

# The Association Press

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## PRESIDENT'S REPORT TO MEMBERS

GEORGE WALKER



I am humbled by the opportunity you have given me to lead our wonderful organization over the coming year. I must first pay homage to my late partner Paul Brock, who was my firm's Prime Member in the Association of Insurance Attorneys in 1986, and who thought that we should have an Associate Member because he was too tied up with work and other organizations to attend the AIA annual meeting. Carolyn and I attended the next meeting at the Breakers Hotel in Palm Beach, Florida in April of 1987, and I haven't missed a meeting since. Thank you Paul.

There are, we are told, people who come into our lives and later depart, leaving little or no evidence of their coming and going. There are others who come into our lives and leave footprints on our hearts. I am fortunate to have experienced a large crowd of the latter type of people over my lifetime, and I would be remiss if I did not acknowledge many of those people today. I must start with my lovely wife, Carolyn, who has been the love of my life for the last forty years. By the time that you receive this, we will be celebrating our 37th anniversary, and I have no reason to believe that I would have amounted to much of anything had she not crossed my path and had I not been wise enough to trip her when she did. The ADTA is much privileged to have her as its First Lady for the coming year. Thank you Carolyn.

There are many great friends that we have made over the last 25 years in the organization, and the history of those friendships is pretty much a history of the benefits of membership in this fine group. At that meeting at the Breakers Hotel in April of 1987, we met a harried young couple who had the "privilege" of staying in the hospitality suite's bedroom, which essentially eliminated any prospect for sleep for either of them. Jerry and Kathy Weedon immediately became our very best friends, and I cannot think of our organization without thinking of them. One reason that they could not get to sleep was the voracious appetite for fun exhibited by another new member at that meeting who was seemingly unable to leave the hospitality suite. I came to know Dan Quinn at that time, and I cannot think long about our organization without Dan coming to mind. I have a hundred stories from our Executive Council and annual meetings over the past quarter century, but each one comes down to stories about people. They are people that we have been so very lucky to meet and come to know. The ADTA is about its people, for we think that there is nothing better than making a new friend in the profession from whom we may learn something about the practice of law or something about the enjoyment of life. If we are truly fortunate, we make new friends who will remember us when their clients need lawyers in our area of the world. Thank you all of my ADTA friends.

These are parlous times in the practice of law generally and, in particular, in the area of defense of civil trials. The jury trial is not dead and gone, but it no longer makes appearances as frequently as it once did. The continuing economic crisis has drastically altered the relationships that we once had with the clients that sent us business, leaving many of us to scramble to redefine who we are and what we do. The use of "legal auditors" and other entities has in many cases interfered with our exercise of independent professional judgment and has in some instances com-

moditized the practice of law. I know that many of you who are reading this today have law practices that are substantially different from what you had five or ten years ago. But, the more I think about these changes, the more convinced I am that there really is nothing new under the sun. The practice of law has always been changing, at least for the 34 years during which I have been licensed to practice. At every turn, there has been something new on the horizon, and there have been constant threats to the jury trial system. We have over these many years, with greater and lesser success, fought off the demise of the jury trial, and we will continue to do so.

I hope over the coming year to keep up the proud tradition established by my predecessors, and govern the Association in a way that permits our members to enjoy the experiences that Carolyn and I have had over the past 25 years. I will not propose substantial changes in the business or the governance of the Association, for we have done quite well with the association model we have followed over the past seventy years. There will be no outrageous initiatives, for we have done quite well without them in the past and will continue to do well without them in the future. What there will be is a great deal of hard work on my part to make sure that I leave the Presidency to Steve Heine next April in New Orleans in a little better shape than I received it from Frankie Colon-Pagan this past April in Maui.

I am blessed to be supported by outstanding officers and an outstanding Executive Council for the coming year. I congratulate David Zizik on his election to the office of Vice-President, and I likewise congratulate Gail Kelly, Mike Kronlund, and Fred Raschke, who have been elected to three year terms on the Executive Council. If you have ideas about how we can improve the ADTA, please send me an email (gwalker@handarendall.com) and I will put your ideas on the agenda for the fall management meeting in New Orleans in November. I look forward to seeing each of you in New Orleans at the annual meeting next April.

## INTERNET & TECHNOLOGY COMMITTEE

CATHRYN SPAULDING - MA

The Internet & Technology Committee is looking into the possibility of using social media such as Facebook, LinkedIn, and Twitter to assist in promoting networking and communications among the members of the ADTA. This would enable the membership to share information and ideas more easily and quickly. The Committee also continues to work with the Marketing Committee to develop innovative ways to encourage ADTA members to refer business to other ADTA members. We are hopeful that with the use of social media, the connections made at the Annual Meeting will continue to be strengthened throughout the year.

## ADTA MAUI 2011 – SIMPLY PARADISE!

WILLIAM H. STAPLES - CA

This article should not be written by the meeting host, as there is a built in bias. But OMG, what a great meeting! For those of you who were there, let's go down memory lane. For those who weren't, here is what you missed.

• A wedding at the beach following the Friday night Gala. That's right, a first for ADTA. Congratulations to our own Denise Anderson of Tampa and her fiancée and now husband Scott McGevna. A great couple and a great story (too long to tell here).

• The best band ever, Jimmy Mac and the Cool Cats! We have never seen so many of our members still on the dance floor, upright and dancing, at the end of the evening. Thank you Molly Craig.



President, George Walker

• Weather, 82-83 degrees everyday. Sunshine galore with a few clouds.

• Continuing Education second to none. Up to date presentations geared to the seasoned defense trial attorney. Justice Consuelo ("Connie") Callahan of the Ninth Circuit Court of Appeals gave her insightful comments regarding the inner workings of the Ninth Circuit. David M. Louie, Attorney General for the State of Hawaii and his former partner, Art Roeca, with help from others, steered us through visual presentations to the jury, jury selection and a thought provoking skit regarding the uncharted legal ramifications of tele-medicine. Bob Tait and Fred Raschke presented tales and insights on a long catastrophic injury trial and Jim Campbell instructed us as to what we were missing out on by not using social media as a research tool.



Bob and Vicki Varney

• An evening at the Maui Ocean Center, Maui's premier aquarium. Nestled in a spectacular ocean front, harbor setting, we had the facility all to ourselves. We had plenty of time to explore as we enjoyed cocktails, had dinner in the nautical themed open air restaurant and within the living reef exhibits and then rocked to the band, Funky Buzness.



President-Elect, Steve Heine and Past-President Frankie Colón

• We got together with old friends, met new ones and exchanged stories and lies over Mai Tai's and Blue Hawaiians as we watched whales breaching from the water, divers performing ceremonial dives off Black Rock and enjoyed the beautiful sunsets.



Steven Tervooren and Ed Birk

- On the lawn overlooking the ocean, Hula dancers and a fire dancer left everyone spellbound as a warm-up to the Gala.

- A resort facility where everything was perfect. The rooms, the facilities, the staff were all superb. Kudos to the Sheraton Maui Resort & Spa and its staff!

- No one will soon forget the tales we heard of deep sea fishing. Very few fish but lots of seasickness. Big thanks to Captain Skip (Skip Hudgins).

- Golf, whale watching, snorkeling, dining and shopping in the old fishing village of Lahaina, the beach, the surf, the pool and just relaxing. What more could you want? We did it all.

- Now on to New Orleans in 2012 but Hawaii will not be forgotten. WE WILL RETURN!

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## NEW ORLEANS — 2012

### APRIL 18-22, 2012

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MATTHEW W. BAILEY - LA

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The Royal Sonesta, in the heart of the French Quarter and directly on Bourbon Street, will be the gathering place for the ADTA's annual meeting in 2012.



The lively and ever entertaining French Quarter is made up of a collection of cultures, cuisines and influences that are sure to entertain, intrigue and capture you as you stroll the unique streets in and around the French Quarter.



Jackson Square, a short, but interesting walk from the Royal Sonesta, includes three 18<sup>th</sup> century historic buildings with St. Louis Cathedral being at the center of the three. The

Square originally overlooked the Mississippi River, but the view was blocked in the 19<sup>th</sup> century due to the building of larger levees (which I am thankful for as I write this article). The Square is a gathering place of painters, art students, mimes, fortune tellers, tarot card readers and street performers, along with live musicians. Across from the Square is the famous Café Du Monde, which has served beignets since the 19<sup>th</sup> century.

