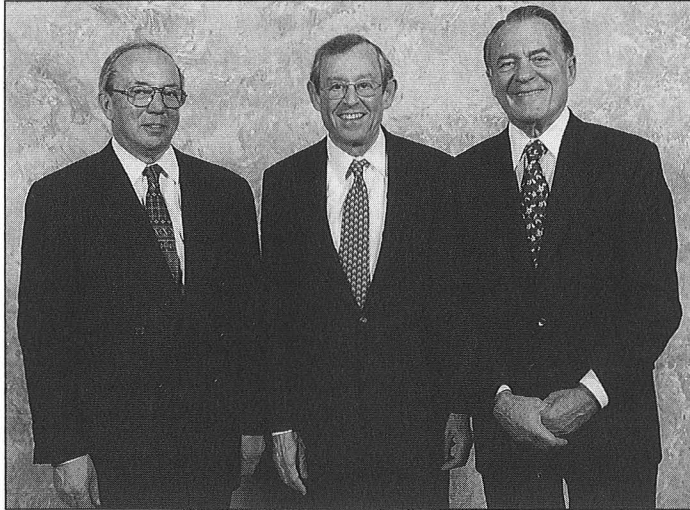

American College of Trial Lawyers

THE BULLETIN

Number 30

Spring 1998



Three Presidents in Palm Desert

P. André Gervais, Q.C., Montreal, Quebec, President, Canadian Bar Association; Edward Brodsky, New York, President, American College of Trial Lawyers; Jerome J. Shestack, Philadelphia, President, American Bar Association.

ACTL Spring Meeting In Palm Desert

Some 950 ACTL Fellows, Spouses, guests and speakers gathered at the Marriott Desert Springs Hotel in Palm Desert, California for the American College of Trial Lawyers' 1998 Spring Meeting in March.

Judge Griffin Bell, a Past

President of the College and Attorney General in President Jimmy Carter's Administration, spoke of the "explosion of rights" in this country during the first General Session on March 20. "Life has become more complicated, people are crowded to-

gether, there are more disputes," he said. "People seem to be constantly looking for new rights." Noting that we must be very careful in state and federal courts not to deny people their rights, he also said one of the major chal-

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American College of Trial Lawyers
THE BULLETIN

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lenges of the court system is "weeding out rights somebody imagines they have from real rights." Judge Bell said there are "too many trifle cases" and that the development of class action cases has sent "lawyers looking for cases that produce fees."

He also noted the difficulty of average Americans gaining entrance to our legal system. "If you are middle class and don't have a contingency case," he said, "you are hard put to establish your rights." He reminded the audience that there are public defenders, legal aid lawyers and country lawyers who never turn people away from their doors, but that there is no organized effort to take care of the middle class.

He also contended that, "One of the worst things that has happened to the law practice is doing away with notice pleading." Stating, "We have had an explosion of discovery," he told of his surprise on once hearing that a lawyer in his firm was, "On discovery." Judge Bell said lawyers try to find the facts through discovery and document production and added that, "Document practice has become one of the most expensive parts of the practice of law."

Judge Bell also mentioned how the Federal Sentencing Guidelines have "just about taken plea bargaining out of the justice system." He also called punitive damages, RICO, and the

"bounty hunting" qualities of Qui Tam cases as being, "wild cards within the law, and they greatly interfere with the way the legal system should work."

Judge Bell is a Fellow of the College and a partner with King and Spalding in Atlanta.

NITA in South Africa

James E. Ferguson, a Fellow of the College and Chair of the National Institute of Trial Advocacy (NITA), told the audience of some 500 ACTL members at the opening session about NITA's experiences in establishing a trial advocacy program in South Africa. He explained that the legal system in South Africa is a combination of common law and the civil law of the Dutch-Roman system, and that there was no jury system when the NITA program began there 12 years ago. He said that even though the justice systems of the United States and South Africa are quite different, he "soon learned that the techniques of advocacy and persuasion are universal."

Mr. Ferguson explained how the "Black lawyers of South Africa had incredible obstacles to overcome." He said the lawyers they met in those early days of the program had come face to face with the criminal justice system, "And virtually all of them had been political prisoners of one kind or another.

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Almost to a person, the lawyers we met had been arrested for political reasons, had been imprisoned for political reasons, had been banned — a punishment we don't know anything about here — for political reasons, or had been banished for political reasons." He also said most of them were products of a "grossly inferior" education and legal education. "They encountered disrespect in the courts and every day they laid their lives on the line and were in danger of personal safety. Yet, to a person they were committed to spending their time in a program that was foreign to them because they felt this was a way of improving their advocacy skills."

"These were lawyers who were fighting the effects of an unjust system on a daily basis," Mr. Ferguson said. "These were people who were seeking emergency applications to keep people in their homes. These were people who were protecting children who were arrested under a state of emergency for nothing more than kicking a ball into the street and following the ball down the street. These were people who were trying to keep families together when a family member might be taken away in the night and detained without explanation, and without contact with the outside world."

He also noted that NITA was "a child" of the ACTL as the College had come forth with a seed grant of \$10,000 in 1971 to help get the institute started. The College has also provided cash and resources to pay for lawyers to attend NITA courses over the years.

Mr. Ferguson is a partner in Fergu-

son, Stein, Wallas, Adkins, Gresham & Sumter, P.A. of Charlotte, North Carolina.

Do You Know Your Client?

John L. McGoldrick, a Fellow of the College and Senior Vice President, Law and Strategic Planning, and General Counsel of Bristol-Myers Squibb Company in New York gave a presentation entitled, "Reflections of a Trial Lawyer Turned General Counsel."

He said the great challenge is for trial lawyers to understand business people. He asked the audience, "How good is your understanding of our role?" Mr. McGoldrick noted that business people have a different world view from lawyers. He said the general counsel's job is to "protect shareholder values."

He said there is often a different perspective from what the trial lawyer thinks business people want from what they really want.

Although part of the general counsel's job will always be to count beans and be cost effective, he said, "what we really want is the highest professionalism."

His list of what general counsel really wanted was as follows: excellence in all things, big and small; wisdom; independent judgement; fearless candor; integrity, responsiveness to general counsel and the core values of civility and honor.

Mr. McGoldrick challenged the audience to "know thy client," to find out what the company really wants. "Don't be afraid of numbers," he said, and "think of why we retain you."

He said he realized the difficulty of

*the general
counsel's job
is to "protect
shareholder
values."*

John McGoldrick

(Continued on page 4)

"We seek an independent judiciary to hear our cases and we want an atmosphere of fairness and an atmosphere that promotes speedy justice."

Marna Tucker

(Continued from page 3)

answering the general counsel's question of "What are our chances of winning this case?" He said general counsel know you can't really put a number on that question, but that it was, nevertheless, a relevant and important question. "What I really want to know is what's in your gut, your liver, your soul, your heart," Mr. McGoldrick said. "It's very valuable. It's one of the most valuable things you sell us."

He also said, "Next, we don't want surprises." Mr. McGoldrick ended his talk by saying that lawyers talk too much. "Say what you have to say and when you're finished with it – stop."

The Federal Judiciary

Marna Tucker, Chair of the ACTL Federal Judiciary Committee and a partner in the Washington, D.C. law firm of Feldesman, Tucker, Leifer, Fidell & Bank, told Spring Meeting attendees of an important project before them. Noting that because federal judges have restrictions on what they can do to speak for themselves, "Judges must rely on others to do that job for them."

The mandate of the Federal Judiciary Committee, she said, is that, "We seek an independent judiciary to hear our cases and we want an atmosphere of fairness and an atmosphere that promotes speedy justice."

"First of all," Ms. Tucker said, "we want a well-compensated judiciary to attract and to retain the best of our profession."

She also told of the College's efforts to get automatic cost of living increases for the federal judiciary and

to de-link federal judges salaries from those of Congress. The committee is also developing a process whereby they can prepare Fellows to speak out quickly when "hair-triggered calls for an unpopular decision" can be appropriately defended. The committee is also focusing on the problem of current judicial vacancies in hopes that appointments can be made more quickly, and that hearings might occur more quickly.

The committee is also working with the Federal Judicial Center, which has asked the College to provide lawyers to train new judges. Ms. Tucker asked anyone interested in this important mission to let her know.

Three Decades On The Bench

Honorable Robert R. Merhige, Jr., Senior United States Judge, Richmond, Virginia, has announced that he will resign in June and re-enter the private practice of law.

