

PRESIDENT'S REPORT



MICHAEL L. O'DONNELL
2021-2022

AMERICAN COLLEGE OF TRIAL LAWYERS

President's Year End Report American College of Trial Lawyers 2021-2022

This Report marks the end of the 2022 presidential term representing the College's 72nd Anniversary as the leading organization of trial lawyers in North America. This year has seen the ebb and flow of the pandemic, economic concerns, mass shootings, war in Ukraine, and attacks on the Rule of Law. These issues have presented challenges for many American and Canadian families, including members of our own College family. Through the efforts of our National Office staff, Executive Committee, Board of Regents, and forty General and sixty-two State/Province Committees, the work of the College has continued.

Our last two Presidents, Doug Young and Rodney Acker, along with their spouses, Terry and Judy, dealt with the worst of the pandemic. After the Tucson meeting in March 2020, travel became difficult with in-person meetings cancelled. College meetings were operated on virtual platforms. The 2020 Annual Meeting was conducted by President Young and President-Elect Acker via Zoom from a studio in California. Shortly thereafter, President Acker and I conducted the Leadership Workshop from the same studio in California with all Regents, Chairs, and staff participating remotely. President Acker and I repeated the virtual platform for the 2021 Spring Meeting, which had been scheduled for Maui, Hawaii. Not only did Doug and Rodney continue the important work of the College remotely, in many ways it flourished under their leadership. I thank them and the leaders we have served with on the Executive Committee (Past Presidents Sam Franklin and Jeff Leon, President-Elect Susan Harriman, Treasurer Bill Murphy, Secretary Rick Deane, and Secretary-Designate John Day) for their selfless service to our beloved College. Fortunately, Rodney was able to lead us at the Chicago meeting in the Fall of 2021, our first in-person national meeting since March of 2020.

Recalling the final reports of my predecessors, we are struck by how many of them have used "Gratitude" as the theme of their final reports. There is no better word to express our own feelings about this past year. Brett and I are grateful to Doug, Rodney and the Executive Committee members and their spouses who have been an extraordinary source of counsel, support, and friendship. Despite the lack of in-person gatherings for about fifteen months in 2020 and 2021, we met virtually throughout the pandemic. I can't recall a single occasion when the Executive Committee made any decision without unanimous consent and every discussion was collegial, respectful, and consistent with College values. The College is in great hands with President-Elect Susan Harriman. Our Fellows will appreciate and embrace Susan's joyful outlook along with her energy and passion for the College.

We are grateful for the work and support of the Regents and Past Presidents who comprise the Board of Regents. We will miss outgoing Regents Michael Shepard, Joe Caldwell, Larry Krantz, and Sandy Forbes, and welcome their successors Bill Keane, Greg Wells, Richard Strassberg, and Bernard Amyot. Thank you for your past and future service to the College.

We lost Rita Silverman, wife of Past President Leon Silverman, and Morgan Varner, husband of Past President Chilton Davis Varner. They will be missed.

We are grateful for the General Committee Chairs, Vice-Chairs, and Fellows whose work on committees helped achieve the goals and mission of the College. We are grateful to the State/Province Chairs, Vice-Chairs, and Fellows who welcomed us with open arms to the thirty-five locations in the United States and Canada we travelled to this year. Each stop presented special memories which we will never forget. Because Past President Doug Young and Terry and Past President Rodney Acker and Judy had very few opportunities for travel during their tenures, they joined us for a few trips. The generosity and kindness of our Fellows at each stop was remarkable. The lunch and dinner meetings, speakers, museums, and sights created a lifetime of special memories for us.



Executive Committee at Retreat



Serenaded by a bagpiper at Michigan Fellows Dinner at Crystal Downs

We are grateful for our National Office staff which skillfully transitioned us from in-person to remote to hybrid meeting formats. Our staff is dedicated to the mission and goals of the College. We thank Dennis Maggi (Executive Director); Amy Mrugalski (Senior Strategic Initiatives Manager), Suzanne Alsnauer (Senior Meetings and Conference Manager), Geri Frankenstein (Senior Manager, Membership), Sarah Stokes (Senior Communications Manager), Kim Klingaman (Meeting Project Coordinator), and Cheryl Castillo (Office Administrator and Accounting), for their support and dedication throughout this year.

I am grateful for having had extraordinary mentors. In the last *Journal*, Past President and Editor of the *Journal* Bob Byman emphasized the importance of having mentors: “There is always time until there isn’t. Mentors are important. Important to have them, important to be them. Important to remember them.” I acknowledge my four primary mentors with my gratitude and love. My father was my first mentor. He was an architect, a Fellow of the American Institute of Architects, and a man of great integrity and thoughtfulness. “What would Dad do?” is the right question whenever I am faced with an ethical dilemma. My first professional mentor was my former partner Bill Steele, a Fellow and Former Regent of the College. He exuded professionalism. My final two mentors have been my partners Mal Wheeler and Jack Trigg, both Fellows of the College and men of great skill and judgment. Their moral compasses point due north...always.