The French Quarter is also home to numerous unique and vintage antique shops, one-of-a-kind jewelry shops and art galleries.



Bourbon Street, the most famous of all the French Quarter streets is well-known and well-publicized for its many drinking establishments. The Old Absinthe House, Pat O'Brien's, Napoleon House and Lafitte's Blacksmith Shop (considered by many to be the oldest continually occupied bar in the United States) are just a few.

Peggy Schultz, our Executive Director, Peter McLean, our "retired" travel director, George Walker, our President, and I are extremely excited about this venue and feel that it will be the best attended meeting in recent history because of its central location, cost and access via Southwest Airlines – not to mention the nonstop entertainment available within steps of the hotel.

The meeting is still almost a year away, and people are already glowing with excitement and anticipation of the hospitality suite. It will comprise several suites and have a wrap-around balcony overlooking Bourbon Street. It is, no doubt, the most sought after balcony on Bourbon Street. I dare to say what may be seen while standing on the balcony, but I assure you it will be the most talked about hospitality suite for years to come.

Wednesday evening, we will have the President's Reception in the hotel courtyard. Thursday, late afternoon, we will depart by bus to the World War II Museum, just a few blocks from our hotel, for a private showing of *Beyond All Boundaries*, a very powerful 4-D cinematic experience narrated by Tom Hanks. We will all have the opportunity to tour the museum. While we eat, drink, mingle and dance, we will be entertained by the Victory Belles Trio and the Victory Six group. It will be a night to remember.

Friday evening, we will meet as a group in the hospitality suite and then dine at one of the many, many famous restaurants in downtown New Orleans, most of which are within walking distance of the hotel.

Our final evening event will be Saturday night in the Royal Sonesta Ballroom, where we will be entertained by Rockin' Dopsie and the Zydeco Twisters.

Thursday and Friday mornings, for those who are still not stuck on Bourbon Street, we will have our CLE sessions. Steve

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## THE ASSOCIATION PRESS

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Heine and his committee are currently lining up an excellent group of speakers.

The Thursday morning's spouse's breakfast will include a demonstration by the New Orleans School of Cooking. The optional afternoon events being planned include a French Quarter walking tour, a plantation tour and a swamp tour.

I assure you this is one meeting that you do not want to miss. Mark your calendars now and we will see you there!



## MEMBERSHIP REPORT

WILLIAM H. STAPLES - CA

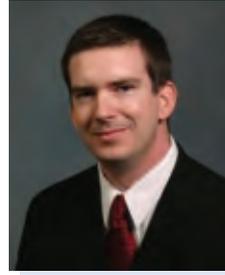
Have you ever wondered how many ADTA members there are? Well, as of April 30, 2011 there are 416 Prime members and 155 Associate members for a total of 517. Is that good or bad? It's neither. It is simply who we are; 517 of the best defense trial attorneys in the U.S., Canada and Puerto Rico who join together to enhance our abilities, contacts and friendships.

My job is to encourage you to reach out to other experienced defense trial attorneys and get them to join with us. In the past 12 months we have welcomed 39 new members but at the same time we lost 36. Is that good or bad? Again, it is neither. People retire, lose interest, or change the focus of their practice. What is good is that our new members are enthusiastic and active. A year ago, in Boston, we had 25 members attend their first meeting. Many of them came to Hawaii. This year, 21 members attended for the first time and I suspect we will see many of them in New Orleans.

Our continuous search for new members is not simply to make our numbers grow. It is to bring together as diverse a group of experienced defense trial attorneys as we can so that we all continue to learn and grow in our profession. We should also remember that new members, first and foremost, equate to new friends. They also bring new experiences, new learning opportunities, new contacts and an enthusiasm to keep moving ADTA moving forward.

So now, back to my broken record speech. If you are a Prime member and there is no Associate member in your firm, nominate one today! If you know an experienced defense trial attorney in a location that can accept a Prime member, encourage that person to join. Ask your State or Province Chair to assist you in recruiting. Lastly, if you have never been to an annual meeting or it's been a while, be sure you attend New Orleans in 2012.

## NEW MEMBERS



### Shane M. Carnine

Black, Hedin, Ballard, McDonald  
Mount Vernon, Illinois

Shane M. Carnine practices with the firm of Black, Hedin, Ballard, McDonald in Mount Vernon, Illinois. Shane graduated from Southern Illinois University School of Law in 2003. His wife, Meagan, is an attorney also. Shane and Meagan have two children, Jack and

Kate. Shane concentrates his practice in the areas of Municipal and Governmental Defense and Civil Litigation in Trial and Appellate Courts. Shane also acts as a Special Assistant Attorney General for the Illinois Department of Transportation. Shane was a Law Journal articles editor and received awards for excellence in corporations and evidence. Shane also obtained a judicial clerkship in the Utah Appellate Court. He is a Past President of the Jefferson County Bar Association, a past presenter for the Illinois Association of Defense Trial Counsel, and an article author for the Illinois Bar Journal.



### James P. Craig

Lederer Watson Craig, PLC  
Cedar Rapids, Iowa

James P. Craig practices with Lederer Weston Craig PLC in Iowa. James obtained his Juris Doctor from the University of Iowa in 1982. James' wife, Deborah, is a homemaker and community volunteer. James and Deborah have four children: Andrew Webster, 24;

Elise Elizabeth, 22; Ethan James, 20; and Madeline Regan, 15. James focuses his practice in insurance coverage/bad faith, product liability, construction litigation, tort defense, municipal law and professional liability defense. James is a member of the IADC, a fellow of the Iowa Academy of Trial Lawyers, a member of ABOTA and was named an Iowa Super Lawyer, 2007-2010. He is also a member of the Board of Governors for the Iowa Defense Counsel Association and was a faculty member for the IADC 2009 Trial Academy. James enjoys hunting, skeet shooting, fitness and travel. He is a long-time Iowa Hawkeye football fan.



### John V. Denson, II

Samford & Denson, LLP  
Opelika, Alabama

John V. Denson, II practices with Samford & Denson, LLP, in Opelika, Alabama. John graduated from the University of Alabama School of Law in 1960. John's wife, Rose Ann, is a homemaker. John and Rose Ann have two children, Rush Denson, 38, and

Kristin Denson Sartelle, 35, as well as four grandchildren: Rush Denson, 10, Quinn Denson, 6, Nate Sartelle, 4, and Ella Rose Sartelle, 2. John concentrates his practice in the areas of medical malpractice and personal injury. John was inducted into the

American College of Trial Lawyers in 1988. He is and has been listed by *Best Lawyers in America* for more than 15 years. John was also elected and served one term as Lee County Circuit Court Judge but was not eligible for a second term due to age limitations. In his free time, John enjoys boating and reading.



**James D. Ebanks**  
Ebanks Taylor Horne, LLP  
Houston, Texas

James D. Ebanks practices with Ebanks Taylor Horne, LLP in Houston, Texas. James graduated from the University of Houston in 1984 with a J.D. His wife, Nancy, volunteers in charitable organizations and helps with fundraising. James and Nancy have

four children: Diana, 26; Erik, 23; Laura, 23; and Brittany, 20. James concentrates his practice in general liability and personal injury defense, alcohol beverage and liquor liability, auto products liability and general products liability, automobile negligence, bad faith, breach of contract and commercial litigation, property and casualty litigation, common carrier and trucking and defense litigation, deceptive trade practices, medical device litigation, food liability litigation, industrial and petro-chemical accident litigation, professional liability litigation, workers' compensation and wrongful death/employer's liability litigation. John's board certification is in personal injury trial law and civil trial law, by the Texas Board of Legal Specialization. He is a Texas Super Lawyer (by Texas Monthly 2003, 2005 and 2006). John has been recognized by many community and volunteer organizations, and received honors and awards through Boy Scouts of America and the Houston Livestock Show and Rodeo. John is on the Board of Directors for District 20, and is a member of the Texas Association of Defense Counsel (TADC) Board Membership Committee. He is a frequent speaker/lecturer for the Texas Association of Defense Counsel, Counsel on Litigation Management (CLM) and the CEU Institute. In his free time, John works with Boy Scouts of America, the Houston Livestock Show and Rodeo and enjoys hunting and sports.



