

American College of Trial Lawyers THE BULLETIN

Number 27

Summer 1997

ACTL Regional Meetings Score High Marks With Fellows

Attendance at Regional Meetings of the American College of Trial Lawyers continues to grow and regional meeting organizers keep pace by offering Fellows quality speakers and activities.

President Jefferson gladly joined in on. Judge Robert Henry moderated a panel discussion titled "Challenges to The Rule of Law." Panelists included: Hon. Clarence Brimmer, Donald MacPherson, Nickolas Murnion, Shelly Waxman, Clay Jenkinson (answering questions as President Thomas Jefferson).

The second day of the Regional Meeting began with a speech by Professor Bernard Schwartz, author of *Thomas Jef-*

Once Upon a Time When We Were Colored, followed with his speech "Changes in Society Resulting from the Rule of Law." The session finished with the presentation of a rare and newly discovered film *The Trial of "Machine Gun Kelly."* Judge Ralph Thompson played the film during his presentation titled "Rule of Law in the 1930s."

Oklahoma State Chair, John C. Tucker hosted the most successful meeting and social functions.

The closing event was a dinner at the Gilcrease Museum of Western Art and Oklahoma Governor Frank Keating was a featured speaker.

Highlights from the 10th Circuit Regional Meeting

The College is known for presenting top notch speakers at all of its meetings, but one of the speakers at the 10th Circuit Regional Meeting in Tulsa, Oklahoma may have topped them all. Founding Father and President of the United States, Thomas Jefferson spoke to the fellows gathered in Tulsa.

The imposter was, of course, historian Clay Jenkinson. Dressed in historically accurate garb, Mr. Jenkinson presented "Thomas Jefferson and The Rule of Law." Mr. Jenkinson was followed by a panel discussion that



Oklahoma State Chair, John H. Tucker, Historian Clay Jenkinson (dressed as President Thomas Jefferson) and, the Honorable Robert Henry, U.S. Court of Appeals Judge for the 10th Circuit pictured at the 10th Circuit Regional Meeting in Tulsa, Oklahoma.

erson and *Bolling v. Bolling: Law and Legal Profession in Pre-Revolutionary America*, titled "Thomas Jefferson and the Rule of Law." Cliff Taulbert, author of

Hilton at Short Hills, New Jersey. President Coats, his wife Linda, and Executive Director Robert A. Young were

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Highlights from the NJ/PA/DE Regional Meeting

Regent Jerome J. Graham, Jr. and State Chair Edwin J. McCreedy hosted the meeting May 2nd and 3rd, 1997 at the

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American College of Trial Lawyers

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PRESIDENT'S MESSAGE**ANDREW M. COATS****Regional Meetings**

The Regional Meetings of the College are wonderful - without exception. Linda and I attended three in a month and each one was very special in its own way.

The Fellows from Ohio, Tennessee and Kentucky met during the weekend of April 17-20 in Lexington, Kentucky. Past-President Lively M. Wilson, Regent Bob Campbell and Kentucky State Chair Joe Savage, organized and put on a splendid meeting. (I know Joe really did most of the work.) The substantive programs were well put together and very interesting, with a day at the historic Keeneland Race Track, golf on the beautiful Champion Course and a concluding formal dinner at Spindletop Hall, a great Kentucky Mansion. It was a great time in Blue Grass Country!

It's really hard not to have a great time on the Monterey Peninsula, but with the fellowship of the College, our time there was very special. We spent a memorable day and night with Regent John Martel and his wife Bonnie at River House, their home in Santa Cruz, California before traveling with them down to Spanish Bay for the Southwest (Northern/Southern California, Nevada and Arizona) Regional Meeting.

Former Northern California State Chair David O. Larson organized and presided over the meeting and did a great job. Among the College luminaries present were Past-President Bill Haight, Regent Anthony Murray and Northern California Chairman John Woodhull Clark. Golf was played at Pebble Beach, Spanish Bay, and Spy Glass Hill. The substantive meeting featured Leon Panetta, former Congressman from that area and former Chief of Staff to the President, Fellow John M. Ottoboni, counsel to the San Francisco

'49ers and other interesting speakers, many of whom were Fellows of the College.

An evening at the Pebble Beach - Beach Club watching the sunset over the Pacific, while raising a glass with the Fellows of the College, was a splendid experience - a truly wonderful time.

Regent Jerry Graham and New Jersey State Chair Ed McCreedy put on a great meeting for the Fellows from New Jersey, Pennsylvania and Delaware in Short Hills, New Jersey - a beautiful part of the country. A wonderful evening at the Vail Mansion in Morristown capped off a meeting with Golf at Baltusrol - one of the great courses in the world - and a substantive program, which was highlighted by an address from the Attorney General of New Jersey. A little rain didn't spoil the festivities and fellowship of a great Regional Meeting of the College. We were all very pleased that Past-President Bob Clare joined us for the meeting.

Future Meetings

We are looking forward with great anticipation to the 10th Circuit Regional Meeting in Tulsa, Oklahoma and the Northeast Regional Meeting at Scarborough, Maine in June, and the Northwest Regional at Jasper Park, Alberta, Canada in July. I hope to see you at one

("President's Message" Continued on page 3)

("President's Message" Continued from page 2)
of these great Regional Meetings.

