

THE BULLETIN

NUMBER 22

SUMMER

1995

Moment of Truth for Lawyers

by Sol M. Linowitz

Sol Linowitz addressed the American College of Trial Lawyers at the 1995 Spring Meeting in Amelia Island, Florida. Following is a reprint of that speech.

I want to talk with you about the state of the legal profession in the United States today — where it is, where it is heading, and what should be done to move in the right way and in the right direction. These are all matters I undertook to deal with in my book "The Betrayed Profession".

I must tell you frankly that as a lawyer I wrote the book with sadness and even some anger — but also with hope and even optimism. For I believe that while the problems are real and deeply troubling, we lawyers can, if we will it, deal effectively with them in a manner that will enhance our profession and restore the bar to the position of trust and respect it once occupied.

You don't need me to tell you that lawyers are today viewed with distrust, dislike and suspicion in too many places. There is a widespread public impression that the practice of law has become primarily a money-grabbing, profit-maximizing, hustling business, rather than an admired profession. This has brought into question the intention, the integrity and the value of lawyers generally. Lawyer-bashing has become a popular indoor and outdoor sport and lawyer jokes can be confidently relied upon to evoke loud guffaws and applause.

When I was young I found attacks on lawyers — and there were some — irritating but not disturbing for I was certain of my respect as well as my love for my profession; and I was confident that whatever misbehavior might be discovered in its lower depths, its leadership was ethically as well as intellectually admirable.

In recent years — through experience as well as observation, I have lost some of that confidence and even some of my respect — but not my love for my profession.

How did all this happen? How did we get to the point where to acknowledge that you are a

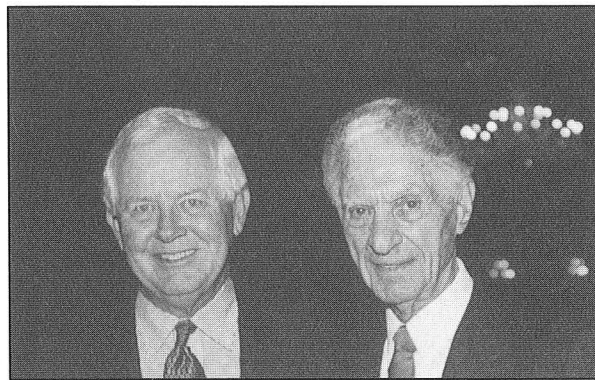
lawyer is to invite scoffing and derision? I think the answer is quite simple: Too many lawyers have forgotten what they are supposed to be. Too many fail to remember that in enter-

dealing with human problems on a human scale. I learned the deep satisfaction of helping to solve a problem or settle a dispute among people. I knew the fulfillment of having men and women who had entered my office in panic and distress leave it grateful and with peace of mind. I came to understand that human relations is the stuff of which law is made; and that no lawyer worth his salt can practice his calling impersonally; that to be a lawyer in the real and deep sense of the word is to concern yourself with people and with the things which bring people together or drive them apart; and that being a real lawyer involves knowing how to work with those you must serve. The law was for me truly a human profession. Over the years, however, something seriously disturbing has been happening to the legal profession. Increasingly, law has become a business rather than a profession. In too many law

firms, the computer has become the Managing Partner as law firms are ruled by hourly rates, time sheets and electronic devices. We have seen an increase in technological expertise with a corresponding diminution in the human side of law practice. Lawyers are making more and achieving less, and in the process, I am afraid, they have lost a great deal of what we were meant to be.

I am not saying anything new here. In a speech on the state of the legal profession in 1986, Chief Justice Rehnquist said:

"The practice of law has always been a subtle blend between a 'calling' such as the ministry, where compensation is all but disregarded, and the selling of a product, where compensation is all important. The movement over the past twenty-five years has been to increase the emphasis on compensation — to make the practice of law more like a business."



President, Lively M. Wilson and Sol M. Linowitz at 1995 Spring Meeting.

ing the profession, lawyers assume solemn responsibilities and obligations which are an integral part of their calling; that lawyers are "officers of the court" precisely because they are vested with important rights and authority under our system of justice — the right to summon, to direct, to impose — not because lawyers have an inherent right to do so but because these significant privileges have been granted in exchange for lawyers' undertaking to fulfill important responsibilities in our society.

When I entered the legal profession 56 years ago a lawyer was a member of an esteemed and honored profession. Becoming a lawyer meant joining a helping profession — one which dealt with the problems of people and did so sensitively and effectively. Lawyers regarded themselves as charged with a public trust — committed to strengthening our system of law and justice.

As a young lawyer practicing in Rochester, New York, I had the exhilarating experience of

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THE BULLETIN

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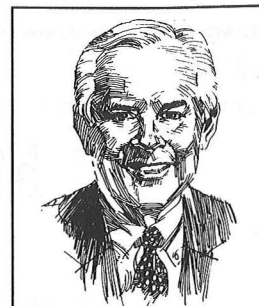
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PRESIDENT'S MESSAGE

They tell the story of a man who stopped to ask directions to the next town. "You turn left, go over the mountain, by the waterfall and the lake, and then follow the river until you reach the city." "Is that the shortest way?" "Oh, no, you asked the best way to get there. That's the way I go. The shortest distance is on the interstate." According to Rand McNally it is 1866 miles from Ottawa to San Antonio. That's on the interstate. Actually, it's much farther but infinitely more interesting and exciting to follow the route that Frances and I have been privileged to travel this year. Two things stand out. No member of the College was asked to do something, to serve on a committee, to undertake a project, who didn't respond positively and enthusiastically. The other is the enormous amount of effective work that is being done to further the College goals of improving the art of advocacy, the ethics of our profession, and the administration of justice.

Following Frank Jones' excellent example, there will be a written report on College activities at the Annual Meeting, but let me highlight just a few of them here.

An expanded Legal Ethics Committee is looking at the contentious issue of trial publicity, and the need for an effective balance between free press and fair trial. That committee, along with the Teaching of Trial Advocacy Committee, is preparing teaching material to be used in connection with the *Code of Trial Conduct*. Incidentally, over 15,000 copies of the *Code* have been distributed to judges, lawyers, and, perhaps more importantly, to law schools. The Complex Litigation Committee is trying to find an effective and efficient solution to the handling of mass torts. We have increased the Emil Gumpert Award to \$50,000 and are in the process of establishing a mock trial competition in Canada. The College has also been active in expressing its views on relevant issues presently



LIVELY M. WILSON

pending in Congress. There are many, many others, but these are illustrative of the kinds of activities going on in the College. The success of the College will continue to depend on the enthusiastic response of the Fellows and the extent to which we remain focused on our purpose.

