

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



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## **PRESIDENT'S MESSAGE**

*KEVIN J. KELLY - NY*

### **2008 ANNUAL MEETING CHARLESTON, SOUTH CAROLINA:**



The ADTA held its annual meeting in Charleston, South Carolina from April 9<sup>th</sup> through April 13<sup>th</sup>. Once again, we had a great time, and a memorable and well attended meeting. We had the pleasure of staying at the elegant and beautifully restored Mills House in downtown Charleston, in an ideal location for touring the city and surrounding areas. We enjoyed true Southern hospitality by our gracious hosts, Bernie & Bobby Hood and Molly & Steven Craig. The

entire Hood family showed us a great time in their historic city, their beautiful home, and made this a very special meeting.

One of the many highlights of the meeting was the "History of the ADTA" presented by Gary Peplow during our business meeting on Saturday morning. A booklet version of the history was distributed to the members in attendance and it will soon be available on the ADTA web site ([www.adtalaw.com](http://www.adtalaw.com)). The history was a Steve Crislip project and he worked with great energy in putting it together. We thank Steve and Gary Peplow for this important contribution to our organization. Many thanks also to Lynnette Baldwin for her invaluable assistance with the project.

We were also graced in Charleston with an original composition by Dan Flatten from Houston, Texas. Dan mentioned that in years past, Emerson Logee had acted as the ADTA's resident poet laureate, and some of you may recall that Emerson provided his beautiful words at our banquet on Saturday evening. Dan was kind enough to put together his own prose regarding the ADTA meeting in Charleston in 2008. It is, as you will see below, something special.

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## THANK YOU

It was a time for us to thank our immediate past president, John Clifford and his wife, Pam for their wonderful service to the ADTA over the past year. Gail and I look forward to representing the ADTA during the coming months, and hope that we can match the type of devotion and feelings of friendship put forth by John and Pam.

It was time to say goodbye to Peter McLean, who has been our meeting planner for years. It will not be the same without Peter and Cecily. While Peter's formal position with the ADTA may be over, we hope he will remain a friend and help us out when needed in the future.

## ELECTION OF OFFICERS

At the Charleston meeting, we elected as Vice President, Francisco (Frankie) J. Colon-Pagan and as President-Elect, Robert (Bob) E. Tait. The remaining officer positions remain the same. Our Treasurer is Matt Bailey, our Secretary is George Walker, and our Membership Chair is Glenn S. Morgan. Our Continuing Legal Education Committee headed by President-Elect, Bob Tait, consists of the Class of 2010, Kevin Amatuzio, Stephen Heine, and Molly Hood Craig.

At the most recent meeting, we elected to the Executive Council three outstanding members. The Class of 2011 consists of David Zizik, Stephen Pennell, and James D. Harris, Jr. We very much look forward to working with them, and know that they bring experience, energy and commitment to the council.

## COMMITTEE APPOINTMENTS:

The meeting brought changes in leadership of some of the ADTA committees. We continue to be impressed with the number, quality, and enthusiasm of our new and first time attendees. Ed Birk, our outgoing Chairperson of the **New Member Committee**, did a wonderful job and is moving to the Marketing Committee. His replacement, Stephen Pennell, has already started working with his committee to continue the efforts to make those of new members and first time attendees feel welcomed by the ADTA, a signature feature of our group.

Our **Internet and Technology Committee** is now chaired by David Zizik. David and his group are looking into ways to update our website and to assure easy and complete communications with the membership. The **Women and Minorities Committee** has new leadership under the guidance of Cathy Spaulding. She is committed to using her best efforts to make diversity work in the ADTA. The **National Issues Committee**, under the direction of Bill Powell, has stepped up and has agreed to provide participation at the upcoming Scottsdale meeting with a complete one hour program put on by the members of that committee.

The surveys taken of our members have told the management that they are interested in pursuing marketing and business opportunities provided through the ADTA. This year, we are asking our **Marketing Committee**, chaired by Dan Balmert, to provide us specific and concrete ideas regarding opportunities in marketing. If you have any specific ideas that you think will help, please notify the committee, and I'm sure they will take them into consideration.

Our **Membership Committee**, chaired by Glenn Morgan, works tirelessly in keeping up the membership of our organization. As you know, we have very specific rules and membership

requirements. ADTA invites only one defense trial attorney to be its prime member for one million in population for each city, town, or municipality across the United States, Canada and Puerto Rico. An ADTA prime membership is, in essence, a statement of the high regard in which that defense trial attorney is held by his or her peers in the defense trial bar of their city, state or province.

The **Publications Committee**, which produces *The Association Press*, is ably chaired by Steve Heine. He and his committee have done a great job in providing information to our members and their families. Steve reminds us that we are always interested in personal items and important things happening in our members' lives. Please contact Steve with news and information, and we will try and work them into our next edition.

## 2009 ANNUAL MEETING IN SCOTTSDALE:

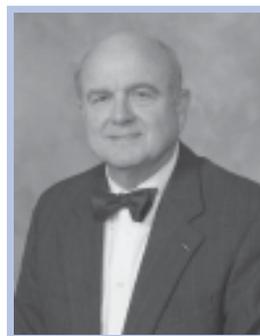
The ADTA meets next year in Scottsdale, Arizona on April 14 – 19, 2009. This meeting is being hosted by Tom and Mary Burke, and Jim and Eileen Ryan. If you missed the Power Point presentation on Saturday morning, it was one of a kind. We are staying at the Westin Kierland, a spectacular resort and property for both golfers and non-golfers alike. We ask that you make your plans now to attend. We are arranging a short pre-meeting trip to the Grand Canyon that will have us leaving Sunday morning from the Phoenix Airport and returning to the Westin Kierland on Tuesday evening. Peter McLean has graciously agreed to be our tour operator. Plans are in the works, and if you have an interest, please notify Peggy Schultz, Peter McLean or me. Details regarding the pre-meeting trip will be published on the ADTA-Talk.

Gail and I are privileged to represent this organization. We very much look forward to working with the Executive Council, officers, and the members so that the ADTA can continue as an exceptional representative of the defense trial bar in the United States, Canada and Puerto Rico. We look forward to an exciting and productive year for the ADTA and its membership, and hope you will get involved to keep our organization strong and vibrant in the coming years. Your assistance is greatly encouraged and appreciated.



## CLASS OF 2011

### JAMES D. HARRIS, JR.



James D. Harris, Jr. is a member of the Wyatt, Tarrant & Combs, LLP in Bowling Green, Kentucky. Jim was admitted to practice in Alabama in 1967 and then in Kentucky in 1983. He served in the Vietnam war and then in the Army Reserves, retiring as Colonel in 1995. Jim and Jean have three children and eight grandchildren. Jim claims all his grandchildren are above average.

In addition to his practice, Jim enjoys reading, classical music and gardening but found time to run the New York City Marathon in 1994.

## STEPHEN R. PENNELL



Steve Pennell graduated from Indiana University in 1973 and from the Indiana University Law School in 1976. Steve has been an attorney with Stuart & Branigin LLP in Lafayette, Indiana since graduating from law school. He was President of the Defense Trial Counsel of Indiana in 2004, and received the DRI Fred Sievert Award. He served as Chair for the Indiana State Bar Association Litigation Section in 2004 and instituted a Civility Award which is

presented to a plaintiff's attorney, a defense attorney, and judge. Steve currently serves as the editor-in-chief of the *Indiana Civil Litigation Review*.

Steve and his wife, Diana, were married on the I.U. campus in 1974. Diana is employed as a teacher in the library of an elementary school in Tippecanoe County. She loves to read children's books to her students and grandsons. They have two children, Jim and Lauren. Jim and his wife, Susan, live in Lake Zurich, Illinois and have two sons, Kurt and Matthew. Jim is an accountant with Zurich Insurance. Lauren and her husband, Steve Galbraith, live in Tampa, Florida. They have one son, Michael. Lauren works as a mental health therapist.

