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Law, The River, And The Lamp

Paul D. Carrington, Dean, Duke University School of Law, delivered the following speech to the Fellows and guests of the College at the 1987 Spring Meeting, Boca Raton, Florida.

The Pilots' Black Box

I begin with a story. It is not my story, but Mark Twain's, told in his remarkable book on professional education, *Life on the Mississippi.*

The profession of which Twain writes is that of steamboat pilots, who were trained as apprentices. Each cub hired a master pilot to train him. The standard length of training was two years, and the standard fee was five hundred dollars. This sum was often paid after the training period from the earnings of the cub as a professional, a nineteenth century variation on today's guaranteed student loans. Because $500 was a welcome income supplement for the masters, and because they delegated their most onerous duties to their cubs, masters accepted more cubs for training than there were piloting jobs to be performed, creating what we now call a glut of pilots.

The glut had the unsurprising effect of diminishing the wage rate. Where the standard rate had been $250 a month at the time Twain trained with his mentor, Horace Bixby, it dropped as low as $100. As Twain put it, it appeared that the knights of the tiller had gone too far with a good thing. In desperation, a group of a dozen of the best pilots took the step of organizing the Pilots' Benevolent Association; they put up some capital for the Association, raised the minimum wage for an Association member to $250 "and then retired to their homes, for they were promptly discharged from their employment." But their Association by-laws had "seeds of propagation." One feature was that every member who paid his $12 dues was entitled to unemployment insurance of $25 a month. Even widows could draw the $25, and get burial expenses as well if the deceased kept his dues paid up. The newly unemployed pilots paid their $12; and signed up, and so did many of the superannuated and forgotten pilots:

> *They came from farms, from interior villages, from everywhere. They came on crutches, on drays, in ambulances — any way so they got there. They paid in their twelve dollars and straightway began to draw out twenty five dollars a month and calculate their burial bills.*

Soon the Association had all the young, or useless, or helpless pilots, as well as the dozen first class ones.

But nine-tenths of the good pilots were outside the Association deriding an organization that spent more than it received supporting the unworthy. They were derisive, but also grateful to the Association for removing so many pilots

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American College of Trial Lawyers
10889 Wilshire Boulevard, Los Angeles, Calif. 90024
Telephone: (213) 879-0143

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from the list and leaving the work for the worthy non-members, for their wages began to rise.

It was not long, indeed, until wages had regained their former level, and there was a shortage of pilots. But Association members would not work on the same boat with non-members, so it was the non-members' turn to be laid off, except for those who found work on non-Association boats. Many of those laid off saw at last the wisdom of membership, and joined up, even though they were required to pay extra back dues to compensate for their earlier failure to support the Association.

The victory of the Association did not become total, however, until the invention of the black box. For the admirable purpose of enhancing river safety, an honest black lock box was placed at every river port, to which each Association member was given a master key. By leaving notes in these black boxes, the members shared information about navigational hazards on the river. The insurance companies, convinced that boats were safer if they were controlled by persons having access to that secret information, lowered their rates for boats piloted by Association members. This very practical advantage drove all the remaining pilots into the Association, even if they had enormous back dues to pay up with compound interest.

When the Association had taken in all the pilots, it enacted rules against the training of more cubs, a rule it could enforce because there were no masters outside the Association who could provide the apprentice training.

And then they raised the minimum wage of members to $500. The shipowners were tempted to refuse to pay so much, but this would have halted river traffic. So, under duress, they raised the freight rates. They soon discovered that the farmers were unable to resist these higher rates. The farmers even gullibly accepted the explanation that the higher rates were caused by the high salaries of pilots, whereas the rates were actually raised more than enough to pay the pilots. So the owners were pleased to pay the high wages, because it was profitable to do so. Only the public served was disadvantaged.

Twain's story documents the later epigram of George Bernard Shaw that all professions are conspiracies against the laity. But he concludes with a twist. The pilots had no sooner confirmed their monopoly power than the first rails were laid parallel to the river. The steamboat industry was soon obsolete and the Pilots' Benevolent Association a broken tyrant. The consumers of transport had the last laugh.

The Lawyers' Black Box

This wry story invites both comparison and contrast. If a "conspiracy," we lawyers are a very large one, open, ultimately to most who aspire to enter it. We are also mindful, as the pilots were not, of a public duty. Yet, lawyers like other professionals, are not free of the conspiratorial impluse. Like original sin, it is always with us. Indeed, it is fact that American law schools are the product of an impulse to elevate and enrich the bar that was kin to the spirit animating the Benevolent Association.

Law school as we know it is a peculiarly American institution. Only in Canada and India is there anything like it. Elsewhere in the world, law in universities is a course of study open, like any other, to undergraduates. Law students elsewhere maintain undergraduate life styles and pursue their study in the mainstream of university life. Elsewhere, professionalization in law occurs outside the university in apprenticeships, sometimes enriched with other activities organized by lawyers and judges who are not academics. Only a person planning a career as a legal academic would normally pursue law as a graduate course of study.

Nineteenth century American lawyers were, as most of you well know, largely innocent of higher learning. Law practice was mostly for amateurs, for anyone who could read Blackstone and owned a form book. The University of Virginia, as planned by Thomas Jefferson, offered law study to undergraduates as preparation for public life, and only incidentally for the practice of law. And there were a number of law schools not associated with universities, the one at Litchfield, Connecticut being perhaps the best known; these institutions aimed to prepare professionals, and their teachers were practitioners and judges who taught as an avocation.

"TWAIN WOULD READILY HAVE IDENTIFIED THE LAW SCHOOL AS . . . A DEVICE SERVING A PUBLIC PURPOSE AS WELL AS THE SELF-AGGRANDIZING AIM OF THE BAR TO ELEVATE THE STATUS AND INCOMES OF LAWYERS."

Law as a post-graduate three-year study pursued by professional students studying under full-time professors first appeared at Harvard in 1870, the invention of Christopher Columbus Langdell. In a few decades, that model gained ascendancy. The rapidity of later development is marked by the data that in 1900 the median number of years of higher education for American lawyers was zero, whereas in little more than a half century, that median had become seven. Zero to seven, it is fair to say, is a truly radical social change in so short a time.

Twain would readily have identified the law school as the American lawyers' black box, a device serving a public purpose as well as the self-aggrandizing aim of the bar to elevate the status and incomes of lawyers. What caused this rapid and unusual development? It was the result of a powerful mutual attraction between the organized bar and the entrepreneurs of higher education. The sources of that mutual attraction are no mystery.

DeTocqueville observed the political and social vacuum existing in nineteenth century America. Observations of recent revolutionary societies such as China and the Soviet Union confirm that classlessness is an inherently unstable condition: where there is no elite, one seems to create itself. In America, among the successful competitors for the vacancy, were doctors, lawyers, and professors.

DeTocqueville predicted the rise of the bar on the basis of the crucial role its members played in this country's polity. As the profession organized, its associations manifested the normal impulses of work guilds, seeking to shelter members from competition and to elevate their shared status. To the leaders of the bar, whose careers were linked to the advancement of the collective interest of the profession, the profession's path to power, wealth, and status led to higher learning, because academic credentials were the meritocratic source of status. They were therefore instrumental in urging states to raise educational requirements for entry into our profession, always for the stated purpose of elevating the quality of service provided by the profession.

"IN THE LATE NINETEENTH CENTURY, THERE WAS A SCRAMBLE TO ESTABLISH LAW SCHOOLS . . ."

Meanwhile, American universities evolved in a congenial direction, responding to the same needs broadly felt by other Americans. Sincere as was the desire to advance learning for its own sake, the vitality of institutions of higher learning depended on the market's perception of their relative capacities to create and confer status, wealth, and power. A sensible entrepreneur responsible for such an institution had to seek ways to associate with it persons likely to enjoy the status, wealth, and power which could be shared with the institution and its alumni. To educational leaders as well as deTocqueville, it appeared that the American legal profession was predestined to grow in these respects. Hence, they bonded to the rising profession. In the late nineteenth century, there was a scramble to establish law schools, and most were molded to the Harvard model of a semi-autonomous institution serving advanced students committed to careers in law. State licensing systems were used by the bar to encourage and support this development. By 1920, the three-year professional law school was standard, and not long after World War II, the preparatory undergraduate degree became the norm. Thus was invented our unique American law school tradition.

The question I propose to discuss today is whether law school in America is a good thing or a bad. Despite their conspiratorial origins, law schools have an obligation to serve the public as well as students and the profession. My question is therefore always pertinent. To answer requires us to think like a lawyer about being one. As with the pilots' black box, the costs and benefits of law school are numerous and ineffable, so I will conclude that, having spent 33 of my 55 years in law schools, I do not know whether we are a public liability or a public asset. I would be pleased to have your assesments when I am done. It is in any case fitting that a discussion of the merits of law school should leave the audience with a question.

The Externalities

The direct effect of law school is to prolong the period of pre-professional residency of lawyers in academic institutions. The real costs are two and one half years of foregone income and the cost of instruction. In 1987, these costs approach $100,000 per head for full-time students. That is I remind you, mostly excess over the comparable cost of training a lawyer in Australia or Japan or Switzerland or Sweden. That cost is initially borne

largely by our students, although they receive subventions from financial aid sources that include state treasuries, federally insured loans, and university endowments. The effects of this investment in human capital radiate. I count nine consequences external to the law schools, none fully measurable.

First, investment expects return. The income expectations of practicing professionals are elevated by a need to recover their entry cost; assuming a reasonable six or seven year pay out, the expected average income enhancement may be as high as fifteen thousand dollars a year, although it will be less for students in less elite programs. John Kramer has recently demonstrated that the return on the investment is actually higher, with so short a payout on the return that, as he puts it, "No one can afford not to go to law school." If this is so, as seems likely, additional factors are driving lawyer incomes up.

Also a return on the investment is the gratification associated with higher professional status. The American public may not want to hug lawyers, but it does esteem our talents and status, perhaps in part on the basis of our academic credentials. And not to be ignored is the value of the power that comes with status and income.

