

THE BULLETIN

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49th Annual Meeting

Hugh L. McColl, Jr. became the CEO of a small bank in Charlotte, North Carolina in 1983. Last year that bank merged with and became the Bank of America. "He is now CEO of the most highly valued financial institution in this country and in the world," Past President John C. Elam said as he introduced the first speaker at the 49th Annual Meeting of the American College of Trial Lawyers in Philadelphia.

Speaking of the South he grew up in, Mr. McColl said, "Almost immediately after we integrated our schools, the South's economy took off, our community life strengthened and our cultural life became enriched. I believe inte-

gration made the difference. I believe that integration and the unity it began to nourish became a source of strength."

He spoke of diversity and the importance of the two professions of "lawyering and banking" to make more progress in determining that all citizens are equal under the law.

"As long as there is a lack of balance between diversity in our society and the diversity in our professions we are incapable of achieving our potential or serving our country well. Until we achieve this balance we will be part of the problem of divisiveness and not part of a unifying solution. We will be an impediment to our country's success."

He said that many minorities

remain trapped in sub-standard public schools and asked, "So why should it surprise us that minority kids – who come in disproportionate numbers from low to moderate income homes – struggle to compete academically with their largely better-prepared white classmates?"

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The Seventh

ACTL Sponsors Anglo-American Exchange in Edinburgh and London

Associate United States Supreme Court Justice Anthony M. Kennedy and then College President E. Osborne Ayscue, Jr. led a United States delegation to the first phase of the seventh Anglo-American Exchange in Edinburgh and London

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American College of Trial Lawyers
THE BULLETIN

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(1895-1982)

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GARY HUNT
Managing Editor



American College of Trial Lawyers
8001 Irvine Center Dr., Suite 960
Irvine, California 92618
Telephone: (949) 727-3194
Fax: (949) 727-3894
E-Mail: acotl@earthlink.net

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in September. The remainder of the delegation consisted of Associate Justice Clarence Thomas, California Supreme Court Chief Justice Ronald M. George, Tenth Circuit Court of Appeals Judge Deanell R. Tacha, District Judge Sam C. Pointer, Jr. of the Northern District of Alabama, Past Presidents Edward Brodsky, Leon Silverman and Andrew M. Coats, now Dean of the University of Oklahoma Law School, and Sylvia H. Walbolt of St. Petersburg, Florida.

The British delegation was led by Chief Justice Lord Thomas Bingham. The other members of the British delegation were Lord Alan Rodger, the Lord Justice-General of Scotland; Sir John Frank Mummery, a Lord Justice of Appeal; Sir Hayden Phillips, Permanent Secretary and Clerk of the Crown in Chancery; Peter Goldsmith, a former Chairman of the Bar Council, who has since become a life peer; Mr. Justice Maurice Kay of the Queen's Bench Division; Sir Sydney Kentridge, Professor Jack Beatson of the faculty of law of Cambridge University and Jeremy P. Carver, head of the International Division of Clifford Chance, soon to be the world's largest law firm.

The agenda for each session of the Exchange is set by the host country. The Delegates had an opportunity to compare in depth the way in which out-of-court publicity, comments to the media by lawyers and television coverage of trials is handled in each of their countries. The British delegates were particularly interested in the American experience with federalism in light of the recent transfer of certain powers from the central British Parliament

to parliaments in Scotland, Wales and Ireland. The British account of the experience of having decisions of its highest court subject to review by supranational tribunals served to emphasize for the delegates from the United States the significance of our having declined to ratify treaties that would grant such power to tribunals outside the United States. The British use of — and view of — jury trials proved to be quite different from ours.

In addition to exchanging papers on these and other subjects, the delegates and their spouses had the opportunity to observe the functioning of courts in both Edinburgh and London and to visit historic sites in both cities. They were entertained at the residence of the United States Ambassador to the Court of St. James and at Gray's Inn.

"We came away from these sessions with a new appreciation both of the common roots of our two legal systems and of the differences that our diverging cultures and histories have produced," Mr. Ayscue reflected.

Fellow Sylvia Walbolt, the second woman inducted as a Fellow of the College, observed, "It was the most extraordinary experience of my professional career, at both the intellectual level and the collegial level."

The second phase of this Exchange is scheduled for September 2000 in Washington, D.C.

Past Exchanges have resulted in such innovations as the use of written briefs in appeals in Great Britain and the Inns of Court movement in the United States. □

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He said that his company's foundation made a decision last year to put the bulk of their charitable dollars into early childhood education and preparedness programs. "By supporting programs like Success By Six and Smart Start we are attacking the circle of poverty and educational underachievement at the root," he said. "We are working to make sure that kids are prepared to learn the first day they step through a school-house door. And what we are learning is that minority kids can compete, and win, just as well as anybody."

Past President Robert B. Fiske, Jr. introduced **Edward G. Rendell**, who is finishing his second four-year term as Mayor of the City of Philadelphia. Mr. Fiske told how Mayor Rendell had changed Philadelphia from a city "in shambles" to a city with a sense of "identity and pride."

"He privatized many city services and engaged in hard bargaining with the unions, changing the compensation packages and changing outmoded work rules that were a disincentive to productivity," Mr. Fiske said. "What he inherited as a \$230 million deficit has turned in the last five years into budget surpluses. He also engaged in a number of major development initiatives. He has built a new Lincoln Center type concert hall, twelve new hotels are under construction or already built, there has been an extensive waterfront commercialization project, a National Constitutional Center and an Avenue of the Arts right here in the center city. Finally, in his most crowning achievement, he has persuaded the Republic National Con-

vention Committee to hold its 2000 convention here in Philadelphia."

Mayor Rendell, who previously served as the city's district attorney, acknowledged that Philadelphia has a sense of "vitality, energy and dynamism," but also noted that, "in 1998 – in the midst of all this energy – requests for food by families to our food banks increased by 22 percent. Requests for shelter by families increased 17 percent."

"While all this is going on," he said, "there have been Americans who have clearly been left behind, who haven't been touched by the recovery, whose lives haven't been changed. Opportunities haven't been created for them."

He noted the debate in Congress about the projected budget surplus and said, "We ought to be spending that money and we ought to be spending it fixing America's problems."

He spoke of a crumbling American infrastructure, the lack of health care coverage for many Americans, out-dated school buildings where, "there aren't enough books to go around and where learning to operate a computer is a distant dream."

He emphasized this period of prosperity in our country and said, "When this country was founded, we took care of each other. If someone was unemployed, we brought them food and we brought them clothes until they got back on their feet again. It's what made America a very very special place. We didn't fear immigrants, we welcomed each wave of immigrants because we were all immigrants ourselves."

"The sun is shining," he said, "the conditions are right for America to provide opportunities for all Americans. And in this glistening city that

has come back so much, there are Americans living ten minutes from here who I am ashamed to admit live in a hopeless condition. That ought not to be how it is. We ought to have the power, the resources, the energy and the will to make a difference."

In introducing **The Honorable Edward M. Kennedy**, President-Elect Michael E. Mone said of the United States Senator for Massachusetts, "He has been a strong and passionate vote for many of the issues that Mayor Rendell just talked to you about. On affordable health care for all of our citizens, it has been Ted Kennedy's voice that has helped to achieve what we have. When the students in this country did not have the money for college, it was Ted Kennedy's voice that was heard. On issues that we care about, like legal services for the poor, it was Ted Kennedy who spoke up. On the preservation of the jury system and the rights of Americans to seek redress in court, Ted Kennedy is the person who has carried that battle. Historians looking at his career have said that he is one of the most effective legislators that has served in the United States Senate in the last 100 years."

