

# *the* **Association** *press*



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## **PRESIDENT'S MESSAGE**

*STEPHEN R. CRISLIP (WV)*



As a small, but well-connected defense organization, we try to stay in touch with our members electronically and by mail at their offices. Twice a year we like to get The Association Press to the spouses and other family members so that they can keep up with our activities in printed form. In this organization, the spouses and guests

are as important as the members when it comes to Annual Meetings. I am reminded of the associate member's spouse who would not accept a transfer of locations for a firm until the ADTA membership issue was sorted out.

Our meetings have always been in nice places that we hope are affordable for business purposes. We try to keep that in mind whenever we select a site. Traditionally, we rotate from east to west with occasional middle of the country meeting locations for convenience, and about every five to ten years at an "off-campus" location. We go west to San Diego in 2007, east to Charleston, South Carolina in 2008, and to Phoenix, Arizona in 2009. We recognize that places like London, Bermuda, Ireland, and Puerto Rico have limited some of our regular attendees in the past and we only do that on occasion.

However, I can report to you that the 2006 Puerto Rico 65<sup>th</sup> Annual Meeting led by President Dan Formeller met every criterion of this organization. While admittedly fewer people attended because of the distance, those that did attend got more than their money's worth. We had a CLE

panel of speakers, as opposed to people who were just presenting papers. The theme was Practical CLE for Working Defense Attorneys and it was on point. We wanted CLE that meant something to each lawyer and their firms, and we even included a session for spouses and lawyers on managing the stress in their lives, particularly when they were trial attorneys, or married to one. The evaluations were uniformly good on this approach to providing practi-

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cal working things for our members, as opposed to some of the CLE programs you can get down the street from your office. We think that makes us unique and important to our members. The CLE material is available now at a modest cost.

Our organization runs on volunteer time and effort, but it has succeeded for 65 years because of the friendships and relationships that we all have with each other. It is interesting to see these members changing as more and more members are retiring from the practice of law and taking Emeritus status. However, it is equally pleasurable to see the delight of new members welcomed into this group where they are treated so royally upon their first visit.

Our Executive Council will meet in San Diego in November of 2006 for our mid-year meeting and will tour the facilities at the Hilton La Jolla Torrey Pines to set everything for the April 18-22, 2007 meeting. There will be more to follow on that meeting, but it will be a wonderful *family* opportunity, as well as an opportunity for just you and your spouse or other to get away alone for a lovely “bidness” meeting.

The plan this year is to utilize what makes us different from any other defense organization. That is, we want to look after the needs of defense trial attorneys and see that our members exchange referrals and business with each other for the common good. If you have any issues or concerns, please contact any of the officers or the Executive Council members and express them to them directly. If you need a lawyer, use your ADTA Directory first and last.



## ADTA ANNUAL MEETING RECAP

*Daniel R. Formeller (IL)*

The ADTA held its 65<sup>th</sup> Annual Meeting at the beautiful El Conquistador Resort in Fajardo, Puerto Rico between April 26 and 30, 2006. In spectacular surroundings, the ADTA members in attendance had a wonderful time with their colleagues and friends.



Convention co-chairs Carol and Bruce Keplinger and Martha and Frankie Colon anticipated every detail and presented us with a wonderful week of events and hospitality. The meeting served as an opportunity to welcome 13 new members who were in attendance along with 10 past presidents. The President’s reception was held on a terrace on a cliff overlooking the ocean and was just the beginning of a week of events that offered perfect tropical weather and breath-taking views of the island and the surrounding water.

The CLE committee, Tom Burke, Doug Johnson and Bill



Luckett, chaired by now President Steve Crislip, presented an outstanding educational program focused on the practicing trial lawyer. Many in attendance remarked that the educational program was the best ever presented at an ADTA meeting. Speaker papers and materials were distributed in CD-ROM format for the first time. While ADTA members were attending CLE sessions, our spouses and guests were treated to local speakers on Puerto Rico’s history and culture.

The Friday evening black tie dinner/dance was elegant and wonderful with music and dancing into the wee hours. At the evening’s festivities, it was my privilege to award





Russ Roberts with the ADTA Outstanding Member Award for his years of devoted service to the ADTA in a number of different capacities. The standing ovation that Russ received was well deserved.

On Saturday, after the conclusion of the business meeting, President Steve Crislip adjourned the membership to enjoy a relaxing afternoon at the pool, the beach and the golf course and tennis courts. On Saturday evening the tropical theme party in the rain forest was a unique experience providing a lasting memory for everyone. The farewell brunch is always a bittersweet experience. It marks the end of another ADTA meeting and the gathering of close friends. As we all head for home we are all glad for the time together, sad that it ended so soon and already we are looking forward to meeting again next year in San Diego.



## MAPPING OUT A HISTORY

*(Reprinted from the Charleston Gazette)*

When Stephen Crislip was a young associate lawyer at Jackson Kelly in 1975, a senior partner sent him to sort through the law books and papers the family of a deceased judge had offered the firm. The family told Crislip to take anything useful before they set it out for the refuse collectors.

