



# From the President's Desk

by Chris Heil, Esquire  
*ATLA President*

## *The winds of change are blowing across the country...*

It's doubtful that too many people are unaware of the growing debate that President Obama's healthcare reform is causing around the nation. Once again, one group has been taking the opportunity during this debate to try to limit the rights of malpractice victims. Talking heads, funded by wealthy insurance companies, are making the media rounds shouting to anyone within earshot that the best way to repair our healthcare system is to reduce the number of medical malpractice lawsuits, i.e. reduce accountability. These "reformers" argue that the threat of lawsuits makes doctors order unnecessary tests to protect themselves – a phenomenon known as "defensive medicine." They also argue that the pervasiveness of these suits drives up malpractice insurance premiums, putting doctors out of business. While both of these arguments make compelling talking points, the evidence does not support their claims.

As I pointed out in a recent guest article in the *Democrat Gazette*, there is no indication that the threat of lawsuits causes doctors to order more tests. A recent article in the *New Yorker* examined that very concept, focusing on McAllen, Texas. Despite the fact that Texas has some of the strictest caps on malpractice awards in the country, McAllen is the home of the most expensive health care in the country. The article illustrates that doctors aren't running more tests because of liability reasons, but because the current fee-for-service structure actually encourages doctors to run more tests to increase revenues. Here in Arkansas, where we have the fourth lowest insurance premiums in the nation, the number of practicing doctors has increased faster than our state's population, growing at a rate of almost 20 percent.

The argument that these reforms will help the system by reducing malpractice insurance claims is also difficult to swallow. A recent study by Public Citizen, a national consumer advocacy group, stated that malpractice payments reached record lows in 2008, yet the estimated rate of medical errors remains high. This essentially means that injured patients are receiving less in compensation while efforts to reduce the negligence in the first place are stagnant. Fixating on the legal system not only distracts from the true causes of the high cost of health care in this country, but also

ignores the larger issue of patient safety. As many as 98,000 people die every year because of medical errors, yet in 2008; just over 11,000 injured parties received any sort of compensation. These numbers suggest that patient safety is a much larger issue than liability; though improving it will have a natural positive impact on the latter. It's simple logic. If medical negligence is reduced, the number of injured patients who need to seek legal recourse will also decline.

But, despite this logic and the facts that support it, we know that the "deformers" will not stop. Thus, we have to remain vigilant. ATLA is defender of the victim, but it is costly and time consuming. Thus, we need your support, whether it be financial, or by giving of your time and expertise to ATLA. Change is coming. Let's make sure it's a change we can live with. •

## *...and right here at ATLA.*

Change is not only something that is in store for our healthcare system, but is also something that is happening right here at ATLA. As many of you now know, Carol Utley has chosen to retire as executive director of our organization after 26 years of outstanding service. And while we are sad to see her go, we wish her nothing but the best as we reflect on her years of service. Carol has been at ATLA's helm through many public policy battles, changing administrations and shifting legislative make-ups. And through them all, she has helped our organization grow stronger and more effective at promoting the goals and ideals of our profession.

While many will no doubt recall that Carol's efforts through the years kept the encroaching threat of tort reform at bay, her other accomplishments are no less impressive. Through her years of tireless work meeting with attorneys around the state and continually offering new and exciting ways of providing continuing education programs, Carol successfully grew ATLA's membership from a small group into a one thousand strong political force empowered to protect and defend Arkansas's jury system and consumers.

Carol will be missed but we hope that she will now take some much deserved time for herself and her future endeavors. We all wish her the best of luck and thank you for everything she has done for ATLA.

CONTINUED ON PAGE 7

truth, that she is truly injured, and the defense is attacking her this way to avoid paying for the harm they have caused, then your verdict needs to ensure that they do not profit from this tactic.

The book includes solid, practical advice for how to set up this approach, then execute it at trial. It includes good, practical advice on how to prepare your lay witnesses, how to set up and attack the DME doctor, how to conduct effective discovery and how the lawyer should conduct himself at trial.

Though the author is careful to point out that giving hard and fast rules where trial strategy is concerned is folly given the complicated nature of the beast, he does dispense practical advice, based on experience, such as allowing

other witnesses, not the plaintiff, to carry the weight of describing the injury and effects thereof. Plaintiff tends to come off as a whiner doing it him or herself, the author argues. Less is more. The author suggests that lay witnesses should be matter of fact because jurors are suspicious of overly emotional testimony. He believes in not overly rehearsing testimony and he believes the less time the plaintiff is on the stand, the better. Admonish the witnesses that it isn't their job to sell the case. That's the lawyer's job.