As you can see, the mentorship of “Fellows” has significantly impacted the arch of my life and career. I hope all of us have mentors and are mentors.

Finally, I am grateful for the love and support of my partners and colleagues at Wheeler Trigg O’Donnell, my executive assistant Jenny Pointer, and my family. I used the word “we” in the above paragraphs because Brett is an integral part of every aspect of my personal and professional lives. She is a lawyer by education and training, but voluntarily gave up her career to support and raise our family, including me in many respects! She is unfailingly positive, kind, gracious, patient, and supportive as she guides and counsels me. She has represented the College with grace and dignity. She is the love of my life.

The College has been very active this year. The following summarizes the activities of some of our General Committees:

Access to Justice and Legal Services---Chair Mark Surprenant and his committee are working on a Pro Bono CLE program for November 2022. The committee also collaborates with the Distinguished Pro Bono Fellows Committee.

Adjunct Fellowship---Chair Adam Peck and the committee continue to work within their mandate to investigate candidates. Please let Adam know if you are aware of a worthy candidate who primarily practices outside of his or her State or Province so this committee can investigate them.

Advocacy in the 21st Century---Chair John Day and the committee continue to be one of the most active committees in the College. Past President Doug Young created this task force shortly after the beginning of the pandemic. It was later made into a standing General committee. It has authored a number of papers, prepared by distinguished Fellows and Judicial Fellows from both the U.S. and Canada, which are posted on the College website.

Boot Camp Trial Training Programs---Chair Paul Mark Sandler and the committee continue with its active Boot Camp program schedule. It conducted the first international virtual College training program in London in December, 2021. It has conducted multiple programs in the United States this year and is planning multiple additional programs in Canada and internationally.

Canada-United States---Chair Paul Le Vay and the committee are working on a white paper on cross-border evidence collection.

Communications---Chair Frederick Straub and the committee continue their work with our Senior Communications Manager Sarah Stokes on the six bi-monthly issues of the eBulletin and continue to produce the terrific podcast interviews of prominent individuals.

Complex Litigation---Chair Douglas Dagleish and the committee published a treatise on electronic evidence through Bloomberg. The committee is working with the Federal Judicial Center to make it widely-known and available. Currently the committee is considering CLEs to be presented by committee members regarding electronic evidence.

Distinguished Pro Bono Fellows---Chair Kimball Anderson and the committee have released articles about various Pro Bono Fellows. The committee continues to collaborate with the Access to Justice and Legal Services Committees.

Emil Gumpert Award---Chair Kathryn Snapka and the committee thoroughly reviewed all the submitted applications and recommended the award which was presented to Clean Slate Utah’s First Step Expungement Program.

Federal Civil Procedure---Chair Thomas Green and the committee continue to monitor review of proposed rule changes with the Civil Rules Advisory Committee.

Federal Criminal Procedure---Chair Sharon McCarthy and the committee released the Brady/Giglio Guide for Prosecutors in the fall of 2021. The committee is considering a white paper on diversion courts and another on bench trials.

Federal Rules of Evidence---Chair Mark Cohen and the committee continued attending meetings of the Judicial Conference Advisory Committee on Federal Rules of Evidence. It is continuing work on a white paper regarding areas in which the Courts and parties have attempted to streamline trials, focusing on the consequences of those approaches.

Gale Cup---Chair Brian Gover and the committee are working on plans to complete a name change to “Abella-Gale Cup Moot” and relocate it from Toronto to Ottawa. The Cup is co-sponsored by the Criminal Lawyers’ Association.

Griffin Bell Award for Courageous Advocacy---Chair Stuart Miller and the committee continue to seek nominations to consider for this award.

Heritage---Chair Kent Hyde and the committee continue to interview senior Fellows to preserve their thoughts and perspectives for future generations.

Honorary Fellowship---Chair and Past President Chilton Davis Varner and the committee have put forward for Honorary Fellowship Canadian Supreme Court Justice Mahmud Jamal and U.S. Supreme Court Justice Brett Kavanaugh. Both have been invited to accept Honorary Fellowship at a future College meeting. U.S. Supreme Court Justice Amy Coney Barrett will accept Honorary Fellowship at the Annual Meeting in Rome. New Supreme Court Justice Ketanji Brown Jackson will be put forward soon.

International---Chair Robert Goodin and the committee, along with the Teaching Abroad Subcommittee, are very active in preparing for programs to be held in Poland, Africa, and Guam/Palau.

Judicial Independence---Chair John Robbins Wester and the committee are working with the Judiciary Committee to make recommendations for improving the process by the U.S. Senate for confirming judges, particularly U.S. Supreme Court Justices.

