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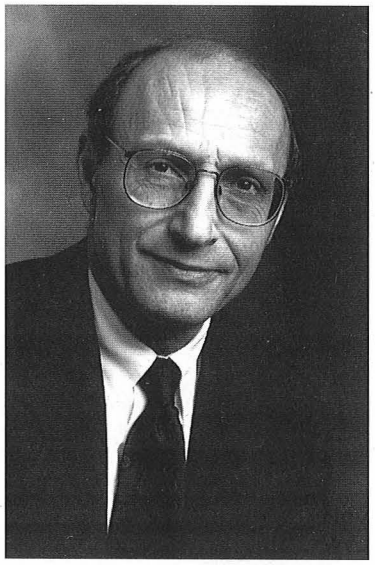
College View Prevails In Ethics Rules Debate

The President's Report

As many, if not all, of you know, the ABA Ethics 2000 Commission proposed to amend the Model Rules of Professional Conduct to authorize lawyers to disclose client confidences or secrets in instances where clients had allegedly used their lawyers' services to cause substantial harm to financial interests or property of others. This proposal was similar to one advanced by the Kutak Commission in the early 1980s. It was similar to the proposal advanced again before the ABA in the early 1990s. In both instances the American College of Trial Lawyers opposed the intrusion on client confidentiality. In both instances the College led the opposition to adoption of the proposal. In both instances the College was successful.



Earl J. Silbert, President

(Continued on page 18)

Table of Contents:

From the Editorial Board, Page 2	Believing Is Seeing, Page 12
Emil Gumpert Award Winners, Page 6	Annual Meeting Lineup, Page 17
Mass Torts Manual, Page 7	Letters to the Bulletin, Page 23
President-Elect Profile, Page 9	Calendar, Page 24

Emil Gumpert Award Honors Excellence In Teaching,

Page 3

American College of Trial Lawyers

The Bulletin

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FROM THE EDITORIAL BOARD

In the past, major projects of the College-projects in which the College has used your dues money and your collective stature to defend the principles on which our profession is based or to improve the administration of justice-have perhaps not received enough attention in these pages.

In this, the second issue of the "new" Bulletin, we feature three such projects:

1. the College's role in the defeat of proposed changes in the Model Rules of Professional Responsibility, the subject of the President's Report;

2. the Emil Gumpert Awards, now in their twenty-fifth year, and their role in the improvement of the teaching of trial advocacy in law schools; and

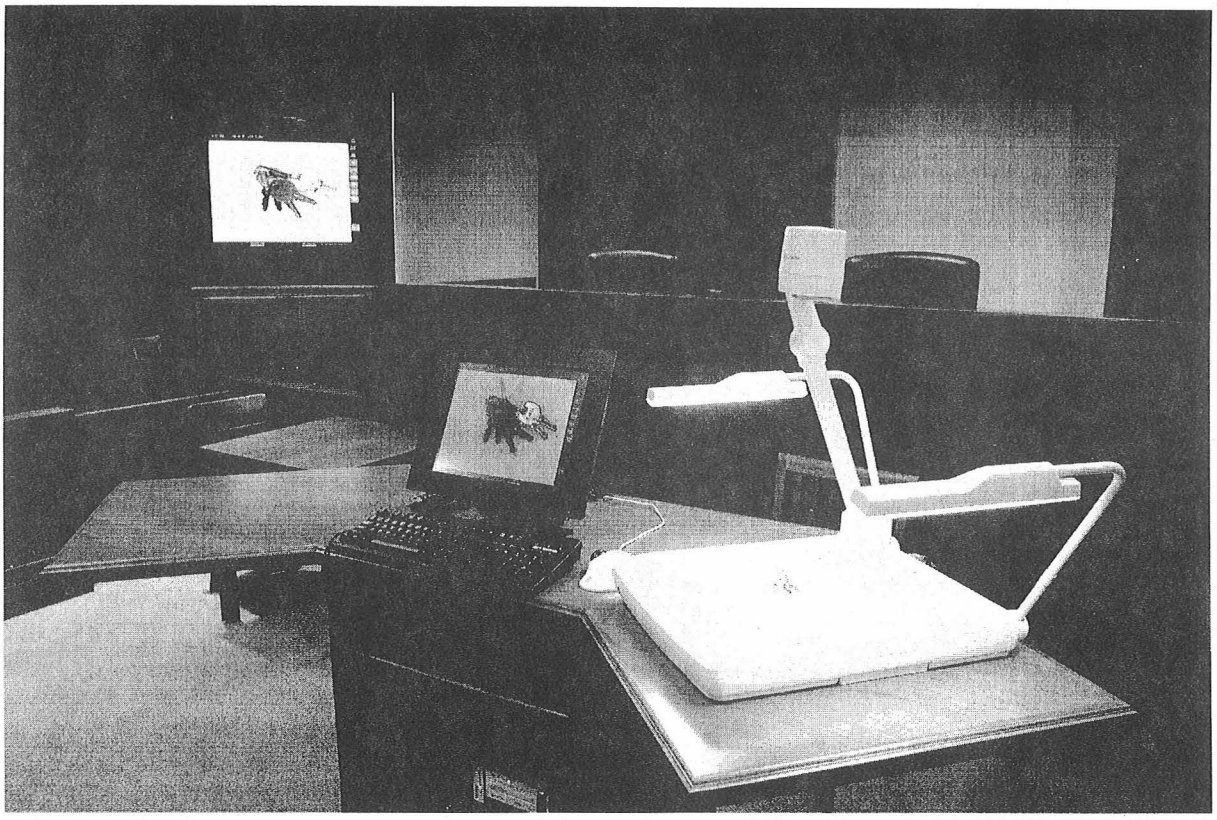
3. the Mass Torts Manual being developed by the College's Complex Litigation Committee.

We believe that you should know more about your elected leaders—who they are and where they come from. In this issue we feature a profile of Stuart D. Shanor, who has been nominated as President-Elect by the Past Presidents, who comprise the Nominating Committee for the College's officers. In the next issue we will profile the other new officers and those persons whom you elect to the Board of Regents at the Annual Meeting.

Professor John W. Reed, the fifth winner of the Samuel E. Gates Award for significant contribution to the litigation process, has addressed meetings of the College on several occasions. The Editorial Board had identified his presentation at the Fiftieth Anniversary meeting of the College, entitled *Believing Is Seeing*, as one that every law-

(Continued on page 11)

EMIL GUMPERT AWARD



Wake Forest University School of Law Equips State-Of-The-Art Electronic Courtroom With Proceeds of Gumpert Award

EMIL GUMPERT AWARD AIDS TRIAL ADVOCACY TEACHING

Twenty-six years ago, the College decided to honor founder Emil Gumpert by establishing an award in his name to encourage excellence in teaching trial advocacy in American and Canadian law schools.

After giving the Emil Gumpert Award to 39 law schools, the College can claim it has made a significant impact, according to Emil Gumpert Committee Chairman Raymond Brown.

"I really believe the program has had an effect to spur law schools to improve the teaching of trial advocacy," Brown said. "A good number of Gumpert Award schools have had teams that won in the National Trial Competition, National Moot Court and Sopinka Cup competitions."

For instance, a team from Dalhousie University Law School of Halifax, Nova Scotia, captured Canada's Sopinka Cup in 2000 after the school had become the first Canadian winner of the Gumpert Award in 1998. Dalhousie

(Continued on page 4)

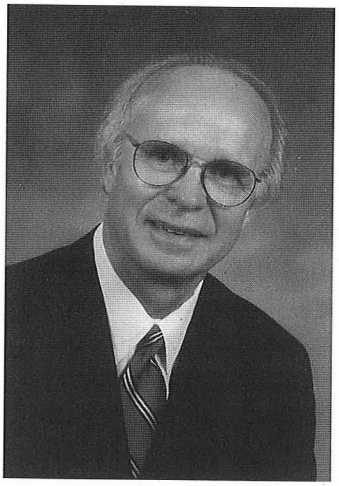
EMIL GUMPERT AWARD

(Continued from page 3)

Law School Dean Dawn Russell said, "This international recognition is a well deserved pat on the back for the many professors, lawyers, judges and staff who work so hard to produce the programs which have earned the Gumpert Award."