College Task Force Formed

We are creating a task force to determine whether there are issues affecting the administration of justice and the trial practice which the College should address. Traditionally, we only speak to those issues which are important to our profession and upon which we can have some impact.

Past-Presidents, Frank C. Jones, Morris Harrell, R. Harvey Chappell, Jr. and Gael Mahony are the members of the task force, with Bill Haight serving as Chair.

If you have any thoughts or ideas along those lines, you should call or write one of those distinguished gentlemen or your Regent.

Report Issued

I am sure, by now, you have received the Report of the Federal Rules of Evidence Committee espousing the use of appropriate rules of evidence in sentencing proceedings. The monograph is extremely well done, and hopefully it will be persuasive in dealing with the problem of enhanced punishments based upon double and triple hearsay. If you don't practice in the federal criminal area, why don't you send a copy of the report to one of your colleagues who does.

"Delinking" Judicial Salaries

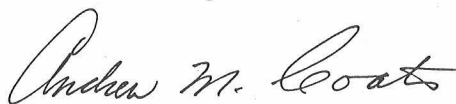
The Federal Judges have, for several years now, been "linked" with the members of Congress for their judicial salaries and cost of living increases.

Under present law, unless the Congress votes to raise their own salaries or increase their cost of living adjustments, the Judges get no increase. Since it is politically difficult for the members of Congress to vote themselves any kind of raise, the Judges get no increase. The effect of this gridlock is that the value of judicial compensation has been decreasing at the rate of 4 to 5 percent each year. The College supports "de-linkage", freeing the Judges from being lock step with Congress. Our Federal Judiciary Committee under the leadership of Marna S. Tucker of Washington, D.C. is addressing this problem. I know she would appreciate any thoughts or ideas you might have. If you have a Congressman or Senator who will listen to you, let Marna know. We can use your help in persuading Congress to "de-link" the Judges. The legislation untying this knot almost passed last year. Maybe with the active support of the Fellows of the College, we can get it done this year.

1997 Annual Meeting

Preparations continue for our Annual Meeting in Vancouver and Seattle in early September of this year. This is our first National Meeting in the Northwest and it promises to be a great occasion. I hope you are planning to be there.

Let's keep in touch.



Andrew M. Coats
President

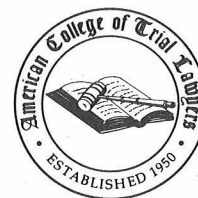
Bench Marks

Fellows Recently Appointed to the Bench are:

Stephen T. Goudge, Q.C., of Toronto, Ontario was recently appointed to the Court of Appeal for Ontario.

Dan A. McKinnon, III, of Santa Fe, New Mexico was recently appointed Justice, New Mexico Supreme Court.

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



**with an Optional
Pre-Meeting
Conference
in Vancouver,
B.C.
September 7-10**

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

ACTL CALENDAR OF EVENTS

STATE MEETINGS

1997

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

1998

January 30-31

VIRGINIA Annual Black Tie Dinner/Brunch

Commonwealth Club
Richmond, VA

REGIONAL MEETINGS

1997

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

1998

March 19-22

ACTL Spring Meeting

Marriott Desert Springs
Palm Desert, CA

October 29-November 1

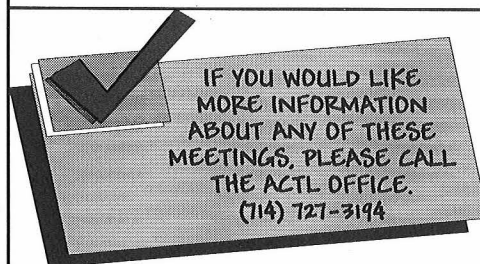
ACTL Annual Meeting

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

2000

March 16-19

ACTL Spring Meeting

The Ritz-Carlton
Kapalua, Maui, Hawaii

October 26-29

ACTL Annual Meeting

JW Marriott
Washington, D.C.

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

October 16-19

EASTERN CHAIRS Workshop

Keswick Hall
Keswick, VA

October 30-November 2

WESTERN CHAIRS Workshop

La Quinta Resort & Club
La Quinta, CA

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

September 10-13

EASTERN CHAIRS Workshop

The Greenbrier
White Sulphur Springs, WV

September 24-27

WESTERN CHAIRS Workshop

The Inn at Spanish Bay
Pebble Beach, 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

JW Marriott
Washington, D.C.

Two-City Meeting is an International Event For Fellows

The College's first national meeting in the Northwest will offer something for everyone. The Optional Pre-Meeting Conference commences in Vancouver, British Columbia, Canada, and is followed by the 1997 Annual Meeting in Seattle, Washington.

The only way to really appreciate the Northwest is to actually go there. That's something the College has never done with its national meetings, until now. Fellows will have the opportunity to visit two of the premier cities in the region when they register for the conference and Annual Meeting.

Vancouver

The Optional Pre-Meeting starts in Vancouver, September 7-10. Only the Fellows with confirmed registration for the meeting can make reservations at the Hyatt Regency in Vancouver. This is an optional Pre-Meeting before the Annual Meeting in Seattle. There will be two mornings of professional programs.