San Antonio will present an excellent opportunity for us to get together for the kind of fellowship that has been the hallmark of our meetings. The program arranged by President Elect Charles Renfrew is outstanding. Judge Richard Arnold, Chief Judge of the Eighth Circuit, Senator Orrin Hatch, Chairman of the Senate Judiciary Committee, are highlight speakers. For a change of pace, Reg Murphy, Executive Vice President of the National Geographic Society, and Billy Payne, Chairman of the Organizing Committee for the 1996 Olympics, will be on the program. Unfortunately, Mr. Payne's appearance does not include a supply of tickets. Our Executive Director, Robert Young, will work his usual magic on the various social activities. It promises to be an outstanding meeting, and I look forward to seeing you in San Antonio on September 21-24.

If any Fellow wishes to submit an article on an issue such as ethics or professionalism, we would be pleased to consider it for publication in the *Bulletin*.

Moment of Truth for Lawyers

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The major concerns I have primarily involve the large firms in our larger cities which attract the cream of the law school graduates each year and which set the tone for the whole legal profession.

The explosive growth in these law firms has resulted to a major extent from the ever increasing intrusion of government into business matters making it necessary for corporations to seek more and more legal guidance and assistance. In responding to these corporate requirements, law firms have had to expand and with that has come a dramatic increase in legal corporate expenses which now represent 5% of corporate budgets.

With the passage of time, lawyers and businessmen alike have come to accept the proposition that the client is best able to judge what he needs done and the lawyer must be ready to do whatever the client asks.

In acceding to this, the lawyer has, I submit, bartered away what has always been his proudest characteristic: his independence. For if the lawyer stands ready to do whatever the client asks, he deprives the client of the one thing the client is most entitled to have — the best advice the lawyer can give him as to whether what the client wants done should really be done. What makes the lawyer a professional is his insistence that in the legal realm, he sets the parameters of what he will and will not do — and he tells the client what he believes is in the client's best interest. Elihu Root's words are worth recalling: "About half the practice of a decent lawyer consists in telling would-be clients that they are damn fools and should stop."

I know that there will be some — perhaps many — who will consider what I have to say as maudlin prescriptions from an old timer nostalgic for the good old days; and there is some truth to that. But I believe there is a good deal more than that in what I am saying.

In the first place, I am not so overwhelmed by nostalgia as to fail to recognize that the practice of law as I knew it and lived it in the middle decades of this century had its own gross imperfections. Discrimination because of race or creed or color or sex were an all-too-familiar experience for African Americans who were kept from ABA membership until 1954; or for women who in 1992 had 60,000 in law school, and in 1963, thirty years earlier, had just 17; or for Catholics and Jews who knew discrimination as an accepted part of trying to join a law firm. So thinking back over half a century, I must temper my enthusiasm for the past with the recognition that in more recent years there has come substantial progress in overcoming indefensible bigotry in

the profession. The bar can properly take pride in the progress thus far made.

But it is my deep conviction that lawyers can and should do more — that we can lead the way to a more ethical America. I believe again Elihu Root had it exactly right when he told a client: "The law let's you do it but don't. It's a rotten thing to do."

So when I talk about putting a stop to much of what is going on in the practice of law today, I am echoing Elihu Root's words urging lawyers to know when to say "The law lets you do it but don't. It's a rotten thing to do". And when I talk about restoring the status and dignity of the bar — I believe I am being at least as practical as I am idealistic. For as a practical matter, I believe neither clients nor the political public will continue to accept what many Americans deplore in the practice of law today. And acceptance of the proposition that law is a business will, I believe, inevitably lead to the

If lawyers cannot by themselves reestablish a climate of professionalism, then government will set the parameters of behavior.

kind of government regulation that is imposed on other businesses — only more so, because of the lawyer's impositional powers. What I am saying is that if lawyers cannot by themselves reestablish a climate of professionalism, then government will set the parameters of behavior.

I submit that the need — the pressing need — is for lawyers to recognize that there is much we can and must do to become once again the "democratic aristocracy" Alexis de Tocqueville found in this country.

What should be done? Let me give you just a couple of examples:

First, let's talk about our law schools where it all starts: In 1993 there were 176 law schools in this country with enrollment of almost 150,000. In virtually all of these law schools, teaching is done by the Socratic method, and law students are taught (as we like to say) to "think like a lawyer" — to be ready and able to argue the case for either side of a controversy. But if you must be just as ready to take either side regardless of the merits, you are not apt to spend time worrying about legal ethics or right and wrong. The Socratic method, in short, does not focus on justice or fairness or morality but on conflict.

Law schools have, therefore, experimented with legal ethics courses, but the teaching has been mostly left to people for whom the life of the law has been logic not experience. The heart of the matter is that the law schools must find a way to do a much better job of teaching legal ethics as an essential part of being a good lawyer. And our law firms must not only press them to do it but must in our own offices set a standard of ethical behavior for the young lawyers to follow.

Another major law school concern is or should be the educational background of law students today. The legal system of the Western world rests on a large body of philosophical, social and literary history. It is important for young law students to learn that history so they can be people of breadth and learning. It is important for them to recognize that our system of law and justice grew out of our own past; and that we are custodians and not owners of that past including our laws and institutions. Perhaps the best thing the law schools might do to improve the legal profession would be to launch a crusade to improve the liberal arts education of lawyers. Law students should be encouraged to take courses in science, philosophy and even psychiatry as part of their training.

The leaders of the bar used to be people who believed that a lawyer should know accounting, but needs philosophy; that for understanding the idea of a contract, anthropology is apt to be more valuable than case law; that you can often learn more about people from great novels than you can from studying the law books. They recognize that a good lawyer, almost by definition, should be a person of breadth who has a grasp of what yesterday teaches us about today and tomorrow.

As Felix Frankfurter once wrote to a young man interested in becoming a lawyer: "No one can be a truly competent lawyer unless he is a cultivated man...The best way to prepare for the law is to come to the study of law as a well read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a truly liberal education can give."

I submit that those words should be engraved on the walls of every law school in the country.

A particularly difficult and quite different problem confronting our law schools is how to cope with the expense burden law school imposes on the students and which keeps many of them from going into public service as they would like to do. When law students leave law

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school today carrying a debt burden of say, \$30,000 or \$40,000 or more — as so many of them do — it is understandable that they seek jobs where large sums can be earned immediately. And they rush to the big firms which will pay the big money. It seems to me reasonable to suggest that the National Service Program, launched by President Clinton, be expanded so that recent law school graduates can go to work in legal aid, or as public defenders, or in similar jobs in return for forgiveness of a portion of their debt. If, for example, 10,000 law school graduates were to be forgiven \$20,000 of their debt in return for their entering upon some form of public service in the legal aid area, the total cost would be \$200 million of the \$7 billion the National Service Program is expected to cost. It is hard to think of a better investment to help strengthen our system of justice. I suggest that the American Bar Association might want to get behind such a proposal and help make it a reality!