Non-economic compensation is, of course, important to other professions as well. Twain chose piloting over lawyering for reasons of status and power. As he reported it:

> *My father was a justice of the peace and I supposed that he had power of life and death over all men, and could hang anybody that offended him. That was distinction enough for me as a general thing, but the desire to be a pilot kept intruding nevertheless.*
>
> *. . . in truth, every man or woman has a master . . . but in the day I write of, Mississippi pilots had none. A pilot's movements were entirely free, he consulted no one, he received comments from nobody . . . So here was the novelty of . . . an absolute monarch who was absolute in sober truth and not by a fiction of words.*

Second, higher lawyer income means higher prices for legal services. Higher prices for legal services may, in turn, like other costs, be passed on by some users to their customers or clients. Japanese goods, for example, are produced with materially lower legal costs than are American goods.

Third, higher prices for legal services increases the advantage of wealthier litigants over those with less resources. Illustratively, modern discovery practice is often the tool of oppression rather than enlightenment, in part because the high hourly billing rate of American lawyers enables a resourceful party to impose intolerable costs on an adversary.

Fourth, high prices for legal services limit availability of professional services for middle and lower income citizens. The Legal Services Corporation, among others, is a costly but not very effective response to a problem created in part by our costly methods of training lawyers.

". . . THE LARGE LAW FIRM AND PARALEGALISM ARE BOTH DISTINCTLY AMERICAN DEVELOPMENTS."

Fifth, higher fees for lawyers changes the organization of work, which becomes more hierarchical. High-priced lawyers do less of their own work. The law firm becomes larger, more highly leveraged in the ratio of associates to partners, and an employer of paralegals. Note that the large law firm and paralegalism are both distinctly American developments. People delivering legal services may therefore as a group have less status and power over their own lives than they would if lawyer time were less valuable. I will not guess at the indirect consequences of elongated heirarchy on the quality of legal services delivered by contemporary institutions.

Sixth, the high investment required to enter our profession alters the selection of those who join our profession: different people become lawyers. Those who can afford to invest the necessary capital, who are willing to postpone the benefits of work, and who are attracted by high incomes enter the profession in larger numbers; those less willing to make the required capital expenditures and postpone enjoyment of benefits but who would perform legal work at lower income and status levels are effectively excluded from the profession.

Because the traits valued by the selection are not evenly distributed among ethnic groups or among economic classes, social mobility is reduced, and certain minorities, most notably the black minority, are reduced in their representation in the profession. The resulting shortage of minority lawyers has adverse effects that are familiar to all. Affirmative action programs in law school admissions offices are a palliative for a problem created in part by the existence of the law school. Given that law schools are part of the problem, it may be appropriate that we be asked to be part of the solution.

In the bargain, it seems likely that the high investment level required for entry into the profession has also had a differential effect on women, who have also been less frequently encouraged to make the necessary investments in their own human capital, or to postpone the benefits of work. The consequences of masculinity in the American legal profession may be substantial if subtle.

Moreover, even the attraction of abler persons into the legal profession may itself be a public detriment caused by high lawyer incomes. Thus, Derek Bok has argued that persons attracted to law might perform more socially productive work in other fields. Perhaps a stronger point is that high lawyer incomes are a disincentive to public ser-

vice by able lawyers who might otherwise move in and out of the public sector with greater frequency. Increasingly frustrated is Jefferson's aim to train lawyers as political leaders. Loan forgiveness programs are now in place in many elite law schools as an ineffectual response to this unfortunate consequence.

Seventh, higher incomes for lawyers may independently contribute to the status of the profession. If, as it seems, the public interest favors public respect for the law, then it may be desirable to elevate public esteem for the legal profession which administers that law.

Eighth, entry requirements which select professionals who are able to postpone gratification may elevate prevailing standards of professional conduct. This would be so, if, as seems plausible, ethical conduct does not generally carry its own immediate rewards. If we were to lower entry costs to our profession, our members would have lower stakes in their professional reputations and less incentive to adhere to appropriate standards. This does not imply that American lawyers are more ethical than those elsewhere, only that they may be more ethical than they would be if it were easier to join their profession.

Ninth, several of these possibly adverse consequences of our costly methods should be assessed in light of the contrasting benefit of standardization of lawyers' credentials. The fact that all lawyers share a common experience and wear the same academic jewelry may in some circumstances reduce the advantage to the wealthy client of buying expensive lawyers, and may afford more satisfaction to many lawyers doing routine work. There may also be a stabilizing effect derived from the sharing of superficially identical professional status by persons engaged in such vastly different activities as a public defender and the counsel for a transaction by an international corporate partnership to build an oil refinery in an ecologically sensitive marshland.

"... THE MERITS OF LAW SCHOOL MUST ULTIMATELY HANG ON THE CONTENT OF OUR EDUCATIONAL PROGRAM."

This egalitarian effect is, however, threatened by the impulse to certified specialization. As subprofessions establish separate and higher identities, the case for standardization weakens. If we are to move to a fourth year of law school for some specialties, it becomes more persuasive to contend that students planning to engage in less remunerative work should complete their training in two years, or even in one, options which could substantially reduce some of these external consequences.

However one weighs these costs or benefits, the merits of law school must ultimately hang on the content of our educational program. If law school, like the black box, materially enhances the professional capacity of its students, these ineffable public costs may be justified. But if the additional time and money invested by students does not enlarge the capacity of graduates to serve the public, the supposed external benefits are a fraud and deceit.

A Long and Secluded Embrace

The most striking feature of the traditional American law school program is its isolation, both from the profession and from higher education, the two larger systems of which law schools are a part. What happens to students, and to the law, when students are locked for so long in the secluded embrace of their teachers and their peers? I count five distinguishable major consequences of isolation, each difficult to evaluate.

First, there is the intellectually narrowing effect of the isolation. Law students and faculty removed from contact with other disciplines take a narrower view of their subject, sometimes even abandoning what they know of the humanities and social sciences because it seems soft and unprofessional. In T.R. Powell's deathless phrase, a lawyer thus learns to think about a thing which is inextricably related to another thing without thinking about the other thing.

Second, isolation enhances the power of law teachers over the lives and careers of their students. Whether this is good depends, of course, on how that power is exercised. A good teacher can be a model of professional conduct and of self-restraint in the use of power. If law is the orderly use of power, such models of behavior can be important, especially with regard to students who some day become judges. On the other hand, greater power increases the risk of misuse. Most of you experienced in law school occasions when a teacher's power was overborne.

Mark Twain had a similar experience with his master, Horace Bixby, who could be described as a practitioner of the Socratic method. He asked Twain a lot of questions. And true to the legend of Professor Kingsfield, he often commented forcefully when Twain's responses were inadequate. When Twain missed his first question, Bixby cruelly denounced him as "the stupidest dunderhead I ever saw or heard of." On another occasion, Bixby summed up his appraisal of Twain: "taking you by and large, you do seem to be more kinds of an ass than any creature I ever saw before." If Bixby used the carrot of praise we are not told.

One source of the teacher's power is professional language which becomes, in turn, a source of power which law graduates use on one another and on their clients. This is true even for river pilots. Twain tells about listening to senior pilots discuss the passage at Plum Point. They used familiar words but in technical senses that were impenetrable to him as a novice. He expressed his impotence, saying:

> *I stood in the corner, and the talk I listened to took all the hope out of me . . . I wished the piloting busi-*

ness was in Jericho and I had never thought of it.

That feeling is well known to all who have attended law school.

Third, prolonged isolation promotes complexity in our subject. There are additional reasons, I have no doubt, for the complexity of contemporary American law. As E.B. White put it, complexity has a bright future. Yet complexity such as ours is unknown elsewhere in the world, and was not known to us until the advent of law school. Teachers filling three years of air time and seeking to be known for the subtlety of their professional expertise, may find distinctions otherwise unnoticed, and develop an audience which values their discoveries, especially as their favorite students become appellate court law clerks. One must suspect that the length and intensity of law school has something to do with the ever increasing length of appellate opinions.

Perhaps Horace Bixby indulged himself in a similar way when he told Twain to remember 120,000 landmarks each useful to navigation, and each subject to frequent change through erosion, like statutes repealed or cases distinguished. Bixby also required Twain to remember these landmarks upstream and down, by night and by day.

Bixby, of course, did not increase the complexity of the river by observing it. The law teacher's freedom from such responsibility is less clear.

"... SOME LAW SCHOOLS HAVE ... BEEN SO COMPETITIVE THAT HOSTILITY, ALIENATION, AND PASSIVITY BECOME COMMON BEHAVIORS."

Fourth, extended isolation of law students and teachers intensifies the socialization of students to the shared values of fellow professional students. This is an advantage if strenuous work habits are being reinforced, and if the students compete in a constructive spirit.

Unfortunately, some law schools have at times been so competitive that hostility, alienation, and passivity become common behaviors. Admission standards which exclude all but those having high academic expectations can contribute to this adverse consequence, because half of each group of high flyers are doomed to stand in the bottom half of their class, to them a dispiriting condition. Some law schools have sought to redress this unwelcome effect by reducing grade competition, a step which risks socializing the students to the values of sloth.

Especially harmful to socialization in law school today is professional placement. Placement competition concentrates the minds of students on concerns for the affect rather than the substance of being a good lawyer. It also consumes enormous amounts of emotional energy of students; for many, indeed, it becomes the major activity in law school. The malign consequences of placement on teaching and learning is everywhere a serious problem for law schools.

Moreover, law school socialization can be dehumanizing. To law students, people become parties, not flesh and blood. Injury, death, and betrayal become claims, not tragedies. Again it is Twain who penned the best description of this woeful process. "I had lost something," he complained, "that could never be restored to me while I lived. All the grace, the beauty, the poetry had gone out of the majestic river." He could remember how much he appreciated a sunset on the river, but after his training he could no longer feel rapture and could only think that:

> *All the value any feature of [the river] had for me now was the amount of usefulness it could furnish toward compassing the safe piloting of a steamboat. Since those days, I have pitied doctors from my heart. What does the lovely flush in a beauty's cheek mean to a doctor but the breaks that ripple above some deadly disease? ... Does he ever see her beauty at all, or doesn't he simply view her professionally and comment on her unwholesome condition all to himself? And doesn't he sometimes wonder whether he has gained most or lost most by learning his trade?*

Fifth, the isolation of the law school from the practicing profession is an impediment to skills training aiming to enhance the competence of students to perform lawyer tasks. Genuine academicians often lack both interest and qualifications to conduct such training. Those who do have the interest and qualifications are not always suited to academic life. This problem is heightened by the length of American legal education, which has the effect of reinforcing the expectation of both the profession and the novitiates that substantial training will occur within the professional school, whether or not it is most appropriately conducted there. By replacing legal apprenticeship as the main avenue of entry into the profession, law schools have largely preempted those practical training functions performed in other countries under the auspices of the organized bar.

