

# PRESIDENT'S REPORT



**FRANCIS M. WIKSTROM**

2014-2015

AMERICAN COLLEGE OF TRIAL LAWYERS

## President's Report 2014-2015

Serving as the 65<sup>th</sup> President of the College has been an incredible privilege! I will never forget the thrill of being inaugurated in London with all of the attendant pomp and circumstance and our encore celebration at the Paris Opera House.

Since then, my travels have taken me to the four corners of the United States—Alaska, Hawaii, Maine, and Florida—to three Canadian provinces—Ontario, Quebec, and Alberta—and to many places in between. I have attended 55 events in almost as many states and provinces. According to Delta, I have logged 174,453 miles. Linda was able to take time away from her busy appellate practice and join me on more than half of those trips. And the other College officers covered ten additional events where we had conflicts.

Although each place was distinctive, there was one constant. Everywhere we went we found wonderful, welcoming Fellows—a tribute to the genius of Emil Gumpert who made collegiality one of the foundations of fellowship. Actually, there was another constant. The spouses and partners of the Fellows are some of the most interesting and accomplished people we have ever met.

Space does not permit a detailed report on each trip, but I would like to mention a few highlights. My first trip was to Birmingham, Alabama, to participate in the Jere F. White, Jr., Trial Advocacy Institute, a wonderful tribute by the Alabama Fellows to a deceased Fellow. CLE speakers included several Alabama Fellows, three Past Presidents (Lightfoot, Dalton, and Varner), Regent Rufus Pennington, and me. More than 350 lawyers attended this outstanding program which also served as highly effective outreach effort for the College.

The Western and Eastern Chairs Workshops were quite different, befitting their locations and dates. The western event was at Huntington Beach, California and featured a beach party and Beach Boys music. The eastern conference was in Washington, D.C. on Halloween weekend so Dennis arranged for fitting costumes for Linda and me.



Our October and November trips were highlighted by beautiful fall colors in Maine, Indiana, Ohio, and Wisconsin. Early December was a whirlwind, with trips to Oregon, Washington, Arkansas, Mississippi, Louisiana, and Pennsylvania in the first eight days of the month.

Alaska in January—who in their right mind would do that? I would, and did, because it was a wonderful opportunity to meet the enthusiastic Alaska Fellows and to take my XC skis and explore their wonderful trail system. And thawing out was easy in 70° weather the following weekend in San Francisco.

On a sadder note, in January and April I attended memorial services for two Past Presidents who were outstanding leaders of the College—Gael Mahoney and Leon Silverman.

In February and March, Linda and I had the privilege of presiding at the finals of the National Moot Court Competition and I presided at the National Trial Competition. These are signature events for the College and provide tremendous exposure to law students who hope to be trial lawyers. I later presented awards to the winners when I was in Washington, D.C., and Chicago.



Starting in May, Linda and I were able to attend a series of outstanding regional meetings on Cape Cod; in a 200-year-old inn in Pennsylvania; in Jasper Park, Alberta; on the northern Michigan lakeshore; and in Deer Valley, Utah.

At all of the regional, state, and province meetings, we were able to meet Fellows who do not regularly attend national meetings. It was a tremendous opportunity to expand the circle of fellowship.

### **Board of Regents Retreat**

The principal College activity this year was a Board retreat that was held in Atlanta in late July. The last time the Board held a retreat to deal with strategic issues facing the College was 2002. In the summer of 2014, the Executive Committee approved a proposal for a retreat to be held in 2015, and, at the Annual Meeting in London, the Board agreed. Past President David Beck was immediately appointed to chair a Retreat Planning Committee comprised of Secretary

Sam Franklin, Past President Mike Mone, and former Regents Paul Meyer, Christy Jones, and Jeff Leon.

At the 2014 Chairs Workshops, breakout sessions of State, Province, and General Committee Chairs discussed and ranked issues that they believed were of the greatest concern to the College and their reports were sent to the Retreat Planning Committee. By late November, the Retreat Planning Committee had prepared a Final Retreat Proposal and had appointed five Task Forces made up of Fellows at-large. The Task Forces were named for their primary issue of concern:

**Activities of the College**, chaired by Former Regent Phil Garrison, was charged with looking at all of the activities of the College and the public profile of the College;

**Admission to Fellowship**, chaired by Former Regent Doug Young, was charged with examining the criteria for Fellowship and the need for diversity;

**Future Mission of the College**, chaired by Former Regent Bruce Felmy, was charged with articulating the future mission of the College;

**Governance**, chaired by Former Regent Dennis Suplee, was charged with considering all issues relating to College governance;

**National and Regional College Meetings**, chaired by Kathleen Flynn Peterson, was charged with determining whether the national, regional, and local meetings are fulfilling the needs of the Fellows.

