

The Association Press

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PRESIDENT'S MESSAGE

KEVIN J. KELLY - NY



The ADTA is truly a unique organization. Despite significant changes in the litigation arena and our strict membership requirements, we remain healthy and vibrant. We are proud to be considered among the elite members of the defense bar. We are "One in a Million", special, I think, since we are experienced trial attorneys at a time when membership in that club is becoming more uncommon.

The ADTA leadership understands that the challenges to our civil justice system and the role of the trial attorney are great. It is, however, our intent to take on those problems and to make this a dynamic organization now and in the future.

The surveys we have done tell us that those who attend our annual meetings are generally happy with the ADTA. That's a good thing, and we hope to keep that up. We also want to encourage our new members and those who have not been attending to participate. We think there are opportunities for you and your firm. Our Marketing Committee is coordinating an effort to get you to refer matters and clients to other ADTA members. The Committee will be ready to meet you in Phoenix/Scottsdale and, hopefully, get a program together that can be a platform for going forward.

Gail and I, along with Bob and Donna Tait, have been privileged to represent the ADTA at meetings of the sister organizations (DRI, FDCC, IADC and Excess/Surplus). When I get the opportunity to speak to attorney and company groups about the ADTA, I always remind them just how unique we are, that we are the select few.

The ADTA meets in Phoenix/Scottsdale, Arizona on April 14 – 19, 2009. This meeting is being hosted by Tom and Mary Burke, and Jim and Eileen Ryan. We are staying at the Westin Kierland, a spectacular resort with lots to do. We're also planning a short pre-meeting trip to the Grand Canyon. Let us know if you're interested.

NEW COMMITTEES:

We have two new committees: The **Meetings Committee**, chaired by Molly Hood Craig, will assist meeting hosts with issues they confront in putting a meeting together.

Although some might believe that it's difficult to improve on perfection, in an effort to make our annual meetings even more enjoyable, not only for our members but for the ADTA spouses as well, we've created a **Spouses Committee** to assist the Executive Council and the Convention hosts in the selection and planning of activities. Terri Mitchell has agreed to act as Chairperson, and the Committee will include the spouses of the President-Elect and Convention Co-Host (this year Donna Tait and Eileen Ryan, respectively), the spouse of a Past-President (Holly Broom will initially fulfill that role), and Jennifer Schlitz representing the "younger crowd". The Committee is in the process of formulating its agenda, so if you have any thoughts or suggestions, please don't hesitate to pass them along to any member of the Committee.

COMMITTEE CHANGES:

At the Executive Council meeting in November, we made some changes in the Committees, including some of the chairs.

Our **Internet and Technology Committee** is now chaired by Cathy Spaulding. She and her predecessor, David Zizik, along with Peggy Schultz, are updating our website that will assure easy and complete communications with the membership. We hope to be operational when we arrive in Phoenix/Scottsdale in April. The **CLE Compliance Committee** is now headed by Kevin Amatuzio. We give a special thanks to Tom Sandenaw for all his work over the years holding down that job. I understand Tom wants to spend some time getting his golf game to another level. Good luck with that, Tom.

IMPORTANT COMMITTEE ACTIVITIES:

The recent survey of our members told the leadership that members are interested in pursuing marketing and business opportunities provided through the ADTA. Our **Marketing Committee**, chaired by Dan Balmert, is working on providing specific and concrete ideas regarding opportunities in marketing. Marketing was the number one topic for discussion at the Executive Council Meeting. It was agreed that it's time to take some action which we hope to do in Phoenix/Scottsdale.

Our **Continuing Legal Education Committee** headed by President-Elect, Bob Tait, consists of the Class of 2010: Kevin Amatuzio, Steve Heine, and Molly Hood Craig.

Our **Membership Committee**, chaired by Glenn Morgan, continues to work in keeping up the membership of our organization. We have very specific rules and membership requirements. ADTA invites only one defense trial attorney to be its prime member for one million in population for each city, town, or municipality across the United States, Canada and Puerto Rico.

The **Publications Committee**, which produces *The Association Press*, is chaired by Steve Heine. His most recent publication was extremely well received. Steve reminds us that we are always interested in personal items and important things happening in our members' lives. Please contact Steve with news and information, and we will try and work them into our next edition.

The **New Members Committee** chaired by Steve Pennell has worked to make this group a true benefit to the organization. If you're interested in helping out, give Steve a call.

The **Women and Minorities Committee** is committed to using their best efforts to make diversity work in the ADTA. The **National Issues Committee**, under the direction of Bill Powell, is participating at the upcoming Phoenix/Scottsdale meeting with a one hour program put on by committee members.

ADTA DUTCH TREAT DINNER

DRI MEETING - NEW ORLEANS
OCTOBER 22, 2008



Send us your Photo!



Personalize your contact information on the ADTA website.

Jpeg format is preferable
Send to pschultz@adtalaw.com



2009 ANNUAL MEETING – SCOTTSDALE, AZ

THOMAS P. BURKE II – AZ AND JAMES F. RYAN - PA

Arizona in April – The desert is in bloom, the days are warm, the evenings cool, and whether this is your 1st or 21st meeting, this is the place to be. Our 68th Annual Meeting will be at the Westin Kierland Resort and Spa located in Northeast Phoenix or North Scottsdale, depending which name you prefer. The resort offers everything imaginable to cure the Wintertime doldrums and welcomes you with a beautiful palm tree lined entrance and spectacular lobby. Westin Kierland has two swimming pools, 27 holes of golf and a first rate spa to cure whatever may ail you. Whether it is too many laps around the lazy “river” or too many poolside margaritas, the Agave Spa will loosen and relax what the Arizona sun does not.



Westin Kierland is adjacent to Kierland Commons which has shops for the shoppers, restaurants for the foodies and outdoor “ambience” for just plain enjoyment. Additionally, there is an abundance of nationally recognized courses dotting the North Scottsdale desert: Grayhawk, Troon North, TPC, Wekopa, to name just a few.

As usual, the Annual Meeting will offer enlightening and insightful CLE. Bob Tait and his committee have arranged for a diverse program addressing remarkable changes effecting our practices, both in and out of the courtroom. Thursday’s session will begin with Suzanne Richards, Esq. advising us on what we and our clients need to know about the discovery of electronically stored information. Thereafter, ADTA member David Zizik will then help us face the wave of the future -- the “paperless law office”. Thursday morning’s program will conclude with Dr. Jeffrey Boyll of Litigation Research Technologies discussing the latest innovations in jury consulting. Not to be outdone, Friday morning will begin with United States District Judge Algenon “Monty” Marbley, a former defense lawyer who just celebrated his 10th anniversary on the bench, sharing his impressions of the “Changing Face of the Trial Lawyer”. We will then be treated with a demonstration of a “State of the Art” accident reconstruction by Robert Winn, the Director of Colorado Operations for Engineering Systems Inc. The CLE session will conclude with ADTA “National Issues” chair, Bill Powell, and his partner, Tom Hurney, detailing the erosion of the privilege, the status of federal preemption and other “issues” of national importance.

Our Saturday morning program includes for the first time not only a fascinating presentation for both members and their spouses, but more CLE credit. St. John’s University Professor of Law John Q. Barrett, a world-renowned expert on the Nuremberg Trials that followed WWII, will compare those tribunals to those that have followed 9/11 in “Nuremberg Lawyers” Then and Now: Government Policymakers, Prosecutors and Defenders under International Law, 1945-2009.” Professor Barrett is a graduate of Georgetown University (1983) and Harvard Law School (1986), and he is an Elizabeth S. Lenna Fellow at the Robert H. Jackson Center in Jamestown, New York. Professor Barrett is writing the biography of the late United States Supreme Court Justice Robert H. Jackson, who was the architect of and then chief United States prosecutor before the International Military Tribunal in Nuremberg during 1945-46.

The evening events, hopefully started each night with another memorable Arizona sunset, will follow the usual pattern for our meetings. On arrival night (Wednesday), the President’s Reception will be outside at the Marshall Pavilion.



