



# AAM-a-gram

ASSOCIATION OF ATTORNEY-MEDIATORS

*“...to support and promote professional and qualified attorney-mediators who are committed to the proposition that the existing dispute resolution system can fulfill its intended purpose through the use of mediation.”*

**2016–2017  
AAM**

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## President’s Message

June 2016

We are professional mediators whether we have a primary mediation practice or incorporate mediations into our law practices. We are also lawyers. As professionals we follow and adhere to the best practices and ethical guidelines propounded by our states and local guidelines in the States we practice.

As professional mediators our first best practice is “to do no harm”. The decision to reach a settlement is in the hands of the parties with the advice of their attorneys.

We are bound and obligated to keep the discussion and negotiation confidential. Confidentiality is the cornerstone of the mediation process. We do not reveal what went on in mediation or what is discussed in a private session unless given per-

mission to do so.

We do not give legal advice or offer legal advice. We do not represent any party nor are we invested in the outcome and resolution reached.

Our commitment is to the mediation process and to give the parties the opportunity to understand the risks of moving forward into an uncertain trial procedure where they lose control over the outcome of their dispute.

Mediation is a successful process and the ethical guidelines we follow help to make resolution possible and probable.

**We are professional mediators.**

There may be lots of mediators in the area where you practice or mediation may still be growing in your geo-

graphic area. This next year I want to try to have AAM help our members be recognized as the professionals we are and that being an AAM member elevates us to being the **Best Mediators We Can Be.**

Linking our own websites, as is available now, is a beginning, however, more exposure is what I am going to try to provide for our members. It is important that you also add the link to AAM’s website on your personal website to increase the awareness and exposure of AAM’s professional mediators. AAM does a great job with the seminar meetings we provide. Sid is continuing with a “go to” ethics panel and education pack-

**CHAPTER  
PRESIDENTS**

**Bexar County/San  
Antonio Chapter  
Don Philbin**

**Central Texas  
Chapter  
David Moore**

**Houston Chapter  
J.L. "Larry" Hinojosa**

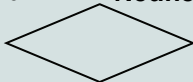
**Illinois Chapter  
Michael Leech**

**North Texas Chapter  
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**Oklahoma Chapter  
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**Mississippi Chapter  
Charles Swayze**

**St. Louis Chapter  
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Attorney-Mediators**

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**President's Message—Continued**

ets for our members in outlying areas.

Some of the ways AAM can help you grow is to provide instruction on using Constant Contact, Facebook, and your own website to keep your names before the attorneys and judges you serve. I use LinkedIn for my professional contact and have

a separate professional I Facebook page. I am not overly skilled at keeping the information current, however, I think those are useful tools. Adding a short video to your website is not difficult, so providing instructions and other useful tips on a webinar or conference call later in the year will be of benefit to you. We have had some outstanding guest marketing speakers at our recent conferences. If you need an introduction to them, please contact Brenda at the AAM National Office.

We are now a national organization and I want to get the word out that an AAM member is a cut

above someone who has taken the required 40 hour course.

**We are  
Professional  
Mediators**

...

**Let's spread the  
word!**

*Jeff*

**Jeff Kilgore**

**AAM National  
President**

**mediate4u@yahoo.com  
Galveston, Texas  
(409) 939-6924**



**Note from Sid**

Just when you thought you had put me out to pasture and gotten me out of your hair, here I

am again. Since we didn't get started with the "Everyone Get One" campaign until late in my term as President, the Board graciously allowed me to continue the campaign into this year.

The whole idea is to grow our membership so we can keep the cost to each member manageable and to keep the quality of our educational programs at its highest like they are now and have been for some time.

The concept is simple. I have asked each member to contact 10 (if you are too busy you can contact 5) mediators, tell them the benefits of membership and ask them to join up. You could get 10 new members or 7 or 5 or whatever but at least get one.

Once they have committed, you can have Brenda send them the link to the application form or you or the new member can go to our website and sign up.

## President's Message—Continued

As a second request, contact me and say how many you got, or how many you talked to or contacted. Once you have made the contact we can follow up and convince them to join.

Just try it! You'll like it and you can further develop your communication skills at the same time. What A Deal!!! Please help out and let me hear from you.