In December, the Retreat Planning Committee conducted a survey of approximately 1,500 Fellows, including all members of State, Province, and General Committees and all Fellows inducted in the past five years. An outside facilitator was also hired to help plan and run the retreat.

Each of the Task Forces held numerous telephone conferences throughout the first half of 2015, conducted research, and drafted a comprehensive report that contained recommendations to the retreat participants. The amount of work done by each of the Task Forces was prodigious and was the key to the success of the retreat.

The retreat itself was held for two full days beginning on July 31. All of the Regents attended as did almost all of the Past Presidents. Attendees also included the Retreat Planning Committee and two members from each Task Force. Each Task Force presented a summary of its findings and recommendations and this was followed by several hours of thorough discussion. At the conclusion of the retreat, each Task Force was charged with distilling the consensus of the group into concrete proposals to be considered and voted on at the Fall Board Meeting in Chicago.

Although the Board has not yet considered these proposals at the time of this writing, I think it is safe to predict that the College will maintain its high standards for admission, even if this means that the average age of the College continues to get older and the number of Fellows becomes smaller. Our standards for admission are what make us unique and are the reason we

command the respect that we enjoy. That being said, we will continue to improve our efforts to improve the diversity of the fellowship and to make sure that we have not overlooked *qualified* women lawyers and lawyers of color who should be Fellows.

The retreat participants recognized that the College is not as well-known as it was in years past and that we live in an age where lawyer rating companies are tripping over themselves to publish who is “best,” “super,” or “top rated” (and to sell plaques attesting to their designation). I expect that the Board will approve positive and dignified efforts to improve the profile of the College, using professional assistance where appropriate, and will allow use of the College name more frequently to take stands on issues that are squarely within our mission statement. And we will attempt to refine our mission statement so that it clearly states who we are, what we do, and what we stand for.

These were just a few of the great ideas that were discussed at the retreat. There will be a full report after the Board makes its decisions in Chicago.

**United Kingdom-United States Legal Exchange**  
*(Courtesy of Past President Chilton Varner who led the Exchange)*

On September 7, 2015, in London, England, the American College resumed its tradition of a Legal Exchange between the bench and bar of the United Kingdom and the United States. Over a period of almost 50 years the College has sponsored a series of such exchanges, the last occurring in 2004-2005. Each exchange consists of one week hosted by the U.K. delegation in the first year and a second week in the following year hosted by the U.S. delegation. Each exchange has enjoyed the enthusiastic participation of the two countries’ highest-ranking jurists, as well as distinguished practitioners. Discussion papers on agreed topics of common interest are prepared and shared in advance of the Exchange. Once the Exchange begins, the papers are then the subject of robust discussion by the delegates during the mornings, followed by afternoon events that include both delegates and spouses.

The delegates to the 2015-2016 Exchange are:

<u>The United Kingdom</u>	<u>The United States</u>
The Right Honourable Lord Mance, Justice of the Supreme Court of the United Kingdom	Honorable Ruth Bader Ginsberg, Justice of the Supreme Court of the United States
The Right Honourable Lord Reed, Justice of the Supreme Court of the United Kingdom	Honorable Stephen G. Breyer, Justice of the Supreme Court of the United States
The Right Honourable Lady Justice Arden, Royal Courts of Justice	Honorable Samuel A. Alito, Justice of the Supreme Court of the United States
The Right Honourable Lord Justice Lloyd Jones, Court of Appeal of England and Wales	Honorable Diane P. Wood, Chief Judge, U.S. Court of Appeals for the Seventh Circuit
The Honourable Mr. Justice Rabinder Singh,	Honorable Neil M. Gorsuch, U.S. Court of

Royal Courts of Justice	Appeals for the Seventh Circuit
The Right Honourable Lord Colin Carloway, Supreme Court of Scotland	Honorable Lee H. Rosenthal, U.S. District Court for the Southern District of Texas
The Right Honourable Sir Declan Morgan, Lord Chief Justice of Northern Ireland	Gregory P. Joseph, Past President and President of Supreme Court Historical Society
Dinah Rose, QC, Blackstone Chambers	Douglas R. Young, Former Regent
Christopher Pugh, Managing Partner, Freshfields Bruckhouse Deringer	Joe R. Caldwell, Chair of the Emil Gumpert Committee
Professor David Feldman, QC, Rouse Ball Professor of English Law, University of Cambridge	Catherine M. Recker, Chair of the Federal Criminal Procedure Committee
	Chilton Davis Varner, Past President