On Thursday evening, we will go indigenous: the Desert Botanical Garden. Established in 1945 to preserve and exhibit desert flora, the Desert Botanical Garden is a setting that reveals the wonders and beauty, sometimes subtle, of desert plant life. Whether an interesting juxtaposition to the desert plants or some artistic evolution, a unique exhibit will be on display while we are there, Chihuly: The Nature of Glass. Dale Chihuly is the renowned Seattle glass artist whose installation at the Desert Botanical Garden has been described by one reviewer as “serious an art as being done in any medium.” Come see and compare.



Optional events for the meeting include horseback riding, desert jeep tours, a tour of Old Town Scottsdale and a visit to the Phoenix Art Museum and Heard Museum. The latter two offer an interesting point/counterpoint. The Art Museum has transformed itself into an impressive contemporary setting with a wide ranging collection of world art; the Heard, meanwhile, is in Spanish Colonial setting and contains one of the largest collections of native American art.

Saturday evening will have our traditional Black Tie Gala, onsite at Westin Kierland. We have been honored to have Kevin Kelly as President this year, and his wife Gail supporting him in a First Lady role, so we look forward to a special night in tribute to them.



ADTA COMMITTEES AND MEMBERS

Membership Committee

Glenn S. Morgan
National Membership Chairperson

David W. Zizik
Northeast Region
(ME, NH, VT, MA, CT, RI, NY)

Patrick G. Cullen
Mid-Atlantic Region
(PA, NJ, DE, DC, WV, VA, MD)

Gerald W. Weedon
Southeast Region
(NC, SC, GA, FL, AL, TN, MS, PR)

Louis J. Leonatti
North Central Region
(KY, OH, MI, IL, IN, MO)

Douglas M. Johnson
Midwest Region
(MN, WI, SD, NE, IA, KS)

Katherine Venti
Mountain Region
(WY, MT, ID, CO, UT, ND)

Barry N. Beck
Southwest Region
(TX, OK, NM, AZ, AR, LA)

Steven C. Mitchell
West Region
(CA, OR, WA, NV, HI, AK)

Morris A. Chochla
Northern Region (Canada)

New Member Sub-Committee

Stephen R. Pennell - Chairperson

William B. Alverson, Jr.
Edward L. Birk
Richmond M. Enochs
Beth R. Fleishman
Stephen J. Heine
Robert W. Murnane
Jennifer Lee Parrish
J. Burruss "Buzzy" Riis
Steven S. Tervooren
Bruce L. Walker
David W. Zizik

Women and Minorities Sub-Committee

Cathryn Spaulding - Chairperson

Patricia O'Connell Alvarez
Adrienne L. Baumgartner
Maureen M. Deskins
Jeffrey R. Glass
Richard E. Harrison
Gail M. Kelly
Carrie J. Legus
Karen L. Kendall
R. Alan Lemons
Glenn S. Morgan
Jill Haavig Stone

Internet and Technology Committee

Cathryn Spaulding - Chairperson

William H. Staples
David W. Zizik
Co-Chairpersons
Scott E. Blinks
Joseph J. Bosick
Troy A. Bozarth
Thomas P. Burke, II
Gary J. Clendening
Philip C. Graham
Glenn S. Morgan
Russell H. Roberts
Robert E. Tait
Robert M. Tyner, Jr.

Mandatory CLE Compliance Committee

Kevin F. Amatuzio - Chairperson

Scott E. Blinks
John R. Brown
James D. Gauthier
Vincent R. K. Orchard
James F. Ryan
Thomas A. Sandenaw, Jr.
William H. Staples
Gay L. Tedder
George M. Walker
James F. Waltz

Marketing Committee

F. Daniel Balmert - Chairperson

Edward L. Birk
Maureen M. Deskins
Thomas J. Hurney, Jr.
Stephen D. Jones
Michael A. Montgomery

Meetings Committee

Molly Hood Craig - Chairperson

Thomas P. Burke, II
John R. Clifford
Gail M. Kelly

National Legal Issues Committee

William J. Powell - Chairperson

Michael F. Aylward
Edward L. Birk
Matthew W. Carlson
Thomas A. Hurney, Jr.
Bruce Keplinger
Michael C. Kronlund
Russell H. Roberts

Program and CLE Committee

Robert E. Tait - Chairperson

Kevin F. Amatuzio
Molly Hood Craig
Stephen J. Heine

Publications Committee

Stephen J. Heine - Chairperson

Adrienne L. Baumgartner
Michael W. Brennan
Gordon R. Broom
Richard B. Collins
Patrick G. Cullen
James D. Harris, Jr.
J. Frank "Jeff" Kinsel, Jr.
Linda J. Hay
Steven C. Mitchell
Bruce W. Robinson
Steven V. Schlitz
Jimmy E. White

Site Selection Committee

Daniel R. Formeller
2012 Convention Chairperson

Stephen R. Crislip
2013 Convention Chairperson

John R. Clifford
2014 Convention Chairperson

Spouses Committee

Terri Mitchell - Chairperson

Eileen Ryan
Jennifer Schlitz
Donna Tait

SECRETARY'S REPORT

GEORGE M. WALKER - AL



As many of you know, I am a lame duck, having announced my retirement as Secretary as of the close of the Phoenix/Scottsdale meeting in April. I have had a very enjoyable (and rapid) five years as the Secretary for our Association. For my final *Association Press* Secretary's Report, I thought it would be nice to come up with a Top Ten List—a la David Letterman—of my favorite memories of my five years as your Secretary. There were a lot of great memories to consider, but here are my ten favorites:

10. Bob Newhart. Okay, not really. What I really enjoyed was watching Gordy Broom bask in the feigned adulation of the Galveston meeting participants for his having brought Bob in.
9. Holly Broom's hole-in-one on number 9 at the El Conquistador golf course in Puerto Rico. She still owes me a drink.
8. Morgan Freeman. He had a good laugh when he sat down at our table at the Officers Club at the Miramar Marine Air Base in San Diego and I looked at Bill Luckett and said: "Morgan Freeman? I thought you said Morgan Fairchild was going to be sitting here!" The rest of the evening I heard him talking and I thought I was somehow in *The Shawshank Redemption*.
7. The Ocean Course at Kiawah Island outside Charleston. For everyone who didn't make it out there during the Charleston meeting, consult your local listings for the 2011 PGA Championship. Even if you are not a golfer, you will be moved by the beauty of this golf course.
6. The San Diego Zoo. But I was really disappointed that we didn't get to meet Joan Embry, who used to show up on the Tonight Show with animals from the Zoo and scare Johnny and Jay.
5. The seawall in Galveston. A more beautiful walk would be hard to find. My thoughts and prayers go out to all of those in the Galveston area who were so tragically affected by the winds and water of Hurricane Ike.
4. The ferry to the island beach in the Caribbean at the El Conquistador Resort. I never made it around the island to the nude beach on the other side, but I always meant to do so.
3. The hospitality suite at the Torrey Pines Hilton. The Pacific Ocean, the South Course at Torrey Pines, the sunset, and the constant overflying of the F-18 Hornets—it doesn't get any better than that.
2. The Olsen Sisters. Can we please have another meeting in San Diego so that we will have another opportunity to see those outstanding backup singers and dancers?

And my number one memory of my five year tenure as ADTA secretary is....

1. The wonderful opportunity to work with all of you who have served on the ADTA Executive Council with me at one time or another since June of 2004: Jerry Weedon, Gordy Broom, Dan Formeller, Steve Crislip, John Clifford, Kevin Kelly, Bob Tait, Frankie Colon-Pagan, Glenn Morgan, Matt Bailey, Pat Cullen, Steve English, Doug Johnson, Tom Burke, Jim Ryan, Barry Beck, Bill Luckett, Steve Mitchell, Mo Chochla, Bill Staples, Molly Craig, Kevin Amatuzio, Dan Balmert, Steve Heine, David Zizik, Steve Pennell, and Jim Harris. I enjoyed every minute with every one of you. May we all be in Heaven thirty minutes before the Devil knows we are dead!

