

Indo-American Judicial Exchange

The College participated in the first Indo-American Judicial Exchange which took place in India from January 24 to February 4. The American delegation was led by Justices Scalia and Ginsburg and included four Chief Judges of Federal Courts of Appeals, five Fellows, and Robb Jones, the Chief Administrative Assistant to Chief Justice Rehnquist. The Indian people who participated in the Exchange included the Chief Justice of the Supreme Court of India, other judges of India's highest courts, the Attorney General of India, Solicitor General of India, and leading lawyers from the Indian Bar. Next year some of the Indian participants will travel to the United States to complete the Exchange.

The idea for the Exchange originated with Siddhartha Shankar Ray, the Indian Ambassador to the United States. As Ambassador Ray explained, the Indian Government has conducted several successful judicial exchanges with the British and he believed that an exchange between distinguished American and Indian judges and lawyers, with traditions steeped in the common law, could be the start of a mutually beneficial dialogue.

Chief Justice Rehnquist received the idea with enthusiasm and assembled a group of judges and lawyers. In addition to Justices Scalia and Ginsburg, the Americans included

Chief Judge Abner Mikva (D.C. Circuit), Chief Judge Gilbert Merritt (Sixth Circuit), Chief Judge Richard Arnold (Eighth Circuit) and Chief Judge Clifford Wallace (Ninth Circuit). The Fellows who participated were Fulton Haight, Past President of the College from California; Joan Hall,

were dinner guests of the Bar Association of India and had an opportunity to meet with Indian judges and lawyers for informal discussions. Indeed, there were many such opportunities as the Indians were gracious hosts at lunches and dinners and other social events throughout our stay.



The American delegation is pictured in front of the Supreme Court in Delhi. The Supreme Court is the highest Court in India. The people are as follows: (Top Row) Richard Sinkfield, Judge Richard Arnold, Bill Haight, Rob Jones, Charles Renfrew, Judge Gilbert Merritt, Judge Clifford Wallace. (Bottom Row) Judge Abner Mikva, Associate Justice Ruth Bader Ginsberg, Associate Justice Antonio Scalia, Joan Hall, Edward Brodsky.

Chicago; Richard Sinkfield, Atlanta; Charles Renfrew, California; and Edward Brodsky, New York.

The Exchange began when the American delegation assembled in Delhi on January 24 and were briefed by Kenneth Brill, the United States Charge d'affaires from the Indian Embassy, about economic, political and other issues as they affected relations between our countries. That evening, we

The next morning our delegation called on Shrih. R. Bhardwaj, the Minister of State for Law and Justice. The Minister discussed with us problems involving human rights in India, the backlog in the Indian courts, alternative dispute resolution and in particular arbitration, and other problems that the judiciary and the bar were coping with in India.

After leaving the Minister, we were invited to meet with the newly formed Indian National Human Rights Commission. The Commission's broad mandate is to investigate and expose human rights violations in India and to educate the Indian people, many of whom are impoverished and ignorant, about their rights.

The Commission, which is probably the only national body of its kind in the world, is empowered to investigate human rights violations and issue reports of violations to the public. It is expected that these reports will be widely publicized in the Indian press, which is a free press and has no inhibitions

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American College of Trial Lawyers

THE BULLETIN

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INDO-AMERICAN EXCHANGE

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about criticizing its own Government. The idea is that public exposure will tend to inhibit future human rights violations. Our delegation was most favorably impressed with the ambitious scope of the mandate of this Commission.

That afternoon we proceeded to the Supreme Court of India (the highest Court in India) where we listened to portions of oral arguments in several cases and in the evening we were dinner guests of the Chief Justice.

On Friday, January 28, Judges Wallace and Arnold and several of the lawyers in our delegation participated with Indian lawyers, professors and environmental activists in a discussion of environmental issues. India is attempting to balance a program of protecting its environment without inhibiting foreign investors with expensive environmental protection rules. It is a difficult task. There was a spirited discussion of these issues with, of course, no resolution. But the exchange of ideas was stimulating and worthwhile.

Up until this time our discussions were informal. On Friday afternoon there was a formal inauguration of the Indo-American legal forum as a prelude to two full days of round table discussions among the delegates to the Exchange. That evening, there was a reception hosted by the United States Charge d'affaires at his residence and, subsequent to that, a dinner given for the American delegation by the Minister of State for Law and Justice.

For the next two days the American participants and their counterparts, including the Chief Justice of the Supreme Court of India, the Attorney General of India, other members of the Supreme Court and High Court of India (the intermediate appellate court) and some of their leading lawyers participated in a round table discussion on topics of mutual interest. The format was that an Indian judge or lawyer, who had prepared a paper on a particular subject, spoke for about ten minutes after which there was a discussion in which everyone participated.

In the course of our informal discussions with the Indian judges and lawyers certain themes kept repeating and some noteworthy differences between our judicial systems became apparent. For example, one issue often discussed during our visit was human rights. The Indian judges are determined to deal with human rights issues by becoming an extraordinarily activist Court. The Indian courts, under a concept called Public Interest Law, have virtually eliminated standing requirements in human rights cases.

Anyone, including a newspaper reporter or a person who writes a letter to the Court, may bring alleged human rights violations to the attention of the Supreme or High Court which are courts of original jurisdiction in these cases. If the allegations appear to have

merit, the Court may order an investigation into the issues and will ultimately decide the matter, giving relief where appropriate even if no aggrieved party has filed a complaint. Indeed, the Court, with no complainant may start an investigation on its own when it learns of human rights violations. That is far different from our country in which even the most activist judges are narrowly limited by standing requirements. The Indian judges explained that without these procedures many human rights violations would go unremedied because there are so many impoverished ignorant people in India who are not aware of their rights, have no idea of how to protect those rights, and have no money for lawyers.