The Hyatt is located just 20 minutes from Vancouver International Airport in the heart of the city's downtown business and shopping district. Two blocks from the hotel is the exclusive shopping district of Pacific Centre and Robinson Street—the Rodeo Drive of the Northwest. Also within walking distance from the hotel is 1000-acre Stanley Park, scenic Gastown, Chinatown, Vancouver's entertainment district, including B.C. Place, G.M. Place and the Ford Centre for the Performing Arts.

Tours

Plans for various tours in Vancouver will include:

Vancouver City Tour

This private narrated tour will pass through Gastown, one of Vancouver's oldest and most historic areas. The tour continues through North America's second largest Chinatown. Next, the tour will enter Stanley Park—1000 acres of wilderness located

in the heart of Vancouver's downtown. The tour continues along the waterfront to Queen Elizabeth Park—the highest geographic point in Vancouver.

Cruise of Howe Sound

The cruise aboard the M.V. Britannia will begin in Vancouver Harbour. The Britannia is a large vessel with several decks and large windows from which to view the magnificent scenery. Participants will sail through Coal Harbour, under Lion's Gates bridge, to Howe Sound. Sights along the way will include North and West Vancouver, Stanley Park and the Coastal Mountains.

Transportation

Fellows registered for both meetings can travel from Vancouver to Seattle on luxury motor coaches chartered by the College. Each coach will have a tour guide on board and refreshments. The trip will take passengers across the U.S./Canada border so be sure to bring your passport.

Seattle

Only the Fellows with confirmed registration for the Annual Meeting in Seattle, September 11-14, can make reservations at the Westin Hotel. Named the "Emerald City," Seattle is filled with treasures for the eyes. Pike Place Market, one of the country's last authentic farmers markets, the waterfront and the Seattle Aquarium are just a short walk from the hotel. Some College custom tours of exclusive Seattle locations are also being planned that will surely fill up quick so sign up early. Fellows will leave the comforts of the Westin one night during the meeting for a special evening at the Museum of Flight at Boeing Field. (Airline food not included, but a spectacular array of heavy hors d'oeuvres featuring foods of the region will

be served.)

The meeting will include two days of professional programs. Committee meetings will also be scheduled each morning prior to the professional sessions.

Tours

The following are a selection of some of the tours that will be available in September during the free afternoon in Seattle:

Art of the Pacific Northwest Tour

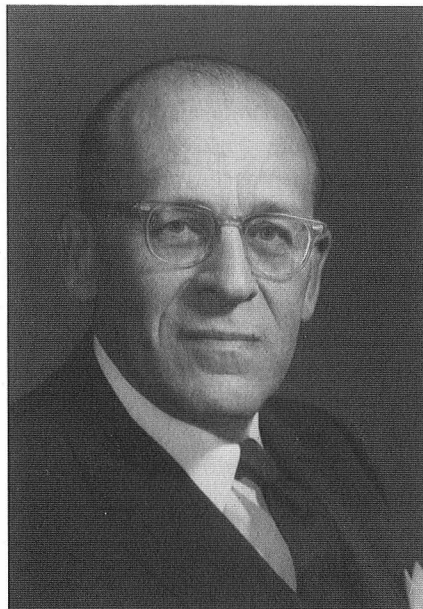
World-renowned glass artist Dale Chihuly will allow registrants to tour his private Boathouse Studio. Located on the shores of Lake Union, Chihuly's "hot shop" is the birthplace of glass masterpieces displayed in galleries throughout the world. Participants will be granted special access to observe the works in progress and watch Chihuly's master glassblowers creating spectacular new pieces. The tour will also include visits to several art collections within private homes. The tour ends with a visit to the Seattle Asian Art Museum in Volunteer Park. The facility features a collection of Chinese, Indian, Japanese, Korean and Southeast Asian works of art. Docents will be on hand to answer questions.

Yacht Tour and Houseboat Visit

Seattle holds the distinction within the United States as one of the only cities to boast a thriving community of floating homes. Participants will cruise aboard a luxury yacht from Lake Union, through the Montlake Canal, to Lake Washington. Once on board, the captain will steer participants by the community of houseboats and act as tour guide offering facts and insights into the water community. Included is a glimpse at the houseboat occupied by Tom Hanks in the film, *Sleepless In Seattle*. The tour includes transportation by

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In Memoriam BERNARD G. SEGAL



(1907-1997)

Bernard G. Segal, the Fifteenth President of the American College of Trial Lawyers, died peacefully in his Philadelphia, Pennsylvania home on June 1, 1997 after a long illness.

Born in New York City and raised in Allentown and Philadelphia, Pennsylvania, Mr. Segal received his undergraduate and law degrees from the University of Pennsylvania. In 1932, Mr. Segal went to work for the Attorney General of Pennsylvania and at the age of 24, he became the youngest Deputy Attorney General in the history of Pennsylvania. In that post, he drafted important legislation, including the Pennsylvania Banking Code. His distinguished legal career continued as a founder and for many years, Chairman of the law firm of Schnader, Harrison, Segal & Lewis in Philadelphia. In a career marked by his consummate preparation and an unrelenting drive for perfection, Mr. Segal became known as a superior lawyer, among the best in his profession. Appellate advocacy was his forte and he was involved in nearly fifty cases before the Supreme Court of the United States. He was honored as a Fellow in 1955 and served as College President from 1964-1965. Service to the Bar was a vital part of his professional life. In 1952, he became the first Jewish lawyer to be elected Chancellor of the Philadelphia Bar Association and in 1969, Mr. Segal became the first Jewish lawyer to be elected President of the American Bar Association.