MEMBERSHIP REPORT

GLENN S. MORGAN - VT

No more comments on the weather or venue commentaries. The hard true fact is that ADTA membership is the foundation of our organization. Consequently, if you truly believe in our mission, recommend a new Prime member in your state. If you are a Prime member and do not have an Associate member, add one. When my mentor and partner Leonard F. Wing, Jr. was approaching retirement/Emeritus status, he encouraged me to become active in ADTA. Betsy and I are forever indebted to the Wings for their advice on ADTA. As a group, many of us will be looking at Emeritus status in the coming years so don't wait until you are in the car heading for some retirement community to bring in a new member, do it now.

Our meetings are great and the CLE is the best. So please take that 15 minutes I've asked for in the past and think about what ADTA means to you and how you can share that experience with someone in your own firm or legal community. Remember to contact our new Executive Director, your State or Regional Chairs, or me about any new prospects or questions you may have about membership in ADTA.

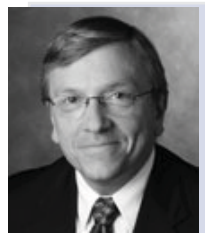
NEW MEMBERS

Steve Pennell, Chair of the New Member Committee, asked all of our new members to complete a brief questionnaire. Thanks to Steve, we are able to welcome new members:



J. Ben Alexander
Haynsworth Sinkler Boyd, P.A.
Greenville, South Carolina

Ben is married to Cathy. He practices with Haynsworth Sinkler Boyd in Greenville, South Carolina. He graduated from the University of South Carolina in 1998. Cathy is a CPA and a stay-at-home mom. Ben and Cathy have two children, ages 5 ½ and 3 ½. Ben specializes in medical malpractice defense and was listed in *Best Lawyers in America*. Ben enjoys running in his spare time.



Jonathan C. Bacon
Archer Norris
Walnut Creek, California

Jonathan is married to Anne M. Randolph. He practices with Archer Norris in Walnut Creek, California. He graduated from Golden Gate University School of Law in 1981. He and Anne have three children from 21 through 26 and one 2 ½ year old grandchild. Jonathan specializes in the area of environmental law and toxic torts and construction litigation. He was named as a Northern California "Super Lawyer" five consecutive years and received the DRI Exceptional Performance Citation in 2007. He is the immediate Past President of the Association of Defense Counsel of Northern California and Nevada. He enjoys skiing, motorcycles, carpentry, gardening, reading and travel.



Ralph E. Cascarilla
Walter & Haverfield LLP
Cleveland, Ohio

Ralph is married to Gini and practices with Walter & Haverfield in Cleveland, Ohio. He graduated from the T.M. Cooley Law School in 1973. Gini is an artist and art teacher. They have three children from 25 to 32 years of age. Ralph handles complex commercial, environmental and white collar criminal litigation. When he has time, he enjoys non-legal reading, gardening and wine.



Michael T. Cimino
Jackson Kelly PLLC
Charleston, West Virginia

Mike practices with the firm of Jackson Kelly in Charleston, West Virginia. Mike is married to Elizabeth who also is an attorney at the same firm. Mike and Elizabeth have three children, ranging in ages from 3 to 7. Mike graduated from the West Virginia University College of Law in 1993. Mike practices in the area of occupational safety and health and litigation with emphasis on premises liability, toxic tort and deliberate intent cases. Mike is listed in *The Best Lawyers in America and Chambers USA, American's Leading Business Lawyers* from 2004 to 2006. Mike has been on the Board of Governors for the Defense Trial Counsel of West Virginia since 2002. Mike's hobbies include golfing and skiing.



Robert M. Edwards, Jr.
Jones Obenchain, LLP
South Bend, Indiana

Bob practices at Jones Obenchain in South Bend, Indiana. He is married to Janene. Bob graduated from Notre Dame in 1976. He has three children from ages 25 to 30 and three grandchildren. He practices in the area of insurance defense and ADR. He is listed in the *Best Lawyers in America* under ADR and was selected as one of Indiana's Top Lawyers for ADR in 2008. He is a past board member of the Defense Trial Counsel of Indiana. When not working, Bob enjoys skiing, fishing, kayaking, scuba diving and travel.

Larry G. Evans
Hoepfner Wagner & Evans LLP
Merrillville, Indiana

Larry practices with Hoepfner Wagner & Evans in Merrillville, Indiana. He is married to Laura with whom he has four grown children and two grandchildren. Larry graduated from Valparaiso University School of Law in 1962. He has been the President of the Indiana Bar Foundation, on the Board of Governors of the Indiana State Bar, the President of the Local Inns of Court and held many other professional leadership positions.



L. Hayes Fuller, III
Naman, Howell, Smith & Lee, LLP
Waco, Texas

Hayes is married to Rosanne Fadal Fuller. Hayes practices with Naman, Howell, Smith & Lee in Waco, Texas. He graduated from Baylor University School of Law in 1979. He and Rosanne have two children, ages 21 and 23. Hayes does personal injury and civil trial work and ADR. He is board certified by the Texas Board of Legal Specialization. He is a Past President of the Texas Association of Defense Counsel. His hobby is travel.



Daniel W. Glavin
Beckman, Kelly & Smith
Hammond, Indiana

Dan practices in Hammond, Indiana with Beckman, Kelly & Smith. He is married to Julie, a science teacher. They have two children, ages 19 and 24. Dan graduated from Indiana Law School in 1980. He concentrates in transportation, products liability and employment litigation. He has been active with the Defense Trial Counsel of Indiana and his hobbies are music and theater.



Linda J. Hay
Alholm, Monahan, Klauke, Hay & Oldenburg, L.L.C.
Chicago, Illinois

Linda graduated from The John Marshall Law School in Chicago in 1986. She practices principally in the areas of professional liability defense. She has been active with the Illinois Association of Defense Trial Counsel. Her hobbies are reading, greyhound rescue and attending professional sporting events.



Anissa M. Mediger
Murnane Brandt
St. Paul, Minnesota

Anissa practices with Murnane Brandt in St. Paul, Minnesota. She graduated from the Hamline University School of Law in 1997. She is married to Garrett Mulrooney, an attorney and adjunct Professor of legal research and writing at the University of Minnesota School of Law. They have one child, Rowan Margaret, age 2. Anissa handles mass toxic tort, product liability, premises liability and general insurance defense litigation. She was selected as a Rising Star by *Minnesota Law & Politics* in 2005 through 2008. She reports that her hobbies are chasing a toddler, hiking and reading.



Julie R. Murzyn
Beckman, Kelly & Smith
Hammond, Indiana

Julie practices with the firm of Beckman, Kelly & Smith in Hammond, Indiana. Julie graduated from Indiana University in 1997. She is married to Mark, a physical therapist. She practices primarily in the area of litigation with a concentration in products liability, commercial and casualty litigation and transportation litigation. She enjoys travel, both domestic and foreign, and fitness including running, biking and rollerblading. She reports that she and Mark were expecting their first child in November, 2008.



Scott E. Shockley
DeFur Voran LLP
Muncie, Indiana

Scott is married to Vicki. He practices with the firm of DeFur Voran in Muncie, Indiana. Scott graduated from the University of Denver Law School in 1977. He has four children from ages 23 through 30 and two grandchildren. He principally practices in litigation, including commercial and employment litigation. Scott is a Fellow of the American College of Trial Lawyers. His hobbies are golf, fishing, skiing and gardening.



M. Michael Stephenson
McNeely, Stephenson, Thopy & Harrold
Shelbyville, Indiana

Mike graduated from Indiana University in 1982. He practices at McNeely, Stephenson, Thopy & Harrold. He is married to Wendy, a financial consultant. They have five children, ages 14 to 28. Mike concentrates in civil litigation including products liability. He was named as an Indiana Super Lawyer from 2005-2008. He enjoys fishing and assisting in his children's sports activities.

