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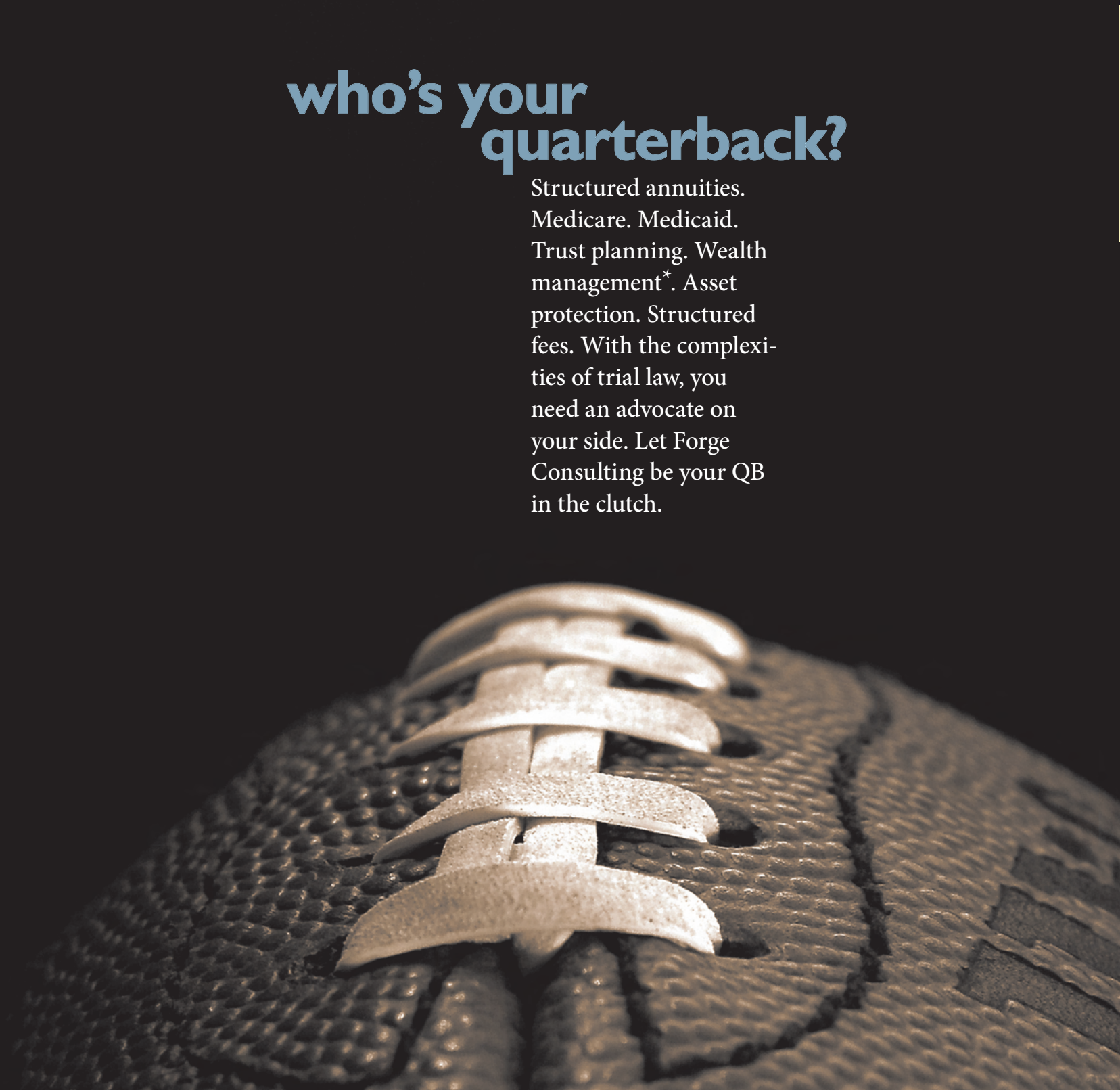

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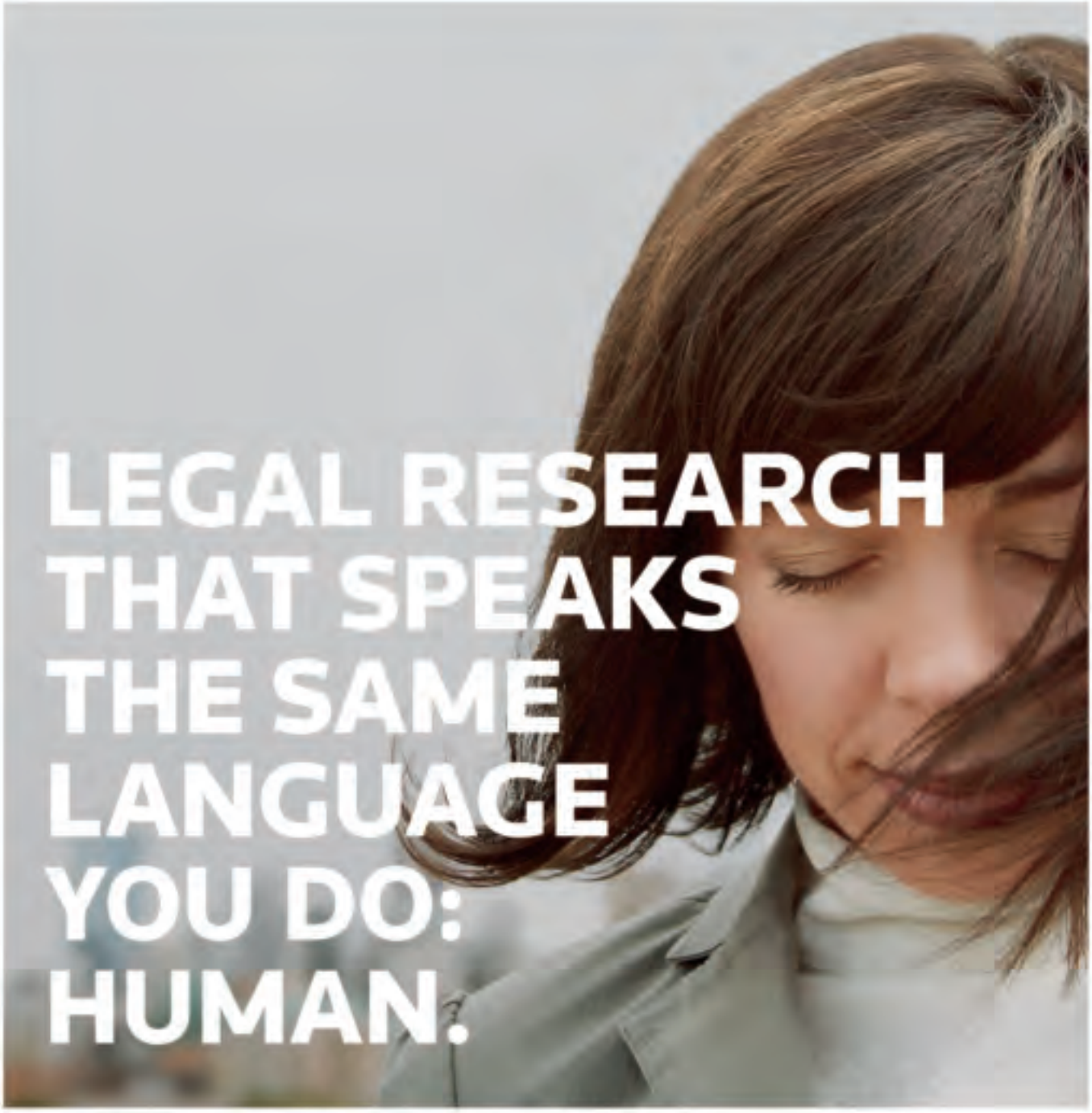

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Photo by Cindy Momchilov of Camera Work Photography.

ATLA Docket is published quarterly by the Arkansas Trial Lawyers Association, 1400 W. Markham, Suite 307, Little Rock, AR 72201. Telephone (501) 376-ATLA.

Introducing Gibson Vance, AAJ President

by Tre Kitchens, Esquire
ATLA President

I'd like to take this opportunity to introduce the new President of AAJ, Gibson Vance. If you missed his column in the August issue of Trial, here is a second chance to find out more about the 2010-2011 President of the American Association of Justice:

Working and thriving together
by C. Gibson Vance

It is with great pride and humility that I become the president of AAJ. AAJ is one of the most important membership organizations in our country. No other association fights each day for the civil justice system and for the rights of the injured people we represent.

AAJ is your organization, and I and my fellow elected officers are accountable to you. Over the past several years AAJ has encountered challenges, but we have persevered and emerged stronger than ever. After all, we are trial lawyers. We are used to being the underdogs, we are accustomed to fighting the good fight, and we prevail more often than not.

AAJ can continue to thrive, but your organization needs your help. Fortunately, there are many ways to make a difference in carrying out our mission—you can choose the ones that best fit your interests, skills, and time. For example:

- *Help build AAJ membership by volunteering to help with a phonathon or other member recruitment activity in your state.*
- *Get involved with the Women Trial Lawyers Caucus, the Minority Caucus, or the New Lawyers Division by participating in one of their projects or events.*
- *Join a section or litigation group in your practice area and connect with your colleagues through AAJ's many list servers.*
- *Share your expertise by speaking at an AAJ Education program.*
- *Attend an AAJ convention and take advantage of numerous opportunities to earn CLE credits, attend section and litigation group meetings, network with colleagues from around the country, and hear from important political figures.*
- *Volunteer to serve on a committee.*
- *Contribute to our vital legislative and communications efforts by attending lobby days and by working with AAJ staff to share your clients' stories with lawmakers and the media.*

Engaging with your colleagues in these and other ways will make AAJ stronger and better. You will benefit, too, by networking with other trial lawyers who have abundant experience and knowledge to share.

To get more involved, e-mail me at gibson.vance@beasleyallen.com or contact AAJ headquarters and we will find a way to use your talents. AAJ needs you; the civil justice system needs you.

Since this is my first column, I hope you won't mind if I take a moment to get personal. I want you to understand what kind of president you are getting this year.

I was raised by a single mother who taught school and never made more than $30,000 a year. I got my first job at age 12, and I attended college on a Pell grant, student loans, and money I earned working full time. I enrolled in a night law school because I had to work during the day. My first years of practice were in a two-man law firm where I tried many dog-bite and auto cases. I am proud of where I came from. If I were starting all over again, I would not change a thing.