These five enumerated consequences of the long embrace of the student by the law school should be assessed in part by evaluating the pedagogical tool so long associated with law school, the case method. In the mind of Langdell, its inventor, law school was linked to the case method. Linked they may still be. Without the case method, law school would still be a play without a hero.

Historically, the case method generated substantially more opposition than did the idea of graduate professional school. From the beginning it was attacked as inefficient. Many of Langdell's own students despised his teaching. To this day, students resist his method as wasteful and anxiety-inducing. For over a century, they have sought refuge in canned outlines. Also among the unkind things that were said about the case method was that it produces

graduates who are "analytic giants but moral pygmies."

Langdell's own theory of justification was an adaptation of German scientism which declared cases to be the raw material from which the legal scientist could distill the structure of law, which was envisioned as a network of general principles few in number. Law is, however, not a science and cannot be made one. It is a product of culture and intuition, not observable and predictable forces. It is a craft, or perhaps an art, but never a science.

Despite Langdell's jurisprudential humbug, the case method was accepted. It found a new intellectual foundation in a narrower doctrine which viewed law as an aggregation of atomized rules, each embodied in a judicial decision. Note how comforting to the enhanced role of our profession was the complexity produced by this jurisprudence. This was the conception of the law that gave impetus to the development of local law schools studying local cases, and also to the Restatement of the Law, which sought to harmonize the enormous corpus of legal atoms.

"... WE NOW HEAR SOME THOUGHTFUL TEACHERS AND STUDENTS QUESTIONING THE LEGITIMACY OF OUR JUDGE-CENTERED LAW."

In turn, this conception gave way in recent decades to Legal Realism. Students are told that the law is not what judges say, but what they do, and that legal outcomes are explained at least in part by who decides. The Realist case method student quickly learns that some precedents can be reduced in authority to insignificance, while others are enlarged, according to the tastes or instincts of the official beholder. The student may conclude that cases do not really embody law, but only the political preferences of persons not commissioned to exercise political power. Over time, this observation may be given increased accuracy with respect to the decisions of judges who, themselves trained to a Realist view, are less disciplined in their efforts to adhere to controlling texts and traditions.

Thus, we now hear some thoughtful teachers and students questioning the legitimacy of our judge-centered law. This concern for legitimacy is strictly an American concern; the English, for example, proclaim a more modest role for judges and there is little anxiety about the legitimacy of their work. Is is not more than likely, as my sometime colleague Patrick Atiyah suggests, that the differences between the materials on which English and American lawyers are trained are a partial cause of this difference?

On the the other hand, in one respect, the case method may contribute to the legitimacy of what our judges do. Students who read and discuss thousands of cases over years of their lives may acquire a sense that judges are striving to conform their decisions to signs and values not their own. To the extent that judges are successful, they persuade us that law is being observed, that they are not self-willed, and that knowing the law to which the judges refer is useful.

However these consequences for legal theory may be appraised, they are not responsible for the case method's success. It survives despite its jurisprudential implications and not because of them. As each of you knows, it survives because it is widely esteemed as an efficient means of inculcating intellectual skills, or habits of thinking, which are deemed valuable in the practice of law. People who have studied cases are changed by the experience; the change is often substantial, and may be more profound than that usually wrought by any other experience provided in higher education.

Let me again enumerate. I count five intellectual skills or traits that may be enhanced by the case method.

First, it is a means of elevating the basic skills of reading, speaking, and listening. These skills are polished in dialogue between teacher and students, and among students, which is facilitated by the framework for discussion provided by the cases. Most cases contain some features which are readily accessible to all readers; but careful reading is generally rewarded with greater discernment which can be revealed and tested in daily discussions. The method thus stimulates the student to concentrate on self-development, which is the only proven means by which such basic skills can be improved.

Second, case instruction also gives a practical bent to the student's thinking; cases are problems, and students reading cases are also trying to solve problems. Understanding of doctrine and underlying policy is enhanced and deepened if the understanding is acquired as a result of a student's own synthesis in the course of such problem solving. A student who has read and discussed a hundred antitrust cases, for example, will generally have a firmer grip on that field and its difficulties and ambiguities, than one who has invested equal time in passive submission to lecture, outline, and text.

Third, case study also hones the student's sense of relevance as he acquires the habit of distinguishing between ideas that are useful and those that are not.

Fourth, case study advances balance in thinking, and so aids development of professional judgment. Discussion and analysis requires consideration of both sides of issues. A student who has considered both sides of several thousand cases is less likely to engage in self-deception about the strength and righteousness of his position.

Fifth, case method dialogue often enhances the self-reliance of students in thinking. Within the narrow confines of a single case, the student learns that he can be master to his professional environment. Confidence begets intellectual courage, courage to advance ideas even while one is uncertain of the reception they may receive.

Twain would especially appreciate these last. By the time of his writing, he was able to see beneath the hard veneer of his mentor, Bixby, and to read the subscript of

Bixby's instruction. He then knew that Bixby was not teaching him anything so ephemeral as one hundred and twenty thousand landmarks, significant though those surely were. Indeed, not even the technical skill drilled into him by Bixby was the durable substance imparted. What he really learned was not merely marks and channels, or how to read a wind reef on the water or tell from the feel of the wheel that shoal water is nearby. The valuable lessons were judgment and courage — judgment in the evaluation of his own skill and technical knowledge; courage to apply them despite the ubiquitous risk of error, even, in the case of the pilot, of fatal error. Bixby, by his example, taught both hardeyed realism and tight mastery of self-doubt, traits which are not easy companions, but which most professionals need.

"AGGRESSIVE TEACHING NOT ONLY RISKS THE HOSTILITY OF STUDENTS, BUT ALSO RISKS REAL INJURY TO FRAGILE DEVELOPING EGOS."

Indeed, Bixby as teacher provided a gaudy display of both judgment and courage. Twain described Bixby's night-time passage of the dangerous Hat Island crossing. The big boat carried passengers who badly needed to get to Cairo before morning. On their account, Bixby made the crossing, going at downstream speed without a ray of light, gliding by instinct through two narrow sand bar channels, brushing as he needed to the very trees of Hat Island itself with his stern, in order to make a sharp turn at just the right moment through a third channel, where his keel would rasp against the sand, and his boat hang upon the apex of disaster. It was a miracle of professional judgment and courage when the boat went over the bar and into calm water. Twain noted the reaction of a supernumerary pilot who had been in the texas of the boat with Bixby at the time:

> *The last remark I heard that night was a compliment to Mr. Bixby, uttered in soliloquy and with unction, by one of our guest pilots. He said: 'By the Shadow of Death, but he's a lightning pilot.'*

Lightning lawyers need very different kinds of judgment and courage. Our medium is words, not water, and the forces with which we deal are social and political, not natural. But a lightning lawyer must often confide in his or her own professional intuition, and had better know its limits. Such judgment and such courage can be enhanced by energetic case study.

The law teacher seeking to develop these traits in students is not called upon for such heroic deeds as Bixby's. But the case method does make its demands on the teacher, nevertheless. Some psychic fortitude is required for the method to engage students who are shy, hostile, or alienated. Aggressive teaching not only risks the hostility of students, but also risks real injury to fragile developing egos. Neither student nor teacher can ever be certain of the legitimacy of the motives of the prodding teacher. Retreat is always open to the teacher, who can lecture without fear of student opposition. And the lecture secures broader coverage of the ever-expanding range of information that some find useful or even essential. For these reasons, the bite of the case method depends significantly on the personal traits as well as the intellect of the teacher.

The benefits of case method learning are valuable. They can be crudely measured, and can be sold in the marketplace or used in a variety of endeavors, including public service. Moreover, they are achieved at relatively low cost: case method instruction efficiently permits classes almost as large as those served by lectures. It is for these reasons, despite all, that the case method was and remains a winner. It stands as the first reason for being of the graduate professional law school.

Institutional Stress and Strain

This analysis of the costs and benfits of the law school tradition also serves to identify the competing stresses which threaten it. In fact, the tradition has undergone significant, perhaps substantial, change in recent decades, much of it externally induced.

On the one side there is the demand of the profession and of the students for more skills training, for deeper involvement of students in practical, clinical work. Complaints that law school is not sufficiently practical are not new, but they have become increasingly insistent. Many schools have responded in substantial ways to this demand. There is more practical skills training now than ever, in advocacy, negotiation, counseling, and drafting. Some schools have gone so far as to incorporate externships into their programs, thus foreshortening the secluded embrace. At least two law schools have been established in recent years with radically different curricula aimed to achieve greater practicality. But these steps have not satisfied many students and leaders of the profession who continue to share concerns about the competence of our graduates to perform even the most basic lawyer tasks. Each of you probably has his or her own catalogue of such concerns.

"THERE IS MORE PRACTICAL SKILLS TRAINING NOW THAN EVER, IN ADVOCACY, NEGOTIATION, COUNSELING, AND DRAFTING."

There are at least six reasons why law schools are unlikely to achieve a satisfactory rating in measured improvement of useful lawyering skills. One already mentioned is the effect of isolation on the teaching talent available. In recent years, the organized bar and some

educators have striven to correct this by bringing into the law school clinical teachers. To date, however, mixed results have been achieved. Academic institutions have resisted affording equal recognition to teachers whose contribution is limited to clinical teaching.

A second obstacle is the difficulty of identifying which students need which skills. In part, this is a matching problem. Until students have been placed and assigned, it is not clear which among the many specialized skills that one might attempt to teach are the ones which any particular student needs.

A third obstacle is our lack of solid understanding of how professional skills are actually acquired. It is useful to remember that we know very little of demonstrable value about teaching reading. People have read for 5000 years and for so long attempted to analyze its teaching and learning, but with little success. Reading skill seems to be self-developed in response to an environment in which reading is valued. That is about the state of our knowledge with regard to the more complex skills of a lawyer.

