



# THE BULLETIN

NEW PRESIDENT FACES TOUGH CHALLENGE

## DAVID J. BECK



DAVID BECK WITH A FEW OF HIS LONGHORNS.

David J. Beck knows he has chosen a challenging theme for his year as President of the College: reversing the trend of the vanishing trial.

“We’ve all been lamenting the vanishing trial phenomenon,” Beck said as he prepared to begin his term in September. “But now is the time for us to determine whether there is anything we can do about it. It is going to take some creative thinking, a lot of hard work and will probably involve contact with judges, corporate America and other groups to see what we can do to reverse this unfortunate trend.”

Beck, of Houston, is following three other Texans who have been Presidents of the College since its

founding in 1950—Leon Jaworski, Kraft Eidman and Morris Harrell. Beck worked with Jaworski (President 1961-

62) and Eidman (President 1977-78) at Fulbright & Jaworski in Houston. Harrell, of Dallas, was President in 1987-88. All three are deceased.

Leaving Fulbright, Jaworski in 1992 he founded Beck, Redden & Secrest, LLP, now a firm of thirty lawyers that was cited in the January 2005 issue of *The American Lawyer* as one of the nation’s top five litigation boutiques.

Beck said he wants the College to tackle the knotty problem of the vanishing trial because conditions, for example, that pushed the commercial world away from trials and into arbitration may be changing.

DAVID BECK, con’t on page 23

# COLLEGE SPONSORS LAW STUDENT ESSAY CONTEST

## TOPIC IS JUDICIAL INDEPENDENCE AND THE SEPARATION OF POWERS DOCTRINE

The College is sponsoring an essay contest for law students on the topic of Judicial Independence and the Separation of Powers Doctrine.

All students enrolled in United States law schools are eligible to enter, including those studying for advanced degrees. The winning essay will be rewarded with \$10,000 prize and the prize for the runner-up will be \$5,000. These prizes will be

funded by the Foundation of the American College of Trial Lawyers.

Essays are to be approximately 5,000 words in length, and the submission deadline is March 1, 2007. Notice of the competition has been sent to every law school in the United States. The winning essays will be selected by a panel of distinguished judges and retired judges drawn from the ranks of the College. ♦

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*A current calendar of College events is posted on the college website at [www.actl.com](http://www.actl.com), as are a current compendium of the ongoing projects of the College's National Committees.*

## AMERICAN COLLEGE OF TRIAL LAWYERS THE BULLETIN

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## FROM THE EDITORIAL BOARD

The College's principal asset is the Fellows from whose collective lives and reputations its stature has grown over the last fifty-six years. All of the Fellows are superb lawyers; that is a given. Beyond that, the rich variety of experiences they bring, the lives they have lived—are living—give it that special quality that sets it apart.

In this issue, we continue to focus on the stories of individual Fellows. In addition to an article introducing David Beck, who will become your president at the annual meeting in London in September (and his favorite horse), we profile Jervis Finney, who, at a time when many of his contemporaries are retiring, has taken on a second career of public service. We are publishing the reminiscences of Tom Chandler, an early Regent. We recount the unusual first-person story of two of the Fellows who volunteered to represent detainees at Guantanamo Bay.

We continue our effort to memorialize those Fellows who have passed from among us with a short account of their lives and careers.

And finally, we are publishing the first responses we received to our request for the stories of Fellows who served in World War II. We hope that seeing these in print will prompt more of you who lived through that experience to share your stories with us. We already have the names of many more of you who are veterans of that conflict, and we are in the process of developing a way to capture your stories.

Many of you are simply too modest to volunteer your own stories. We are therefore dependent on all of the Fellows to bring to our attention those World War II veterans among you about whom we should be aware.

The College office has brought to our attention a piece of history about the composition of the organization in its early days. We hope that the resulting article, focusing on the changes in our demographics over the years, will prompt you to reflect on your role in seeking out qualified candidates for Fellowship.

Over the years, the quality of the College's regional meetings has improved greatly. Many of you have had a part in planning state, province and regional meetings that have brought to the participants a meaningful program in addition to the fellowship that has always been a hallmark of our meetings. From time to time we become aware of a paper given at a regional meeting that translates so well from the oral form in which it was delivered into the written word that we choose to publish it.

We became aware of such a paper, given last Spring in Puerto Rico at the First Circuit Regional meeting by a Federal Circuit Judge, and we publish it in this issue. We hope that it will provide you with food for thought and that it will serve as a challenge to raise the bar in planning your future meetings. ♦

We welcome both thoughtful op-ed type articles and your suggestions for making *The Bulletin* more informative and useful. You can email them to [mellis2019@carolina.rr.com](mailto:mellis2019@carolina.rr.com) or mail them to Marion Ellis at the address on the masthead.

# A CLASH OF LEGAL CULTURES

UNITED STATES CIRCUIT JUDGE JUAN R. TORRUELLA

*(Editors Note: Associate Justice Antonin Scalia addressed the 2001 Annual Meeting of the American College of Trial Lawyers in New Orleans on the subject of his approach to constitutional interpretation, which he labels “originalism.” His remarks were reported in the Winter 2001-02 issue of the Bulletin. Speaking to the First Circuit Regional Meeting of the American College of Trial Lawyers at El Conquistador Hotel, Fajardo, Puerto Rico on March 3, 2006, Juan R. Torruella, United States Judge for the Court of Appeals for the First Circuit, delivered an address in the nature of a rejoinder to Justice Scalia’s approach, which the Justice had also recently addressed in a meeting in Puerto Rico. Judge Torruella’s remarks, slightly edited, follow. As is our custom in publishing opinions expressed by speakers at College meetings, we welcome comments in the form of letters to the editor or publishable rebuttal articles.).*

The theme that I have chosen to speak about today, which I have entitled *A Clash of Legal Cultures*, does not relate to such a current topic as the perceived differences between the western and Muslim worlds, or even such a legal subject as a discussion of issues of comparative law involving the common law and civil law systems, although I may tangentially touch on a related point later in my presentation. Rather I intend to address my remarks to the clash of the two home-grown legal cultures that have evolved in the United States regarding the appropriate methodology in the interpretation of constitutional issues before the courts. In this respect, I am inspired by the comments of another recent visitor to our shores, Supreme Court Justice Antonin Scalia, who addressed the local chapter of the



Federalist Society several weeks ago on the subject of his philosophy of constitutional interpretation, which he self-described as “originalism,” or “strict constructionism.”

Perhaps in keeping with today’s title, it could appropriately be labeled “legal fundamentalism.”

In this respect, he was quoted by Jonathan Ewing of the Associated Press, in an article that appeared on page 14 of the *San Juan Star* on February 15, 2006: “The Constitution is not a living organism, . . . you would have to be an idiot to believe that. . . . It is a legal document. It says something and doesn’t say other things.” There can be no room for personal, political or religious beliefs, Justice Scalia indicated. Proponents of the living Constitution want matters to be decided “not by the people, but by the Justices of the Supreme

Court.” “They are not looking for legal flexibility, they are looking for rigidity, whether it’s the right to abortion or the right to homosexual activity, they want that right to be embedded from coast to coast and to be unchangeable,” he is quoted as saying.

Perhaps before I go any further I should state for the record that nothing that I say here today should be attributed to any other idiot than myself. I realize that it is somewhat hazardous for a circuit judge to disagree publicly with a Supreme Court justice, but I’m hoping that Justice Scalia will remember, if by chance he comes across my remarks, that we are both duck hunters, and that I mostly speak in that capacity today. Of course, if the truth be known, his chagrin with me may very well be prompted not by what I am about to say, but by the fact that I am a much better shot than he.

Those important issues having been clarified, let me get to the crux of the matter at hand. Let me start by saying that I believe it is an unfortunate circumstance that the ongoing debate about the judicial process and about what is the appropriate standard that judges should follow in deciding constitutional issues, typified by Justice Scalia’s slip of the tongue (at least I hope that is what it was), is fueled to a large extent by ideological imperatives related to *Roe v. Wade*, 410 U.S. 113 (1973), and the abortion issue. I think it is telling that Justice Scalia in speaking about his originalist views specifically zeros in on that very subject as part of his reported remarks. It is, of course, no secret that this has been a recurring theme with him for some time, and naturally, he is entitled to his opinion, which I am well aware is entitled to considerable weight and deference (slip of the tongue aside). However - although the abortion

issue is obviously an important issue, particularly to women and religious groups, and of course also to the decisional process, and I do not belittle its importance in any way -- I believe that unduly focusing on the substantive content raised by that issue (that is abortion, with its religious and ethical connotations) distorts the larger field of constitutional interpretation and the fundamental questions raised by Justice Scalia’s appeal to originalism.

Certainly, the Supreme Court has been deciding constitutional issues, of diverse and varied natures, by going outside the four corners of that “legal document,” as my learned colleague refers to the Constitution, since day one, without such

a major and unrelenting fuss being made about strict constructionism or the lack thereof, as we now have. Thus, I contend, it is the abortion issue that has energized the forces, not the question of the appropriate

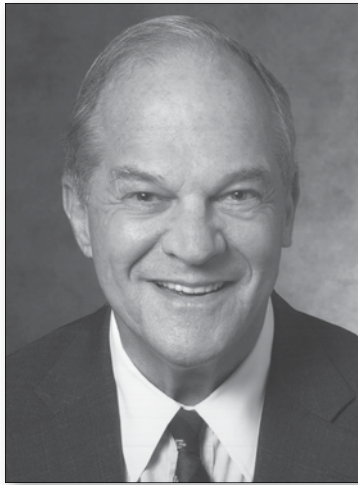
interpretative methodology. In their attempt to overturn *Roe* and win a reversal of the specific issue of abortion rights, the opponents of *Roe* blithely ignore what the Supreme Court has been doing since its inception. The associational rights of people are not mentioned in the Constitution or the Bill of Rights; the right to educate a child in a school of the parents’ choice is also not mentioned; nor is the right to study any particular subject or any foreign language; or the right to keep the state out of the marriage bed in dictating contraceptive practices. Yet the First Amendment has been construed to include all of these rights. And this list of “unspecified” yet well-established constitutional rights is not exhaustive.

The argument that *Roe v. Wade* should be overturned on the ground that it is contrary to the “originalist” or “strict constructionist”

## “UNSPECIFIED” CONSTITUTIONAL RIGHTS



# THE END OF A GLORIOUS YEAR



MICHAEL A. COOPER

This is my last opportunity to address you as President of the College. Indeed, when you read this report, I will have joined the ranks of Past Presidents, whom Whitney North Seymour liked to refer to as “Former Livings.”

It is impossible to encapsulate in a brief report the richness and variety of the experiences I have had this past year or the multifaceted activities of the College’s state, provincial, general and ad hoc committees and task forces. Let me then touch on three subjects—the Fellows and spouses Nan and I have met at the meetings we’ve attended, recent significant undertakings and accomplishments of College committees, and the role of the College in our profession and our justice system—and hope that my brief comments convey a recognizable sketch of this remarkable band of brothers and sisters.

Upon our arrival at state, provincial and regional meetings, Nan and I have invariably been thanked for making the effort to attend. I have increasingly felt that the principal thanks should go the other way. It is Nan and I who are indescribably grateful for having been given the opportunity to meet so many interesting, professionally committed and congenial Fellows and their spouses. They have been as varied as the topography of the continent they inhabit. Their willingness to be of assistance and their regard for one another, not just within a particular state or province but throughout the United States and Canada, was epitomized by the

prompt and generous response of Fellows to the Foundation’s request for assistance to the victims of Hurricane Katrina, including the many Fellows and other lawyers whose professional and personal lives were dislocated by that catastrophe.

At several dinners Fellows who have died during the past year were eulogized, and their widows have been invited to attend. At other events, tribute has been paid to longtime Fellows, including one, Tom Chandler of Tucson, who was celebrating the fiftieth anniversary of his election to fellowship in the College.

At all the meetings I attended, humor and good will were the order of the day, even among lawyers who might be appearing as adversaries in court the next day. Time after time, I was reminded of a statement about lawyers made many years ago by a great New York lawyer, Harrison Tweed. He said (I will substitute “Fellows of the College” for “lawyers”):

“I have a high opinion of Fellows of the College. With all their faults, they stack up well against those in every other occupation or profession. They are better to work with or play with or fight with or drink with than most other varieties of mankind.”

I have been blessed by the institutions with which I have been associated, in secondary school,

college and law school, in my firm, and in other professional and charitable organizations in which I have chosen to become involved. But the College has had a unique impact on my life, as it has been and remains unique in the role it can play in preserving the rule of law, improving the administration of justice and restoring the legal profession to the place of respect in society it once held.

