

THE BULLETIN

Number 29

Winter 1998

The Independence of the American Lawyer

By

Warren B. Lightfoot

Chester Bedell epitomized the independent American lawyer. It is a great monument to him that this bar on an annual basis stops to reflect on what our independence means, for it is the very essence of the American lawyer. Any diminution in that aspect of our identity would have alarming implications for our system of jurisprudence and for the public. For the past ten years, commentators have observed repeatedly that our independence is in decline. In 1988

Stanford Law Professor Robert Gordon published a thoughtful article in which he describes the influences tending to diminish our professional independence. He says large firm practice is so intense that it saps the energy of its lawyers, making them slaves to the billable hour and leaving no time or motivation for outside commitments. Moreover, lawyers for big corporations are overly subservient and exert minimal control over their clients. Conversely, he argues, lawyers for tort plaintiffs, di-

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Chester Bedell was a Fellow of the American College of Trial Lawyers and died in 1981 while serving on the Board of Regents of the College. His family and friends established a foundation to preserve and nurture a recurring theme of his: The Independence of the American Lawyer.

Each year since 1986 the Chester Bedell Memorial Lecture has been given during The Florida Bar Annual Meeting at a joint session hosted by the Trial Lawyers Section of The Florida Bar and the Trustees of the Chester Bedell Memorial Foundation.

Warren Lightfoot presented the 1997 lecture in Orlando June 27, from which this article was taken.

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American College of Trial Lawyers
THE BULLETIN

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American College of Trial Lawyers
8001 Irvine Center Dr., Suite 960
Irvine, California 92618
Telephone: (714) 727-3194
Fax: (714) 727-3894

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voring spouses and small businesses have much more autonomy, but those lawyers tend to make the important decisions themselves without a fully informed client, and their independence shades into self-interest.

In 1993 Tony Kronman, Dean of the Yale Law School, published his book, *The Lost Lawyer*, echoing many of Professor Gordon's themes and lamenting the decline of our independence. Dean Kronman reminds us that in the final analysis all we really have to offer our clients is deliberative wisdom and that "deliberation requires not only sympathetic engagement but detachment too." Dean Kronman says that because of the increase in billable hours and the demands of modern practice, we become narrower people (our horizons shrink), and we lose the breadth of experience required for independent judgment. Simultaneously with this shrinkage, we become more and more dependent on a few important clients or referrers of business, Kronman argues, and our professional detachment is diminished. Finally, he says the more we depend on others, the greater the pressure becomes to conform our views to theirs, with a lessening of our independence.

I believe these academicians are wrong; I believe that as a whole, our colleagues are more independent than at any time in this century, and I want to tell you why I believe that. Let's

look for a moment at a historical perspective of our independence. In the early years of this republic, the practice of law did not consume so much of the lawyer's time and a great many practitioners were involved in public service in addition to their primary vocation. In 1835 Alexis de Tocqueville observed in *Democracy in America* that we alone stood between the wealthy and the American people, moderating the influence of each:

"In America there are no nobles or literary men, and the people are apt to distrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society."

If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar."

Further, he noted that when the American people are intoxicated by the impetuosity of their ideas, the lawyers are a moderating influence without whom the republic could not survive. So we begin our analysis with the clear image of an independent bar. If we fast forward seventy-five years we see that times have changed. Railroads have become powerful clients

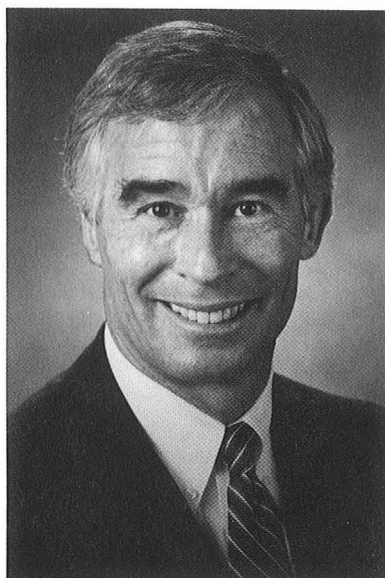
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and have led the way in placing lawyers on retainers, to the point that Louis Brandeis in his famous 1914 speech said:

"It is true that at the present time the lawyer does not hold as high a position with the people as he held seventy-five or even fifty years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people."

In my view that was the low point of our independence. But what we need to do now is fast forward another seventy-five years to the end of the 1980's, and we can see the vast changes that occurred on the legal landscape during that period. I want to talk about those changes and what they have meant to three great segments of our bar: criminal lawyers, corporate defense lawyers, and plaintiffs' lawyers.

We came through the fifties when a few lawyers took on McCarthyism; when the courage and skill of men like Joseph Welch reminded us of what it meant to take on popular demagoguery. Then we moved into the tumultuous sixties and seventies with civil disobedience and civil rights testing the constitution and testing the mettle of our colleagues in daily front-line confrontations. Those days required not only great moral strength



Warren B. Lightfoot is a member of the Board of Regents and a partner in the Birmingham, Alabama law firm of Lightfoot, Franklin & White, L.L.C.

but physical courage, and those of our number who practice criminal law today look back at the sixties and seventies for continuing inspiration. Indeed, all of us learn every day from our brothers and sisters at the criminal bar what true independence means: that public opprobrium and even the threat of economic sanctions cannot affect our professional decisions. This segment of our bar receives too little recognition, in my opinion, for the countless times they deal with undeserved vilification by the press and public, nonetheless staying the course.

When we look about us to see who really upholds bedrock constitutional values on a regular basis, it is our

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means*

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1998 ANNUAL MEETING SLATED FOR LONDON WITH ROME CONFERENCE FOLLOWING

The 1998 Annual Meeting is scheduled for October 29—November 1, 1998 in London, England. The Annual Meeting will be followed by a meeting in Rome, Italy from November 1—4, 1998.

Registration will be by lottery, as determined by the Executive Committee of the College. This is as it was in 1992 when the College accepted registration by lottery.

The registration materials will be mailed in June 1998. There will be a three-week response period and all unopened registration envelopes will be randomly selected and assigned a number up to capacity. Preference will be given to Fellows registering for both meetings, although registration will be accepted separately if openings exist after all who wish to attend both meetings are accommodated.

All hotel rooms for both locations will be available only through the College. No reservations can be made in advance, or prior to confirmation of registration.

There will be three optional post-Rome tours offered. They are: Tour I — Prague, Vienna, Budapest; Tour II — Northern Italy; Tour III — Paris and Burgundy Country. Prices and extent of stay (most will be 5-7 days) will be outlined in material mailed in June.

Optional afternoon tours will be offered in London and Rome and this detailed information will also be in materials mailed in June.

The Induction Ceremony will be Friday, October 30, 1998 at the Annual Banquet. Inductees may be accommodated just for the London meeting, but may attend the Rome portion if they register and are in the lottery up to capacity.

While plans for events and programs are still in the final planning stages, all information will be in the materials to be mailed in June 1998. At this time, we can confirm the opening reception in London on October 29, 1998 will be at Hampton Court Palace. The Annual Banquet will be **Friday** rather than **Saturday**. On Saturday, the Royal Globe Theatre will be reserved exclusively for the College for a buffet dinner and special performance of the Royal Shakespearean Theatre Group.

In Rome there will be a reception on November 2, 1998. On Tuesday, November 3, the evening will be free for independent dining. It is hoped that a papal audience will be possible and a closing black tie banquet is planned for Wednesday, November 4, 1998.

Professional programs are being planned in both locations by President-Elect E. Osborne Ayscue, Jr.

Please watch for registration materials in June 1998 and respond within the specified three-week period.

