

# American College of Trial Lawyers

NUMBER 9

SUMMER BULLETIN

1988

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## Arms Control and Soviet Relations: On Trial

Ambassador Max M. Kampelman, The Counselor,  
Department of State, delivered the following address to  
the Fellows and guests of the College at the 1988 Spring  
Meeting, Palm Desert, California.

Mr. Chairman, members of the Judiciary, distinguished guests, ladies and  
gentlemen of the American College of Trial Lawyers, friends —

**I**t was a distinct honor to receive your invitation to speak. I approach my  
task this morning fully conscious of that privilege. This is now my second  
appearance before you. It tracks the fact that I have had the occasion, since  
1980, of heading two separate American international negotiating delegations  
under two Presidents. The first negotiation, in Madrid, lasted three years and  
was at the Conference on Security and Cooperation in Europe under the  
Helsinki Final Act. I spoke to you of that experience when we last met. During  
the initial months of that Conference, I served as Co-Chairman with one of  
your most distinguished former Presidents, former Attorney General of the  
United States, Judge Griffin Bell, a great American whom I wish again publicly  
to thank for his wisdom, guidance and personal support during that period. The  
second negotiation, of course, in which I am now engaged, is in Geneva where I  
serve as head of the American delegation to the Nuclear and Space Arms  
Reduction Talks. The task common to each assignment was to negotiate with  
the Soviet Union.

### RUSSIA

I have found the Soviets to be skilled negotiators with a keen understanding  
of the political pressures to which Western democratic institutions are usually  
susceptible. They are relentless in trying to create and exacerbate those pres-  
sures in hopes of converting them into concessions at the negotiating table  
which will cost them nothing in the way of reciprocal concessions. A key to  
dealing with Soviet negotiators is, therefore, sustained patience and determina-  
tion to stay at the bargaining table at least one day longer than the Soviets are  
prepared to stay.

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# American College of Trial Lawyers

## BULLETIN

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Emil Gumpert  
1895 - 1982

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In 1843, the Marquis de Custine, wrote of his experiences living in Russia:

*"If better diplomats are found among the Russians ... it is because our papers warn them of everything that happens and everything that is contemplated in our countries. Instead of disguising our weaknesses with prudence, we reveal them with vehemence every morning; whereas, the Russians' Byzantine policy working in the shadow, carefully conceals from us all that is thought, done, and feared in their country. We proceed in broad daylight; they advance under cover. The game is one-sided. The ignorance in which they leave us blinds us; our sincerity enlightens them; we have the weakness of loquacity; they have the strength of secrecy."*

Alexis de Tocqueville, writing about the same time of his travels in the United States, shared this profound cultural realization and predicted the 20th Century confrontation between the United States and the Soviet Union. He analyzed it as a test of whether democracy, symbolized by the United States, with its pluralistic dispersion of power and decision-making, could compete in foreign policy with authoritarian regimes such as that of Russia.

## THE WORLD

For many years now, particularly since the end of World War II, we in the United States have looked at international affairs through the prism of our relations with the Soviet Union. During our lifetime, it has been the central focus of our country's foreign policy. Today, the Soviet Union remains the only country which can directly threaten our nation.

This is the reality of today. But, as it must under the laws of nature, today will soon be yesterday; and tomorrow will soon be with us. What will it be like? Will it be more of the same? Or will an evolving world cause us to change the prism through which we look at the world and our place in it? Here are some relevant and often contradictory indications:

- The new nations with strange names that have in great numbers erupted into the world scene are today mostly authoritarian and are increasingly flexing their muscles.
- Middle Eastern countries, which once conspicuously flaunted their oil weapon, are now caught up in war and bitterly divided over rapidly encroaching religious fundamentalism.
- China, free of the stifling Soviet bloc, is now challenging its Leninist cousin with dramatic experiments in market mechanisms, possibly at the expense of central Party control.
- Japan, now the world's second largest economy, is spreading its silver and gold wings globally.
- Nuclear weapons and the skills necessary to build them are no longer the exclusive possession of the superpowers. These, along with ominous chemical weapons, are today capable of being acquired by the irresponsible and the lawless. Furthermore, as Senator Sam Nunn recently stated in an important speech, our society is a society of vulnerable networks — electricity grids, water systems, pipelines, telecommunication links. Putting aside risks from acts of sabotage and terrorism — and they cannot be put aside for long — modern society is

seriously vulnerable to catastrophic disruption.

— And, of tremendous importance, almost unnoticed, the numbers of people and the numbers of nations now freely electing their governments or vitally moving in that direction are greater than ever in the history of the human race.

Other global factors also demand attention. Whether we understand it or not, we are at the beginning of a new scientific and technological age that makes all similar development in the history of Man, from the discovery of fire through the industrial and commercial revolutions, dwarf by comparison. During our lifetime, medical knowledge available to physicians has increased more than ten-fold. Over 80% of all scientists who ever lived are alive today. The average life span is now nearly twice as great as it was when our grandparents were born. The average world standard of living has, by one estimate, quadrupled in the past century. New computers, new materials, new bio-technological processes are altering every phase of our lives, deaths, even reproduction. Moreover, as we look ahead, we must agree that we have only the minutest glimpse of what our universe really is. It is, indeed, accurate to say "our science is a drop, our ignorance a sea."

Yes, Man's evolving creativity produces opportunities. But the devil, too, evolves and we are constantly reminded of growing problems as well — the annihilating threat of nuclear war being only one of many, albeit the most discussed, of those problems.

