

# The Association Press

SUMMER 2012 VOL. 18 NO. 2

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## PRESIDENT'S REPORT TO MEMBERS

STEVE HEINE



The 2012 ADTA meeting in New Orleans was a wonderful event, enjoyed by all and with record attendance. Both Matt Bailey and his team, and our superior Executive Director, Peggy Schultz, set a standard of excellence that will be remembered by all for years.

The 2013 meeting will be the 72nd Annual Meeting of the Association of Defense Trial Attorneys. It will be held at the Greenbrier in White Sulphur Springs, West

Virginia on April 17-21, 2013. I encourage all of you to join your ADTA friends at the Greenbrier. It is a special and wonderful place with amenities second to none, as well as an affordable room rate. Bring your families. There are activities for all at the Greenbrier.

As I begin my year as President of the ADTA, I want to thank my friends, Gordy Broom and Dan Formeller, who preceded me and, also, my recently deceased senior partner, Lyle Allen, who was an early President of the ADTA.

George Walker, Frankie Colon and Bob Tait, three Presidents who preceded me, have set this organization on a fine path. If it were not for them, the ADTA would not be where it is today. We are sound financially, we are again growing in numbers, and we are evolving with the change in the profession and the business climate of the United States and the world. We have increased our international membership. We have committees that are functioning and involved. We have members that are more invested now than they have ever been.

Membership involvement in the day-to-day activities of the ADTA is key to the success of the organization and to its members' success professionally.

The CLE at the Annual Meeting was superb. We had an excellent and riveting program on legal ethics presented by Charlie Swift. Charlie and his wife, Cathy McDonald, spent the entire meeting with us and were warmly welcomed by the ADTA family. Brian Coody from Lake Charles, Louisiana began the program with an excellent presentation on how to detect if a witness is lying and how to prove it in court. We had an educational presentation about the comparison of the civil code systems of Louisiana and the common law. Lori Berke, Denise Anderson, Matt Booker, and Troy Bozarth gave us an excellent instruction on trial skills. Stephen Straus educated us all on United States Supreme Court opinions regarding preemption of state law. Rich Traub gave a fascinating presentation on the impact of worldwide catastrophes on the insurance industry.

The educational aspect of the meeting was superceded only by the prime location and the socializing in the after hours. The Bourbon Street nightlife provided entertainment from the balcony of the Royal Sonesta Hotel for those who were not inclined to brave Bourbon Street itself.

At this meeting, we welcomed our new leadership team. David Zizik of Boston, Massachusetts became the President-Elect. Dan Balmert from Ohio became the Vice President. Tom Hurney assumed the duties of Secretary from Dan Balmert. We have three new members of the Executive Council. They are Michael Aylward from Boston, Massachusetts, Pamela Treadwell-Rubin from Tucson, Arizona, and George Wilkinson from Cincinnati, Ohio. We are proud to have all three on our Executive Council as the Class of 2015.

We were fortunate to have the leadership of our sister organizations, the IADC, the FDCC, and the DRI, at our meeting in New Orleans. Mary Massaron-Ross represented the DRI. Henry Sneath, the DRI President, continued with his trial and could not attend. Mike Neil and Ed Kaplan from the FDCC ably represented that organization. Bill Perry and Quentin Urquet joined us from the IADC. New Orleans is Quentin's hometown, so he entertained us at some local establishments.

We have a great year ahead of us. This organization is vibrant, growing and active. The Long Range Strategic Planning Committee chaired by Steve Pennell has done a fine job. Its work has come to an end. We will continue to move forward with our long range plan. Many thanks to Steve and his committee who have done a fine job.

As I write this, I am beginning the second week of a trial out of town, living out of a suitcase, and in a hotel with my fine partners and client. Remember, trials are the foundation of the ADTA. We are the Association of Defense **Trial** Attorneys. I hope that in the coming year we can focus on the continued development of our trial skills, our membership, and our friendship.

The tradition of excellence continues ...!

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## INTERNET & TECHNOLOGY COMMITTEE

CATHRYN SPAULDING - WESTWOOD, MA

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The Internet & Technology Committee has created a "Linked-In" group which is connected to the website. We encourage everyone to become a member of the group. We have also discussed other forms of social media to encourage members to stay connected between annual meetings. We continue to work with the Marketing Committee to develop innovative ways to encourage ADTA members to refer business to other ADTA members.

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## NEW ORLEANS 2012 ANNUAL MEETING - A Time to Remember

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MATTHEW W. BAILEY - BATON ROUGE, LA

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Wow! If you attended the Annual Meeting at the Royal Sonesta in April, you are well aware of what a great time was had by everyone. Our members, their spouses and the family members who attended and participated experienced a time they will not soon forget at the Royal Sonesta located in the heart of the French Quarter.

Steve Heine and his crew put on a spectacular CLE program for the members. Plus, everyone enjoyed our Saturday morning guest speaker, John Besh.