The books held no interest, but Crislip did have a small, tattered hardbound map produced in 1867 by John Swann, called "Title Map of the Great Kanawha Coal Field."

"It was going into the trash pickup that day," Crislip said. "I got it just in time."

The firm's leaders did not want the map, so Crislip tucked it into a bookcase without even opening it because it looked very fragile.

The map sat in Crislip's bookcase for 30 years until a major renovation of the firm's offices in Laidley Tower prompted him to pull it out. Crislip researched the map's background and found only one other copy of the map, which is in the Library of Congress. A hand-drawn notation of the mail route to "Hamline" mars that copy.

The colored map features land owned by George Washington (his heirs), and by prominent locals such as Ruffner, Bullitt, Clendenin and Caperton. The original \$10 price printed in the corner is a small fraction of the value an appraiser will eventually list for the map. The appraiser hasn't determined a price yet, but Jackson Kelly CEO Al Emch considers it priceless.

Crislip asked the office planner if she could find a good spot for the map on the wall in the newly designed conference and meeting area. A Washington, D.C., archivist restored, repaired and preserved the 5 by 6 foot map. Crislip donated it to the firm where hangs on the 16<sup>th</sup> floor.

The map intrigued Crislip, who was a history major before his law school days. He researched its background and compiled a history of the map.

"How wonderful that someone like Steve would find the map," said Emch. "It is almost an education about how deeply information can be gleaned from something like a historic map."

The map has strong ties to Jackson Kelly, a firm with a significant base of energy clients. It was signed by the firm's first lawyer, Benjamin Smith, and produced by John Swann, a Confederate lawyer, who had a title litigation practice with his brother before the Civil War. Because of his Confederate ties, he couldn't practice law in West Virginia after the war. Instead, he put his title knowledge to work and produced the early map of the Kanawha coalfields.

Smith was the U.S. Attorney at the time of West Virginia's statehood and reportedly had to arrest his own son, Confederate Maj. Isaac Smith. Isaac Smith eventually joined his father at the firm in 1871 when Confederate lawyers regained their right to practice law.

Confederate Maj. Thomas Broun also verified the map. He practiced law in New York City in 1867, where he published the map for his fellow officer, John Swann. Broun was the father-in-law of Malcolm Jackson, who was the first of the Jackson family lawyers in the firm's current name.

According to documents Crislip found in the West Virginia Archives, Broun owned the warhorse Traveller, and later sold him to Gen. Robert E. Lee.

A misshapen map of newly formed West Virginia appears in the map's border. It lacks a southeastern corner of the state's current boundaries. The Eastern Panhandle's boundary is also much smaller than it is today.

"We are pleased to display this historical piece reflecting the history of the coalfields and of our earliest clients in that industry. It also reflects the history of West Virginia at its formation and the conflict in the families and this community that existed at the time," Emich said. "It has far more value to us than its considerable commercial value as an artifact."

The newly restored, preserved and framed map hangs around the corner from the 16<sup>th</sup> floor reception desk. Crislip and Emch hope map lovers and students will stop to see it during regular business hours.

"It's just a piece of paper, but it tells a story," Crislip said. "I feel like it belongs here."



## A WORD FROM LOU

*Lou Scofield (TX)*

We don't sufficiently acknowledge the importance of accessories to our successful practice of law. For example, I have a "Dictaphone Voice Processor" on which I dictate my obstructionist pleadings, non-responsive discovery replies, frivolous objections to discovery, motions filled with righteous indignation, intemperate letters to opposing counsel, and pretrial reports to my client and the insurance carrier...predicting disaster unless my considerable courtroom skills carry the day. I don't know how it became a "Voice Processor" instead of a tape recorder, but I'm not going to question its title because I *need* it. I recently had a day when it broke down. This event did not reduce me to a useless biomass (as do some mechanical malfunctions), but I was at least partially disabled until they put a replacement on my credenza.

For some of you, the breakdown of a "Voice Processor" would do little to disrupt your day. But what if I took your blackberry (strawberry? elderberry?) and dropped it into the commode? Eh? What if I did that! Or how about your cell phone? What if I put it in your kid's school backpack, so she could use it as a trowel to dig in the playground dirt! Imagine being without these valuable tools. Could you still function? You should be able to. It wasn't that long ago that we didn't have such gadgets. But the cold fact is that we have grown so accustomed to them that we now count on them. We need them.

Some might suggest that such dependence is weakness. I disagree. How is today's use of printers and copiers, instead of carbons (which I started out using), a weakness? Or cast back even further. I'm sure 75 years ago the growing dependence on the automobile could have been seen as a weakness. But not now.

Clearly we should not be concerned with the increasing dependence of our law practice on machines and new gad-

gets. But we should be concerned with **what kind of** machine or gadget we have. Experience teaches that there are serious consequences to having the wrong device.

Let's use the car as an example. During an unfortunate stretch of my law practice I bought a minivan. It stripped me of my effectiveness as a trial lawyer, my self-esteem, and my ability to go faster than two miles per hour over the speed limit, regardless of what the applicable limit was. If you happen to own a minivan I hope you are not offended...but, of course, who cares what you think? You're a "girlyman." Even if you are insulted you won't say anything about it...you drive a minivan for crying out loud! Driving to court in a minivan is like John Wayne riding into town on a cow.