Another subject which was often discussed in the course of our visit was affirmative action. The Indian Constitution provides for affirmative action to improve the condition of India's substantial underclass and the Indian Government has instituted affirmative action programs to attempt to equalize the rights of women and children.

However, as much as the Indian Government is attempting to eliminate discrimination because of race, creed, color or sex, the rules do not apply to private employers or to privately owned public places of accommodation such as hotels. With some exceptions, prohibitions against discrimination apply only to the Government and Government owned companies. This is far different from the broad equal opportunity employment legislation in our country prohibiting discrimination.

As the Indian government privatizes their industry, which it is slowly doing, more of their companies may be discriminating against different classes of people with impunity. Several of the Indian judges predicted that eventually their anti-discrimination laws would be expanded to apply to private companies.

Other subjects discussed and compared with our laws during our visit include free expression, constitutional due process, damages for human rights violations, alternative dispute resolution techniques, court backlogs and questions of administrative law.

We left Delhi on the evening of January 30 for a whirlwind trip to Bombay, Madras and Calcutta. On Monday morning in Bombay, Justice Ginsburg presided over a forum on "The Rights of Women and Minorities". In the afternoon Indian lawyers lectured on "Judicial Review of the High Courts in India", and "Human Rights: An Asian Perspective" (to which there was a response from Judge Wallace). Before the lectures we met with the Chief Justice and other Justices of the High Court in Bombay and in the evening there was a dinner hosted by the Chief Justice of Bombay on the lawn of the High Court.

On Tuesday, February 1, we departed for Madras and that afternoon attended a lunch

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PRESIDENT'S MESSAGE

In response to my invitation in the last issue of the *Bulletin*, quite a number of Fellows have written either me or President-Elect Lively Wilson to express an interest in being appointed to one of the committees for the 1994-95 College year. I encourage others to do so as well. It is my hope that every Fellow who wants to become active in the College will find an opportunity to do so.

SPRING MEETING, APRIL 17-20

As I write this message in late February, we are nearing capacity for the Spring Meeting. If you can attend, let me urge that you send in your reservation immediately. The College office can supply additional forms if need be.

The meeting should be outstanding. The Hyatt Gainey Ranch is one of the most attractive facilities in the country, with wonderful opportunities for golf, tennis, swimming and other recreation; and several choice optional tours will be available. Bob Young and his staff will work their usual magic in the social activities. The substantive program, which is described in detail in this issue, will be first rate, with a number of interesting principal speakers and a fascinating program on professionalism and civility jointly sponsored by the Committee on Teaching of Trial and Appellate Advocacy and the Professionalism Committee.

One of the primary motivations for the creation of the College in 1950 was to make it possible for its members to share a warm fellowship -- to enjoy each other's company as we move "from labor to repose". The two national meetings provide opportunities to experience fellowship with a superb group of trial lawyers and their spouses, and I encourage all of you who can do so to attend one or both of these meetings.

CHAIR WORKSHOPS

Workshops were held this year at Charleston, South Carolina (January 6-9) and La Quinta, California (January 20-23). The members of the Board of Regents, the State and Province Chairs, and the Committee Chairs were invited to attend one of them, and the officers were at both -- a total of about 100 persons, including spouses of Fellows, at each Workshop. For the first time this year, we adopted a three-day format -- Thursday evening through Saturday evening. This was necessitated by the expansion of the agenda to include several more hours of meeting time. Notwithstanding the additional night, the net cost to the College was approximately the same in view of the dramatic savings in airfare arising from the Saturday night stayovers.

The format of the two Workshops was identical. The Friday morning program

included presentations regarding the responsibilities of the State and Province Committees, the Regents, and the College office, particularly with respect to the nomination and election of new members. On Friday afternoon there was a report and discussion regarding the new Policy Procedures and Guidelines that govern activities at the state and province levels -- an important milestone in the history of the College; and each Committee Chair or a designee gave a report on current and anticipated future projects at the national level.

The Saturday morning program featured "breakout sessions", an idea originated last year by Bill Haight that was expanded upon this year. The attendees were divided into four groups, each consisting of a dozen or so Fellows, that were as nearly as possible "mirror images" of each other, i.e., with approximately the same number of Regents, State and Province Chairs and Committee Chairs, and with geographical diversity. The breakout sessions lasted an hour and a half, and a Regent or Past President served as discussion leader. While there were suggested topics for discussion, the Fellows were asked to talk about any matter that might help strengthen the College and increase the College's service to its members, the profession and the public.

Following the breakout sessions, everyone got together for another hour and a half. The leaders gave oral reports, which were followed by a general discussion that included a number of "straw votes", the results of which were interesting and in a few instances rather surprising.

Here are some of the "straw votes":

FUTURE WORKSHOPS

By an overwhelming margin, it was concluded that there should be more emphasis on breakout sessions at future Workshops, thereby giving each Fellow in attendance a real opportunity to have input with respect to the future course of the College.

COMMUNICATION WITH FELLOWS

The participants at each Workshop decided *unanimously* that the College has not been doing an effective job in communicating with its members, and that "the rank and file membership" does not have a very good understanding of the College's activities and accomplishments. We will address that shortcoming in two ways: first, there will be four issues of the *Bulletin* this year, compared to an average of one or two a year in the past, and each issue will contain a great deal of information about the projects of the committees, action taken by the Board of Regents, and so on; and second, the officers and Regents will undertake to be more informa-



FRANK C. JONES

tive about the work of the College as they meet with groups of Fellows around the country.

NATIONAL MEETINGS

With respect to the substantive programs at national meetings, there was almost a unanimous opinion that we should continue to present well known speakers on topics of general interest that are not necessarily law related. However, a strong viewpoint was also expressed that the programs should be supplemented with more sessions containing "professional substance", such as "cutting edge" or "big case" topics. The program at Scottsdale will address this concern at least in part through the professionalism program on Tuesday afternoon, and Lively Wilson will take this suggestion into consideration in planning the Ottawa program as well.