"When I came on board the salary was \$30,000," Judge Merhige said of his 31-year service as a federal judge. "Fortunately, I had had a successful law practice and I had valid investments, so the salary wasn't very important." He said he has no regrets and has had an exciting career, "But I've had this nailing compulsion that I have not been fair to my family – especially to my grandchildren, and my children – from a financial standpoint. Education is important to me, and I'm leaving solely because of the fact that I'm getting tired of writing ten dollar checks to

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(Continued from page 4)

charities that really need much more than that." He also said that he wanted to be sure that his grandchildren would have more assurance of a good college education.

Judge Merhige told of his love of the law and how there was a time when he wasn't sure if he would become a lawyer at all. There were others in his law class who seemed much more able to grasp what was going on so much more than he. Then one day the law professor came into class with the graded papers of a test. The professor called Judge Merhige's name and he got up and walked to the front of the class. The professor said, "You got a 36 on the exam." Judge Merhige said he could still remember the embarrassment, the anger that went through his mind, that this man could be so cruel. He heard the snickering of the "smart boys" in class behind him. Then the professor looked over his shoulder to the rest of the class and said, "Incidentally, that's the highest grade in the class."

"I knew then I was going to be a lawyer," Judge Merhige said.

He said he is asked often, "What is your most interesting case?" His answer — "Tomorrow's case. Tomorrow's case is going to be the most exciting I've ever had." He also said, "The biggest case is the one right in front of you. It means somebody's liberty or property. It's important to somebody."

He also said he does not go to bed each night without thanking God for having gotten him into the legal profession.

Judge Merhige had a tip for lawyers

going before judges. "I'm on the multi-district, a panel, and very frequently we have lawyers come before us and say, 'All we want is a neutral judge'. Frankly, I become enraged when they make that kind of statement. I don't know. I've asked them.

"If he's not neutral, he ought not to be a judge," he said. "The truth of the matter is the people who make those statements just don't know the system."

He also explained that some lawyers are concerned they might have upset a judge. "Don't worry about disturbing the judge," he said. "If he's a real judge, he'll do what I do. I get so angry sometimes that I'd like to get off the bench and pop somebody. I don't dare do it. I just take a little recess and run cold water over my wrist and look in the mirror and say, 'you're a judge, act like a judge'."

Judge Merhige also told the story of too many lawyers in the courtroom for a hearing on a discovery issue that he considered to be very simple. "You know, gentlemen," he said, "I'm glad to see you in a way. But I want to tell you, I don't consider myself to be the brightest judge in this circuit, or even in this division. But I'm not so damned dumb that I need eight lawyers to . . ."

He also told of a class action case involving an item that sold for 79 cents. He told the lawyers that this looked like a lawyer's case to him. He said, "Okay, I think you've got a case here, but I want you to know if you come up here with a settlement where the company gives coupons, the fees are going to be given in coupons."

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"The biggest case is the one right in front of you. It means somebody's liberty or property. It's important to somebody."

Judge Robert R. Merhige, Jr.

The President's Report

What is the College doing about the lack of civility among lawyers? What is the College doing about the poor reputation of lawyers?

These are questions that are constantly asked of me as I travel around the country to attend State and Province meetings, and I will address those issues in this report.

First — the issue of civility.

Why do so many lawyers act uncivilly to their adversaries? Some say clients believe Rambo tactics give them an advantage. Some say the practice of law has become a business rather than a profession and that ethical rules are being trashed for the sake of obtaining more business.

There was an article in the *New York Times* not so long ago written by a prominent lawyer — not a member of the College — entitled, "I am paid to be rude."

Is that true? Do we get better results for our clients when we kick our adversaries below the belt — when we go right to the line on ethical and behavioral issues?

I do not believe so and, quite the opposite, there are many reasons why civility — not incivility — is critical to the practice of law. First, let's be practical about it — forget for a moment about the high calling of our profession to behave honorably, ethically and respectfully to our

adversaries.

Incivility breeds incivility and some of us, to even the playing field, decide to fight fire with fire. But succumbing to that temptation turns adversary proceedings into gutter fights and everyone loses — the client — the profession — and the judicial system. Accordingly, that response adds fuel to the fire of incivility and is hardly a solution to the problem.

The reason we should act civilly, even against an uncivil adversary, is because we must not be promoters of conflict — we must be peace seekers, not pit bulls. Lawyers should be problem solvers — healers — whose conduct should soothe, not exacerbate the issues between adversaries. Incivility intensifies these problems. It does not alleviate them.

Lawyers must not only advance the interests of their clients — we owe a duty to the judicial system to be sure that it is a respected institution which will treat people fairly and with dignity. Incivility demeans that system. Incivility produces professional discontent, public disapproval of lawyers and disrespect for the judicial system.

Civility is important also because it directly impacts our own self-image and the level of satisfaction we can achieve as lawyers. How can we attract the



Edward Brodsky
President

best of our young people to our profession when so many of them are worried about entering into a legal environment which they fear is uncivil and hostile to the way they want to live?

Issues of civility are not adequately addressed in the disciplinary rules. The standards we should set for ourselves go beyond the minimum standards mandated by the Codes of Professional Responsibility. Civility is a professional culture issue — not a rules issue. Much of the incivility which exists today would not violate any ethical or disciplinary rule. But our professional behavior must be much higher than the lowest common denominator for reasons other than fear of sanctions or discipline.

How can our profession deal with the problem so that the stain of incivility will eventually be eradicated?

We in the College behave civilly to our adversaries which, by itself, is a great help because we teach by example. But be-

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yond that, the College has, at this year's Spring Meeting, approved a teaching syllabus prepared by the Committee on Trial and Appellate Advocacy to be used by Fellows all over the country, along with our Code of Trial Conduct.

The idea is that each State Committee will, using the syllabus, assign Fellows to fan out to the local law schools in their areas to lecture about civility. We hope to reach students early enough to persuade them that uncivil conduct is wrong — it should neither be engaged in nor tolerated. Teaching our young people is one way that the future may be shaped.

The College Foundation is sponsoring an essay contest for law students on the subject "Civility and Zealous Advocacy — Are the Two Incompatible?" The Foundation is giving a cash award to the winners of the contest and has received approximately forty-five essays that have been reviewed by a distinguished panel of judges. The winning essay will be published in our *Bulletin*.

Are these complete answers? Of course not. Will they help? Of course they will and everything we can do every day in the practice of law to teach by example will improve the system. If all of us pull together and make a concerted effort to deal with this issue, we can eventually cure this terrible problem.

Now, let us turn to the lawyer's reputation.

We are not a popular profession. We are accused of being greedy and are the targets of bad jokes in poor taste. Why is that?

In part, it is because we are the ones who are called upon to represent unpopular causes — to defend against the tyranny of the majority. People criticize us when they are problem free but seek us out in times of crises. To meet the constant criticism of lawyers, we must speak out about the glory of our profession and our magnificent accomplishments in the development of our democracy. And we, the members of the College, have an obligation to carry the message that our dedication to the highest standards of justice and the highest standards of competence still exists. Protecting our system demands rigorous and constant attention — especially by members of the College.

When someone says to me that the best days for lawyers are behind us — and for those who believe that our society would be a better place without lawyers — I say that they bear the burden of explaining — who will take their place? Who will fill the great void that would be created without the lawyers?

Who will protect the poor and the injured and the victims and those who are different?

Who will be on the vanguard when the government encroaches our liberties — the po-

lice come knocking on our door and pay no attention to the limitations created by years of constitutional jurisprudence created by an independent judiciary and an independent bar? Who will be the champions of those who cannot speak for themselves? Who will be the healers? Who will protect our basic freedoms of speech and religion? Who will prevent the government from encroaching on our liberties.

It is the lawyers and our independent judiciary. No other profession carries that burden.

I say to the people who criticize us — look at some of the lawyers who have won the College's award for Courageous Advocacy:

(1) Julius Chambers, working in North Carolina in the civil rights movement. A bomb shattered the window of his home while his family slept. His car was firebombed while he was delivering a speech. His father's automobile repair shop was burned twice and Mr. Chamber's automobile was destroyed by arsonists. But he continued to persevere and he made a difference.

(2) Max Stern, who represented without fee, a black Jamaican illegal immigrant charged with the murder of a police officer. His tenacious investigation demonstrated that many affidavits in support of police search warrants in the Boston area contained false

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Annual Meeting of the Virginia Fellows, held in Richmond in January 1998.