I sold the minivan (yes, it's the one I shot...see "Being A Boss": The Association Press, Winter, 2003) and I bought a new pick-up truck. My courtroom prowess returned, as did my pride, and my daughter was born less than a year later. Clearly we need to pay attention to the type of accessories we choose for our law practice.

And another thing, no discussion of lawyer accessories can leave out our computer systems. We at MehaffyWeber have gone with Dell (gotta support the Texas geeks). We have a Zoot 9000 system, complete with the Zapthebastards software package. I'll bet its better than yours. If its not I'll be miffed. It cost us about a billion dollars. They even had to bring in rented geeks just to train us. The system runs so flawlessly, we only need three full-time employees to keep it working. They are called "I.T." people. You can pick out I.T. people in any law office. They're the ones in the cone hats that have shining stars and crescent moons on them.

This system is amazing. It comes complete with firewalls, antivirus protection, and a "spamblocker." I'll bet it can block any other kind of potted meat too. Without me doing a thing, it blocks *all* the stuff I don't need to see and only 41% of the stuff I do.

With the right software it can do animations that make a head-on collision look like a Bugs Bunny cartoon. "No pain and suffering here folks," I calmly suggest to the jurors as they watch their monitors. "Look. I can run it backwards. And look at my animated truck driver...why he's the spitting image of Saint Christopher himself, the patron saint of all us travelers."

I'm telling you folks, if you don't have the Zoot 9000 with Zapthebastards software; your opponents are going to whip the britches off you.

So get the right kind of accessories. And be thankful for all that these labor-saving and time-saving devices have done for us. With the right car, cell phone, blackberry, and computer system at hand, success is assured.



## MIRACLE CHILD

*(Reprinted from the Baton Rouge Advocate at the request of ADTA Management)*

Last December, Karyn Bailey underwent surgery to have a lump removed from her right breast.

She was 39 years old and 18 weeks pregnant. The lump and lymph nodes were biopsied, and she was diagnosed with stage II breast cancer.

"I was so shocked. The lump had been there for three years. My doctor thought it was a cyst, but it had grown during my pregnancy. Still, I never suspected cancer," she said.

Her husband, Matt Bailey, delivered the bad news. They both cried.

They were told she would need to start chemotherapy while she was still pregnant.

"Of course, I worried about the baby," Karyn Bailey said. "My doctors, F.A. Moore and Gerald Miletello, worked closely together and came up with a treatment plan to keep us both safe. I started chemo on January 17."

"Fortunately, we don't see very many pregnant patients," Miletello said. "However, there is data to show that the drugs we gave Karyn (Cytosan and Adriamycin) are safe if administered in the second and third trimester. She had a great response."

Four chemo sessions delivered three weeks apart bought Karyn Bailey to within two and a half weeks of her delivery date and put her into remission. She suffered fatigue and nausea, as well as leg cramps and muscle spasms. She also lost her thick, blond hair.

Comprehensive biophysicals were conducted weekly to ensure that the baby was OK. While the sonograms and other tests were reassuring, the couple still worried. Obviously pregnant in the chemo room, Karyn attracted attention from other concerned patients and staff.

"I consulted with a breast cancer specialist about her case and communicated frequently with her obstetrician," Miletello said. "We had every reason to believe she and the baby would do well, but it still makes you nervous."

Both parents shed tears of relief when Jordyn Reese Bailey was born weighing 6 pounds, 2 ounces on April 10. The beautiful, redheaded baby girl was declared perfectly healthy. Her mother has hardly put her down and only reluctantly shares her.

"She's our miracle baby," Matt Bailey said.

Matt and Karyn Bailey met through mutual friends two and a half years ago, and have been married fifteen months. In that time, they have been through a wedding, a preg-

nancy, Katrina, a cancer diagnosis, surgery, chemotherapy, an anniversary and childbirth. Oh, and their household also includes 13-year old twins, Abby and Zach and 10-year old William (from their previous marriages) every other week.

Matt Bailey hasn't missed a single child's ballgame, and he goes to all of Karyn's appointments with her. Because he owns his own law firm, he is able to conduct much of his business by cell phone, regardless where he is. He coaches William's baseball team, shops for groceries and brings the dogs to the vet. He even shopped for pink baby clothes after Reese was born because they didn't want to know the baby's sex before birth.

Though both said they just wanted a healthy baby, both were secretly hoping for a girl. "I wore a pink shirt to the hospital," Matt Bailey said. Now they have two girls and two boys.

"I carry my Blackberry with me all the time, and I can control my schedule to a degree. I used to travel, but I don't as much anymore. My office and clients have been very supportive," he said. "I don't know how it all gets done, but you just do what you have to do. We're a team."

Matt Bailey also shaved his wife's head and offered to shave his own in support, though she wouldn't let him. "Her hair started falling out in big clumps so, one day – the day before our first anniversary – I dropped the kids off at school and came back home and shaved her head like a puppy dog. It took an hour and a half, and I cut her ear. We were both crying," he said.