Another example cropped up last year when the University of Montana Law School won the Gumpert Award in 1999 and the year 2000 National Moot Court Competition.

Then College President Mike Mone, who was a judge in the New York City contest that year, noted the correlation between winning both contests in a letter to Brown: "The way the competition is conducted I did not know that the team was from Montana until after the decision was made so I did not vote for them in order to vindicate the Gumpert Committee. Their performance, however, and the fact that they were recognized as the winners of the National Moot Court Competition does show that the Gumpert Committee is selecting schools that are doing an outstanding job training lawyers in advocacy."



Raymond Brown,
Chair
Emil Gumpert Award Committee

Other examples include Notre Dame's winning the Gumpert Award in 1995 and the National Trial Competition in 2000, and Stetson's winning the same competition in 1994 and 2001, having won the Gumpert Award in 1997. Runner-up in the National Trial Competition in 2001 was the University of Washington, which won the Gumpert Award in 2001.

The Gumpert Award is the only one of its type given to a law school for the teaching of trial advocacy.

The winning school is free to apply the $50,000 award in any way it desires, but one recent winner, Wake Forest University School of Law, chose to use the money to upgrade and fully outfit the electronic components of one of its teaching courtrooms.

"It was a Godsend to us," said Wake Forest Professor Carol Anderson, director of the school's trial advocacy program. The Gumpert money allowed the school to upfit the electronic components all at once, rather than having to do it piecemeal on a year-by-year basis, according to Ed Raliski, the law school's director of educational technology.

Students can now practice in a state-of-the-art environment that includes software that fully encompasses the scheduling of dockets for courts throughout the state. The courtroom also now includes coordinated TV monitors for the counselors, judge and witness stand, that are touch screen sensitive and tied into a five-foot wide screen. A witness can track movements with a touch of a finger and those movements show up on the big screen. The courtroom also includes the electronics for videoing arraignments in jails or prisons and the taking of depositions by videoconferencing. Students can also watch trials in other venues via videoconferencing.

> ***"The Gumpert money allowed the school to upfit the electronic components all at once rather than having to do it piecemeal on a year-by-year basis."***
>
> Ed Raliski, Director of Educational Technology at WFU School of Law

Each year the Gumpert Committee receives four to eight applications from law schools all over the United States and Canada. There are no limits on the number of schools that can apply. The chairman assigns a committee member to shepherd the investigation of each applicant. That member in turn appoints two College Fellows who are not graduates of that law school to

(Continued on page 5)

EMIL GUMPERT AWARD

(Continued from page 4)

make site visits and render written reports. The committee member in charge of each application then presents the results to the full committee. "That member had better be prepared, because committee members take great delight asking questions of the presenter," says Brown of Brown-Buchanan-Sessoms in Pascagoula, MS.

The application process begins in late August and is usually complete by the end of September.

The College Fellows who are chosen to inspect the schools normally spend at least a day at the applicant law school, meeting the faculty, inspecting the facilities and observing class sessions and actual trial practice work.

"The evaluators that go in make sure the program is not just on paper," Brown said. "They visit the school when they can observe actual courtroom mock trials in session." Most of the schools now have special venues set up like courtrooms.

After the evaluators make their visits, each makes a written report which is photocopied and sent to each of the 21 committee members and the Regent liaison, currently Payton Smith of Seattle.

The full committee gathers each January. The shepherding committee member makes a 15 to 20 minute presentation, about each applicant school. The committee then recommends the winning school to the Board of Regents.

"Often some applicants are so good we will carry them over to the next year," Brown said. Winners must wait at least 10 years before reapplying.

Law schools discover the existence of the award by various means, including legal education journals and contacts by Fellows in their state or province.

Establishment of the award in 1975 did not come about solely as a way to honor Gumpert. The College's leadership and eminent lawyers and judges, including Chief Justice Warren Burger, had voiced concern about what they perceived as a lowering of the quality of teaching of trial advocacy in law schools.

At the same time, the College was seeking a way to honor Gumpert for his 25 years of leadership, and it decided to establish the award in his name, to be accompanied by a $5,000 stipend. Characteristically, Gumpert resisted, saying that the College should save its money. (The award was increased to $10,000 in 1979, to $25,000 in 1985 and to $50,000 in 1996.)

> ***"Often some applicants are so good we will carry them over to the next year."***
> Raymond Brown, Chair
> *Emil Gumpert Award Committee*

Disregarding Gumpert's objections, the College established the award at its meeting in Acapulco, Mexico in March 1975 in honor of Gumpert's 80th birthday. Fellow George Spiegelberg of New York City was named the first chairman of the Gumpert Award Committee and the first awards were given in 1976 to two law schools—Gumpert's home state McGeorge School of Law at the University of the Pacific in Sacramento and Cornell Law School.

Other current members of the Gumpert Award Committee are: Murray E. Abowitz of Oklahoma City, Mark A. Aronchick of Philadelphia, Walter Barry Cox of Fayetteville, AR, John J. (Jack) Dalton of Atlanta, Richard L. Gerding of Farmington, NM, David L. Grove of Philadelphia, William D. Heinz of Chicago, Robert J. Jossen of New York City, James R. Kohl of Novi, MI, Nicholas J. Neiers of Decatur, IL, Richard C. Peck, Q.C., of Vancouver, BC, James L. Robart of Seattle, George F. Short of Oklahoma City, Donald C. Smaltz of Alexandria, VA, H. Richard Smith of Des Moines, IA, Joseph D. Steinfield of Boston, Audrey Strauss of New York City, Colin J. S. Thomas, Jr., of Staunton, VA, James J. Virtel of St. Louis and Jere F. White, Jr. of Birmingham, AL. ◆

EMIL GUMPERT AWARD WINNERS

1976—McGeorge School of Law, University of the Pacific, Stockton, CA, and Cornell Law, Ithaca, NY

1977—Harvard Law School, Cambridge, MA, and University of Maine School of Law, Portland, ME

1978—Baylor School of Law, Waco, TX, and Yale Law School, New Haven, CT

1979—Loyola Law School at Los Angeles, Los Angeles, CA, and University of Missouri-Columbia, Columbia, MO

1980—University of Illinois School of Law, Urbana-Champaign, IL, and University of San Diego School of Law, San Diego, CA

1981—University of North Dakota, Grand Forks, ND, and William Mitchell College of Law, St. Paul, MN

1982—University of California School of Law, Los Angeles, CA, University of Denver College of Law, Denver, CO, and Loyola University of Chicago School of Law, Chicago, IL

1983—Dickinson School of Law, Carlisle, PA, and Indiana University School of Law, Indianapolis, IN

1984—Emory University School of Law, Atlanta, GA, and Cumberland School of Law Samford University, Birmingham, AL

1985—St. Louis University School of Law, St. Louis, MO, and Emory University School of Law, Atlanta, GA *(Special 10th Anniversary Award)*

1986—Campbell University School of Law, Buies Creek, NC

1987—None Awarded

1988—Washington University School of Law, St. Louis, MO, and New York University School of Law, NY, NY

1989—University of New Mexico School of Law, Albuquerque, NM, and Temple University School of Law, Philadelphia, PA

1990—Syracuse University School of Law, Syracuse, NY

1991—University of Texas School of Law, Austin, TX

1992—Northwestern University School of Law, Chicago, IL

1993—Widener University School of Law, Wilmington, DE

1994—Gonzaga University School of Law, Spokane, WA

1995—Notre Dame Law School, South Bend, IN

1996—University of Tennessee College of Law, Knoxville, TN

1997—Stetson University College of Law, St. Petersburg, FL

1998—Dalhousie University Law School, Halifax, Nova Scotia

1999—The University of Montana School of Law, Missoula, MT

2000—Wake Forest University School of Law, Winston-Salem, NC

2001—University of Washington School of Law, Seattle, WA

MASS TORTS MANUAL BEING DEVELOPED

Lawrence T. Hoyle, Jr.

