

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



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## **PRESIDENT'S MESSAGE**

*JOHN R. CLIFFORD (CA)*



Happy New Year!

Yes — another year has gone by and it is time to look forward to the adventures of a new year and to reflect back and evaluate the past year.

It has been a busy year for Pam and I, having the privilege and honor to represent the ADTA together with Kevin and Gail Kelly at the meetings

of our sister organizations, the IADC, FDCC, DRI and the Excess Surplus Lines Claims Association. These meetings provide a valuable platform which enables us to work with the leaders of the other defense organizations to enhance and protect our civil justice system.


















It has also been my privilege during this year to work with many dedicated individuals who volunteer countless hours to serve this wonderful organization. While I have difficulty capturing the ADTA spirit in a bottle, it is prevalent in who we are and what makes us an exceptional organization.

This wonderful ADTA spirit was recently exemplified at the Fall Executive Council Meeting held at the Mills House in Charleston, South Carolina, the site of this year's Annual Meeting. While there are a number of new faces on the Executive Council with the Class of 2010 and the changing of officer positions together with our new Executive Director Peggy Schultz, the same ADTA "can do" attitude was present and the desire to continually improve this organization for you, its members.

One of the areas the Council focused on during the meeting was the marketing committee led by Chairman Dan Balmert and renewing our efforts to enable the members to capture the business benefits of your ADTA mem-

bership. There was universal consensus that ADTA membership was beneficial for marketing, as well as a correlation between referral of work and attendance at the Annual Meeting. There was also recognition of the other intangible benefits of belonging to a national organization including have a reference service for out-of-state legal and jurisdictional issues and obtaining information concerning expert witnesses or simply having an office to utilize for out-of-state business. The Executive Council will be continuing its efforts in this area and working to expand the roster of companies that receive the Directory. I would request your assistance in this effort by continuing to reach

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for your ADTA Directory when referring work and to provide new client contacts to include in the roster. Please contact Peggy Schultz with any new contact information.

By the time you receive this message, you should have already received the brochure for this year's Annual Meeting in Charleston. The convention hosts have planned an exceptional meeting and Charleston in the Spring will be a wonderful opportunity to renew friendships and make new acquaintances while obtaining exceptional CLE and improving business opportunities. Our convention hotel is in the heart of historic Charleston and you will be able to walk in the history of our Country. This year, we will also have a special treat with a report on the History of the ADTA which is being presented by Gary Peplow at Saturday morning's general session.

In conclusion, I would like to thank Lynnette Baldwin and Peter McLean for their many years of tireless service to the ADTA and would ask that each of you show your appreciation to them this Spring in Charleston.

Best wishes for a happy and prosperous New Year.



## LAWYER JUROR

WILLIAM J. POWELL (WV)



I have recently had the special experience of being a juror in a first degree murder case. I was selected notwithstanding the following: I advised the court that I was the golfing partner of the defense counsel; the defendant charged with the murder of his wife was a local lawyer; I acknowledged having done extensive criminal defense work and spent time as a federal prosecutor; was the nominee for a federal district court in the district the case was to be tried; and, knew the judge, tried cases before

him and had pending matters on his docket. That I remained as one of twelve after voir dire, and sworn in as a juror, left me stunned. I will say that I consistently stated I could be fair and impartial. Apparently, they believed me.

Now, this was no ordinary case. The local lawyer charged with the murder of his wife wasn't just accused of killing her, but was accused of killing her, sawing her body up into various parts, packing those parts into American Tourister luggage, and then dumping the luggage into a local creek. Needless to say, the evidence was not "run of the mill" evidence.

My fellow jurors represented several professions. The eight men and five women included housewives, retired folks, laborers, secretaries and me. They were all really nice folks. None of these citizens particularly wanted to be jurors, especially on this highly publicized case, but all took their responsibilities very seriously. They respected each other's opinions, but didn't always agree. We all tried to enjoy our time together to the extent possible. Baked goods appeared often, and were appreciated by all, including the bailiffs who complained of being underfed, notwithstanding their appearance.