A fourth and related obstacle is the difficulty of measuring the attainment of a skill. There are few analogues in the practice of law to science in medicine, so much is intuitive.

A fifth obstacle is that clinical instruction is generally labor intensive and hence costly, not only in coin, but in the job satisfaction of the teacher. Clinical legal education therefore threatens to elevate the costs and adverse consequences of law school.

Finally, the movement for clinical and skills training collides with another and stronger influence that is pulling the university law school away from the legal profession and toward the academic enterprise of the university.

It may even be the case that some of clamor for more legal professionalism in law school is an expression of fear that the law school is moving away from the legal profession and toward the academic profession. If so, the fear is at least based on an accurate observation.

A couple of decades ago, David Riesman and Christopher Jencks observed what they described as the Academic Revolution, which was a transfer of power and status to university faculties. In short, the academic profession came of age, elevating the relative importance of research and graduate study, and academizing professional schools. This shift in power and values has occurred and has affected law schools. All of you have witnessed some of its symptoms. At many law schools, the influence of the academic profession is stronger than is the influence of the legal profession. Law professors are ambitious to achieve greater status within the academic profession. Diminishing is their identification with the legal profession, their interest in the alumni of their schools or in the future careers of their students. Against this tide, the movement to clinical education in law is an ebb.

The academization of the law school has by any reckoning some positive aspects. The deplorable tendency of traditionally isolated legal education to close the minds of students to the insights of other disciplines is reduced. Academized legal scholars have mined a series of other disciplines which offered promise of illuminating law and legal institutions.

Most promising, I think, with respect to the future quality of our law has been the application of empirical methods to our institutions. Too many of our legal institutions and procedures were formed on the basis of intuitive opinions about lawyer and litigant behavior which can be scientifically disproved. While lawyering is not a science, there is no reason for law to be made on the basis of false premises. Unfortunately, lawyers, courts, and legislatures share the universal tendency of people to ignore unwelcome facts no matter how convincing the proof. And it is likely to remain true, as my colleague Donald Horowitz has taught us, that the adversary process will continue to subvert and abuse hard data for partisan purposes. It is also true that many important legal and political considerations, like those I am discussing, are ineffable; and that preoccupation with the measurable dimensions of policy can focus attention on less important facts merely because they are known. Yet it is heartening to observe the slowly increasing receptivity of our profession and our institutions to hard-nosed empiricism. It threatens many a foolish notion.

Significant benefits have also been received from the study of Law and Economics. Too much legal policy has rested on analysis that neglected considerations of economic efficiency. Such economic concepts as marginal utility and transaction cost are useful tools to anyone concerned with what the law is or ought to be. This presentation bears witness to my own debt to the insights of human capitalism.

Nevertheless, the utility of economics to the study and practice of law is limited. Economic modeling is often remote from the political and institutional realities in which public problems are confronted, for the reason that economic self-interest only partly explains human behavior; often we behave in a manner better explained by abnormal psychology than by economics.

Moreover, economics anaesthetizes the moral sensibilities of its practitioners too often to provide a satisfactory guide to decisions suffused with moral consequences. It is for this reason that economic analysis of law has been closely associated with that Darwinian political right which ever seeks liberation from redistributive moralities derived from Judeo-Christian traditions. Thus, in his most ambitious book, *The Economics of Justice,* Richard Posner, perhaps the foremost champion of Law and Economics, argues that wealth maximization provides the soundest ethical basis for the law. My colleague Richard Schmalbeck, in a powerful review of this book, fairly concludes that Posner fails to demonstrate "that wealth maximization is an ethical principle at all, much less the best possible

ethical principle."

Because of its limitations, and because it does seem to be the diction of the political right, law and economics may be, as Morton Horwitz describes it, a "fad that has peaked out." On the other hand, noting that Adam Smith and William Blackstone were contemporaries as students of moral philosophy at Oxford, an enthusiast can reckon that we are in the early stages of a useful reintegration of the disciplines founded by that notable duo.

The path most recently selected by legal scholars seeking a higher plane has been the exploration of literary criticism. Literary criticism has been influenced in recent decades by European philosophy, and is now imbued with the wisdom that literature is best understood as the product of cultural influences that converged on the author to produce his or her text. Thus, a text can be deconstructed to find its true cultural significance and meaning, which may be concealed by the words chosen by the author, who possibly did not understand his own work. Some of its practitioners carry this insight to a determinist extreme, leaving no room at all for the free will of the author to choose words to express an original idea that rises above and influences the historical context in which the work is produced. Contemporary legal scholars are at work applying these critical techniques to legal texts as well.

"... JUST AS LAW AND ECONOMICS HAS BEEN CAPTURED BY THE RIGHT, LAW AND LITERARY THEORY HAS BEEN TAKEN OVER AS THE TESTAMENT OF THE LEFT."

It is possible that these skills and insights of hermeneutics will prove to be useful in developing better techniques of legal analysis and argumentation. So far, hermeneutics applied to law appears to be more effective in revealing blemishes than in prescribing remedies. A major part of its teaching was anticipated by Legal Realism which showed us that legal texts can often be manipulated to legitimate the pursuit of one public policy or another. That judges' decisions are the product not merely of their culture, but especially reflect the mores of the ruling class, is an insight lacking novelty.

In its extreme form, critical studies produces a nihilist approach to legal texts, denying them any meaning. The nihilist scholar forced to address and solve a real legal problem is likely himself to be left with mere bromides to guide action. The nihilist teacher, if he or she exists, is found in a moral cul-de-sac: if legal texts mean nothing, what is the teacher of those texts doing in a professional school devoted to the assumption that those texts are significant, especially to the careers of its students? Such a teacher would be in the morally hapless position of the atheist training priests.

Moreover, just as law and economics has been captured by the right, law and literary theory has been taken over as the testament of the left. Thus, some adherents of Critical Legal Studies, employ hermeneutic techniques to show that law is merely the means by which the controlling class dominates and imposes its values on the disenfranchised, as a form of political advocacy for a displacement of existing law by a system designed to uplift the downtrodden and reconstruct our values.

Hermeneutics as a basis for a political agenda is, however, lacking in force. It is too deterministic to provide a persuasive basis for action by persons exercising free will. As my colleague Stanley Fish has pointed out, it is error to assume that an insight into the source of our convictions will render them less compelling. Revealing that an idea is a mere cultural artifact and thus less rooted in universal truth than some suppose may be a killer argument in philosophy, but as Fish says, "law is not philosophy, and it will not fade away because a few guys in Cambridge and Palo Alto are now able to deconstruct it."

Time forbids my discussion of other interdisciplinary efforts conducted in history, philosophy, and other related disciplines. I limit myself to five general remarks.

First, I note that these inter-disciplinary ventures by law scholars are largely Americanisms, the product of law school as we know it.

Second, such disciplines as safety engineering and accounting, which might also inform the law, are rarely explored by legal academics, I suppose because they are perceived to have less cache among the academic profession.

Third, one may question the ability of the law professoriate to maintain competence in more than one discipline. Consider the claim of Harry Wellington, as Yale dean an advocate of infinite breadth to law study:

> *[T]oday's young [legal] academic is enormously sophisticated in humanistic and social science studies. To get a grip on the limits of the law, an academic must work in political philosophy; so, too, if he is interested, in distributive justice. Nor can he fail to know economics and he is delinquent if he ignores history. The demands then . . . are truly prodigious. But the challenge is being met . . . at Yale.*

Perhaps so, but Richard Posner may be right in his assessment that such ambitious intellectualism has had little payoff in useful scholarship. There is always a risk of hubris. One may perceive similarity between lofty legal scholarship and the Hollywood of which Sam Goldwyn spoke when he gave the advice to a newcomer that "the virtue people most admire here is honesty, and if you can fake that, you will have it made." Or one may fear that beneath the phony tinsel of our elegant scholarship, we may come to find real tinsel.

There may also be a danger to whatever value remains in the case method. The professor preoccupied with the economic or cultural or philosophical dimensions of the law may be less interested in, and possibly even less

qualified for, case method teaching. Again it is Posner who observed:

> *The academic lawyer who makes it his business to be learned in the law and expert in parsing cases and statutes is made by Dean Wellington to seem a paltry fellow - a philistine who has shirked the more ambitious and challenging task of mastering political and moral philosophy, economics, history, and other social sciences and humanities so that he can discourse on the large questions of policy and justice.*

Effective case method teaching may require some of the traits of Dean Wellington's paltry fellow.

Fourth, humanist scholarship may be, in the end, a false siren to all its practitioners, however able and genuine they may be. Grant Gilmore, I fear, was right when he concluded from his decades of study both wide and profound:

> *For two hundred years we have been in thrall to the eighteenth century hypothesis that there are, in social behavior and in societal development, patterns which recur in the same way that they appear to recur in the physical universe.*
>
> *. . . The hypothesis is itself in error. Man's fate will forever elude the attempts of his intellect to understand it. The accidental variables which hedge us about effectively screen the future from our view.*

In his acknowledgment of the validity of Gilmore's dour assessment, Arthur Leff offered the reassurance that humanist scholarship is at least an entertaining game for those who get their pleasure from futile intellectual assaults on the unknowable and who, even if they are doomed to ultimate defeat, may in the meantime enjoy what Leff described as "some beautiful innings."

My final general observation is thus suggested by Leff. He reminds us that law, in addition to being an artifact of economics and literature and social psychology and history and philosophy and cultural anthropology, is also a game in the grand American tradition of games. It is important to remember this dimension of our activity, particularly insofar as law teachers play the role of coach or model.

One of Leff's metaphors is chess, a game which presumably could be a subject of humanist scholarship not as broad and not as profound as law study, but broad enough nonetheless. It is, however, unlikely that broadly humanist teaching would improve a student's level of play, anymore than river safety would improve if the pilots used the black box to exchange reprints of essays on the philosophy of science or critical theory applied to the professional language of piloting.

It is, therefore, a legitimate concern of the profession that legal scholarship could by continuing along its present path arrive at irrelevance. Law school teaching would inexorably follow along the same path. Given the numerous costs of legal education, both direct and indirect, which I have counted in the last hour, it would be a pity to sacrifice the benefits, ineffable though they are, so to endure uncompensated waste.