Judiciary---Chair Mark Anderson and the committee are working with the Judicial Independence Committee on a project. See above under Judicial Independence.

Jury Committee---Chair Ralph Weber and the committee are seeking state and federal court adoption of Model Jury Instructions.

Lewis F. Powell, Jr Lectures---Chair and Past President David Beck and his committee are considering various individuals to give the next Lewis F. Powell, Jr. Lecture. Former Secretary of State James Baker provided the most recent lecture at the Annual Meeting in Chicago in October 2021.

Mentoring---Chair **John Siffert** and his committee launched the Just The Beginning Internship Project in June 2022. The project pairs financially challenged interns with Judicial Fellows and other Judges in combination with mentoring from local Fellows. The College contributed \$100,000 towards this initial project.

National Moot Court Competition---Chair David Ackerman and his committee worked with the New York City Bar to conduct another successful competition virtually in 2022.

National Trial Competition---Chair Hon. Karen Townsend and her committee worked with the Texas Young Lawyers Association to conduct another successful competition in person in Fort Worth, Texas in 2022.

Online Advisory---Chair Suzanne Helene Pringle and her committee provided input regarding setup of our new Learning and Resource Center. The committee will also be advising on the website redesign.

Outreach---Chair Thomas Hoopes and his committee continue to encourage and track state and province sponsored CLE and outreach programs and collaborate with the Communications Committee on the podcast project.

Public Defenders---Chair Leigh Skipper and the committee collaborated with the Federal Criminal Procedure Committee on a white paper “The Effective Use of Pretrial Diversion in Criminal Cases.” They are working to publicize the paper.

Samuel E. Gates Litigation Award---Chair and former Regent Paul Hickey and his committee are discussing several nominations for this award.

Sandra Day O’Connor Jurist Award---Chair Todd Thompson and his committee are accepting nominations for this award.

Sopinka Cup---Chair Christine Glazer and her committee worked with The Advocates’ Society to sponsor another successful virtual Sopinka Cup competition in 2022.

Special Problems in the Administration of Justice (U.S.)---Chair Stephen Raber and his committee are investigating whether there are states that have not implemented a Veterans Court System to handle certain criminal offenses. The committee is working with State Chairs to identify channels for establishing such Courts. The committee is also discussing options to address unique problems faced by foster children who age out of care and find themselves in legal trouble due to lack of support in the legal system.

Task Force on Fellow Engagement---Chair Cal Mayo and the Task Force are working on a program to help the College better welcome new Fellows.

STATE AND PROVINCE MEETINGS

As our society learned to live with the pandemic, the number of scheduled College events increased beginning the summer of 2021 and grew throughout 2022. Brett and I had the pleasure of attending twenty-four state and province meetings and four regional meetings during the course of this year. We were met at each location with generosity and kindness. The dinners were often in extraordinary locations and most included exceptional keynote speakers. There are far too many special memories to recount here but I list a few of them below:

- Traveling across Arkansas, Mississippi, and Louisiana with Regent Lyn Pruitt and her husband Chip. Not every meal was formal but every one included good food and company. In the evenings, we shared dinner with the Fellows from each of these states.



- Past President Tom Tongue gave us a special guided tour of Portland, Oregon followed by dinner with the Oregon Fellows.



- Enjoying lunch with Past President Doug Young and his wife Terry at their beautiful home overlooking San Francisco Bay, followed by my first experience riding Doug's cutter horse named Will. Will and I both survived a few "cutting" maneuvers. We then met the Youngs and Ackers for a tour of a nearby Redwood forest followed by a dinner with the Northern California Fellows and listened to a Nobel Prize winning astrophysicist and astronomer who demonstrated his skill with his traveling telescope after the dinner.



- Joining Past President Mike Stout and the Kansas Fellows for dinner in Wichita, Kansas. Unfortunately, Brett and I were unable to join for the annual trip to Mike's ranch in the beautiful Flint Hills due to a College conflict but Past President Doug Young and his wife Terry and Regent Dan Fulluo and his wife Sally were able to enjoy Mike's hospitality.



- Sharing St. Patrick's Day with the North Carolina Fellows in Charleston, South Carolina.



- Enjoying Big Cedar Lodge outside of Springfield, Missouri with Past President Rodney Acker, his wife Judy, and the Missouri Fellows. The Fellows particularly remembered their devoted Chair Monte Clithero who passed away during his term this year. The dinner with the Missouri Fellows was in a room overlooking the famous Trail of Tears statue.



- Winning Team at the National Trial Competition



- Spending time with Michigan State Chair Dan Scully and his wife Peggy, who kindly drove us over 100 miles so we wouldn't get lost in the wilds of northern Michigan.