As your president, I will always base my decisions on what is best for the rank-and-file members of AAJ—the members I admired as a young lawyer and who are the backbone of our organization. And I will always put the interests of our clients first. This is my pledge; it is your job to hold me to it.

I am proud to be a trial lawyer. It is not what I do, it is who I am. I know you feel the same way, and I know the AAJ staff is proud to work with us on behalf of injured people. So let's fight together. Let's fight not for glory or wealth, but for those who need us to fight for them the most—our clients.

•

C. Gibson Vance is a shareholder in Beasley, Allen, Crow, Methvin, Portis & Miles in Montgomery, Alabama.

Opportunity

by Mike Boyd, Esquire
ATLA President-Elect

In an effort to help prepare my oldest son for the oncoming rush of life after college, I have told him that a person in this world is truly owed nothing.

Encouraging, I know.

In my defense, the speech continues with: "All a person can ask for is *an opportunity*." And once that opportunity is given – yes, given – then it is up to that person to make something of it. This is not to say that hard work and/or good work doesn't create the opportunities; both certainly do. Throw in some luck and you're in a good position. The opportunity given may be taken, or it may be passed upon, and that decision can be a weighty one. I know, I know, not a new concept or speech, but worth repeating in my opinion.

Right now, ATLA and the citizens of this state are being given an opportunity. This opportunity is not by happenstance, as some are. This opportunity is a result of the foresight of the leadership of this organization, hard work by some very smart and dedicated people in this organization, and of course money – your money. This opportunity exists in the election this fall. There are a large number of seats at stake in the House and the Senate – 13 in the Senate and about 40 in the House. To underscore the significance, this represents about 40% of the seats up for grabs in *both* the House and Senate. Many of those open seats in the Senate are being sought by those who have done the right thing as a Representative in the House. We call those candidates friends. There are also candidates whose leanings are unknown, and certainly those who will be doing the bidding of bad corporations. I won't say what we call those. I can say this storm was predicted better than Ned Perme could have (thanks, Mr. Hass). We have prepared for this moment for some time; and thus, our opportunity lies before us.

I don't know about you, but I tire of the hyperbole that dominates our political landscape. Call it reptilian, call it good marketing, but hyperbole in the form of fear has exploded in recent years. Not that it's new – it most certainly is not. But there are so many different ways to bombard people with hyperbole now that it is simply unavoidable to most every human being on the planet (hey, that means you Botswana).

Now for some fear. This election is truly the opportunity that we have been waiting for. We have an opportunity to solidify in our Legislature a healthy majority of individuals who are not beholden to the bad side of corporate interests, or who are frothing at the mouth to take us out and the citizens' rights along with us. You, as an ATLA member, along with your fellow ATLA members, can take this opportunity and make the right thing happen, or we can pass on it and risk failure. It's true that if you don't give your time or money, the election will still occur and the right people may still get elected. But when you make that conscious decision to abstain, you may as well give money to the American Tort

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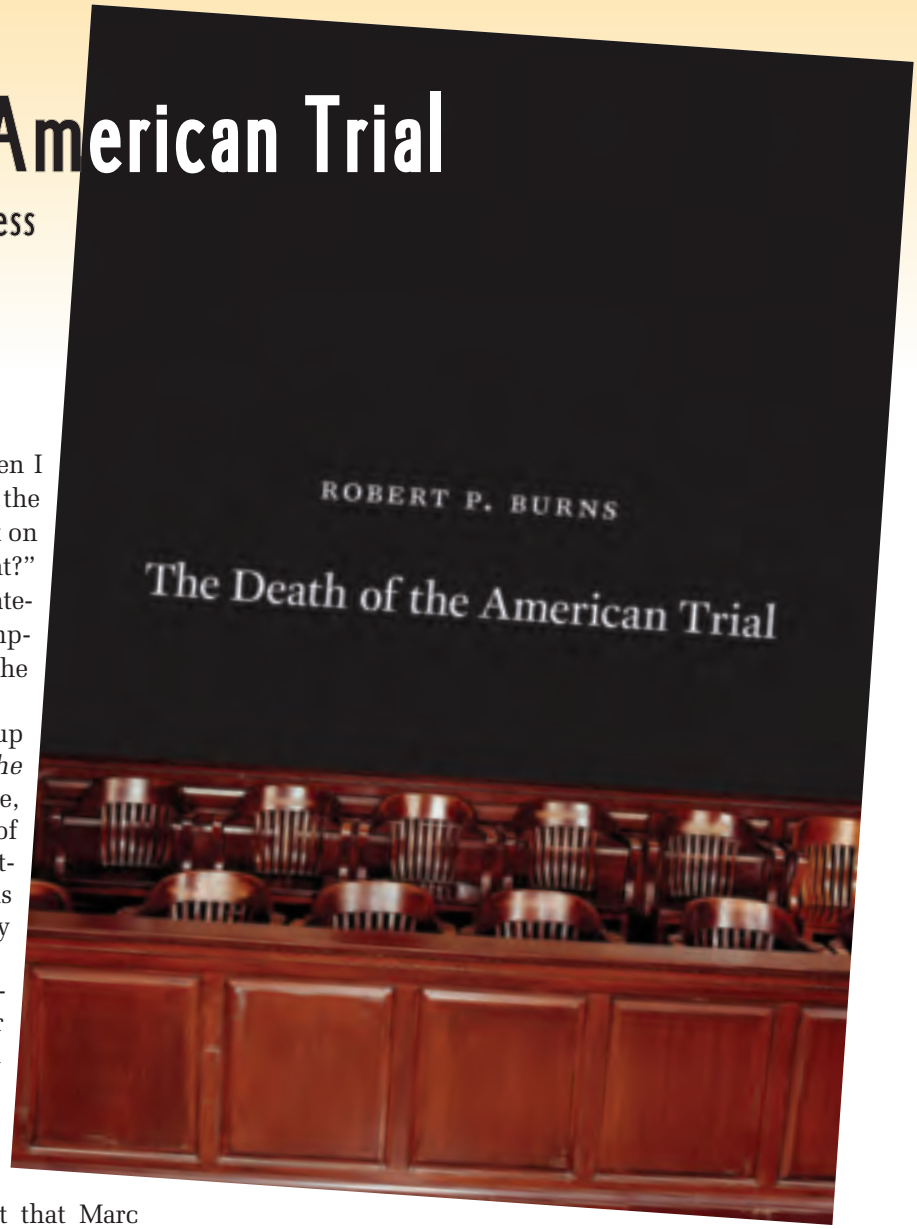
BOOK REVIEW

The Death of the American Trial

Robert P. Burns, University of Chicago Press



Review by William S. Bailey

When I was called to the dinner table when I was growing up, it was a certainty that the three basic food groups would be present on my plate. My inevitable "Do I have to eat that?" attempt at negotiation always centered on one category, the vegetables, with their eventual consumption depending on both their preparation and the possible reward of dessert.

There is no question what literary food group Professor Robert Burns's *The Death of the American Trial* falls into—it is a legal vegetable, fortified with the literary vitamins and minerals of voluminous footnotes and authorities. A respected scholar and popular classroom teacher, Burns takes on a subject that matters, or should, to every American—the decline of the jury trial.

Although the American jury is a critical component of the institutional glue that holds our society together, increasingly, it has been lost in the shuffle of modern life, like a once-prominent but now-forgotten ancestor.

Burns is not the first legal scholar to sound the alarm about the demise of our jury system. For example, Burns notes at the book's outset that Marc Galanter, a professor at the University of Wisconsin School of Law, has analyzed the raw data collected by the administrative agencies of our state and federal court systems—which show a precipitous drop in jury trials in recent years—and has expressed great concern over what this trend means for our future.

But, Burns informs the reader, his book takes a different approach to the problem. While Galanter provided a sophisticated statistical analysis of jury trends, Burns says that his goal "is less to identify the causal mechanisms . . . than to identify the significance or meaning of this decline."

Of course, any hope of mitigating the steady decline in jury trials depends in part on informing the legal profession and the public about what is causing it and what can be done to reverse the trend. Thankfully, Burns does analyze the causes, matching the 12 jurors in the box with 12 well-supported reasons why juries have become a fading sight on the American legal landscape.

This section is one of the most useful in the book because it helps the reader understand the causes and effects of the recent downward trend. It is a pity, however, that the author fails to weigh the relative importance of the 12 reasons for the decline. Not only are some more important than others, but some also are more capable of institutional correction. The reader comes away with a sober appreciation of what is slipping away from us without any real idea how to stop it.

As a trial lawyer for 35 years, I have no doubt which factor is at the top of the list: the steady consolidation of judicial power, particularly in the federal court system. With their lifetime appointments and expanded power to dispose of cases summarily, federal judges have taken on an imperial role in the resolution of disputes, at the expense of our jury system.

Some federal judges believe that cutting down on the number of jury trials is a good thing. When confronted with Galanter's statistics, one federal circuit judge remarked, "That means we are doing our job."

Federal judges now dismiss many cases on summary judgment. These dismissals will surely proliferate in light of

the Supreme Court's recent decision in *Ashcroft v. Iqbal,* which gave federal judges the power to dismiss an action if they believe it is unlikely to succeed at trial, even if it is legally sufficient under Federal Rule of Civil Procedure 8. Federal judges also can derail entire bodies of litigation by excluding expert testimony under *Daubert* and its progeny.

This broad use of judicial power in the federal courts to curtail trials is different from what I experienced in the early days of my practice. Trial judges might have been God-like, fearsome, and irascible then, but they nearly always let lawyers try their cases, no matter what their personal feelings about the merits might have been. While state court judges are less dictatorial, having to face regular reelection, they too have broadly expanded power to dismiss lawsuits that once would have gone before juries.

Another critical factor in the decline of the American jury trial is alternative dispute resolution (ADR), which Burns mentions only in passing. ADR supporters claim that jury trials are a wasteful and wildly speculative roll of the dice. But mediators often scare lawyers and their clients with stories about what juries will do if the case does not settle.

But some are working to set the story straight. Marsha Pechman, a judge with the U.S. District Court for the Western District of Washington, has as a goal increasing the number of jury trials in her court. She has made "ADR has gone too far" her rallying cry. ADR has taken a major toll on the number of cases that go to trial, partly by demonizing the jury system, and an analysis of its effect would have been appropriate in Burns's book.

