

PRESIDENT'S REPORT



SUSAN J. HARRIMAN

2022-2023

AMERICAN COLLEGE OF TRIAL LAWYERS

**President's Year End Report
American College of Trial Lawyers 2022-2023**

Dear Friends and Colleagues:

The spirit of collegiality in the College makes me so proud of this organization and so grateful to call myself a Fellow. While the past year has been a divisive one, with public regard for politicians continuing to erode and respect for the judiciary dropping precipitously, somehow that divisiveness never creeps into the College. We love being together and differing political views never seem to matter. If we trial lawyers have learned to appreciate our similarities and respect our differences, maybe there is some cause for optimism that the rest of the population can learn to do the same.

Speaking of gratitude, it is the most common theme to be found in the Year End Reports of my predecessors. I share that emotion and cannot thank you all enough for the incredible privilege of serving as President of the College. Some more specific thanks are in order, starting with the Executive Committee. The College is fortunate to have an extremely talented and dedicated Executive Committee, which includes President-Elect Bill Murphy, Treasurer Rick Deane, Secretary John Day, Secretary-Designate Sandy Forbes and Immediate Past President Mike O'Donnell. The Executive Committee has worked together seamlessly throughout the year, operating always on a consensus basis. We never take a vote because there is no need to do so. We listen to each other, respect each other's views and always find a way to reach an outcome with which everyone is comfortable. The College will be in great hands in 2023-2024 with Bill Murphy as President and with such a dedicated Executive Committee.

I also wish to express my gratitude to the Regents, who, among other numerous duties, devote countless hours to investigating candidates and presenting them at our Spring and Annual Meetings. We will miss seeing our friends Peter Akmajian (Region 1), Greg Lederer (Region 5), and Lyn Pruitt (Region 6) at our board meetings as they are rotating off after four years of dedicated service. We look forward to welcoming Donna Melby (Region 1), Rob Adams (Region 5), and Cal Mayo (Region 6) in their place.

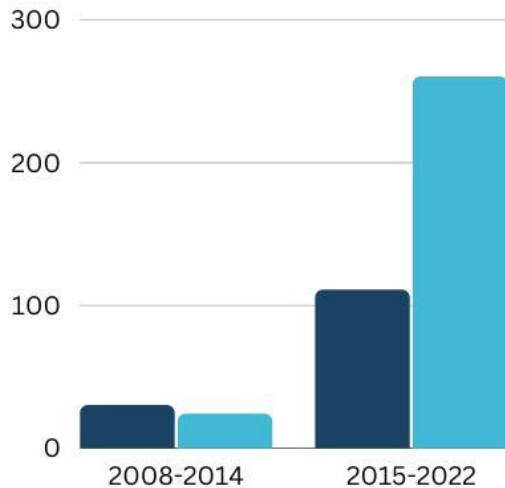
The photo below is of our Board of Regents taken at the 2023 Spring Meeting — it is a wonderful group of friends, and I am grateful to every single person in the photo for helping make this year fun and rewarding.



No person can do this job, or any other job for the College, without the help of our extraordinary staff, and I am immensely grateful to each and every one of them. I wish to thank Cheryl Castillo (Office Administrator), Kim Klingaman (Meetings and Project Coordinator), Sarah Stokes (Senior Communications Manager), Amy Mrugalski (Senior Strategic Initiatives Manager), Suzanne Alsnauer (Senior Meetings and Conference Manager), Geri Frankenstein (Senior Manager, Membership) and last, but not least, our esteemed Executive Director, Dennis Maggi, who works tirelessly to keep the College running smoothly while continually improving its operations. Every single member of our National Staff is devoted to the mission of the College and has provided me (and many of you) with unwavering support throughout the year.

Beyond conducting their usual duties, members of the Executive Committee, Past Presidents, Regents and State and Province Chairs have welcomed me into their homes, accompanied me on some of my trips and made me feel part of a wonderful extended family. Thanks to the collegiality of the College, every single trip was enjoyable. By the time my term ends, I will have attended 45 State and Province events from St. John's, Newfoundland to Oahu, Hawaii and numerous places in between.