- Our trip to Canada this year started with a lobster feast at the beautiful “cabin” of Regent Michelle Awad and her husband Jack, followed by separate dinners with the Fellows of New Brunswick, Nova Scotia, and Newfoundland. The Newfoundland Fellows made the Youngs, Ackers, and O’Donnells Honorary Newfoundlanders in a “screeching-in” ceremony which involves a shot of rum followed by kissing a cold, dead cod fish. Newfoundland Vice-Chair Dan Simmons gave us a memorable tour of the easternmost point of North America.



Of course, the above stories represent just a few of the extraordinary events we shared with Fellows and the warmth we experienced at every meeting from our Fellows and their spouses/guests. Due to several trial and College conflicts, Brett and I were unable to attend a few of the local meetings. We very much appreciate our colleagues on the Executive Committee who covered these meetings for us. We are hopeful that our States and Provinces will continue to schedule more local meetings as our world continues to reopen.

REGIONAL MEETINGS

We also attended four regional meetings---the 3rd Circuit Regional Meeting in Philadelphia (Delaware, New Jersey, and Pennsylvania); Region 6 Meeting in New Orleans (Arkansas, Louisiana, Mississippi, and Texas); the Tri-State Meeting also in New Orleans (Alabama, Florida, and Georgia); and the Northwest Regional Meeting in Girdwood, Alaska (Alberta, Alaska, British Columbia, Idaho, Montana, Oregon, Washington). Our regional meetings continue to be a great way for Fellows to gather with colleagues from their region without the additional expense of a national meeting. As you can see from the below summaries, regional meetings occur at world-class locations with the quality of the speakers rivaling those at the ACTL national meetings.

The 3rd Circuit Regional Meeting began with a Friday night reception followed by dinner hosted by Regent Katie Recker and her husband Matt. The program was held in the beautiful Masonic Temple. Delaware State Chair David Ross, New Jersey State Chair Ed Kole, and Pennsylvania State Chair John Conti hosted the meeting. The speakers included Delaware U.S. Senator Chris Coons, Chief Judge Michael A. Chagares of the 3rd U.S. Circuit Court of Appeals, Judge Karen M. Williams of the U.S. District Court of New Jersey, and Maurice Q. Jones who is the Founder of PAR Recycle Program which salvages electronic parts and mines them for valuable minerals, supporting 112 employees who are ex-convicts. The program reduces recidivism and provides parolees with employment, housing, and other support. Additional speakers were William Markham, a highly decorated Air Force veteran and Executive Director of Project One Vet At A Time (POVAT), who helps veterans receive the benefits to which they are entitled on a pro bono legal basis. Fellow Jeff O’Hara was instrumental in founding this program. Dean Amy J.

Wildermuth of the University of Pittsburgh School of Law, and Judge Nelson C. Johnson, author of the “Boardwalk Empire” (HBO series) were the final speakers of the day.

New Jersey State Chair Ed Kole is part owner of a horse, Mo Donegal, who finished 5th in the Kentucky Derby. Mo ended up winning the final Triple Crown race, the Belmont Stakes. The College has, to my knowledge, its first winner of a Triple Crown race!

The Region 6 Meeting started with a cocktail reception followed by remarks by Louisiana Governor John Bel Edwards who discussed economic challenges and opportunities, the effects of climate change, and the polarization existing in America today. The General Session was opened by former New Orleans Mayor and current National Coordinator of Infrastructure Implementation Mayor Mitch Landrieu who summarized the national infrastructure plan and the need to rebuild roads and bridges in the United States in order to compete with the rest of the world. Damon Hewitt, President and Executive Director of Lawyers’ Committee for Civil Rights Under Law, summarized the Lawyers’ Committee’s efforts in justice reform, digital justice, prevention of hate crimes, and election rights and reforms. Former Director of the United States Marshals Service Don Washington spoke about our oldest federal law enforcement agency founded under Article II in 1789. The Marshals Service retains final authority regarding security requirements for the judicial branch of the federal government and is sworn to protect the rule of law. Finally, Past President Rodney Acker, Fellow Mark Surprenant and I presented the 2020 Emil Gumpert Award to Professor Becki Kondkar, who is Co-Director of the Tulane Law School Women’s Prison Project. Due to the pandemic, there had not previously been an in-person formal ceremony. Professor Kondkar shared the story of Sandra, a woman who was convicted of second-degree murder in 1995 by a divided 10-2 jury. She was sentenced to life without the possibility of parole for killing her abusive, estranged boyfriend after he entered her home uninvited and tried to strangle her. The Women’s Prison Project helps women like Sandra to end the practice of punishing and incarcerating domestic violence, sexual assault, and trafficking survivors through law reform, training, and education.

That evening, Louisiana State Chair James Brown hosted a cocktail reception at the hotel including strolling around the event skillfully playing his violin. He even serenaded us with his version of “Danny Boy.”

