

PRESIDENT'S REPORT



Rodney Acker
2020-2021

AMERICAN COLLEGE OF TRIAL LAWYERS

President's Year End Report
American College of Trial Lawyers 2020-2021
Rodney Acker, President

The College is in great shape. The College's committees and Task Forces have adjusted to the limitations created by the pandemic and are fully engaged in fulfilling the College's mission and their committee mandates. Reduced travel and other expenses coupled with a good stock market have put us in an excellent financial position. None of this was by accident, and it has not been without its challenges. The College consists of some very remarkable people, both Fellows and our staff. Over the last year, those people have come together to further the missions of the College. It has been a privilege to work with each of them, and I am grateful to all of them.

Of course, my gratitude starts with my wife Judy. No one could have asked for a better partner and a more calming influence. A very funny former First Lady was once asked, what was the hardest thing about being First Lady? Without hesitation she quipped — spending 200 nights in a hotel room with my husband. Well, Judy went her one better — 365 days (almost) at home with me with (almost) no complaints. We just celebrated our 49th Wedding Anniversary earlier this month. Who'd have thunk it in 1972.

I was also truly blessed to have a remarkable Executive Committee. One of the most rewarding aspects of being on the Executive Committee for the last four years has been to spend in-person time with four talented and interesting people and their significant others. While we had no in-person gatherings for almost 15 months, regular Zoom calls created the opportunity to develop strong bonds. Finally, we had in-person meetings in May and then again in June. I felt as though we had not missed a beat through the months of physical separation. For my four years on the Executive Committee, I can't recall a single instance where the Executive Committee took any action (or declined to take any action) without unanimous consent. That tradition continued this year. The College could not be in better hands for the coming year than it will be with President-Elect Mike O'Donnell.

The broader leadership of the College is housed in the Board of Regents, the Past Presidents, and the committees. While you might expect Board Meetings lasting six hours on Zoom with 30+ lawyers would be challenging, the Board maintained both focus and collegiality in continuing the College's work. Zoom calls also allowed for more and closer work with the committees. Although anxious to be back to in-person meetings, the technology allowed the committees to meet more effectively and more often and we will see that continue.

The Return to In-Person Gatherings (Hope for What's Coming)

Missing from the last 19 months has been the in-person Fellowship that is the essence of the College. Like the Presidents and their spouses before us, Judy and I were excited about carrying the College flag on our visits to the states and provinces in both countries. The pandemic restricted all trips from the Spring 2020 Meeting until the Kentucky Fellows held the first in-person gathering in May 2021. While Judy and I were disappointed not to travel and see old friends and make new ones, the silver lining was spending additional time with my wife. Travel has slowly resumed, and from my conversations with Fellows across both countries and the results of a survey about

attending in-person meetings, it is obvious Fellows are looking forward to gathering together, both locally and nationally.

The fact that there were few in-person meetings did not stop the Fellows from gathering virtually. The first two virtual national meetings of the College drew the highest Fellow registrations in College history. The success of those virtual meetings has resulted in the decision to include a virtual component in future national meetings even when we are back to unrestricted, in-person attendance. States and provinces were also adept at making the most of a bad situation by holding virtual cocktail, lunch and dinner calls in addition to state and province committee meetings. Some events were very creative such as the Alberta Fellows' virtual bar crawl. Even the College-sponsored competitions adjusted and were all held virtually for the first time ever and went off without a hitch. Judging the law students in these competitions is always a highlight for every president of the College. The students are talented, well prepared, well coached, and the future of trial practice. Typically, there is an opportunity to visit with the competitors after the competition, but even when that is missing, the competitions are still fun for both the competitors and the Fellows who judge.

College-sponsored competitions:

Competition	Winner
Gale Cup	Université Laval
Sopinka Cup	Université d'Ottawa
National Moot Court Competition	Loyola Law School, Los Angeles
National Trial Competition	University of California, Los Angeles

Judicial Independence and Public Statements:

As our politics have become more rancorous, attacks on politicians and the judiciary are more prevalent. Over the last few years, the College made statements when these attacks were a threat to our mission to protect the rule of law and the independence of the judiciary. In the months leading up to the presidential election and continuing until the inauguration, these attacks increased exponentially and the College could have released statements almost daily. Indeed, Fellows contacted the National Office frequently requesting that the College condemn politicians on both sides of the aisle for their actions, statements and attacks on judges.