Deeply committed to civil rights, in 1963 Mr. Segal helped launch the Lawyers' Committee for Civil Rights Under the Law convened by President Kennedy. Mr. Segal co-chaired the Committee which sent lawyers to defend civil rights workers in southern states and played a critical role in advancing civil rights. Mr. Segal's wife, Dr. Geraldine Segal, a civil rights scholar in her own right, worked closely with Mr. Segal in their civil rights activities. Mr. Segal also played a seminal role in furthering legal services for the poor, chairing the Advisory Committee on the National Legal Services Program under President Johnson's OEO program and enlisting lawyers throughout the nation to provide legal services to the indigent.

In the course of his career, he carried out special assignments in the justice field for four Presidents, Eisenhower, Kennedy, Johnson and Nixon. His service to the Bar was marked by his tireless effort in extending the influence of the organized Bar in matters of legal policy nationwide.

Mr. Segal is survived by his wife, Geraldine, two children, Loretta Joan Cohen and Richard Murry Segal, three grandchildren, one great grandchild, a sister, Florence S. Lowe of Washington, D.C. and a brother, Irving R. Segal of Philadelphia, a partner in the same law firm for many years.

Services for Mr. Segal were held on June 4, 1997, at Temple Adath Israel, Old Lancaster Rd. at Highland Ave., Merion Station, PA. The burial followed at the Roosevelt Memorial Park. Contributions in his memory may be made to the University of Pennsylvania, The Jewish Federation of Greater Philadelphia or to a charity of the donor's choice.

COMMITTEE NEWS REPORTS

STANDING COMMITTEES

Access to Justice and Legal Services Committee

There are now Access to Justice and Legal Services Committees in 11 states. Each Access to Justice Committee Chair has been encouraged to do the following:

1. Request that a committee of three to five individuals be appointed to share the effort and add perspective.
2. Personally or through state Access to Justice Committee members:
 - (a) Meet and discuss with the following individuals and organizations concerning the existence and purpose of the Committee, and how the Fellows might provide meaningful assistance to those with appropriate needs, whether or not they meet the LSO qualification guidelines:
 - 1) The director of Legal Services Organization in the jurisdiction;
 - 2) Chief Justice of the high court;
 - 3) The presiding judges of the federal and state courts;
 - 4) Organizations that deal with issues pertaining to children, the elderly, the handicapped and mental health.

It was also noted that the New York model seems particularly applicable to major metropolitan areas such as Chicago, Los Angeles and San Francisco. The Chair is to communicate with members of the Standing Committee from Illinois and California to encourage appointment of Access to Justice Committees in those particular cities.

John J. Bouma, Chair

Alternatives for Dispute Resolution Committee

In connection with the Committee's ongoing project to develop standards for lawyers in mediation, the Rosenbleeth Committee has undertaken to contact individuals and organizations with mediation experience and ask them to identify subjects they believe should be addressed by the Committee's project. The ADR Committee has also undertaken a review of federal, state and province statutes and rules that bear on the proposed mediation standards. Once this material is collected, the Committee intends to produce an outline for the second phase of the project.

Shaun S. Sullivan, Chair

Award for Courageous Advocacy Committee

The Courageous Advocacy Committee receives and investigates recommendations and information relative to outstanding courage demonstrated by trial lawyers in unpopular or difficult cases and, where appropriate, recommends awards to

the Board of Regents.

The last award was given to Julius L. Chambers at the Annual Meeting of the College in Toronto, Canada on September 24, 1994.

David C. Hilliard, Chair

Canada-United States Committee

At the Spring Meeting of the Committee, Robert P. Armstrong, Q.C., reported on the College's efforts to establish a National Trial Competition in Canada. He and Regent David W. Scott Q.C., had secured the approval of law deans representing 22 law schools in Canada. An administrative person has been identified and set to work in Ottawa to commence organization. The use of the Ottawa courthouse has been confirmed as a site for the competition. The first competition is expected to be held in March, 1998, and will be conducted in both official languages (English and French). The Committee is now liaising with a committee of the deans chaired by Marilyn Pilkington, Dean of the Osgoode Hall Law School in Toronto. At the Spring Meeting, the Committee resolved to recommend a budget sufficient to fund the initial organization and administration expenses involved in establishing the competition, and sufficient to defer the travelling expenses of those involved in the competition.