Steve enjoys reading, swimming, and traveling. Last summer, Steve and Diana went on a river cruise in Russia from St. Petersburg to Moscow. Steve and Diana are planning to take a trip to visit China in 2008. Steve enjoys watching the Colts play football and I.U. basketball, and is hoping I.U. will still have a competitive team after the turmoil of the past season.

## DAVID W. ZIZIK



David W. Zizik is founding member of Zizik, Powers, O'Connell, Spaulding & Lamontagne, P.C. and the firm's Managing Attorney. He studied theology as an undergraduate at Boston College and graduated from BC Law School in 1979. David and his firm handle a wide range of complex commercial and insurance defense litigation in all Massachusetts and Rhode Island courts. The firm has offices in Westwood (part of Greater Boston) and Barnstable Village (Cape Cod), Massachusetts, and Providence, Rhode Island.

In 1979, David somehow convinced Karen Ann Baker to marry him. They tied the knot in 1980. Karen was then a registered nurse. She is now pursuing a Certificate in Interior Design at Boston Architectural College. David and Karen have two sons, Michael (25, a graduate student at Tulane's School of Architecture) and Andrew (21; a junior at Emerson College majoring in Visual Media Arts). The fifth household member is Marley, a 5 year old Soft Coated Wheaten Terrier.

For years Karen has been trying to convince David to stop telling bad jokes, with marginal success. David has been trying for even longer to improve his golf game, with no success. They enjoy spending time at their summer home on Cape Cod, which they spent much of their life savings renovating in 2005, just before the real estate market tanked.

Another of David's loves is theology. He is a part-time student in the Master of Arts in Ministry Program at St. John's Seminary in Boston; and has published articles in *National Catholic Reporter*. That it is taking forever for David to complete the program is no secret. He reckons that, push comes to shove, Boston's Archbishop will award him a degree posthumously.



## CHARLESTON CLE A TECHNOLOGICAL SUCCESS

WILLIAM H. STAPLES - CA

ADTA has a tradition of presenting superb educational programs at its annual meetings. Charleston was no exception! This year's theme was technology. Technology as in E-discovery and technology in the presentation of your case at trial. Other presentations were included so that the non-technical savvy members would not crash and burn from overload.

The highlight of the program was the presentation by the Honorable Kathleen McDonald O'Malley of the United States District Court, Northern District of Ohio, Cleveland, Ohio. An entertaining and energetic speaker, Judge O'Malley literally took us on a tour of the courtroom of the twenty-first century. Since 1998, she has spearheaded a pilot project of integrating technology into the courtroom and her courtroom has been the test model.

The heart of the courtroom, from the trial attorney's stand point, is the Video Presenter cart. It allows counsel to switch from displaying exhibits, real-time transcripts, video recordings or multimedia presentations with the push of a button. However, it doesn't stop there. The judge and attorneys have full computer access, including the internet, so that information can be pulled at a moment's notice during trial. There are large plasma monitors, individual jury monitors, infrared listening assistance and translation devices and more.

Judge O'Malley and David R. Cohen, Esq., her Special Master, have prepared an interactive computer tutorial, essentially placing her courtroom in the computer, to assist in training counsel on all of the new wizardry. Her program has been such a success that federal courtrooms across the country are being equipped based upon her model.

Not only did we get to see what we will be using in the courtroom, but also insight into the planning and preparation that needs to go before hand. David Perry and Brian Clune of the Merrill Corporation showed and explained the different types of presentations to consider using at trial and how you go about preparing them. David Perry is VP of Strategic Development and Director of Product Management, Merrill Corporation, San Francisco. For any follow up, he may be contacted at david.perry@merrillcorp.com or (415) 357-4300. Brian Clune is VP of Video and Trial Services, Merrill Corporation, San Francisco. For any follow up, he may be contacted at brian.clune@merrillcorp.com or (415) 357-4300.

This included animations, simulations, digitizing and retrieving document exhibits and video depositions. It was clear to those in attendance that Tom and Mary Burke, in preparing their Scottsdale PowerPoint presentation, must have missed this session.

We were fortunate to have Chief Judge David C. Norton, United States District Court, District of South Carolina take time from his busy calendar to provide us with an informative review of the current state of electronic evidence, its spoliation and sanctions. With the ever changing ways of communication, this is something we all need to stay on top of and be able to counsel our clients.

For a change of pace, Steven Stieber, Esq. of Stieber Berlach, LLP, Toronto, Ontario provided us with a very interesting analysis of the similarities and differences of defense obligations between our respective jurisdictions (US and Canada). This was extremely useful and important as our local defense practices seem to have ever increasing contact north of the United States borders. Also, for those of you that are not aware, ADTA has 29 members outside the 50 States.

To round things out, John G. Carroll, Vice-President and Claim Counsel for General Star Management Company and Genesis Management Company brought us back to the reality of defense practice in the top "Judicial Hellhole" jurisdictions of 2007/2008. In case you missed it they are 1. South Florida, 2. Rio Grande Valley and Gulf Coast, Texas, 3. Cook County, Illinois, 4. West Virginia, 5. Clark County Nevada and 6. Atlantic County, New Jersey.

Thanks to all of our presenters and the committee members that worked so hard to put it together: Kevin Kelly, Dan Balmert, Mo Chochla, Molly Craig and, yes myself, Bill Staples. Also, a challenge to the Scottsdale committee for '09, try to out do us!



## ADTA CHARLESTON, 2008

DANIEL V. FLATTEN – TX

Charleston, South Carolina and the annual soiree of the ADTA meeting, camouflaged as C-L-E.

We gather first for cocktails on the terrace by the pool of the storied Mills House hostelry, a charming southern jewel.

Trading lies and stories that have entertained our way since last we met in 0-7 out in Californ-i-a.

The ladies in their finery full worthy of the place where southern belles of bygone days still teach us charm and grace.

As daytime yields to nighttime and the evening shadows fall, the sunset pink of overhead reflects the Mills House wall.

Then after brief dispersal for dinner on our own A spirited assault upon the hospitality room.

New this year, to me at least, a piano sing-along Led by Donna Tait and her frizzed compan-i-o-n.

Thursday morning's CLE—expansive courtroom tech might in retrospect be called the Lin-e-ar Gazette.

Then off to more productive fun like golf and garden tours where stately homes and tree lined streets display their timeless lures.

The Aiken House for dinner where a tented dance floor gave all temptation needed for this group to misbehave

Alas no reels or waltzes here but rock full amplified, but the young crowd on the dance floor seems entirely satisfied.

And Gordy Broom his natural role as frat boy gone awack draws Molly Craig between his legs while flat upon he back!

That, coupled with the spirits served in quantities unchecked, prompts Clifford descend the stairs without a single step.

Then back to Mills House once again and lest we now despair, the bar remains in session in the room above the stair.

Perhaps the most amazing feat of this year's CLE, a lawyer from Toronto who explained the policy—

The policy that brings about the duty to defend and did it with a ready wit made easy to attend.

Then onward to the oyster roast on lawn of Drayton Hall, three centuries' hospitality makes happy guests of all.

Steaming oysters carried up in cages six feet long are dumped upon the tables where awaits the hungry throng.

Bobby Hood instructs us all on where to place the blade, but failure makes us wonder "do they do this every day?"

Gloved hands, sharp knives and patience, and lots of friendly brew finally bring success, but better yet, the Frogmore stew.

Nathaniel Russell's classic house, a setting so serene is just the place to end the day in shaded garden green.

Next day we heard our his'try from an unknown early date Through every yearly meeting since 1948!

The business meeting's brevity a gift from heaven sent— reports and recognitions and elections by consent.

Ed Curran's poignant memories of colleagues now deceased includes this year a silent prayer for our own personal peace.

At last the formal banquet at Hibernia's storied hall, where revelry continues as a lively southern ball.