President Edward Brodsky; Bunny Burgin, wife of North Carolina State Chair Charles Burgin; Regent James W. Morris, III; and John H. O'Brien, Jr., State Chair of Virginia.

President's Report

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statements.

Mr. Stern exposed police misconduct that jeopardized the Constitutional rights of all citizens. He was widely criticized in the press by the mayor and by law enforcement officials. And years before that, in the face of public hysteria and death threats, he successfully defended an African American house painter who was falsely charged in the rape of a white student in an area of Boston. He made a difference.

I could go on and on about lawyers — lawyers who make this country the unique place that it is.

These cases, and other cases involving basic freedoms, have been brought by lawyers, shaped by lawyers and argued by lawyers. Without these cases our great principles of law and freedom would not have been estab-

lished.

Remember this, our fine independent judiciary would have nothing to do — would just sit there — without the lawyers bringing cases to it, some of them establishing our enduring constitutional principles. And these principles have not been established by wealthy corporations paying huge fees to lawyers. These cases, in large measure, have been brought on behalf of people who cannot afford to pay large fees. Many of these actions have been brought and prosecuted by lawyers working for a fraction of the fee they could command in other cases, or sometimes working for no fee at all.

So, in the face of that record of achievement, what can we do to improve the reputation of lawyers?

Aside from living our lives the way we do and teaching by example, I believe that all of us can

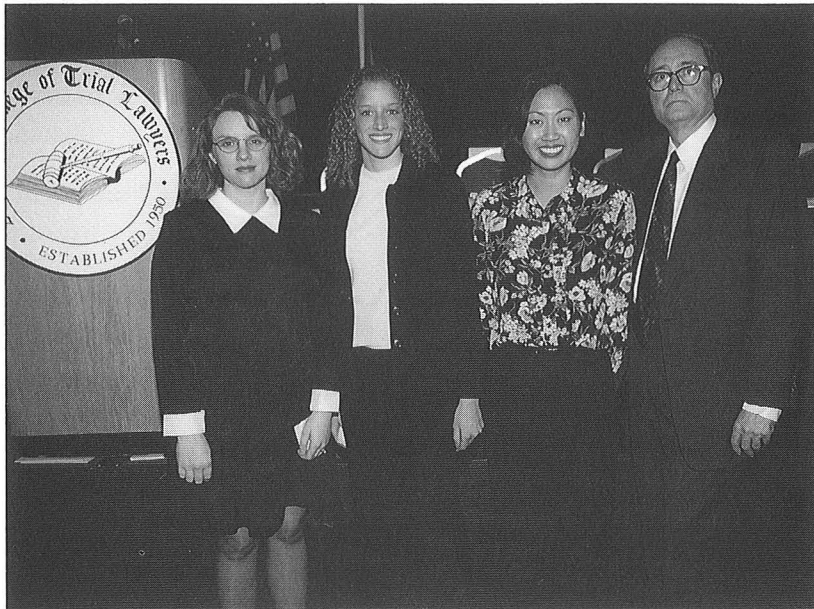
do more. The Fellows of the College are leaders of our communities all across the country. You command the respect that comes with years of dedication to your profession and years of high achievement.

If each of you would seek out opportunities to talk to people in your communities — whether it is at town meetings — or local television — or in the schools — to send the message of what lawyers have done in this country and what they continue to do on a daily basis. I believe we, together, will make substantial inroads in addressing this problem.

If we don't do it, who will?

The facts are there and you are the best advocates in the country. Can you imagine what we can do if we made a concerted effort in this regard?

I ask you to join in this effort — and together we can make a difference. □



National Moot Court Competition Winning Team

Valerie Davis, Rachael Abrams and Kathryn King of the New York University School of Law, received the Winning Team Award for the 1997 National Moot Court Competition from David S. Cupps, ACTL Regent from Columbus, Ohio. Ms. Davis, as "Best Oral Advocate," gave the student's response during the Spring Meeting in Palm Desert.

Spring Meeting Honors



ACTL Past President Ralph I. Lancaster, Portland, Maine, presented an ACTL Honorary Fellowship to Associate Justice Peter deC. Cory of the Supreme Court of Canada during the Spring Meeting. Justice Cory is from Ottawa, Ontario.



"What are the attributes of outstanding counsel really represented by all of you. I think they are integrity, honesty to themselves, to their clients, the court. Industry, all the difficult work of the endless preparation to refine issues, to make the facts clear and to present the issues. Dedication to the role and the work of counsel, which is one of the foundation stones of any democratic society. Courage, the great courage to represent unpopular individuals and unpopular causes."

Associate Justice Peter deC. Cory

New Fellows Inducted During 1998 Spring Meeting In Palm Desert

The College welcomes the following Fellows who were inducted into Fellowship during the 1998 Spring Meeting in Palm Desert.

ARIZONA

Gerald Maltz
Tucson

NORTHERN CALIFORNIA

Philip R. Birney
Sacramento

Thomas J. Brandi
San Francisco

Michael L. Dillard
Sacramento

John Echeverria
San Francisco

William L. Jaeger
San Francisco

P. Beach Kuhl
San Francisco

Gregory P. Lindstrom
San Francisco

James McManis
San Jose

M. Max Steinheimer
Stockton

Gary T. Walker
San Francisco

SOUTHERN CALIFORNIA

Brad Dennis Brian
Los Angeles

Maureen J. Bright
Glendale

Richard Conway
Long Beach

Louis "Duke" De Haas
Los Angeles

Don G. Grant
Riverside

Virginia C. Nelson
San Diego

Thomas J. Nolan
Los Angeles

David J. Noonan
San Diego

Layn R. Phillips
Newport Beach

Denny Schoville
San Diego

Howard B. Soloway
Los Angeles

Timothy L. Walker
Long Beach

COLORADO

William L. Keating
Denver

Bruce W. Sattler
Denver

CONNECTICUT

Kathleen Eldergill
Manchester

Garrett M. Moore
Cheshire

J. Daniel Sagarin
Milford

FLORIDA

Lewis "Mike" S. Eidson
Miami

David B. King
Orlando

Chandler R. Muller
Winter Park

Herman J. Russomanno
Miami

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ILLINOIS

Norman J. Barry, Jr.
Chicago

Catherine Coyne Reiter
Chicago

Matthew A. Rooney
Chicago

KENTUCKY

J. David Boswell
Paducah

LOUISIANA

Harry S. Hardin III
New Orleans

MARYLAND

Kenneth Armstrong
Rockville

Deborah A. Johnston
Greenbelt

Paul F. Kemp
Rockville

Benjamin Rosenberg
Baltimore

Kenneth L. Thompson
Baltimore

MISSOURI

James P. Holloran
St. Louis

Duane E. Schreimann
Jefferson City

W. David Wells
St. Louis

Harold L. Whitfield
St. Louis

MONTANA

Theodore R. Dunn
Bozeman

NEBRASKA

Robert D. Mullin, Jr.
Omaha

NEW JERSEY

Lewis B. April
Atlantic City

Thomas R. Ashley
Newark

Lauren E. Handler
Morristown

Peter L. Korn
Springfield

Eugene M. Purcell
Bedminster

OHIO

David J. Hooker
Cleveland

PENNSYLVANIA

Allen D. Black
Philadelphia

Nancy J. Gellman
Philadelphia

Stephen A. Madva
Philadelphia

TENNESSEE

James R. Garts, Jr.
Memphis

TEXAS

Vic Anderson
Fort Worth

Douglas E. Chaves
Corpus Christi

Barbara M. G. Lynn
Dallas

Terence M. Murphy
Dallas

Glenn A. Perry
Longview

Jorge C. Rangel
Corpus Christi

Shannon H. Ratliff
Austin

Reagan W. Simpson
Houston

William C. Slusser
Houston

VIRGINIA

Stephen M. Hodges
Abingdon

Virginia W. Powell
Richmond

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Charles F. Witthoefft
Richmond

WASHINGTON

William F. Etter
Spokane

Dennis L. Fluegge
Yakima

Michael J. Myers
Spokane

Kate Pflaumer
Seattle

William R. Squires III
Seattle

Lish Whitson
Seattle

WEST VIRGINIA

Dan O. Callaghan
Summersville

WISCONSIN

William R. Wick
Manitowoc

BRITISH COLUMBIA

J. J. Camp, Q.C.
Vancouver

Karen F. Nordlinger, Q.C.
Vancouver

MANITOBA/ SASKATCHEWAN

Dennis P. Ball, Q.C.
Regina

Neil G. Gabrielson, Q.C.
Saskatoon

ONTARIO

Donald B. Bayne
Ottawa

Roy C. Filion, Q.C.
Toronto

Stan G. Fisher, Q.C.
Toronto

Roger T. Hughes, Q.C.
Toronto

**Kristopher H. Knutsen,
Q.C.**
Thunder Bay

M. James O'Grady, Q.C.
Ottawa

Charles F. Scott
Toronto

Ronald G. Slaght, Q.C.
Toronto

QUEBEC

Lynne D. Kassie
Montreal

Richard Nadeau
Montreal

ACTL Fellows Appointed To The Bench

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

Hon. W. Ian C. Binnie, Q.C. of Ottawa, Ontario was recently appointed to the Supreme Court of Canada.