Throughout the year, I have sounded the theme of relevance in my talks around the U.S. and Canada. One aspect of relevance refers to our membership and ensuring that it mirrors our society, our communities and our courtrooms. In order for the College to continue to consist of the best trial lawyers in our two countries, it is imperative that we find and nominate more people of color and more women. In 2014, the College held a retreat led by then President Fran Wikstrom and discussed the need to increase the numbers of women and lawyers of color in the College. At the end of 2022, the College had 5604 Fellows, 11 percent of whom were women and 3.5 percent of whom were Fellows of color. We have made meaningful progress since 2014 as the graph below demonstrates:



Inductees of Color

2008 - 2014:

30 Inductees of Color

2015 - 2022:

111 Inductees of Color

Women Inductees

2008 - 2014:

24 Women Inductees

2015 - 2022:

260 Women Inductees

Needless to say, despite the progress, there is significant room for improvement.

Another membership statistic worth noting is the average age of our Fellows, which has climbed since 2014 from 69 to 73. That increase in age translates to an increasing number of Emeritus Retired Fellows over the last several years and a decreasing number of full dues paying Fellows during the same time period. Although some of the increase in our Emeritus Retired ranks is due to the Pandemic (it seems people liked being home!), it is also a function of our aging population. The good news is that the average age of our Inductees has dropped from 59 at the Spring Meeting in 2015 to 57 at the Spring Meeting in 2023.

Not surprisingly, given those statistics, it has become apparent that many of our chapters need new life. The aging of our Fellows in certain States and Provinces causes lots of problems, including (1) there aren't enough Fellows actively trying cases to know who else is actively trying cases; (2) the look of a mostly all white and all male group of retired Fellows may not be appealing to the diverse Fellows who join; and (3) the loss of revenue from having fewer Fellows will impact the College's ability to carry out its mission. To address this issue, I have urged all Fellows to be on the lookout for potential candidates to recommend to their State and Province Committees. I also have pushed for diversity and inclusion everywhere I went. The goal was not only to find the best trial lawyers in our two countries, but for them to want to be active members in the College.

Over a three-week period in January, President-Elect Murphy and I had a series of Zoom calls with small groups of the State and Province chairs. We offered advice on candidates and Geri Frankenstein, who is in charge of membership, answered questions about the nomination process. The main reason for the call, though, was to ask each chair how many candidates he or she expected to submit for the March poll. The chairs predicted between 115 and 144 candidates for polling in the spring – a number that seemed high. We ended up with 113 candidates being polled, the highest number since the spring of 2017. Again, in July, with the very able assistance of Geri Frankenstein, we held 17 Zoom calls, again with small groups of State and Province chairs, averaging three or four chairs on a call, and we were able to connect with 89% of the chairs. On each call, we reminded the chairs of their predictions for the spring poll and congratulated them if they made or exceeded their predictions. We asked

each chair how many candidates will be ready to be polled by the September 15 deadline. The total estimated proposals for the September poll range from 107 to 168. While these numbers represent substantial improvement, it's important to remember that the number of candidates polled always exceeds the eventual number of Inductees; the Board typically approves between 75-80 percent of those presented.

During the time period from 2014 to 2022, deaths, resignations and terminations averaged 172 annually (the vast majority of that number is deaths), while the average number of Inductees during that same period was 146. If the Board approves 75-80 percent of those presented at the September Board of Regents Meeting and if the predictions of the chairs prove accurate for the September poll, we should have more Inductees than deaths for the year 2023-2024 — now that would be a great turnaround!

In our calls with State and Province chairs, we have learned that the most successful State and Province Committees are those that hold monthly meetings on a set date and at a set time. We will be encouraging all State and Province Committees to do the same in order to increase accountability and make sure that exceptionally qualified trial lawyers are being considered for Fellowship in the College in a timely manner.