The President's Report

As I travel across the country to attend State and Province meetings, I come away with several distinct impressions. First, the warm enthusiasm of our members for the College and the principles for which it stands is apparent at every meeting I attend. There is no group of people, in my experience, who can work with each other, laugh with each other and litigate against each other, with more spirit than our members. Second, there is probably as much activity by our General Committees and our State Committees as there has been at any time in the history of the College and our members continue to develop more projects, particularly on the local level.

On a sad note, Justice John Sopinka of the Supreme Court of Canada, an honorary Fellow and a good friend of the College who attended many of our meetings, passed away suddenly on November 24. Cynthia and I traveled to Toronto to represent the College at the funeral which, as you can imagine, was well attended by family members, the judiciary, the legislature and friends of the Justice. We all will miss Justice Sopinka's warm comradeship, his gregarious personality, his quick wit and his hard work on behalf of the College. Justice

Sopinka, in an extraordinary life of accomplishment, was a professional athlete, a concert violinist, a superb lawyer and an outstanding judge. An obituary of Justice Sopinka appears on page 20 of this *Bulletin*.

As far as the business of the College is concerned, I recently sent a letter to all State and Province Chairs asking that they undertake to have at least one project underway which engages as many of the Fellows as possible. I have asked the Chairs to be prepared to report to their Regents before the 1998 Spring Meeting on the initiatives they are undertaking and whether similar programs would be worthwhile for other jurisdictions. Thus far, the response has been quite enthusiastic. Some states, of course, have more than one project underway, but for those who do not, I believe that this will be a rewarding effort.

The pro bono program, which started in New York under the leadership of Dan Kolb, is being replicated in different parts of the country. This effort is particularly necessary now that federal funding has been substantially curtailed, particularly in class actions. New York Fellows have been volunteering in large numbers to represent people in class actions and in cases involving important is-



Edward Brodsky
President

Presidential Perspective

Edward Brodsky is a partner in the New York City law firm of Proskauer Rose LLP. He received his B.B.A. from the College of the City of New York in 1950 and his L.L.B., cum laude, in 1957 from New York University.

He is the author of "Law of Corporate Officers and Directors," Callaghan & Co., 1985; "Guide to Securities Legislation," New York Law Journal Press; "A Practical Guide to Tax Shelter Litigation," Bi-weekly column, New York Law Journal, 1992 — and "Corporate and Securi-

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sues of law. I recently sent a letter to all State and Province Chairs describing the New York project and suggesting that other jurisdictions replicate it or modify it to fit their needs. Some states have started to do that and

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ties Litigation.”

After graduation from law school, he began his practice with the U.S. Department of Justice, Civil Division, in Washington, D.C. There he soon began his career as a trial lawyer. In 1957 he became a Special Attorney in the Attorney General's Special Group on Organized Crime. In 1959 he became an Assistant U.S. Attorney for the Southern District of New York. Two years later he became Chief of the Special Prosecutions Division of the U.S. Attorney's Office.

President Brodsky currently practices in the areas of commercial litigation, white collar criminal defense and securities law.

His litigation career has led him to a wide spectrum of commercial and white collar criminal cases, including securities fraud, antitrust, contract and real estate environmental cases. He also has participated in intentional act commercial arbitration.

Since 1977 President Brodsky has been a member of the National Advisory Board, Se-

curities Regulation Law Journal. He has also served on the RICO Law Reporter since 1990. He was also on the Editorial Board of The Tax Shelter Advisor from 1984-1986.

In addition to being President this year, he has also served the College as Treasurer (1994); Regent for Downstate New York, Connecticut and Vermont, and Chairman of the International Committee (1991-1994); and Chairman of the Downstate New York Committee (1989-1990). He is also a member of the International Academy of Trial Lawyers.

He participated in the Judicial Exchange between the United States and India in 1994.

Mr. Brodsky is active in the Anti-Defamation League, which presented him with its Human Relations Award at a dinner in his honor in 1995.

Concerning the American College of Trial Lawyers, he would like to see more Fellows — particularly at the local level — engaged in professionalism, advocacy and pro bono programs.

Mr. Brodsky believes the College should continue to improve the quality of the trial bar, to lead the profession by being the best trained, best prepared, and best performing trial lawyers in the United States and Canada.

He also believes that as the information highway paves its way into the courtroom, it will enable lawyers to try complex cases more efficiently. Through the use of computer technology, lawyers will have information at one's fingertips while examining witnesses, and the computer will enable trial lawyers to quickly develop interesting demonstrative evidence to help the jury better understand more complicated cases.

Away from the office, Mr. Brodsky enjoys attending the theater, concerts and ballet. He stays active in the garden, on the bike trail, tennis courts, ski slopes and walking on the beach. He also looks forward to getting to know more College members as he and his wife, Cynthia, travel to State and Province meetings. □

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I look forward to a successful pro bono effort tailored to the needs of each state and province.

There are various kinds of advocacy programs being advanced by State Committees.

For example, the Maryland State Committee is encouraging participation by the Maryland Fellows in law school advocacy programs and post graduate seminars in advocacy. Other states have similar teaching projects. There also are

programs in professionalism being developed and conducted in different parts of the country.

In Canada, the Canada-United States Committee — under the leadership of Jack Giles — is working on a proposed “cross

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"I'm Proud To Be A Lawyer"

BY EUGENE A. COOK

"The first thing we do, we kill all the lawyers"

— William Shakespeare, *Henry VI*

Reprinted by permission of the Houston Chronicle from the Sunday, April 27, 1997 issue.

When anarchist Dick the Butcher speaks these lines, he is recognizing that to overthrow a legitimate government it is first necessary to kill those who oppose tyranny: the lawyers. Despite their meaning, however, the lines are usually taken out of context and employed as the favorite jest of lawyer-bashers everywhere. No one, it appears, likes lawyers. Lawyer-bashing is a national pastime, the theme of regular articles and letters to editors, the punch line of countless jokes and a sure-fire ratings booster for radio talk-show hosts.

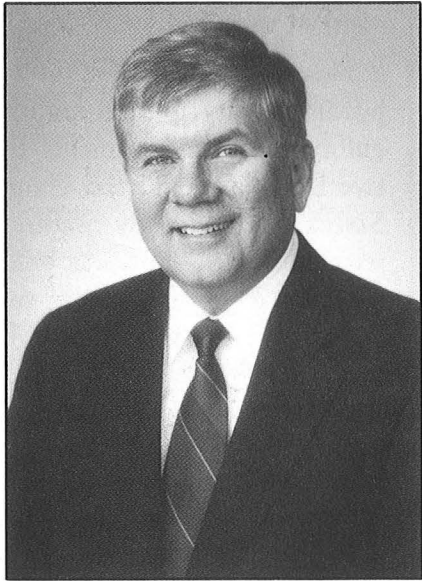
Despite these insults, I am proud to be a lawyer. I know what many members of the public apparently do not: that history is filled with generations of lawyers who, like those Dick the Butcher would exterminate, have stood against tyranny to build a free society. Of the 56 men who signed the Declaration of Independence, 30 were lawyers. The author, Thomas Jefferson, was himself a lawyer. That champion of passionate rebellion, Patrick Henry, was a lawyer. Of the 55 delegates to the Constitutional Convention in Philadelphia who hammered out our Constitution, 31 were lawyers.

A few years later, during the War of 1812, the British invaded and cap-

tured the nation's young capital. A Washington citizen went on board a British ship to secure the release of a U.S. prisoner. The young Washingtonian maintained an all-night vigil aboard the vessel while the British relentlessly bombarded Baltimore. Generations of Americans know the triumph he felt when he saw, in the dawn's early light, that the flag was still there. He was Francis Scott Key, author of the *Star-Sprangled Banner*, and he was a lawyer.