Though she got a wig and wore it a couple of times, Karyn Bailey said she wasn't comfortable. "It was hot and itchy, and I felt like a drag queen. I wore doo rags and baseball caps for a while, but now I usually just go bald."

Her hair started to grow back until she resumed chemo soon after she gave birth. She'll have four additional sessions, and three weeks after her last chemo, she'll start radiation, going daily for 25 sessions.

"I should finish around Labor Day, and we're planning to have a big party." Karyn Bailey said.

Friends, family, neighbors, co-workers and the community of St. Aloysius Catholic Church have been very supportive, the Baileys said. The older children have taken everything in stride.

"So many people – some I don't even know – are praying for me," she said. "My doctors and nurses have been great and Matt has been wonderful. I had some psycho moments. You know when you're pregnant, you're emotional anyway, but he's always pointing out the positive side of things.

"We had everybody crying in the delivery room. We both feel very blessed and lucky, and we love to share our story" she said. "Sometimes, I even think God sent Reese to me so that my cancer would be discovered when it was. She's such a joy in our lives."



## SAN DIEGO

**APRIL 18, 2007 - APRIL 22, 2007  
HILTON LA JOLLA TORREY PINES**

Your San Diego Convention Co-Hosts Terri and **Steve Mitchell (CA)** and Pam and **John Clifford (CA)** have a fun filled and exciting week planned for you in San Diego next April. The convention hotel, Hilton La Jolla Torrey Pines is located overlooking the Torrey Pines Golf Course and the Pacific ocean. This hotel is ideally situated in between the costal communities of Del Mar and La Jolla, California, and is an easy 15 mile drive north of the San Diego Airport. The hotel is adjacent to the Torrey Pines Preserve which has excellent hiking trails which meander through the torrey pines down to Torrey Pines State Beach.



Planned off-site events include "An Evening at Miramar" and "An Evening at Sydney's at the San Diego Zoo."

Your evening at Miramar will be the experience of a lifetime. We will enter the fascinating world of Marine Corps Air Station, Miramar, a truly unique and exclusive site. Since the dawn of aviation, MCAS Miramar has been the most well known military air station in the world. From Charles Lindberg's flight tests on the Spirit of St. Louis, to the world conditions of today, Miramar has been at the forefront. With the release of the movie "Top Gun," Miramar gained fame with the general public. After we clear the security checkpoint and have been cleared for entrance we will be joined by our "hosts" for the evening which are Marine Corp Officers who will thrill you with the stories of "soaring the skies" as we proceed forward to an actual working hanger. At the hanger, we will get a close-up view of the Marine Corps most technologically advanced equipment, including the cockpit of an F-A-18 Hornet. After the "brief" at the flight line, we will proceed to the MCAS Miramar Officers' Club for some "R&R" with our hosts and view some actual footage taken by pilots which is not available to the general public.

On Friday, we will enjoy an evening at the San Diego Zoo, which is located in beautiful Balboa Park. The San Diego Zoo was founded by Dr. Harry Wegeforth in 1916 and encompasses 100 acres and over 4,000 individual animals representing 800 different species. A few steps in any direction from the outdoor Sydney's Grill you will find elephants, koalas, meerkats, and capybaras. You will also experience an up close encounter with exotic animals and have a chance to chat with the trainers.



The golfers in the group will be treated to a rare experience, as the golf tournament will be held on the Torrey Pines Golf Course located adjacent to the hotel. The Torrey Pines Golf Course is home to the annual PGA Buick Open and the south course has been selected as the site for the 2008 U.S. Open.

San Diego also offers many other activities for you to enjoy during your stay, including a visit to the San Diego Maritime Museum which includes the aircraft carrier "Midway" and the old clipper ship the Star of India. For those of you bringing children, other activities include a trip to Sea World or Legoland (both locations are within 20 minutes of the hotel). For those of you with more exquisite tastes, there is excellent shopping and fine dining available in both La Jolla and Del Mar - just minutes from the hotel and at San Diego's historic Gaslamp District.

Your Continuing Legal Education Committee is planning another excellent conference presenting dynamic speakers on practical issues which will benefit the members of our association.

We look forward to seeing you in San Diego.



## ABOUT OUR MEMBERS

*Adrienne Baumgartner (LA)*

**Jennifer Parish (VA)** is up for election as an officer (Secretary) for the Litigation Section of the Virginia State Bar on June 16<sup>th</sup>.

**Steve Enochian (CA)** has left the firm of Enochian, Kenny and Snowden to take an in-house position with a long time client.

**Jeffrey S. Hebrank (IL)** has moved into the 1<sup>st</sup> VP Chair of the Illinois Association of Defense Trial Counsel, and will ascend to the presidency in July, 2007.

**Doug Hoffman (WA)** has recently become a fellow of the American College of Trial Lawyers.

**James B. Harris, Jr. (KY)** was recently elected to the Board of Governors for the Kentucky Bar Association for the Second Judicial District and will take office July 1, 2006.