Highlighting the issue of consumers ability to sue HMOs, Senator Kennedy said, "Beyond everything else there is one fundamental underlying theme – who is going to make the decision with regards to your healthcare, your parents' healthcare, or your children's healthcare? Should that be an accountant in an insurance company, or should it be a medical professional?"

He said, "Americans, all over the

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country – north, south, east and west – say it ought to be done by medical accounting, but not the HMOs.”

He also said there is not a country in the world that has a strong trial bar like the United States. “That is the backbone of what is right in terms of the consumer protection and the fundamental families of this country.”

Past President Andrew M. Coats introduced **William G. Paul**, President of the American Bar Association. He told of how Mr. Paul had hired him as a summer law clerk and had given him his bicycle, “to ride back and forth to law school.” They then practiced in the same law firm for many years. In 1976 Mr. Paul was President of the Oklahoma Bar Association and Mr. Coats was President of the Oklahoma County Bar Association.

Of Mr. Paul’s trial experience, he said, “He tried all kinds of cases as a lawyer. He became, very early, a Fellow of this College because of his exceptional trial work. He tried divorce cases, personal injury cases on the plaintiff and defendant side. He tried oil and gas cases, banking cases, he tried commercial cases. He tried will contests, he tried employment. He tried tax cases. In addition to that, he did estate plans and trusts, oil and gas opinions. He was in our tax law section. He did real estate transactions. He was truly omnivorous as a lawyer.”

“We – the profession, we – are confronted today with an issue which many believe is the most serious and important one the profession has faced in this century,” Mr. Paul said.



American Bar Association President William G. Paul was introduced by a former law partner and ACTL Past President Andrew M. Coats.

“It’s the question of multi-disciplinary practice (MDP). It is the question of whether lawyers should be permitted to practice law with other professionals – with accountants, with financial planners, with consultants. It’s a question of whether our rules of professional conduct should be changed to permit the sharing of fees. And the answer to the question goes to our core values. It goes to questions of the independence of the lawyer, if not the profession, to attorney-client privilege, to maintaining confidences of the client, conflicts of interest. So it is a deadly serious issue.

And it’s not one we ask for, it’s one that’s moving upon us of its own force. There are MDPs proliferating around the world, he said. And there is a very very substantial movement in this country, primarily in the tax area, by the big accounting firms hiring hundreds, hundreds, hundreds of lawyers. And the rationale for that being permissible under our current regimen is that it is not the practice of law. Well, it’s debatable whether or not it’s the practice of law.

“The reason the role of the Ameri-

can Bar Association is so significant, so important,” he said, “is that historically our model rules, adopted by the House of Delegates, become the national standard. This is a matter for state regulation. But most states do follow the lead of the American Bar Association.”

He said this issue will most likely come before the ABA in July 2000.

Mr. Paul said, “The question may be – should we do nothing and see continued proliferation of this practice, undirected, unregulated? Or, if we don’t change our rules, should we get proactive in trying to stop it, if it is unauthorized practice of law, or if it is a violation of our ethics? Or, should we approve it and make our rules more flexible, but shape it and direct it. Those are the questions. Those are the issues.”

Past President Gene W. Lafitte introduced **Lester Munson**, Senior Writer and Associate Editor of *Sports Illustrated Magazine* by saying that Mr. Munson had practiced law in Chicago as a personal injury lawyer for some 17 years.

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A graduate of Princeton University, where he was editor of *The Princetonian*, the school newspaper, Mr. Munson worked as a journalist in the Chicago area for three years before going to law school at the University of Chicago. He then joined his father in the practice of law. In 1989 he returned to journalism in the publication of a Chicago area sports newspaper. With *Sports Illustrated*, Mr. Lafitte said, "He specializes in investigative work and in legal issues involving sports — things like strikes and lockouts and anti-trust litigation in sports — financing of stadiums, gambling of professional and amateur athletes, allegations, disciplinary actions involving sports illuminaries."

Using a slide presentation, Mr. Munson displayed a story in *Sports Illustrated*. The story told of a case where one lawyer in a criminal case "Fumbled his way through a closing argument" while the "local prosecutor was masterly — I think we invented that word for this article — in his presentation," he said. Mr. Munson also said he called the defense counsel in the case 30 times to talk about the trial. He faxed in letters and called partners of his with whom he was acquainted.

"Not once did I ever get a callback, nor did my colleagues get a callback," he said. "It's as if we did not exist." The prosecutor, he said, would call him back ten minutes after he had called him. What did the prosecutor tell him about the case? "Absolutely nothing. Absolutely nothing, because the rules are the rules and he can't. But, given that posture it was very easy for the three of us doing this article to say one

fumbled his way through the argument and one was masterly.

"Is this too complicated for you?" Mr. Munson asked. "You want me to go through this again? See, there are lessons you can learn here."

Continuing, Munson said, "Now, it works both ways." He showed a cover with Michael Jordan in a Chicago White Sox uniform. "Look what it says here. 'Bag it Michael. Jordan and the White Sox are embarrassing baseball.'" He said his editor at the time decided that was going to be the headline on the cover of *Sports Illustrated*.

Munson said, "It surprised a lot of us because inside the magazine was an article that said Michael was doing pretty well at baseball. But the editor thought this was kind of cute. Keep in mind we are *Sports Illustrated*; this is Michael Jordan. We like to think we are pretty good at producing a magazine and Michael Jordan is the greatest athlete in the history of team sports.

"What is Michael's reaction to this cover? Not once since that cover has he talked to one of us from *Sports Illustrated*. We put this guy on the cover 41 times. Several times after this, when he returned to basketball. Not once would he give us an interview. And believe me, an interview with Michael Jordan is an item of value in sports journalism.

"The moral of the story is, if somebody like me — it could be the local paper, it could be a radio station, television — calls you, call back. You don't have to say anything, just call back. Calling back is going to help you."

Retiring Regent Anthony Murray introduced **The Honorable Paul V. Niemeyer** to Fellows at the Annual

Meeting.

Judge Niemeyer, a Fellow of the College, was awarded the Special Merit Citation of the American Judicature Society for his efforts in rewriting the rules of civil procedure in Maryland. He was elevated to the United States Court of Appeals, Fourth Circuit, Baltimore, Maryland by President Bush after serving only two years as a United States district court judge.

In 1996 Judge Niemeyer became chairman of the Advisory Committee on the Federal Rules of Civil Procedure for the Judicial Conference.

Judge Niemeyer traced the history of civil rules to the Magna Carta and said that in the 1930s lawyers and academics, "demanded discovery as an adjunct to this process." He quoted a University of Michigan professor of the time who argued, "False and fictitious causes and defenses thrive under a system of concealment and secrecy in the preliminary stages of litigation, followed by surprise and confusion at trial."

From this national debate was born the Federal Rules of Discovery, "which the Supreme Court thereafter directed were to be accorded a broad and liberal treatment," according to Judge Niemeyer.

He cited a 1991 report of the President's Council on Competitiveness that claimed the judicial system had become burdened with excessive costs and long delays. One of the chief culprits discussed in the report was discovery, he said. The report also stated that "Over 80 percent of the time and costs of a typical lawsuit involves pre trial examination of facts through discovery."

Noting that there have been previ-

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The President's Report

"Tonight, the portals of the American College of Trial Lawyers are again open to receive into Fellowship..."

At the end of my first month as President of the College – in Portland, Oregon – I had the gratifying experience of inducting a new Fellow into the College. The induction ceremony took place at the annual dinner of the Oregon Fellows in order to welcome a new Fellow whose illness threatened to preclude her from traveling to future meetings of the College for induction. Recognizing the qualifications required for Fellowship, appreciating the personal qualities and professional abilities that Fellowship is intended to recognize, and remembering the honor I felt on the occasion of my own induction, I found it a profoundly moving experience to address the induction charge to a single inductee who has earned the right to call herself a Fellow of the College.