The Tri-State Regional Meeting also took place in New Orleans. We joined Past President Sam Franklin and his wife Betty, and Past President Rodney Acker and his wife Judy for dinner with a number of Fellows Friday night. Rodney and I took an early morning flight to Houston, Texas to join the Texas Fellows and Past Presidents David Beck and Doug Young for the Annual Texas Fellows Luncheon. Past Presidents Beck, Young, Acker, and I awarded the National Moot Court Competition award to the Texas Tech Law School team which was present along with the Dean of the law school and several administrators and professors from the school.

We returned in time for the Friday night reception which featured the Muscle Shoals All Star Band. Muscle Shoals, much like California’s Wrecking Crew, consisted of talented studio musicians who supported stars like Aretha Franklin, the Rolling Stones, Alicia Keys, and Gregg Allman out of the Fame Recording Studios in Muscle Shoals, Alabama. It was one of the finest musical events we have ever attended. Fellow Rick Hall’s father was one of the original members of Muscle Shoals.

The General Session was opened by thoughtful comments from Alabama State Chair Gaynor St. John, Regent Bob MacKenzie, and Secretary Rick Deane. Alabama Tourism Director Lee Sentell spoke about tourism in the South and the Civil Rights movement. CEO of the 2022 World Games Nick Sellers spoke about the 2022 World Games this summer in Birmingham, Alabama. It is an 11-day multi-sport event organized with the help of the International Olympic Committee. Author, chef, and owner of Highlands Bar and Grill Frank Stitt of Birmingham, Alabama spoke about his restaurant which was named the James Beard 2018 Best Restaurant in the United States.

The first speakers the next day were a panel consisting of Fellow Chris King; Fellow Finis St. John, Chancellor of the University of Alabama System; Deputy Director of Athletics at University of Alabama, Matt Self; and Executive Associate Athletics Director at Auburn University, Rich McGlynn, who discussed the name, image, and licensing (NIL) issues facing collegiate sports and the future of paying college athletes. Documentary filmmaker, author and professor at Dillard University, Zella Palmer, spoke about the evolution of Louisiana Creole Cuisine followed by former U.S. Senator from Alabama, Doug Jones, who spoke about guiding the White House through the U.S. Senate confirmation process.

Past Presidents Doug Young and Rodney Acker and their wives Terry and Judy, joined us for the final regional meeting in beautiful Alaska. We all very much enjoyed our time with Regent Carey Matovich, Alaska State Chair Neil O'Donnell, and our Fellows and their spouses/guests. The speakers at the General Session were Major General Randy "Church" Kee, U. S. Air Force (Ret.) who served as Senior Advisor on Arctic Security Affairs to the Ted Stevens Center for Arctic Security Affairs. He addressed global security issues in the Arctic in light of major power rivalries, climate change, and the recent Russian invasion of Ukraine. Former Alaska Supreme Court Chief Justice Dana Fabe and former Alaska Judge Elaine Andrews provided tips on resolving difficult cases through mediation. Dr. Caroline Van Hemert is an Alaska-based writer and wildlife biologist. For six months, she and her husband traveled by row boat, ski, foot, raft, and canoe across some of the wildest land in North America. Journalist Larry Persily operates the Wrangell Sentinel weekly newspaper in Southeast Alaska and addressed Alaska's oil-driven politics, its unique position without a state sales or income tax while distributing oil-wealth savings dividends to the public every year, and the inevitability that nothing good can last forever. Executive Director of the Berkeley Judicial Institute Judge Jeremy Fogel addressed the future of virtual proceedings and cameras in the courtroom in light of the pandemic. The final speaker was Jeff King who has won the 1,049 mile Iditarod Trail Sled Dog Race four times. Jeff addressed the lessons he has learned about determination, competitiveness, empathy, and sportsmanship from more than 150,000 miles on a dogsled over the past thirty-five years.

WHITE PAPERS

Thanks to all the Fellows who gave their time, talent and energy in drafting various white papers. The Board of Regents approved the following White Papers at the 2022 Spring meeting:

- Statement on Virtual Proceedings in the Civil Justice System by the Advocacy in the 21st Century Committee
- Remote Proceeding Advocacy by the Advocacy in the 21st Century Committee

- Treatise on Electronic Evidence available for purchase through Bloomberg by the Complex Litigation Committee

TRAINING PROGRAMS

Boot Camp Trial Training Program

- First international training program occurred virtually in December 2021 with barristers in London
- Several boot camps were held throughout the United States, including events in Houston, Miami, Denver and Orlando---and several more are on the calendar
- Launched a test case, virtual one year/once a month lunchtime Boot Camp in association with six bar associations in Maryland

Teaching of Trial and Appellate Advocacy

- The first Diversity in the Courtroom program occurred May 20-22 in Chicago and involved about fifty diverse lawyers and twelve Fellows from around the United States, including Past President Doug Young. The program took the students through the trial process ending with a mock trial on the final day. The success of this inaugural training program was the result of the collaborative efforts of Chair Tom Heiden, Immediate Past Chair Joe Crawford, and the members of their committee. Our courtrooms are diverse---judges, jurors, court personnel, and witnesses. The emergence of a broader group of talented, diverse lawyers will benefit clients in particular and our system of justice in general. This program will help bring even more talented and diverse advocates of excellence to our courtrooms while building faith, trust, and belief in our justice system. We anticipate this program becoming an annual event.