Twenty-five of the nation's 42 presidents were lawyers, including John Adams, Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, Andrew Jackson, William Howard Taft, Calvin Coolidge, Richard Nixon, Gerald Ford and our current president, Bill Clinton. Some of them led us through our country's most difficult conflicts. Most Americans know that Abraham Lincoln, president during the Civil War, was a lawyer. But many do not know that Woodrow Wilson, who led us through World War I, was a lawyer. Franklin Delano Roosevelt, our president during almost all of World War II, was also a lawyer.

Lawyers were no less active as leaders during other challenging periods of American history. Who among



*Eugene A. Cook is Chair of
the
Professionalism Committee
and a partner in the Bracewell
&
Patterson, L.L.P. firm of
Houston, Texas.*

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us can remain untouched by the work — and the words — of Houston's own Barbara Jordan, during Watergate: "My faith in our Constitution is whole. It is complete. It is total." Jordan always believed that "each of us can make a difference, and together we can make this nation stronger."

Jordan was not the first Texas lawyer to defend the cause of freedom. Over 150 years ago, six stubborn lawyers fortified themselves with over 180 other souls to defend the Alamo against impossible odds. William Barrett Travis, commander of the Alamo, was only 26 years old when he wrote an open letter to the people of Texas and all Americans, promising that he would "never surrender or retreat."

What most people do not know is that Travis had a law practice in Anahuac and, later, in San Felipe before he sacrificed his life at the Alamo.

The colorful James Butler Bonham was 29 years old when he died at the Alamo. Long before he traveled there, he achieved fame as a spirited lawyer in South Carolina. One day at court, another lawyer insulted Bonham's female client. Bonham interrupted the proceedings and took a buggy whip to the surprised opponent.

Bonham's contempt charge and subsequent jail sentence were relieved by the ladies of the town, who saw to it that he was well fed and outfitted with whatever comforts his jailers would allow.

Bonham's reckless courage later made him a natural choice to ride through enemy lines in search of reinforcements for the besieged Texas forces. He fought his way through a blistering assault to return to the Alamo. Once back inside, Bonham manned a cannon. Rumor has it he died trying to explode its powder magazine to keep it from falling into enemy hands.

Those who believe that lawyers never act for anything but profit should read the letter to Gen. Sam Houston in which Bonham volunteered his services as a soldier. "Permit me through you to volunteer my services in the present struggle of Texas, without condition. I shall receive nothing, either in the form of services, pay, or land, or rations."

Other lawyers with promising careers traveled from their homes and families to secure freedom for Texas.

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*six stubborn
lawyers
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180 other
souls to
defend the
Alamo*

Proud Lawyer

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Micajah Autry wrote his wife from the long march to South Texas that he intended to help Texans gain their independence because "there is not so fair a portion of the Earth's surface armed by the sun." At 24, Peter James Bailey traveled from Kentucky to fight at the Alamo. Green B. Jameson practiced law in Brazoria County before taking charge of Alamo cannon placement.

The tradition of lawyers' courage and commitment to society continues in modern times. A few years ago, the Buffalo (N.Y.) *News* reported lawyer Deborah Evans Hayden's efforts to help a family so poor that the children and their mother slept on mattresses on the floor. The family ate at a card table with one dish, one spoon and one fork. For heat, they depended on the kitchen stove. Hayden obtained clothes for the children, had them enrolled in school, got the heat turned on and got the father counseling. When asked why she did so much, without a reward, Hayden responded, "I just could not walk away."

A 1993 CNN report told of Michael Dopheide, a young law school graduate in his mid-20s, the same age as many of the Alamo heroes. Dopheide was on board a train which jumped its tracks on a bridge

over an Alabama bayou. Michael pulled more than 30 people from the wreckage. Dopheide explained that "no matter how difficult the situation is, you're still going to help, you're still going to carry this person to a safe place."

Disreputable lawyers are justly criticized. The public, as well as the legal profession, is well served by their exposure. But they are only a small part of the story of the legal tradition. That tradition has been built by the men of the Constitutional Convention, our country's presidents and other leaders, and by the people laboring within the legal profession today.

For every charlatan, we can find a dozen honorable lawyers to offset the jokes, the negative reports and the dishonorable few.

As Americans and Texans, we have only to look back through our own history to find portraits of honorable men and women who have served the society as lawyers.

We have only to picture the Alamo and then, 46 days later, the Battle of San Jacinto and the commander who led Texas to victory in the war's decisive battle. He was Sam Houston, a courageous man, a hero committed to building a strong and free society, a capable leader. But first, he was a lawyer. □

President's Report

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border" treaty for the uniform enforcement of judgments between Canada and the United States. Surprisingly enough, with substantial business being transacted between the two countries, there is no such treaty at this time.

The Canadian Judiciary Committee, under the leadership of Thom Hunt, is considering whether to recommend that in Canada the courts follow the practice in the Federal system in the United States, of aggressively moving cases along without the initiative of any party. Under the present system in Canada, similar to some of our state courts, if one of the parties does not attempt to move the case to trial, the courts will not do it for them.

On a national level, we recently circulated the College's report on sentencing guidelines to all federal judges and I have already received letters from several of them thanking us for a job well done and expressing gratitude for a helpful report. Also, our report on the *Daubert* decision in the Supreme Court continues to be cited favorably in decisions across the country. That report has been published in Federal Rules Decisions and our sentencing guidelines report soon will be similarly published.

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The College has been making an effort to delink the salaries of federal judges from the salaries of Congressmen. We have marshaled our State Committees to have members of the College write letters to their Congressman stating how strongly they believe that the salaries should be delinked.

A special committee on Media Related Problems of the High Profile Case is working on a report which will deal with problems in the handling of major, heavily publicized jury cases that deserve serious consideration by trial lawyers. These problems revolve around the interaction of the news media with court, counsel, witnesses and other participants in the trial or those who publicly comment on the trial.

The Alternatives for Dispute Resolution Committee is hard at work developing a set of rules for the conduct of attorneys in alternate resolution dispute such as arbitration and mediation. At present, we know of no organization that has promulgated such rules.

The Court of Appeals for the District of Columbia Circuit has held that when a client dies the interests of the Government and the interests of the estate of the deceased should be balanced in determining whether the attorney client privilege will apply to what otherwise would be privileged communications.

We are looking into the question of whether, at the appropriate time, we should file an amicus brief criticizing the ruling on the ground that it will inhibit clients from freely talking to their lawyers.

Our Federal Rules of Criminal Procedure Committee,

under the leadership of Bob Ritchie, is examining questions under the sentencing guidelines. The Committee is dealing with difficult questions of recommending modifications of the federal sentencing guidelines.

In the Year 2000, the fiftieth anniversary of the College, our annual meeting is scheduled in Washington and I have appointed an ad hoc committee consisting of past presidents Frank Jones, Robert Clare, Ralph Lancaster, Charles Renfrew and Leon Silverman to make recommendations for that meeting. I have also appointed an ad hoc committee consisting of Treasurer Earl Silbert, President-Elect Ozzie Ayscue and Regent Warren Lightfoot to make a recommendation as to whether at some time in the near future we should create another long term planning committee of the College to



Hawaii State Chair, James Kawashima and his wife, Meliva (left) welcome President Ed Brodsky and his wife, Cynthia (right) to the Hawaii Fellows Dinner on January 26, 1998.

recommend what the College should be doing in the millennium. Our last long range planning committee meeting was in 1993.

We anticipate a history of the College will be completed and published by the History Committee during the year 2000 for the College's fiftieth anniversary celebration.

These are but some examples of the rich menu of projects in which the College is involved. As you can see, we are busy and productive.

