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From the President's Desk

by Chris Heil, Esquire
ATLA President

It has only been a little over two weeks since I became the President of ATLA, and suffice to say it has been an eye opener. Although I have served on the Executive Committee as Secretary-Treasurer through the ranks up to President and have had the opportunity to work with and observe some of our finest Presidents to date, I did not realize just how "popular" a President can be. I've received dozens of phone calls, e-mails and letters from members, vendors and the occasional life insurance salesman, which had me worried for a second when I thought more about it! It seems everyone has an opinion they'd like to share on how I should handle this issue or that issue. Unfortunately, for each person who indicated they liked how "A" was being handled, and equal number thought "A" was the wrong thing and preferred "B". I suppose I should have expected as much from a group of highly motivated and intelligent professionals.

As I reflected on the diverse nature of opinions presented to me on just about every subject, a thought bounced around in my head that I have only recently been able to corral and put into words. Its not very original, but it is famous, so at least I chose well: "Ask not what your (President) can do for you, ask what you can do for your (President)". All right, so I took a few liberties with the quote (two to be exact), but the sentiment is instructive. I will dedicate my heart and soul this year to improving ATLA in any way that I can, but I need your help. For every opinion or complaint presented to me I have but one request: bring a solution with it. Those of you who know me well know that I can only do so much, and even what I can do is often less than inspiring, so I need you. Words without actions are hollow indeed. Before one complains that x or y needs to be done, or not done, I'd ask that you assess the situation and come up with a proposed solution. Your Executive Committee members, with my notable exception, are talented, motivated and intelligent folks, but they cannot do it alone.

Additionally, I'd ask that each of you get involved in ATLA as much as your time will allow. Each of you has a talent or skill set that can be brought to the table to improve not only ATLA as an organization, but the individual members in

it. Too often we are either afraid or unwilling to get involved beyond just membership, or attendance at one of our fine CLE programs. If that is the case for you, that's fine, but you really don't know what you are missing. In my many years being active in ATLA, from first just attending committee meetings, then chairing a committee or two and finally through my leadership track, I have become a better lawyer and a better person. I've learned professional and personal skills from folks like Ralph Cloar, David Williams, Chip Welch, Brad Hendricks and so many others and I am the richer for it. That is available to you, and you will also benefit, whether it be by networking and receiving referrals or just fellowship. Your membership in ATLA is what you make of it. Take advantage of the opportunities presented to give back to the organization and to take a leadership role. You will be the better for it, and so will ATLA.•

by Dee Studebaker, Esquire

***Bayird vs. Floyd*, No. 08-1099 (May 1, 2009).**

This case reminds appellate attorneys of the bad news and the good news concerning the rules of abstracting. The trial court granted a Motion to Dismiss pursuant to Ark. R. Civ. P. 12(b)(6) acknowledging it considered "all other pleadings and exhibits submitted." Therefore the circuit court's order was actually an order of summary judgment. The bad news: Appellant's addendum did not contain essential pleadings for the Supreme Court's understanding of the case. Appellee provided a supplemental addendum, but it did not contain enough either. The good news: Ark. Sup. Ct. R. 4-2(b)(3) allows appellant "an opportunity to cure any deficiencies." The Court ordered the Appellant to file a substituted addendum and brief within 15 days, but only provide those pleadings that Appellee had not provided. I'd say that was much better news for Appellant rather than judgment affirmed.

***Darrell Johnson & A. Jan Thomas, Jr., Bankruptcy Trustee in the Matter of Darrell W. Johnson and Janet K. Johnson, Debtors vs. Rockwell Automation, Inc, et. al*, No. 08-1009 (April 30, 2009).**

This is an important case. Every lawyer interested in tort reform should read it. It came before the Supreme Court on two certified questions of law from the U.S. District Court for the Eastern District of Arkansas. Much has been written on whether Act 649 of 2003 passes Constitutional muster. This case answered "no it does not." The decision represents a great victory found in ATLA's mission statement: advancing the administration of justice while upholding and improving the adversary system and preserving every citizen's access to trial by jury. The Arkansas Supreme Court concluded that two statutes within the Civil Justice Reform Act of 2003 are unconstitutional. It held that Ark. Code Ann. § 16-55-202 and Ark. Code Ann. § 16-55-212(b) are both unconstitutional because each statute offends separation of powers under Article 4, §2, as well as Amendment 80, § 3 of the Arkansas Constitution.

The Court wrote, "the nonparty-fault provision in the instant case conflicts with our 'rules of pleading, practice and procedure.' . . . we take this opportunity to note that so long as a legislative provision dictates procedure, that provision need not directly conflict with our procedural rules to be unconstitutional." (Slip Op. at p. 7). The Court continued, "[t]his is because rules regarding pleading, practice, and procedure are solely the responsibility of this court." (Id.) Although Ark. Code Ann. § 16-55-201, defining the right of a defendant, is substantive, Ark. Code Ann. § 16-55-202 is not. "It is clear to this court that the legislature has, without regard to this court's 'rules of pleading, practice and procedure,' established its own procedure by which the fault of a nonparty shall be litigated." (Slip Op. at p. 8).

Ark. Code Ann. § 16-55-212(b) concerning the medical costs of the CJRA also violates the constitution because the statute promulgates a rule of evidence by limiting what may be introduced relating to the value of medical expenses and dictating what evidence is admissible. Rules regarding admissibility of evidence are within the Court's province. (Slip Op. at p. 10).

This opinion is a breath of fresh air for plaintiffs. It clearly opens the door inviting more to march forward advancing ATLA's mission statement. Join this important mission if you too are concerned with improving our adversary system. •

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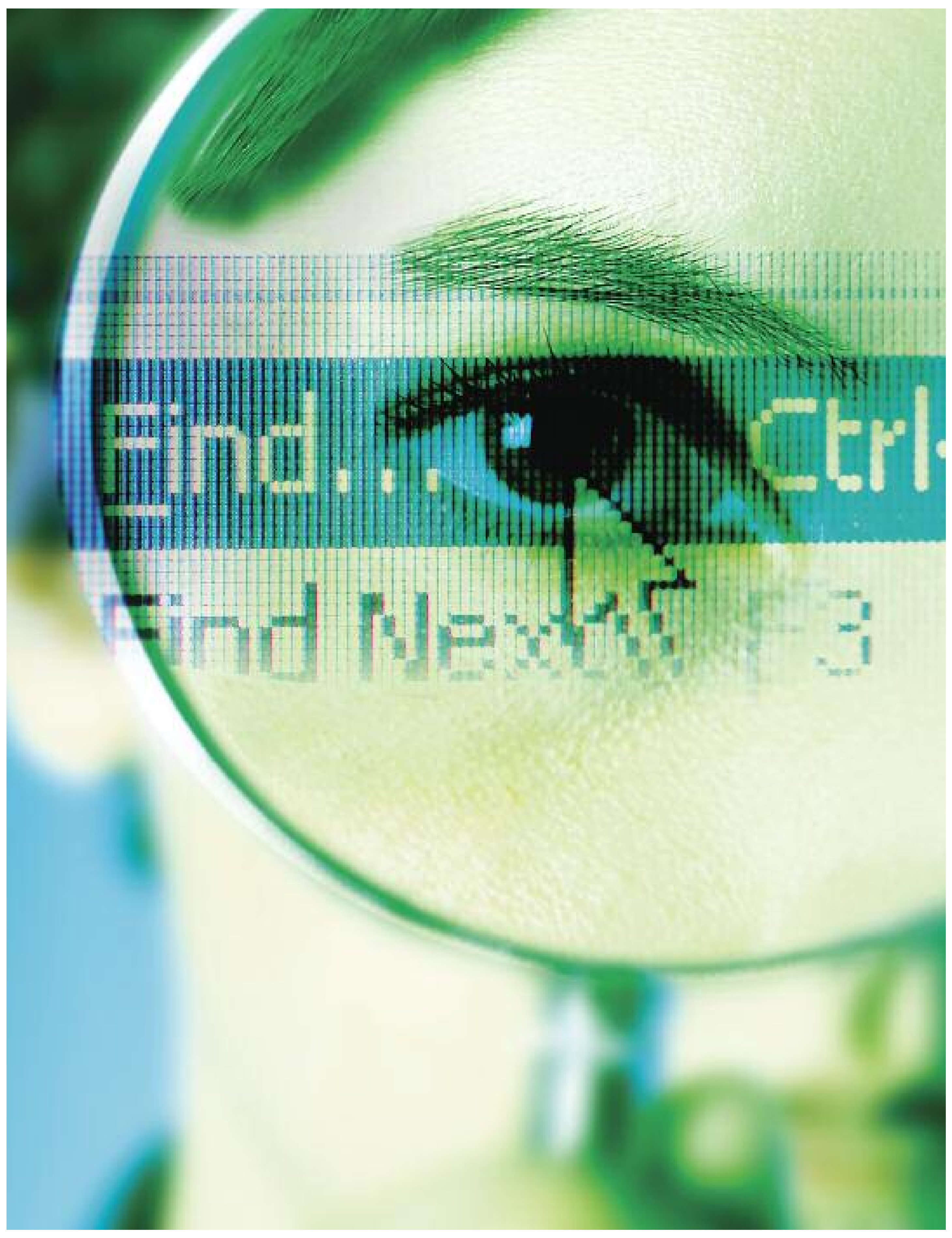
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Brave new world: Social networking sites as evidence

by Sherri L. Latimer, Esquire

The inventor and architect R. Buckminster Fuller once said, "Humanity is acquiring all the right technology for all the wrong reasons." For many of us born in an age before personal computers, it seems Fuller could have been talking about the use of PCs for socializing. Although the Luddites among us may not wish to make, maintain, or end relationships online, millions of people are doing just that. Two of the most popular social networking sites, Facebook and MySpace, boast 200 million and approximately 130 million users respectively.[ii] Of course there is nothing inherently wrong with these sites, just with the uses some people make of them.

Many people use social networking sites to share their unique experiences and interests with the world. When designing a personal web page on these sites one can easily post quotes, pictures, or videos. People also have the capacity to make entries on personal blogs or comment on other users' pages. Unfortunately some of the items posted on such sites are hardly wholesome. For example, a casual search on MySpace one evening revealed pictures of people who were scantily clad, drinking alcohol, smoking marijuana, kissing members of the same sex, and playing with guns. Similarly various comments indicated that their respective users were "wasted," "aroused," and "into girls" (posted by a user who claimed to be female). People often proudly show themselves at their worst oblivious to the fact that there may be repercussions.

Such social networking sites can be a goldmine for attorneys. These personal web pages can contain valuable information about opposing parties or, just as importantly, one's own clients. The question is, how can this information be used? Like other states and the federal courts, Arkansas is struggling to figure out how to handle the new media computers and the internet present. In fact, the Arkansas Bar Association recently submitted the Petition of the Task Force on Electronic Discovery to the Supreme Court of Arkansas.[iii]

So what's a lawyer to do? Judges may be reluctant to admit electronic evidence, but the traditional arguments still apply. Realize that electronic documents must overcome the same hurdles as any other evidence before it can be admitted: authenticity, hearsay, and the best evidence rule. But also be aware that there is virtually no Arkansas law to rely upon regarding the admissibility of electronic data. The following, however, is an application of the regular considerations for admissibility in this state as applied to social networking site pages.[iv]

In order to be admitted every piece of evidence must first be authenticated. Arkansas Rule of Evidence 901(a) states:

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Social Networking

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> The requirement of authentication or identification as a condition precedent to admissiblity [sic] is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

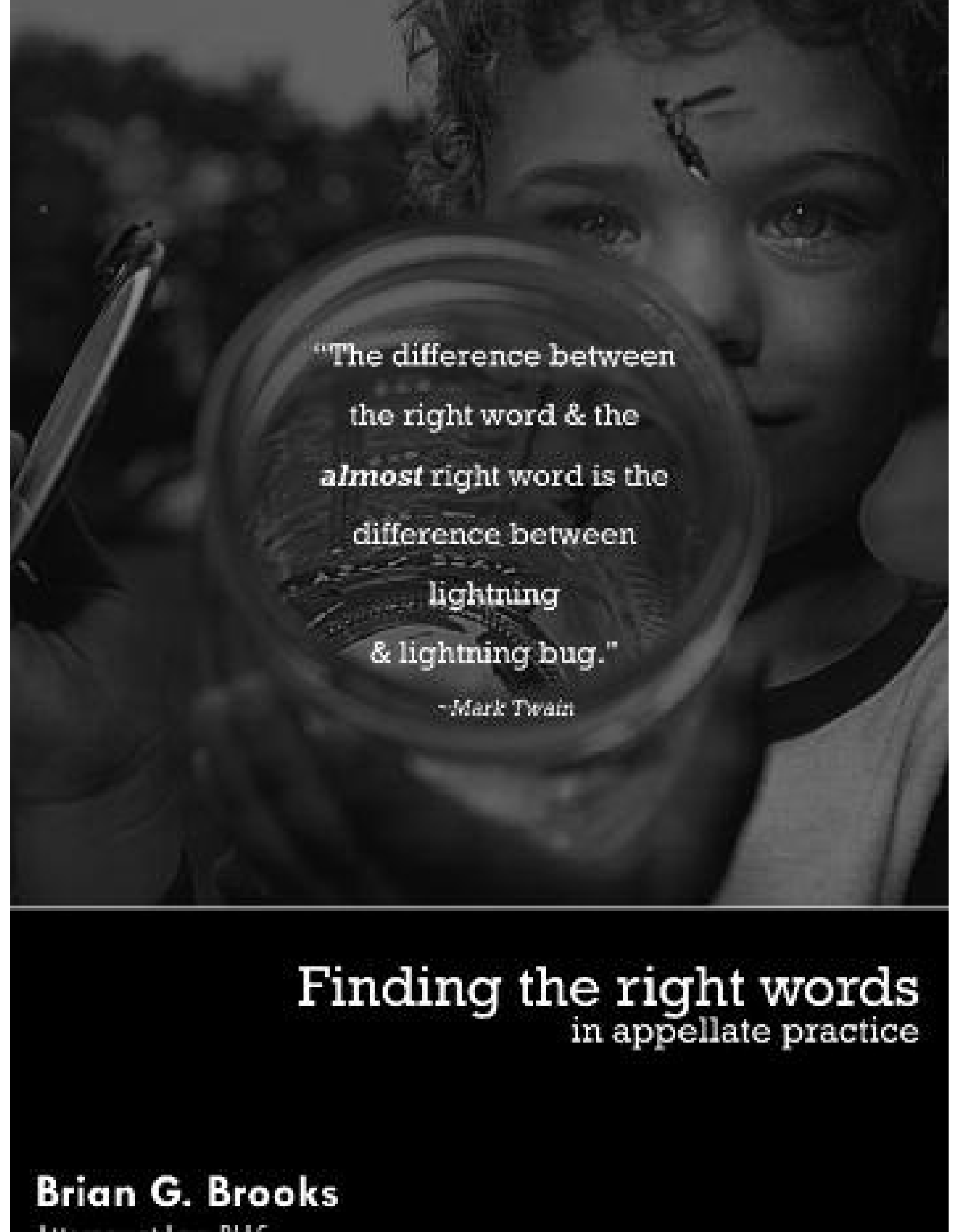
There are several ways social networking web pages can be authenticated. The easiest, of course, is stipulation. But if opposing counsel will not stipulate to admit electronic evidence, an obvious alternative is to have the author of the web page testify that he created the page.[v] Similarly, the testimony of a witness who observed or assisted the author in creating the page can be used to authenticate such evidence.[vi] Also, any content on the page that links it to the author may be used for authentication.[vii] Finally, one can also make use of any similarities between the contested page and a web page which has already been authenticated for this purpose.[viii]

A witness testifying to the creation of a web page need not have any special training in computer administration or programming. Such issues may come into play regarding the reliability of the evidence produced, but a witness merely asserting that the purported author is indeed the person who created the page does not to have any specialized knowledge.[ix] Should the evidence be challenged on the basis of being altered, manipulated, or damaged in some way after it was created one may have to rely upon an expert who is familiar with the computer or the program with which the web page was created.[x]

The second major obstacle to admitting evidence is hearsay. Arkansas Rule of Evidence 801(c) provides the classic definition of hearsay: "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The scope of the definition of "hearsay" and the myriad of exceptions provide several avenues through which one may admit social networking web pages.