Since the Spring Meeting, Regent Scott, who resides in Ottawa, has organized a local committee of lawyers. They are proposing to meet with people at Ottawa University the week of May 12 in an attempt to make the first cut at the budget. The next meeting of the Council of Deans is in Newfoundland on June 20, and it is hoped a proposed budget will be available to present to the Council of Deans at that time. Mr. Armstrong is urging Dean Pilkington and her committee to press the deans at their June meeting to make arrangements for trial competitions in the Atlantic Provinces as well as Quebec. At present competitions are only held in Ontario and the Western Provinces, and the first national competition in 1998 may have to be limited to contestants from these competitions. It is intended, however, that the competition at the provincial level be expanded to the entire country as soon as feasible. The deans' agreement must be secured to moving the time of all competitions at the provincial level from the spring of 1998 to January or February in order that the national competition can take place in the spring. Finally, the Committee resolved at the Spring Meeting to ask a prominent Canadian jurist, who was elected a Fellow of the College when he was at the bar, to lend his name to the cup to be presented under the auspices of the College to the winner of the national competition.

At the Spring Meeting, Earl A. Cherniak, Q.C. delivered the latest working draft of the Canadian Code of Trial Conduct and identified points in the draft that may require further

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("Committees" Continued from page 7)

discussion. A number of such points were discussed, and it was agreed that Mr. Cherniak would circulate a revised draft based on this discussion in order that any remaining points in issue can be identified and settled at the Committee's meeting in Seattle.

While a detailed draft of a proposed convention was reviewed by the Committee at the Spring Meeting it was clear there was inadequate time to deal satisfactorily with all the questions raised by the members of the Committee. The Committee did agree, though, that the members of the Committee would go to the meeting in Seattle prepared to approve a text. In order to be in a position to do this, the points any member wishes to raise will be circulated to the members of the Committee over the summer. The Chair has proposed a preliminary meeting of the members of the Committee who go to Vancouver in order to attempt to discuss and settle such points in advance of the meeting in Seattle.

Jack Giles, Q.C., Chair

Complex Litigation Committee

The following contains excerpts from the REPORT OF THE COMPLEX LITIGATION COMMITTEE TO THE BOARD OF REGENTS.

On April 8, 1995, Judge William W Schwarzer invited the College to study and make recommendations for the handling of "mass tort" litigation. Noting that current practices involving central aggregation of claims frequently have led to unfair results from the perspectives of both plaintiffs and defendants, Judge Schwarzer invited the College to explore improved methods for the just processing and handling of such claims, specifically mentioning problems of multiple punitive damages, appropriate Rule 23 Class application utilization and claims resolution.

Lively M. Wilson, College President at the time, assigned Judge Schwarzer's challenge to the Complex Litigation Committee and a self-selecting ad hoc committee was formed to provide guidance on this issue.

For our purpose, a "mass tort" is distinguished from a "mass accident" which involves a situation in which a number of persons are hurt by a single act of an individual or enterprise. Examples would include airplane crashes, explosions, catastrophic fires and oil spills. The modern "mass tort," however, is defined by four factors.

1. A course of conduct that is not limited to one specific event;
2. A resulting impact that is manifested over an extended period of time that might last years or even decades;
3. An unknown or unpredictable number of claimants; and
4. A wide variety of injuries or damages that range from insignificant to serious.

Agent Orange, Asbestos, Dalkon Shield, Dioxin and

"DES" are a few examples. There are and continue to be, however, many others, the most topical of which at present is the Silicone Gel Breast Implant Litigation.

Resolution of mass tort litigation should seek to accomplish four objectives:

1. A fair determination — whether by agreement or adjudication — of liability and damages;
2. Reasonable assurance that parties entitled to it will be able to collect compensation;
3. Minimum adverse impact on enterprises and the related economy consistent with achieving deterrence of objectionable conduct; and
4. Minimum transaction cost.

(Schwarzer, "Settlement of Mass Tort Class Actions — Order Out of Chaos," Cornell Law Review, Vol. 80, No. 4 (May 1995), page 836.)

As a practical matter, many believe that these goals are not being realized and commentators question why these claims are being allowed to increase the burdens on already overburdened systems.

In May 1996, a letter was sent to the Fellows seeking to identify those experienced in mass tort litigation who would be willing to share their experiences and successes with the Committee.

The Fellows were advised that the Committee was focusing on litigation involving mass exposure to products, chemicals, forces, etc., with particular attention to the aggregation techniques utilized by the courts: class actions, MDL consolidation, test or common issue trials, etc. The Committee was interested in the views of the experienced Fellows as to whether these procedures furthered fair and efficient determinations in this type of multiple claim litigation. The specific questions were:

- Does our judicial system need different tools to deal with the unique challenges of this litigation?
- Is the individual litigant model of litigation ineffective and/or inordinately expensive for resolution of these claims?
- Do the jurisdictional limits on state and federal courts prevent fair and efficient determinations?
- Which of the consolidation techniques utilized by the courts are effective? Which are not?
- Do any or all of the consolidation techniques impose unfair burdens on the litigants, or unduly deprive them of control over their claims or defense?
- Are current practices governing expert scientific testimony appropriate when applied to these kind of cases?
- Does the risk of multiple punitive damages inherent in mass tort litigation impose an unacceptable burden on defendants?

