The Bulletin

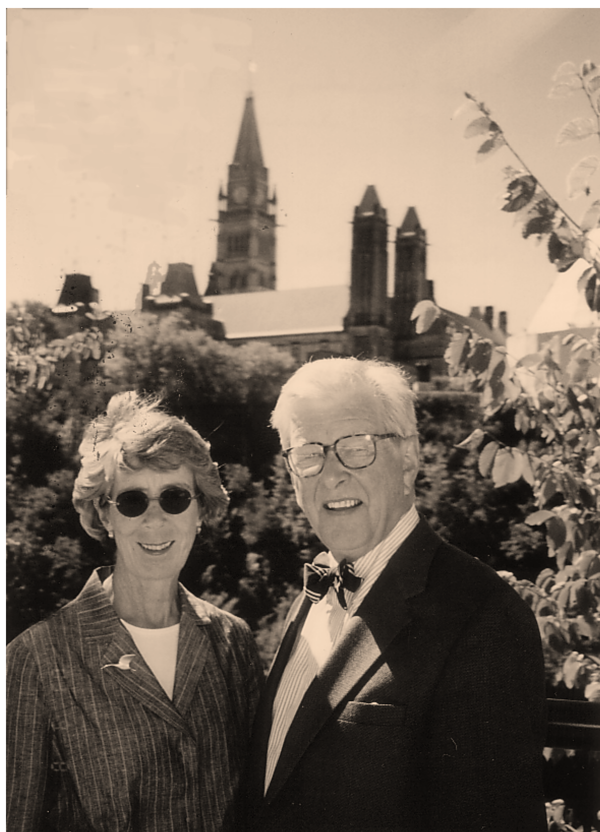
Number 45, Fall 2003

First Canadian President Sets An Ambitious Agenda

As the first Canadian to become President of the College in its 53-year history, David W. Scott knows he has a unique responsibility and he has decided upon an agenda that is heavily laden with important tasks, not only for the entire College, but also for the legal profession.

"Obviously I am a surrogate for the rest of the Canadians, and I had better do this right," he said from his home in Ottawa. "It is the pinnacle to be invited to become a Fellow, and then to become president is way beyond that."

A Fellow since 1983, Scott takes over as President from Warren Lightfoot at the 2003 Annual Meeting in Montreal.



President David W. Scott, Q.C.
and wife Alison with Ottawa skyline

"It is important that there be a Canadian as president at some stage because this is a uniquely North American organization," he said. "There are only about 300 of us Canadians (of 5,395 total), but there is an important exchange factor. The College has gained some of its strength by the diversity of the Fellowship, not just in terms of areas of practice, but also, of course, because of our two cultures."

As President during 2003-2004, Scott has set his sights on four major areas for the College: eliminating geographic holes in the membership, encouraging more local projects for state and province committees, making sure the membership continues to become more diverse, and improving College publications.

But beyond those tasks, Scott believes the College must take a more active role in

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College Considers Action On Rule 1.6 , see p. 12

American College of Trial Lawyers
The Bulletin

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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

From The Editorial Board

The College has always prided itself on the quality of the speakers at its national meetings. In arranging these programs the president-elect, to whom that duty falls, tries to bring to the attendees speakers who leave the audience with a thought-provoking message.

Oral presentations sometimes lose their impact when translated into print. Occasionally, however, we find a paper that both goes to the heart of what the College is about and loses nothing in translation. Canadian Bar

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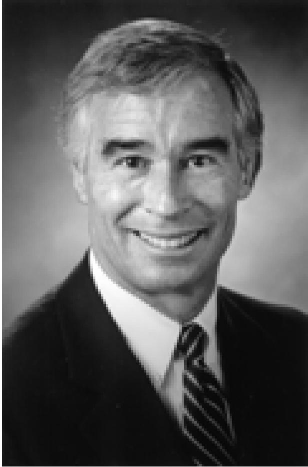
THE PRESIDENT'S REPORT— A WHIRLWIND YEAR OF FORTY-THREE TRIPS



Warren B. Lightfoot

This will be my last president's report to you. Robbie and I have had a wonderful year getting to meet so many of you and getting to visit parts of North America we had never seen before.

In my last two reports, I covered the thirty College trips we made up through our visit to Boise, Idaho, on May 9 and 10. Since then, we have made nine more, with four additional trips planned prior to Montreal. If all goes as scheduled, we will have made forty-three trips during this year.

The Executive Committee and Secretary Designate David Beck met in Washington, D.C., on June 2 and as has become our custom, each of us attended the Supreme Court Historical Society Dinner that night. We have had some conversations with the Court recently and will be participating in its Anglo-American Legal Exchange in the fall of 2004. A Canadian-US Legal Exchange is also under discussion. You will be hearing more about both in the coming months. I am in the process of appointing a committee to work on both these exchanges, and Payton Smith of Seattle has agreed to chair it.

The next trip for Robbie and me was to delightful Newport, Rhode Island, June 13-15 where we attended a regional meeting of the Massachusetts, New Hampshire, Rhode Island, Connecticut, Maine, Vermont, Quebec and Atlantic Provinces Fellows. We had a delicious New England Lobster Boil the first night, met in the fourth oldest government building in this country (where Rhode Island declared its independence *before* the rest of the country did, in July 1776, and where the courtroom scene for the movie *Amistad* was filmed). We also debated Rule 1.6, watched a Transatlantic sailboat race begin, visited some of the "cottages" along the shoreline and had dinner at the National Tennis Hall of Fame. It was a splendid meeting, after which we spent some time on Cape Cod at the home of our good friends Margie and Mike Mone.

The DC Fellows had their annual dinner in Chevy Chase, Maryland, on June 20, and an elegant evening it was. Jack and Joan Bray were hosts, and the turnout was impressive.

June 27-29 was the weekend the Colorado Fellows assembled in Denver at Cherry Hills Country Club for a fine and well-attended evening. Joe and Tami Jaudon made the arrangements and were our hosts. Mike and Brett O'Donnell drew short straws and were responsible for helping us get from place to place on time. The day after the dinner, Regent Mike Stout and his wife LeAnn drove us to Vail and through spectacular mountain scenery. I learned that climbing stairs at 12,000 feet is much different than it is here in the coastal plain of the Southeast.

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President's Report

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We attended a regional meeting on July 18-20 at the Homestead on the shores of Lake Michigan. Flying into Traverse City introduced us to a part of the world we had never seen, and watching the sun set over Lake Michigan was a memorable sight. The Fellows of Tennessee, Kentucky, Ohio and Michigan showed up in force, with Bill and Mary Lou Sankbeil orchestrating a very successful meeting. We heard a very interesting discussion of the two Michigan affirmative action cases by Phil Kessler and the University of Michigan's General Counsel. I cannot help but notice that I am accumulating scores of CLE hours in a year in which I turn 65 and have no CLE requirements.