Sid McCollum  
**adrsid@sbcglobal.net**

vvv

### AAM Board Updates

We said farewell to **Sid McCollum**, as he moved his name badge from President to Immediate Past President. He's not going anywhere, but will be here in the wings, keeping us on track! Thank you, Sid, for your dedication to AAM during your term. We welcome **Jeff Kilgore** as new incoming President and **Debra Leo** as incoming President-elect. Debra has already begun the President-elect task of getting the speakers lined up for the fall conference in Houston on September 16, 2016.

We want to thank the three board members that completed their terms on the board – **Mike Leech, Ron Wiesenthal, and Jim Young**. We appreciate your time and energy for AAM during your last three years and will miss you being in your seat when the board gathers. Thank you.

### In the News

The 2015-2016 Arkansas Bar Foundation/Arkansas Bar Association Joint Award Recipient for Outstanding Lawyer-Citizen Award was presented to **Sidney H. McCollum** of Alternative Dispute Resolution, Inc. This award is given in recognition of outstanding participation in and for excellent performance of civic responsibilities and for demonstrating high standards of professional competence and conduct. **Congratulations, Sid!**



## North Texas Chapter Hosts Spring Happy Hour for Members

The AAM North Texas Chapter hosted a get together on April 13, 2016, at Blue Mesa Grill in Addison, for all members, new members in the application process, and other potential members that wanted to know "What is AAM all about?".

About 30 mediators attended and had a great time networking and "cheering" each other on. Several of the guests have since placed membership and we welcome them to AAM! For more information about the North Texas Chapter, please visit their webpage at <http://www.attorney-mediators.org/NorthTexasChapter>.

**Special thanks to Lis Bulmash and John Shipp for organizing the event!**



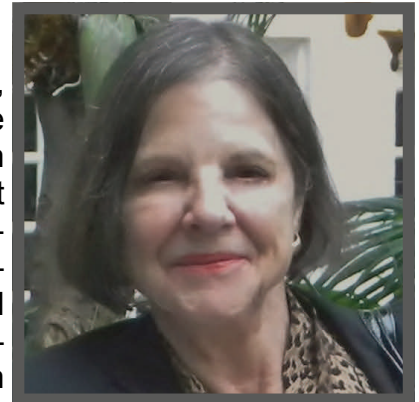
## BRUTSCHE' RECIPIENTS 2016

The Brutche' Award is a very special and prestigious award "Given to the person(s) personifying the principles of service and commitment to the profession that are the foundation of the ADR movement."

**The 2016 Brutsche' Award has been awarded to  
Suzanne Mann Duvall and Christopher Nolland**

**Suzanne Duvall** is a Dallas-based attorney-mediator who mediates in Texas and across the country. She has been a full-time mediator for over 20 years and has mediated over 2500 cases in all areas of civil disputes. She is also an experienced arbitrator and a highly sought-after trainer in mediation. She is often a presenter at the AAM Advanced Mediation Trainings, and is always the first to volunteer for a committee or panel.

Ms. Duvall has received numerous awards for her mediation skills, leadership, and service to the mediation profession including the Frank G. Evans Award given by the State Bar of Texas ADR Section for outstanding leadership in the field of dispute resolution, the first ever American Arbitration Association Brutsche' Award for Professional Excellence in Dispute Resolution, the Texas Association of Mediators Susanne Adams Award for Outstanding Commitment and Dedication to the Mediation Profession, and the Association of Attorney Mediators Pro Bono Service Award. At its annual symposium in October of 2015, the Texas Mediator Credentialing Association named Suzanne M. Duvall its Outstanding Credentialed Mediator of the Year. It is the first such award given by TMCA in its 14-year history. Suzanne's leadership and service in the ADR field has included positions with the State Bar of Texas, Dallas Bar Association, Texas Mediator Credentialing Association, Association of Attorney-Mediators - Past National President, Texas Association of Mediators, Life Fellow, Texas Bar Foundation, Fellow, Center for Public Policy Dispute Resolution, UT School of Law, Master, Annette Stewart American Inn of Court. In addition to all of her other activities, Suzanne is the editor of the "Ethical Puzzler" column in the State Bar ADR Section newsletter; a position she has held for the last 14 years. Suzanne's life of service, achievement, teaching and mentoring is a fitting testimony to the life, work, and ongoing legacy of Steve Brutsche'. Congratulations on receiving the Steve Brutsche' Award for 2016!