Now let me turn for a few minutes to the role of our bar associations. I submit to you that the greatest responsibility of a bar association today is to assure the availability of legal services to those in need. For as Judge Learned Hand said: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." The fact is that too many people in our country feel they do not have access to justice today. Too many who need lawyers will go unrepresented because the bar has not organized itself to provide them the services they need at a price they can afford. The rhetoric of our profession has long insisted that our system is one of "justice for all" but the visible truth is that we are not living up to our professed beliefs.

In my judgment, the test of our bar associations will ultimately be how well they respond to this need for legal services. The reason this is both a challenge and a test is or should be obvious. For if the legal profession does not stand for equal justice under the law, then it is hard to see what it does stand for. And I believe it is critical to the self-respect of the bar that every lawyer make some contribution of time or money to the cost of approaching the goal of equal justice for all.

As a basic principle, lawyers and non-lawyers alike must recognize that in a very real sense law is what America is all about. In no other system of government do the law and the courts play so large a role. No other country has so many lawyers, and in no other country have lawyers been so influential. Elsewhere, the totem of the society is a crown, or a mausoleum or a spot of sacred land. In the United States, it is a document under glass at the National Archives. The greatest responsibility to assure that that document remains alive and strong lies with the lawyers.

The most frightening measure of what the

legal profession has lost over the years is that most Americans don't even remember the faith and trust this society once placed in its lawyers. If Alexis de Tocqueville came to America today to study its laws and customs, he would never come up with the idea that the lawyers were the country's natural aristocrats. Who is responsible for this?

Lawyers blame the law schools; the law schools blame the lawyers; the judges blame the lawyers; the lawyers say the clients made them do it; still others blame the culture itself. Why do people single out lawyers for the loss of ethical fiber at a time when ethical decline is so widespread?

I think the answer is simple: because lawyers are supposed to be the custodians of a community's legal and ethical sense. To a significant extent, the loss of self-respect in the profession and the loss of public respect both reflect the failure of our schools to convey to the young what law and lawyers have meant in the history of this country. If the profession wishes to retain its privileges, we lawyers above all others must understand why we have been granted exclusive access to the judicial processes of government and why the public has the right to expect that lawyers will be vigilant not only in the interest of clients but also for the rule of law that protects us all.

The goal must be that Americans come to understand the tone and climate of our legal rules of fair play, the reason self-incrimination under oath is odious, the difference between evidence one may feel is good enough in deciding whether to buy this car rather than that one, and evidence that is good enough to place the weight of law on the side of one party to a dispute rather than the other. We need a widespread understanding of the forces that have shaped and nourished our legal system.

Professor Paul Freund of Harvard once wrote: "Law is probably the most neglected phase of our culture in the liberal arts curriculum." He was right and there is much which can and should be done about this.

We teach American history in 5th, 8th and 11th grades in our school systems; and most college students take a year's course in the subject. At each level appropriate to the sophistication of the students, it should be possible to develop courses on law in our history. This is a job that can be done and done well by historians, lawyers and teachers working together. Of all the projects to bolster our faltering legal system, this is probably the one that could be put on the rails most quickly. We could in a few years be introducing millions of students to educational materials that would make better citizens of all of them, and better lawyers of those who want to study law. The heart of the matter is that before we can have respect for lawyers, we must first have respect for law.

When we talk about law, we are talking about an organized, reasonable accepted way for people to live together and settle their disputes without resort to force. Everywhere we look in the world today, we see monstrous pogroms, wars and atrocities, caused in large part by the absence of law as a shield for the people. In the former Yugoslavia, in Sudan, in Sri Lanka, in Armenia and Azerbaijan, Eastern Turkey, and India and Ethiopia, in Rwanda and Somalia, people kill each other because they lack the security of law, and there may be worse to come.

What does all of this mean? What does it come down to?

If it calls for anything, it is a call to lawyers to reaffirm their independence, to make clear their willingness to sacrifice money for pride, and their eagerness to play the proper role as guarantor of rights. But to make the contribution that only lawyers can make to the future of our country and the world lawyers will have to do much more than simply declaim their responsibilities.

Lawyers are going to have to prove that their profession stands ready to serve not only the rich and the powerful, but also the poor and the powerless.

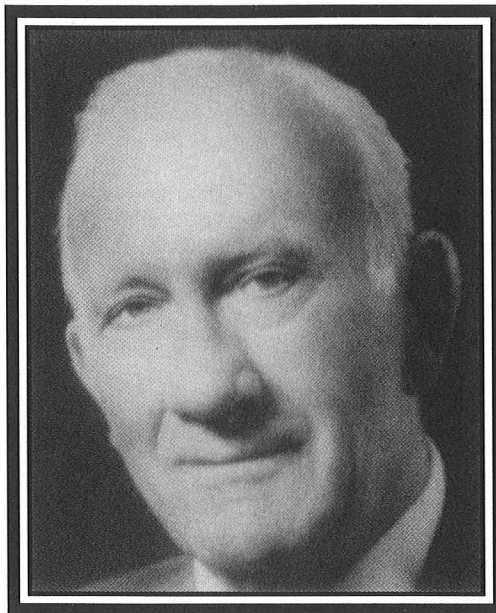
Lawyers will have to demonstrate that their concern as lawyers is with the human and the humane — that they are truly committed to the principle of equality of access to the law — that lawyers accept the obligation to serve all of the people in our society.

Then — and only then — will we lawyers find that we have won and deserve the appreciation and respect of those we seek to serve — then and only then will we once again be able to say with dignity and honor "I am truly proud to be a lawyer".

Sol M. Linowitz has combined three careers as lawyer, businessman and diplomat. At present he is Honorary Chairman of the Academy for Educational Development. He was Senior Counsel of the International law firm of Coudert Brothers until 1994, having served as a Senior Partner of the firm from 1969 to 1983.

Sol M. Linowitz is author of "The Betrayed Profession" published by Scribners and bearing the subtitle "Lawyering at the End of the Twentieth Century". In his book, Mr. Linowitz elaborates on a number of points touched upon in his talk and offers a series of proposals to law firms, law schools, judges, bar associations and society at large.

In Memoriam CHARLES E. HANGAR



(1924-1995)

Chuck Hanger, the Forty-First President of the American College of Trial Lawyers, died peacefully at his home in Carmel, California on July 23, 1995. He was a genuine American hero.