THE SUITE LIFE OF ADTA MARKETING

BY EDWARD L. BIRK - FL

Recently the National Security Agency intercepted a stray telephone call between two suspicious characters who actually turned out to be David Zizik of Boston and Jennifer Parrish of Fredericksburg, Virginia. They were talking about the ADTA, of course, but the NSA at first thought they were part of the Attorneys for Determined Terrorist Association. Luckily, just before David and Jennifer were subjected to extraordinary rendition for a free vacation in Guantanamo Bay, the NSA figured out it was just a couple of hardworking lawyers trying to keep bread on the table.

We obtained the transcript of the call through the Freedom of Information Act and thought you might enjoy reading it.

JP: "Hello, Jennifer Parrish speaking."

DZ: "Hey, Jennifer, it's David. I'm in big trouble. It's budget time and my partners are really jumping my case about my ADTA dues and travel budget. They want to know how many dollars we've made for every dollar spent on the ADTA. They tell me they want to spend the money on Red Sawks tickets. This is wicked bad."

JP: "Yeah, David, I used to hear the same thing. Until, that is, I found the hospitality suite at our annual meetings."

DZ: "What, the hospitality suite? I'm too busy attending CLE sessions to go to the hospitality suite. Then the family activities, then dinner, that's enough for me."

JP: "David, you've got it all wrong. The hospitality suite is the source of many great networking success stories. But in the ADTA we don't call it networking so much as we call it 'making friends.'"

"You see, like I tell my partners, the ADTA is our very own international law firm with an office in every major city across the country, including Puerto Rico, and Canada. Anytime one of our clients needs a lawyer in Vancouver, Oklahoma City, Los Angeles, Cleveland, Boston, San Juan, or Jacksonville, for example, all I have to do is open up my ADTA Directory and I can refer the client to a quality lawyer who I can trust not to steal my client."

DZ: "So the hospitality suite is a good place to network? I thought the only networking that goes on in the hospitality suite is between Mr. Seagrams and Mr. Schwepps."

JP: "Oh yeah you betchca. That's the place to be to make friends in the ADTA. We also make ADTA friends in the restaurant, on the bus tours, tennis courts, all over."

Jennifer went on to tell David about several ADTA marketing success stories. Like this one from Bob Tait, who is now our President-Elect from Ohio.

During the Galveston, Texas meeting in 2005, Bob was spending some time in the hospitality suite at the San Luis Resort. That's where he met Fred Raschke and his wife Kim, new ADTA members who had done lots of work helping to organize the Galveston meeting. Fred is the younger partner of Jack Brock of Mills Shirley, LLP in Galveston.

When Bob met Fred, he had no intention of giving him the hard sell about what a great attorney he is (which he is) or about how good his law firm is (which it is). Bob didn't plan to market his firm. Fred was new to the ADTA. The only thing on Bob's mind was what generations of ADTA members have done since our founding in 1941—welcoming Fred and making him feel like he's a part of a great group of attorneys and their families.

A few days later, everyone, including Bob and Fred, departed the San Luis Resort with renewed excitement about our practices and our profession. Fast forward four months to September of 2005 when Bob receives a telephone call from Fred.

It seems Fred's largest client—a chemical company—was about to be sued for an accident and injuries involving a pressurized rail car in Ohio. The case involves catastrophic injuries to a 27-year-old father of two. Fred's client turned to him for a referral and Fred turns to Bob. Fred called Bob and said the three sweetest words any of us has ever heard—"We need counsel."

If your best client asks you to recommend counsel in another state, you want to have confidence in whoever you recommend. That's what the ADTA gives us—the confidence to refer a client to someone you can trust, someone who upholds the best ideals of our profession—another member of the ADTA.

Since making his appearance three years ago in the rail car case, Bob has been involved in more than 70 depositions, he has made trips to Texas, Chicago, Washington, and Michigan. He's been to countless hearings, and the fees are already well into six figures.

"My managing partner not too long ago asked me 'I know you like this organization, but is it worth money we keep spending?'" Bob told me, "This case from Fred answered his question better than any words I might have offered. No one asks me anymore to justify my ADTA budget."

We don't often refer clients to someone we don't know. That's the value of the ADTA. Just as Jennifer told David, the ADTA is our international firm with an office in every city.

Here are a couple more examples.

In 2006 and 2007, Gordon Broom referred a number of mesothelioma medical depositions to Jerry Weedon and me. He knew he could call upon Marks Gray, P.A. to do the job quickly without trying to retire on his client's nickel. We obtained records and tissue samples from a Jacksonville hospital notorious for its difficult attitude toward discovery.

Several years ago, I needed an attorney in Oklahoma City to help defend against a breach of contract action filed in federal court. I looked up Stephen Peterson in our Membership Directory and he put one of his attorneys on the case. We had the case dismissed for lack of personal jurisdiction.

Later on, I needed trial counsel in New York City. Who ya gonna call in New York City? Kevin Kelly, of course. Kevin put one of his best attorneys on the case.

This is what being a member of the ADTA is all about. Friendship. Trust. Confidence. Professionalism. And, of course, the hospitality suite.

ADTA members no doubt have hundreds of these stories. Please send yours to me at ebirk@marksgray.com.

Ceci and I hope to see you in Arizona.

BOSTON 2010 ANNUAL MEETING

DAVID W. ZIZIK - MA

Plans for the 2010 Annual Meeting in Boston, Massachusetts are firming up. *Mark your calendars:* Boston, Massachusetts, Wednesday April 28 – Sunday May 2, 2010.

The Association has contracted with the Boston Marriott Copley Place to be our 2010 meeting/hotel venue. The Marriott Copley place is located at 11 Huntington Avenue in the Back Bay section of Boston. Within blocks of the hotel are residential streets with some of the best preserved examples of late 19th century urban architecture in the country. Copley Square, one block from the hotel, includes Trinity Church, the Boston Public Library, the John Hancock Tower, and other architecturally and historically rich sites. There are numerous restaurants, shops and other places of interest within walking distance of the hotel. The South End, Beacon Hill, the North End, Harvard Square, and Boston's great museums are within reasonable walking distance, a 5-10 minute cab ride, or a short hop on Boston's rapid transit (the "T").

The Association has contracted for our Thursday evening event at the JFK Presidential Library and Museum. This harbor side venue is home to President Kennedy's archives, and its museum provides a fascinating collection of JFK-era memorabilia. We will have the opportunity to tour the museum at leisure, and for cocktails, an indoor "clam bake," music and dancing.

We have received approval for the Thursday afternoon golf tournament at the Framingham Country Club from the Club's Board of Directors. FCC, a private facility 30 minutes west of Boston, is a classic New England course, founded in 1902. ADTA's prime member from Springfield, Massachusetts – John Stewart – will chair the tournament committee.

The current plan for Friday evening's dine around is to offer hors d'oeuvres in ADTA's hospitality room from about 6:00 to 7:00. A number of sign-up sheets will be provided for various pre-chosen Boston restaurants, to make the process of selecting a dining venue easier, and to ensure that those who have not made prior plans will have the opportunity to dine with other ADTA members and spouses. By eliminating the pre-dine around venue (and associated bus transportation to get there), we will have more time to enjoy each other's company without the stress of a pre-set schedule.

Saturday evening's black tie gala will be truly special. ADTA has contracted with The Top of the Hub, an award-winning venue that features outstanding cuisine, impeccable service, and a sophisticated ambiance. Located 52 floors above Boston's historic Back Bay in the John Hancock Tower, 200 Clarendon Street, we will be able to enjoy the Skywalk Observatory's spectacular views of the Boston skyline and beyond while we dine, dance and enjoy the evening with good friends.

Plans for the afternoon venues and other activities are ongoing, and include a special spouse's breakfast presentation, tours of Boston's Museum of Fine Arts and the Isabella Gardner Museum, walks along Boston's Freedom Trail, "Duck Tours," Fenway Park, and much more. This will be a truly special experience in one of America's great historic cities. Plan ahead to share the fun with your ADTA friends in Boston, Massachusetts, Wednesday, April 28 to Sunday, May 2, 2010!