**Douglas M. McIntosh (FL)** received the 2006 Archbishop Edward A. McCarthy award from the South Florida Chapter of the St. Thomas More Society. The award is given annually to someone from the legal community who best personifies the morals and ethics of St. Thomas More, the patron saint of lawyers.



## NATIONAL LEGAL ISSUES

*William J. Powell (WV)*

The National Legal Issues Committee Chairman **Michael F. ("Mike") Aylward (MA)** gave a very informative presentation in Puerto Rico on a number of "hot" legal issues.

Mike's presentation included discussion of recent changes in the Federal Rules of Civil Procedure regarding e-discovery. The rule changes will take place on December 1, 2006, unless Congress blocks them. The new rules provide methods by which parties can answer discovery through access to electronic storage of documents. The rules also address inadvertent disclosures in an effort to maintain privilege.

Speaking of privilege, Mike's presentation also touched on the very timely topic of attorney/client privilege with corporate clients, which has been under attack in recent years. The Government has taken the position that cooperation with them often requires a waiver of privilege. However, recent Sentencing Commission amendments suggest that this waiver will no longer be required or considered as the sole basis for cooperation benefits.

Finally, Mike touched on recent attempts to obtain through discovery the legal advice provided to insurance companies by coverage counsel. He identified jurisdictions in which the insurers have had some success protecting these communications (Connecticut), and some where insurers received less favorable treatment (Florida and Oklahoma).

Overall, Mike's presentation was an excellent review of timely issues that we will likely confront or have confronted in our respective practices.



## NEW EXECUTIVE MEMBERS

### WILLIAM H. STAPLES (CA)



William Staples is a shareholder and the head of the litigation share group for Archer Norris for its Walnut Creek, California office. Bill graduated from the University of California, Berkeley, with a degree in Political Science and earned his Juris Doctorate Degree from the University of San Francisco.

Bill has over thirty years of legal experience and is a member of the Association of Defense Counsel of Northern California and Nevada as well as DRI.

Bill and his wife, Maureen, are celebrating thirty-four years of marriage this year. Their oldest child, Shannon, just graduated from the University of Arizona with a B.S. in Human Services, and their other child, Tom, just finished his freshmen year at the University of Arizona and desires to pursue veterinary school.

In his spare time, Bill struggles at golf and enjoys cooking and reading suspense novels.

### DANIEL BALMERT (OH)



Daniel Balmert is a native of Portsmouth, Ohio. Dan is a 1973 graduate of Notre Dame, and received his Juris Doctorate from Capitol University Law School in Columbus, Ohio in 1976. He joined the firm of Vorys, Sater in 1976, serving in its Columbus, Ohio office. In 1982, he became instrumental in the opening of the firm's Cleveland office. He is currently partner in charge of the firm's Akron, Ohio office.

Most of Dan's work as a trial lawyer is spent defending employers and employment law and product liability mat-

ters throughout Ohio, Michigan, Connecticut and Wisconsin.

Dan has served as an arbitrator for the American Arbitrator Association, was appointed by the Federal Court to serve as a member of the Civil Justice Reform Act Advisory Group to the United States District Court for the Northern District of Ohio and was appointed as Delegate to the Judicial Conference of the Eighth Judicial District Court of Ohio. Dan has also been identified and listed in the worker's compensation law section of The Best Lawyers in America each year since 1995.

Dan has served as a member and chairman of the Board of Trustees of the Juvenile Diabetes Research Foundation and of the Cleveland Hearing and Speech Center.

Dan is married to Susan, and they have two children. Adam, twenty-four, is a special education teacher in Orlando, Florida and Kelly, twenty-two, is a senior at Ohio State, studying pediatric physical therapy.

## MORRIS CHOCHLA (ON)

Morris Chochla is the senior partner of Forbes Chochla in Toronto, Ontario, a law firm specializing in civil defense litigation. Morris obtained his undergraduate degree in chemical engineering in Queens University in Kingston, Ontario as well as his Bachelor of Law.



The majority of Morris' work is spent handling construction, professional errors and omission and general commercial claims as

well as insurance matters.

Morris has spoken throughout Canada on numerous topics, including issues pertaining to the insurer's duty, insurance policies and litigation against civil engineers. Morris has recently been elected Chair of the Ontario Bar Association Insurance Law Section.

Morris is married to Janice Mackintosh, a lawyer and currently the executive director of the Public Accounts Council of Ontario. They have two children, Dylan (22) and Samantha (18). Dylan just graduated from the University of Western Ontario with an Honors Bachelor of Arts Degree, with majors in Political Science and French.

Morris enjoys playing piano (mostly jazz and blues), squash in the winter and golf in the summer.