We flew to Edmonton, Alberta on July 30 and drove over to the Jasper Park Lodge for the incredibly well done regional meeting put together by Pat Peacock and his wife, Virginia Engel. Fellows from Alberta, British Columbia, Idaho, Montana, Washington and Oregon attended, and the program assembled by John Martland was as good as I have ever seen. Featuring mountains, glaciers, close encounters with bighorn sheep, elk, coyote and bears, the Jasper Park meeting was altogether extraordinary.

Because we had another regional meeting in Regina, Saskatchewan five days after the Jasper meeting ended, (and because our 40th anniversary occurred while we were in Jasper Park), Robbie and I elected to stay in the Canadian Rockies. We were joined by friends from Birmingham and spent an incomparable five days in Lake Louise, Banff and along the breathtaking Icefields Parkway before flying from Calgary to Regina.

The Fellows of Minnesota, North Dakota, South Dakota, Saskatchewan and Manitoba assembled for a regional dinner in Regina on August 8, and a most successful one it was. Gordon and Judy Kuski planned and coordinated the dinner on August 8 and were our considerable hosts throughout.

On September 4 Robbie and I attended the Georgia Fellows Annual Black Tie Dinner in Atlanta and saw our many friends among the Georgia Fellows and spouses. Paul and Judy Painter planned the evening and Paul presided admirably. Regent Jack Dalton and his wife, Marcy, were our genial hosts for our seventh consecutive appearance at this always convivial gathering.

Robbie and I flew to Lincoln, Nebraska early the next day, August 5, so we could join the Nebraska Fellows at the splendid dinner that Jim and Pat Bausch arranged. Regent Brian O'Neill and his wife, Ruth, were there (Brian having lost to some of the Cornhusker golfers that afternoon). Jim Bausch thanked me for coming out to the hinterlands, but I assure him that, as a native of Birmingham, I am *from* the hinterlands.

We have trips scheduled to West Virginia, Wisconsin, Missouri and Nevada, and by the time you read this report, those will also be a part of our travels. We have truly enjoyed ourselves and will always be grateful for the opportunity.

In my last report, I told you were working hard to defeat the Amendment to Model Rule 1.6 by the American Bar Association. As it turned out, the Cheek Task Force and the leadership of the ABA had worked diligently to see that the amendment passed, and despite a lot of effort by many Fellows of the College, the amendment was approved 218 to 201. The College is deeply indebted to Ben Hill, Larry Fox and Bill Paul for serving as eloquent spokespersons for our position. We will be considering a campaign on a state-by-state basis to prevent adoption of the ABA version, or if it has already been adopted, to reverse that action.

Recent action by the executive and legislative branches of our government impinge on judicial independence in sentencing. I have appointed a Task Force to consider the issues involved in these actions: Past President Earl Silbert will chair the Task Force and Mike

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Teaching Program For Public Service Lawyers Sees Rapid Expansion

The College, through its Teaching Trial and Appellate Advocacy Committee, has embarked on an ambitious course—to organize, through its State and Province Committees, trial advocacy programs to enhance the trial skills of public interest and pro bono lawyers throughout the United States and Canada.

Following the inaugural efforts in South Carolina and New York, where the idea for this project was born, a group of Texas Fellows conducted a program entitled *Trial Skills for the Public Interest Lawyers* in the Kraft W. Eidman Courtroom at the University of Texas School of Law. The registrants were educated and entertained on subjects ranging from voir dire to closing arguments, including a demonstration on *Daubert* challenges to expert testimony, presided over by the Honorable Barbara Lynn, U.S. District Judge for the Northern District of Texas. By all accounts, the program was a resounding success.

Armed with the materials from Texas, New York, and South Carolina, the Committee then helped to coordinate the production of outstanding programs in other states.

Working with the Legal Services Training Consortium for New England, Fellow Richard Zielinski organized a three day, NITA-type trial advocacy program for legal service lawyers from seven New England states.

Virginia State Chair, Mike Smith, moderated a program entitled *Trial Skills for Public Interest Lawyers* in Richmond. This lecture style presentation was staffed by judges and ACTL Fellows on topics ranging from "Pre-Trial Orders and Motions to How to Fire Your Client."

At the Texas Poverty Law Conference, Texas Fellows James B. Sales and Broadus Spivey and the Honorable W. Royal Ferguson, U.S. District Court, Western District of Texas, conducted a panel discussion on *The Law and Practical Consideration in Dealing with Expert Witnesses*. Additionally, Tommy Jacks spoke on *Demand Letters*.

Louisiana Fellows, led by George Robinson, conducted a program, entitled *Selected Problems in Trial Advocacy*, with the North Louisiana Legal Services Foundation in Shreveport.

Terry O. Tottenham

In Los Angeles, Don Mike Anthony collaborated with the National Legal Aid & Defender Association to conduct a program entitled *Trial Advocacy Training for Legal Aid Attorneys*. Richard C. Brennan organized the New Jersey Public Interest Lawyers Seminar at Seton Hall Law School in Newark, New Jersey.

Additionally, James Redmond is working with the Province Chairs to plan programs for legal services lawyers in Canada. Tom Fain and L. William Staudenmaier are organizing programs in Seattle and Milwaukee, respectively.

Program attendees uniformly have praised the College for the excellence of the presentations. Participating Fellows have enjoyed the service opportunity, which has strengthened the meaning of their Fellowship and their sense of belonging to the College. Without question, these programs have enhanced the trial skills of those who represent the less fortunate in our society. In leading this effort,

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Teaching Program

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the College has demonstrated its dedication to the principles of access to justice and to the improvement of our justice system.

If you are interested in organizing a Trial Skills For Public Interest Lawyers seminar in your State or Province, please contact Terry O. Tottenham of Austin, Texas, the Committee Chair, or the National Office. Educational materials developed by the committee are available to assist you in planning your program. ◆

Awards, Honors and Elections

Samuel G. Fredman of Rye Brook, New York, was the selected guest of honor at the Seventh Annual Past Presidents' Dinner of the Westchester (New York) Bar Association on October 16 at Tarrytown, New York.

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Jay H. Greenblatt of Vineland, New Jersey, received the 2003 Daniel J. O'Hern Award from the New Jersey Commission on Professionalism in the Law. The O'Hern Award, which recognizes commitment to professionalism, career achievement and service to the profession and community, was presented at a luncheon on October 2.

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David A. Miller, Q. C., of Halifax, Nova Scotia, became the second recipient of the prestigious Lee Samis Award of Excellence on May 22 at the Canadian Defence Lawyers Annual Meeting in Toronto. The Lee Samis Award was named for the founding president of the CDL to recognize exceptional contributions and/or achievements by members of the organization.

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William M. Saxton of Southfield, Michigan, was one of three Michigan lawyers to be honored with the Champion of Justice Award on September 12 from the State Bar of Michigan. The award is given for integrity and adherence to the highest principles and traditions of the legal profession and professional accomplishments that benefit national, state or local communities.