A WORD FROM LOU

LOUIS M. SCOFIELD, JR. – TX

It is time we discussed our offices.

Being a good lawyer is not enough in this day and time of an oblique economy and stiff competition. We must look like good lawyers too. And part of looking like a big-time hot-shot courtroom lawyer is residing in an appropriate office. And here, as in everything else I write to you about, there are a few rules.

First Rule: Your office is not just a place to paint your name on the door, and to put your desktop computer and land line telephone. It, like your clothes, needs to be impressive. If you are sitting at a crappy desk, in a crappy suit, in a ratty office like Philip Marlow's, your client is not going to shell out \$500/hr for your stunning talents. No one really wants a "diamond in the rough" when their legal neck is in a noose...not at these prices.

So you need to get into the best office you can afford...then decorate it appropriately. Mind you, I realize the physical plant limits you here. In the "old days" our offices were positively regal: spacious, with deep hand-set wood paneling; a separate sitting area with small sofa, chairs and coffee tables; elegantly appointed with art, lamps, vases, ash trays; and there would be a liquor cabinet in the corner. The desk area had a large dark desk, inlaid with leather and matching leather wing-back chairs. Law books were at hand behind the desk, and licenses were hung in custom frames, discretely off to the side, but lighted and set so they would be seen. If this describes your office, congratulations, you're probably about to retire.

Today's office buildings of glass, steel, and lease rules, limit your pallet. But you can still use impressive furniture and hang your credentials on the wall. Which leads us to the Second Rule: Display your credentials. You want your client to see that you were a "good student"; that you "play well with others"; and that you are "respected by your peers". So hang your credentials where they will be seen.

On the "good student" point, you want your clients to sit in your office, see your licenses and degrees, and think to themselves: "Say, he sure studied a lot; I'll bet he's really smart." They don't care if you were no fun back then. Every time I have had a body part removed by a surgeon, I did not want the doctor who could chug, tell jokes, and invent mischief in school. I wanted the guy opening me up to be the one who studied a lot and was really smart. I know it was a long time ago, and such distant academic applause means little, but you need to display all you can to elevate yourself, in your client's eyes, above the mundane no fun human that you still are. Which is also why you display the other stuff, like the "plays well with others," credentials. That's your ADTA membership plaque, DRI, state bar, and local bar memberships. And on the "respected by your peers" point, put up the gratitude plates and awards you have. The client will figure you deserve respect, at least to start with, if others have respected you. Besides, all these licenses, plaques and awards can easily cover sloppy paint and wall paper.

Third Rule: Your general office décor should reflect your personality, not. If you think it should, you haven't been listening. The whole idea is to look respectable and worth \$500/hr. Trust me, as cool or as cute as your personality may be, it isn't what a new client (or even an old one) really wants to see. They want to see success. They want to see competence.

My own office is a perfect example. Above my credenza hangs behind me a very large painting by Dale Terbusch. It is a powerful scene of mountains, with a brilliant almost blinding sun dawning over the distance, and a ribbon of river flows far far away, continuing its relentless erosion of the dramatic cliffs and peaks. In the foreground, there are tough gnarled trees that stand mute amid the rocks, and there is a coming storm off to one side. Folks, you could put Daffy Duck in front of this painting and he'd look competent.

The wall to my left is covered with "credentials" (see Second Rule above). The wall to my right features a painting by George Boutwell. It's a Texas hill country scene, with a farmhouse, a windmill, and an old pick-up truck. It positively hums "Texas values". And in front of me, where my clients sit, is a small table separating two leather wing-back chairs...and the leather matches the leather in my desk top. You guessed it "tradition".

Lest you think I am completely manipulative, there are a few random hangings of paper, scotch taped here and there, that have lovely hearts and "I Love Daddy" drawn with crayola. But in general, the above-described theme prevails.

Finally, Fourth Rule: Be tidy. No one likes to see a sloppy desk, with piles of stuff, files, letters, paper clips, post-its, and old documents that should either be in a file or should have been discarded years ago. As clients sit there and see it, they might start to think that some of the debris might be their case. I know its form over substance and sometimes a mess is unavoidable, but there have to be limits. I have a partner whose office is so messy, when he was out of town some creative friends of his did a movie about it. His office was the set, and the plot was that it could not be entered without full toxic waste suits, breathing apparatus and safety lines. That level of mess isn't good.

Related to the mess on your desk is the mess in your desk. Never keep old documents in your desk. No matter how useful they are to reminisce from, toss 'em. Tomorrow isn't promised to anyone, and potential personal mortification (in more ways than one) should be inspiration enough for you to keep the place free of old resolved grievance notices from the State Bar, denial letters from your E & O carrier, and, of course, love letters... which, it is said, "read great at the time, but always sound silly in court".

THE ASSOCIATION PRESS

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RUMORS, GOSSIP AND INNUENDO ABOUT OUR MEMBERS

TERRI MITCHELL - CA

Hello fellow ADTA-ers! There is much to report from our ranks. First of all, **Bill Alverson** reports from Alabama that his daughter Blanche has recently committed to Auburn to play basketball! She is an all-state basketball player in Buford, Georgia. Blanche graduates in 2009 from Buford High School. His wife and daughter moved to Buford in June of 2007 and their lives have been working around her athletic career. Blanche is 6'3" and is ranked 45 nationally overall and 8th in her position nationally by ESPN. They have had a whirlwind of events and visits. Going into this past May when she committed, Blanche had already received offers from Louisville, Miami, Penn State, Arkansas and, of course, Auburn. Her older brother goes to Auburn, and like her brother, she will be a fourth generation Auburn student. Some of you might remember Blanche as Bill took the family to ADTA in Tucson and San Antonio. Probably her biggest memory is the armadillo races she and her brother participated in while in San Antonio. For the first time in years, their calendar this spring won't have a basketball conflict so we look forward to seeing Bill and his wife again! Congrats to the Alverson family.

On another athletic note, reports from Illinois tell us that **Karen Kendall** completed her first marathon in St. George, Utah on October 4, 2008. She has run many half-marathons, but this was her first full 26.2 mile event. Can an Ironman Triathlon be far off? I'm glad to hear that Karen recovered from her fall in Charleston due to those uneven sidewalks...what is it with the South and trying to keep things historically accurate? HA!

Lynnette Baldwin, long-time Assistant to the Secretary of the ADTA, is working as a volunteer in the nursery of a local hospital, where her daughter, Lindsay, is a registered nurse. I guess Lynnette had to find something to do with all her spare time now that she is retired from the ADTA.

Mo Chochla writes from Canada that he and Jan's son, Dylan started law school at the University of British Columbia in Vancouver, Canada this past September. Mo is also starting part-time studies for his Masters of Law at Osgoode Hall Law School in Toronto in February of 2009. If he and Dylan stay on schedule, they will both be graduating from law school in the Spring of 2012 (Mo for the second time, of course!) Also, because he didn't have anything else to do, Mo has agreed to be Vice-Chair and Chair of the Governance Committee of the Toronto East General Hospital Foundation for yet another year plus he assumed the role of Chair of the Audit Committee of the Ontario Bar Association and was elected member of council. He recently was selected once again by "Best Lawyers" through its peer review as a leading lawyer in "Insur-

ance Law" as well as having been recognized as a leading practitioner in "Insurance Litigation" and "Professional Liability". Congrats to the Chochla family! Nice job, eh?

Last month I reported that **Gordy and Holly Broom's** son Joe married a fellow Kansas Jayhawk, Jessica Keegan. What I left out, however, was that the ceremony was officiated by fellow ADTA member (and fellow Jayhawk) **Bill Sampson!** Bill writes, "Gordy had been hinting around about my doing the ceremony for some time when I asked him, 'Is this what Joe and Jess want to do?' Turns out, it was! So yours truly had to 'get official.' Living in a small town has its benefits for something like this. And before long, my disappointing public record notwithstanding, I had a pro tem appointment and was on my way."