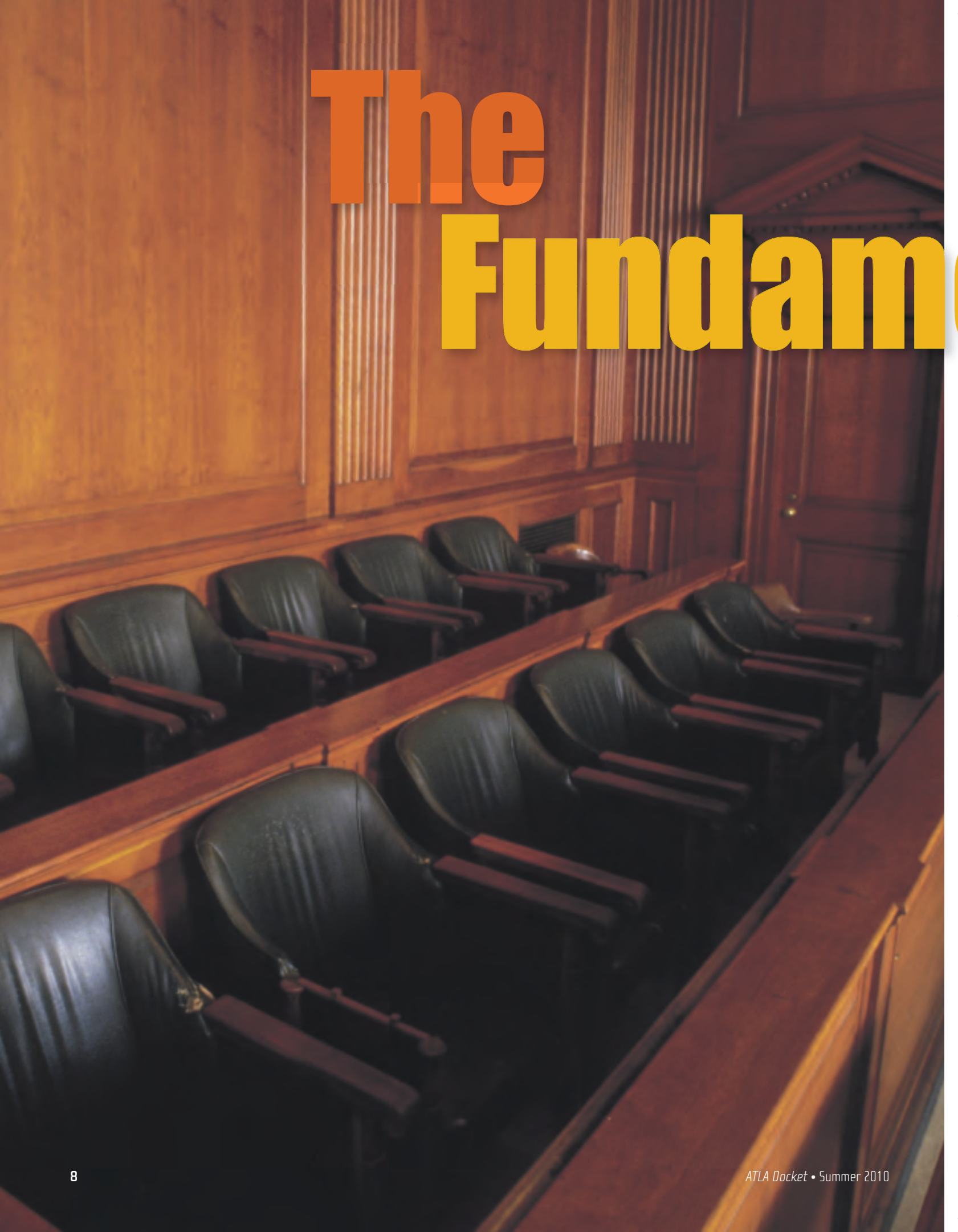
The book's other notable fault is the lack of human interest. Worthy as the subject may be, the presentation is dense and dry. Even a few stories would have helped Burns better communicate his intellectual mastery of this subject and his finely tuned arguments.

Although the book is not for the casual reader, or even most lawyers, Burns is to be commended for making the case for why the jury trial is an endangered species and why it matters. He has done his part.

What about the rest of us? Our clients' rights depend directly on the health of the jury system, so we would do well to heed the advice of Dr. Seuss's Lorax: "Unless someone like you cares a whole awful lot, nothing is going to get better. It's not."•

The Death of the American Trial
by Robert P. Burns, University of Chicago Press
www.press.uchicago.edu
200 pp., $29

William S. Bailey practices law with Fury Bailey in Seattle.



The Fundam

ental Nature of Juries

by Joanne Doroshow, Esquire

The civil jury has been a cornerstone of our democracy. In 1791, during its first session, Congress enshrined the right to civil jury trial in the Bill of Rights. It became the Seventh Amendment to the U.S. Constitution.

The Founders believed not only that ordinary citizens had the common sense, life experience and values to make reasoned decisions on the facts in civil cases but also that the civil jury was vital for the protection of individual liberties against injustice. Two centuries later, U.S. Supreme Court Justice William Rehnquist wrote in *Parklane Hosiery Co., Inc. v. Shore,* 439 U.S. 322 (1979), "The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary." Rehnquist added, "Trial by a jury of laymen, rather than by the sovereign's judges, was important to the founders because juries represent the layman's common sense, the 'passionate elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community."

This form of direct citizen participation in the administration of justice remains just as vital today. American civil juries serve as indispensable watchdogs over official or arbitrary misuse of power that threatens the public welfare. It is well recognized that jury verdicts in civil cases, or even the mere prospect of them, have forced manufacturers, hospitals, automakers, drug companies and other industries to make their products and practices safer, saving countless lives from injury or death (see, e.g., *Lifesavers: CJ&D's Guide To Lawsuits That Protect Us All*). Civil juries also even the playing field by helping victims hold accountable individuals, institutions and corporations who misuse their authority. Access to the civil jury system is often the only means of redress in civil liberties, civil rights or violent crime cases when the criminal justice system has failed.

Equally important, civil juries express the conscience of the community, injecting shared values into their decisions about society's tolerance for certain types of behavior. In this way, civil juries perform a norm-setting or signaling function that deters potential wrongdoers from dangerous conduct. Civil juries also help develop community acceptance of tort law, since they are continuously called upon to define what is a "reasonable person," "reasonable conduct" and other evolving precepts of tort law. And sometimes, through civil jury nullification, verdicts have set in motion significant legislative changes to civil law standards, such as the statutory repeal of contributory negligence and the adoption of comparative negligence rules.

In addition, the civil jury system educates the public about civic virtues, democratic values and the law itself. French political scientist and historian Alexis De Tocqueville championed this aspect of our justice system in his 1835 book, *Democracy in America,* hailing the civil jury as an institution essential to the success of every free society. De Tocqueville wrote, "Juries, especially civil juries,

CONTINUED ON PAGE 10

instill some of the habits of the judicial mind into every citizen, and just those habits are the very best way of preparing people to be free. … I think that the main reason for the practical intelligence and the political good sense of the Americans is their long experience with juries in civil cases. …I regard it as one of the most effective means of popular education at society's disposal."

Despite its historic and current importance, the American civil jury system has been under attack. For over 30 years, the insurance, tobacco, pharmaceutical, chemical, oil and auto industries have waged a relentless lobbying and PR campaign against civil juries. Many states have passed laws that undermine the power and authority of civil juries. Caps on damages are one example. A damages cap is an arbitrary, "one-size-fits-all" ceiling on the amount an injured party can receive in compensation. Damages caps usurp one of the jury's crucial fact-finding responsibilities: Determining compensation based on the specific evidence presented at trial.

Moreover, by forcing victims to accept judgments in disregard of the jury's verdict, such legislation turns the right to trial by jury into a hollow right. Courts across the country continue to strike down caps for this very reason. In February 2009, Georgia state court judge Diane Bessen declared the state's $350,000 cap on non-economic (*i.e.,* quality of life) damages in medical malpractice cases unconstitutional, reasoning in part that the cap "so interferes with the determination of the jury that it renders the right of a jury trial wholly unavailable." The case is now pending before the Georgia Supreme Court.

Other business-led efforts seek to remove juries from certain types of civil cases altogether. One of the more talked about recent proposals, "health courts," is supported by a group founded by corporate lawyers, called Common Good, which would, among other things, bar juries from hearing all medical malpractice claims. Under Common Good's "health court" scheme, decision-making authority would be put in the hands of either the hospital or insurer involved, or "experts" appointed and commissioned by a panel heavily weighted toward health industry representatives, with compensation for injuries determined by a "schedule" developed by political appointees (*e.g.,* a certain amount for a lost eye or severed limb) rather than decided by juries on a case-by-case basis.

Mandatory binding arbitration clauses in contracts between businesses and ordinary Americans represent a more covert attempt to dismantle the civil jury system. These forced arbitration provisions, usually buried in the fine print and written in legalese that is incomprehensible to most people, abolish jury trials, replacing them with a single arbitrator or a panel of arbitrators who need not follow the law, may be biased or have a financial incentive to side with corporate repeat players who generate most of the cases they handle. Many standard purchase agreements, employment contracts and medical insurance agreements include mandatory binding arbitration clauses, so if you've bought a car, had a credit card, purchased a computer, used a cell phone, invested in stocks, had insurance, saw a doctor or worked for a large corporation during the last decade, chances are you unwittingly forfeited your constitutional right to trial by jury.

Given the vital role juries play in advancing democracy and safeguarding our freedoms, Congress, state legislatures and courts must ensure that their authority is not crippled in any respect. Failure to do so would not only jeopardize a fundamental feature of our civil justice system but also leave ordinary citizens vulnerable to the unchecked power of corporate America.•

Joanne Doroshow is the founder and executive director of the Center for Justice & Democracy and co-founder of Americans for Insurance Reform (AIR). An attorney, Doroshow has worked on civil justice issues since 1986, when she directed an insurance industry and liability project for Ralph Nader. Together, they developed some of the first educational materials used to fight "tort reform" around the country including Goliath: Lloyd's of London in the United States (1988) and Safeguarding Democracy: The Case for the Civil Jury (1992).