The College did speak, including an op-ed in Bloomberg Law condemning the numerous attacks and threats against the justices on the Wisconsin Supreme Court. For many, these statements were not enough. As I explained to many of the Fellows with whom I spoke individually, the College includes many passionate Fellows in each party who have conflicting views on when and what should be said. The College, however, attempts to remain non-political. Although it is important for our voice to be heard on issues involving our mission, the College's policy on public statements cautions restraint when making any statement that could affect the collegiality of the College.

“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.” *ACTL Guidance for Public Statements*

Defending judicial independence has long been a core mission of the College. Historically, a number of committees worked on judicial independence issues. However, the College stepped up its efforts to defend judicial independence with the creation of the Judicial Independence Committee in 2019. Headed by Chair John Wester, the committee focuses on two separate but equally important functions. First, the committee is vigilant to identify attacks on the judiciary and prepared, through its rapid response team, to respond to them on either a local or national level. These statements are well documented and can be seen on the website. Although we expected that the assaults would have subsided following the inauguration, we were wrong. In June, the College again spoke out on attacks against a Southern California federal judge after a personal attack following his ruling on an assault weapons statute. The nature of both verbal and physical attacks against judges was the subject of a *60 Minutes* article. According to *60 Minutes*, there were 4000 verbal or physical attacks threatened against federal judges last year, up more than 400% from five years ago. The Federal Judges Association asked the College to participate in a forum hosted by Duke Law School and address how the organized bar can assist in curbing this trend. I was honored to participate. John Wester, Chair of the Judicial Independence Committee, has participated in similar presentations.

Second, the committee is committed to educating the adult public as to the meaning and importance of judicial independence. In collaboration with the National Association of Women Judges, the committee produced a PowerPoint presentation and supporting materials that can be used by Fellows and NAWJ member judges to speak to civic groups and other adult audiences about the judiciary and the rule of law. Despite the logistical challenges due to pandemic restrictions, six presentations were given in multiple states last Fall or this past Spring; another five are scheduled, and several more are in the planning stage for Fall 2021. The committee continues to search for Fellows to volunteer to give presentations, either live or virtually, to audiences in their local area.

Fellow Engagement:

In 2020, the College contracted with McKinley Advisors to assist with a new Fellow Engagement project. The goal is to have more involvement by Fellows generally and particularly newly inducted Fellows. McKinley Advisors conducted surveys of the College to identify any barriers to participation and modify our existing structure in a way that would allow more Fellows to participate. McKinley’s report was delivered to the Executive Committee in June of 2020. The Executive Committee created a Task Force to work with McKinley to implement its findings and recommendations. To date, the Task Force has completed the first two recommendations (rethink expectations of volunteers and document their responsibilities) and moved considerably through the third recommendation (centralize resources into a volunteer portal). In the near future, the Task Force will move into the fourth recommendation (increase communication effectiveness). For this portion of the effort, the Task Force will design and implement a mentorship program for new Fellows to actively and intentionally engage them in College activities from the beginning of their Fellowship.

The Task Force is led by of Cal Mayo (Oxford, MS) as Chair and Michelle Awad (Halifax, NS) We expect the Task Force to have substantially completed its work and present the results to the Board at the Annual Meeting.

Mentoring:

Mentoring young lawyers has long been a focus of the College and has been viewed as essential to developing the next generations of trial lawyers. In 2019, the Mentoring Task Force issued its report titled: *“Mentoring the Next Generation of trial Lawyers—Developing Excellent Trial Lawyers in an era of Diminishing Trials.”* That report provided a blueprint for mentoring through Law Firm/ In-House Trial Training Programs, Bar Associations, the Judiciary, Corporate Counsel and the College itself. When the pandemic hit, Past President Jeff Leon noted: “Indeed, the need for young trial lawyers to be able to learn trial skills and the importance of civility in trial practice has become even more acute with the lack of face to face contact necessitated by the social distancing of the Pandemic.”