Hon. Harvey Weissbard of Newark, New Jersey was recently appointed to the Superior Court of New Jersey.

Hon. Allan R. Hilton of Montreal, Quebec was recently appointed Judge of the Quebec Superior Court.

Hon. W. Erwin Spainhour of Concord, North Carolina was recently appointed Senior Resident Superior Court Judge. □

Spring Meeting CLE:

***Daubert* as Roadmap for the Trial Lawyer**

An experienced panel guided Fellows through the difficult terrain of whether a jury should be allowed to hear the testimony of a particular "expert" to express an opinion on a subject during the CLE portion of the ACTL Spring Meeting in Palm Desert.

President-Elect E. Osborne Ayscue, Jr., in introducing the panel, said, "What kinds of expert testimony are subject to the tests laid out in *Daubert* has itself been given different answers by different courts."

"*Daubert* in the Courts, a Roadmap for the Trial Lawyer," explored how courts apply *Daubert* and offered practical suggestions for dealing with expert testimony in one's own practice.

ACTL Fellow J. Donald Cowan, Jr. of Greensboro, North Carolina prepared the materials and moderated the panel. Panelists were: Fellow Sherrill Wm. Colvin, Fort Wayne, Indiana; Steven R. Kuney, Washington, D.C., who represented Joiner against General Electric in the recent U.S. Supreme Court case that established the standard of review in *Daubert* rulings by the district court; Judicial Fellow Honorable William L. Osteen, Sr. of Greensboro, North Carolina; and Fellow Chilton Davis Varner of Atlanta, Georgia. □

Spring Meeting

(Continued from page 5)

Attributes of Outstanding Counsel

Jerome J. Shestack, a Fellow of the College and President of the American Bar Association, spoke on "The Trial Lawyer in the Twenty-First Century." Mr. Shestack talked of hopes and aspirations of lawyers and the legal profession.

He outlined his six-point star of professionalism:

- 1) "Integrity and ethics — the high moral ground, something that should always be in the forefront of our consciousness."
- 2) "Competence and independence."
- 3) "Learning and education. And I don't just mean taking CLE courses. We are in a profession where learning and education means constant replenishment."
- 4) "Civility. Not just surface politeness, it is respect for the dignity and worth of the human being. It is an ability to put an end to rancor and to dispute and anger and arrogance. It is recognizing that the worth of life is what makes civilization grow and advance."
- 5) "Our obligation to our system of justice. We are the ministers of our system of justice and if there is a loss of public confidence in our justice system, we are in large measure

responsible — or bear the responsibility — for that loss."

6) "Pro bono service. We all know that time is worth money. Why should we do that? One of the reasons is just human decency." Mr. Shestack also said, "If we are committed to the goals of justice, then we must secure those goals with equal access, through helping the poor, through helping the vulnerable, the displaced in our society."

Mr. Shestack also reminded Fellows that eight Presidents of the American Bar Association had also been Past Presidents of the ACTL.

Mr. Shestack is a partner in the Philadelphia law firm of Wolf, Block, Schorr & Solis-Cohen.

Canadian Courts

P. André Gervais, Q.C., President of the Canadian Bar Association, explained litigation in Canada. Mr. Gervais told of the etiquette and procedural differences of Canadian courts. Then he said, "Damage awards in Canada amount to little more than pocket money in the United States." He said pain and suffering in Canada is capped and \$250,000 is "absolutely tops" for an award. Punitive damages are the exception and treble damages are rare, "and you had best just forget about them." He said

(Continued on page 14)

*"Canadians
are
embracing
Alternative
Dispute
Resolution
with a zeal
no one
could have
predicted a
decade ago."*

P. André
Gervais, Q.C.

Spring Meeting

(Continued from page 13)

that "jury selection in Canada is different, and 99 percent of the cases are heard by a judge."

He also said that since Canada is bilingual, "If you don't understand French you will be working at a disadvantage," and that Canadians do not regard speed as an attribute. "A snail's pace is more in store," he said.

Then he said that, "Because the majestic form of our civil justice tends to be slow, the awards comparatively small, and the win-lose results of our system unsatisfactory, Canadians are embracing Alternative Dispute Resolution with a zeal no one could have predicted a decade ago."

Quoting ACTL Regent David Scott, Q.C. of Ottawa, he said, "Litigation as we know it is going the way of the dodo bird. There is far too much playing in the interlocutory way, far too much discovery, far too much paper chasing. The public is becoming impatient with it. They are saying it is too expensive, it takes too long, it's too frightening, and it is not user-friendly."

Mr. Gervais said, "My advice to you, then, should you be contemplating legal action in Canada, is this. Look to the future, not the past. Consider the advantages of ADR over the adversarial system. If you are coming North on behalf of a client, you may want to hone your abilities to speak softly and you may find it prudent to leave the big stick behind."

Mr. Gervais is a partner in the Montreal, Quebec law firm of Mackenzie Gervais.

The Sword and The Gallows

Walter E. Dellinger, III, is a law professor at Duke University Law School. In addition to being a constitutional scholar, he served as Acting U.S. Solicitor General during the 1996-97 term of the U.S. Supreme Court.

He began his talk with the dire threat of failure that faced the framers of the Constitution when they returned from their first break of the summer on July 6, 1787. "Gouverneur Morris of Pennsylvania admonished his colleagues," Mr. Dellinger said. "I came here", he said, 'as a representative of America. I came here', he said, 'as a representative of the whole human race, for the whole human race will be affected by the proceedings of this convention'."

"While we in our own time may doubt that they could represent the whole human race," Mr. Dellinger said, "we surely cannot doubt the predictive assessment that the whole human race would be affected by the proceedings at Philadelphia."

Returning to Morris' quote, "He said to his colleagues, 'We must examine the consequences of failure. The country must be united. If persuasion does not unite it, the sword will'. He begged that they consider the horrors of civil commotion - 'the traitors that will be made by the stronger parties of the weaker. The stronger party will make traitors of the weaker and the gallows will finish the work of the sword'."

Mr. Dellinger said it was an extraordinary "Apocalyptic vision."

"What was striking," he said, "is

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that no one stands to refute the vision of the sword and the gallows finishing the job of the sword."

Pursuing an NFL Franchise

Richard E. Thigpen, Jr., General Counsel of the Carolina Panthers, Charlotte, North Carolina, spoke of the Carolina Panther's pursuit of an NFL franchise. He told of Panther's owner, Mark Richardson's, campaign to gain strong community support throughout the Carolinas, beginning in 1988. By 1990 — three years before being awarded a franchise — they had decided to build a stadium in Charlotte. He said the city had assembled 33 acres of land, which they would rent for a dollar a year for 99 years. "Before you think that's a steal, remember we had to commit to spending \$400 million on that land," Mr. Thigpen said.

"So the city got a good bargain out of it, but they also decided that in case we didn't get the franchise, we had to agree to pay \$35 million for the land they had assembled for us. They had a no lose situation."

In fact, Mr. Thigpen's description of the efforts to gain a franchise was filled with no lose situations. He told of how tightly and secretively the NFL holds its documents. He explained the difficulty he had in looking at some agreements the NFL had with other entities. "Why would you want to do that?" he was asked. "We don't let anybody see these things."

"I tried to explain to them that the 30 member teams owned all the stock of the NFL and I didn't think it unreasonable for a stockholder to ask to

come up and see some agreements that they were bound by," Mr. Thigpen said. "It took six months," he added. He could not take the documents out of the office, nor could he make copies of them. He was, however, allowed to bring a tape recorder so he could summarize the documents. "There were some surprises," he added, "but nothing terrible."