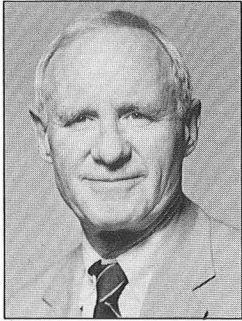
PROFESSIONALISM AND CIVILITY

In response to the question of whether professionalism and civility should be a main concern of the College, almost 90% said "yes". I believe this is indicative of the widespread conviction that our profession has drifted much too far toward commercialism and that there is an alarming failure to adhere to the principles of ethical conduct and civility that were the hallmark of the profession a generation ago. The newly established Professionalism Committee will have an all day meeting at Scottsdale, and you will hear from this committee in months and years to come.

ADMISSION TO FELLOWSHIP

Other views: although most believe that the present size of the College is "about right", there is a widespread conviction that we must continue to be quite vigilant in nominating and electing qualified lawyers, including women, minority practitioners, and those who practice advocacy in a wide variety of practice areas; there was accord that the

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Robert B. Fiske, Jr.

FISKE NAMED INDEPENDENT COUNSEL

Robert B. Fiske, Jr., President of the College in 1991-92, was recently appointed by Attorney General Janet Reno to serve as Independent Counsel in the Madison Bank

investigation. In accepting this responsibility, Bob Fiske stated, "I am very honored to have been selected for this important and challenging assignment. I am very grateful to the many Fellows who responded so quickly and so knowledgeably to my inquiries about potential candidates. This process was instrumental in helping to produce the high-quality staff that I have been able to assemble."

This appointment is in keeping with the tradition of commitments to public service by other leaders of the College in years past,

including, for example, the service provided by Past President Leon Jaworski during the Watergate investigation.

The press release of the Department of Justice that was issued on January 20 included the following:

"Attorney General Janet Reno today named Robert B. Fiske, Jr., age 63, a former U.S. Attorney and Past President of the American College of Trial Lawyers, to serve as Independent Counsel in the Madison Bank investigation.

"Noting that she had promised to appoint someone who was 'ruggedly independent,' the Attorney General pointed out that Fiske, a Republican, was named U.S. Attorney in New York in 1976 by President Gerald Ford but was retained until the end of his term in 1980 by President Jimmy Carter, a Democrat, because of the universally high regard for Fiske's skill and integrity.

"Fiske, a Litigation Partner in the New York City firm of Davis Polk & Wardwell, also served as Chairman of the Attorney General's Advisory Committee of U.S. Attorneys from April 1978 to April 1979, Chairman of the American Bar Association Standing Committee on the Federal Judiciary, 1984-87, and President of the Federal Bar Council, 1982-84.

"Fiske graduated from Yale University, B.A. 1952, and the University of Michigan, J.D. 1955, where he was a member of the Order of the Coif and an Associate Editor of the Michigan Law Review."

Past President Bob Fiske will attend the Spring Meeting at Scottsdale. He will introduce one of our principal speakers, Louis Freeh, Director of the FBI.

PRESIDENT'S MESSAGE

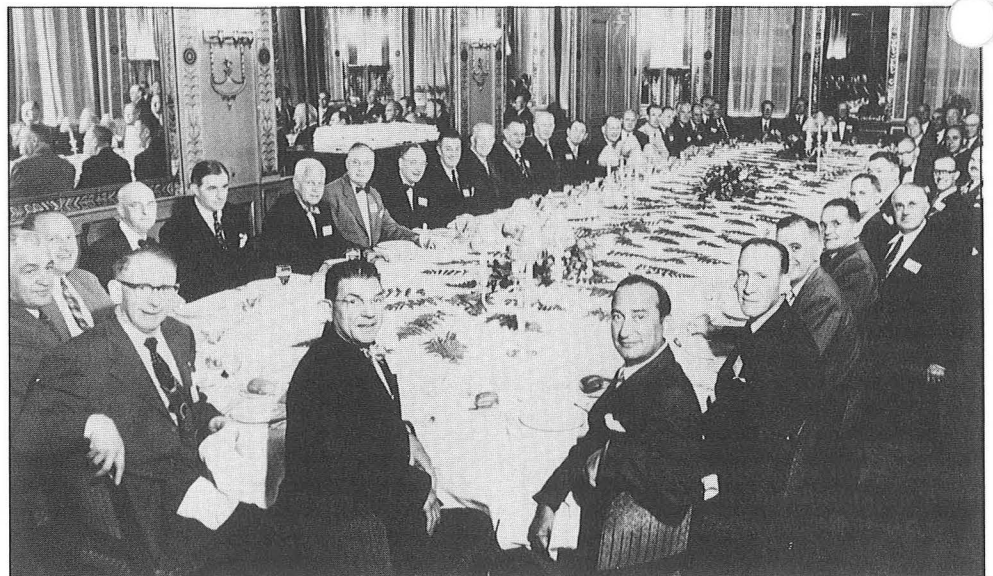
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College should continue to speak with only "one voice" with respect to national issues, and that "increased visibility" should not in and of itself be a goal; and it was unanimously agreed that the College should not attempt to replicate the work of the organized bar but instead should do selectively what it does best and as to which its members have real expertise -- namely activities that will maintain and improve the standards of trial conduct, the administration of justice and the ethics of the profession.

CODE OF TRIAL CONDUCT

On the embarrassing side, only about 15% of those in attendance at the Charleston Workshop answered "yes" to the question of whether they have referred to the Code of Trial Conduct in the last 12 months (to protect the guilty, there was a hand vote with eyes closed). That question was not presented at La Quinta but I expect that the result would have been about the same. One explanation may be that the present Code has become somewhat outdated. The Legal Ethics Committee has submitted a proposed revision and it will be acted upon by the Board of Regents in April. I believe there will be substantial interest in the new Code when it is published and disseminated throughout the country.