One of the joys for myself and Cynthia is visiting the members of the College at dinners and meetings in different states and provinces. Recently, for example, we were in Portland, Oregon to attend the Oregon dinner. Not only were we the beneficiaries of warm fellow-

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President's Report

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ship by the Oregon people, but we also were lucky enough to be in Portland to see a magnificent exhibit of glass sculpture and artifacts by the well known artist, Dale Chihuly. In addition, Regent Mike King and his wife Mary Jo were gracious enough to invite us to their home and escort us on a magnificently scenic drive to Mount Hood.

We also spent an extraordinarily busy weekend in Mississippi and Louisiana in early December. On Friday night we attended the Mississippi State Dinner in Jackson. On Saturday morning I attended a meeting of the very diligent Mississippi State Committee. On Saturday, mid-morning, we traveled by car to New Orleans and attended the Louisiana Dinner that night. Then on Sunday morning I attended an Executive Committee meeting of the College and we flew home on Sunday afternoon. Talk about whirlwinds!

President-Elect Ozzie Ayscue is hard at work planning the Spring meeting in Palm Desert which you should not miss. Cynthia and I are looking forward to seeing you there for what promises to be an excellent professional program and for some fun in the sun. ☐

Deadline Extension for Foundation Cookbook

In view of the demands that the Holidays have made on all of us and the Canadian Postal strike, we are extending the deadline for contributions to the American College of Trial Lawyers Cookbook until February 27, 1998.

The response has been very encouraging and offers us some unusual and fascinating recipes. Two Justices of the Supreme Court and a Lord of Appeal in Ordinary have joined many other Fellows, Honorary Fellows and Judicial Fellows who have found time to share their family secret recipes; or if not secret, their favorite recipe. To all of these contributors we extend our sincere thanks.

Their covering letters show a sincere desire to help and a love for the College. They include statements like, "I am sharing this recipe for the first time"; "For 33 years I have guarded this recipe and refused requests to divulge it, but I have decided to release it to you"; or another, "Enclosed are some of our precious family recipes." One of the most moving stated, "this is the only time we have shared the recipe outside the family. We feel in this instance, however, that Dad would approve our sharing the recipe, because he was an

early member of the College."

We have a strong base on which to build a great cookbook. And we know that among the Fellows we have not heard from that there are many with the same generous spirit and love of the College as those who have given us such a great start.

The Canadians were blanked by the Postal Strike, although one enterprising Fellow faxed his recipe. What is most disheartening is that there are almost 15 States and all the Provinces but one that have not made any contribution. We are intrigued by the fact that there are no cooks in these areas.

We have therefore decided to extend the deadline and to urge all the shy chefs to come forward and do their bit for the College as others have done. Send your recipes to:

R. L. Clare
P. O. Box 307
Annandale, NJ 08901

It helps if the recipes are on 5x6 cards, but we will take them any way we can get them.

Additional New Fellows Inducted During 1997 Annual Meeting in Seattle

We regret the following new Fellows inducted during the Seattle meeting were not listed with their colleagues in the Fall 1997 Bulletin. The College welcomes these new Fellows.

GEORGIA

E. Davison Burch
Athens

William C. Lanham
Atlanta

H. Lamar Mixson
Atlanta

HAWAII

Stephanie A. Rezents
Honolulu

IDAHO

John Magel
Boise

ILLINOIS UP & DOWNSTATE

Kimball R. Anderson
Chicago

John F. Flannery
Chicago

John T. Hickey, Jr.
Chicago

Richard J. Hoskins
Chicago

Richard J. Prendergast
Chicago

INDIANA

Michael R. Conner
Indianapolis

IOWA

Stephen J. Holtman
Cedar Rapids

Robert D. Houghton
Cedar Rapids

KANSAS

Gerald L. Green
Hutchinson

M. Warren McCamish
Kansas City

KENTUCKY

Leslie W. Morris II
Lexington

ACTL Fellows Appointed To The Bench

The College is pleased to announce the following judicial appointments of Fellows.

Charles W. Arnold, Jr. of Jacksonville, Florida was appointed to the Circuit Bench in Duval County, Florida by the Governor of Florida.

Charles R. Breyer of San Francisco, California was recently appointed as United States District Judge for the Northern District of California.

Richard F. Cebull of Billings, Montana was recently appointed United States Magistrate Judge, U.S. District Court for the District of Montana at Great Falls, Montana commencing February 1, 1998.

William I. Elfving of San Jose, California was recently appointed Judge of the Superior Court for the County of Santa Clara, State of California.

Bruce W. Kauffman was confirmed by the U.S. Senate to be United States District Judge for the Eastern District of Pennsylvania.

Because a particular large client may well not be ours tomorrow, we have much more latitude in telling them exactly what they must do and what we are willing to do.

Independence

(Continued from page 3)

colleagues of the criminal bar. Consider the situation we would have if not for an independent criminal bar. Alesander Solzhenitsyn describes such a wasteland in Volume One of his *Gulag Archipelago*. With great distaste he describes trial after trial in which the defense lawyers are recruited to the prosecution's viewpoint, saying at one point: "A Soviet defense lawyer is first of all a Soviet citizen" and "like all workers he too is outraged at the [political] crimes of the defendants." Our criminal law practitioners are among the most self-reliant because oftentimes the monetary reward fails to compensate for the disrepute they endure from some segments of the public. Observing our colleagues at the criminal bar and the daily recriminations they face reminds us of Boswell's question to Dr. Johnson: "What is the greatest of virtues?" and Dr. Johnson's reply, "Courage, sir, for without courage, there can be no other virtues." Similarly, the lawyers who practice at the domestic relations bar probably encounter more overt hostility than any among our number, and the independence of their judgment in those matters often preserves the very sanity of their clients.

The Alabama State Bar recently dedicated a memorial in Monroeville, Alabama to the ideals personified by Atticus Finch in *To Kill a Mockingbird*, and afterwards we received a letter from Harper Lee, the author. In that letter Ms. Lee said that our profession has always had "some real-life

heroes — lawyers of quiet courage and uncompromising integrity who did right when right was an unpopular and sometimes dangerous thing to do." Ms. Lee's words describe a number of our colleagues at both the criminal and domestic relations bars.

What about the corporate lawyer; those of us who regularly advocate for large businesses in today's world? Have we become sycophants as Brandeis noted near the turn of the century? I submit to you that we have not. In today's climate more and more cases involve extraordinarily high stakes and corporations must defer to the judgment of outside trial lawyers, in matters of discovery, in tactics, in evaluations, in decisions about when to settle and when to fight. Moreover, the transitory nature of today's practice gives us great leverage with our corporate clients. We know they distribute their work widely on occasion; we know that budgetary constraints may make the work unattractive to us next year or the next. Because a particular large client may well not be ours tomorrow, we have much more latitude in telling them exactly what they must do and what we are willing to do.

Where defense counsel interface with large corporate defendants, our colleagues bring important attributes. First of all, we offer our good names and our integrity, and our clients need those more than ever before in today's punitive damages and sanctioning atmosphere. Our clients know that trial judges respect us and listen to us and trust us; that appellate judges credit what we say the law means; and

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that our opponents can bank on what we tell them. Those elements are priceless to a beleaguered corporate defendant; they are lifeboats available when the ship is sinking. My friend, Judge Bill Hoeveler, who stands for the very best of our aspirations, likes to quote Robert Louis Stevenson's observation that "personal honor is the distinguishing badge of the legal profession." Ultimately the corporate defendant is paying for just that — our good name and our honor — and we exact more than monetary payment in return. We insist that corporate behavior be modified not only in the current instance but for other occasions in the future.

At no time in our country's history have corporate defense lawyers held such sway in boardrooms. They listen to us, not because they want to or they like us more than they used to, but because we alone hold a map for survival in the minefield of today's high stakes litigation. And we in turn can insist that clients join us in heeding Dean Roscoe Pound's admonition: that in addition to asking whether certain conduct is lawful, we should also ask whether it is the *right* thing to do.