The College's general committees and task forces have demonstrated their immense capacity to advance the College's mission. Some have authored written reports and manuals, such as the 2004 report of the Task Force on the United States Sentencing Guidelines, presaging the Supreme Court's *Booker/Fanfan* decisions, the International Committee's

2003 report (and 2005 supplemental report) on the military commissions for the trial of terrorists recently found unconstitutional by the United States Supreme Court in *Hamdan*, the 2005 report on the "vanishing trial" by the Ad Hoc Committee on the Future of the Civil Trial, and the recently

published Manual on Mass Tort Litigation, a monumental project begun by the Complex Litigation Committee seven years ago. Other projects nearing completion include the manual on cross-border litigation that is being prepared by the Canada-United States Committee and "The Anatomy of a Patent Trial," upon which the Complex Litigation Committee has been working continuously this past year. The first three of these College reports contribute well-reasoned views to legal discourse on some of the most pressing and difficult issues of our time; the last three are designed to assist bench and bar in the analysis of issues and presentation of evidence in complex cases to enhance the likelihood of a decision supported by the facts and in conformity to the law.

Other committees and task forces have been addressing issues that vitally affect the integrity of our profession and the administration of justice, including the vexing subject of lawyer advertising and the long-debated issue of cameras in the courtrooms. On these and other subjects, the College does not presume to have a monopoly on wisdom or insight, but the vast courtroom experience and high standing of our Fellows and the measured and informed positions taken by the College in the past entitle the College to be listened to carefully when it addresses an issue of contemporary concern.

The College's state and province committees, in addition to seeking out and investigating

candidates for election to Fellowship, participate in law student moot court competitions (including, but not limited to, the four competitions sponsored by the College in the United States and Canada) and mentoring programs for young lawyers; conduct trial skills training programs for public interest lawyers;

and assist Fellows in finding worthy pro bono assignments to undertake. These are all aspects of being a good citizen of one's community, which our Fellows continuously strive to be.

As experienced advocates, recognized by our peers as being among the best of the trial bar, we have a special obligation, for, as Sir Francis Bacon once pithily stated, "Every man is a debtor to his profession." The College acknowledges and accepts that obligation and has endeavored to discharge it by, among other ways, promulgating the Codes of Trial Conduct and Pretrial Conduct, which set forth the norms to which trial lawyers should aspire (not the minimal requisites to avoid disciplinary sanction). We also discharge that obligation by our teaching of law

## COMMITTEES ARE HARD AT WORK

# FELLOWS REPRESENTING GUANTANAMO DETAINEES HAVE UNUSUAL EXPERIENCE

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*The Spring 2005 issue of The Bulletin contained an article entitled “Fellows Responding to Need for Counsel in Guantanamo Cases.” The next issue carried a letter to the editor from Fellow **George Daly** of Charlotte, North Carolina: “**Jeff Davis** [FACTL] of Charlotte and I are representing . . . a detainee at Guantanamo. Thanks for the notice in your recent issue on how to go about getting involved in this project. . . .” The following article describes the subsequent experience of two lawyers from entirely different backgrounds, one who describes himself as a defender of “hippies,” free speech and abortion rights, the other a former Marine Vietnam War veteran, a lifelong Republican, whose civil trial career has been devoted principally to the defense of securities accounting fraud.*

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## WHAT WAS IT LIKE REPRESENTING A GUANTANAMO BAY PRISONER?

The Sunday, June 11, 2006 edition of *The Charlotte* [North Carolina] *Observer* carried the front-page headline “3 Detainees Found Dead at Guantanamo.” The news article that followed carried the byline of reporter Mike Gordon, an *Observer* reporter. There to do a profile of the colonel in charge of the Guantanamo Bay detainee facility, a North Carolinian, Gordon was the only reporter from the United States present at the facility on the preceding day, June 10, when the three were found hanging in their cells from nooses made of strips of bedding and clothing, rags stuffed in their mouths.

The military characterized the suicides as an act or “asymmetrical warfare” designed to bring more international pressure to close the prison. Some or all of the three had reportedly attempted to commit suicide before.

The June 11 article quoted Jeffrey J. Davis, a Charlotte attorney: “Quite frankly, we’re behaving in an unconstitutional manner and it scares the hell out of me. If this [detention for years without charges] can happen to these people, it could happen to you and me and to my children and grandchildren.”

Davis was not speaking in the abstract. In response to a Spring 2005 article in the *College Bulletin* entitled “Fellows Respond to Need for

Counsel in Guantanamo Cases,” he and George Daly, both Fellows of the College, had volunteered to represent Guantanamo detainees

What Davis did not know at the time was that one of the three detainees who had apparently taken his own life was his and Daly’s client.

George Daly had traveled to the prison in Cuba last May 16 and 17, like other attorneys representing Guantanamo detainees at his own expense, to meet with two clients he had acquired through the New York-based Center for Constitutional Rights. “I was told it was like Alice entering the looking glass, and that’s what it was like,” Daly said.

He found what he described as a typical U.S. military prison that could have been anywhere. There was no hint that he was on Cuban soil. Everything was super secret, and Daly, like all other visitors, had to receive security clearance before being allowed to visit.

He was escorted into a small cubicle in one of the five prison camps, where he and an interpreter spent several hours with one detainee client, Rashid al Quayed, a Saudi Arabian. “I was told he was chained to the floor by one leg, although I couldn’t see that,” Daly said. “He didn’t want anything about his case made public.”



Al Quayed was a last minute addition. Daly was told by the military that his original client, Mani Shaman Turki al Harbardi al Uteibi, also a Saudi, did not want to see him. A little over three weeks later, al Uteibi was reported to have committed suicide.

Daly said he was treated “very officially,” accompanied by a Navy Chief Petty Officer at all times. He stayed in what used to be called BQ (bachelor’s quarters) barracks now called CBOQ (combined bachelor’s quarters). “It was like a Motel 6 and cost me \$20 a night,” he said.

He had not known quite what to expect before his visit. He said he was told by Gitanjali “Gita” S. Gutierrez of the Center for Constitutional Rights, who is coordinating the efforts of all the lawyers who have volunteered, that he would be entering a case that wasn’t civil rights law, but “human rights law.”

Asked why he volunteered for the assignment, Daly, much of whose career has been devoted to civil rights cases, said, “My motivation is that I am terribly offended that the rule of law doesn’t apply to Guantanamo.

If they’re guilty, try and convict them. If they’re innocent, let them go, but this gulag where you are held without charges and without a trial offends me. I want to bring some legal process to Guantanamo.”

He continued, “I’ve never seen any other case where the national executive refuses to acknowledge being controlled by the law. . . . The only solution is political, using lawsuits and lawyers to get information out. The effect has been to focus international attention on Guantanamo, but that’s been basically a political solution, which is working itself out.”

Jeff Davis, a former Marine who served in the Vietnam War and whose practice has been principally commercial litigation, said he offered

his pro bono services because, “I think what our government has done is outrageous and I’m doing my small part to undo what it’s doing. All my life we were the good guys and now we’re not. We’re snatching people up all over the world without charge and holding them for up to four years while we torture them. I think we are creating a very dangerous situation for our citizens and for the world.”

On June 29, 2006, the United States Supreme Court handed down its decision in *Hamdan v. Rumsfeld*, holding that the military commissions created to try the Guantanamo detainees violated both the Uniform Code of Military Justice and the Geneva Conventions. One week earlier al Quayed, the client Daly had interviewed, was among fourteen Saudis who had been sent back home after being held for more than four years.

## “HUMAN RIGHTS LAW”

Ironically, Daly understands that al Uteibi died not knowing that he too was scheduled to be sent back to Saudi Arabia. Daly relates that the government will not confirm that al Uteibi committed suicide, but he knows that his family has buried him. “Jeff and I are now trying

to force the government to prove that our client committed suicide,” Daly said. Having received no documentation of al Uteibi’s death, they have filed motions to preserve evidence about his detention and suicide. The government’s response labeled their concerns a “conspiracy theory.”

Daly and Davis have also continued to represent al Quayed in an attempt to clear his name. Though released and returned to his native country after being held for four years without charges, he is still classified as an “enemy combatant” by the United States government.

Daly and Davis have agreed to take on another case. ♦

# PROFILE: JERVIS FINNEY

FELLOW BEGINS PUBLIC SERVICE CAREER  
WHEN MANY OF HIS CONTEMPORARIES ARE RETIRING

*[The following is another in a series of articles on Fellows who have chosen to march to a different drummer.]*



Photo by Stephanie Hopkins

JERVIS FINNEY

Jervis S. Finney, a Maryland Fellow since 1982 and now the chief counsel to Maryland Gov. Robert L. Ehrlich, Jr., is almost as well known for his way of expressing himself as he is for his work as a trial lawyer.

He speaks in elliptical sentences that remind one of Alan Greenspan's style. After a question to Finney, there is a long pause, and a response eventually emerges that at first appears to have no relation to the question. Only after reflection does the answer make perfect, logical sense.

Stephanie Hopkins, Finney's Executive Assistant and friend of 31 years, said, "He wants you to wait and hear what he is saying. He will start a story in one direction and then, in the middle of it, he will throw in a tidbit here and there. That's to see if you are paying attention. 'I've been with him so long people accuse me of speaking Jervieze.'"

Pamela J. White of Finney's former law firm, Ober, Kaler, Grimes and Shriver in Baltimore said, "I learned early on that it was always a big

mistake trying to finish Jervis's sentences for him."

"It's a little bit like having the Mad Hatter as a pen pal," an adverse Maryland state senator told the *Washington Post*, after having received two long

letters from Finney.

Finney, now 75, was senior litigation counsel at the Ober firm when he accepted the newly elected governor's offer to join the Ehrlich administration in January 2003 as chief counsel, criminal justice advisor and "very,very" senior policy advisor. Governor Ehrlich, a Wake Forest Law School graduate, had joined the Ober firm in 1982. Finney said of his return to government, "It was public service that motivated me generally, but also a definite desire to join Governor Bob Ehrlich in trying to improve Maryland government."

Finney said there have been some difficult times because Ehrlich is a Republican in an historically one-party Democratic state "controlled by partisan legislators who so fear a workable two-party system that will destroy their political

monopoly.” According to the *Washington Post*, the Democrats have been investigating since September 2005 whether the governor fired state employees improperly.

“Take a good look at it,” Finney said. “Some hired private attorneys and the attorney general’s office are representing the legislative committee and they’ve just gone on and on. Certainly, Governor Bob Ehrlich brought change and governmental efficiency to Maryland with worthy initiatives, but those legislators haven’t proved a thing against him. Yet, these legislative hearings have been endless, seventeen of them, at a cost, yes, waste of over a million dollars.”

Finney said, “Perhaps my major duty is being the primary assistant and advisor on Governor Ehrlich’s unique (for Maryland) initiative, from the beginning, for the fair and impartial selection of the most capable to be Maryland judges, irrespective of political affiliation, powerful friends, race, religion or whatever. Certainly much of the judiciary and many lawyers agree with the forthrightness and success of that endeavor of Governor Ehrlich.”

Regardless of the stress involved, Finney seems to be enjoying his new job. “I am working about one third harder than I ever did in my prime and at a little more than one third of the compensation,” he said with a chuckle.

College past president Ozzie Ayscue, who remembers that Finney’s name was still echoing around the campus at Phillips Andover when he enrolled there three months after Finney had graduated, observes that an ironic sense of humor has served Finney well. One day a few months after he had assumed his present post in the political jungles of Maryland, Ayscue relates,

Finney had called him for no apparent reason, announcing, “I just wanted to talk to somebody sane.”

“Jerve [pronounced Jerv-ee] and his family have mentored me since my teenage years,” Governor Ehrlich said. “Jerve’s brother, Redmond Finney, was the headmaster of Gilman, the Baltimore City prep school that provided me an excellent secondary school education. Jerve has counseled and supported me in many areas of law and politics, from my time at Ober Kaler as a young associate attorney until the present day, where he serves as my Chief Counsel. Jerve has his own style of writing and speaking, which can be quite lengthy and difficult for his opponents to understand. Accordingly, my typical response to a Jervism is, ‘Hey Jerve, what’s the bottom line?’ My bottom line is one of appreciation for having a Jerve Finney in my corner – in my life.”

“He looks and acts like a little kid in a candy shop,” said Pamela White, his former partner at the Ober firm. “The weight of the

world is on his shoulders and the duties that he performs are exhausting to be sure, but I’ve never seen him happier.”

Finney has been the “go-to-guy for lawyer ethics and integrity issues” over the twenty-five years she has known and worked with him, said White, who was president of the Maryland State Bar in 2001-02.

A 1949 Andover graduate, a 1953 graduate of Princeton University, Finney was an Army paratrooper for two years before going to Harvard Law where received his law degree in 1958 and joined the Ober firm. His specialties included product liability and manufacturer and financial class action defense, including the famous GAF asbestos cases in the 1980s. In an intense post

## A GOVERNOR’S MENTOR

trial hearing, a federal judge told him and a colleague, "You, you, you've put the cart before the chicken!"