"The focus of the manual is not to reform the law, but rather to identify procedures that have been used in mass tort litigation and that, based on experience, should be adopted or avoided in other cases presenting similar situations."

Acting on its concern about the proliferation and increasing complexity of mass tort litigation, the College's Board of Regents at its Spring 2000 meeting authorized the Complex Litigation Committee to develop a litigation manual on such cases.

Such litigation typically arises from an allegedly defective or toxic product that is claimed to have injured, or to have created the risk of future injury to, many people. Typically, the claimants are in many different jurisdictions, and they may have been affected in different ways.

"We are working on a manual that assembles and describes the best practices utilized to address procedural problems in mass tort litigation," said Lawrence T. Hoyle, Jr., chairman of the Committee. "We are not attempting to tell lawyers how to litigate these cases. Rather, we want to draw on the experience of the Fellows to offer ideas and suggestions about how to handle the procedural issues that are unique to mass torts."

After the preparation of the Manual was authorized by the Regents, the Committee initially surveyed College Fellows to ascertain their experience in mass tort litigation. "We received about 2,000 responses to our survey of the Fellows and that data has now been computerized," the Committee report continued. The data allows the Committee to identify which Fellows have been involved in which mass tort litigations, and what roles those Fellows played in those cases.

Utilizing the information disclosed by the survey, the Committee is now hard at work studying various mass tort lawsuits. "We are asking Fellows who have participated in particular mass torts to prepare case studies addressing the procedural history of each litigation," said Hoyle of Hoyle, Morris & Kerr in Philadelphia. So far the Committee has received initial case studies for asbestos, bone screws, latex gloves, diet drugs, polybutylene pipes and blood products. Five of the case studies focused on litigation of cases through the multidistrict litigation (MDL) process, and one focused on class action settlement. "The Fellows who prepared those cases studies are con-

So far the Committee has received initial case studies for asbestos, bone screws, latex gloves, diet drugs, polybutylene pipes and blood products.

(Continued on page 8)

MASS TORTS MANUAL

(Continued from page 7)

tinuing to work on them, expanding them in particular to address the development of the litigations in state courts," the Committee reported to the Board of Regents in August. "A case study on tobacco is in the process of being prepared."

The Reporter hired by the Committee, Professor Howard Erichson of Seton Hall Law School, also would like to have case studies on Bendectin, breast implants, Dalkon Shield, GM pickup products, heart valves and L-tryptophan. Hoyle said that the Committee hopes to be able to assign those case studies at the upcoming College meeting this October in New Orleans.

In addition to analyzing the evolution of specific mass tort cases, other Fellows are preparing papers that address specific issues that have arisen repeatedly in mass torts. For example, one paper discusses how trials have been structured in mass tort litigation. Another paper discusses techniques for coordination between state and federal courts and among state courts. One paper discusses the evolution of the plaintiffs' and defense bars and how that evolution affects the progress of the cases. As with the case studies, the Committee anticipates asking Fellows to continue assembling information about specific topics and how those issues have been addressed in various mass torts cases.

"Our success in completing this plan will depend on our ability to obtain useful analyses from the Fellows who volunteer to assist the Committee," Hoyle noted. Many Fellows have been so busy that they have not had time to do the substantive work needed by the Reporter, but Hoyle is still optimistic. Notwithstanding the delays from volunteers, Professor Erichson is preparing an initial draft of the manual based on the material assembled to date and his own ideas concerning the other selected subjects. Thus the Committee will have a draft that can be reviewed and critiqued.

As one of the papers points out, the mass tort "phenomenon" is a remarkably recent development. Nonetheless, the work of the Committee to date indicates that mass tort litigation will continue to proliferate in the future. The Committee hopes that the Manual will prove useful in avoiding problems that have arisen in earlier mass tort litigations.

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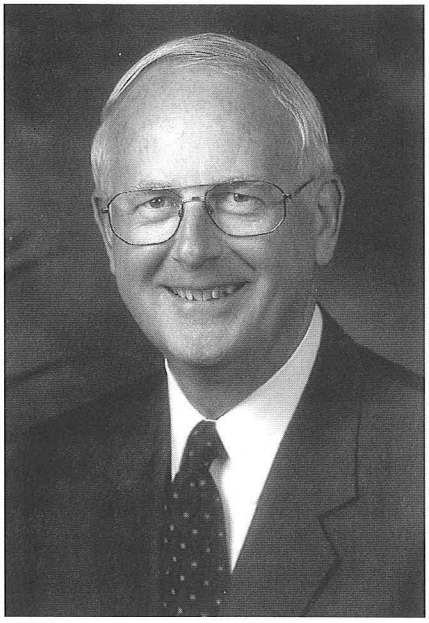
In addition to Hoyle, members of the Complex Litigation Committee include: Charles H. Abbott of Auburn, ME, Ralph W. Brenner of Philadelphia, (immediate past chair), John W. Carey of Fairfax, MN, Bryan Finlay, Q.C., of Toronto, Ontario, Wayne Fisher of Houston, Michael T. Gallagher of Houston, Richard A. Gargiulo of Boston, David Gross of Short Hills, NJ., H. Thomas Howell of Baltimore, Ronald B. Leighton of Tacoma, WA, Michael D. Loprete of Newark, NJ, Edward W. Madeira of Philadelphia, Stephen A. Madva of Philadelphia, Robert J. Mathias of Baltimore, Henry G. Miller of White Plains, NY, Peter J. Mone of Chicago, John Nyhan of New York City, Michael L. O'Donnell of Denver, William J. O'Shaughnessy of Newark, NJ, Paul C. Saunders of New York City, Robert B. Shaw of Columbia, SC, Leon Silverman of New York City, Alan L. Sullivan of Salt Lake City, Melvyn I. Weiss of New York City, Lively M. Wilson of Louisville and Sharon Woods of Detroit. David O. Larson of San Francisco is Regent Liaison. ◆

PRESIDENT-ELECT PROFILE



Stuart Shanor, President-Elect

PRESIDENT-ELECT: MORE NEED TO KNOW ABOUT COLLEGE'S ROLE

High on President-Elect Stuart Shanor's agenda is finding ways to make sure more lawyers and judges know about the College and its work.

"I think the College has hidden its light under a bushel, so to speak, for a long time," Shanor said. "I would hope that, with some discretion, we can raise or increase the profile of the College so that it is more well known, both to lawyers and to the judiciary."

Shanor, who practices in Roswell, New Mexico, said, "We have come to the point where many in the judiciary don't even know who and what the College is. We owe it both to our Fellows and to the College generally to raise that profile and make sure that we are distinguishable from other organizations."

Shanor, who will succeed President Earl Silbert at the Annual Meeting in New Orleans, said another priority is to promote more meaningful activity at the state, province and regional level. "This is where the members can come together and enjoy the fellowship, which I think is really the bedrock of the College," he said. "Everyone cannot attend our national meetings."

Invigorating the recruitment of new Fellows is another of his priorities. "Basically, the survival of the College depends upon us doing a really good job of getting our State Chairs and State Committees to search for the very best of the trial bar," Shanor said.