Medium aside, much of the content of social networking pages is no different from that of a diary or letter. Hence the regular exceptions to hearsay used with personal writings are easily applicable to one's Facebook or MySpace page. For example, a posting made in response to another user's blog entry or web page comment may fall under the exception of a present sense impression.[xi] Likewise statements posted on a person's page regarding his plans for the weekend could fall under the exception of then existing mental, emotional, or physical condition.[xii] And the admission of a party-opponent is, by definition, not hearsay and cannot be successfully challenged on this ground.[xiii] Therefore, the testimony an opposing party's regarding the contents of a web page is not inadmissible due to hearsay. You get the idea. The hearsay issues social networking pages bring are no different than those of evidence which was not created electronically; both should be treated in the same manner.

Finally, in order to admit evidence one must contend with the so called



best evidence rule. This rule requires an original in order to prove the content of a writing, recording, or photograph.[xiv] In regard to data stored in computers, Rule 1001(3) defines the word "original" as "any printout or other output readable by sight, shown to reflect the data accurately."[xv] Therefore, hard copies of web site pages cannot be kept out of evidence because they are not the original electronic data.

The Arkansas Court of Appeals affirmed this rule in *Dirickson v. State.* ____ S.W. 3d ____ (Ark. App. Jan. 28, 2009). In *Dirickson* the Defendant entered a chat room and had online conversations in which he sexually propositioned "Cheryl," a person he believed was a fourteen year old girl. When he went to meet "Cheryl" to have sex with her he learned that his internet friend was actually Police Officer David Holland and he was arrested. Holland saved the chat room conversations to his hard drive and printed copies of them which were admitted as evidence at Dirickson's trial. At trial Holland testified that he saved the conversations he had with the defendant to the hard drive of his computer and immediately printed hard copies of them. Charles Simpson, a computer expert, also took the stand and testified that chat room conversations can be "archived" onto a hard drive with the use of certain software programs. Once saved in this manner such computer files cannot be changed, deleted, or manipulated in any way. Thus the conversations Holland saved could only be accessed by printing them and, Simpson pointed out, such printouts would be identical to the archived files. This evidence was used to convict Dirickson of internet stalking of a child.

On appeal, Dirickson challenged the printouts of the internet conversations: he claimed they violated the best evidence rule. The appellant argued that the hard drive of Holland's computer which stored the internet conversations was the best evidence. The hard drive, however, had been destroyed by a virus and was never admitted into evidence or even examined by the defendant's attorney. The Arkansas Court of Appeals held that the printouts were originals under Arkansas Rule of Evidence 1001(3). The court went on to say that even if the printouts were not deemed to be originals under Rule 1001(3), they would still be admitted under Rules 1003 and 1004.

Arkansas Rule of Evidence 1003 states that duplicates are admissible unless a question is raised concerning the original's authenticity or continuing effectiveness, or if the circumstances are such that it would be unfair to admit a duplicate rather than the original. The *Dirickson* court pointed out that authentication merely requires sufficient evidence to support a finding that the matter in questions is what its proponent claims it is; this may be accomplished through the testimony of a witness who has knowledge that a matter is what it is claimed to be.[xvi]

In this instance the testimony of both Simpson and Holland authenticated the printouts. Officer Holland testified that he used software to archive these conversations and printed them out immediately after they were saved. The expert bolstered Holland's statements by testifying that the conversations could not be changed in any way once they were archived and they were printed as hard copies verbatim. Thus the court held that the computer printouts had been sufficiently authenticated and were admissible as duplicates under Rule 1003.

Rule 1004(1) allows the admissibility of evidence other than the original to prove the contents of a writing, recording, or photograph when all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith. In light of this rule, the original in *Dirickson*, the hard drive, was damaged by a virus, not through any ill intentioned act of the State or the police.[xvii] If the hard drive is to be considered the original under this rule then Holland's printouts would be admissible since the drive was accidentally destroyed.

Although *Dirickson* deals with chat room conversations, its lessons can be extended to social networking web pages — the same evidentiary rules will apply. In addition, spoliation was a concern in *Dirickson.* While the alteration or deletion of evidence is always an issue, it seems especially easy with electronic data. However, there are means to preserve such evidence. For example, the court can issue an order preventing users from making any changes to their web pages. Similarly orders can require social networking site company to freeze a user's account. An attorney can investigate these web pages and print hard copies provided the pages are public, i.e. anyone can view them. A simple name search on MySpace or Facebook will lead one to the right page if the user has incorporated his name into the text of the page and he has not set his page to "private."

Private web pages may pose challenges. A user's private page can only be viewed by those he has accepted as "friends." If the person who brought this web page to one's attention is a "friend" of the user, that "friend" can grant an attorney access to the web page or print hard copies for him. If this individual has not been granted the status of a "friend" one may have to explore other options. An attempt to gain access to a page's content for litigation purposes by becoming a "friend" raises ethical questions. But the traditional vehicle of discovery can be used to learn what is relevant on social networking pages. Interrogatories and requests for production can provide information such as the name utilized by the user on his page, the account identification number (which may be necessary when subpoenaing a social networking company), and hard copies of the web pages. Likewise one can ask a party to access his private web pages in the course of a deposition.[xviii] "Private" does not mean a page is immune to discovery.

Cyberspace is a new reality we all must face. Because the internet is relatively new and the media it brings are multiplying there are far more questions than answers. This article does not propose to provide any solutions to the admissibility of social networking sites – it merely outlines the current state of things in Arkansas. It is the job of the courts and the legislature to provide answers to the challenges that such electronic media pose in the courtroom. •

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Endnotes

i This article examines the admission of information from social networking web pages in relation to Arkansas law. For a discussion of the admissibility of such pages in the federal courts see Stacey Schesser, "MySpace on the Record: The Admissibility of Social Website Content under the Federal Rules of Evidence," First Monday, vol. 11, No. 12 (December 4, 2006), accessed on April 15, 2009, http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1419/1337.

ii Barbara Ortutay, "Fast-growing Facebook's user base hits 200 million," April 8, 2009, accessed on April 15, 2009, http://www.foxnews.com/wires/2009Apr08/0,4670,TechbitFacebookMillions,00.html.

iii See David Williams, "Electronic Discovery in Arkansas," *ATLA Docket,* Winter 2009, pp. 8-11, 28 for the Petition. The Supreme Court of Arkansas' per curiam opinion issued in response to the Petition on March 5, 2009 is available at http://courts.arkansas.gov/court_opinions/sc/2009a/20090305/published/inre_Rule 26.1.pdf.

iv For a discussion of the admissibility of web pages in general see Paul R. Rice, Electronic Evidence: Law and Practice (2nd ed. 2008), pp. 369-391.

v Ronald J. Levine and Susan L. Swatski-Lebson, "Are Social Networking Sites Discoverable?," Product Liability Law & Strategy, November 13, 2008, accessed on April 15, 2009, http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202425974937. In regard to e-mails, *Bobo v. State* holds that a person who either sends or receives an e-mail can authenticate the electronic message as can any person who has read an original e-mail. 102 Ark. App. 329, 333 (Ark. Ct. App. 2008). In *Bobo,* to authenticate the messages the State offered the testimony of individuals who sent, received, and read the original e-mails in question as well as evidence that the e-mails were properly addressed to the receiver's e-mail account obtained via forensic examinations of the sender's and recipient's computers.

vi Levine and Swatski-Lebson, supra.

vii Id.

viii Id.

ix Computer Crime and Intellectual Property Section, Criminal Division, United States Department of Justice, "Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations," July 2002, accessed on April 15, 2009, http://www.usdoj.gov/criminal/cybercrime/s&smanual2002.htm.

x Id.

xi Arkansas Rules of Evidence, Rule 803(1).

xii Arkansas Rules of Evidence, Rule 803(3).

xiii Arkansas Rules of Evidence, Rule 801(d)(2). Cf. *Dirickson v. State* which holds that statements of party opponents in statements made in online chat rooms are not hearsay. ____ S.W. 3d ____ (Ark. App. Jan. 28, 2009).

xiv Arkansas Rule of Evidence, Rule 1002.

xv Arkansas Rule of Evidence, Rule 1001(3).

xvi The court cited Arkansas Rules of Evidence 901(a) and 901(b)(1).

xvii The court in *Bobo v. State* reached a similar conclusion regarding e-mails when the computer from which the defendant sent e-mails crashed and the electronic messages only existed in printout form. Because the hard drive was destroyed through no act of bad faith and the originals no longer existed, the printouts were deemed acceptable under Arkansas Rules of Evidence 1004. The court also cited Rule 1001(3) indicating that accurate printouts of electronic data are originals. *Bobo,* supra.

xviii Beck/Herrmann, "E-Discovery for Defendants," accessed on April 25, 2009, http://druganddevicelaw.blogspot.com/2008/02/comment-on-e-discovery-for-defendants.html.

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Does my law practice need a website?

by Deanna Davis & Jordan Little

Once upon a time, in a land far, far away, people used a tool called a "telephone book" when they needed to find a doctor, a mechanic, a florist, and yes, a lawyer. That tool became basically obsolete when people learned that with a few keystrokes and mouse clicks, they could not only get a listing of names and telephone numbers, but a wealth of information about the service providers they were looking to hire.

Do I Need A Website?

The answer to this question depends on how you'd answer the following questions:

Do you want clients, potential clients, and business associates to think you're a dinosaur?

If so, you definitely don't need a website (or email, for that matter). Wow them with beautifully inked copies generated with good old fashioned carbon paper whipped off the platen of your shiny new IBM Selectric typewriter! Think about it. Why would your clients believe you are on top of the current law in your areas of practice, and the best lawyer for their all-important case, if the image you project is seriously old school? Or if you have no image at all?

Having a website is really a requirement for any business in today's world. Remember how 20 years ago all lawyers needed a Martindale listing to have "street cred"? Think of a website the same way. It puts you on the list -- a very good list. Your website is like an online business card, brochure, and communication method -- all wrapped into one place.

Most importantly -- it's where your clients expect to find you!

Do you want a low-cost avenue for marketing your firm?

Websites are inexpensive compared to conventional advertising. A clean, well-designed website can be constructed on a budget of $1,000 to $5,000. A multi-page, robust site with streaming video, opt-in subscriber functions, and other bells and whistles can cost as much as $8,000 to $20,000. Compare that to the annual cost of television or print ads. Any type of marketing or networking that interacts with people and presents a positive image of your firm, will help you succeed.

If you have a niche practice -- say you specialize in representing people who've been injured by defective widgets -

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Website

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— here's a great forum to tell the world about your special skills and abilities in this one area. No sixty second commercial spot. No size or page limitation. You can fully explain your experience in this novel area and really set your firm apart.

If you focus your website on a particular area that has not been covered, or cover a particular area better, you will get attention. A good web presence is necessary to get you noticed in today's crowded market.

Do you want a cost-effective way for people to see who you are and what your practice is really about?

The purpose of a good website is to enhance your reputation. Even when clients are referred to you by other people, the first thing they usually do is look you up on the web to see what they can find out about you before they contact you. You have an opportunity with your website to tell people exactly what you want them to know about yourself and your firm. Work with your web designer to craft an impressive website, and your reputation will improve. You write the message. You have control. You set the discussion topics. Putting relevant information online such as your experience, biographies, practice information, resources, and knowledge assists your reputation by developing it to what you want it to say and what you want to impress upon visitors. The more you put online, the more impressive your website becomes. Having a positive impression increases your reputation in the field.

A properly constructed website allows your potential clients to gather the information they need from the privacy of their own computer monitors. What are the questions you and your staff answer nearly every day when potential clients call? And how, exactly, would your best staff member phrase those answers on his or her best day? This is the information that needs to be available 24/7 on your website.

Think of your website as a relationship enhancer — a half step between your advertising and your front door. Would it be easier to convince potential clients to visit your website or to convince them to get in their car, drive to your office, park their car, and walk in your door?

Do you want to tie all of your marketing efforts together and create a "brand" for your firm?

Branding your firm means creating a definitive identity that belongs only to you. When you see the golden arches, you think "McDonalds." That's branding at its best. Creating a brand involves developing a distinct logo and design "look" that you implement on your letterhead, your business cards, your print ads, your video ads, and yes, your website. Over time, your firm becomes easily identified by this "brand." A website gives you the perfect venue to expand and perfect your firm's branding. Multiple pages throughout various sections of your site can show off your logo and color scheme in a way that will get it "stuck" in your potential clients' minds. Along with business cards, flyers, brochures and commercials, a well-designed website can be an important asset when it comes to the way your firm is perceived by the public.

Do you want an easy way to update your information?

Most professionally designed websites can incorporate a user-friendly content management system that will permit you to make simple updates yourself. This makes your website become not a static one-time-only piece of marketing material to be thrown away, but an important part of your firm that is dynamic and always changing to meet your needs and the needs of your clients.