Gordy chimes in, "Joe and Jess are both KU graduates and very proud of it. Bill and Dru live in Lawrence, Kansas and are also dedicated Jayhawks. When we visited with Joe and Jess at school we would also visit with Bill and Dru. In the course of time, Joe and Jess developed their own relationship, and once they learned Bill could perform the wedding, they were pleased that he said yes."

Bill adds, "The ceremony was held on the KU campus in the Alumni Center, a traditional, brick building near the Student Union and which, from its upper floor, commands a view of Kansas's justly famous 'hill.' Planned to a fair thee well by the bride to be and celebrated on a flawless summer day, the ceremony was beautiful. There was a poignant moment as the rings were presented, which only more firmly endeared this couple to their family and friends. After that, it was applause and music and the groom literally clicking his heels as he left with his truly lovely partner for life. As with his father and me, it was not lost on Joe he had married up!"

Bill continues, "I have participated in my share of legal proceedings, like all of us. But there is something special, for sure, about looking the children of such great friends in the eye and helping them celebrate the most important moment of their lives. It is as humbling as it is happy, and it is altogether wonderful. Thanks to Gordy and Holly and Joe and Jess for the opportunity. God's speed to Joe and Jess."

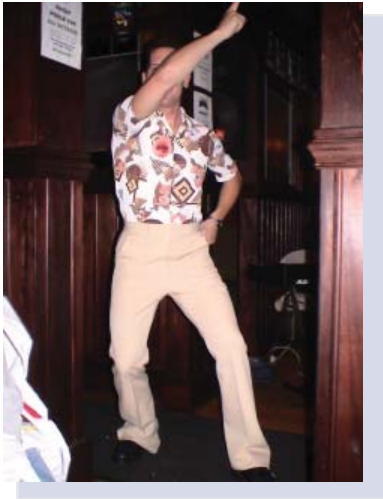
Gordy sums it up, "We all enjoyed a once in a lifetime experience. Needless to say the trial lawyer skills served Bill well. He did a beautiful job and he and Dru are part of our family experiences. A true ADTA friend."

Gail Kelly reports that **Pam Clifford** had to leave the Executive Council early to get back to attend the American Music Awards. I can't be positive, but I'm pretty sure I spotted her on the TV broadcast as a back-up dancer to Kanye West! In fact, here is an undercover photo obtained from Kanye, himself. Of course, her face has been blocked out to protect her...I think I've seen that dance move at the ADTA.



And, our co-host of the Arizona meeting, **Jim Ryan** feels obligated to tell us that as soon as Pam left, husband **John** (you know him, the outgoing Pres.), put on a bowling shirt left over from the 70s and enjoyed himself too much, if you know what I mean. John was celebrating as Pam doesn't let him wear his bowling shirt back home! In fact, I think this is a picture from that night. Of course, John is incognito, but I recognize that dance move as well....and, it looks like he's wearing Spanks!

From sunny Nor Cal, things are pretty normal. **Steve** is in yet another trial and has been elected President of the local Bar Association. I have just been hanging out in the local bars! We visited our son Scott at UCLA for parent's weekend, which coincidentally ended up being "Dad's day at the frat." I'm happy to report that Steve and Scott were able to "hold their own" in the beer pong contests. The question was what to do with mom on the frat bus, so of course, I went! Chugs were had by all. Our older girls played together on the varsity soccer team at the high school. They won their league and got to play side-by-side in the sectional playoffs. After 100 minutes of scoreless play, they lost in penalty kicks! But I'm happy to say that they held the other team to a shut-out — in fact they had 16 shut-outs throughout the season. Our youngest daughter, Jenny, has jumped into middle school and I'm pleased to report has sworn off boys for awhile!



For anyone interested, there is a "**Race for the Cure**" being held in Chandler, Arizona on April 19, 2009. Chandler is about 20 miles away from Scottsdale. It is a triathlon for women only. You can participate as individuals or as teams. It is a 400 meter swim, 8 mile bike ride and 2 mile run. If people are staying on, it might be fun to put a team together. Here is the link if you are interested: <http://www.triforthecureaz.com>.

The holiday season is upon us and provides a chance to reflect upon what is important. Last Thanksgiving we were lucky enough to share the time with the **Clifford Family**—can you imagine all eight of us together—YIKES! We had a wonderful time and most importantly, our children got to know one another and understand the bonds between John, Steve, Pam and I. That friendship goes beyond the ADTA confines and into our everyday lives. It brought us together again this summer up in northern California to celebrate John's sister's 50th. The ADTA provides members an opportunity to connect on a level beyond the once a year meeting.

Our thoughts go to our friends in Texas and along the Gulf Coast. I was hoping to have information and updates on how they are coping with the devastation that has hit their area but have nothing to add. I believe I speak for the general membership in extending the strength of our communal friendship to bring them some comfort.

I hope to see all of you in Arizona!
XOXOXO,
Terri

NEW YORK COURT BARS DEFENSE ATTORNEY FROM REPRESENTING CORPORATE DEFENDANT'S FORMER EMPLOYEES

LINDA J. HAY - IL

In a recently filed opinion by a New York Court, an employment defense firm was ordered to cease representation of four former employees of the defendant employer because the representation had the potential to prohibit the plaintiff's informal access to those fact witnesses. (*Rivera v. Lutheran Medical Center*, ___ N.Y.S.2d ___ 2008 WL 4635746, 2008 N.Y. Misc. LEXIS 6060 (2008).) This case should be of interest to any defense attorney who has contacted former fact witnesses, and offered to represent them in the litigation for free. Armed with this ruling, plaintiff's counsel may now seek, and obtain, disqualification of the lawyer's representation of these witnesses.

Plaintiff Felix Rivera, a housekeeper, was terminated by his employer, Lutheran Medical. Rivera sued Lutheran Medical and a vice-president of Lutheran Medical for improper termination based on theories of retaliatory discharge (Rivera's sister-in-law had been a patient at Lutheran Medical, filed a claim, and settled the case with Lutheran) and discriminatory practices. Lutheran asserted termination on a legitimate basis, that Rivera had sexually harassed another employee. Morgan Lewis and Bockius, LLP, appeared on behalf of Lutheran Medical. Rivera's wrongful termination case asserted damages in the amount of \$12 million. ("Judge Calls Morgan Lewis' Actions a Bid to Thwart Informal Discovery", N.Y. Law Journal (October 29, 2008)(see also www.law.com).

In the course of defending Lutheran Medical, Morgan Lewis contacted four former employees who were fact witnesses in the case. These four former employees had no personal potential liability or exposure in the case. Morgan Lewis offered to represent all four of these individuals for purposes of presenting for deposition, without charge. The four former employees all accepted Morgan Lewis' offer of representation.

When these facts were disclosed to Rivera, Rivera filed a motion to disqualify Morgan Lewis from representing these four former employees, citing as a basis that Morgan Lewis' actions of contacting the former employees and offering representation at no charge denied Rivera the right to conduct informal discovery as to these individuals, i.e., Rivera and his lawyers were now precluded from talking with these employees without any defense lawyers' knowledge or involvement. Rivera also argued that Morgan Lewis had a conflict of interest with its various clients, under New York law, and that Morgan Lewis had further violated New York law concerning what Rivera termed to be solicitation of legal work.

In ruling on the motion to disqualify, the court found that the law firm did not have a conflict, but it did improperly solicit these witnesses and gained a potential unfair tactical advantage. The advantage was that Lutheran Medical had effectively blocked Rivera's informal access to these witnesses. The court cited *United States v. Occidental Chemical Corp.*, 606 F. Supp. 1470, 1478 (W.D.N.Y. 1985), as a basis for its holding and noted that the court there stated it was "unwilling to provide unnecessary encouragement for a method of obtaining legal work which results in one side gaining even a minor tactical advantage."

The *Rivera* Court relied also on a prior New York case, *Niesig v Team I*, 76 N.Y.2d 363, 558 N.E.2d1030 (1990), which had addressed an

analogous situation in the context of a plaintiff moving the court for leave to informally discuss the case with former employee witnesses. The *Niesig* Court, in granting plaintiff's motion, emphasized the importance of informal discovery practices in litigation, which the *Rivera* Court found critical to its analysis.