As the new president of the nation's leading trial advocacy organization, Shanor believes changes are in the offing. "Lawyers trying 50 or 100 cases before they are nominated for fellowship in the College is probably a thing of the past," he said. "But the cases where the issues justify going to trial and which do, in fact, go to trial in today's world are so much more important and involve so much more in terms of stakes and pre-trial preparation that lawyers who are involved in those cases are worthy of membership in the College even though they may have tried fewer cases. Today, the cases are more complex and intense and require the same kind of advocacy skills that were called upon in a different era."

Shanor said he is not worried about the possible demise of the trial lawyer.

"I think there is always going to be a need for trial advocacy," he said. "I don't think the courts are going to go away. I don't think ADR

(Continued on page 10)

PRESIDENT-ELECT

(Continued from page 9)

is going to spell the end of the trial bar. I just think it's a changing landscape."

Finding ways to get good training for young trial lawyers is still a problem, Shanor said. "Firms, including my own, are not handling the smaller cases which provided a training ground for younger lawyers in earlier years. Thus I think all firms are having to use alternate means to train their lawyers in trial advocacy, such as using the NITA (National Institute of Trial Advocacy) program, or, as our firm does, have a special NITA program just for the young lawyers in our firm to supplement their training. The College can play a role here and is on the right track in doing so. We are working right now, through the Teaching of Trial and Appellate Advocacy Committee, to develop a curriculum for teaching trial advocacy to public interest lawyers. I think this is a very worthy project for the College."

"I think there is always going to be a need for trial advocacy."

A member of the College since 1979, when he was inducted at the age of 41, Shanor never learned who nominated him. "I was very, very honored by being selected as a Fellow of the College," he said. "I knew the New Mexico Fellows of the College, all of whom were the outstanding trial lawyers in New Mexico at that time."

He remembers his introduction to the College fondly. "When I was inducted into the College in Dallas, a longtime family friend, Earl Morris, who was a former ABA president, invited me to sit with him. Erwin Griswold (former U.S. Solicitor General) was at the table and it was an extraordinary event. My classmate, Amalya Kearse, who is now on the Second Circuit Court of Appeals, was the first woman to be inducted into the College. She was the one who gave the acceptance for our class. I guess you would say I was overwhelmed. The induction charge was given by Emil Gumpert."

He and his wife, Ellen, were so impressed with the quality of the membership of the College that they made a commitment to become very involved. "We made up our minds after our first experiences with the College that if we were going to spend our limited funds and time to participate in something that this was the most worthwhile organization. Our affection for the College, and our devotion to it, just increased year after year because we enjoyed it so much and met so many wonderful people."

Shanor grew up in Springfield, Ohio, where his father was an ordained Lutheran minister and a college professor. His mother taught Latin and English. Nobody in his family was a lawyer, but a high school teacher urged Shanor to consider a legal career based upon his debating and acting skills. He decided early on to become a trial lawyer because "I did a lot of thespian activities in high school and a lot of competitive debate and oratory in college. I suppose there's a little actor in all trial lawyers."

After graduating from Wittenberg University in Springfield and then the University of Michigan Law School in 1962, Shanor settled down to practice in Cleveland, Ohio. He and Ellen, whom he had met in Ann Arbor when she was in undergraduate school, would visit New Mexico on vacations to see her parents. "I became enchanted with the lifestyle and the climate, and we began looking around to see what the opportunities in New Mexico might be," Shanor said. "Roswell met our needs for a smaller community and a good place to raise our kids." So in 1966, he and Ellen relocated to the New Mexico town of about 45,000, where he joined the predecessor firm to Hinkle, Hensley, Shanor & Martin.

"As a Midwesterner who had relocated from Ohio to New Mexico there was a certain

(Continued on page 11)

PRESIDENT-ELECT

(Continued from page 10)

adjustment to the West," Shanor said. "I had some fascinating and interesting cases in the early days of my career in New Mexico. Just as an example, I defended a rancher in a rustling case. As you might imagine, in New Mexico cattle rustling was a very serious crime that drew greater penalties than some of the more violent felonies would draw in the cities. I was able to successfully defend the man, but the remarkable thing about the case was that it turned out that all the Livestock Board witnesses for the prosecution were ultimately indicted as a rustling ring."

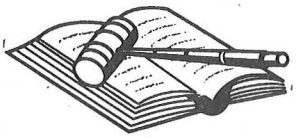
"I suppose there's a little actor in all trial lawyers."

Today Shanor's firm does "a tremendous amount of oil and gas work, including litigation, contract and title work, and we do a substantial amount of water law work. We also represent our share of ranchers, farmers and business people."

In 1990, Shanor was selected as trustee for the largest bankruptcy in New Mexico which involved Bellamah Community Development, a real estate corporation with $500 million in debts and properties in five states. The case was finally completed this year.

A member of the ABA and several bar and bar-related groups, he is a founder of the George L. Reese, Jr. American Inn of Court and was the 2000 recipient of the Professionalism Award of the State Bar of New Mexico. Also he is a former president of the board of education of the Roswell Independent School District, and a former chairman of the Roswell Planning and Zoning Commission and the Extraterritorial Zoning Commission. President of the St. Andrew's Episcopal Church Foundation, he is a former senior warden of the church vestry and has held several civic posts.

The Shanors love to relax by going RV (recreation vehicle) camping in various remote locations in New Mexico, Colorado and Wyoming, and he enjoys fly fishing, hiking and golf. ◆



FROM THE EDITORIAL BOARD

(Continued from page 2)

yer should read. We saved it to be published in its entirety in an issue in which it could be featured. We hope that you will read it, ponder on it and circulate and discuss it in your own firms.

Many of you cannot attend our national meetings. Over time, our regional, state and province meetings have themselves become regular events. Many of them feature outstanding programs. We have promised you better coverage of these local and regional meetings, and we have asked those Fellows responsible for planning these meetings to designate someone to report on them. We are confident that they would welcome the help of the would-be writers among you.

In our last issue, we solicited your comments, suggestions and criticisms. We have printed several of your letters in this issue.

Ozzie Ayscue
Chair, Communications Committee
ozzie_ayscue@shmm.com ◆

BELIEVING IS SEEING

John W. Reed

From an address delivered October 27, 2000 to the College at its Fiftieth Anniversary meeting at Washington, D.C. by John W. Reed, University of Michigan Law School, Thomas M. Cooley Professor of Law Emeritus. In addition, Reed has served as Dean of the University of Colorado Law School and, in retirement, has taught at Wayne State University School of Law. Professor Reed, the fifth recipient of the Samuel E. Gates Litigation Award for his contribution to the improvement of the litigation process, has addressed several College meetings.

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We do tend, all of us, to believe what we see.

Well, what *do* we see? What do we see in our profession here at the beginning of the century? Let me list several things that I see, and, I assume, we all see.

1. ***I see lawyers advertising their services***, described less bluntly as "marketing." Lawyers employ staff members to utilize every opportunity to bring themselves to the attention of prospective clients and to inform present clients of achievements and honors. Some of this is in self defense, as consumers of legal services increasingly shop around for legal services. "Beauty contests" are no longer limited to the boardwalk in Atlantic City.

   I see lawyers wedded to the billable hour. Begun, with the best of intentions as a way to rationalize the charges for our services, the billable hour has taken on a life of its own, driving all kinds of decisions—personnel decisions, litigation tactics, client development, and the like.

   I see lawyers moving toward multidisciplinary practices, to provide one-stop service for clients, with the probable consequence of a loss of the bar's indispensable independence.

   I see law firm personnel practices driven almost exclusively by their money impact, such as the large rewards for rainmakers, such as the forced early retirement of long-time partners.

   I see a decline in firm loyalty, with a high degree of mobility, indeed with whole departments moving from firm to firm, almost always motivated by money, by self-interest.