Doroshow founded CJ&D in 1998. As CJ&D Executive Director, she has testified before the U.S. Congress many times and appeared before numerous state legislatures around the country. She has written or co-authored numerous CJ&D studies and White Papers on civil justice issues including Premium Deceit: The Failure of "Tort Reform" to Cut Insurance Prices, The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take

Away Your Rights, The Bitterest Pill, and The Racial Implications of Tort Reform. She also edited Lifesavers: CJ&D's Guide to Lawsuits that Protect Us All, The Secret Chamber, Workers Compensation-A Cautionary Tale, How the Civil Justice System Protects Environmental Health and many other CJ&D publications.

Doroshow is a nationally recognized civil justice expert, frequently appearing on television and radio programs on CBS, ABC, NBC, PBS, CNN, Fox News, MSNBC, CNBC, C-SPAN, and NPR. She is regularly quoted in newspapers nationwide, including the Wall Street Journal, New York Times, Washington Post, Chicago Tribune, Miami Herald and Los Angeles Times. Doroshow has film and television production experience as well. She was one of the producers of the 1992 Academy Award-winning documentary, The Panama Deception, and has worked on the theatrical, broadcast and video distribution of a number of films. In 1994 and 1995, she was a Segment Producer and Coordinating Producer for TV Nation, the Emmy Award-winning humorous political show by Michael Moore. She was also a Coordinating Producer of the documentary SiCKO (2007) and an Associate Producer of Fahrenheit 9/11.

From 1981 through 1985, Doroshow was lead counsel and spokesperson for TMI Alert, a community group working to block the restart of the TMI-1 nuclear reactor after the 1979 Three Mile Island accident and whose case reached the U.S. Supreme Court. In 1992, she worked on the successful Supreme Court appeal of the Karen Silkwood case. From 1989 to 1990, Doroshow was the director of California-based Bhopal Justice Campaign, a coalition of community groups and leaders fighting for statewide support for victims of the India gas disaster.

The Center for Justice & Democracy (CJ&D) is the only national consumer organization in the country exclusively dedicated to protecting the civil justice system. The CJ&D was founded by consumer advocates in March 1998. Originally known as Citizens for Corporate Accountability and Individual Rights (CCAIR), the organization was formed with seed money from filmmaker Michael Moore and received a significant grant from the Stern Family Fund as a recipient of the Public Interest Pioneer award.

Over the past decade, CJCJ&D has released hundreds of studies, White Papers and fact sheets on civil justice issues, presented testimony before Congress and state legislatures, and helped organize countless press events advocating the rights of consumers and patients. Through groundbreaking research and legal analysis, grassroots mobilization and effective advocacy, CJ&D is fighting to protect the civil justice system.

Article originally published in the Fall 2009 (vol. 9:3) issue of the CJ&D's quarterly newsletter, Impact. Reprinted with permission of the author and publisher.

The People Shall Judge

by John Vail, Vice President and Senior Litigation Counsel,
Center for Constitutional Litigation, Washington, DC

If you believe in the fundamental principle of democracy that the People are capable of judging things for themselves you need to be concerned about the way tort reform robs citizens of their fundamental right, as jurors, to judge their peers and to set the norms by which society functions. *See* John Locke, *Second Treatise of Civil Government,* ch. xix ("The People shall be judge…")

The right to sit on a jury is fundamental. It was won by spending blood and treasure. Today its importance is almost forgotten, as people clamor to escape jury service. But in our earlier history it was cherished. It is time to restore some of its luster. A key piece of the story involves a burglar named Brittle and a "colored man" named Crossley.

The Early Days

In pioneer America, "On a day-to-day basis, ...it was the juries, not the president or the state governors, who enforced the law; and it was the juries, and not either judges or legislators, who spoke authoritatively as to what the law was." Forrest McDonald, *NOVUS ORDO SECLORUM:* THE INTELLECTUAL ORIGINS OF THE CONSTITUTION, p. 289 (1985). Thus, jury service was considered a most valuable right, at least the equivalent of the right to vote. Vikram David Amar, *Jury Service as Political Participation Akin to Voting,* 80 Cornell L. Rev. 203, 218 (1995); Stephan Landsman, *The Civil Jury In America: Scenes From an Unappreciated History,* 44 Hastings L.J. 579, 595-97 (1993).

In 1831 a keen-eyed visitor from France, Alexis de Tocqueville, observed that, in America, "the jury is, above all, a political institution, and it must be regarded in that light in order to be duly appreciated." Alexis de Tocqueville, Democracy in America 293 (Bradley rev. ed. 1945). Tocqueville famously praised the jury for being like "a gratuitous public school, ever open, in which every juror learns his rights," and concluded that the jury is "one of the most efficacious means for the education of the people which society can employ." de Tocqueville, *supra,* pp. 295-96.

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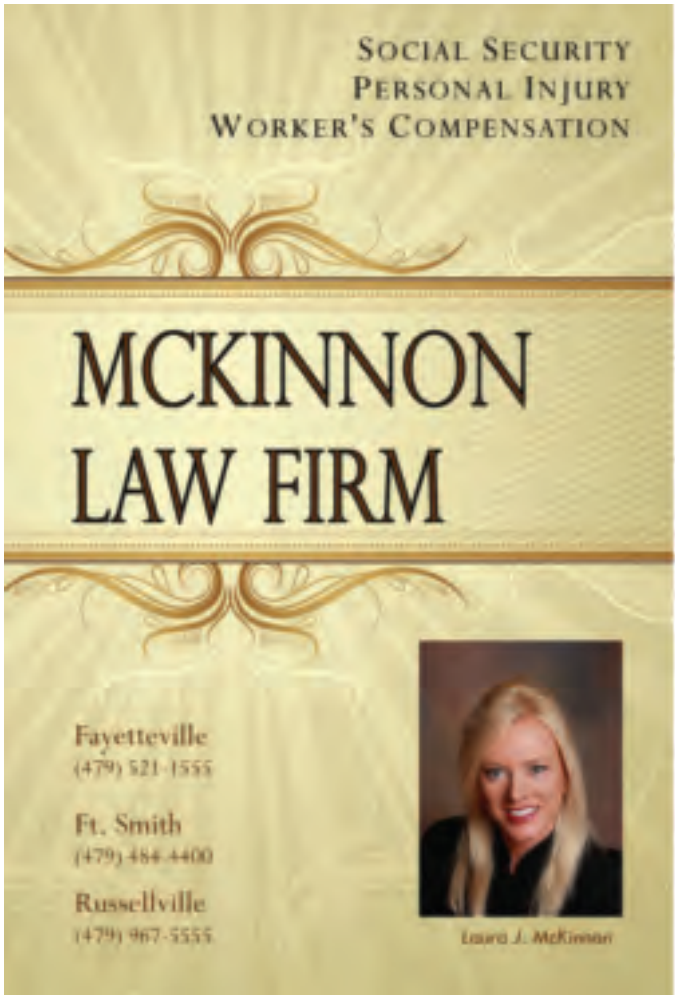
The Civil War

Prior to the Civil War persons of color were not allowed to sit on juries. "No African-American served on any trial jury in the United States, North or South, until 1860 during a criminal trial in Worcester, Massachusetts." Jeffrey Abramson, WE, THE JURY, p. 2 (Harvard University Press (paperback edition) 2000) (citing Leon F. Litwack, NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES, 1790-1860, 94 (1961)).

Deliberations leading to passage of the federal Jury Anti-Discrimination Act – which was passed in 1875, is now codified at 18 U.S.C. § 243, and bars discrimination on the basis of race in jury service – make it clear that the post-Civil War Congress construed the right to serve on a jury as a fundamental right to participate in democracy. The concern of Congress in outlawing racial discrimination in jury selection was not simply to afford litigants a jury made up of a cross-section of the community, but also to extend to persons of color the fundamental right to sit in judgment of their peers.

Senator Morton of Indiana, a proponent of the bill, stressed that serving on a jury is a right of great magnitude:



> Why, how important is it in the Southern States, how important is it in those States where slavery recently existed and where its traces still remain and where the education and the feelings and the passions of slavery still remain, *to establish this great right,* that no man shall be excluded from the jury because of his color if he is otherwise qualified.

Congressional Record p.1795 (2nd Sess. 1875) (emphasis supplied). Senator Morton continued, equating the right to sit on a jury with the right to vote:

> Why he says you do not allow children to vote; you do not allow these pages to vote, and therefore you should exclude a whole race. Because you do not allow a boy ten years old to vote, you ought to exclude a colored man fifty years old from voting. That is the argument. That is the force of his logic. Because you exclude infants from the right *to go to the polls or sit in the jury-box,* therefore you must exclude a whole race of adults, of men who have arrived at mature age, from the enjoyment of the plainest common rights.

Id. at 1795 (emphasis supplied).

Senator Carpenter, an opponent, noted that the bill would "secure to citizens of the United States the right *to serve as jurors* in a *State* court in the trial of citizens or inhabitants of a State," *Id.* at 1862 (emphasis on "to serve as jurors" supplied; emphasis on "State" is in original), and that the right to serve was no small thing: "Juries in State courts perform a most important function in the administration of justice by the State government." *Id.* at 1863.

Senator Bayard of Delaware, another opponent of the bill, recognized that the right to serve as a juror was at issue and confidently predicted that the Supreme Court would strike down a Congressional enactment recognizing the right. Congressional Record Appendix p. 103.

Senator Bayard proved no clairvoyant. Just five years later, in *Strauder v. West Virginia,* the Supreme Court recognized the right to serve as a juror:

> The very fact that colored people are singled out and expressly denied by statute all *right to participate in the administration of the law,* as *jurors,* because of their color, though they are citizens, and may be in

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> other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority....

100 U.S. 303, 308 (1880) (emphasis supplied). The Supreme Court subsequently affirmed its understanding that the right to serve on a jury is a right of participating in democracy:

> The jury system postulates a conscious duty of participation in the machinery of justice which it is hard for people not brought up in fundamentally popular government at once to acquire. One of its greatest benefits is in the security it gives the people that they, as jurors, actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse.