The *Rivera* Court stated:

These witnesses are not parties to the litigation in any sense and there is no chance that they will be subject to any liability. They were clearly solicited by Morgan Lewis on behalf of LMC to gain a tactical advantage in this litigation by insulating them from any informal contact [*6] with plaintiff's counsel. This is particularly egregious [**14] since Morgan Lewis, by violating the Code in soliciting these witnesses as clients, effectively did an end run around the laudable policy consideration of *Niesig* in promoting the importance of informal discovery practices in litigation, in particular, private interviews of fact witnesses. This impropriety clearly affects the public view of the judicial system and the integrity of the court.

Unfortunately, Morgan Lewis has a history in this litigation of improperly thwarting plaintiff's attempts to obtain discovery. For example, Morgan Lewis refused to disclose numerous documents it marked "classified." Plaintiff was compelled to move to declassify those documents. By Order dated March 5, 2007, Hon. Arthur M. Schack, ⁴ granted plaintiff's motion and declassified all of the documents finding after an in-camera inspection that the documents in question were "ordinary documents, such as documents relating to the terminations of plaintiff, an insurance policy, and other similar non-confidential documents" (Schack, J., Decision and Order, March 5, 2007, P 1). Justice Schack also issued a conditional preclusion order against defendants for evasive responses to plaintiff's discovery demands. [**15] Plaintiff's cross-motion to preclude defendants from asserting any affirmative defense that defendant acted for legitimate business reasons with regard to plaintiff's claim of discrimination was conditionally granted unless defendants provided "complete, direct, clear and **non-evasive answers**, including any responsive documents . . . to outstanding discovery requests" (Decision and Order, P3) [Emphasis added].

(*Rivera*, 2008 N.Y. Misc. Lexis 6060 (at p. 4).) The court ordered that Morgan Lewis cease representation of the four former employees.

The ruling of the *Rivera* Court clearly admonishes the long-standing practice of defense attorneys to contact, communicate and represent (if the witness agrees) former employees of its client who are purely fact witnesses. Troubling also is the court's reliance and mention of past discovery matters, ruled on by the court on seemingly very different issues, as a basis for criticizing the defense firm's actions. This case is noteworthy in the sense that the plaintiff's bar may be more aggressive in seeking defense firm disqualification on these issues with at least a case citation in support.

While it is not clear what direction other courts will take based on this case alone, the defense lawyer dealing with this common scenario would be well served to thoughtfully analyze the issues raised in *Rivera* before a casual contact with a former employee in which an offer of representation is made. It is difficult, however, to assess what specific steps the lawyer can take in such a situation in light of the court's ruling. There is no doubt, however, that the *Rivera* Court frowned upon the lawyer initiating the contact and, in that initial contact, making the offer of representation. The defense lawyer should try to take time after the initial contact and communication before having a discussion about representation. The defense lawyer may also want to advise the former employee that they have the ability to retain any counsel of their choosing or none at all. The

defense lawyer should consider a later discussion about representation, if through their firm, for a fee. The key component seems to be actions that are not taken which appear or are in the nature of a solicitation for services, which then acts as a bar to any informal communication with the former employee by opposing counsel, before they have had the opportunity for contact. Certainly each situation should be considered on its own facts, but in cases where the stakes are high, or the opposing firm is savvy, the defense lawyer should consider some of the above steps. Documentation of these facts would then be useful if faced with a motion to disqualify. Despite steps taken to alleviate the *Rivera* Court's concerns however, it remains unclear whether these steps would be sufficient to defeat a motion to disqualify under the *Rivera* Court's ruling.

WHAT IS NEW IN MY STATE?

PATRICK G. CULLEN - MA

Michael F. Aylward



Mike, who went by "Radio" as a kid, now practices law in Boston with the firm of Morrison Mahoney. That firm recently celebrated its 60th anniversary—a period during which it has grown from eight attorneys to 160. The firm's sphere of influence is broad as it has branch offices in New Jersey, New England and Old England (make that London) to service the firm's Lloyds of London account.

While the firm's traditional base of insurance defense has been expanded in other directions, Mike heads up the insurance claims group to deal with suits involving primary and secondary coverage and bad faith. He has eschewed a career in radio notwithstanding the early nick-name and a professional quality radio voice. His biography includes a college degree from Dartmouth, a tour as a U.S. Senatorial aid, a law degree from Boston College (before it became a national sports contender in everything) and heavy duty experience with the Super Fund Statute. That statute provided enough legal and factual questions about the 2,000 or so "worst" toxic sites to keep an army of law offices busy for years. He has had experience with clergy abuse cases in the Boston area, as well as in *Speck of Dust* (not its real name), Mississippi wherein the town's only restaurant sat and fed at one sitting all the protagonists in a clergy abuse case: the Bishop and victims broke bread together so to speak.

Mike attended his first meeting of ADTA through connections at Defense Research Institute. He knew a number of ADTA members from activities with sister organizations and ultimately joined the group because "I like it for the people" and because he was persuaded to join at about 2 o'clock A.M. in the hospitality suite by an ADTA member whose way with words was so good there was no need for him to kiss the blarney stone. Michael and his wife Deborah (a real estate attorney not affiliated with Fannie or Freddie Mae) enjoy the theater, enjoy traveling and are looking forward to their 20th anniversary in about one year.

Boston is, according to Mike, a great place to try cases. The trial level judges are, he says, appointed on merit and are a sharp group of judges. This fact lead Mike to contribute this situation to What is New in My State. The Boston Superior Court Administrative Judge created a Commercial and Business Litigation Section that is outstanding. The bench bright lights who staff that section are especially adept at commercial litigation. The bar is so much convinced of that reality that such cases are gladly tried in State Court in Boston rather than Federal court. How is that for something that is new?



Robert A. Babcock

Bob has been a member of ADTA for about a decade, having come to us through a meeting he attended as President of The Federation of Defense & Corporate Counsel. Through friendship with the then officers of ADTA, he came to appreciate our small, friendly, everybody-knows-everybody style and so he joined up. He and his wife of 53 years, Donna, have enjoyed their ADTA experience mightily.

Bob traveled a somewhat different road to the practice of law in that he obtained an undergraduate degree in architecture, graduated from highly regarded Michigan Law School and then spent six years in the Air Force. At the conclusion of his Air Force obligation, he joined a firm that had heavy emphasis on construction litigation, which along with Fidelity and Surety law, are his principal areas of practice. Currently he is with Baker Sterchi Cowden & Rice, a firm in Kansas City, Missouri that has another office in St. Louis. Just by talking with him on the phone, you sense that he is energetic and quick.

Over the years, Bob has had the opportunity to participate in the defense of both high profile cases and high profile individuals. In his defense of the general contractor and representation of its excess carrier in the "Hyatt Skywalk Collapse" case and subsequent declaratory judgment actions, Bob confronted head-on the business of dealing with a huge number of plaintiffs who pressed claims for serious injuries in the presence of large excess policies. He has also had the opportunity to represent, in separate matters, Waylon Jennings, as well as Nate "Tiny" Archibald and Lucius Allen, both players with the National Basketball Association in "the day."

Bob enjoys fly fishing and making model ships, a hobby that places a premium on patience and a steady hand. He works at his professional craft with the lessons learned from those hobbies: exercise patience and a steady hand at your work with the realization that some days, the fish (jury) are not biting. He looks at what is new in his state from the perspective of what is new in the practice of insurance defense. He notes, in the "What is New in My State" category, that there is a real difference between defense and **insurance** defense. Large deductibles, self-insured retentions and liability claims that are excluded from coverage all create situations where the dollars at issue are not the concern of insurance carriers. As far as Missouri is concerned, the implementation of a comparative fault statute that eliminates joint and several liability for defendants with less than 51% fault and a punitive damages statute that imposes caps of \$500,000 or five times the net amount of judgment have changed the evaluation of potential exposure for tort claims.