I had a few observations about juries which alternatively pleased me or – because I try cases—may alter my future arguments. First, I doubt that the judge's routine admonition to the jury to not discuss the case until the end of the trial holds very often. We followed the instruction, but only because I reminded them about the instruction, and didn't want a mistrial. They *wanted* to talk about the evidence all the time. Second, for those who think the jurors religious backgrounds are not important are mistaken. Religious tenets are important to folks who are religious. Sounds simple, but remember they share those principles in the jury room. Third, jurors think that lawyers are always trying to spin evidence into something that it's not. I wish I had a nickel for every time one of my fellow jurors started off a comment during deliberations with "No offense, Bill, but..." They respect us, but are very suspicious about "spin" and are easily convinced that lawyers will say *anything* to win. Fourth, be careful with your humor during trial. Comments by lawyers during the trial which I thought were very funny didn't sit well with other jurors who considered the humor inappropriate. Fifth, they want to do the right thing, so you need to be specific in what you ask for, and explain why it is the *right* thing. Sixth, it's darn hard being a juror when you're a lawyer. You want to do your best, but always be mindful of your role. You have to protect the process. I *knew* what those bench conferences were about. I knew why objections were made, *and* I knew the law. But, I couldn't comment on such things. My fellow jurors wanted me to expand on the instructions and comment on inadmissible evidence. Hell, I wanted to comment on it, but I couldn't. Our role was that of fact finder and to render the best verdict we could. It was more difficult than I thought it would be.

My last observation is the one that made me feel best. Juries want to do it right. They are willing to change their minds and often do. They take care to look at the evidence, and even though they remember evidence differently, they all get to where they need to be eventually.

We convicted the defendant of first degree murder, without mercy, which meant life without the chance of parole. Though we were sure of our decision, several of the women jurors were crying because of the emotional toll of the case. They cared about doing the right thing. Even I, as the elected foreman of the jury, had trouble sleeping during deliberations, and had a few unfamiliar butterflies when I returned the verdict. I think that was a good thing. It was an experience that I won't forget, and I think one that will help me in future when I deal with juries.



## FROM JOHANNESBURG TO VANCOUVER

LEON BEUKMAN (BC)

### A TALE OF TWO CITIES (WELL NOT REALLY) (WITH THANKS TO CHARLES DICKENS)



"It was the best of times, it was the worst of times..."<sup>1</sup>.

Why, is the question, would you give up a successful trial lawyer practice, turn all your earthly possessions into cash, and move half-way around the world to start again?

In an earlier life, I had practiced as a barrister in the traditional English sense of the word in Johannesburg, South Africa. After practicing for some nine years, it had be-

come apparent that with the ever-escalating levels of violence and economic uncertainty that it was time for a change. Having done some travelling through Europe, Canada and the US, I finally decided that I was going to make one of the most beautiful cities in the world my new home.

To re-qualify in Canada with an existing legal qualification from another common law or so-called hybrid jurisdiction, I had to provide proof of all my academic qualifications as well as my practice experience to the Federation of Law Societies of Canada. After they had evaluated my credentials, I was required to sit for eight challenge exams to convert my South African law degree into a Canadian law degree. After that, I was allowed to sit for the Bar exam in British Columbia.

I arrived in Vancouver in May, 1998. As I was fortunate enough to find employment as a paralegal with a small Vancouver law firm by the name of Brock and Potter, I had to do the studying for the challenge exams after hours. The "Brock" of Brock and Potter was, of course, no one else than one of our past ADTA Presidents and now Emeritus member, R. Rees Brock. After completing the challenge exams successfully and completing an abbreviated period of articles, I was called to the bar in British Columbia and started to practice at a medium sized downtown Vancouver law firm. By then, Rees Brock had moved his practice there and I accompanied him.

A few years later as good fortune would have it, I acted for a defendant in an insurance related action and Vince Orchard, the prime member for the ADTA in Vancouver, represented one of the other defendants. After the litigation had gone some way, it became apparent that not only did Vince and I work well together in the defense of that action, but we could see us working together on many other

files in the future. Consequently, in the summer of 2006, I moved my practice and joined the national firm of Borden Ladner Gervais in their Vancouver office, working in their insurance and tort litigation practice group.

While it was a long and sometime difficult as well as humbling road to travel by giving up a successful barrister practice only to start again in a new country as a paralegal, the destination made the journey worthwhile.

I am now fortunate enough to be practicing with one of Canada's pre-eminent law firms doing exactly what I have always wanted to do.

So while it was often the best of times in having the opportunity to start again in a city like Vancouver, it was also for many reasons often the worst of times going through the process of immigration, and re-qualification. However, now some 10 years after making this life-changing move, I have no doubt that if I had the same chance, I would do it again. The journey from South Africa to Vancouver was difficult but worth it in each and every possible way.

<sup>1</sup> Charles Dickens, A Tale of Two Cities 1859 London, Chapman and Hall, Piccadilly, London



## ABOUT OUR MEMBERS

STEVE HEINE (IL)

**Dennis J. Wall (FL)** has been selected by the editorial board of Insurance Coverage Issues in Catastrophe Claims being published by Thomson West Publishing as a national leader in Insurance Law and one of six Coverage attorneys featured as a chapter author in Catastrophe Insurance Claims Coverage: Leading Lawyers on Evaluating a Catastrophe Claims' Scope Investigating Claims and Developing Strategies for Prosecution and Defense.