Reading Emil Gumpert's words that evening, I had an opportunity to reflect on his eloquent articulation of his vision of the College and of its purpose. I was not alone. Following the induction ceremony, a number of Fellows told me what a rewarding experience it was to hear the charge again under such special and unique circumstances. As the College enters its 50th year, I am mindful of how well Emil Gumpert's idea and vision has stood the test of time.

Gumpert conceived of the College as a means of recognizing and organizing the premier practitioners of all aspects of trial law from every

American state and every Canadian province. Fellowship status was not, for Gumpert, to be earned on the basis of professional excellence alone; then, as now, to move from candidacy to Fellowship required not only unquestionable trial skills, but ethical standards and contributions to the candidate's local communities which met the same standards. While trial practice has certainly changed in the 50 years since Gumpert's ideas were put into practice, his standards and his idea of a unique fellowship of trial lawyers are as relevant today as they were 50 years ago.

We are literally surrounded by proof of the correlation between the solidity of an idea's foundation and its endurance. As a homely example, many of the basic rules governing baseball today include regulations setting out the relative locations of home plate, the pitcher's mound, and the bases that were established over 150 years ago. Over the ensuing decades, despite enormous changes in the size, strength, and speed of the athletes training and competing under these rules, the layout of the diamond has remained exactly the same as it was in 1846 when Cartwright's rules were first formulated. Rather than limiting the competition conducted under them, these rules have stimulated it. Today, it is at least as hard to hit in the major leagues as it was when the game started. The distances have stood the test of time, and have encouraged those who play according to the rules establishing them to greater achievement. In the College,



Michael E. Mone
President

Mike Mone is a partner in the Boston law firm of Esdaile, Barrett & Esdaile. He is a plaintiff's attorney whose litigation practice is heavily influenced by product liability, medical malpractice, aviation and insurance law cases.

Listed in every edition of "The Best Lawyers in America," he has been a Regent of the American College of Trial Lawyers since 1995. After serving as Secretary and President-Elect, he became the 50th President of the College in October 1999.

Mr. Mone served on the National Board of Governors of the

Gumpert's ideas and his standards have had a similarly positive effect on those "playing" under them, and having guided us for 50 years, can be expected to continue to inspire us to rise to future challenges.

This idea of celebrating experience as an example for further future accomplishment is to me particularly appropriate as we celebrate the 50th anniversary of the College. The 50th anniversary festivities will culminate at our annual meeting in Washington, D.C. in October 2000. This

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Association of Trial Lawyers of America and was President of the Massachusetts Academy of Trial Attorneys. He served as President of the Massachusetts Bar Association in 1993. In 1994, he completed a four-year appointment on the Massachusetts Board of Bar Overseers and also served on the Joint Bar Committee on Judicial Appointments.

He was appointed by Governor Dukakis in 1987 to serve on the Judicial Nominating Committee. He has represented judges and lawyers in disciplinary cases and was appointed by the Supreme Judicial Court to act as Special Counsel to the Commission on Judicial Conduct to investigate a judge.

A graduate of Middlebury College, he obtained his J.D. from Boston College Law School in 1967 and was awarded an Honorary Doctor of Law from Suffolk University in 1999.

Mike and Margaret Mone have one son, Michael, who was an Assistant District Attorney and is now in private practice in Massachusetts. □

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golden anniversary is an appropriate opportunity for the Fellows of the College to remind ourselves of the immutable value of maintaining the highest standards of quality and ethics, despite – and perhaps because of – the inevitability of change in our lives, in our practices, and in the law itself.

“By your ability, learning and character you have added luster to the legal and judicial annals of your

state or province...”

Over the last year, as Margie and I have traveled and met with Fellows all over the United States and Canada, I have been consistently impressed by the warmth and sincerity with which we have been received by the wonderful people who are Fellows of the College. The late Tip O'Neill, Former Speaker of the House in Massachusetts, explained his profession by saying, “all politics is local.” For all its international stature, the American College of Trial Lawyers is just this type of “local.” It is each of the individual Fellows, whether from the largest city or the smallest town, who unite together their strength and integrity to form the fabric of the trial Bar of our two nations.

Two events last year underscore for me the regard in which the College is held by non-Fellows: an honor bestowed on us in Naples, and a request made of us in Oregon. Last spring, as I prepared for the meeting in Naples, I hoped to include as a speaker a member of the House's Judiciary Committee, Representative Asa Hutchinson of Arkansas. As part of my communications with the Congressman's staff, I sent a list of the Arkansas Fellows to Mr. Hutchinson as a reminder of Arkansas' representation on our roster. Very shortly after this list winged its way to Washington, I was the happy recipient of Congressman Asa Hutchinson's acceptance of our invitation. I am confident that Mr. Hutchinson's acceptance was prompted in large part by his recognition of the College as including the leaders of the trial bar in the State of Arkansas.

This Fall, just before I visited

Portland, Oregon's Bar found it necessary to investigate certain trial tactics used by its malpractice insurer in defending cases in Oregon. The president of the Bar, responding to the public criticism of the insurer's approach to this problem, desired an impeccable panel to investigate and report to the Bar and the public. He announced that he would ask five Fellows of the American College of Trial Lawyers, an organization that he held in the highest regard, to investigate those charges and make that report. A panel was chosen from among our Fellows and they are working with the Oregon Bar to investigate this matter of utmost public importance. These two recent events showcase the twin strengths of the American College of Trial Lawyers: our ability to think and act as an international organization, and our simultaneous ability to rely on the personal qualities of integrity, skill, and reputation of each of our Fellows.

“...This organization will be further advanced by the application of the rare qualities and virtues which nature, fortune and laborious days have bestowed upon you.”

Being a trial lawyer has always required enormous personal commitment, but in talking with Fellows around the country, I detect fear of change. Time and again, I have listened to Fellows' observations on the changes in trial practice as we know it, and concerns that trial lawyers are – perhaps – a dying breed. I do not subscribe to this belief; as history shows, lawyers are flexible creatures who have survived greater demon-

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President's Report

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strations of the plasticity of the law than those we see today. Looking back 100 years, I find precursors to today's trial lawyers' furrowed brows on past leaders of the Bar concerning changes not only in trial practice, but change in the composition of the Bar as new immigrants became educated and began appearing in court. Put simply, trial practice survived and flourished because it was basic to the American system of justice; it is no less essential today. Changes will occur, but whether it is alternative dispute resolution, jury trial experiments, or multi-disciplinary practice, we need not fear them as long as we adhere to our values and continue to use our skills in the representation of our clients. Concern is a constant companion to change – 50 years from now another president will preside over our 100th anniversary, and I am sure that he or she will hear members lament about the good old days and how times have changed – but fear need not be. The College will be strong, and the practice of law will remain vigorous and exciting as long as we are able to keep Emil Gumpert's vision of ethical and skillful practice alive.

“And so, we like to look upon these gatherings, not only as regular meetings of the Fellows, where we may with utter freedom and equanimity go from labor to repose.”

This year the College will meet at the Ritz Carlton in Maui from March 16 through March 19. President-Elect Earl Silbert has put

together a wonderful program that will include addresses by the Chief Justice of the Massachusetts Supreme Court and the President of the Canadian Bar Association, and a panel on the challenges of multi-disciplinary practice. Maui in the early spring is beautiful; I hope that many of you will be there to celebrate what Gumpert referred to as “keenest delight in exalting our friendships.”

This year's celebration will continue in Washington, D.C. in October when the College will gather to celebrate its 50th anniversary. Special events include a reception at the Library of Congress, a morning program on the history of the College – which will include the distribution of the newly publicized history of the College – and other wonderful speakers. On Saturday morning Professor Walter Dellinger will moderate a discussion with the Chief Justices of the United States, the United Kingdom and Canada. All of these chief justices are Honorary Fellows of the College. We have invited all of our living Honorary Fellows to attend the meeting to participate in our anniversary celebration that will culminate on Saturday evening at a banquet in honor of the Supreme Court of the United States. I hope as many Fellows as possible will come to Washington to reflect on our past, celebrate our present, and look to the future of the College.