Finney said, "Yes, I've been a lifelong Republican. I worked in the Eisenhower convention in 1952, helped campaigns after I got back to Baltimore in 1958, because the only Republican elected county-wide to the Baltimore County Council in 1962 and then elected to the Maryland Senate in 1966-74, and then served as U.S. Attorney from 1975 to 1978."

Aside from basic federal law enforcement, successfully attacking governmental corruption and new criminal computer fraud were his priorities. Later, he was placed on Maryland's State Ethics Commission, and in 1998 was selected by the presiding officers of the general assembly to serve as special counsel to the Joint Legislative Ethics Committee. At that time, Senate President Thomas V. "Mike" Miller, Jr. (D), the longest serving Senate President in Maryland history, speaking of Finney, remarked, "He has prosecutorial experience. He has legislative experiment, but most of all, he's a person of unquestioned integrity."

Although his paternal forebears were notable surgeons, Finney's maternal grandfather was a 1902 legislator and a prominent Baltimore lawyer. "Law, government and public service became of interest to me early on; they say they were in my blood," Finney said.

Asked what he believes is the most pressing issue facing the trial bar today, Finney replied, "Public government-performance litigation. There

are cases in Maryland federal and local courts against education, juvenile services, detention and social services, that are fifteen, twenty years old. The issue is why so long? It's not the courts being clogged; there is a lot of lawyer churning." Finney feels also that the "prevailing party rule desperately needs reform."

Finney's private life is filled with pursuits of the bluebloods—horses, sailboats and racquets. In 1993, he was prominent in the Maryland Hunt Cup as co-owner (with his brother and a long-time friend) of a hunter-jumper named Ivory Poacher, the winner. Started in 1894, the event is one of the most prestigious steeplechase races in the world.



JERVIS FINNEY SAILING IN NOVA SCOTIA

In addition, Finney is a skilled sailor, a hobby he and his family have pursued in Nova Scotia, where his family has owned Little Fish Island since 1908. Long a lover of racquet sports, he was a mid-Atlantic junior tennis doubles champion and, much later, a 55-plus United States and Canadian national squash doubles champion, "always carried through by my partners," he said. His was a half-century love of squash.

Finney places his Fellowship in the American College of Trial Lawyers among his most treasured endeavors. He said, "Following great training and discipline from my law firm, many of my finest legal relationships and colleagues arose in the American College of Trial Lawyers, through which I maintained integrity, hopefully improved intelligence and also learned a great more about legal issues and the broader spectrum of the practice of law. The College is a great contributor to the integrity and professional excellence of the legal profession. The College and my many friends there have my eternal gratitude." ♦

methodology of constitutional interpretation, if it prevails, will not just bring about the reversal of a case (the particular merits of which one can argue one way or the other without bringing down the house). I am more concerned with the aftermath of a reversal of *Roe v. Wade*, if it establishes “originalism” or “strict constructionism” as the law of the land by which all constitutional issues will be measured. Will the originalists then promote the reversal of those rights recognized under the First Amendment, but not specified, such as those mentioned above? There is not much question in my mind that if this self-imposed constitutional straight-jacket is accepted by a majority of the court, it will result in an era of constitutional interpretation with totally unworkable standards. For attempting to fathom what was in the minds of the Framers in the 18th century while situated in the 21st century is no more than just an elusive illusion.

Such a wild goose chase, pardon the hunting pun, can never have been intended by the Framers. There should be no worries about a “living” constitution with such a suffocating standard of constitutional interpretation. It is my opinion not only that the strict constructionist proposal goes against the Framers’ original intention, as is demonstrated by the open-ended language of many of the key provisions of the Constitution and several of its amendments (which I shall discuss presently), but additionally, the history of constitutional decision-making in the United States clearly shows that it is an extreme doctrine which has never been practiced by the Supreme Court in the manner proposed, notwithstanding the lip service that it receives when conveniently needed.

Two amendments, the Ninth and the Tenth come to mind when open-ended language is considered. The Ninth Amendment states that “[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage

others retained by the people.” The Tenth states that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” Thus, there are rights that are not specified in the Constitution, or the Bill of Rights, which exist and must be declared by someone. This open-ended language would appear to counter the arguments made to the effect that the courts and not the Framers have been creating rights that are not sanctioned by the Constitution. When all other arguments fail, the best tactic is to pick and choose whatever parts suit your position, and interestingly enough, that is exactly what the originalists, led by Justice Black (see his dissent in *Griswold v. Connecticut*, 381 U.S. 479, 511 (1965)) have done with the Constitution. So much for strict constructionism.

Although it is claimed that changes in public opinion or mores are irrelevant to interpretation of the Constitution, and of course at first glance this seems like a plausible point, the originalists not only use this argument as a shield, but also as a sword (well, at least as a small penknife), with a considerable component of populist appeal (and demagoguery, I believe) in this contention. After all, it will appear logical to the unwitting common citizen that judges sworn to uphold a written Constitution be made to “stick” to what “it says” in that “legal document.” Why should judges, who are not elected by that Joe or Jane citizen be able to overturn the actions of elected officials, when nowhere in the four corners of the “legal document” does it say that judges can do that? The problem is that for the strict constructionists, this is a self-defeating argument, for how can they argue that position unless they are also going to argue that *Marbury v. Madison*, 5 U.S. 137 (1803), should be reversed? For, isn’t *Marbury v. Madison* “living proof” that the Constitution is “living,” for where in the Constitution is the concept of judicial constitutional review to be found in



specific language? The answer is “Nowhere.” This concept was a judicial creation, uniquely American. It didn’t exist anywhere else in the world until recently, and doesn’t exist in Great Britain even today, so how could it have been in the Framers’ minds?

The proposition that the “legal document” should be interpreted for what it says sounds good on its face, but it is an argument that falls on its face upon closer analysis. For we all know as lawyers that very few legal documents are all-inclusive and foresee all possible issues that will arise between the parties beforehand. Which usually means that even the simplest legal document has to be interpreted by extraneous evidence. Now that is the case with a “simple” document, what about complex ones, like a Constitution written over 200 years ago and meant to apply universally to varying circumstances and epochs? Can we possibly rely on just the conditions that existed at the time of its ratification in applying it to the problems of today’s society?

When one reads the Constitution, one finds specific provisions, for example, that the President must be native born and 35 years old to qualify for the office. Clearly, someone who is 34 years old at election time does not qualify. Thus a strict, literal reading of that provision is clearly warranted. But what about someone born in Puerto Rico, where we are since 1917 U.S. citizens at birth? Can someone who meets the age requirements move to New York and run for President as a native-born citizen? Where in the four corners of the “legal document” or the Federalist Papers would an originalist justice look for the answer to that originalist conundrum?

Questions of interpretation of the Eighth Amendment, which as you know prohibits “cruel

and unusual punishments,” or other open ended clauses, such as the due process or equal protection provisions, are perhaps even better examples. All of these provisions have evolved with the passage of time by way of judicial interpretation, with not much thought being given to second guessing the Framers. What was acceptable punishment in the way of prison conditions in the 18th century would today in many cases be deemed unacceptable and unconstitutional under the Eighth Amendment. The process due to a public employee fired because he or she was in the “wrong” political party under Andrew Jackson’s administration would be considerably different than what the Supreme Court has decided is now required under *Perry v. Sindermann*, 408 U.S. 593 (1972), or *Rutan v. Republican Party*, 497 U.S. 62 (1990).

The concepts of liberty, equality, and privacy, among others, have gone through substantial modifications by reason of the changing values of the American people with the passage of time, which even the Supreme Court cannot help but notice, and thus, its decisions have

eventually adjusted to reflect these changes, as I believe they should. This is the way the system was designed to evolve, to be self correcting. Call it a “living Constitution” or whatever you wish, but certainly not a fossilized one.

One thing is certain, no society can afford to remain static, and the law, particularly constitutional law, which is the fabric that holds society together in relative cohesion, cannot lag too far behind society or it runs the risk of becoming irrelevant. Which is not to say that the Supreme Court should render its judgments on the basis of public opinion. But this is not to say that it should be totally oblivious to the changes in its natural environment. The law must change slowly,

“THE LAW  
MUST CHANGE  
SLOWLY...”

for this slowness gives stability to society. But slowness is not the same as immobility, which is what is implied in originalism. The problem with strict constructionism is that it is based on the underlying premise that judges don't "make" law. That is simply not the case, has never been the case, and if originalism is the touchstone that we must look to, then I say it was never intended to be the case by the Framers. In fact, under the Constitution, all three branches of government, including the executive branch (I refer you to *In re Neagle*, 135 U.S. 1 (1890)), make law, although obviously this is principally a function of the legislative branch.

In this respect, it must be remembered that the Founders were familiar with how common law courts operated. A substantial number of them were trained in the law. English common law courts "made law" as part of their everyday functions. Thus *Marbury* was accepted (I refer you to that Court's reference to Blackstone and the common law courts of justice), even though there was no specific provision in the "legal document" authorizing such a then revolutionary concept, whereby the Supreme Court, an unelected body, could invalidate a law enacted by Congress, an elected body.

The common law background of our constitutional system is of importance in understanding the basic fallacy of the straight-jacket of originalism. The U.S. Constitution, one of the first written constitutions in modern history, although serving as a model for many others since then, is clearly distinguishable from most, particularly from those in civil law countries, because of its comparative brevity. In most of those countries, their constitutions are lengthy because of the

detail with which the various subjects are covered. For example, consider the following gross approximation. The Argentina Constitution has 129 articles spanning 26 pages when printed from the internet. The Venezuelan Constitution is even longer with 350 articles and 82 pages. In comparison, the U.S. Constitution has 7 articles and 27 amendments spanning only 17 pages.

Because of the code background that is traditional in civil law jurisdictions, their constitutions are much longer. In that legal culture, judges have a very limited function, particularly vis-à-vis the "making" of law. In civil law countries, the laws and constitutions usually spell out every right and procedure in detail, and the judges' function is considerably more limited when compared to

that of common law judges. Under our legal culture, judges have a more proactive role in deciding what the law is, and they have traditionally been expected to fill in the gaps to a larger extent when the elected branch accidentally or intentionally leave spaces which the courts

must fill. This was known by the Framers and built into the system by them, although not specified as such. In this context, arose the Court's decision in *Marbury*.

In this respect, the language of the Supreme Court in *United States v. Carolene Products Co.* is most instructive and which I find particularly apropos:

Prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.

## COMMON LAW BACKGROUND

304 U.S. 144, 152-53 n.4 (1938). Despite such language, it was not until 1954 that the Supreme Court finally overturned *Plessy v. Ferguson*, 163 U.S. 537 (1896), a decision as activist as has ever come out of the Supreme Court, lacking any foundation in the provisions of the Fourteenth Amendment, to which a non-originalist Supreme Court added the word “separate” to the “equal” to reach a predetermined result. Had the Supreme Court not finally stepped in almost 60 years later in *Brown v. Board of Educ.*, 347 U.S. 483 (1954), to end segregation, the political branches, so glorified under the mantle of “democratic government” by the originalists, would still be debating the subject.

What I find most disconcerting about originalism is the double standard by which it is applied by its proponents. I would find it more credible if the strict constructionists applied their mantra in a consistent manner across the constitutional spectrum, and with the same vigor, to issues other

than just overturning of *Roe v. Wade*. Frankly, the claim that *Roe* lacks any support in the language of the Constitution is difficult to square with the originalists’ forthrightness when made by the same advocates that remain impassive and oblivious to Puerto Rico’s unequal condition, justified by a judicial aegis devoid of any constitutional support in the language of that “legal document.”

Democracy, of which I am a firm believer, is not an absolutist solution to every human problem. Minorities, and those at a disadvantage for inappropriate reasons, can be oppressed by the majority, and thus should be protected under our constitutional system even against that democratic

majority. Large portions of our Constitution, particularly the Bill of Rights, are anti-majoritarian. Because the protection of these insular minorities ultimately falls upon the courts, these institutions must face the displeasure of the democratic majority.

Displeasure with *Roe v. Wade* by activist groups, just as activist as those whom they accuse of activism, would have us reject a time-honored method of constitutional interpretation in favor of “originalism” based on a perceived intent of the Framers, allegedly gleaned from the Federalist Papers and the like. Can one discern the Framers’ original intent from such opaque documents as

the Federalist Papers, which were basically propaganda to promote the ratification of the Constitution by the states? In my view, the Federalist Papers are about as useful in determining the original intention of the Framers on almost any constitutional issue as the Dead Sea Scrolls are

in interpreting the New Testament. I suggest you look into how the Federalist Papers were prepared and who had real input into their preparation. I suggest that you would have some degree of scholarly disappointment in what you would find in that respect. They are not a verbatim record of the debates, and they are not an unbiased statement of the proceedings that preceded the ratification of the Constitution and the Bill of Rights.