**Robert T. Lynch (CA)** has become a Fellow of the American College of Trial Lawyers (ACTL), one of the premier legal associations in North America. The induction ceremony consisted of an audience of 830 persons during the recent 2007 Annual Meeting of the College in Denver, Colorado.

**Thomas A. Sandenaw, Jr. (NM)** was named 2007 Outstanding Civil Defense Lawyer of the Year at the 2007 NMDLA Annual Meeting in Albuquerque in October of this year.

**Karen L. Kendall (IL)** has been appointed Secretary of the American Academy of Appellate Lawyers.

**Steven S. Tervooren (AK)** has been selected for inclusion in the 25<sup>th</sup> Anniversary edition of *The Best Lawyers in America* in the specialty of insurance law.

**Kim Colbo (AK)** has been selected for inclusion in the 25<sup>th</sup> Anniversary edition of *The Best Lawyers in America* in the specialties of Product Liability Litigation and Eminent Domain and Condemnation Law.

**Richard K. Traub (NJ)** was appointed to the Board of Directors for the FDCC at its Annual Meeting in Sun Valley, Idaho.





# WELCOME TO CHARLESTON! APRIL 9-13, 2008

*MOLLY HOOD CRAIG (SC)*

Spring is a wonderful time to visit Charleston: the weather is warm, the flowers are blooming and the outdoors are inviting. We look forward to you joining us in April to participate in the many exciting activities Charleston has to offer. Our plans for the Annual Meeting in Charle-



*Molly and Steven Craig*



*Bernie and Bobby Hood*

ton include visits to neighboring plantations, tours of Charleston gardens, tours of historic homes, golf, fishing and tennis, just to name a few. Even with a weekend full of activities, there will be plenty of time to relax and tour Charleston on your own or enjoy shopping in the historic district. We have limited rooms available at the Mills House Hotel and encourage you to register early.



*Historic Charleston Foundation*



*Streets of Charleston*



*Martha Morales & Frankie Colon-Pagan*

Our guest speaker for the Saturday breakfast is South Carolina State Senator, Glenn F. McConnell. Mr. McConnell resides in Charleston and has served in the state senate since 1981. In January 2001, Senator McConnell was elected President Pro Tempore and continues to serve South Carolina in that capacity.

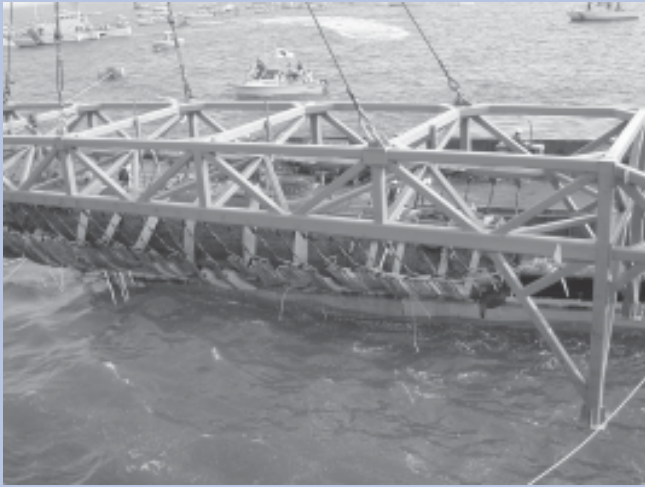
Senator McConnell enjoys a special interest and expertise in Civil War history. Indeed, his leadership and perseverance led to the discovery, recovery and excavation of the Civil War submarine, H.L. Hunley. The Hunley was the first operational submarine to sink an enemy ship in U.S history, occurring in Charleston Harbor on the night of February 17, 1864. On this infamous evening, the Hunley and its eight crew members rammed a spar torpedo into the Union ship, the USS Housatonic. Although the Hunley's attack on the enemy ship successfully sunk its target, the Hunley disappeared after the attack. After over a century, the South Carolina Hunley Commission, with



*Senator, Glenn F. McConnell*



*Carriage Ride*



*Recovery of the Civil War submarine, H.L. Hunley*

Senator McConnell as its Chairman, organized and executed the recovery and preservation of the submarine. The Hunley was raised from Charleston Harbor on August 8, 2000, and is now housed in a special, freshwater tank for ongoing excavation and study.

Senator McConnell will take us through the history of the Hunley, its recovery from the Charleston Harbor and the fascinating artifacts found when the Hunley was opened. Senator McConnell's presentation will be enlightening and refreshing not only to Civil War enthusiasts, but also to anyone with an appreciation of American history.