President and First Lady, George and Caroline Walker, greeted all of the members and first time attendees on Wednesday evening at the President's Reception which was held in the Fleur de Suite and Courtyard of the Royal Sonesta. This was just the beginning of yet another terrific and memory making meeting.

We were presented with a 4-D documentary at the World War II Museum, followed by a tour of the museum while dining on John Besh's creations and sipping our favorite cocktails. Oh and don't forget the beautiful Victory Belle Trio.

We were blessed with beautiful weather thereby allowing us to walk, shop, spectate, eat and drink throughout the French Quarter. Suffice it to say, most members were over served.

Saturday evening, we capped off our meeting with our traditional black tie dinner dance. The food and service was second to none and Rockin Dopsie, Jr. and the Zydeco Twists (and our hostess) put on a show that will not soon be forgotten.

Last but not least, I know for certain there is not one member, spouse, family member or friend who will ever forget our hospitality suite. It will be talked about for years to come!

And, of course, the most important thing we experienced was continuing our friendships and making new ones.

Melissa and I certainly enjoyed the experience of hosting this successful meeting, and I would not trade the experience. I would personally like to thank the many people who helped make our New Orleans meeting such a success.

See you at the Greenbrier in 2013!



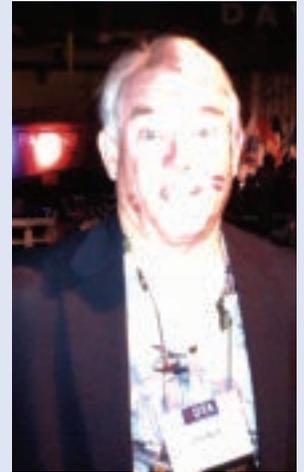
Fred Raschke, recipient of the We Prefer to Refer award.



5 finalists; L to R: George Walker, ADTA Past President; Matthew Bailey; Fred Raschke; Williams Sampson; and Marketing Chair Ed Birk.



Steve Heine presenting George Walker with a gift (artwork of Roy McElroy).

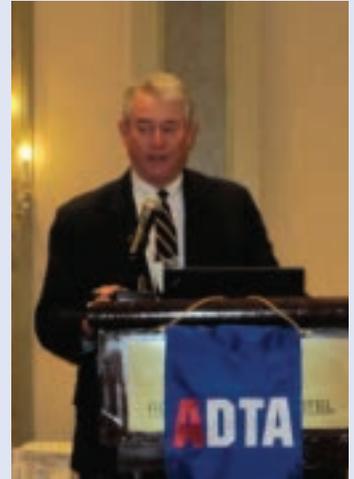


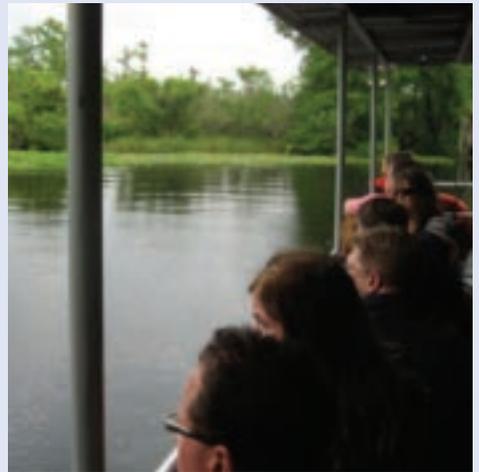
2012-2013 officers.



2012-2013 Executive Council Members







## GREENBRIER 2013



Be sure to book early for the next Annual Meeting at the Greenbrier in White Sulphur Springs, West Virginia ([www.greenbrier.com](http://www.greenbrier.com)), April 17–21, 2013. The Greenbrier, America's Resort, truly offers

something for everyone, from whitewater rafting to afternoon tea, from falconry, fishing and skeet shooting to a massage, from horseback riding to golf and tennis, and from hiking and biking to casino gambling. That is in addition to great food, great fun with other ADTA members, and superb CLE. You won't want to miss out on this, the ADTA's 72nd Annual Meeting!



## MEMBERSHIP REPORT

WILLIAM H. STAPLES - WALNUT CREEK, CA

Membership is more than just numbers!

I can't believe I just said that; but it's true. Membership in ADTA is about the privilege of being among some of the best defense trial attorneys anywhere. It is interacting and sharing experiences with colleagues from all over the United States, Canada and Puerto Rico. It is making new friends and exploring new places.

Many of you got to experience this once again in the great City of New Orleans. In fact 25% of our membership attended! I don't know what the records will show but that's got to be one of the best turn outs in decades. This is what it's all about. Participating, taking advantage of why you joined in the first place.

It goes to show that ADTA is a vibrant, healthy organization, whose members believe in its purpose. Now, here it comes. You knew I had to get to it. Don't keep ADTA or its purpose a secret. Let your fellow defense trial attorney's know about ADTA. Invite them to join. Invite your partners to join. What better selling point than the fantastic experience you just had in New Orleans. Participation is at one of its highest levels; let's strive to do that with our membership numbers too.