The dining and the dancing and the drinking without halt reminds me of Miss Pittypat—"where's my smelling salt?"

And the pulchritude around us shows that Flatten got it right: "the test of membership here is a lively, pretty wife."

So here's to Molly Craig and her parents and her mate, in fact the whole Hood family, in fact the whole dern state!

She did it with such graciousness so pleasant to perceive, I almost wish we met here every year without reprieve.

But on to Arizona where the springtime desert sun will find us once again mistaking CLE for fun.



## NEW MEMBERS

- J. Ben Alexander - Greenville, SC
- Jonathan C. Bacon - Walnut Creek, CA
- Ralph E. Cascarilla - Cleveland, OH
- Mike Cimino - Charleston, WV
- Jeff Eden - Portland, OR
- Robert M. Edwards, Jr. - South Bend, IN
- Larry G. Evans - Evansville, IN
- L. Hayes Fuller - Waco, TX
- Daniel W. Glavin - Hammond, IN
- Gregory D. Hagen - San Diego, CA
- Linda J. Hay - Chicago, IL
- Mark A. Lienhoop - La Porte, IN
- Anissa M. Mediger - St. Paul, MN
- Julie R. Murzyn - Hammond, IN
- Anne M. Oldenburg - Chicago, IL
- Robin B. Phelan - Albany, NY
- J. David Roellgen - Vincennes, IN
- James E. Sell - San Francisco, CA
- Scott E. Shockley - Muncie, IN
- Steven E. Springer - Indianapolis, IN
- M. Michael Stephenson - Shelbyville, IN
- Stephen A. Tyler - Highland, IN
- J. Thomas Vetne - South Bend, IN



## SECRETARY'S REPORT

GEORGE W. WALKER - AL

The Top ten reasons I am glad that I did not miss the Charleston Annual Meeting....

10. I would have missed the other-worldly presentation by Jim and Eileen Ryan and Tom Burke for the 2009 Phoenix meeting.
9. I would have missed Gordy Broom getting down (and, miraculously, getting back up) dancing to the band at the party at the William Aiken House.
8. I would have missed Bob Tait's team winning the ADTA golf tournament with a suspicious play-off strategy.
7. I would have missed Pam Clifford and Eileen Ryan taking over the stage and joining the band at the Black Tie Dance at Hibernian Hall.
6. I would have missed the piano players in the Hospitality Suite each night.
5. I would have missed other good friends in the Hospitality Suite both day and night.
4. I would have missed breakfasts, lunches, and dinners with my very good friends from all over the country (Puerto Rico and Canada as well).
3. I would have missed the history lesson on the *Hunley* provided by Glenn McConnell.

2. I would have missed the history lesson on the ADTA provided by Gary Peplow.

And the number 1 reason why I am glad that I did not miss the Charleston meeting—

1. I would have missed the continuous fun, hospitality, and good humor visited upon all attendees by our gracious hosts Bernie and Bobby Hood and Molly and Steven Craig.



## CHARLESTON RECAP

BY MOLLY H. CRAIG - SC

What a wonderful time we had in Charleston, South Carolina for the ADTA Annual Meeting! The weather cooperated fully throughout the weekend, making the golf, plantation and garden tours, shopping and sightseeing even more enjoyable than expected. If you missed this outstanding weekend event, plan now to attend next year's Annual Meeting in Arizona.

We kicked off the meeting on Wednesday evening with the President's reception on the Mills House poolside terrace where we were treated to great food and enjoyed catching up with friends. On Thursday morning, we began the CLE portion of our program. We were fortunate to have Honorable David C. Norton, of the U.S. District Court, District of South Carolina, Honorable Kathleen McDonald O'Malley of the U.S. District Court, Northern District of Ohio, David Cohen of Cleveland, Ohio, and John Carroll of New York as our guest speakers.

Following our CLE morning program, many members enjoyed the golf tournament on the Patriots Point course located along Charleston Harbor. The winning foursome of the golf tournament was Bob Tait, Gretchen Barney, Dan Quinn and John Stewart beating the other fourteen teams (including defending team captain, George Walker!).

For the non-golfers, the fishing excursion was well-attended and it is rumored Bobby Hood, Jr. caught a record-keeping red fish. We also had several attendees participate in Historic Charleston's Glorious Gardens tour. Those who made their own way through Charleston's historic and shopping districts enjoyed a well deserved "tea break" at the home of Bernie and Bobby Hood. On Thursday evening, we enjoyed cocktails, dinner and dancing at the William Aiken House. Other than a minor back mishap by our illustrious President and a few surprise moves, the night was filled with cool breezes, cold drinks and a hot dance floor!

On Friday morning, our CLE program began with a presentation by Steven Seiber of Toronto, Ontario, followed by presentations from Brian Clune of Phoenix, Arizona, Thomas Hurney of Charleston, West Virginia, and David Perry of San Francisco, California. After this top-notch CLE program, we enjoyed oysters and frogmore stew at Drayton Hall Plantation, one of the South's oldest plantation houses. Just to make sure our attendees had a healthy dose of history, our cocktail party Friday evening was held at the Nathaniel Russell House where the docents gave us tours of the house and gardens.

We were, indeed, honored to have South Carolina State Senator Glenn McConnell speak on Saturday morning. Senator McConnell offered a captivating presentation to our group regarding the social and political implications of raising the *Hunley*, a Civil War-era submarine. We owe a great deal of gratitude to Senator McConnell who graciously donated his time

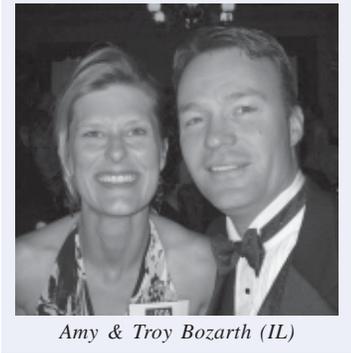
and efforts to participate in our program. On Saturday afternoon, almost one hundred people boarded the *Spirit of Charleston* for a boat ride and tour of Fort Sumter, a Civil War fort located in Charleston harbor. On Saturday evening, we ended our meeting with the traditional dinner and dance at Hibernian Hall, a well-known establishment for Irish debauchery.

We were also honored to have the Presidents and President-Elects of our sister organizations as our honored guests. Despite their exceptionally busy travel schedules, Wayne and Donna Mason, Steve Barney and Gretchen Olson of the FDCC, Gino and Jeanne Marchetti and Rob and Carol Hunter of the IADC, John and Betty Martin and Marc and Nancy Williams of DRI and Sandra Van Ink of Excess Surplus Lines joined us for the weekend.

The 2008 Annual Meeting was an enjoyable, productive and beneficial experience for everyone involved. We look forward to another successful Annual Meeting next year in Arizona.



*Scott & Maureen Deskins (FL)*



*Amy & Troy Bozarth (IL)*



*Frankie Colon-Pagan & Martha Morales (PR)*



*Clayton & Kristy Hall (CA) and Julie & Wayne Maire (CA)*



*Anita Parke & Leon Beukman (BC)*



*Carolyn & George Walker (AL)*



*Jim, Joanne & Sarah Smith (MI)*



*Lynnette & Joe Baldwin (IL)*



*Glenn & Betsy Morgan (VT)*



*Rob Tyner (MS), Chris Morris (MI) and David Cohen (OH)*



*Melinda Crislip (WV), Cecily & Peter McLean (LA)*



*Karen Kendall (IL), George Walker & Jennifer Parrish (VA), Steve Heine (IL) and Kevin Amatuzio (CO)*



*Bruce & Terry Churchill-Smith (AB)*



*Steven & Molly Craig (SC)*



*Jean & Bobby Hood, Jr. (SC)*



*Eileen & Jim Ryan (PA)*



*Philip Werner (TX) & Pat Kerrigan (TX)*



*Karyn & Matt Bailey (LA)*



*John Martin (TX), Wayne Mason (TX), John Clifford (CA) and Gino Marchetti (TN)*



*John Stewart & Joan Timm (MA) and David Zizik (MA)*



*Janet Walsh (LA) and Tony & Patty Tunney (IL)*



## COMMENTS FROM NEW MEMBERS ATTENDING FIRST MEETING

### L. GINO MARCHETTI, JR. - TN



Jeanne & Gino Marchetti (TN)

Oftentimes at meetings of attorneys, particularly a new group, one may feel ill at ease. The experience of Jeanne and I at our first ADTA Meeting as "First Timers" could not have been more welcoming. Everyone seemed to go out of their way to make us feel part of the ADTA Family.