There were no issues on which there was unanimity of

opinion, but several issues on which we submit there was a "consensus." These cover:

- A recognition that, although individual determination of claims was desirable, there were situations where the only way to get a reasonably just determination was through collective resolution which basically involves settlement.
- Experience disfavors consolidation and common issue trials.
- A general hostility to class certification of these types of mass tort claims for "litigation," although there was a significant split in the appropriateness of a "settlement" class where all elements of Rule 23 were not satisfied. (This issue is presently before the U.S. Supreme Court in Amchem Products v. Windsor, argued 2/18/97 and before the Federal Rules Advisory Committee.)
- Several Fellows suggested that before a class was certified or extensive discovery allowed to proceed on large numbers of consolidated cases, a representative number of cases should be tried to develop a "track record" as to whether there was really a tort involved and, if so, what were the reasonable values of different types of injuries.
- A lack of enthusiasm for attempts at legislative solutions, for as one Fellow expressed: "the cure can be worse than the disease."
- The unfairness and undesirability of multiple exposure to punitive damages, although no general suggestions were forthcoming as to how this could be avoided, short of litigation. (Senator Hatch has recently introduced a bill, S. 78, to limit multiple punitive damage awards based on a defendant's single act or course of conduct. The *Multiple Punitive Damages Fairness Act of 1997* would allow multiple damages only if a court determines in a pretrial hearing that a plaintiff will offer new and substantial evidence of previously undiscovered, additional wrongful behavior on the part of the defendant, other than the injury to the plaintiff. A court awarding punitive damages under the exception must make specific findings of fact to support a multiple award. It also must reduce the amount of the punitive damage award by the sum of the amounts of punitive damages previously paid by the defendant in prior actions based on the same act or course of conduct. Disclosure to the jury of the court's determination and action would be prohibited.)

There was a broad division of opinion in the responses to our questionnaire as to whether the courts were adequately handling the issues regarding scientific expert testimony, the so-called Daubert issues. There is a continuing cascade of decisions involving a Daubert analysis as to the requisite scientific methodology to support an expert opinion as to causal connection between the alleged toxic agent and the complained of medical condition. The increased scrutiny given to proposed expert causation testimony will have a marked impact on the future of mass tort litigation.

It is perhaps understandable that the experience of the

members of the College, both in the prosecution and defense of such claims, cannot reach a broad consensus as to either the identity or solution of the problems caused by the mass tort phenomena and it may be inappropriate, therefore, for the College to take a public position at this time. The Committee believes that as developments in this area continue, it may be possible to reach consensus. The Committee therefore suggests that it continue to monitor these developments and at the appropriate time submit a supplemental request to the Board.

Edward W. Madeira, Jr., Chair

Federal Judiciary Committee

The recent and repeated failure by Congress to give cost-of-living increases to federal judges has, in effect, amounted to a decrease (considering inflation) in judge's salary of \$31,000.

Because of its concern about the impact on those serving on the federal bench as well as those considering such a path, the Federal Judiciary Committee has prepared a statement decrying this practice. By linking the consideration of these salary increases with consideration of Congressional pay raises, the Congress has prevented these increases. The Committee has recommended to the Board of Regents that the cost-of-living adjustments for federal judges be delinked from congressional salaries.

The Committee is also recommending action by the College against unwarranted attacks on judges and their impact on the independence of the judiciary. The Committee has prepared a paper studying this problem from the trial lawyer's perspective and will submit it to the Board of Regents.

Marna S. Tucker, Chair

Federal Rules of Civil Procedure Committee

The Committee continues to have a central focus on three primary areas of concern that are presently before the U.S. Judicial Conference Advisory Committee on the Civil Rules, viz., the proposals to amend Rule 23, particularly 23 (b) (3) on class actions; the proposal of the Regents and the Committee to amend discovery Rule 26 (b) (1); and the analysis and implementation of the Civil Justice Reform Act (CJRA).

The Committee, through one or more members, has continued to attend Federal Rule Advisory Committee meetings and public hearings in Philadelphia and San Francisco on Rule 23, another meeting in San Francisco on Rule 26, and as a panelist at a major conference of the federal judiciary sponsored by the ABA-Rand Institute on the CJRA at the University of Alabama Law School.

The Committee has met twice in the past six months, Dallas and Boca Raton, and will continue to keep under review federal Rule 47 on voir dire examination and Rule 48 on the required number of jurors comprising a federal jury panel in

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civil litigation.

Robert S. Campbell, Jr., 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.

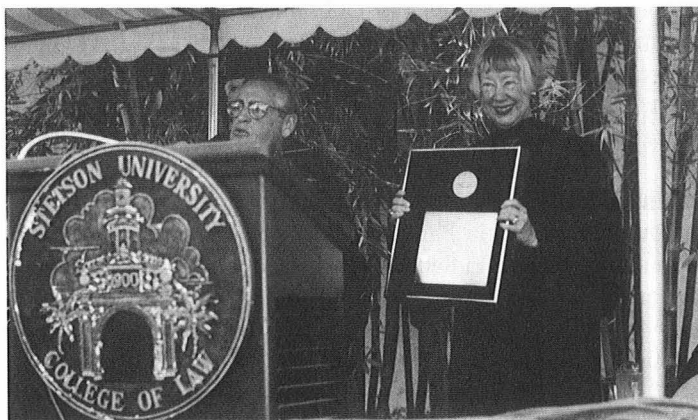
Beale Dean, Chair

Emil Gumpert Award Committee

On Saturday May 10, 1997, Regent Warren B. Lightfoot and I participated in the graduation ceremonies of Stetson University College of Law. During the exercises we presented a plaque recognizing Stetson College of Law as the winner of the 1997 Emil Gumpert Award. The College also received the gift of \$50,000 from the American College of Trial Lawyers having been judged the most outstanding trial advocacy program among the 17 other law schools that applied for the recognition.