## NEW MEMBERS



### J. Bruce Alverson

Alverson, Taylor, Mortensen & Sanders  
Las Vegas, Nevada

J. Bruce Alverson practices with Alverson, Taylor, Mortensen & Sanders in Las Vegas, Nevada. J. Bruce attended law school at the University of San Francisco, and obtained his J.D. in 1970. He has two children, JoDee Crawford and Elizabeth Flippin, and a grandson, King Flippin, age 4. J. Bruce defends cases in all aspects of civil litigation. J. Bruce has held leadership positions in the American College of Trial Lawyers (ACTL) – Nevada State Chairman 2004-2007; the American Board of Trial Advocates (ABOTA) – Las Vegas Chapter President 2002-2007, National Board of Directors 2007-present; and the Defense Trial Lawyers of Nevada – Secretary/Treasurer 1985-1991. J. Bruce keeps busy in his free time. He recently wrote and published a book on the history of the legal community in Las Vegas as seen through the eyes of Judge Harry Claiborne, and in 2008, he received a Ph.D. in History from the University of Nevada, Las Vegas. He also enjoys fishing, and spending a good part of the summer months with friends and guests at his fishing lodge/bed & breakfast on the Madison River in Montana.



### Russell C. "Rusty" Beard

Beard Law Firm  
Abilene, Texas

Russell Beard practices with Beard Law Firm in Abilene, Texas. Rusty attended Baylor Law School and obtained his J.D. in 1981. Rusty is married to Jane Varner Beard, an attorney and grants administrator for Owen Foundation. Rusty and Jane have two children, Sterling Beard (22), who graduated from Dartmouth College and is currently employed by TheHill.com and Hudson Beard (20), a junior chemistry major at Princeton University. Rusty practices in civil litigation in the areas of Personal Injury, Business and Consumer, Insurance, Anti-Trust, Employment, and Trusts and Estates. Rusty is a Life Fellow of the Texas Bar Foundation; Member of the International Association of Defense Counsel; the Federation of Defense and Corporate Counsel, the State Bar of

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

Texas (Grievance Committee – Panel Chair 1990-1996); the Texas Young Lawyers Association (Board of Directors 1987-1989) and the Abilene Bar Association (President 1996-1997). Rusty is active also with the Texas Association of Defense Counsel (Board of Directors, 2001-2005 and 2011; Nominating Committee for Officers & Directors 2006 and 2008). Rusty enjoys hunting, skiing, travel and reading.



**Wilton V. Byars, III (Trey)**  
Daniel Coker Horton & Bell  
Oxford, Mississippi

Trey practices with Daniel Coker Horton & Bell in Oxford, Mississippi. Trey attended the University of Mississippi where he obtained his J.D. in 1992. Trey and his wife, Jane Lyle Byars (Jane Lyle) are parents to Kate (11), Vance (10), Charles (8), and Mary Dale (5). Jane works in retail sales. Trey is a litigator with a focus on products liability, public entity/governmental liability, medical negligence and insurance bad faith and coverage. Trey is in Martindale-Hubbell, AV rated; was named in Best Lawyers in America Personal Injury Litigation – Defendants; and has been named a Mid-South Super Lawyer. Trey holds leadership positions in defense organizations which include the Mississippi Defense Lawyers Association – President; William C. Keady American Inns of Court – Secretary/Treasurer; Member/Counsel on Litigation Management; the Federation of Defense and Corporate Counsel; Defense Research Institute; the American Bar Association; the Mississippi Bar Association; and the Mississippi Board of Bar Admissions. In his free time, Trey enjoys travel, cooking, fly fishing, and sports.



**David C. Corso**  
Fisher, Rushmer, Werrenrath,  
Dickson, Talley & Dunlap, P.A.  
Orlando, Florida

David Corso practices with Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A. in Orlando, Florida. David attended law school at the University of Texas, obtaining his J.D. in 1988. David's wife, Kimberly, is in sales, and they have two children, Olivia (14) and Lily (11). (No grandchildren yet!) David concentrates his practice on the defense of personal injury cases with a focus on dental malpractice. David has been honored with a Martindale-Hubbell AV rating (5.0), and he is a member of both the ABOTA and FDCC. David is also President of the Florida Law Alliance, a co-chair of the Seminar Committee for the Florida Defense Lawyers Association, and is the Marketing Committee Chair for the Harmonie Group.

When not busy with work, David enjoys family, physical fitness and landscaping.



**Scott M. Kyrouac**  
Wilkinson, Goeller, Modesitt,  
Wilkinson & Drummy, LLP  
Terre Haute, Indiana

Scott M. Kyrouac practices with Wilkinson, Goeller, Modesitt, Wilkinson & Drummy, LLP in Terre Haute, Indiana. Scott attended Indiana University in Bloomington and obtained his J.D. in 1985. Scott has three children: Lauren (18); Carmen (16); Brook (14) and Jaxon (5). Scott specializes in the defense of commercial litigation, product liability, medical malpractice, and personal injury cases. Scott has been honored with the 2008 DTCI Defense Attorney of the Year; was the 2011 President of DTCI; and the 2012 Treasurer of American Board of Trial Advocates. In addition to his Presidency of DTCI, Scott was the 2010 President Elect DTCI, the 2009 Vice President DTCI, the 2008 Secretary DTCI, and the 2007 Treasurer DTCI. Scott also serves as pro bono counsel for Saint Joseph Church, the Terre Haute Humane Society, the Clay County Humane Society, and the Miss Softball America.