Our mentor, Steve Crislip, did everything within his power to make our first meeting a memorable one. I must say that the extra touch of bringing us coffee and croissants each morning to our room went above and beyond the call of duty. To have a Past President attending to our every need made us feel extra special.

Seriously, Jeanne and I thoroughly enjoyed our time with the ADTA and are very much looking forward to future meetings.

### STEVEN E. SPRINGER - IN



Judy & Steve Springer (IN)

Even after all these years it is still a bit intimidating to walk in to a room full of strangers having a great time and thinking you will fit in. At the ADTA, it is not a problem for new members. Judy and I were called and written to ahead of our first meeting. We were met with enthusiasm at the New Members' Reception and things just kept rolling from there. We were pleasantly surprised to find several friends we had met along the way in other organizations. I suspect we are on the verge of establishing a litany of friends and colleagues across the country. Generally it takes a long time to make old friends. It would appear that the process will go quickly at ADTA. We are looking forward to our next meeting.

### J. DAVID ROELLGEN - IN



J. David Roellgen - IN

I was very pleased to be invited to join ADTA by Stephen Pennell. He assured me that this was a premier defense organization and that the fraternity, networking, and social agendas were unbeatable.

My wife Sue and I attended the annual meeting in Charleston, SC. Although we have both traveled to bar events I can honestly say that we felt right at home immediately. I can't tell you how many lawyers and spouses introduced themselves to

Sue and I as we attended the well planned social events. We could not have felt more welcome.

The CLE was top notch, well presented, and pertinent to the defense bar. The social events, tours, and time to meet and greet were unparalleled in my experience. The friendly atmosphere and the feeling that there are no strangers at ADTA made us glad to attend and become part of the ADTA family.

I have Phoenix penciled in for next year!



## 2009 ANNUAL MEETING

THOMAS P. BURKE, II - AZ

### PHOENIX/SCOTTSDALE THE WESTIN KIERLAND RESORT & SPA APRIL 14 - 19, 2009

From the charms of Charleston to the wide open space of Phoenix/Scottsdale, the 2009 Annual Meeting is a true counterpoint to the 2008 gathering. Historic east coast compared to developing west. Our stay at Westin Kierland provides a large resort experience which, despite the many adventures and experiences offered in Phoenix/Scottsdale, might entice some members to check their bags, slip on sandals and never regret a stay entirely on site. The golf, tennis, pool, spa, shopping and





restaurant options all located at the resort and the adjacent Kierland Commons indeed present a challenge to justify off-site events.

The challenge is more than simply met. An evening at the Desert Botanical Garden in April will provide an inspiring and entertaining indigenous experience. Even Shaquille O’Neil, who has dubbed himself the Big Cactus, would appreciate the unique setting and experience of the Desert Botanical Garden.

Probably more renowned than the Desert Botanical Garden is the Heard Museum. Boasting one of the most significant collections of Native American art, the Heard Museum is two blocks from the Phoenix Art Museum which has completed recent renovations and expansion to display its impressive permanent collections and rotating exhibits.

Among the many reputable offerings in Scottsdale, notable are art galleries, shopping and restaurants. These are offered in an array of styles and settings, from old west to highly contemporary.

Of course, the Phoenix/Scottsdale area is known perhaps as much anymore for golf. The Westin Kierland provides, on site, three sets of nine. Within a short distance are Grayhawk, Troon and many other courses of destination.

Any trip to Phoenix/Scottsdale should prompt questions of visits to the Grand Canyon and the red rock country of Sedona. For those members and attendees wanting to add day trips, either before or after the Annual Meeting, these two are definitely worth consideration.

**Evening events :**

*Wednesday*

*President’s Reception:  
Marshall’s Pavilion at the KierlandNew  
Member Reception: Sandpiper Terrace*

*Thursday*

*Desert Botanical Garden  
Reception and dinner*

*Friday*

*Scottsdale Center for the Arts  
Reception  
Dine around*

*Saturday Night Gala:*

*Herberger Foyer and Ballroom, Westin Kierland  
Sunday Departure Brunch: Herberger Ballroom 1 and 2*



## MEMBERSHIP REPORT

*GLENN S. MORGAN - VT*

If you missed the meeting in Charleston, you truly need to consider reevaluating your priorities. The Hood and Craig families went all out for the ADTA. Our scheduled events were spectacular. The optional tours provided choices that appealed to a variety of interests. We had several new member and first time attendees. Following the Charleston meeting, our New Members Committee sent out a questionnaire requesting feedback on a variety of topics including among others how did you like the meeting? and would you recommend ADTA to a colleague? The responses uniformly stated the meeting and the ADTA folks are GREAT and YES they would recommend ADTA to a colleague. My question to you is: When was the last time you asked anyone to join ADTA? The answer should be today because you can offer someone an opportunity to share the ADTA experience. Consider another member of your firm for associate membership in ADTA. How about asking a partner in another office location. The ADTA standards for admission are high and unique so make someone you hold in high esteem a gift that keeps on giving, a chance to be a member of the ADTA.

We are recovering slowly from the low point I wrote to you about last Fall. However, we have a long way to go to get back to where we should be in total membership. Our New Members Committee is instituting new procedures to reach out to new members. For example, each new member will be assigned a mentor to answer questions about ADTA and encourage them to attend our next meeting. A lot of our members work very hard to make ADTA what it is today. So please take that 15 minutes I’ve asked for in the past and think about what ADTA means to you and how you can share that experience with someone in your own firm or legal community. Remember to contact our new Executive Director, your State or Regional Chairs or me about any new prospects or questions you may have about membership in ADTA.



## SCOTTSDALE CLE

*ROBERT E. TAIT – OH*

In keeping with our venue, we’ve planned a CLE program for our Scottsdale meeting that we think you will find both entertaining and enlightening. Loosely titled “It’s Not Your Father’s Trial Practice Anymore”, we plan to highlight and discuss some of the remarkable changes that have impacted, and are continuing to effect our profession. Although the schedule has yet to be finalized, the program will include United States District Judge Algenon “Monty” Marbley, a former defense lawyer who just celebrated his 10<sup>th</sup> anniversary on the bench, who will relate his impressions of what trial lawyers must do to adapt to this changing environment; William Powell, the ADTA “National Issues” chair, who will discuss the erosion of the attorney-client privilege and other traditional client protections; Suzanne Richards, a nationally recognized employment litigator who will speak on what you and your clients need to know about e-discovery; and Dave Zizik, who will enlighten us on the “paperless law office”. In addition, Robert Winn, the Director of Colorado Operations for Engineering Systems Inc. will provide a demonstration of the “State of the Art” in accident reconstruction, and Dr. Jeffrey Boyll of Litigation Research Technologies will discuss the latest innovations in jury consulting. In all, our program will provide both “real life” examples and practical suggestions that hopefully will benefit all of our attendees, regardless of their practice.



## BOSTON 2010

DAVID W. ZIZIK - MA

The ADTA is coming! The ADTA is coming! *Mark your calendars:* Boston, Massachusetts, Wednesday April 28 – Sunday May 2, 2010.

The details are just about done! The Marriott Copley Place is the #1 choice for ADTA's 2010 Annual Meeting venue.

This will mark the first time since 1967 that the Association has conducted its annual meeting in The Hub of the Universe (or, for those who prefer informality, simply "the Hub").