As to the substantive aspect of relevance, it is important that the College continue to actively engage in programs and activities that carry out its mission. Many of these programs help train the next generation of trial lawyers; our moot court, mock trial, boot camp and diversity trial advocacy programs are all devoted to that aim. We also work tirelessly to protect the independence of the judiciary and both our Judiciary Committee and our Committee on Judicial Independence are laser focused on that goal. And *Trial Tested*, the College's podcast, continues to both educate and entertain us with enlightening discussions about life and law through interviews with prominent Fellows and signification figures in the world of trial law. I frequently have spoken about the two Task Forces formed this year, one on Mental Health Awareness and the other on Civics Education. To learn more about the current work of the committees and the efforts of our Task Forces, please read about them in the section on committees below. Suffice it to say, I am very proud of all of the work that our committees do and proud of the myriad ways in which the College works to improve the standards of trial practice and respect for the rule of law.

I am grateful to the chairs, vice chairs and the members of every state and province committee and our general committees for their hard work. The committees truly are the lifeblood of the College. Here are some examples (in alphabetical order) that demonstrate the positive impact that the College is having on the legal profession.

General Committees

Complex Litigation Committee

This year, the Chair and Vice Chair of the Complex Litigation Committee, Terri Mascherin and Brent Gurney, decided to try a new format for some of their committee meetings – a Lunch and Learn series involving speakers on topics of interest to committee members. The format is a one-hour noon ET program over Zoom. Some programs have been conducted as interviews of a guest speaker and some have been presentations on a topic, but in every case

the Committee allots plenty of time for Fellows to ask questions and engage in conversation with the guests. The Committee has experimented with inviting Fellows who serve on other Committees, and most recently all Fellows, to join the programs. For its May meeting, the Committee heard a fascinating presentation by Fellow Bill Lee of Washington, D.C. and jury consultant Jamie Laird on Trends in Damages in Post-Pandemic Trials. Eighty-three Fellows joined via Zoom for the program. Earlier programs this spring featured Barrister Toby Cadman of the Guernica Centre for International Justice discussing his work seeking redress for clients who suffered as a result of international terrorism, and Professor Shari Diamond, J.D. Ph.D., discussing her recent research on why scientists who are recognized by their peers as among the very best tend not to testify as experts at trial. The series resumes this fall.

Judiciary Committee

In 2019, the College published a White Paper titled, “The Need to Promote and Defend Fair and Impartial Courts.” The Judiciary Committee, chaired by Donna Melby, is re-examining the 2019 White Paper and conducting a study of pending legislation in various states that adversely impacts the independence of our courts.

Judicial Independence Committee

The mandate of the Judicial Independence Committee includes the duty “to recommend initiatives as appropriate . . . in educating the public regarding the judiciary’s role in protecting the rule of law.” In furtherance of that mandate, the Committee crafted a well-articulated, thoughtful set of recommendations for changes to the confirmation process in the United States Senate for nominees to the Supreme Court. The last several Senate confirmation hearings have caused an undermining of respect for the Judiciary – and for the Senate itself. The Committee’s recommendations will be set forth in a White Paper, which will be submitted to the Board of Regents for its approval in September. As soon as it is approved, the College will send a copy to all Fellows.

In keeping with its mission, the Committee also helps the Executive Committee with responses to instances where threats of any kind are made against a judge. Although it’s important to respond quickly to such attacks, it takes time to write and obtain approval for a letter denouncing the threat or attack. The Committee has dealt with the time issue in two ways. First, it wrote a model letter to have on hand that can quickly be adapted to a given situation when there is a threat against a judge. Second, it wrote a set of guidelines to help the Executive Committee determine whether the situation calls for a response from the College. With these tools in hand, the Executive Committee should be able to respond more quickly when a response is warranted.

