

PRESIDENT'S REPORT



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2017-2018

AMERICAN COLLEGE OF TRIAL LAWYERS

President's Year End Report American College of Trial Lawyers 2017-2018

Betty and I have just experienced the thrill of a lifetime and the highlight of my professional career, by having the opportunity to serve this year as President and First Lady. No matter how much one may think they know about this office, from serving first as a Regent and then three years as an Officer, it is very difficult to describe just what a privilege and honor it is to have served. Over the course of the year, we saw a number of old friends, but made many new ones during our travels. We extend a special thanks to those who were kind enough to invite us into their homes for a stay when we visited their cities. We will always remember the view from Regent Susan Harriman's house in Sausalito, and the winery we visited with Susan and Fellow Bill Keane and his wife, Cindy.

During the course of the year, we traveled from coast to coast, and from north to south including visits to Canada, the Oklahoma Fellows bi-annual meeting in Mexico, Alaska and Puerto Rico. I attended forty-seven events, and another five or so were covered by other officers when scheduling conflicts prevented my attendance. On a sad note, these travels included attending two memorial services for Past Presidents Charlie Renfrew and Jimmy Morris. In addition, we conducted two Chairs' Workshops, literally on each coast; we attended the U.S. Supreme Court Historical Society dinner; and I also attended, as an observer, a meeting of the American Civil Trial Roundtable in Washington, D.C.

In a first time experience for me, I attended the final rounds of all the competitions the College supports, including the National Moot Court Competition in New York, the Gale Cup Moot in Toronto, the National Trial Competition in Austin and the Sopinka Cup Trial Competition in Ottawa. All of these competitions were well run and full of enthusiasm, and I was honored to sit as a member of the appellate panel in the final round in the National Moot Court Competition, and as the trial judge in the final round of the National Trial Competition.

The attendance at the various events ranged from small, such that Fellows could gather around one table for dinner, to quite large, including the Tri-State Regional Meeting in Savannah, the Third Circuit Regional Meeting in Wilmington, the Region Six Meeting in Oxford, the New England Fellows Meeting in Portland, and the Northwest Regional Meeting in Whitefish, Montana. Regional meetings take a great deal of thought and planning in order to be successful, and one regional meeting had to be delayed and rescheduled due to the small number of Fellows who registered, and the significant financial loss which would have been incurred had the meeting gone forward. Great care must be taken by the Regent and host State or Province Committee in conducting a regional meeting to evaluate and plan all aspects including scheduling, venue, program and budget to guard against a financial loss.

When I attended the Southern California Fellows Annual Dinner in May, I traveled to Newport Beach early enough so that I was able to spend the good part of a day in visiting our National Office. During that visit, I met individually with each member of our fine staff who was present that day, in order to learn more about what each does to make our organization the success it is, and to learn of any issues or concerns which our staff might have. Our staff does a

large amount of work behind the scenes, on a daily basis, to support our mission and all of us, and we are fortunate to have them. During the year, we completed an upgrade to our database and continued to work on improvements to our website.

Since our *eBulletin* does an excellent job, every two months, of providing information about the various activities of the College, my report on the activities of our various committees will be somewhat condensed. As a general matter, in an attempt to make sure that our State and Province Committees are performing successfully and meeting all expectations, the Board approved a split into two Province Committees for Manitoba and Saskatchewan. We also performed due diligence to evaluate whether a split might be appropriate in Pennsylvania, and determined that there was no significant interest or support in doing so. The Executive Committee worked hard with our Regents to identify any problems or issues being experienced in any State or Province Committees, and took steps to improve any issues which were identified.

Starting with the workshops and continuing throughout the year, we urged our State and Province Committees to be ever vigilant in the search for new nominees, with particular efforts toward identifying younger trial lawyers, and being more diverse and inclusive in our nominations. In particular, I conducted a series of conference calls on two occasions during the year with Fellows serving as diversity liaisons, and also conducted a series of conference calls with all Chairs facing a submission date of September 15 for new candidates. I am happy to report that at each event I attended, where I always tried to address the need for diversity and inclusion, as well as focus on younger trial lawyers who meet our standards, that message appeared to be well received.

In addition to our standing committees, we also had a number of special undertakings this year. We have a Task Force on Judicial Independence, chaired by Former Regent Kathleen Trafford with the assistance of Vice Chair Buddy Wester, updating our existing white paper on that topic, and evaluating other ways in which the College can engage in supporting this important part of the rule of law. We also have a subcommittee, under the Admission to Fellowship Committee, chaired by Walter Bundy, reviewing our advertising guidelines. We have an Ad Hoc Committee, led by Regent Ritchie Berger, determining whether the existing white paper addressing fairness in campus sexual assault disciplinary proceedings can be supplemented to assist Canadian universities and colleges with these difficult issues. Finally, we have an subcommittee of the Special Problems in the Administration of Justice (Canada) Committee reviewing the Canadian Codes of Conduct for possible revisions.