Balzac v. Porto Rico, 258 U.S. 298, 310 (1922) (Taft, C.J., for the Court)

Why the right is so important was cogently addressed by the Nebraska Supreme Court. A man named Brittle was convicted of burglary by a jury that included Crossley, a "colored man." *Brittle v. The People,* 2 Neb.198, 1872 WL 6048, *4 (Neb. 1872). A trial judge overruled Brittle's objection to the seating of Crossley on the jury and Brittle appealed. *Id.*

At the time, the Nebraska Constitution allowed only white males to sit on juries. *Brittle,* 1872 WL 6048, *5. The Act of Congress admitting Nebraska to the Union conditioned the admission on there being "no denial of the elective franchise, or of any other right, to any person, by reason of race or color." *Id.* The Court ruled that this language required that Nebraska afford to persons of color the right to serve on juries. The right to serve on a jury was not a "natural" right - a right that existed outside of government - but it was, like voting, a fundamental *political* right, "attaching to a citizen because of his relation to the government." *Brittle,* 1872 WL 6048, *14-15.

Why Jury Service Matters

The Nebraska court observed in *Brittle* that jury service helps us live by the Golden Rule: "When the white man acts under the consciousness that the black man may some day sit in judgment upon his rights, and that he in return may measure with the same measure that is applied to him, an important right is accorded him." 1872 WL 6048, *14. The principle still applies. Persons from all walks of life must consider that as they judge, yet they shall be judged.

Jury service was designed to be and remains a moderating influence on society, allowing diverse people to live together in freedom under law. Constitutional scholar Akhil Reed Amar has suggested, "All who vote should serve on juries, and each jury should strive to bring together diverse citizens--rich and poor, black and white, male and female, urban and rural-- into a common conversation affirming and nurturing a deliberative democracy." Akhil Reed Amar, *Three Cheers (And Two Quibbles) for Professor Kennedy,* 111 Harv. L. Rev. 1256, 1269 n.26 (1998). The effect of jury service is not theoretical. Modern jurors report that their service enhances their appreciation of the justice system. Shari Seidman Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors,* in Robert E. Litan, Ed., VERDICT: ASSESSING THE CIVIL JURY SYSTEM, pp. 285-86, The Brookings Institution, 1993.

The late Chief Justice Rehnquist bemoaned a "gradual process of judicial erosion" of constitutional rights concerning juries. *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 339 (1979). *See also* Landsman, *supra, The Civil Jury In America: Scenes From an Unappreciated History,* 44 Hastings L.J. 579 (1993). Faith to democratic values requires stopping that erosion. "Tort reforms" that take decisionmaking power away from juries should be recognized as the unconstitutional usurpations of power that they are. *See, e.g., Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt,* —- S.E.2d ——, 2010 WL 1004996 (Ga.2010) (holding that a cap on noneconomic damages violated the right to jury trial). •

John Vail is Senior Litigation Counsel and Vice President of the Center for Constitutional Litigation (CCL) the law firm that devolved from the legal department of American Association for Justice. In that capacity John has dedicated himself to keep courts open to ordinary citizens. He has appeared as counsel, written and successfully argued in countless state and federal courts around the country against state tort reform statutes, efforts to eliminate the right to jury trial, attempts to make experts unavailable and other efforts to prevent access to justice. He writes regularly about the civil justice system and has been published numerous times.

Prior to accepting his current position with CCL, John spent two decades working for legal aid organizations across rural America. Mr. Vail has received the Denison Ray Award for "inspired vision and outstanding leadership" in his legal aid work and the Public Justice Achievement Award from Trial Lawyers for Public Justice for his work in preserving the right of access to justice.

Tort Reform Remedy or Red Herring?

by Ken Connor, Esquire

In the ongoing debate over health care reform, critics on the right are increasingly citing the lack of tort reform as a major deficiency of the current proposals floating around the halls of Congress. Instead of focusing on truly conservative solutions to our nation's mounting health care crisis, Republican lawmakers and pundits are playing the same old song-and-dance—blaming ballooning health care costs on trial lawyers. This red herring tactic is a classic example of politicians trampling principle in pursuit of politics. In this case, Republicans moonlighting as "conservatives" seek to use tort reform to shield corporate malefactors (who also happen to be their financial benefactors) from full accountability for their wrongdoing. In so doing, they are undermining a bedrock principle of our nation's justice system.

For years, Big Business and the U.S. Chamber of Commerce have spent millions of dollars in a public relations campaign aimed at demonizing trial lawyers, portraying them as unethical con-artists out to game the system. These corporate interests have a vested interest in keeping the tide of public opinion running against trial lawyers because it deflects attention from the widespread problem of negligent and reckless conduct that injures consumers. This "shoot the messenger" tactic not only enables businesses to

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"In the state of nature. . . all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law."

— Charles de Montesquieu

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avoid financial accountability for wrongdoing—it deliberately undermines the people's civil liberty.

The reality is that trial lawyers are the people's first line of defense to secure redress of grievances for private or civil wrongs committed against them. The most highly publicized of these kinds of cases usually involve David and Goliath-type scenarios—think of the massive frauds committed by WorldCom, Enron, or Bernie Madoff and you get an idea why trial lawyers are essential to securing justice for those wronged at the hands of well-heeled rogues with deep pockets and limitless legal resources. And yes, sometimes these cases involve substantial claims against doctors or hospitals accused of malpractice.

Despite unfair characterizations to the contrary, medical malpractice is no joke. Every day thousands of Americans walk into doctors' offices, emergency rooms, and operating rooms trusting their lives to the expertise and integrity of the medical system. Errors in diagnosis, misread charts, medication errors… all can cause irreparable harm to their victims. And these kinds of accidents happen often—far more than Republican advocates of "reform" are willing to admit and far more than most people realize. According to several studies conducted over the last decade, up to 98,000 people die every year as a result of an estimated 15 million instances of preventable medical errors. These statistics place death by malpractice as the 6th leading cause of death in the United States.

For the victims and their families, the tragedy inflicted as a result of medical malpractice is very real, and the process of seeking a just remedy can be overwhelming. It is for precisely these kinds of situations that the 7th Amendment to the United States Constitution guarantees all Americans the right to a fair trial before a jury of their peers. This right is a foundational principle of our civil liberty and should be a core tenet of conservatism because it affirms the responsibilities citizens have in a free society and the accountability of all before the law.

Nevertheless, the importance of the civil justice system and the right to trial by jury is poorly understood by many conservatives because trial lawyers are constantly demonized by special interests seeking to evade justice. Many Republicans have been wrongly led to believe that tort "reform" is some kind of Reaganesque trickle-down solution to the high cost of insurance and the high cost of medical care. The facts, however, don't support such a notion. Skyrocketing insurance premiums are not a result of malpractice litigation, and the high cost of medical care stems more from "offensive medicine" (profiteering by doctors seeking to make an extra buck), rather than "defensive medicine" purportedly resulting from fears of malpractice suits.

In 2007, the Congressional Budget Office estimated that costs associated with medical malpractice claims only amounted to 2% of overall health care spending. Furthermore, multiple studies suggest that the high cost of medical insurance has virtually no correlation with the frequency or amount of malpractice payouts but is actually a result of insurance companies playing the market and—in some cases—intentionally misrepresenting the influence of malpractice payouts in order to keep premiums high. Doctors are not fleeing the medical profession from fear of lawsuits, and those who are sued for medical malpractice are often permitted to continue working with little to no professional censure for the harm they inflicted.

The truth is that corporate moguls push for tort reform because they have little use for a civil justice system that puts the little guy on the same plane as the rich and powerful. These so-called fiscal conservatives don't like equal justice. They want preferential treatment—something they are accustomed to getting from politicians because of their hefty campaign contributions.

Conservatives need to educate themselves about the importance of a civil justice system that protects everyone and treats all litigants—rich and poor alike—as equals before the law. Furthermore, true conservatives ought to resist attempts to federalize tort law and impose one-size-fits-all solutions to "problems" that are, in large part, the fictional creations of special interest lobbyists seeking to enrich the coffers of their wealthy clients. Any change in medical malpractice laws should occur at the state level and

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Verdicts & Settlements

Debra M. Evans and M. Gail Graves vs. Vicki A. Stephens, Individually and As Successor Trustee of the Helen Joyce Jones Trust DTD. 12/12/1989, as Amended and Restated 12/1/2003; And as Successor Trustee of the C. C. Jones Revocable Trust DTD. 12/12/1989; Robbie Joyce McCroskey, Intervenor, CV 2008 8879.

$1.89M jury verdict in Pulaski County Circuit Court on April 19th -28th, 2010.

Reporting attorney plaintiffs' counsel Patrick R. James and Matthew R. House of James, Fink & House, P.A. in Little Rock, Arkansas.

C. C. Jones, the parties' father, started a successful trucking company in North Little Rock, Arkansas called C. C. Jones, Inc. With only an 8th grade education, he formed a plan with the cash and other assets that he accumulated over his lifetime to support his wife, Helen Joyce Jones, for her lifetime, and leaving the remainder to his four daughters, Plaintiffs Debra Evans and Gail Graves, Defendant Vicki Stephens, and Intervenor Robbie McCroskey.

Mere days before Mr. Jones' death in 1998, the C. C. Jones Revocable Trust was suspiciously changed to make Defendant Stephens the sole Trustee instead of First Commercial Bank. Defendant Stephens also became Trustee of the Helen Joyce Jones Revocable Trust. Ms. Jones died in November of 2007, and shortly thereafter Plaintiffs accumulated information and documentation which made them leery of Defendant's handling of the trust administration and the trust assets over the previous decade.

Plaintiffs initially filed for an accounting and, after accumulating additional information and documentation, eventually alleged multiple causes of action via an Amended Complaint. Discovery was hard-fought with multiple motions to compel and orders to compel discovery. The matter ultimately went to trial in April of 2010.

Plaintiffs presented only four witnesses (the Plaintiffs; a trust expert, Craig Lair from the Rose Law Firm; and Nancy Jones, a forensic accountant and securities expert from Hot Springs Village).Defendant presented over twice as many witnesses, including the Defendant, her son, one of her employees, her and Mr. Jones' banker, her parents' lawyer from the Friday Law Firm, her and her mother's stockbroker from Sterne Agee, and various other witnesses.

The jury unanimously found for the Plaintiffs as against the Defendant on every count submitted to it, and also awarded punitive damages and additional compensatory damages. Specifically, the jury unanimously found that the Defendant committed a breach of fiduciary duties, conversion, fraud, breach of contract, violation of criminal statute (theft of property in an amount over $500) allowing for the imposition of civil damages, costs, and attorney's fees, and breach of trust under the Arkansas Trust Code. Among other things, it was alleged that Defendant wrongfully converted cash, CD, and cattle; engaged in unsuitable securities investments; improper forgiveness of loans owed by Defendant and others; outright failure to repay loans; and improper handling of records and other assets unaccounted for.