“Long and happy may be our years together.” □

ACTL Fellows Appointed To The Bench

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

The Honorable Raymond C. Fisher, former Assistant Attorney General, was recently appointed Judge to the U.S. Court of Appeals for the Ninth Circuit, Pasadena, California.

The Honourable Mr. Justice Paul Lamek was recently appointed to the Superior Court of Justice, Ontario, Canada.

Barbara M.G. Lynn of Dallas, Texas was recently appointed District Judge for the Northern District of Texas, Dallas Division.

The Honorable David A. McLaughlin of New Bedford, Massachusetts was recently appointed Associate Justice, Superior Court Department of the Trial Court of the Commonwealth of Massachusetts.

The Honourable Mr. Justice Richard Nadeau of Montreal, Quebec was recently appointed Judge of the Superior Court of Quebec Palais de Justice, Montreal, Quebec.

The Honorable Paul Noland of Wheaton, Illinois has recently been recalled to service, Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois.

The Honorable T. John Ward of Tyler, Texas was recently appointed U.S. District Judge for the Eastern District of Texas. □

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ous unsuccessful efforts to curtail the expansiveness of discovery, in 1997 the College proposed an amendment to Rule 26. Instead of gearing relevancy for discovery purposes to the subject matter of litigation, the American College's proposal intended to gear relevancy to a specific claim or defense in the litigation."

In 1996 Judge Niemeyer engaged the Civil Rules Committee of the Judicial Conference to look at the entire discovery issue.

The committee went to great lengths to gain information, including conferences of plaintiff and defendant lawyers, asking national legal groups to make responses, and conducting studies to collect empirical data. The Federal Judicial Center conducted a national survey of lawyers and the RAND Institute for Civil Justice reviewed its data on discovery.

From these activities the committee learned:

- no one wanted to eliminate full disclosure of relevant information;
- nearly 40 percent of the federal cases do not use discovery and that it is used for three hours or less in another 25 to 30 percent of the cases;
- in cases where discovery was actively used it was thought by both plaintiff's and defendant's lawyers to be unnecessarily expensive and burdensome;
- the data revealed that the costs of discovery overall represents about 50 percent of litigation costs;
- in particular cases where discovery was actively employed it represents as much as 90 percent of the costs of litigation;

- almost all lawyers favored the elimination of local rule options;
- the belief was almost universal that discovery costs could be reduced by greater judicial involvement, and the earlier the better;
- lawyers representing defendants felt that a relaxation of the waiver of attorney-client privilege rules for limited purpose of discovery would significantly lessen the costs of discovery;
- the data clearly confirmed that early discovery cut-off dates and confirmed trial dates were the best court management tools for reducing the costs of discovery;
- and 83 percent of all attorneys polled by the Federal Judicial Center wanted some change in discovery rules.

The committee eventually selected a half dozen changes they felt would receive the most support and provide the greatest balance. Other hearings were held and additional comments received. The proposal went through the Standing Committee of the Judicial Conference with minor changes and sent to the Judicial Conference.

The debate at the Judicial Conference centered on four rules. The first centered on Rule 26(a), the mandatory disclosure rule. The proposal narrowed the requirement of disclosure to matters that only support claims in defense, excluding eight categories of cases. But the proposal also would eliminate the right of district courts to opt out. "While lawyers support this, district judges have almost uniformly opposed it," Judge Niemeyer said. The proposal carried by a very narrow vote of 13 for and 12 against.

The second change involves Rule 26(b)1, defining the scope of discovery. The proposal divides the current

scope into two parts – attorney managed discovery and court managed discovery. Under the change, attorneys can request and routinely receive information relevant to claims and defenses in the action. And only the court – for good cause – can authorize discovery for information relevant to the subject matter. This proposal was also controversial, passing with 12 for and 11 against.

The third proposal was defeated by a vote of 15 to eight. It would have involved the power of the court in conditioning disproportionate discovery on the payment of costs.

The final change would amend Rule 30(d) to establish a presumptive time limit for depositions to one seven hour day. "While the proposed rule does not establish a fixed time limit, it establishes a presumptive time limit that either the parties or the court can modify," he said. This proposal passed with 22 in favor without a count taken of those opposing it.

These proposals approved by the Judicial Conference will be presented to the Supreme Court to be considered by the Court at conference. If the Court approves them, the Supreme Court is required to transmit the rules to Congress by May 1, 2000. Congress then has seven months within which to pass a law vetoing the changes. If Congress fails to act by December 1, 2000 the changes will become law.

Judge Niemeyer concluded by saying, "I have come to learn that more substantial changes to the civil rules are now most difficult and the committee must be satisfied with taking small changes and then only when supported by empirical data and by broad political support." □

New Fellows Inducted During 49th Annual Meeting Philadelphia

The College welcomes the following Fellows who were inducted into Fellowship during the 1999 Annual Meeting in Philadelphia.