## MUTUAL SECURITY

This reality will undoubtedly have its effect on international relations. None of us can for long face the economic, political and social complexity of our lives without addressing them in an international context. If we come to appreciate that national security must hinge on "mutual security", we must look for means fundamentally to alter the dynamics of international tensions. To be specific, our ultimate national security may well require us to accelerate the search for a changed relationship between our country and the Soviet Union; and this will require us to find ways to leap over the limitations of traditional diplomacy and foreign policy.

We know that unilateral security can no longer be achieved either by unilateral withdrawal from the world or by unilateral attempts to achieve impregnability. In the world of today, security requires military strength. But with that strength we need to reach toward a relationship in which there is an acceptance of mutual responsibility for the lives of people in all countries. There is no security for the people of Iran without security for the people of Iraq. There can be no security for the people of Iraq without the people of Israel feeling secure. Neither we nor the Soviet Union will be secure while the other feels

insecure. We must seek an alteration in the framework of our relationship with one another.

## THE SOVIET UNION

Our aspirations, however, must not blind us to the obstacles in the way of their fulfillment. The tensions that have characterized our relationship with the Soviet Union are not illusory. Henry Kissinger has reminded us that the fundamental challenge to the free world is the principle that has governed Soviet international behavior — everything that has become Communist remains forever inviolate; and "everything that is not Communist is open to change by pressure, by subversion, by guerrilla action, and if necessary, by terror." Gorbachev last year regrettably reaffirmed this dangerous Soviet principle when he proclaimed in Warsaw that "socialist gains are irreversible" and warned that an effort to "undermine" their "international ... socialist community" would threaten peace. And yet, this year we see strong indications that the Soviets may finally withdraw their troops from Afghanistan.

The Soviet regime cannot be permitted to propagate its faith with the sword. A Soviet Union which desires to enter the 21st Century as a respected and secure member of the international community must reject its old faith that the "irreconcilability" of our two systems means the "inevitability" of war and violence as the instrument to achieve its vision of a new society.

The Soviet Union is the last remaining empire of our day. Its empire consists of former states now absorbed within Soviet geopolitical boundaries; contiguous Eastern European states; and states in different parts of the world over which it exercises control. But imperialism comes with a high price tag. The West learned that the price is too high. That conclusion may be reaching the Soviet elite.

The Soviet economy is working poorly, although it does provide a fully functioning military machine. Massive military power has provided the Soviets with a presence that reaches all parts of the world, but this military superpower cannot obliterate the fact that its economic and social weaknesses have many third world characteristics. The Soviet's awesome international police force has provided continuity to its system of governance, but a Russia which during Czarist days exported food cannot today feed its own people. And no police can keep out the ideas and developments that are communicated by satellite to all parts of the world, any more than it can by fiat insulate itself from the wind currents that circle our globe.

The new leadership of the Soviet Union is fully aware of its problems. I suspect it is also aware of our strengths, reflecting the vitality of our values and the healthy dynamism of our system. In the past five years, we have seen 15 million new jobs created in the United States, a



5% drop in our unemployment rate to its lowest level in 8 years, a 17% increase in GNP per capita, and a reduced inflation rate, which had been at double digits, to around 4% annually for the last six years.

Contrary to what is often reported, these gains in employment and income have been widely shared by all major demographic groups in our country. Annual employment has grown by 2.4% for whites, 4.7% for blacks, 6.8% for hispanics, and 8.2% for black teenagers. Further, nearly two-thirds of these jobs have been in higher-paid skilled occupations. We have every reason to be proud of our system and of our human values which have governed our system.

We hope the time is at hand when Soviet authorities looking at the energy of the West, comprehend that repressive societies in our day cannot achieve economic health, inner stability, or true security. We hope the leadership of the Soviet Union will come fully to accept that it is in its best interest to permit a humanizing process to take place. We hope it has come to understand the need to show the rest of us that cruelty is not indispensable to its system. We hope the ruling elite today realizes that its historic aim of achieving Communism through violence has no place in this nuclear age. We hope Soviet authorities will join us in the commitment that our survival as a civilization depends on the mutual realization that we must live under rules of responsible international behavior. We hope — but as yet we cannot trust.

But even as we cannot yet trust, we have a responsibility to ourselves to observe developments in the Soviet Union carefully and to do so with open eyes, an open mind, and an open heart. There have been changes within the USSR. General Secretary Gorbachev has shown himself in a dramatic way willing to reconsider past views. The words *glasnost* and *perestroika* have been repeated so extensively that they may well take on a meaning and dynamism of their own which could become internally irreversible. The recent political rehabilitation of Bukharin, a Communist Party leader executed by Stalin in the 1930's, is of profound symbolic significance. It opens up for discussion the very sensitive topic of Stalin's legacy. It also helps Gorbachev legitimize for today the principle of economic incentives that Bukharin himself favored in earlier times in the Soviet Union.

## MOSCOW AND HUMAN RIGHTS

Two weeks ago, I accompanied our Secretary of State to Moscow as part of our ongoing mutual effort to normalize relations and deal with the areas of tension that divide us. It was a dramatic and memorable experience, made even more so by the realization that the drama was a continuing and evolving one.