Your website should grow with your firm. You must keep your site's content fresh. If you put everything on the website and keep it updated, it can easily define your online reputation.

Blogging is the current trend in websites. It's a trimmed version of the word "web-log" and is an efficient way to build interest in your firm and provide even more dynamism to your site. In a nutshell, a blog is an online journal with updates occurring once a day to once a month. A professional blog should not read like your daughter's diary, however, and should be used for professional articles and law-related news. A professional blog that is kept up to date can be an extremely valuable tool when it comes to "getting found" on the internet and, aside from search engine benefits, will show your clients that you're an active part of the legal community.

How do YOU find information today?

When today's consumer (your next potential client) is looking for a window repairman, they will go to Google and type in "Little Rock window repairman." They will visit the sites

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found in the "hit list" and most likely will chose a repairman based on the information they find on the repairman's website. Admit it, you've done it.

Clients find lawyers the same way.

If you toss up a dinky website, expect dinky results. If you put up an impressive, informative website, expect impressive results. You need something online, or you are missing out on a big, big world of potential clients.

Do you want to be ultra-cool?

Blogging. Tweeting. RSS feeds. Links to Facebook, MySpace, Linkedin, and other social networking sites. Right there on your website. That's cool. And it's Web 2.0.

These super cool, Web 2.0 thing-a-ma-jigs are not, however, new. The teenagers of five years ago (when these web-features were first being introduced) no longer find these things "cool." They don't even notice them. They're almost ubiquitous on the internet and are no longer a "feature." They're simply expected. Those teenagers of five years ago are fast becoming the majority of the 18-25 demographic -- you know, the people who are involved in car accidents, employment disputes, contract squabbles, who are getting hurt on the job, and who are getting divorced -- many of whom are in need of your good legal advice. If your bread and butter fits snugly in that demographic, you should have these features integrated into your marketing concept.

The answer is "yes" — you need a website!

In the past, when potential clients were looking for an attorney, their easiest option would be to pull out the Yellow Pages to search for a law firm in their area that provided the service they needed. Today, that same client can (and will) go to a search engine and almost instantly be presented with a list of law firms that fit their needs, with links to their websites. Those websites are loaded with pictures and information, maps, and phone numbers, which allow the client to research attorneys and law firms — all without ever having to leave the house or office. Not having a website will soon be like not having a listing in your local telephone directory.

A well-designed, professional website can give you added visibility and credibility. Building and maintaining a website is probably the most cost-effective advertising you'll ever do.

Tell me again — Why do I need a website?

YOUR FIRM'S BEST FOOT FORWARD: Your website will serve as your virtual business card, giving your information to interested parties. This means great exposure for you to a large group of potential business partners and clients. Let the world know what your practice is all about, where you are located, and how you can be contacted.

WORLDWIDE EXPOSURE: A web presence reaches far beyond the city limits of the town in which you practice. Currently more than 1.2 billion people have access to the internet, with over 200 million of those users being American.

SHOWCASE YOUR PRACTICE: You put your services, skills, and areas of expertise on display when you have a website. Anytime a potential client wants to see your track record or services you currently offer, simply refer him or her to your site.

MARKET YOUR LAW FIRM: Your law firm's image can be marketed locally and internationally. Having a website for your law firm will mean that you can communicate information about yourself and your firm more quickly to the potential client.

MODERNIZE YOUR FIRM'S IMAGE: A website will let potential customers know that your firm is currently growing and staying up with the times. A business without a website can leave an impression of an old, unenthusiastic, and fading business to a net-savvy potential client. The younger generation simply expects a business to have a website, and if you're not online, they may take their business elsewhere. Your competitors with websites will be easy for potential clients to find.

AVAILABILITY: With a website, your law firm can be open 24 hours a day, 7 days a week. If you build auto-responders into your site, your potential clients will get a swift and personal response to their contact emails, reassuring them that you are eager to help them with their legal problems.

These are a few of the reasons why your law firm, however small, can benefit from having a professional web presence. Your website can be viewed 24 hours a day, 365 days a year by anyone with a connection to the internet, anywhere in the world. With more and more people using the internet as their main method of researching and obtaining goods and services, this is a potential market you can't afford to ignore. If you don't have a website, you could be losing business to those forward-thinking lawyers that do. •

Have A Look

- "Law Firm Websites That Work" - ABA Journal, April 2009
- "Publish and Prosper: Blogging for Your Business" - DL Byron & Steve Broback
- "Web Copy That Sells" - Maria Veloso

Jordan Little is a young whippersnapper who thrives on design, marketing, and all things nerdy (yes, he was one of the first Arkansans to own an iPhone). He owns and operates his own business -- Pixelsplendor Graphic & Web Design (www.pixelsplendor. com), and has helped fearful lawyers down the path to the World Wide Web. Although he and his contemporaries have seen telephone books, they grew up in the Internet Age and have never actually used one.

Jordan was assisted in the writing of this article by his business manager, former t-ball coach, and mom — Deanna Davis, who has been the Senior Litigation Paralegal at the Cearley Law Firm for 16 years.

ADAAA Revives Protection for Disabled Workers

by Denise Hoggard, Esquire

On September 25, 2008 former President George W. Bush signed the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA"). The stated purpose of the ADAAA is to restore the Americans with Disabilities Act ("ADA") to what Congress intended for it to be: broad coverage in favor of individuals. Prior to its passage, there were few cases which fit within the strictures of the ADA and practitioners were wary of taking on the daunting task of representing disabled workers.

Prior to the ADAAA's passage, cases were decided that narrowly construed the ADA. The seminal cases which sounded the death knell for many plaintiff's cases was *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams,* 534 U.S. 184 (2002). In *Toyota* the Supreme Court held that in order to be deemed substantially limited in a major life activity, and therefore meet the threshold issue of being defined as "disabled", the plaintiff must have a substantial "impairment that prevents or severely restricts" that person from performing a major life activity which are central to daily life. The ADAAA notes that the Court interpreted the phrase too narrowly and, as a consequence, many who should be protected by the ADA are being excluded. For this reason, the ADAAA explicitly provides for courts to interpret the phrase "substantially limits" in accordance with the ADA contrary to the strict reading of recent cases.

Plaintiff's attorneys are looking at potential ADA cases with renewed interest and the likelihood of success for a plaintiff has clearly risen. Prior to the amendments, it was not uncommon for plaintiffs who suffered from injuries of diseases for which they required an accommodation, finding themselves outside the definition of "disabled" and therefore, without the opportunity for receiving an accommodation. Non-employment lawyers, who provide legal services to disabled, diseased or injured workers, need to be mindful of the broad remedial impact of the ADAAA to provide a potential additional redress.

Because the ADAAA has drastically changed the ADA, any cases decided applying the ADA with a narrow view are outdated and overruled by the amendments. The ADAAA is not retroactive. However, argument can be made that the Congressional intent has been clarified and should be used

CONTINUED ON PAGE 16

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Disabled Workers

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to assist courts in interpreting the contours of the Act even for pre-amendment cases.

Who qualifies as an individual with a disability?

Under the ADAAA, only one major life activity must be affected in order for a person to be considered disabled. The Amendments now reject the former position that the disability had to be permanent and long-term to qualify under the ADA. Instead, impairments that are episodic or in remission are considered a disability when they are actively affecting a major life activity. The ADAAA defines the ADA's term "major life activity." To do this, the ADAAA has two non-exhaustive lists. The first is a list of general major life activities, including but not limited to "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." The second is a list of major bodily functions, including but not limited to, "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

This new definition that seeks to draw in as many individuals as possible should have had an impact on cases decided in the last year. For example, in *Brannon v. Luco Mop Co.*, 521 F.3d 843 (8th Cir. 2008), the plaintiff was a diabetic that was absent from work following a foot and toe amputation. The court found that she was not a qualified individual within the meaning of the ADA. If this case were to have been decided under the ADAAA, though, one would expect the outcome to be different. Having an amputation would seemingly affect major life activities, such as walking and standing and using broad construction of the definition, should result in the individual now being considered a qualified individual.

Similarly, in *McNary v. Schreiber Foods, Inc.,* 535 F.3d 765 (8th Cir. 2008), the terminated employee had a disease, well-known to the employer, that required him to take breaks to relieve dizziness or eye pain. During one episode of his condition, he left his work station to rest, put his feet on the table, and closed his eyes. Plaintiff was fired for sleeping on the job, but the plaintiff says he was following orders by resting, not sleeping. The court said that the employee was fired for a legitimate reason. Arguably now under what the ADAAA would say was the true congressional intent of the ADA, the plaintiff would qualify as an individual with a disability. It would not matter that he does not constantly, permanently suffer from dizziness or eye pain. The ADAAA says that when those impairments are affecting major life activities, like seeing, walking, or standing, they constitute a disability when active.

Reasonable Accommodations and Mitigating Measures

Although the ADAAA did not change the definition of "reasonable accommodation," employers still have the requirement to enter into an interactive process.

Additionally, "[t]he ADAAA specifically rejects the requirement enunciated by the Supreme Court in *Sutton [v. United Airlines, Inc.,* 527 U.S. 471 (1999)] and its companion cases that the question of whether or not an impairment substantially limits a major life activity is to be determined by referencing mitigating measures." Michael Newman & Faith Isenhath, The Americans with Disabilities Act Amendments Act of 2008, 55 Federal Lawyer 12, 12 (Nov./Dec. 2008). The ADAAA says that these determinations are to be made without regard to, at least, the following: medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants, or other implantable hearing devices, mobility devices, oxygen therapy equipment and supplies, or assistive technology. Ordinary eyeglasses and contact lenses are not on

the list and are the two mitigating factors that may be considered.

In *Buboltz v. Residential Advantages, Inc.,* 523 F.3d 864 (8th Cir. 2008), a blind employee resigned after her employer took away her responsibilities of administering medication and working alone with residents. When she discovered she would not be allowed to dispense medication anymore, she said that she had numerous devices she could use to mitigate her impairment. The employer did not take any action in response to that statement. The court found that her statement about devices was not a request for reasonable accommodation but an argument that she did not need an accommodation to do her job. This technicality, the court said, relieved her employer of the duty to enter into an interactive process to determine a reasonable accommodation. Under the ADAAA's mandate to more broadly interpret the Act, arguably, this employer would not have been able to ignore the employee's statement. The employer was on notice that she was blind. This was enough for the employer to take the initiative and begin the interactive process. Since she had devices that could help her, that seems to be a reasonable accommodation that the courts would encourage under the ADAAA.

Mental Illness under the ADAAA

The list of major life activities that the ADAAA added to the ADA now specifically includes activities such as sleeping, reading, concentrating, thinking, and communicating. This non-exhaustive list includes these activities that could very easily be affected by emotional and mental impairments.

Since the definition of impairment is broadened with the ADAAA, an employer who knows or has reason to know that sleepiness, chronic tardiness, moodiness, lack of concentration and poor judgment are linked to a terminated employee's emotional or psychiatric disorder, might face a lawsuit. If the employer has or should have knowledge of a psychological disability that allows these traits to surface, the employer may have a duty to accommodate the condition as a disability.

The ADAAA also declares that episodic or intermittent impairments are disabilities if the impairment substantially limits a major life activity when the condition is active. This could be important for those who suffer from manic depression or bipolar disorders and other conditions that do not always, at least on the surface, appear to interfere with the employee's daily life. Hypothetically, an employee suffering from bipolar disorder, for example, who stops taking medication, will be considered disabled for the time that his major life activities are impaired. His symptoms would be episodic—when he was off his medication—but, nonetheless, a disability theoretically requiring accommodation under the ADA.

In *Breiland v. Advance Circuits, Inc.,* 976 F.Supp. 858 (D. Minn. 1997), an employee engaged in altercations with various other employees in his department. He went to see a counselor who diagnosed him with major depression and a schizoid personality disorder. The counselor said that he may have a hard time interacting and communicating with others and needed psychiatric help. The court decided that he was not substantially limited in a major life activity. However, the new ADAAA, which provides a non-exhaustive list of major life activities, includes communicating and could be construed broadly (and properly) to include interacting with others. This was not a constant problem for him, but was episodic in nature, which is intended to be covered as a disability when active under the ADAAA. This employee may receive the protections of the ADA in finding a reasonable accommodation for his mental illness.

While the ADAAA broadens the scope of "impairment," transvestism, transsexualism, exhibitionism, voyeurism, pedophilia, sexual behavior disorders, compulsive gambling, kleptomania, and pyromania, and psychoactive substance use disorders stemming from current illegal drug use are still explicitly not included in the definition.•

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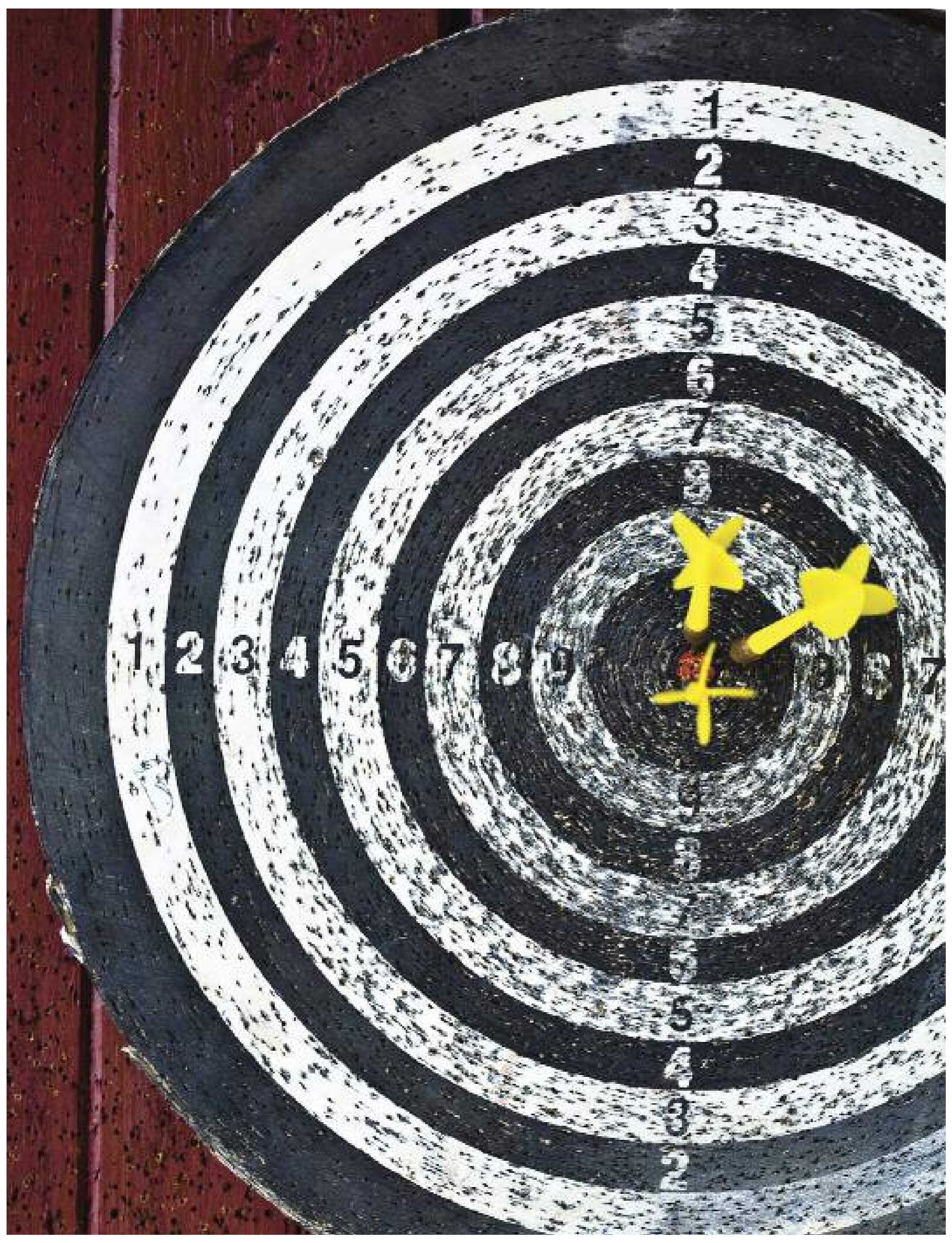

Simple Steps to Conduct Your Own Focus Groups

by Sach Oliver, Esquire

Focus groups are fun, invaluable, and not too expensive. As a trial attorney, the ability to interact with jurors during and after the case is a unique experience not afforded to us within the confines of our judicial system. In trial, when you are able to interact with the jurors, the final verdict has been rendered…it is too late.