All of us defense lawyers can search in our years of practice and can find a few times when we have truly made a difference, with a company saved, or jobs created or conditions improved. Think about it, you defense lawyers; you are always more liberal in your thinking than your clients, and that very contrast places today's corporate lawyer, in Tocqueville's words, squarely between the wealthy and the people. It is my belief that we have a great influence on corporate America;

that our rectitude time and again sets the standard for our corporate clients in their approaches to litigation, and indeed, in fundamental questions of right and wrong.

The last great division of our bar comprises those who regularly represent the little people, the powerless; for ease of reference, the plaintiffs' bar. As I said, these lawyers are the *most* autonomous; they have no board of directors looking over their shoulder. They have the awesome responsibility of advising the truly unsophisticated clients, and necessarily must play major roles in every decision. Literally, because their clients' livelihoods sometimes depend on them, plaintiffs lawyers every day make the lonely, stress-filled decisions about what to accept or not accept in settlement; about which cases to undertake; about how much money to spend on a risky case. The recent book written by Jonathan Harr called *A Civil Action* captures the dreadful responsibility assumed by plaintiffs' lawyers; I recommend it to you. More than any other segment of the bar, these practitioners exercise their independence on a daily, if not hourly, basis.

And look at the changes affected by our brothers and sisters at the plaintiffs' bar. Because of them and their independent decisions, women and minorities are protected in the workplace; because of them the disabled are accommodated, civil liberties are preserved; because of them, American products are the safest in the world; because of our colleagues who represent plaintiffs, our environment is

(Continued on page 16)

*we alone
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Our members of the plaintiffs' bar exert an enormous influence and have literally transformed the face of this country.

(Continued from page 15)

cleaner than ever before; our workplaces and recreation areas are the safest in the world. Our members of the plaintiffs' bar exert an enormous influence and have literally transformed the face of this country. The public good is unquestionably served by the efforts of this proud segment of our bar.

These positive aspects of our practice are not, however, part of the public's perception of us. But that is because we live in an age of images, particularly where the press emphasizes one sentence, one sound bite, frequently out of context. Everybody worries today about images; corporations and individuals worry about their images. The press and the public complain about *our* image. And my answer to those critics is, "we're going to be the best lawyers we can be, and our image will take care of itself." We're not in a popularity contest; we never have been. We're supposed to be tough, resourceful advocates for our clients and within the bounds of propriety, we're trying to prevail. To the press and public, I say, don't come patronizing us and telling us we need to work on our image. That's not a concern that governs what we do as lawyers.

If Governor Leroy Collins had worried about his image, he would never have gone to Selma; he would never have taken the stands he took in the sixties. If Alabama lawyer Fred Gray had worried about his image, Rosa Parks would have languished in jail and the civil rights movement might have foundered. Governor Collins and Fred Gray have become legends, and I am proud to be a member of their profession. We don't make the laws and we

don't interpret them, but we are called on to use them for the benefit of our clients and that is precisely what we do, as hard as we can.

And just as unrelentingly, we police ourselves and discipline ourselves to a degree far beyond any other profession. Architects, engineers, physicians, preachers, bankers and journalists do not even come close. The American lawyer is scrutinized more closely than any profession on earth, and we welcome it; it is part of the price of independence. Such scrutiny serves the public, and it makes us better lawyers. None of us is perfect but all of us require certain standards of one another.

Our critics point out those among us who don't measure up, and not only do they tar us with the same brush, they go further and say our profession is responsible for many of society's ills. But think about it; we live in a time of shifting mores, of increasing violence, of family abuse. Sometimes the very fabric of society seems to be tearing: a confrontational, in-your-face mentality pervades; we see incivility among motorists, professional athletes, government employees, salespersons; we see slipshod work, persons without pride in their production, outright dishonesty. Our profession is a part of that fabric and is not immune from this generalized decline in values. But more than most, we fight it; we continue to hold our colleagues accountable, we insist on our standards and we continue to strive for civility among our members. More than most, we are mindful of our moral and ethical obligations; more than most, we remember that

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everything we do and say reflects not only on us personally but also on our profession.

Look at what we do for society as lawyers; we manage disputes, we reduce the friction generated everyday in the workplace and the marketplace because we provide an outlet, and frequently a cure. Other societies have fewer lawyers, but the governments of those countries are far more intrusive than ours; it is precisely the presence of our profession that permits this country to be so unregulated. So although the press and the public like to say that lawyers are a necessary evil, the truth is that most of this country's bedrock values are in place because of lawyers, and many of this country's most positive changes occurred because of lawyers.

So we labor on, making small differences often and occasionally a significant contribution. Justice Oliver Wendell Holmes was a realist about the practice of law. He said this about us: "We cannot live our dreams. We are lucky enough if we can give a sample of our best and if in our hearts we can feel that it has been nobly done." All of us occasionally achieve that goal in our practice, and those few times make our other travails worthwhile.

Finally, our independence enures to the public's benefit in one final way, and this one is outside the practice of law. Because our time is our own and we have to answer to no one on a regular basis, we give back to our communities to a degree unmatched by any other profession. There is a passage in the *Book of Luke* that cuts across all creeds. It says that "to whom

much is given, much is required." We have been given much, in terms of a capacity for analysis, an ability to solve problems, the training to organize and prioritize, and those same qualities lend themselves to serving our communities. Just look at what our colleagues do outside the profession. In addition to the demands of practicing law, our lawyers bear children and raise them; they coach little league; they serve on church and synagogue boards; they preach a sermon occasionally; they quite literally put God before Mammon; they serve on library boards, school boards, city councils, United Way; they provide leadership to countless educational and charitable organizations. A year ago the largest peacetime gathering in world history convened in Atlanta, conceived by Billy Payne, a lawyer, and implemented largely by his committee of nine, of which five were lawyers and one was the spouse of a lawyer. In Salt Lake City the Winter Olympics of 2002 will be led by Tom Welch, a lawyer and the spearhead for the entire organized effort. I say to the press and public: don't come patronizing us and saying that lawyers are just in it for the money; our profession gives more back to society than any other in terms of volunteer time.

So it is true: we cannot live our dreams, but we have been given a unique opportunity to serve our clients and at the same time the public. And on rare occasions in all of our lives we can look back and know we have made a difference in someone's life. It is my belief that we make a difference many more times than we are aware of. We

(Continued on page 19)

*Other
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of those
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ACTL Calendar of Events

1998

February 4

Pennsylvania Fellows Dinner
Park Hyatt Philadelphia
Philadelphia, PA

February 13

New England Regional Winter
Black Tie Dinner
The Ritz-Carlton
Boston, MA

February 20-21

Arkansas Fellows Meeting
The Inn at the Mill
Fayetteville, AR

February 26—March 1

South Carolina
Annual Meeting
The Cloister
Sea Island, GA

February 26—March 1

North Carolina Meeting
The Cloister
Sea Island, GA

February 27-28

Gale Cup Moot Competition
Osgood Hall
Toronto, Canada

March 5-7

National Trial Competition
Final Rounds
St. Anthony Hotel
San Antonio, Texas

March 15-19

Board of Regents Meeting
La Quinta Resort & Club
La Quinta, CA

March 19-22

ACTL Spring Meeting
Marriott Desert Springs
Palm Desert, CA

May 1-3

AR, MS, LA & TX
Regional Meeting
Lake Hamilton Resort
Hot Springs, AR

May 8-10

Tri-State Regional Meeting
(AL, FL and GA)
Marriott Grand Hotel
Point Clear, AL

May 14-17

DNY-CT-VT Canada
Regional Meeting
Elbow Beach Hotel
Bermuda

May 29-30

NJ, DE and PA
Regional Retreat
Skytop Lodge
Pocono's, PA

June 5-7

Ontario and Upstate New
York Fellows Regional
Meeting
Niagara-on-the-Lake
Ontario, Canada