Mentoring Committee

- Launched the Just The Beginning Internship Program to offer paid internships (with financial support from the Foundation and the College) for law students of moderate means during the summer of 2022. The students will be mentored by a Judicial Fellow and a local fellow from that city.

Jere White Trial Advocacy Program was originally scheduled for November, 2021, but has been rescheduled to November 2022 due to the pandemic.

Additional training programs were presented throughout the year, both virtually and in person, by various State and Province Committees in their local jurisdictions.

LEADERSHIP WORKSHOP

The leadership workshop was held in Tucson, Arizona over the Halloween weekend. The Executive Committee provided training for our Regents, State and Province Chairs, and General

Committee Chairs to help them fulfill their duties this year. These leaders of the College have shown great commitment and passion for their roles. Secretary-Designate and Advocacy in the 21st Century Committee Chair John Day moderated a spirited panel discussion about the pandemic and the impact on our Courts. The Judicial panel included U.S. District Court for the Northern District of Texas Chief Judge Barbara Lynn; Ontario Superior Court of Justice Darla Wilson; and Michigan Supreme Court Chief Justice Bridget McCormack. The panel sought to outline the best court and technology practices going forward. The Judges described the crown jewel of our system of government as the Rule of Law. They encouraged the Fellows to take lessons learned from the challenges of the pandemic and improve the administration of justice and access to justice going forward. Innovation, creativity, and collaboration will be essential tools.

Past President David Beck spoke to the Workshop leaders about engagement and the responsibilities of leadership. David quoted Nelson Mandela: “It always seems impossible, until it is done.” Regent Joe Caldwell addressed diversity in the College. Joe, along with Secretary Rick Deane, have been instrumental in the implementation and advancement of our diversity initiatives, and they joined me in meetings with all state and province diversity liaisons. The Workshop concluded with Regent Greg Lederer updating our leadership about the Task Force on Fellow Engagement chaired by Fellow Cal Mayo.

COMPETITIONS

The College sponsors four moot and mock trial competitions every year. The Gale Cup, Sopinka Cup, and National Moot Court Competition were held virtually. The National Trial Competition was held in person in Fort Worth, Texas. Past Presidents Doug Young and Rodney Acker had the honor of judging the semi-finals and I had the privilege of judging the finals of the competition. The talent of the students in all of these competitions was amazing as was the dedication of the Fellows who support these competitions. The winners of this year’s competitions are below:

| COMPETITION | WINNER |
|---------------------------------|------------------------|
| Gale Cup | Université de Montreal |
| Sopinka Cup | University of Ottawa |
| National Moot Court Competition | Texas Tech |
| National Trial Competition | UCLA |

THE JOURNAL

Past President Bob Byman, his committee, and other contributing Fellows continue to inform and entertain us with wonderful articles in this *Journal*.

AWARDS

The 2022 Emil Gumpert Award was presented to the Clean Slate Utah's First Step Expungement Program. Past President Fran Wikstrom, Amy Mrugalski, and I attended the event at the Eccles Theater in Salt Lake City, Utah. The Committee received a total of twenty-two applications from various law schools and legal service organizations. The winner, Clean Slate Utah, was announced in March 2022 following approval by the Board of Regents. The PEW Charitable Trust reports that nearly one in three U.S. adults, about 70 million people, have a criminal record, including those who were arrested but not convicted. That includes about 800,000 people from Utah alone. In March 2019, Utah became the second state in the nation to automate the criminal record expungement process for most misdemeanor offenses. These records have long lasting consequences that can hinder a person's access to employment, housing, or a professional license. Our country is awakening to the need to expunge certain criminal records to allow people with criminal records to get jobs, educational opportunities, and housing and move forward with their lives and the lives of their children. In addition, expungement has a positive impact against recidivism. Furthermore, bipartisan support is strong---how often can we say that in these times? Past President Fran Wikstrom and I presented the award and it was announced at that time that Destiny Garcia would become their new Executive Director. Ms. Garcia is a woman in long-term recovery and a survivor of domestic violence. She has been through the process of expungement herself and is determined to show her children and others that your past mistakes do not define you. The Emil Gumpert Award, an Award of the College, is funded by a grant from the Foundation. The Trustees of the Foundation recently approved increasing the amount of the Award from \$100,000 to \$150,000, effective for the 2023 Award.



