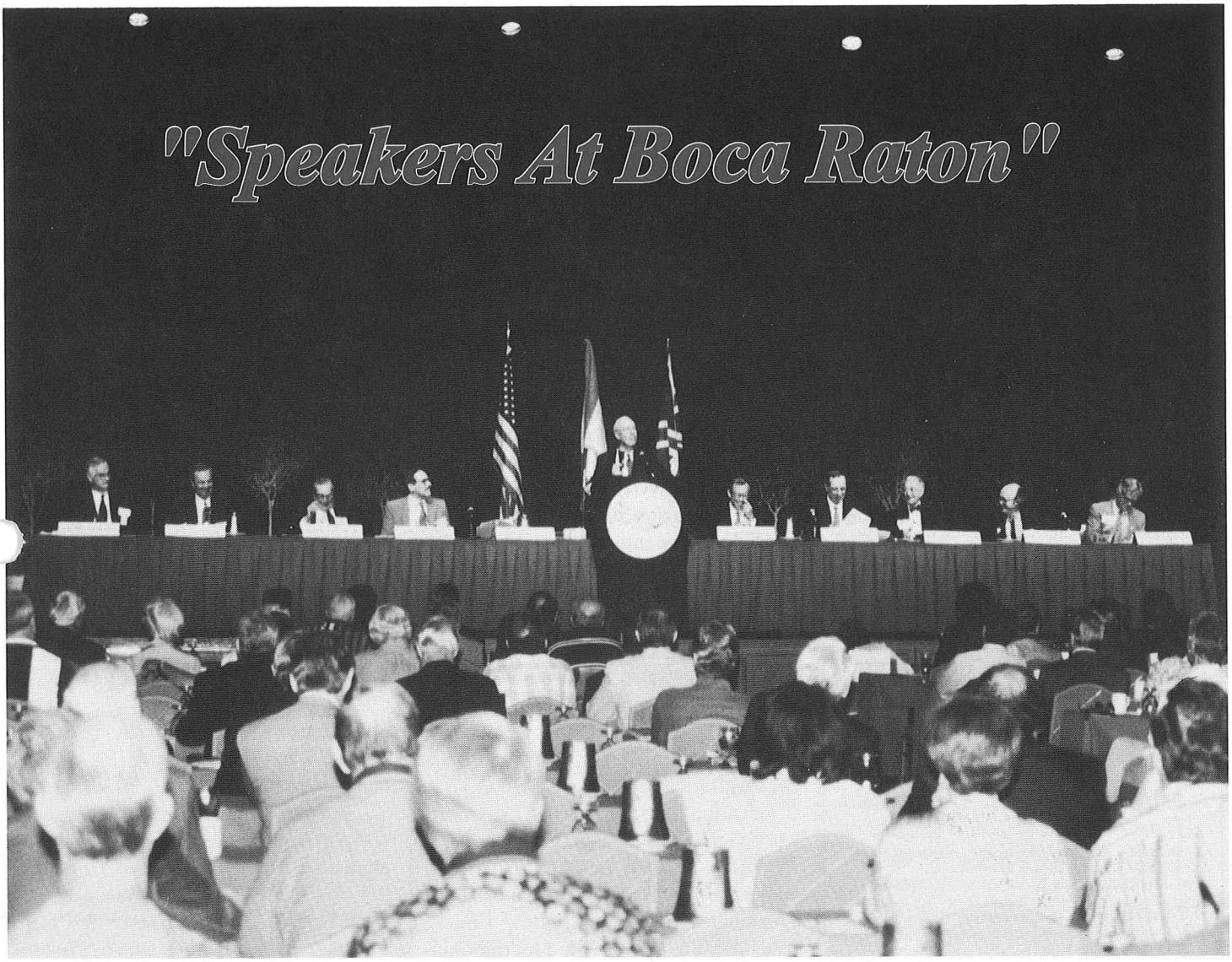
American College of Trial Lawyers

THE BULLETIN

Number 26 Spring 1997



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American College of Trial Lawyers
THE BULLETIN

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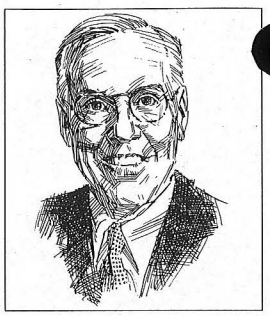
President's Message



ANDREW M. COATS

It's hard to believe my year as President of the College is half over. The time is really flying by. (The operative word there is "flying" as Linda and I do a lot of it.)

The 47th Spring Meeting of the College in Boca Raton last month was wonderful. Other than a rain out of the tennis tournament, everything worked out quite well. (We golfers got rained on too, but finished our tournament. I guess golfers are just made of sterner stuff.)

I hope you saw Anthony Lewis' (New York Times Columnist and one of our speakers) column in the New York Times, describing Mario Cuomo's speech to the College. He described the College as "A learned and tradition-minded organization of eminent figures in the litigating bar." Sounds right to me. Whatever you believe about Governor Cuomo's political views, you cannot help but be impressed by his ability as a speaker. He gave a great and moving speech.

Mr. Lewis' speech to the College was taped by C-Span for later broadcast. C-Span also taped the Panel on Independent Counsel, which was our Spring CLE presentation. I understand it has been broadcast twice and was very well received.

Justice Sandra Day O'Connor; Lord Goff of Chieveley; Canadian Bar President, Russell Lusk; 10th Circuit Judge Robert Henry; and Counsel to President Clinton, our Fellow Chuck Ruff also highlighted the program and stayed to enjoy the fellowship for the full meeting.

Bob Young and the staff were great as usual. A splendid meeting.

Just before the Spring Meeting, Linda and I attended the Joint Meeting of the North and South Carolina Fellows at the Cloister in Sea Island, Georgia.

The South Carolina Fellows have met at Sea Island for many years. Several years ago they invited the North Carolina Fellows to join them for a joint meeting. I thought that very ecumenical of them. They have some joint functions and some separate functions over the three days of the meeting. North Carolina State Chair, Charles Burgin, and his wife Bunnie and South Carolina State Chair, Jacob Jennings and his wife, Jane-Marie did a great job organizing the various functions and activities. Greensboro Fellow, Don Cowan put on a CLE program for the North Carolina Fellows which is excellent.

I was very impressed with the South Carolina Business Meeting held there at Sea Island. First, they have very good attendance. If you are a South Carolina Fellow, you are expected to be at the meeting unless you have a very good reason not to be. If a Fellow doesn't RSVP indicating he will attend, he gets a call from one of the other Fellows to find out why he won't be there and to encourage his attendance.

Second, South Carolina has a special part of their meeting I haven't seen anywhere else. At the start of the meeting, the Chair announced that two of their Fellows had died since the last meeting. Then a Fellow, who had obviously prepared well for the occasion, got up and by way of a Resolution of Condolence gave a detailed biographic retrospective of the life and times of the deceased Fellow.

Listening to a description of the accomplishment, and more importantly, the contributions that these deceased Fellows had made to their State, their communities and to their profession and the administration of justice, captured for me the essence of the Ameri-

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Waxing Eloquent: The Speakers at Boca Raton

The 47th Spring Meeting of the American College of Trial Lawyers included a general session spread over two days. The sessions featured a wide range of prominent speakers and interesting topics. Day one included, Lord Goff of Chieveley; New York Times Columnist, Anthony Lewis and Former Governor of New York, Mario Cuomo. Day two featured the President of the Canadian Bar Association, Russell W. Lusk, Q.C.; U.S. Court of Appeals Judge, Robert H. Henry; Counsel to the President, Charles F.C. Ruff and Associate Justice of the Supreme Court, Sandra Day O'Connor. The following article is a synopsis of those two days.

Lord Goff of Chieveley

Lord Goff is a member of The House of Lords, the equivalent of the Supreme Court of the United States. His status in the House is akin to the Supreme Court's Chief Justice. Before addressing the general session, he was presented an Honorary Fellowship in the College by Past President Robert L. Clare, Jr.

Lord Goff has a rich tapestry of experience in common law, which governs one third of the world, and civil law, the dominant legal system in Western Europe. In his speech, Lord Goff chose to compare and contrast the two legal systems. "While the common law possesses unique virtues," he said. "We are beginning to pay much more attention (to civil law) since joining the European Community."

According to Lord Goff, the major differences between the common law and the civil law systems are to be found in the form rather than the substance. In common law, judges have a large role in creating law. In true civil law, legislation is the only source of law. He said being reared on case law affects judicial method. "Common laws tend to proceed by analogy, moving gradually from case to case. We tend to avoid large abstract generalizations, preferring limited temporary formulations." In others words, Lord Goff said the judicial method of common law tends to reason upward, where as civil courts tend to reason downwards from the abstract principles embodied in their code. As a result, common law cases have a relatively limited affect, serving as a base for future operations. "Common law is a working hypothesis," said Lord Goff.

Another major difference between the two systems is the selection process for judges. In most common law systems, judges are drawn from a pool of experienced lawyers. In Germany, where civil law prevails, judges are appointed straight out of college at about 27-years old. Their 5-year law degree courses are expressly designed for judicial service. He noted that in Germany judges are treated as civil servants, without any of the prestige that comes with judicial service in common law courts.

> *"Common law is a working hypothesis."*
> Lord Goff of Chieveley

Lord Goff also noted the contrasting styles in both systems when it came to high court decisions. In civil law dissenting judgments are not issued. The reasoning being the judgments are meant to reflect the general consensus of the court. Whereas in common law courts, the dissenting opinion can often be the basis on which opposition and future precedents are forged.

But he points out there has been some blending of the two systems. "The jury trial is one of the few common law institutions successfully exported to civil law countries," said Lord Goff. France and Switzerland have adopted the system with Argentina and Spain on the threshold. Lord Goff said under Boris Yeltsin's leadership, Russia has reinvigorated their jury system with remarkable success and they are trying to expand its use all over the country. However, Lord Goff points out the jury trial has been modified in many civil law systems such as France. "The bench of three magistrates retires with the jury when they deliberate. A hangover... from the German occupation when juries were reluctant to convict," said Lord Goff. In Switzerland the judges sit in on deliberations in order to explain the jury's decision making process to the courtroom once a verdict has been rendered.

Despite the influence of civil law, he concludes the fundamental ethos of the common law will remain intact. "The common law has already fathered the idea of the 'rule of law,' surely the most important legal principle in the world."

