

## Andrea Davis

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**From:** Stewart Clontz [ncaj@ncaj.com]  
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**To:** Andrea Davis  
**Subject:** Read All About It! Auto Torts Section Newsletter!



November/December 2009

### From the Communications Chair

**Hello** and **Welcome** to the November/December 2009 edition of the North Carolina Advocates for Justice Auto Torts Section e-Newsletter.

If you would like to participate in *Interrogatories*, contribute an article on the law, legal practice or technology that would be informative to members, or have an interesting professional or personal announcement, please email me at [sclontz@farrin.com](mailto:sclontz@farrin.com). Please make sure the email communication has the heading "Newsletter."

Thank you and please enjoy this issue of the Section e-Newsletter!

**Stewart Clontz**  
**Communications Chair, Auto Torts Section**

### Interrogatories

by **R. Alfred Patrick** of *Lawyers East*



Each month an Auto Torts Section member responds to a few questions regarding their practice and experience, growth and changes in the auto torts practice area. This month, the *Interrogatories* spotlight is focused on **Al Patrick** with *Lawyers East*. I, on behalf of Auto Torts Section members, would like to send a huge THANK YOU to Al for his inspiring and excellent article. Enjoy! -- *Stewart*

I'm a trial lawyer - despite public perception these days, I like calling myself a trial lawyer and I embrace the term. I'm also a husband, a father, a church member, a friend, a scout leader, college football fan, a resident of a vibrant, fast-growing city in a region of the state where sometimes, it feels like time stands still and the rest of the state has forgotten about us (except when they drive through on their way to the beach). It's these things that make me who I am and enable me to try every day to justify the trust people

show in me when they ask me to help them with the most personal of matters, an injury that has disrupted their lives in a way that those, who are not their loved ones, can't begin to imagine.

Now for the details...I've been a trial lawyer for more than 20 years. It's hard to believe that I've been doing it this long because it doesn't seem like it - it's never been work and each new case brings a new set of facts, human interest, challenges and opportunities. Twenty years of experience means I'm old, which is also hard to believe even though I just celebrated one of those milestone birthdays with a "0" in it. I remember what those lawyers with 20+ years of experience looked like when I was a young lawyer and I find it hard to believe I'm now one of them so I guess it's appropriate to discuss what I've been doing during that time frame and how I got here/there.

I live in Greenville with my wife Susan and our thirteen and nine year-old sons. My firm is *Lawyers East*, which I formed with former NCAJ member Bill Lederer, prior to his death in 2007, and which now has four lawyers. The name reflects our practice area, which includes all of eastern North Carolina -- essentially I-95 to the coast and border to border -- although I have tried cases and continue to try cases throughout the state including more than 50 counties to date. I limit my practice to cases involving serious personal injury or death, nursing home negligence and abuse and insurance bad faith litigation. I've developed a special interest in cases involving traumatic brain injury (TBI) and appreciate the trust other lawyers have shown in asking us to help with TBI cases.

I grew up in Jacksonville. My father was a career Marine who joined at the end of World War II and served in Korea and Vietnam and had to leave the service due to a service-related disability. My mother was a career educator, serving as a teacher and then a guidance counselor. It seemed natural to go to college at East Carolina University, where I majored in business, and then on to law school at Wake Forest University. I never planned to practice law, instead I intended to use my law degree in business -- I never saw the "trial bug" coming and when it bit, it bit hard.

I learned the best way to get trial experience was to work as an assistant district attorney, so I joined the DA's office in the 23rd District (Ashe, Allegheny, Wilkes and Yadkin counties). I learned a great deal (being the low-man in a four person office meant that if I won the case, I was a genius and if I lost, well, that's why they gave me the case) and enjoyed the experience even more. That position led me back to the coast and the "civil" side of the court calendar, where I joined an insurance defense firm in Wilmington and stayed for almost six years until "I saw the light" and chose to start representing individuals instead of insurance companies. I returned to Greenville and joined a plaintiff's firm in 1994 where I remained until I joined Bill's firm in 2004. I've served on various bar associations and NCAJ committees during the years and have recently accepted a leadership position within the Auto Torts Section.

### **1) What was your first personal injury trial and how did it go?**

As plaintiff's counsel, the first personal injury trial was an industrial accident case in Nash County in 1994 where the client had been injured by a falling "jib crane." I had just joined the firm and the trial was five weeks away. The lawyer who had been handling the case had just left the firm and it was now my responsibility. There was no chance for a continuance and despite the firm's recommendation, the client had rejected what turned out to be in essence, a nuisance settlement offer. Thankfully, the case had been well-prepared by the prior attorney, but it was still up to me to become familiar with the liability issues, the medicine, 15+ depositions, numerous witnesses and to complete the preparations for trial against one of the more well-respected defense attorneys in eastern North Carolina.