A focus group is pretrial research where information about a case is given to a group of people and that group gives you feedback about the case. Basically, it is practicing for the big trial. Each trial is like a Super Bowl for our clients. Do you think the Pittsburgh Steelers practiced or played other games to prepare for their victory of Super Bowl XLIII over the Arizona Cardinals? We should conduct at least one focus group on every case worthy of trial.

Feedback

The goal of a focus group is to obtain juror feedback. We are looking for opinions, ideas, attitudes, notions, conclusions, questions, curiosities, impressions, and whatever else is on the minds of the jurors. You must give the jurors permission to give you their feedback.

The number one and most important feedback we are looking for is what jurors spend the overwhelming amount of their time doing during deliberations. No matter what type of case you have, the jurors spend a tremendous amount of time talking about one thing in deliberations. It is not the evidence. Not the witnesses. Not the lawyers. Not lunch. Not guilt or innocence. JURORS SPEND OVER HALF OF THEIR TIME IN DELIBERATIONS TALKING ABOUT THEIR OWN LIVES.[1] Jurors always discuss their own life experiences and how what happened to them or what they experienced relates to your case.

Jurors start saying:

"When my aunt was in the hospital…

"Where I work, we have this policy….I think everyone does it that way…

"20 years ago, I witnessed a big truck wreck…

"I was walking through the store and this happened to me…

"I have been taking care of my mom with heart problems for years and…

Why Conduct Focus Groups?

Focus groups flag the important issues. We recommend conducting a pre-discovery focus group, a post-discovery focus group, and a trial preparation focus group. At each stage of litigation, as information becomes available, the important issues for the jurors change. Why does it change? Because you have learned through focus groups how to present information that rules out problems and weaknesses for your case and alleviates juror concerns. The first focus group

CONTINUED ON PAGE 22

Focus Groups

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will basically be a questions ceremony. You must go answer all of those questions. If you leave some questions unanswered, you have not met your "jurors' burden of proof."[2] The second focus group tests the answers you have found to see how the jurors digest the information gathered. The third focus group allows you to test themes, arguments, storytelling, and other trial issues that you have learned from prior focus groups and your discovery on the case.

Other than flagging important issues, focus groups:

- Indicate why jurors are likely to decide one way or another;
- Test strategies of each side and their consequences or benefits;
- Provide new presentation techniques;
- Emphasize the weak points of your case;
- Present the questions jurors want answered;
- Shout themes, arguments, and analogies at you, if you will listen;
- Give you key words that resonate with the jury's mindset;
- Outline which beliefs, life experiences, and backgrounds effect deliberations;
- Offer reaction to personalities or witnesses;
- Critique exhibits;
- Point out what you as the lawyer are missing because you are too close to the case (Can't see the forest for the trees);
- Gives you leverage in negotiations, using results, video clips, knowledge, and the simple fact you are prepared;
- Guide for discovery;
- Prepare voir dire issues; and
- Forces you to prepare both sides of the case and put on the shoes of the defense attorney.

Simple Step #1 to Conducting Your Own Focus Group: Jurors and Location

The first step is to select a location and find mock jurors. Any location will work for a focus group. You can use a hotel, a bank, local school classroom, a church, and the list goes on. Literally, the location is not important. What is important is that the location be as neutral as possible. For example, if you use your own law office, you must take steps to neutralize the focus group. If you do not regularly host focus groups for outside law firms, you might choose a location other than your own law office for your own focus group.

There is considerable discussion amongst attorneys and trial consultants about venue. If my case is in this county or that county, should I do the focus group in that county? Well, we have done focus groups all over the state (and in other states) and the focus group process does not differ much at all between county to county or region to region. The tort reform propaganda is nationwide. The questions and issues that will be flagged in a focus group will be virtually the same everywhere. Sure, if you have the resources and the time, hold the focus group in or near the venue of your lawsuit. However, if you conduct the focus group in another venue, your results will likely be very similar.

Locating jurors is more time consuming and difficult than the location of the focus group. We have developed relationships with many churches[3] and staffing agencies[4] in order to always have an ample source of first time mock jurors. We also run ads in the newspapers for jurors. Craigslist[5] is another way you can find jurors.[6] Another interesting source we have used is contacting the local chamber of commerce for contact lists.

Simple Step #2: Prepare Your Oral Statements

Once you have a location and jurors, you need substance to test. We suggest you prepare four statements:

- Plaintiff Opening Statement
- Defense Opening Statement
- Plaintiff Evidentiary/Closing Statement
- Defense Evidentiary/Closing Statement

These statements should be 5-10 minutes each in length. For the opening statements, tell the story from each perspective. Most importantly, make the opposition's story as or more powerful than your side. The attorney must (as literal as possible) place themselves in the shoes of the opposition. A successful focus group ends in a loss, because you truly tested the case.

The evidentiary/closing statements are designed to test 1-3 pieces of evidence from both sides. The plaintiff should test the weakest evidence. The evidence you are most concerned about or have the most questions about should be tested.[7] The opposition should test its strongest evidence. Add more detail during this portion than you did during opening. We want to see the comparisons or changes between the opening and the new evidence and hear the feedback.

Simple Step #3: Prepare Your Documents and Forms

Forms are a series of open-ended questions that are given to the focus group at specific times during the session.[8] Forms can change from focus group to focus group and can be altered in content to fit each case. We recommend the following forms:

Confidentiality and Background Forms: You need the juror to sign a confidentiality agreement. Also, this form asks if they are listed for jury duty. General background information is gathered in this form: work, age, family, address, lawsuits, etc. This is the first thing jurors fill out when arriving.

Post – Opening Forms: After both sides have given their openings, the jurors fill out these forms. It is a list of open-ended question asking, "What is this case about?" type questions. DO NOT USE MULTIPLE CHOICE OR CLOSE ENDED QUESTIONS.[9]

Post – Evidentiary Forms: After the second group of statements, the jurors should answer some questions about "how things have changed." This is the first time in the process where we ask the jurors to tell us which way they are

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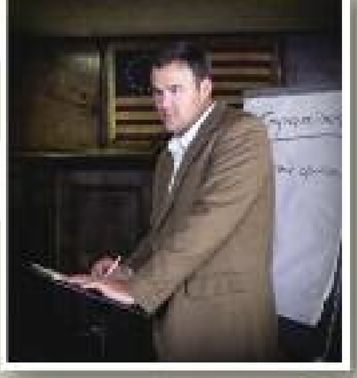

"I have used Sach a number of times and will continue to do so. The benefits to me and my clients go well beyond the particular case that's focused. I learn concepts and principles from each session that shape how I prepare many unrelated cases for settlement and/or trial. I most recently focused a criminal case and was blown away at how easily Sach transitioned what I felt to be primarily a tool we use in civil cases to a criminal setting.

Not surprisingly, one of the participants gave us what became the theme of our case word for word. We have done focus groups in-house, but find our clients are best served by eliminating as much as possible our own bias from seeping into the discussions. Sach, Ryan and Leona are pros."

-Alan Lane,
Fayetteville, AR

"The best way to describe the value of the focus group Sach did for me, and a referring attorney from Missouri, is to quote Mark, when we were writing Sach a check right after the first focus group (yes, we did more than one in the same case).... He said, "Best money I have ever spent in 22 years of law practice."

We think about our cases like lawyers. Conducting a focus group allows you to think about your case like a juror. And after all, that is what we should be doing, as it is jurors who decide our cases!"

-Paul Ford,
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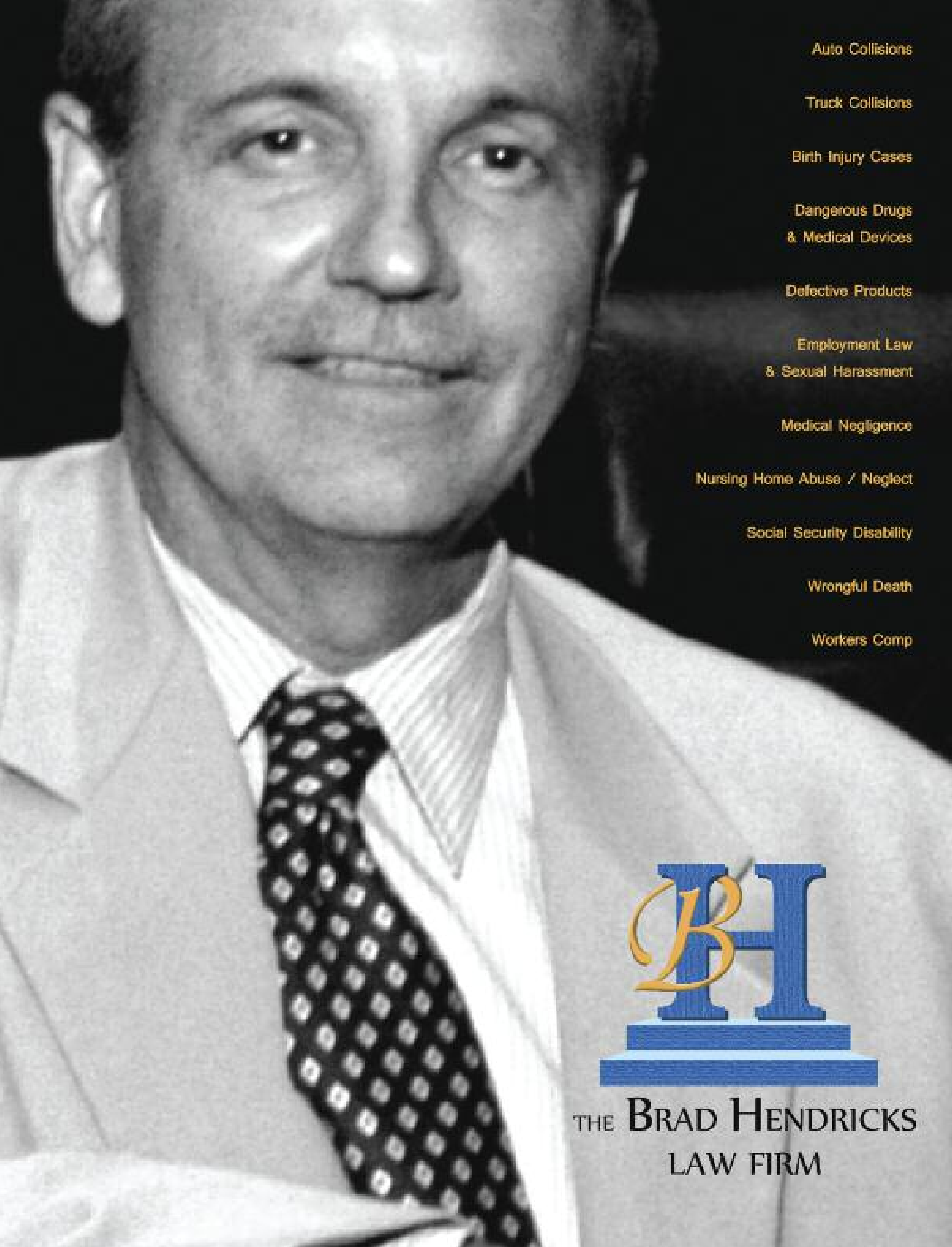

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Focus Groups

continued from page 22

leaning in the case. Almost every time, the jurors will be split 50/50. We use this form to decide how to split the group up for deliberations. Because we are limited on time, we divide the jurors into groups of 6, place them in separate rooms and video them. We divide the groups as equally as possible with plaintiff and defense jurors to instigate debate. Verdict Form: Ask the jurors to make a decision. The verdict form for a focus group is not like at trial. The verdict form should be simple. Do you find negligence on the part of…. If so, divide liability…. If so, what are the damages…. Obviously, each case is slightly different, but overcome the urge to give them a complicated verdict form that may halt feedback due to confusion.

Post – Verdict Form: There are almost always "just go along" jurors. Folks that vote one way or the other to appease or move things along. Also, there are jurors that are mad because the group did not agree with them. There are also the jurors that can convince one or two people, but do not speak up in a group. This form gives these types of jurors the opportunity to voice their concerns and opinions. This form has questions like "What would you have done differently from the group?" and "What would you have liked to have said?"[10]

Simple Step #4: Conduct Your Focus Group

Offer your jurors carbohydrates and caffeine. We always have plenty of donuts, cookies, and coffee available for the jurors. We want them energized and awake. Go to an office supply store and buy some nametags, legal pads, and ink pens. I wear a nametag throughout as the moderator and so do the jurors.[11] To learn the most information, you should call everyone by their first name. You want jurors taking notes for their own benefit and then you collect their notes at the end. You will need at least 2-3 video cameras and excellent microphones to record all audio. We capture the jurors' comments and body language on camera for utilization after the focus group.