In conclusion, it was quite evident that the



The above photo is believed to be the first Annual Meeting of the Fellows taken in August, 1951. You can help us if you know any of the Fellows in the photo. We would appreciate your identifying them and sending us the photo in the Bulletin with the identification.

Workshop participants have a good feeling about the College -- many told me that they believe it is the premier legal organization in the country, and in some instances the only legal organization that has unqualified

respect today -- and a conviction that, consistent with its traditions and bylaws, the College can provide even greater service years to come.

Frank C. Jones

COMMITTEE NEWS UPDATE

STANDING COMMITTEES

ACTL HISTORY COMMITTEE

This Committee is seeking to locate materials of historic significance to the College, including files and recorded personal recollections, particularly of its early leaders -- anything that might enhance the archives of the College or assist in the writing of its history. If you have, or know of, any such materials, please write to Robert A. Young, Executive Director, describing them.

Submitted by:
John Elam



Illinois Downstate Chair, Douglas Enloe and his wife Jeanne (left) are pictured with James Morris, Chair, Admission to Fellowship Committee (center) and Kitty and Thomas Crisham, Upstate Illinois Chair (right) at the recent workshop held in La Quinta, California.

ALTERNATIVES FOR DISPUTE RESOLUTION COMMITTEE

As mentioned in the last edition of the *Bulletin*, members of the ADR Committee are available to speak on ADR at local, state, province and regional meetings. Arrangements for a Committee member to speak can be made by contacting the Committee Chair, Frank G. Jones, at 713/651-5473.

The Committee Chair has participated with the Task Force responsible for developing an action plan concerning the adversary system for the Long Range Planning Committee. The Task Force has made several recommendations to the Long Range Planning Committee, which, if adopted, will involve significant activity on the part of the ADR Committee. These recommendations include: a study of the effectiveness of ADR procedures in reducing docket back-logs to be carried out with the assistance of subcommittees appointed by State and Province Chairs; preparation of a report on ADR techniques identifying and recommending those systems most effective in eliminating back-logs and those which are most efficient in resolving disputes while preserving the right to trial; and recommending to the Board of Regents which ADR procedures should be recommended for adoption in all states and provinces and how the College may participate in working for adoption of those procedures.

The Committee will be meeting at the Spring Meeting and hopes to have Fellows from those states in which Fellows have participated in docket reduction back-log programs to discuss these programs with us.

Submitted by:
Frank G. Jones

AWARD FOR COURAGEOUS ADVOCACY COMMITTEE

The Committee met on 20 September 1993 during the Fall meeting of the College in Washington, D.C. The activities of the Committee since that time have focused on finalizing submissions to the Board of Regents, investigating persons suggested to receive the Award and improving information about the Committee and the Award for Courageous Advocacy.

A draft of a brochure describing the Award for Courageous Advocacy and previous recipients of the Award will be discussed at the Committee's meeting in Scottsdale.

Submitted by:
J. Donald Cowan, Jr.

COMPLEX LITIGATION COMMITTEE

The Committee has undertaken two projects relating to the *Manual for Complex Litigation, Second*. First, we are reviewing the *Manual* page by page and line by line in order to report our recommendations on any additions, deletions or alterations. Secondly, we are preparing outlines and reports on certain kinds of complex litigation to supplement the *Manual*. These projects were undertaken at the request of Judge William W. Schwarzer, Director of the Federal Judicial Center, to the College. The Committee has been divided into two Subcommittees to address these projects.

The report of the Committee on the *Manual for Complex Litigation, Second* was reviewed by the Executive Committee and will be edited by a Professor from Emory University before it is finalized and submitted to Judge Schwarzer. With respect to the second project, the Committee has proposed the addition of two sections covering areas of RICO and Environmental Litigation. These two sections are being finalized and will be submitted to Judge Schwarzer in the near future.

Submitted by:
Robert G. Stachler

FEDERAL RULES OF CRIMINAL PROCEDURE COMMITTEE

A subcommittee was formed to survey all state Attorneys-General regarding the state practice of disclosing statements of government witnesses prior to trial. The survey has been completed and currently a final report is being prepared. This survey will be used in conjunction with a proposal to be presented to the Attorney General to liberalize the practice of disclosing witness statements pursuant to 18 USC 3500, The Jencks Act.

The Chairman personally conducted a survey of members of the College in 50 states to determine the state law provisions relating to waiver of a trial by jury by a defendant. This survey will be used to support a proposed amendment to Rule 23(a), Federal Rules of Criminal Procedure relating to a waiver of a jury trial by the defendant, without the consent of the prosecutor.

A subcommittee was formed to draft an advisory note to accompany the proposed amendment. The Chairman has enlisted the assistance of a law professor (an expert in the area) to assist the subcommittee in drafting the advisory note.

During the course of the year the Committee has received com-

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ments from numerous non-committee members of the College who have offered their expertise to assist the committee. The Chairman has accepted their offers and has sought their expertise.

Submitted by:
Peter F. Vaira

FEDERAL RULES OF CIVIL PROCEDURE COMMITTEE

The committee met in Phoenix on October 19, 1993. Present were Robert S. Campbell, Jr., Peter W. Culley, John C. Deacon, J. Grant McCabe, III, William A. McCormack, David T. Ryan, Evan L. Schwab, Irving R. Segal, Stuart D. Shanor, Joseph M. Spivey, III and William W. Vaughn.

The early portion of the meeting consisted of an update and discussions on the progress of Proposed Rules 26(a)(1) [mandatory disclosure] and 11 [sanctions] in the Congress. Courtesy of Evan Schwab, there was handed out a recent Washington Supreme Court decision authorizing sanctions on a law firm under Rule 26(g) for failing to disclose a "smoking gun" document.