A native Californian, Chuck graduated from Berkeley High School, enrolling in the University of California in 1941. His illustrious athletic career in basketball, and track and field was interrupted by his enlistment in the U.S. Army in 1943. He was wounded and captured in the Battle of the Bulge in 1944. He received the Purple Heart. After his internment in a German prison camp, he returned to the University of California at Berkeley, to continue his studies, becoming Valedictorian of his class. During that time, he achieved an outstanding record in basketball, honored as an All-American and set a high jump record that was not broken for over 14 years. He was recently inducted into the Athletic Hall of Fame at U.C. Berkeley.

By 1950 he had graduated from Boalt Hall Law School. Chuck continued his stellar accomplishments in the legal world at Brobeck, Phleger & Harrison in San Francisco for over thirty years. He was known as one of the finest anti-trust litigators in the country. During this time he was honored as a Fellow of the American College of Trial Lawyers, serving as President from 1990-1991. He was responsible for bringing Prime Minister Margaret Thatcher into the College for induction as an Honorary Fellow in 1990. He became a member of the U.S. Supreme Court Society in 1980, serving as a Trustee from 1993.

Chuck was a great trial lawyer who was respected and admired by friend and foe alike. He served the College with distinction for many years and he added a full measure of distinction and dignity in everything that he did. He was a giant of a man in every sense, and he will be sorely missed.

COMMITTEE NEWS UPDATE

STANDING COMMITTEES

Access to Justice and Legal Services Committee

The Committee has concluded that the needs of any particular state with respect to access to justice for both the poor and those who make too much money to qualify for legal assistance, but not enough money to retain private attorneys, are unique to that state and/or region. Given such differences, the Committee believes it unlikely that the Committee will be able to design a program that will be appropriate for each jurisdiction on a "turn key" basis.

In recognition of such geographical differences, the Committee is working with a concept which would include a recommendation that the Board of Regents encourage each State Committee to appoint a subcommittee whose sole focus would be to design a program that would address and meet the particular access-to-justice-and-legal-services need within that state. To assist such subcommittees in their efforts to identify appropriate opportunities, the Committee would submit "menus" of possible opportunities from time to time.

The Downstate New York Committee has proposed that it initiate a pilot program in which it would seek to develop a consensus among Fellows in downstate New York that, consistent with the goals of the College and the Code of Professional Responsibility, senior lawyers should be undertaking regular personal pro bono commitments. The proposal includes the circulation of a menu of pro bono activities that could be undertaken by Fellows of the College in New York, ranging from complex cases such as capital cases through more limited commitments, including mediation of complex cases and mentoring young lawyers who are otherwise engaged in public interest matters. It is the objective of that Committee to see to it that the range of options would be suitable to lawyers at different points on the political spectrum and it would be the intent that the senior members of the trial bar who are Fellows of the College would choose matters that are consistent with their exceptional experience and talents. The proposal will be on the agenda for the approval of the Board of Regents in San Antonio.

The Committee is working with state chairmen from a few other jurisdictions to design and undertake additional pilot projects.

Submitted by:
John J. Bouma

Code of Trial Conduct Committee

Following is a presentation that former Chief Justice Harold Clarke made about the use of the College's *Code of Trial Conduct* at a recent meeting of Georgia Fellows.

1995 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM

The American College of Trial Lawyers' *Code of Trial Conduct* will hold an important place in the orientation of new law students in Georgia this year.

Now in their third year, the Orientations on Professionalism conducted by the Chief Justice's Commission on Professionalism and the State Bar Committee on Professionalism at each of the state's law schools have become a permanent part of the orientation process for entering law students. The purpose of the program is to introduce the concept of professionalism to first-year students. Responding to suggestions from the bench and bar that the concept of professionalism needs to be introduced early in a law students' career, the Commission and the Committee created the two-hour program in 1993. Each year, the program reaches over 1000 law students and attracts over 200 Georgia lawyers and judges who volunteer as group leaders at the law schools at Emory, Georgia, Georgia State, Mercer, and John Marshall.

The program begins with a keynote address by a Supreme Court justice, followed by breakout sessions to explore professionalism issues by discussing a series of hypothetical situations taken from the everyday practice of law and client relationships. The breakout groups are comprised of approximately eight students and two lawyer leaders.

Following the breakout discussions, all the students and leaders reconvene for concluding remarks by a State Bar leader. Following the two-hour program, a reception is held where students, group leaders, speakers, and faculty can meet and follow up on the group discussion in an informal setting.

This year, a new feature is being added to the breakout group experience in the Orientations. Through the generosity of the American College of Trial Lawyers, each student will be given a copy of the American College of Trial Lawyers *Code of Trial Conduct*, which sets forth the duties of trial lawyers to their clients, opposing counsel, courts, and the administration of justice. This will be a subject of discussions.

At the end of one program, a student remarked, "I am relieved to learn from this exercise that I do not have to leave my personal ethical values at the courthouse door." This positive response to the project from students, law schools, and group leaders assure the continuation of the Orientations as a cooperative effort among the law schools, the organized bar, the practicing bar, and the judiciary.

Submitted by:
Lively M. Wilson

Complex Litigation Committee

The principal assignment of the Complex Litigation Committee over the past few months has been to respond to Judge Schwarzer's challenge to the College at the Amelia Island Spring Meeting to study and make recommendations with regard to various controversial aspects of so-called "mass tort" litigation. A working group consisting of several members of the Committee and liaisons from several other committees of the College has been convened to discuss these issues including problems raised by multiple punitive damage awards, the appropriateness of class certifications and difficulties in processing mass claims. The Committee will submit a preliminary report to the Regents at their September meeting in San Antonio.

Submitted by:
Edward W. Madeira, Jr.

Indo-American Judicial Committee

The second half of the Indo-American Judicial Exchange took place from May 14, 1995 to May 26, 1995, starting in Washington, D.C., continuing in Williamsburg, Virginia and concluding in New York City. The Indian delegation consisted of the Chief Judge of India, members of the Supreme Court of India and several leading lawyers from India. On the American side the participants included Justices of the Supreme Court of the United States, members of the College and others. The Exchange included round table discussions of various topics among the delegates, a reception at the White House, a reception at the Supreme Court and visits to Federal courts.

Submitted by:
Edward Brodsky

Legal Ethics Committee

The Committee is reviewing the College's By-Laws governing termination or suspension of Fellowship for misconduct to determine whether changes should be recommended. The Committee's report to the Board of Regents on Pretrial and Trial Publicity has prompted the Executive Committee to request the Committee to undertake a study of the whole spectrum of questions raised by the O.J. Simpson case, including TV in the courtroom, media coverage of trials, out-of-court statements to the media by counsel involved in a case and paid-for comments on TV by so-called expert lawyers not involved in the case. Work on that project will be underway in the near future.

Submitted by:
Charles C. Hileman

Mexico Committee

In the past year, the Mexico Committee has welcomed more Fellows of the College who have expressed an interest in the Committee. We continue to invite further participation by our members.

