

# PRESIDENT'S REPORT



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2016-2017

AMERICAN COLLEGE OF TRIAL LAWYERS

## **President's Report 2016-2017**

I write this having just returned from my last Regional Meeting in Sun Valley, Idaho for the Northwest Regional meeting. This August I have also been to the Executive Committee Retreat at the College's new headquarters in Newport Beach, California; San Juan, Puerto Rico for the Fellows dinner; Atlanta, Georgia for their Annual Black Tie Dinner; and Wichita, Kansas for the 10<sup>th</sup> Circuit Regional Meeting. That was the last of 47 trips on behalf of the College. It was a wonderful way to see the United States and Canada. At every stop Eileen and I were treated with gratitude, affection and grace. It was a very special year for both of us. Eileen was with me throughout this adventure of a year.

I am pleased to report to you that the College is in remarkable shape in all aspects of our organization. Let me share some of the highlights.

### **2016 Chairs Workshop**

Following the 2016 Annual Meeting in Philadelphia, Eileen and I were off and running, attending several State and Province Fellows dinners before heading to Colorado Springs for the annual College leadership conference which was held at The Broadmoor. The Chairs Workshops are where the College gathers the Board of Regents and Chairs for the General, State and Province Committees to review how the College conducts its business and to share with each other what is going on with their General, State or Province Committees. The highlight of this meeting was the several talks and discussions by our invited guest Margaret Marshall, former Chief Justice of the Massachusetts Supreme Court, on the issue of diversity. I had not previously met Margie, as she likes to be called, but she was able to set a tone for the rest of the year: Do not fear diversity but embrace it and it will make us stronger. Past President Joan Lukey ended the meeting with a speech that inspired us all to take what we learned and move the College forward. The weekend certainly inspired me to do the best I could to move the mission forward.

### **Diversity**

The Board, through the adoption of the policy on diversity, gave good direction on what course we should follow. I spoke on diversity at every stop I made throughout the year. I appointed a diversity liaison for each state and province chapter. It took a little time and many calls and emails before I could fill every position, but once that was completed we wanted to give real direction to our liaisons, State/Province Chairs and Regents. Georgia State Chair, Rick Deane, and I authored a checklist based on the policy. It was sent to the liaisons. I then conducted a series of telephone conferences with the liaisons to get updates on their progress and how they were moving through the checklist. We made it clear in these communications that their Regent would be asked at the Board Meeting in Montreal about this progress. I have received much positive response from the liaisons and chairs. My expectation is that we will see some of the fruits of our efforts at the Annual Meeting. However, this cannot be a one-time event. This needs to be something we continue through the years but our first steps have been encouraging.

## Communications

Immediate Past President Mike Smith started an initiative to improve College communications when the Board decided that our internal communications were lacking. We gave internal communication our first priority. Communications Committee Co-Chairs Paul Fortino and Paul Meyer took on the assignment to start the eBulletin. We asked Fellows to send us news about what the College was doing in their state and province chapters. Our goal was to publish the eBulletin six times in the first year. We actually published the e-Bulletin 11 times last year, including the special issues regarding single important issues. This tool has allowed the College to communicate with the Fellows about what their College is doing. When I began my term as President I would frequently get the question from Fellows, “What is the College doing?” Because of the work of the Communications Committee, with great assistance from Communications Manager Eliza Gano, that question is no longer asked. A review of the last eBulletin and the amazing number of things that the Fellows are doing every month shows just how dynamic the College is. Paul Fortino and I had a conversation recently at the Northwest Regional meeting where we contemplated the question of whether there are far more seminars and other events occurring because of the internal communications or whether those things were always being done and we just now know about them. My answer is that I do not care. The eBulletin proves that the mission of the College is being embraced and moved forward by our Fellows.

In July the College launched a new website at the same address, [www.actl.com](http://www.actl.com). With the assistance of Être Communications the staff were able to bring this project to conclusion. My mantra in the many calls I had regarding the website was that it had to be simple to use. We are not inundated with technically savvy Fellows. We tested it in many different formats with the help of a Task Force. I think it is working well but the proof will be in the use it gets. We are tracking this and the results are encouraging. I have also appointed Fellows to a Task Force on the College’s Online Presence who are more adept with technology to review our needs on an ongoing basis. Some of this change is hard. When we shifted to electronic polling the College staff and I worked the phones for weeks helping Fellows who were having problems and exhorting State and Province Chairs to talk to their Fellows and help them with the ballots. I can report that the College is now in the 21st Century. We came to this point kicking and screaming at times but we now have a technical platform and a group with the knowledge to stay ahead of the ever changing curve.

Finally, circumstances have prompted us to comment publicly on two issues that were thought to directly impact our mission. Bringing those issues to the Board and Past Presidents is not the best of days for a President. We treasure our collegiality as we should. However, this important element of the College should not make us unwilling to stand up publicly for the mission of the College. Fellows of this College are renowned for their ability to handle difficult and sometimes emotional issues with opposing counsel and in the end disagree in a professional manner. We have all tried cases against friends with whom we have disagreed. They are still our friends. Who better than us to be able to disagree agreeably and maintain our collegiality? We need to jealously guard against being too aggressive on public comments but we need to be just as wary about failing to comment when the goals of our mission are being attacked. In looking at the history of the College in *Sages*, I noted that our history is replete with public comments from

issues as different as the loyalty oaths of the 1950s to a position on class actions. Criticizing a public official who castigated a federal judge and standing against defunding legal services for the poor directly impacts our mission. I am proud that the Board stood up to these challenges. I have been asked by Fellows to comment on several other issues in the past year. We took each such request seriously and each time the Executive Committee unanimously decided not to bring those issue to the Board since it was our view that they did not directly impact our mission.