The jury awarded $472,560.00 for each Plaintiff and also awarded punitive damages in the amount of $472,560.00 for each Plaintiff, for a verdict of $1,890,240.00. An attorney fee, expenses and costs request of more than $300,000 is pending.

Carolyn Goshien and Rodney Goshien, Individually and as Guardians of K.M.G., a minor, v. Centers for Youth and Family and Philadelphia Insurance Company. CIV 08-3328

$680,000 jury verdict in Pulaski County Circuit Court, Fifth Division on 12/7/10 to 12/11/10. $27,000 in medicals. Demand was $250,000 and offer was $200,000. Reporting attorneys are plaintiff Connie Grace, Gary Holt and Breean Walas.

The minor, K.M.G., a teenager with severe mental illness was transferred to Centers for Youth and Family from Rivendell on or about March, 27, 2007. While she was there, no one monitored her lithium level and failed to notice that she was incoherent, falling, urinating and defecating on herself, sleeping around the clock, and sustained severe bruising. On Memorial Day of 2007, she was transferred to Arkansas Children's Hospital with the life threatening disorder (acute renal failure) requiring two rounds of dialysis, bruising that caused the ACH staff to report suspected abuse, and further emotional scarring. The jury determined that the defendants were negligent under ordinary

negligence. Past medical expenses of $27,000.

Mary Priddy, R.N. was testifying expert on standard of care for nurses and staff. Defense expert Dr. Hank Simmons' deposition was read into Plaintiff's case.

Melissa & John Edwards, as Parents and Guardians of Caleb Edwards, a Minor v. St. Joseph's Mercy Health Center, CV2007-632.

$210,000 jury verdict in Garland County Cir., 3rd Div. on June 2nd, 2010. Medicals 10,000.00. Demand $100,000. Offer $18,000 (Rule 68 Offer of Judgment filed). Reported by plaintiff Terry Dugger of Busfield & Dugger, PA.

Medical Malpractice: Admitted Liability. Caleb, a minor, was being discharged from St. Joseph's on February 22nd, 2002 when, during the course of removing his IV, the nurse assigned to the pediatric ward sliced through and almost completely amputated his left index finger at the last joint, the DIP joint, using a pair of bandage scissors. Caleb was transferred by ambulance from St. Joseph's to Arkansas Children's Hospital where the severed portion was reattached by a pediatric hand surgeon. He was 6 months old at the time of injury and 8 years old at time of trial.

The near amputation was to the index finger on his non-dominant hand. Initially, his recovery was a bit shaky and difficult because of his age and his apparent dislike of casts, which he would somehow manage to remove and which consequently had to be replaced 3 times.

Caleb had essentially the full use of his index finger at the time of trial. He was very active in sports, football, soccer and baseball.

However, there were some permanent aspects to his injury: (1) his left index finger was shorter than the right one because of the insult to the growth plate, which was closing prematurely; (2) there were measurable decreases in light-touch and protective sensation and in isolated range of motion; and (3) Caleb reported the finger felt different than his other one and that it sometimes hurt or ached.

Neither Caleb's treating physicians nor the defense medical expert, Dr. Jeff Johnson, could state, within any degree of medical reasonableness, what the future might hold for Caleb and whether and to what extent he might require future care.

Additionally, the court allowed the defendant to tell the jury it had already paid all of the medical expenses. As a result, damages were sought only for the permanent injury; past & future pain, suffering and mental anguish; and scarring/visible results of the injury.

We were concerned about the defendant being allowed to advise jury it had paid all expenses and whether this information might cause the jury to view the hospital in a favorable light, which was the admitted purpose of defendant's counsel, as stated on the

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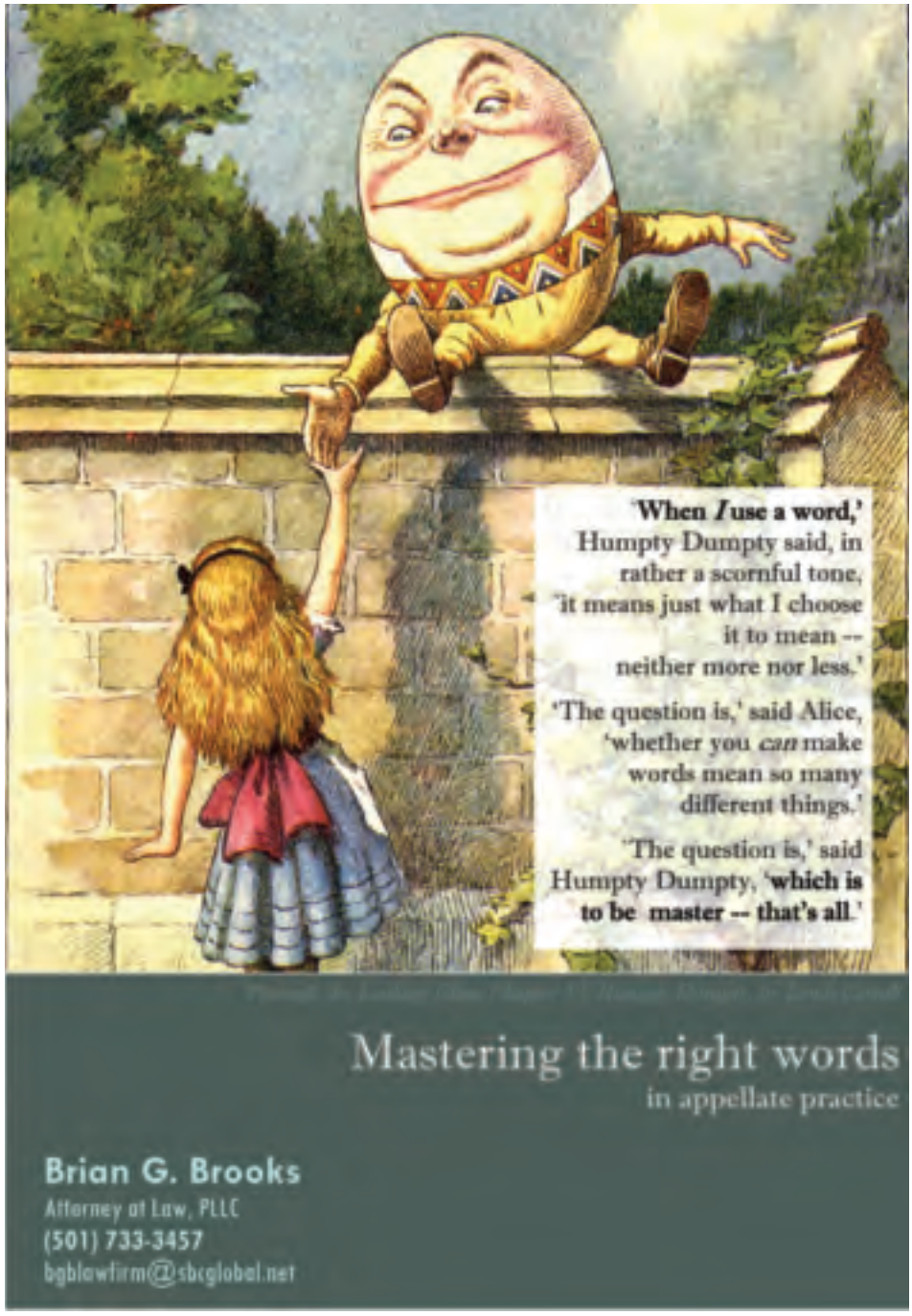
record during the hearing on plaintiff's motion in limine addressing this issue. After conducting a couple of informal focus group sessions with a small group of friends/family, we learned that this information would not generate sympathy for the hospital. Instead, what we heard was that "it was the least they could do," something which was repeated throughout trial at every opportunity.

Rebecca Christison/Estate of Hugh Christison v. Boyd Corley Construction, LLC, Bonds Excavating Enterprises, Inc., and Jeff Bonds, CV 2008-2518-3

$1,225,000 settlement in Benton County Circuit, Division Three. Reporting Attorney, plaintiff Pine Drewyor.



Wrongful death/Construction fatality. 55-year-old adult male surveyor was killed on February 14, 2008 when a tracked crawler excavator (trackhoe) crushed him while backing across a jobsite.

There was an OSHA citation against the trackhoe operator for lack of a functioning bi-directional alarm, lack of field of view or spotter when reversing course.

Health was a bit of an issue of deceased as he had a semi-recent heart attack but returned to work, along with diabetes (passing out had been an issue which hadn't come up to defense counsel yet). Economic losses were in the $400,000.00 range. Potential for some comparative negligence was present depending on how defense counsel would have pitched it to the jury.

Death was arguably instantaneous to roughly ten (10) seconds of track travel time as his foot was the first part of him trapped under the track as it continued to move up his legs and torso. The trackhoe stopped to then move off of him once it reached his upper torso as he was spotted.

Plaintiff hired Jay Marsh for econ and Porter Brownlee for general contracting/construction knowledge as experts. Defense hired Ralph Scott for econ and a Rimkus consultant out of Atlanta. Scott and Marsh were comparable on numbers. Neither deposed as both reports were solid.

Estate of Earl McLemore vs. Lifecare Centers of America and Lifecare-Elizabethton,

$4.75M jury verdict in Circuit Court of Carter County, Tennessee, April 5th–15th, 2010. $545,000.00 pretrial offer. Reported by plaintiff Trial Counsel: M. Chad Trammell of Texarkana, S. Drake Martin of Jackson, Tennessee, Brian Brooks of Greenbrier, Arkansas and Tony Seaton of Johnson City, Tennessee. Defense Counsel: Rick Powers and Dan Rhea of Knoxville, Tennessee and Lanny Norris of Elizabethton, Tennessee.

Earl McLemore suffered a debilitating stroke at the age of 75 in February 2005. He was treated in the Johnson City Medical Center for approximately 3 weeks, and during the hospitalization, he stabilized and improved somewhat.

He received a feeding tube because of swallowing difficulties. On March 15, 2005, Mr. McLemore was discharged to Lifecare Center of Elizabethton for rehabilitation. He had a small quarter-sized open sore on his sacral area, Stage II. He was clear of infection and set up to heal, per a local doctor's testimony.