For those who appreciate baseball history, 1967 was "The Impossible Dream" year of the Boston Red Sox, who beat out the Minnesota Twins and Detroit Tigers by 1 game to win the American League pennant, only to lose the World Series in 7 games to the St. Louis Cardinals (Boston's first World Series since 1946). (*Note to Gordy: Yeah, we know, Go Cardinals!*) 1967 Opening Day attendance at Fenway Park totaled a mere 8,324 fans; try getting a ticket now!

But I digress.

Back to the future: 2010, that is.

The Marriott Copley Place is located at 11 Huntington Avenue in the Back Bay section of Boston. Boston is rich in history and a joy for anyone who enjoys walking, and the Back Bay is especially so. Within blocks of the hotel are residential streets with some of the best preserved examples of late 19th century urban architecture in the country. Copley Square, one block from the hotel, includes Trinity Church, the Boston Public Library, the John Hancock Tower, and other architecturally and historically rich sites. There are numerous restaurants, shops and other places of interest within walking distance of the hotel. The South End, Beacon Hill, the North End, Harvard Square, and Boston's great museums are within reasonable walking distance, a 5-10 minute cab ride, or a short hop on Boston's rapid transit (known as "the T").

Karen and I are excited about the preliminary plans. With superb assistance from Peggy Schultz and the "Boston 2010 planning committee" – including Michael Aylward and Cathy Spaulding – great progress is being made. We have a lot of work to do, and many hoops to jump through, before we can finalize a schedule of events. But here is our "dream team of events" that has made the final cut for Boston 2010:

First of all, we will have a great hospitality room! We are trying to convince the Marriott to give us a suite that overlooks Back Bay and the Charles River. Keep your fingers and toes crossed.

Of course we will have first-class CLE on Thursday and Friday mornings.

I plan to conduct personal tours of Boston College for a reasonable fee. Please email me ASAP because space is strictly limited. (BU, Northeastern and Harvard graduates pay double...no, wait a minute, Harvard graduates pay triple. At least.)

A special spouse's event is being planned for Thursday morning.

The Thursday afternoon golf tournament will be held at the Framingham Country Club (my home course), an easy 30-minute ride west of Boston "down the Pike" in Framingham, Massachu-

setts. FCC is a classic New England course, founded in 1902, which has hosted a number of PGA qualifying events and amateur tournaments. Our prime member from Springfield, Massachusetts – John Stewart – will be chairing the golf tournament committee. Thursday's optional afternoon trips: the Museum of Fine Arts or the Museum of Science. On Thursday evening, we are planning cocktails and an indoor "clam bake" at the spectacular JFK Presidential Library and Museum. (You don't have to be a liberal to enjoy the JFK Library. And liberals enjoy the library even when a significant number of conservatives are present.)

Friday's optional planned events include guided walking tours on Boston's well traveled "Freedom Trail" in the morning for those not attending CLE. For the afternoon, we are planning the tennis tournament at the Boston Athletic Club, and a Boston Harbor Cruise, followed by cocktails at the Boston Public Library (a block from the hotel), and then dine arounds in Boston's North End and Harvard Square in Cambridge (shuttle service to be provided).

For those who don't stay too long at the hospitality room Friday night (Saturday morning?), we are planning a very special presentation at the conclusion of the Saturday business meeting, then for the afternoon a "Duck Tour" (including a tour of Fenway Park), and a tour of the Isabella Gardner Museum, followed by a very special final evening event at the SkyWalk, on the 50<sup>th</sup> floor of Boston's Prudential Center, providing panoramic views of Boston.

More details will follow.

What is certain is that Boston 2010 will be a memorable occasion that should not be missed!



## EXECUTIVE DIRECTOR REPORT

PEGGY SCHULTZ - FL



What a meeting that was in Charleston! ADTA really knows how to treat its members. Our officers and committees go out of their way to guarantee that members, spouses and guests have a quality experience at the ADTA Annual Meetings.

It was my good fortune to become better acquainted with some of you and really get to know the personality of the organization. I am amazed at the friendships shared by all. ADTA is one big family! We all know this is just one of

the reasons to belong to ADTA, but a very important one. ADTA allows personal and business contacts that no other organization can foster as well.

Since the Charleston meeting I have been addressing different phases of planning for future meetings. I've just returned from Boston where we will hold our 2010 meeting. I previewed many off-site locations and it looks like we will have another

exceptional event. Boston is just full of history, museums, water activities and shopping. Not to mention the restaurants! We will be staying at the Boston Marriott Copley in the Back Bay area where there is so much to see and do.

Bill and Maureen Staples and David and I are off to Maui later this month. Maui is the site of ADTA's 2011 meeting and we all know the thoughts and images we can drum up over this location. Tropical beaches, sunny days, warm nights, fishing, golfing.....can't get much better. We hope to return with a plan in place for the off-site events and a decision on the hotel. There are currently three hotels being previewed.

Upon return, it will be time to energize the planning and finalize the agenda for the Scottsdale meeting. Arizona is a beautiful location for our meeting and, here again, so much to offer that you cannot list it all. I hope that you take Kevin Kelly up on his offer to do a Pre-Meeting trip to the Grand Canyon. If you haven't heard about this trip, please contact Kevin or me. It will prove to be a great time.

My first few months of orientation have been very full and very informative in so many ways I can't even begin to list. It is an exciting time for me. Please let me hear from you at any time with suggestions for improvements to our wonderful organization. *Hope you have a great summer!*

Members with suggestions or comments for the Committee should send them to [fdalmert@vorys.com](mailto:fdalmert@vorys.com).



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## NATIONAL ISSUES REPORT

WILLIAM J. POWELL - WV

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The spring is ending swelter here in West Virginia. In such circumstances, I often wonder: "What is the government doing, and how will it hurt me or my clients?" Admit it, there is always something. In the last few days my friend, fellow ADTA member, and newly appointed member of the National Issues Committee Tom Hurney called me and said: "Boogie (he calls me that) I was doing some fun research at three in the morning. You wouldn't believe what the government is doing now!!" "Calm down", I said. But, he was right.

On December 11, 2007, the Sunshine in Litigation Act 2007 was introduced by Senators Cole and Leahy. (The Sunshine in Litigation Act has been introduced by Senator Cole on prior occasions, particularly in 2003 and again in 2005. The bill never became law. The current bill, Senate Bill 2449, has an accompanying bill introduced in the House by Senator Wexler, on April 23, 2008. Both bills are pending in the respective judiciary committees at this time.) The Sunshine in Litigation Act restricts protective orders and sealing of cases and settlements by courts. The Act states "The court shall not enter an order under Rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case ..." Such an order may only be entered upon finding of fact that the order would not restrict the disclosure of information which is relevant to the protection of public health or safety or the public interest in disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining confidentiality of the information or records in question and the requested protective order is no broader than necessary to protect the privacy interest asserted.

Testifying against the bill was Steven G. Morrison, former president of the Defense Research Institute. Mr. Morrison's recorded remarks state "[t]he current legislation contemplated ... threatens the fundamental right of litigants to privacy and property. This legislation would increase the costs and burdens on the parties and decrease the efficiency of the court system. Certain parties would receive unfair tactical advantages at the expense of others. As importantly, the need for such legislation has not been demonstrated in the nearly two decades since it was first introduced. In my experience, legislation such as this would cripple the ability of the parties to reach a just determination of their disputes without offering any offsetting benefits." ([http://www.judiciary.senate.gov/testimony.cfm?id=3053&wit\\_id=6823](http://www.judiciary.senate.gov/testimony.cfm?id=3053&wit_id=6823))

Statutes and Rules prohibiting private parties' ability to maintain confidentiality of documents and settlements continue to be enacted, and provide counsel with a challenge in maintaining the legitimate need for confidentiality.

You have to watch these people every second!