Much time was devoted to discussing the proposed revision to Rule 26(c)(3) dealing with protective orders. This new addition (see pp. 54-55 of the enclosed October, 1993 Call for Comment) would provide that:

"(3) On motion, the court may dissolve or modify a protective order. In ruling, the court must consider, among other matters, the following:

- (A) the extent of reliance on the order;
- (B) the public and private interests affected by the order; and
- (C) the burden that the order imposes on persons seeking information relevant to other litigation."

It was the sense of our Committee that the court in question would be the same one that had entered the protective order originally. We had previously noted our objection to this proposed revision by letter to Judge Sam Pointer, then Chairman of the Advisory Committee for Civil Rules.

Our Regent, Bill Vaughn, said there are really two facets to this problem, one dealing with settlement where it is likely that protection is really needed and the other dealing with discovery where such orders are often abused. Bill noted that it is becoming all too routine for parties to simply provide that everything is to be treated as confidential and that courts are too willing to simply sign off on whatever the parties agree to in the first place. In any event, and because this rule is being sent out for public comment, it was decided that Peter Culley would chair a three person subcommittee (to include Don Schlappizzi and Joe Spivey) which would report back to our full Committee on what further, if any, opposition we should register to proposed Rule 26(c)(3).

We next discussed the proposed revision to Rule 43 which we had all more or less referred to as authorizing "live video" or "audio" testimony at trial. Originally, the Committee's objection to this proposal was sent to Judge Sam Pointer.

After much discussion our Committee determined that we would no longer oppose proposed new Rule 43.

We then discussed the proposed amendments to Rules 50, 52 and 59. In each case the amendment is to make uniform the requirement that in motions for judgment NOV under Rule 50, to amend or add findings under Rule 52 or for new trial under Rule 59, the same must be now uniformly filed (not served) "not later than 10 days after entry of judgment". We had no opposition to this salutary proposal.

The question of when and where our Spring, 1994 meeting should be held was addressed. There was considerable opposition to having the meeting at the Midyear or Spring meeting of the College essen-

tially because there would be little opportunity to really address substantive issues at the Midyear meeting. A number of Committee members expressed the view that they do enjoy and are most willing to travel for the substantive work of this Committee. There was also discussed the fact that more often than not our Spring Committee meeting, like the one in the Fall, will be dictated by when the Advisory Committee on Civil Rules will be meeting.

Submitted by:
Ken Sherk

LEGAL ETHICS COMMITTEE

REVISED CODE OF TRIAL CONDUCT. At its meeting in Washington on September 21, 1993, the Committee unanimously approved the subcommittee's proposed revised Code of Trial Conduct, and on September 24 the proposed revision was forwarded to President Frank C. Jones with the recommendation of the Legal Ethics Committee that it be approved by the Board of Regents.

TENTH CIRCUIT REGIONAL MEETING. Charles C. Hileman made a presentation on the subject of Legal Ethics for Trial Lawyers at the Tenth Circuit Regional Meeting in Jackson, Wyoming on August 16, 1993.

NEW CHAIRMAN OF COMMITTEE. President Frank C. Jones appointed Charles C. Hileman as Chair of the Legal Ethics Committee to succeed William J. Brennan, III, who has served with distinction as Chairman of the Committee for seven years.

The Committee's plan for the future is to undertake consideration of possible action by the College on the subjects of lawyer advertising, media publicity and the adoption of written procedures for dealing with charges and complaints against Fellows of the College supplement Section 3.6(d) of the Bylaws of the College. Subcommittee to consider each of those subjects are being formed.

Submitted by:
Charles C. Hileman



E. Osborne Asycue, Jr., Regent, discusses College issues in a breakout session held in Charlestown, S.C. held in January.

MEXICO COMMITTEE

In general discussion, it was reaffirmed that the focus of the committee should be on establishing exploratory contacts with top trial lawyers in Mexico and in dealing with dispute resolution issues, particularly those that will arise as a result of the passage of NAFTA. Our primary mission in establishing contacts with Mexican lawyers and in delving into dispute resolution issues should be to enable us to better serve clients and potential clients and to assist in creating a system

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which would promote the resolution of disputes in accordance with the standards of the American College of Trial Lawyers.

We agreed that each of the committee members would attempt to identify potential Mexican trial lawyers who are considered to be at the top of their profession in Mexico and that these names would be submitted to me for further screening. We would then assign various members of our committee to make exploratory contacts with some of these individuals.

All of the committee members indicated that they will be attending the Spring Meeting in Phoenix. It was, therefore, decided that we would hold a committee meeting and that I would contact Bob Young regarding scheduling a time that would not conflict with the meetings of other committees on which our members may serve. We agreed that we would invite Boris Kozolchik of the National Law Center for Inter-American Free Trade to talk to the group about dispute resolution issues that may arise under NAFTA (he has since accepted) and that Gene Lafitte would follow-up on some preliminary discussions concerning what is being done by the federal courts in regard to pursuing NAFTA dispute resolution issues.

I attended the meeting in Tucson in February concerning judicial cooperation and dispute resolution issues and obtained as much information as possible concerning what is going on in this area as possible. It was also agreed that I would advise Chief Justice Rehnquist of the College's interest in this area if the opportunity arises.

Submitted by:
Phil Robbins

NATIONAL COLLEGE OF DISTRICT ATTORNEYS COMMITTEE

Many of you may not know how the National College of District Attorneys began and the role the American College of Trial Lawyers played from its inception.

Back in 1969, it dawned on a few of us that the prosecutors in this country did not have a national training center such as the F.B.I. Academy that had served for federal and local law enforcement officers. Several of us met over a one year period to brainstorm this idea into reality in 1970. Among the founders was Leon Jaworski, former President of the American College of Trial Lawyers, the American Bar Association, and a prosecutor of renown fame from the war crimes trials and Watergate. As a result, the National College of District Attorneys came into being with joint sponsorship of the National District Attorneys Association, the American Bar Association, the International Academy of Trial Lawyers, and, of course, the American College of Trial Lawyers.