He continued telling the audience of challenges faced by the owners to acquire an NFL franchise as he described meetings with the NFL Finance Committee, structuring the franchise so there "was some reasonable protection of the owners," and the method they used for ownership of the stadium. The stadium, he said, "is owned by a trust for the benefit of charity, but it is not a charitable trust."

Mr. Thigpen also gave a bleak warning to lawyers in attendance as he spoke of the multi-state taxation of athletes. When the Carolina Panthers go to California to play the Forty-Niners, the state of California takes state income tax out of a portion of the players and coaches' salaries, he said. "It's a shell game to me," he added. "But it may be found in the future that a lawyer who comes from Massachusetts who comes out to California is going to find that he's going to leave some of his pay check out here. And when the California lawyer goes to New York City he's going to leave part of his pay check in the state of New York, and the City of New York. Some states are already moving in that direction." □

"But it may be found in the future that a lawyer who comes from Massachusetts who comes out to California is going to find that he's going to leave some of his pay check out here."

Richard E. Thigpen, Jr.

ACTL Calendar of Events

1998**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 5-7

Minnesota Annual Meeting
Madden's Resort
Brainerd, MN

June 6

Maine Fellows Dinner
Club House of the Atlantic
House Condominium
Scarborough Beach, ME

June 12

Southern California Fellows
Annual Black Tie Dinner
California Club
Los Angeles, CA

June 12

Texas Fellows Annual Meeting
Corpus Christi Town Club
Corpus Christi, TX

June 12

Rhode Island Fellows
Annual Dinner
TBD

June 17

Georgia Fellows
Black Tie Dinner
Driving Club
Atlanta, GA

June 18

Tennessee Fellows Annual
Black Tie Dinner
Cumberland Club
Nashville, TN

June 18

Kentucky Fellows Annual
Luncheon
The Lexington Club
Lexington, KY

June 19

North Carolina Summer
Meeting
Dunes Club
Myrtle Beach, SC

June 19

Florida Fellows Reception and
Annual Dinner
Buena Vista Palace
Walt Disney World Village
Orlando, FL

June 26-28

Northeast Regional Meeting
TBD
Mont-Tremblant
Quebec, Canada

June 26-27

Arizona Fellows Meeting
Pointe Hilton
on South Mountain

July 19-21

Northwest Regional Meeting
Salishan Lodge
Gleneden Beach, OR

August 14-16

Iowa Fellows
Summer Meeting
Village East
Okoboji, IA

August 22-26

Canadian Bar Association
Annual Conference
St. John's
Newfoundland

August 28

Central Ohio Fellows Dinner
Rocky Fork Country Club

September 10-13

Eastern Chairs Workshop
The Greenbrier
White Sulphur Springs, WV

September 17-18

Wisconsin Fellows Fall Meeting
TBD
Lake Geneva, WI

September 18

Illinois Fellows Annual Dinner
Westmoreland Country Club
Wilmette, IL

September 24-27

Western Chairs Workshop
The Inn at Spanish Bay
Pebble Beach, CA

October 2

Indiana Fellows Annual
Meeting
Woodstock Club
Indianapolis, IN

October 10-11

Kansas Fellows Meeting
Ritz-Carlton
Kansas City, MO

October 24-28

Board of Regents Meeting
London, England

October 29—November 1

Annual Meeting
London, England

November 2-5

Rome Conference
Rome, Italy

November 19-21

Oregon Fellows Meeting
TBD

December 4

Washington State
Fellows Dinner
Sorrento Hotel
Seattle, WA

December 4

Mississippi Fellows Dinner
TBD

December 4-7

Executive Committee
Meeting
Windsor Court Hotel
New Orleans, LA

1999**December 5**

Louisiana Fellows Dinner
TBD

February 5-6

Virginia Fellows
Annual Meeting
The Commonwealth Club
Richmond, VA

February 25-28

South Carolina Fellows Annual
Meeting
The Cloister
Sea Island, GA

February 27

North Carolina/South Carolina
Joint Meeting
The Cloister
Sea Island, GA

March 7-11

Board of Regents Meeting
The Ritz-Carlton
Naples, FL

March 11-14

ACTL Spring Meeting
The Ritz-Carlton
Naples, FL

April 22-25

TX, AR, MS, LA
Regional Meeting
TBD
San Antonio, TX

May 6-8

Tenth Circuit
Regional Meeting
El Dorado Hotel
Sante Fe, NM

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

2000

Philadelphia, PA

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

July 23-26

Northwest Regional
Meeting
Chateau Whistler Resort
Whistler,
British Columbia, Canada

October 22-26

Board of Regents Meeting
J W Marriott
Washington, DC

October 25-29

ACTL Annual Meeting
J W Marriott
Washington, DC

Committee News Reports

Admission to Fellowship

The Committee on Admission to Fellowship met during the Spring Meeting of the ACTL at Palm Desert, California. Attending the meeting were Warren Lightfoot, Regent, Birmingham, Alabama; Richard Holme, Denver, Colorado; Paul Meyer, Costa Mesa, California; William Edlund, San Francisco, California; Arnold Gordon, Southfield, Maine and Committee Chair Audrey Strauss, New York, New York. Linda Fairstein of New York City and Paul Meltzer, Santa Cruz, California, although not present, had contributed their thoughts about the agenda prior to the meeting.

The committee discussed whether the College should provide a waiver of fees or provide a subsidy to lawyers working in public interest positions. The committee decided to recommend that Regents be alerted to the possible existence of a need to offer a waiver of the registration and initiation fees to inductees serving in public interest positions. The committee did not reach a decision as to whether to recommend subsidies for Fellows serving in public interest jobs after their induction. However, the committee will continue to col-

lect information about the practices of other lawyers' organizations in providing subsidies to members in public interest jobs for attendance at meetings. To date, committee members have identified the California Attorneys for Criminal Justice ("CACJ") as an example of an organization that provides subsidies to public interest lawyers for attendance at meetings. Paul Meyer agreed to follow up by getting more detail as to how the CACJ administers its subsidy. Arnold Gordon agreed to check on the practices of the American Trial Lawyers Association; and Audrey Strauss agreed to find out about whether the ABA White Collar Section and the New York Council of Defense Lawyers have similar practices. Committee members and others reading this report are requested to supply other examples of organizations that subsidize public interest members.

The committee then discussed whether the standards for admission to fellowship should be, or will need to be, adjusted to account for a diminution in the number of trials in recent years. Warren Lightfoot noted that a resolution is on file permitting admission to be based on a lim-

ited number of larger trials or arbitrations. However, to assist the Regents in continuing to assess this issue, the committee determined to collect information about trends in trial practice and to provide that information to the Regents.

Finally, the committee discussed its ongoing concern that the College encourage greater numbers of women and minorities be admitted to fellowship. The committee agreed that as a regular matter, State Chairs should be reminded to encourage their State Committee members to be searching for qualified candidates for fellowship among women and minorities.

Audrey Strauss, Chair

Alternatives for Dispute Resolution

The committee met in March in Palm Desert, California to review a proposed outline for the topics for the Mediation Standards Project. An additional topic was added to the existing four topics. Following the meeting, the agreed upon topic outlines were circulated to committee members, along with a pro-

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posed schedule. We hope to have text for each of the topics prepared by June.

Shaun S. Sullivan, Chair

Attorney-Client Relations

This committee has had a very active and interesting few months. We continue to view the growing assaults on the traditional and time-honored concepts of attorney-client privilege and confidentiality to be a significant problem. The committee was polled, either in person or by fax, in advance of the College meeting in Palm Desert. All responded with a resounding "yes" on the question of whether we should recommend a position be taken by the College favoring the rules upon which we have all relied in the past.

The committee also specifically authorized the Regents to do whatever appeared to be helpful and productive as individual situations arose, and to take action in support of preservation of our rights and those of our clients with respect to privilege and confidentiality.

The College submitted an Amicus brief in the United States Supreme Court supporting the Petitioner's position that the attorney client privilege continues after the death of the client in a criminal proceeding (*Swindler & Berlin and James Hamilton*, No 97-1192, Petition for Writ of Certiorari to the

United States Court of Appeals for the District of Columbia Circuit). In *Swidler* the Court of Appeals held that after the death of a client in a criminal proceeding, a court is to weigh the need for the privileged information against the preservation of the privilege after death. In that setting, a court may determine that the need for information outweighs the need for maintaining the confidentiality of the attorney-client communication. The College's position is that there is and should be no balancing test. It is vital and necessary to promote the candor of communication that a client know that what is said to an attorney will remain confidential — not only during his or her lifetime — but afterwards as well. To do otherwise would create an uncertainty and chilling effect on the client that would undermine his or her willingness to communicate candidly and frankly with counsel.