Anthony Lewis

Lewis is a columnist with The New York Times and the winner of two Pulitzer Prizes. Lewis took the title of his speech from a recent book by James Fallows, "Breaking the News: How the Media Undermine American Democracy." Although Lewis agreed with some of the criticisms in Fallows' book, he did not agree with the conclusion that democracy and today's American press are incompatible.

Historically, Lewis said, the press has gone through many transformations. In the early years of free press, many editors actually worked for political parties. Reporting the news objectively only came to dominate the thinking of the press in the mid 1950s. However, Lewis points out dispassionate objectivity proved to be a flawed ethic when Senator Joseph McCarthy began making his inflammatory statements about Communist infiltrators in the U.S. and those statements were repeated through the press without any

("Speakers" Continued on page 8)

The Lawyer's Honor - A Casualty Of Our Times?

By U.S. District Judge & FACTL William M. Hoeveler

I was inducted into this great organization in 1970 in St. Louis. I remember going to one of the baseball games and seeing the statue of Stan Musial. I remember many things about that day because it was so important to me. I want to begin by saying this organization, of which I have been proud to be a member, is an island in a sea of troubled waters. An island of excellence and idealism in a sea that is fast becoming an ocean. In the year 2,000 we will have, I believe, in excess of a million lawyers in the United States; more lawyers per capita than any other nation in the world.

My remarks have been designated as a discussion of honor and embracing the question, whether we, as lawyers, have lost our honor. And so, I'll begin by defining honor. I note several definitions: Distinction. A delicate sense of what is just and right. Scorn of meanness, deceit, or unfairness. To treat with respect, deference or civility. An outward mark of high esteem.

The oath required of all lawyers admitted to the Florida Bar mentions honor in two places, the honor of the admitees and the protection of the honor of those with and against whom he or she practices. While I will presently move from the subject of honor, I hope at the conclusion of these remarks to connect the thought with the rest of my comments.

I was seated in my office in November or December of 1995, when I received a call from the first woman president of the American Bar Association, Roberta Cooper Ramo. I learned quickly that Ms. Ramo is a very persuasive lawyer. She advised me of the forthcoming creation, by the American Bar Association, of a committee of lawyers to be described generally as a high profile mentor or resource team, now called The Resource Team for High Profile Trials. She very graciously suggested that I act as chair of the Team. Ms. Ramo made it clear that the reason for the establishment of the Team was the impact of the O.J. Simpson case on the public view of criminal trials and criminal justice in this country. I was pleased to accept her charge and the first meeting of our Team was February of 1996. In our several meetings we had established procedures for responding to inquiries and established the limitations on what our several members may do in advising those who desire assistance. I'm very proud of our team. Most have hands on experience with one or more high profile trials. Included in our number are defense attorneys, prosecutors, ethics professors, judges, a media representative and a very competent and willing staff of the ABA Criminal Justice Section. Our purpose, our raison d'etre, is to assist judges and lawyers who are presented with high profile complex trials and may, due to lack of experience in such areas, or for other reasons, need help in getting started and keeping them running smoothly.

Obviously it is not our purpose to assist in the substantive aspects of such trials, but rather to offer assistance in those areas which, if not carefully handled, can cause problems for all concerned. For example, early handling of the media, what control should be exerted by the judge in determining what types of media coverage should be permitted and the extent of it; First Amendment problems concerning proper control of the press and the attorneys, selection of the jury, security and other problems usually present in the trial of a high profile case.

As a result of the publicity given the team, we have had a number of inquiries, some of which have been referred to members of the team suited to assist with the particular problem. Most of the inquiries have been from state judges, but some have been from federal judges as well. We have created a small library of resources, pleadings, jury questionnaires and other materials related to the subjects about which we can properly give counsel. We also provide to inquirers copies of an excellent book, prepared for the National Center for State Courts on the preparation and conduct of high profile trials.

"While most judges and lawyers agree that Simpson was not a fair representation of what generally goes on in a criminal trial, that example has provided millions with their first view at the process."

The reaction of the public has been interesting. The lay persons I've heard from and talked to about the resource team uniformly responded in a very positive way. Doesn't that say something about the public view of the criminal justice system in the United States? Or, at least a view that has more recently been shaped by the Simpson case.

Is the need for such services as the team offers a real need? Time will tell, but permit me to offer a few observations pertinent to that question. In May, 1996, I attended and participated in a media-law conference at the National Judicial College in Reno, Nevada. Clearly one of the impeti for the conference was the Simpson case and various speakers offered opinions on the effect of that case on our criminal justice system. One opined that

("Judge Hoeveler" Continued on page 16)

ACTL CALENDAR OF EVENTS

STATE MEETINGS

1997

May 9-11
ARIZONA Fellows Spring Meeting
El Conquistador
Tucson, AZ

May 30
SOUTHERN CALIFORNIA Fellows Annual Black-Tie Dinner
California Club
Los Angeles, CA

June 19
TENNESSEE Fellows Black-Tie Dinner
Cumberland Club
Nashville, TN

June 20
NORTH CAROLINA Summer Dinner Meeting
Biltmore Forest Country Club
Asheville, NC

June 27
FLORIDA Fellows Annual Dinner
Dolphin Hotel, Walt Disney World
Orlando, FL

June 27-29
MINNESOTA Fellows Golf & Fishing Weekend
Madden's Resort
Brainerd, MN

August 8-10
IOWA Fellows Annual Meeting
Jumer's Castle Lodge
Bettendorf, IA

September 20-21
KANSAS Fellows Meeting
The Ritz-Carlton
Kansas City, MO

October 3
INDIANA Fall Meeting & Golf Outing
Fort Wayne Country Club
Fort Wayne, IN

December 6
LOUISIANA Fellows Dinner
Windsor Court Hotel
New Orleans, LA

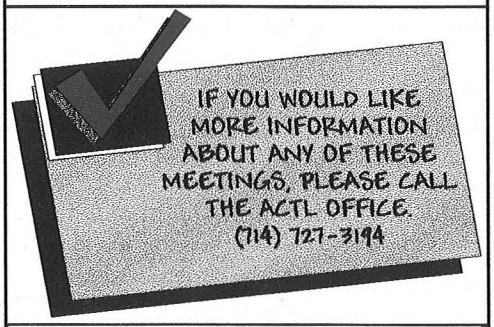
REGIONAL MEETINGS

1997

April 24-27
SOUTHWEST Regional Meeting
Spanish Bay
Pebble Beach, CA

May 2-3
NJ/DE/PA Regional Meeting
Short Hills Hilton
Short Hills, NJ

June 5-7
10TH CIRCUIT Regional Meeting
Doubletree Hotel
Tulsa, OK



June 13-14
NORTHEAST Regional Meeting
Black Point Inn
Scarborough, ME

July 31-August 3
NORTHWEST Regional Meeting
Jasper Park Lodge
Jasper, Alberta, Canada

1998

July 19-21
NORTHWEST Regional Meeting
Salishan Lodge
Gleneden Beach, OR

1999

August 1-5
NORTHWEST Regional Meeting
Coeur d'Alene Resort
Coeur d'Alene, ID

NATIONAL MEETINGS

1997

September 7-10
ACTL Optional Pre-Meeting Conference
The Hyatt Regency
Vancouver, British Columbia, Canada

September 11-14
ACTL Annual Meeting
The Westin Hotel
Seattle, WA

October 16-19
EASTERN CHAIRS Workshop
Keswick Hall
Keswick, VA

October 30-November 2
WESTERN CHAIRS Workshop
La Quinta Resort & Club
La Quinta, CA

1998

March 19-22
ACTL Spring Meeting
Marriott Desert Springs
Palm Desert, CA

September 24-27
WESTERN CHAIRS Workshop
The Inn at Spanish Bay
Pebble Beach, CA

October 29-November 1
ACTL Annual Meeting
London, England

November 2-4
Optional Post Meeting Conference
Rome, Italy

1999

March 11-14
ACTL Spring Meeting
The Ritz-Carlton
Naples, FL

October 28-31
ACTL Annual Meeting
Philadelphia Marriott
Philadelphia, PA

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2000

March 16-19
ACTL Spring Meeting
The Ritz-Carlton
Kapalua, Maui, Hawaii

October 26-29
ACTL Annual Meeting
J W Marriott
Washington, DC

OTHER MEETINGS

1997

August 23-27
CANADIAN BAR ASSOCIATION
Ottawa Congress Centre
Ottawa, Canada

September 2-6
BOARD OF REGENTS Meeting
The Empress Hotel
Victoria, British Columbia, Canada

December 6-7
EXECUTIVE COMMITTEE Meeting
Windsor Court Hotel
New Orleans, LA

1998

March 15-19
BOARD OF REGENTS Meeting
La Quinta Resort & Club
La Quinta, CA

1999

March 7-11
BOARD OF REGENTS Meeting
The Ritz-Carlton
Naples, FL

October 24-28
BOARD OF REGENTS Meeting
Philadelphia Marriott
Philadelphia, PA

2000

March 12-16
BOARD OF REGENTS Meeting
The Ritz-Carlton
Kapalua, Maui, Hawaii

October 22-26
BOARD OF REGENTS Meeting
J W Marriott
Washington, D.C.

"Bench Marks" Fellows Recently Appointed to the Bench

John T. Broderick, Jr. of Concord, New Hampshire, was appointed Associate Justice, New Hampshire Supreme Court.
Robert A. McQuaid, Jr. of Reno, Nevada, was appointed U.S. Magistrate.
Frank Plaut of Golden, Colorado, was appointed Colorado District Court Judge.
James M. Regnier of Helena, Montana, was appointed Justice, Montana Supreme Court.
Kenneth C. Stephan of Lincoln, Nebraska, was appointed Judge, Nebraska Supreme Court.
Stuart T. Waldrip of Villa Park, California, was appointed Judge, Orange County Superior Court.
W. Swan Yerger of Jackson, Mississippi, was appointed Circuit Judge, Hinds County Circuit Judgeship.

("President's Message" Continued from page 2)
can College of Trial Lawyers. Not only was it a wonderful tribute to departed friends and colleagues, but all of us came away with a renewed sense of our potential to make our corner of the world a better place. It also made me even more proud to be a lawyer and to be a Fellow of the College. It's a meaningful part of their Annual State Meeting and I commend it to you. The spirit of the American College of Trial Lawyers is alive and well in South Carolina.