The plaintiff was receiving workers compensation benefits as a result of the accident at the time of the trial and in, what I believed, was an effort to avoid establishing a "floor" for the verdict, the defense withdrew their claim for a credit for benefits paid on the eve of trial. Little did I know at the time that the workers compensation issue would eventually define the case and occupy my time for years to come.

A week-long trial resulted in a verdict for my client that surprised everyone and I learned it was a great deal more fun representing individual plaintiffs than insurance companies. I also learned that collecting a judgment can sometimes be much more difficult than winning at trial since, even though we had won the trial, we couldn't get the money for our client.

At the time, the workers compensation statutes imposed a dollar for dollar lien that could not be adjusted or reviewed by a judge unless and until the lien exceeded the judgment amount. The lien, at the time of trial,

exceeded \$100,000 and although the lien was growing weekly, we determined it would be several years before the lien would actually exceed the judgment, allowing us then to petition the court to modify or extinguish the lien. There appeared to be no way around the provision of the statute.

We consulted social security experts to help us determine the plaintiff's prospects for employment and an economist to help us determine the present value of the benefits to be paid in the future. After presenting evidence showing that the present value of the lien far exceeded the judgment, Judge Quentin Sumner granted our motion to reduce the lien pursuant to N.C. Gen. Stat. § 97-10.2(j).

The workers compensation carrier took us to the Court of Appeals, which agreed that a present value analysis of the future lien could be considered to determine whether the lien in fact, exceeded the judgment and then, the Supreme Court disagreed, reminding us that our prior impression was correct: there was no way around the provision of the statute.

The legislature changed the statute the following year to, in essence, allow judges to do exactly what we asked Judge Sumner to do, and § 97-10.2(j) now gives judges far greater ability to modify or extinguish workers compensation liens. So, my first plaintiff's personal injury trial took me through all of the emotions of trial work (success and failure) as well as a visit to each court where a plaintiff's case can be heard and considered.

## **2) What was your most memorable personal injury trial and why?**

Every case I've lost -- the reasons should be obvious, but I'll point out that I've learned far more from losses than from successes.

## **3) What did you learn most from mentoring lawyers when you started?**

Unfortunately, I've not had the benefit of mentors. I've always been thrown into a "sink or swim" situation and being a quick study, I've kept my head above water.

That's not to say that I have not learned great things from non-lawyers, lawyers and judges, as well as court personnel as part of my legal education. My parents gave me a good base for all that I do: values that I hold near and dear, a strong sense of right and wrong and the need to fix things that need fixin'. Scout leaders helped emphasize those values and gave me an opportunity to lead, emphasized the value of service and of great importance professionally, to speak in public.

I've seen good lawyers and some not-so-good lawyers, but I've learned from each. And finally, I'll always remember something Superior Court Judge Henry Stevens told me early in my career: "God only made one perfect man and they crucified him." This certainly puts things into perspective when you are a trial lawyer.

I do regret that I have not had the opportunity to have a mentor in the law. I hope I never stop learning, so if anyone wants to volunteer to serve, let me know.

## **4) What would you share with a young lawyer now?**

Learn to shut up and listen - we have two ears and only one mouth and there's a reason for that. We can learn so much more when we listen, whether it is to our clients, prospective jurors, witnesses, judges, courthouse staff or the proverbial man on the street. Listening conveys respect and maybe, just maybe, the public will listen too.

Be professional: the law is a learned profession and no harm can come when we're prepared, on time and we remember the Golden Rule. Twelve jurors singing your praises after trial can do wonders in the community. Also, as a professional, we have an obligation to become involved in our community - let others know that their friend, who happens to be lawyer, is a good person who does good things, despite what the insurance companies say on television.

Get as much trial experience as possible. Try everything you can and watch others try their cases. There is no greater professional thrill than the sound of the knock on the jury door when the jurors have finished their deliberations. Nothing beats it - nothing.

Take risks. Remember: we're right and the other side is wrong, so why be afraid? Let's show our clients and the public that the lawyer can still be the hero in North Carolina.

### 5) How has the insurance defense bar changed?

The defense attorneys are not fun any more. It seems like the life has been sucked out of them by the insurance companies. This shouldn't be surprising since these lawyers, many of whom are close friends of mine, are no longer given discretion by the insurance companies in how a case should be handled - it's almost like they've returned to elementary school where they have to raise their hand to ask permission to go to the bathroom. Some are "true believers" but the rest go through the motions and while most are still quite effective, it's obvious it's not as enjoyable as it once was.