If the attack is allegedly on unelected judges deciding the meaning of the Constitution, I pose the question: What is intrinsically more democratic about reliance on such inscrutable evidence as the Federalist Papers? Even if they were an

## DEMOCRACY NOT ABSOLUTIST SOLUTION

accurate representation of the Framers' beliefs at the time, does it justify their use for the purpose of determining the solution to constitutional problems that arise 200 plus years hence, problems the Framers did not even imagine existed, much less considered would be litigated before the courts? Looking to such papers for evidence of constitutional intent is like looking through most legislative history, which I believe Justice Scalia himself has referred to as "looking for friendly faces in a crowd" to support you.

If an originalist like Justice Scalia were able today to talk to the Framers and Founding Fathers about his strict constructionist theories and about how he believes they intended the Constitution to be interpreted today, I suspect that people as practical as Benjamin Franklin, who was an inventor and

scientist; Thomas Jefferson, who was used to the continuous adaptation and changing circumstances required of a rural society bordering on frontier wilderness, of which he was a part; or a Founding Father such as George Washington, who had recently fought in the Indian and Revolutionary Wars, with all of the inherent uncertainties that such conflicts entailed, would say to Justice Scalia, "Your honor, remember what Tom Jefferson wrote to Madison, 'the earth belongs in usufruct to the living; . . . the dead have neither powers nor rights over it.'"

I rather like a living Constitution, and hope that it will ripen to old age and continue to serve us all, healthy and vigorously for a long time to come.

Thank you much for listening. ♦

## FELLOWS TO THE BENCH

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

### **JONATHAN B. CONKLIN**

Fresno County Superior Court  
Fresno, California

### **JOSEPH D. JOHNSON**

Shawnee County District Court  
Topeka, Kansas

### **FRANK MARROCCO**

Ontario Superior Court of Justice  
Toronto, Ontario, Canada

### **DON W. POOLE**

Criminal Court of Hamilton County,  
Eleventh Judicial Circuit of Tennessee  
Chattanooga Tennessee

### **DOUGLAS C. SHAW**

Ontario Superior Court of Justice  
Thunder Bay, Ontario, Canada

### **PAUL M. WARNER**

United States Magistrate Judge  
Salt Lake City, Utah

## MASS TORT LITIGATION MANUAL PUBLISHED

The long-awaited Mass Tort Litigation Manual, the product of a monumental effort of the College's Complex Litigation Committee, chaired by Fellow **Lawrence T. Hoyle** of Philadelphia, is now available for purchase. Published by Matthew Bender, it is available through LexisNexis Bookstore.

The work reflects the experience of dozens of Fellows of the College who are specialists in handling mass product liability claims involving personal injury or property damage resulting from exposure to allegedly defective products or toxic substances. The Committee had drawn upon their experience by soliciting responses from all the Fellows of the College and assimilating the responses of those with experience in this difficult area of law and procedure.

Mass torts litigation is defined as involving:

- Massive, unpredictable numbers of claims
- Dispersion of claims, with actions in numerous state and federal courts
- Injuries manifested over extended periods of time
- Wide variety of claimed injuries and levels of damage
- Uncertain liability and causation, often involving complex scientific evidence

The Manual addresses such subjects as aggregation of claims, pretrial proceedings, discovery, settlement, trial and bankruptcy and includes tables of cases and applicable statutes.

# NATIONAL TRIAL COMPETITION AGAIN SEEKS FELLOWS' PARTICIPATION

Following on the success of the National Trial Competition Committee in recruiting Fellows to participate in the 2006 regional competitions, the committee, led for 2007 by committee chair and former Regent Judge **Garr M. "Mike" King**, Portland, Oregon, and vice-chair **Douglass Farnsley** of Louisville, Kentucky, is seeking even broader participation by Fellows in the 2007 regionals.

Since its inception 31 years ago, the National Trial Competition has been co-sponsored by the Texas Young Lawyers and the College. Students from 150 law schools participate, and the competition begins with thirteen regional competitions which are held across the United States.

Each competition is hosted by a law school within the region. The judges, three to a trial, one presiding, the other two sitting as a jury, score and critique the performance of each participant. In this way, the experience goes beyond being simply a competition and becomes a more rewarding learning experience.

The National Trial Competition provides an excellent opportunity for Fellows to provide guidance and support to the next generation of trial lawyers. In the era of the "vanishing trial," this opportunity may be more important than ever.

Law student participants have universally reported that the participation of Fellows as presiding and critiquing judges has immensely enhanced the value of their experience in the competitions. The educational value of having their presentations weighed and subjected to constructive criticism by

experienced trial lawyers cannot be underestimated.

Adding to the experience, Fellows in a number of the regions organized receptions and other social gatherings, which enhanced the collegiality and fellowship associated with the event.

In response to an article in the Summer 2005 Bulletin, Number 51 at p. 25, an unprecedented number of Fellows, upwards of 225 of you, volunteered a day or so to help make the 2006 regional competitions a success. The success of that effort, led by 2006 committee chair Judge **Phillip R. Garrison** of Springfield, Missouri, and its impact on the students who participated was the subject of an article in the Spring 2006 *Bulletin* at p. 22.

An anonymous coach for one of the schools in the 2006 competition commented, "We had the best judges I have seen at NTC regionals. I felt confident all judges had actually tried cases! Congratulations for a job well done."

The students were not the only beneficiaries; the Fellows also found the experience to be rewarding. As Regent Joan Lukey commented, "It was great fun. What incredibly talented teams I was privileged to judge!"

The members of the National Trial Competition Committee invite you to look over the list of regionals, to select the regional closest to your home, and to get in touch with the listed ACTL contact. A number of Fellows drove five hours or more to participate in the February 2006 regionals; distance should not be deterrent to participation!

**LOOK FOR THE 2007 HOST SCHOOLS AND DATES ON THE FOLLOWING PAGE**



# 2007 NATIONAL TRIAL COMPETITION

## REGIONAL COMPETITION HOST SCHOOLS AND DATES

*The schedules and locations of the 2007 regional competitions and the contact person to whom you may volunteer your participation follows:*

### REGION 1 (CT, MA, ME, NH, RI, VT)

Boston College, Boston, MA  
Dates: February 8-11, 2007 (pending)  
ACTL contact: **Michael Angelina**  
mangelini@bowditch.com

### REGION 2 (NY)

Fordham University School of Law, New York, NY  
Dates: February 1-4, 2007  
ACTL contact: **John Maloney**  
jmaloney@carterconboy.com

### REGION 3 (DE, PA, NJ)

Temple University School of Law, Philadelphia, PA  
Dates: February 9 - 11, 2007  
ACTL contact: **Carmen P. Belefonte**  
Carmen@belefontelaw.com

### REGION 4 (DC, MD, VA)

George Mason University College of Law, Fairfax, VA  
Dates: February 1-3, 2007  
ACTL contacts: **William D. Dolan III**  
WDDolan@venable.com  
Elaine Bredehoft  
ebredehoft@charlsonbredehoft.com

### REGION 5 (FL, GA, SC)

Emory University School of Law, Atlanta, GA  
Dates: February 9-11, 2007 (pending)  
ACTL contact: **Tony Cochran**  
alc@cclblaw.com

### REGION 6 (KY, MI, OH, WV)

Salmon P. Chase College of Law Highland Heights, KY  
Dates: February 9-11, 2007  
ACTL contact: **Gerry Rapien**  
rapien@taftlaw.com

### REGION 7 (AL, MS, NC, TN)

Campbell University Law School Buies Creek, NC  
Dates: February 15-17, 2007  
ACTL contact: **Rufus Pennington**  
rufusna

### REGION 8 (IL, IN)

University of Illinois – Champaign/Urbana Champaign, IL  
Dates: February 15-18, 2007  
ACTL contact: **Robert W. Neirynck**  
rneirynck@cwlawoffice.com

### REGION 9 (AR, IA, MN, MO, WI)

Washington University St. Louis, St. Louis, MO  
Dates: February 16 - 17, 2007  
ACTL contact: **Frank Gundlach**  
fgundlach@armstrongteasdale.com

### REGION 10 (CO, KS, MT, ND, NM, NE, OK, SD, WY)

University of Colorado School of Law Boulder, CO  
Dates: February 16 - 17, 2007  
ACTL contact: **Pamela Mackey**  
pmackev@hmplaw.com

### REGION 11 (LA, TX)

Louisiana State University, Baton Rouge, LA  
Dates: February 2 - 4, 2007  
ACTL contact: **Joe Redden**  
jredden@brsfirm.com

### REGION 12 (ID, N.CA, NV, OR, WA)

University of California Hastings College of Law  
San Francisco, CA  
Dates: February 17-18, 2007 (pending)  
ACTL contact: **James P. Bennett**  
jbennett@mofo.com

### REGION 13 (AZ, S.CA, UT)

University of Utah S.J. Quinney College of Law  
Salt Lake City, UT  
Dates: February 8 – 10, 2007  
ACTL contact: **David Greenwood**  
GreenwoodD@howrey.com

# TOM CHANDLER MEMOIR

*Thomas Chandler, Tucson, Arizona, a 1956 inductee, served as a Regent from 1968 to 1972. The following is an edited version of the reminiscences of his years in the College that he recently recorded for the College's Heritage Committee.*



In the early 1950s, I learned that Mark Wilmer and Elias Romley, two of the best Arizona trial lawyers, had been inducted into the American College of Trial Lawyers. I knew little or nothing about the College, but knowing that neither of these men would join just any lawyers' group thirsting for members I was sure that the College was a very worthwhile organization.

In August of 1956, I stood in the lobby of the Baker Hotel in Dallas, hoping to find someone in a tuxedo who could tie my black tie so I could attend the banquet at which I was to become a member of the College. A fellow inductee and a Kansas City lawyer, J. D. James, whose first name was Jesse, did the job on the tie and I went to an event that has made a real impact on my personal and professional life. I became a Fellow of the College.

At the induction ceremony, our Chancellor Emil Gumpert gave the prospective inductees a charge that fairly stated his views of what he believed the purposes of the College were.

Emil Gumpert reminded us of the distinction between trial lawyers and other members of the Bar and said that the portals of the College were only open to those who had mastered the art of advocacy and were possessed with a high degree of personal integrity. He asked Fellows to look upon our gathering as a group striving to improve and elevate the standards of trial practice, the administration of justice and the ethics of trial lawyers.

Emil Gumpert also stressed that in our meetings, with utter freedom and equanimity, we should go from labor to repose, obliterate the recollection of our distractions, controversies, and trials for the moment, and go from the rush and tumult and uproar of our daily lives into quiet fellowship and congenial society of our Fellows, finding pleasure and charm in our contemporaries and taking the keenest delight in exalting our friendships.

Emil Gumpert's message had two parts. One part was to improve trial practice and the administration of justice. The other part was to

get to know lawyers from all over this and other countries, and savor and nourish the friendships that one made.

My lawyering skills have improved as a result of my membership in the College, but the lifelong friendships that have been forged and fond memories of meetings have been much more important than my continuing legal education. Those who knew Emil Gumpert will remember how important fellowship and enjoying the company of other members were to him.

Our Chancellor and Founder, Emil Gumpert, welcomed the new inductees into the College, and one could glean from his welcome his vision of the College. In my nearly fifty years of Fellowship, I have seen the College grow and the culture of the College change. The growth and the change was inevitable, but like so many old people, I miss the good old days.

However, the size of the College does not prevent a member from making friendships that endure a lifetime. I cannot remember a meeting that I did not find a new friend.

In my early years, the culture of the College was more in keeping with fellowship and personal friendships. In the spring of 1957, we met in Biloxi, Mississippi at a small and delightful little resort hotel. We golfed, visited, took a trip to the Bellingrath Gardens near Mobile and rested. At a luncheon at which Justice Brennan was the speaker, our President Jesse Nichols gently reminded the Justice that the commitment to the golfers required him to end his remarks promptly at noon. We met new friends, exchanged war stories and indeed found pleasure and charm in the illustrious company of our contemporaries.

Another early spring meeting was held at the

Homestead in Hot Springs, Virginia in 1958. Here new friends were made and some very entertaining events took place.

My first Spring meeting as a member of the Board of Regents was in March of 1969 in Houston, Texas. Leon and Janette Jaworski went beyond the call to host us. Leon even provided young associates to fill our golf foursomes. I asked one young man if he was not pleased to leave the office and play golf and his response was, "Not when I have to be back to work and stay until midnight."