Turning to our general committees, and to highlight just a few, we established the Beverley McLachlin Access to Justice Award Committee to investigate and nominate potential recipients for that award in the future, which is for persons who have made a significant contribution to improve access to justice, after it is introduced during the program at the Annual Meeting in New Orleans. A portrait bust of Chief Justice McLachlin, created by Past President Warren Lightfoot, will be presented during the general session. We expect a number of members of the Canadian Supreme Court to be present for the presentation to former Chief Justice McLachlin, as well as the conferring of honorary Fellowship upon Justice Sheila Martin.

In January, a group of Fellows from our International Committee, led by former Regent Brian O'Neill, conducted a very successful training program over a three day trial practice workshop in Guam, similar to the program which was conducted in Palau in 2015. Ten Fellows flew at their own expense to conduct that workshop, at which over 100 people from Guam and the neighboring commonwealth and confederations attended. Talks are already underway for a possible return to Guam for another educational workshop in 2020.

A highlight for me was the opportunity to attend the event at the Fordham Law School in New York City, when Judy Wahrenberger, Chair of the Emil Gumpert Award Committee, presented the check for \$100,000 from the Foundation to the Feerick Center for Social Justice. That grant will be used to support the immigration assistance project being conducted at Dilley, Texas. This event was attended by approximately sixty persons, including a large number of students at Fordham who have participated in the Dilley Project, and the Fordham administration highlighted the College and the Foundation during this ceremony.

Our Fellows (and others from their respective firms) working under the auspices of the Special Problems in the Administration of Justice (U.S.) Committee, achieved a significant result for Veterans faced with appeals from denials of disability claims. The Federal Circuit Court of Appeals determined that the wrong standard of review was being employed by the Veterans Appeal Board, and mandated a new standard which will hopefully increase the prospects for successful appeals going forward.

Finally, under a subcommittee to our Access to Justice and Legal Services Committee, led by Fellow Mark Surprenant, we have launched a pilot program (the Distinguished Pro Bono Fellows program) in which Fellows, interested in doing pro bono work, partner with certain host organizations in order to facilitate pro bono assistance. The subcommittee has identified eight Fellows who have agreed to participate in this pilot project, and if the program is as successful as we hope, we would then encourage other Fellows to participate and broaden the number of host organizations.

Turning to a couple of issues identified with respect to the competitions supported by the College, the number of mock competitions available to law students continues to proliferate, and law schools have choices as to which competition to send their top team. As Fellows, we all need to be ready and willing to help with Regional rounds and through our National Trial Competition Committee, continue to provide the excellent participation during the final round in Texas. A second issue relates to support for the Gale Cup Moot in Canada, as one of the long time co-sponsors (the Canadian firm Lenczner Slaght) has announced it will no longer be able to provide the same level of administrative and financial support previously provided. The Executive Committee is monitoring those developments, and we have now established a separate Canadian Committee dedicated to support for the Gale Cup Moot.

One final matter to call to your attention is the issue which arises, from time to time, of whether the College should make or approve a public statement on a particular topic. The Executive Committee attempts to be highly responsive to these issues, and closely adhere to our existing policy and process. The Board did approve a couple of statements as well as a submission by the Special Problems in the Administration of Justice (Canada) Committee to the Canadian Judicial Council, but elected not to make any statement where the issue was emotional

and Fellows might genuinely disagree. There is one issue we continue to evaluate, and that is whether the College should make any statement, or take any action, when there is a serious threat to judicial independence in a country other than the United States and Canada, such as currently exists in Poland.

As the year ends, four outstanding Regents will complete their terms. We are indebted to Regents Bill Murphy, Steve Schwarz, Ritchie Berger, and Susan Harriman for their service to the College, and while their successors are well-qualified, we will miss these good friends and their wisdom and judgment.

STATE OF THE COLLEGE

The College is in excellent shape, due in no small part to the proactive review and actions emanating from the Board Retreat in 2015, and the follow-up work done by the Long Range Financial Planning Committee under the leadership of Past President Tom Tongue. From a financial viewpoint, we are in excellent shape, having generated an operating surplus in fiscal year 2018, including successful investment results and two profitable national meetings in Montreal and Phoenix. The Executive Committee found it very helpful to have the Secretary perform the additional role as Assistant Treasurer, working closely with the Treasurer in all budgeting, forecasting, and financial review tasks. Our annual budget approval process now includes a four year pro forma forecast to assist the Board in its financial review. We do have concerns with our aging Fellowship, and the Executive Committee, working with the Regents, is monitoring and analyzing changes in our Fellowship (including emeritus status requests, resignations, and terminations) to determine if we are losing more Fellows than experienced on a historical basis.

As the year ends, I remember what an honor it was during my first year as a Regent to have the opportunity to meet and become friends with our Past Presidents, the Regents, and other former members of the Board. I was blessed to be a member of a great Regents class (Past Presidents Mike Smith and Bart Dalton, and the late John Famularo) and am so grateful, and honored, to have had this year as your President. I have every confidence in our next President, my dear friend, Jeff Leon and second Canadian President, and the other committed officers.

To close, Betty and I send a huge “thank you” and best regards.