The National College of District Attorneys is located at the University of Houston Law School, where there are ample classrooms, hotel and meeting facilities, and other support. The American College of Trial Lawyers has made a significant contribution each year in keeping with promoting professionalism and high standards among trial lawyers.

From a modest beginning, the National College of District Attorneys has become a strong institution dedicated to improving trial skills and ethical standards of state and local prosecutors. The National College of District Attorneys fills a great void in providing many general and specialized courses that state and local governments cannot do. Last year, the National College of District Attorneys administered 19 courses all over the country as some 2,145 prosecutors were enrolled. The National College of District Attorneys also serves as a resource and publication center for prosecutors. Ethics and understanding the role of the prosecutor is a high priority of the National College of District Attorneys.

Our committee, the National College of District Attorneys, is committed to an even greater partnership with the National College of District Attorneys. We would like to be supportive in other ways than just

financial. Beale Dean, our former chairman, Bob Meserve, Jay O'Hara, Morris Harrell, John Hill, and other American College of Trial Lawyers members have served or are serving on the National College of District Attorneys Board of Regents. The members of the American College of Trial Lawyers can take great satisfaction in its contribution not just to improving trial skills but to our system of criminal justice in these United States.

Submitted by:
Carol S. Vance

NATIONAL MOOT COURT COMPETITION COMMITTEE

The National Moot Court Competition Committee each year sponsors the regional and final rounds of the National Moot Court competition. This year the final round of the competition was held on January 27, 1994 at the Association of the Bar of the City of New York. The Honorable Judith S. Kaye, Chief Judge, New York State Court of Appeals, presided over the final bench.

South Texas College of Law was named the winner of the final rounds of the Forty-Fourth Annual National Moot Court Competition sponsored by the Young Lawyers Committee of the Association of the Bar of the City of New York and the College. The winning team will attend the Spring Meeting of the College.

The members of the championship team were Mary-Olga Ferguson, Sheila P. Haddock and Gary R. McLaren. The team from Southwestern University School of Law placed second in the competition.

The case for this year's competition was *Michaels v. Fifrex, Inc.*, a case concerning toxic torts. This case presented issues that arose in a product liability action, in which petitioners sought damages for increased risks of cancer. These risks were alleged to be the result of a pesticide manufacturer's failure to adequately warn of such risk on the EPA approved label affixed to the product.

The Southwestern University School of Law won the award for the team presenting the best oral argument and the runner-up award for the best brief. The best brief award was presented to South Texas College of Law, which also received the runner-up award for best oral argument.

The award for the best individual oral argument went to John C. Rogers from the Southwestern University School of Law. Mary-Olga Ferguson, from South Texas University School of Law, received the runner-up award for the best individual oral argument.

In January 1995, The Honorable Ruth Bader Ginsburg, Supreme Court Justice of the United States, will be the presiding justice at the Forty-Fifth Annual Moot Competition.

The Moot Court Competition Committee will be meeting at the Spring Meeting of the College to discuss the competition at the Regional and National level. If any Fellow has any ideas or suggestions for the Committee to consider, please forward them to Bettina B. Plevan, Chair of the Committee.

Submitted by:
Bettina B. Plevan

NATIONAL TRIAL COMPETITION COMMITTEE

The National Trial Competition was held last year in San Antonio, Texas on March 10-13. Approximately 120 law schools from throughout the United States participated in the Competition. At the end of the Final Rounds, which lasted three days, the University of

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COMMITTEE NEWS

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Notre Dame Law School was named national champion. Temple University Law School placed second.

Seventeen Fellows served as presiding judges during the preliminary rounds and as jurors during the championship round. Those Fellows participating were: David J. Beck, Raymond L. Brown, Thomas M. Crisham, David S. Cupps, Robert L. Dickson, Kevin J. Dunne, Keith Gerrard, Hubert W. Green, Leo A. Hughes, Jr., Andrew J. Kilcarr, Stuart Lefstein, Richard E. Rassel, Edward J. Rice, Jr., Shulamith Simon, James J. Virtel, Michael A. Williams and Stanley P. Wilson. Of the two committee members who did not attend, both were in trial.

120 schools participated in the eleven regional competitions. There were 22 teams at the National Competition, but only 21 law schools were represented because one school sent two teams (Washington University School of Law of St. Louis, Missouri).

The Committee made several suggestions during the year to the Texas Young Lawyer's Association, the group that organizes the Competition each year, to improve the quality of the Competition. All of our suggestions were incorporated in this year's event. Attached is a copy of a letter identifying possible improvements for next year's Competition.

This year's Competition will be held in Dallas, Texas on March 16-19. We will have President Jones present at the final ceremony to hand out the Lewis Powell Medallions and other awards to all participants.

Submitted by:
David J. Beck

SPECIAL PROBLEMS IN THE ADMINISTRATION OF JUSTICE COMMITTEE

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.

STATE AND PROVINCE COMMITTEES

IOWA

The Committee, together with a subcommittee, continues to work on plans for the 1994 summer outing to be held at Lake Okoboji on August 12 and 13.

Although Iowa continues to be over its limit in terms of members, the Committee has under consideration and is investigating several individuals whose names have been submitted as potential nominees for membership in the College.

Iowa Fellows of the College individually are active in a number of programs sponsored by the two law schools in the state, the State Bar Association, other state trial organizations, and Inns of Courts that relate to trial advocacy.

Submitted by:
H. Richard Smith

KANSAS

The Kansas Fellows provide a cash award, a plaque, and the winner's name is placed on a permanent plaque at the University of Kansas College of Law and Washburn University College of Law for the outstanding student in its advocacy program.