I have had the opportunity to personally meet and know all the past Presidents of the College from Emil Gumpert (1950-51) through Chuck Hanger (1990-91). That is forty in number. Cody Fowler served two terms. I also personally knew many that followed the first forty.

## FRIENDSHIPS THAT ENDURE

Among the first forty you will find many true giants of our profession including Emil Gumpert, Cody Fowler, Albert Jenner, Leon Jaworski, Whitney

Seymour, Bernie Segal, Frank Raichle, Bob Meserve, the Honorable Lewis Powell, Barnabas Sears, Robert Clare, Simon Rifkind, Alston Jennings, Leon Silverman, Griffin Bell, Phil Tone and Ralph Lancaster. Six of the first forty were also presidents of the American Bar Association. Other members of the College also became presidents of the ABA. The College can also be proud of its contributions to the administration of justice as well as enhancing the professional and ethical standards of the trial bar.

On September 30, 2006 I will have practiced law for sixty years and during that time have had many great experiences. Without doubt, the fondest memory that I will ever have about my career is my membership in the American College of Trial Lawyers. ♦

# GUMPERT AWARD NOMINEES SOUGHT

The Emil Gumpert Committee is once again seeking a response from Fellows who may know of worthy applicants for the 2007 Emil Gumpert Award. The purpose of the Award is to maintain and improve the administration of justice. A program considered for this award must adhere to principles of ethical and professional advocacy, serve an important public need, and demonstrate that an award of \$50,000 would be meaningful in terms of helping it to accomplish its goals.

The goal of the Gumpert Award is twofold: to confer on a worthy recipient the honor of an award recognized throughout the legal community and to help elevate the profile of the College.

The first award winner, in 2005, was Dakota Plains Legal Services of Mission, South Dakota, a program devoted to the legal needs of the Native American population on a remote reservation. The award was used to create an online resource

tailored to the unique legal needs of Native Americans and available to those who undertake to represent them.

The 2006 winner, Legal Aid University of Boston, is an innovative program offering both online and direct training programs for legal services lawyers throughout the United States. Its award is the subject of a separate article in this issue of the *Bulletin*.

If you are aware of a program worthy of consideration, go to the ACTL website, [www.actl.com](http://www.actl.com), and click on Emil Gumpert Award. You will find there the application/nomination form for the award. You can use that form to nominate an organization, or you can send the name and address of the organization to your State or Province Chair, who will forward it to the Chair of the Emil Gumpert Committee for follow-up action. You may also refer your nominee directly to the ACTL website and have them complete the application/nomination form and submit it directly. ♦

## ERRATA

We managed to violate thrice in one issue the time honored maxim “say anything you want about me, but spell my name right.” On page 27, we managed to rename former Regent Louis W. Fryman “Lewis,” on page 57 we managed to put an extra letter in Puerto Rico State Chair Eugene F. Hestres last name, and on page 51 we misspelled the name of Judge Patricia Seitz. We apologize for the errors.

"You had companies that were very concerned about punitive damages and runaway juries, so they built arbitration provisions into their contracts," he said. "They wanted a dispute resolution system separate and apart from our judicial system. But things are changing. Punitive damages are not as much of a problem as they once were. You now have punitive damage caps in many states, including Texas. Also, companies are beginning to realize that arbitration really isn't the panacea they were told it would be. They were told that arbitration would be faster, cheaper and that you would get a so-called 'just result.' But my experience is that it's not faster, it's not cheaper, and discovery is usually about the same as in litigation. And instead of 'just results', arbitrators frequently just split the baby, so everybody is upset about the result. You then superimpose on top of all that the fact that you can't appeal a bad decision. So for a lot of reasons the bloom may be coming off the arbitration rose."

A 1965 graduate of the University of Texas Law School, Beck was inducted into the College, of whose existence he had learned from Eidman, in 1982. "At my first meeting as a Fellow I was in absolute awe, because four United States Supreme Court justices were present and Leon Jaworski introduced me to each of them," Beck recalled.

He had already worked with Eidman in bringing about the College's sponsorship of the National Trial Competition. As a member of the board of the Texas Young Lawyers Association, Beck shepherded the contest into existence in 1975. He took the idea to Eidman, who convinced the Board of Regents to support it.

"I thought there was a real deficiency in our law schools as to how we were training students who wanted to become trial lawyers," Beck said. "There were moot court competitions available, but they involved an appellate court approach. That didn't do much for those law students who wanted to become trial lawyers. My notion was that we would create a competition among the country's law schools so they would be forced to develop some kind of a trial advocacy program."

Before he perfected the idea, he went to Harvard Law School to get advice from Professor Robert Keeton. "He gave me invaluable advice and helped me secure the support of the Litigation Section of the American Bar Association for our Competition."

The first year's Competition was in Houston and the problem was an issue that was involved in a case Beck was handling at the time. "It was a personal injury case that raised the issue of whether a defendant could invoke the 'seat belt' defense, a hot issue at the time. Could a defendant take advantage of the

plaintiff's failure to wear a seat belt to mitigate damages or prevent the plaintiff from recovering at all?"

In that first year, the student team from Harvard won the contest among about 60 law schools. In the 2006 Competition, students from more than 150 law schools participated in regional contests held in 13 states with Fellows serving as judges. In the finals at Dallas last March, Loyola Law School of Los Angeles won the \$10,000 first place award, named after Eidman, who was instrumental in obtaining College support for the Competition during its infancy.

## NATIONAL TRIAL COMPETITION FOUNDER



Today, almost all law schools include advocacy training in their curricula.

Beck said he had wanted to be a trial lawyer since his early high school days in the small town of Port Arthur, although no one in his family had ever graduated from college, much less practiced law. A nun who taught him encouraged him to pursue a legal career, and he supported his law school education working in construction during the summer and working 20 to 35 hours a week in the Law School library and at an Austin law firm during the school year.

After graduation, he went to work for Fulbright & Jaworski and ultimately became a senior partner. Beck is a very active trial lawyer. This past Spring he was in trial nine out of sixteen weeks. A generalist, he is listed in four different areas in The Best Lawyers in America.

Beck was elected president of the State Bar of Texas in 1995-96 and is a past president of the International Association of Defense Counsel. He is a past winner of the University of Texas Law School Faculty Award and the Honorary Barrister Award. Most recently, he was honored with the Anti-

Defamation League's 2005 Jurisprudence Award presented each year to those who demonstrate a devotion to the principles enshrined in the U.S. Constitution, commitment to the democratic values of the United States, and dedication to fair and equal justice for all. In 2004, he was appointed by Chief Justice William Rehnquist to the Judicial Conference Standing Committee on Rules of Practice and Procedure.

Beck has published numerous law journal articles and has appeared as a lecturer on various bar association and law school CLE programs.

He and his wife, Judy, have three adult children. Lauren is a partner in a Houston law firm. David is a lawyer living in San Antonio after serving as a Marine Reconnaissance trooper in Iraq. Daughter Allison has her MBA and is in commercial real estate in Houston.

Beck likes to relax by jogging and playing golf "poorly," but he especially looks forward to getting away to the family's 500-acre ranch near Blanco, 200 miles to the west of Houston. Here, he enjoys looking after his registered longhorn cattle, and taking rides on his favorite bay horse, Silky. ♦

## DAVID J. BECK

David J. Beck, along with Joe Redden and Ron Secrest, founded Beck, Redden & Secrest, L.L.P. in January, 1992. He was formerly a senior partner of Fulbright & Jaworski, L.L.P. in Houston, Texas.

Mr. Beck is a very active trial lawyer and has been throughout his professional career. He was named by the National Law Journal as one of the top 10 trial lawyers in the United States for 1998, and was named by the

National Law Journal in 1999 as one of the top trial lawyers in the Southwest. After a poll of Texas lawyers in 2002, he was listed by the Texas Lawyer as one of the "Go To Lawyers For Lawyers In Trouble." In November of 2003, and again in 2004 and 2005, a statewide survey by Texas Monthly Magazine named him as one of Texas' "Top 10 Super Lawyers." In 2004, 2005, and 2006 he was named the Top Super Lawyer. He has been named one of "The Best Lawyers in America" by

Woodward & White since 1987, and is currently one of the few attorneys listed in four areas of practice.

He has also been named a Fellow in the International Academy of Trial Lawyers, an Advocate in the American Board of Trial Advocates, and an "Honorary Overseas Member" of The Commercial Bar Association ("COMBAR"), a preeminent association of English barristers. Mr. Beck served as President of

the State Bar of Texas in 1995-96. He is a past recipient of the prestigious University of Texas Law School Faculty Award and the State Bar of Texas Presidents' Award. He also received in 1995 the distinguished "Honorary Barrister" Award from the University of Texas Law School Board of Advocates. In 2005, he was named as a member of the Board of Trustees of The Center for American and International Law.

Mr. Beck is also a Past President of the International Association of Defense Counsel ("IADC"). The IADC, which was founded in 1920, is a professional organization of attorneys in the private practice of law, who specialize in representing defendants in civil litigation.

In 2004, United States Supreme Court Chief Justice William Rehnquist appointed Mr. Beck to the very prestigious Judicial Conference Standing Committee on Rules of Practice

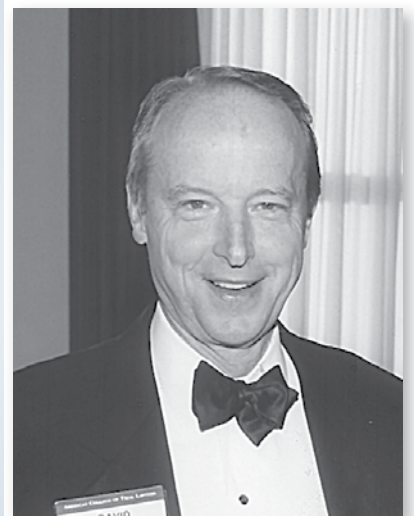
and Procedure. The Committee's members include some of the leading judges, academicians, and practitioners in the United States.

Most recently, Mr. Beck was honored with the Anti-Defamation League's 2005 Jurisprudence Award. The Award is presented each year to legal professionals who demonstrate a devotion to the principles enshrined in the U.S. Constitution, commitment to the democratic values of the United States, and dedication to fair and equal justice for all.

Mr. Beck has published numerous law journal articles and has appeared as a lecturer on many bar association and law school continuing legal education programs. He is the author of *Legal Malpractice in Texas*, a book which was originally published by the Baylor Law Review in 1991 (43 BAYLOR L. REV. 1 (1991)) and whose second edition was published in 1998 (50 BAYLOR L. REV. 547 (1998)). He also

co-authored the 1999 through 2006 versions of O'Connor's Annotated Civil Practice and Remedies Code, a treatise widely used by Texas lawyers. In 2003, he authored "The Legal Profession at the Crossroads: Who Will Write the Future Rules Governing the Conduct of Lawyers Representing Public Corporations?", published by St. Mary's Law Journal (34 ST. MARY'S L.J. 873 (2003)). In December, 2004, he authored "*Perspective: Separation of Powers – Is Our Judiciary Under Serious Attack?*", published by the Texas Bar Journal (67 TEX. B.J. 974 (2004)). In April, 2006, he co-authored "The Vitality of Barcelo After Ten Years: When Can An Attorney Be Sued For Negligence By Someone Other Than His Client?", published by the Baylor Law Review (58 BAYLOR L. REV. 371 (2006)). He has won various awards for his legal writing. ♦

Past President Jimmy Morris said of Beck, "David, whose career has been one of uninterrupted triumph, strangely dwells on his service on the faculty at the IADC Trial Academy in Colorado in 1974, a group he insists on calling 'the Legends,' when all others refer to them as 'the Legumes.' David, of course, has the attributes of a world class trial lawyer. He is hard-working, intelligent and well known for being quick on his feet, but what impresses me most is that he has no equal as an organizer of his own time. I am astonished at his ability to manage his busy trial schedule, leadership in his firm, commitment to the University of Texas, the ACTL, service on U.S. Federal Rules committees, etc., etc., etc., all with excellence, and yet he always has time to put his family first. And of course we all know that he is way over married. We look forward to Judy serving as our First Lady with that combination of style, grace and warm good humor which has enabled her to tolerate David for these many years."



# AWARDS, HONORS AND ELECTIONS



**GORDON S. RATHER, JR.** of Wright, Lindsey & Jennings LLP, Little Rock, Arkansas was honored with the Arkansas Bar Association's Outstanding Lawyer Award during that

organization's Annual Meeting in Hot Springs June 7-10. The Outstanding Lawyer Award is given in recognition of excellence in the practice of law and outstanding contributions to the profession.



**STEPHEN C. FITCH** of Columbus, Ohio has received the Bar Service Medal from the Columbus Bar Association. The medal is presented each year to recognize a history of distinguished service to

the Bar. Previous recipients include three College Fellows: late past president John C. Elam, former Regent Bruce G. Lynn and Duke W. Thomas.