Over the period of the last year, there has been an enormous increase in the amount of activity involving U.S. and Mexican lawyers and judges in the examination of procedures in cross-border litigation, arbitration and even mediation. This has involved groups created pursuant to NAFTA, public and private organizations, courts, bar associations, judges and lawyers. As the saying goes, "The rules are changing". The Mexico Committee can seize an opportunity to involve members of the College in bringing to bear on this process some of the principles which we believe should govern the conduct of trials and arbitrations of cross-border disputes. A second area of greatly expanding activity has been in efforts to educate the bench and bar of the U.S., Mexico and Canada concerning the judicial and legal systems of their respective countries, and in particular on the efforts being made in Mexico to institute meaningful change in the judicial system. This provides another area where the College and its members can serve the interests of our clients, as well as our system of justice by helping to influence developments.

From its inception to the present time, the Mexico Committee members (with the advice and consent of the Board of Regents) have felt that we must go slowly until we get a better picture of how events were developing in our neighbor to the south. These trends are becoming clearer, and there is an opportunity to move in the arenas mentioned above. This will be the focus of our discussions when the Committee meets in San Antonio.

Submitted by:
Philip A. Robbins

National Moot Court Competition – 1995



Winners of the 45th Annual National Moot Court Competition attended the recent Spring Meeting in Amelia Island, Florida. From Fordham University School of Law are (left to right) James R. Bliss, Michael S. Cryan and Edward D. Hassi, Best Oral Advocate.

Publications Committee

The Publications committee wishes to remind the Fellows that the College is desirous of distributing the *Code of Trial Conduct* to graduating law students and the Judiciary around the country. This past year over 15,000 copies of the *Code of Trial Conduct* have been forwarded to law schools and to the various court systems.

Submitted by:
Edward J. Rice, Jr.

Special Problems in the Administration of Justice Committee

In February, the Executive Committee asked the Special Problems Committee to review the provisions of House Bill HR10, commonly referred to as the "Common Sense Legal Reforms Act of 1995." Information was obtained and reviewed by Committee Members, and the Committee submitted its comments and recommendations on the provisions of the Bill to the Executive Committee. Just before the spring meeting in Amelia Island, Florida, the Committee was asked to prepare a position paper on the provision of the Bill proposing a "loser pays" rule for all diversity cases filed in Federal Court. The Committee came to the conclusion that the College should oppose the proposed legislation because the impact of "loser pays" had not been adequately studied or debated by Congress, and without careful study Congress could not weigh the purported benefits of the legislation against the impact on American taxpayers seeking access to the Federal Courts.

The Committee prepared a position paper which was submitted by President Lively Wilson and Fellow Robert S. Campbell, Jr. of Salt Lake City, Utah to Senator Hatch and the Chief Counsel of the Senate Judiciary Committee on April 24, 1995 in Washington, D.C. President Wilson reported that Senator Hatch was receptive to the position stated by the College.

The Special Problems Committee continues to be active in its liaison role with the American Law Institute and with its Committee to monitor developments in the jury system. Jerry Palmer and John Dense, the College liaisons to the ALI-Product Liability Project have furnished a report on their meeting with the reporters for the Project in Philadelphia on Wednesday, June 28, 1995. A copy of that report was furnished to Lively Wilson, President of the College on July 19, 1995.

The Committee will meet again at the annual meeting in San Antonio, Texas.

Submitted by:
Garr M. King

State Judiciary Committee

At its organizational meeting at Amelia Island, the Committee on State Judiciary considered mechanisms for supporting merit selection of state judges and reasonable judicial compensation in several states. It became clear that these issues are quite state-specific, that the "merit" in merit selection varies widely from state to state, that the state committees must be the guiding hands for our committee's efforts. As a result of these thoughts, letters have been sent to the respective state committee chairs seeking their individual thoughts and direction. Early focus upon Texas, South Carolina and Florida has been suggested, and the Committee looks forward to the responses of the state chairpersons.

Submitted by:
Jervis Spencer Finney

STATE AND PROVINCE COMMITTEES

NORTHERN CALIFORNIA

Plans are well under way for our fall dinner to be held on October 27, 1995, at the St. Francis Yacht Club in San Francisco.

I am pleased to report that Peter Hinton, Lewis Fenton, Joe Genshlea, John Clark, Bruce Wagner, Dick Lucas, Fred Ebey, Larry Wayte and Jim Simonelli are assisting Loyd McCormick and me in the placement of the *Code of Trial Conduct* in the courts of their respective counties. We are also moving forward with placement of the Codes in the Northern California law schools.

As in the past, your Northern California Committee looks forward to nominations of worthy trial lawyers for Fellowship.

Submitted by:
David O. Larson

INDIANA

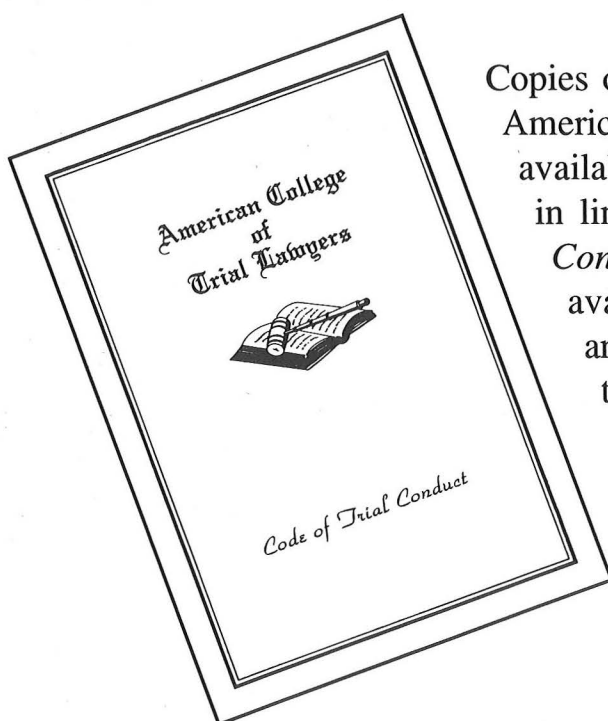
The annual meeting of the Indiana Fellows is scheduled in Indianapolis on October 13. The Fellows will have a golf outing in the afternoon followed by a reception and dinner at Woodstock Club in the evening.

The State Committee arranged for the *Code of Trial Conduct* to be included in materials provided to participants in the 1995 Indiana Bench/Bar Conference on Civility in the Legal Profession held in May. Our next project is to make plans to distribute the *Code of Trial Conduct* to law schools for use in trial practice courses.