**Megan J. Goguen**  
Hanson Curran LLP  
Providence, Rhode Island

Megan J. Goguen practices with the firm of Hanson Curran LLP in Providence, Rhode Island. Megan attended St. John's University School of Law, and obtained her J.D. in 1997. Megan's husband, Mark, is a 4<sup>th</sup> grade teacher. Megan and Mark have two children,

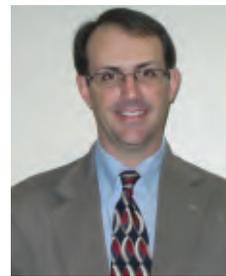
Mairead, age 9, and Bridget, age 7 (no grandchildren yet!) Megan concentrates her practice in the areas of medical malpractice and workers' compensation defense. Megan has been named as a Rhode Island Super Lawyer – Rising Star Edition, 2010 and awarded the Providence Business News 40 Under Forty Award, 2009. In her spare time, Megan enjoys spinning, reading and trying to keep up with active young daughters. She loves listening to "Doctor Radio" on Sirius/XM because she is fascinated with medicine but could never be a doctor (too gory!) Megan also noted that while it may or may not be a hobby, she loves to talk. Being a civil defense attorney is in Megan's blood. Her late father, Kevin Conboy, Esq., was a very talented trial at-

torney who practiced in White Plains, New York. His love of the profession and passion for his work is the reason Megan pursued a career in law. Four years after his death, his law degree hangs in Megan's office in Providence to remind her that she can be a happy lawyer, a great parent and good person all at the same time.



**Thomas Hayes**  
Hayes, Harkey, Smith and Cascio, LLP  
Monroe, Louisiana

Thomas (Tommy) Hayes is with the firm of Hayes, Harkey, Smith, and Cascio, in Monroe, Louisiana. Tommy obtained his law degree from Louisiana State University, the Paul M. Hebert Law Center, in 2003. Tommy's wife, Meredith, is also an attorney, and she practices at Deutsch, Kerrigan, and Stiles, in New Orleans. Tommy and Meredith have two children, Thomas Moore Hayes V, age 3; and Charles Moore Hayes, age 1. Tommy practices in the areas of Insurance Defense, Insurance Coverage, Motor Vehicle/Trucking Litigation, Premises Liability, Commercial Litigation, and General Civil Litigation. Tommy has an A/V rating with Martindale Hubbell, is a member of the Louisiana Attorney Disciplinary Board, and a Past President of the Young Lawyers Section of the 4th Judicial District Bar Association. In his free time, Tommy enjoys tennis, golf, hunting, fishing and activities with his family.



**James D. Kreyenbuhl**  
Brennan, Harris & Rominger, LLP  
Savannah, Georgia

James D. Kreyenbuhl practices with the firm of Brennan, Harris & Rominger, LLP in Savannah, Georgia. Jamie attended Georgia State University College of Law and obtained his law degree in 1997. His wife, Tisha, is an elementary school teacher. Jamie and

Tisha have two children: Zoe, 11 and Zan, 9. Jamie concentrates his practice in the areas of general litigation, insurance law, state workers' compensation, federal longshore and harbor workers' compensation as well as school law. Jamie has been a member in good standing of the State Bar of Georgia since 1997, and is admitted to practice before the Supreme Court of the State of Georgia, the Court of Appeals of the State of Georgia, and all other courts of the State of Georgia. Jamie is also admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Eleventh Circuit, and the United States District Court for the Southern District of Georgia. Jamie is a member of the Savannah Bar Association, the American Bar Association, as well as the Georgia School Boards Association Council of School Board Attorneys. Jamie is also the current President of the Rotary Club of Effingham Sunrise. In his free time, Jamie enjoys playing golf and spending time with his family.



**Robert B. McMonagle**

Lane & Waterman, LLP  
Davenport, Iowa

Robert B. McMonagle is with the firm of Lane & Waterman, LLP in Davenport, Iowa. Robert obtained his law degree from Notre Dame Law School in 1994. His wife, Denise, is a physician. Robert and Denise have two children, Patrick, age 12 and Grace, age 8. Robert concentrates his practice in the defense of civil claims. Robert is a Past President of the Quad City Claims Association, 2002-2003. Robert enjoys travel and photography in his free time.



**Ivan A. Sarkissian**

McConaughy & Sarkissian, P.C.  
Englewood, Colorado

Ivan A. Sarkissian practices with McConaughy & Sarkissian, P.C. in Englewood, Colorado. Ivan graduated from Tulane University School of Law in 1997, cum laude. John's wife, Kama, is a lawyer also, but currently is a stay-at-home mom with three very active children: Max, 8, Lucy, 6 and Sam, 4. Ivan concentrates his practice in the areas of construction law, products liability, and commercial litigation. Ivan was named a Colorado Super Lawyers Rising Star in 2009 and 2010. Ivan is a member of the Colorado Defense Lawyers Association and an annual speaker at sponsored seminars on construction defect matters. He is a member of DRI, and a board member of the St. Thomas Moore School. In his free time, Ivan enjoys golf, hockey and skiing, and is a hockey coach for the Littleton Youth League.



**Stacy F. Thompson**

Clendening Johnson & Bohrer, P.C.  
Bloomington, Indiana

Stacy Thompson practices with the firm of Clendening Johnson & Bohrer, in Bloomington, Indiana. Stacy obtained her law degree in 2002 from Indiana University Maurer School of Law, Bloomington, Indiana. Stacy's husband, Tyler, is a teacher. Stacy and

Tyler have two children, Luke, age 6 and Liv, age 3. Stacy concentrates her practice in the areas of Civil Litigation, Employment Law, Health Law, Insurance Defense, Medical Malpractice Defense, and Representation of Physicians, Physicians' Groups and Health Care Facilities. Stacy has been awarded the 2010 Defense Trial Counsel of Indiana Young Lawyer of the Year, and was named an Indiana Super Lawyers Rising Star, in both 2010 and 2011. Stacy is active in the Defense Trial Counsel of Indiana, and acts as Chair of the Health Law Section, in both 2010 and 2011, as well as the Indiana State Bar Association, District 7 Council Member. Stacy enjoys spending time with family and friends, as well as running.



**Sheila S. Trexler**

Neil Dymott Frank McFall & Trexler  
San Diego, California

Sheila S. Trexler practices with the firm of Neil Dymott Frank McFall & Trexler in the San Diego, Indian Wells and Temecula offices. Sheila obtained her J.D. from California Western School of Law in 1985. Sheila's husband, Dan Rowe, is retired. Sheila focuses her practice in the area of medical malpractice defense. Sheila has been named Top 50 Women Litigators in California – 2007 through the present, by the Los Angeles Daily Journal, is a Super Lawyer for Southern California – 2007 through the present, by the publishers of Law and Politics Magazine, a San Diego Defense Lawyer of the Year – 2009 by San Diego Defense Lawyers, a Best Lawyers of America – 2008 through the present and was honored with the title of San Diego Professional Malpractice Lawyer of the Year – 2011 by Best Lawyers in America. Sheila is a Board Member for the San Diego Chapter of ABOTA, teaches medical malpractice litigation at California Western School of Law as an adjunct professor, and is a former law clerk to the Honorable E. M. Gunderson of the Nevada Supreme Court (1985-1986). Sheila, a former registered nurse, loves to golf in her free time.



**Kenneth F. Werts**

Craig & Craig  
Mt. Vernon, Illinois

Kenneth F. Werts practices with Craig & Craig in Mount Vernon, Illinois. Ken obtained his Juris Doctor in 1984 from Southern Illinois University. Ken and his wife, Lisa, have two children, Elizabeth (Lizzie), age 22 and Thomas (Tommy), age 20. Ken is a member of the Jefferson County Bar Association, Illinois State Bar (Chairman Workers' Compensation Law Section Council 1997-1998 and 2008-2009) and American Bar (Member Workers' Compensation and Employers' Liability Law Committee 2001-present) Associations; Illinois Association of Defense Trial Counsel (Member Board of Directors, 2001-2006; Chair Employment Law Committee, 2001-2003; Chair Workers' Compensation Committee 2003-2005; President 2010-2011); Defense Research Institute (Member Workers' Compensation Committee 2007-present); Illinois Chamber Employment Law Council; and National Association of Railroad Trial Counsel. Ken is a past member of the Board of Directors of Big Brothers Big Sisters of Coles/Cumberland County, a past member of the Board of Directors and President of Angels on Assignment, a mission of the First United Methodist Church of Mt. Vernon, a past member of the Board of Directors and Secretary for Habitat for Humanity of Jefferson County, a past President of Kaskaskia District United Methodist Men, and a current member of the Board of Directors of Comprehensive Services of Jefferson County. Ken concentrates his practice in the areas of Workers' Compensation Law, Black Lung and Occupational Disease Law, and personal injury litigation. In his free time, Ken reads, fishes, attends open wheel racing events, and volunteers with several church and community groups.