The competition for the Award has become more significant in recent years, the applications have increased and the on-site visits to the schools have become more intense. In addition, the applications now contain a provision concerning the teaching of civility as an integral part of the advocacy curriculum. Our Committee will begin accepting applications in the Summer and Fall (some new, some former applicants supplementing their presentation) and the evaluators expect to have the on-site evaluations completed by December 1997. Tradition dictates that the Committee will meet in January to receive the full presentations and make the decision for the 1998 Emil Gumpert Award recipient.

Louis W. Fryman, Chair



Emil Gumpert Award Committee Chair, Louis W. Fryman (at podium) presents Emil Gumpert Award to the Stetson University College of Law Dean, Lizabeth Moody during Stetson University College of Law Commencement, May 10, 1997.

Legal Ethics Committee

The Committee has transmitted its report on *Fair Trial of the High Profile Case* to President Coats for review and approval of both President Coats and the Regents.

The Subcommittee on the Teaching Syllabus for the Trial Code will have its initial meeting shortly and prepare a plan for the completion of the teaching syllabus.

Murray E. Abowitz, Chair

Mexico Committee

The Committee met by telephone conference call on May 15, 1997. A decision was made to move forward with the identification of a small group of Mexican lawyers who are considered to be the country's best in handling significant civil and criminal disputes in court or by arbitration. Although the legal systems and therefore the skills and expertise of such lawyers is different than in the United States or Canada, we will look for lawyers in Mexico with a reputation for integrity and ability commensurate with the level that we expect of our own members. Once identified, we will present for approval of the Regents a plan for meeting with this counterpart group to establish informal contacts seeking to develop informational and educational exchanges on cross-border legal issues of interest to U.S., Canadian and Mexican lawyers. Input is invited from any ACTL member who has business or legal contacts in Mexico or can assist in identifying Mexican counterparts.

We continue to get and fulfill requests for the *U.S. Trial Lawyers Brief Guide to U.S.-Mexico Cross-Border Dispute Resolution in Civil Cases*.

The Committee members will also be happy to assist any program chairs of state, regional or national meetings who might wish to include a speaker or panel discussion of Mexican or cross-border legal matters.

Philip A. Robbins, Chair

STATE AND PROVINCE COMMITTEES

KANSAS

Each year the Fellows of the State of Kansas make a \$250 award to the outstanding trial advocate student at the University of Kansas and Washburn University School of Law. This year the recipient is Korey Kaul from the University of Kansas and Daniel Perez, Jr. from Washburn University.

Wayne T. Stratton, Chair

MINNESOTA

Our chapter will be holding a Golf and/or Fishing weekend on June 27-29, 1997, at Madden's Resort, Brainerd, MN. We will have our two newest ACTL inductees, Mr. Steven Kirsch and Mr. Scott Davies present a seminar on Saturday morning regarding Alternative Dispute Resolution with Mr. Kirsch's presentation from the Personal Injury perspective and Mr. Davies' from an Employment Dispute perspective. We will also have the pleasure of Mr. Andrew M. Coats, President of the ACTL addressing our gathering. The afternoon will be devoted to an informal golf tournament followed by fellowship over dinner.

John W. Carey, Chair

MISSISSIPPI

The Mississippi State Committee is exploring ways in which a meaningful access to justice and legal services program might be placed into effect. The Committee has enlisted the aid and advice of Mississippi Fellow and former State Bar President Alex Alston, who has had a long association with the State Bar sponsored pro bono program, and related programs.

John B. Clark, Chair

PENNSYLVANIA

In 1997, the Pennsylvania State Committee conducted ACTL business at meetings held in Philadelphia on February 6, in Harrisburg on April 1, and via conference call on May 19.

Edwin L. Klett, Chair

TENNESSEE

Tennessee congratulates and thanks the Kentucky Fellows for the outstanding program, entertainment and fellowship we enjoyed in Lexington during the races at Keeneland in April. Joe Savage and his committee set a fast pace for the other committees with their 6th Circuit gathering. I think many of us left some money with the ponies.

Robert J. Walker, Chair

WASHINGTON

Our liaisons continue to work with the state's three law schools. We provide Fellows to judge advocacy competitions and lecture classes on professionalism, civility and ethics.

J. Donald Curran, Chair

(*"Meetings" Continued from page 1*)
among the honored guests.

The Friday night dinner at the Hilton was preceded by golf at Baltusrol. President Coats humbled us all with a relaxed 76 on his first look at the course. New Jersey Fellow Tom Campion chaired a professional program on Saturday morning that featured a lecture on demonstrative evidence by the Merrimac Group, who have produced exhibits for more than 2500 trials. The meeting was concluded with a lecture by New Jersey's Attorney General, the Honorable Peter Verniero.