When I began negotiating with the Soviet Union in 1980, under President Carter, human rights was beginning

to be injected as a major item on our agenda. We urged upon the legitimacy of that agenda, while the Soviet Union stubbornly insisted that the discussion of the subject was an improper interference in their internal affairs. We prevailed in that negotiation, but reluctant Soviet acceptance of our written standards of human rights behavior did not alter their insistence that no nation had the right to question their internal behavior.

When President Reagan asked me in 1985 to return to government service as head of our nuclear arms reduction negotiating team, I found myself engaged in a series of even more extraordinary and significant developments. Under the leadership of the President and the careful guidance of Secretary of State George Schultz, whom I believe to be one of our most capable and dedicated public servants in this century — and I make this statement after careful consideration and close observation — the United States enlarged upon what President Carter initiated, and incorporated the concept of human rights as a necessary and ever-present ingredient in the totality of our relations with the Soviet Union.

Yes, we were prepared to reduce arms; and we wanted to normalize and stabilize our relations with the Soviet Union. But, we insisted, the pursuit of arms reductions must be accompanied by attention to the serious problems that cause nations to take up arms: regional problems, bilateral tensions, and, of course, human right violations. The latter, we explained, are at the root of much of our mistrust of the Soviet system, and, since they run contrary to international obligations, they undermine the very essence of trust and confidence between nations.

Since March of 1985, there have been three meetings between the leaders of our two countries with a fourth likely to take place in late May or early June. Secretary of State Schultz has met with his counterpart fifteen times during this period, covering uncounted numbers of hours. At all of these meetings, human rights has been actively on the agenda. It is today a fully agreed agenda item. The issue is discussed thoroughly, frankly and frequently — and we see results. The results are not yet entirely to our satisfaction, but are, nevertheless, highly significant. To carry the process forward, the Soviet Union has designated a counterpart to our very able Assistant Secretary of State responsible for human rights, Richard Schifter. They meet regularly and will meet again later this month. There will be further positive results.

On each of Secretary of State Schultz's visits to Moscow, he has invited a large group of refuseniks, those Soviet citizens repeatedly denied permission to emigrate, to a reception at our Embassy compound. The Secretary meets each guest and then speaks words of encouragement and renewed commitment to the group. A year ago, the Secretary's visit coincided with the Jewish Passover holiday. A member of our Moscow Embassy staff invited a number of the refuseniks to his home for a Seder service,



a festival of freedom. The Secretary of State attended that Seder and joined in a prayer for freedom. This demonstration in Moscow of America's Judaic-Christian values was moving and impressive. At the Secretary's reception of two weeks ago, the number attending was smaller. Familiar faces were gone. They had received permission to emigrate.

That evening, following the reception and before the evening session with Mr. Shevardnadze, I joined Secretary and Mrs. Schultz at the home of Dr. Andrei Sakharov and his courageous wife, Yelena Bonner. Our discussion over tea in the small Sakharov living room was a rare experience. Here was a demonstration of that which is eternal in the human spirit, the striving for human dignity. And here were two extraordinary human beings, one Russian and one American, talking to each other about how to help the movement toward greater human dignity evolve constructively toward reality.

The following evening we arranged to have dinner at one of Moscow's new cooperative restaurants. The restaurant, owned by a private entrepreneur, set its prices based on the law of supply and demand and was competing effectively with state-run restaurants.

The Secretary had as his guests one of the country's leading poets, a man loudly proclaiming the need for his country to leave Afghanistan; a distinguished Soviet economist, advocating the development of a free market economy; the head of the Soviet cinematographer's union, pressing for closer cooperation with the United States; the director of historical archives, energetically urging that the peoples of the Soviet Union be given the truth about their history; a popular playwright, whose unorthodox play on the Treaty of Brest-Litovsk, treating Trotsky and Bukharin as human beings rather than stereotypes, was a major hit in Moscow after Gorbachev attended a performance; the artistic director of Moscow's respected avant-garde theater questioning whether the adulation of leaders was not an undesirable reminder of slavery; and a historian committed to the restoration of truth into the Soviet treatment of its past, who wondered why the best books on the Soviet Union were found in the West. The characteristic common to all of our Soviet guests was a freedom of spirit which moved them to stretch the limits of free artistic and intellectual expression beyond those permitted by the State.

This is what we found in Moscow. The Soviet citizens with whom we spent time were intellectuals and obviously not representative of the government or the population, but our time together was symbolic of a new spirit that is beginning to assert its presence within the Soviet intellectual community. We could not have had such open experiences two years ago. We hope they will be more common two years from now.

It would be an error to overstate the importance of these developments. It would be equally mistaken and foolhardy to ignore their existence. We in the United States cannot directly influence these developments in any

significant way. Nevertheless, our activities and our conduct as free governments and peoples does play some role, and we must not ignore it. Democratic societies are, after all, those by which the Soviet Union measures itself. Soviet leadership not only seeks our technology, but also adopts our terminology and tries to cloak itself with noble words of ours like "democracy" and "human rights." We have long been aware of a love-hate fascination the Soviets have with Western culture. Our task, therefore, is, through our actions and statements, to attempt to modify and resist external Soviet power even as we try to encourage within the State the emergence of a fuller, freer civil society, one that indeed satisfies the deepest aspirations of the Soviet peoples.

## ARMS REDUCTION TALKS

Our message must be that neither we nor the Soviets can accept today's reality of tension and threatening instability without seeking to change it. The task of the democracies of the world is to exercise the leadership necessary to develop a sense of international political community. We need a way to resolve regional problems. We need a cooperative effort to eliminate hunger from the world and to foster economic development. We need vitally and profoundly to assure basic human dignity and human rights for peoples all over the world.