I suppose one of the reasons this book resonated with me is the fact that the trial in Part II just happens to be strikingly similar to a case I handled three years ago. Same issues (mild traumatic brain injury - great client and lay witnesses).

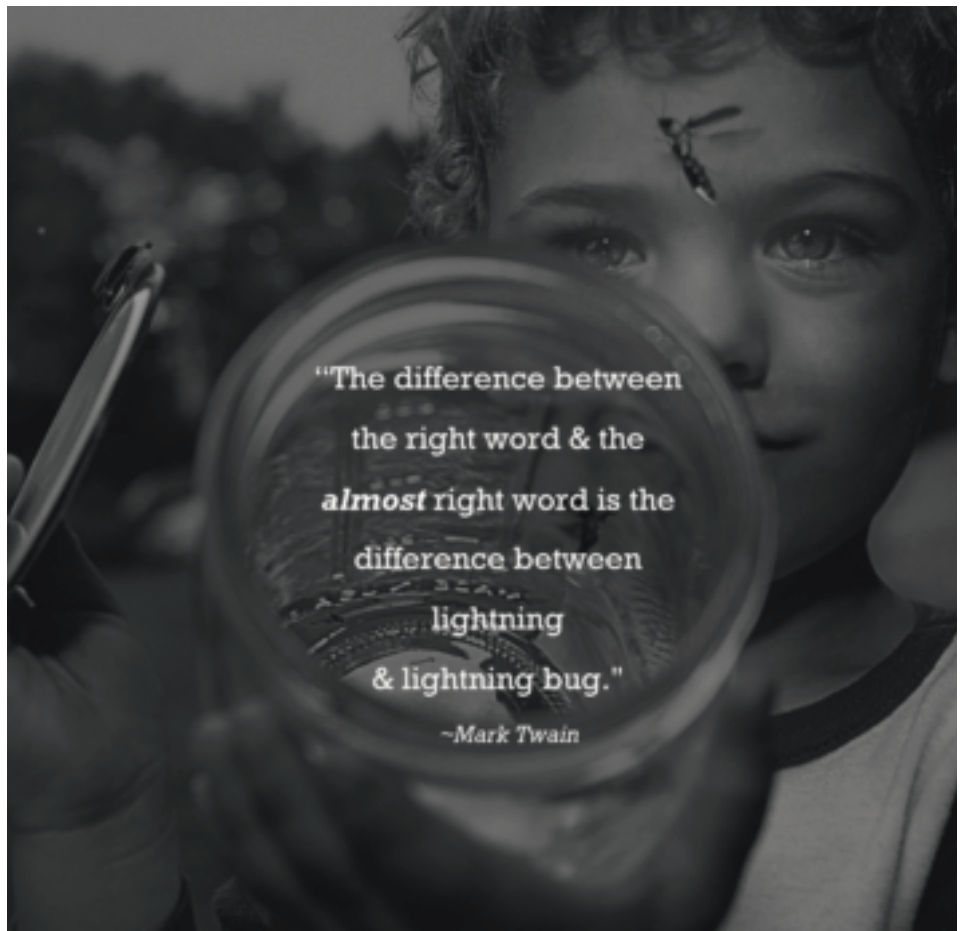
CONTINUED ON PAGE 40

## PRESIDENT

CONTINUED FROM PAGE 2

Of course, Carol could never be replaced, but we are happy to announce that Matt Hass, long time Government Affairs Director, will be stepping up to take the reins and help usher in a new and exciting era. While I'm sure future *Docket* articles, e-mails, meetings and discussions will be devoted to fully embracing and unveiling Matt's new vision for ATLA, I can offer a brief glimpse of what he has up his sleeve...

For one, Matt is making it his goal to thoroughly examine the structure of our organization so we can identify all strengths and weaknesses that may exist. He plans to devise ways that we can make ATLA stronger in the public policy realm while simultaneously providing more value to our members. Much of the details of his plans are still being worked out, but from what I've seen thus far, I'm convinced that it is going to be an exciting time in the life of our organization. I hope you'll commit yourself to being involved in the process and helping make ATLA an even stronger force for the future of our profession. •



**Finding the right words**  
in appellate practice

**Brian G. Brooks**

Attorney at Law, PLLC

(501) 733-3457

[bgblawfirm@sbcglobal.net](mailto:bgblawfirm@sbcglobal.net)