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Larry S. Stewart of Miami, Florida, was recently recognized with a special President's Award by the Florida Chapters of the American Board of Trial Advocates. It was only the second time the award has been given. Stewart also was recently honored with his fourth Wiedmann and Wysocki Award from the Association of Trial Lawyers of America.

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Charles L. Babcock of Dallas, Texas, has been asked to be Chairman of the Texas Supreme Court Advisory Committee and to chair a committee appointed by the Texas Supreme Court to rewrite the Canons of Judicial Conduct.

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Knox D. Nunnally of Houston, Texas, has received the 2003 Ronald D. Secrest Outstanding Trial Lawyer Award from the Texas Bar Foundation. The award honors a trial lawyer who has demonstrated outstanding trial and advocacy skills, high ethical and moral standards and exceptional professional conduct, thus enhancing the image of trial lawyers.

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W. James Foland, Kansas City, Missouri, has been awarded the 2003 Ben Ely, Jr. Outstanding Defense Lawyer Award presented by the Missouri Organization of Defense Lawyers. ◆

Remembering Why We Have Courts At All

The following was adapted from the address of Simon V. Potter, President of the Canadian Bar Association, at the College's 2003 Spring Meeting, at which he was also inducted as a Fellow.

Introduction

It was Elihu Root, United States statesman and New York Bar President, who said: "About half the practice of a decent lawyer is telling would-be clients that they are damned fools and should stop."

I am here to talk about the other half. I think there are many files in which we have no business telling our clients to stop.

I will deal today, by way of preface, with the value to our clients, but also to society as a whole, of the courtroom trial, and therefore of the trial lawyer. I propose then to deal with what appear to be threats to the very trial which makes us trial lawyers.

I should deal first, though, with the foreseeable reaction of some who might read into my remarks a disdain for other ways of settling disputes.

I have nothing against mediators. We are all mediators, to the extent that we often advise our clients to offer or to accept settlements of their disputes.

I have nothing against arbitration which is, after all, a form of litigation, though with differences which are key to my argument today.

I have nothing against settlements. I do think that some clients need to be brought to settlements and told not to insist on going to court when an acceptable settlement is on the table.

Indeed, it is clear that we need to continue to find ways to seek quicker, cheaper ends to get our clients through the ordeal and out the other end.

The Trial Under Threat

Simon V. Potter

With those shibboleths out of the way, I can say, then, that it is without any disdain for the alternative methods of dispute resolution that I will speak today of some of the threats to our traditional form of dispute resolution, the courtroom trial. I want to address some of the longer-term ramifications of those threats. I think we must speak of the duty of trial lawyers in the face of those threats.

My topic is that of the misguided policies here and there which appear to downgrade the very trial which makes us the "trial lawyers" which we are.

Though there are few things I like better than a trial, and cross-examination and pleading, I will try not to allow my remarks to be tainted by that taste, but to look at the value of the trial, and of trial lawyers, for what it really is.

I think, first, that I am not overreacting, or bringing you a problem from some foreign land, when I speak of the downgrading of the trial. It was a judge, an American judge, who said less than a year ago that, "We are creating a whole new culture where a trial is perceived as a failure of the system." (Judge Patrick E. Higginbotham of the 5th U.S. Circuit Court of Appeals in New Orleans, speaking at the May 2002 5th Circuit Judicial Conference in New Orleans.)

Of all federal civil cases in the USA which were resolved in 1970, jury and bench trials

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Remembering Why

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together made up 10%. By 2001, that percentage was down by 80%, to a mere 2.2% (jury trials went from 4.3% to 1.5%). The federal court workload had increased 146% so, even without taking into account population increases and growth in the economy and growth in the number of judges, the trial was in 2001 about half as frequent as it had been in 1970.

Is this decline in trials just because ADR is working? No. Is someone or something actually discouraging trials? I think so.

I think that this is dangerous, and I think that it reposes on a fundamentally flawed view of what a trial is, and what trial lawyers are for.

At this year's ceremonies of the swearing in of new young lawyers in Québec, the Superior Court's Chief Justice's speech included a very pointed message that the courts should be seen by lawyers, and this as a matter of their ethical duty, as a last resort for their clients' disputes. These new lawyers were told that settlement had to be sought, not so much out of a duty to their clients, but out of the lawyer's duty not to burden the judicial system.

Amendments to procedural codes, in Québec and across Canada, and I understand in the United States, seem tailor-made to hasten the small and the medium case through the system and out the door, settled as much as possible, but actively to discourage the larger or more important case from even coming to court.

The very system seems in some ways to have given up the fight, especially when it comes to the larger cases. The court system appears not to have seen arbitration and mediation at all as competition but to have welcomed its arrival as a godsend, as a mechanism which offers to get things done without the courts having to be bothered.

What has happened to the idea that a party deserves his or her "day in court"?

Yes, the complications of society and of the rules of litigation have made it so that one's day in court is often a year in court, but this does not change the fundamentals of the argument I advance here.

The fact is that we are being pressured not to go to trial, indeed in no small measure by the very procedural rules which are said to make things go more smoothly.

What is going on here, and what are the ramifications?

The Ethical Implications

I do not maintain, of course, that lawyers with unreasonable clients ought to make them even more unreasonable, or that disputes which are eminently settleable ought to be brought to court nonetheless. I do not maintain that lawyers should refrain from telling clients what settlements may be envisaged, or how those settlements might be better than going through the costs and difficulties and uncertainties of court. I do not maintain that we have a duty to seek to generate a new precedent with every case.

But I do maintain that it is a dangerous thing when parties are dissuaded by the system from getting their disputes before a judge. I do maintain that lawyers ought not to be told that their ethical duty is to lighten the load on the courts.

Their duty is to advise and represent their clients. The duty of governments is, should matters not settle, to provide a proper and reasonably accessible forum for that representation to come to a pleading, before the judicial branch of government.

I am also troubled that some appear to think that part of the cause of the overburdening of our courts is the lawyers themselves, as though lawyers have been intentionally dragging their clients to court with trials which might easily have settled.

That kind of jaundiced view should not be held by those in the know. It is one thing for humorists like Art Buchwald to write: "It is not the bad lawyers who are screwing up the justice

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INTERNATIONAL COMMITTEE REPORT ON MILITARY COMMISSIONS DISTRIBUTED

At its Spring 2003 meeting, the Regents approved the Report of the International Committee on Military Commissions for The Trial of Terrorists. This project was begun by past committee Chair Mark Alcott and continued by the committee's present Chair, Chuck Dick. The Report was initially authored by a team of lawyers at Jenner & Block in Chicago. The team was headed up by Jenner & Block partners Dick Franch, FACTL, and Pat Bronte. The College immediately distributed the Report to relevant Senate and House Committees and U.S. government departments.

The Report recognized the difficulties in balancing the interests of national security with the interests of due process and fairness. It summarized the policy interests involved and the relevant orders of the President and the Department of Defense. It discussed the legal authorization for these orders and the class of persons potentially subject to them. It then commented on the adequacy of the procedures for trial by military commissions and discussed the advantages and disadvantages of trying terrorists before international tribunals, instead of military commissions.