## NATIONAL ISSUES REPORT

THOMAS J. HURNEY, JR. - WV

### Preemption

Preemption continues to be a hot topic in the United States Supreme Court with two decisions out and a third on the way.

In *Bruesewitz v. Wyeth, LLC*, No. 09–152 (Sup. Ct. Feb. 22, 2011), the Court held that the National Childhood Vaccine Injury Act (“NCVIA”) preempts common law design defect claims against vaccine manufacturers. Examining the statutory language, which states “[N]o vaccine manufacturer shall be liable in a civil action for damages...if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings....,” the Court found express preemption because Congress made a “sensible choice to leave...judgments about vaccine design to the FDA and the National Vaccine Program rather than juries.”

In *Williamson v. Mazda Motor of America, Inc.*, No. 08–1314 (Sup. Ct. Feb. 23, 2011), however, the Court held a Federal Motor Vehicle Safety standard allowing manufacturers to choose between installing lap and shoulder or lap seat belts in rear seats of vehicles did *not* expressly or impliedly preempt common law claims.

*Williamson* was a wrongful death action in which plaintiff’s decedent was killed in a vehicular accident while sitting in the middle rear seat, wearing a lap belt. The plaintiffs sued Mazda arguing it was negligent for failing to install lap and shoulder belts; Mazda argued for preemption based on the regulations and *Geier v. American Honda*.

The applicable regulation, according to the Court, stated manufacturers “must install lap and shoulder belts on seats next to a vehicle’s doors or frames. But they have a choice about what to install on rear inner seats (say, middle seats or those next to a minivan’s aisle). There they can install either (1) simple lap belts or (2) lap and shoulder belts.”

*Mazda* relied heavily upon *Geier v. American Honda*, 529 U.S. 861 (2000), where the Court found a regulation allowing a choice between passive restraints, preempted common law claims for not installing air bags. As explained in *Williamson*, “[b]y requiring manufacturers to install airbags (in order to avoid tort liability) the tort suit would have deprived the manufacturers of the choice among passive restraint systems that the federal regulation gave them....,” and therefore “the state law stood as an ... obstacle ... to the accomplishment ... of a significant federal regulatory objective, namely, the maintenance of manufacturer choice.”

*Williamson* distinguished *Geier*. Examining the regulation at issue in *Geier*, the Court stated the Department of Transportation “deliberately sought variety—a mix of several different passive restraint systems....DOT hoped that this mix would lead to better information about the devices’ comparative effectiveness and to the eventual development of “alternative, cheaper, and safer passive restraint systems.” Thus, “this history, the agency’s contemporaneous explanation, and the Government’s

current understanding of the regulation convinced us that manufacturer choice was an important regulatory objective. And since the tort suit stood as an obstacle to the accomplishment of that objective, we found the tort suit preempted.”

Turning to the regulation in *Geier*, the Court found that unlike the regulation at issue in *Williamson* which allowed choice in an effort to develop better restraints, it allowed choice due to concerns over cost. Second, the Solicitor General argued for preemption in *Geier*, stating that state actions insisting upon airbags would stand as an obstacle to the objectives of the DOT regulations, and against preemption in *Williamson*. Where the Court stated there is “no reason to suspect that the Solicitor General’s representation of DOT’s views reflects anything other than ‘the agency’s fair and considered judgment on the matter.’”

Preemption devotees should carefully read these cases. They demonstrate, a la *Levine v. Wyeth*, 555 U.S. 555 (2009), and *Riegel v. Medtronic*, 552 U.S. 312 (2008), that the Court will carefully parse statutory and regulatory history, and defer to some extent upon the representations of the agency as voiced by the Solicitor General. Eagerly awaited is the decision in *Pliva v. Mensing*, argued March 31, 2010,<sup>1</sup> which addresses whether FDA labeling regulations preempt suits over failure to warn against generic drug manufacturers. Recall that the Court held there was no such preemption for “pioneer” or “name brand” manufacturers in *Levine v. Wyeth*. *Pliva* will thus be another chapter in the preemption saga.

### FASB Disclosure Requirements

We reported last issue on the Financial Accounting Standards Board’s release of a Proposed Accounting Standards Update related to the disclosure of certain loss contingencies which was of concern because of the extensive disclosure requirements which would force counsel to disclose privileged information about pending litigation to auditors. Faced with stiff opposition, an amended draft was released July 20, 2010, with comments due August 20, 2010.<sup>2</sup>

Here’s an update. The FASB received comments from 347 entities,<sup>3</sup> urging that the amended standard be discarded because the elevated reporting requirements will intrude upon the attorney client privilege and work product doctrines and essentially provide legal strategy to opponents in litigation.<sup>4</sup>

The Standards were scheduled to go into effect on December 15, 2010. After an extended comment period, the FASB Board met on October 27, 2010, and announced “a final standard will not be effective for the 2010 calendar year-end reporting period.” The Board “will decide on an effective date at a future meeting, after it has substantially concluded its redeliberations.”<sup>5</sup> The FASB Board met again on November 10, 2010, and announced on the website:

The staff summarized for the Board comments received on the July 2010 Exposure Draft, *Contingencies (Topic 450): Disclosure of Certain Loss Contingencies*, and the major issues to be redeliberated. The Board did not reach any decisions at this meeting. The Board directed the staff to work with the staffs of

the SEC and PCAOB to understand their efforts in addressing investor concerns about the disclosure of certain loss contingency through increased focus on compliance with existing rules. The Board also directed the staff to review filings for the 2010 calendar year-end reporting cycle to determine if those efforts have resulted in improved disclosures about loss contingencies. The Board will begin redeliberations at a future meeting, currently expected in the second half of 2011.

Interestingly, the Harvard Law School blog on Corporate Governance and Regulation reporting on April 5, 2011, reported that the SEC is raising issues with corporations over whether filings are in compliance as related to the disclosure of contingencies.<sup>6</sup>

### Dodging a Red Flag

In case you missed it, the long simmering controversy over The Federal Trade Commission's extension to lawyers of its "Red Flag" regulations, issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("FACTA") passed in 2003, is over.<sup>7</sup> The enactment of Red Flag Program Clarification Act of 2010 signed by President Obama on December 18, 2010, establishes that FACTA and the Red Flag regulations do not apply to lawyers.

Some background: Pursuant to FACTA, the FTC issued regulations in November 2007 to "require each financial institution or creditor to develop and implement a written Identity Theft Prevention Program (Program) to detect, prevent, and mitigate identity theft in connection with the opening of certain accounts or certain existing accounts." Lawyers were surprised to learn from a footnote in an April 30, 2009 FTC announcement<sup>8</sup> that if you bill your clients, you may be a creditor under the regulations: "creditors under the ECOA include professionals, *such as lawyers or health care providers*, who bill their clients after services are rendered."

The ABA sued the FTC for exceeding its statutory authority.<sup>9</sup> The District Court ruled for the ABA<sup>10</sup>, and the FTC appealed to the Fourth Circuit. Meanwhile, Congress passed the Red Flag Program Clarification Act of 2010 which changed the definition of creditor and "made it clear that a creditor's allowance of deferred payments alone could not trigger the identity theft protection requirements." Thus, in *ABA v. FTC*, Slip Op. 10-5057 (4<sup>th</sup> Cir. March 4, 2011), the Fourth Circuit vacated the decision as moot, finding the Act clearly intended to exclude lawyers from the definition of creditors.

<sup>1</sup> [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/09-993.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/09-993.pdf).