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## MARKETING MOJO

F. DANIEL BALMERT - OH

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Your Marketing Committee, Ed Birk, Maureen Deskins, Tom Hurney, Steve Jones, Mike Montgomery, and Dan Balmert, is in the process of developing a marketing plan for the organization and is currently assessing multiple marketing suggestions supplied by members of the ADTA Executive Committee.

The Chair of the Committee, in response to an inquiry concerning its 2008 goals responded, "We intend to develop a plan that will: (a) enhance the desire of non-members to become active, participating members of this well respected organization, and (b) increase the revenues of its members through the development of a reliable, client referral system." He noted, "Our ADTA colleagues have for many years quietly referred work to each other. Our studies to date suggest that this most often occurs as a result of personal relationships grown and nurtured through attendance at the Annual Meeting. We hope to develop systems that will quantify the volume and value of this referral work and make it available to managing partners, firm decision makers, sister organizations, and prospective prime and associate members."



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## THE ASSOCIATION PRESS

EDITOR

**STEPHEN J. HEINE**

[SHEINE@NRVA.COM](mailto:SHEINE@NRVA.COM)  
**HEYL, ROYSTER, VOELKER & ALLEN**  
**SUITE 600, 124 S. W. ADAMS**  
**PEORIA, IL 61602**  
**309.676.0400**

GRAPHICS/DESKTOP PUBLISHING

**DAVID MARTIN**  
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**713.651.8289**



## WHAT IS NEW IN MY STATE

STEPHEN J. HEINE - IL



Robert L. Ferguson (MD)

Robert L. Ferguson, a graduate of the University of Maryland with a degree in electrical engineering, earned his law degree, with honors, from the University of Maryland School of Law. He began the practice of law in Baltimore as an insurance defense attorney. In 1966 he became a founding member of his current firm, Ferguson, Schetelich & Ballew, P.A., that focuses on civil litigation with concentration on insurance defense.

Bob's professional activities have lead him to the Presidency of the Baltimore City Bar, various committee assignments for the State Bar and a two year stint with the ABA House of Delegates. He also has contributed to the legal profession as an instructor at the Maryland Judicial Institute and with the Maryland Institute for Continuing Professional Education for Lawyers. He is a Fellow of the American College of Trial Lawyers. In the sparse spare time that he has, Bob follows his interests in travel and photography.

Bob's immediate family consists of his wife Pam who is the Director of a private pre school. Their children are Colleen Driscoll, the mother of their three grand children, Chris Ferguson, who is also an attorney working in Bob's firm, Scott Ferguson a chemical engineer and Elizabeth Ferguson, soon to be a veterinarian.

Bob and Pam have missed only two meetings since attending ADTA's meeting in New Orleans. He has served as ADTA's Membership Chairman for Maryland for the last 5 years. He and Pam enjoy the friendship and wonderful travel opportunities as an ADTA member and Bob looks forward to the excellent ADTA educational programs and speakers.

New developments in Maryland law include the enactment of a statute imposing first party bad faith against insurance companies in certain circumstances. This occurred in 2007 during the first term of our new Democratic governor. Notwithstanding four years of positive ratings over 50%, our former republican Governor, Robert Erlich, was replaced by a Democrat and now, after four years of refusing to allow slots encouraged by Governor Erlich, the Democrat controlled legislature has pulled the handle to the far left and has approved a referendum to allow slots at certain locations around the state. Equally significant developments are occurring in the Courts. Bob, who serves on the Governor's Trial Courts Judicial Nominating Commission for Baltimore City, notes that among seven justices on the Maryland Court of Appeals, Maryland's highest appellate court, three are retiring to be replaced by our new Democratic Governor. In case you can't tell, Bob is a Republican.

In discussing some of his more interesting cases, Bob recently obtained a summary judgment in Federal Court on behalf of his clients, a pilot and an aerial pesticide company, in a case where the decedent's wife and family claimed that exposure to an aerial pesticide (composed primarily of a Chrysanthemum extract), allegedly sprayed directly on decedent, caused a heart attack some ten days after the exposure. Another was the defense of a client that overhauled the engine on a police helicopter that crashed (the engine threw a rod) where the police officer

pilot and observer were injured. The observer claimed a brain injury and cognitive deficit. Among his reasons was that when he went to the grocery store, he would often forget to pick something up, although he never made a list. Bob's favorite, however is an insurance coverage case in which Pat Cullen was on the other side. It was being argued in the United States Court of Appeals for the Fourth Circuit. There were multiple parties and Pat was only given a minute and a half to argue why his client should be awarded attorneys fees. It was an up hill battle for Pat, in Bob's opinion, and the Court's, but in his own unique, laid-back style, Pat used that minute and a half to impress the Court with his sense of humor, delivering some of the funniest lines about how his client, with an insolvent insurer, had turned the case into the biggest *pro bono* case of Pat's career.



## WHAT IS NEW IN MY STATE

PATRICK G. CULLEN - MD



Buzzy Riis (AL)

Buzzy Riis has been a member of ADTA since 1997. The first meeting he attended was our Bermuda meeting and he has been addicted to ADTA ever since, missing only the meetings in Ireland and Oregon.

Buzzy is a lifetime resident of Mobile, Alabama, graduating from Washington & Lee University, B.A., 1982, and receiving his law degree from the University of Alabama School of Law, J.D. 1985. He has been with Hand Arendall (yes, the same Hand Arendall where George Walker "works") since 1991 and is a member of the Litigation Section of the law firm, actively involved in the following Practice Groups: Personal Injury & Insurance; Construction and Public Contracts; Employment and Labor, and Worker's Compensation. Buzzy practice involves general civil litigation with a concentration in personal injury and construction defense litigation. He also has over 12 years experience in OSHA disputes on behalf of contractors, healthcare providers, shipyards, stevedores and manufacturing facilities in contesting citations from the Occupational Safety & Health Commission.

Buzzy has been active in the pro bono lawyer program in the City of Mobile throughout his practice. He was recognized as the 2003 Volunteer Lawyer of the Year. Buzzy is an active member of several Mardi Gras Societies in Mobile and a member of St. Paul's Episcopal Church. He enjoys sailing, waterskiing, scuba diving, and, since San Diego, surfing. He has two children: a son, Burruss, and a daughter, Mickey. Burruss will be a junior at The University of Southern Mississippi next year and Mickey will be a junior in high school at St. Paul's Episcopal School in Mobile.

Buzzy reports that it is a great time to be in Mobile, Alabama. He basis that on what is new in his State—many new job opportunities. Thyssen Krupp has chosen North Mobile County as the site for a steel mill now valued at \$3.7 billion. The steel mill is going to create 29,000 jobs during construction, and 2,700 jobs paying an average of \$50,000 to \$65,000 annually once the plant is operational in 2010. The mill will produce high-grade carbon steel for sale primarily into the North-American automotive industry. ThyssenKrupp has opened a project office in Mobile, awarded several site preparation contacts to Alabama-based companies, and placed an order for the hot strip mill and cold rolling complex.

Northrop Grumman's KC-45 tanker to be built in Mobile was chosen by the US Air Force over Boeing's program. The deal will create 2,000 new jobs directly in Mobile and another 25,000 indirectly. Northrop Grumman's contract is to create 179 new tankers, a deal worth up to \$40 billion dollars. This program is the largest Pentagon project since 2001. As many of you may know, Boeing is challenging this selection.

According to Buzzy, his firm of Hand Arendall has sent George Walker to challenge Boeing's CEO to a round of golf ... winner take all! So far, Boeing has not responded to that challenge.



## WHAT IS NEW IN MY STATE

PATRICK G. CULLEN – MD



G. Mason White (GA)

Mason White is a 1985 graduate of the University of Georgia School of Law. Upon graduation he joined the firm of Brennan, Harris & Rominger in Savannah, Georgia. For 18 years he has served as the managing partner for the firm. Long time ADTA member Richard Harris is a senior partner in that firm and was one of the hosts for a recent ADTA annual meeting in Savannah. Mason's wife Lisa, an attorney, does regulatory work with the Corps of Engineers.