Saturday evening featured a catered dinner at the Vail Mansion in Morristown, N.J., which had been restored and decorated by top New York and area decorators.

Highlights from the Southwest Regional Meeting

Informative speakers, great fellowship and seasonal weather made for smooth sailing as the Southwest Regional Meeting docked in Pebble Beach, California. Fellows came together at The Inn at Spanish Bay to attend the four-day meeting beginning April 24, 1997, organized by Fellow David O. Larson.

Leon Panetta, the White House Chief of Staff during President Clinton's first term, addressed the General Session during the first full day of meetings. Mr. Panetta talked about the challenges facing Washington now and in the future. The former Chief of Staff noted four challenging areas where he said the Federal Government needs improvement. First, he said Washington needs to assert more fiscal responsibility. "We have a responsibility to make good use... disciplined use, of your money." Secondly, he said it is the responsibility of government to maintain a strong economy. Thirdly, Mr. Panetta insisted that thoughtful cost cutting reforms in Washington need to be made. "We can reduce the size of government, but make it more effective and efficient," he said. Finally, leadership in a changing world may be one of the biggest challenges facing our government, according to Mr. Panetta. He said the U.S. role in foreign policy eventually affects us at home. In closing, he hopes the leadership in Washington will work together in the spirit of bipartisanship to meet the challenges facing the country.

The second speaker to address the General Session was the General Counsel to the San Francisco '49ers John M. Ottoboni, FACTL. Mr. Ottoboni discussed the representation of professional sports franchises and the legal challenges facing many teams. He covered a wide array of topics including: salary caps, the rights of ticket holders, and workers compensation cases filed by retired players.

The second day of the General Session featured a panel discussion titled: *Judicial Control of High Profile Cases*. The panel discussion moderator was John N. Hauser, FACTL. Panel members and topics included:

- Professor Erwin Chemerinsky of USC Law School discussed ethical rules and guidelines for attorneys acting as commentators.
- Judge William W. Schwarzer, FACTL, covered television in

(*"Meetings" Continued on page 12*)

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the courtroom and a Judicial Center report.

- Joseph P. Russoniello, FACTL, addressed the use of gag orders to control out-of-court statements by parties and attorneys.
- Robert A. Goodin, FACTL, talked about attorneys, commentators, gag orders and courtroom television.

Highlights from the Kentucky, Michigan, Ohio and Tennessee Regional Meeting

Fellows from the four-state region gathered in Bluegrass Country for their Regional Meeting hosted by Kentucky State Chair Joe C. Savage. The weekend meeting in Lexington, Kentucky began April 17th. The meeting's first session was a panel discussion titled "Discovery In Federal Court." Panelists included: Judge Thomas A. Higgins, FACTL; William P. Hampton, FACTL; Hon. Martin J. Murphy, FACTL; and Charles Mike J. Cronan, IV, FACTL.

The second session also featured a panel discussion. The panel discussed "Civility In Federal Court." Panelists included: Judge Henry R. Wilholt, Jr., FACTL; Robert R. Campbell, FACTL; Robert L. Elliott, FACTL; and Dean David Shipley, University of Kentucky College of Law.

Fellows were able to divide their free time among a number of leisure activities. A visit to Shaker Village, a local horse farm, tours of historic homes, golf and the Keeneland horse track were just a few of the activities available to the Fellows.

("Two-City" Continued from page 5)

deluxe mini-vans to the yacht, guided houseboat tour from the yacht and inside tours of selected houseboats.

Seattle City Tour

This tour offers an overview of the many attractions Seattle offers its visitors. The tour will travel along the waterfront with its import shops and fresh seafood restaurants, into historic Pioneer Square. Pioneer Square is one of Seattle's oldest areas featuring early 1900's architecture. The tour moves on to the International District, the third largest on the West Coast. The tour continues along Lake Washington into the Arboretum and on to the University of Washington campus. The first stop will be Hiram Chittenden Locks and Salmon Ladder. The locks are an engineering feat connecting saltwater Puget Sound with freshwater Lake Union. The salmon ladder allows the seasonal migration of salmon returning to their parent streams to spawn. Next, the tour travels to Magnolia Bluff for a short photo opportunity of Puget Sound. Before returning to the hotel the tour will make a stop at the world famous Pike Place Farmers Market. The market houses almost every specialty shop imaginable.

Further information on tours will be provided to Fellows when they have been confirmed for registration.

Registration materials for this two-city, two-country meeting will be mailed in early July. Be sure to register early to insure a place at these historic meetings of the American College of Trial Lawyers in the Northwest, bringing the culture and highlights of the countries and regions to you.

Publication Notes

Complimentary copies of College Publications are available for distribution in limited quantities. The following are available:

The Code of Trial Conduct

***The Law Of Evidence In
Federal Sentencing
Proceedings***

***U.S. Trial Lawyers Guide to
U.S.-Mexico Cross Border
Dispute Resolution in Civil
Cases***

Please send your written request to:

***American College of Trial Lawyers
8001 Irvine Center Drive, # 960
Irvine, California 92618***