Regent **J. DONALD COWAN, JR.** of Greensboro, North Carolina has received the North Carolina Association of Defense Attorneys 2006 Professionalism Excellence Award. Cowan was cited for "his range of expertise as a trial lawyer that spans the entire spectrum of trial practice, from the most sophisticated and difficult civil cases to the most demanding of criminal cases" and for his efforts to train and educate other attorneys. Last year's recipient of this award was Fellow Stephen Perry Millikin, also of Greensboro.

**M. ALLYN DINGEL, JR.**, Boise, Idaho, received the 20004 Idaho State Bar Annual Distinguished Lawyer of the Year Award, given to an attorney who has distinguished the profession through exemplary conduct and many years of service to the profession and to Idaho citizens.

**PAUL E. FREEHLING**, Chicago, Illinois, has been selected a Laureate of the Illinois State Bar Association's Academy of Illinois Lawyers. Laureates are members of the Association and the profession "who exemplify values, standards and ideals of the best of the legal profession" and "have demonstrated a commitment to the highest principles of the legal profession through a pervasive record of service of the law, the profession and the public."



**R. J. "JACK" CINQUEGRANA**, Boston, Massachusetts, has been elected president of the Boston Bar Association.

**PAUL MCNEIL** of Jonesboro, Arkansas has received the Outstanding Defense Lawyer award from the Arkansas Association of Defense Counsel.

**JULIUS L. CHAMBERS**, Charlotte, North Carolina, has received the Thurgood Marshall Award from the American Bar Association's Section of Individual Rights and Responsibilities. The presentation took place at the ABA's Annual Meeting on Aug. 5 in Honolulu, Hawaii. The award honors individuals for outstanding

commitment to the preservation and expansion of civil rights for all Americans. One of his nominators reflected, “[H]e has spent his entire adult life working to make life better for those who do not enjoy the blessings of liberty and freedom from want.” Chambers became the ninth recipient of the College’s Courageous Advocacy Award in 1994.

LARRY S. MCDEVITT, Asheville, North Carolina, BETTINA B. PLEVAN, New York, New York, CHARLES A. WEISS, St. Louis,

Missouri, and W. SCOTT WELCH III, Jackson, Mississippi, have been elected to the Board of Governors of the American Bar Association. They join Fellows **David E. Funkhouser**, Mason City, Iowa, **HARRY S. HARDIN III**, New Orleans, Louisiana and **JAMES M. STURDIVANT**, Tulsa, Oklahoma on the thirty-eight member board.

JUSTICE RICHARD D. ALDRICH, Los Angeles, California, has won the Jurist of the Year Award from the Judicial Council of California, the policymaking body for California courts. ♦

## COLLEGE DEMOGRAPHICS A CONTINUING CONCERN

The aging demographic profile of the Fellows of the College has been the subject of several *Bulletin* articles over the past few years.

The College staff has recently uncovered in the archives a study that puts that issue in a historical context. Made in 1972, in the twenty-second year of the College’s existence at the request of then President-elect designee Robert Clare, that study disclosed there were then 2,358 Fellows, all male with the exception of Phyllis Cooper, wife and law partner of founder Grant Cooper. Emeritus, judicial or honorary Fellows numbered 202, leaving 2,156 dues-paying Fellows.

The oldest had been born in 1877 and was then 95 years old; the next oldest two were born in 1879. Forty-six had been born in the 1880s, 279 in the 1890s.

A full 22 percent, 524 of the 2,358 Fellows were 70 or more years old. Another 882 were 60 to 69 years old, so that 1,406, or almost 60 percent, were sixty or older. Fellows 51 or over were 2,038, or 86 percent, of the Fellows. Sixty-

seven were age 45 or under, and three hundred twenty were 50 or younger.

Significantly, in 1972, 31 Fellows age 45 or younger were inducted. An additional 59 who were age 46-50 were inducted, for a total of 90 new Fellows who were age 50 or under.

Comparable *induction* figures are not available, but in 2005 only 14 nominees who were 45 or under were even *nominated* to the Board Regents, and only 46 who were 50 or under.

This decline in the number of younger nominees has been attributed to various causes, including the decline in the number of cases being tried and the inertia of state and province committees and the Fellows in general in identifying qualified candidates.

The College has appointed a task force, chaired by past president Robert B. Fiske, Jr. of New York, to investigate this phenomenon and to report its findings to the Board of Regents in its meeting in London and to recommend a course of action to address it. ♦



# MANY FELLOWS AMONG WORLD WAR II VETERANS

*[Many of our more senior Fellows served in World War II, either in the armed forces or in some other war effort-related capacity. The Bulletin has launched an effort to identify these people and to capture and publish their stories. Knowing that there will be too many stories to publish in one issue, we have decided to print these accounts as we receive them. We are continuing to collect the names of such Fellows and will make contact with them to try to record their stories. We are aware that in the past some veterans have been reluctant to talk about their war experiences. We hope that the perspective that comes with the passage of time will move all of our veterans who were a part of “the greatest generation” to share their stories with the rest of us. You are a part of our heritage, and we have much to learn from you.]*

*At the end of the article that follows is a reference to the Veterans History Project of the Library of Congress. Many of you may already be aware of it. It provides a vehicle for preserving the oral histories of our veterans of all the wars of the Twentieth Century. We suggest that the instructional materials available from this project on the Internet may also help provide a useful format for recording one’s own history for our purposes—or, indeed, for both. Indeed, we encourage those who know a Fellow who is a veteran of World War II who might not otherwise respond—or be able to respond—to download these materials and conduct the interview they suggest.]*

***These are the stories of those World War II veterans who have responded  
to our request that they share with us their stories.***

**JACK E. HORSLEY,**  
Mattoon, Illinois (1958)

My wife registered me in the WWII Memorial, Washington, D.C. My rank overseas was Lt. Colonel. After the war I received two honorary promotions to full colonel and then to brigadier general. The following is my registration in the Memorial: Judge Advocate General’s Department, detailed to Army Air Force. Staff Judge Advocate, Iceland Base Command, 1943-45. Temporary duty in courts martial, England and Scotland; supervised four courts martial, 1944-45, in Kent and Sussex, England. Wounded in Nazi shelling at Keflavik, Iceland, 1944. Received Purple Heart. Two years in European Theater of Operations.

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**GOULD BARRETT HAGLER**  
Augusta, Georgia (1976)

I was born December 21, 1924 in Augusta, Georgia. Upon reaching age 18 on December 21, 1942,

I decided to ask to be drafted rather than wait to be called. With two friends, we were inducted on February 23, 1943 and put on active duty March 3 of that year.

Everyone wanted to be a pilot, but I am color blind and this disqualified me. With some help at the induction center I was sent to the Tank Destroyers at Camp Hood, Texas. After basic and some advance training at Hood the units not fully trained and part of a battle unit were transferred to other types of outfits. I was among a group sent to the artillery at Camp Rucker in Alabama. (In North Africa the Army decided the TDs were not as effective as planned and no additional units were formed). I joined the 512th Field Artillery Battalion, a 105 mm outfit which was just being formed. I stayed with this unit until my discharge on December 19, 1945.

We went on Tennessee maneuvers then to Fort Riley, Kansas from which we were sent to Europe in July 1944. We were in Wales about six weeks and



landed in France, near Ste. Mere Eglise on or about August 1945, and were on the European continent until the end of the war. We were in the 3rd Army the whole time, being in the battles of Northern France, Ardennes, Rhineland and Central Europe. Our battalion was not a part of any larger unit, but we were attached to various larger ones, such as the 80th, 35th and 5th infantry divisions. I was in the survey section of Headquarters Battery and ended up a T/4. I was awarded a Bronze Star with an Oak Leaf Cluster.

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## HON. SAMUEL G. FREDMAN

White Plains, New York, (1984)

I was called to the service in mid-1943, shortly after my nineteenth birthday, having by that time completed three semesters at Columbia Law School in the accelerated program which was available to us. I returned in June 1946, after serving more than two and a half years, almost one full year of which had been in the Pacific Theater of war. That was not the same Sam Fredman who returned to law school, however. Put aside what I had done and where, other than to note that I had been, at age 21, a Far Eastern Air Force sergeant-major with heavy administrative and other responsibilities, and had already decided to marry the young lady who had been in my life since 1944 (all of three dates in that interim). My father passed away in July 1946; as an only child, I had certain commitments to my mother in Shenandoah, Pennsylvania; I was married in September 1946, and I had matured much beyond the ken of the lad who had gone off to war at nineteen. To me, the law, and particularly law

school, had lost much of its glamour, and no longer held my interest in the same fashion as it had in my prior life.

*(Excerpted with permission from a first-person account in the Westchester (New York) Bar Journal.)*

• • •

## HENRY BURNETT

Miami, Florida (1968)

My story involves neither danger nor bravery, but was certainly important referable to my future profession. I left high school after three years without graduating and entered the University of Virginia as an undergraduate, hoping to qualify for the V-12 Officer Training Program. Before I could apply, the program was closed. After two trimesters at the university, I enlisted in the United States Navy at age seventeen and was sent to boot camp at Bainbridge, Maryland. I completed boot camp and remained for approximately one month awaiting assignment. At the end, I was assigned to Princeton University in an officer training program and completed one calendar year at Princeton following my discharge. I returned to the University of Virginia, entered the R.O.T.C. program and received my commission upon graduation one year later.

The highlight of this story is that Uncle Sam provided me through the G.I. Bill two and one-half years of a free education, allowing me to both enter and ultimately complete my legal training. Needless to say, I am indebted to Uncle Sam for the profession that I have followed for the past 56 years. I will recognize that this pales in comparison with the Battle of the Bulge, Saipan, Okinawa, Purple Hearts, and so forth, but you asked for it.

**Editors note:** *The In Memoriam section of this issue of the Bulletin contains the obituaries of nine other veterans of World War II and of two veterans of the Korean War.*

*For those who are interested in having their oral histories placed in the Veterans History Project at the Library of Congress or in accessing the instructional materials for creating written histories or conducting recorded interviews, the website address is: <http://www.loc.gov/vets.html>.*

# COLLEGE OPPOSES CREATION OF OFFICE OF INSPECTOR GENERAL FOR THE JUDICIARY AS INTRUSION ON JUDICIAL INDEPENDENCE

*Consistent with the College's policy of opposing encroachment on the independence of the judiciary wherever it manifests itself, the following letter was sent to the Chairs and the ranking minority members of the Senate and House Judiciary Committees of the United States Congress:*



**Michael A. Cooper**  
President  
cooperm@sullcrom.com

July 21, 2006

The Honorable Arlen Specter  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510-3802

The Honorable Patrick J. Leahy  
United States Senate  
433 Russell Senate Office Building  
Washington, DC 20510-4502

The Honorable F. James Sensenbrenner, Jr.  
United States House of Representatives  
2449 Rayburn House Office Building  
Washington, DC 20515-4905

The Honorable John Conyers, Jr.  
United States House of Representatives  
2426 Rayburn House Office Building  
Washington, DC 20515-2214

Re: Judicial Transparency and Ethics Enhancement Act of 2006 –  
S. 2678 and H.R. 5219

Gentlemen:

I write on behalf of the American College of Trial Lawyers (the "College") to oppose enactment of the Judicial Transparency and Ethics Enhancement Act of 2006, S. 2678 and H.R. 5219. The College is an invitation-only association of more than 5,000 skilled and experienced members of the trial bars of the United States and Canada, who represent plaintiffs and defendants in all types of civil actions as well as prosecutors and criminal defense lawyers. The College has sought for more than fifty years to improve and enhance the administration of justice, the standards of trial practice, and the ethics of the profession.

We oppose the proposed legislation as an unnecessary intrusion upon the federal judiciary and an unwise erosion of the fundamental constitutional principle of separation of powers.

Under the proposed legislation, an Office of Inspector General would be established, which would have the duties to investigate matters pertaining to the Judicial Branch, to conduct and supervise audits, to prevent and detect waste, and to recommend changes in laws or regulations governing the judiciary. The Inspector General:

- would have substantial and expansive investigative powers, including the power to issue subpoenas to obtain information from any federal, state or local agency or other entity, and to require the attendance of witnesses for the taking of testimony and the production of documents;

**REPLY TO:**  
**Sullivan & Cromwell**  
125 Broad Street  
New York, NY 10004-2498  
t: 212.558.3712  
f: 212.558.3349

**NATIONAL OFFICE**  
19900 MacArthur Blvd.  
Suite 610  
Irvine, CA 92612  
t: 949.752.1801  
f: 949.752.1674  
www.actl.com



- would be selected in consultation with Congress and would report directly to Congress, at times in closed session for sensitive matters;
- could also report directly to the Executive Branch through the Attorney General.