You could do a focus by yourself if necessary, however we recommend at least three people: moderator, plaintiff's counsel, and defense counsel. The jurors should never know what side you represent. The moderator and attorneys should not be seen visiting in front of the jurors. The attorneys simply stand up and read the prepared statements. The moderator facilitates the focus group and conducts an open discussion with jurors after each set of statements. A recommended agenda is as follows:

8:45 – 9:10 a.m.:
Confidential Agreement and Background Forms (Coffee/Pastries)
9:10 – 9:15:
Plaintiff's Opening Remarks
9:15 – 9:20:
Defendant's Opening Remarks
9:20 – 9:30:
Post – Opening Forms
9:30 – 10:15:
Open Discussion (Between Jurors and Moderator)
10:15 – 10:20:
Plaintiff's Evidentiary and Closing Remarks
10:20 – 10:25:
Defendant's Evidentiary and Closing Remarks
10:25 – 10:30:
Break
10:30 – 10:40:
Post Evidentiary Forms
10:40 – 11:00:
Open Discussion (Between Jurors and Moderator)
11:00 – 11:45:
Deliberations and Verdict Forms
11:45 – 11:55:
Post – Verdict Forms
11:55 – 12:00:
Distribute Checks and Thank Jurors

During the open discussion, the moderator asks a serious of open-ended questions to pull information from the jurors. Usually, it takes at least two follow-up questions to learn the rationale behind the juror's original response. The moderator should encourage the jurors to share their life experiences. These life experiences are what drive their decision making process.

To start the discussion, ask open-ended questions. Such as:

- What are your first impressions?
- What stood out to you?
- What's in the front of your mind right now?
- What has been brought to your mind by the stories you've just heard?

Some follow-up questions to learn the rationale are:

- What else?
- How so?
- Why do you feel that way?
- Please tell me more about that?
- What has happened in your life that helps you feel that way?

Some questions to instigate discussion are:

- Who here has a little bit different leaning from Juror John?
- Who here feel similar to Juror James and what would you add to his opinion?
- What could make you feel a little bit different about that?

Simple Step #5: Analyze the Focus Group Findings

Once you have completed the focus group you must read all of the forms, watch the open discussion DVD, and watch the deliberations DVD. When reading the forms, I organize the forms by juror. Before starting to analyze the information, I prepare a spreadsheet that identifies themes, analogies, arguments, problems/weaknesses, strengths, deposition questions, written discovery questions, and golden

nuggets.[12] Take Action With the New Information Learned. Take action with the new information learned.

Simple Step #6: Take Action With the New Information Learned

This is the most important step. Take the invaluable information you have learned and let it guide you to trial success.

Conclusion

If you choose to conduct your own focus group, please do not hesitate to give me call to discuss. I will email whatever information I have to help you prepare for the focus group. Focus groups will increase the value you can obtain for your client by better preparing you for trial. •

Recommended Literature:

Ball, D. *How To Do Your Own Focus Groups: A Guide for Trial Attorneys.* (2001) available at: www.nita.org

Oliver, E. *Facts Can't Speak for Themselves: Reveal the Stories that Give Facts Their Meaning.* (2005) available at: www.nita.org

Endnotes

1 We video every deliberation of every focus group. Then we watch the deliberation. We have conducted over 50 focus groups. Every deliberation proves this point. Also, in our discussions with national trial consultants, it appears this is a national consensus.

2 Focus groups will teach you quickly that all of this "law" mess and judicial stuff is simply "juror noise". I use the term "juror noise" because jurors apply their own law, they apply their own instructions, and they use their own life experiences to make decisions. They don't use the instructions, law, or the burden of proof to make decisions.

3 Oliver, S. Use the 'Church Method' to Organize Focus Groups. TRIAL, Journal of the American Association for Justice, December 2008.

4 http://www.staffmark.com/home/ or http://www.manpower.com/

5 Local classifieds and forums for 570 cities in 50 countries worldwide – community moderated, and largely free. Found at: http://geo.craigslist.org/iso/us/ar

6 My good friend Paul Scoptur gave me this idea. Paul is a partner with Aiken & Scoptur in Milwaukee, WI. Paul and Phillip Miller of Tennessee are great trial lawyers who now conduct focus groups for outside firms.

7 If you have a great piece of evidence that you know beyond a shadow of a doubt will be a slam dunk, you should not waste your time or money on that evidence. On more complicated cases or cases with larger monetary value where it is feasible, it is recommended all evidence be tested by mock jurors for feedback.

8 Eric Oliver has a great set of forms in his book referenced in this paper. Also David Ball has a set of forms on a CD that comes with his book. Eric is speaking at an ATLA CLE hosted by our firm on November 13, 2009 in Northwest Arkansas. ATLA is working to schedule David for a two-day seminar in the next year.

9 Multiple choice and close-ended questions assume you have some sort of control over the jurors' decision-making. These questions also assume you know the answer. One of the "wow" factors of a focus group is how far off we lawyers are when thinking we know what is important to a juror.

10 Feel free to email me at soliver@baileyoliverlawfirm.com and I will gladly send you a template set of forms that we amend case to case to fit different fact patterns.

11 We have started asking the judge to allow the jury panel to wear nametags during voir dire. Matter of fact, Judge Weaver in Izard County said the nametags made voir dire easier for both parties, the court reporter, and the court in our last nursing home trial.

12 A golden nugget is a statement that a plaintiff juror uses to sway the mind of a strong defense juror in deliberations. David Ball talks about arming your jurors in closing. These golden nuggets are the best statements for arming your plaintiff friendly jurors.

87th General Assembly — Legislative Session Summary

by Rebecca L. Lynn, Esquire

The Arkansas General Assembly convened on January 12, 2009, recessed 88 days later on Thursday, April 9th, and then officially adjourned "sine die" on May 1st. A budget session will convene in February 2010.

In contrast to the focus of the 2007 session — tax cuts and distribution of a large state surplus — the major agenda items of the 2009 session were increasing taxes to fund a state emergency care "trauma network" and setting up the state lottery for college scholarships. The first few weeks of the session were devoted to passing a 56¢ per pack cigarette tax and increases on other types of tobacco that were estimated to raise about $72 in new revenue to fund the state trauma system.

The lottery legislation, Act 606, creates an independent nine-member lottery commission. The commission will enter into agreements to participate in multistate lottery games such as Powerball to help fund Academic Challenge scholarships. Setting the amount of scholarships was postponed until next year. Lottery ticket sales are expected to begin by the end of 2009.

Legislators balanced a $4.5 billion general revenue budget for the 2010 fiscal year which begins July 1, allotting $1.9 billion for public schools, $1 billion for the Department of Human Services, $587 million for four-year universities and $287 for the Department of Corrections. Of the $310 million surplus, the House and Senate each got $30 million to designate for state projects. The Governor controls $65 million plus $50 million for the Governor's Quick Action Closing Fund for economic development projects. The legislature dodged having to make severe budget cuts by plugging $100 of surplus into the 2010 budget.

The number of bills introduced this session – 2285 – was significantly less than in 2007 (2816) and 2005 (3176). The session produced 1501 acts, again less than in 2007 (1755) and 2005 (2325).

For your ATLA lobbying team, controversy started early in the session with the filing on January 26 of HB 1232, a bill originating from the nursing home lobby, to "Create the Long-Term Care Quality Improvement Act." The bill was touted to legislative sponsors as a bill that simply extended the protection of quality assurance committee records from discovery granted to hospitals to nursing homes. ATLA members and lobbyists mobilized to educate legislators as to the ramifications of the bill as originally written. ATLA members Chad Trammell, David Couch, Brian Brooks, Paul Byrd, Bob Edwards, and many others, worked with legislators and nursing home representatives to amend the bill, which ultimately became Act 198 of 2009.

ATLA was likewise successful in amending several other bills that were unacceptable to its members in their original form: HB 1985 (Act 710), which clarifies liabilities regarding failure to receive written approval before disposing of funds that should be held for reimbursement of

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Medicaid costs; and HB 2247 (Act 719), that clarified that a mineral lessee does not owe a fiduciary duty to the mineral lessor.

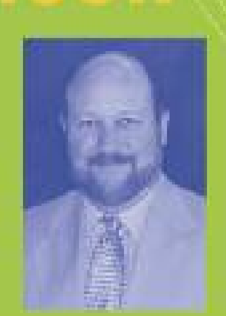
Among the bills that ATLA opposed and that did not pass were: HB 1682, that would have eliminated the private cause of action for the unauthorized practice of law provided in the Deceptive Trade Practices Act; HB 1969, amending §20-77-307 concerning assignment and recovery of third-party liability for Medicaid costs by DHS; and HB 2168, extending the time under which action on a lien under the medical, nursing, hospital, and ambulance service lien act from 6 months to 5 years.

As in the 2007 session, issues relating to the Fayetteville Shale project and the development of the gas industry in Arkansas caused a considerable amount of controversy and lobbying activity during the 2009 session. The gas industry pushed bills concerning the makeup and operation of the Oil and Gas Commission and to protect mineral developers. Surface and royalty owners supported bills limiting the industry's ability to exercise eminent domain and to provide for ownership of severed mineral interests when the record owners cannot be identified or located. Action on most of these issues was deferred, and will resurface in 2011 and thereafter as both sides reorganize their lobbying efforts and legislative agendas.

Another issue likely to resurface in future sessions will be the creation at the state level of a "Qui Tam" law. Despite two valiant efforts, Representative Lindsley Smith was unable to move her HB 2103 (to establish a cause of action to recover funds in Medicaid Fraud lawsuits) out of the House Judiciary Committee.•

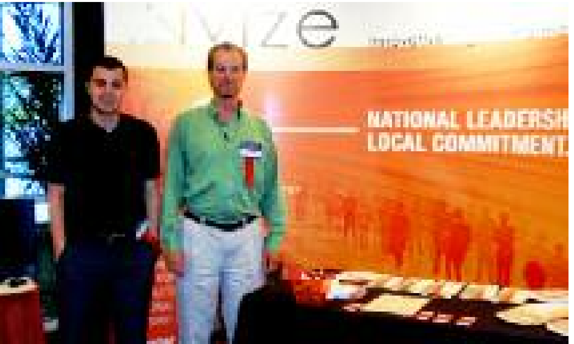
46TH ANNUAL CONVENTION HIGHLIGHTS

46TH ANNUAL CONVENTION HIGHLIGHTS



Opposite, clockwise from top left: Chris Heil, John Vail, Mike Boyd; Brad Hendricks; LauraMcKinnon & Brian Trubitt; Terry & Becky Lynn; David Couch & Bruce Engstrom; Brad Hendricks, Tre & Alicia Kitchens; Ashley Hudson & Robin Smith; Eric Buchanan & George Wise. Above, clockwise from top left: David Williams and Toni Hardin; Lance Wright receives iPod Touch from Paul Byrd as Judge Fogleman looks on; Chris Heil leads membership meeting; Videographer David Roe with Bruce Engstrom & Holly Fish; eldest first time attendee Steve Davis; master auctioneer Sach Oliver; Sylvius von Saucken lectures on Medicare; Steve Bell & Lance Wright; Darrin Williams & Neil Chamberlin

46TH ANNUAL CONVENTION EXHIBITORS



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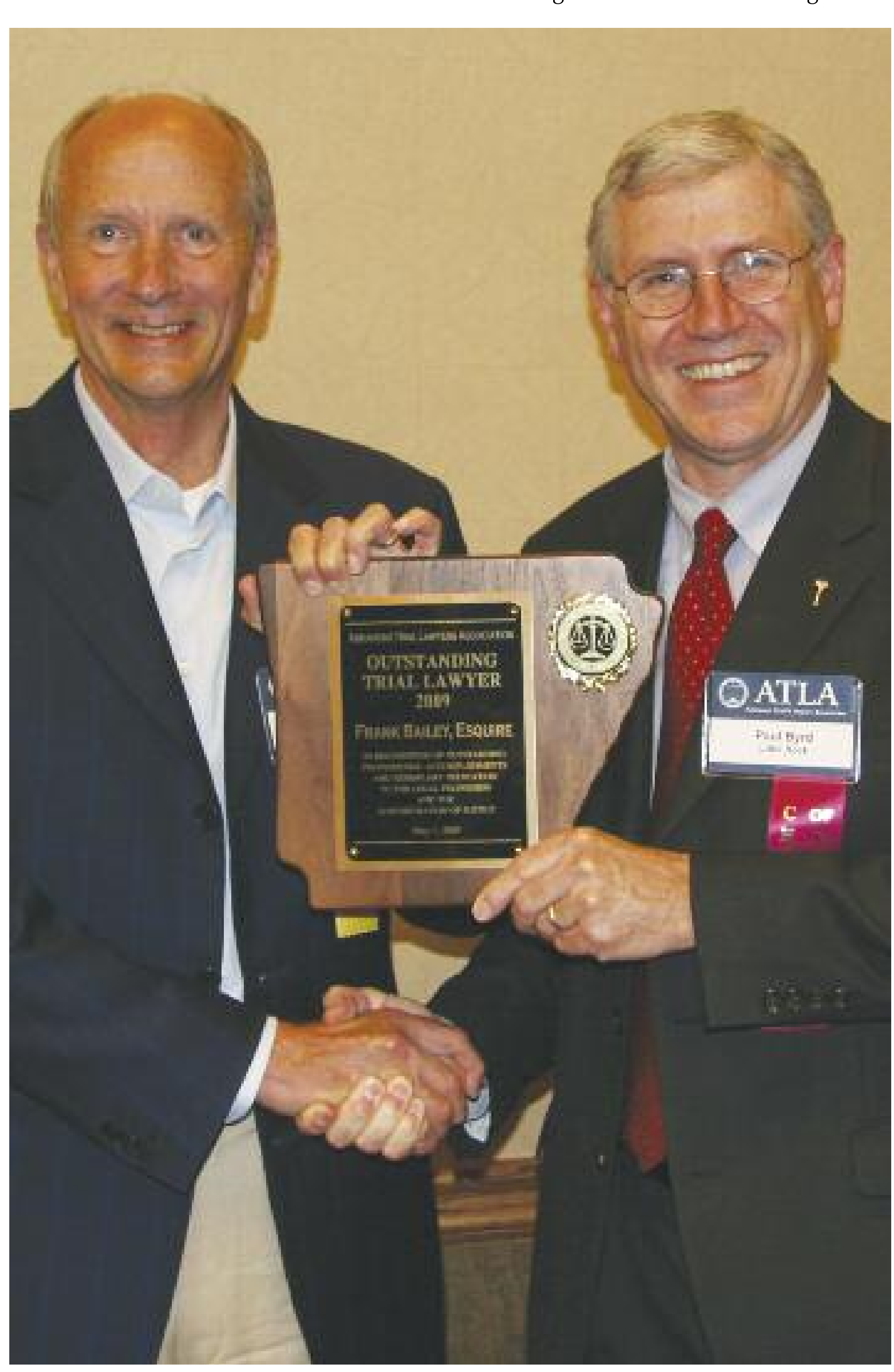
ATLA AWARDS RECIPIENTS 2009-2010

Each year the highlight of the ATLA convention is the annual recognition of outstanding men and women at the awards luncheon. This year was to be no exception.