June 18

Tennessee Fellows Annual
Black Tie Dinner
TBD
Nashville, TN

July 19-21

Northwest Regional Meeting
Salishan Lodge
Gleneden Beach, OR

August 14-15

Iowa Fellows
Summer Meeting
Village East
Okoboji, IA

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

October 24-28

Board of Regents Meeting
London, England

October 29—November 1

Annual Meeting
London, England

November 2-4

Rome Conference
Rome, Italy

November 19-21

Oregon Fellows Meeting
TBD

December 4

Mississippi Fellows Dinner
TBD

December 5

Louisiana Fellows Dinner
TBD

1999**March 7-11**

Board of Regents Meeting
The Ritz-Carlton
Naples, FL

March 11-14

ACTL Spring Meeting
The Ritz-Carlton
Naples, Florida

August 1-5

Northwest Regional Meeting
Coeur d'Alene Resort
Coeur d'Alene, ID

October 24-28

Board of Regents Meeting
Philadelphia Marriott
Philadelphia, PA

October 28-31

ACTL Annual Meeting
Philadelphia Marriott
Philadelphia, PA

2000**March 12-16**

Board of Regents Meeting
The Ritz-Carlton
Kapalua, Maui, Hawaii

March 16-19

ACTL Spring Meeting
The Ritz-Carlton
Kapalua, Maui, Hawaii

October 22-26

Board of Regents Meeting
J W Marriott
Washington, DC

October 25-29

ACTL Annual Meeting
J W Marriott
Washington, DC

Independence

(Continued from page 17)

are the guardians of our country's mores in a very real sense; we are watched, we are emulated, and what we do directly affects the rest of the nation and its quality of life in a special way. Other societies pay highest tribute to their monarchs or to their deceased military or political leaders. In this country, by contrast, we exalt a simple document displayed at the National Archives. That document was written by lawyers and every day is being preserved by lawyers. I, for one, am proud to be among that number, and I am proud to join you in celebrating the extraordinary legacy of Chester Bedell.

June 20, 1997 □

In Memory of John Sopinka

by
David W. Scott, Q.C.

Mr. Justice John Sopinka, who died suddenly and unexpectedly on the 24th day of November 1997, was a wonderful illustration of the miracle of immigrant parents. John's father was born in the Ukraine and emigrated to Canada in 1926.

John was a person of enormous and varied talents, each honed to a high level of excellence. In keeping with his Eastern European heritage, he was an artist, a violinist whose skills in spite of a multitude of competing demands enabled him to play at the orchestral level. He was an athlete of superior ability. He played professional football as a halfback with the Toronto Argonauts and, indeed, was a sufficiently valuable commodity to be traded at the height of his career to the Montreal Allouettes.

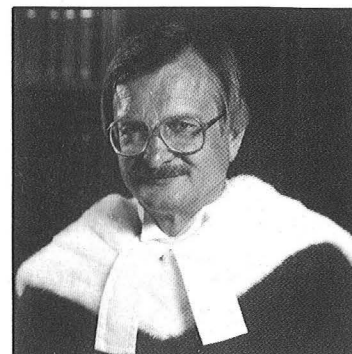
At the Bar, Justice Sopinka was a lawyer's lawyer. A prodigious worker, he stood out from the pack as an advocate. His hallmark was a special ability to polish the point to its most important essentials, stripping away excessive and confusing verbiage. His cross-examinations were legendary for their focus and brevity, effectively communicating the point to the trier. He laid out a

seductive trail and left the turning point to be identified by the Court. Everything in his advocacy was understated.

As a judge, he lived up to everything and more than was anticipated of him. All of his judicial colleagues at his death testified as to the extraordinary influence which his practical judgment and common sense had in judicial conferences. To the surprise of no one who knew him well, he turned out to be a rather benevolent judge. His sense of restraint was most finely tuned when counsel was obviously struggling.

In the case of questions from Mr. Justice Sopinka and in keeping with his intellectual standards, the rule was simple: respond as effectively as you can to the question; it won't be repeated.

He enjoyed a wonderful sense of humour. Hardly a question posed or an observation made without a chuckle and a sideways glance. His judicial demeanour was an invitation to participate. In addition to these qualities, intellectual strength, wit and effective communication, John was by nature highly competitive. He was a fine rackets player and prior to his death he had taken up golf with a vengeance.



*Justice John Sopinka
Supreme Court of
Canada*

The American College of Trial Lawyers was a high priority in John's life. He was inducted as a Fellow in Chicago in 1984 and participated in the second Canada-U.S. Legal Exchange in 1993, and thenceforth he was a regular attendant at College functions and one of its most fervent supporters. He was highly influential in maintaining the prestige which the College has enjoyed with the judiciary across Canada. Great good fortune ensured that prior to his death, and with the approval of the Board of Regents, he was invited to lend his distinguished name to the award for the winning team at the planned National Trial Competition for Canada. His loss was completely unanticipated and a cruel shock for Marie and his children, Melanie and Randall. The fellowship of the American College of Trial Lawyers is diminished by his passing. □

Committee News Reports

Adjunct State

The committee considers and makes recommendations on nominations of lawyers whose trial experience and activities are not known to the State Committee of a particular state. As an example, in the last several months two potential candidates have been referred to our committee. One had tried a very substantial case with excellent results in a jurisdiction outside of his home town. The other was an individual who had recently moved to another state. We have contacted the State Chairman of the "home" state in the first example and the State Chairman in the "new" state in the second example. Our committee will follow the developments of the investigation in those two situations. If appropriate, someone from our committee will be appointed to make an independent investigation and recommendation.

The committee is anxious to hear from Fellows who know of similar situations. Particularly due to the mobility of lawyers — both in moving to other states or in developing a national practice — a lack of familiarity with their trial experience in the

state where they live can result. Please let us know if you are aware of qualified attorneys in these circumstances who deserve consideration.

Frank N. Gundlach, Chair

Alternatives for Dispute Resolution

The ADR Committee continues to work on its standards for mediation project. A January meeting in Chicago was tentatively scheduled by Judge McGarr.

Shaun S. Sullivan, Chair

Attorney-Client Relations

The Attorney-Client Relations Committee continues to work on evaluating the growing problems relating to the time-honored rules governing lawyer-client privilege and confidentiality. There are growing attacks across the country in which courts are being asked to create exceptions that threaten the integrity of the concept.

We hope to gain sufficient information, input and comment from committee members to report to the Regents and suggest

some position or action be taken if that seems to be the appropriate course.

Carman E. Kipp, Chair

Complex Litigation

The Complex Litigation Committee continues to expand on the work of the Ad Hoc Committee on Mass Tort Project. The last two interim reports have been circulated to committee members asking them to suggest new and constructive ideas on the problem of handling "mass tort" litigation. We are in the process of collecting and reviewing these suggestions and look forward to discussing them at our committee meeting during the ACTL Spring Meeting.

Ralph W. Brenner, Chair

Federal Criminal Procedures

The Federal Criminal Procedures Committee held work sessions in Washington, D.C. in November 1997 and a subcommittee held a work session in New Haven in December. Sub-

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committees have been established for research and drafting of a report to the Board of Regents. These subcommittees will address three areas of concern relating to federal sentencing:

(1) the modification of procedures for downward departure based upon substantial assistance to permit motions by any party and the courts;

(2) modification of the manner in which "relevant conduct" is considered in sentencing under the guidelines and in triggering mandatory minimums; and

(3) mandatory minimums and the manner in which their application impacts sentencing.