ALABAMA

Fred D. Gray
Tuskegee

John N. Leach, Jr.
Mobile

Scott A. Powell
Birmingham

ARIZONA

Ron Mercaldo
Tucson

William H. Sandweg III
Phoenix

Robert E. Schmitt
Prescott

NORTHERN CALIFORNIA

James R. Oppliger
Fresno

Russell G. Porter
Sacramento

SOUTHERN CALIFORNIA

John D. Barnett
Orange

Karl A. Keener
Santa Monica

Robert A. Long
Los Angeles

Michael I. Neil
San Diego

COLORADO

Patrick J. Burke
Denver

Raymond P. Moore
Denver

Jerry B. Tompkins
Grand Junction

DELAWARE

Richard E. Poole
Wilmington

DISTRICT OF COLUMBIA

Rita M. Bank
Washington

GEORGIA

Robert L. Berry
Rome

Philip C. Henry
Atlanta

Daniel S. Reinhardt
Atlanta

HAWAII

Wayne Kamaí Kekina
Honolulu

IDAHO

David Z. Nevin
Boise

Jerry V. Smith
Lewiston

P. Craig Storti
Boise

ILLINOIS

Stanley V. Boychuck
Chicago

William J. Burke
Chicago

John T. Coleman
Chicago

D. Cameron Dobbins
Champaign

James R. Figliulo
Chicago

Richard D. Gaines
Rockford

Steven J. Harper
Chicago

John W. Kozak
Chicago

Al J. Pranaitis
Alton

Richard E. White
Murphysboro

INDIANA

Lance D. Cline
Indianapolis

IOWA

David A. Elderkin
Cedar Rapids

John M. French
Council Bluffs

Thomas D. Hanson
Des Moines

Thomas J. Shields
Davenport

KENTUCKY

David Alan Friedman
Louisville

LOUISIANA

Troy E. Bain
Shreveport

Lawrence S. Kullman
New Orleans

W. Shelby McKenzie
Baton Rouge

MARYLAND

M. Dean Jenkins
Ocean City

MASSACHUSETTS

John D. Cassidy
Boston

Steven L. Hoffman
Newton

Frances A. McIntyre
Somerville

Elizabeth N. Mulvey
Boston

MINNESOTA

John M. Degnan
Minneapolis

Peter Scott Hendrixson
Minneapolis

Lewis Remele
Minneapolis

Peter Thompson
Minneapolis

**MISSISSIPPI**

Howard Dyer III
Greenville

David W. Mockbee
Jackson

MISSOURI

William J. Lasley
Carthage

MONTANA

Keith Strong
Great Falls

NEBRASKA

Lee Kovarik
Gering

Robert W. Mullin
Scottsbluff

NEVADA

Keith E. Galliher, Jr.
Las Vegas

NEW HAMPSHIRE

Michael R. Callahan
Concord

**DOWNSTATE
NEW YORK**

Lawrence Iason
New York

Mark F. Pomerantz
New York

Paul C. Saunders
New York

Stephen P. Scaring
Garden City

**UPSTATE
NEW YORK**

Donald L. Schoenwald
Syracuse

Michael R. Wolford
Rochester

NORTH CAROLINA

Donald H. Beskind
Raleigh

Robert W. Spearman
Raleigh

NORTH DAKOTA

Richard H. McGee II
Minot

Jane C. Voglewede
Fargo

OHIO

R. Eric Kennedy
Cleveland

Joseph W. Shea III
Cincinnati

Sam B. Weiner
Columbus

R. Gary Winters
Cincinnati

OKLAHOMA

Jack E. Gordon Jr.
Claremore

OREGON

Martha Lee Walters
Eugene

PENNSYLVANIA

James A. Dattilo
Pittsburgh

Richard H. Galloway
Greensburg

Clifford E. Haines
Philadelphia

James T. Marnen
Erie

Dennis St. J. Mulvihill
Pittsburgh

Daniel J. Sherry
Newtown Square

Barry E. Ungar
Philadelphia

PUERTO RICO

Raúl Dávila-Rivera
San Juan

SOUTH CAROLINA

John P. Linton
Charleston

SOUTH DAKOTA

Edwin E. Evans
Sioux Falls

TENNESSEE

A C Wharton Jr.
Memphis

TEXAS

George H. Spencer, Jr.
San Antonio

VERMONT

S. Crocker Bennett, II
Burlington

WASHINGTON

Tom Chambers
Seattle

WEST VIRGINIA

Patrick S. Cassidy
Wheeling

WISCONSIN

James T. Murray, Jr.
Milwaukee

Marie A. Stanton
Green Bay

ALBERTA

John J. Marshall, Q.C.
Calgary

John Martland, Q.C.
Calgary

**Edward H. Molstad,
Q.C.**
Edmonton

**ATLANTIC
PROVINCES**

**Michael F. Harrington,
Q.C.**
St. John's

BRITISH COLUMBIA

J. Edward Gouge, Q.C.
Vancouver

ONTARIO

Chris G. Paliare
Toronto

ACTL Calendar of Events

2000

January 15

Maine Fellows Dinner
Portland Country Club
Falmouth, MA

January 21

Northeast Regional Meeting
Four Seasons Hotel
Boston, MA

January 21-23

Emil Gumpert Award Committee Meeting
Windsor Court
New Orleans, LA

January 28

Upstate and Downstate NY Fellows Breakfast Meeting
The Sky Club
New York, NY

February 3

Final Rounds National Moot Court Competition
The Association of the Bar of the City of New York
New York, NY

February 4

Virginia Fellows Annual Dinner
The Commonwealth Club
Richmond, VA

February 17-20

Tri State Meeting
The Cloister
Sea Island, GA

February 18-19

Arkansas Fellows Meeting
Inn at the Mill
Johnson, AR

February 24-27

South Carolina Fellows Annual Meeting
The Cloister
Sea Island, GA

February 24-27

North Carolina Fellows Annual Meeting
The Cloister
Sea Island, GA

February 25

Northern California Fellows Annual Dinner
St. Francis Yacht Club
San Francisco, CA

February 25-26

Gale Cup Moot Competition
The Great Hall at Osgoode Hall
Toronto, ON

February 29

Eastern Pennsylvania Fellows Dinner
TBD

March 3-4

Sopinka Cup National Trial Advocacy Competition
Courthouse in Ottawa
Ottawa, Canada

March 12-16

Board of Regents Meeting
The Halekulani
Honolulu, HI

March 16-19

ACTL Spring Meeting
The Ritz Carlton
Kapalua, Maui, HI

March 30-April 1

National Trial Competition
TBD
Dallas, TX

April 13-16

AR, LA, MS & TX Regional Meeting
Fairmont Hotel
New Orleans, LA

April 20

Alabama Black Tie Dinner
Country Club of Birmingham
Birmingham, AL

April 26-May 1

Southwest Regional Meeting
The Inn at Spanish Bay
Pebble Beach, CA

May 4-7

DNY, CT & VT Regional Meeting
Elbow Beach Hotel
Bermuda

May 12

Southern California Black Tie Dinner
California Club
Los Angeles, CA

May 18-21

Oklahoma Fellows Meeting
St Francis Hotel
Sante Fe, NM

June 2

Minnesota Fellows Golf Outing and Dinner
Minikahda Club
Minneapolis, MN

June 2-4

Arizona Fellows Meeting
Hacienda Del Sol Resort
Tucson, AZ

June 9

Georgia Fellows Black Tie Dinner
Atlanta, GA

June 16-18

Northeastern Regional Meeting
Cranwell Resort and Golf Club
Lenox, MA

June 20

Minnesota Fellows Meeting

July 23-25

Northwest Regional Meeting
Chateau Whistler Resort
Whistler, BC, Canada

August 11-13

Iowa Fellows Meeting
TBD

August 20-23

Canadian Bar Association Meeting
Convention Center
Halifax, NS

September 17-23

Anglo-American Exchange
Washington, DC

October 22-25

Board of Regents Meeting
J W Marriott
Washington, DC

October 26-29

ACTL Annual Meeting
J W Marriott
Washington, DC

2001**March 25-28**

Board of Regents Meeting
Boca Raton Resort & Club
Boca Raton, FL

March 29-April 2

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

May 3-6

Tenth Circuit Regional Meeting
Ritz Carlton
Kansas City, MO

July 29-31

Northwest Regional Meeting
Grouse Mountain Lodge
Whitefish, MT

October 14-17

Board of Regents
The Ritz Carlton
New Orleans, LA

October 18-21

Annual Meeting
The Ritz Carlton
New Orleans, LA

Canadian Supreme Court Justice Frank Iacobucci Receives Honorary Fellowship

Past President Frank C. Jones presented an Honorary Fellowship in the College to Justice Frank Iacobucci of the Supreme Court of Canada during the Annual Meeting in Philadelphia.

In presenting that Fellowship, Mr. Jones said, "Only those persons who have attained a high degree of respect and imminence in judicial or other roles in the profession, or in public service, are eligible to election as an Honorary Fellow of the American College of Trial Lawyers."

During the 1960s Justice Iacobucci practiced law in New York City. In 1967 he became a member of the faculty of the law school of the University of Toronto. Over the years he has served that University as professor, associate dean, and dean of the law school and as vice president and provost of the University.

He served as Deputy Minister of Justice and Deputy Attorney General for Canada for three years in the 1980s. In 1988 he was appointed Chief Justice of the Federal Court of Canada and in January 1991 he was appointed to the Supreme Court of Canada, where he now serves.

In 1988 the Frank Iacobucci Center for Italian-Canadian Studies was established at the University of

Toronto. The Center holds a yearly conference, publishes an annual journal and is in the process of creating an archive for the documentation of the Italian experience in Canada.

Noting that the College has established the Sopinka Cup as an annual advocacy award for Canadian law students, Justice Iacobucci said, "It is just amazing to me to witness the generosity and support, and if I may say so – the humanity – of this College that has been extended to one of my country's great jurists who loved this College greatly."

"I first heard of the American College of Trial Lawyers some 45 years ago from a great Canadian lawyer and an early Fellow of the College in the 1950s," he said. He told of Leonard St. Martin DuMoulin, who "was a great influence on me, such that his support, inspiration and guidance largely explain my presence here today. His example as a lawyer and citizen have greatly shaped my professional life."