It is this framework that provides the necessary perspective for our arms talks in Geneva.

Our negotiations in Geneva have so far produced one Treaty. The INF Treaty, now before the United States Senate for advice and consent on ratification, will eliminate all United States and Soviet nuclear missiles which have a range of between 500 and 5500 kilometers (approximately 300-3300 miles). This is the first time since the dawn of the nuclear age that our two countries have agreed to eliminate complete categories of nuclear weapons. The treaty contains comprehensive and intrusive verification measures never before part of any international arms agreement. When I began my assignment as arms negotiator in 1985, the common wisdom among all experts was that the Soviet Union would never permit American observers to inspect military and production facilities on Soviet soil. This, they said, would be considered an unacceptable threat to their closed society. The experts were wrong. The Treaty provides for serious on-site inspection.

The Treaty also stands for the principle of asymmetrical reductions to attain equality. Under the Treaty, the Soviets will destroy missiles capable of carrying four times as many warheads as those destroyed by the United States. The reason is simple: they now have more missiles; in order to get to an equal number, zero, they must destroy more.

In the INF Treaty, we see a pattern for other negotiations with the Soviets. We are agreed in principle that we will seek a second nuclear arms treaty, perhaps by the

end of the first half of this year, when President Reagan meets Secretary General Gorbachev in Moscow. This treaty, also on our Geneva agenda of talks, would reduce longer-range strategic nuclear weapons, those with a range above 5500 kilometers, by 50 percent — and we have put equal numbers next to that percentage reduction figure.

The extremely difficult and challenging task in these long-range strategic talks, START, is in our requirement for adequate verification. It is much easier to verify a reduction to zero, as in INF, than it is to verify a number higher than zero, as in START. When we agree on a zero figure, production stops and flight testing ends. That is not so when a number above zero is agreed upon. The added verification complexity is enormous. The verification regime must be able to provide us adequate assurance that the limits will be observed, and that violations will be detected. Without those assurances, there will simply be no agreement. If it will take longer to negotiate, so be it. Our goal is not a fast agreement. It is a good agreement. We proceed expeditiously because it is evident the Soviets would like to have the agreement with President Reagan and we believe that President Reagan is perhaps more likely to achieve bipartisan support for a good treaty than his successor, now an unknown.

There is a third dimension to our talks in Geneva, the use of space to strengthen defenses — our SDI program, the Strategic Defense Initiative. Western security has relied and continues today to rely on the principle of deterrence. This form of deterrence, based on mutual vulnerability, has been successful in preventing war between East and West. Europe is, after all, enjoying the longest period of peace in its modern history.

With our SDI program, we are now exploring whether we can strengthen deterrence through an increased ability to deny an aggressor his objectives. People ask of their governments that they be protected from attack, not that their government only be able to avenge them after the attack. It is this prospect of a more effective deterrence that research on strategic defenses offers. We are investigating, within the bounds of existing arms control agreements, the possibility that defensive technologies, preferably non-nuclear ones, will persuade an aggressor that an attack cannot gain its objectives.

The Soviet Union has for many years been active in building up its defensive capabilities. It has the most comprehensive air defense system in the world; and it has spent enormous resources on passive defenses to protect its leadership, command and control system, industry, and population. It possesses the only operational anti-ballistic missile system in the world, and it has just modernized it. It possesses the only operational anti-satellite system in the world; and it was the first to destroy a satellite in space. The Soviets, furthermore, as Mr. Gorbachev has acknowledged, are proceeding with an intensified program of research on their own version of SDI.

It is not in our interest to permit the Soviets to have the

field of strategic defenses all to themselves. We will continue with our SDI research program. It would be highly imprudent for any American President not to pursue such an investigation with vigor. The Soviets, I believe, understand the firmness of our commitment.

I cannot leave this subject before this audience of lawyers without acknowledging the debate as to whether our SDI program is consistent with the principles forming the foundation and the text of the ABM Treaty. Let me quote in this connection the clear and unambiguous statement of Soviet Defense Minister Grechko, who in 1972, while explaining the Treaty to the Supreme Soviet, said that the ABM Treaty “imposes no limitations on the performance of research and experimental work aimed at resolving the problem of defending the country against nuclear missile attack.” Our program is not a violation of the ABM Treaty or of any other international obligation we have assumed.

The task of seeking verifiable arms reductions in our interest encompasses more than the nuclear arms that have been part of my responsibility. We are negotiating and may soon conclude an agreement which will satisfy our verification concerns as we limit nuclear testing. One of our important goals is to proceed expeditiously to begin negotiations this year on the reduction of conventional arms in Europe — and here, building on the precedent of asymmetrical reductions established in the INF Treaty, there will have to be asymmetrical reductions in the conventional area as well. The task of dealing with the serious threat from chemical weapons is also on our agenda, with our goal to ban chemical weapons worldwide. Here, the task of verification is immensely difficult if not near impossible.

## REGIONAL ISSUES AND NICARAGUA

We are also engaging the Soviets in an active dialogue on important regional issues that divide us. We are today emphasizing to the Soviet Union that their adventurism, direct and indirect, must cease, or there can be no stability in our relationship. I would like, as I conclude, to highlight the importance of this subject with a few words on a current highly critical and dangerous regional problem — Central America.