John P. Cooney, Jr., Terry Philip Segal and Thomas E. Dwyer, Jr. have been asked to chair the respective subcommittees. The committee has the benefit of many years of research and analysis in these areas by Professor Daniel J. Freed of the Yale Law School. We have established contact with the United States Sentencing Commission, the Senate Judiciary Committee and the Committee on Criminal Law of the Judicial Conference of the United States. The committee is working toward the goal of a positive, constructive impact on these areas of federal sentencing.

The Federal Criminal Procedures Committee will welcome input from Fellows of the Col-

lege in any of the three areas under study. Suggestions for the approach to be taken, as well as sharing of experiences within the areas of concern, would be particularly helpful.

Robert W. Ritchie, Chair

Federal Rules of Evidence

The College's Report on "The Law of Evidence in Federal Sentencing Proceedings" was mailed during the Fall to all Justices and Judges of the United States Supreme Court, the United States Courts of Appeals, and the United States District Judges. The committee received several favorable comments on the Report from federal judges. The report will be published in *Federal Rules Decisions* during the Spring of 1998.

The committee will meet during the Spring Meeting in Palm Desert and the Annual Meeting in London. At those meetings, the committee will consider certain changes to the Federal Rules of Evidence which may be proposed by the United States Judicial Conference's Advisory Committee on the Federal Rules of Evidence and whether or not our committee should comment on those proposals. In addition, the committee will consider whether there are any topics which would be appropriate for a re-

port by the College similar to the federal sentencing proceedings report and the earlier report on the Supreme Court's *Daubert* decision.

Fletcher L. Yarbrough, Chair

History

The History Committee continues to monitor the work of the historians who are researching and writing a history of the first 50 years of the College. This history will be completed and published during the year 2000 in connection with the College's 50th anniversary celebration.

James W. Morris, III, Regent Liaison

International Committee

The committee's mission is "to advance the rule of law abroad by the encouragement of independent advocacy, particularly in those nations recently emerging from despotic pasts." In the committee's short existence, members have participated in an Indo-American Judicial Exchange, traveled to Tunisia under the sponsorship of the U.S. Information Service, prepared a paper on advocacy which was translated into Russian and disseminated in Russia, and served as speakers for Federal Judicial Center

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seminars for foreign judges and officials.

Suggestions for future activities include a South Africa-American Legal Exchange, trips to other countries under U.S.I.S. sponsorship, preparing papers for translation and dissemination in other countries, support for the United Nations War Crimes Commission, studying and making recommendations concerning international tribunals — including the proposed International Criminal Court — and providing observers at trials with international human rights implications. Some of these projects are dependent on the cooperation of, or funding by, other organizations.

If Fellows of the College have any suggestions for the work of this committee, I would appreciate hearing from you.

The committee will be meeting at both meetings of the College in 1998, Palm Desert and London.

Thomas D. Allen, Chair

Legal Ethics

Following a meeting of the State and Province Chairs and General Committee Chairs, President Brodsky inquired as to whether there might be some overlap in the activities of the Professionalism Committee, the Teaching Trial and Appellate

Advocacy Committee and the Legal Ethics Committee. In a telephone conference call, it was determined that the Teaching Trial and Appellate Advocacy Committee was involved in a project that related to the Legal Ethics Committee project currently underway in developing a teaching syllabus for the Code of Trial Conduct. As a result, it was determined that the committees would attempt a joint meeting at the Palm Springs meeting.

The sub-committee developing the teaching syllabus for the Code of Trial Conduct is hard at work. Our objective is to have a draft for review by the entire committee this spring. President Brodsky expressed a desire that the project be completed this year.

Murray E. Abowitz, Chair

Mexico Committee

The Mexico Committee has continued with the plans discussed in the last *Bulletin* with efforts to bring the Mexican Ambassador or Foreign Minister to a College meeting as a speaker in the near future, and to invite one or two top Mexican trial lawyers as guests to facilitate discussions that may lead to the establishment of ongoing informal contacts.

Philip A. Robbins, Chair

National College of District Attorneys

As 1997 comes to a close and the College prepares for its twenty-eighth year of service to the prosecution community, it is time to take a moment to reflect upon the year just passing.

The Board of Regents held its last meeting in December in San Antonio, Texas, in conjunction with the meeting of the Board of Directors of the National District Attorneys Association. The 1998 budget was approved and officers were elected. Thomas J. Charron of Marietta, Georgia, was re-elected Chairman, Beale Dean of Fort Worth, Texas — and a representative of the American College of Trial Lawyers — was re-elected Vice-Chairman, and William Murphy of Staten Island, New York, was elected Secretary/Treasurer.

The 1997 Career Prosecutor Course, in its 27th year, was one of the largest and most successful in history. The John Price Lecture was delivered by the Honorable John Kaye, County Prosecutor in Freehold, New Jersey and then President of the National District Attorneys Association.

The Seventh Annual National Conference of Domestic Violence was attended by over 1,200 participants in Los Angeles. The keynote address by the

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(Continued from page 23)

Honorable Charles I. Hynes, District Attorney in Brooklyn, New York, set the theme of the Conference — “Beyond Survival.”

During 1997 I presented the first Dean's Award of Honor. Actually, I presented this award twice during 1997 — once to the Honorable Sandra A. O'Connor, State's Attorney of Baltimore County, Maryland, and also to the Honorable Charles J. Hynes, mentioned earlier. The Award was presented to them in recognition of their commitment to the improvement of the criminal justice system and their exemplary contributions to excellence in prosecution education through their support of the College over the years.

Faculty awards during 1997 were presented to Richard A. Mullaney, Assistant General Counsel, City of Jacksonville, Florida — who received the Distinguished Faculty Award — and to Paul Der Ohannesian II, Assistant District Attorney in Albany, New York; Robert J. Humphreys, Commonwealth's Attorney in Virginia Beach, Virginia; and Charles R. Pyle, Assistant Attorney General in Tucson, Arizona. Each received the Lecturer of Merit Award.

As successful a year as 1997 has been for the College, 1998 promises to offer new challenges and opportunities. During the spring, a new course will

be presented in Charleston, South Carolina — *Technology In and Out of Court*. This course will address technology in the courtroom. The coordinated approach to the preparation and use of exhibits using presentation software and the use of technology in the office will be explored.

The Eighth Annual Conference of Domestic Violence will be held in Dallas, Texas, in October.

In May, the College will present the first trial advocacy course at the National Advocacy Center in Columbia, South Carolina under an agreement with the National District Attorneys Association. This project has been under development for several years and we are very excited about the opening of the Center.

John L. Hill, Jr., Chair

Samuel E. Gates Litigation Award Committee

The committee will convene in March 1998 at the ACTL Spring Meeting in Marriott Desert Springs, Palm Desert, California to consider lawyers who have made a significant contribution to the improvement of the litigation process and who would be deserving recipients of the Award. The committee has invited and continues to invite suggestions for

qualified awardees to be made substantially in advance of that time. A summary of the work done by any proposed recipient which would qualify him for the Award should also be submitted. Although the recipient need not be a Fellow of the American College of Trial Lawyers, he must be a lawyer who has made a significant contribution to the improvement of the litigation process.

Recipients of the Award prior to 1997 are shown on page xv of the 1997 ACTL Roster. The name of Judge Patrick E. Higginbotham of the Fifth Circuit Court of Appeals, to whom the Award was presented at the 1997 Annual Meeting of the College, will be added to that list.

Beale Dean, Chair

Teaching of Trial and Appellate Advocacy

Following the Eastern Committee Chairs Workshop, a list of potential projects was circulated to committee members for comment. The list included a mentor program; involvement of fellows in swearing in ceremonies for new lawyers; a “bridge-the-gap” program; and the training of public interest lawyers on litigation subjects. Comments have been received and the feasibility of projects on this list is under consideration.

At the request of President Brodsky, the committee is examining a draft syllabus on the teaching of professionalism to law students. This draft syllabus was prepared by the prior committee for use in conjunction with a videotape. We will see if the syllabus can be adjusted for use without the videotape in order to make use of the fine effort put into the syllabus by the prior committee.