### 6) Please comment on the state of the auto injury practice in North Carolina.

It's more of a game now (hate the game, not the player) as the insurance carriers do everything they can to delay and obstruct resolution of a case. No longer is it a genuine disagreement as to the issues, but instead, total destruction of the plaintiff is required - the carriers seem to be united in their effort to convince everyone that our clients are liars, thieves and cheats - it's become our job to call them out on this issue.

Right now, we're losing the PR battle. The constant media barrage: television commercials telling only one-half of the story (we all know that Allstate rejected the opportunity to settle the case for less than the policy limits, thereby putting the young driver's college fund in jeopardy when an excess verdict was returned - all the while, paying its attorney a flat fee for the representation); news reports of a purported malpractice crisis; national Chamber of Commerce attacks suggesting businesses are harmed by lawsuits; potential tort reform as a compromise for health reform (why should one class of people be treated differently than another?) etc., all of which are designed to convince our friends and neighbors that every case is frivolous.

NIMBY (not in my back yard) is an analogy that applies: everyone dislikes Congress, but they love their congressman because he/she brings home the pork; folks gripe about the schools, but usually, love and respect their child's teacher; speeders always want the police officer to let them go, but catch the other guy; and of course, "the other guy's injury claim must be frivolous, but mine is legitimate."

### 7) Who was the first personal injury client who touched you and why?

There are two, and for different reasons. The first was an elderly woman who asked me to represent her when one of the big three insurance companies had the nerve to suggest she was at fault in causing the collision. It wasn't a big case -- a few thousand in medical bills and no permanent injury. We were finalizing our preparations for the mediation hearing and when discussing how I anticipated the negotiations would progress, she was quick to point out that all she wanted was to recover her medical bills, nothing more. I explained to her all of the elements of damages in North Carolina and she reminded me that all she wanted to do was recover her medical bills, nothing more. I was reminded that day that we need to always be aware of our client's desired outcome. Ever since that day, I always ask my client during the initial interview what it is they want to accomplish with the case - it often simplifies things greatly.

The second was a young mother who had suffered a traumatic brain injury when her stopped car was struck by an out-of-control tractor-trailer. She worked as a realtor in Charlotte and I will always remember her deposition testimony when asked how her injury affected her professional life. She calmly replied that occasionally, after showing a house to prospective buyers, she would get in her car and realize she did not know how to get home - in essence, she was lost, but not in a way that most of us can appreciate -- her brain could not process the visual clues and other information most of us rely upon when we get lost. She then stated that she would have to call her husband to tell him where she was and get directions from him on how to return home. A simple, yet poignant moment to remind us of how lives can be affected by the negligence of others and how the people we represent are left to deal with those effects.

As I said earlier, I'm proud to be a trial lawyer.

**Al Patrick** owns **Lawyers East**, P.O. Box 8448, Greenville. **Al** can be contacted at (252) 353-1333 or [al@lawyereast.com](mailto:al@lawyereast.com).

## Mountain Magic Wrap-Up

Mountain Magic occurred at the Grove Park Inn in Asheville on October 22-25, 2009.

To read a summary of the Auto Torts Section meeting, please [click here](#).

To read a summary of the General Session speaker, Jim Lees, and luncheon speaker, Congressman Bruce Braley, please [click here](#).

## Convention Moves to Wilmington!

*It's Wonderful in Wilmington!* If you want to find out *WHY*, mark your calendars for **June 19-23** and make plans to attend **Convention 2010** that will take place at the Hilton Riverside in historic downtown Wilmington. The Hilton sits directly on the riverfront of the Cape Fear River and is steps away from scenic views, dozens of fabulous restaurants, lots of fun nightlife options, and eclectic shopping. A \$12 million renovation provides new rooms, new restaurants, and new public areas in a contemporary, art deco setting.

We're also very excited to announce that **U.S. Attorney General Eric Holder** will be the guest speaker at the luncheon on Saturday, June 19th. We're very fortunate to have such a distinguished dignitary as part of our Convention.

The Convention week also includes the Civil & Criminal Masters in Advocacy Seminars and the Summer Conference for Paralegals.

We recommend that you go ahead and reserve your hotel accommodations. We've reserved room blocks at these locations. Be sure to mention the NC Advocates for Justice for discounted rates!

**Hilton Riverside** - \$159/night - 910.763.5900

*Where the action is and most Convention activities take place. Both river view and city view rooms available.*

**Best Western Coastline** - \$129/night - 910.763.2800

*Location of the Paralegal Conference, all river view rooms, less than two blocks from the Hilton.*

**Riverview Suites** - \$159/night - 910.772.9988

*One-bedroom condos, all river view, one-half block from the Hilton.*

**Shell Island Resort** - \$199/night - 910.256.8696

*In Wrightsville Beach, beautifully renovated facility, a wide revamped beach, oceanfront one-bedroom condos.*

Wrightsville Beach is a 20-minute drive from downtown Wilmington. For those who wish to rent beach cottages, we recommend these realtors:

**Intracoastal Realty** - 800.346.2463 or 910.256.4503 - [www.intracoastalrentals.com](http://www.intracoastalrentals.com)

**Bryant Real Estate** - 800.322.3764 or 910.256.3764 - [www.bryantrealestate.com](http://www.bryantrealestate.com)

Stay tuned for updates!