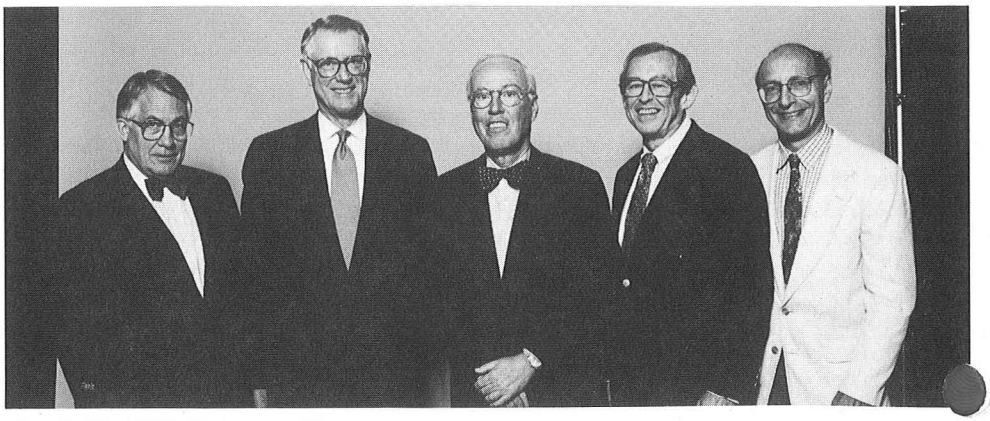
We have some wonderful regional meetings coming up this Summer.

- The Southwest Regional Meeting at Spanish Bay, CA on April 24-27.
- The New Jersey, Pennsylvania, Delaware Meeting at Short Hill, NJ on May 2-3.
- The 10th Circuit Regional Meeting in Tulsa, OK on June 5-7.
- The Northeast Regional Meeting at Black Pointe Inn on June 13-14.
- The Northwest Regional Meeting at Jasper Park on July 31-August 3.

I love the national meetings of the College, but the regional meetings are very special and are my favorites. They are small enough to get to know Fellows from the region - yet large enough to present great programs. You owe it to yourself to attend.

The Annual Meeting in Vancouver/Seattle this Fall promises to be outstanding and should be a most interesting experience. The College has never before held a national meeting in the Northwest. Send in your reservation forms as soon as you get them. We will, no doubt, be oversubscribed - the ultimate tribute to the quality of the National Meetings. Looks like a very busy Spring and Summer. See you in your town...

ANDREW M. COATS, PRESIDENT



The 1997 ACTL Executive Committee. From left to right, Secretary, E.Osborne Ayscue, Jr.; Immediate Past President, Charles B. Renfrew; President, Andrew M. Coats, President-Elect, Edward Brodsky; Treasurer, Earl J. Silbert.

NEW FELLOWS INDUCTED AT 1997 SPRING MEETING IN BOCA RATON, FLORIDA

The College welcomes the following Fellows who were inducted into Fellowship at the 1997 Spring Meeting in Boca Raton, FL.

ALABAMA
Joe Espy, III - Montgomery
Robert E. Jones, III - Florence

ARIZONA
Gene Zlaket - Tucson

ARKANSAS
John C. Everett - Fayetteville
Mike Huckabay - Little Rock
Gordon S. Rather, Jr. - Little Rock

CALIFORNIA
Gary L. Bostwick - Santa Monica
Larry A. Burns - San Diego
William C. Callaham - Sacramento
Alan B. Clark - Los Angeles
Stephen R. Cornwell - Fresno
Gary S. Davis - Modesto
Thomas HR Denver - San Jose
Paul B. Meltzer - Santa Cruz
Dennis F. Moriarty - San Francisco
George E. Peterson - Los Angeles
Thomas G. Stolpman - Long Beach
Richard J. Wylie - San Jose

COLORADO
Gary M. Jackson - Denver
Joseph M. Montano - Denver

CONNECTICUT
Robert B. Adelman - Bridgeport
Trudie Ross Hamilton - Waterbury
Patrick M. Noonan - Wallingford

DELAWARE
Steven James Rothschild - Wilmington

DISTRICT OF COLUMBIA
Thomas M. Hogan - Washington
John W. Nields, Jr. - Washington

FLORIDA
R. B. "Skip" Dalton, Jr. - Orlando
Donald G. Jacobsen - Lakeland
Rutledge R. Liles - Jacksonville
Greg Presnell - Orlando
William H. Wendt - Boca Raton

GEORGIA
James E. Hudson - Athens

INDIANA
William W. Drummy - Terre Haute
James C. Tucker - Paoli
Stephen L. Williams - Terre Haute

KANSAS
Ronald E. Wurtz - Topeka

KENTUCKY
David Sparks - Paducah

MARYLAND
Robert C. Bonsib - Greenbelt
Robert R. Michael - Rockville
John "Jack" M. Quinn - Rockville
James P. Ulwick - Baltimore

MASSACHUSETTS
Michael O. Jennings - Springfield

MICHIGAN
Deborah Gordon - Royal Oak

MISSOURI
Dan H. Ball - St. Louis
David K. Hardy - Kansas City
Lori J. Levine - Jefferson City
Robert G. Russell - Sedalia

NEBRASKA
Denzel R. Busick - Grand Island

NEW HAMPSHIRE
Cathy J. Green - Manchester

NEW JERSEY
Francis X. Dee - Newark
Laurence B. Orloff - Roseland

NEW MEXICO
Paul Bardacke - Albuquerque

NORTH DAKOTA
David L. Peterson - Bismarck

OHIO
Kathleen M. Brinkman - Cincinnati
James E. Burke III - Cincinnati
Hans Scherner - Columbus

OKLAHOMA
D. Kent Meyers - Oklahoma City

PENNSYLVANIA
Albert Momjian - Philadelphia
Allan H. Starr - Philadelphia

RHODE ISLAND
John A. MacFadyen - Providence

SOUTH CAROLINA
Mark W. Buyck, Jr. - Florence

TENNESSEE
James M. Doran, Jr. - Nashville
David F. Harrod - Athens
J. Kimbrough Johnson - Memphis
Wm. Paul Phillips - Huntsville
James F. Sanders - Nashville

TEXAS
Rodney Acker - Dallas
William B. Dawson - Dallas
Tommy Jacks - Austin
Ronald D. Krist - Houston
Patton G. Lochridge - Austin
Steve McConnico - Austin
George L. McWilliams - Texarkana
Ronald L. Palmer - Dallas
Thomas C. Riney - Amarillo

UTAH
Robert A. Peterson - Salt Lake City

VERMONT
Peter W. Hall - Rutland

VIRGINIA
William G. Broaddus - Richmond
Phil Gardner - Martinsville
Joseph L. Lyle, Jr. - Virginia Beach
Russell V. Palmore, Jr - Richmond
John M. Ryan - Norfolk
Thomas R. Scott, Jr. - Grundy
Conrad M. Shumadine - Norfolk

WASHINGTON
Dan W. Keefe - Spokane

WEST VIRGINIA
David Burton - Princeton

WISCONSIN
Thomas E. Brown - Milwaukee
Peter J. Hickey - Green Bay
James Arthur Johnson - Rhinelander
James Pelish - Rice Lake
John (Jack) Teetaert - Appleton

ATLANTIC PROVINCES
Thomas G. O'Neil, Q.C. - Saint John

BRITISH COLUMBIA
C. E. Hinkson, Q.C. - Vancouver

ONTARIO
Tom Bastedo, Q. C. - Toronto
Rino Charles Bragagnolo, Q.C. - Timmins
C. Clifford Lax, Q.C. - Toronto
W. Niels Ortved - Toronto
Donald H. Rogers, Q.C. - Toronto

("Speakers" Continued from page 3)

warning to the reader about their credibility. "Isolated facts were not enough, we learned. A thoughtful report needed content. And so newspapers began publishing more interpretive stories, trying to show the larger meaning of events," said Lewis. But throughout the 1960s and 1970s a more aggressive posture by the press began to take shape as a result of Vietnam, The Pentagon Papers case and Watergate.

Now, Lewis said, the press has overdone its aggressive posture toward politicians. Instead of being silent skeptics, many journalists have evolved into vocal cynics. Quoting the book "Out of Order" by Thomas Patterson, Lewis said investigative journalism has given way to "attack journalism". "It appears to be watchdog journalism but it's not," said Lewis. He points out this type of journalism seeks out controversy rather than accuracy.

"Television makes its special contribution to the cynical view of life, emphasizing horror whenever possible," said Lewis. "Statistics show crime is actually falling. But the public, seeing it through the distorted lens of television, thinks the menace is growing worse."

Lewis said another shortcoming of today's press, " is the practice of writing about every issue in terms of its politics rather than its substance." Lewis said when President Clinton proposed a plan to give families tax credits of $1,500 a year to help fund their children's college education, The Washington Post called it a "...hastily assembled election year plan...". The story ignored the substance of the plan treating it with total cynicism. "That is how far the idea of interpretation has been carried; how it has been abused," said Lewis.

Another failing of the press according to Lewis, is the celebrity status of some journalists on television. "The panel shows on which they star are interested not in information or careful reflection but in combat," said Lewis. A problem that accompanies the celebrity status, Lewis adds, is the notion that these journalists are not merely giving the public the news but the truth. "It is fine for today's editors and reporters and columnists to have higher ambitions, but a little modesty is in order. If we have any wisdom at all, we know how little we know," said Lewis. "The fact that your face is recognizable on television does not make you into a philosopher king."

With all that said, Lewis believes the press has many virtues that outweigh its shortcomings. Lewis notes the news coverage of the genocide that was going on in Bosnia brought home the reality of the war being carried out by the Bosnian Serbs. "I think the press's unrelenting attention to the war led the Clinton administration to do what it did at Dayton," said Lewis. "On the issue of Bosnia the press surely served Democracy." Lewis went on to praise the work newspapers have done exposing economic dislocation in America, corruption in Congress and environmental destruction.

"If we have any wisdom at all, we know how little we know. The fact that your face is recognizable on television does not make you into a philosopher king."

Anthony Lewis

Lewis argued that the American press truly serves democracy, flaws and all. "In truth Democracy could not function without the press," said Lewis. While there are many shortcomings that the media needs to address Lewis believes one of its greatest roles is watchdog in preventing evil. "In smaller ways it continues to play its crucial informing role in a democracy," said Lewis. "And I believe it will rise to great challenges when they come again."