This year's discussion topics were (1) Equality and Access to Justice; (2) The Foundations of Federalism; and (3) International Law and Terrorism. The U.K. delegation and the U.S. delegation each prepared papers on each of these subjects, which provoked exploration of the similarities and differences between the legal systems of the two countries. For example, one of the leaders in the U.K. delegation commented that the U.S. delegation's clear presentation and history of the American system of federalism had enabled her to analyze much more carefully the EU-UK relationship, as well as the complications of the devolution of powers within the United Kingdom. She stated that the Exchange "will lead to greater understanding of our duties on these difficult questions that confront us."

Afternoon events ranged from a welcome reception at Lincoln's Inn to a tour of the Supreme Court building guided by Lord Mance of the U.K. delegation, to a visit to Runnymede and the memorial to the Magna Carta.

One of the judges sent this thank you to the College:

*Thank you for what was, quite simply and without exaggeration, one of the most amazing weeks I have spent. The discussions, the people, the careful planning and execution by the College all contributed hugely. I savored it as it occurred, learned a great deal, and was left with a great deal to think about. What could be better than gathering with brilliant and engaged people to think together about consequential issues, in places that themselves make us think about history and events we too often ignore or take for granted? Answer – perhaps nothing.*

## **State/Province and General Committees**

All of the “heavy lifting” of the College is done by the state and province committees and the general committees. I cannot overemphasize how critical the state and province chairs, and their committees, are to the livelihood of the College. With rare exceptions, no one can become a Fellow in the College unless he or she is discovered, investigated, and approved by a state or province committee. It requires a tremendous amount of work; even more so given the ever vanishing trial. I cannot thank enough the chairs and committee members for their dedication to the College.

The substantive work of the College is done by the general committees. Space does not permit me to list everything that these committees have done, but here are a few highlights.

### *International Committee*

At the request of Justice Ashby Pate of the Supreme Court of Palau to Secretary Sam Franklin, the International Committee, under the leadership of Chair Brian O’Neill and Vice Chair Rich Busse, put together a program to send Fellows to Palau in November 2015 to teach trial advocacy skills to their bench and bar. The project was oversubscribed by Fellows who were willing to pay their own way to participate in the project. When judges in other Micronesian countries, such as Guam and Samoa, heard of the program, they asked if they could send judges to attend. Watch for a report on this signal outreach activity.

### *U.S. and Canadian Trial and Moot Court Competitions*

Trial and moot court competitions are held each year in the United States and Canada and are signature events for the College. The College is a co-sponsor of each competition and Fellows volunteer to be judges at regional and national events. College officers are invited to attend and judge the final rounds.

318 teams from 160 law schools competed in this year’s 40<sup>th</sup> Annual National Trial Competition co-administered by the Texas Young Lawyers Association and the National Trial Competition Committee, Chaired by Tim Helfrich. The Finals were held in Houston, where the competition first began 40 years ago. The first night, Past President David Beck was honored for his pioneering role in establishing the competition. 52 Fellows participated in judging the final rounds and many more judged in regional rounds. I had the honor of presiding over the final trial. The winning team of Emily Schroeder and Nicolette Ward was from Chicago-Kent Law School.

The National Moot Court Competition is co-administered by the New York City Bar Association and the National Moot Court Competition Committee, chaired by David Weinstein (a previous winner of the competition). The national finals ended up being a cross-town competition between Georgetown and George Washington. Best team honors were won by George Washington and the best oralist was Stephen Petkis of Georgetown.

The Canadian Competitions Committee, chaired by Greg Richards, is responsible for both competitions in Canada. The College is featured prominently in both of these competitions and our participation adds luster to the College’s profile in Canada. Due to a scheduling conflict,

President-Elect Mike Smith attended the Sopinka Cup National Trial Competition in Ottawa, but only after promising that I could cover for him next year. Treasurer Bart Dalton represented the College at the Gale Cup Moot in Toronto.