Since seeing is believing, when we see all these things and see also their mostly lucrative effects, what do we believe? I suggest that these

(Continued on page 13)

BELIEVING IS SEEING

(Continued from page 12)

phenomena cause us to believe that the law is not so much a profession as it is a business, that economic considerations drive the decision-making processes, that the bottom line trumps all. When I say "cause *us* to believe," I use the word "us" to include the public generally and also a large portion of the bar. Thus, these things cause the general public and much of the bar to believe, as I said, that the law is more business than profession.

But I see more, and you see it too.

2. ***I see zealous advocacy out of control***, characterized by incivility, arrogance, and sharp practice—what someone has called "ice hockey in business suits." I see a return to the ancient ritual of trial by ordeal—the ordeal of discovery abuse and scorched-earth tactics.

When we see these things and see that they often produce favorable outcomes, what do they lead us to believe? I suggest that they cause us to believe that in litigation practice, winning is not everything, it's the only thing.

3. ***I see lawyers practicing law by fax and e-mail***. Only last month a highly successful Seattle lawyer told me that he has several clients for whom he does much work whom he has never met. The venues of their relationships are the telephone, telefax, and the Internet. The clients want immediate advice, and they expect instantaneous electronic response to their electronic questions.

When we see this development, what does it cause us to believe? I suggest it causes us to believe that law is not a personal profession but rather a black box spewing out answers to submitted questions—that law is merely another Internet service business.

4. ***I see management of courts by statistics***, with judges being judged by and held responsible to lay court administrators. I see sentencing guidelines and other legislatively imposed limits on judges' discretion. I see judges charged with management of quasi-judicial staffs, dealing often with matters moved over from the administrative arm of government.

"I suggest [lawyers practicing law by fax and e-mail] causes us to believe that law is not a personal profession but rather a black box spewing out answers . . . —that law is merely another Internet service business."

When we see these things, what do they cause us to believe?

5. ***I see tremendous growth in extra-judicial modes of resolving disputes***—the so-called ADR movement. While no one denies that arbitration and mediation and the like are beneficial in certain settings, ADR is broadly employed—is imposed (not chosen, but imposed) on litigants in other settings where it produces inequities and disadvantageous consequences for the parties and for the judicial system. Though described as "alternative," I see arbitration and mediation becoming the norm, with court trials, especially jury trials, as the real alternative mode of dispute resolution.

When we see ADR settling in as the norm, what does it cause us to believe? I suggest it causes us to believe that it is more important to decide something quickly than to decide it right.

6. ***I see the civil jury playing a diminishing role***. Calendars favor nonjury dispositions, as do jury election rules; cases are diverted

(Continued on page 14)

BELIEVING IS SEEING

(Continued from page 13)

from the courtroom to the ADR room; juries are reduced in size; counsel are denied meaningful voir dire; and the like. And I see growing skepticism about the jury's competence.

7. ***I see that those lawyers who are single-minded about their profession get ahead***— that those who strive for a balance between the professional and the personal aspects of their lives typically receive fewer professional rewards.

When we see this, what does it cause us to believe? I suggest it causes us to believe that the right professional-personal balance is ten to one, and that the law is a career, not a calling.

8. Finally, ***I see lawyers trying to satisfy clients when instead, in the words of Elihu Root, they ought to tell the client he's being a damned fool and should stop it!*** As lawyers, they suspend their own principles in the service of the client's principles. It's as if they had seen the garbled English translation on the sign in a Parisian hotel elevator which read, "Please leave your values at the front desk."

When we see this, what does it lead us to believe? It causes us to believe that lawyers are mere agents of their clients, not their counselors.

You can reasonably complain that I have overstated some of these points, that the characterizations are academic exaggeration; but I submit that they are a roughly accurate depiction of the legal profession's landscape at the turn of the century. That is what we see. And, if seeing is believing, then those things produce in us—that is, in the public and in a large portion of lawyers—these beliefs:

—that the bottom line trumps other considerations;
—that winning is the only thing;
—that lawyers are losing the personal relationships with their clients;
—that courts are simply part of the governmental bureaucracy, mere cogs in the governmental machinery;
—that deciding disputes quickly is more important than deciding them right;
—that the jury is at best an unaffordable luxury;
—that a good lawyer is single-minded about the law and need not be a whole person; and, finally,
—that values are negotiable.

These things, again conceding overgeneralization, are some of the widely held beliefs about our profession. Many lawyers hold those beliefs, and you know that the public holds them too. From what people see in us, this is what they believe about us. When I think of the public's view of our profession, I am reminded of a recent episode in the cartoon strip "Beetle Bailey" involving the hapless and henpecked General Halftrack and his wife. She says: "Answer me one question, will you?" "Of course, my dear." She says: "What do you think your biggest fault is and why don't you stop doing it?"

Once again, let me make the point that seeing leads to believing: and with so many unfortunate things to see, it is no wonder that the resulting beliefs are less than exalted.

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Believing Is Seeing

Now, I ask that you, with me, approach things from the opposite direction and consider how what we believe affects what we see. We see not simply what the world presents to us but what our minds project onto it. Psychology has repeatedly demonstrated that truth empirically.

(Continued on page 15)

BELIEVING IS SEEING

(Continued from page 14)

For example, a poor person, shown a coin, estimates the coin's diameter to be larger than does a rich person. Another example: Many subjects are shown a picture of a man with a drawn knife on a subway car; when questioned about the picture afterward, the overwhelming majority remember him as a black person, though in fact he was white. Innumerable experiments and experiences show that we tend to see what we believe, what we expect to see.

The same point is made by a charming story about Sherlock Holmes—a story I have told some of you before. Holmes and Dr. Watson went on a camping trip. After a good meal and a bottle of wine, they lay down for the night and went to sleep. Some hours later Holmes woke up, nudged his faithful friend, and said, "Watson, look up at the sky and tell me what you see."

Watson replied, "I see millions of stars."

"What does that tell you?"

Watson thought a moment and replied, "Astronomically, it tells me that there are millions of galaxies and potentially billions of planets. Astrologically, I observe that Pisces is in Leo. Horologically, I deduce that the time is approximately a quarter past three. Theologically, I can see that God is all powerful and that we are small and significant. Meteorologically, I suspect that we will have a beautiful day tomorrow. What does it tell you?"

"Believing is seeing. If we believe bad things, we will see bad things. If we believe the good, we will see the good, not only in ourselves but also in others."

Holmes was silent for a second and then spoke: "Watson, you idiot, it tells me that someone has stolen our tent."

To use the psychological jargon, "the world is mediated by cognitive structures and processes that actively shape how we perceive and evaluate the world around us." Believing *is* seeing. If we believe bad things, we will see bad things. If we believe the good, we will see the good, not only in ourselves but also in others. When teachers believe in their students' abilities, their possibilities, those students do, in fact, achieve more; they tend to become what their teachers believe they can become. When I say believing is seeing, I use "believe" in the sense of believing *in* something, in the sense of having a vision that something can be brought to pass. I need not belabor the importance of vision before an audience of Fellows of the College, where a high vision of the pursuit of justice is its animating force. The only limits, as always, are those of vision. In the Biblical phrase, "Where there is no vision, the people perish."

"Powerful ideas, like democracy, liberty, the worth of the individual, have changed whole continents."

I grant that it is possible to overstate the extent to which one's belief, one's vision, may produce a parallel reality. Rose-colored glasses, after all, may simply produce a rose-colored illusion. But it is undeniable that if we believe in something, we are more likely to see it; and if we don't see it immediately, we are nevertheless more likely to bring it into being. Referring to Don Quixote, Oliver Wendell Holmes once said, "If a man has the soul of a Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make . . . his world ideal." Notice that Holmes didn't say that he will *find* his world ideal. He said that if he has the soul of an idealist, he will *make* his world ideal.