## Section Member News

**Meredith Hinton**, Section Membership Co-Chair and NLD Section Liaison, of the *Ricci Law Firm, PA* in Greenville had a beautiful baby boy, Holt Williams Hinton, on July 21, 2009. Holt was 6 pounds 3 ounces and 18 inches long! *Mom Meredith, Dad Hank and Holt are all doing well since Holt's arrival!*

## Look Who's Bloggin' Now!

The NCAJ homepage now features a blog! The blog is another venue for NCAJ attorneys to inform the public about issues important to their work defending the rights of all North Carolinians. We welcome and ask for member involvement as blog authors!!

Every Monday, a new blog will be posted for public viewing. The blog is structured to allow for public comments, each of which will be reviewed and approved by NCAJ staff, in consultation with the NCAJ blog's editorial board, before being posted online. During this first phase of this project, blog authors remain anonymous. The blog includes a legal disclaimer indicating that the content should not be considered to be legal advice.

Recent posts have focused on educating the public on UATRA and its effort to strike a balance between the interests of injured people and those that are responsible for the injury, fairly apportioning fault to all who are responsible.

Read or comment on past posts at [www.ncaj.com/page/blog/](http://www.ncaj.com/page/blog/).

**This is an open request for members to contact us if they are interested in writing for the blog (300-500 word entry).**

Contact Liz Avery-Jones at [liz@ncaj.com](mailto:liz@ncaj.com) for more information and to volunteer!

### **Upcoming Events – Save the Date!**

#### **REGISTER TODAY! Learn @ Lunch:Expert Speed(y) Testimony in NC**

*December 9*

*NCAJ*

*1312 Annapolis Drive*

*Raleigh*

This seminar explores forensic speed estimates in auto collisions and their importance at trial. The speaker is an accident reconstruction specialist who will discuss these topics:

- Daubert (or the lack thereof)
- The evolution of speed testimony in North Carolina
- Speed estimates: the current science
- The importance of speed estimates
- Accuracy v. Precision
- Proper care and feeding of reconstruction specialists (or what they need to perform for you)

Registration includes lunch, seminar materials on CD and 1.0 CLE hour. For a detailed brochure, [click here](#).

#### **REGISTER TODAY! Learn @ Lunch: Legislative Update Seminar**

*December 15*

*NCAJ*

*1312 Annapolis Drive*

*Raleigh*

Our panelists, **Senator Don Vaughan** and **Representative Rick Glazier**, will offer their interpretation of the significant new changes that impact your everyday practice. Dick Taylor, NCAJ CEO, and Todd Barlow, NCAJ Political Affairs Counsel, will moderate the panel.

Registration includes lunch, seminar materials on CD and 2.0 CLE hours. For a detailed brochure, [click here](#).

#### **REGISTER TODAY! Learn @ Lunch: Ethics FAQs**

*January 28*

*NCAJ*

*1312 Annapolis Drive*

*Raleigh*

This seminar addresses ethical dilemmas that arise in the everyday practice of the auto torts practitioner. Speakers will discuss issues ranging from fee agreements to distribution of proceeds followed by the applicable rules and opinions. Plus, you'll get expert advice on avoiding the common pitfalls.

Registration includes seminar materials on CD and 1.0 Ethics CLE hour. For a detailed brochure, [click here](#).

#### **Save the Date for these Upcoming CLEs in 2010!**

*January 22, 2010, Disbursements 2010, NCAJ, Raleigh*

*February 12, 2010, Wild & Reckless: Punitive Damages in DWI and Other Cases, Embassy Suites, Greensboro*

*February 17, 2010, Learn @ Lunch: Wrongful Death Distributions, Spouses, Children and Lineal Descendants, Oh My!, Law Office of Comerford & Britt, Winston-Salem*  
*March 26, 2010, Brain Injury Litigation, Charlotte School of Law, Charlotte*  
*April 23, 2010, Discovering the Client's Story, Sheraton Four Seasons, Greensboro*  
*May 14, 2010, Trial of a Soft Tissue Injury Case, NCAJ, Raleigh*  
*June 19-23, 2010, Convention, Hilton Riverside, Wilmington*

### **2009-10 Auto Torts Section Officers**

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