<sup>2</sup> <http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175821001041&blobheader=application/pdf>.

<sup>3</sup> The diverse groups that responded included corporations, law and accounting firms, Lawyers for Civil Justice, a coalition of the defense organizations, the Association of Corporate Counsel and the ABA. <http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175821343739&blobheader=application%2Fpdf>.

<sup>4</sup> See, Tammy Whitehouse, "FASB, Lawyers Face Off on Contingency Disclosures," Compliance Week, Aug. 19, 2010, available online at <http://www.compliance-week.com/fasb-lawyers-face-off-on-contingency-disclosures/article/189585/>.

<sup>5</sup> [http://www.fasb.org/cs/ContentServer?site=FASB&c=FASBContent\\_C&page name=FASB%2FFASBContent\\_C%2FActionAlertPage&cid=1176157832170](http://www.fasb.org/cs/ContentServer?site=FASB&c=FASBContent_C&page name=FASB%2FFASBContent_C%2FActionAlertPage&cid=1176157832170).

<sup>6</sup> <http://blogs.law.harvard.edu/corpgov/2011/04/05/the-sec-push-for-enhanced-disclosure-of-litigation-contingencies/#more-16410>.

<sup>7</sup> Here are the regs, <http://www.ftc.gov/os/fedreg/2007/november/071109red-flags.pdf>, and here is the FTC Website on the Red Flag Rules. <http://www.ftc.gov/bcp/edu/microsites/redflagrule/index.shtml>.

<sup>8</sup> <http://www.ftc.gov/os/2009/04/P095406redflagsexteneddenforcement.pdf>.

<sup>9</sup> Complaint at P. 2. [http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/1\\_1\\_Complaint.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/media/nosearch/1_1_Complaint.authcheckdam.pdf).

<sup>10</sup> See also Lindsay M. Sestle, *FTC Barred from Applying Red Flag Rules to Lawyers*, ABA Litigation News (Nov. 9, 2009) available online [http://apps.americanbar.org/litigation/litigationnews/top\\_stories/FTC-red-flags-creditor-lawyer.html](http://apps.americanbar.org/litigation/litigationnews/top_stories/FTC-red-flags-creditor-lawyer.html).

## A WORD FROM LOU

LOUIS M. SCOFIELD, JR. - TX

*This article was written and submitted a full month before Congressman Weiner's revelations... It confirms of course, the wisdom of the author.*

I just got an e-mail advertisement that said: "Feeling depressed lately? You are not alone. Reply to us at \*\*\*.org" then it refers a person to some place that helps lawyers with this problem. It is well-meaning. But I read it as: "Feeling depressed lately? Welcome to the club! Just e-mail us and you'll drop into our data bank, at which time we will go 'all Julian Assange and everything' and publish your name and/or problems TO THE WHOLE WORLD...especially if your problem is sexy, or you have an unusual name, or you have an important job, or you make news later for some other reason...say like after an accident, or winning an award, or getting elected to an important office." If this happens, how can you complain? You brought it on yourself.

The advent of e-mails, and now Twitter and Facebook present problems for us which are important to consider. We all know to never write (or e-mail) anything that we don't want to see in court with an exhibit sticker on it, [Love letters are great, but sound silly in court]. But for some reason people are determined to be stupid in the use of Twitter and Facebook. Why would anyone want another human being to have so much power over them as is recklessly gifted to "friends" and strangers, in perpetuity, on these social web sites? I want to ask these web users what my Mom and Dad used to ask me (more often than I care to remember) "What were you thinking?" Usually I wasn't. I was just being human.

So what is it about us humans that inspires us to reach out in this way? And don't tell me it is not in our very nature. We are doing it in an almost interstellar way. This very day we are sending signals into outer space attempting to make contact with other beings. Talk about talking to "strangers!" And how stunningly stupid is that? Any beings capable of responding to our "tweets" into space could also be capable of interstellar travel and will have no trouble destroying all of us in a week. They would be so far in advance of us in technology, communications, and culture that we will be goners for sure.

I'm reminded of the story of the boy who finds an injured bird on a very cold winter day. But, having his hands full, he could not immediately carry it home. So he placed the bird in a warm fresh pile of cow manure, with the plan that he would go home, put down his load, and return. Meantime the bird, feeling warmer and better, began to sing. A fox heard him, and came and ate him. The "moral" of the story is: If you are up to you neck in it, keep your mouth shut.

Sound advice for humanity. What makes us think that “aliens” from another place in space, massively ahead of us, will be benevolent and not simply come, kill us all, and take our pleasant planet for their own? Why are we “singing” out to them? Because, you say, we humans are so decent ourselves that they will be kind to us? Are you kidding? Look what happens when cultures clash on our own planet. Ask the natives in both North and South America how it worked out for them when Europeans discovered them. And their culture, communications, and technology were only slightly less advanced than the Europeans, compared to the degree of advancement the “interstellar aliens” will have over us. To me it is simple. We are very unwise to be sending signals to the stars, and only slightly less so to be posting our lives on the internet “social” sites.

Look at it another way. The folks who invent, run and are proficient with this computerized world, have a lot more time, motivation, and knowledge than you on how to maximize, for their benefit, use of your information. In a very real sense, they are your technological superiors, and, believe me, they know they are. They also know it would take you significant dedicated time and effort to try to use existing laws to stop them from doing whatever they want with your personal data, and that you likely won’t ever try to stop them...even if you had a right to claim your privacy, which you probably don’t. So once the information on you is out there, that’s it. \*\*\* Simile: Like a tattoo that seemed like a good idea at the time, you are stuck with it. Only with a lot of money and pain can you clean it off, and even then it always leaves a scar.

So why is it in our nature to expose our personal information in the face of cautions against it? I’ll tell you why. But because I’m too lazy to actually research the phenomenon in learned writings from respected psychologists, I’ll just tell you what I think: Like the children we are, we want attention, we want to feel important, and we want to be accepted as part of a group. Most of the time posting our personal information doesn’t immediately backfire, so we take the chance.

Anyway, that’s what I think explains it.

Even so, our children’s life expectancies will be 100. That is a long time for a data bank to be working you over. So my advice is not to give the social “webworld” the data to start with.

As lawyers we need to be routinely advising our clients to avoid the social “webworld” unless they have a person hired and dedicated to maintain it; keep the cranks out of it; and continually purge the baseless critical attacks and libel. This full time monitor will have to be vigilant. Was it Mark Twain who observed that a lie races half way around the world before the truth can pull on its boots? Better to just stay out of the social “webworld.”

And as lawyers we need to take advantage of the foolishness of others, by researching on the web the other party, witnesses, and potential jurors. As most of you already know, there is a wealth of information now out there.

Finally, as parents we need to urge our kids to stay out of “webworld” and to socialize the old fashioned way. If they resist, you can tell them the story of the bird. Then spend the next twenty minutes trying to explain to them how it applies to the point.

## IF IT LOOKS TOO GOOD TO BE TRUE...

MORTIMER SNERD

Edgar Bergen knew that I was not the brightest bulb in the pack and now even I have to wonder about the watts I put out. I have practiced law since e-mail began. I started after graduating from the law school where I went by M. Snerd. Over time, I have read lots of e-mails that gave me the opportunity to represent parties such as wives, only to learn later that their husbands buried them in economic dirt, and businesses, only to learn later that they were on the brink of bankruptcy. I have always summarily hit the delete button as to all of those Plaintiff’s cases. After all, I am an insurance defense lawyer.

And then I got an e-mail allegedly from Aigin Lease Company, Ltd. in Nishiki, Japan. It seems they rented heavy construction equipment to a company in my jurisdiction. Upon inquiry to the sender, I received an equipment lease, a personal guaranty for the lease and an invoice that had gone unpaid. The amount in controversy was \$780,525.00 plus interest. It was agreed I would be paid a 10% contingent fee for everything collected without suit and 1/3 of anything collected after suit was filed.

The “client” had indicated that just a letter from me would have the desired effect. And so it was. I sent one e-mail letter and in response immediately received a reply e-mail to the effect that the debtor was having a Board meeting and would be back in touch. It was requested that I “stay any action for now.” While awaiting some further word from the debtor, I determined that the debtor no longer was a tenant at the address I had been given and that its corporate charter had been forfeited. It was beginning to look like the typical subrogation case that insurers seem to generate.