The committee also reviewed a proposed communication to the State Chief Justices regarding a proposed revision of Rule 4.2 of the Model Rules of Professional Conduct. Our Regent, Earl Silbert, has transmitted the communication, views and recommendations to the Chief Justices.

We will continue to monitor ongoing developments in this area, make appropriate recommendations and provide reports in the College publications.

Carman E. Kipp, Chairman

Canada-U.S. Committee

At the Spring Meeting, the Canada-U.S. Committee reviewed the status of three projects it has underway, as well as two projects currently under consideration. The three projects underway consist of the establishment of a Canadian Nation Moot Trial Competition, a Canadian Code of Trial Conduct and a recommended form of a Convention for the Reciprocal Enforcement of Judgments between Canada and the United States.

At the meeting, the chair received a report from Bob Armstrong showing that significant progress has been made toward the establishment of a Canadian National Trial Competition. For many years the committee navigated a sea of difficulties in attempting to establish this competition.

Bob Armstrong has been taking the lead in this arduous task, and the most recent difficulty has arisen from the failure to obtain effective assistance from the National Association of Law Deans. It has therefore become evident that an organization is required which is prepared to take on the administration of the undertaking. Consequently, the committee unanimously approved Bob Armstrong's recommendation to accept the administrative assistance of the Ontario Section of the Canadian Bar Association in conjunction

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with a group dedicated to establishing an appropriate memorial to the late John Sopinka.

The Sopinka group is prepared to become a partner in the venture, and will seek to raise substantial funds dedicated to the competition, which will bear the name of the Honourable John Sopinka.

At the same time, the staff at the Ontario Section of the Canadian Bar Association, who themselves conduct and administer the Gale Cup — a national appellate moot court of all Canadian law schools — would provide the administrative support for our competition. The committee unanimously agreed to accept the recommendation, subject to the condition that the National Trial Competition be held in Ottawa, Canada's national capital. It is the fervent hope of the committee that the first competition will be held in the spring of 1999.

The work of preparing a Canadian Code of Trial Conduct has been completed. This work was led by Earl Cherniak. It was reported to the committee that the Code has been submitted to the Regents of the College, and it is hoped that the Regents will be able to deal with it at the next meeting of the College.

At the meetings of the committee in the fall of 1997, the form of a Convention for the Reciprocal Enforcement of Judgments had been agreed

upon, and with the unanimous approval of the committee the draft was forwarded to the Regents for their approval.

Following this, the President of the College referred the draft to the College's Committee on Special Problems in the Administration of Justice. The committee reviewed the exchange of letters between its chair and Richard Hite, Chair of the Special Problems Committee. As a result of the views expressed to the President by the Special Problems Committee, this committee unanimously agreed that any resolution adopted by the Regents endorsing the Convention should also urge the President and the Senate to designate, at the time the Convention is approved, that it be applicable in all states and territories without variation.

Since the Spring Meeting, the chair of this committee has reported the committee's agreement on this point to the President of the College. It is the hope of the committee that the Regents will have time to address this question as well at the next meeting of the College.

The two projects the committee had under consideration were a convention for the reciprocal pre-trial gathering of evidence in both countries, and the question of cross-border *pro hac vice* admission.

Committee member Don Paul Badgley conducted an inquiry and made a report to the com-

mittee on the feasibility of the first project. In his report Mr. Badgley identified many concerns that would have to be overcome if such a convention were to be adopted. These included issues of sovereignty, allocation of costs of judicial involvement in discovery issues, the rules of procedure in discovery activities, etc. The committee resolved to accept Mr. Badgley's recommendation that the chance of arriving at an acceptable convention is so small that the committee should not pursue the matter further, at least not at this time.

With respect to cross-border *pro hac vice* admission, the members of the committee who are leading this project were regrettably unable to attend the meeting and this matter is to be pursued further at the meeting of the committee in London and Rome later this year.

Jack Giles, Chair

Complex Litigation

The committee had a very successful and well attended meeting at Palm Desert in March. The committee voted to continue their work on the Ad Hoc Mass Tort Project even though they recognized that to work on all facets of the project at one time would be too great an undertaking. It was therefore decided that individual members

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would specify project areas they are prepared to research. These members will report their findings to the whole committee at the next meeting in the fall.

Ralph W. Brenner, Chair

Emil Gumpert Award Committee

At its January meeting, the Emil Gumpert Award Committee carefully considered the applications for the award for 1998. This award is given annually to the law school deemed to have achieved a level of excellence in the teaching of trial advocacy which is worthy of special recognition. This year the applications were excellent. Each demonstrated a commitment and dedication to trial advocacy training and, in many instances, services to the community through legal clinics. After careful consideration, the committee recommended that the 1998 Award go to Dalhousie Law School located in Halifax, Nova Scotia. Dalhousie is the first Canadian law school to receive this award. It is the oldest university-based law school in Canada and has a strong trial advocacy program. Graduates practice law throughout Canada.

The Regents accepted the recommendation of the committee and the Award will be presented to Dalhousie later this spring.

Thomas J. Groark, Jr., Chair

Federal Criminal Procedure Committee

The Federal Criminal Procedure Committee, working through three subcommittees, is drafting proposals addressing 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.

Three subcommittees — chaired by John P. Cooney, Jr., Terry Philip Segal and Thomas E. Dwyer, Jr. — coordinated committee member efforts and are preparing to circulate drafts of the proposals. A report was presented to the Board of Regents at the Spring Meeting.

The full committee will meet June 5-7, 1998 in Washington, D.C.

The committee continues to solicit input from Fellows of the College in the areas under study. We anticipate the committee will work with the United States Sentencing Commission, the Senate Judiciary Committee and the Committee on Criminal Law of the Judicial Conference in these important areas of concern.

Robert W. Ritchie, Chair

International Committee

The principal subject of discussion at the Spring committee meeting was future international projects for the College and the committee.

There was considerable interest in a proposal to establish an International Judicial Academy. This would be located in Washington, D.C. and would conduct educational programs about the U.S. judicial system for judges and legal officers from other countries. Its principal need at the moment is start-up financing. Once it is actually in operation, members of the College will be needed to participate in the presentation of its programs.

The committee is also interested in proposals concerning Central and South America, an International Criminal Court, and assistance to the United Nations War Crimes Commission.

Thomas D. Allen, Chair

Legal Ethics Committee

The subcommittee for the development of a teaching syllabus for the College Code of Trial Conduct met at the Spring Meeting, as did the Legal Ethics Committee at large.

The subcommittee continues its hard work in developing the teaching syllabus and hopes to have the syllabus completed by mid-May or early June. The draft of the syllabus will be circulated to the committee at large

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for comments and the final work product will be submitted to President Brodsky by August 15.

The committee's paper on *Fair Trial of High Profile Cases* has been approved for publication.

At the meeting of the committee at large, the opinion in *Arce v. Burrow*, 958 S.W.2d 239 (Tx. App. - Houston [14th Dist.] 1997), was discussed. The opinion focuses upon the obligations of lawyers in mass tort settlements. The presentation by our secretary, John McElhaney, was excellent and the discussion lively.

Murray E. Abowitz, Chair

Mexico Committee

The Mexico Committee convened during the Spring Meeting at Palm Desert and agreed upon a letter to be sent to a small, carefully selected group of Mexican lawyers. The letter would solicit their interest in meeting with members of our committee on an informal basis to explore one or more of the following: 1) the establishment of an informal group of U.S., Mexican, and Canadian lawyers to meet periodically and consider matters of mutual interest to the bar of the respective countries; 2) study and make comments or recommendations on cross-border litigation issues; 3) participation in educational efforts to improve the knowledge of lawyers and

judges in the three countries regarding each other's legal and judicial system, and cross-border dispute resolution, including the possibility of inviting Mexican lawyers from time to time as speakers or panelists at future meetings; and 4) promotion of the establishment of personal contacts among lawyers and judges of the three countries.

We have spent a lot of time reviewing possible contacts in Mexico and obtaining recommendations from a variety of sources. We have now narrowed the list to a small number of names and will proceed as outlined above.