## WHAT IS NEW IN MY STATE

Pat Cullen (MD)



## OREGON

As a member of a five-person, Portland, Oregon Firm founded in 1998, **JAMES "JIM" HILLER'S** practice is familiar to most: Many self-insured clients, transportation cases and the occasional plaintiff's case. Jim reports that Oregon's highest court is taking a second look at the constitutionality of the legislatively established \$500,000.00 cap of non-economic damages and tort cases. Several years ago, the cap was upheld as to wrongful death cases with the court reasoning that wrongful death was not recognized in common law and the legislature was free to limit the amount of recovery and legislatively – created claims. A few years later, the Oregon Supreme Court found this cap on tort damages to be unconstitutional as to injury claims recognized in common law at the time the Oregon Constitution was drafted in 1857 (which includes nearly all common law injury claims we see today). That has encouraged the Oregon friends of ATLA to mount an assault on the earlier ruling as relates to wrongful death cases, claiming there was a common law remedy for wrongful death in 1857.

A move that ostensibly should assist employers, the Oregon legislature toughened the standard of causation by which employees may be compensated for occupational diseases. One such employee who failed to meet the new standard then sued his employer under the theory that he was left without a remedy for an injury, which is protected by the Oregon Constitution. The Oregon Supreme Court, in a case handled by Jim's firm, accepted the worker's argument and permitted its common lawsuit to proceed.

Jim relates his involvement in a somewhat unusual case that arose in Taiwan which he handled for Nike. At issue was the allegedly improper extension of three million dollars (U.S. money which amounts to twenty-two million dollars in New Taiwan's dollar) in credit by an employee of Nike to certain Taiwan's customers who defaulted. Nike's claim against its employee dishonest insurer ultimately was settled for what we all would call "big bucks."

While Jim continues to pull hard on the oars at work, he continues to pursue his interests in golf, running and travel (not necessary in that order). Jim and his wife, Veronica, recently traveled to Seattle to visit their daughter, Sasha, who works in marketing for Jamba Juice as it expands its outlook across the country. Veronica stays busy in the field of residential real estate sales. When asked about a favorite ADTA memory, Jim instantly responded the highlight for him and Veronica was the 2001 annual meeting they and Steve and Francine English co-hosted in Portland. It was a huge amount of work, said Jim, but he would never forget the pure joy of sharing his wonderful city with the members who attended.

## ALABAMA

**JOHN A. SMYTH, III.**, is a partner in the firm of Maynard, Cooper & Gale P.C. in Birmingham, Alabama. The firm was founded in 1984 by a group of twenty six attorneys who en masse left another Birmingham firm upon viewing greener grass. The grass was a good indicator because the firm has now grown to a "full service" firm of over 150 attorneys. John is quite proud of his firm, whose members include the current President-elect of both the Alabama State Bar and the Birmingham Bar Association and a past President of the American Bar Association. Another partner in the firm has announced his candidacy for President of the American Bar Association.

John and his partner, Jeff Grantham, are relative newcomers to ADTA, having been proselytized by the persuasive former President of ADTA, Gordon Broom, with whom Jeff and John got to try a case with a few years ago in Gordy's lovely Madison County, Illinois. John and Jeff and their spouses attended their first annual meeting at Galveston last year and had a wonderful time.

When asked about recent developments in Alabama law, John replied that a big one may be on the horizon. He explained that the Alabama Supreme Court is presently considering a case where the plaintiffs' bar is asking the court to reconsider Alabama's "date of last exposure" statute of limitations trigger for toxic tort exposure cases in favor of a "discovery"/"diagnosis of disease" rule, which is the law in most other states. Since 1979, Alabama law has been that, in toxic exposure cases, the statute of limitations starts to run upon exposure to the toxic substance rather than upon the manifestation of the disease. John's firm has filed an amicus brief in the case on behalf of the Alabama Business Council and John pointed out that the defendant in the case is represented by ADTA member George Walker of Mobile, Alabama, who argued the case before the Alabama Supreme Court.

John's wife, Leigh Ann, a "retired" human resources professional, is now kept busy with the energetic activities of their two children, Mary Katherine (age 6) and Hunter (age 5). John is able to keep his golf game sharp enough to carry a 12 handicap (which to the uninitiated is very respectable.) He spends a fair amount of his time in the office

dealing with the complexities of asbestos litigation and other toxic tort cases. That work has brought him into contact with some of the national players on the Plaintiffs' side. He is presently preparing for an asbestos trial that begins in Atlanta on July 10 against the Charleston, South Carolina, Motley Rice law firm.

## MASSACHUSETTS

**DAVID ZIZIK**, is the founding partner of Zizik, Powers, O'Connell, Spaulding & Lamontagne, P.C., an insurance defense firm with offices in Wellesley, Massachusetts and Providence, Rhode Island. In October 1988, nine years after his graduation from BC Law School, David went out on his own. Since then, his firm has gone through an evolutionary process to its current status of four shareholders and five associates.

David's practice runs the gamut from small property and casualty claims to complex multi-party trial and appellate litigation. Recently, David's firm successfully defended the insurer in *Rubin v. United Services Automobile Association*. Rubin was a Massachusetts case that involved a coverage dispute about whether the carrier owed a duty to defend its insured, a dentist, in a sexual harassment/hostile work environment case filed by a former employee. The trial court ruled that the alleged harassment fell within the policy's business pursuits exclusion and that the insurer had no duty to defend. The firm then defended the insured's appeal to the Massachusetts Appeals Court, which affirmed the trial court's decision.