13 days later, Mr. McLemore was rushed to the hospital with a dinner-plate sized Stage IV sore on his bottom that penetrated all the way down to the bone, full of infection and foul odor. He had a raging urinary tract infection from MRSA and the MRSA bacteria was coursing through every organ in his body due to sepsis.

Despite having a feeding tube, Mr. McLemore had not been fed and hydrated properly, and was instead malnourished and extremely dehydrated.

Plaintiff proved that the Lifecare-Elizabethton aides and nurses had been unable to do their jobs because of chronic short-staffing in the facility. The short-staffing was a corporate decision by Lifecare to staff only at budgeted PPD numbers regardless of the needs of the residents. Earl McLemore, as a result, did not get pressure relief every 2 hours, was not kept clean and dry in a timely fashion, his catheter was left in a filthy condition, and his feeding tube was typically dislodged with the formula going all over his bed and into the floor.

Two local treating physicians testified that Mr. McLemore's marked deterioration was preventable with adequate nursing home care, which he did not receive.

Lifecare outrageously claimed at trial that Earl McLemore was on death's door when he entered their facility and that he was in the process of dying with his vital organs shutting down.

Back in March 2005, when Lifecare wanted Medicare Part B therapy dollars over and above the residency payments, Lifecare and its Medical Director certified to Medicare that Mr. McLemore had a good potential for Long Term Rehabilitation goals – completely inappropriate for a dying man.

As counsel aptly pointed out in closing argument, "Does anyone really believe that this company would certify a man who is actively dying for Medicare therapy and take tax payer dollars? Because if they would, this company is going to have a lot more to worry about than the McLemore family."

The jury deliberated on the afternoon of the 8th day and returned a verdict on the afternoon of the 9th day of the trial finding that Lifecare was medically negligent and caused injuries to Mr. McLemore and awarded $500,000.00.The jury did not find that Lifecare caused Mr. McLemore's death. They jury said that punitive damages should be awarded and after a brief second proceeding on that issue, returned a punitive damages verdict in the amount of $4,250,000.00.

Harvey v. Boyd, CV-2009-65.

$81,219 jury verdict in Perry County Circuit Court on April 14th, 2010. Reporting attorney plaintiff David S. Mitchell P.A. $7,533.82 in medical expenses. Wage loss of $200. Property damage of $3900. Offer was 10,000.

On October 3, 2006 defendant failed to yield at stop sign and pulled out in front of client, a 16 year old female. Defendant denied fault. Client, a straight "A" full-time student working her way through school as a nanny, was en route to a church food bank where she volunteers for the needy at the time of the accident. She had a few long gaps in treatment and instances where shoulder pain was re-aggravated after the wreck.

Client complained of shoulder pain for 3 1/2 years, but there was no objective test showing injury. Treating Dr. testified she may have microscopic tears in her shoulder muscles and that her pain, more likely than not, is permanent.

Used techniques from "David Ball on Damages", "Rules of The Road", "Polarizing the Case" by Friedman, and

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"Reptile" by Ball and Kennan. The verdict was unanimous.

Audrianna Grisham, P.A. v. Emery Hughes Corporation, 2006-522

$111,342.50 jury verdict in Lonoke County Circuit Court on January 12th - 15th, 2010. Reported by plaintiff attorneys Tony Wilcox and Brandon Lacy. Demand $60,000. Offer $10,000.

Plaintiff is a collection law firm in Maumelle, Arkansas. Plaintiff entered into two contracts with two used car dealerships in Lonoke County which operated under the Defendant's corporate name. The contracts were for collection services related to deficiency files and bankruptcies on vehicles sold and financed by the dealerships. The contracts provided that the Plaintiff was entitled to a 35% contingency fee based on the recovery of all deficiency files. The contracts further provided that either party may terminate the contract at any time with or without cause. If the contract is terminated by the dealership without cause, however, Plaintiff is entitled to the attorney's hourly fee for all work performed on contingency files which remained uncollected at the time of the termination. Plaintiff includes this language in its contracts to protect itself in performing the numerous front-end requirements involved in collection work and due to the impossibility of filing liens on such cases if they are subsequently transferred. The parties performed under the contracts from 1999 until 2005 without complaint. In 2006, the Defendant terminated its contracts.

At the time, it offered no explanation for the termination. After suit was brought, the Defendant came up with a reason which it believed constituted "cause" for termination. The Plaintiff, however, was able to present evidence regarding the financial motive for terminating the contracts without compensating Plaintiff for the work performed on these files. In addition, the Defendant argued that the termination provision of the contract was a penalty clause which is unenforceable under Arkansas law. The Court disagreed with the Defendant's legal argument, and the jury disagreed with its factual argument.

Plaintiff's damages equaled the hourly fee for all attorney work performed on contingency matters which remained uncollected at the time of the termination. Plaintiff presented voluminous (literally volumes) of documents supporting the hourly calculation of damages in the amount of $111,342.50. The jury awarded every nickel requested by the Plaintiff.

Greenwood v. Evines E. Rainey & Floyd's Chipmill, Inc., CV-2006-6-6

$260,000 jury verdict in Cleveland County Circuit Court (Judge David F. Guthrie) on 1/25/10 through 02/03/10. Reported by plaintiff attorneys Neil Chamberlin and Will Bond. Medicals of $94,495.40. Demand was $1M to defendant log truck driver; $275,000 to defendant Floyd's Chipmill. Offer to defendant log truck driver was $237,000.

Personal Injury. On December 21, 2004 the defendant log truck driver rounded "Dead Man's Curve" on State Highway 63 in Cleveland County. The log truck fell on its side. The logs separated and struck the plaintiff, a 55 year old female, who was driving a pickup truck in the opposite direction.

The plaintiff suffered trauma to the head and face, among other injuries, and was hospitalized for 10 days. The plaintiff returned to work shortly after the wreck. The plaintiff's employer testified to his opinion that the plaintiff would retire five years earlier than expected due to her injuries.

The trial court struck ACA 27-50-804, which forbids admitting into evidence records of driving violations, as unconstitutional under *Johnson v.*

Rockwell Automation, Inc. (Ark. 2009). Trial evidence included that the defendant log truck driver had 21 prior driving convictions and license suspensions, admitted to the investigating trooper that he exceeded the posted speed warning for the curve, drove on five bald tires, pulled a trailer with broken welds, and did not have current licenses for either the truck or trailer.

An eyewitness testified that the defendant log truck driver was driving too fast for the curve, that his tires were smoking, and that the plaintiff had no opportunity to avoid the wreck.

Four of 12 jurors declined to find the log truck driver liable until after two hours of deliberations, and the same four declined to award any damages until after six hours of deliberations, at which point the jury returned a 9-3 verdict for the plaintiff. The jury declined to award punitive damages.

The defendant chip mill, to whom the defendant log truck driver was in route, was dismissed on a directed verdict based on an absence of duty.

The defendant log truck driver's insurer contended that the liability policy was cancelled before the wreck due to nonpayment of premiums, but paid the verdict amount.

Experts for the plaintiff were Dale Halfaker, Ph.D., neuropsychologist; and Sarah Moore, MS, CRC, CLCP, life care planner and vocational assessor. Expert for the defendants was A.J. Zolten, Ph.D., neuropsychologist.

Gerry Fuller v. The Village at Pleasant Valley, LLC, CIV-2007-5733

$150,000 jury verdict in Pulaski County 1st Division. Reported by plaintiff attorney Charles Harrison and Will Bond. Medicals $26,000. Wage loss $15,000. Demand $195,000. Offer $15,000.

Personal Injury. The plaintiff, a 60 year old female Baptist Home Health social worker, was parking at the Village of Pleasant Valley, LLC and stepped in a drainage trench while getting out of her car. The drainage trench encroached a foot and two inches into the parking space. The trench was 10 inches deep. The trench was not marked with any paint or barriers.

The shopping centers' testimony was that no one had ever fallen in this space before and that the trench was an open and obvious hazard that the plaintiff should have seen.

Plaintiff broke her foot in four places as a result of the fall and was off work for fifteen weeks. After her return to work, she began to experience pain in her pelvic floor. This required extensive therapy. The relationship of the pain in her pelvic floor to the fall was disputed. The plaintiff had a fibromyalgia diagnosis that dated back over 20 years. Case was tried to a jury of 12 in Marion Humphrey's court in Pulaski County. •

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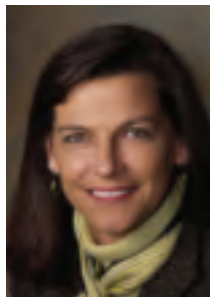

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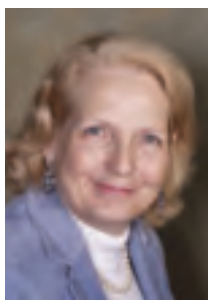


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ATLA Awards Recipients 2010

Excerpts from Chris Heil's Remarks at the 2010 Awards Ceremony

The highlight of ATLA's annual convention has always been the awards ceremony during which we recognize the outstanding men and women who have made an impact on our association and profession. Awardees at this year's ceremony certainly lived up to the standards set by those of past years and have set the bar even higher for next year.

Outstanding Trial Lawyer Award – DON ELLIOTT

The Outstanding Trial Lawyer Award is presented to the attorney who has demonstrated the skills, ethics and dedication to advancing and protecting the rights of individuals and the American justice system. This year, the award was presented to Don Elliott of Fayetteville, who can rightfully be described as one of the hardest working people in the legal profession.

The son of a Colonel and football coach, Don Elliot learned early on that a strong work ethic was key to success in life. And it was a strong work ethic that drove him to the legal successes he has had. After graduating from Ouachita Baptist, where he attended on a full football scholarship, Elliott went to law school at the University of Arkansas in Fayetteville with the intention of becoming a tax attorney. However, it didn't take long for him to find his true calling.

Initially joining Niblock and Odom as an associate after graduation, Elliot went on to create the firm Odom and Elliot in 1982 with Bobby Odom where he focused on personal injury. Later, in 2006, he formed the firm Elliott and Smith, with his colleague Tim Smith, where he focuses on plaintiff's personal injury law.

Don Elliott (left) receives the Outstanding Trial Lawyer Award from Chris Heil, outgoing ATLA president

Don Elliott's impressive caseload and hard working attitude have earned him the respect of clients and colleagues alike. His commitment to ATLA and our justice system is evident each time he is called upon to serve, and as ATLA's 2010-2011 Secretary/Treasurer, he has taken on an even greater role as one of the association's leaders.