Philip A. Robbins, Chair

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Be Prepared

Watch for your registration information in June

October 29 — November 1, 1998

ACTL Annual Meeting
London, England

November 2 — 5, 1998

Rome Conference
Rome, Italy

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National College of District Attorneys

The Chairman of the Board of Regents of the National College of District Attorneys since 1992, Thomas J. Charron, resigned his position as District Attorney in Marietta, Georgia, to become the first Director of Education of the National District Attorneys Advocacy Center in Columbia, South Carolina. The Board of Regents selected Michael P. Barnes, Prosecuting Attorney in South Bend, Indiana, as the new Chairman of the Board.

President William L. Murphy has named several new National District Attorneys Association (NDAA) representatives to the Board of Regents since the last meeting of the NDAA Board of Directors: President-Elect John R. Justice, Solicitor in Chester, South Carolina; the Honorable Jerry M. Blair, State Attorney in Live Oak, Florida; and most recently, the Honorable Nola T. Foulston, District Attorney in Wichita, Kansas, who replaces Tom Charron.

In March 1998 the College presented its first course dealing with technology, *Technology In and Out of Court*. The treated subjects related to the use of technology in managing and operating a prosecutor's office as well as the use of technology in the preparation and presentation of evidence in court.

Victor S. (Torry) Johnson III,

District Attorney General in Nashville, Tennessee, was presented the "Dean's Award of Honor" at the Technology Course in recognition of his commitment to the improvement of the criminal justice system and his exemplary contribution to excellence in prosecution education. Mr. Johnson has been a member of the College's faculty for a number of years and has lectured on a wide variety of topics.

On May 11, 1998, the College will present the first trial advocacy training course for local prosecutors at the new National Advocacy Center in Columbia, South Carolina, under contract with NDAA.

John L. Hill, Jr., Chair

National Moot Court Competition

The National Moot Court Competition continues to be well run by the Young Lawyers Committee of the Association of the Bar of the City of New York. We are available to them for support as they want, but they did not call upon us. I myself served as a judge and offered cooperation for the finals.

Sheldon H. Elsen, Chair

National Trial Competition

This year's National Trial Competition final rounds were

held in San Antonio, Texas in March 1998. Twenty-four teams from across the United States emerged from regional competition to participate in the finals. Twelve members of the committee served as judges for the preliminary, quarter-final, semi-final and final rounds of the competition. Those Fellows in attendance were: Ried Bridges, J. Thomas Cardwell, David S. Cupps, Sam P. Daniel, Jr., Keith Gerrard, Andrew Jay Graham, J. Clifford Gunther, III, Thomas R. Lemon, Robert J. Muldoon, Jr., James J. Virtel, Michael A. Williams and Stanley P. Wilson.

In addition to the committee members, Garr M. King, the Regent Liaison, was also present throughout and College President Ed Brodsky was the Presiding Judge for the final round of the competition.

The teams competing in the semi-final round on Saturday morning were Washington University v. Northwestern School of Law of Lewis and Clark College, and Temple University v. University of Memphis. Presiding Judges in those rounds were Michael Williams of Colorado and Regent David Cupps of Ohio. The teams from Temple University and Washington University emerged from the semi-finals and in a very spirited trial — and after a rather lengthy deliberation — the jury of Fellows awarded the final round to the team from Temple University.

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sity. Those competing in the finals for Temple University were Kevin Toth and Bryan Fortay, and for Washington University, Stephen Palley and Rebecca Hirselj. The Outstanding Oralist Award was given to Toth of the Temple University team.

On Friday evening of the competition, the Fellows were hosted at the Argyle Club by Hubert and Leah Green. Hubert has served on the National Trial Competition Committee, and in fact, participated as a juror in one of this year's semi-final rounds.

The awards banquet was held on Saturday evening at the St. Anthony Hotel. Each of the team members who participated in the finals competition in San Antonio were awarded the Louis F. Powell Memorial Medallion by Regent Liaison Garr M. King and President Edward Brodsky.

Members of the National Trial Competition Committee would like to salute the Texas Young Lawyers Association, the coaches and most of all, the participants in the final rounds of the National Trial Competition. The advocates in this year's competition competed with energy and skill as they ably represented their respective client. Throughout the rounds, each team distinguished itself with civility displayed to their opposing colleagues.

James J. Virtel, Chair

Samuel E. Gates Litigation Award Committee

The committee has entertained suggestions for a recipient of the Gates Litigation Award, and met at the Spring Meeting held at Palm Desert to discuss those under consideration. A quorum of the committee was not present at that meeting. Further discussions will be held by telephone conference calls so the committee may be in a position to submit a proposed recipient's name to the Board of Regents for approval prior to the October 1998 Annual Meeting in London.

Beale Dean, Chair

Special Problems in the Administration of Justice

At the Spring Meeting, the Board of Regents asked the Special Problems Committee to look at current developments in jury trial practices and particularly issues such as: 1) note taking by jurors; 2) questioning by jurors of witnesses under controlled circumstances; 3) permitting discussions among jurors about evidence before the conclusion of the case; 4) mini summations by counsel prior to final summation in lengthy trials; 5) interim instructions or charges by the court in lengthy cases; and 6) any other issues relating to proposed or actual "jury reform."

The committee would appre-

ciate input from any member of the College about discussions, proposed reforms or actual reforms relating to these subjects.

Richard C. Hite, Chair

Teaching of Trial and Appellate Advocacy

The Teaching of Trial and Appellate Advocacy Committee is pleased to report that the teaching syllabus on civility, referred to in our last report, has received the approval and endorsement of the Board of Regents. In the very near future it will be distributed to state committees to place in the hands of members of the College throughout the country for use in making presentations to law students and young lawyer groups.

The syllabus is made up of a series of vignettes that raise civility issues for discussion. These issues conclude with a strong case for the proposition that handling the issue in a civil and professional manner results in a better outcome for the client (not to mention a more pleasant professional life for the attorneys). The committee urges members to use this syllabus as an easy tool for taking a proactive role in improving the practice and image of our profession.

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State and Province Committee Reports

ARIZONA

The Arizona Fellows will hold their annual meeting in Phoenix on June 26 and 27. We will start with a Friday evening western dinner, followed by a Saturday business meeting with the rest of the day devoted to golf, tennis, shopping, roping and bronco-busting (and other Arizona pasttimes). On Saturday evening we will head for the now major league baseball park for hot dogs, beer and an Arizona Diamondbacks victory over the Florida Marlins.

If anyone is in cool, balmy Arizona in late June, please feel free to join us.

Philip A. Robbins, State Chair

CONNECTICUT

Kathleen Eldergill, Garrett M. Moore and J. Daniel Sagarin attended the Spring Meeting in Palm Desert and were inducted into the College.

Also, the Fellows of Connecticut, Downstate New York and Vermont are having a Regional Fellows Meeting at the Princess Hotel in Hamilton, Bermuda, May 14-17, 1998. Fellow Alan Levine is coordinating the event, including the CLE

programs each morning.

Shaun S. Sullivan, State Chair

FLORIDA

The Florida Fellows will hold their annual banquet at the Florida Bar Convention on Friday, June 19, 1998, at the Buena Vista Palace in Walt Disney World Village, Orlando, Florida. Iran-Contra Independent Counsel Lawrence E. Walsh is expected to attend this function as a special guest.

The Florida Fellows are in the process of forming an Access to Justice Committee, which is to be chaired by Fellow Bob Feagin. A written questionnaire has been circulated to Fellows throughout the state seeking their input on the development of procedures for the committee. The questionnaire seeks to identify matters that should be considered by the committee, screening such matters and effecting assignment of them to interested Fellows throughout the state. Liaisons are also being established with various Florida public interest groups to help apply the resources represented by the trial experience and skills of Florida Fellows to the matters that most

need and deserve their pro bono involvement.

Murray M. Wadsworth, State Chair

INDIANA

The 1998 Annual Meeting of ACTL Indiana Fellows is set for October 2, 1998, at Woodstock Country Club, Indianapolis. Following the Indiana State Committee Meeting Friday morning, golf and tennis events are planned for Friday afternoon, followed by a cocktail reception and dinner. The planned speaker is Indiana ACTL Fellow Larry Mackey, one of the lead trial counsel for the Oklahoma City bombing trials. All Indiana Fellows and their guests are invited and urged to attend. For the last two years, this October weekend has provided perfect Indiana autumn weather.