## **MEMBERSHIP REPORT**

*GLENN S. MORGAN (VT)*

HOW MUCH DOES ADTA MEAN TO YOU? At the Executive Council Meeting in November, I had the sad task of reporting that our membership numbers are declining at an alarming rate. In my last article, much of which will be repeated again in this article, I related the seriousness of our lack of new membership candidates. The situation has worsened considerably since my last plea. We have lost several more members to retirement, resignation or unpaid dues as of November 30, 2007. Peggy Schultz or I have contacted the state and regional chairs requesting their assistance to fill those vacancies. However, the state and regional chairs, Peggy and myself cannot alone carry the burden of maintaining membership numbers in the ADTA. As stated before, I feel membership in the ADTA carries with it a responsibility of each and every member to seek out and approach strong ADTA prospective members.

Please consider this article to be a second request from me to each of you to take 15 minutes and think about what

ADTA means to you and how you can share that experience with someone in your own firm or legal community. There are 1440 minutes in a day and we are all busy, but this is not too much to ask of you. Many of you have proposed lawyers for ADTA membership or told me you have someone in mind, but for one reason or another, applications do not materialize. Follow up is difficult for all of us because of our busy practices. Nevertheless, we must reach out to individuals who have expressed interest in ADTA and close the deal. Our new Executive Director, Peggy Schultz, is contacting current members who are delinquent on their dues. She has experienced some success in keeping those members, but I anticipate we will lose another 20 to 25 members by February, 2008. Even though you may not practice in a state where you know a good candidate for ADTA, please get that information to your State Chair, Regional Chair, Peggy or myself. Apparently, my "Gipper" reference in the last article wasn't well received, so let's go get a new member for ADTA!



## **A WORD FROM LOU**

*LOU SCOFIELD (TX)*

Now that we are all big shot courtroom lawyers, it was only a matter of time before our talents would be discovered by our clients. Among them are "special clients" who recognize our talents even more (as though such were possible) than the rest of our clients. I am referring to those special clients who call upon us to travel to jurisdictions far from our home and comfortable puddle to try cases in "foreign" courts. By "foreign" I mean any courtroom situated more than 150 miles from your personal legal epicenter.

Some clients ask us to do this because they like us. They like us because we've been successful for them in the past, we know the product or issues involved and they don't want to pay to educate another English major about a particular profession, or physics, or engineering, or chemistry. They like us because we're cheap (er-not me of course) or because we have their trust. But most of all I prefer to think they like us because we are oozing with more talent than anyone else they could call on for the task.

Regardless of the reason, many of you are called upon by your clients to handle cases in distant places. Some of you have not yet had this happen, but you will. The purpose of this article is to offer, for the benefit of the practiced and the neophyte, some observations on practicing elsewhere from where one is.

I have some credentials in this regard. I am national counsel for one client and regional counsel for a number of others. As a regional counsel I go places in Texas far from MehaffyWeber's flagship office in Beaumont. Lest some of

you think regional counsel is a lesser distinction, it isn't in Texas. I am regional Texas counsel for a motor vehicle manufacturer for an area ranging from San Antonio and Austin, east to Beaumont and the river between Texas and Louisiana, north to Dallas, and south to Brownsville and South Padre Island. That's an area the size of Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, eastern New York State and all of the habitable portions of Alaska, combined. Perhaps a slight exaggeration, but you get the point, and I can promise you there are places I go in Texas that are every bit as foreign to me as is Boise, Idaho. And whether regional or national in range, they all share the same demands.

**Demand # 1:** Get a local counsel. Even if you are licensed in the jurisdiction, if you are 150 miles from home you are going to get your keester (euphemism for "ass") handed to you if you don't have local counsel. I'm reminded of the case where a Dallas lawyer came down to Beaumont, tried his case, and in closing argument...I kid you not... said to a jury on which he left pipefitters, welders and ironworkers: "I want you to try to resist me. Yes resist me..." They did. The biases, strengths and weaknesses of the local jurors, the judge, and the foibles and proclivities of the other counsel, are all vital information. What sells and what doesn't is vital information that you need and don't have. If you can get a fellow ADTA member as local counsel you can be assured of the quality of your help. If you can't find a fellow member, try to hire the Judge's daughter or son in law. Not to influence the court unfairly, of course, just to assist in leveling the playing field. No luck? Then try to find someone smarter than you. Don't worry, there are lots of them. He or she will be a big help in all stages of the case and you won't feel as bad when you start to drive off at its conclusion and you overhear muttering, "National counsel, huh? That idiot had nothing over me."