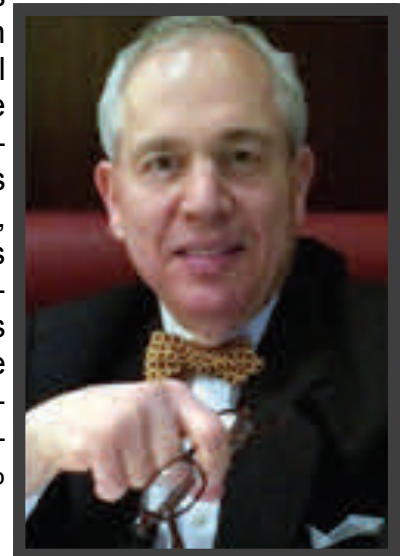


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**Chris Nolland** is an attorney-mediator in Dallas, Texas. Chris' resume as an attorney shows a distinguished record from his student days forward. After law school, Chris Nolland served as an appellate law clerk and thereafter practiced law in New York City and Dallas. He was a partner in a well-known national business litigation firm. In 1993, Mr. Nolland began his own practice with an emphasis on complex business and commercial disputes, bankruptcy and debtor/creditor related matters and with an additional focus on the development of a mediation/arbitration practice. Since that time, Mr. Nolland has mediated or arbitrated over 1,500 cases and has earned a reputation as the "go to" guy for the resolution of complex disputes. Over the past 15 years Nolland has established a practice as Special Settlement Counsel, acting as the primary negotiator for one party in a non-neutral role. Nolland has been engaged as Special Settlement Counsel in over 100 significant matters, primarily business disputes. Special Settlement Counsel activities now account for over 50% of Mr. Nolland's practice.



Mr. Nolland is an Adjunct Professor of Law at SMU Law School and for the past nineteen years has taught a full semester course on Negotiation to 2nd and 3rd year law students and LLM candidates. Mentoring younger attorneys has always been one of his greatest satisfactions and he easily connects with younger attorneys and students, and they with him. He is a frequent speaker at ADR programs and training courses, including AAM's Advanced Trainings, and has been profiled in legal and business publications. Chris has made an unusually rich and diverse contribution to the ADR movement, to litigants, to his fellow mediators, to students, and to the young attorney-mediators and negotiators who will be serving the public when our generation has retired. Congratulations on receiving the Steve Brutsche' Award, 2016!

## Nashville – Looking Back and Moving Forward

Little did we know that the title for the AAM Annual Meeting and Advanced Attorney-Mediator Training would be so fitting – in more ways than one! This year is the 25<sup>th</sup> anniversary of AAM, so we thought it would be enjoyable to go to a really nice venue and have some fun. Looking Back and Moving Forward was mainly meant to capture the history of AAM and Mediation – however, as those that attended will tell you, walking through the lush indoor atriums at the Gaylord Opryland Resort and Conference Center certainly had you **looking back and moving forward**, hoping to end up at the meeting space, or the dinner location, or the bar, or your room. It was a lovely atrium with lush vegetation and water features and walking paths that went in every direction and even up and down – very stunning. Maybe this was a little more than we had anticipated for our short term Gaylord journey on the property. The meeting space was lovely – spacious and comfortable. Our journey down mediation memory lane began

with some of AAM's finest and most seasoned mediators giving us tried and true methods and tips to fulfill our mediation visions. Special thanks to **Ross Stoddard, Irving, TX, Suzanne Duvall, Dallas, TX, Gary McGowan, Houston, TX, Cecilia Morgan, Dallas, TX, and Bud Silverberg, Dallas, TX** for getting us off to a great start!

The day's line-up included not only some of those AAM members that we never give up on, but some new AAM speakers, as well! We want to welcome these newcomers to the AAM speakers arena: **Melvin Kennedy, St. Louis, MO, Brian Tagtmeier, Houston, TX, David Lopez, Houston, TX, and Jimmy Lawson, Lakeland, TN.** Thank you for a job well done! Let's not overlook our trusty members that are called on to enlighten us on various topics and get us talking and thinking. Thank you to **John Dowdy, Arlington, TX, Sam Graham, Austin, TX, Jeff Kilgore, Galveston, TX, Kim L. Kirn, St. Louis, MO; Mike Leech, Chicago, IL; Debra Leo, Birmingham, AL; Francis "Hank" Raucci, Helena, MT and Sid McCollum, Little Rock, AR.**

The program was superb and all of the evaluations were in agreement, AAM conferences continue to be the place to get your mind thinking about new tidbits of information to use the next day in

mediation.