Task Force on Civics Education

At the Leadership Workshop in Newport, Rhode Island last October, the state and province chairs and the general committee chairs had a lively discussion about what the College can do about the decline of respect for the rule of law in the United States. Everyone agreed that an increased knowledge of basic civics would help alleviate the problem. In response, the College formed a Task Force on Civics Education, whose goal was to determine how to match the enthusiasm and skills of our Fellows with a well-respected organization that would help us

reach the communities who would benefit from hearing from us. The Task Force completed its work and recommended that the College pursue a partnership with the National Constitution Center (NCC) by having Fellows participate as scholars in its Peer-to-Peer Scholar Exchange Program. The Executive Committee approved that recommendation at a meeting in early June.

The NCC's Scholar Exchange Program relies on volunteer judges, attorneys, historians and educators to engage virtually via Zoom with multiple classes of high school, middle school or college students to discuss selected constitutional topics throughout the year. Typical topics include the American Revolution, the structure of the Constitution, Federalism and separation of powers, the Bill of Rights, The Fourteenth Amendment, Article III, and landmark cases, among others. The NCC develops the content and handles the logistics of scheduling and advertising the programs and matching the appropriate scholar, while a member of its staff moderates each discussion. The NCC also offers training to new volunteer scholars. Approximately two weeks before a scheduled presentation, the NCC reaches out to scholars who have expressed an interest in the topics to be discussed to determine if the scholar is available to present on the selected date and time. The NCC then forwards any PowerPoint, script or other materials to the scholar in advance of the program.

For several reasons, this program provides an excellent opportunity for Fellows interested in civics education. First, the NCC is a well-respected national organization, and the educational materials that it develops are of the highest quality. The program has been very successful; this past school year, it reached 10,000 students in 33 states. The program is also national in scope and has an existing audience network. Importantly, the program seems well-suited for trial lawyers with unpredictable schedules, given that the scholars do not have to commit to a presentation until two weeks in advance. Two of our Task Force members, Judicial Fellows Jack Zouhary and Christine O'Hearn, have participated in NCC programs and have spoken highly of their experience. And, best of all, the NCC is very interested in a partnership with the College. It currently has a list of 30-40 volunteer scholars but welcomes the opportunity to expand its reach by adding scholars and new topics.

The College owes a debt of gratitude to the Task Force, and I personally want to thank each of its members and Chair Kathleen Trafford for their impressive work.

The Outreach Committee has asked you to be a scholar in the program and to date, we have more than 60 Fellows who have signed up to volunteer. I have talked to a couple of Fellows who have already taught a class and who found the process rewarding. My hope is that each and every Fellow will agree to present at least one civics program a year.

Task Force on Mental Health Awareness

Another task force that sprang up this year was the Task Force on Mental Health Awareness, which is chaired by Fellow James Brown of Louisiana. Those of us who were in Key Biscayne for the Spring Meeting heard Fellow John Broderick, the former Chief Justice of the New Hampshire Supreme Court, speak passionately about how he and his wife failed to realize that the problems their son was experiencing were due to mental health issues---until it was almost too late. Justice Broderick ended up in the hospital and his son in prison before they learned that his son was self-medicating his mental health problems with drugs and

alcohol. At the conclusion of Justice Broderick's talk, I promised that the College would join the fight to increase awareness around mental health issues, and the Task Force arose as a result of that promise. The reasons for creating this Task Force were reinforced when I read a talk by Justice Clement Gascon, a retired Justice of the Canadian Supreme Court, about his bouts of chronic anxiety and depression. He said that by offering support, understanding and acceptance, we will be part of the solution. Justice Gascon's poignant remarks underlie the reasons for having the Task Force. We all need to offer support, understanding and acceptance to anyone suffering from mental health issues. The Task Force will recommend ways in which we can do that, and we should all look forward to hearing their recommendations.

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In sum, the College overall is in great shape, and each and every one of us should be proud to call ourselves Fellows. I have been deeply honored to serve as your President, and I thank you all for having granted me this opportunity.

A handwritten signature in cursive script, reading "Susan J. Harriman". The signature is written in black ink and is positioned above the printed name.

Susan J. Harriman
President