I asked Past President Leon and Former Regent Christy Jones to consider the next steps in the College’s mentoring efforts. After meeting virtually with the Chairs of several committees and considering many suggestions and options, Jeff and Christy submitted their report and six recommendations on February 10, 2021. Their recommendations include organizing a library and making accessible teaching materials already in existence at the College to help younger lawyers in need of mentoring; developing a program for contacting corporate counsel for assistance in providing in-court opportunities for junior trial lawyers; organizing and making accessible to the judiciary a catalogue of initiatives undertaken by various courts that offer increased opportunities for young lawyers to appear in court; promoting wide circulation of the papers produced by the College’s Task Force on Advocacy in the 21st Century, particularly to provide direction on effective advocacy in virtual hearings; encouraging pro bono work as a means to obtain trial experience; and issuing a “Mentoring Challenge” to state and province committees. The Mentoring Task Force is intended to now become a permanent Mentoring Committee. On June 3, I wrote the state and province chairs asking them to appoint a mentoring liaison to begin working with and as part of the Mentoring Committee. The Mentoring Committee will be chaired by former Regent John Siffert and, like the Fellows serving as Diversity Liaisons, the Committee and the Mentoring Liaisons will have periodic calls with the President. Mentoring is particularly localized by its nature and we are hopeful that the new initiative will develop robust mentoring programs in each state and province. The committee is off to a good start, partnering with Just the Beginning — A Pipeline Organization to create an ACTL Summer Judicial Internship program. Funded by a grant from the Foundation, the program will provide stipends to law students who could not otherwise avail themselves of the opportunity to work in the chambers of state and federal judges. The new ACTL SJI program is national in scope. We hope that Judicial Fellows around the country will volunteer to participate by hiring these interns, and that Fellows throughout the country will organize mentoring events for the ACTL SJI’s. We believe this new program has the potential to become a recurring opportunity to mentor aspiring lawyers, to involve Judicial Fellows in College activities and to increase the visibility of the College among the interns and judges who participate.

Marshall Scholars Forum on the Rule of Law: Legal Issues in a Post Pandemic Society

The Marshall Scholarship program was created in 1953 shortly after World War II by the British government at the proposal of Sir Roger Mellor Makins, Deputy Undersecretary of State. The program is named after General George C. Marshall (“the Marshall Plan”). The scholarships provide for post graduate study in England by US students in a wide range of fields. The number of scholarships has increased over the years, and 48 scholarships were awarded in 2019. The list of the 2000+ alumni of the Marshall Scholars program is truly impressive, and includes a Nobel Prize winner in chemistry, holders of more than 50 patents, financiers with more than \$44 Billion in assets, 10 university presidents, 38 members of the American Academy of Arts & Sciences, and six Pulitzer Prize winners.

Earlier this year, the College was approached by Nell Breyer, Executive Director of the Association of Marshall Scholars and daughter of Justice Stephen Breyer, about creating a program in connection with the Association of Marshall Scholars. The Executive Committee quickly approved the project and Past President Doug Young is leading this effort by the College. The program will be structured much like the Legal Exchange Programs and will address a number of issues. It was originally planned to occur in September 2021, but due to Covid-related travel restrictions affecting overseas participants, it has been rescheduled for May 2022. Participants include Justices Gorsuch, Breyer, Alito, and Sotomayor and possibly other justices who are still considering their participation. It is anticipated that Chief Justice Roberts will welcome the delegates at the opening dinner. The UK delegation tentatively includes: The Right Honorable Lord Hodge (Deputy President of the Supreme Court of the UK); The Right Honorable Lady Arden (Justice of the Supreme Court of the UK); The Right Honorable Lord Mance (Deputy President (ret) of the Supreme Court of the UK); The Right Honorable Sir Declan Morgan (Lord Chief Justice of Northern Ireland); The Right Honorable Sir Geoffrey Vos (Master of the Rolls); The Right Honorable Lord Justice Flaux (Chancellor of the High Court); Dame Karen Steyn DBE (Judge of the High Court of England and Wales, Queen’s Bench Division); The Honorable Dame Justine Thornton DBE (Judge of the High Court of England and Wales, Queen’s Bench Division), and barristers Helen Davies QC. In addition to Doug Young, the U.S. Delegates include Regents John Day, Rick Deane, Susan Brewer, Fellows Andrea La’Verne Edney, Ashok Ramani, Adam K. Peck and Judicial Fellows USCA (1st Circuit) Bill Kayatta, USDJ (NDTX) Barbara M. G. Lynn. Other participating judges are The Honorable Martin Jenkins (Associate Justice of the California Supreme Court) and USDJ (DAZ) Diane Humetewa. Topics for the program will include Covid and the Courts, Free Speech and the Internet, The Rule of Law and an Independent Judiciary, Copyright and Technologies of the Future, Separation of Powers and National/International Security and the Law. The program will be held at the Supreme Court building. There will be dinners at the USSC and the British Embassy. It appears that the Marshall Scholars Program is the start of a project that will benefit the College much the same as our Legal Exchanges with the UK and Canada.