In accepting the Honorary Fellowship of the College, Justice Iacobucci said, "Today I feel so honored to be joining the College of which my mentor and legal guardian angel was a proud member." □

Second Year In A Row

Temple University Law School Wins 1999 National Trial Competition

Temple University School of Law was presented with the Kraft W. Eidman Award for winning the 1999 National Trial Competition at the ACTL Annual Meeting in Philadelphia.

Michael Lovell and Amber Van Hauen of Temple University were recognized as the winning team. The Eidman Award consists of a \$5,000 award and a revolving trophy. Each member of the winning team also receives a plaque and a permanent plaque is given to the law school. The Houston firm of Fulbright & Jaworski funds the award.

This is the second year in a row that Temple has won the competition, although this is the first time for this team.

Final rounds of the competition were held in San Antonio, Texas in March 1999. ACTL is a major sponsor of the competition, which is presented annually by The Young Lawyers of Texas. Considered the premier law school competition in the nation and the largest of its kind, it attracts more than 200 teams and involves more than 1200 law students.

In presenting the award, Frank N. Gundlach, Region Liaison to the National Trial Competition Committee, noted that 24 teams from across the United States emerged from regional competition to participate in the finals. Semi-finalists were from the law schools at Wake Forest, Georgetown, Temple and Loyola in Los Angeles. The finalists were from Tem-

ple and Loyola.

"Each year the College assists with the funding and provides judges for the competition and jurors for the final trial," Mr. Gundlach said. "This

year President Ayscue acted as the presiding judge of the final round and 15 ACTL Fellows acted as the jury for the final competition." Jurors were from the National Trial Competition Committee, chaired by James J. Virtel.

Each finalist receives the Lewis F. Powell Medallion, struck in the honor of Justice Powell, who is a past president of the College. □



Margaret Stevens, Regent Frank Gundlach, Michael Lovell, Amber Van Hauen and ACTL then President Osborne Ayscue during the awards ceremony in Philadelphia.

The George A. Spielberg Award for Best Oral Advocate was presented to Margaret P. Stevens of Loyola Law School. Speaking in behalf of all participants in the National Trial Competition, Ms. Stevens said, "I think if you ask any of the participants that were in the National Competition they would thank you, they would thank their coaches, they would thank their teammates, friends and family – who haven't seen them very much until after graduation from law school. I want to thank you as well for your

commitment to law students, to the art of advocacy. This has been an extraordinary opportunity, not only to be in the competition, but also to meet the judges, to meet our associates and fellow associates from law schools. Your commitment to this profession and the dignity and the excitement that is present in this room, and has been present in all the events, really is very inspiring. It warms the heart of this young Turk to know that it is such a welcoming profession. I'm very excited to be on this journey. Thank you." □

Immediate Past President's Report

It has been almost fifty years since Emil Gumpert, the founder of the College, first conceived of it. We know that his idea was to identify and invite into fellowship the best trial lawyers, not to be a bar association, not to have an all-encompassing agenda, but principally to enjoy one another's fellowship. We know, however, that what has evolved over the ensuing forty-nine years from this germ of an idea in one man's mind is one of the most respected legal organizations in the western world.

It is respected because it is composed of lawyers carefully chosen, not only for their ability and achievements, but also for personal standards of professional excellence, integrity, ethics, professionalism and collegiality.

The College is known as an organization whose principal agenda is preserving the best of the traditions and traditional values of our profession. Progressively, as the College has chosen to speak, people have listened. We have become known as a group of lawyers, drawn from all segments of the trial bar, to whom those who make the decisions that affect the justice system can look for advice and to whom they can listen without worrying about whether we have some private, parochial agenda.

In recent years, partly because we have been asked, partly because we see things we are uniquely positioned to address, our level of activity has increased greatly.

Suggesting in a Past President's Report that any of these activities had its genesis and came to fruition in any one year would be misleading. Much of what we do is the product of the ideas and the efforts of many people over time. Furthermore, the College traditionally chooses to speak or act only when it feels that it has a unique contribution to make, so that the activity level of various ones of our committees may vary from year to year.

I would categorize our recent and current activities as follows:

Public service

Our Access to Justice Committee, under the leadership of chairman Daniel F. Kolb of New York City, has been progressively setting up a network of Fellows in each state who are willing to consider taking on major pro bono cases of the kind that call for the talent and experience typical of Fellows of the College, cases that can have a major impact on many lives.

Improvement of our system of justice

A good example of this kind of effort is that of our Federal Civil Procedure Committee, led by Robert S. Campbell Jr. of Salt Lake City, which is asked by the Civil Rules Subcommittee of the Judicial Conference of the United States to comment on each proposed change to the Federal civil rules. Furthermore, when our Committee calls to the attention of that subcommittee some rule that it feels needs to be reexamined, it is

put on the agenda.

Thus, the proposed narrowing of Rule 26 to require civil discovery to focus on the issues actually presented by the claims and defenses asserted in a case, instead of the broader "subject matter" limitation, is winding its way through the system. It has been approved by the Civil Rules Subcommittee and by the Judicial Conference and it is now pending before the United States Supreme Court. That change is the product of your committee's work.

We continue to try to convince the Judicial Conference that a jury of less than twelve is a failed experiment. Our committee is currently working on a paper on that subject.

Our Federal Criminal Procedure Committee, under the leadership of Robert W. Ritchie of Knoxville, Tennessee, prepared a superb proposal, supplemented by a monograph that was both scholarly and practical, to change the federal sentencing guidelines so that downward departures in sentences for cooperation with the prosecution are not under the sole control of the United States Attorney. Our proposal would allow either the judge or the defendant, both of whose hands are now tied, to raise this issue. Distribution of that monograph has generated a positive response from many quarters.

A year or so ago our Federal Rules of Evidence Committee, chaired this year by Fletcher L. Yarborough of Dallas, Texas, produced a monograph on the standard of evidence to be used in sentencing hearings, suggesting a way to correct a manifest unfairness in the present sentencing procedure. That committee is currently monitoring and commenting on proposed changes in the

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Federal Rules of Evidence.

A year or so ago, our Attorney-Client Committee filed an *amicus* brief in the Vince Foster matter, asking the Supreme Court to grant a *writ of certiorari*, which it did, and to overrule, which it did, the ruling of the District of Columbia Court of Appeals that the attorney-client privilege dies with the client.

Maintaining the College's long-standing position that government lawyers should not be exempt from state ethical rules precluding contact with opposing parties represented by counsel, that committee, chaired this year by David Marion of Philadelphia, has been monitoring proposed changes to Rule 4.2 of the Model Rules of Professional Conduct, the rule that articulates that principle.

The Canada-United States Committee, chaired this year by Earl A. Cherniak, Q.C., of Toronto, has adapted the College's Code of Trial Conduct to the Canadian system. That Code has been translated into French, so that it can be published in both French and English in the next College roster.

Our Federal Judiciary Committee, chaired this year by Edward W. Madeira, Jr. of Philadelphia, has a long history of advocacy for improved judicial compensation and for judicial independence. The committee also helps to provide participants for educational programs for judges. Next year, the State Judiciary Committee, chaired this year by George E. Feldmiller of Kansas City, Missouri, will be combined with the Federal Judiciary Committee to better coordinate our efforts to support our federal and state judiciary.

An annual grant from the College provides for scholarships to various

programs of the National College of District Attorneys. The committee that coordinates this activity was chaired this year by John L. Hill, Jr. of Houston, Texas.

Preserving the traditions of the profession

Our Professionalism Committee, under the chairmanship of Eugene A. Cook of Houston, Texas, has worked on a collection of the stories of the lawyers who were involved in founding our nation. It has also helped supervise the Foundation's annual law student essay contest on professionalism.