Powerful ideas, like democracy, liberty, the worth of the individual, have changed whole continents. What we affirm is the power of great ideas to change enterprises as surely as

(Continued on page 16)

BELIEVING IS SEEING

(Continued from page 15)

they change empires. What *are* the ideals—*our* ideals—that shape how we see our profession and what we want it to be? If believing is seeing, what do we believe?

—Do we believe the law is not merely a business but in fact a true profession? If so, will we make it so?

—Do we believe the jury is an indispensable guardian of our liberties. If so, will we work to preserve it and improve it so that it matches our vision?

—Do we believe the profession of law is a humane enterprise? If so, will be practice humanely?

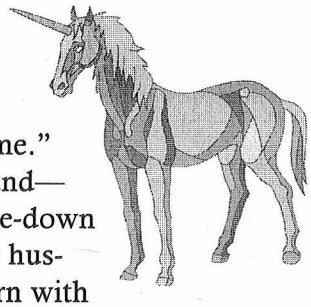
—Do we believe independent courts are essential to the preservation of our democracy? If so, are we willing to fight for their independence?

—Do we believe trial lawyers can be zealous advocates but at the same time officers of the court? If so, are we willing, ourselves, to be exemplars of civil advocacy.

If we do not hold these as truths, if they are not our vision, most assuredly we will not see them. But if we believe in them, in their value, in their essential goodness, we are more likely to see them come to pass, to *bring* them to pass. When we recover our sometimes lost idealism—idealism with which every one of us entered upon the study of law and entered the profession—then, in Holmes' words, we will make our world ideal. Poetic hyperbole? I suppose so, but it is nevertheless an ultimate reality. A romantic vision? Yes, but, in the words of the composer Giya Kanchelli, "Romanticism is a high dream of the past, present, and future—a force of invincible beauty which towers above and conquers the forces of ignorance, bigotry, violence, and evil." Making our world ideal—is it a myth? Yes, but like so many myths, profoundly true.

"Do we believe the law is not merely a business but in fact a true profession? If so, will we make it so?"

Mention of myths brings to mind James Thurber's delightful story entitled "The Unicorn in the Garden," which appears in his satiric "Fables for Our Time." One morning, the husband—husbands usually are one-down in Thurber's world—the husband sees a white unicorn with a golden horn quietly cropping roses in the garden. When he tells his wife what he has seen, she says, "You are a booby and I am going to have you put in the booby-hatch." He had never liked the words "booby" and "booby-hatch," and he said, "We'll see about that." He returned to the garden, but the unicorn had gone away and he sat down among the roses and went to sleep.



As soon as he had gone out of the house, the wife got up and dressed as fast as she could. She was excited and, in Thurber's delightful phrase, "there was a gloat in her eye." She called the police and a psychiatrist and told them to hurry and bring a straitjacket. When they arrived, she said, "My husband saw a unicorn this morning"; and as the police and the psychiatrist looked at each other, she provided the details—a white unicorn with a golden horn eating the flowers. At a solemn signal from the psychiatrist, the police leaped from their chairs and seized the wife. She put up a terrific struggle, but they finally subdued her. Just as they got her into the straitjacket, the husband came back into the house.

"Did you tell your wife you saw a unicorn?" asked the police. "Of course not," said the husband, "the unicorn is a mythical beast." "That's all I wanted to know," said the psychiatrist. "Take her away. I'm sorry, sir, but your wife is as crazy as a jay bird." So they took her away,

(Continued on page 17)

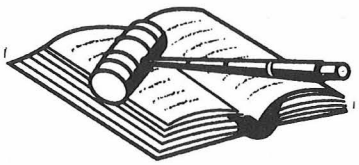
BELIEVING IS SEEING

(Continued from page 16)

cursing and screaming, and shut her up in an institution. The husband lived happily ever after.

Since this is a fable, there has to be a moral. Thurber's moral: Don't count your boobies until they are hatched.

There are many who believe a moral, caring legal profession to be, like the unicorn, a product of a mythic imagination the romantic vision of what could be. I plead with you not to lose that vision. Some things must be believed to be seen. I think unicorns do exist, or can be made to exist, just as I think our profession can take new forms of service and excellence through the power of imagination and spirit, especially the imagination and spirit of so talented an assembly as the Fellows of this distinguished College. In seeing the law as a noble calling you may constitute only a minority of our profession. But a prophetic minority has more to say than any majority, "moral" or "silent." The will *can* do the work of the imagination. If you believe, you *will* see. I guarantee it. ◆



STELLAR LINEUP FOR ANNUAL MEETING

Supreme Court Justice Antonin Scalia, ABA President Robert E. Hirshon, former FBI Director Louis J. Freeh and Alexander Sanders, a former South Carolina appellate judge and President of the College of Charleston head the list of speakers for the 2001 Annual Meeting October 18-20 in New Orleans. The gathering opens with a reception at the New Orleans Museum of Art on Thursday evening, October 18.

The Friday session begins with presentations of the winners of the National Trial Competition and the Sopkina Cup. Following that ceremony, former FBI Director Freeh will speak. Then ABA President Hirshon will make his remarks. He will be followed by Sanders.

After Sanders' speech, an Honorary Fellowship will be presented to Justice J. E. Michel Bastarache of the Supreme Court of Canada. The last speaker on Friday's program will be Justice Scalia.

Saturday's program will begin with presentations of the winners of the Gale Cup (Canadian National Moot Court) and the Haight Award, a $2,500 stipend for the law school of the winning team in the National Moot Court Competition. International Committee Chairman Mark H. Alcott will then give a summary of the work of his committee. He will be followed by Judge Richard S. Arnold of the U.S. Court of Appeals for the Eighth District in Little Rock, who will deliver the annual Lewis F. Powell, Jr. Lecture. ◆

THE PRESIDENT'S REPORT

(Continued from page 1)

Asserting that its recommended proposals reflected the rules adopted in a significant majority of the states, the ABA Ethics 2000 Commission once again sought approval of its recommendation by the ABA House of Delegates. Again the College led the opposition to adoption of the proposals. Again, the opposition led by the College was successful. The opposition put together by the College to maintain what it strongly believes to be integrity in the confidentiality of attorney-client communications was an outstanding example of what this College has the capability of accomplishing when important goals are at issue.

"The opposition put together by the College was an outstanding example of what this College has the capability of accomplishing when important goals are at issue."

When the College undertook its opposition this past summer to the specific proposals of the Commission to adopt modifications to Model Rules 1.6(b)(2) and (3), it faced a formidable challenge. The Commission, chaired by the highly respected Chief Justice of the Supreme Court of Delaware, E. Norman Veasey, a Fellow of the College, had held extensive hearings. It had the support of academics. It claimed support from the majority of the states. Only one member of the Commission, Larry Fox, a Fellow of the College, dissented from the proposed Rules 1.6 (b)(2) and (3).

When the Commission's recommendations had been circulated and made available to the College, its Legal Ethics Committee, under the leadership of John McElhaney of Dallas, Texas, as Chair, was asked to review the entire Report. After a very careful, thorough, and thoughtful review, the Legal Ethics Committee recommended that the College oppose adoption of these two proposals and no other of its extensive recommendations. It was the view of the Committee that these two proposals affected core values concerning the attorney-client relationship and that the College should concentrate its efforts in opposing their adoption. The recommendation of the Legal Ethics Committee was adopted by the Board of Regents, which authorized the Executive Committee of the College, together with the Legal Ethics Committee, to organize an opposition to acceptance of the proposed changes in the Rules.

The first step was the preparation and acceptance of a report setting forth the bases for the opposition of the College. The Legal Ethics Committee prepared an excellent report. After review by the Board of Regents and the Executive Committee, this report was published in one of our blue books. It was then disseminated to each member of the House of Delegates with a covering letter from your President summarizing the proposed modifications and the reasons for the opposition of the College to their acceptance.