I wrote to the client seeking copies of the application filed by the debtor to arrange the financing for the lease, the location of their equipment and copies of any correspondence relating to the client’s attempt to collect the debt. For some reason, I never received any of the requested items.

The next e-mail I got from the debtor was a request that they be given time to make the payments. They requested an agreement to accept payment in full in four installments over eight weeks. I thought my client would probably go along with that and indeed my client did. Then, as a show of good faith, the debtor promised to send me certified funds payable to my firm in the amount of “USD\$296,786”. This was getting better and better. When I informed the client of the effectiveness of my threatening letter writing, they were ecstatic—what with the economy being what it was and all. Since the idea of getting a fee of \$29,678.60 for writing one letter seemed a bit unlikely, my wife and I agreed we would not spend it until we got it. That turned out to be a good idea.

I then got into the mechanics for the transfer of funds. Would it be handled by wire I wondered, being the banking sophisticated that I am? I thought I had better get my client’s federal tax ID number and what would I do if that Japanese company did not have such a number? My client advised me they did not have a tax ID number.

I forgot about that issue. My client approved the payout over two months, and I wrote an e-mail to the debtor confirming our arrangements to include a date certain for the first payment. At that point, I told the managing partner about my good fortune. He suggested I discuss this prospective large deposit with our bank. I did so.

The lady at the bank said to forget about the wire transfer information as it would give the client and the debtor too much information about the firm. She also said she would notify their fraud unit to follow up if such a check arrived. I then began to worry. What if a check arrived in the full amount? Would I be a party to money laundering? What was I supposed to do?

The first thing I did was call the Internal Revenue Service, ever sensitive to my client's confidentiality. The person on the other end of the line told me to fill out a form whatever and send it to someplace just on either side of the Rocky Mountains. I tried to tell the lady that what I had going on was here and now and that procedure would not do it. As the IRS had no further suggestions, I then called the FBI. I spoke to a person in charge of such things. In a bored and totally unexcited voice, she told me that the whole thing is a scam. That conversation lasted less than a minute. But what if the check came and it was real?

On the appointed day, the Canadian equivalent of Federal Express delivered a cashier's check in the amount of \$296,786 drawn on a New Jersey bank. The New Jersey part was worrisome. I have watched enough TV to know what goes on there. My money laundering fears returned. With trepidation I delivered the check to our bank. Of course, the check was no good.

Out of curiosity, I tried without luck to follow up on the name and telephone number on the delivery papers that brought the check. I then wrote the client to advise them of this really sad turn of events and what did they want me to do next? I never heard from them again. I did, however, receive a call in seven days from the debtor wanting to know if the check had cleared. I told them that I did not know who they were and I was not authorized to discuss my client's confidential information over the phone with strangers. They did not call back.

The final chapter on this story occurred when, six weeks later, I received a personal e-mail addressed to me from yet another Japanese company that had the same misfortune as the first—leased equipment and big unpaid amounts. In fact, the second letter used almost exactly the same language as the first letter that started this whole tale. I thought about replying to this second letter but remembered the check came from New Jersey and decided not to get involved.

So why did these people go to all this trouble of generating false contract documents and false letterheads and false cashier checks? There has to be a crime in there somewhere. Well, our bank manager told me that if I had deposited the check through a teller, and if the teller told me that the check would clear by such and such a date, and if, after that date, I wrote a firm check against those funds, our firm would be expected to make that check good even if the phony check did not bounce until after I had written the check. Edgar will tell you that I am not too smart—but I am not that dumb either. Regards. M.S.

## ABOUT OUR MEMBERS



### **MARKS GRAY, P.A. ATTORNEY INDUCTED INTO THE AMERICAN BOARD OF TRIAL ADVOCATES**

**JACKSONVILLE, FL**- William M. Corley, an attorney at Marks Gray, P.A., has been inducted into the Jacksonville Chapter of the American Board of Trial Advocates.

Founded in the late 1950's, the American Board of Trial Advocates (ABOTA), is a national organization of trial lawyers in all 50 states with membership equally balanced between personal injury plaintiffs' attorneys and defense attorneys. The primary purpose of ABOTA is to preserve the right of trial by jury as guaranteed by the 7th Amendment to the United States Constitution.

Mr. Corley joins Marks Gray attorneys Gerald Weedon, Jephtha Barbour and Mary Bland Love as members of ABOTA, in addition to Victor Halbach and Frank Perritt as retired Marks Gray member attorneys of ABOTA.

Mr. Corley joined Marks Gray in 1982, focusing his practice on the areas of civil litigation specializing in the areas of drugs and medical devices, mass torts, products liability, and motor vehicles. Mr. Corley graduated from Western Maryland College with a Bachelor's degree and received his Juris Doctor with honors from Stetson University. Mr. Corley served in the U.S. Army, Field Artillery, as Captain from 1974 to 1979 (Airborne Ranger) and also served in the U.S. Army Reserve, Military Intelligence from 1982 to 1999 as Lt. Colonel. In addition to his membership in ABOTA, Mr. Corley is a member of the Product Liability Advisory Counsel, the Defense Research Institute, the Florida Bar Association, the Jacksonville Bar Association and the Florida Defense Lawyers Association.

Marks Gray, P.A., a North Florida law firm since 1899, is a multi-service law firm with offices in Jacksonville and Ponte Vedra Beach. The firm has a long history of serving their client's diverse business needs, in addition to their long-standing civil litigation practice. Marks Gray represents national and international clients in all types of litigation and is well-known as a premier trial law firm.

To learn more about Marks Gray and William Corley, please visit [www.marksgray.com](http://www.marksgray.com) or contact William Corley directly at [wmc@marksgray.com](mailto:wmc@marksgray.com).

## CORRECTION REGARDING MILES DEWHIRST

Please note that at our recent annual meeting, there was an error in the Power-Point presentation. Miles Dewhirst was listed as Miles Cantrell under his photograph. Our apologies to Miles, whose picture accompanies this correction.



of Texas' largest businesses – cattle ranching. One cattle owner sued a corporate ranch and its president, alleging conversion of 13 cattle. The evidence indicated the president was made aware that some of the cattle belonged to others, but he sold them anyway and collected \$5,327.11. The jury found malice and awarded \$1.25 million in punitive damages – \$250,000 against the president and \$1 million against the ranching corporation.

The Texas Supreme Court reviewed the five factors that are needed to assess a punitive damages award – did the conduct cause physical harm, did it endanger the health or safety of others, did it involve repeated actions, did it threaten financial ruin, and was it the result of intentional malice rather than accident – and held that the \$1.25 million award was excessive. The Court noted that “Texans know better than to steal cattle, an offense once redressed beneath a tree rather than inside a courtroom,” but said the high ratios in the award “exceed the outmost limits permitted by due process.” Barbara reports that, in Texas, a 4-1 punitive to compensatory damages ratio is the outer limits of what the Texas Supreme Court will permit and in this case only one of the five factors, malice, was present.

Barbara has been practicing since 1983 and currently maintains offices in both Beaumont and Houston. She is admitted in Texas, California, Mississippi, Arkansas, and Oklahoma. She joined the ADTA several years ago and has been active in the Federation of Defense and Corporate Counsel and the Texas Inns of Court program. Barbara has children in college and high school and has held leadership positions in a number of non-profit organizations, including the Symphony League, the Monsignor Kelly High School, and the Southeast Texas Family Resource Center.



*Steve Pennell with his  
President's Award*

## WHAT'S NEW IN MY STATE

ROBERT N. WEBNER - OH



**Barbara Jane Barron**  
Beaumont, Texas

Hurricane Ike has helped keep Barbara Barron of the Mehaffy Weber firm in Beaumont, Texas busy. Barbara currently is defending more than 300 cases related to that devastating natural disaster – which sounds like a lot, but pales in comparison to the thousands of asbestos cases that

she handles as national counsel for certain insureds as well as the other commercial and toxic tort cases that come her way.

In her hurricane cases, Barbara defends independent adjusting companies that were hired by insurers. Each case presents unique issues raised by the interplay of different insurance policies, disputes about the cause and apportionment of damage (such as whether the particular injury caused by wind, flooding, or something else) and other issues. Plaintiffs' counsel often have expertise and sophisticated knowledge of the area, and the stakes are high because the bad faith claims and Insurance Code violations that typically are alleged may allow recovery of interest, attorneys' fees, and penalties.