### *Special Problems in the Administration of Justice (U.S.) Committee*

For several years, the Special Problems in the Administration of Justice (U.S.) Committee, currently chaired by John Chandler, has been engaged in what must feel like a Sisyphean task—trying to get a veterans service organization to allow Fellows to volunteer to help deal with the extreme delay in processing appeals after the denial of a veteran’s claim for benefits. Each year the average delay increases and it is currently more than 1,500 days. The Bureau of Veterans Appeals asked that we work through the American Legion, which represents 20% of the 50,000 pending appeals. When a veteran utilizes a veteran’s service organization like the Legion, the appeal stalls while the organization evaluates and makes recommendations to the Bureau of Veterans Appeals. The Legion has 13 lawyers processing these claims.

Members of the committee negotiated with the Legion for more than a year. On July 1, 2015, the Legion finally agreed to a pilot project consisting of a team of ten Fellows who have agreed to be trained and to assist the Legion with its appeals backlog on a trial basis. The Legion initially required that all be members of the Legion (and therefore veterans) and the Fellows agreed to join the Legion for this experiment. The ten volunteers for the pilot project are Dick Rosenbleeth, Denny Shupe, Tom Cunningham, John Gilligan, Pat McLaughlin, Chris Mattson, Rig Baldwin, Gary Thimsen, David Knight, and John Chandler. Each of them paid to attend a six-hour training program and took a test to become certified. Upon certification, they will begin reviewing appeals. These Fellows are some of the unsung heroes of the College!

Assuming that the pilot program is successful, the committee will work closely with the Access to Justice and Legal Services Committee to recruit Fellows as volunteers. The committee will also look for “class action” types of issues where large numbers of appeals can be resolved at one time and will work for legislative changes to improve the process.

### *Access to Justice and Legal Services Committee*

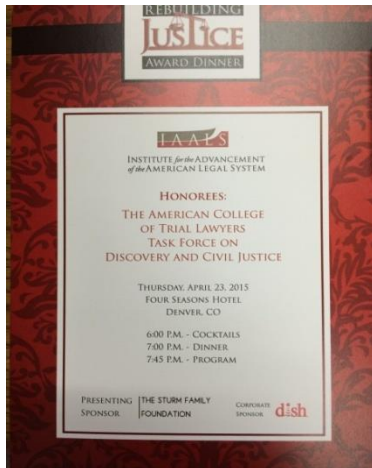
The Access to Justice and Legal Services Committee, Chaired by John Gilligan and Ian Kelly, has been working closely with the Special Problems in the Administration of Justice Committee on the veterans appeal project. Once the pilot program has proven successful, it will take the lead in recruiting and coordinating volunteer Fellows. The committee is also working with the National Legal Aid and Defender Association to find impact cases for which it then recruits Fellows willing to handle the cases pro bono. The committee monitors pro bono cases and access to justice initiatives involving Fellows throughout the United States and Canada.

### *Task Force on Discovery and Civil Justice*

In early 2015, the College’s Task Force on Discovery and Civil Justice completed and published its final report entitled *Reforming Our Civil Justice System: A Report on Progress and Promise*. The report was the culmination of seven years of outstanding work by the Task Force in conjunction with the Institute for the Advancement of the American Legal System (IAALS). The Task Force and IAALS issued their first report in 2009 and were largely responsible for the



many rule changes and pilot programs throughout the country that are designed to reduce the cost and delay of civil discovery and to improve judicial case management. The final report contains 24 principles focusing on proportionality and effective case management and designed to achieve fundamental improvements in the civil justice system. The Board accepted the final report at the Spring Meeting in Miami and formally expressed its gratitude to the Task Force for its outstanding work. In April, IAALS recognized the Task Force, led by Paul Saunders and Judicial Fellow Ann Frick, with its “Rebuilding Justice Award” at its annual banquet in Denver.



### *Federal Civil Procedure Committee*

The Federal Civil Procedure Committee, chaired by Hank Fellows, has been actively tracking the 2015 amendments to the Rules of Civil Procedure. Many of the changes arose from the work of College’s Task Force on Discovery and Civil Justice.

### *Judiciary Committee and Special Problems in the Administration of Justice (Canada) Committee*

The Judiciary Committee, chaired by Paul Saunders, and the Special Problems in the Administration of Justice (Canada) Committee, chaired by Bruce Carr-Harris, are working together to survey Fellows and judges in Canada about case management systems and to develop strategies for dealing with court congestion. This effort is similar to the work in the United States that resulted in the publication of *Working Smarter, Not Harder* by the College and IAALS. The Judiciary Committee is also monitoring attacks on the judiciary in Kansas and other jurisdictions, and is working with IAALS on judicial selection and retention issues.