**Demand # 2:** Learn the local rules and the local substantive law. Few things are more embarrassing than learning for the first time at the charge conference that Oklahoma doesn't have comparative fault as a defense in a product liability claim. Or that a local court in Kentucky doesn't hear motions in *limine* until after *voir dire*. If an admission *Pro Hac Vice* is needed you'll have to learn the local law and rules anyway, because in virtually all cases you *promise* the admitting court that you have, at least, read them. And you don't want to break that promise, 'cause if the judge finds out you haven't read them, you'll get your keester handed to you. And on the topic of *Pro Hac Vice*, your local counsel is really handy here, because in some places he'll actually have to swear you are of good moral character. Some of you can't even get your spouses to say that about you.

**Demand # 3:** Use your foreign status to your advantage. You can extract sympathy and gain accommodations from the other lawyers in the case. After all, you have to travel far and at great inconvenience to do anything. Human nature will incline most lawyers to avoid cancellations,

and flex to your schedule in a way they would not for just local folks for whom familiarity has bred contempt. You're the new kid, and, strangely enough they will simultaneously presume innocence on your part while also thinking you must be some big gun. This is a huge advantage. I had a case in New York. I promise you, the local bar there had never seen anything like me. You know, southern accent, quick smile, fumbling at my notes in the plaintiff's deposition. By the time the plaintiff's counsel was on his feet screaming objections, the damage had been done. Naturally the line of questions was proper in Texas, but apparently a big no no in New York, even though not technically a violation of local rules. But hey, I'm the new kid. And here again local counsel comes in really handy. He took a recess, and we left the room and opposing counsel behind, trying to control his blood pressure. My local counsel explained the different culture, cleared it up with opposing counsel by pointing out my innocence and ignorance of local custom, and we resumed. Great, eh? Being foreign has its pluses.

**Demand # 4:** The final "Demand" for purposes of this article: Never forget where you are. You may start to feel at home. Your local counsel, the Court and the other lawyers may work hard to make you feel that way. But you are not at home, and while your reputation may be magnified, so will your mistakes. Its like walking around on Mars and thinking: "Gee, this is just like the Mojave..." Don't flip up your visor to see better. You are not on Earth, you are not local. When in foreign courts be relentless in asking your local counsel about any and every step you take. Local procedures, the substance of your case, how he thinks the court, jurors, or lawyers will react to your ideas or strategies. Ask about everything. It will repeatedly confirm to all that you are not local, but, trust me, the locals in the case will never see you as "local" anyway.

I hope these little tips are of some help. My travels have confirmed for me that in a general sense we are all the same, but every local legal culture is different. They each have their own long history, customs, and unwritten rules. Frankly I think this is a great thing. It lets the practice of law flex to the environment it is in. And you'll do well for your clients in these differing environments if you allow yourself to be flexible too. The best fun though is the people you meet. As all us traveling salesmen know, every one is a blessing.



## NEW MEMBERS

R. Matthew Cairns - Concord, NH  
Lisa M. Lee - Concord, NH  
Gay L. Tedder - Kansas City, MO  
Gregory J. Arpin - Spokane, WA  
Robin Bartlett Phelan - Albany, NY





## A WORD FROM THE EXECUTIVE DIRECTOR

**PEGGY L. SCHULZ**  
EXECUTIVE DIRECTOR  
[PSCHULTZ@ADTALAW.COM](mailto:PSCHULTZ@ADTALAW.COM)  
304-344-1611



ADTA - what an exceptional group of people! I can say this as I have already had the opportunity to talk with many of you in San Diego and again at the Fall Executive Council Meeting in Charleston. The friendships that have developed over the years are quite apparent. With the landscape for members coming from America, Canada and Puerto Rico, what a great opportunity to network, share professional knowledge and receive referrals.

In my role as Executive Director, it will be my responsibility to provide a more cohesive operation to the day-to-day activities of ADTA, bring the Annual Meeting planning in-house, work with membership initiatives and to maintain the personality and stature of the organization. There will be some bumps along the way, but all will be overcome with time. Be patient with me—please.

Membership is a challenge with fewer courtroom trials and firms tightening up on the number of memberships for which they will pay. This makes our job for recruitment more difficult. But if you agree that ADTA provides a venue to further the techniques and knowledge which make a good defense trial attorney and provides an excellent network for referrals, I encourage you to look around and help us find new members. Many members are rolling into the Emeritus status, which is a great place to be, but we need to fill those positions with practicing attorneys. Membership efforts require an exorbitant amount of time. As Membership Chair, Glenn Morgan has done a fantastic job and should be applauded. Please help make his job a little easier by recommending potential members. I hope we can count on you for this assistance in the days ahead as we launch a membership campaign.

I consider myself to be very fortunate to have been selected as the first Executive Director of ADTA and look forward to my days ahead. I am just a phone call or email away. Please let me hear your thoughts, concerns or suggestions to improve the organization or our Annual Meeting.