**Greg N. Stivers**  
Kerrick Stivers Coyle, PLC  
Bowling Green, Kentucky

Greg N. Stivers practices with Kerrick Stivers Coyle, PLC, in Bowling Green, Kentucky. Greg attended the University of Kentucky College of Law and obtained his J.D. in 1985. Greg is married to Alicia Stivers who works in Tourism/Marketing. Greg and Alicia have three daughters: Elizabeth (22); Laura (20) and Lillie (16). Beginning over 25 years ago, Greg's practice initially involved automobile and premises liability trial practice and workers' compensation defense. After several years, Greg began representing a regional university and other employers in discrimination and wrongful discharge cases, in addition to developing a practice in commercial litigation. In recent years, his practice has expanded to include defending municipalities on issues ranging from civil rights and housing discrimination to excessive force and sexual harassment. Greg concentrates his practice in Business Law, Employment Law, and Commercial Litigation. Greg has been honored by the University of Kentucky Lafferty Society, the Western Kentucky University Cherry Society, and the WKU Summit Award – 2009, 2010. Greg has been counsel in the following published

decisions: *Autry v. Western Kentucky University*, 219 S.W. 3d 713 (Ky. 2007); *Board of Regents of W. Ky. Univ. v. Clark*, 276 S.W. 3d 819 (Ky. 2009); *Caneyville Volunteer Fire Dep't v. Green's Motorcycle Salvage, Inc.*, 286 S.W. 3d 790 (Ky. 2009); *Clark v. Board of Regents of W. Ky. Univ.*, 311 S.W. 3d 726 (Ky. App. 2010); *Consolidated Infrastructure Mgmt. Auth., Inc. v. Allen*, 269 S.W. 3d 852 (Ky. 2008); *Leeds v. City of Muldraugh*, 329 S.W. 3d 341 (Ky. App. 2010); *Wells v. City of Bowling Green*, 344 S.W. 3d 141 (Ky. App. 2011); and *Woods v. Western Ky. Univ.*, 303 S.W. 3d 484 (Ky. App. 2009). Greg has been involved in a number of professional and civic organizations, including: American Bar Association; Kentucky Bar Association – Employment & Municipalities Law Sections; Bowling Green/Warren County Bar Association; Defense Research Institute; Kentucky Bankers Association; Western Kentucky University Research Foundation, Past Chair; Hilltopper Athletic Foundation, Past Chair; St. Joseph Cemetery Board; Big Brothers and Big Sisters, Past President; UK Alumni Association; and the Leadership Bowling Green Alumni Association. In his free time, Greg enjoys golf, tennis, reading, music, politics and hot yoga.



**Melissa R. Tannery**  
Troutman Sanders LLP  
Richmond, Virginia

Melissa R. Tannery practices with Troutman, Sanders LLP in Richmond, Virginia. Melissa attended the University of Virginia School of Law, and obtained her J.D. in 1997. Melissa and her husband, Joseph

J. Tannery, an attorney and environmental consultant, have two children, Austin (7) and Hollis (3). Melissa concentrates her practice in Product Liability, Trusts and Estates and Fiduciary Litigation, and Commercial Litigation. Melissa was selected as a Virginia "Rising Star" in Personal Injury Defense: Products by *Law & Politics' Virginia Super Lawyers Magazine* (2007-2011). Melissa has held the following leadership positions in defense organizations: Defense Research Institute: Steering Committee member of DRI's Drug & Medical Device and Women in the Law Committees; Chair of the DRI Women in the Law Expert Witness Database Committee; and co-editor of DRI Drug & Medical Device Newsletter (Rx for the Defense). Melissa in her free time enjoys activities with her children, exercising, hiking, reading and traveling. Melissa is also a co-creator and regular contributor to a blog on Virginia product liability law (<http://www.vaproductliabilitylaw.com>), and a co-author of the only authoritative treatise on Virginia product liability law (Spahn, Gary J., et al., *Virginia Law of Products Liability*, (2d. ed. Harrison 2002 and annual updates).)



**Robert Lee Vance**  
Woolf, McClane, Bright, Allen & Carpenter, PLLC  
Knoxville, Tennessee

Robert (Bob) Lee Vance practices with Woolf, McClane, Bright, Allen & Carpenter, PLLC, in Knoxville, Tennessee. Bob attended law school at the University of Tennessee, obtaining his J.D. in 2001. Bob's wife, Angela, is in social work. They have three children, Gavin (15); Parker (13) and Clyde (2). Bob concentrates his practice in product liability, commercial litigation, environmental tort, workers' compensation and general tort litigation. Bob was honored with a 2011 Rising Star of the Mid-South Super Lawyers award in Business Litigation. Bob enjoys fishing, golf, snow skiing, and water sports in his free time.