Several years ago our Legal Ethics Committee produced the College's revised Code of Trial Conduct and, later, the well-received monograph on the handling of high-profile trials. This year, under the leadership of John H. McElhaney of Dallas, Texas, it has been monitoring proposed changes to the Model Rules of Professional Conduct.

The Lewis F. Powell, Jr. Lecture Committee, chaired this year by past president R. Harvey Chappell, Jr. of Richmond, Virginia, arranges periodic lectures in honor of the late Justice Powell, a past president of the College, at our national meetings. At the Spring 1999 meeting, the Honorable William H. Webster gave a lecture on Justice Powell's service in World War II.

Recognition of the contributions of others

Chaired this year by Robert A. Hicks of Atlanta, Georgia, our Award for Courageous Advocacy Committee recognizes outstanding courage demonstrated by trial lawyers in unpopular or difficult cases. The committee has identified

a recipient who will be honored at the Annual Meeting in October 2000.

Our Samuel E. Gates Litigation Award from time to time honors a lawyer who has made a significant contribution to the improvement of the litigation process. This year the nominee of the committee, chaired by Sylvia H. Walbolt of St. Petersburg, Florida, was Judge Dorothy W. Nelson of the Ninth Circuit Court of Appeals, who was honored at the Spring meeting.

The Committee on Honorary Fellowship, chaired by Past President Robert L. Clare, Jr., recommends outstanding members of the highest courts of the United States, Canada and Great Britain for honorary fellowship in the College. We inducted Sir Sidney Kentridge, a former provisional member of the Supreme Constitutional Court of South Africa who has been described as a "jewel of the English Bar," as an Honorary Fellow at the Fall 1998 meeting in London. We inducted Lord Irvine of Lairg, the Lord Chancellor of England, as an Honorary Fellow at the post-meeting conference in Rome; Lord Woolf of Barnes, the Master of the Rolls, the second ranking person in the British Judiciary, at the Spring 1999 meeting in Naples, and Justice Frank Iacobucci of the Canadian Supreme Court at the 1999 Annual Meeting in Philadelphia.

Canada

In addition to drafting the Canadian Code of Trial Conduct and helping to institute the Canadian Trial Advocacy Competition, the Canada-United States Committee is seeking ways to implement its proposed Convention on the Reciprocal Enforcement of Judgments.

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To better coordinate the work of the Canadian Fellows, the Canadian Judiciary Committee, chaired this year by Roderick A. McLennan, Q.C., of Edmonton, is being merged into the Canada-United States Committee.

International

Our International Committee, chaired by Thomas D. Allen of Chicago, has been examining the possibility of a China project. It had become apparent that the Mexico Committee could best function as a subcommittee of the International Committee, and these two committees moved in that direction this year.

A measure of the respect in which the College is held is that we are asked to help organize judicial exchanges between the United States and Canada, India and the United Kingdom. When such exchanges are proposed, our Supreme Court looks to the College to handle the mechanics and to suggest lawyers who should participate. Past exchanges with our British counterparts have produced the Inns of the Court in the United States, the use of briefs in appellate arguments in the United Kingdom and the spread of mediation in both countries. This year the College co-sponsored the first half of an Anglo-American Exchange in Edinburgh and London. The second phase of this Exchange is planned for September 2000 in Washington, D.C.

Teaching of trial and appellate advocacy skills

One major agenda of the College has become preserving both the skills necessary to be an effective advocate in the adversary system that under-

girds our system of laws and the best of the traditions and traditional values of the profession. To that end, one of the College's major efforts is encouraging the proper professional training of law students and younger lawyers as advocates. Many of us are not aware of the extent of the College's programs that are designed to reach law students, to instill in them a sense of our heritage and to introduce them to the College as one of the keepers of those traditions.

We help to sponsor national trial competitions and national moot court competitions in the United States and Canada. Our National Trial Competition Committee was chaired this year by James J. Virtel of St. Louis, Missouri, and our National Moot Court Competition Committee by Mary Jo White of New York City.

Teams of law students, often the winners of competitions in their own schools, compete in regional competitions. The winners come to national finals, where they compete until a winner is selected. This year for the first time we co-sponsored the Canadian Trial Advocacy Competition, for which we awarded the Sopinka Cup, named in honor of the late Canadian Justice John Sopinka, who was a Fellow of the College and then a Judicial Fellow. For the first time this year we gave an award to the best oralist in the National Moot Court competition in memory of late Past President Fulton Haight.

What we have, thus, is thousands of law students preparing and trying a case in a modified mini-trial format or preparing and delivering an appellate argument. They learn from the Fellows of the College who coach teams and sit as judges, and they learn from one another.

Each year we give the Emil

Gumpert Award. Members of this committee, chaired this year by Thomas J. Groark, Jr. of Hartford, Connecticut, make site visits to analyze and pick an outstanding law school trial advocacy program to recognize with this award. This year the award went to the University of Montana School of Law.

Last year the College's Foundation, whose chair is Past President Lively Wilson, instituted an essay contest on professionalism. We give monetary awards to the law student who produces the best paper and to his or her legal writing instructor, and we publish the winning paper in *The Bulletin*.

Many years ago we were instrumental in establishing NITA, the National Institute of Trial Advocacy, which gives young lawyers intensive hands-on experience under expert instruction to help develop their trial skills.

Our Committee on the Teaching of Trial and Appellate Advocacy, chaired this year by J. Robert Elster, of Winston-Salem, North Carolina, has recently created a user-friendly teaching syllabus, designed for use in presenting programs on civility to law students and young lawyers. These are materials that can be used to put on programs involving the audience in a discussion of what civility requires. The syllabus has been enthusiastically received.

Though most of us are generally aware of these efforts to influence law students and young lawyers, I suspect that most of us have never had occasion to focus on their significance in the aggregate.

Specific problem areas

The Complex Litigation Commit-

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tee, chaired by former Regent Ralph W. Brenner of Philadelphia, has been at work on a major effort to propose a workable system for dealing with mass torts.

Our Alternatives for Dispute Resolution Committee, chaired by Shaun S. Sullivan of Hartford, Connecticut has been working on a code of conduct for mediation.

The Committee on Special Problems in the Administration of Justice, chaired by Edward W. Mullins, Jr. of Columbia, South Carolina, has studied various experiments with juries and proposals to change the jury system, with an eye towards whether any of these developments calls for the College to take a position.

Our Committee on Science and Technology in the Courts, chaired this year by Michael R. Griffinger of Newark, New Jersey, has been asked to consider developing a set of suggested guidelines for governing the use of computer-generated evidence in the courtroom.

In these and many other ways your national committees, using your dues money, the time and talent of lawyers like you from all over the United States and Canada, and your collective stature to improve the quality of justice and help maintain the rule of law that is the backbone of our civilization.

The internal workings of the College are also vital to its well-being. This past year, as we approached the fiftieth year of its founding, we began the process of taking a hard look at ourselves, how we are organized and how we function. We want to insure that the College maintains its stature and its relevance in a rapidly changing world and that it remains posi-

tioned to serve our profession and our system of justice for the *next* fifty years.

The continued vitality of the College depends on new members. Without new blood we cannot perpetuate the College and what it stands for or pass the torch to succeeding generations. Your State Committees and Regents work long and hard to identify trial lawyers whose presence would enhance, and whose absence diminishes, the College.

The Adjunct State Committee, chaired this year by past Regent Spencer J. Brown of Kansas City, Missouri, deals with candidates whose practice is national rather than local or who have moved from one state to another during their careers.

One major growing challenge that we face is the changing nature of trial practice and the decrease in the number of traditional trials taking place. The Admission to Fellowship Committee, chaired by Audrey Strauss of New York City, has been studying those changes as they affect the available pool of lawyers who meet the College's criteria for membership.