Mario Cuomo

During Governor Mario Cuomo's introduction, College Fellow Ralph I. Lancaster, Jr. said that perhaps his greatest legacy as the former governor of New York is the fact that he appointed every current judge on that state's Supreme Court. In light of recent attacks on many judges across the country for unpopular decisions, Governor Cuomo chose the independence of the judiciary as the topic of his speech to the College.

He reminded the audience of a time, not so long ago, when judges were revered and respected. Even though the vast majority of the public didn't understand the ins and outs of the legal system, they looked up to the judge from high atop his bench.

Governor Cuomo said television is probably one of the reasons the judicial system has lost the respect it once had. It made judges less distant and highlighted their imperfections. "Even the recent live coverage has created distortions, because viewers seldom witness an entire proceeding, and most of them lack the familiarity with the law necessary for a full understanding of what is happening in the nightly glimpses on the screen," said Governor Cuomo. Sighting the O.J. Simpson trial as the only exposure most Americans have had with a court proceeding, he said most who watched indicated they lost respect for our judges and the judicial system.

Thanks to television, movies, radio and computers, we have been saturated with information about everything imaginable. As a result, the former Governor said, we have become better at facts than at philosophy; more knowledgeable without necessarily becoming wiser. At the same time most Americans are startled by the images of violence and crime portrayed daily in the media. "So much so that we have little tolerance for labored explanations from the judge as to why apparent 'technical' errors or insufficiencies should allow someone, we are all sure is guilty, to go free," said Governor Cuomo. An angry public, he said, demand something be done. "In one survey, 80 percent of the people say they would get rid of the constitutional presumption of innocence."

Unfortunately, Governor Cuomo said, politicians jump on the opportu-

nity to please the electorate. He pointed out that the targets usually end up being the immigrant, the prisoner or the poor. People who can't vote or don't vote. "That's called politics, the kind that the Founding Fathers tried to protect the courts from by making them independent, and therefore, less vulnerable to being commandeered by surges in public emotion," said Governor Cuomo. Today that protection is being tested by the body politic and politicians who will do almost anything it takes to win.

These politicians, he said, mock and ridicule legal decisions and the judges who make them in an effort to lift their own standing in the polls. But while they are building themselves up they are trampling the reputation and public confidence in the judiciary, challenging its very foundation.

Governor Cuomo quoted former Federal Court Judge Robert Bork, suggesting there be a constitutional amendment making any federal or state court decision subject to being overruled by a majority vote of each House of Congress. This would negate the principle of Judicial Review. "If popular sentiment, as enacted by a simple majority in Congress, could have overruled the Supreme Court, would the Congress of the time have overruled Brown v The Board of Education thereby restoring segregation? Almost certainly." While he insists the courts are not beyond criticism, most of the charges being leveled are false and the drastic remedies suggested are dangerously demagogic.

Governor Cuomo put out a rallying cry for lawyers to do everything they can to support the judiciary under attack. "As officers of the court, the burden of persuasion is ours," said Governor Cuomo. "And the delight as well, because in making a case for our judicial system, we will be making a case for the lawyers who designed the system, helped implement it, and have sustained it as judges and advocates for 200 years."

Russell W. Lusk, Q.C.

Lusk is the President of the Canadian Bar Association. He was appointed Queen's Council in 1989. After seeing the result of the O.J. Simpson trials in the United States and the outcome of a high profile murder case in Canada, Lusk remains a well spoken advocate for cameras in the courtroom. Lusk spoke about how our different systems have faced the common issue of televising cases.

As a result of the Simpson case, Lusk says people lost respect for the judicial system. However, Lusk called for all lawyers not to try and seek out the easy solution of banning cameras completely from the courtroom. "After the Simpson case there may be a greater need for additional televised cases, to regain a sense of reality and respect that was lost as a result of that case being televised."

The Supreme Court is one of the few courts in Canada to allow its cases to be televised. The court has allowed other broadcasters to televise cases as well, on the condition that it be gavel to gavel coverage. But the courts have ruled on many an occasion to keep cameras out of Canadian courts. Lusk noted one recent high profile murder case where Canadian broadcasters were banned from broadcasting any of the proceedings. In the same case, print reporters were limited to reporting only what was said in front of the jury. Lusk pointed out the sharp contrast in that ruling as compared to the Simpson case. "...a great deal of information was presented in the absence of the jury, but which the public was allowed to hear, and which contributed to their overall impression and possibly to some of the public cynicism that existed." Lusk asserted, few Canadians seemed to mind the restrictions on the media during the murder case that gripped their country because many Canadians felt justice was served.

"In short, if the viewers see us acting as we should, then we have nothing to fear from exposure."

Russell W. Lusk, Q.C.

Lusk said there are lessons to be learned from the Simpson case. First, the public needs to become more educated about the systems of justice. "Television must be a sweeping searchlight instead of a vaudeville spotlight," said Lusk. Also, lawyers need to realize they and the judicial system are being evaluated right along with the accused. "In short, if the viewers see us acting as we should then we have nothing to fear from exposure," said Lusk. "And respect for our system of justice and profession will be enhanced in the process." Lusk insisted appearance is not more important than substance, "but if the system appears unjust few will notice its substance."

Lusk closed by reminding all lawyers there is one thing they can no longer do, pretend they have no role in the public's perception of the judicial system.

Honorable Robert H. Henry

Judge Henry is a former state legislator and Attorney General for Oklahoma. Currently, he is a Fellow of the ACTL and Judge of the U.S. Court of Appeals for the 10th Circuit in Oklahoma City. Like Mario Cuomo, Judge Henry chose to speak about the independence of the judiciary, but from a personal point of view. Judge Henry had recently come under attack for reversing a lower court decision in a controversial case involving a transsexual prisoner.

Criticism of judges is not the problem. According to Judge Henry, there are some judges and decisions worthy of criticism. The real evil that the independence of the judiciary seeks to prevent is an evil that these latest attacks promote. "Judges should feel completely free to apply settled law to even controversial cases," said Judge Henry. "If a judge will be attacked not for faulty application of precedent, but because the litigants happen to be unpopular, the pressure to shortcut rights of parties will be increased." Judges deserve criticism, he said, if they bow to these tactics. Judges have been given constitutional protection in order to do

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the right thing no matter what the latest opinion polls may say about an issue.

Unfortunately, judges that come under attack are limited to how they can respond. "It's difficult for us to call a press conference, indeed almost always improper, because pending cases might be affected," said Judge Henry. The real problem is not that politicians running for something assault a judge. Henry said the real problem is sometimes these assaults work.

He made a request to all officers of the court to simply let their voices be heard. He asked all lawyers to write letters to the editor when they see an attack on a judge or his opinion. Write a letter telling why you agree with the ruling or why you disagree with the ruling. "I can think of nothing else that will elevate the discourse anymore than doing this," said Judge Henry. "After all The Federalist Papers themselves were largely glorified letters to the editor, written by gentlemen, who I'm certain would be members of this College if they were alive today."

In closing, he insisted he was not asking for an end to the criticisms. He asked for an elevation of the dialogue. "For an effort to criticize accurately through honest treatment of the relevant ruling, opinion or law." If that could happen, Judge Henry said, these current attacks would not foreshadow a future of judges intimidated into not following the law, "...but judges having the courage to stand their ground, and return to the Constitutional bedrock of our founders."

Charles F.C. Ruff

Ruff is a Fellow of the ACTL and he spoke to the general session in Boca Raton only six weeks after beginning his new job as Counsel to the President. One of his numerous responsibilities as Counsel to the President is advising the President on judicial appointments. Ruff spoke about the problems the current administration has in finding qualified candidates for the bench and how to fill the numerous vacancies that now exist.

Unfortunately Ruff realizes the judicial appointment backlog of late can not be attributed to a lack of qualified candidates but political gamesmanship. Ruff said the sharing of the confirmation process between the President and Senate is a process that has worked fairly well over the years. "This is not to say there weren't disagreements about the qualifications; about the judicial philosophies of these candidates, but they were, by and large, debated in a fairly sensible and rational fashion," said Ruff.

Now politicians have turned it into what Ruff called a multi-pronged attack on the judicial nomination process. Ruff said there is a new political process at work to try and slow the system of nomination and confirmation to a virtual halt. "Perhaps in the hope that whatever it be, one year, two years or four years, the process of appointing judges can be taken out of the hands of the President of the United States," said Ruff.

He believes the slowing process began last year in 1996, when only 17 nominees were confirmed. That's the lowest election year total in more than two decades. In 1992, the previous election year, 66 judges were confirmed. "Part of this process and part of the reason for this slow down is, very candidly, in the hands of the White House," said Ruff. But since he's been at the White House approximately 50 new nominations have been readied. Ruff said the President has insisted on consulting both Democratic and Republican leaders throughout the country when seeking out nominees. "And that is indeed reflective of the way that a truly bipartisan judicial process ought to be carried on."

> *"Part of this process and part of the reason for this slowdown is, very candidly, in the hands of the White House."*
>
> Charles F.C. Ruff

In the speech that Ruff called a "blatant commercial," he solicited the members in attendance for their help. He said to get the process back up to speed lawyers should contact senators, congressmen or anyone of influence in their district, and tell them you can't run our courts without judges. Ruff predicted by the end of the year there would be at least 150 vacancies on the bench and at the current pace of confirmation only a small percentage would be filled. "So I ask you to advance this cause," said Ruff. "Try and make sure... that there are judges to perform the kind of work that Judge Henry and Justice O'Connor perform. Because without that, our system of justice simply can't perform the task that the Constitution vested in it."

Honorable Sandra Day O'Connor

Appointed by President Reagan, Associate Justice O'Connor has served on the Supreme Court since 1981. Justice O'Connor is also an Honorary Fellow of the College and is one of only a handful of people to have addressed the College's Annual Meetings on three separate occasions. While most of the Fellows of the College are leaders in their field, Justice O'Connor took the opportunity to remind many that there is much to be gained by expanding their familiarity with foreign law systems.

She said American lawyers are shortsighted to a certain extent. Which is perfectly appropriate because in the common law tradition only the precedents that are truly binding in a given jurisdiction are decisions of our own court. But in our early years, the Associate Justice said, it was commonplace for American courts to follow developments in English courts. At some point in our history we stopped looking abroad. "This is rather odd since the law in Great Britain did not lose it's dynamic quality in the twentieth century," said Justice O'Connor.