Boot Camp:

One of the successful programs undertaken in recent years includes the one-day Boot Camp Trial Training program for Young Lawyers, headed by Paul Mark Sandler and a team of enthusiastic Committee members. These one-day, in-person programs use a historic case for the day tailored to the programs’ lectures, demonstrations, and panel discussions. While more than six programs

were conducted in person before the pandemic, the committee successfully transitioned to a Zoom format to present a program in Salt Lake City under the leadership of Andrew Morse (over 250 young lawyers attended), and in Cincinnati under the leadership of John Gilligan. With the return of in-person meetings, the committee will be scheduling 14 boot camps for this fall and 2022, including a successful one held in Oklahoma on August 6. The key to successful programs is the enthusiasm of Fellows in jurisdictions around the country forming “local teams” to help organize and join the boot camp faculty of 23 judges and lawyers.

Advocacy in the 21st Century:

The Advocacy in the 21st Century Committee (“A21C Committee”) arose from a task force of the same name launched by Past President Doug Young in the Spring of 2020. As Covid-19 began to wreak havoc on the court systems of Canada and the United States, it was obvious that the response to the pandemic was going to impact the administration of justice long after society was able to medically manage the Covid-19 threat. Doug and the Executive Committee determined that the College needed to lend its experience and voice on the use of technology and other administration of justice issues brought quickly to the forefront by the pandemic.

Regent John Day of Nashville was appointed to lead the task force, comprised of judges and lawyers from across the US and Canada. The group quickly sprang into action, meeting frequently via Zoom. In just over two months, it created a series of white papers on the use of remote video in depositions, examinations for discovery, hearings, non-jury trials, and appellate arguments, as well as an extensive paper titled “Issues to be Considered When Preparing for and Conducting a Civil Jury Trial During the Pandemic.” Shortly thereafter, the task force released a thorough examination of the constitutional issues that arose in US courts in their efforts to manage a criminal docket in an era of mask-wearing and social distancing. Then, in September, the Board approved the Committee’s “Overarching Principles Applicable to Civil Trials,” a major policy statement setting forth the College’s position on the preference for in-person court proceedings, while also recognizing how technology can play a role in the delivery of justice.

In September, the Board of Regents converted the task force into a general committee, retaining John Day as Chair, selecting Fellow Roslyn Levine of Toronto as Vice Chair, and expanding the group. The A21C Committee immediately went to work on reviewing and updating its earlier papers, presenting them to Executive Committee and Board for approval at the Spring Meeting. The committee then undertook an effort to reach out to several other organizations, offering to assist them in their efforts to take what was learned during the pandemic and see what changes can be made to the court systems in both countries to make justice more accessible and affordable while actively promoting the traditions of in-person advocacy in a public courtroom.

The committee is now poised to explore additional issues concerning advocacy in the 21st century. It is expected the committee will identify issues that would benefit from the experience and expertise of the Fellows of the College, and then work with other College committees and outside groups to lend the College’s voice to the discussion of those issues.

The A21C Committee and its predecessor are shining examples of how the College can use the leadership and experience of its Fellows to assist the Bench and Bar in our two nations.

Awards

The Board of Regents approved three awards this year:

The 2021 **Emil Gumpert Award** was given to The Arizona Justice Project to support and fund its program to address inequities resulting from conflicting interpretations of The Arizona 1993 Truth in Sentencing Act. The AJP, and several Fellows who work closely with the AJP, were involved in appealing *Chaparro v. Shinn* in which the Arizona Supreme Court unanimously permitted parole eligibility for convicts in cases where judges imposed sentences that specifically stated that parole was a possibility.

The **Griffin Bell Award** will be presented to John Rosenberg, founder of the Appalachian Citizens Law Center, a nonprofit law firm in Whitesburg Kentucky, that has helped thousands of former coal miners and their widows seeking black lung benefits.

The first **Thurgood Marshall Award for Equity and Justice** will be presented posthumously to the family of Congressman John Lewis and will be accepted by his son, John Miles Lewis. Congressman Lewis led the charge for civil rights dating back to before his participation in the march at Selma Alabama.

Conclusion:

To finish where I started, the College is well positioned to move forward. It has been a challenging year for both the legal profession and the College. The College has remained focused on its mission to further the administration of justice despite those challenges

Rodney Acker

A handwritten signature in cursive script that reads "Rodney Acker". The signature is written in black ink and is positioned below the printed name.