Our Publications Committee, chaired by Sharon M. Woods of Detroit, has been engaged in a continuing study of ways to improve communication with our members. The College's website at www.ACTL.com has created a major new avenue of communication to supplement an expanded and improved *Bulletin*. In addition, the College office is now accessible by email. The email address is acotl@earthlink.net. To recognize these changes, the committee will henceforth be called the Communications Committee.

Increasingly, state and regional

meetings have taken on a new importance. Your president gives attendance at each of these a high priority. And if he cannot attend, he tries to arrange for one of the other officers to provide a national presence. We know that many Fellows cannot go to the national meetings regularly. We want you to know that what you are doing and what is on your minds is important to the College.

We have undertaken to publish a fifty-year history of the College in the year 2000. That history, which is being professionally researched and written by authors Marion Ellis and Howard Covington under the direction of a committee chaired by Past President John C. Elam of Columbus, Ohio, will be distributed at the time of the fifty-year celebration in Washington, D.C. in October 2000.

Finally, the College could not function without the dedication of Executive Director Bob Young and his staff. Working out of a small office in Irvine, California and out of sight of most of us except at our two yearly national meetings, they do the work required to make the organization function smoothly on a day-to-day basis. We are very much in their debt.

A year ago in London I thanked you for the trust you had placed in me and for the opportunity to return to our profession a measure of what I had received from it. In hindsight, Emily and I cannot have returned even a fraction of what we carry away from this year. The experience of visiting with all of you in far-flung corners of the United States and Canada, as well as in London and Rome, is one that we will treasure for a lifetime. □

E. Osborne Ayscue, Jr.

ACTL Activities

Some 64 State and General Committee Chairs attended the **Western Workshop** in Laguna Beach, California with ACTL officers in November for orientation in the policies and procedures of the College.

President Michael E. Mone explained that the Board of Regents sets budgets, goals and policy and controls admission to Fellowship in the College.

President Elect Earl J. Silbert said, "If a committee has nothing to do then it ought to be abolished." He also emphasized that the responsibility of State Chairs is to look for qualified candidates. Mr. Silbert also spoke of Employment and Intellectual Property law as examples of new areas of trial practice in which the College should be looking to for potential candidates for Fellowship. He also noted the College's tradition of producing monographs and asked what other kinds of activities the College should be undertaking.

On the subject of change, President Mone said, "The end of any organization is when you begin to say, 'We've always done it this way'."

During the two-day workshop participants witnessed a mock presentation of potential candidates to the Board of Regents.

The **Access to Justice Committee** reports that "an excellent result has been secured" in one of the first cases undertaken through the College's Access to Justice program. The case involved, "pervasive, adverse conditions in detention cells in

New York City."

The committee has also undertaken discussions with the American Corporate Counsel Association and the Litigation Assistance Partnership Project of the American Bar Association which may result in further national and regional coordination between those organizations and ACTL Access to Justice committees in various states.

The committee also encourages Fellows who may be associated with other organizations that could use pro bono assistance in important cases to contact committee chair Dan Kolb.

The **Admission to Fellowship Committee** is evaluating materials from across the United States and Canada in an effort to determine whether there is a declining incidence of trials and arbitrations in both state and federal courts. They also want to determine whether these trends vary by locale or type of case. This project is central to continuing examination of the trial experience required of persons nominated for admission to the College.

The **Attorney-Client Relations Committee** is studying a recent Department of Justice guideline for sentencing of corporations, which considers as a negative factor a corporation's provision of funding for the defense of "culpable" employees and agents. The issue is whether it is improper or prejudicial to the administration of justice for the government to encourage a corporation to

deprive its employees of funding of their defense in order to be viewed as "cooperating."

The committee is also considering a proactive effort to analyze recent encroachments on the attorney-client privilege and ways for the trial bar to educate the public and the courts on the importance of that privilege. A request for the Board of Regents to fund a study and position paper on that subject is in preparation.

Following the approval of the Canadian Code of Trial Conduct by the Regents, steps are underway to print and distribute the Code to law societies, law schools, the judiciary and the profession. The Code, with an introduction by Antonio Lamer, the Chief Justice of Canada, will be printed in the ACTL Roster.

The **Canada-U.S. Committee** is also establishing a liaison with the American and Canadian Bar Associations with a view to making a joint submission to the federal governments of both countries to achieve implementation of the Draft Convention for the Reciprocal Enforcement of Judgments.

A cross border judicial committee has been formed to address the issues raised in several recent high profile cross border bankruptcies where consistent rulings were needed in both jurisdictions. The College has been asked to assist the work of this committee.

The committee is also studying the feasibility of pro hac vice cross border occasional calls to the bar. Reciprocity and conditions are

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among the key issues.

The **Federal Civil Procedure Committee** expects to complete a report soon on the significance of the twelve-person jury in the federal civil trial system. The committee is also reviewing proposed amendments to the Federal Civil Rules 5 and 6, dealing with electronic service, and Rule 77 (d) on notice of orders and judgments.

The **Samuel Gates Award Committee** is finalizing a proposal to be submitted to the Board of Regents for refining the criteria for the award. It also recently submitted a nomination for the award to the Board of Regents.

The **Special Problems/Administration of Justice Committee** is conducting a survey of state and province chairs, asking them to report any juror innovations that are being considered or are in use in state or federal courts in their jurisdictions. The committee had previously made a brief survey on jury trial innovations and was asked by the Board of Regents to identify the specific innovations in various court systems in more detail. The survey covered the conduct of jurors during trial and included such things as the rights of jurors to take notes and ask questions of witnesses. The Regents also asked the committee to evaluate these innovations to determine their potential impact upon the conduct of trial by jury. In the initial survey, the committee found that such innovations had been adopted and are the subject of experimentation in 37 states, and federal court systems. Other studies have found that some

HELP WANTED

The **International Committee** is considering the feasibility of a project aimed at helping to develop fairer judicial processes in China. Are you interested in participating in such a project? Are you proficient in the Chinese language? Do you have some knowledge of its legal system? Do you have contacts, either personal or professional, in the Chinese legal system that you are willing to share?

If so, please respond directly to committee member Joan Lukey in Boston, phone: (617) 526-6798; fax: (617) 526-5000; e-mail: joan.lukey@haledorr.com.

projects had made substantial progress. Although some of these innovations seem innocuous, others have the potential for causing a dramatic change in the way jury trials are conducted.

This committee also monitors the work of the American Civil Trial Bar Roundtable, an ad hoc group of representatives from several other trial bars such as ABOTA, ATLA, DRI, IADC, and FICC. The group meets twice a year to discuss issues relating to the civil justice system and is in the process of developing a white paper addressing several rather non-controversial issues such as lawyer civility.

State & Province Committee Activities

In November, **Arizona Fellows** conducted the 29th annual "Joseph Jenckes Closing Argument" competition between the University of Arizona and Arizona State University Colleges of Law. The competition was established in 1970 in memory of one of the most colorful Arizona

trial lawyers, ACTL Fellow Joe Jenckes. Each year the Fellows select the transcript from an actual Arizona jury trial, which is delivered to the law schools two weeks before the competition. Each law school conducts its own try-outs to select the two law students who will represent their college in the competition. A \$600 (\$300 to each student) prize is awarded by the Arizona Fellows to the winning team and a \$400 (\$200 to each student) consolation prize to the runner-up team. The 1999 winners were Brian Laird and Ash Sawkar from the University of Arizona College of Law, coached by law Professor Thomas Mauet.

The **Idaho State Committee** is in the process of developing a mentoring program for young lawyers in Idaho and is seeking information on other mentoring programs. Please contact Merlyn W. Clark, Idaho State Chair, at (208) 388-4836 or P.O. Box 1617, Boise, ID 83701.

The **Kentucky State Committee** is considering participation in an intra-state trial student competition.

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