Outstanding Trial Lawyer Award — Frank Bailey

As is the case for many great trial lawyers, Frank Bailey grew up on a farm in Arkansas in Marion County. After serving in the 101st Airborne Division at Camp Eagle in Vietnam and receiving an Honorable Discharge from the U. S. Army, Frank attended the University of Arkansas in Fayetteville, and graduated from the University of Arkansas School of Law. He then began practicing law on the square in Mountain Home, Arkansas. It was not long until his practice grew. Now, Frank has over 30 years of experience in trying personal injury cases.



2009 Outstanding Trial Lawyer Frank Bailey with 2008 President Paul Byrd

In 1988, he was Board Certified as a Civil Trial Specialist by the National Board of Trial Advocacy, has been appointed three times to serve as a Special Associate Justice to the Arkansas Supreme Court and is a Diplomate of the National College of Advocacy. He is a longtime member of the Arkansas Trial Lawyers Association where he and partner Sach Oliver develop and co-chair an annual ATLA CLE and share their skills and knowledge with their colleagues as a speaker for numerous CLE programs. He is a frequent contributor of articles to the ATLA Docket and his firm has authored yet another in this very issue.

Frank believes in the rights for all citizens but his soft spot is for children and the frail elderly who are victims of wrongdoing. For these clients, Frank has achieved multiple million dollar verdicts and a $2.3 medical malpractice case.

Frank is currently serving as President of the Mountain Home Chamber of Commerce, is a past president of the Mountain Home Rotary Club and a member of the Baxter Regional Hospital Foundation Advisory Board.

Outstanding Trial Judge Award — Judge William R. Wilson, Jr.

The career of Judge William R. Wilson, Jr. stands out because he is a judge who is appreciated and respected by all lawyers: both the defense and plaintiff. Judge Wilson was a lawyer before he was a judge. A trial lawyer. And during his career as a trial lawyer, Bill Wilson was one of Arkansas's best. Opposing lawyers often identified him so, as he successfully tried hundreds of civil and criminal cases. His peers recognized his achievements when he was

elected president of ATLA in 1980 and ABA president in 1984. In 1989, he was named ATLA's Outstanding Trial Lawyer.

Judge Wilson grew up in Scott County in a sawmill town called Forester that disappeared after the mills closed in the early 1950s causing the Wilson family moved to Waldron. After graduating from Waldron High School, Hendrix College and Vanderbilt Law School, he began practicing law in Texarkana in 1965.

The story of his journey to the Federal Bench is an interesting one. While he was still a child living at Forester, his father was called to jury duty in Fort Smith to the court of Federal District Judge John E. Miller. Young Bill Wilson accompanied his father and watched the proceeding for a week. During jury deliberations, Judge Miller invited young Wilson into his chambers where they talked about bird hunting and other topics of interest. It was during his first visit to a Judges' chambers that Judge Wilson discovered his life ambition to become a federal district judge.

In 1993, Bill fulfilled his boyhood ambition and accepted President Clinton's appointment to the Federal Bench where he has remained serving the Eastern District of Arkansas as a vigorous proponent of the jury system for 15 years.

In an Arkansas Times article written about him, Judge Wilson was quoted as saying this about the jury system,

> "Henry Woods used to say the Holy Ghost descends into the jury room when the jury deliberates. I don't go that far, but of all human institutions, I've got more confidence in the jury system than any other. I tell every juror that I believe we have the best justice system here in America that ever existed, because it guarantees the right to trial by a randomly selected jury."

Consumer Advocate Award — Governor Mike Beebe

Mike Beebe was sworn in as the 45th Governor of the State of Arkansas on January 9, 2007, following more than two decades of dedicated public service. First as trial lawyers and State Senator and then as Attorney General, Governor Beebe has spent his entire career representing the people of his state.

As Governor, he spends his days working with people of every background and every political persuasion to implement the positive vision he has for Arkansans. He believes in more and better-paying jobs, affordable and accessible health care, providing all children with a first-class education and a fair and accessible system of justice for all.

Born in Amagon, Arkansas (Jackson County), in 1946, the Governor earned a bachelor's degree in political science from Arkansas State University in Jonesboro in 1968, and completed law school at the University of Arkansas in 1972, while serving his country in the U.S. Army Reserves.

CONTINUED ON PAGE 36

Outstanding Young Lawyer Brandon Moffitt with Paul Byrd

Outstanding Young Lawyer Michael Phillips with Paul Byrd

2009 President Elect Tre Kitchens recognizes Welch an Kitchens' own Rebecca Louden as Outstanding Paralegal

Awards

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Governor Beebe and his wife, Ginger, have three adult children and are active members of Trinity Episcopal Church.

Roxanne Wilson Advocacy Award — John Patterson

The purpose of the Roxanne Wilson Advocacy Award is to recognize ATLA members whose love of the law, the legal profession and advancement of advocacy is reflective of that of the late Roxanne Wilson for whom this award is named. Recipients may be outstanding jurists and barristers, but the most important pre-requisite for nomination is a strong love of the profession, a demonstration of dedication to family, the community and ATLA. The recipient should also be an activist in the advancement and improvement of the legal system and the legal profession.

This year's recipient, John Patterson, exemplifies and honors the spirit of this award. This lawyer has a successful and extremely busy law practices while devoting many hours to ATLA and to the preservation of the civil justice system.

John has many years of experience as a leader of the Arkansas Trial Lawyers Association. He has served on the ATLA Board of Governors since 2000 and has been a member of the

Henry Woods Lifetime Achievement recipient John Belew with Belew & Bell partner Steve Bell, who received a 2009 President's award

BUSINESS VALUATION
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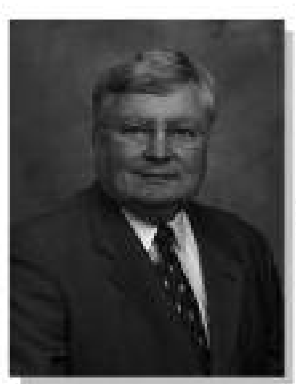
AGRICULTURAL DAMAGES



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Executive Committee since 2004, serving as Secretary-Treasurer and then Vice President in 2005.

John graduated from Searcy High School, Hendrix College, and the University of Arkansas Law School. Patterson is a member of the Arkansas Trial Lawyers Association, the American Association for Justice, the Arkansas Bar Association, and is a past president of the White County Bar Association. He is licensed to practice in all Arkansas courts, the U.S. District Courts for the Eastern and Western Districts of Arkansas, the Eighth Circuit Court of Appeals and the U.S. Supreme Court.

John's legal practice is limited to personal injury, wrongful death, nursing home neglect, toxic chemicals, defective products, social security disability, business torts, and oil and gas industry injuries. Patterson has led numerous legal education seminars around the state instructing other lawyers on how to represent injured clients. Additionally, he has worked to help raise funds and elect representatives who are committed to strengthening Arkansas's civil justice system so that deserving individuals can get justice and hold wrongdoers accountable.

For years, John has served as president of Ring 308 of the International Brotherhood of Magicians and has provided a free annual Holiday of Lights magic show for White County residents.

He is a former Arkansas State Golf Champion and was elected to the Sports Hall of Honor at Hendrix College. He served as chair of ATLA's Golf Tournament Committee and last month successfully directed ATLA's first tournament in Little Rock.

John is married to Cara Patterson and has two daughters, Anna Patterson Strong, an analyst with Acxiom Corporation and Amy Patterson, the director of weekday child ministries at St. James United Methodist Church in Little Rock. His son-in-law, Dr. Aaron Strong, is a pediatric resident at Arkansas Children's Hospital in Little Rock.

Henry Woods Lifetime Achievement Award — John M. Belew

John M. Belew is a trial lawyer's trial lawyer. Just as the late Judge Henry Woods, our honoree has served on the Board of Governors and held every volunteer office in ATLA, most recently serving as president, and was named ATLA's Outstanding Trial Lawyer in 2004.

John serves as a role model to all lawyers when it comes to giving back to his profession through service to professional organizations and especially to the trial bar. He has donated thousands of dollars and hundreds of hours to ATLA since becoming involved many years ago.

An accomplished pilot, an avid skier, loving husband, proud father and doting grandfather, John has never forgotten the people who have traveled this journey with him. He cares deeply about his clients and possesses great integrity, honesty and a burdensome sense of fairness when it comes to advocating their cases.

Belew has recovered millions of dollars for those injured or killed and their survivors against defendants in hundreds of medical malpractice, product liability, and bad faith cases. He is also known to be an impressive criminal defense lawyer. In one case that is still the talk around town, he defended an individual charged with murder and the jury returned with an acquittal within thirteen (13) minutes after entering the jury room. For many years he held the record for the largest punitive damages verdict ever affirmed by the Arkansas Supreme Court.

One of the greatest compliments we can pay to John is to describe him as possessing the same generosity of spirit as our dear friend, Henry Woods. It would be impossible to count the number of hours he has spent teaching other lawyers whether from a podium, at a CLE program or just over coffee.

There is no greater legacy than investing in the professional development of your colleagues and enjoying watching their success and John is always ready to share his knowledge

CONTINUED ON PAGE 38

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Awards

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and to foster the success of another great trial lawyer.

Outstanding Members ATLA Young Lawyers Division: Brandon Moffitt and Michael Phillips

Each year we recognize a member or members of the ATLA Young Lawyers Division who demonstrate a high level of professional excellence, dedication and leadership within ATLA. This year, we had had two strong candidates and the committee couldn't select one over the other and so we asked that these two law partners, Brandon Moffitt and Michael Phillips, share the title.

Phillips and Moffitt have surpassed excellence in all the qualifying categories and most notably through their support of ATLA programs through their involvement with the Law Student section, ATLA's first golf tournament and their efforts to organize ATLA member networking luncheons within central Arkansas throughout the past year.

Additionally, in response to having received Annual Convention registration scholarships to the 2008 convention, these two decided to "pay it forward" and sponsor first-time attendees of this year's convention.

Brandon, a native of Tennessee, moved to Little Rock to attend law school six years ago. After passing the bar, he then joined life-long Arkansan and Lawrence County native Michael Phillips in opening their firm, Moffitt and Phillips in Little Rock in 2006.

Outstanding Paralegal/Legal Assistant — Rebecca Louden

Rebecca Louden has been described by her employers at Welch and Kitchens Law Firm as loyal, dedicated, honest and hard working. With her outstanding skills and experience as a paralegal and trial assistant, Rebecca has become in indispensible member of firm since joining their legal team in 2006. Nominated by Bryce Brewer, Brewer says "She makes our job easier, the firm's clients happier and their work product better."

Rebecca is a graduate of North Pulaski High School in Jacksonville and received her Paralegal Certification from the University of Arkansas. She is a member of ATLA's Paralegal Division. •

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msmith@ddh-ar.com

John Patterson receives the Roxanne Wilson Advocacy award from Paul Byrd

Todd Turner receives a 2009 President's award from Paul Byrd

CHAMPIONS OF JUSTICE AWARDS RECEPTION

Friday May 1st, 2009

President Elect Tre Kitchens hosts the annual Champions of Justice award presentation. Shown here with Chad Trammell, accepting the Platinum Founder award on behalf of his firm, Nix, Patterson & Roach of Texarkana.

Bob Edwards of Wilkes & McHugh received recognition as a Bronze Barrister. Additionally, Edwards accepted a Bronze Barrister award for Brian Reddick, also of Wilkes & McHugh, who was unable to attend.

Paul Byrd is recognized for his personal Champion Benefactor status and also with a Bronze Barrister award for his firm, Hare Wynn Newell & Newton.

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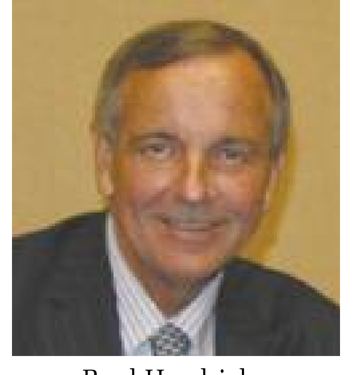

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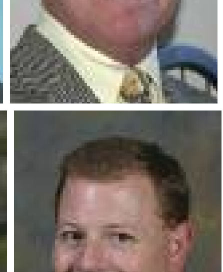

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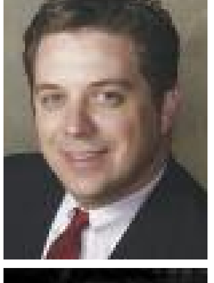

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Christopher Heil, Esquire practices with the Brad Hendricks Law Firm in Little Rock where personal injury, nursing home and employment discrimination litigation are his focus. He graduated from Rhodes College in Memphis in 1987 with a degree in Psychology where he was an esteemed member of the Pi Kappa Alpha fraternity's oldest continually existing chapter. He received his J.D. from the UALR School of Law in 1992. He has served as the chair of ATLA's Public Relations and Listserv Committees, as a member of the Amicus Curiae, Legislation and Publications Committee and frequently contributes articles to the ATLA Docket. In 1998, he received an ATLA President's Award for his service to the association and in 2005, he was named Outstanding Member of the ATLA Board. He was first elected to the ATLA Board in 1997 and is a 1200 Club Contributor and a Champion of Justice contributor. Chris is also licensed before the Eighth Circuit Court of Appeals and the U.S. Supreme Court.

PRESIDENT-ELECT

Tre' Kitchens, Esquire, is a member of the Arkansas Trial Lawyers Association, the American Association of Justice and the Arkansas Bar Association. In 2003, he received ATLA's "Outstanding Member of the Young Lawyers Division." Tre received his J.D. in 1999 from the UALR William H. Bowen School of Law. He is partner in the firm of Welch & Kitchens where he practices in the areas of business litigation, civil litigation, civil rights, personal injury, family law and criminal law. He lives in Little Rock with his wife Alicia and two daughters Annalyce and Makayla.