Sherrill Wm. Colvin, State Chair

KENTUCKY

The ACTL Kentucky Chapter Annual Luncheon will be held during the 1998 KBA Annual Convention on Thursday, June 18, 1998, at The Lexington

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Club, 170 Esplanade, Lexington, Kentucky, from 12 Noon until 1:30 p.m. The Kentucky State Committee will hold a meeting immediately following. Reservations can be made through State Chair Wayne C. Priest, Jr., Bowling Green, Kentucky. The State Committee will 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., State Chair

MASSACHUSETTS

Massachusetts Fellows are actively engaged in two initiatives, one with a local genesis and the other one of the ACTL's national projects; and we are doing them both with a technological twist.

The first project is our mediation program, which was started several years ago under the able leadership of Joe Steinfield, cultivated under the watchful eye of Marty Cosgrove, and now energized and expanded by Charlie Donelan. The program involves making Fellows available to our two largest counties, Suffolk and Middlesex, to mediate cases which the Regional Administrative Judges of the two counties identify. The basic criteria are that the cases should be complex, likely to take an inordinate amount of courtroom time, and/

or of such a sensitive nature that a public forum is truly in nobody's interest. The current energy and excitement going into the program is both a function of Charlie's approach to the project, and of the attitudes of the new Regional Administrative Judges — Margaret Hinkle in Suffolk and Stephen Neel in Middlesex. Cases are being identified by the RAJs and matched to appropriate Fellows by Charlie.

The second project relates to the Access to Justice initiative in which each of the states was asked to become involved. Max Stern (an ACTL Courageous Advocacy Award recipient) is chairing the effort, and is already working with such groups as the Lawyers Committee for Civil Rights to identify cases which could particularly benefit from the wisdom and experience of senior Fellows. At the same time, Max is reaching out to Massachusetts Fellows to identify those among them who are prepared to participate in this effort.

The "technological twist" is that my communications as State Chair now go by e-mail to all Massachusetts Fellows who have private, confidential e-mail. (Everyone else still gets hard copy through the mail.) This enables the State Committee to send out mailings about our initiatives, and reminders periodically, to our entire state fellowship. In turn, the Fellows can

contact such people as Charlie Donelan and Max Stern by e-mail if they wish to express their interest in participating in our projects. The turn around time is great!

Both projects are receiving enthusiastic support from the Fellows, and the State Committee has the sense that our members are feeling a greater sense of participation as a result of projects such as these.

Joan A. Lukey, State Chair

MISSISSIPPI

The annual black-tie dinner of the Mississippi Fellows was held at the University Club in Jackson in December 1997. There was a record attendance of approximately 80 present. We were delighted to have present as guests President Ed Brodsky and his bride, Cynthia, of New York City, as well as Regent Eddie Rice, and First Regentlady Patty Rice, of New Orleans. As Eddie Rice reminded us, this was the fourth consecutive year he has attended the annual dinner of the Mississippi Fellows. Several Fellows inquired where in Mississippi Eddie's practice is located, since his attendance is so regular.

We are pleased that Mississippi Fellow Swan Yerger has been appointed, and has now served several months, as a

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Hinds County Circuit Judge in Jackson. We understand that Judge Yerger will be a candidate for the position in the next judicial elections.

The Mississippi State Committee as presently constituted has held two meetings and is well into the nomination process for 1998. We are delighted to learn that four of our 1997 candidates were nominated by the Board of Regents at the Spring Meeting at Palm Desert, California.

The annual breakfast meeting of the Mississippi Fellows will be held in conjunction with the Mississippi Bar meeting at Sandestin, Florida, on July 17.

The Mississippi Fellows continue to build on and enjoy a high level of collegiality.

John B. Clark, State Chair

DOWNSTATE NEW YORK

The Fellows of Downstate New York, Connecticut and Vermont are having a Regional Fellows Meeting at the Princess Hotel in Hamilton, Bermuda, May 14-17, 1998. Fellow Alan Levine is coordinating the event, including the CLE programs each morning.

Gregory P. Joseph,
Downstate Chair

OHIO

Approximately one-third of Ohio's 185 active Fellows par-

ticipated in separate membership meetings in Cleveland, Columbus and Cincinnati during the month of April. State Chairman John McDonald attended each of these meetings and expects that his State Committee will have as many as two dozen prospective candidates for Fellowship to consider at the April 18 and July 18 meetings.

A social gathering of the Central Ohio Fellows and spouses is planned for August 28th at the Rocky Fork Country Club. Plans are underway for a regional meeting in Cincinnati in the Summer of 1998.

John C. McDonald, State Chair

SOUTH CAROLINA

The South Carolina State Committee will meet May 29, 1998 and the South Carolina Chapter will have its Annual Meeting February 25-28, 1999.

The Fellows have established an ACTL Distinguished Lecturers Series, which was presented in 1997 and 1998. We are in the process of possibly having a member of the College become associated with the Law School so that this course can be supervised and the students receive credit.

We are in the process of establishing a CLE program for lawyers who are employed by the various Legal Aid Societies in South Carolina. This is spearheaded by James B. Pressly, Jr.

and R. Bruce Shaw.

The South Carolina Chapter has offered its services to the courts for any pro bono work the court may consider to be of sufficiently significant impact to warrant the College's involvement.

Jacob H. Jennings, State Chair

TEXAS

The Texas State Committee has approved and forwarded 11 new nominees to the College for submission in the Spring 1998 Ballot.

The Texas Fellows will have their annual meeting and luncheon in connection with the annual meeting of the State Bar of Texas at Corpus Christi, Texas, on Friday, June 12, 1998, at the Corpus Christi Town Club; One Shoreline Plaza, 6th Floor; 800 N. Shoreline Blvd.; Corpus Christi, Texas 78401; Telephone: (512) 880-5777.

Darrell Barger, a Fellow in Corpus Christi, is the local chair who is coordinating the meeting and luncheon.

James LaVoy Branton,
State Chair

UPSTATE NEW YORK

On the weekend of June 5-7, 1998, the Upstate New York and Ontario Fellows will hold a joint meeting at Niagara-on-the-Lake. Topics for

discussion by distinguished speakers from both sides of the border include: Relationship Between Trial Lawyers — A Code of Civility, and Alternate Dispute Resolution.

Activities include theatre and dinner at the Niagara Commissioner's Quarters overlooking the Falls. The Ontario Province Committee has several projects under consideration jointly with the judiciary, including one on civility.

VERMONT

Philip J. Kramer, Upstate Chair

The Fellows of Vermont, Downstate New York and Connecticut are having a Regional Fellows Meeting at the Princess Hotel in Hamilton, Bermuda, May 14-17, 1998. Fellow Alan Levine is coordinating the event, including the CLE programs each morning.

ONTARIO PROVINCE

Edward J. Tyler III, State Chair

On the weekend of June 5-7, 1998, the Ontario and Upstate New York Fellows will hold a joint meeting at Niagara-on-the-Lake. Topics for discussion by distinguished speakers from both sides of the border include:

Relationship Between Trial Lawyers — A Code of Civility, and Alternate Dispute Resolution.

Activities include theatre and dinner at the Niagara Commissioner's Quarters overlooking the Falls. The Ontario Province Committee has several projects under consideration including one on civility to be held jointly

QUEBEC PROVINCE

with the judiciary.

Earl A. Cherniak, Q.C., Province Chair

Quebec was most severely hurt by the ice storm which literally paralysed Montreal for the entire month of January, causing financial losses in excess of one billion dollars and leaving most Montreal law firms closed for a week and operating half-staff for another two. Hotels were filled with families that had been compelled to abandon their homes due to lack of electricity, lack of heat and lack of basic supplies. There was no alternative but to cancel the January 15th black-tie dinner, where we expected an outstanding number of local Fellows — as well as Fellows from the Northern States — to welcome President Brodsky and Regent Mone.

We have lost the Dean of Quebec Fellows, Jack Campbell, Q.C., who died peacefully, at age 94, on January 30, 1998. His

career was already a model in his lifetime and will be perpetuated, thanks to the numerous committees which he has chaired and the numerous reports to which he has contributed and which are now part of the permanent archives of the Bar of Quebec and of the Canadian Bar.

There is good news also. Alan Hilton, one of our youngest Fellows, was appointed to the Bench, sworn as a Justice of the Superior Court of Quebec.

Finally, we are pleased to announce that the Annual Meeting of the North Eastern Region will be held in Mont-Tremblant on June 25th next, under the chairmanship of Regent Michael Mone and, hopefully, honour sponsorship of President Brodsky.

As this will be my last report, I take this opportunity to express my gratitude to the officers of the College and to the secretarial office for their support and warm feelings towards my wife Denyse and myself during my term of office.

Guy Pepin, Q.C.,
Province Chair □

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