Last year, the Soviet Union and its allies supplied approximately one billion dollars in military and economic aid to the Communist Sandinista regime in Nicaragua. That regime, which in its origins included many democratic elements and pledged itself to be governed by free elections and democracy, instead followed the Soviet model and suppressed basic freedoms. It has also actively engaged in the subversion of its neighboring four Central American democratic governments. The recent action by the House of Representatives to delete military aid to the 15,000 freedom fighters in Nicaragua notwithstanding, the United States should not and, I believe, will not accept a Soviet military presence on our continent. A Soviet-



sponsored Nicaragua, which borders on both the Atlantic and Pacific Oceans, is a threat to our sea lanes in both oceans. Only 700 miles from our border, it represents, particularly in collaboration with Castro's Cuba, a serious potential threat to our security. The friendship and close cooperation between Castro, Nicaragua's Communist leader Ortega, and Panama's military dictator Noriega cannot escape the attention of the American people. It has the attention of the American Government and has the potential of dramatically affecting the future of United States-Soviet relations.

I close my observations this morning by referring again to Andrei Sakharov. In his 1975 Nobel Prize speech that he was not permitted to present in person, he said:

*"I am convinced that international trust, mutual understanding, disarmament, and international security are inconceivable without an open society with freedom of information, freedom of conscience, the right to publish, and the right to travel and choose the country in which one wishes to live."*

Dr. Sakharov has shared his views with Mr. Gorbachev. The United States negotiates with the Soviet Union in that context. We have faith in these principles as we intensify our efforts to find a basis for understanding, stability, and peace with dignity through our negotiations. To negotiate is risky. It is, in the words of Hubert Humphrey, something like crossing a river by walking on slippery rocks. The possibility of disaster is on every side, but it is the only way to get across. The object of diplomacy in a democratic society, indeed the supreme achievement of statesmanship, is patiently, through negotiation, to pursue the peace we seek, always recognizing the threat to that

peace and always protecting our vital national interests and values.

We hope and trust that our negotiating efforts will produce results. With the complex nature of our adversary and of the issues we face, however, we must also face the fact that even with full agreement in Geneva, we will still be nearer to the beginning than to the end of our pursuit. Our effort must be to continue to persuade those who today lead the Soviet Union that just as the two sides of the human brain, the right and the left, adjust their individual roles within the body to make a coordinated and functioning whole, so must hemispheres of the body politic, north and south, east and west, right and left, learn to harmonize their contributions to a whole that is committed to work together in the search for peace with liberty.

General and former Secretary of State George Marshall once observed: "If Man does find a solution to world peace, it will be the most revolutionary reversal of his record we have ever known." We must reverse the record of history. That is the commitment of the United States.

Thank you.

Ambassador Max M. Kampelman, a lawyer, diplomat and educator, now serves as Ambassador and Head of the United States Delegation to the current negotiations on nuclear and space arms in Geneva, and as The Counselor, Department of State. A partner, until his retirement in 1985, in the law firm of Fried, Frank, Harris, Shriver & Kampelman, he has lived and worked in Washington since 1949. Ambassador Kampelman received his J.D. from New York University and his Ph.D. in Political Science from the University of Minnesota.

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## Future ACTL National Meetings

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### 1989

- **Mar. 5-8** Spring Meeting:  
Boca Raton Hotel & Club,  
Boca Raton, Florida
- **Aug. 5** Summer Banquet:  
Honolulu, Hawaii
- **Nov. 2-5** Annual Meeting:  
Fairmont Hotel,  
New Orleans, Louisiana

### 1990

- **Mar. 4-7** Spring Meeting:  
Marriott's Desert Springs Resort,  
Palm Desert, California
- **Aug. 4** Summer Banquet:  
Chicago, Illinois
- **Oct. 16-21** Annual Meeting:  
Fairmont Hotel,  
San Francisco, California

### 1991

- **Mar. 10-13** Spring Meeting:  
Westin Kauai, Kauai, Hawaii
  - **Aug. 10** Summer Banquet:  
Atlanta, Georgia
  - **Oct. 10-13** Annual Meeting:  
Westin Copley Place,  
Boston, Massachusetts
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# College News

## SAMUEL E. GATES LITIGATION AWARD

Professor A. Leo Levin, Director of the Federal Judicial Center since July 1977, received this year's Samuel E. Gates Litigation Award at the Spring Meeting in Palm Desert, California.

A member of the Law Faculty of the University of Pennsylvania since 1970, Professor Levin served as Chairman of the Pennsylvania State Legislative Reapportionment Commission and Founding Director of the National Institute for Trial Advocacy from 1971-73, Executive Director of the Commission on Revision of the Federal Court Appellate System, 1973-75, and Member of the Standing Committee on Practice and Procedure of the Judicial Conference of the United States from 1977-78.

Author of several books and numerous articles, Professor Levin has been a member of the National Institute of Corrections since 1977 and has served as Chairman of the Board of Certification for Circuit Executives since 1977. He is a member of the Order of the Coif, the American Law Institute, and the Board of Directors of the American Judicature Society.

The Gates Award is presented each year to a lawyer whose work has made significant contributions to the improvement of the litigation process in the United States.