VICE PRESIDENT

Michael W. Boyd, Esquire, is a partner in the law firm of Bell & Boyd, P.A. in Magnolia, where he handles business litigation, civil litigation, personal injury, workers compensation, insurance litigation, products liability and domestic relations. He graduated Magna Cum Laude in 1994, from the U of A in Fayetteville with a B.A. in Broadcast journalism. He earned his J.D. from the U of A School of Law in 1997. He is a member of the American, Arkansas and Jefferson County Bar Associations and the American Association for Justice. Mike was named the Outstanding Member of the ATLA Young Lawyers Division in 2005-2006. He has served on the ATLA Board of Governors since 2003 where he is a Champions of Justice member. He and his wife Jamie have four children and make their home in Magnolia.

SECRETARY-TREASURER

M. Chad Trammell, Esquire earned his J.D. from the University of Arkansas in 1991. He is a member of the Arkansas, Arizona, Kentucky, Louisiana, Oklahoma, Pennsylvania and Tennessee Bar Associations, the State Bar of Texas and the Arkansas Trial Lawyers Association. Chad is a former Captain in the U.S. Air Force Judge Advocate General's Corps and served from 1992-1996. Chad is a partner in the firm Nix, Patterson and Roach, LLP. He and his partners are Platinum Founders of ATLA making an annual contribution of $25k. His areas of practice include nursing home litigation and catastrophic personal injury. Chad and his wife, Virginia, who is also a lawyer, have a son, Charlie.

IMMEDIATE PAST PRESIDENT

Paul Byrd, Esquire, earned his J.D. from the University of Arkansas in 1985. He is the managing counsel of the Arkansas office of the law firm of Hare, Wynn, Newell & Newton, LLP. His firm's practice focuses on civil litigation with an emphasis on representing consumers & victims in nursing home neglect, personal injury, wrongful death and products liability and consumer litigation. Paul has been actively involved in defective tire litigation and crashworthiness cases around the nation. In November 2000, Paul was featured on the front page of the Wall-Street Journal and in January 2001, he appeared in a Dateline NBC documentary about his involvement in the case Brownlee/Whitaker vs. Cooper Tire and Rubber Company. In addition, Paul has been litigating in "commercial consumer" litigation against Agri-Business companies where he represents Arkansas farmers. He has served as a Special Judge in various municipal courts, Pulaski County Circuit Court, and as a Special Associate Justice of the Arkansas Supreme Court. Paul and his wife, Jane, have five children (with one grandchild on the way).

Ralph M. Cloar, Jr., Esquire (2009-2012) earned his J.D. from the University of Arkansas at Little Rock School of Law. He is a past president of ATLA and a long time member of ATLA's Board of Governors and 1200 Club. In addition to representing the Arkansas Trial Lawyers Association on the Board of Governors of the American Association for Justice, Ralph is a Sustaining Member and serves as Chair of their Budget Committee and as a member of ATLA's Executive Committee. He was the first recipient of the Roxanne Wilson Advocacy award in 1995 and was honored with Lifetime Achievement awards from the American Association for Justice in 2006 and ATLA in 2007. Ralph and his wife, Katy, make their home in Little Rock.

Brad Hendricks, Esquire graduated cum laude from Arizona State University and received his JD in 1980 from the University of Arkansas at Little Rock School of Law. He began his law career as a Compliance Attorney & then Assistant Warden for the Arkansas Dept. of Corrections. He went into private practice first as Trial Counsel for the Haskins Law Firm and then at his own firm, the Brad Hendricks Law Firm where he currently practices, almost exclusively handling medical malpractice cases. Hendricks is a member of the Arkansas Trial Lawyers Association (Past President), the Arkansas Bar Association (incoming Chair of the Professional Ethics Committee; former Chair, Tort Law Section & Committee on the Unauthorized Practice of Law), the American Association for Justice, the American Bar Association, the Texas Trial Lawyers Association, the Texas Bar Association, and the Missouri Bar Association. He has been recognized by ATLA with the Consumer Advocate Award (2005), by the Arkansas Times as Best Personal Injury Attorney in Arkansas & was twice recognized as the Best Lawyer in Central Arkansas by the Arkansas Democrat-Gazette.

Morgan E. "Chip" Welch, Esquire (2008-2011) earned his J.D. from the University of Arkansas, School of Law in 1975. He is a partner in the law firm of Welch and Kitchens in North Little Rock where he practices primarily in the areas of personal injury, medical malpractice, employment discrimination and commercial litigation. He is a member of the Inns of Court Foundation (Master of the Bench); an AAJ Sustaining Member, a past president of ATLA (1991-92); IMPACT Trustee; and chair of ATLA's Amicus Curiae Committee. Chip is a 3000 Club contributor and was named ATLA's Outstanding Trial Lawyer in 1990. In 1997, he received ATLA's Roxanne Wilson Advocacy Award. Chip and his wife, Cheryl, have two grown children.

ATLA BOARD OF GOVERNORS 2009-2010

David H. Williams, Esquire (2009-2011) focuses his practice in the areas of personal injury, product liability, tractor-trailer crash, plane crash and pharmaceutical actions. David earned his J.D. from Leflar Law Center, University of Arkansas, Fayetteville, in 1975. He is a past president of ATLA, an AAJ Sustaining Member and past secretary of the Council of Presidents for the American Association for Justice. He chairs the ATLA Awards and Legislation Committees, serves on the Amicus Curiae Committee and the Editorial Board of The Arkansas Lawyer for the Arkansas Bar Association. He served on the Plaintiff's Steering Committee in the American Airlines flight 1420 crash and represented many clients in the Fen-Phen diet drug class action in Philadelphia. He has received awards from ATLA for Outstanding Trial Lawyer, Civil Justice Advocate, Roxanne Wilson Advocacy, and President's Award. He received the Bar Association's Maurice Cathey Award for his work as Chair of the Editorial Board of the Arkansas Lawyer. He was voted a member of the American Board of Trial Advocates. He is a Fellow of the Arkansas Bar Foundation, member of Best Lawyers in America by Consumer Guide, and the Bar Register of Preeminent Lawyers by Martindale-Hubbell.

Don Elliott, Esquire (2009-2012) is a partner in the Fayetteville law firm of Elliott & Smith, P.A. where he concentrates his practice on plaintiff's personal injury law. He graduated from Ouachita Baptist University in 1975 with a BS in accounting, and in 1980, obtained his CPA. He earned his JD from the University of Arkansas in 1978. Don is a former president of the Washington Co. Bar Association, a member of AAJ, the Arkansas Bar Association and the American Board of Trial Advocates. He also served on the Ark. Model Civil Jury instruction committee (2000-2007).

Jason Hatfield, Esquire (2008-2011) graduated from the University of Arkansas in 1991 with a B.S. in Micro-biology. In 1994, he completed a Masters Degree and began law school. Jason was admitted to the bar in 1997 and worked at Niblock Law Firm for eight years before accepting a position with the firm of Lundy and Davis. His practice mostly consists of personal injury, toxic torts, insurance bad faith, workers compensation and social security. He is a Trustee of IMPACT, a member of the Arkansas Bar Association's New Member Committee, the American Bar Association, W.B. Putman Inns of the Court and other county bar associations. Jason and his wife, Cheryl, have two sons and live in Fayetteville.

Joey H. McCutchen, II, Esquire (2007-2010) received a B.A. in Zoology from the U of A at Fayetteville. He went on to earn a J.D. from the U of A Law School and a Masters of Theological Studies from Harvard. In 1991, he founded the Law Office of Joey McCutchen. His law practice specializes in the areas of personal injury, products liability and medical malpractice with an emphasis in litigation. Joey founded NextLevel Sports, a sports marketing and representation agency. He is on the ATLA Board of Governors, the founder of a consumer advocacy group, and is active in the fight against governmental and corporate corruption. He has received the Champions of Justice Platinum Founder Award and the Civil Justice Advocacy Award for Outstanding Service to the Legal Profession and the Citizens of Arkansas by ATLA for his commitment to preserving the civil justice system and consumer rights. He is a member of the Bar of the State of Arkansas and Oklahoma as well as the American Association for Justice and the American Bar Association. He has also been recognized by the AAJ's National College Advocacy as an Advocate. He has served as the President of the Fort Smith Board of Education and was a member of the Board from 1992 to 1998. He is a member and past president of the Fort Smith Boys Shelter and a former president the Fort Smith Montessori Board of Education. He is a charter member of the Fort Smith Boys and Girls Club Alumni Association. He is an active coach and sponsor at the Fort Smith Boys and Girls Club. Joey and his wife, Tara, have two daughters, Elizabeth and Victoria.

Frederick S. "Rick" Spencer, Esquire (2008-2011) received his J.D. from the University of Arkansas Law School in 1975 and graduated top of his class from the Hastings College of Trial Advocacy in 1982. He is a past president of the National Organization of Social Security Claimant's Representatives, past chair of ATLA's Administrative Law Division, twice the recipient of ATLA's President's Award and a recipient of the Roxanne Wilson Advocacy Award. He has served on ATLA'S Board since 1989 and is a 3000 Club contributor and has been a speaker at many state and national CLE seminars. Rick and his wife, Brenda, have two daughters, Sarah and Heather Grace, and lives in Mountain Home. See www.spencer-law-firm.com.

Paul N. Ford, Esquire (2007-2010) received his J.D. from the University of Arkansas in 1987. He joined his father's practice in Wynne immediately upon passing the bar and then opened a solo practice when he moved to Jonesboro in 1993. He is a member of the Arkansas and Craighead Bar Association of Criminal Defense and is a charter member of the Arkansas Association of Criminal Defense (2000). His areas of practice include personal injury, criminal and medical malpractice.

J.P. Jaynes, Esquire (2008-2011) is a native of Searcy, Ark. He attended Hendrix College in Conway where he graduated with a B.A. in Political Science with Distinction in 1989. He received his J.D. from the UALR Law School in 1992. He began his practice with the Haskins Law Firm in Little Rock and in 1994, began practicing with the Law Offices of Brad Hendricks. He currently practices in the areas of civil litigation and criminal law with Dabbs and Pomtree in Little Rock. J.P. recently began Jaynes Mediation in order to concentrate on the practice of alternative dispute resolution. He acts as an arbitrator and is certified by the Arkansas Alternative Dispute Resolution Commission in the areas of Civil and Probate Mediation. He is also a member of the Association of Attorney- Mediators. He makes his home in Searcy and has one daughter, Elizabeth.

James A. Simpson, Jr., Esquire (2009-2012) received his B.A. in 1989 from the University of Arkansas where he attended on a football scholarship and was a 3-year Razorback Football Letterman. In 1995, he earned his J.D. from the U of A Law School and was admitted to the Arkansas Bar that same year. He is a member of Golden Key and the Board of Advocates of the University of Arkansas Law School. He served as city attorney of Bradford for three years before becoming city judge of Bradford and serving for five years. Jim is a former president of the White County Bar Association, a member of the Arkansas and American Bar Associations and the American Association for Justice. He is a member of the board and past president of United Way of White County. He and his wife, Tracy, have two children.

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CONTINUED FROM PAGE 43

William J. "Bill" Stanley, Esquire (2007-2010) is a principal at Stanley & Thyer, P.A. He received his B.S. in Accounting from Arkansas State University in 1989 and earned his J.D. from the U of A Law School in 1991. He focuses his practice on criminal defense, personal injury, medical malpractice, wrongful death and social security disability. He is a member of the American Bar Association, Arkansas Bar Association, American Association for Justice, Arkansas Trial Lawyers Association, Craighead County Bar Association, the National Association of Criminal Defense Lawyers, the Arkansas Association of Criminal Defense Lawyers, the Million Dollar Advocates Forum and was named one of the "Best Lawyers in America." Bill and Mekelle have two children, Hannah and Jennings.

Sandra Coody Bradshaw, Esquire (2009-2012) obtained her Bachelor of Arts Degree in 1988, graduating magna cum laude, from the University of Arkansas at Monticello. Sandra graduated from the University of Mississippi Law School in December 1991. While attending law school, she served as Research Editor for the Mississippi Law Journal. She is licensed to practice in Arkansas and Mississippi. Sandra has served as Deputy Prosecutor for the 10th Judicial District, Deputy Public Defender for the 10th Judicial District, President of the Southeast Arkansas Legal Institute, and has sat as Special Circuit Judge for the 10th Judicial District. Ms. Bradshaw is a member of the Arkansas Bar Association, the Mississippi Bar Association, Ashley County Bar Association, the Southeast Arkansas Legal Institute, and the Arkansas Trial Lawyers Association. In 2002, Ms. Bradshaw is a fellow in the American Academy of Adoption Attorneys, She concentrates her area of practice in contested domestic relations, all areas of adoption law and criminal law.

Bruce Flint, Esquire (2008-11) was born in Massachusetts in 1955. He attended Kenyon College and Wake Forest University graduating with a B.A. in history. He then attended Law School at Southern Methodist University and graduated with a J.D. in 1982. From 1983-93, he was partnered in the firm of Wilk and Flint in Dallas, Texas. For the next 7 years, he was sole proprietor of the Law Offices of Bruce A. Flint, P.C. in Dallas, Ft. Worth and Texarkana, Texas. From 2000 to 2004, he was at the law office of Flint & Garcia in Fort Worth, Texas. From 2003 to the present he has been a partner at Flint & Soyars, L.L.P. with offices in Texarkana, Texas and El Dorado, Arkansas. Additionally, he is of counsel with Flint & Garcia in Dallas and Ft. Worth, Texas. He has dual residences in the U.S.A. as well as Brazil. Mr. Flint is fluent in Portuguese and Spanish. He is an honorary member of the OAB, Organization of Brazilian Lawyers, a member of the Arkansas Trial Lawyers and recipient of the Silver Diplomat Champions of Justice in 2006.

Jim Keever, Esquire (2009-2010) practiced orthopedic surgery in Texarkana for 22 years before entering law school in 1999. He is a member of ATLA, as well as the AAJ, and the Texas TLA, and now represents plaintiffs in medical malpractice suits. Jim also works with other attorneys in reviewing medical malpractice or personal injury cases, and functioning as a consulting expert.

Robin C. Smith, Esquire (2009-2011) of Mount Ida, received her JD from the University of Arkansas School of Law (cum Laude) in May of 2005. Robin also holds a BA in Marketing for the University of North Carolina - Wilmington. In September of 2005 she opened the Robin Smith Law Firm, PA and focuses primarily on Domestic Relations, Real Estate, Estate and Probate fields. During law school Robin was honored as a member of the Montgomery County Farm Family of the Year; served as president and secretary of the student chapter of ATLA; served as president of the H.L.A. Hart Society in addition to being a member of the William B. Putnam Inns of Court. Before attending law school Robin held an Unlimited North Carolina General Contractor's license, built and remodeled residential properties. Since opening her solo-practice Robin served: three terms as President of the Polk-Montgomery County Bar, as a member of the Arkansas Bar Association's Unauthorized Practice of Law Committee and as a member of the 18-West Judicial Circuit's Courthouse Preparedness Committee. Robin has two children, Bob (16) and Claire (13).