Richard Franch

The Report recommended supplementary regulations to improve the fairness of trials before military commissions without sacrificing national security interests. In particular, the Report recommended:

- Limiting military commission prosecutions to alleged violations of the law of war;
- Clarifying the meaning of "international terrorism;"
- Prohibiting the removal of commission members or limiting the circumstances under which they may be removed;
- Adopting the Unlawful Command Influence rules for military commission proceedings;
- Clarifying that confidential communications between the accused and his counsel are protected by the attorney-client privilege and are neither discoverable nor admissible at trial;
- Directing the commission to exclude evidence of statements by the accused made in response to physical force or the threat thereof;
- Requiring that any limitations on procuring the attendance of witnesses be applied equally to the prosecution and the defense;
- Requiring the Presiding Officer, when making a determination under § 6(D)(5)(b) of the Procedures, to balance the accused's ability to make his defense against the national security interests involved;
- Adopting a procedure for capital sentencing that includes an eligibility determination and a weighing of aggravating and mitigating

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Military Commissions

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circumstances of an offense and offender;

- Requiring the military commissions to issue findings of fact and conclusions of law;
- Permitting the prosecution and defense each to submit written briefs within 10 days after receiving the trial record, with such limitations as to length and form as the Review Panel deems appropriate;
- Permitting the Review Panel the discretion to extend the 30-day limitation on the review period, at least in capital cases;
- Providing that the Review Panel shall be entitled to review commission determinations as to mixed questions of law and fact; and
- Clarifying review standards to state that review of sentencing decisions is not limited to "material error[s] of law."

A complete copy of the Report may be found at the publications section of the College's website, www.actl.com. ◆

From the Editorial Board

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Association President Simon V. Potter's plea for the preservation of the courtroom trial as the centerpiece of our jurisprudence, delivered at the Spring 2003 meeting at Boca Raton, is such a paper. We hope that you will find it as compelling as we did. Coincidentally, Potter was inducted as a Fellow at the meeting at which he spoke.

Continuing our tradition of introducing you to your new leader, we feature a profile President-Elect David W. Scott of Ottawa, who will take office as our first Canadian President in Montreal.

The level of activity of the College at both the local and national levels increases with each passing year. You will find descriptions of some of the more recent of these activities in these pages: support of efforts to increase judicial pay; the continuing fight against the weakening of the attorney-client privilege; the publication of a new Code of Pretrial Conduct; the publication of an insightful critique of current proposals for the trial of terrorists by military commissions, and a College-sponsored project to teach trial and appellate advocacy skills to public interest and pro bono lawyers that has spread like wildfire.

We are painfully aware that it has taken the United States Post Office an incredible amount of time to deliver the last two issues of your copy of the *Bulletin*. (The chair of the Editorial Board received his copy twenty-one days after it was mailed at a facility he can see from his office window!) The cost of first-class mail delivery makes that alternative unfeasible. We have had a talk with the local postmaster, and we are exploring other avenues. You should know that as soon as we go to press, the *Bulletin* is posted on the College website. You may want to start checking that periodically, both to look for the latest *Bulletin* and to see what other new publications the College has produced.

We continue to solicit your thoughts about both the *Bulletin* and the College. ◆

New Executive Director's Presence Felt

Dennis Maggi, who took over as the College's executive director in June, immediately began to make his presence felt. In July, he started sending weekly updates to all members of the Board of Regents and Past Presidents to provide information and invite feedback between the Board of Regents meetings. "I feel truly blessed to have the opportunity to serve as the Executive Director and work with each of you to accomplish the goals of the College," Maggi said in his first weekly update dated July 18.

He has also started to formulate a strategic plan for operation of the College's information technological needs, such as computers, accounting system, membership database and an interactive website that eventually will allow Fellows to register for meetings and pay annual dues online. "We want to move communications from the 20th century into the 21st century," Maggi said. In addition to inner-office activity, he has traveled to meet with the College leadership and has attended the Northwest Regional meeting in Jasper, Alberta, Canada. Maggi has also traveled to Montreal to attend to the final details for this year Annual Meeting. He reports that over 1,200 individuals have registered for the meeting. "This continues to be an exciting time for the College and I am looking forward to the Annual Meeting and meeting the Fellows of the College." A business administration graduate of California State University at Sacramento, Maggi has thirteen years of experience as a professional association executive. He serves as Chair-elect for the California Society of Association Executives and is a member of the American Society of Association Executives Ethics Committee; he also served as assistant director of the College in 1995-96. ◆

Dennis J. Maggi

Annual Meeting Update

The College's Fifty-third Annual Meeting, to be held in Montreal October 30 through November 2, promises to be a resounding success.

As of press time, the College's room block at the Queen Elizabeth Hotel in Montreal has been sold out, and a block of guestrooms at the Le Centre Sheraton have been booked for overflow registrants in the hope that no Fellow who wishes to attend will be turned away.

Confirmed speakers include Hon. Jean Charest, the Premier of Quebec; Hon. Louise Arbour, a Justice of the Supreme Court of Canada, who will be made an Honorary Fellow; Hon. Gerald Tremblay, Mayor of the City of Montreal; United States District Judge John S. Martin, Jr. of the Southern District of New York, who has recently announced his resignation in protest over Government sentencing policies; Kathy Reichs, a forensic anthropologist and best-selling author; J. Robert Pritchard of Torstar Corporation; Irwin Cotler, and Harry F. Tepker, Jr. of the University of Oklahoma. ◆

College Considers Carrying Rule Change Fight To States

The College is considering a state-by-state campaign to fight planned changes in the time-honored attorney-client privilege, President Warren Lightfoot has announced.

The ABA House of Delegates voted 218-201 on August 11 to amend Rule 1.6 of the Model Rules of Professional Responsibility to allow lawyers to breach the duty of confidentiality if a client uses the lawyer's advice to commit a crime or a fraud. The recommendation will now be sent out to the states for adoption.

"The College, together with a number of other organizations of courtroom lawyers, worked very hard to persuade ABA delegates to vote against the amendment to Model Rule 1.6," Lightfoot said. "Proponents were, however, highly organized and were able to counter our efforts. We consider the issue such an important one that we are not giving up. We are presently considering mounting a state-by-state campaign to persuade the various states to reject Model Rule 1.6, or if they have already adopted some version of it, to rescind it."

Although the new rule was enacted in response to corporate malfeasance such as that committed at Enron and WorldCom, it will do little to affect such crimes, Fellow Ben Hill of Tampa said.

Hill, Fellow Larry Fox of Philadelphia and Fellow Bill Paul of Oklahoma City, a former ABA president, were the College's key spokesmen during the debate on the rule change at the ABA meeting in San Francisco.

"Texas has a similar rule to this," Hill said. "But it didn't stop Enron in Texas. The rule puts the attorney in a very awkward position. None of us may realize how awkward until the attorney faces a malpractice action or an action initiated by a group or shareholders or people who have been harmed by the Enrons of the world for not reporting something."