In addition, we provide Fellows as adjunct professors to teach segments of the advocacy program when requested.

Submitted by:
Jack L. Lively

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:
John T. Marshall

TEACHING OF TRIAL AND APPELLATE ADVOCACY COMMITTEE

Since last September's committee meeting, plans have developed and been realized to have a CLE program at the Spring Meeting on Tuesday afternoon, April 19, 1994 on the subject of Professionalism and Civility. The program will be moderated by Charlie Nessen from Harvard Law School. The panel will include distinguished jurists, practitioners of varying age, sex and experience and a law student from the winning Moot Court team. Such jurists who have been invited include Honorable John Sopinka from the Supreme Court of Canada and Chief Justice E. Norman Veasey from the Delaware Supreme Court. We plan on video-taping this panel discussion for use by interested law schools.

Submitted by:
Frank N. Gundlach

MONTANA

In 1994 we have two major activities. The first activity is to proceed with our search for outstanding trial lawyers and hopefully we will be able to submit several nominations this year.

Our second activity will be hosting the 1994 Northwest Regional Meeting at Big Sky, Montana. The meeting will take place July 24, 25 and 26, 1994, and we anticipate an outstanding meeting and a very good turn out of members.

Submitted by:
R. D. Corette

OHIO

We have tentatively scheduled a meeting for May 11, 1994 in Columbus, Ohio, for the State Committee.

We have tentatively scheduled a seminar/social event in Northern Michigan for early August to include the Fellows in Michigan, Ohio, Kentucky and Tennessee.

Submitted by:
Robert L. Davis

TENNESSEE

There will be a social meeting in Memphis, Tennessee at the Peabody Hotel on June 9, 1994. That meeting is held in conjunction with the meeting of the Tennessee Bar Association.

Submitted by:
Charles J. Gearhiser

ACTL CALENDAR OF EVENTS

STATE MEETINGS

1994

- April 8-10 **ARKANSAS Meeting**
Lake Hamilton Resort
Hot Springs, AR
- May 6-8 **OKLAHOMA Meeting**
Waterford Hotel
Oklahoma City, OK
- May 12 **PENNSYLVANIA Meeting**
Ritz Carlton
Philadelphia, PA
- May 20-21 **ARIZONA Meeting**
TBD
Phoenix, AZ
- May 27 **NORTHERN CALIFORNIA Luncheon**
World Trade Club
San Francisco, CA
- June 24 **NORTH CAROLINA Dinner**
Dunes Golf and Beach Club
Myrtle Beach, SC
- August 12-13 **IOWA Meeting**
Village East Resort
Lake Okoboji, IA
- October 1 **KANSAS Meeting**
Ritz Carlton
Overland Park, KS

1995

- March 2-5 **SOUTH CAROLINA Meeting**
Sea Island, GA

(1994 continued)

- October 27-30 **SOUTHWEST REGIONAL Meeting**
TBD
Sedona, AZ
- November 17-20 **FLORIDA/GEORGIA/ALABAMA Tri-State Meeting**
The Cloister
Sea Island, GA

1995

- May 25-27 **TEXAS/LOUISIANA/MISSISSIPPI Meeting**
Lafayette Hilton and Towers
Lafayette, LA
- June 16-18 **NORTHEAST REGIONAL Meeting**
TBD/Newport, RI
- August 6-9 **PACIFIC NORTHWEST REGIONAL Meeting**
The Coeur d'Alene Resort
Coeur d'Alene, ID

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

(714) 727-3194



REGIONAL MEETINGS

1994

- June 3-5 **NEW ENGLAND REGIONAL Meeting**
Bald Peak Colony Club
Melvin Village, NH
- June 10-12 **PENNSYLVANIA/NEW JERSEY/DELAWARE Meeting**
Seaview Resort
Absecon, NJ
- July 24-26 **NORTHWEST REGIONAL Meeting**
TBD/Big Sky, MT

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
- October 17-20 **ACTL Annual Meeting**
Hyatt Regency
San Diego, CA

OTHER MEETINGS

1994

- March 4-5 **The Gale Cup Competition**
Toronto, Ontario
- March 17-19 **National Trial Competition Final Rounds**
Dallas, TX
- August 19-24 **Canadian Bar Association Annual Meeting**
Toronto, Ontario
- September 11-16 **Anglo-American Exchange**
London, England

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

SCOTTSDALE SPRING MEETING DRAWS CAPACITY ATTENDANCE

The 1994 Spring Meeting will be held April 17-20, 1994 in Scottsdale, Arizona. The world class Hyatt Regency Resort at Gainey Ranch will be the site for this 44th Spring Meeting of the ACTL. The resort features a spectacular pool area, golf, tennis and spa.

An exciting social and professional schedule has been planned. President-Elect, Lively Wilson, has put together an outstanding professional program that is outlined

in this article.

The social events will include a Western Nights theme party with participants encouraged to dress in Western "Denim and Diamonds".

A variety of optional tours will be offered including a Phoenix Valley Tour, the Heard Museum, Jeep Adventure Desert Tour and River Rafting. In addition, the traditional golf and tennis tournaments will be held on Monday, April 18th.

MONDAY, APRIL 18, 1994

8:30 a.m. - 11:15 a.m. **GENERAL SESSION**

Presiding: Frank C. Jones, President, ACTL
King & Spalding
Atlanta, Georgia

Invocation

John C. Elam, Past President, ACTL
Vorys, Sater, Seymour & Pease
Columbus, Ohio

Address

R. William Ide, III
President, American Bar Association
Atlanta, Georgia

Introduction of Speaker

Robert B. Fiske, Jr.
Independent Counsel, Department of Justice, and
Past President, ACTL
Little Rock, Arkansas

Address

Honorable Louis J. Freeh
Director, Federal Bureau of Investigation
Washington, D.C.