## HISTORY PROJECT

Gary Peplow, long-time Secretary and Lyle Allen, Past President, are assembling the *ADTA History* from the inception of the organization to the present. Gary can be reached through Lynnette Baldovin at [lbaldovin@hrva.com](mailto:lbaldovin@hrva.com) or 309-676-0400 Ext. 252.

We have many photos from recent years but few photos from before 1990. Any way you can get them to Gary would be greatly appreciated.



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## WHAT IS NEW IN MY STATE

### MATTHEW W. CARLSON (DC)



Matthew W. Carlson

Matt Carlson practices law in Washington, D.C. He and his firm, Thompson O'Donnell, LLP, out of affection for ADTA, recently sponsored the cocktail hour for the ADTA members who were in D.C. for the DRI Annual Meeting. Matt has been an active member of the Association for three years and the first meeting he attended was a regional meeting (remember those?) in Massachusetts. Matt also serves

as Treasurer for the local defense group in D.C., the D.C. Defense Lawyers' Association, a group whose positive camaraderie compares favorably to that of ADTA.

While D.C. is not technically a state, the insurance practice of most firms in D.C., including Matt's, takes the members to D.C. Courts that are both local and federal (same jury pool, different judges) and to the courts of both Maryland and Virginia. When Matt began with his firm in 1994, its practice was 99% insurance defense. Like many firms, the firm's practice has diversified over the years to the point where its practice is now split 60-40 as to insurance defense and "other." On the rare occasion, the firm members have undertaken lobbying chores on narrow projects.

Like most defense attorneys, Matt has had his share of "odd-ball" cases. One stands out in his mind because the plaintiff was a law school professor who sued a dog owner when the dog attacked (allegedly (that gets put in from force of habit)) the professor as she rode her Harley Davidson. A key witness for the unsuccessful plaintiff was a dog psychologist for Hollywood stars (who preferred to be referred to as an "animal behaviorist"). That expert, at \$350 per hour portal to portal from Los Angeles, was summoned to support the theory that the invisible fence was the cause of the offending dog becoming violent. Matt's defense verdict and its being sustained on appeal provided a level of satisfaction as against law school professors and California experts. It was especially satisfying as the professor had refused a significant pre-suit offer of settlement made by a co-defendant.

Matt finds that he and his wife Patricia's list of hobbies got shorter after their two children, William (6) and Abigail (4), were joined by Jonah (2). Matt offers the demands of family life as partial explanation for his annual ADTA golf outing demonstration of a rusty golf swing. Patricia, as a middle school teacher of American History and consultant pursuant to a Library of Congress grant, likewise finds that her days are short. They are both Christians and active in their church.

In terms of new developments in the law, Matt has recently received several cases for the defense wherein "real estate malpractice" was alleged against agents who permitted their clients to get involved with sub-prime, adjustable mortgages. Matt wonders philosophically whether the bail out of such risk-takers is in the national interest. So who was that comedienne who noted, "It is always something"?

### GAIL M. KELLY (NY)



Gail M. Kelly

Gail Kelly, the ebullient spouse of ADTA President-Elect Kevin Kelly, was first admitted to practice law in 1989. Since 1994, she has worked in the same New York City firm as her husband. She has two children who were babies during her law school days. Her son Terence, an NYU graduate, works with a political consulting firm. (The firm discounts any credit for Kevin's meteoric rise through ADTA's trip to the

throne.) Her second son Sean is a senior at Boston College and, despite all that he has learned at home, is considering the law as a career.

Gail's legal career started with a large law firm in the corporate litigation department that paid a handsome salary for activities that did not include depositions or court appearances. When she joined Conway, Farrell, Curtin & Kelly, Gail was turned loose in the defense of allegedly negligent insureds and quickly concluded "This is fun!" In the hobbies department, Gail sings in her church choir and plays bagpipes with the Glor Na nGael (Voice of the Irish) Pipe and Drum Band. The Irish pipe band performs under a strict code of conduct: No pre-performance consumption of alcohol is permitted (exception to the rule for the New York City St. Patrick's Day Parade). When she wins Mega Millions and retires, she will be attending 81 Mets home games each year.



During the course of having fun at the practice of law, Gail represents contractors in job site accident cases and occasionally intervenes in fistfights between members of a local school board client.

Beginning this Fall, New York State has aggressively pushed a Summary Jury Trial program which is designed to increase the efficiency of the court system. Although the goal of the system is to provide a cost effective alternative to the jury trial, in practice the summary trial is little more than an arbitration attended by jurors. Each side is limited to one hour, which includes time spent on cross examination. Gail and her colleagues in New York will be following the program for its impact on the future of our jury trial system.