Hill said the true effect of adopting such a rule may be to squelch candid communication by clients and to damage the attorney's relationship with the client.

"It's my feeling that if the client knows you may report him, the client is not going to tell you everything for fear that you will report it," Hill said. "Without a full and candid discussion with the client, we are prevented from effectively counseling the client. The rule calls upon us as lawyers to try to make an evaluation of what is a fraud and what isn't a fraud. It puts us in an adversarial role with our clients. It makes us policemen."

Adoption of the rule puts the lawyer in jeopardy in another way, Hill explained. "Let's suppose I make a judgment that a client is about to commit a fraud and I therefore report the client. Suppose the client is charged, but acquitted. Then where am I?"

In addition, the rule doesn't clarify to whom the lawyer should report the so-called fraud. "To my adversary in a civil proceeding?" Hill asked rhetorically. "To the state attorney?"

Adoption of the rule will have a chilling effect on the practice of law, he said. "It seriously damages the attorney-client relationship. The rule, in effect, says, 'Counseling our clients doesn't work, so let's report them.' It's a dilution of the attorney-client relationship, particularly the confidentiality that goes along with it. If we lose confidentiality, we lose one of the most important distinguishing characteristics of our profession. We can have subpoenas issued by the court and we have confidentiality. Other than those what are the remaining characteristics that distinguish us from any other group?" ◆

First Canadian President

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trying to restore honor and integrity to the legal profession.

A third generation lawyer, Scott was born January 27, 1936 in Ottawa. He graduated from Loyola College in 1957 and received his law degree from the University of Ottawa in 1960 before entering practice with his father in 1962 in Ottawa. He was appointed Queen's Counsel by the Government of Ontario in 1976.

"My father was anxious that I become an intellectual property lawyer like he was. I did not share his enthusiasm," Scott said. "The litigation aspect of the law was more appealing. It was the competitive thing."

Scott received his baptism by fire in the courtroom almost immediately after receiving his license. He was named co-counsel to represent a young mother who had been charged with killing her infant child. "It was enormous stress and excitement, but she was acquitted after a jury trial," he said.

A succession of trials followed in his career. He represented Kimberly-Clark against Proctor & Gamble in the intellectual property litigation known as the "diaper wars," which was then one of the largest lawsuits of its kind in the world. In another high profile case he successfully represented a prominent journalist who had been criminally charged with publishing the government's planned budget, an otherwise secret document.

And just a few years ago, he successfully represented the Canadian government in a famous case involving Conrad Black, Canada's largest and richest press baron.

Black sued the government for refusing to allow him to accept a knighthood from Queen Elizabeth II. (Canadians are barred from accepting foreign titular honors, even those of England.) "It went all the way to the Court of Appeal and we were successful in having the lawsuit dismissed," Scott said.

Black then renounced his Canadian citizenship, and moved to England where he was knighted to become Lord Black of Crossharbour!

As a young lawyer, Scott had heard about the American College of Trial Lawyers, but had only a vague notion of details.

"I knew that it was a very prestigious organization that was well beyond my reach," Scott said. "All you had to do was look down the list of Canadian Fellows, which included lawyers like Gordon Henderson, the absolute cream of the profession."

Scott said he felt extremely honored when he was tapped for membership. "Every trial lawyer is seeking to develop a reputation," he said. "The hard work and effort is built around this objective. So when you are invited to join the one organization that absolutely defines professionalism, it is an important step."

In his year as President, he said, "If the College represents the very best of the trial bar, then it's not enough for us to rest on our laurels and enjoy each other's company. We should be contributing something at the local level to law students and young lawyers, and this involves local projects."

Many states and provinces already have local projects, and that is a good start, he said. "Ideally there should be something going on in every state and province once a year. Because we are dealing with very busy lawyers, the way to make this happen is to provide the states and provinces with the materials necessary to do seminars or other projects."

Scott said the College already has one such project underway in the form of the materials for teaching advocacy to public interest lawyers produced by the Teaching of Trial and Appellate Advocacy Committee, headed by Terry Tottenham of Austin, Texas. In addition, the Legal Ethics Committee, chaired by Alan Radnor of Columbus, Ohio, is preparing a set of course materials on ethics, which can be circulated to states and provinces. "In other words, instead of having

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First Canadian President

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to develop twelve ethical problems on their own, the states and provinces can use these materials," Scott said. "I think there is room for other projects like these. This is an extremely high priority because this is an opportunity to provide leadership and is also how others learn about the College in local communities."

Scott said he is going to continue President Lightfoot's work to insure that there is more diversity in the College. "More women, visible minorities and more lawyers from other disciplines," he explained. "One of the biggest challenges is younger lawyers. There is this oddity that once you become a Fellow, unless you have effective leadership, there is no instinct to rush out and find other suitable nominees. As a result, in some states and provinces, superb younger candidates are not always sought out by the local Fellows."

Another area Scott will focus on during his term is improving College publications. "We should publish materials which may be controversial," he said. "The traditional view has been we shouldn't be publishing materials unless there is unanimity about the issue. This inhibits writing on interesting subjects. In the case of official publications of the College, which express the College's viewpoint on an important subject, obviously the College should speak with one voice. But we should have an appropriate vehicle for views on matters of academic or professional interest, views which are not necessarily shared by everybody."

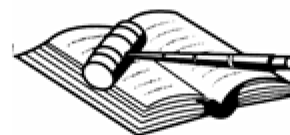
To this end, Scott said he wants to explore the possibility of launching an American College of Trial Lawyers Law Review. "Maybe we could start with one per year and call for articles and end up with five or six papers in it," he said. "It would represent another endeavor in which Fellows could become engaged."

In addition to his College agenda, Scott wants to devote time to improving the image of trial lawyers. "I believe that the reputation of the profession has suffered," he said. "It is at its very lowest right now. There is a certain public attitude about trial lawyers. It is fed by specialization and lawyers being 'captive' and tied to the interest of particular clients. The next thing you know the client is dictating to the lawyer. This is completely inconsistent with our tradition of independence, and I feel it has to be addressed. The profession has got to say to the client, 'I decide who I am going to act for and if you can't live with that, then you are going to have to find somebody else.' At an earlier time clients lived with this notion of independence."

Scott said he also is concerned that the future of the trial as a dispute resolution mechanism is in doubt, and the College should take action to forestall the day "where the state will not permit us to have a trial unless the litigants are prepared to pay for it."

Away from the office, Scott and his wife, Alison, like to spend time with their four grown children and four grandchildren on the family's farm property in the Ottawa countryside. "We are cross-country skiers and we play a bit of golf, but mostly we spend our time in the country improving our surroundings," he said. "The property of 750 acres is owned by six families. I like to build cross-country ski trails. We have about ten kilometers of trails now and we continue grooming them."

If he's not working on the farm property, Scott also pursues another hobby—hand carving wooden walking sticks and hiking poles, which he gives to friends and sells for charity. "Although uninvited, I have parceled them out to a number of people in the College!" ◆



DAVID W. SCOTT, Q. C.