There are at least four practical ways she believes lawyers can benefit from foreign legal systems. First, lawyers need to know how to help their clients over seas. U.S. businesses are continuing to expand globally and they need to comply not only with U.S. laws but their host country's legal system as well. Many firms have done this by opening branch offices for on-site legal

advice. Many firms have also joined in the practice of legal exchanges so that partners may become better acquainted with the legal system of the country(s) they are doing business in. Second, foreign law sometimes applies through choice of law or otherwise in American courtrooms. Justice O'Connor said increasingly, instead of choosing between laws of states to settle a dispute, U.S. courts are having to choose between laws of countries. Third, when pursuing institutional reforms domestically, we may draw useful lessons from the jurisprudence of other nations. "Among the most interesting comparisons for me have been the techniques used in Great Britain to select and use jurors perhaps a bit more efficiently than we do," said Justice O'Connor. "And the vastly greater civility shown in Great Britain between lawyers with each other and with judges." Fourth, by understanding how our laws interact with the laws of other countries, we can find better ways of coordinating procedures across all of our jurisdictions. Hopefully this will lower the cost of transnational litigation. She noted how an exchange between Arizona lawyers and Mexican lawyers resulted in a common method to resolve international torts between the two jurisdictions. "They met, they talked, they identified the needs and they looked for ways to accommodate the needs of both," said Justice O'Connor.

The ACTL efforts in this area personally influenced Justice O'Connor, having been a member of the Anglo-American exchanges in the past. She applauded the College for its contribution to furthering the education of lawyers around the world. "Our flexibility, our ability to borrow ideas from other legal systems is what will enable us to remain a progressive legal system, a system that is able to cope with a rapidly shrinking world," said Justice O'Connor.

Panel On Independent Counsel

Following the General Session was a Professional Program that also qualified those in attendance for CLE credit. The panel discussion took up the subject of the Independent Counsel. On the panel was Fellow Lawrence E. Walsh who served as the Independent Counsel for the Iran-Contra investigation; Fellow and Past President Robert B. Fiske, Jr. who was the first Independent Counsel for the Whitewater investigation; Nina Totenberg, a reporter and commentator for National Public Radio; Fellow and Past President Griffin B. Bell who is a former U.S. Attorney General; Fellow Theodore B. Olson who was one of President Reagan's lawyers during Iran-Contra and Fellow Herbert J. Miller, Jr., who was Chief of the Criminal Division for the Department of Justice. Havard Law School Professor Charles Nesson was the panel moderator.

The panel was divided as to whether the Independent Counsel should even exist. "It was never a good law," said Judge Bell. "It was sort of the beginning of moving away from trusting our institutions." But, Totenberg argued the law was raised from the embers of Watergate, a time when the public saw its own government as untrustworthy. "The President of the United States fired Archibald Cox," said Totenberg. "If he hadn't done that we probably wouldn't have this law."

Some of the panelists said the Independent Counsel statute, with its unlimited budget and time to investigate, has been used too frequently. "The problem is it's been extended to officials that don't have that importance to the country," said Walsh. Still others argued the statute takes away the prosecutorial discretion of the Attorney General while at the same time limits the decision making powers of the Independent Counsel. "The Independent Counsel isn't free to exercise the kind of prosecutorial judgment that experienced, seasoned, prosecutors with more than one case invoke all the time," said Fiske.

Other panelists argued the public doesn't trust the government to investigate itself and that was the reason the Independent Counsel came to be and the reason it will continue. "I ask you, if Ed Meese had conducted the investigation of Iran-Contra, whether the public would have accepted the verdict," said Totenberg.

Lord Goff Presented Honorary Fellowship

At the Spring Meeting Lord Goff of Chieveley was presented an Honorary Fellowship to the American College of Trial Lawyers. Lord Goff is the Senior Lord of Appeal in Ordinary House of Lords in London, England. This is the equivalent to the Chief Justice of the Supreme Court in the United States. Past President Robert L. Clare, Jr. presented an engraved plaque to Lord Goff commemorating his induction. Lord Goff was called to the Bar of Inner Temple in 1951, but elected to stay on at Oxford as a tutor. After he left Oxford he served as a Barrister and a Q.C. primarily in the commercial field. He served as a Recorder, Judge of the High Court, Judge in Charge of the Commercial Lists and as a Lord Justice of Appeal before he was finally called to the House of Lords. He also serves as an Honorary Professor of Legal Ethics at the University of Birmingham.

Lord Goff receives his Honorary Fellowship from Robert L. Clare, Jr. in Boca Raton, Florida.

University of Georgia School of Law, Moot Court Champs

The winning team of the 1996 National Moot Court Competition was recognized during the General Session of the College. Regent Liaison for the Moot Court Committee, Jerome J. Graham, Jr. presented the winning team. Kerry Harike, Chandler Mason and Thomas Mew from the University of Georgia School of Law in Athens, Georgia were honored for their hard fought victory. Chandler Mason was also honored in the competition as *Best Oral Advocate*.

COMMITTEE NEWS REPORTS

STANDING COMMITTEES

Alternatives for Dispute Resolution Committee

At the Spring Meeting the Committee reviewed the results of the literature survey undertaken under the supervision of Dean Michael Hoeflich of the Kansas University Law School, and to address the second phase of the project. With respect to the literature survey, it was reported that there are no scholarly articles dealing with standards for lawyers engaged in mediation. Also, it was agreed that Dean Hoeflich would undertake a survey of federal, state and province statutes and rules that might bear on proposed mediation standards. It was also agreed that the Committee would contact the State and Province Chairs to advise them of our project and to ask them to provide the Committee with similar information. Finally, two subcommittees were formed. The first subcommittee will be headed by Richard Rosenbleeth and it will undertake to contact those individuals and organizations with mediation experience and ask them to identify subjects they believe should be addressed by our proposed project. The second subcommittee will undertake to review the information collected to date, the Model Rules and the Code of Trial Conduct and, based on that information, it will produce an initial outline of the subjects to be covered by the proposed standards.

Shaun S. Sullivan, Chair

Attorney-Client Relationships Committee

The Committee has been aware of an ongoing problem relating to some activities emanating from offices of the United States Attorneys regarding the subject of lawyer/client privilege and lawyer work product confidentiality and the propriety joint defense agreements. At the Spring Meeting the Committee was updated by Regent Earl J. Silbert who continues to have direct experience with problems in this area.

In sum, we understand the government is demanding access to attorney/client files and materials in cases where corporate settlement may be in negotiation while individual defendants will continue to be prosecuted. As a specific condition of these settlements, the government requires complete disclosure of the attorney corporate files in their entirety. This obviously could have disastrous consequences to the individual defendant.

There have also been some general claims by U.S. Attorneys that they are entitled to subpoena entire files from attorneys, sometimes without the benefit of court sanctification under certain circumstances. We believe that this is clearly contrary to the traditional, long standing and essential concept of attorney/client and work product confidentiality and privilege.

We solicit input from any Fellow who has direct experience in this problem area. Please send the Committee input, in written form, at least two weeks before the next meeting in Vancouver/Seattle or contact the Committee Chair if you would like to address the Committee in person with your thoughts and comments during the Committee Meeting in Vancouver/Seattle. The Committee will continue to monitor these problems and consider appropriate, specific action subject to authority to the Board of Regents.

Carman E. Kipp, Chair

Canada-United States Committee

At the Spring Meeting the Committee addressed three matters. First, the establishment of a Canadian National Moot Trial Competition. Robert P. Armstrong, Q.C. reported that on November 20th, 1996, in the company of Regent David W. Scott, Q.C., he attended a meeting of the Canadian Association of Law Deans in Ottawa. The law deans enthusiastically approved the Committee's proposal of College sponsorship of a National Trial Competition among Canadian Law Schools. The deans established a committee of their own, chaired by Dean Pilkington of Osgoode Hall Law School at York University in Toronto. Mr. Armstrong reported that he had since met with Dean Pilkington, who confirmed that the University of Ottawa is prepared to act as the host law school for the competition and that the Honourable Mr. Justice James B. Chadwick, the Senior Justice of the Ontario Court in Ottawa, has agreed to make facilities in the court house in Ottawa available for the competition. The support, cooperation and participation of the Supreme Court of Canada is also anticipated. The College resolved to recommend that the cup to be presented by the College be named after a prominent Canadian jurist to be named after his consent has been secured. This jurist became a Fellow of the College when he practiced at the bar. It is the hope and expectation of this Committee that the first Canadian Moot Trial Competition be held under the auspices of the College in Ottawa in March of 1998.

Second, was the question of a Canadian Code of Trial Conduct. Committee member, Earl A. Cherniak, Q.C., presented a draft code that he prepared on the basis of the views of the members of the Committee that he had collected. It was agreed by the Committee this draft would constitute the Committee recommendations to the Regents for a Canadian Code to be approved by the Committee at its meeting in Vancouver/Seattle in September of this year subject to its resolution of any specific issues forwarded in writing to the Chairman of the Committee prior to that meeting. As Mr. Cherniak pointed out, the code accommodates differences in practice as well as terminology between our two countries. While there are important differences in such matters, it is evident that on both sides of the border the fundamentals are the same.

Finally, was the question of developing a convention or treaty for the reciprocal enforcement of money judgments between Canada and the United States, which would constitute

a College recommendation to the government of both countries. The Committee reviewed a detailed draft which was the product of suggestions as well as a wealth of materials exchanged between the members of the Committee prior to the meeting. While there was a consensus that the draft reflected the agreement of the Committee on matters of principle, there remained difficult specific issues requiring resolution. The expectation is that these issues can be resolved in order that at the Vancouver/Seattle meeting the Committee can agree to recommend to the Regents a form of instrument that could constitute a College proposal. It has been the consensus of the members of the Committee that this is an incentive which is long overdue given the close trading relationship between Canada and the United States. The fact is a convention of this type has been in force between the members of the European Economic Community since 1967 and between Canada and the United Kingdom since 1984.

Jack Giles, Q.C., Chair

Canadian Judiciary Committee

The Committee had distributed a questionnaire to all Canadian Fellows about a recent report on the Canadian Judiciary. The report was written by Professor Martin Friedland and it makes various recommendations intended to strengthen the role of the judiciary and its independence.