As was explained to the members of the House of Delegates, the "unilateral disclosure" of confidential attorney-client communications would "place lawyers in an untenable dilemma between their fiduciary duty to protect client confidences and secrets and proposed authorizations to act as whistleblowers against their clients." The enclosed blue book report of the Legal Ethics Committee was exhaustive in its research and persuasive in its arguments.

At the same time, with assistance from Past Presidents Ozzie Ayscue, Andy Coats, and John Elam, a team was put together to lead the opposition on the floor of the House of Delegates. Ben Hill of Tampa, Florida, was the coordinator and organizer of our team. He did a terrific job. He was closely and ably assisted, not only in putting the team together but also in addressing the House of Delegates, by Immediate Past President of the ABA and Fellow of the College Bill Paul of Oklahoma, and Larry Fox, the member of the Commission who dissented

(Continued on page 19)

THE PRESIDENT'S REPORT

(Continued from page 18)

from the Commission's Report on these two proposals and filed the motion to delete them. Other Fellows who assisted significantly on the floor of the House of Delegates, some of whom were prepared to address the House of Delegates, included Max Bahner, Don Cowan, Harry Hardin, Larry McDevitt, Bill Pope, Bill Rakes, Alice Richmond, Mike Smith, and Scotty Welch. Regent and Treasurer-Designate Jimmy Morris contributed significantly to our organizing effort. Ben Hill and others of the College team had also coordinated with other members of the House of Delegates who supported our opposition to the proposals.

After the blue book with the covering letter was furnished to each member of the House of Delegates, we sent a memo to each State Chair, enclosing copies of the blue book and covering letter. The Chairs were requested, either personally or through other members of their State Committees, to contact each member of the House of Delegates in their respective state jurisdictions, to explain to them the position of the College, and to urge the delegates to oppose the modifications in proposed Rules 1.6(b)(2) and (3). The State Chairs responded quickly and effectively. Another separate letter was sent to every member of the College who was also a member of the House of Delegates urging them to make whatever efforts they could with their fellow delegates to oppose adoption of the proposed modifications. Each Regent of the College was requested not only to make appropriate direct input themselves, but to coordinate with the State Chairs in their respective jurisdictions and to make sure that the contact with House of Delegate members was completed.

As a result of these organizing efforts, the position of the College was extremely well represented both prior to the ABA meeting in Chicago and also when the issue came up for debate on the floor of the House of Delegates. It was our aim to have a team in place that could present our position as skilled advocates in the most persuasive manner. And that is what happened: the motion to delete the two proposals not only prevailed but by a margin of 63 percent to 37 percent.

I wish to thank each and every member of the College who participated and contributed to the successful representation of the position of the College on the floor of the ABA House of Delegates. It was the joint effort that succeeded and the contribution of each of you is appreciated.

"I wish to thank each and every member of the College who participated and contributed to the successful representation of the position of the College on the floor of the ABA House of Delegates."

The College has extraordinarily talented lawyers in its membership. They are powerful and persuasive advocates. The extremely successful opposition organized and implemented by the College to adoption of the proposed modifications reflects its talent and skilled advocacy. It also reflects what the College has the capability of accomplishing when significant issues are at stake. As our legal system and the administration of justice continue to grow more complex, significant issues will increase in number and in complexity. This will apply to the trial of cases, the focus of concern of the American College of Trial Lawyers. When these issues do arise, the College has the skill and the talent, but also the obligation to use that skill and talent to participate in and contribute to a resolution of these issues that will most benefit our legal system and the administration of justice in the courts.

Earl J. Silbert, ***President***

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The following is an excerpt from the Report of the Legal Ethics Committee on Duties of Confiden-

(Continued on page 20)

LEGAL ETHICS REPORT

(Continued from page 19)

tiality, approved by the Board of Regents and published in Blue Book form.

If the attorney does not truly stand in the place of the client, the client is unrepresented and the adversarial model does not work. Our judicial system thus depends upon two conditions. First, the ethical duty of *loyalty* to the client is paramount. By definition, an attorney cannot represent a client's interests and simultaneously represent interests opposed to the client. Clients who are unskilled in legal matters are unheard and unrepresented to the extent that their legal counsel represents the interests of others; in that situation, the adversary model is compromised and its promise of fairness is unfulfilled. Second, the law has recognized for centuries that competent legal representation in an adversary system requires an open disclosure of information between attorney and client and the *confidentiality* that makes that possible.

Any retreat from the loyalty and confidentiality that our adversary model requires can only be justified by considerations that are so important that they justify the resultant impairment of our legal system. For example, the law has always accorded special importance to an individual's right to be protected from death or substantial bodily harm; the right to bodily integrity is uniquely and ultimately incapable of social compromise. The present Rule 1.6 incorporates those values, but it properly refuses to abandon loyalty and confidentiality, and the adversary system that they make possible, in order to reduce purely monetary injuries. It should not be changed.

Important Policy Considerations

1. Trust and Disclosure

The attorney-client relationship is founded on *trust*. An attorney cannot represent the client and render competent legal services unless the client communicates all relevant facts. "The obligation is predicated on the assumption that a lawyer can best advise a client when the client is free to discuss all information relating to his legal matter, even information that may be embarrassing or damaging, without fear of reprisal." (ABA/BNA Lawyers' Manual on Professional Conduct, 55:302.) The Model Rules and the Code of Professional Responsibility foster trust between client and attorney by placing no duty on the attorney to discover and prevent illegal conduct and by prohibiting disclosure of a client's secrets in all but the most extreme and carefully limited instances. Under these circumstances the client can be confident that the attorney represents only the client's interests and that all relevant information can be freely communicated.

The College continues to adhere to the tenet that disclosure should be prohibited in all but the most extreme and carefully defined instances, such as preventing imminent death or substantial bodily harm. By contrast, the proposed changes to Model Rule 1.6 undermine the attorney-client relationship by endorsing attorney disclosure of confidences in a variety of ill-defined and poorly reasoned circumstances.

Client confidentiality is a foundational prerequisite to competent and zealous legal representation and has been honored in courts of law for centuries. The attorney-client privilege was already established at the time of the reign of Elizabeth I in the 16th century and the "origin of the legal duty to preserve secrets, as distinct from the evidentiary privilege, has been traced back at least as far as the mid-19th century in England." (ABA/BNA Lawyers' Manual on Professional Conduct, 55:301.) The essential importance of attorney-client confidentiality has been frequently and consistently recognized in American judicial decisions. The Supreme Court stated in 1866:

> But it is our of regard to the interest of justice, which cannot be upholden, and to the administrative

(Continued on page 21)

LEGAL ETHICS REPORT

(Continued from page 20)

> of justice, which cannot go on, without the aid of men skilled in jurisprudence-in the practice of courts-and in those matters affecting the rights and obligations which form the subject of all judicial proceedings. If the privilege did not exist, at all, every one would be thrown upon his own legal resources. Deprived of all professional assistance, a man would not venture to consult any skillful person, or would only dare to tell his counsel half the case. (*Blackburn v. Crawford's Lessee*, 70 U.S. 175, 18 L.Ed 186, 193 [1866] [quoting *Greenough v. Gaskell*, 1 Myl & K, 98]).

The Supreme Court's relatively recent pronouncement in *Upjohn Co. v. United States* (449 U.S. 383 [1981]) reiterated the fundamental importance of principles of confidentiality in our adversarial system of justice:

> [The privilege] is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from consequences or the apprehension of disclosure. (Id. at 389).