David W. Scott

- Born: Ottawa, Ontario, January 27, 1936
- Education: Loyola College (University of Montreal) , B.A. 1957, University of Ontario LL.B. 1960
- Admitted: Ontario, 1962
- General Civil Litigation, Intellectual Property Litigation, Criminal Litigation, Administrative Law
- Certified Specialist in Civil Litigation
- Appointed Queen's Counsel, 1976
- Co-chairperson of the National Firm and Partner in the Ottawa office of Borden Ladner Gervais
- American College of Trial Lawyers (Inducted 1983, Province Chair, 1993-94, Regent 1996- , Secretary 2000-02, President Elect 2002-03)
- Bencher, Law Society of Upper Canada, elected 1991, re-elected 1995
- Advocates Society (awarded the Advocates' Society Medal in 1999)
- Appointed by the Minister of Justice as Chair of the Triennial Review Commission established under the Judges Act of Canada, 1999
- Milvain Chair in Advocacy, University of Calgary Law School, 1988
- Honorary Doctor of Laws from both the Law Society of Upper Canada and the University of Ottawa, 2001
- Has served on the boards of numerous professional, educational, social and philanthropic organizations
- Has published extensively on a variety of legal topics

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system in this country—it's the good lawyers. If you have two competent lawyers on opposite sides, a trial could easily last six months."

But that kind of view is not alright for those who must decide how to make court systems responsive to real needs.

Warren E. Burger only had it half right when he said, in his address to the American Bar Association in New Orleans in 1978: "We should get away from the idea that a court is the only place in which to settle disputes. People with claims are likely people with pains. They want relief and results and they don't care whether it's in a courtroom with lawyers and judges or somewhere else."

Of course, courts are not and should not be the only place where disputes are settled. But it is not every litigant who does not care how the settlement is reached. Many do, and many of those do indeed prefer that it be by reasoned decision, after a fair hearing, before the courts of the land, with a chance of an appeal.

Cases go to trial because the clients have not settled, not because the lawyers have not settled, and the trial lawyer's duty is then to plead the matter to the best of his or her ability.

Those who argue that the practical problems faced by court systems can be solved, even partially, by lawyers keeping cases out of the system appear to have taken too much to heart the feeling expressed by Oscar Wilde: "Duty is what one expects of others."

Trial lawyers do not feel that way. They know that they themselves have duties, which they expect themselves to meet. We have a duty to the client who wants a judgment.

And the government has a duty to make sure that its judicial branch can accommodate that client.

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Justice Is Not Just A Private Matter

There is a reason for which court proceedings have for centuries been held to be public, and open to all, barring exception.

It is that the course of justice is of interest to more than just the litigants themselves. The way it operates and the results to which it arrives are of interest to all citizens in a free democracy.

If justice is to be sought by preference through mediation, which is private, or by arbitration, which is private, then the very operation of the justice system escapes not only the judicial branch of government but also the properly judgmental eyes of the citizenry.

This is not to say that all litigants ought to be forced to wash their linen in public. It is to say that pushing litigants away from the public *fora* and towards the closed *fora* will necessarily have an effect on public understanding and public appraisal of the systems of justice and of the results being achieved.

The Value Of Precedent

The inscription above the doors to Yale Law School (carved some time between 1929 and 1931) reads "The law is a living growth, not a changeless code." That is right, and the sap of that tree is precedent.

Does more recourse to arbitration imperil *stare decisis*?

Well, it is clear that recourse to arbitration and a growing tendency to settle does not positively contribute to *stare decisis*. That way, as was said by U.S. District Judge Sarah S. Vance of the Eastern District of Louisiana, "There is no verdict, no appeal, no precedent."

No precedent. Is it not by precedent that the entire edifice of the law has been built (even in civil law jurisdictions like my own)? Has it not been by muddling through, from one precedent to the next, that the law has grown, that the distinctions have been made, that our quest for justice has advanced?

I open a parenthesis to remark that, of course, the law advances also because of the absence of compelling precedent to guide every particular case. Luckily for trial lawyers, there seems always to be one more precedent, latent in the ether, waiting to be created. It is perhaps not as bad as Peter Mayle said in *Acquired Tastes*, but he had a point: "The law, as you . . . discover if you're unfortunate enough to be involved with it often, is almost entirely made up of Gray Areas." . . . "I have seen the future," he wrote, "and it's a Gray Area."

I prefer the old English proverb which saw the same thing, but spoke of it more hopefully, by referring to the "glorious uncertainty of the law". ("Being a lawyer, I don't like to advise parties to go to law. I know the glorious uncertainty of it, as it is called." Horace Mayhew, English journalist, *The Image of His Father*, 1848).

Let us choose this more optimistic view. Winston S. Churchill said, and he was right, "For myself, I am an optimist. It does not seem to be much use being anything else."

Still and all, the precedent, and the search for each next new one, is what makes the law, and it is what makes the law keep up with social and other changes in the world. It is not just that it is enjoyable for the trial lawyer. It is good for a democratic and dynamic society.

Oscar Wilde, though not thinking of the law (I think he thought little of the law), made the point I am making here when he said, "It is because humanity did not know where it was going that it managed to find its path." So did our law find its way, and so does it continue to do so, by the trial of precedent, the one leading to the next. "No judge writes on a wholly clean slate." (Felix Frankfurter, *The Commerce Clause*, 1937.)

If the world is changing faster and faster, but we are faced with a system which makes

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precedent less and less regularly, what does that say for the very relevance of the law over the long term? Roscoe Pound, in his *Introduction to the Philosophy of the Law*, said, rightly, that the "Law must be stable, and yet it cannot stand still."

The larger cases with the most at stake are often those in which the new issue can be attacked, and the imaginative precedent sought.

What kind of world awaits us if the courts, which are to make the precedents, actively discourage from their doors the very cases which will set those precedents? Will the law march ahead less slowly? I fear so.

What kind of world awaits us if the courts handle only the small and medium cases and leave the larger ones to the precedent-free *fora*? Will the issues coming for determination tend to be less juicy? I fear so.

Judgments And Our Freedoms

"As in absolute government the King is law, so in free countries, the law ought to be King." Thomas Paine, *Common Sense*.

When Thomas Paine said that, he did not mean that arbitration ought to be king. He did not mean that settlement was the duty of litigants.

He meant that the courts are there to set what is the law and that the government must abide by that law and not by mere expediency.

It is no excuse for governments to tell us that it is more expedient to push litigators to settle and not to bring matters to court. It is the government's duty to have a court there waiting when the litigants decide that they want the law to decide.

That law is the only protector of our freedoms, of the predictability on which personal and commercial relationships are born and thrive.

Cicero wrote that "we are all servants of the laws to the end that it maybe possible for us to be free," and Goethe wrote: "Law alone can give us freedom."

Benjamin Franklin wrote in *Poor Richard's Almanack* that "where there's no law there's no bread".