Presentation of Winning Team of 1993 National Moot Court Competition

Presenter

Jerome J. Graham, Jr., Regent Liaison
National Moot Court Competition Committee
Ribis, Graham & Curtin
Morristown, New Jersey

1993 Winning Team

Mary-Olga Ferguson
Sheila Haddock
Gary McLaren
South Texas College of Law
Houston, Texas

Response by Best Oral Advocate

John C. Rogers
Southwestern University School of Law
Los Angeles, California

Introduction of Speaker

Ralph I. Lancaster, Jr., Past President, ACTL
Pierce, Atwood, Scribner, Allen, Smith & Lancaster
Portland, Maine

Address

Honorable Stephen Breyer
Chief Judge
United States Court of Appeals for the First Circuit
Boston, Massachusetts

TUESDAY, APRIL 19, 1994

8:30 a.m. - 11:15 a.m. **GENERAL SESSION**

Presiding: Frank C. Jones, President

Report on India-United States Exchange

Edward Brodsky
Regent, and Chairman of The International Committee
Proskauer, Rose, Goetz & Mendelsohn
New York, New York

Committee Reports

Special Problems in the Administration of Justice

John T. Marshall, FACTL, Chairman
Powell, Goldstein, Frazer & Murphy
Atlanta, Georgia

Federal Rules of Evidence

Michael A. Cooper, FACTL, Chairman
Sullivan & Cromwell
New York, New York

Presentation of Honorary Fellowship to The Rt. Honorable Sir Thomas Bingham

Presenter

Robert L. Clare, Jr., Past President, ACTL
Shearman & Sterling
New York, New York

Address by Sir Thomas Bingham

Introduction of Speaker

Robert P. Armstrong, Q.C., FACTL
Chairman, Canada-United States Committee
Tory Tory DesLauriers & Binnington
Toronto, Ontario, Canada

Address

Cecilia I. Johnstone, Q.C.
President, Canadian Bar Association
Ottawa, Ontario, Canada

Introduction of Speaker

Fulton Haight, Past President, ACTL
Haight, Brown & Bonesteel
Santa Monica, California

Address

Honorable E. Norman Veasey
Chief Justice, Supreme Court of Delaware, and
Judicial Fellow, ACTL
Wilmington, Delaware

1:00 p.m. - 4:30 p.m. **CLE PROGRAM**

Presiding

Lively M. Wilson, President-Elect, ACTL
Stites & Harbison
Louisville, Kentucky

Topic: Panel Discussion on Professionalism

Moderator: Charles R. Nesson
Professor of Law, Harvard Law School
Cambridge, Massachusetts

Panelists

Honorable Richard M. Bilby
United States District Judge, and
Judicial Fellow, ACTL
Tucson, Arizona

Michael J. Bonesteel, FACTL
Haight, Brown & Bonesteel
Santa Monica, California

Larry Feldman, FACTL
Fogel, Feldman, Ostrov, Ringler & Klevens
Santa Monica, California

Wayne Fisher, Regent, ACTL
Fisher, Gallagher & Lewis
Houston, Texas

Dora Fitzpatrick
Healy and Beal, P.C.
Tucson, Arizona

David Gross, FACTL
Budd Larner Gross Rosenbaum Greenberg & Sade, P.C.
Short Hills, New Jersey

John F. Oppedahl, Executive Director
The Arizona Republic and The Phoenix Gazette
Phoenix, Arizona

John C. Rogers, Best Oral Advocate
National Moot Court Competition
Southwestern University School of Law
Los Angeles, California

Gina Marie Rossano
Snell & Wilmer
Phoenix, Arizona

Theodore Schneyer, Professor of Law
University of Arizona
Tucson, Arizona

Honorable John Sopinka, Associate Justice
Supreme Court of Canada, and Judicial Fellow, ACTL
Ottawa, Ontario, Canada

Honorable E. Norman Veasey, Chief Justice
Supreme Court of Delaware, and Judicial Fellow, ACTL
Wilmington, Delaware

INDO-AMERICAN EXCHANGE

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hosted by the Chief Justice of the High Court of Madras. After lunch, we went to the High Court and were welcomed in a ceremony in which the Chief Justice of the Madras High Court and the Advocate General and other judges and lawyers participated.

Later in the day, we attended a series of lectures given by an Indian High Court judge and four Indian lawyers on "Impact of United States Supreme Court Judgments on Indian Law", "Protection and Vindication of Human Rights", "Human Rights and Constitutional Values", "Legal Control of Government", "Justice in the Workplace: Constitutional and Statutory Protection" and "United Nations Universal Declaration of Human Rights and the Indian Constitution".

On February 2, part of our delegation

departed for Calcutta and attended a dinner hosted by the Chief Justice of the Calcutta High Court. The next morning, we visited the High Court and observed portions of oral arguments. We then returned to Delhi and travelled home.

The trip was not all work. Our gracious hosts treated us to some extraordinary sight-seeing. We were taken to the exquisite Taj Mahal, and the elephant caves in Bombay. We were invited to observe the very formal semi-annual ceremony they call "Beating the Retreat"* in Delhi. We also were invited to the Republic Day Parade, an elaborate annual parade at which, among other things, the Indian Government displays some of its military hardware. The parade was quite impressive both for what it displayed and for

the precision with which it was conducted. At the conclusion of the parade helicopters dropped rose petals on the crowd and a barrage of colorful balloons was released into the bright blue sky.

One of the highlights of the trip was a dinner with the President of India at his residence, attended by the Prime Minister and other Indian dignitaries.

It was a most successful first part of the Indo-American Judicial Exchange. We look forward to next year's visit by the Indian delegation and a continuing dialogue with the Indian judiciary and bar.

* Hundreds of years ago when the Moguls were at war in India, each evening at sunset the fighting parties sounded a bugle call signifying the end of hostilities for the night. That was called Beating the Retreat. The fighting stopped and resumed the next morning.