The Bridge

Is it inevitable that law schools be submerged in the values and ambitions of the larger academy? I think not. For those who wish to pursue it, there remains Jefferson's vision of law study as a bridge. The university law school might be, and perhaps sometimes is, a means by which the university shares its values and traditions, such as intellectual rigor and respect for truth, with the institutions of public decision making. In return, the university might, and perhaps sometimes does, receive a better purchase on reality and a better sense of the limits of its insights. A law school can aspire with Karl Llewelyn that:

> *"if there be one school in a university of which it should be said that there men learn to give practical reality, practical effectiveness, to vision and to ideals, that school is the school of law."*

A law school with this view of itself might be a house of several mansions at least. If the bridge is its guiding metaphor, it does not resolve its conflicts of interest, but learns to live with them and make them a source of strength.

Such a law school would nourish the aims of clinical legal education and maintain a solid foot in the practicing profession, but mindfully of the limitations I have enumerated, and mindful also that a regular faculty heavily invested in skills training is unlikely to justify or to maintain a place of respect for the professional school within the university. An appropriate compromise may be found in the liberal use of practitioners and judges in adjunct clinical training.

Such a school would also accommodate diverse theorists, including a number perhaps who are not trained as lawyers, but whose intellectual interests are directed at law or legal institutions. In recognition that law is, as critical theorists hold, a deeply cultural phenomenon, such a school would also welcome into its intellectual community students and scholars trained as lawyers in different cultural systems, thus linking itself along this dimension of study with scholars and students devoting their efforts to the understanding of those diverse cultures.

The core of the law faculty would, however, aim its research at the two questions of what our American law and legal institutions are or ought to become within the foresight, reach and life spans of those of us who are responsible for this moment. While recognizing that the improvement of our law is primarily the task of public officers and institutions, not university law schools, the

law school can claim, almost to the exclusion of others, the role of critic of those officers and institutions. In performing that role, the school can draw upon the practical insights of lawyers and judges, the broader wisdom of collegial scholars in the humanities and social sciences, and on the perspective of those who veiw us from a distance. For such an institution, the case method might be retained for its value in skill training, but might also give place to law reform as the first reason for being of the law school.

". . . THE IMPROVEMENT OF OUR LAW IS PRIMARILY THE TASK OF PUBLIC OFFICERS AND INSTITUTIONS . . . "

As law reformer, the role of the law professor resembles that of the editorial writer or political cartoonist. He retains the ambition to marshal the intellectual achievements of other disciplines to the illumination of contemporary events and institutions, but chiefly as a consumer, not a creator, of history, or philosophy or economics or literary criticism. Such a scholar will seldom qualify for the highest academic accolades for intellectual work. He paints on the narrow canvas of today's reality and with an array of colors limited by time and place.

Such a professor is also limited in the role of lawyer, and cannot participate freely in those affairs which he observes. This is so because it is important that he maintain his disinterest as best he can. For all of the reasons that the critical theorists apply to judges, legal scholars can never rise far above the culture that produced them and complete disinterest is therefore not an approachable goal. Yet the warrant of the legal scholar to be taken seriously as a source of public wisdom depends on the pursuit of disinterest.

Legal scholarship aimed at contemporary law reform can reinforce the professional training of lawyers in a very special and important way. In their shared commitment to enhance the law, a faculty serving as active critics teach, in the most powerful way that can be imagined, by the model of their commitment, that law is real, or at least that it is a realistic and a worthy hope.

Such a conviction is, I attest, important to professional competence. More than a few lawyers, once well-trained, lack competence because they have lost, or never really acquired, the needed confidence that law matters, that professional judgment can be rooted in the reality of official adherence to the law. Lawyers altogether lacking that optimism have, alas, no professional tools with which to work.

I have said that law is a craft, or perhaps sometimes an art. I have said that it is an artifact of culture, of history, of economics, of literature. I have said, with Arthur Leff, that it is also a game. But it is at last a kind of secular religion, because it rests on a shared faith in an everlasting mystery. That mystery is how, if at all, persons applying the lash of power, can be made to conform their deeds to the expectations of others expressed in written texts and traditions. The human traits needed to achieve such conformities are not easily or often demonstrated. Doubt comes easy.

Law as faith will strike some of you, I am sure, as romantic. So it may be. Yet such romance is not novel. I call your attention, for example, to the teachings of the Zen tennis coach, Tim Gallwey, who identifies self-forgetfullness as the key to effective tennis, and intense fascination with its sensual aspects as the path to that self-forgetfulness; he concludes *The Inner Game of Tennis* with the advice that the aspiring player should learn to love the tennis ball. "When there is love present, the mind is irresistably drawn toward the object of love. It is effortless and relaxed, not tense and purposeful."

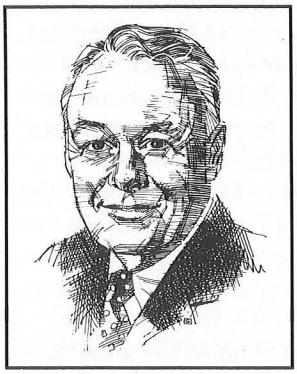
Moreover, there is, for the last time, Twain. He was as hard-boiled a cynic as any of us here today; yet he recognized that romance and professionalism are not at odds. He concluded that the one essential ingredient in the professionalism of the pilot, one which underlies both the judgment and the courage which Bixby taught him, is the pilot's love of the river: "Your true pilot," he said, "cares nothing about anything on earth but the river, and his pride in his occupation surpasses the pride of kings."

That a law school can teach a love of the law is attested even by such a severe critic as Scott Turow, who in *One L,* revealed the Harvard Law School faculty and students to be seriously lacking in admirable human traits. His view was close to that of an earlier critic who described that school (which trained me) as a place where false pearls are thrown to real swine. Turow nevertheless learned at Harvard to love the mystery of the law, if not his teachers and colleagues. It seems a pity that he did not value the gift that they gave him.

And so I exhort law schools to see and to prescribe treatment for the law's many blemishes. As they do so, they will often share with students a love. That love will not be based on the attractions of law's supposed perfections, anymore than is the pilot's love of that ugly current of mud. Rather they share a love arising from our collective sense of self-worth, and our passion for our own special mystery. It may be that America's great aspiration to govern by the common will, an aspiration now shared by much of the world, ultimately depends for its attainment on just that unrequited sentiment of the worldly men and women who serve their law while serving their clients.

Dean Paul D. Carrington was born in 1931 in Dallas, Texas. He received his B.A. from the University of Texas, Austin, in 1952 and his L.L.B. in 1955 from Harvard. His 30 year career as a teacher includes a tenure at the University of Michigan School of Law from 1965-1978, after which came his appointment as Dean of Duke University School of Law in 1978. Active in the Association of American Law Schools, and Consultant to the American Association of University Professors, Dean Carrington currently serves as Reporter to the Advisory Committee on Civil Rules of the Judicial Conference of the United States. □

Annual Report of the Immediate Past President



R. Harvey Chappell, Jr.

My year as President commenced August 9, 1986, at the Annual Banquet in New York City and the months that followed have passed swiftly. Ann and I have attended Regional and State Meetings throughout the country and we have thoroughly enjoyed these opportunities to meet the Fellows and participate in their programs.

We started our travels by attending the Annual Meeting of the Canadian Bar Association in Edmonton, Alberta, August 15-18, 1986. I hope that this meeting will be a regular visit for future Presidents of the College.

College Meetings

The fall workshops of the State and Province Chairmen were exceptionally well attended, first at the Greenbrier, White Sulphur Springs, West Virginia, October 1-3, 1986, and then at Silverado, Napa, California, October 30 - November 1, 1986. The results of these sessions are now showing up in the fine work being done by the State and Province Committees. These Committees are vital to the life of the College and the success of its programs. The meetings this fall were held at the Greenbrier, September 30 - October 2, 1987, and then at the Arizona Biltmore in Phoenix, November 11-13, 1987.

During the past year Regional Meetings were held in Kansas City, Missouri (Rocky Mountain States), Ponte Vedra Beach, Florida (Tri-States), Laguna Niguel, California (Southwest States), Melvin Village, New Hampshire (Northeast States) and Gleneden Beach, Oregon (Northwest States). In addition, no less than twenty-four states and provinces listed formal meetings of Fellows on the College calendar not including, of course, the meetings of the States' Committees. These gatherings of Fellows increase each year and in my judgment will be even more important in the future as the College membership increases with the resulting difficulty in locating hotels and resorts that can accommodate College meetings of national scope. Fellowship is a prime objective of the College and these smaller get-togethers serve an essential purpose.

Leadership Conference

For the first time in the history of the College, the Board of Regents and Past Presidents assembled in Williamsburg, Virginia, November 20-23, 1986. The purpose was to review the growth of the College since its organization in 1950 and to assess six basic areas of inquiry: Governance of the College; College Headquarters and Staff, College Publications; College Meetings and Relationships with American Bar Association and Other Professional Groups; Finances; Implementation of the College's Objectives as Set Forth in Bylaw II; and The Fellows. The immediate results of this conference have been:

New Staff Quarters and Computer

The national office has been expanded, with new quarters, and will remain in the Los Angeles area. A larger computer has been installed along with additional support equipment to the end that our staff will be in a better position to serve the Fellows.

Annual Meetings Changed

Because of the growth of both the American Bar Association and the College, problems have arisen with reference to the Annual Meeting and the needs of both groups as to meeting space and living accommodations. The recent meeting in San Francisco amply demonstrated these problems. A survey was conducted among the Fellows to determine their desires concerning future annual meetings. Approximately 50 percent of the Fellows responded and overwhelmingly opted for a separate annual meeting. The Board of Regents in San Francisco addressed this issue and determined that the College's Annual Meeting in 1988 will be in Toronto in conjunction with the American Bar Association meeting but, thereafter, the College's Annual Meetings will be held separately. The timing and the place of the initial separate Annual Meeting of the College will be determined based on the various options available. In the meanwhile, every effort will be exerted to continue the traditional Saturday evening banquet during the American Bar Association's Annual Meeting.

Investment Program

A new budgeting format and financial reporting system is now in place as well as the retention of investment counsel who have been given discretionary authority with respect to a portion of the College's investment portfolio.