As our society evolves, so therefore must our law.

And, of course, in this quest for the right law, the right evolution of precedent, the trial lawyer bears the noble duty of helping judges to get it right. We also help arbitrators to get it right, but that does not carry the benefit of precedent of which I speak here.

Jury Trials

Where there are fewer trials there will be fewer jury trials. Even in the context of the dwindling number of trials here in the United States, there are, as I have said, fewer of that smaller number which are jury trials.

I do not mean here to launch the debate as to whether jury trials are better or worse than trials by judge alone, but it is worth mentioning that some do see value in the jury trial, and even see a constitutional right there.

Arbitration clauses can be struck down by US courts if they do not see a clear and conscious waiver of the right to a jury trial.

When the system tries to squeeze cases out of the trial track and onto the mediation and arbitration track, when chief justices invent new rules of ethics which conscript lawyers into keeping their clients away from trials on the merits, have the clients given a clear and conscious waiver of their right to a jury trial?

Training The Younger Lawyers

Are fewer and fewer young lawyers getting the trial experience they need when young in order to grow into the seasoned litigators our clients need? We certainly face this problem in our Firm, Ogilvy Renault, and I have heard across Canada the same

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complaint from other firms, large and less large. (I hasten to add that, at Ogilvy Renault, we are doing something about it and will have the fine pleaders available when the clients come calling.)

The Quest For Truth And The Example Of The Criminal Courts

We should have known all this.

The criminal justice system has faced problems of overloading and has toyed with ways of just getting the cases through the system, like sausage. What did we learn?

In the '70's the public, and lawyers, had to wake up to the realization that the practical compromises made to keep the criminal system working were compromises which came at a cost to principle. In 1974, Dorothy Wright Wilson, then Dean of the University of Southern California Law Center, said: "If criminals wanted to grind justice to a halt, they could do it by all banding together and pleading not guilty. It's only because we have plea-bargaining that our criminal justice system is still in motion. That doesn't say much for the quality of justice."

Professor Franklin E. Zimring of the University of Chicago said in 1978: "Because of plea-bargaining, I guess we can say, 'Gee, the trains run on time.' but do we like where they are going?"

Well, no. We should be very worried as to where the train is headed, and we should be worried about the long-term effects on the quality of justice being delivered.

United States Judge Harold J. Rothwax perhaps said it best in *Guilt: The Collapse of Criminal Justice*: "The speedy trial statute is a mathematical calculation that renders the quest for truth irrelevant."

Is the quest for truth now to be made irrelevant on the civil side, too? For it is of that quest that we are talking when we speak of trials. They are perhaps imperfect tools for the quest, and some stories can be found of the quest being perverted, but the very institution of the trial is that never-ending quest.

Settlements can also be based on the parties' view of the truth and on other than cold, arithmetic calculation, and can rest on parties' views of a larger truth than the narrow view sometimes sought at trials. I have nothing against settlements, as I say; it is just that I think we ought not to be pressured into forcing our clients into them, and that the courts ought to be there for us when the settlement does not look right.

In the Talmudic tradition, the judge must first explore the chances for *psharah*, or compromise. But, when the parties say that they do not wish to compromise their claims, the judge *must* put all thought of it aside and must judge according to the law and the evidence. The judge *must* make the trial and the judgment available to the parties.

The adversarial process and cross-examination and reasoned pleading are the tools the state must offer when parties do not wish to settle.

The trial, and the trial lawyers' presentation and challenge of these competing views through the cross-examination, we all as trial lawyers know are essential litmus tests, are searches for the version of events most closely approximating the truth.

As George Meredith wrote, in "The Ballad of Fair Ladies in Revolt":

> *But O the truth, the truth!*
> *The many eyes*
> *That look on it! the diverse things they see.*

Being forced to settlement by the unreadiness of the system to hear a case is having a system which cares not for truth, but only for settlement. Can a system which is not seen to care enough for truth be seen to care for justice?

"Justice is truth in action", said Benjamin Disraeli in a speech to the British House of Commons in 1851.

Even if the United States Constitution did not say, twice, that citizens should not be

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deprived of their liberty or property without "due process of law" (Fifth Amendment 1791 and Fourteenth Amendment 1868; this edict was also in the 13th century Statute of Westminster), do we not see an injustice in our being so deprived when we are forced to settle, to accept less in compensation than we deserve, or to pay more than we deserve to? Is the injustice not compounded, even leaving aside the Constitution, if it is because of the state's failure to provide for *fora* of due process that we are forced there? Yes, sadly, and yes.

We take for granted that our country's courts are there to dispense justice, to hear disputes and to render judgment on them, not simply to twist arms into a settling handshake. We should not take this for granted. It was a hard won right. King John was forced to write in the Magna Carta (1215), "To no one will we sell, to no one will we refuse or delay, right or justice."

Our Duty As Trial Lawyers

Are we now then to be told that it is our duty to urge our clients to abandon that quest for the just verdict? Are we now to be told that it is our duty to tilt our advice as to the balance between principle and practicality, and to lean towards settlement more than we used to?

I say, "No."

Oscar Wilde said, "We must be modest and at the same time realise that others are inferior to us." Tongue in cheek, but it applies here: We must be modest and know that a trial is not always in our clients' best interest, but we must see this through the knowledge that, if the parties do not really want to settle, court trials are superior to other forms of dispute settlement in the search for truth, in the quest for the advancement of the law and in the demonstration to the public that there is a court system there waiting for them when they need it.

It is not our duty to push clients away from this recourse, just to unburden the courts.

Let me end where I began, to make sure that I am not misunderstood. I have nothing against settlements, and nothing against mediation meant to search out that good settlement. We must not shun the good settlement.

But we must not allow every trial to be seen as the failure to find the good settlement. And we must certainly not allow the makers of rules to add to trial lawyers' ethical duties by putting on the lawyers' shoulders the burden of reducing citizens' recourse to the courts.

I am with Justice Jim R. Carrigan, then with the Supreme Court of Colorado when he said in 1977: "I'm sick and tired of hearing about the number of cases disposed of when we discuss the judicial system. The Chief Justice should know that the job of the courts is not to dispose of cases but to decide them justly. Doesn't he know that the business of courts is justice?"

We can be cynical about the system, as even poets like Robert Frost were: "A jury consists of 12 persons chosen to decide who has the better lawyer." But being cynical is not being right. As Justice Harry A. Blackmun once said, "It's easier to be cynical than to be correct."

Juries do not choose the best lawyer, but a good lawyer can indeed help a jury, or a judge, to come to a just decision, to a just decision which advances the cause of justice.

And we should say so.

The American College of Trial Lawyers heard from Québec's last Chief Justice, and now a partner of mine, in October, and he said what I am saying here, but in two short sentences. "What makes a good judge? Two good trial lawyers make a good judge."