Barbara reports that the Texas Supreme Court recently addressed punitive damages issues in a case that arose from one



**Barbara Burke**  
Minneapolis, Minnesota

The ADTA and Barb Burke of Minneapolis, Minnesota, go back a long way. Her grandfather, Roy Mordaunt, was one of the founders of ADTA, and he and Barb's father, John Mordaunt, both served as presidents of the organization. (You can read about their role in the ADTA, and see

their pictures, by clicking on the “Association History” tab on the home page of the ADTA website.) Barb herself has been an ADTA member for more than 20 years.

Since 1978, Barb has practiced law at Cousineau McGuire, a firm founded by her grandfather and father. She maintains a general litigation practice that currently focuses on defense of employment law claims as well as legal and medical malpractice cases.

Barb reports that in Minnesota, as in other states, funding for courts has become a huge issue. State funding for the judicial system has been cut on several occasions, and according to the Minnesota Supreme Court those past budget cuts have left the state's court system understaffed by 20 judges and 270 administrative employees. In Hennepin County, which encompasses Minneapolis and surrounding communities, judges facing both

civil and criminal dockets have had to set aside fewer weeks on their calendars to hear civil cases. The result is that civil cases proceed on a slower track and it takes even longer to get an action to trial.

Barb also serves as an “attorney coach” in the Minnesota State Bar Association Mock Trial Program. Under the program, every year high school teams are given a common “case” to be tried. Each team then prepares and presents the case against an opposing team at three mock trials, and the teams that receive the best marks proceed in state, and ultimately national, competition. In 2007, Barb agreed to serve as coach for Holy Family Catholic High School, which was new to the mock trial program, and in the face of competition from schools with much more established programs she has coached the Holy Family team past the first round on more than one occasion.

Since their first ADTA meeting at the Breakers in Palm Beach in the 1980s, Barb and her husband, Tom, have attended a number of ADTA meetings. She has made a number of good friends in the organization, and she reports that her fellow ADTA members also have been a productive source of referrals for her and for her firm.



**Scott Blinks**  
Chehalis, Washington

Scott Blinks, of Vander Stoep, Remund, Blinks & Jones in Chehalis, Washington, has developed a busy practice that focuses in large part on tires. He deals with just about every aspect of the tire business,

from defending tire manufacturers against products liability claims to defending tire distribution and warehouse companies against breach of contract claims. The cases raise some interesting issues – such as one recent matter where the plaintiff alleged a tire defect based on a claim that a foreign substance was found in the tire, and testing that occurred during the trial determined that the foreign substance was in reality the liquidified remains of an unfortunate bug that had been pulverized on the highway after the tire had failed.

Scott reports that businesses that deal with tires often are self-insured, and the poor economy has affected how those entities handle cases. Many of the businesses now try to handle cases they consider “routine” – such as those involving consumer claims and auto accidents – through in-house counsel, with only more complex cases being sent to outside firms. As a result, Scott is seeing more cases that come to him after in-house counsel have initially handled the case and then encountered issues.

In all cases given to outside counsel, adjusters and business people are much more involved in monitoring and supervising work and are seeking increased access to case records and status reports through on-line systems, as well as far more detailed, and more frequently updated, litigation plans and budgets. In addition, Scott believes that clients are more likely to look to their lawyers for early guidance and assistance in crisis communications and for help in planning strategies and developing processes to keep the public informed about significant issues.

The economy also has dramatically affected the operation of state courts. In Washington, court funding is provided by both state and county governments. County revenues are largely based on real estate taxes, and the real estate market in Washington has been hard-hit by the recession. As a result, many judicial vacancies have gone unfilled due to lack of funding, and clerk’s offices are short-staffed and operate on a drastically curtailed basis. In one court, the clerk’s office is closed on Mondays and Fridays, and when it is open only one intake window is available – resulting, at times, in three-hour waits in line before the window is reached, even when the window is reached only one task is permitted to be undertaken per customer.

Scott has been an active member of the ADTA for more than 15 years and has served as state chair and as a member of the Mandatory CLE Compliance Committee. He and his wife, Therese, and their daughter, Reese, are regular attendees at the annual meetings, and Scott reports that he has developed some great friendships with fellow members – to say nothing of receiving a number of referrals. Scott also is a member of DRI, the Washington Association of Defense Attorneys, and the National Association of Elder Law Attorneys.

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## RUMORS, GOSSIP AND INNUENDO ABOUT OUR MEMBERS

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We can thank Buzzy Riis for introducing many of the Maui attendees to the Hula Pie at Leilani’s restaurant. Hula Pie is made with a chocolate cookie crust piled high with macadamia nut ice cream and topped with fudge and whipped cream. It is rumored that someone ate three slices in one sitting.

Doug and Ann Johnson and Steve and Jennifer Schlitz took in a couple of extra rounds of golf prior to the conference on two beautiful courses. Nothing quite topped Anne’s closest to the pin win during the golf tournament. They barely “survived the Road to Hana.” The picturesque drive included lush vegetation, waterfalls and plenty of ocean views. Roaming cats, chickens and shaved ice balanced out the trip. Survival was being able to endure the 600 hairpin turns in a large SUV.

Denise Anderson found time away from the ADTA activities to tie the knot with Scott McGevna. Congratulations to Denise and Scott!

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## AND THE NOMINEES ARE...

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EDWARD L. BIRK - FL

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Jet lag has passed and what remains from our fabulous annual meeting in Maui are the happy memories, including the presentation of our We Prefer to Refer Award for 2011. We also have good news about new members of the Marketing Committee.

### We Prefer to Refer:

This year, our second year of the award, produced a record number of nominees—eleven, up from last year’s list of five. The

Marketing Committee, per the rules, winnowed that list of eleven to five candidates and the Council of Past Presidents debated, considered, evaluated, and finally made its selection.

The complete list of nominees is:

F. Daniel Balmert of Cleveland, Ohio.  
 Dan Flatten of Houston, Texas.  
 Robert W. Harrison of San Diego, California.  
 Mike Hodgins of Augusta, Maine.  
 James Jennings of Roanoke, Virginia.  
 Kevin Kelly of New York, New York.  
 Doug McIntosh of Fort Lauderdale, Florida.  
 Fred Raschke of Houston, Texas.  
 William R. Sampson of Kansas City, Missouri.  
 Robert Tait of Columbus, Ohio.  
 Marc Williams of Huntington, West Virginia.

The envelope please . . . and the winner is Doug McIntosh of Fort Lauderdale, Florida.

Jerry Weedon of Jacksonville, Florida nominated Doug this year, as well as last year. Among the referrals Doug made to Jerry is an insurance company which needed counsel to represent a sub-contractor in a major loss involving the collapse of a six-story parking garage in Jacksonville, which led to the excess carrier retaining Jerry for the defense of the subcontractor in seventeen separate personal injury claims.

Many thanks to Doug and all of the nominees for your referrals.

The marketing mission of the ADTA is to capitalize on the referral potential embodied in our broad base network of top notch trial attorneys who are the ADTA. Literally, we have the marketing reach of an international law firm. We can put that long reach to work for everyone's benefit by thinking first of other ADTA members when a client calls to ask for a referral in another city.

The marketing committee has already received a new nomination for the 2012 We Prefer to Refer Award. Keep those nominations flowing by referring clients to your fellow ADTA members.

#### **New Marketing Committee Members:**

Our new ADTA members and first-time attendees made a very strong showing at the annual meeting in Maui. New Member Chair Steve Pennell reports there were twenty new members or first-time attendees who made the trip. I am proud to announce that of that group, we are adding four new members to the Marketing Committee. Each one of them brings energy and enthusiasm to the ADTA and its marketing mission.

They are:

Lori Berke of Phoenix, Arizona.  
 Jim Craig of Cedar Rapids, Iowa.  
 Miles Dewhirst of Colorado Springs, Colorado.  
 Jamie Hood of Charleston, South Carolina.

They have already felt the ADTA experience and caught the referral bug. Lori best described this after the Maui meeting, her second, when she said: "In the short span of two years, we already feel like we've made many lifelong friends. I hope the future brings the opportunity to refer business to each and every one of them."