Mason confesses an addiction to golf and satisfies his craving 2 or 3 times a week. He has really enjoyed his membership in ADTA and notes in particular the annual meetings: they are not trade-related and they do not involve entertaining (and guarding) your clients. As we learned through Gary Peplow's history presentation at the 2008 annual meeting in Charleston, the early days of ADTA certainly had a different focus. Mason favors the current emphasis on mingling with the "one-in-a-million" lawyers who are ADTA.

As a defense litigator, Mason has had personal involvement in a major case that, at the appellate stage, clarified a portion of the complex world of Georgia's version of comparative negligence. He also participated in a wrongful death case that seemed to last forever after a trial, 3 trips to Georgia's intermediate appellate court and two appearances before George's highest appellate court. Trial was a successful ending for the defense.

Insofar as what is new in Georgia, within the last few years there has been a bevy of statutes enacted under the euphemism "tort reform" to include the following: (a) institution of a cap on non-economic damages in medical malpractice cases, (b) the *Daubert* standard was adopted as to expert testimony, (c) apportionment in the context of comparative negligence cases was tweaked, (d) and a Federal rules type offer of judgment procedure was adopted.

These reforms have been melded by Mason into an active defense practice that daily confronts new litigation brought by Yankee lawyers (f/k/a carpetbaggers) who specialize in arcane causes of action and e-mail equipped adjusters (God love 'em) who look for replies by immediate keystroke. Life is good.



## RUMORS, GOSSIP AND INNUENDO ABOUT OUR MEMBERS AND THEIR FAMILIES

TERRI MITCHELL – CA



Terri Mitchell – CA

Welcome to our new feature, "Rumors, Gossip and Innuendo About our Members and their Families", aptly titled by my husband, Steve! As the ADTA is truly about the three "F"s in life –Friendship, Families and Fun, (scared you for a minute, didn't I?), we are starting a feature about those things.

Charleston was a great success by all measures! Everywhere I looked members and their partners were enjoying themselves – I spotted some new dance moves on the floor, fielded requests for couches in the hospitality suite next time (for after hours lounging), and successfully found the perfect Bloody Mary with my friends! Members were falling all over themselves, literally and figuratively, having a good time.

I sent out a call to the folks whose email addresses I have and received news from many:

William Powell of Jackson Kelly in Martinsburg, WV reports that his partner Tom Hurney, (an ADTA member), just had his oldest daughter, Grace, graduate from High School. She will be going to Concord College on a full scholarship and dad is justifiably proud. Bill also mentions that Tom spends much of his spare time playing music for school dances as he has a collection of some 10,000 digitized songs. He gets very "funky". Hmm, do I hear "dancing in the hospitality suite, anyone?"

From Florida, Dick Collins reports that their youngest son, Kyle, is getting married this October to his long time lady friend, Sara Hall. They will take their vows at sunset on the beach and will honeymoon for a week in Hawaii! (Thank you Dad!) When Dick asked if they had a plan B, they replied, "what?" Dick said, "RAIN!" Well let's hope not! Kyle is the first in the Collin's family to take the big plunge...congrats and HAVE FUN!

In Philly, Eileen and Jim Ryan report that prom tonight for their son Kevin was a success. He took an Irish lass named "Meghan Mooney"...really, no kidding! Kevin graduates with honors on June 1st and will attend Penn State University in State College- Jim & Eileen are very psyched to tailgate. Their daughter, Meghan (alias RYAN ELIZABETH WALSH) just filmed a public service announcement for DISNEY (she plays a lifeguard and it's about pool/water safety—perhaps to be seen in a movie preview at a theater near you.) She doesn't know where it will be shown, but got paid to act so she is excited—as are mom and dad!

Gail and Kevin Kelly had no dirt to dish from New York, but did report that son Sean is graduating from Boston College and will be a Double Eagle as he is starting BC Law School in the fall....No retirement plans for the Kellys!

And back in West Virginia, Melinda Crislip writes that their younger son Seth graduates from medical school this spring. He will spend the next four years at WVU doing a year's internship and three year's residency in anesthesiology. He has a contract on a townhouse so Melinda, Steve, brother and sister in law will have a place to sleep when travelling to Morgantown

for football games—very important!! Melinda reports that Murphy, the 11-month old golden retriever has several yard projects going—they may need to get her a hardhat and if any of you need any holes dug for landscaping purposes, she’s your girl! Melinda will rent her our CHEAP!!

In Illinois, Gordy and Holly Broom report that their son, Joe Broom and Jessica Keegan will be married August 2nd in Lawrence, Kansas in the Alumni Center in the heart of the KU Campus. Both are KU graduates. Go Jayhawks!

On the West Coast, Jack Clifford is graduating from Cathedral High on May 31st and will be following his father’s footsteps to Chico State...well, let’s not hope ALL of his footsteps.

We at the Mitchell residence survived prom...our daughter Emily is Junior Class President at her high school and thus charged with “putting on” prom...our garage resembled a florist shop but hats off to her, she did a great job and managed to look beautiful and enjoy herself at the dance! Our girls (ages 17, 15 and 12) and I do on occasion feel sorry for Steve...especially in the evenings as we huddle and watch “America’s Next Top Model” and “Gossip Girl”, and he is sitting with the only other male member of our family, the dog “Rocky”, watching Anderson 360 and/or some sporting event. He just can’t seem to understand the whole Top Model Thing! However, our son Scott just finished his first year as a UCLA Bruin and will be returning home this summer to take up residence on the couch next to his dad!

If anyone has news they would like to add to our column, send it my way at [stmitch6@sbcglobal.net](mailto:stmitch6@sbcglobal.net) or give me a call on my cell 707-291-0244. We hope to make this a regular thing. If you want to receive information that may not be on the website or included in the meeting brochure, we may start an email group, trading information regarding morning walks, local chapters of groups that folks are interested in, etc. or other information that will add to our three F’s—Friendship, Families and Fun!



## A WORD FROM LOU

LOUIS S. SCOFIELD, TX

### JURY SELECTION

The problem with writing the definitive article on jury selection is that every one of you thinks you know how to do it better than anyone else. Once you get to this level of Big Shot Courtroom Lawyer you are likely, and justifiably, set in your ways. After all, jury selection is an art, not a science, with each of us using colors and brush strokes, bold and light, that we believe work best. Still, there are a few universal rules that you forget at your peril. Some of them are:

1. Remember the rule of “P:” Strike all preachers, politicians, pipefitters and welders. I know “welders” doesn’t start with a “P” but strike them anyway.
2. Remember Luke, “Trust the force:” Always trust your instincts. Some call it “vibes.” Some call it “intuition.” Whatever you call it, no matter how good, charming, or wonderful a prospective juror seems to be, never let one that gives you the creeps get on the jury. In his bestselling book *Blink*, Malcolm Gladwell will teach you to trust your gut feelings. In it he discusses countless studies that prove your intuitive reactions, born of experience, are well founded and best followed.
3. No place for pride: The jury selection process has so many dynamics that you can use all the help you can get. I

always recruit my client and any other assisting folks to help with peremptory strikes. It is remarkable what another set of eyes and ears can pick up. In other words, sometimes your well crafted questions are no match for the observations made by your client during *voir dire* (pronounced “vore dye-er” not “vva-deer” like you latte’-sipping Granola crunchers like to say it).

4. Ignore the popular tricks: For example, ignore body “language” and bumper stickers. Most body “language” is useless in jury selection. No one, including the person supposedly speaking with their body movements, knows the “language” and it is inherently ambiguous. Of course, if a prospective juror is obviously mouthing to you that “you suck,” you might consider exploring the issue further...but only if you don’t mind the rest of the courtroom learning what you suck at. Risky though, because you don’t know if the juror intends the expression as an adjective or a verb.

