Brennan's retirement, as well as a copy of a speech Justice Brennan gave to the American College a number of years ago.

Submitted by:  
Don Paul Badgley

### Emil Gumpert Award Committee

To date this year, the Emil Gumpert Committee has received six applications from the following law schools: University of Tennessee Law School; Gonzaga Law School; University of Idaho Law School; University of Oregon Law School; Notre Dame University Law School; Lewis & Clark Northwestern School of Law. The committee is gratified by the large number of pending applications, and believes this reflects significant awareness of the Emil Gumpert Award in law schools throughout the country. On the other hand, the committee will have its work cut out for it when it next meets in New Orleans in 1994.

Applications from such diverse schools as Notre Dame and Gonzaga present the committee with the difficult task of evaluating and comparing schools which are not only diverse geographically, but which are significantly different in size, student body makeup and orientation. This is not a new challenge, however, and over the years the committee believes that it has been able to strike a balance by applying its standards with sufficient flexibility and perspective to allow the smaller, lesser known schools to compete effectively. This is witnessed by the award going to Widener University last year and in prior years such schools as New Mexico University Law School ('89), Campbell University ('86), Cumberland School of Law ('84), William Mitchell College of Law ('81) and McGeorge School of Law ('76).

The committee's breakfast meeting held on September 20, in conjunction with the Annual Meeting of the College in Washington, D.C. was well attended. Among other things, the committee focused upon the need to include instruction and training in "professionalism" as one of the important criteria in evaluating the schools' trial advocacy programs. While the current application does require the schools to provide information with respect to courses and training in "ethics", the question discussed was whether this category is sufficiently broad to include professionalism, and whether or not more specific information should be developed with respect to professionalism. The sense of those who attended the breakfast meeting was that there should be a specific focus upon professionalism when the full committee meets to consider the pending applications.

At the breakfast meeting, Chairman Payton Smith reported on the status of pending applications and the progress of on-site evaluations. Chairman Smith reported that on-site evaluators have been assigned with respect to each of the pending applications, and that it does appear as though the necessary "field work" will be done so that all of the pending applications can be considered at the New Orleans meeting. Chairman Smith stated that he will be sending an announcement to the committee members with respect to details for the 1994 meeting in New Orleans.

Submitted by:  
William B. Campbell

### Alternatives for Dispute Resolution Committee

Frank G. Jones was invited to speak on Alternatives for Dispute Resolution at the Tenth Circuit American College of Trial Lawyers meeting at Jackson Lake Lodge in the Grand Teton National Park in August of 1993. The ADR Committee is willing to provide speakers on that subject at state and regional American College meetings.

At the recent Washington meeting, discussions focused on possible future activities of the committee. Regent Liaison, Andy Coats, has suggested that the committee look into dispute resolution under NAFTA and under other international treaties.

During the past year, the ADR Committee circulated a questionnaire regarding the status of ADR in the various states. It was concluded that, while publication of information regarding ADR on a state-by-state basis would be useful to ACTL members, the committee did not have the manpower or the resources to perform this task. The committee is now exploring possible sponsorship of such an endeavor by drafting an article for a law school law review or other publication. Sam Porter and Dick Rosenbleeth are to follow up on this idea.

Submitted by:  
Frank G. Jones

### Legal Ethics Committee

At its meeting in Washington on September 21, 1993, the committee unanimously approved the proposed Revised Code of Trial Conduct and it has been forwarded to President Frank C. Jones with the recommendation of the entire committee that it be approved by the Board of Regents.

The committee continues to monitor the Model Rules of Professional Conduct through the efforts of Mitch Rieger. College members are asked to advise Mr. Rieger of any action which may be taken by an individual state to either adopt or reject the Model Rules of Professional Conduct.

Charles C. Hileman made a presentation on the subject of legal ethics for trial lawyers at the Tenth Circuit Regional meeting in Jackson, Wyoming this past August.

Our committee wishes to thank William J. Brennan, III who has served with distinction as Chairman of the committee for the past seven years.

Submitted by:  
Charles C. Hileman, Chairman

### Federal Rules of Evidence Committee

On April 7, 1993 the committee submitted a report to the Advisory Committee on Evidence Rules of the Judicial Conference of the United States commenting on a proposed amendment to Rule 412 of the Federal Rules of Evidence, which governs the admissibility of evidence of a victim's past sexual behavior or predisposition. On May 6, I appeared before the Advisory Committee to restate and elaborate on our committee's comments on the pending proposal to amend Rule 412.

At a meeting held on Monday, September 20, on the occasion of the College's Annual Meeting, our committee tentatively decided to prepare a report on the impact of the Supreme Court's decision last Term in *Daubert v. Merrill Dow Pharmaceuticals* on the admissibility of evidence of scientific, technical or other specialized knowledge under Rule 702. A subcommittee of three Fellows is currently at work on this project.