Based on the results of the questionnaire, the Committee intends to submit a report to the College by the Fall Meeting. It would be our intent that this report could then be forwarded to interested Canadian bodies such as the Canadian Judicial Council.

In my view, the questionnaire and report which our Committee has formulated, distributed and upon which it will now report, has engendered considerable interest in the College among Canadian Fellows. Canadian Fellows like to see that the College is actually doing something in Canada in respect of Canadian legal matters. There has been some reluctance among Canadian lawyers to respond to the questionnaire, on the grounds that the College is an American, and not a Canadian institution. However, on the whole I believe that the exercise has been extremely worthwhile.

Thomas G. Heintzman, Q.C., Chair

Federal Criminal Procedures Committee

In accordance with the directive from the Board of Regents, the Committee has undertaken a review of some of the problems arising from the United States Sentencing Guidelines. A work session of the Committee was held in Chicago on January 11, 1997, with 10 members of the Committee and Professor Daniel J. Freed of the Yale Law School attending. Substantial progress has been made in identifying areas of concern in determining the scope of the project. The Committee made a preliminary report to the Board of Regents prior to the Spring Meeting and will continue to work in accord with the directions received from the Board.

Robert W. Ritchie, Chair

Federal Rules of Evidence Committee

In January, the Committee submitted to the Board of Regents a revised report, *The Law of Evidence in Federal Sentencing Proceedings*, which proposes that defendants in federal sentencing proceedings be accorded a limited right of confrontation, that the hearsay rules in the Federal Rules of Evidence be applied in federal sentencing proceedings, and that the government be required to prove facts by clear and convincing evidence rather than a mere preponderance, when the establishment of those facts would substantially increase the sentence that would otherwise be imposed or when those facts concern related conduct of which the defendant has not been convicted.

The Committee continues to monitor the activities of the Judiciary Conference Advisory Committee on Evidence Rules. During the College's Spring Meeting, the Committee reviewed several proposals that will shortly be considered by the Advisory Committee.

Michael A. Cooper, Chair

Samuel E. Gates Litigation Award Committee

The Committee unanimously agreed upon a recipient's name to be submitted to the Board of Regents for approval, with the hope that the Award may be made at the September, 1997 Annual Meeting to recognize a lawyer who has made a significant contribution to the improvement of the litigation process.

Beale Dean, Chair

Emil Gumpert Award Committee

At the Spring Meeting the Board of Regents approved the recommendation that this year's Award for an outstanding trial advocacy program will be given to Stetson University College of Law in St. Petersburg, Florida. The President of the College will present an engraved plaque and a check for $50,000 to Stetson. This year the Committee reviewed the applications and on-site evaluations of 17 law schools. (The highest total ever.)

The Committee encourages all members of the College to solicit their law schools to submit applications for this prestigious and financially rewarding recognition. Applications can be obtained by any member or by the law school by contacting the College office in Irvine, California. The Committee will begin its evaluations and on-site investigations during the Fall culminating in presentations at the Committee Meeting in January 1998.

Louis W. Fryman, Chair

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Legal Ethics Committee

Following another drafting session of the Subcommittee on Media Related Programs of the High Profile Case, the Subcommittee submitted its report to the entire Legal Ethics Committee which approved the report and approved its submission to the Regents. The Subcommittee on a Teaching Syllabus for the Trial Code has been reconstituted and that project is proceeding.

Murray E. Abowitz, Chair

Mexico Committee

The Committee sent a number of copies of their *U.S. Trial Lawyers Guide of U.S.-Mexico Cross Border Dispute Resolution in Civil Cases* pamphlet to Fellows who have requested it. This eight page pamphlet is designed for College members with an interest in the structure and function of the Mexican system. It presents an overview of cross-border issues in discovery, evidence gathering, service of process, enforcement of arbitration clauses and awards, procedures in arbitration and other practical problems likely to be encountered in litigation or arbitration in the U.S. involving Mexican parties, witnesses or documents. The Guide is available by contacting the College office in Irvine, California or the Chair of the Mexico Committee. The Committee again invites all those in the College who have interest or expertise in Mexico to consider getting involved in the work of the Mexico Committee.

Philip A. Robbins, Chair

National College of District Attorneys

The Board of Regents of the National College of District Attorneys approved an agreement with the National District Attorneys Association for the College to conduct advocacy for state and local prosecutors at the National Advocacy Center of the Department of Justice at the University of South Carolina in Columbia. The Center is now under construction and will be ready for occupancy in the Spring of 1998. The Center is designed to train primarily federal attorneys, but a significant amount of scheduling time and physical space will be allocated to the training of state and local prosecutors. The Center will contain administrative office space, dormitory rooms, dining facilities, as well as classrooms, seminar rooms and mock courtrooms. The National College of District Attorneys will establish a branch office in Columbia, but will continue to conduct training around the country from its headquarters at the University of Houston Law Center.

The term of Edwin Meese, III, on the Board of Regents as a representative of the American Bar Association, expired at the end of 1996. He served two three-year terms on the Board, which is the maximum under ABA policy. The Board of Regents named him Regent Emeritus at its last meeting. It is hoped that his interest in the College will continue.

The National College of District Attorneys is now on-line at http://www.law.uh.edu/NCDA/course.html.

John L. Hill, Jr., Chair

National Moot Court Competition Committee

The winning team from the 1996 National Moot Court Competition was presented during the General Session of the Spring Meeting in Boca Raton. The team members were Kerry Harike, Chandler Mason, and Thomas Mew from University of Georgia Law School, Athens, Georgia. Chandler Mason also won the award for the Best Oral Advocate.

The National Moot Court Competition continues to be run well by the Young Lawyers Committee of the Association of the Bar of the City of New York. I myself served as a judge and offered cooperation for the finals.

Sheldon H. Elsen, Chair

National Trial Competition Committee

A total of 24 teams, representing 21 law schools, gathered in Houston for 3 days, commencing on April 3, to participate in the Championship Rounds of the National Trial Competition. After 6 rounds of competition the team from Northwestern bested the team from the University of Houston: Ed Brodsky, President-Elect of the College, was the presiding judge for the final round and members of the College's National Trial Committee served on the mock jury which evaluated the student advocates in the final round. The 24 teams which advanced to the final round were:

Region I:	University of Maine, Suffolk University
Region II:	Syracuse University (two teams)
Region III:	Howard University, Washington and Lee University
Region IV:	University of Memphis, North Carolina Central University
Region V:	Georgia State University, University of Alabama
Region VI:	University of Akron (two teams)
Region VII:	ITT Chicago - Kent, Northwestern University

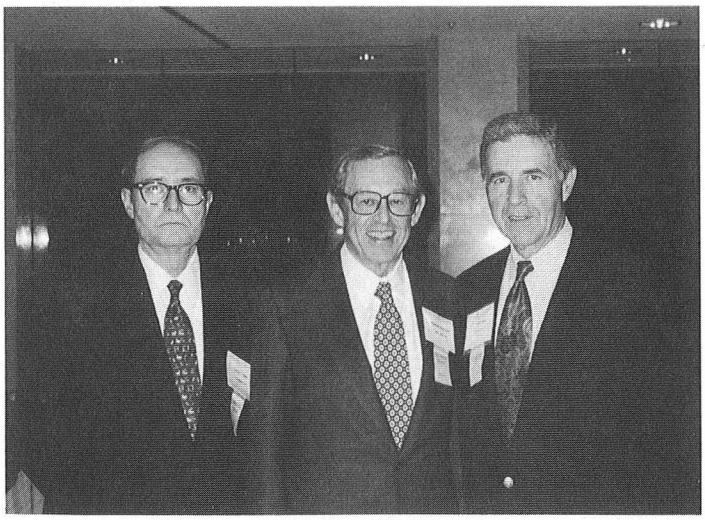
Region VIII:	Drake University, Washington University
Region IX:	Baylor University, University of Houston
Region X:	University of Colorado, Lewis & Clark College
Region XI:	Pepperdine University, University of Pacific
Region XII:	Temple University (two teams)

The eight teams which advanced to the quarter finals were Akron, Baylor, Houston, Howard, North Carolina Central, Northwestern, Syracuse and Temple. Semifinalist were Baylor, Houston, Northwestern and Temple.

The National Trial Competition, a joint effort of the College and the Texas Young Lawyers Association, was established in 1975 to encourage and strengthen student's advocacy skills through competition and interaction with members of the bench and bar. The program is designed to expose law students to the nature of trial practice and to serve as a supplement to their formal education.

The College sponsors a trip to its Annual Meeting for the members of the National Championship Team and for the Best Oral Advocate. At the next meeting, the Kraft W. Eidman Award, consisting of a $5,000 gift and a silver bowl, will be presented to the winning team. This generous contribution is endowed by Fulbright & Jaworski LLP. In addition, the Best Oral Advocate will receive the George A. Spiegelberg Award, donated each year by Fried, Frank, Harris, Shriver & Jacobson.

David S. Cupps, Chair



Three leaders of the College in attendance at the National Trial Competition Finals in Houston, Texas. From left to right National Trial Competition Chair, David S. Cupps; President-Elect, Edward Brodsky and Regent, Garr M. King.

Science and Technology in the Courts Committee

As a result of the discussion during the Spring Meeting, the Committee felt that a worthwhile project to pursue would be offering a presentation on science and technology in the courts to the State Judicial Center in Reno, the Federal Legal Education Center and to the NITA organization. The intent is to produce a set program with supporting AV and handout materials and offer members of the Committee as speakers. The intent is to address a spectrum of issues that judges will face and offer concrete ways of addressing them.

The following assignments were made:

ACTION ITEM	PERSON	DUE DATE
1. Contact with State Judicial Center	J. Ric Gass	4/30
2. Contact with Federal Judicial Center	J. Ric Gass	4/30
3. Contact with NITA	Tom McNeill	4/30
4. Contact ABA Legal Resource Center	Tom McNeill	4/30
5. List of Topics for Presentation	Mike Griffinger & Bob Maack	5/30
6. Circulation of Topics to Entire Committee for Review	J. Ric Gass	6/30
7. Comments by Committee Members		7/30
8. Report to Board	J. Ric Gass	8/30

In contacting the State Judicial Center, the Federal Judicial Center and NITA, the Committee will make it clear that this is exploratory contact on the part of the Committee and that the College will have to formally act on a program before it could go forward. In the contacts, we will explore areas and topics these organizations see that need to be addressed.