The Sandra Day O'Connor Jurist Award was presented to Judge Barry Williams for the courage he displayed in the multiple trials of the Baltimore police officers who were involved in the death of Freddie Gray.

The Beverly McLachlin Access to Justice Award was presented to Patricia Hebert for her work. Ms. Hebert practices family law with a focus on children. She is a leader in Canada on reforming and improving best practices in family law cases.

The Samuel E. Gates Litigation Award was presented to Texas U. S. District Court Chief Judge and Fellow Barbara Lynn who was a national leader in devising protocols permitting trials to go forward during the pandemic. Her work became a model for other courts throughout the country.

Last year, the first Thurgood Marshall Award for Equality and Justice was presented posthumously to the family of Congressman John Lewis and was accepted by his son John Miles Lewis.

UNITED STATES AND CANADIAN FOUNDATIONS

Due to the efforts of U.S. Foundation President Joan Lukey and the Trustees, the Foundation has distributed \$690,000 this year. The Canadian Foundation Directors, formerly led by President Trisha Jackson and now led by President Jeff Leon, continues to grow its monetary corpus and distributed \$11,000.00 this year. Thank you for your continued support of our Foundations.

FORUM ON THE RULE OF LAW

One of the most significant events this year was our co-sponsorship with the Association of Marshall Scholars of the Forum on the Rule of Law at the Supreme Court of the United States from May 3-5, 2022. Marshall Scholarships have been awarded since WWII as an expression of appreciation from Britain for U.S. support in WWII, particularly for the Marshall Plan developed by General George Marshall, who acted as Secretary of State and Secretary of Defense under President Truman. The Forum had been delayed due to the pandemic and Brett and I were delighted that Past Presidents Doug Young and Rodney Acker, along with their wives Terry and Judy, were able to join for this event. The first evening we met with the delegates and spouses/guests at a reception in the East Conference Room of the Supreme Court. We then had dinner in the West Conference Room with Chief Justice Roberts and his wife Jane, along with Chief Justice Wagner of the Supreme Court of Canada, and Supreme Court Justices Breyer and Gorsuch.

The meetings the next day were conducted in the East Conference Room. The first panel was about Free Speech and the Internet/Copyright and New Technologies and included contributions from Justice Kagan, as well as Former Regent and First Circuit Judge William Kayatta and Secretary Rick Deane. The next panel discussed the Rule of Law and Global Security moderated by Past President Doug Young. His panel included Justice Breyer. The group then toured the Capitol which had just reopened to public tours since being closed as a result of the January 6, 2021 riot. Dinner was served in the Library of Congress where we were greeted by Aslihan Bulut, Law Librarian of Congress.

The next day we initially gathered in the Great Hall of the U.S. Supreme Court for opening remarks on the Rule of Law and an Independent Judiciary delivered by Justice Breyer and Deputy President of the United Kingdom Supreme Court Lord Hodge, the leader of the delegation from the United Kingdom. We then moved back to the East Conference Room for a panel on Human Rights and Civil Liberties moderated by Marshall Scholar Lady Arden, Retired Justice of the United Kingdom Supreme Court. The next panel was on Climate and the Courts and was moderated by Fellow Adam Peck. Secretary-Designate John Day then moderated a panel on Virtual Justice and Jurisprudence Post-COVID which included Justice Sotomayor. The final panel discussed the Separation of Powers and was moderated by Marshal Scholar Kannon Shanmugam with participation from Justice Gorsuch. This was our first Forum with the Association of Marshall Scholars and provided great exposure for the College with some of the leading jurists and lawyers from the United States, Canada, and the United Kingdom.



Canadian Chief Justice Wagner, UK Supreme Court Lord Hodge, U.S. Supreme Court Chief Justice Roberts, and Chief Justice of Northern Ireland Siobhan Keegan enjoying dinner in the U.S. Supreme Court

JUDICIAL INDEPENDENCE

Defending judicial independence has been a core value of the College. Attacks by politicians and the public on judges have become increasingly commonplace. The College’s policy on public statements cautions restraint when making any statement that could affect the collegiality of the College. The ACTL Guidelines for Public Statements states:

“Although not included among our core missions, collegiality is as important as any of those missions, and no statements should be made which unduly threaten our collegiality by taking a position on one side of a matter of genuine and divisive controversy.”

For this reason, our Executive Committee and the Board of Regents is reluctant to weigh in with official positions of the College concerning matters which are reasonably in dispute. We recognize some Fellows believe we are saying too much on the rare occasions we do weigh in on an issue, and other Fellows believe we aren’t saying enough on some of the important issues of the day. As many Past Presidents have said, the American College of Trial Lawyers is not a bar association. We are a collection of the finest trial lawyers in the United States and Canada who enjoy each other’s company and camaraderie.