In its April 2, 1982 Report of the Legal Ethics Committee, the College criticized similar proposed changes to Rule 1.6, stating that "the draft Rules' approach to client confidences is a failure. It sets forth a rule of confidentiality so riddled with ill-defined and poorly thought through exceptions that it affords no assurance to any client as to when, if ever, he may rely on his attorney to protect his secrets." The point must be emphasized. The proposed changes to Rule 1.6 do not instantaneously abolish the Rule on confidences, but they eviscerate confidentiality. Superficially, particularly by purportedly limiting their application to where the client "has used or is using the lawyer's services to further the crime or fraud," the appearance of confidentiality remains, but the premise of the attorney-client relationship is eroded. The proposed expansion of an option to breach confidences includes ambiguous and poorly defined provisions for: (1) informing on former clients, (2) preventing crime or fraud that results solely in substantial financial or property injury, and (3) rectifying or mitigating substantial injury to financial or property interests. What remains can be characterized as an amorphous, highly subjective mandate to "supervise" and "parent" the client. This has never been the intent or spirit of Rule 1.6, nor is it consonant with the letter of the Rule and the essential conditions underlying the American legal system.

2. Client Fraud

The issue of client fraud presents a complex and difficult problem involving the core values that require confidentiality. It challenges the function, or perhaps more aptly the role, of the lawyer in the attorney client relationship. American jurisprudence and the College have held the principle of confidentiality nearly inviolate, and see the function of the attorney to be first and foremost a protector of client confidences and a zealous advocate for the client's interests. Others, particularly those who support the proposed changes to Rule 1.6, believe that although an attorney has a duty to keep a client's confidences and to advocate on behalf of the client, this duty should be tempered by countervailing duties to protect the monetary interests of non-clients. In fact, some states have made disclosures of client confidences mandatory, rather than discretionary, in these circumstances.

(Continued on page 22)

LEGAL ETHICS REPORT

(Continued from page 21)

By including property or pecuniary damage as triggers for disclosure, the proposed Rule changes the role of the attorney from a representative and a zealous advocate to a "whistleblower" and "policeman." In many respects, the attorney's role under the proposed Rule would resemble a combination of prosecutor, judge, and jury; he would gather information about possible fraud, render a decision, and then exact a punishment-disclosure-as he saw fit in a context in which the client no longer has a legal representative or advocate. Under the proposed changes to the Rule, the attorney's whistleblowing function would interfere with the attorney's traditional role and would override the principles of loyalty and confidentiality upon which that rule is based.

By including property or pecuniary damage as triggers for disclosure, the proposed Rule changes the role of the attorney from a representative and a zealous advocate to a "whistleblower" and "policeman."

This is a significant and dramatic paradigm shift. Amending Rule 1.6 would shift the attorney's function away from advocacy and loyalty to the client toward a construct that permits the attorney to represent the financial interests of others. This has never been and should not be the role of lawyers in our system of jurisprudence. The assurance of fairness at trial is predicated on advocacy of adverse interests to an impartial judge and jury. The lawyer has personal ethical duties to the court, but has never been obligated to represent the interests of third parties to the extent described in the proposed changes to Rule 1.6. There is no need and no justification to recruit the attorney from officer of the court to officer for the court.

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Conclusion

The understandable theoretical desire to create broad public protection cannot always be perfectly reconciled with the very real duties of confidentiality and loyalty. These duties are at the very heart of the attorney-client relationship.

> The law is molded on the premise that a greater good inheres in encouraging all clients, most of whom incline toward complying with the law, to consult freely with their lawyers under the protection of confidentiality in order to gain the benefit of frank communication. (RESTATEMENT ch. 5 intro, note at 453-54).

Enacting rules which are counter-intuitive and are often likely to be disregarded is more likely to spawn cynicism or disregard for the ethics rules than to change societal behavior. The attorney's fiduciary duty of undivided loyalty is compromised by the proposals. Appeals to attorney self-interest made at the expense of damage to the well practiced and well understood principles of loyalty and confidentiality exacerbate the problem, and would inevitably, if genuinely embraced in actual practice, create an environment of uncertainty and mistrust.

Enacting rules which are counter-intuitive and are often likely to be disregarded is more likely to spawn cynicism or disregard for the ethics rules than to change societal behavior.

The American College of Trial Lawyers opposes the ABA Ethics 2000 Commission proposals for change of Rule 1.6(b)(2) and 1.6(b)(3).

Legal Ethics Committee. John H. McElhaney, Chair. ◆

LETTERS TO THE BULLETIN

From Donald W. Molloy, Chief Judge, U.S. District Court, District of Montana, Missoula, Montana, in a July 30, 2001 letter to President Silbert.

On July 26, 2001, I had the honor and pleasure of swearing in two new Federal District Court Judges for the State of Montana. Sam E. Haddon and Richard F. Cebull are President Bush's nominees to the Federal District Court. They, along with Roger Gregory, are the first federal judges confirmed by the United States Senate during the Bush Administration. Both Judge Haddon and Judge Cebull are members of the American College of Trial Lawyers. So am I.

I write to advise you of this because my suspicions indicate that Montana is the only state in the Union where every active Article III Federal Judge on the District Court Bench is also a Fellow of the American College of Trial Lawyers. I will bet it is also the first time in the history of the College that a state has every Article III District Judge who is also a member of the prestigious college.

Donald W. Molloy

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From former President Frank C. Jones in a July 26, 2001 letter to Editor Marion A. Ellis.

The Summer 2001 issue of The Bulletin—the first issue published by our new Editor—is first rate and a clear improvement over the past. Let me congratulate you and everyone else who is responsible for this fine result.

I hope that in future issues we can focus even greater attention upon activities that take place at the state and province levels, and regional meetings. Many of our Fellows hardly every come to national meetings, as you know.

Thanks again for your good work.

Frank C. Jones

[President Jones, we are indeed planning more coverage of state, province and regional meetings. Eds.]

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From Fellow Donald R. Shultz, State Committee Chair for South Dakota, Rapid City, South Dakota, in a July 25, 2001 letter to President Silbert.

I have read the Summer 2001 Bulletin and I just had to take the time to congratulate you and Marion Ellis on an excellent publication. Normally there is so much coming across the desk that one does not have time to read it all, however, I read this Bulletin from cover to cover. It was outstanding from start to finish. Congratulations.

Donald R. Shultz

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From David W. Scott, Q.C., Ottawa, Ontario, who is Secretary of the College, in a letter to Ozzie Ayscue, Chair of the Communications Committee.

I've just finished a careful reading of The Bulletin. It is excellent and I congratulate you, your Committee and, through you, our new editor.

The text is superb and the photographs in particular add to the appeal, having in mind particularly the extent of materials that busy lawyers receive in their working day. Congratulations.

David W. Scott ◆

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CALENDAR

NOTE: *Calendar changes frequently and dates should be checked with ACTL office before scheduling events.*

2001

November 1-4
Western Chairs Workshop
The St. Regis Monarch Beach Hotel
Monarch Beach, CA

November 9-11
Maryland & DC Fellows Joint Meeting
Tidewater Inn
Easton, MD

November 15-18
Eastern Chairs Workshop
The Ritz-Carlton
Key Biscayne, FL

November 29
Washington State Fellows
Annual Christmas Dinner
Broadmoor Golf Club
Seattle, WA

November 30
Oregon Fellows Dinner
Heathman Hotel
Portland, OR

2002

February 14-17
Tri-State Meeting
(Georgia, Florida, Alabama)
Cloister
Sea Island, GA

March 10-13
Board of Regents Meeting
La Quinta Resort and Club
La Quinta, CA

March 14-17
Spring Meeting
La Quinta Resort & Club
La Quinta, CA

May 16-19
Board Retreat
Ritz-Carlton Reynolds Plantation
Atlanta, GA

October 13-16
Board of Regents Meeting
The Waldorf-Astoria
New York, NY

October 17-20
Annual Meeting
The Waldorf-Astoria
New York, NY