5. More to the point, if I see a man with crossed arms, it could mean that he has a closed mind. But it could just as easily mean that the folks on either side of him are occupying the arm rests, or, better yet, that he likes to cross his arms. Most body “language” is much too subtle for me.

Then there are juror bumper stickers. Asking what is on a juror’s bumper sticker only leads to more questions, such as, “Is it your car, or your son’s?” “Was the sticker on there when you bought the car?” “Are you proud of it, or is it like your tattoo, something you deeply regret putting there?”

Folks, if you can’t think of a better reason to strike a juror than folded arms, or if you can’t think of a better question than the bumper sticker question, you need to re-think your approach.

6. Don’t forget to use the “tried and trues:” These are countless. Here’s a couple: Begin your *voir dire* by asking each of the jurors whether they have made up their mind. Second, as time is allowed, tell the panel as much as you can about your case. [In Texas *voir dire* is closing argument, and if you haven’t won the case by the time you sit down you are in big trouble.] Ask each juror if they can be fair, and watch each as they answer. This isn’t a wasted question if you use it well. You already know your personal “tried and trues.” Don’t abandon them in favor of some new methodology . . . which leads us to jury consultants.

7. Jury Consultants. I have to confess to a bit of prejudice here. I think jury consultants are useful, but not for their advertised purposes. Jury consultants are an extra set of eyes and ears, which are noted above as quite useful. Beyond this they sometimes add a layer of E&O coverage, plus they might even give you a little more credibility in the eyes of an unfamiliar client.

But I have always been suspicious of the substantive benefit of jury consultants, focus groups, mock juries, summary trials, and shadow juries, because they tell you little that you didn’t already know, to wit: regardless of your forum, judge, jury, facts, dazzling talents, and the ability to tell the future, any given jury can rule any way at any time. All of us have won cases that we should have lost and lost cases that we should have won. The best our experience allows us to do is suggest percentage chances of outcomes, were we to imagine the case being tried, say 10 times before 10 different juries, you might say you’d expect to prevail 6 or 7 times out of 10.

In this regard let me tell you the Johns Manville story. Pay attention, because the way I tell it, it’s almost true. The story goes that Justice Parker (5th Circuit, retired) when he was a District Judge here, decided to prove to the asbestos defendants, especially Johns Manville, that they could not win an asbestos case on liability. To accomplish this, 5 cases were brought to trial simultaneously with 5 juries being selected. The issues at trial were liability alone, tried simultaneously in one court room,

before all 5 juries. They heard the same evidence, the same lawyers, the same judge, the same charge, and the results were 5 different verdicts ranging from Johns Manville being completely exonerated by one jury, to a verdict finding Johns Manville guilty of gross negligence and exposed to punitive damages. The other juries filled-in the spectrum between these two extremes. As you might imagine, I consider this little "experiment" as pretty stout justification for my suspicion of jury consultants, focus groups, mock juries and shadow juries.

But my suspicion only goes so far. I am pro-jury trial. If you exercise your strikes wisely, you will sharpen the group to some extent, and increase the likelihood that you can elevate them to their oath. It is then my personal experience that 90% of the time juries do the right thing. Although, half of the time they do the right thing, they do it for the wrong reasons. Still and all, warts and all, a jury, more focused by your crafty jury selection skills, will be more likely to listen favorably to your tale, and in any event, is a lot better than a panel of arbitrators, a panel of judges, or a panel of welders.



## ABOUT OUR MEMBERS

**Dyan Ebert** became the first female chief executive officer of her firm, Quinlivan & Hughes. She started as an associate attorney at the firm in 1994 and officially took her firm's top spot at the end of February, 2008. Still a practicing litigator, Dyan travels all over the state on cases related to employment, insurance and similar issues.

While an advocate for women's rights, Dyan reportedly sees her position in the company as a genderless role. As chief executive, she says that her job requires her to be tolerant and patient, yet she is able to command respect from those around her but not forget the humor of each day.

**Steven A. Gurnee** of Gurnee & Daniels, LLP of Roseville, Sacramento was awarded Trial Lawyer of the Year by the Sacramento Valley Chapter of A.B.O.T.A.

**Patricia J. Kerrigan**, a founding partner of Werner, Kerrigan & Ayers LLP in Houston, has been appointed by Governor Rick Perry to serve as the 190th Judicial District Court Judge representing Harris County, for a term to expire after the next general election. The Honorable Patricia J. Kerrigan is a past DRI board member and secretary/treasurer. She is also a Past President of the Texas Association of Defense Counsel and the ADTA.

**Steve Tervooren and Kim Colbo**, of **Hughes Pfiffner Gorski Seedorf & Odsen, LLC** (Anchorage, Alaska) captured a rapid-return defense verdict on behalf of Fleetwood Motor Homes of California and its local motor home dealership in a high stakes product liability burn case. The plaintiff, a successful radio morning show host, was seated in a motor home with his feet next to a heating system outlet. He lacked sensation in his feet due to diabetic neuropathy and sustained fourth degree burns on his ankles and Achilles regions, leading to the bilateral rupture and loss of Achilles tendons, multiple skin grafts, the need for ankle-foot orthotics to restore limited ambulation, and severe depression. Plaintiff asserted counts for strict products liability based upon design and failure to warn as well as negligence and punitive damages. Plaintiff's lowest pre-trial demand was \$4.1 million. Following three weeks of trial, the jury reached a defense verdict in twenty minutes.

**Dennis J. Wall** of Winter Springs, Florida has been named by *Florida Super Lawyers* magazine as a top attorney in Florida for 2008 and also named among the 20 top Florida attorneys listed in *Insurance Coverage Florida Super Lawyers 2008*.

**Mike and Kathryn Montgomery (VA)** were blessed with Rhys Michael Montgomery on June 13th at 5:14 p.m. Rhys weighed in at 8 lbs 1 oz. and was 21 inches long. The Montgomery family is doing well.

# 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.*



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## **BOOK REVIEW**

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*PATRICK G. CULLEN*

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***MAKING YOUR CASE (THE ART OF PERSUADING JUDGES) BY ANTONIN SCALIA AND BRYAN A. GARNER, THOMPSON/WEST (2008), 206 PAGES, \$29.95.***

This book contains more tips on how to do a trial or appellate argument to the Court than most golf books do on how to get the white ball into the small cup. And even though you probably have done lots of legal arguments to the Bench, you probably also have never had formal training on the subject. There might even be the possibility that what you have done is to cultivate and refine bad habits. So here is an opportunity for you to get a ton of ideas from experts on how those arguments ought to be done.

Justice Scalia and author/teacher on advocacy Bryan Garner combine to write a clearly outlined, detailed "how to" book

on 115 distinct subjects that cover (a) general principals of argument, (b) legal reasoning, (c) briefing, and (d) oral argument. Consider your options: to lead with your strongest argument or build up to it; to make concessions with gusto or very begrudgingly; to start with the facts or the issue; to argue as though before a jury or an appellate court; to think syllogistically or to leave that for the philosophers; to use argumentative or neutral language in stating the issues; to summarize the facts witness by witness or not; to set forth your own version of the facts or to adopt the opponent's with your own additions; to use similes or leave that to the novelists; to single cite or multi-cite for each point of law; to let the senior lawyer on the case do the argument or not; to be conversational or oratorical; to use italics or bold type or underlining for emphasis?

The book is split up in such a way as to discuss tightly wrapped issues on the topic of legal argumentation. The writing style is not overly formalistic and makes for quick and enjoyable reading. If you know all the preferred answers to the options listed above and even if you recognized that the last option concerning emphasis is a trick question, get the book anyhow and give it to an associate who could, on the next appeal, make your firm look like a hero.

***THE ASSOCIATION PRESS***

***ATTN: STEPHEN J. HEINE  
SUITE 600, 124 S. W. ADAMS  
PEORIA, IL 61602***