Here is a brief biography of your new Marketing Committee members.

#### **Lori:**

Lori has her own firm—Berke Law Firm PLLC.<sup>1</sup> Her practice focuses on governmental and public entity liability, commercial litigation, torts and professional liability. She and husband Jeff Dick were in Maui for their second ADTA annual meeting. She earned her bachelor's degree in finance at the University of Minnesota in 1990 and J.D. at William Mitchell College of Law in 1993.

#### **Jim:**

Jim practices with the firm of Lederer Weston Craig, LLC. He and wife Debbie were in Maui for their first meeting. His practice focuses on tort defense, municipal law, and professional liability. He earned his bachelor's, master's, and J.D. degrees from the University of Iowa and was admitted to the Iowa bar in 1983.

#### **Miles:**

Miles earned his bachelor's degree at the University of Nebraska (business and marketing!) in 1982 and his J.D. in 1987. His practice involves representation of corporations in various contractual disputes and related commercial litigation matters, as well as lawsuits concerning claimed defects in the design and construction of residential and large commercial buildings. He and wife Lori were first-time attendees in Maui.

#### **Jamie:**

Jamie earned his bachelor's degree from the University of the South at Seawanne in 1999 and his J.D. at the University of South Carolina Law School in 2002. He also earned his L.L.M. in admiralty from Tulane Law School in 2003. (He will have lots of valuable local knowledge for us next year in New Orleans!) He practices in admiralty, negligence, personal injury, products liability, construction litigation, medical malpractice, and insurance coverage cases.

These folks will be a great addition to our veteran committee members: Tom Hurney of Charleston, West Virginia, Victor Flanagan also of Charleston, Mike Montgomery of Richmond, Virginia and Secretary Dan Balmert, of Cleveland, Ohio as an ex-officio member.

The Marketing Committee Mission is to identify, develop, and encourage relationships that result in referral of business among ADTA members; and enhance among lawyers their perception of the ADTA. Consistent with that mission, we will be working with the Long Range Planning Committee and the Technology Committee to develop ways to enhance the ADTA's visibility among the legal profession and among potential clients.

Stay tuned! Send us your ideas. The tradition of excellence continues.

<sup>1</sup> There is no longer any truth to the rumor that Lori and husband Jeff plan to relocate to Jacksonville, along with Tom and Mary Burke of Phoenix, all to start the law firm of Berke, Birk, and Burke d/b/a Birk's Law. Negotiations to start the firm had been going well until two of the three refused to agree on the correct spelling of Birk

## BOOK REVIEW

PATRICK G. CULLEN - MD

*The Confession*: A Novel by John Grisham, Doubleday (2010) 432 pages \$28.95 (or less at Amazon.com).

Does it seem like twenty years have gone by since most of the nation enjoyed reading John Grisham's initial novel about *The Firm*? His recent release, *The Confession*, actually involves two confessions. According to the author, this story is a melding of fiction with the reality of two somewhat similar cases. The first confession involves a young black male who is coerced into confessing guilt for a crime he perhaps did not commit. Based on that confession, the young man faces an imminent execution date. At the 11<sup>th</sup> hour, a white sex offender admits to a minister that he committed the crime for which the young man faces death. The first confession was enough to support a death sentence. Will the 11<sup>th</sup> hour second confession be enough to stop the execution?

The execution date is fast approaching as the story tracks the feverish efforts of a Texas small town lawyer (a flamboyant dude) to stop the execution. The story involves a wide array of characters including a Kansas minister, the local prosecutors' staff, the aforementioned sex-offender, local black and white ministers and their respective congregations, a sympathetic local judge, the victim's family, a TV personality whose niche is covering executions, the Texas executive, legislative and judicial branches, and last but not least, a well organized warden.

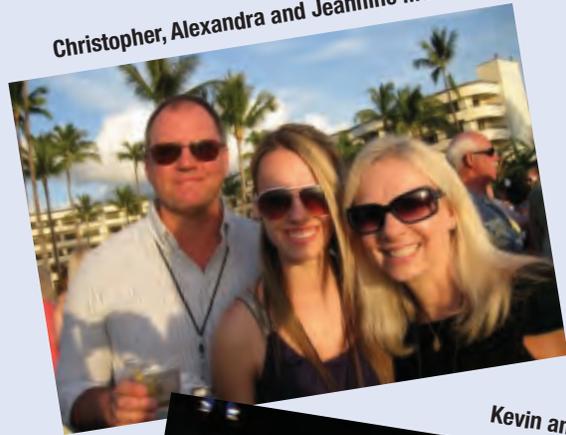
The recorded book version moved along swiftly and I was not really sure how it all was going to turn out. As the author intended, the story did make me confront my own views on the death penalty: sometimes it seems like the right thing but where do you draw the line?

Some reviewers of *The Confession* have been negative in their criticism of the book: e.g., "the plot and characters are unable to support an earnest protest against the death penalty." Other reviewers comment that *The Confession* is a "grab-a-reader-by-the-shoulders" suspense story and is a "superb work of social criticism." Luckily, no one grabbed my shoulders while driving to and from work while listening to the more than adequate reading of the book, but I liked it anyhow.

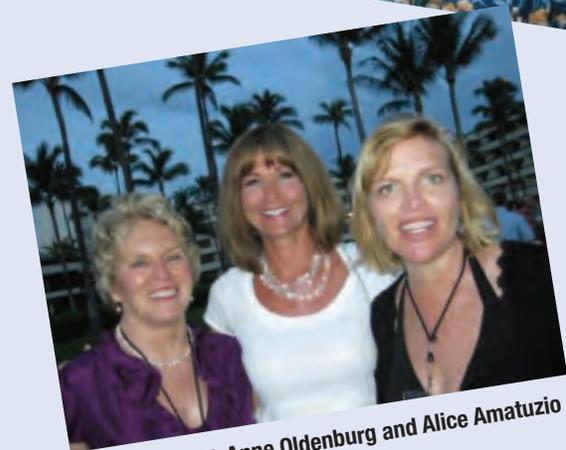
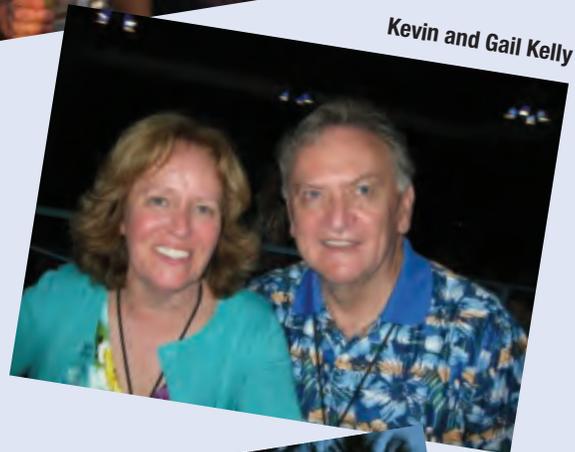
Send any ADTA related photographs to  
Editor Linda Hay at [lhay@illinois-law.com](mailto:lhay@illinois-law.com).

## ANNUAL MEETING PHOTOS

Christopher, Alexandra and Jeannine Morris



Kevin and Gail Kelly



Karen Kendall, Anne Oldenburg and Alice Amatuzio

Jeff Dick and  
Lori Berke  
(member)





**"Take the lens cap off!" –  
President Elect Steve Heine**



**Wayne & Julie Maire and  
Steven & Linda Gurnee**



**The Zizik Family**



**Fun in the Sun!**



**Farm to Table (Spouse Breakfast)**



**Linda Gurnee and the Trexlers**



**Francisco J. Colón-Pagan  
and Martha Morales-Colón**



**President George Walker, Carolyn Walker,  
and Molly and Elizabeth Hood Willis**

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(proposed member's name)

for (Prime)(Associate) membership in the Association of Defense Trial Attorneys (ADTA). Please send an application to

\_\_\_\_\_ (name of applicant)

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at \_\_\_\_\_

(city)

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Office telephone \_\_\_\_\_ Office Fax \_\_\_\_\_

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

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Name of Member (Print)

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**Membership Requirements:**

A trial lawyer doing principally civil 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.

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

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