David's family includes his wife of 26 years, Karen Baker, a homemaker who spends substantial time as a volunteer at their parish church. David and Karen's two children are Michael (22) and Andrew (19). Michael graduated in 2005 from Wake Forest with a degree in economics, and learned from a collegiate internship and his work over the past year as a paralegal in David's firm what he does not want to be in life: either a lawyer or a stockbroker. He now is enrolled in Tulane University's Master of Architecture program. Andrew, a guitar player since fourth grade, is enrolled in Emerson College in Visual and Media Arts Production, a program associated with the production side of the musical world. He also, as you might imagine, plays in a band known as Robots in Love.

Outside the office, David participates in the Master of Arts in Ministry Program at St. John Seminary, Boston. His precise destination is yet to be determined but he hopes that it will involve work in either the Archdiocesan Tribunal or in some area of spiritual direction.

David's first annual meeting with ADTA was in Dublin. He calls joining ADTA "a highlight of my life." He sizes up ADTA this way: "It is an organization about our families and us. Members are accepted as competent and thus do not have to put on airs. Members can just be themselves." He seems to have that right. He and Karen both have their bags packed for San Diego and Charleston.



## NEW ADTA MEMBERS

Ann M. Asiano – Larkspur, CA  
 Daniel J. Crawford – Larkspur, CA  
 Eric A. Gale – Larkspur, CA  
 Randall S. Hanson – Grand Forks, ND  
 George S. Arata – Modesto, CA  
 John M. Drath – San Diego, CA  
 Debra A. Reece – Bangor, ME  
 Kimberly Ann Leegan – Westfield, NJ  
 Michael J. Leegan – Florham Park, NJ  
 Brian H. Ratcliff – El Dorado, AR  
 Douglas A. Sears – Sacramento, CA  
 John E. Riddle – San Jose, CA  
 Andrew W. Weiss – Fresno, CA  
 Pamela A. Treadwell-Rubin – Tucson, AZ  
 Serieta G. Jagers – Princeton, KY  
 Leon Beukman – Vancouver, BC  
 Grant W. McGuire – Newark, NJ  
 John B. Stewart – Springfield, MA  
 Jason R. Vendsel – Minot, ND  
 George B. Wilkinson – Cincinnati, OH  
 James L. Chipman – Halifax, NS  
 Chadney C. Ankele – Monterey, CA  
 Elisamar Soto – Laredo, TX  
 Douglas M. McIntosh – Ft. Lauderdale, FL  
 Bernie McGarva – Toronto, ON  
 James E. Garland – Baltimore, MD  
 R. Michael Waterman - Hudson, WI  
 Tomislav Z. Kuzmanovic - Milwaukee, WI  
 Kelly J. Snowden - Redding, CA  
 W. David Conner - Greenville, SC



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## ASSOCIATION OF DEFENSE TRIAL ATTORNEYS ELECT EXECUTIVE OFFICERS FOR 2006-2007

At the ADTA's 65<sup>th</sup> Annual Meeting at the El Conquistador in Fajardo, Puerto Rico, elections were held, and ADTA is pleased to announce the Association's new Executive Officers for 2006-2007:

### President

Stephen R. Crislip, Charleston, West Virginia

### President-Elect

John R. Clifford, San Diego, California

### Vice President

Kevin J. Kelly, New York, New York

### Immediate Past President

Daniel R. Formeller, Chicago, Illinois

Elected as Members of the **Executive Council**  
 for a three-year term were:

F. Daniel Balmert – Cleveland, Ohio

Morris A. Chochla – Toronto, Ontario

William H. Staples – Walnut Creek, California



## SO WHAT NOW?

*Pat Cullin (MD)*

**Ed Curran**, known for his eloquent remarks in memory of deceased ADTA members at our annual meetings, retired a few years ago. He answers the question as to "So What Now?" this way. He and his wife Pat both enjoy traveling. They have, since retirement, completed a cruise down the Danube that permitted them to visit six countries. They also have toured Southern Italy and Russia and attended the annual meeting in San Juan. As this is being written, they are en route to France with plans in place for a July, 2006 trip to Salt Lake City, Mt. Rushmore, the Grand Tetons, Snake River and beyond.

In between trips, Ed manages to walk three miles per day. He also serves as a volunteer treasurer and board of director's member for the Chrysalis Center, an organization which provides housing and employment for those with mental illness, substance abuse problems or AIDS/HIV. The clients of the organization are helped to get into a normal

life by finding an apartment to rent and living on their own. Chrysalis serves approximately 1,000 per year. It operates on a budget in excess of \$5,000,000.00 per year and employs over 100 persons.

Ed has also apparently discovered Circuit City or some such. He has been working with the computer (which he did not do at work). He has begun to use a digital camera, a DVD player and he goes to the movies twice a week at a real picture show. He eschews golf as a hobby. All in all, Ed says a man on the move.

**Richard S. Gilardi** practiced with the firm of Lynch, Gilardi and Grummer in San Francisco, California for 28 years, served as ADTA president in 1993 and retired at an early age in 2000. After retirement, he began, virtually from scratch, the pursuit of a college degree in geology. He put his toe into the academic waters by taking several courses at a local junior college, commuting on his mountain bike. Success at that level led him on to enroll at a nearby university. He graduated in 2005 with a Bachelor of Science in Geology.