We are very concerned that these extraordinary powers could be used to threaten or punish individual judges for having rendered controversial decisions in areas such as sentencing or to attempt to coerce judges with respect to matters that are *sub judice*. Whether or not case-related matters and judicial decision-making are intended to be within the purview of the Inspector General, those topics are not explicitly excluded from the proposed legislation. It is not difficult to envision an Inspector General, either *sua sponte* or under pressure from others, investigating a judicial decision and justifying that investigation as “pertaining to the Judicial Branch” or “possible misconduct.”

For an Inspector General who reports to Congress to have the authority to investigate a particular judge for judicial misconduct or to review the content of judicial opinions is an unacceptable threat to judicial independence. Separating judges from the political branches of government is a bedrock principle of the American judicial system. The framers of the Constitution considered an independent judiciary essential to the liberty of the citizenry. Judges need to be safe from retaliation or pressure by other branches of government if they are to have the fortitude to take actions that are legally correct but may be unpopular or frowned upon by representatives of other branches of government, such as declaring laws unconstitutional. Judicial independence is also necessary to assemble a qualified and committed bench.

Further, we submit, there is no need for such legislation. For one thing, the Administrative Office of the U.S. Courts conducts extensive audits of the federal courts’ financial affairs and monitors the operation of court programs for possible waste or fraud. We are not aware of any cogent criticism of the manner in which the Administrative Office does its work.

The isolated instances of questionable conduct relied upon by the legislation’s proponents fall principally into two areas—financial disclosure and recusal—which can be addressed by narrower, targeted proposals, rather than by creating an office of Inspector General with sweeping powers.



We are also puzzled and troubled by the introduction of this legislation at a time when the Judicial Conduct and Disability Act Study Committee, created at the behest of the late Chief Justice William H. Rehnquist, Jr. and headed by Justice Stephen G. Breyer, is completing an evaluation of how the federal judicial system has implemented the Judicial Conduct and Disability Act. We understand that the Committee's report is expected within the next few months. It is simple common sense to see what recommendations the Committee makes before rushing to enact the pending bills. Finally, we also understand that the Judicial Conference has instituted several initiatives to deal with issues of seminar attendance and ethics training.

We would be pleased to provide testimony during any hearings held to consider this legislation.

Thank you for considering the views of the College.

Sincerely,

Michael A. Cooper  
President

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**PRESIDENT'S REPORT, con't from page 7**

and sponsorship of trial and appellate skills competitions.

The College has commented on proposals to amend the Federal Rules of Civil Procedure, Criminal Procedure and Evidence and on legislative proposals to suspend the writ of certiorari and to create the position of Inspector General for the federal courts. Finally, at a time when courts, individual judges and even the rule of law are increasingly under attack, and other branches of government are encroaching on the judiciary's

historic sphere of authority, the College is resolute in its defense of judicial independence and the doctrine of separation of powers.

I do not presume to say that the College is or should be the sole arbiter of the standards of our branch of the legal profession and the administration of justice. But I do believe that the trial bar and our justice system have no more steadfast advocates, and I am confident that under the leadership of President David J. Beck, the College will continue to play that role. ♦

# IN MEMORIAM

## THE COLLEGE HAS RECEIVED NOTICE OF THE DEATHS OF THE FOLLOWING FELLOWS:

**Daniel M. Berger, '93\***, Pittsburgh, Pennsylvania, age 73, died July 2, 2006 of leukemia and lymphoma. A graduate of the University of Pittsburgh and of Yale Law School, a member of Berger & Lagnese, LLP, and principally a medical malpractice lawyer, he was also a noted civil libertarian. He had served as general counsel to the Pittsburgh chapter of the American Civil Liberties Union and as president of the Pittsburgh chapter of the Americans for Democratic Action, and he was present on the Washington Mall in August 1963 to witness first-hand Martin Luther King's "I Have a Dream" speech. His survivors include his wife and three sons.

**Jerry Byron Blackstock, '89**, Atlanta, Georgia, a partner in the firm of Hunton & Williams, died April 2, 2006 at age 61 of cancer. A graduate of Davidson College and of the University of Georgia School of Law, he had been chair of the litigation practice at Powell, Goldstein, Frazer and Murphy before joining Hunton & Williams in 2002. He had chaired the Board of Trustees of his alma mater, Riverside Military Academy, and had both written and taught extensively on trial practice. He had chaired the Georgia Athlete Agent Regulatory Commission and had held numerous leadership positions in a variety of bar organizations. The Georgia Bar Association had named him Defense Attorney of the Year for 2002, and the Atlanta Bar Association had honored him with its leadership award. His survivors include his wife and three sons.

**Jim DeWitt Bowmer, '77**, Temple, Texas, age 87, of counsel to the Temple office of Naman, Howell,

Smith & Lee, died July 20, 2006. A graduate of Baylor University and of its law school, he had served in the United States Army Judge Advocate General Corps in Africa, Italy, Hawaii and the Philippines during World War II. A past president of the State Bar of Texas, he had been honored as a Distinguished Alumnus of Baylor Law School and had been the recipient of an honorary degree. A widower, his survivors include two daughters.

**Anthony J. Caputo, '70**, White Plains, New York, died June 18, 2006 a few days short of his ninety-third birthday. A graduate of New York University and of its law school, he practiced law for sixty years, for more than forty of those in his own firm. He was an avid golfer and curler. A widower, his survivors include two sons.

**Natie P. Caraway, '80**, Jackson, Mississippi, age 73, died August 6, 2006. Raised by an aunt and uncle after his mother died when he was an infant, he had joined the Mississippi Air National Guard while in high school and was called to active duty in the Korean Conflict at age 17. A graduate of Meridian Junior College and of the University of Mississippi and of its law school, after clerking for a judge of the United States Court of Appeals for the Fifth Circuit, he began practice in Meridian. Elected to the Mississippi House of Representatives at age 26, he was one of a group of younger legislators who took numerous courageous stances for racial justice during the time of unrest in the early 1960s. In 1962, he moved to Jackson, where he practiced for the rest of his life, most recently with the firm of Wise, Carter, Child and Caraway. His survivors include his wife, a daughter and two sons.

*\* Year of induction*

IN MEMORIAM, con't on page 34



**James Anderson "Bubba" Dunlap, '72**, Gainesville, Georgia, died September 29, 2005 of Parkinson's Disease at age 85. A Phi Beta Kappa graduate of Davidson College and of the University of Georgia School of Law, he had served as a Captain in the Sixth Cavalry Regiment, assigned to the 3rd Army under General George S. Patton, in World War II and had participated in the invasion of Normandy and the Battle of the Bulge. He was awarded a Bronze Star. He later served as a civilian aide to the Secretary of the Army in the Truman and Eisenhower administrations. He had practiced with the firm of Whelchel & Dunlap until his retirement. A noted philanthropist, he had served as chair of the Board of Regents of the University System of Georgia and in various other leadership positions in legal and educational organizations. His survivors include his wife, two sons and two daughters.

**Vincent J. Fuller, '81**, Washington, District of Columbia, died July 26, 2006 of lung cancer and chronic obstructive pulmonary disease at age 75. An early protégé of Edward Bennett Williams and a partner in Williams & Connolly LLP, during his career he had defended high-profile clients, including boxing promoter Don King, Congressman Adam Clayton Powell, Michael R. Milken, boxer Mike Tyson and Teamsters Union boss Jimmy Hoffa. His successful insanity defense of would-be presidential assassin John Hinckley is widely regarded as one of the great courtroom performances of the Twentieth Century. A graduate of Williams College, a U.S. Navy veteran and a graduate of Georgetown Law, his survivors include his wife, three daughters and two sons.

**The Honorable Bert M. Goldwater, '55**, Reno, Nevada, died May 3, 2006 at age 91. He had attended Stanford University, but because of a

lifelong battle with asthma, had returned to the University of Reno, where he graduated in 1936. A graduate of the University of Colorado Law School, he was editor of the Rocky Mountain Law Review. After forty years of trial practice, during the last fifteen of which he was a part-time Referee in Bankruptcy, he was appointed United States Bankruptcy Judge in 1979. Retiring from that position after three years, he practiced law for more than a decade before being recalled to serve the bankruptcy court on a year-to-year basis until his death. He had served as Chairman of the Nevada Board of Bar Examiners and as Chairman of the National Conference of Bar Examiners. He had also chaired the Nevada Citizens Committee on Taxation and Fiscal Affairs and served on the Nevada State Gaming Commission and the Nevada State Human Rights Commission. He had been president of both Temple Sinai and Temple Emanuel. Twice widowed, his survivors include two daughters, a step-son and a stepdaughter.

**Maurice E. Gosnell, '60**, Lawrenceville, Illinois, died May 25, 2006 at age 95. A graduate of the University of Illinois and of its law school, he practiced law for over sixty years, most recently with Gosnell, Borden, Enloe & Sloss, Ltd. During his long career, he had served as an Assistant State's Attorney, city attorney for Lawrenceville and a United States Magistrate, as well as serving in many bar-related and business-related leadership roles. He was for twenty-five years a trustee of Vincennes University, and he had served on the Illinois State Bar Board of Governors. An instrument- and multi-engine-rated pilot, he had been president of the Lawyer-Pilots Bar Association. A widower, his survivors include three daughters.

**Gene W. Halverson, '74**, Duluth, Minnesota, died May 29, 2006. Born in 1920 on a farm

homesteaded by his Norwegian grandfather, a graduate of Macalester College, he was a PT boat skipper in the South Pacific during World War II. A post-war graduate of the University of Minnesota Law School, he had practiced for more than fifty years with Reyelts Leighton Bateman Hylden & Sturdevant, Ltd. in Duluth. He had been president of his local bar and of the Minnesota State Bar Association and a member of the House of Delegates of the American Bar Association. He had also chaired the Minnesota State Board on Judicial Standards. Among his interests outside the practice of law, he had served a term as chairman of the Duluth Superior Symphony Orchestra. His survivors include his wife, two sons and two daughters.

**Robert Cooke Howison, Jr., '73**, Raleigh, North Carolina, died August 18, 2006 at age 91. A Phi Beta Kappa graduate of the University of North Carolina and of its law school, he had been Editor of the North Carolina Law Review. As a Lieutenant-Commander in the Coast Guard, he served in all theaters during four years of World War II. He had been president of his local bar and had served on and chaired the State Board of Law Examiners. His original firm, Joyner & Howison, had merged years ago with Hunton & Williams. Outside the legal profession, he had chaired the Wake County Board of Welfare and the North Carolina Board of Public Welfare and had served his church in several capacities, including as senior warden. A widower who had remarried, his survivors include his wife and a daughter.

**William G. Hundley, '81**, Washington, District of Columbia, died June 11, 2006 at age 80 of cancer of the liver. Serving in the United States Army in World War II, he had won a Bronze Star in the Battle of the Bulge. A graduate of Fordham

Law School, he began his career as a trial attorney in the Department of Justice Internal Security Division during the Cold War. He then became Special Assistant to Attorney General Robert Kennedy and Chief of the Justice Department's Organized Crime and Racketeering Section. He later became special assistant to the Commissioner of the National Football League. Then, in private practice, most recently with Akin, Gump, Strauss, Hauer & Feld, he became a high-profile white-collar defense lawyer, whose clients had included former Attorney General John Mitchell and former Maryland Governor Marvin Mandell. A widower, his survivors include four sons and two daughters.

**Clifford C. Kasdorf, '69**, Milwaukee, Wisconsin, died August 16, 2006 at age 93. A founder of Kasdorf, Lewis & Swietlik, S.C., he was a graduate of Marquette University and of its law school. A widower who had remarried, his survivors include his wife, two sons and a daughter.

**John W. Keegan, '95**, White Plains, New York, died February 6, 2006 at age 75. He was a graduate of Fordham University and of its school of law. A retired member of Keegan, Keegan & Struitt, LLP, he had served as president of his local bar, taught at the law schools of Pace University and Fordham University and had served as a member of the New York State Bar Committee on Judicial Selection. His survivors include his wife, three sons and three daughters.

**Thomas Cook MacDonald, Jr., '75**, Tampa, Florida, died May 26, 2006 at age 76. A graduate of the University of Florida and a graduate with highest honors from its law school, where he was Editor of the Law Review, he had begun his forty-four years of practice with Shakelford, Farrior, Shannon & Stallings. Graduating first in his Judge

Advocates General School class, he had been an Air Force JAG officer during the Korean War. A past State Chair of the College and a Life Member of the American Law Institute, he had served as General Counsel to the Florida Judicial Qualifications Commission and Chancellor of the Episcopal Diocese of Southwestern Florida and had served on the Supreme Court of Florida Judicial Nominating Commission and on the Board of Governors of the Florida Bar. He had been president of the University of Florida Alumni Association and special counsel to the University of Florida and to Governor Farris Bryant, as well as legal counsel to the Tampa Sports Authority. He had received numerous awards, including a distinguished alumni award from his alma mater. His survivors include his wife, a daughter and a son.