Gail has been a very active member of ADTA. She has served as state chair for the membership committee, and a member (in perpetuity) on the logo committee and women and minorities membership sub-committee. Gail thus can speak from personal knowledge of the difficulty of soliciting new members whether male or female in these days and times. And so she urges each of us to do what we can to keep strong this wonderful group we know as ADTA.



## NATIONAL ISSUES

WILLIAM J. POWELL (WV)

### LATEST ON PRIVILEGE

On November 13, 2007, HR 3013 was approved by the House of Representatives. The Bill is entitled, "The Attorney-Client Privilege Protection Act of 2007." The legislation now goes to the Senate where it is believed to have significant support.

The Bill prohibits United States Government employees from pressuring organizations, corporations and other businesses to waive attorney-client privilege, including work product privileges, in return for some "cooperation" benefit. It also prohibits the Government taking action that adversely affects the rights of the business's employees.

The House Bill is the result of almost five years of complaints regarding the manner in which the Department of Justice has exercised its investigative power with businesses. In 2003, the Deputy Attorney General issued a memorandum commonly known as the "Thompson Memorandum" regarding prosecution of businesses. In determining if the business under investigation was "cooperating," the government questioned whether or not the business paid attorney's fees for its "culpable" officers and employees. If so, it could be regarded as impeding the investigation, and deemed uncooperative. Judge Kaplan, in the Southern District of New York (435 F. Supp. 2d 330) (2006), found the Government's pressure exerted upon KPMG in KPMG's payment of attorney's fees to be unconstitutional, and blistered the Government's actions.

After much criticism, the McNulty Memorandum was released to refine the Thompson Memorandum, and tried

to alleviate the pressure of privilege waiver by requiring prior Department of Justice approval for any such request. However, the uproar from the defense bar, the American Bar Association, the ACLU, and others continued. Ultimately, the debate led to the introduction of the legislation now passed by the House.

It is believed the Senate version of the Bill will pass. As yet, it is unclear what the White House will do if it gets to the President's desk. If made a law, the statute will provide significant protection to businesses during government investigations and will allow significant freedom for businesses to help protect employees and investigative materials prepared by counsel.



## CHARLESTON 2008 CLE - TOPICS

KEVIN J. KELLY (NY)

The primary theme of the CLE 2008 is the impact of technology on the practice of law. This will be a practical "heads up" for trial lawyers on the problems and challenges we face.

The committee consists of Bill Staples, Morris Chochla, Molly Craig and Daniel Balmert. The topics and speakers are as follows:

- 1. E-Discovery and Spoilation**  
*The Honorable David C. Norton*  
*Chief Justice United States District Court,*  
*District of South Carolina*  
*Charleston, South Carolina*
- 2. Navigating the Electronic Courtroom:  
How Best to Use E-Briefs**  
*The Honorable Kathleen McDonald O'Malley*  
*United States District Court, Northern District of*  
*Ohio, Cleveland, Ohio*  
*-And-*  
*David R. Cohen, Esquire*  
*David R. Cohen Co., LPA*  
*Cleveland, Ohio*
- 3. Handling Cases in Judicial Hell Holes**  
*John Carroll, Esquire*
- 4. The Defense Obligation:  
A Comparative Analysis Between Canada  
and The United States**  
*Steven Stieber*  
*Stieber Berlach, LLP*  
*Toronto, Ontario*
- 5. Creating Creative Technology**  
*Matthew Peterson*  
*Phoenix, Arizona*
- 6. Electronic Trial Presentation**  
*David Perry, VP Strategic Development*  
*San Francisco, California*



## MARKETING REPORT

F. DANIEL BALMERT (OH)

At the "Crislip Top Gun" annual meeting in San Diego, your ADTA Marketing Committee (chaired by Dan Balmert and supported by Tom Hurney and Steve Jones) distributed to the members in attendance a survey designed to learn more about our members' perception of the ADTA and its impact on their own and their firm's marketing efforts. One focus of the survey was the effectiveness of the ADTA with respect to referral business.

The responses were very interesting. They reveal that attendance at the annual meeting often results in referral work.

Twenty-nine members responded to the survey, thirteen with less than ten year tenure and sixteen with more than ten. Twenty responders were prime members and two were first time attendees.

On referrals, twenty-four members reported they had referred an average of four to five legal matters to other ADTA members. Twenty-two indicated that they had received an average of two referrals from other ADTA members.

Most members believe that referral work is a genuine benefit of ADTA membership, and one that is an effective marketing tool for recruitment of new members. Most members believe the management of their firms recognizes ADTA membership as a valuable client development tool.