However, I did feel compelled to express my personal opinion on two subjects this year. First, in the June 2022 eBulletin, I expressed my concerns about the illegal protests and picketing at home locations of U.S. Supreme Court Justices as a result of the leak of the *Dobbs* draft opinion. These protests were designed to intimidate the Justices to rule in a certain way on a particular issue and also threaten the independence of the Judiciary. The Rule of Law requires judges to exercise independent judgment based on the facts and legal arguments presented to them without undue influence or apparent efforts to intimidate them. There are criminal statutes in place limiting the free speech rights of protesters that target judges in the vicinities of their courthouses or homes. These statutes are consistent with fundamental First Amendment principles. Such protests are not consistent with the principles of judicial independence that are central to the core mission of the

College. Full opportunity can and should exist for the exercise of our rights to freedom of speech and expression and everyone has a right for their views to be heard in an appropriate manner. Shortly after I wrote my article in the eBulletin, a potential assassin who indicated an intent to harm Justice Kavanaugh was found outside his home with a gun and a knife. Thankfully, the potential assassin was apprehended before he was able to commit any deadly crimes. It is my hope that we can find ways to engage in robust debate on the important issues of our day without resorting to inappropriate attempts to intimidate the judiciary.

Second, in the summer 2022 edition of the *Journal*, I shared my personal opinion about the inappropriate questioning of Judge Ketanji Brown Jackson, now Justice Jackson, as “soft on terrorism” because of her role as a public defender and later as a private attorney representing a few Guantanamo detainees who were never convicted of a crime. I believe it was unfair and inappropriate for Senators to question her fitness to serve on the Supreme Court of the United States because of these representations, just as it was unfair and inappropriate for Senators to question Justice Amy Coney Barrett about her faith and religious beliefs during her confirmation hearing. The circus atmosphere at recent U.S. Senate confirmation hearings, particularly for Supreme Court Justices, has negatively impacted the public’s confidence in the Rule of Law and our system of justice. Senators who mislead the public with their questioning are seeking votes, not trying to uphold and instill confidence in our Rule of Law.

The Executive Committee has asked Chair John Wester of our Judicial Independence Committee and Chair Mark Anderson of our Judiciary Committee to jointly analyze potential reforms to improve confirmation hearings of judicial nominees by the Senate Judiciary Committee. The goal is to improve civility and accountability of Senators’ behavior in confirmation hearings. The Joint Committee has examined the creation of a code of conduct and standards/questioning guidelines for the Senate Judiciary Committee. They have explored whether the best method is a position paper or an open letter to the Senate Judiciary Committee. The College can play an important role in educating our students, lawyers, politicians, and fellow citizens to embrace, not attack or undermine, some of our cherished ideals such as the right of an accused to an attorney or the right to religious beliefs. The Mission Statement of our Judiciary Committee includes efforts to “analyze and seek to ameliorate barriers to the attraction and retention of highly qualified judges.” Many highly qualified lawyers who would otherwise want to be considered for a federal judgeship would view the unprofessional and unproductive behavior of both political parties during confirmation hearings, which have become progressively worse over the last thirty years, as a significant barrier to their judicial intentions. We hope to offer concrete suggestions to reaffirm the importance of civility to these hearings.

Thank you for tolerating my personal perspective on these issues. Of course, any final recommendations will be subject to review and approval by our Board of Regents.

During our many trips, I developed a pattern of walking around the city we found ourselves in at dawn each morning. I have always enjoyed sunrises and wanted to experience as much of each city as I could. Of course, these walks revealed troubling truths about the impact of the pandemic on our cities. However, the morning after the Southern California meeting, I walked around the hills of downtown LA and noticed a homeless woman sleeping on a bus bench. On my return to

the hotel, I passed the homeless woman again. As I was about to pass her, an unmarked private car stopped and a man exited from the car. I slowed down my walk and intently watched to make sure nothing inappropriate was going to happen to this poor woman. I then noticed the man gently touch the woman on the arm to ask if she would like breakfast. The man then went to his trunk and offered her a bag of breakfast items. The man left and the woman had what was probably her first meal in a while. I was humbled and grateful.



During our travels this year, Brett and I have seen many acts of kindness, most of them to us. I hope we all have the opportunity to slow down enough in our fast worlds to see what is there to be seen even when it is cloaked in misery---hope and kindness. Thanks again for the incredible privilege you provided Brett and me to serve the College this year. We look forward to the terrific speakers President-Elect Susan Harriman has assembled, the special events our National Staff has organized, and seeing many friends at the Annual Meeting in Rome, Italy.