**Denis McInerney, '72**, New York, New York, age 80, died January 31, 2006. A graduate of Fordham College and Fordham Law School, where he was editor of the law review, he had practiced for over forty years with Cahill Gordon & Reindel LLP. He had served as president of the New York County Lawyers Association, as chair of the Departmental Disciplinary Committee of the Appellate Division First Judicial Department of the New York State Supreme Court and later as special counsel to the Court. He had also been a trustee of his alma mater, which had honored him as a distinguished alumnus and awarded him an honorary Doctor of Laws degree. His survivors include his wife, two daughters and a son.

**Ralph F. Mitchell, '79**, Cincinnati, Ohio, died March 29, 2006 at age 77. A graduate of Salmon P. Chase College of Law, he had practiced with Rendigs Fry Kiely & Dennis for forty-four years. He had received the John P. Kiely Award for Professionalism from the Cincinnati Bar

Association. A widower who was predeceased by one son, his survivors include three daughters and a son.

**Leslie W. Morris II, '97**, Lexington, Kentucky, a 72 year old partner in the firm of Stoll, Keenon & Park, LLP, and his wife, Kaye, died in the August 27, 2006 crash of Conair Flight 519 at Bluegrass Field in Lexington. They were on their way to a whale-watching expedition off the coast of Alaska. A Phi Beta Kappa graduate of the University of Kentucky, where he received the Sullivan Medallion as the outstanding male graduate, he had graduated with distinction of the University of Kentucky Law School, where was a member of the Order of the Coif. Following a tour of duty in the Air National Guard, he began practice with the firm of Stoll Keenon & Park in 1962, remaining there for the rest of his life. He had been president of his county bar, which had honored him with its lifetime achievement award, and a Master of the Bench in the American Inns of Court. His survivors include a daughter and a son.

**J. Corbett Peek, Jr., '72**, Newnan, Georgia, died December 7, 2006 at age 86. No other obituary information was available at press time.

**Lord Rawlinson of Ewell, Honorary Fellow '73**, Wiltshire, England, died June 28, 2006 at age 87. Peter Anthony Grayson Rawlinson, a graduate of Sandhurst, was called to the Bar, Inner Temple, in 1946, having studied for examinations while on active duty in the Irish Guards during World War II, from which he emerged with the rank of Major. Rising rapidly in the law, he became a Queens Counsel at thirty-nine and had served as chairman of the Bar. Described in one obituary as "a onetime golden boy of Conservative politics and the bar," he had served as a member of the House

of Commons, as Solicitor General, as Attorney General and as Attorney General of Ireland. He became a Privy Counselor in 1964 and was elevated to the House of Lords in 1978. During his career he participated in many celebrated trials. A poet and a talented artist, after his retirement from the practice in 1985, he had also produced seven novels in the nature of James Bond-style thrillers, one of which won the Rumpole Award. His survivors include two daughters from his first marriage, his wife, two sons and a daughter.

**Arthur G. Raynes, '86**, Philadelphia, Pennsylvania, founder of the law firm of Raynes McCarty, died July 24 of lung cancer at age 72. A college athlete, a graduate of Duke University and of Temple University School of Law, he had served as Chancellor of the Philadelphia Bar, as a Trustee of Temple University and a member of the Board of Overseers of the University of Pennsylvania Law School. He had represented high profile and catastrophically injured clients for more than forty-five years, including more than fifty thalidomide babies in the 1960s, the families of forty-six oil riggers killed in a helicopter accident off the coast of Scotland and over 1,300 Spanish hemophiliacs who had contracted HIV from defective blood products. In 2004 he was one of thirty-three lawyers featured in a published history of the International Academy of Trial Lawyers. His survivors include his wife, a daughter and two sons.

**Robert W. Sayre, '80**, Philadelphia, Pennsylvania, died March 26, 2006, at age 90 of a stroke. He had practiced for almost fifty years with Saul, Ewing, Remick & Saul before his retirement in the mid-1990s. His undergraduate degree was from Princeton University, where he played varsity soccer, and his law degree from the University of Pennsylvania. During World War II, he served in

the Army in Washington, and was discharged as a Lieutenant Colonel. A specialist in health law, he had been general counsel to Bryn Mawr Hospital for more than twenty years. An equal rights advocate, early in his career he had been appointed to defend a group of clients charged with violation of the Smith Act. His clients' conviction at trial was reversed on appeal on First Amendment grounds. He had been vice-chair of the Lawyers' Committee for Civil Rights, and he helped found the Public Interest Law Center of Philadelphia, whose board he later chaired. Outside the practice of law, he was a past president of United Cerebral Palsy of Philadelphia and Pennsylvania and past president of the United Way of Southeastern Pennsylvania, which had honored him and his wife with its Citizen Volunteer Award. The couple had hiked all over the United States and in Europe. His survivors include his wife of sixty-four years, two sons and a daughter.

**Hon. William E. Stewart, Jr., '60**, retired Judge of the Superior Court of Washington, DC, died February 10, 2006. No other obituary information was available at press time.

**Joseph E. Stopher, '55**, Louisville, Kentucky, died April 27, 2006 at age 90 after a heart attack. A retired partner of the law firm of Boehl Stopher & Graves, LLP, where he had practiced for more than sixty-five years, he was a graduate of the University of Louisville and of its law school. He had been named Lawyer of the Year by both the Louisville and Kentucky Bar Associations and had been a member of the Board of Governors of the American Bar Association. He had been chair of the Gheens Foundation, a nonprofit organization formed to finance educational causes. He sat on the Kentucky State Fair Board for twenty-eight years, during a part of that time representing the

American Saddlebred Horse Association. He had attended his first state fair at the age of thirteen, helping his father deliver bottled water, and he went on to attend seventy-nine consecutive fairs. For thirty years he had been a trustee of Southern Baptist Theological Seminary and was the first layman elected chairman of its board. His survivors include his wife, a daughter and two sons.

**Bruce R. Toole, '70**, Billings, Montana, died September 16, 2005 at age 82 after a decline resulting from dementia, which had impaired his later years. Enlisting in the United States Army after graduating from high school in 1942, he served in an antiaircraft artillery battery in England and Germany until he was injured in Germany. A graduate of the University of Montana and of its law school, he practiced for two years in Missoula and then joined the Billings firm, now Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., where he practiced for fifty years. He had been president of his local bar and of the Montana State Bar Association. He was the recipient of the Yellowstone Bar Association Area Lifetime Achievement Award. He had also been instrumental in restoring the Billings railroad depot. His survivors include his wife, a daughter and two sons.

**Eugene M. Warlick, '83**, White Bear Lake, Minnesota, died April 24, 2006 at age 80 after a five-year battle with Parkinson's disease. A veteran of the Korean War, he was a graduate of the University of Minnesota and of its law school. He had been a partner in the St. Paul-based firm of Doherty, Rumble & Butler, the oldest in the Twin Cities area. He had served on the board of United Way. His passion for the law was equaled by his love for classical music. He had been a member of the board and president of the St. Paul Chamber Orchestra and had been named a life director in

1985. He also sang in the choir of his church. His survivors include his wife, a daughter and a son.

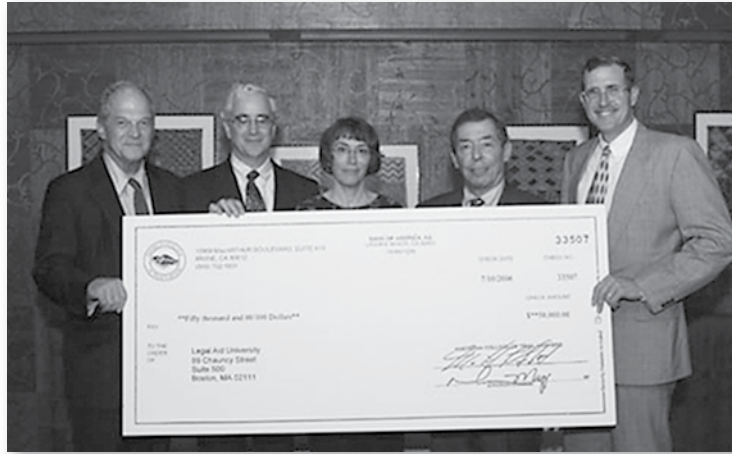
**Raymond N. Watts, '81**, Sandusky, Ohio, died June 23, 2006 at age 89 after a brief illness. A graduate of Allegheny College and Western Reserve University College of Law, he began his law practice in New London, where he was elected mayor at age 25, the youngest mayor in Ohio at the time. In 1945, he moved to Sandusky, where he practiced with the firm of Flynn, Py & Kruse for forty years until his retirement in 1985. He had served as president of his county bar. His survivors include his wife and three daughters.;

**Henry O. Whitlow, '66**, Paducah, Kentucky, died November 7, 2005 at age 91. Born in Monkey's Eyebrow, Ballard County, Kentucky, he was educated at the University of Kentucky undergraduate and law schools. In World War II, he served with the 12th Armored Division in Europe, attained the rank of Major and earned a Bronze Star. A former president of his local bar, he was named Kentucky outstanding Lawyer by the Kentucky Bar Association in 1993. He practiced law for sixty-three years, most recently with Whitlow, Roberts, Houston & Straub. He had been named outstanding local Jaycee president in Kentucky and had served as president of his local Chamber of Commerce, of the Four Rivers Boy Scout Council and of the Paducah Rotary Club. He had also been chairman of the board of his church. His hobbies were goose and duck hunting and growing roses. His survivors include his wife, a son and a daughter.

***Editor's Note:** After the press deadline for this issue, the College received notice of the death of **Kevin Colleran '88**, Lincoln, Nebraska, in London during the College's Annual Meeting. He was reportedly struck by a bus while jogging. ♦*



# EMIL GUMPERT AWARD PRESENTED TO LEGAL AID UNIVERSITY



(L-R) President **Mike Cooper**; **Willard P. Ogburn**, chair, LAU Board of Directors and Executive Director, National Consumer Law Center; **Ellen Hemley**, Executive Director, LAU; **Joseph D. Steinfield**, Chair, Emil Gumpert Committee; **Richard M. Zielinski**, FACTL.

**L**egal Aid University (LAU), an online and on-the-ground facility that has trained lawyers in at least 26 states, is the recipient of this year's Emil Gumpert Award.

Executive Director Ellen Hemley, accepting the award at a July 26 luncheon in Boston, explained that LAU will use the College's \$50,000 grant to develop new online training materials that focus on affirmative litigation on behalf of legal services clients. She also spoke about efforts currently underway to establish an LAU office in one of the Gulf States, in addition to its present offices in Boston and Seattle.

LAU was chosen from among 67 applicants, up from 46 in last year's competition, which was won by Dakota Plains Legal Services of Mission, South Dakota. Presenting the award to LAU, College President Michael Cooper pointed out that in a time of diminishing funds and increasing need for legal services, the College is pleased to support an organization dedicated to improving the quality of legal services programs.

Emil Gumpert Committee Chair Joseph Steinfield

presided at the luncheon attended by Fellows from throughout New England and elsewhere. Richard Zielinski, FACTL, spoke about the relationship between LAU and New England Fellows, who have served as volunteer faculty at training sessions for the past three years. Regent Liaison Joan Lukey of Boston concluded the event by thanking the Emil Gumpert Committee members for their contributions to the College.

Joseph Cheavens of Houston assumes chairmanship of the Emil Gumpert Committee at the annual meeting in London. The Committee is currently soliciting nominations for the 2007 award. All Fellows are urged to consult the College website for further details.

The College created the Gumpert award in 1975 in honor of Founder Emil Gumpert. For nearly three decades it had been used to recognize law schools in the United States and Canada for excellence in trial advocacy teaching programs. Forty-one law schools had been so honored. In 2003, the guidelines for the award were changed to honor a program whose principal purpose is to maintain and improve the administration of justice. ♦

# THE BULLETIN

of the

AMERICAN COLLEGE OF TRIAL LAWYERS

19900 MacArthur Boulevard, Suite 610

Irvine, California 92612

## STATEMENT OF PURPOSE

The American College of Trial Lawyers, founded in 1950, is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only, after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and those whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years' experience before they can be considered for Fellowship. Membership in the College cannot exceed 1% of the total lawyer population of any state or province. Fellows are carefully selected from among those who represent plaintiffs and those who represent defendants in civil cases; those who prosecute and those who defend persons accused of crime. The College is thus able to speak with a balanced voice on important issues affecting the administration of justice. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial profession.



*"In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships."*

– Hon. Emil Gumpert,  
Chancellor-Founder, ACTL