Submitted by:  
Michael A. Cooper

## COMMITTEE NEWS

CONTINUED FROM PAGE 15

### Report of Committee Projects and Activities of the Special Problems in the Administration of Justice

Our committee report entitled "Proposal for the Application of Vicarious Liability Under Civil RICO" was completed and forwarded to the Board of Regents in March 1993. On September 17, 1993, the Board of Regents gave final approval to the paper which will shortly be published as an ACTL position paper.

The committee feels it is important and timely to remind the Fellows of the report on punitive damages published by the committee and approved by the Board of Regents on March 3, 1989. The committee arrived at conclusions and made specific recommendations involving problem areas. These included the conclusion and recommendation that civil awards of punitive damages should be retained but only in certain carefully limited situations which are discussed in the report, that the quantum of punitive damages should be limited by flexible formulas based on the amount of compensatory damages, and that methods should be employed to avoid prejudice by discovery or admissibility of evidence of wealth.

The committee believes that the recommendations are in the best interests of all parties affected by the civil justice system in America, and it is hoped that the report will assist in the efforts being made in many jurisdictions to reform punitive damage problem areas.

Copies of the report can be obtained from the College headquarters in Irvine, California.

Submitted by:  
Garr M. King

### National Trial Competition Committee

The final rounds of the National Trial Competition were held on March 12 and 13, 1993 in San Antonio, Texas. Teams representing 21 law schools were in San Antonio to compete for the championship. Over 100 law schools participated across the United States in 11 regional competitions. As usual, the Texas Young Lawyers Association did an outstanding job in the sponsorship and coordination of this event, and the members of our committee are grateful to the Texas Young Lawyers Association for their dedication to making this competition the outstanding success that it is.

Eighteen of the 20 members of the National Trial Competition Committee were present for the final rounds. One member was unable to attend because of a trial commitment, and the other was snowbound. In addition to the 18 committee members, Regent Jerry Greenan was also in attendance as well as the President of the American College of Trial Lawyers, Bill Haight.

The 1993 case problem revolved around a charge of first degree murder. According to the problem as drafted by Judge Jerry R. Parker of Tampa, Florida, one Anthony Daniels was alleged to have entered the residence of his estranged wife, shot and killed her lover, R. J. Case, and the state was seeking a verdict of murder in the first degree. Participating as both presiding judges and jurors, the Fellows put in a 10-hour day on Friday with the completion of the quarter final rounds at approximately 6:30 p.m. The semi-final rounds were completed late Saturday morning, and the semi-finalists had approximately one hour to prepare for the final round. The Temple University team handled the prosecution and the University of Notre Dame team represented the accused. The Honorable Solomon Casseb, Jr. served as the presiding judge, and the venue was at the John H. Wood Federal Courthouse in San Antonio. Some may remember that Judge Casseb presided at the now famous Texaco/Penzoil trial a few years back.

The Temple and Notre Dame teams ably represented their respective clients in the case. The jury consisted of 12 Fellows of the College, including its President, Bill Haight. At the conclusion of the trial, it was the opinion of our jury that Notre Dame was the winning team.

Also, Frank Kros of the Notre Dame team was selected as the outstanding oral advocate.

On Saturday night, the Fellows and their spouses joined the students, their coaches and the committee members of the Texas Young Lawyers Association for an awards banquet at the St. Anthony Hotel.

As usual, David Beck, Chairman of the National Trial Competition Committee, did an outstanding job in coordinating the activities and assignments of the Fellows. Hubert and Leah Green served as our San Antonio hosts for a delightful dinner on Friday evening, and the entire committee eagerly looks forward to the 1994 competition, the finals of which will be held in Dallas.

The committee reconvened for a breakfast meeting on September 20, 1993 in Washington, D.C. The primary topic of conversation was methods by which more spontaneity could be injected into the competition, particularly in the championship round. Several approaches were developed, and David Beck, committee Chairman, was going to discuss these proposed changes with the Texas Young Lawyers Association and with the problem's author, Judge Jerry Parker. In addition to our scheduled business meeting, committee members and spouses also met for dinner on Saturday, September 19, 1993 at the City Club in Washington, D.C. The dinner was hosted by Andy Kilcarr.

All in all, 1993 was a very successful year for the National Trial Competition Committee.

Submitted by:  
James J. Virtel



The 1993 National Trial Competition Winning Team from the University of Notre Dame were honored during the Annual Meeting in Washington, D.C. Pictured from left to right are: Fulton Haight, President; Thomas J. Greenan, Regent; Edward A. Sullivan, III; Dominique Camacho; Frank J. Kros and Frank C. Jones, President-Elect. The team was presented the Kraft W. Eidman Award and Frank Kros was presented the George A. Spiegelberg Award as Best Oral Advocate.