Anthony Bryce Brewer, Esquire (2009-2012) was born in Jonesboro and graduated from Jonesboro High School in 1992. In 1996, he received his Bachelor's Degree in Agriculture with an emphasis on agri-business. From there, Bryce earned his Juris Doctorate in 2000 from the UALR William H. Bowen School of Law and is licensed to practice law in Arkansas and Tennessee as well as U.S. Federal Courts. He focuses his practice primarily on personal injury, nursing home negligence and social security disability. He is a member of the Pi Kappa Alpha fraternity, the Arkansas Trial Lawyers Association, the American Association for Justice and the Pulaski County and Arkansas Bar Associations. He and Beth have two children.

Neil Chamberlin, Esquire (2007-10) is a partner at the McMath Woods law firm in Little Rock. He grew up in North Little Rock. He graduated from Hendrix College in 1989. He graduated from the UALR School of Law in 1993. He has been representing the injured and the wronged ever since.

Eric D. Wewers, Esquire (2007-2010) earned his J.D. from the UALR School of Law in 1990. After graduation, he went to work for the law firm of DeHay & Blanchard, P.C. working in the areas of toxic tort, products liability, legal negligence and pharmaceutical defense. In 1992, Eric helped form DeHay & Elliston, LLP where he was responsible for over 40,000 asbestos cases. After 9 years, he resigned from his partnership and opened the Texas office for Wilkes & McHugh representing victims of nursing home neglect. In 2003, Eric formed a private practice where he focuses on nursing home abuse and neglect, pharmaceutical and wrongful death litigation. Eric and his wife, Kelly, have three children, Logan, Claire and Luke.

George Wise, Esquire (2008-2011) was admitted to practice law in Arkansas in 1978. He is a native Arkansan who was born in Batesville and grew up in Forrest City. He attended the University of Arkansas and the University of Arkansas School of Law. He is a lawyer with the Brad Hendricks Law Firm where he focuses his practice on medical negligence cases. His ATLA service includes being chairperson of the Publications Committee and serving on the Legislation Committee, the Amicus Curiae Committee and the Annual Convention Committee. He is married to Barbara Wise, a Spanish teacher at Horace Mann Middle School. They have two sons, Charles, a senior at the U of A, and Dalton, who is currently living in Bolivia studying Spanish.

An empty book is like an infant's soul, in which anything may be written. It is capable of all things, but containeth nothing.

– Thomas Traherne

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Shannon Muse Carroll, Esquire (2008-2010) earned her law degree from the University of Arkansas in 1991. She served three years as a Deputy Prosecuting Attorney for Union County prior to entering private practice. Since 1995, she has been a member of the Hot Springs law firm of Lane, Muse, Arman & Pullen where she focuses on accident injury law, Social Security and Workers Compensation. She served as a Deputy PA in Garland County from 1995-1997. She served on the House of Delegates for the Arkansas Bar Association and is a 1200 Club Member of ATLA. She has been married for 16 years to her husband, Steve and has 3 sons, Tim, Sam and Isaac.

David A. Couch, Esquire (2009-2011) practices law in Little Rock, Arkansas. His practice is concentrated on cases involving nursing home neglect and abuse. David earned his Bachelor's degree from the University of Arkansas in Fayetteville and received his Juris Doctorate in 1985 from the University of Arkansas at Little Rock School of Law, where he served as an associate editor of the Law Journal. He is the immediate past chair of AAJ's Nursing Home Litigation Group and is a frequent speaker at national and local seminars on trial issues, especially those involving nursing home litigation.

Phillip Duncan, Esquire (2008-2010) has been practicing law in Arkansas for over 30 years. He received his J.D. from the University of Arkansas, Fayetteville in 1974. His primary areas of practice are personal injury, products liability and class action. His experience includes: Morris v. UP Railroad ($8M verdict, settled after appeal); Anderson v. GMC ($2.9M verdict); Little John Trucks v. Shelton ($3.5M settlement); Baranowski v. GM (confidential settlement); Page v. Suitt Const. Co. ($4M verdict); Dees v. Allied Fidelity ($2.35M verdict); and Barnett v. GMC (certified class in Arkansas, Tennessee, and Mississippi, class-wide settlement). Memberships include Pulaski County and Arkansas Bar Associations, Arkansas Trial Lawyers Association, American Association of Justice, National College of Advocacy, Arkansas Bar Foundation, and AIEG. The Million Dollar Advocates Forum recognized him and Summation featured him as a litigator of the month.

Bob Edwards, Esquire (2009-2011) received his B.A. in Biology from Hendrix College in 1991 and his JD from the Bowen School of Law in Little Rock in 1998. Upon graduation, Bob helped elect Mark Pryor to the Attorney General's Office and then went to work for Attorney General Pryor, eventually serving as the Chief of Staff. Bob has been with the law firm of Wilkes & McHugh, P.A. in Little Rock since 2003. He is licensed to practice law in Arkansas, Kentucky, Pennsylvania and Tennessee with his practice being focused primarily on nursing home and tractor-trailer litigation. He is a member of the Arkansas Bar Association, the Arkansas Trial Lawyers Association, the American Bar Association, and the American Association for Justice. He is also active in AAJ's Nursing Home Litigation Group and Interstate Trucking Litigation Group. In addition to practicing law, Bob has served as a member of the Board of Directors of the England Public School District in England, Arkansas. He is a member of the Board of Alumni at the Bowen School of Law having recently served as its President,and a member of the President's Club at Hendrix College. Bob is married to Tiffany Fitch of Hindsville. They have one daughter, Katharine Grace.

Ruthanne Murphy, Esquire (2008-2010) attended the Wesley School of Nursing and Wichita State University in Wichita, KS to obtain her license as an RN. She earned a BSN from College of St. Francis in Joliett, IL. After 15 years as an emergency trauma nurse and then a cardiovascular intensive care nurse, she attended the UALR School of Law graduating in 1989 with her Juris Doctorate. She does personal injury work, mostly in the area of medical malpractice. She opened a solo practice in 2003. She is a member of the Arkansas Bar Association, the Arkansas Association of Women Lawyers, The American Association of Nurse Attorneys and a devoted member of ATLA.

Conrad Odom, Esquire (2008-2010) was admitted to the Arkansas bar in 1992 and practices before the U.S. District Court, as well as the Eastern and Western Districts of Arkansas. A graduate of Hendrix College, he received his JD from the University of Arkansas in 1991. He is a Fellow of the Arkansas Bar Foundation and a member of the Washington County, Arkansas and American Bar Associations; Southern Trial Lawyers Association and the American Inns of Court (Barrister). His practice includes Social Security, Personal Injury, Workers Compensation and Americans with Disabilities Act cases.

Robert Sexton, Esquire (2008-10) graduated Ouachita Baptist University with a double major in Business Administration and Political Science, B.S., 1993. He received a J.D. with honors from University of Arkansas at Little Rock. Bob was admitted to the Arkansas Bar in 1996, Arkansas and U.S. District Court, Eastern and Western Districts of Arkansas, 1996 and the U.S. Court of Appeals, Eighth Circuit, 1997. He is a member of the Pulaski County and Arkansas Bar Associations; American Bar Association; Arkansas Trial Lawyers Association; Board Member, and Arkansas Sheriffs' Youth Ranches. His practice includes personal injury, medical negligence and general litigation. Bob and his wife Jennie reside in Little Rock with their two children.

Carter C. Stein, Esquire (2008-2010) earned his J.D. from the University of Arkansas at Little Rock School of Law in 2003. He earned a B.A. in history from the University of Arkansas in 2000. He has been practicing with Law Offices of Gary Green since 2004 and focuses his practice on personal injury cases. He is a member of the American Bar Association, Arkansas Bar Association, Pulaski County Bar Association, American Association for Justice and the Arkansas Trial Lawyers Association. He and his wife, Emily, have a son, Bowman.

Eric L. Worsham, Esquire (2009-2011) earned his J.D. from the UALR, William H. Bowen School of Law in 2001. He is a member of the National Organization of Social Security Claimants' Representatives, National Organization of Veterans Advocates, U.S. Court of Appeals for Veterans Claims Bar Association, American Association for Justice, Arkansas Bar Association, Arkansas Trial Lawyers Association, Jefferson County Bar Association, Union County Bar Association, and Garland County Bar Association. Eric is the current Chair of the Administrative Law Division of ATLA. He is a partner in the firm Baim, Gunti, Mouser, Havner & Worsham, PLC, with offices in Pine Bluff, Little Rock, Hot Springs, Hot Springs Village, and El Dorado. Eric primarily represents claimants before the Social Security Administration and the Department of Veterans Affairs, as well as insured claimants regarding short-term and long-term disability policies. He and his wife, Amber, have twin sons, Nix and Zane.

POLYGRAPH EXAMINATIONS

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$400,000 Verdict in Degloving Injury of Left Hand and Arm of Mother of 5

Plaintiff, a mother of 5, had a degloving injury to her left arm in this case of admitted liability. Plaintiff's car was struck from behind, catapulted into oncoming traffic, then rolled over & slid down the highway with her arm between the roof of the car & the pavement, resulting in this very painful & debilitating injury.

Case Name:	*Jones v. Rouse*
Case #:	CV-05-176
Court:	St. Francis County Circuit
Demand:	Suit was filed, after which AUIC's offers to settle for its limits of $25,000 were refused, based on what Plaintiff's attorneys believe to have been bad faith.
Settlement/Verdict:	$400,000 verdict. Itemized verdict, to which plaintiff and defense agreed, awards were as follows: past Meds were $67,000; $150,000 for future surgeries; $68,000 for past wage loss; zero for future lost earnings (she began a $9/hour job 2 months before trial); $15,000 for the nature, extent, & permanency of the injury; $70,000 for pain, etc; and $30,000 for scarring and disfigurement.
Comments:	For a year, client tried to resolve the case on her own, but AUIC (Conway) refused settlement on this $25,000 policy, telling the client: "What do you care when we settle? The hospital is going to get all the money anyway." Adjuster belittled her injury, with comments like, "...so you hurt your arm a little bit, huh?"
Type of Case:	Personal Injury
Reporting Attorney:	Mike Easley of Forrest City, Arkansas for the plaintiff
Date of Trial:	May 19, 2009

Products Liability Case Results in $1,350,000 Award for Plaintiff

In this products liability case, thirty-four year old female (plaintiff), a sanitation worker for Tyson Foods, was injured while pre-rinsing a chicken neckbreaking machine manufactured by the defendant when her clothing was caught in the rotating barrel of the machine.

Case Name:	*Gwendolyn Bohannon v. Johnson Food Equipment, Inc. d/b/a BaaderJohnson*
Case #:	5-07-CV-00123 JMM
Court:	U.S. District Court for the Eastern District of Arkansas, Judge James Moody
Judge or Jury:	Jury
Damages/Injuries:	Amputation of right hand with exception of pinkie finger; Post-Traumatic Stress Disorder; Depressive Disorder
Settlement/Verdict:	$4,500,000
Demand:	$435,000
Comments:	The defendant filed a notice of intent to assert non-party fault against Tyson Foods, Inc., the plaintiff's employer. The plaintiff moved to strike the notice on grounds that the Civil Justice Reform Act could not be construed to allow apportionment of fault against

immune non-parties since it would violate the separation of powers doctrine of the Arkansas Constitution and would violate the fundamental right to a fair trial. The trial court denied the motion to strike and the case proceeded to verdict with Tyson Foods, Inc. named as a party against whom fault could be apportioned. The jury apportioned 30% fault to the defendant, 60% to Tyson Foods, Inc. and 10% to the plaintiff.

Reporting Attorney: Richard Zalasky, Schlicter, Bogard & Denton, LLP

Date of Trial: April 24, 2009 •

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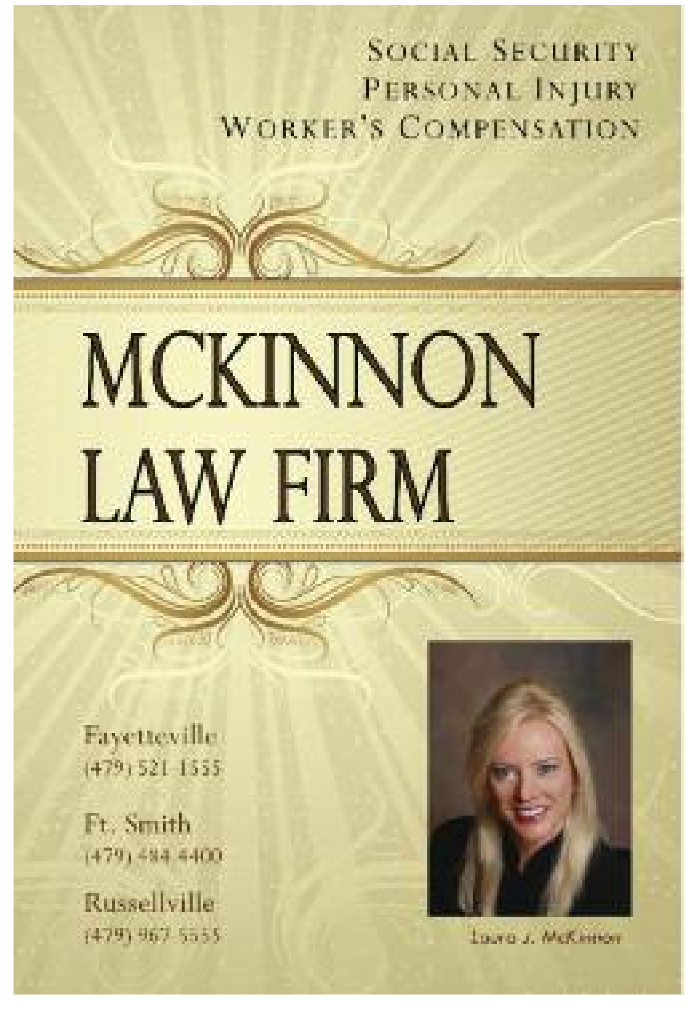

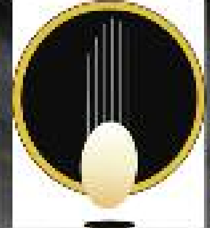

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