**Jeff William Wright**  
Heidman Law Firm, L.L.P.  
Sioux City, Iowa

Jeff William Wright practices with Heidman Law Firm, L.L.P. in Sioux City, Iowa. Jeff attended the University of Iowa College of Law and obtained his J.D. in 1998. Jeff and his wife Ann, a stay at home mom, have three boys: Jackson (12); Daniel (9) and Joseph (4). Jeff concentrates his practice in both commercial litigation and insurance defense. Jeff is a Fellow of the Iowa Academy of Trial Lawyers – 2011. Jeff is on the long-range planning committee of the Iowa Defense Counsel Association. In his free time, Jeff enjoys playing golf, officiating basketball and coaching youth sports.

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## THE ASSOCIATION PRESS

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## A WORD FROM LOU

LOUIS M. SCOFIELD, JR. - BEAUMONT, TX

### Defense lawyers and Plaintiff lawyers, a short book of thoughts on each.

**Chapter 1.** The fact is, we each decided at some point to be courtroom lawyers, handling civil cases, on, of all things, the defense side. Have you articulated to yourself why? It deserves a little thought (but I wouldn't spend the whole day on it...it doesn't deserve that much thought.) My suspicion is that it simply happened to some of you. There you were, minding your own business and someone up and offered you a job. It was a paying job. A job paying you more than you ever were paid before in your life. The rest is history.

Some of you chose this course. Some inherited it by some chromosomal blip from your dad. Others arrived here after dabbling around in other areas of the law.

**Chapter 2.** A different question entirely is why you stayed in this practice on this side of the docket. That steady paycheck? Inertia? I chose it, and stay in it, for the fun. It is a challenge, and often a complex one, to defend a professional liability case or a commercial case. But the real challenge is to defend a huge slobbery corporation against an injured plaintiff represented by a smart bearcat of a plaintiff's lawyer. The huge slobbery corporation is clearly the underdog. I like being the underdog. Sure my client's checks are good, and we can afford to muster some pretty decent investigation, but to be given a fair shake by a jury of **plaintiff's** peers is tough (not too many jury panels have a line of corporate executives and insurance adjusters populating the first couple of rows at *voir dire*). Elevating the jurors to their oath, and holding them there, against the odds, is the province of us.

Our personal wit, charm, skill, knowledge of the law, credibility, experience, and flourish brings us victory more often than not, even in places designated as "Judicial Hell Holes." And on those rare, but unfortunate occasions we get hammered...we still, of course, get paid. What a life.

**Chapter 3.** But what if I became a plaintiff's lawyer? What if tomorrow I woke up as one? I stumble to the mirror and see there, looking back at me, some thinner guy, with slightly bouffant hair, shaped a little like John Edward's hair. I get ready, go outside and hop into my tricked-out pickup, parked next to my third wife's Mercedes 500 SL, and off I go to the local hospital. In the parking lot I put on my Priest's collar and ease on up to Neuro ICU, trolling for accident victims.

Now that's not fair. Hardly any plaintiff's lawyers are like that anymore. Most are very hard working, honest, professional, ethical, skilled and honorable people. And sometimes, yes sometimes, they are even one of us, a defense lawyer with a plaintiff's case. Like Dustin Hoffman in *Tootsie*. — Don't be ashamed. I've been there, and so have you. We all have.

**Chapter 4.** If I'm a defense lawyer with a plaintiff's personal injury case, I do things differently than do many full time plaintiffs' counsel. I treat insurance adjusters with respect, not disdain. I treat all doctors with respect, even if they don't deserve it, and even if I have to prove them wrong. I treat opposing counsel like I know and understand his inner-most thoughts and problems...because I do.

In trial I start my closing argument discussing the damages issue...not the liability issues. I always start the same, with some version of the following: "My client here, Tom, woke up on a Thursday morning, and ate some oatmeal with his kids, Bobby and Wendy. He gathered a warm kiss from his wife, Polly, on the way out the door to his 1994 step side truck. He drives to work and almost gets there, and would have too, but for the defendant trucking company whose tired driver blew the red light and changed the lives of Tom, and his family, forever...and their damage from this is just starting...let's begin with his medical bills..."

What? Remember I'm a **defense** lawyer! I only take plaintiffs' cases that are lay downs on liability, with good damages, and solvent defendants. Don't you?

**Chapter 5:** Kidding aside, I need to get a little preachy. Justice is best served when both sides of a case are presented in a professional, capable and zealous way on behalf of our respective clients...in front of a jury. But powerful forces are at work gradually undermining the jury trial, and access to it as the arbiter of our disputes. To save the American jury trial is a fine calling for all of us, on either side.

The ADTA and counterpart plaintiff's organizations are working to save our juries. Organizations with memberships made up from both sides of the docket are also at work. ABOTA is a fine example of such.