Submitted by:
Robert P. Johnstone

IOWA

The State Committee is working with the Standing Committee on Access to Justice and Legal Services and its Chairman, John J. Bouma, to develop a pilot program. A proposal will be submitted to the Annual Meeting of the Iowa Fellows at Lake Okoboji on August 11-12, 1995.



Copies of the *Code of Trial Conduct* of the American College of Trial Lawyers are available for complementary distribution in limited quantities. The *Code of Trial Conduct* was revised in 1994. Copies are available to State and Province Chairs and others who would like to distribute this important document. Please send your requests to the College office at 8001 Irvine Center Drive, Suite 960, Irvine, California 92718.

The Iowa Committee is also continuing its efforts to have the *Code of Trial Conduct* distributed and accepted in all of its State and Federal Courts.

Submitted by:
David J. Dutton

KANSAS

The Kansas State Committee has agreed to support and encourage the use of the *Code of Trial Conduct* in trial advocacy classes at the Kansas law schools. With our encouragement, both the University of Kansas School of Law and Washburn University School of Law have requested and obtained copies of the *Code of Trial Conduct* to be provided to each student taking a trial advocacy class. The summer class at Washburn University is utilizing the *Code of Trial Conduct* and it will be incorporated into the Kansas University trial advocacy classes in the fall. Kansas Fellows are being utilized to participate in presenting the *Code of Trial Conduct* and explaining its application to the students.

Submitted by:
Mikel L. Stout

LOUISIANA

The Louisiana Fellows have contacted the law schools in Louisiana and have asked them to participate in the National Trial Competition co-sponsored by the College with the Texas Young Lawyers Association and have also volunteered to distribute copies of the College *Code of Trial Conduct* to the graduating seniors.

We have also forwarded a copy of the *Code of Trial Conduct* to the Chief Justice of the Louisiana Supreme Court and have volunteered to make the *Code* available to all of the judges in the State with the court's approval.

On June 26, 1995, Eldon E. Fallon, a Fellow of the American College of Trial Lawyers, past State Committee Chairman for the State of Louisiana, Past President of the Louisiana State Bar Association, and community activist, was sworn in as District Court Judge for the United States District Court for the Eastern District of Louisiana. The swearing in ceremony was attended by virtually all of the current and senior District Court judges of the Eastern District, by a number of the judges of the Fifth Circuit Court of Appeal, by several state District, Appellate,

and Supreme Court judges, as well as by hundreds of Judge Fallon's friends and acquaintances.

A reception at the Louisiana Bar Center, hosted by Judge Fallon's former law firm, followed the induction and swearing in ceremony.

Submitted by:
Edward J. Rice, Jr.

MARYLAND

The Maryland, District of Columbia, and Virginia Fellows will enjoy a Fun Fall Weekend in Williamsburg, VA, on November 10-12, 1995. This tri-State meeting will provide educational, social, and quasi-athletic comradery at the Williamsburg Inn in Williamsburg, VA. A committee made up of the members of the three jurisdictions has put together an interesting program with John T. Marshall, Esquire, of Atlanta, Georgia, a nationally known speaker and a Fellow of the College. Mr. Marshall will present a program on professionalism, using a case scenario to raise discussion issues. The Saturday morning program will also include a presentation by John H. O'Brien, Jr., on alternative dispute resolution.

There will be tours and shopping at the 18th Century Colonial Capital. The weekend will conclude with a Colonial dinner and entertainment by a Fife and Drum Corp.

Submitted by:
William J. Rowan, III

MICHIGAN

The States in the Sixth Circuit held a Regional Meeting July 28-30, 1995, at the Grand Traverse Resort in Traverse City, Michigan. The meeting was hosted by the Michigan Fellows, Bud Roegge, Chair. Regent Robert Campbell was present as was Andy Coats, who was filling in for Lively Wilson.

Dr. Phil Anthony of Decision Quest presented a very interesting program which included information about jury selection and exhibits in the O.J. Simpson case, since Mr. Anthony's firm has been advising the prosecution on those matters.

Submitted by:
Bud Roegge

MISSISSIPPI

The annual breakfast meeting of the Mississippi Fellows was held on June 20, 1995, at the time of the Mississippi Bar Convention in Destin, Florida. It was well attended, and we were blessed with attendance by Bob Jones, Fellow, ACTL, Past President of Arkansas Bar, Jim Branton, Fellow, ACTL, Past President of Texas Bar, and Hal Daniel, Fellow, ACTL, President of Georgia Bar. The Mississippi Fellows support the promotion of the *Code of Trial Conduct* and, as a result of that meeting, have encouraged its ongoing promotion already established through making the *Code* a part of the professionalism guides being promoted by the State Bar of Mississippi as well as concentrated efforts to be made to make it a part of the judicial standards.

Until more specifics are finalized, it was the consensus of the Mississippi Fellows in attendance that more information will be needed before a consensus can be reached whether the formation of a foundation will be supported by the entire contingency of Mississippi.

Submitted by:
Landman Teller, Jr.

NEW HAMPSHIRE

James Muirhead, former State Chair for New Hampshire, has been appointed to the position of Magistrate for the United States District Court for the District of New Hampshire.

Submitted by:
James E. Duggan

OHIO

On Friday, November 17, 1995, the Ohio Fellows will conduct a seminar in Columbus, Ohio, which will be open to all Ohio attorneys, but the faculty will be limited to Ohio Fellows of the College. The seminar will include references to the College's *Code of Trial Conduct*.

Submitted by:
Robert L. Davis

TRI-STATE MEETING

The Maryland, District of Columbia and Virginia Fellows will enjoy a Fun Fall Weekend in Williamsburg, VA, on November 10-12, 1995. This tri-state meeting will provide educational, social, and quasi-athletic comradery at the Williamsburg Inn in Williamsburg, VA. A committee made up of the members of the three jurisdictions has put together an interesting program with John T. Marshall, Esquire, of Atlanta, Georgia, a nationally known speaker and a Fellow of the College. Mr. Marshall will present a program on professionalism, using a case scenario to raise discussion issues. The Saturday morning program will also include a presentation by John H. O'Brien, Jr., on alternative dispute resolution.

There will be tours and shopping at the 18th Century Colonial Capital. The weekend will conclude with a Colonial dinner and entertainment by a Fife and Drum Corp.

Submitted by:
William J. Rowan, III

SIXTH CIRCUIT REGIONAL MEETING

The states in the Sixth Circuit held a Regional Meeting July 28-30, 1995, at the Grand Traverse Resort in Traverse City, Michigan. The meeting was hosted by the Michigan Fellows, Bud Roegge, Chair. Regent Robert Campbell was present as was Andy Coats, who was filling in for Lively Wilson.