At the request of the Chair of the Professionalism Committee, our committee has committed to assist the Professionalism Committee in an exciting project to demonstrate the positive role of lawyers in the founding and development of our country.

J. Robert Elster, Chair □

Set Your Calendars NOW

March 19 — 22, 1998

ACTL Spring Meeting
Marriott Desert Springs
Palm Desert, California

October 29 — November 1, 1998

ACTL Annual Meeting
London, England

November 2 — 4, 1998

Rome Conference
Rome, Italy

State and Province Committee Reports

ARIZONA

The Arizona Fellows sponsored the annual Jenckes Moot Court Competition in October between the top two teams from the University of Arizona and Arizona State University Colleges of Law. Arizona Fellow Joe McGarry served as event chair. This year's format was an argument to the trial court at the conclusion of a bench trial, rather than a jury argument as in the past. Approximately four dozen Arizona Fellows judged the presentations on the qualities of the advocacy, giving a slight edge to the team from the University of Arizona. Following the competition the contestants and the law school Deans and professors joined the Arizona Fellows and their spouses for dinner. Cash prizes and individual trophies were donated to the winning and losing teams. A permanent trophy is presented which stays at the winning school until the next competition. The competition honors Joseph Jenckes, a top Phoenix trial lawyer until his death, and one of the earliest Arizonans elected to the College.

Philip A. Robbins, Chair

CONNECTICUT

A black-tie dinner was held in October, with President-Elect E. Osborne Ayscue, Jr. in attendance. A state committee meeting is scheduled for January where the committee will consider the appointment of an Access to Justice Committee.

Shaun S. Sullivan, Chair

FLORIDA

The Florida Fellows recently welcomed Louis Mrachek, who was inducted to Fellowship in the College at the Annual Meeting in Seattle.

State Committee member Leon Handley was recently selected by the Florida Section of ABOTA as the Trial Lawyer of the Year in Florida for 1997. Also, former State Committee member Bob Josefsberg recently took the helm as President of the International Academy of Trial Lawyers.

Fellow Tom Ervin assumed the Chairmanship of the Professionalism Committee of the Florida Fellows in October, when the former Chair of that committee, Murray Wadsworth, assumed Chairmanship of the

Florida State Committee. Fellow Bob Feagin has agreed to serve as Chairman of an Access to Justice Committee, which is in the process of formation at this time.

The Florida Fellows will hold their annual banquet at The Florida Bar Convention on Friday, June 26, 1998.

Murray M. Wadsworth, Chair

KENTUCKY

The Kentucky State Committee will meet in February. And the Kentucky chapter will hold its Annual Luncheon during the 1998 KBA Annual Convention on Thursday, June 18, 1998, at The Lexington Club, 170 Esplanade, Lexington, Kentucky, from 12 Noon to 1:30 p.m. (EST). The State Committee will also consider scheduling at least one additional social event for the entire membership on Barren River Lake on a date to be announced.

Wayne C. Priest Jr., Chair

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MICHIGAN

The Michigan State Committee held its first meeting of the new year in November and will meet again in January. Tentative meetings are planned every other month thereafter to consider prospective nominees for Fellowship and to review and consider activities of the State Committee.

During the January 1998 meeting the State Committee will consider implementation of the President's proposal for pro bono activities and other plans we might implement during the year. The Annual Michigan Fellows dinner will be held February 6, 1998.

Robert B. Webster, Chair

NEW JERSEY

The State Committee met in early December with excellent attendance. In keeping with the theme at the Eastern Chairs Conference in Virginia, we had quite a positive discussion relative to increasing the profile of the ACTL among the law school and non-members. Our goal is to make every effort to have maximum participation, both at State events and at the Spring and Fall meetings. In that regard, we are scheduling the annual meeting for late February 1998.

Next, we discussed the criteria for new Fellows and are looking to improve the "outreach" efforts to find the best and broadest array of applicants.

With regard to projects, we are considering a scholarship sponsored by the ACTL New Jersey chapter for outstanding academic and trial practice in one of the three law schools in New Jersey. Another potential project is an Amicus Curiae Committee to select and submit for consideration potential litigation in which the College may want to participate. Obviously, this will meet all the criteria discussed in the Virginia meeting.

We also discussed conducting periodic seminars at law schools, as well as to Young Lawyer sections of the local county bar associations. These seminars would address issues of professionalism, civility and ethical conduct in the trial practice of law in New Jersey.

With regard to the Access to Justice Committee, there were several differing views and the issue was tabled until the next meeting. Our next meeting is scheduled for late January 1998 so that we may move the paperwork of appropriate nominations forward in plenty of time for the March 15 deadline.

Edward B. Deutsch, Chair

NEW MEXICO

The New Mexico Fellows plan to have a special State Meeting on May 15 and 16 in Farmington, New Mexico. Farmington is a unique destination because of its proximity to the Navajo Indian Reservation, great golf courses and world class trout fishing. Those Fellows who want to play golf will have the opportunity to play in two scrambles, one at San Juan Country Club, and one at Pinon Hills Golf Course, a course which has been listed as one of the best five public courses in the United States by *Golf Digest*.

Those Fellows who are not interested in playing golf, but enjoy fly fishing, will have the chance to be a part of guided trips or seminars which will take place on the San Juan River's Quality Water section. It will be an opportunity to see how many fish in excess of 20 inches they can catch and release in a single day.

There will, in addition, be tours for spouses to Indian trading posts in the area where Navajo jewelry and Navajo rugs will be shown and discussed.

We're looking forward to a little CLE and a lot of camaraderie. We welcome all Fellows who might be interested in joining the New Mexico group.

Richard L. Gerding, Chair

NEW YORK

This year's Annual Breakfast of the New York Fellows is to be held in January. This is the one occasion during the year when the Upstate and Downstate New York Fellows get together, and it is always a festive and collegial event. It is held each year during the New York State Bar Association's Annual Meeting in Manhattan to maximize the potential turnout. We have invited and hope to be joined by the judges who are Fellows or Honorary Fellows.

Philip J. Kramer, Chair,
Upstate New York Committee
Gregory P. Joseph, Chair,
Downstate New York
Committee

OHIO

The Ohio Committee will meet in Columbus in January for an orientation meeting with Regent David Cupps and past State Chairman Jack Liber. Following the meeting, committee members and spouses will

gather for dinner at the German Village home of State Chairman John McDonald and his wife Sally.

State members will be polled by mail concerning their interest in expanded activity at the state level to include regular local or state dinner meetings, seminars or other projects. Additional meetings of the State Committee are scheduled for Saturday, April 18, and Saturday, July 18, 1998.

John C. McDonald, Chair

ALBERTA PROVINCE

The priority of the Alberta Section will be to consider worthy new candidates for membership. Most of our members are Benchers (past or present) of our Law Society, and as such are frequently called upon to assist in the various programs in which the Law Society engages. However, at our January meeting I will canvass from among our members any perceived needs within our legal community, including the needs

of our two law schools, which may not be presently served.

D.O. Sabey, Q.C., Chair

ONTARIO PROVINCE

A dinner meeting of the Ontario Province Committee Fellows was held in October 1997. Guests included senior judiciary, and Glen How, who recently received the Courageous Advocacy Award from the College. The topic for discussion was whether the Ontario Fellows could be of assistance to the bench in matters affecting the administration of justice in Ontario.

Planning is well underway for a joint meeting with the Upstate New York Fellows at Niagara-on-the-Lake for the weekend of June 5-7, 1998. The program will include a discussion about civility in trial procedure and common issues in alternate dispute resolution, together with theatre and other excursions.

Earl A. Cherniak, Q.C., Chair

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