Each of you on an individual level can help as well. With every talk you give to civic organizations, schools, or other lawyers, regardless of the main topic, add a paragraph or point about the jury system. It will hold the attention of your audience because of its long history of success, and importance in preserving liberty and resolving disputes.

What a closed and unrecognizable place this will be if we lose the promise of a jury trial.

And how sad it will be to lose the contrast between defense lawyers and plaintiff lawyers. Not to mention the drop in hairspray and blow-dryer sales if the plaintiff's bar loses its identity.

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## MARKETING

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JIM CRAIG

Another great Annual Meeting has come and gone, but our memories will live forever. Who will ever forget the 6:45 a.m. hotel emergency wakeup call after the night of our gala!

On behalf of the Marketing Committee, I would like to congratulate all our nominees for the We Prefer to Refer award. As you know, this year we had three new nominees included with nine nominations from 2010 and 2011. These nominations are good for three years. This year the five semi-finalists were Matt Bailey nominated by Fred Raschke; Jim Campbell nominated by Glen Morgan; Fred Raschke nominated by Bob Tait; William Sampson nominated by Tom Burke and Mark Williams nominated by Tom Hurney.

This year's We Prefer to Refer winner of the Crystal Cup was Fred Raschke nominated by Bob Tait. Bob Tait reported that in his initial call, Fred indicated the case was likely to go nowhere as the parties were involved in intense settlement negotiations! \$15,000,000 was offered and refused by the Plaintiff. The case involved a railroad car explosion that resulted in a severe head injury to a young man who was also a husband and father. Plaintiff presented \$22,000,000 in economic damages at trial and demanded a \$100,000,000 verdict. Trial lasted for 14 weeks with Bob and Fred working side by side throughout. Ultimately a defense verdict was obtained for all defendants as the cause of the explosion could not be established. Congratulations, Fred, and thank you for making a referral that epitomizes a principal purpose of the ADTA, helping each other help our clients.

Last year, under the leadership of our Marketing Chair, Edward Birk, a brochure for use in recruiting new members was developed. Lori Berke and Peggy Schultz were instrumental in developing the text and photos for this brochure. Our new motto is "One in a Million". The brochure will soon be available to all members to use in explaining the ADTA to prospective members and to our insurance clients. We hope you find our brochure helpful.

Our goal as the Marketing Committee is to make internal referrals between our members easy and instinctive. In the coming year, the Marketing Committee will continue to work to refine the nomination and presentation process for the We Prefer to Refer award. We will continue to explore new ways to communicate our new slogan ("One in a Million") to our many insurance clients across the nation. If you have suggestions for our internal marketing, we welcome them. Please feel free to e-mail James Craig at Jcraig@lwclawyers.com. Remember, We Prefer to Refer nominations can be made throughout the year by using the form on our website.

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## WHAT'S NEW IN MY STATE

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ROBERT N. WEBNER - OH



**Laura S. Flynn**  
San Francisco, California

Laura S. Flynn, a new member of the ADTA who is a partner at the Low, Ball & Lynch law firm in San Francisco, brings to our organization perhaps the greatest email address ever for a person who regularly engages in negotiations: LFlynn@lowball.com.

Of course, Laura's reputation is due more to her successes in defending employment law cases than to her apt email address. Her practice focuses on federal statutes like the Americans with Disabilities Act and the Family and Medical Leave Act, California statutes that govern workplace issues, and the defense of other employment-related claims.

Laura reports that California courts continue to issue rulings that break new legal ground. Recently, the California Supreme Court delivered an eagerly awaited opinion holding that although state law requires employers to provide lunch and rest periods, it does not obligate employers to police those periods to ensure that employees are not continuing to work. In another case, the Court resolved a dispute about whether a claimant in a lawsuit may recover the amount billed for medical treatment or may only seek what was paid for the treatment, which often will be a negotiated, discounted amount. The Court held that only the amount actually paid may be sought as damages – a decision that restricts the kind of evidence the plaintiff may offer as well as the amounts the plaintiff can blackboard as damages. It probably isn't surprising that Laura adds that the plaintiffs' bar in California already is working to overturn the Court's ruling.

Another development of note is that some cash-strapped California courts have amended their local rules to require

attorneys to provide the court reporter for all hearings, court conferences, and trials. The rule changes create new planning headaches for lawyers, who must agree on the court reporter and the division of costs and then make the necessary arrangements. If the lawyers can't agree on those issues, then each lawyer must provide their own court reporter.

Laura has been a Board member of the Association of Defense Counsel of Northern California and Nevada since 2005. She met Mike Kronlund as well as other ADTA members through that organization, and Mike encouraged her to join the ADTA. Laura attended her first ADTA annual meeting in New Orleans and says it was almost as fun as watching her favorite baseball team, the San Francisco Giants.



**Cary Hiltgen**  
Oklahoma City, Oklahoma

After years of trying and several failed attempts, last year Oklahoma finally enacted its tort reform statute, which became effective on November 1, 2011. Cary Hiltgen, of Oklahoma City's Hiltgen & Brewer, P.C., has been

dealing with the aftermath of that milestone event.