Dr. Phil Anthony of Decision Quest presented a very interesting program which included information about jury selection and exhibits in the O.J. Simpson case, since Mr. Anthony's firm has been advising the prosecution on those matters.

Submitted by:
Bud Roegge

Fellows Appointed to the Bench

We are pleased to announce that the following Fellows have gone to the Bench.

Eldon E. Fallon, formerly of the law firm of Gainsburgh, Benjamin, Fallon & David of New Orleans, Louisiana, was sworn in as District Judge of the United States District Court for the Eastern District of Louisiana on June 26, 1995.

Lewis A. Kaplan, of New York City, became a United States District Judge for the Southern District of New York on September 16, 1994.

Robert D. Laing, formerly of the law firm of McKercher, McKercher, Laing & Whitmore of Saskatoon, Saskatchewan, was appointed to the Court of Queen's Bench last November.

Thomas B. Russell, formerly of the law firm of Whitlow, Roberts, Houston & Russell of Paducah, Kentucky, was recently appointed by the President to serve as one of the Judges of the United States District Court for the Western District of Kentucky.

In the future the College will make announcement of the Fellows who go to the bench. Please forward such information to the National Office of the College in Irvine, California.

45th Annual Meeting San Antonio, Texas

ADVANCE PROGRAM INFORMATION

PRESIDING:

LIVELY M. WILSON, President
Louisville, Kentucky

Invited Speakers and Distinguished Guests

(Listed in alphabetical order, tentative at print date. Other participants will be listed in the final program. Final program subject to change.)

The Honorable Richard Arnold
Chief Judge
U.S. Court of Appeals
for the Eighth Circuit
Little Rock, Arkansas

Kenneth R. Fineberg
Fineberg & Associates
Washington, D.C.

Senator Orrin Hatch
Chairman
Senate Judiciary Committee
Washington, D.C.

Professor Geoffrey C. Hazard
Professor and Director of
American Law Institute
Philadelphia, Pennsylvania

James F. Henry
President
CPR Institute for Dispute Resolution
New York, New York

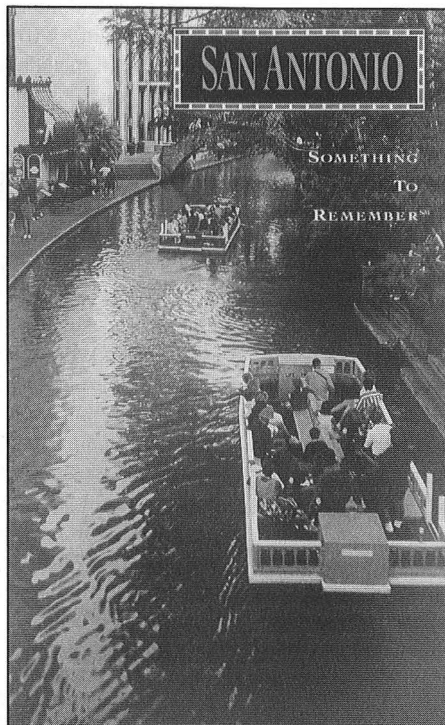
Phillip K. Howard
Howard, Darby & Levin
New York, New York

John J. Jeffries
Academic Associate Dean
University of Virginia School of Law
Charlottesville, Virginia

Professor Carrie Menkel-Meadow
Professor
University of California, Los Angeles
School of Law
Los Angeles, California

Reg Murphy
Executive Vice President
National Geographic Society
Washington, D.C.

William P. Payne
President
Atlanta Committee for the
Olympic Games, Inc.
Atlanta, Georgia



OPTIONAL TOURS

FRIDAY TOURS ONLY

LOOKING OVER THE ALAMO CITY
(\$25.00 per person) 1:30 pm - 4:30 pm
You will visit **Fort Sam Houston**, **Brackenridge Park**, the **Japanese Tea Gardens**, the **Alamo**, and the fantastic shopping at **El Mercado**. Participants may choose to return via motorcoach to the Marriott hotel or walk back to the hotel which is only a few blocks away.

HISTORY LIVES ON MISSION TRAIL
(\$30.00 per person) 1:45 pm - 4:45 pm
The riding tour includes a stop at **Mission Concepcion**, **Mission San Jose**, and another stop at *either* **Mission San Francisco De la Espada** or **Mission San Juan Capistrano**, depending on the number of attendees.

THE ART OF THE ALAMO CITY
(\$26.00 per person) 2:00 pm - 4:00 pm
One of the largest museums in the Southwest, **San Antonio Museum of Art** fascinates visitors who are interested in the outstanding adaptation of an old structure just as it intrigues and delights those interested in fine art. Of special interest is **The Nelson Rockefeller Folk Art Collection**.

SATURDAY TOURS ONLY

LOOKING OVER THE ALAMO CITY
(\$25.00 per person) 1:30 pm - 4:30 pm
You will visit **Fort Sam Houston**, **Brackenridge Park**, the **Japanese Tea Gardens**, the **Alamo**, and the fantastic shopping at **El Mercado**. Participants may choose to return via motorcoach to the Marriott hotel or walk back to the hotel which is only a few blocks away.

A VISIT TO THE WORLD FAMED HUMMEL MUSEUM
(\$38.00 per person) 2:00 pm - 4:30 pm
The Hummel Museum recently opened to rave reviews. The purpose of the museum is to preserve and display for the public the

world's largest collection of original drawings by **Sister M.I. Hummel**, and educate the public about her life and lifestyle.

ARTS AND GARDENS OF THE ALAMO CITY

(\$29.00 per person) 1:45 pm - 4:45 pm
Indoor and Outdoor Art will be on display with two delightful but very different stops. **The Witte Museum** features natural and local history, culture and art. **The San Antonio Botanical Center** is located on 33 acres and illustrates in lovely plantings the varied and unique areas of Texas.