ACTL Manuals Revised

A special committee chaired by Stephen B. Nebeker (with George P. Hewes, III, Gael Mahony and Marcus Mattson) has accomplished the revision of the basic manuals and compilation of a complete statement of the College's admissions policy. In addition the Code of Trial Conduct has been re-edited by Robert G. Stachler and is now in the process of republication for distribution.

Task Force on Litigation

The Task Force on Litigation Issues chaired by John M. Harrington, Jr., met in Washington, D.C., on February

20-21, 1987, and continued its exploration of the overarching issues discussed in the Task Force Report of August 8, 1986. A portion of these discussions was the subject of an afternoon seminar at the Spring Meeting in Boca Raton. The Task Force continues its assignment and will report its recommendations to the Board of Regents.

Federal Judiciary

Consistent with its traditional support of efforts to increase the salaries of the Federal Judiciary, a position paper was submitted to the Interim Commission on Executive, Legislative and Judicial Salaries on October 31, 1986. One of the members of the Commission included Past President Robert L. Clare, Jr. The efforts of the College in this connection were coordinated by President-Elect Philip W. Tone and Harold R. Tyler, Jr., Chairman of the College's Judiciary Committee. Although the salary increases were most disappointing, there were some positive results and the College will continue to support equitable increases in the salaries of the Federal Judiciary.

Kraft Eidman Award Established

As a portion of the College's participation in the National Trial Competition, I am pleased to report the establishment of the Kraft Eidman Award, funded by Fulbright & Jaworski of Houston, Texas, honoring the distinguished Past President of this College who had such a deep and abiding interest in developing trial advocacy. This award consists of the sum of $5,000 and a silver bowl to the winning law school and plaques to each member of the winning team. The National Trial Competition Committee, under the leadership of Robert J. Muldoon, Jr., assisted in the arrangements for and the conduct of the competition which took place in San Antonio, Texas, from March 18-21, 1987. The winners of the competition were Bruce MacDonald and Peter Bertling, of the California Western School of Law at San Diego. Mr. MacDonald received the George Spiegelberg Award as the best oralist.

Moot Court Competition

One of the most pleasing of my duties as President of the College was the participation in the National Moot Court Competition finals in New York City on January 29, 1987, as a member of the Judicial Panel presided over by Justice Byron R. White of the United States Supreme Court. The winning law school team from Wake Forest University School of Law consisted of Scott C. Lovejoy, Donna D. Sisson and Karen S. Williams and they were guests of the College at the Spring Meeting in Boca Raton, Florida.

Committee Activities

The many committees of the College have continued to function effectively throughout the year. I mention only a few. The Committee on Federal Rules of Criminal Procedure chaired by Harvey M. Silets considered proposed Rule 12.3 dealing with the obligation to provide notice of a public authority defense. The recommendations of his Committee were adopted as a position of the College and the Committee on Rules of Practice and Procedure was appropriately notified. The Committee on Federal Rules of Civil Procedure chaired by Francis H. Fox monitored the operation of the Federal Civil Rules and reported on several subjects to the Executive Committee of the Board of Regents. The Committee on Attorney-Client Relationships chaired by Walter Barthold continued to examine developments in the law with particular reference to the traditional privilege of communications between attorney and client and maintenance of client confidences and, among other things, filed a brief **amicus curiae in Shelton v. American Motors Corp.**, the College's brief having been cited in the opinion of the United States Court of Appeals for the Eighth Circuit.

The Spring Meeting in Boca Raton was a huge success, with an excellent program arranged by Morris Harrell. Program participants included: Senator Sam Nunn, ABA President Eugene C. Thomas, Canadian Bar Association President Bryan Williams, Senator George J. Mitchell, The Honorable Robert R. Merhige, Jr., Dean Paul D. Carrington, The Honorable Patrick E. Higginbotham and Professor John W. Reed. Informative CLE programs were presented in two afternoon sessions.

Canada-U.S. Exchange

During the course of the year the Canada-United States Legal Exchange came to fruition. A team of United States judges and lawyers headed by Chief Justice William H. Rehnquist of the United States Supreme Court met in Canada for the week commencing August 31, 1987, with a group of Canadian judges and lawyers headed by Chief Justice Brian Dickson, an Honorary Fellow of the College. This initial phase of the Exchange was most successful. The Canadian team visited the United States for the week of October 18th. (A full report of this Exchange appears elsewhere in this Bulletin by Ralph I. Lancaster.)

1987 Annual Meeting

The year concluded in San Francisco August 7th and 8th with the Annual Meetings of the Board of Regents and the traditional Banquet of the Fellows. The Board of Regents addressed a full agenda of items. Samuel Adams, George J. Cotsirilos, Paul D. Renner and Ralph M. Stockton, Jr., were elected to serve as Regents. Morris Harrell became President, Philip W. Tone our President-Elect, Charles E. Hanger our Treasurer and Marvin Schwartz continues to serve as Secretary. Retiring Treasurer and Regent Ralph I. Lancaster, Jr., and retiring Regents Stephen B. Nebeker and Terrell L. Glenn were presented plaques in appreciation for their fine services to the College.

The Annual Banquet was a delightful and festive affair attended by approximately 950 (the limit that the room could accommodate). Past Pre-

sident Robert W. Meserve was presented the Samuel E. Gates Litigation Award and, of course, the highlight of the evening was the induction of 147 new Fellows with the Initiates' Response by Michael P. Koskoff of Bridgeport, Connecticut.

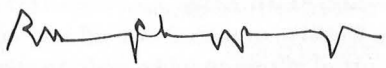
Justice Powell Honored

As an unscheduled event at the Annual Banquet, the College by standing ovation acknowledged the retirement from the United States Supreme Court of its distinguished Past President, the Honorable Lewis F. Powell, Jr., of Richmond, Virginia, and presented to him a remembrance of the occasion with the inscription: *The American College of Trial Lawyers Salutes, with Admiration and Affection, Its Distinguished Past President The Honorable Lewis F. Powell, Jr. in Recognition of His Service on The United States Supreme Court January 7, 1972 - June 26, 1987. San Francisco - August 8, 1987.*

I cannot conclude this report to the College without acknowledging the exceptional efforts of our Executive Director, Bob Young, and his staff. Their hard work and dedication show in all of the functions of the College and most assuredly Ann and I would never have been able to accomplish our travel schedule without the efforts and kindness of Bob Young.

The College now is in Morris Harrell's good hands and all of us wish him well.

I shall always remember this time as President and thank you for this honor. □



R. Harvey Chappell, Jr.

College News

1988 ROSTER

The 1988 Roster will be mailed to all Fellows early in the new year. A new section titled "Qualification Requirements Approved by the Board of Regents" will be printed in the back of the Roster immediately following the Bylaws of the College.

POLLS

Polls for new nominees are scheduled for a November mailing date. Please respond promptly by completing your confidential poll and returning it to the National Office upon receipt. Comments regarding nominees should be included as they are valuable to your Regent in reviewing each potential candidate for election. Anonymous polls are disregarded, therefore, your signature on the poll form is essential.

ELECTIONS

The following Officers were elected at the 1987 Annual Meeting in San Francisco: Morris Harrell, President, Dallas, Texas, from the firm of Locke Purnell Rain Harrell; Philip W. Tone, President-Elect, Chicago, Illinois, of the Jenner & Block firm; Marvin Schwartz, Secretary, New York, New York, from the firm of Sullivan & Cromwell; and Charles E. Hanger, Treasurer, San Francisco, California, from the firm of Brobeck, Phleger & Harrison.

Four new Regents were elected for four year terms: Samuel Adams, Boston, Massachusetts, from the firm of Warner & Stackpole; George J. Cotsirilos, Chicago, Illinois, from the Cotsirilos, Crowley, Stephenson, Tighe & Streicker law firm; Paul D. Renner, Denver, Colorado, of the Renner & Rodman firm; and Ralph M. Stockton, Jr., Winston-Salem, North Carolina, from the firm of Petree Stockton & Robinson.

1988 SPRING MEETING

The 1988 Spring Meeting of the College will be held March 6 - 9 at the Marriott Desert Springs Resort, Palm Desert, California. Registration forms will be mailed to all Fellows in November. Hotel registration forms will be included in the mailing and should be forwarded directly to the hotel. Meeting registration forms should be returned promptly to the National Office of the College.

ANNUAL MEETINGS SCHEDULE CHANGED

The Board of Regents at its meeting in August elected to schedule future Annual Meetings of the College in the fall of the year commencing in 1989.

The College will continue its tradition of holding a banquet in conjunction with the Annual ABA Meeting held in August each year. This will be a banquet only each year with no meeting or induction. The College will hold it's Annual Meeting and Induction in conjunction with the August, 1988 ABA Meeting in Toronto, Canada.

In 1989 and years following, the Annual Meeting of the College and Induction of Fellows will be held in the fall. In 1989 the Annual Meeting of the College will be held in New Orleans, Louisiana at the Fairmont and Windsor Court Hotels from November 2-5, 1989. The format of the Annual Meeting and Induction moved to the fall will also include a professional program similar to the Spring Meeting of the College.

This change was a result of opinions on the membership survey on meetings which was completed by approximately 50% of all Fellows. Of those responding, almost 70% expressed a desire to have a separate Annual Meeting.

WELCOME TO NEW FELLOWS

The College welcomes the following new Fellows who were inducted into Fellowship on Saturday, August 8, 1987, in the Continental Ballroom of the San Francisco Hilton and Tower, San Francisco, California.

ALABAMA
Mobile
FREDERICK W. KILLION, JR.
JERRY A. McDOWELL

ALASKA
Anchorage
JAMES D. GILMORE
THEODORE M. PEASE, JR.
Wasilla
BURTON C. BISS

ARIZONA
Phoenix
MICHAEL A. BEALE
FRANK A. PARKS
Prescott
PHILIP E. TOCI

ARKANSAS
Little Rock
VINCENT W. FOSTER, JR.