### *Outreach Committee*

The Outreach Committee, chaired by Ken Cook, works with state and province committees to encourage them to pursue outreach activities that will enhance the profile of the College. The committee maintains a list of all outreach projects and a library of available resources. It actively encourages each State and Province to have at least one outreach project per year.

### *Teaching of Trial and Appellate Advocacy Committee*

Building upon the November 2014 trial boot camp which the Maryland State Committee co-sponsored with the ABA Litigation Section Camp ("Anatomy of a Trial" using the trial of Sacco and Vanzetti), the Teaching of Trial and Appellate Advocacy Committee, chaired by John Aisenbrey, is developing ways to expand into other cities and still maintain the ability to control the quality of the presentations. The boot camp trial training program not only provides opportunities for young lawyers to learn or improve trial skills, but also provides an opportunity to increase the College's name recognition.

### *Federal Criminal Procedure Committee and Legal Ethics and Professionalism Committee*

These committees, chaired by Katie Recker and Mike Edwards respectively, have been working together to challenge the practice of obtaining waivers of appellate rights and the right to claim ineffective assistance of counsel as part of federal plea agreements. Since their effort began, the Department of Justice has voluntarily agreed not to require waiver of appeals based on ineffective assistance. The Criminal Rules Committee is also working with an ABA task force on the criminal discovery rules, reviewing sentencing guidelines and guidelines for lawyers representing juveniles facing life sentences, and monitoring the effect of budget cuts on public defenders and CJA attorneys.

### *Emil Gumpert Award Committee*

Thanks to the hard work of this committee, chaired by Joe Caldwell, and the generosity of Fellows who give to the Foundation, the College was able to award a \$100,000 grant to Peacebuilders International (Canada). Executive Director Eva Marszewski will accept the award and address the Fellows at the Chicago Annual Meeting. The Foundation also awarded \$50,000 grants to each of the runners-up—the Education Law Center's School-to-Prison Pipeline Project in Philadelphia (an effort to break the link that leads from school discipline to prison) and the Immigrant Legal Resource Center's Legal Relief for Unaccompanied Immigrant Minors Program in San Francisco.

### *Samuel E. Gates Litigation Award Committee*

Upon the recommendation of the Samuel E. Gates Litigation Award Committee, chaired by Lisa Arrowood, the Board voted to present the Samuel E. Gates Litigation Award to retired Judicial Fellow Allan van Gestel for his work as the first presiding judge of the highly successful Massachusetts Business Section, a pilot program to provide selected judges and special procedures for complex commercial cases. This award is given periodically to recognize those who have made significant contributions to the improvement of the litigation process.

### *Sandra Day O'Connor Jurist Award Committee*

As in the Sherlock Holmes mystery, *The Dog That Didn't Bark*, there are occasions when what is significant is what did not occur. This year the Sandra Day O'Connor Jurist Award Committee, chaired by Charles Patterson, reviewed nine nominations for the award. Although the candidates were outstanding jurists, none of the nominations met the very strict standards for this award. The infrequency of the award is a testament to the honor it bespeaks.

### *Jury Committee*

The Jury Committee, chaired by Dan Skerritt, has been monitoring and evaluating procedural changes throughout the country that are designed to make trials more affordable and hopefully more frequent. It has disseminated information on successful programs to states that have expressed interest in developing similar programs.

### *Adjunct State Committee*

As more and more trial lawyers develop national practices and are less well known in their own communities, the Adjunct State Committee, chaired by David Kott, has played a significant role in identifying these lawyers and investigating them for possible fellowship. The committee always gives a “right of first refusal” to the home state or province committee to sponsor the candidate.

### *Federal Legislation Committee*

This committee, with Chair Stephen Urbanczyk, works behind the scenes to identify and monitor federal legislation of interest to the College so that the College can consider taking action. The committee is currently tracking approximately 40 bills in the 114<sup>th</sup> Congress.

### *Complex Litigation Committee*

The major project of the Complex Litigation Committee, chaired by Harry Roper, has been drafting a book on the use of demonstrative aids in trials. The draft has been reviewed by the Federal Judicial Center and its comments are now under consideration. In the book, the members of the Committee seek to identify and unravel many of the issues that arise in the use of demonstrative aides.

## **State of the College**

As readily apparent from the activities described above, the state of the College is strong. Thanks to the careful stewardship of Immediate Past President Bob Byman, the College was able to build a surplus into the budget last year that could be used this fiscal year for the retreat and the United Kingdom-United States Legal Exchange. Both of these activities are in the nature of investments that should provide important returns to the College in the future.

It has been an honor to serve this wonderful institution!