Possible topics to be included are:

1 The spectrum of technology and equipment judges may see and things to be prepared for and how the equipment works in court.

2 Guidelines for visual aids that are not used for evidentiary purposes, but rather as illustrative purposes to aid in questioning or argumentation.

3 The evidentiary bases for animations and suggested ways to handle a motion in limine hearing concerning animations.

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4 Issues associated with the use of and display of real time transcription in court.

5 Courtroom layout and logistics to accommodate today's technology.

6 Suggestions judges can pass on to lawyers on how to make video depositions interesting. (If we succeed on this one, we'll get a Nobel Prize.)

7 The evidentiary issues concerning digital photography and video.

8 Suggestions for the use of jury notebooks that would contain photos of the witnesses, agreed upon time lines, glossary of terms and agreed upon basic explanatory exhibits.

J. Ric Gass, Chair

Special Problems in the Administration of Justice

At the Spring Meeting the Committee discussed some of the issues which will be debated by the American Law Institute at its annual meeting during consideration of the proposed final draft of the Restatement of the Law of Torts (Third): Products Liability. The Committee decided to recommend to the Board of Regents that the College take no position on the issues being debated. The Committee continues to monitor the project of the American Law Institute to draft a Restatement of Torts (Third): Apportionment of Liability. The Committee also continues to monitor actual and proposed changes in jury practices in state courts.

The Committee has been asked to consider whether or not the College needs to revisit the position that it took on awards of punitive damages. A report on this subject was published in 1989. The Committee agreed to recommend to the Board of Regents that consideration be given to assigning to the appropriate committee or committees the task of reviewing the impact of cases involving criminal drug charges on the administration of justice and determining whether the College should take any action.

Richard C. Hite, Chair

STATE AND PROVINCE COMMITTEES

ADJUNCT STATE

The Committee acts as a facilitator to bring to the attention of a State Committee where a trial lawyer is now located and the previous experience of that attorney in another state or states so that the combination of the years will qualify the individual for consideration as a nominee. With attorneys either in changing law firms and moving to another state or relocating to another state where the firm has an office, there is a need for the State Committee of the state where the considered nominee now lives to have information from the previous state. There are no doubt qualified lawyers who slip through the cracks

("Committee News" Continued on page 20)

("Judge Hoeveler" Continued from page 4)

Simpson is now the standard by which the system is judged. Another described it as a legal circus billed as the O.J. Simpson case. In a published comment on Simpson, a Yale law professor was reported as suggesting "ours is a criminal justice system worthy of some banana republic where the rich often act with impunity and the authorities terrorize the peons at will."

Another comment of interest was by Stewart Taylor, a senior writer for the American Lawyer, who wrote, "Simply put, a lot of lawyers devote a substantial part of their professional lives to hiding or distorting the truth, as O.J. Simpson's lawyers are famously doing right now. They (and he described a variety of lawyers) call it zealous representation." Appearing in the November 1995 issue of the ABA Journal, were comments from the then president of the California Bar, who stated he was deluged with calls and mail demanding the disbarment of several of the participants in the Simpson case. At the media law conference referred to and in much of the commentary following the trial, the consensus was generally negative. Attorney Gerry Spence opined that the problem was that the trial "...taught the American public about the American Justice system with the worst possible example." On the other hand, Attorney Floyd Abrams, an expert in First Amendment issues, rose to respond to the considerable criticism leveled at the use of television stating "maybe we should learn a lesson from Snow White's stepmother. Our mirrors are not our problem." An interesting observation.

"Consider also the absolutely bizarre spectacle of one of the defense lawyers castigating the judge from the courthouse steps about an Order the judge had just entered. I assure you that conduct would have been dealt with swiftly in most federal courts."

Are the criticisms of the O.J. Simpson case justified? I'll leave that to you. But let me comment on some of the observations that I've heard about.

The time it took to pick the Simpson jury many considered outrageous; the recurring petulance of the lawyers and the way they dealt with each other from time to time; the spectacle of a defense lawyer appearing on a television talk show during the cross-examination of a witness and bragging about how well he was doing in that cross-examination; the frequent courthouse-step media conferences, especially egregious in view of the frequent conjugal visits permitted and the likelihood of "pillow talk." Consider also the absolutely bizarre spectacle of one of the defense lawyers castigating the judge from the courthouse steps about an Order the judge had just entered. I assure you that conduct would have been dealt with swiftly in most federal courts. The apparent loss of control of the lawyers at times. The endless arguments. I'm told— and while I didn't watch that much of the trial, I have read about

it— that, at times, the lawyers argued back and forth until they finally asked the judge, "Do you want to hear more?" The willingness of the Court and the parties to take to heart the designation of the case as "the trial of the century," and then to set out to achieve that objective.

"But the mood has been changing. The mood, the public perception of lawyers, now, is serious. And I don't think I have to tell a body as august as this, the rank in which we hold in the professions, and indeed, the nonprofessions."

I had a friend visiting in Europe at the time. Of course, it lasted so long, I guess most of our friends went everywhere. He came back and said we were the laughing stock in Europe. That hurts. Well, was what the world saw an accurate portrayal of our system? No, I don't think it was. But I believe most American people think it was. Because of the enormous coverage given the trial and the unfortunate picture given our system, the Resource Team was created. Hopefully we can provide a service.

But let me say to you— and now I want to get into the first part of the comments that I made. Should we be surprised at a spectacle like the O.J. Simpson case? For centuries, we lawyers have been the butt of jokes, but usually they're good-natured comments such as the statement attributed to critics of Saint Ives, the patron saint of lawyers. Some of you, I'm sure, know this Latin. "Advocatus sed non latro res miranda populo." Let me translate it. It means, said of Saint Ives, he was a lawyer and yet not a thief, and the people were amazed. One of my favorite stories is the one told of the Clerk's entry into the records of the North Precinct of Watertown, Massachusetts around 1690. In substance, he wrote "we have 325 inhabitants, two of whom are blacksmiths, three store keepers and a medical doctor, but no lawyers, for which latter fact we take no credit but give thanks to Almighty God."

But the mood has been changing. The mood, the public perception of lawyers, now, is serious. And I don't think I have to tell a body as august as this, the rank in which we hold in the professions, and indeed, the nonprofessions. What we have seen happening to our profession was predicted by Isaiah in one of my favorite biblical references. Isaiah said, "Woe unto you who call evil good, and good evil." "Who put bitter for sweet and sweet for bitter." "And who put light for darkness and darkness for light."

Now a more recent law prophet, Maryanne Glendon, a professor at Harvard, put it this way, but she was really saying the same thing: "We have been for sometime, dumbing down ethics." An interesting comment, but I think very true. We've attenuated our concept of ethics little by little, and moved from one plateau to the next in a downward spiral justifying each move by comparing it with where we have just been. Why is this happening? Let me deal with just a few ideas on that subject. Let's talk about our law schools for just a moment and what's happening in the law schools.

I commend to your consideration an article by Roger C. Crampton in 2 Legal Education, page 247, and this comment: "Modern dogmas entangle legal education. A moral relativism tending towards nihilism. A pragmatism tending towards cynicism." He urges us to abandon our unconcern for value premises "Our indifference to values confines legal education to what is and negates the promise of what might be. It confirms a bias deeply ingrained in many law students that law school is a training ground for technicians who want to function efficiently within the status quo." Let me give you a personal example of what he's talking about.

Several years ago, I gave a lecture at a major law school. I talked about professionalism, and ethics, and taking the high road. And after the talk, a young lady came up and said, "You know, I've been in law school for two years and no one has ever said that to me or to us." I understand from another, that a professor standing nearby said to her after that, "Young lady we're not here to teach values. We're here to teach the law." I have great difficulty with the proposition that there is some dichotomy between the law and values. Recently a study was done involving entering first year students at one of the larger Florida law schools. The information obtained demonstrated a group that was bright-eyed and bushy-tailed, idealistic and with apparent love of the law. After their first year, a similar poll showed a marked change in attitude. They had indeed become more technicians than idealistic students.

"Is it possible that we've reached the stage where we have to instruct each other on good manners, on courtesy, on civility? All of that which honor speaks to. That is an incredible result."

Many of you are familiar with the 7th Circuit study on civility done by a committee chaired by Judge Marvin Aspen and the eventual production of a detailed report by that committee. I look back almost 50 years ago, and I think if we had proposed such a thing then we would have laughed at each other. Is it possible that we've reached the stage where we have to instruct each other on good manners, on courtesy, on civility? All of that which honor speaks to. That is an incredible result. Several years ago, Michael Josephson, an expert on ethics conducted a study of a representative group of lawyers in the Florida Bar. He later spent the better part of a day reporting to the Board of Governors and chairs of various bar committees. Some of the findings were shocking. For example, more than 12% of the lawyers

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polled believed that in the pursuit of zealous advocacy, it was all right to both misrepresent the facts and the law to either the judge, or the jury, or your opponent. An incredible result.

Let me now refer to a U.S. News & World Report issue of January 30, 1995, that I think some of you may be familiar with. It's the cover, and it says "How Lawyers Abuse the Law," and there's a picture of Lady Justice with a group of rats eating away at the base. And in this article is described some of what's going on, not in the criminal field, but in the civil field. For example, a man named Jim Shratz, an auditor who works on investigating lawyers' bills says he finds overcharges of 25 to 50 percent in 90 percent of the cases he's hired to examine. Now, that's not a lack of ethics; that's stealing. Let's call it what it is. Let's not labor under illusions any longer. In an article, again by Stewart Taylor of the American Lawyer, he writes under the title "Things A Rat Just Won't Do; Conceal And Distort The Truth." He begins the article with that very sick joke about the difference between rats and lawyers and experimental biology, but then goes on to describe the problems which he attributes to the "adversarial ethic" running wild.

An American Lawyer study of personal injury lawyers in New York resulted in 15 personal injury lawyers being contacted by a reporter posing as an injured plaintiff. Eight of them honestly said you have no case to the person who went in with the setup. Five of them or 38 percent said, we'll take the case if you will say you fell in a Consolidated Edison lot. And so, 38 percent of those lawyers contacted were willing to commit a felony in order to make money. These examples only skim the surface of the serious ethical decline which the public perceives.

Yes, we have serious problems, of course; and I do want to take some time to suggest what we can do about them.