ADTA members rate the annual meeting as being of significant importance with respect to referral work. ADTA members refer work to other members in geographic areas other than their own, and use both the ADTA handbooks and the website to identify other members for referrals. Many cited personal relationships initiated at annual meetings to be the prime basis for decisions related to these referrals.

ADTA members also use their ADTA relationships to obtain information concerning other members' state law, expert witnesses and jurisdictional particularities.

Based on the responses to the survey, the Committee recommended to the Executive Council that the survey be sent electronically to all members in an effort to obtain additional information about your perceptions on these issues. Keep an eye on your inbox and please take a few moments to respond.



## REPORT ON 2011 SITE

GORDON R. BROOM (IL)

At the 2008 meeting in Charleston, the Executive Council will have to decide the location for the 2011 meeting. Gordon Broom is chairman of the site selection committee.

Traditionally, the Association tries to schedule its meetings so that the distance of travel is shared equally by our membership. That is to say, meeting locations alternate between locations favoring those members in the Eastern half of the country with locations in closer proximity to the Western state's members.

The 2009 meeting is in Scottsdale, Arizona, and the 2010 meeting is in Boston. The Executive Council invited Gordy to its Charleston meeting at which he proposed numerous sites and ideas. After much discussion, but no decision, the site selection committee is focusing its search for a suitable property in the following locations: Hawaii, Monterey, California, Las Vegas and New Orleans. If you have any opinions, suggestions or ideas on the site for the 2011 meeting, please contact Gordy at [grb@heplerbroom.com](mailto:grb@heplerbroom.com).



## BOOK REVIEW

PAT CULLEN (MD)

*Down to the Hard Road (Almost Legal Humor)* by Stephen R. Crislip, 115 pages (AuthorHouse, 2007). \$15.00 per copy with all profits going to charity. Books may be ordered from AuthorHouse by calling 1-800-839-8640 or from the website at [www.downtothehardroad.com](http://www.downtothehardroad.com).

In *Down to the Hard Road* Steve Crislip, Immediate Past-President of ADTA, put to paper his experiences of over two years serving as an ambassador for the Association. During that time, he attended by my count 23 conferences with lawyer types (mostly defense) of 6 organizations including ADTA in nine States (California 5 times), one District (twice), five foreign countries (one without an airport), one territory and one commonwealth (twice).

The title for the book comes from an old time practice in West Virginia of giving directions using the nearest hard road as a point of reference. The subtitle for the book probably comes from Steve's humility for the book is not "Almost" Legal Humor, it is very much filled with West by God Virginia sure enough humor, humor that you will enjoy reading. By the end of his travels, Steve had qualified as a roads scholar.







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## BOOK REVIEW

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STEVE HEINE (IL)

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*Younger Next Year* by Chris Crowley and Henry S. Lodge, M.D. (Workman Publishing, 2004) and *Younger Next Year for Women* by Chris Crowley and Henry S. Lodge, M.D. (Workman Publishing, 2005). Chris Crowley is a former litigator at Davis Polk & Wardwell who "retired in 1990 to write, ski, sail, windsurf, cook and spend time with his wife". Chris is now 73. Henry S. Lodge, "Harry" in the books, is Chris' friend and doctor. Chris and Harry will take you on a life-changing course to turn back your biological clock. The books do not differ much other than the original "*Younger Next Year*" is keyed toward men and the "*Younger Next Year for Women*" is (not surprisingly) keyed toward women. The subtitle to both books is "a guide to living like 50 until you're 80 and beyond."

Don't believe it? It works. Chris and Harry persuasively explain how you can become functionally younger every year for the next 5 or 10 years and continue to live like you're in the 50-year-old range well into your 80s. You can be stronger, healthier and more alert. You can stave off

70% of the normal decay associated with the aging process (weakness, sore joints and the like) and eliminate over half of all illnesses and potential injuries.

And: you can do all of this by following "Harry's Rules." There are only 7 of them. I am not going to give them to you because I want you to buy the book. If you follow these rules, you will find yourself in the best shape, not just physically, but mentally and spiritually, of your life.

If you need some additional inspiration (as I almost always do), buy the books on CDs and listen to them while you are driving. Or, if you need even more (I need a lot to keep moving), look at Chris and Harry's website ([www.youngernextyear.com](http://www.youngernextyear.com)) and read Chris' blog and the success stories.

Chris and Harry will take you through the biology of growth and decay; show you how to take charge of your body; explain why you need a heart rate monitor; the physiology of exercise; how you got from where you were to where you are now and how to get back to where you started; and, one of the best tips, "Kedging".

I have not met Chris, but I have talked to him. These are the two of the most inspiring and life-changing books you will ever read.

**THE ASSOCIATION PRESS**

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