CALIFORNIA
Costa Mesa
LEONARD A. HAMPEL, JR.
Fresno
JOHN D. CHINELLO, JR.
OLIVER W. WANGER
Los Angeles
JOHN G. DAVIES
TIMOTHY J. SARGENT
DONALD C. SMALTZ
CHARLES S. VOGEL
San Diego
RAYMOND F. ZVETINA
San Francisco
KEVIN J. DUNNE
JOHN W. KEKER
RICHARD W. ODGERS
JAMES N. PENROD
J. THOMAS ROSCH
JOSEPH P. RUSSONIELLO
WILLIAM E. TRAUTMAN
Santa Monica
MICHAEL J. BONESTEEL
Santa Rosa
WILLIAM E. GEARY
WILLIAM G. LUCKHARDT

COLORADO
Denver
JOHN U. CARLSON

CONNECTICUT
Bridgeport
MICHAEL P. KOSKOFF
Hartford
THOMAS J. GROARK, JR.
EDWARD F. HENNESSEY
JOHN C. YAVIS, JR.
New Britain
PAUL J. McQUILLAN
Stamford
JAMES R. FOGARTY
Wallingford
JOHN J. KELLY

DISTRICT OF COLUMBIA
Washington
DONALD T. BUCKLIN

FLORIDA
Miami
JAMES E. TRIBBLE
Tallahassee
ALAN C. SUNDBERG
West Palm Beach
THEODORE BABBITT
ROBERT T. SCOTT

GEORGIA
Atlanta
J. BRUCE WELCH

HAWAII
Honolulu
DAVID J. DEZZANI
GEORGE W. PLAYDON, JR.

ILLINOIS
Chicago
ROBERT A. DOWNING
EDWARD J. EGAN
RICHARD T. FRANCH
PETER C. JOHN
LENARD C. SWANSON
ANTON R. VALUKAS
Decatur
NICHOLAS J. NEIERS

INDIANA
Indianapolis
LLOYD H. MILLIKEN, JR.
Richmond
BERTWIN J. KELLER

IOWA
Council Bluffs
DENNIS M. GRAY
Des Moines
TERRENCE A. HOPKINS
Dubuque
DONALD R. BREITBACH
Fort Dodge
WILLIAM S. GIBB
Sioux City
MAURICE B. NIELAND

KENTUCKY
Bowling Green
JOE B. CAMPBELL
Louisville
JAMES G. APPLE
Owensboro
RONALD M. SULLIVAN

LOUISIANA
Baton Rouge
GERALD L. WALTER, JR.
Lafayette
TIMOTHY J. McNAMARA

MAINE
Bangor
GEORGE Z. SINGAL
Ellsworth
BARRY K. MILLS

MARYLAND
Salisbury
RAYMOND S. SMETHURST, JR.

MASSACHUSETTS
Boston
THOMAS E. CONNOLLY
JAMES R. DeGIACOMO
JAMES N. ESDAILE, JR.
New Bedford
DAVID A. McLAUGHLIN

MINNESOTA
Minneapolis
THOMAS L. ADAMS
REED K. MACKENZIE

MISSISSIPPI
Jackson
JOHN M. GROWER
Pascagoula
ROY C. WILLIAMS
Vicksburg
LANDMAN TELLER, JR.

MISSOURI
Kansas City
PAUL E. VARDEMAN
Nevada
WILLIAM G. McCAFFREE
Springfield
RAYMOND E. WHITEAKER
St. Louis
GEORGE L. FITZSIMMONS

NEBRASKA
Kearney
JEFFREY H. JACOBSEN

NEVADA
Las Vegas
STEPHEN L. MORRIS
PAUL C. PARRAGUIRRE
Reno
ALFRED H. OSBORNE

NEW JERSEY
Cranford
EDWIN J. McCREEDY
Milburn
LOUIS A. RUPRECHT
Newark
THOMAS F. DALY, III
Short Hills
JEROME J. GRAHAM, JR.
NORMAN G. SADE
Westfield
ROBERT P. McDONOUGH
Westmont
G. WESLEY MANUEL, JR.

NEW YORK
Albany
CLAYTON T. BARDWELL
Buffalo
CARL A. GREEN
New York City
ELKAN ABRAMOWITZ
JED S. RAKOFF
Rochester
LOUIS D'AMANDA
JOHN J. DARCY
Rome
DAVID N. HURD

NORTH CAROLINA
Charlotte
RICHARD C. CARMICHAEL, JR.
Durham
JAMES B. MAXWELL
GEORGE W. MILLER, JR.
Greensboro
HUBERT B. HUMPHREY, JR.
High Point
ARCH K. SCHOCH, IV

OHIO
Cleveland
THOMAS S. KILBANE
GERALD A. MESSERMAN
JOHN N. NEWMAN, JR.
Columbus
ALAN L. BRIGGS
Dayton
PATRICK W. ALLEN
West Milton
ROBERT J. HUFFMAN

OKLAHOMA
Bartlesville
BRUCE W. ROBINETT
Oklahoma City
MURRAY E. ABOWITZ
PETER B. BRADFORD

OREGON
Eugene
BRUCE E. SMITH
Portland
E. RICHARD BODYFELT
AUSTIN W. CROWE, JR.

PENNSYLVANIA
Norristown
RONALD H. SHERR
Philadelphia
WILLIAM T. HANGLEY
PATRICK W. KITTREDGE
Pittsburgh
GERALD C. PARIS

RHODE ISLAND
Providence
MICHAEL P. DeFANTI

TENNESSEE
Chattanooga
HUGH P. GARNER
JAMES E. MOFFITT
Memphis
CARROLL C. JOHNSON
THOMAS F. JOHNSTON
Nashville
WILLIAM M. LEECH, JR.

TEXAS
Austin
T.B. WRIGHT
El Paso
W. ROYAL FURGESON, JR.
Houston
DAVID T. HARVIN
JOHN C. HELD
NICK C. NICHOLS
San Antonio
LEWIN PLUNKETT
Tyler
JOHN H. MINTON
Waco
ROY L. BARRETT

UTAH
Salt Lake City
H. JAMES CLEGG, JR.
STEPHEN G. CROCKETT
HENRY E. HEATH

VIRGINIA
Bristol
JAMES P. JONES
Norfolk
MORTON H. CLARK
Richmond
OLIVER W. HILL.

WASHINGTON
Seattle
RICHARD M. CLINTON
JERRY R. McNAUL
FREDERICK M. MEYERS

WISCONSIN
Wausau
W. THOMAS TERWILLIGER

WYOMING
Casper
JOSEPH E. VLASTOS

CANADA

ALBERTA
Calgary
CLIFTON D. O'BRIEN
Edmonton
JAMES W. BEAMES

BRITISH COLUMBIA
Kamloops
ROBERT B. HUNTER
Vancouver
EDWARD C. CHIASSON
LEONARD T. DOUST
DAVID ROBERTS

MANITOBA
Winnipeg
HYMIE WEINSTEIN

QUEBEC
Montreal
J. ARCLEN BLAKELY

SASKATCHEWAN
Saskatoon
SILAS E. HALYK

Canada-United States Legal Exchange

Report by Ralph I. Lancaster, Jr., Chairman, Canada-United States Committee

The first Canada-United States Legal Exchange took place this fall. Modeled after the very successful Anglo-American Exchanges which the College initiated, this Exchange was sponsored by the College and the Federal Judicial Center.

In 1983, then Chief Justice Warren E. Burger suggested the Exchange to President Leon Silverman. In the fall of that year, President Gael Mahony appointed the first Canada-United States Committee chaired by former President Jim Baker. The Committee was charged, "[to] investigate areas of common interest between Canada and the United States and to plan for and monitor activities in these areas of common concern", including the planning and execution of a Canada-United States Exchange.

In 1984, Chief Justice Burger discussed the prospect of an Exchange in a meeting with members of the Canadian Supreme Court. Exploration of the concept and initial planning continued through the presidencies of Gene Lafitte and Griffin Bell. Both in 1985 and 1986 discussions of the proposed project continued between the Chief Justices of the two countries. Conflicts in their judicial schedules made it impossible to schedule the Exchange during 1986. However, Chief Justice Burger assigned then Associate Justice William H. Rehnquist, and Chief Justice Brian Dickson assigned Associate Justice Gerard V. La Forest of the Canadian Supreme Court to act as representatives of the Supreme Courts in planning the project cooperatively with the College Committee.

Chief Justice Dickson assigned Jeannie Thomas, Executive Secretary of the Canadian Judicial Council, and Chief Justice Rehnquist arranged for Charles "Chuck" Nihan, Deputy Director of the Federal Judicial Center, to work in the planning and implementation of the project.

Both Chief Justice Rehnquist and Chief Justice Dickson embraced the Exchange enthusiastically. Not only did they both participate actively in the planning process, but they also were personally present throughout the two weeks of the Exchange. They obviously considered the Exchange of great importance to the enhancement of the administration of the justice systems in our two countries.

The importance the College attached to the Exchange is evidenced by the fact that President Morris Harrell, Immediate Past President Harvey Chappell, and President-Elect Phil Tone all took time away from their very busy schedules to attend throughout the two-week Exchange period. The other participants are listed at the end of this report.

The Canadian week of the Exchange took place from August 30th through September 5th in Ottawa, Montreal and Toronto. The participants heard panel presentations by distinguished Canadian jurists, lawyers and professors. The topics presented and discussed included comparisons of civil practice and procedure in both countries, Canadian perspectives on tort law and personal injury damages, the Quebec Civil Code, the relationship between the judiciary and the Canadian Charter, and equality rights. Each of these topics provoked lively and extended discussion. The papers presented were of extraordinary caliber.

The United States week of the Exchange took place during the week of October 18th in Washington, D.C. A similar presentation and discussion format was followed, although somewhat less formal discussion papers were presented and more time was afforded for general discussion by the participants. The topics included the United States Bill of Rights, judicial approaches to civil liberties, competing views of equal protection, conflicts in interpretation of the First Amendment's religion clauses, judges' sanctioning authority, and alternative dispute resolution techniques.

Professor Ed Ratushny of the University of Ottawa and Judge John Godbold, the new Director of the Federal Judicial Center, acted as Reporters for the Exchange. Over the next year, they will combine in editing the papers which were presented and arranging for their publication. Professor Ratushny will also author a major overview of the Exchange for publication at a later date.

The social side of the Exchange was as successful as the substantive side and carried out the College objective to promote fellowship among members of the bench and bar of the two countries. Events included receptions, luncheons, and dinners given by the Governor General of Canada, the Supreme Court of the United States, the Minister of Justice and Attorney General of Canada, The Benchers of the Law Society of Upper Canada, and the Ambassadors of the two countries. In Washington, following observation of an appellate argument in the D.C. Court of Appeals, Exchange team members shared lunch with the members of the Circuit and District Court benches for the D.C. Circuit. And on one evening in Washington, the D.C. members of the Exchange invited the other members to their homes for dinner.