## COMPETITION WINNERS

Georgia State University College of Law, Atlanta, Georgia, produced this year's winning team of the National Moot Court Competition. The team, presented at the 1988 Spring Meeting, was comprised of Linda G. Birchall, L. Craig Dowdy and Rebecca I. Jones. The Best Oral Advocate, Rebecca I. Jones, addressed the College on behalf of her team.

## 1989 ROSTER

Address change forms have been mailed to all Fellows. Any

changes in your Roster listing should be noted on the form and promptly returned to the National Office. Please note that each Fellow may have only one geographic listing in the Roster.

## EMIL GUMPERT AWARD

The Board of Regents, at its recent meeting in Laguna Niguel, California, conferred the 1988 Emil Gumpert Award on New York University School of Law, New York, New York.

New York University has had a clinical program since 1970. It has evolved substantially over the years, becoming progressively larger and more diversified. Today, the program consists of a three-year sequence of courses which exposes students to a wide array of lawyering activities and processes in a variety of teaching formats.

Through the presentation of the Emil Gumpert Award, the College recognizes institutions considered to have outstanding programs in trial advocacy.

## REPORT ON SPRING MEETING

The Marriott Desert Springs Resort in Palm Desert, California, hosted this year's 38th Spring Meeting of the College. The Board of Regents meeting in Laguna Niguel preceded the larger gathering of the Fellows. President Morris Harrell presided over the deliberations of 227 nominations to Fellowship — 169 of which were accepted — and the many reports of the College Committees.

President-Elect Philip W. Tone arranged an outstanding and provocative Professional Program for the 1200 Fellows and guests attending the Spring Meeting, and each day of the General Session found the meeting rooms filled to capacity.

Past President Grant B. Cooper delivered the Meeting's opening in-

vocation which was followed by welcoming remarks by President Harrell and addresses by Robert MacCrate, FACTL, President of the ABA, and J. Patrick Peacock, Q.C., Vice President of the Canadian Bar Association.

Robert L. Clare, Jr., a Past President, then introduced The Right Honourable Lord Griffiths of Govilon, MC. for induction into Honorary Fellowship. Accepting his plaque of membership, Lord Griffiths commented on the changes to the European legal system which are the direct result of the Anglo-American Legal Exchanges. He further spoke of those areas in which change was resisted due to the enormous financial implications stating, "I have the feeling that the time has come when in a future judicial exchange we should work together to seek a cure for the worst excesses of the tort system."

The General Session's second day began with the introduction of Ambassador Max M. Kampelman, The Counselor, Department of State, Washington, D.C., by his former partner Past President Leon Silverman. Ambassador Kampelman's speech covered the ongoing negotiations between the Soviet Union and the United States in their Nuclear and Space Arms Reduction Talks, as well as the changing social and economic environment within the Soviet Union. Ambassador Kampelman's speech appears as the featured article of this Bulletin.

Past President Griffin B. Bell then presented General Robert T. Herres, Vice-Chairman of the Joint Chiefs of Staff, who offered compelling thoughts about the relationship between our nation's military posture and its commitments to maintain that posture.

The Session's thrust then shifted from an international scope to a more localized issue when President-Elect Tone introduced Harvey L. Pitt, FACTL, partner in the firm of Fried,

Frank, Harris, Shriver & Jacobson, Washington, D.C., who addressed the current issues surrounding insider trading.

Afternoon professional seminars offered CLE credits and impressive attendances. The first seminar topic, "Punitive Damages in the Modern Civil Justice System" was moderated by Past President Thomas E. Deacy, Jr., Deacy and Deacy, Kansas City, Missouri, with panelists Wayne Fisher, FACTL, Fisher, Gallagher, Perrin & Lewis, Houston, Texas; Erwin N. Griswold, FACTL, Jones, Day, Reavis & Pogue, Washington, D.C.; Professor Roger C. Henderson of the University of Arizona College of Law, Tucson, Arizona; Charles B. Renfrew, FACTL, Director and Vice President - Law, Chevron Corporation, San Francisco, California; and Leonard Decof, FACTL, of Decof and Grimm, Providence, Rhode Island.

The second seminar topic, "Rule 11 and Professional Responsibility" was chaired by Hon. William J. Bauer, Chief Judge, United States Court of Appeals for the Seventh Circuit, Chicago, Illinois. Panelists included Benjamin R. Civiletti, FACTL, Venable, Baetjer, Howard & Civiletti, Washington, D.C.; Frank J. McGarr, FACTL, Phelan, Pope & John, Ltd., Chicago, Illinois; Professor Melissa L. Nelken, Hastings College of Law, San Francisco, California; Hon. Marilyn H. Patel, United States District Court for the Central District of California, San Francisco, California; Charles M. Shaffer, Jr., FACTL, King and Spalding, Atlanta, Georgia; Jerold S. Solovy, FACTL, Jenner and Block, Chicago, Illinois; and W. Foster Wollen, FACTL, Shearman & Sterling, New York, New York.

The final day of the meeting's General Session included the traditional President's Report, followed by addresses by Hon. J. Clifford Wallace, United States Court of Appeals for the Ninth Circuit, San Diego, California, and Bernard E. Witkin, San Francisco, California. Treasurer Charles E. Hanger from Brobeck, Phleger and Harrison, San Francisco, presented the 1988 Samuel E. Gates

Award to Professor A. Leo Levin, University of Pennsylvania College of Law, Philadelphia, Pennsylvania. Secretary Marvin Schwartz, Sullivan and Cromwell, New York, New York, introduced the winning team of the 1987 National Moot Court Competition and, finally, Past President John C. Elam, Vorys, Sater, Seymour and Pease, Columbus, Ohio, delivered the Induction Charge welcoming the new Fellows into the rolls of the College. Dan K. Webb, of Winston and Strawn, Chicago, Illinois, responded on behalf of his induction class.