I close by saying how proud I am to be able to address and to congratulate, wearing my hat as President of the Canadian Bar Association, and tomorrow to join, as a Fellow, an Association which celebrates those two good trial lawyers. ◆

College Supports Judicial Pay Bills

President Warren Lightfoot has notified U.S. Representative John Conyers, Jr., the ranking Democrat on the House Judiciary Committee, that the College supports legislation providing increases in compensation for federal judges.

"The College is dedicated to improving the administration of justice, including the maintenance of an independent and high quality judiciary," Lightfoot said in his July 7 letter to Conyers. "The Fellows of the College are concerned that a significant erosion has occurred for many years in judicial compensation, negatively impacting the administration of justice. That impact is illustrated by the large and increasing number of judges leaving the federal bench because of inadequate compensation."

Lightfoot continued that not only has the exodus increased, but the financial sacrifice involved has made it more difficult to persuade top lawyers to allow themselves to be considered for appointment.

"Quality judges are absolutely indispensable to the effective administration of justice, and the College views this legislation as critical to the quality of our federal bench," Lightfoot said. ◆

New Regents Nominated

Raymond L. Brown of Pascagoula, Mississippi, Charles H. Dick, Jr., of San Diego, Brian B. O'Neill of Minneapolis and Thomas H. Tongue of Portland, Oregon, have been nominated to four-year terms on the Board of Regents.

Brown would represent the region of Arkansas, Louisiana, Mississippi and Texas. Dick would serve Arizona, Hawaii and Southern California. O'Neill would be Regent for Iowa, Manitoba, Minnesota, Missouri, Nebraska, North Dakota, Saskatchewan and South Dakota. Tongue would serve Alaska, Alberta, British Columbia, Idaho, Montana, Oregon and Washington.

These nominations will be presented at the annual meeting of the Fellows in Montreal.

The nominating committee was chaired by Regent Jack Dalton and was composed of Regents John Cooper and Joan Lukey, past presidents Andrew Coats and Tom Deacy and Fellows-at-large Philip Kessler and Francis Wikstrom. ◆

College Adopts New Code of Pretrial Conduct

U.S. Supreme Court Chief Justice William H. Rehnquist has written an introduction to a Code of Pretrial Conduct adopted recently by the College as a companion to the Code of Trial Conduct.

"Like the Code of Trial Conduct, this new Pretrial Code is part of a continuing effort to promote professionalism and courtesy among trial lawyers during all stages of litigation," Rehnquist wrote. "It supplements existing rules of professional conduct, local court rules, and rules of procedure, and provides guidance to trial lawyers on proper conduct in pretrial proceedings. And, like the Code of Trial Conduct, this Code expresses only minimum standards."

College President Warren Lightfoot explained the reasons behind the College decision to adopt the Code by saying, "All of us acknowledge that most of our colleagues' rude and unprofessional conduct occurs during discovery when no judge is present. This concern led us to ask George Chapman and his Professionalism Committee to write this Code, and we are now determined to give it as wide a distribution as possible. We are currently reviewing ways to get copies to most of the trial judges in North America. We believe its adoption by courts will make a difference."

Copies of the new Code may be obtained online at the College's website, www.actl.com, or from the College headquarters. ◆

Fellows In Print

John M. Poswall of Sacramento, California, has written, *The Lawyers: Class of '69*, a novel which traces the lives of five students at Boalt Hall, Berkeley, for thirty years. ◆

Fellows To The Bench

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

Edward L. Chavez, justice, New Mexico Supreme Court.

James E. Duffy, Jr., associate justice, Hawaii Supreme Court.

James D. Otto, judge, Superior Court in and for the County of Los Angeles, California. ◆

Dickson Medals Awarded in Toronto

College Secretary Michael Cooper and Mr. Justice Charles Gonthier of the Supreme Court of Canada presented the Dickson Medals for excellence in oral advocacy at the 2003 Gale Cup Moot Program in February at Toronto.

(Right: Cooper presents medal to Maryse Culham of the University of Moncton, New Brunswick.)

In addition to Culham, Cooper presented medals to Kristen Rudderham of the University of New Brunswick and Ryan Breedon of Osgoode Hall, Toronto.

The College sponsors the Dickson Medals, which are awarded to the student or students who demonstrate excellence in oral advocacy in the Gale Cup competition.

The medals are named for the late Honorable R. G. Brian Dickson, JFACTL, Chief Justice of Canada, who died in 1998.

Born in 1916, Dickson graduated from Manitoba Law School in 1938 and served in the Royal Canadian Artillery during World War II, during which he lost a leg to injury. He practiced law for several years before becoming a judge in 1963 in Manitoba. He was appointed to the Supreme Court in 1973 and became chief justice in 1984.

The Dickson Medal was awarded for the first time in 1991. ◆

In Memoriam

The College has received word of the deaths of the following Fellows:

Clement J. DeMichelis, Cincinnati, Ohio; Jay Ellsworth Jensen, Salt Lake City, Utah; George S. Leisure, Jr., Sea Island, Georgia; Charles S. Rhyne, McLean, Virginia; Jeptha W. Schureman, Detroit, Michigan; Chesterfield Smith, Miami, Florida; William H. Wendt, Coconut Creek, Florida.

Rhyne was a past president of the American Bar Association and credited with originating May 1 as Law Day. Smith also was an ABA past president, who was perhaps best known for his call for investigation of President Richard Nixon's activities in Watergate. ◆

President's Report

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Cooper will serve as liaison. I have asked the Task Force to give us its report prior to our Spring Meeting in Phoenix. These issues are critical to our justice system, and it is imperative that the College's voice be heard. If you have thoughts or suggestions as the Task Force goes about its work, please give them to me, Earl Silbert or Mike Cooper.

The trial seminars for public interest lawyers being conducted across the continent by local Fellows, using the materials put together by Terry Tottenham's Teaching of Trial and Appellate Advocacy Committee are a great success story. Wisconsin's seminar will be the twenty-first such presentation. These programs are both a showcase for the college and a salutary utilization of our Fellows' enormous talents.

Finally, by the time you read this report, the Board of Regents intends to adopt a dues increase—from $500 to $600 a year. The last dues increases occurred in 1990 (from $250 to $400) and in 1996 (from $400 to $500). We are working hard to be good stewards of your dues and have approved this modest increase only because the level of activity by the College has increased to the point that our reserves are less than the amount recommended by our auditors.

I am proud to turn the presidency over on November 1 to David Scott, our first Canadian President. He is a good friend and a bright, talented and charming Fellow, who will bring his extraordinary charisma to the office. I truly look forward to the coming year, when David and his wife, Alison, will lead our great institution. ◆

President Warren Lightfoot, President-Elect David Scott and Regent Brian O'Neill were among those attending the 2003 regional meeting in Regina, Saskatchewan on August 8 and 9. It was the first meeting ever held in Saskatchewan. Plans are underway to hold a future meeting in Manitoba.

The Bulletin

of the

American College of Trial Lawyers

19900 MacArthur Boulevard, Suite 610

Irvine, California 92612

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A current calendar of College events is posted on the College Website at www.actl.com