SCHEDULE OF EVENTS

THURSDAY, SEPTEMBER 21, 1995

12:00noon - 6:00 pm	Registration/Information
12:00 noon - 6:00 pm	Hospitality Area
7:00 pm - 9:00 pm	Welcome Reception/ Hors d'oeuvres

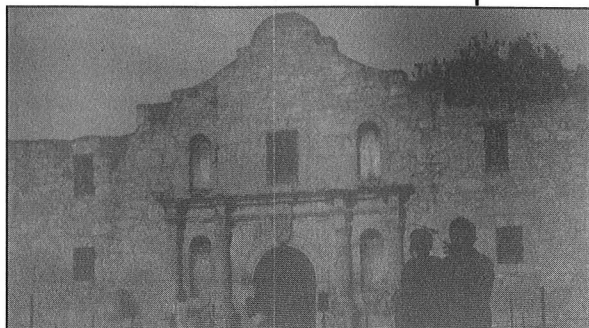
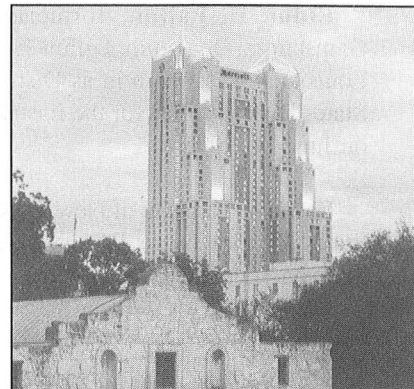
FRIDAY, SEPTEMBER 22, 1995

7:00 am - 8:30 am	General Committee Meetings
8:00 am - 5:00 pm	Registration/Information
8:00 am - 8:30 am	Continental Breakfast
8:30 am - 11:30 am	General Session
1:30 pm - 5:00 pm	Optional Tours
7:00 pm - 11:00 pm	Dancing with the Big Bands Reception, Dinner and Dancing

SATURDAY, SEPTEMBER 23, 1995

7:00 am - 8:30 am	General Committee Meetings
8:00 am - 5:00 pm	Registration/Information
8:00 am - 8:30 am	Continental Breakfast
8:30 am - 11:15 am	General Session
11:15 am - 11:30 am	ACTL Annual Business Meeting
11:30 am - 11:45 am	ACTL Reorganization Meeting of the Board of Regents and Installation of New Officers
11:45 am - 1:30 pm	Inductee Luncheon (By Invitation Only)
1:30 pm - 5:00 pm	Optional Tours
7:00 pm - 7:45 pm	Reception
7:45 pm - 11:00 pm	Induction of New Fellow Formal Banquet
10:00 pm	Sing-A-Long

HEADQUARTERS MARRIOTT RIVERCENTER



REPRINTED FOR YOUR CONVENIENCE

AMERICAN COLLEGE OF TRIAL LAWYERS

1995 ANNUAL MEETING REGISTRATION FORM

September 21-24, 1995

Marriott Rivercenter

San Antonio, Texas

(NOT for hotel registration)

PLEASE TYPE TO IMPRINT ALL COPIES

(Information below will be used for confirmation and name badges)

FELLOW _____ SPOUSE/GUEST (if attending) _____

Name for badges, if different _____

FIRM NAME _____ TELEPHONE (____) _____

OFFICE ADDRESS _____ FAX (____) _____

CITY _____ STATE/PROVINCE _____ ZIP _____

MEETING REGISTRATION FEES

Please register early as space is limited. Capacity attendance may be reached at any time. **Please be sure you are registered and confirmed with the ACTL office prior to making hotel reservations and purchasing air tickets.** You will receive a hotel reservation envelope with your ACTL confirmation. Room reservations in the ACTL room block can only be reserved with the official room reservation envelope. Rooms obtained outside the block or at alternate hotels will not constitute registration. All reservations are on a first come, first served basis.

Registration and tickets are limited to Fellows, Inductees and a spouse or a guest. Fees include Welcome Reception on Thursday; Reception, Buffet and Dance on Friday; Continental Breakfast on Friday and Saturday; and all professional programs on Friday and Saturday.

Fellow or Inductee @ \$475.00 (U.S. currency) \$ _____

Spouse/Guest @ \$250.00 (U.S. currency) \$ _____

SPECIAL EVENT FEES

A special Formal Attire Reception and Banquet is planned for Saturday, September 23. You must be registered for above meeting fees to purchase tickets to this event.

Saturday, September 23 — Banquet (Formal Attire) _____ @ \$125.00 person \$ _____
(U.S. currency)

Space is limited for this special event. Reservations are on a first come first served basis.

TOTAL FEES ENCLOSED

\$ _____

(U.S. currency)

REFUNDS WILL BE GIVEN ONLY ON WRITTEN CANCELLATION REQUESTS RECEIVED IN THIS OFFICE PRIOR TO WEDNESDAY, SEPTEMBER 13, 1995. ALL CANCELLATIONS ARE SUBJECT TO A \$50.00 ADMINISTRATION CHARGE. NO REFUNDS CAN BE ISSUED AFTER SEPTEMBER 13, 1995

OFFICE USE ONLY

ID# _____
CK# _____
CEC _____
BDG _____
TKS _____
OTHER _____

Please return the original white copy with your check to:

American College of Trial Lawyers
8001 Irvine Center Drive, Suite 960
Irvine, California 92718

PLEASE RETAIN THE YELLOW COPY FOR YOUR RECORDS

ACTL CALENDAR OF EVENTS

STATE MEETINGS

1995

September 8

MISSOURI Fellows Annual Dinner
Bellerive Country Club
St. Louis, MO

September 15

ILLINOIS Fellows Annual Golf Outing and Dinner
Evanston Golf Club
Skokie, IL

September 29-October 1

WISCONSIN Fellows Fall Meeting
American Club
Kohler, WI

October 7-8

KANSAS Fellows Meeting
The Ritz-Carlton
Kansas City, MO

October 13

INDIANA Fellows Meeting
Woodstock Club
Indianapolis, IN

October 20

DISTRICT OF COLUMBIA Fall Cocktail Party
TBD
Washington, D.C.

October 27

NORTHERN CALIFORNIA Dinner
St. Francis Yacht Club
San Francisco, CA

October 28

MAINE Fellows Black-Tie Dinner
Portland Country Club
Portland, ME

November 17

OREGON Fellows Annual Dinner
Benson Hotel
Portland, OR

REGIONAL MEETINGS

1995

November 10-12

MARYLAND/DISTRICT OF COLUMBIA/VIRGINIA Fun Fall Weekend
Williamsburg Inn
Williamsburg, VA

1996

January 17

QUEBEC Regional Dinner
TBD

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

(714) 727-3194



NATIONAL MEETINGS

1995

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

1997

March 19-23

ACTL SPRING Meeting
Boca Raton Resort & Club
Boca Raton, FL

October 17-20

ACTL ANNUAL Meeting
Westin Hotel
Seattle, WA

1998

March 18-22

ACTL SPRING Meeting
Marriott Desert Springs
Palm Desert, CA

OTHER MEETINGS

1995

September 9-12

ANGLO-AMERICAN EXCHANGE
The Charles Hotel
Cambridge, MA

September 12-15

ANGLO-AMERICAN EXCHANGE
The Willard Hotel
Washington, D.C.

October 19-22

WESTERN CHAIRS WORKSHOP
The Ritz-Carlton Hotel
Laguna Niguel, CA

November 2-5

EASTERN CHAIRS WORKSHOP
The Ritz-Carlton Hotel
Palm Beach, FL

1996

January 25

ANNUAL NATIONAL MOOT COURT COMPETITION
The House of the Association of the Bar of
the City of New York
New York, NY