"First, I'll say, what can we do about this? Well, we can keep trying. This is an organization that I love. As I said earlier, it's an island. And we can make it a country, by example, by living the idealism that we all have."

But before I do that, let me wonder with you, let me think with you why these things are happening. The training of the lawyers is a problem. But there are many more fundamental problems than those. And here I'm moving into an area that concerns me a great deal and I want to take your time and impose on your good nature to comment on it as I believe it has a definite relationship to these things about which I have been talking.

In June of 1978, Alexander Soltzhenitsyn addressed the Harvard graduating class. For those of you not familiar with the speech, it was a remarkable, frank appraisal of the direction in which the western countries are going. He prefaced his remarks by pointing out that he was a friend, and a grateful one at that. However, in commenting on our technical advances he added, "All the glorified technological achievements of progress, including the conquest of outer space, do not redeem the 20th century's moral poverty, which no one could imagine even as late as the 19th century." He talked about the indifference with which we wake each morning and not worry about things that are happening. He added, "there is a disaster, however, that has been underway for quite some time. I am referring to the calamity of a despiritualized and irreligious humanistic consciousness."

"For some time, I've worried that we who strive for more professionalism are anachronisms with a paradigm that many people feel is antiquated. I don't believe that anymore. I see what the state groups are doing. I see what so many bar associations are doing. And I'm proud to see what this College is doing. With that movement and dedication, I take heart."

A former president of Cambridge University (A. Stassinopoulos) said somewhat the same thing some years ago. I quote from a statement attributed to the educator. "The delegation of religion and spirituality to the irrational has been one of the most tragic perversions of the great achievements of western rationality and the main reason for the disintegration of western culture."

Thomas Merton, a Trappist monk and prolific writer died in 1968. In his book, Life and Holiness, he wrote: "We live in a time of the glorification of the material, of perverse and disordered libertarianism." Allistire MacIntyre, a professor at Yale concluded, "We are living in a new dark ages." And in spite of this amazing technological development, we are going downhill in a handbasket from a social standpoint according to so many observers. There are many one can refer to who discuss the basic loss of spirituality that is so affecting our society. Does this direction have something to do with what's happening to our lawyers, our morals, the way we treat each other? Well, I think the answer's clearly, yes.

William Bennett, in an address given to the Heritage Foundation in December, 1993— had much to say speaking to the same subject. After lamenting the seeming degradation of our society, he submitted that "the real crisis of our time is spiritual." He provided statistics; since 1960, the population is up 41 percent, gross domestic product nearly tripled, social spending grew from $142 billion to $787 billion. But during the same time there was a 560 percent increase in violent crime, 400 percent increase in illegitimate births, four times the divorcees, 200 percent increase in teenage suicide, and a 75 percent decrease in the average high school S.A.T. What a bleak picture of the direction in which we're going. But he holds out hope, as I do, too.

Let me close by giving you just a few recent experi-

ences that I've had. First, I'll say, what can we do about this? Well, we can keep trying. This is an organization that I love. As I said earlier, it's an island. And we can make it a country, by example, by living the idealism that we all have. I'm always glad to see the publications of the College, which I get from time to time, and the aims and ambitions that are indicated by those publications. For some time, I've worried that we who strive for more professionalism are anachronisms with a paradigm that many people feel is antiquated. I don't believe that anymore. I see what the state groups are doing. I see what so many bar associations are doing. And I'm proud to see what this College is doing. With that movement and dedication, I take heart.

Just a little while ago, I gave a talk to one of the Inns of Court in Miami. There were many young law students there. And I wanted to read something that I thought was inspirational, but I frankly thought that I would get some chuckles from the more experienced in the audience. This quote is from a book that was written in 1904. I brought it to Florida when I went there to practice. It's a book that's falling apart, but I read it from time to time simply because what it says is so beautiful. It's from a book called American Advocacy, published in 1904. "Nothing should be higher in the estimation of the advocate next after those sacred relations of home and country than his profession. She should be to him 'the fairest of 10,000' among the institutions of the earth. He must

"My good friends, the road we take does make a difference."

stand for her in all places and resent any attack on her honor as if the same attack were to be made against his own fair name and reputation. He should enthrone her in the secret places of his heart. And to her, he should offer her the incense of constant devotion... That this is not mere sentiment is evidenced by the successful careers of the world's greatest lawyers who were, invariably, the most enthusiastic devotees of their professions honor and esprit de corps."

When I finished the talk, a young lady came up to me with her eyes brightly shining, and said, "I think I'm going to be a speaker at our graduation. May I have that quote?" I was encouraged. Let me finally tie in honor because, isn't that what we're really about. I'll bore you with one other quotation. It is one of my very favorites because it says everything that we believe in, that we try to instill in other lawyers and, hopefully, we can communicate to the public.

Dean Henry Wade Rogers of the Yale Law School some years ago, said this: In Robert Louis Stevenson's Essay on the Morality of the Profession of Lawyers can be found an admirable statement: "The salary in any business under heaven is not the only, nor indeed, the first question. That you should continue to exist is a matter for your own consideration. But that your business should be first, honest, and second, useful, are points in which honor and morality are concerned. The ethics of a profession require that a member of the bar shall be first an honest man. He must live in rectitude and cherish his personal honor, not forgetting that personal honor is the distinguishing badge of the legal profession."

And, I'll conclude with a little story. There were two ladies driving along the road in Vermont. They were going to Brattleboro. They came to a fork in the road which was unmarked. There was an old gentleman sitting in his rocking chair off to the side. One of the ladies turned to him and said, "Sir, does it make a difference which road we take to get to Brattleboro?" And he thought a second and said, "Not to me it don't."

My good friends, the road we take does make a difference. Thank you.

This article was re-written by Judge Hoeveler from a speech he delivered during the General Session of the American College of Trial Lawyers' Annual Meeting in San Diego, California, on Friday, October 18, 1996. Judge Hoeveler is a U.S. District Judge in Miami, Florida. He is also a Fellow of the American College of Trial Lawyers.

The 1997
Annual Meeting
will be in
Seattle, Washington
September 11-14

with a
Pre-Meeting Conference
in Vancouver, B.C.
September 7-10

Mark Your Calendar
for this
Two-City, Two-Country
Special Meeting

("Committee News" Continued from page 16)

due to their change of address. If any Fellow knows of an attorney that may have been overlooked as a nominee because of a change of address please contact the Adjunct State Committee.

Frank N. Gundlach, Chair

DELAWARE

At a meeting earlier this year, the Delaware Committee determined to explore ways in which our Fellows might be of assistance to the Widener University Law School in the teaching of trial advocacy. After meeting with several professors at Widener, we have determined that we will provide several lawyers to participate in the intensive trial advocacy program which meets in mid-January and mid-May. Each session is approximately eight days in length and involves student participation in mock trials from about 8:30 a.m. to 6:00 p.m. each day.

We will begin in January 1998 by providing comment and constructive criticism after observing the performance of ten students per day in their roles as lawyers participating in trials.

R. Franklin Balotti, Chair

FLORIDA

The Committee is very proud of State Committee member James M. Russ who was recently honored with the Tobias Simon Pro Bono Service Award, which is the Florida Supreme Court's highest honor for providing pro bono services. In presenting the award to Russ, Chief Justice Gerald Kogan declared that "(H)e truly is one of the giants of the trial bar in this state. This man, in the true spirit of what Toby Simon stood for, deserves, very richly, this particular award."

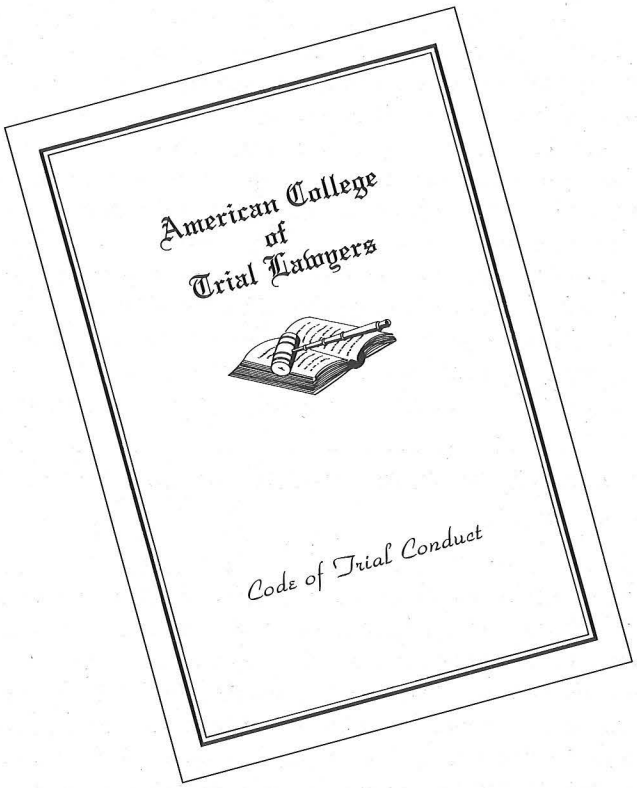
Sylvia H. Walbolt, Chair

DOWNSTATE NEW YORK

At its March 4, 1997, meeting, the Downstate New York Committee considered at some length the Regents' policy statement concerning Appellate Lawyers as reflected in the minutes of the meeting of the Board of Regents held on October 29, 1992. That policy statement provides that "appellate lawyers are engaged in 'trial practice' as required by the Bylaws, and that appellate lawyers who are deemed qualified by their state committees, who otherwise meet the qualifications and to receive favorable ratings in the polls, should be approved for membership in the College." After a thorough discussion, the Committee decided to undertake an investigation of one candidate in particular to ascertain whether the candidates qualifications, including appellate as well as practice, qualifies the candidate for membership in the College.

The Downstate New York Committee has an active Pro Bono Committee under the leadership of Daniel F. Kolb. The Pro Bono Committee is dedicated to identifying cases to be handled by Fellows personally, rather than by junio members of their law firms, and it has met with extraordinary positive reaction in Downstate New York. In addition the Downstate New York Committee is exploring the possibility of a meeting with the Upstate New York Committee and the District of Vermont and perhaps others. This project is being headed by Alan Levine.

Gregory P. Joseph, Chair



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 request to the College office at 8001 Irvine Center Drive, Suite 960, Irvine, California 92618.