The tort reform statute made four significant changes to Oklahoma law. First, it eliminated joint and several liability and allows only several liability in most cases. Second, non-economic damages are capped at \$350,000, absent special findings of reckless conduct. Third, juries will be instructed that none of the damages awarded are taxable. And finally, only the amount actually paid for medical care – as opposed to the non-discounted, billed amount for such services – may be admitted as evidence.

The statute specifically applies only to cases commenced after November 1, 2011, and in the weeks before that effective date Oklahoma courts were inundated with new tort cases filed by plaintiffs' counsel who wanted to avoid the new rules. Cary and his colleagues have been working hard to deal with that flood of litigation ever since.

Cary notes that a new set of state court judges will be dealing with the new cases, because there have been a number of judicial retirements in recent months. The salaries Oklahoma pays to its judges are among the lowest in the nation, and many experienced judges have retired, are receiving their state retirement pay, and have gone back to practicing law. Their replacements tend to be far less experienced, particularly in civil litigation – a fact that is concerning, because Oklahoma trial court judges have only a bailiff and a secretary, with no clerks to help with legal research.

Judges and plaintiffs' lawyers aren't the only challenges Cary has dealt with in his Oklahoma practice. His homes have been destroyed by tornadoes twice in 23 years, and he just finished rebuilding his house after a 2009 twister strike. He reports that the tornadoes do not produce much litigation, however, because insurers know better than to risk having such claims decided by jurors who live every day in Tornado Alley.

Cary decided to join the ADTA when he was the President-Elect of DRI and rode the DRI/ADTA/IADC/FDCC circuit with Frankie Colon-Pagan and Bob Tait. Frankie and Bob offered Cary the opportunity to join the ADTA and he accepted immediately. He has attended the annual meetings in Scottsdale, Boston, and New Orleans, and enjoys the relaxed atmosphere he finds within the ADTA.



**Angela Lord**  
Fargo, North Dakota

On a very positive note, Angela Lord of the Vogel Law Firm in North Dakota reports that business is booming in North Dakota, and she and her firm are rising to the challenge.

The sharply increased demand for legal services is in part the result of the discovery of rich oil and natural gas deposits in the Bakken oil field in western North Dakota. The discovery has produced thousands of new jobs, a huge economic growth spurt in the State, and a need for legal services. The Vogel Law Firm has responded to the demand with the opening of a new office in Williston, North Dakota, and is actively recruiting experienced lawyers to help staff the office.

The Bakken field's yield in legal work has been almost as significant as its yield in oil and natural gas. It includes quiet title actions, lease disputes, transfers of mineral interests, real estate sales and commercial developments, merger and acquisition work for businesses that have grown rapidly as a result of the increased economic activity, and personal injury litigation caused by the increase in truck traffic and by serious oil field accidents.

In addition, the speed at which the oil development has occurred has caused an acute housing shortage in the North Dakota "oil patch," requiring the establishing of what have been coined "man camps." Not uniformly defined, "man camps" range from the temporary trailer park to the more permanent, dormitory-like structure – which in turn has given rise to regulatory work to establish the camps and litigation with neighbors who aren't keen about a "man camp" suddenly springing up next door.

All of this activity has made things very busy, such that the firm's attorneys from Bismarck and Fargo regularly travel to the Williston office, often by plane from Fargo to Williston, to meet the demands for legal services. Angie, whose practice includes general civil litigation, medical malpractice defense, and health care law, chairs the Vogel Law Firm's litigation practice group and serves on the firm's management committee.

Angie hasn't yet had the opportunity to attend her first ADTA annual meeting but looks forward to doing so. If you'd like to learn more about opportunities and the firm, check out the firm's website at [www.vogellaw.com](http://www.vogellaw.com), or give Angie a call. She would enjoy hearing from her ADTA colleagues and is happy to talk about her home state of North Dakota.

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## BOOK REVIEW

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PATRICK G. CULLEN - BALTIMORE, MD

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*How to Win Friends & Influence People* by Dale Carnegie, 1936, revised 1981, 299 pages. (\$2 to \$12)

Over fifteen million copies of this book have been sold over the years and, although you may not believe it, I have two of them. Dale Carnegie was, in my view, at least at the Ph. D. level as a human psychologist.

So how do you go about winning friends and influencing people? Solid suggestions are given by the author as to six ways to make people like you, twelve ways of winning people to your way of thinking and nine ways to change people without giving offense. The author's suggestions are, in my view, based upon his evaluation and assessment of our human nature.

Approximately 75 years ago Dale Carnegie focused on the needs and wants of those with whom his readers might come in contact. Not only have those needs of the psyche not changed a whole lot, a case can be made for the proposition that in today's society those needs and wants are generally more acute than 75 years ago. If so, Carnegie's approach to the problem of how to sell yourself still makes sense.

Certainly the current sales price of this book makes it a great buy. You might consider buying it as a gift for young adults and/or employees. Admittedly, giving a self-improvement book to another person certainly can come across as being a bit judgmental. But if your intended gift recipient is really short on skills in the field of public speaking or being at ease when introduced to new acquaintances or running a meeting, you can figure out how

to get around the being judgmental part. Your gift of the book would be one way to win a friend and influence that person.