### **Task Force on the Response of Universities and College to Allegations of Sexual Violence**

The Task Force on the Response of Universities and Colleges to Allegations of Sexual Violence showed, in my view, the College at its best. Chaired by Fellow Pamela Robillard Mackey and joined by Regents Elizabeth N. Mulvey and Ritchie E. Berger, Past President Earl J. Silbert, and Fellow A. Gilchrist Sparks, III, the group did the hard work of drafting and completing the *White Paper on Campus Sexual Assault Investigations* that the Board approved at its meeting in the Spring. But that was just the beginning. Following approval of the White Paper, we formed a sub-committee of the Task Force, along with Être Communications and National Office staff, to make sure that the report did not just sit on the website. The paper was discussed in at least 25 media outlets, most dealing with educational issues. Pamela Mackey did an interview with the *ABA Journal*. Regent Mulvey and Immediate Past President Smith met with the Editorial Board of the *Richmond Times-Dispatch*, which published an Op-Ed. Regent Mulvey authored an Op-Ed for the *Chronicle of Higher Education* which is the primary source of news, information, and jobs for college and university faculty members and administrators. I was invited to speak at the 70<sup>th</sup> Education Writers Association National Seminar regarding the College's White Paper. Regent Berger represented the College at a symposium on Title IX, due process, relating to campus sexual assault investigations hosted by U.S. Secretary of Education DeVos. Multiple college and university counsels have been given the White Paper and we have been advised that the National Association of College and University Counsel have posted the paper on their website. This is an issue that spurs great feelings and I received an objection from Fellows in the State of Washington. I have included their objection and my response in the Board materials so that we can again discuss the issue of the proper standard to use in evaluating these claims.

### **Long Range Financial Planning Committee**

Past President Tongue chaired the Long Range Financial Planning Committee and was assisted by Past President Byman, President-Elect Franklin and Fellow Jeffrey E. Stone. Following the completion of their work, the report was presented to the Executive Committee in June. At its retreat in August, the Executive Committee further discussed each recommendation and the potential impact to the College's annual budget. During this meeting, the Executive Committee reviewed the annual audit of the College and the Committee asked several questions and discussed some of the recommendations with Jennifer Farr, Partner at the College's auditor, Davis Farr LLP, and the potential impact it would have on the College. Following review and discussion of the Long Range Financial Planning report, the Executive Committee submitted recommendations to the Board of Regents for action at their meeting in Montreal. This was an important effort well led and well done. It will help keep the College on sound economic footing.

## **International Committee**

The International Committee continues to be a beacon of light in the push for the Rule of Law. Following the success of the Palau Trial Advocacy Training program held in November of 2016, the Chief Justice of the Supreme Court of Guam asked the College to conduct a legal training seminar for judges and lawyers practicing in countries and territories in the western Pacific Ocean. In addition, the College has been asked to participate in a program that celebrates the 50th Anniversary of the Eastern Supreme Caribbean Court. These projects, along with the College's ongoing support of other Rule of Law initiatives around the world, demonstrate how the International Committee is always on the move.

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

The Teaching of Trial and Appellate Advocacy Committee continues what seems like a nonstop schedule to promote the College through trial advocacy training efforts. Recently the Committee conducted two outstanding programs. The first, in Austin, Texas, co-sponsored with the Texas College of Law and the American Academy of Appellate Lawyers to put on a program entitled "May It Please the Court: Effective Oral Advocacy." The second was a one-day Bootcamp Trial Training program held in July and hosted by the Northern California Fellows and co-sponsored by the San Francisco Bar Association and the ABA Litigation Section. Both programs were a huge success and continue to further the College's mission.

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

The Special Problems in the Administration of Justice Committee (U.S.) has been working as hard as any Committee in the College on a single issue - helping our disabled veterans. Chair John Chandler has persisted in the face of unbelievable bureaucratic obstacles and is truly inspiring. Assisted by Fellows Elizabeth V. Tanis, Denny Shupe, Stephen D. Raber and their respective firms, a brief was recently filed in the U.S. Court of Appeals for the Federal Circuit that argues that the unconscionable delays of more than four years in deciding appeals violated due process. There is not a more important area of work that the College is doing than this. We all owe a debt of thanks to these Fellows.

## **National Office**

There have been significant changes in the National Office. In May I visited the office before attending the Southern California Fellows Annual Dinner in Los Angeles. During this time I had the opportunity to speak with the staff about the affairs of the College and specific projects. Before leaving for the Fellows dinner, Eileen and I had the opportunity to enjoy lunch with all the staff where we discussed a number of topics. I also visited the new office space the College would move to later that month. One of the Long Range Financial Planning Committee's recommendations was to look for ways to reduce overhead at the National Office. The move of the National Office and the reduction of space accomplishes this and is just one of the many ways the staff is continuing to work to reduce overhead. The National Office staff is exceptional and is everything I could hope for from an organization to help me negotiate the year.

My time as President has been thrilling. I am constantly asked how I am able to be President and run a small law practice. Most of the Fellows with whom I speak to in my travels ask that question. I tell them that it is far easier than it was ten years ago or even five years ago. Advances in communication technology have made the job more efficient. I recently flew to the West Coast and worked on the airline Wi-Fi the entire time. It was like being at my desk without the interruptions. My firm has done well and has actually expanded through the year. Being a Delaware lawyer makes one pretty popular in these times. It certainly helps to have a great staff at the firm. But the question of the tougher parts of being President always gloss over the once-in-a-lifetime experience of being President. There have been a few tough days but they are so outnumbered by the great days that it is not even worth mentioning. I tell people it is like being in trial for a year. There are no days off but I am trying a great case and having a lot of fun. This has been a great honor and I thank all of you for helping me do what I could do to advance the mission of this important organization.