## HONORARY FELLOWSHIP

The Right Honourable Lord Griffiths of Govilon, MC., a Lord of Appeal in Ordinary, became the College's most recent recipient of Honorary Fellowship at the 1988 Spring Meeting. On behalf of the Fellows of the College, Robert L. Clare, Jr., a Past President, presented the plaque of Honorary Fellowship to Lord Griffiths.

Born on Harley Street in London, William Hugh Griffiths seemed destined to the field of medicine as his father and uncle were both distinguished surgeons. This was, in fact, the path he followed upon entering Cambridge in 1946, however, soon thereafter, the study of law captured his interests.

When he was eighteen, Lord Griffiths' Welsh commitment led him to join the Welsh Guards in 1941. He served with the Second Battalion in the Guards Armoured Division until he was wounded shortly before the end of the war in Europe and was awarded the Military Cross.

His elevation to the Bench in 1964 was followed in 1971 by his appointment as a High Court Judge. He was a Judge in the Industrial Relations Court in 1973 and 1974. After five years as a Lord Justice in the Court of Appeal, he was made a Lord of Appeal in Ordinary in 1985. He has been chairman of the Security Commission since 1985 and has served

on many Law Reform Committees and has international standing as a jurist.

Among his many accomplishments, one claim he can make, that most cannot, is that Lord Griffiths played cricket for Glamorgan when they won the County Championship in 1948.

## NATIONAL OFFICE HAS NEW QUARTERS

The National Office of the College has relocated to 10866 Wilshire Boulevard, Suite 570, Los Angeles, California 90024. The office telephone number remains (213) 879-0143. Additionally, a new FAX machine has been installed and now may be used for document transmission. The FAX telephone number is (213) 208-6022.

## ANNUAL MEETING

The 1988 Annual Banquet of the College will be held Saturday, August 6, 1988, at the Metro Toronto Convention Centre, Toronto, Ontario. The 8:00 p.m. Banquet will be preceded by a 7:00 p.m. Reception in Hall A of the Convention Centre. The Annual Meeting is scheduled for 3:00 p.m. in the Essex Ballroom of the Sheraton Centre Hotel. Registrations for the Meeting and Banquet are still being accepted and should be returned to the National Office of the College as promptly as possible. Hotel accommodations can only be reserved through the ABA.

## CODE DISTRIBUTED

President Morris Harrell has recently distributed a copy of the College's newly revised Code of Trial Conduct to each of the United States Federal Appellate and District Court judges. Approximately 1,000 of the revised manuals were mailed and the response from the judges has been very favorable.

## WELCOME TO NEW FELLOWS

The College welcomes the following new Fellows who were inducted into Fellowship on Wednesday, March 9, 1988, in the Springs Ballroom of the Marriott Desert Springs Resort, Palm Desert, California.

### ALABAMA

*Birmingham*

JAMES E. SIMPSON

*Selma*

ARCHIE T. REEVES, JR.

### CALIFORNIA

*San Bernardino*

CAYWOOD J. BORROR

*San Diego*

PHILIP D. SHARP

### COLORADO

*Denver*

HAROLD A. HADDON

### FLORIDA

*Jacksonville*

SAMUEL S. JACOBSON

### HAWAII

*Honolulu*

WALTER S. KIRIMITSU

### ILLINOIS

*Chicago*

RICHARD L. BERDELLE

DAN K. WEBB

### KANSAS

*Topeka*

WAYNE T. STRATTON

### MISSOURI

*St. Louis*

THOMAS E. WACK

### NEBRASKA

*Omaha*

JOHN T. CARPENTER

### NEW YORK

*New York City*

NICHOLAS J. HEALY

FREDRIC W. YERMAN

### NORTH CAROLINA

*Greensboro*

WILLIAM L. OSTEEN

*Morgantown*

THOMAS M. STARNES, JR.

### OHIO

*Dayton*

LEO F. KREBS

### TENNESSEE

*Knoxville*

GEORGE W. MORTON

### BRITISH COLUMBIA

*Vancouver*

H. A. (BUD) HOLLINRAKE

### MANITOBA

*Winnipeg*

ALAN D. MacINNES

E. WILLIAM OLSON

HYMIE WEINSTEIN

### QUEBEC

*Montreal*

J. ARCLIN BLAKELY

### SASKATCHEWAN

*Regina*

ELTON R. GRITZFELD

## Calendar of Events

### 1988

• **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. 9** Illinois Fellows Meeting: Evanston, Illinois

• **Sept. 9-10** Iowa Fellows Meeting: Cedar Rapids, Iowa

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

• **Sept. 16-18** Minnesota Fellows Meeting: Brainerd, Minnesota

• **Sept. 22-25** Rocky Mountain Regional Meeting (CO, KS, NM, OK, UT, WY): Vail, Colorado

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

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

• **Oct. 14-16** Delaware, New Jersey, Pennsylvania Fellows Regional Meeting: Hershey, Pennsylvania

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

• **Nov. 10** Downstate New York Fellows Dinner: New York, New York

• **Nov. 11-13** District of Columbia, Maryland, West Virginia Fellows Regional Meeting: Williamsburg, Virginia