He explains that he always enjoyed and did well in school. (Those who know him will have no trouble accepting that.) He has always loved science and the great outdoors. His studies have taken him to Death Valley, the

bottom of the Grand Canyon, the Rocky Mountains and a remote fossil field in Canada. The most physically challenging was Mt. Whitney, which he hiked and upon which he slept. His last college course was a month long field trip to the Black Hills in South Dakota, the Big Horn Mountains of Wyoming and Yellowstone Park sponsored by the University of Ohio at Akron. Richard shared a college dorm on this trip with a 22-year-old roommate and thrived on cafeteria food, good company and Budweiser. His professors were able to get over the fact that Richard was older than them and was the only student who listed grandfather on his resume.

Richard's pursuit of academia was not motivated by financial gain. Fossil deposits, hikes and the lessons to be learned from geology were and are interests that bring him joy. When asked what he misses about the practice of law, Richard answered, somewhat with tongue in cheek, that he misses those great San Francisco restaurants and his partner, Bob Lynch's shenanigans. Richard's wife Mary was not interviewed for her comments on the subject of shenanigans, but confirmed that she sent him off to school daily with a homemade lunch and wrote their phone number on the front of his field maps, so he would remember to phone home.

**MEMBERSHIP NOMINATION**

I would like to nominate \_\_\_\_\_ for (prime)(associate) membership in  
**(proposed members' name)**

the ADTA. Please send an application to \_\_\_\_\_  
**(name)**

at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
**(city) (state) (zip)**

Office telephone: \_\_\_\_\_ Office fax: \_\_\_\_\_

Year admitted to practice in my state: \_\_\_\_\_

\_\_\_\_\_  
**Name of Member (Print)**

\_\_\_\_\_  
**Signature of Member**

**Return to:**

**Glenn S. Morgan, Ryan, Smith & Carbine; Mead Building, 98 Merchants Row, P.O. Box 310, Rutland, VT 05702**

**Tel.: (802) 786-1045;**

**Fax: (802) 748-8502;**

**Email: gsm@rsclaw.com**

*Membership Requirements*

*A trial lawyer doing principally defense work in insurance and self-insurance activities, with more than five (5) years defense trial experience is eligible.*

**Prime Members:** *The first lawyer member from a firm is the prime member. There can only be one Prime Member from any town, city, or metropolitan area of less than a million population. One additional Prime Member is allowed for each additional one million population, or portion thereof, for a city or metropolitan area.*

**Associate Member:** *Partners or associates of a Prime Member are eligible and encouraged for membership as Associate Members, at the will of the Prime Member.*



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## **MEMBERSHIP REPORT**

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*GLENN MORGAN (VT)*

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The sunshine and beaches of Puerto Rico were truly spectacular. Having traveled to our 2006 venue I can report it was a great meeting. San Diego looks like another great venue for the ADTA. Before we get to San Diego we need to replace those members we have lost to retirement, resignation, death or unpaid dues. We can expect to lose around 30 members by January 1, 2007 for the same reasons.

Although we have added several new members as a result of our membership drive, the past year we must keep the drive alive. Consequently the Council has extended the membership drive for 3 more months. If any member has anyone in mind they would like to recommend, please feel free to contact me directly. It is not too late to become an ADTA Ambassador by recommending a new member before September 1, 2006. Let us help our state and regional chairs put a big push for new members before the drive ends.

We are looking for increased membership in all states and provinces. We have a license to utilize the "Crislip Membership Method". Put succinctly, if you want to be a Prime give us an Associate too. If you are a Prime, add an Associate.

### ***THE ASSOCIATION PRESS***

***ATTN: MATT BAILEY***

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***BATON ROUGE, LOUISIANA 70802***



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## **ADDITUR**

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*Adrienne Baumgartner (LA)*

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**Phyllis Hix (CA)** on the West Coast has news of a visit from her son and grandchildren this month. Many of you know of Mule. Unfortunately, he recently had an ulcerated cornea but after a stay at a very prestigious equine hospital is on his way home. According to Phyllis it was their very first mule.

**David Zizik's (MA)** son, Michael, has quit his job as a paralegal at David's firm and enrolled in Tulane's Master of Architecture school. What an opportunity for him and what a welcome addition to the rebuilding of New Orleans.

Holly and **Gordon Broom (IL)** are awaiting their third grandchild. The new addition will be joining Grace, 4 and Max, 3, in July thanks to their son, Ben and daughter-in-law, Amy.

The best news of all is about the April 10, 2006 arrival of Jordyn Reese Bailey, daughter of Karyn and **Matt Bailey (LA)**. What makes Reese so very special is that Karyn was diagnosed with stage II breast cancer in her 18<sup>th</sup> week of pregnancy. Karyn underwent four doses of chemotherapy while pregnant, and delivered a perfectly healthy baby. Karyn has resumed chemo, which will be followed by radiation. She should be finished with treatment around Labor Day.