A separate spouses' program was carefully planned and equally well received in each country.

Jeannie Thomas and Chuck Nihan must be recognized for their courteous and efficient administration of an extraordinarily complex program. They and their assistants did a remarkable job in planning and executing the Exchange.

This first ever Canada-United States Exchange has been extraordinarily successful. It has been productive in furthering better understanding of the problems with which the bench and

bar are concerned in both countries and in exploring possible solutions to those problems. It also served to promote that degree of fellowship which is indispensable to a better understanding of the justice systems in our two countries. □

Canada - United States Exchange Participants

Canada Team

Canada Judicial Members
The Right Honourable Brian Dickson, P.C.
Chief Justice of Canada

The Honourable Mr. Justice Charles Gonthier
Superior Court of Quebec

The Honourable Mr. Justice Gerard V. La Forest
Supreme Court of Canada

The Honourable Madam Justice Beverley McLachlin
Court of Appeal for British Columbia

The Honourable Guy Richard
Chief Justice of the Court of Queen's Bench of New Brunswick

The Honourable Mr. Justice Calvin F. Tallis
Court of Appeal for Saskatchewan

The Honourable Judge Karen Weiler
District Court of Ontario

Canada Fellows of the ACTL
George A. Allison, Q.C
Montreal, Quebec

L. Yves Fortier, Q.C.
Montreal, Quebec

D. Michael M. Goldie, Q.C.
Vancouver, British Columbia

E. Neil McKelvey, Q.C.
Saint John, New Brunswick

Robert H. McKercher, Q.C.
Saskatoon, Saskatchewan

William L.N. Sommerville, Q.C.
Toronto, Ontario

John Sopinka, Q.C.
Toronto, Ontario

Canada Rapporteur
Professor Ed Ratushny, Q.C.
Ottawa Law School

United States Team

United States Judicial Members
Honorable William H. Rehnquist
Chief Justice, Supreme Court of the United States

Honorable Richard S. Arnold
U.S. Court of Appeals for the Eighth Circuit

Honorable Amalya L. Kearse, FACTL
U.S. Court of Appeals for the Second Circuit

Honorable William W. Schwarzer, FACTL
U.S. District Court, Northern District of California

Honorable Kenneth W. Starr
U.S. Court of Appeals for the District of Columbia Circuit

Honorable Patricia M. Wald
Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit

Honorable Joseph F. Weis, Jr.
U.S. Court of Appeals for the Third Circuit

United States Fellows of the ACTL
R. Harvey Chappell, Jr., Esquire
Richmond, Virginia

Erwin N. Griswold, Esquire
Washington, D.C.

Morris Harrell, Esquire
Dallas, Texas

Leonard S. Janofsky, Esquire
Los Angeles, California

Ralph I. Lancaster, Jr., Esquire
Portland, Maine

Philip W. Tone, Esquire
Chicago, Illinois

Lively M. Wilson, Esquire
Louisville, Kentucky

United States Reporter
Honorable John C. Godbold
Director, Federal Judicial Center

President's Report

Morris Harrell

On August 8, 1987 it was my honor to be installed as the thirty-eighth President of the American College. I succeeded Harvey Chappell who had an outstanding year. The purpose, aims, and objectives of the College are of the highest order of our profession and I will do all I can to further those standards and carry forward the programs of the College.

Past President Harvey Chappell has given you a report, which appears elsewhere in this Bulletin, on the activities during his eventful year as President. We are indeed grateful to Harvey and to his wife, Ann, for their complete dedication to the activities during the past year and for his distinguished service.

This fall we have continued to hold the State and Province Chairmen Workshops. These Workshops not only provide the Chairmen with a complete knowledge of the procedures used in the nomination of Fellows process, but assist them in planning State, Province, and Regional Meetings. The other activities of the State and Province Committees are discussed in detail and, in my judgment, those who attend travel home with renewed dedication to the College and enthusiasm regarding their very significant role. Perhaps an even more important function of the Workshops is the genuine spirit of camaraderie that is generated as we get to know each other better and expand our friendships.

As the College grows in numbers to some 4,400 members, the importance of State and Province Meetings and Regional Meetings is accentuated. The growth in numbers is a natural consequence of the increase in lawyer population. As we all know, there is not a quota for membership, only limitations on numbers. Our standards for election to Fellowship have not been, and should never be, downgraded or relaxed. But the facts are that the College is growing in numbers and the State, Province, and Regional Meetings become even more significant.

You will find in this Bulletin a Report on the Canada-United States Legal Exchange. After years of careful planning through the tenure of distinguished Presidents of this College, the Legal Exchange has now taken place. The tone of the meetings, first for a week in Canada, and recently in Washington, D.C. for another week, was set by the capable leadership and active participation by the Honorable Brian Dickson, Chief Justice of Canada, and the Chief Justice of the United States, the Honorable William H. Rehnquist. Greater knowledge, understanding, and a meaningful continuing relationship have resulted from this well-executed program.

The schedule for meetings of the College is set forth in the Bulletin. A great deal of time and effort has been spent in planning the 1988 Spring Meeting which will be held at the Marriott Desert Springs Resort on March 6 -9. Your President-Elect, Phil Tone, is planning a fine professional program, including an outstanding continuing legal education program that will comply with the mandatory CLE requirements of the States.

As I witness our profession in operation during the last few years, I become increasingly alarmed over the decline in professionalism and I would like to share a few thoughts with you regarding this subject.

While there are no universally agreed-on definitions of the term "profession," there is general consensus that a profession is an organized vocation whose members are formally licensed to perform a particular kind of work, because of special education or competence. Its members are bound together by a common discipline. Commitment to a professional calling involves acceptance of high ethical standards, which generally include a dedication to public service for the benefit and protection of society that looks beyond the mere earning of a livelihood.

To an increasing degree, professionalism also requires a commitment to continued study to remain current with new developments in order to increase and improve the profession's body of knowledge and the practitioner's competence. Perhaps most important, the professional generally has a closer, more personal relationship with clients than encountered in other endeavors.

The practice of law, with its requirement for licensing, public service, and adherence to a high ethical standard that stresses the priority of the lawyer's relationship with the client, clearly fits this definition of a profession. Lawyers have every right to be proud of the high ideals of our profession.

But as we all know, changes in the practice of law during the past several years have been dramatic — and the pace of change is accelerating. These changes have had a significant impact on the traditional practice of law.

From a historical perspective these changes are quite recent. For most of the past 100 years lawyers practiced in a society far less complex than the one we are in now. There were fewer lawyers and, indeed, fewer were necessary. Fewer statutory rights existed, fewer disputes were grounded on points of law. Consequently, the life of the lawyer was simpler.

The lawyer of only a few years ago spent far more time than his or her modern counterpart in face-to-face discussions with clients. Through these personalized encounters, the lawyer served the client not only as a counselor, but as a teacher and a friend. This personal relationship has been a vital aspect of the lawyer's practice. I know that most lawyers place a high value on this personal dimension, and many wish we could return to the more relaxed pace of earlier eras.

Yet lawyers must keep pace with the times. Technological innovation must be introduced if costs are to be kept in line. Many of these changes have increased the economic efficiency and viability of the practice while also improving access to our legal system for a broader segment of our population. On the whole, these changes have been positive steps.

However, these newer directions, including a growing emphasis on quantifiable productivity, could contribute to an erosion of our professionalism if these trends become our exclusive focus.

Even in the modern law office, the need for efficient, cost-effective operations must be balanced with the ideals of the profession.

I am firmly committed to the need for innovation in our profession, and the need for support of the economic viability of the practicing lawyer. But even as we adjust to change, it is vital that we retain the essential personal dimension of service to the individual client, which is the hallmark of any true professional calling. In the course of representation, whether it be office counseling, negotiation, or litigation, some of the most valuable service will defy mathematical calculation. We must not permit the practice of law to become just another business.

It may not be possible to return to the days when the lawyer's representation was more personalized. But if we are to retain our status as a respected profession, the essential role of the lawyer as adviser, counselor, teacher, and friend must not change. To preserve this role will require vigilance and discipline.

Rusty and I look forward to the meetings of the College and it will be our personal pleasure to be with you. □

Morris Harrell

Calendar of Events

• **Dec. 18** Upstate New York Fellows Dinner; Buffalo, New York

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• **Jan. 8** Northern California Fellows Dinner; San Francisco, California

• **Feb. 25-28** South Carolina Fellows Meeting; Sea Island, Georgia

• **Feb. 29 - Mar. 4** Board of Regents Meeting; Laguna Niguel, California

• **Mar. 6-9** 1988 Spring Meeting; Palm Desert, California

• **Mar. 18-19** Virginia Fellows Dinner and Brunch; Richmond, Virginia

• **June 10** Texas Fellows Luncheon; Ft. Worth, Texas

• **June 10-12** Northeast States Regional Meeting; St-Adele, Quebec

• **June 15** Georgia Fellows Annual Dinner; Savannah, Georgia

• **June 24** North Carolina Fellows Dinner; Myrtle Beach, South Carolina

• **Aug. 5** Board of Regents Meeting; Toronto, Ontario

• **Aug. 6** 1988 Annual Meeting and Banquet; Toronto, Ontario

• **Aug. 14-16** Northwest States Regional Meeting; Sun Valley, Idaho

• **Aug. 25-28** Southwest States Regional Meeting; Pebble Beach, California

• **Sept. 15-17** Wisconsin Fellows Meeting; Green Lake, Wisconsin

• **Sept. 28** Michigan Fellows Annual Dinner; Detroit, Michigan

• **Sept. 29 - Oct. 2** Western States and Provinces Chairmen's Workshop; Pebble Beach, California

• **Oct. 20-22** Eastern States and Provinces Chairmen's Workshop; White Sulphur Springs, West Virginia

• **Nov. 17-20** Tri-State (AL, FL, GA) Regional Meeting; Sea Island, Georgia

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• **Nov. 2-5** Annual Meeting and Banquet; New Orleans, Louisiana