There is an up to date version of the book called *How to Win Friends and Influence People in the Digital Age*. (That version is available at Amazon.com for \$13.98.) Two reviews are readily accessible on the web. One reviewer called the 2011 book a step backward filled with jargon and bad writing. That reviewer recommended getting the original book. A second reviewer called the current version intelligent and easy to read. I leave that decision to you. If you are short on time, you can find a "Cliff Notes-type" outline for the book in Wikipedia as well as a biography of Dale Carnegie in the same source.

The concepts for self-improvement as outlined in Dale Carnegie's original courses live on. In fact, the original version of the book is said to have evolved from transcripts of the sessions in Dale Carnegie's courses. According to the Amazon.com web page on this book, "(t)he only diploma that hangs in Warren Buffett's office is his certificate from Dale Carnegie Training. Lee Iacocca credits Carnegie for giving him the courage to speak in public. Dilbert creator Scott Adams called Carnegie's teachings "life-changing."

I can say based on the personal experience of a family member of mine that the Dale Carnegie course was for him a great builder of confidence in public speaking and in general going about the business of interacting with others.

So maybe this review might encourage you to buy the book and share it with a friend who could use help in winning friends etc. You might even sponsor someone in the training course. For many, the time spent reading this book and/or attending a training session would be a good investment in developing valuable personal skills.

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## RUMORS, GOSSIP AND INNUENDO

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*Her first oyster!*

"It came from the swamp ..."



Ivan and Kama Sarkissian



Linda Hay and Jack Needham, and Bob and Vicki Varney, all from Illinois, got a great tour of some local haunts in the Fauborg-Marigny with Ivan and Kama Sarkissian of Colorado. Ivan and Kama, who met at Tulane

University Law School, were tour guides *extrordinaire*. Touring activities included live jazz at d.b.a. and competitive pool at R Bar, all with a few beverages along the way.

The Balcony! Matt Bailey spoke true to his word – the Balcony of the hospitality suite at the Royal Sonesta lived up to its reputation! Good times, good fun, and a visit by hotel security. A total success.



## THREE GENERATIONS OF HAYES

Thomas Hayes IV carried on a family tradition at the ADTA Annual Meeting in New Orleans. Thomas, an ADTA member, like his grandfather and father before him, attended his first Annual Meeting this year, along with his father. Congratulations to the Hayes family for their ongoing support of ADTA.

## CLOSING STATEMENTS

KARL MATHIE TIPPET - ADTA President 1991-1992

September 10, 1928 – January 2, 2012 -  
Reprinted in part from *The Palm Beach Post*

Karl "Moose" Tippet was a lawyer, athlete, charming civic leader, and past ADTA President. Karl was a gifted athlete, playing football, basketball and tennis in high school at Whitefish Bay, and at Lawrence University in Appleton, WI. He played competitive tennis for decades in Winnetka, IL but his greatest accomplishment was golf. He graduated from the University of Wisconsin Law School, and met Lorna Gossett on Valentine's Day 1953. They married later that year, moved to Evanston, IL and Karl started his legal career at the Hinshaw, Culbertson, Moelmann, Hoban and Fuller law firm. He did insurance defense, trial and admiralty work until the port of Chicago was closed. He was president of both the Legal Club and the Association of Defense Trial Attorneys. Karl was a devoted New York Times crossword puzzle solver. Karl and his family lived in Winnetka for many years, and later Karl and Lorna built a home in the Village of Golf, Florida. Besides his beautiful wife, Lorna, he is survived by daughter, Melinda (James Munson); daughter, Susan (John Papadopoulos); grandchildren, Jack, James, Nicole, Alexandra, Elizabeth and Andrew and brother, Ralph "Turk" Tippet. (See the Palm Beach Post for a complete obituary.)

JOE KERRIGAN, ADTA MEMBER

Joe Kerrigan, a beloved ADTA member, passed away peacefully on November 27, 2011 at the age of 92 after a brief illness. Joe was the quintessential gentleman, and he and his wife Jean are remembered by many ADTA members for their love of life and how they embraced new member couples into the ADTA family. Joe was a brilliant trial lawyer and practiced law until he retired at age 85 in 2004. While Jean had passed away in 2001, in 2005, one month after retiring, Joe married Margie Lemay, a marriage which brought great joy to them both. Joe received many personal and professional honors during his life but his greatest achievement was his family. Joe is survived by Margie and by his children, Kathy Potvin and her partner Tom Maszszak; Mike Kerrigan; Hon. Pat Kerrigan (ADTA Past President) and her husband Philip Werner (past ADTA Executive Council member); Tim Kerrigan, (ADTA member) and his wife Cassie Devine, Esq; Matt Kerrigan, Esq. and his wife Sylvia Kerrigan, Esq, as well as and numerous beloved grandchildren and his great grandson Jude. A full obituary is available online.

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