NATIONAL ISSUES REPORT

WILLIAM J. POWELL - WV

Did you ever get that feeling of uneasiness about the world? Now is such a time for me and I expect many of you. The stock market is in the tank, my 401(k) is closer to 201(k), kids college funds have taken a hit (plumbing school, son?), and a new political reality is about to be unveiled with the Obama administration. I express no opinion about the election, and wish him and his staff every possible success. However, there is little doubt that changes are coming for all of us and our clients.

If we are to believe the literature a few examples of potential change include:

1. Labor Unions will begin to grow again after a long decline with the enactment of the "Employee Free Choice Act" which will substitute open voting for secret ballot.
2. Mining and other regulated industries will become much more regulated under an Obama Administration.
3. Environmental controls will become stricter affecting everything from auto makers to power plants.
4. The federal courts will get judges who, if history holds, will be less conservative.

These are just a few of the possible changes. Our clients are concerned. Change, in and of itself, incites concern for clients, and we should be counseling them on how to prepare for it. WE need to prepare for it. We will not be immune from the future changes in the law or the current recession (rate freezing, anyone?). I expect the next few months will tell the tale of what the future hold and will make our Spring meeting pretty interesting. Hang on tight.

In an effort to offer you something actually on the legal front, I note that the United Kingdom passed its Legal Services Act which allows accountants become partners in law firms. Will the United States be next?

Also, for those who are involved in tax work the Seventh Circuit in *Khan v. U.S.*, No. 08-1743 (7th Cir. Nov. 20, 2008) has ruled that the IRS has authority to summon attorney/accountants to testify about what they about the tax shelter client was involved with. For more see, *National Law Journal*, December 5, 2008. The very timely topic of privilege will be discussed *ad nauseam* at the Annual Meeting.

Lastly, OJ sentenced to 15 years. What a ding dong.

ABOUT OUR MEMBERS:

Stephen R. Pennell (IN), partner in the Lafayette firm of Stuart & Branigin, was named a "Diplomat of the Indiana Defense Trial Counsel" for 2008 at the association's Fifteenth Annual Meeting & Conference at Turkey Run State Park on November 20-21. The "Diplomat of the Indiana Defense Trial Counsel" award is presented to members of the Indiana bar who have distinguished themselves throughout their careers by outstanding contributions to the representation of clients in the defense of litigation matters.

Kathryn Montgomery (VA), wife of Mike Montgomery was the topic of an Open Letter to the Members of the Virginia State Bar from the Shareholders of Brandaid Marketing Corporation stating she "is by far one of the most brilliant and dedicated attorneys we have ever had the pleasure of working with."

Joseph J. Bosick (PA), a partner in the Pittsburgh Office of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, obtained a defense verdict from an all woman jury for his client, Echo Incorporated, in the U.S. District Court for the Eastern District of Pennsylvania on July 11, 2008. The high demand case was a product liability lawsuit involving the design of a gasoline powered hedge clipper, which plaintiff alleged was defective. The plaintiff suffered a disabling hand injury. The plaintiff was a Spanish speaking Mexican citizen who entered the United States legally with an H-2B visa for an employer in the landscaping industry. The work visa

coupled with the future lost earnings claim and the future medical claim gave rise to some interesting damage issues. The trial judge was Louis Pollak, who was the former Dean of Yale Law School.

The Federation of Defense & Corporate Counsel Elected its 2008-2009 Officers at their Annual Meeting at the Fairmont Banff Springs Hotel and Resort in Banff National Park, Alberta, Canada in August. The new officers are: President: Steven L. Barney (Petoskey, MI), President Elect: Michael T. Lucey (San Francisco, CA); Secretary/Treasurer: F. Thomas Cordell (Chickasha, OK) and Board Chair: Wayne B. Mason (Dallas, TX). The Board of Directors included **Richard K. Traub (NJ)**.

Patricia J. Kerrigan (TX) was appointed by Governor Rick Perry in 2007 as Judge of the 190th Civil District Court of Harris County. She won election in November 2008 to continue serving on the 190th for a full four-year term. Before taking the Bench, she had an active trial practice for 24 years primarily defending products liability, medical, general tort and commercial cases. She also handled select appellate work in State and Federal Courts of Appeals and was an arbitrator with the National Arbitration Forum.

In July, 2007, **Warren E. Jones (ID)** was appointed to be the 55th Justice of the Idaho Supreme Court by Governor C.L. "Butch" Otter.

Justice Warren E. Jones is an Idaho native who was born in Montpelier, Idaho. He attended the University of Chicago Law School where he received his J.D. degree in 1968. After his second year of law school, he received a Ford Foundation Fellowship for advanced study in criminal law and procedure at Northwestern University School of Law in Chicago. Justice Jones joined the law firm of Eberle, Berlin, Kading, Turnbow, McKlveen & Jones in 1970 where he later became the firm's senior litigator, specializing in litigation of all types, including negligence, products liability, professional malpractice and commercial litigation.

NEW MEMBERS

Claudia A. Baio – Rocky Hill, CT

Micheal J. Collins - Salt Lake City, UT

Carmen Symes Dusek – San Angelo, TX

Paul Gilliam – Tyler, TX

Dale L. Parker – St. Petersburg, FL

Stanley J. Tharp – Boise, ID

MEMBERSHIP NOMINATION

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

the ADTA. Please send an application to _____
(name)

at _____, _____, _____
(city) (state) (zip)

Office telephone: _____ Office fax: _____

Year admitted to practice in my state: _____

Name of Member (Print)

Signature of Member

Return to:

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

Tel.: (802) 786-1045;

Fax: (802) 748-8502;

Email: gsm@rsclaw.com

Membership Requirements

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

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

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

BOOK REVIEW

PATRICK G. CULLEN - MD

IN THE RING—The Trials of a Washington Lawyer by Robert S. Bennett, Crown Publishers 2008, 363 pages, \$27.50.

The cover for the book contains a blurb by former President Bill Clinton to the effect that the story is a rich portrait of Bennett's early life and the "fascinating tour through the high-profile cases that have defined Bennett's career." And it is so. Like Bill O'Reilly's *A Bold Fresh Piece of Humanity*, *In the Ring* does contain the story of how Bennett got to the here and now of his life. Unlike *A Bold Fresh Piece of Humanity*, the focus is a lot less on the self-diagnosed greatness of the author.

Mr. Bennett graduated from Georgetown and Georgetown Law School (after one year at U. VA. Law School), obtained a Masters Degree from Harvard Law School, clerked for a federal judge, became a federal prosecutor at the trial and appellate level, tried a bunch of criminal cases and put together a really impressive background as a trial attorney. He has represented the President of the World Bank (a lady friend was involved) and, you may recall, a President of the United States (a woman problem there too.) His clients have included Dick Cheney in an unfortunate shot-gun matter, Marge Schott of the Cincinnati Reds, the owner of the Zapruder tapes of the Kennedy assassination, some Duke lacrosse players, a Times reporter jailed for refusing to disclose her source and a long list of other individuals all of whom had headlines follow their legal issues.

Each of the stories is interesting. Bennett divulges no client secrets but does share strategies used, objectives sought and the personalities of opposing counsel. In several instances the author spells out that which he sought to achieve by his examination of witnesses. That is followed by a transcript of the "gotcha" questions. In an absolute sense, he did not "win" all his cases but was instrumental, by being very "pro-active", in getting the matters concluded to the satisfaction of his clients. One non-trial matter involved his participation on a committee assembled by the Catholic Conference of Bishops that concerned the huge sex scandal within the Church.

Mr. Bennett's view on people as witnesses: most people have secrets and pick and choose the things they will be honest about. His view on juries: any honest lawyer will tell you that trying a case before a jury is a crapshoot. He says he prefers the odds in Las Vegas. If you are in front of a jury, you have already lost. (Do I hear an Amen or two?) Anyhow, this is a pretty good book.

THE ASSOCIATION PRESS

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