• **Nov. 17-20** 11th Circuit (AL, FL, GA, LA, MS, TX) Regional Meeting: Sea Island, Georgia

• **Dec. 2** Mississippi Fellows Dinner: Jackson, Mississippi

### 1989

• **Feb. 27-Mar. 3** Board of Regents Meeting: Boca Raton, Florida

• **Mar. 5-8** 1989 Spring Meeting: Boca Raton, Florida

• **Aug. 5** 1989 Summer Banquet: Honolulu, Hawaii

• **Nov. 2-5** 1989 Annual Meeting: New Orleans, Louisiana

### 1990

• **Mar. 4-7** 1990 Spring Meeting: Palm Desert, California



# President's Report



Morris  
Harrell

The 1988 Spring Meeting in Palm Desert, California was a huge success as more than 1,200 Fellows and spouses attended the meeting at the Marriott's Desert Springs Resort.

Our President-Elect did a great job in planning and presenting the professional programs. Also, the educational programs on the subjects of punitive damages and Rule 11 and professional responsibility were of high quality and very well received. We thank Phil Tone and all of the speakers for their participation in a most informative and entertaining meeting. Our Executive Director, Bob Young, and his staff did an excellent job in providing enjoyable social activities.

Certainly one of the highlights of the Desert Springs meeting was the address delivered by The Right Honourable, The Lord Griffiths of Govilon, MC at the opening general session on the occasion of his induction as an Honorary Fellow of the College. The presentation of the honorary fellowship is discussed elsewhere in this Bulletin.

The committees have been busy this year, and the programs of the College dedicated to the improvement of the standards and quality of trial practice and the teaching of trial advocacy have been particularly meaningful.

The College sponsored National Moot Court Competition winning team from Georgia State University was honored at our Spring Meeting and on March 24-26 the National

Trial Competition was conducted in Dallas. The winners of that competition will be our guests at the Annual Meeting in Toronto. The Emil Gumpert Award was presented to the New York University School of Law on May 26 by our Secretary, Marvin Schwartz.

The Committee on Special Problems in the Administration of Justice, under the leadership of Charles B. Renfrew, has been active in the study of punitive damages with the assistance of Professor Roger Henderson of the University of Arizona. The objective is to develop a policy statement that will meet the high standards of the College.

We are looking forward to the 1988 Annual Banquet and Meeting to be held in Toronto on August 5 and 6. The Banquet will be held at the Toronto Convention Centre. Following the Reception and Banquet there will be dancing and the traditional sing-along.

In my last report I expressed my concern over the decline in professionalism and shared a few thoughts with you regarding that subject. Also, I am particularly concerned with the lack of civility in our profession today.

Questions are being raised by some law professors, sociologists, historians and philosophers as to whether the practice of law is a business or a profession. Articles are being written raising the question as to whether lawyers should "reconsider" both the meaning and significance of professionalism in law rather than "rekindle" a spirit of professionalism.

There is no doubt in my mind that we should "rekindle" the spirit of professionalism rather than reconsider whether the practice of law is a profession. An integral part of professionalism must be the attitude of lawyers toward opposing counsel.

The revised Code of Trial Conduct of the College has recently been sent to all of the United States judges, and I have received numerous com-

plimentary letters of appreciation for making it available to them. With respect to the discretion of lawyers in cooperating with opposing counsel, the Code states: "The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts. In such matters no client has a right to demand that his counsel shall be illiberal or that he do anything therein repugnant to his own sense of honor and propriety." With respect to relations with opposing counsel the Code states: "A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. He should abstain from any allusion to personal peculiarities and idiosyncracies of opposing counsel."

In a recent lecture delivered by Si Rifkind, an eminent past president of the College, at the University of Pennsylvania Law School there was included "A Lawyer's Credo." I submit this creed to you as principles and precepts which reassert the professional character of the practice of law.

## A Lawyer's Credo

I believe with a perfect faith:

1. That such is the nature of the lawyer's calling that its practitioners must be, and view themselves as, ladies and gentlemen and, by virtue thereof, governed by the code of honor and chivalry which is part of our millennial tradition as appertaining to that status.

2. That lawyers are members of a *profession* and that by reason thereof self-interest may not enter into their attorney-client calculations.

3. That the lawyer's calling is a noble one and that its prac-

tioners are subject to the demands of noblesse oblige.

4. That the lawyer's calling is a learned one and its practitioners are subject to the necessity of continuing their acquisition of learning without end.

5. That lawyers are licensed beneficiaries of privileges and immunities received as gifts from the community in which they practice and that they hold these gifts in trust for the service of the community.

6. That lawyers are bound to have their work product not only characterized by the high-

est quality of which their talents are capable but also informed by integrity, loyalty to client, and devotion to justice.

7. That lawyers are burdened by an unflagging obligation never knowingly to use their talents to perpetrate injustice.

8. That lawyers are obligated to devote time and effort to elevate the law so as to approximate the highest ideals of the nation, to improve the administration of justice and to make access thereto available to all without invidious discrimination on account of origin, station or affiliation.

9. And, finally, that lawyers may never be, or give the appearance of being, licensed predators; they must conduct themselves as members of a ministry dedicated to the service of justice.

We are anticipating an outstanding meeting in Toronto in August and Rusty and I look forward to seeing you.□

*Morris Harrell*

Morris Harrell

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