In addition to his service to ATLA, Don is a former president of the Washington County Bar Association and the American Board of Trial Advocates, as well as serving on the Arkansas Model Civil Jury Instruction Committee

Henry Woods Lifetime Achievement Award - MORGAN E. "CHIP" WELCH & DAVID H. WILLIAMS

The Henry Woods Lifetime Achievement Award is given to the ATLA member who has dedicated his or her professional career to upholding the ideals of our organization. This year, after much deliberation, it was ultimately decided that the award should be given to two individuals because not only have their careers exemplified the requirements of this award, but because they have worked together to strengthen our organization as a team. Their passion for our civil justice system is as deep as their successful careers are long, having each won nearly every award ATLA presents, serving consecutively as president and now serving as members of ATLA's Board of Governors.

Morgan "Chip" Welch served as ATLA president in 1991 and has served as a mentor to many of our members throughout the years. He has consistently been ranked as one of the top personal injury and medical malpractice attorneys in the South, and from ATLA he has been awarded both the Outstanding Trial Lawyer Award and the Roxanne Wilson Trial Advocacy Award.

In addition to his recognition from ATLA, Chip has also been recognized for excellence by his peers on many different occasions, as well as being selected among the best personal injury and medical malpractice attorneys by the Arkansas Times, Mid South Super lawyers and Best Lawyers in America.

A graduate of the University of Arkansas, School of Law, Chip is currently a partner in the law firm of Welch, Brewer and Hudson LLC where he focuses primarily in the areas of personal injury, medical malpractice, employment discrimi-

Morgan E. "Chip" Welch (right) and David H. Williams (not pictured) were honored with the Henry Woods Lifetime Achievement Award, presented by Heil.

nation, products liability and commercial litigation. He is also a member of The Judge William R. Overton American Inns of Court Foundation (Master of the Bench) and the American Board of Trial Advocates (ABOTA).

David H. Williams is equally accomplished and recognized as an attorney. Serving as ATLA president in 1992, David has been a consistent leader in our organization, placing particular emphasis on the legislative battles ATLA has faced throughout the years. As the long time Chair of ATLA's Legislative Committee, David has helped lead the fight against corporate interests bent on sabotaging our justice system. A past recipient of the Outstanding Trial Lawyers Award from ATLA, David is an accomplished attorney with a record of unwavering advocacy for our profession.

After receiving his Juris Doctorate from the University of Arkansas, David began his career in the Pulaski County Prosecuting Attorney's Office where he spent four years as a prosecutor before going into private practice. He is currently the principal attorney in the Law Offices of David H. Williams where he focuses on personal injury.

In addition to receiving numerous awards from ATLA, David has been listed as one of the "Best Lawyers in Arkansas" by the Arkansas Times and recognized in the "Best Lawyers in America Consumer Guide".

Outstanding Trial Judge Award - JUDGE OLLY NEAL

The life and legacy of Judge Olly Neal is one of determination, southern charm, and steely wit. His life's path has taken him through protesting racial segregation and serving a tour of duty in Vietnam, to being a voice of equality and reason on our courts.

A native of Lee County, Judge Neal attended Lemoyne-Owen College and received his law degree from the University of Arkansas at Little Rock. After graduation, he entered private practice, all the while being active in the community in a variety of ways such as volunteering with feeding programs and helping build health clinics in his home county.

Upon leaving private practice, Judge Neal became the first and only African-American Prosecuting Attorney in the state of Arkansas, serving in the First Judicial District. Judge Neal became a Circuit Judge for the First Judicial District in 1993, and later, an Appellate Court Judge on the Arkansas Court of Appeals in 1996 until his retirement in 2006. Coming out of retirement in 2010 to serve once again, Judge Neal has accepted an appointment back to the First Judicial District as Circuit Judge.

Judge Olly Neal (right) honored as Outstanding Trial Judge

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Consumer Advocate Award – STATE REP. STEVE HARRELSON

In 2004, a young, politically active ATLA member from Texarkana decided to take the step of running for the Arkansas House of Representatives, and since that time he hasn't looked back. During his three terms in office, State Rep. Harrelson has grown into a respected political leader in our state creating the popular *Under the Dome* website where numerous Arkansans follow the goings on at the Capitol. And he's also a respected leader among his peers as he was elected to serve as House Majority Leader in the General Assembly.

As Chair of the House Judiciary Committee, he showed strong conviction and support for our profession time and again. Now, State Representative Harrelson is preparing to become State Senator Harrelson after winning a decisive victory in the Arkansas Primary Election for State Senate District 21. With no Republican opposition, his primary victory has ensured his place in Arkansas's State Senate.

His professionalism, fairness and dedication to the core beliefs of our judicial system should make all of us proud to call him our fellow ATLA member. We look forward to working with him in the Senate in the years to come.

Roxanne Wilson Advocacy Award – PAUL BYRD

The Roxanne Wilson Advocacy Award is given annually to an ATLA member who has shown an extraordinary passion for the law, the legal profession and the advancement of advocacy – all traits that are reflective of the late Roxanne Wilson for whom the award is named.

This year's recipient, Immediate Past ATLA President Paul Byrd, has dedicated countless hours to our organization in both leadership and volunteer roles, serving as president during the 2009 Legislative Session, which is always a challenge, and serving his term in the midst of a massive farm lawsuit. Even during his busiest of times, he has rarely missed an opportunity to lead and participate.

Paul earned his Juris Doctorate from the University of Arkansas and is the managing counsel of the Arkansas office of the law firm of Hare, Wynn, Newell & Newton, LLP where he focuses on civil litigation with an emphasis on representing consumers and victims in nursing home neglect, personal injury, wrongful death and products liability and consumer litigation.

Carter Stein (right) accepts the Outstanding Member ATLA Young Lawyers Division award.

Outstanding Member ATLA Young Lawyers Division - CARTER STEIN

Each year ATLA recognizes a member of the Young Lawyers Division who demonstrates a high level of professional excellence, dedication and leadership within the association. This year, the award was presented to a young attorney who has excelled in each of these areas.

Carter Stein has surpassed excellence in all the qualifying categories and most notably through his avid participation and support of ATLA. He is an active member of our Board of Governors and is always one of the first to volunteer when needed.

A graduate of the University of Arkansas at Little Rock School of Law, Carter recently joined the firm McMath Woods P.A. as an associate where he focuses on personal injury cases.

Paul Byrd celebrates receiving the Roxanne Wilson Advocacy Award, with wife Jane, daughter Kate, granddaughter, and Ralph Cloar.

Outstanding Paralegal/Legal Assistant – SUZY DAILY

Mentor and Friend are both terms that have been used to describe Suzy Daily, this year's recipient of the Outstanding Paralegal/Legal Assistant Award. And throughout her long career, she has exemplified both descriptions.

Suzy began her career as a clerk for Walter Niblock before moving to Texas where she worked for several large litigation firms in both Houston and Fort Worth. After several years, Suzy returned to Arkansas - and the Niblock Law Firm - where in addition to her legal assistant duties, she helped mentor and mold many young attorneys who have since gone on to leadership roles themselves.

She currently works in the Fayetteville offices of Lundy and Davis where she continues her role as mentor, in addition to the myriad of legal responsibilities she manages for the firm. •

Tre Kitchens with his uncle, awards ceremony keynote speaker, Mississippi Justice Jim Kitchens

President's Awards & Outstanding Board Member

2010 -2011 ATLA President Chris Heil selected two recipients for the 2010 President's award. David Couch (not pictured) and Lindsey Dilks, both of Little Rock, were recognized for their participation and assistance to the President during the past year.

Robin Smith of Mount Ida, representing District 3, was named the Outstanding Board of Governor Member for 2010. Chosen for her participation and outstanding volunteer record, Robin is currently serving a three year term through 2011.

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Reform Association or Karl Rove. Okay, that is hyperbole, but you get my drift. Without money to the right candidates, they may not win. If they do not, the greed of bad corporations is emboldened and they will strike at the heart of our Civil Justice system, just as they did in 2003.

To be honest, I am concerned that we are all falling victim to a form of apathy. Perhaps not consciously so, but apathy nonetheless. We all get busy and we all have things on our plate that take up our time, energy and money. I get so focused on the practice of law and my family that it would be easy to not think about the possibility of another tort reform battle next Spring, or two years after that, or ten years from now. This looming apathy, or perhaps inattention to reality, was perhaps the key that opened the door in 2003 for tort reform. If not the key, it was a shoulder against the door.

I cannot tell you the sky is falling, because it would not be news. It is always falling. Bad corporations will always be the wolves at the door. They will never stop; they will never quit trying to bend, shape, and even make up laws in their favor, which almost always are incongruent with citizens' interests. At your desk, as you read this (yes, both of you reading this), look to your left, then to your right. That is who, other than ATLA, understands and is willing to fight this fight with you in this state. You, me, and ATLA. But you and I aren't Legislators, are we? So our fight is to make sure we get those candidates elected that will do the right thing. That's all we need.

I know you work hard – I do, too. I know you may have given money already to candidates – I have, too. But, this fight is not over, and it's no exaggeration to tell you *it never will be*. That's the bad news. The good news: we are on the right side, we have a good team, and most importantly, we have the opportunity. Do not pass up this opportunity. After all, that is all you can ask for. •

be tailored to meet conditions in the individual states. The people in Topeka may approach the same problem differently from the folks in Tallahassee. They may be experiencing different problems, or perhaps, none at all. In any event, the residents of Attapulgus, Georgia don't want Chuck Schumer and Olympia Snow dictating the remedy they can pursue when a doctor leaves a pair of scissors in the site of their incision or causes avoidable brain damage to their newborn.

Tort reform subsidizes wrongdoing by shielding wrongdoers from accountability for the consequences of their misconduct. It is an affirmative action program for corporate miscreants. Incorporating tort reform into health care reform will do nothing to cut medical costs. It is, however, guaranteed to result in more, not fewer, cases of medical malpractice. Furthermore, federalizing tort laws will only result in the accretion of more power in the hands of the central government and the emasculation of the rights of states and individuals.

If Republicans are truly sincere in their commitment to protecting the rights and liberties of the American people against more and bigger government, they should resist any attempt to federalize the laws of medical malpractice.•

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