Try one – you will probably agree!



Bud Silverberg and Suzanne Duvall

A lovely reception followed the first day of the training in the Delta Pavilion, an open air pavilion within the Gaylord atrium. We enjoyed food and beverages and entertainment by Nashville singer, **Christian Amsler.** Thank you to our sponsor of the reception, **Michelle Gibson of Digital Smart Tools.** After this enjoyable time of mingling, we boarded the Gaylord shuttles for a drive around the corner to the Claim Jumper Restaurant, where they were ready and waiting for our group of seventy-four attendees and spouses to arrive. The dinner selections were delicious and we ordered from the menu offerings of salmon, steak, ribs, salads, etc. Dinner was accompanied by wine and a special seven layer chocolate cake to commemorate the 25<sup>th</sup> anniversary of



Jeff Kilgore introduces speakers

AAM. It was a lively evening, with time to make new friends and enjoy being together. The journey back to the Gaylord was interesting if you missed the shuttle, but several filled an Uber car to capacity and some walked the moderate distance back to the hotel. All in all, it was a lovely evening with weather that cooperated.

Saturday continued with outstanding training, sharing and interaction to complete the much too short morning before saying our goodbyes. Several attendees stayed for the bonus marketing segment. Our marketing representative in Nashville was **Sheila Sheley** of **Sheley Marketing, LLC, Dallas, TX, <http://www.sheleymarketing.com/>**. If you would like to

get in touch with Sheila, her email is:

[scsheley@sheleymarketing.com](mailto:scsheley@sheleymarketing.com). Let her know you got her name from AAM!

And, the fun never ends! At a request from an AAM member, we were able to obtain a group of Grand Ole Opry tickets for those staying over Saturday night! What an enjoyable experience. Being in the “old” Opry was such an historical occasion and watching the radio show in person will not soon be forgotten! See the photos to get the full effects!



We met many new AAM members in Nashville – and many long-time AAM members that had never been to a training. It was such a pleasure being together. Thank you so much for traveling with us! **Happy Trails!**

“Great conference—best interaction of any group!”



## A World without Haggard (and Remembering Dad)

June 1, 2016 - Jimmy Lawson

So many things change as you age; among them your taste in food, your body tone, your hair, sometimes even your disposition. I like to think that as I've aged I've changed for the better in most respects, but then I'm biased. My wife would probably disagree with me. But aging and the changes that go along with it are inevitable.

One thing that I know has changed over the past fifty-five years is my taste in music. I recall the music of the '60s, but my formative years were the '70s so the soundtrack of my life will always be classic rock. I still listen to it in my car, but as I've gotten older my appreciation for other types of music has grown. I enjoy country music now – not so much the pop country of today's artists but the authentic country music from my youth. I mention that because a few weeks ago something happened that left an indelible impression on my heart.

The Association of Attorney-Mediators, a terrific organization of which I am a member, held its annual spring conference in Nashville the end of April. When I received notice of it earlier this year I was excited because (1) the AAM seminars and social events are always first class; and, (2) it would be an easy trip for my wife and me. I signed up immediately and even agreed to be a member of two panels that would be part of the CLE/CME presentation.

About a month before the conference I received an e-mail from the AAM's executive director, announcing that the organization would be offering tickets to the Grand Ole Opry for the Saturday night performance the last day of the conference. Anyone who wanted to attend could reply and have tickets reserved for them. Without hesitation, I replied and asked that two tickets be reserved for my wife and me.

I have a bit of a history with the Opry. Allow me to explain. My dad, Don Lawson, was a unique man. He was born in 1930, just as the Great Depression was knocking the wind out of everyone's sails. My grandparents were educators, not well-to-do but definitely well respected in our tiny little farming town. My dad was their only child and he was smart as a whip but, by all accounts, he had a mischievous streak that kept him constantly at odds with his parents. He was James Dean before James Dean. My grandparents wanted him to study and become an academic. He preferred to ride his beloved Indian motorcycle and race stock cars. They enrolled him at Hendrix College and sent him there in 1948. He stayed for one year and then disappeared on his Indian. A few weeks later he called my grandparents to tell them he had enlisted in the Air Force. To make a long story short, he served his time in Biloxi and Anchorage, married my mother, spent about five years racing stock cars, and eventually moved back to the farm to raise his family. Of course, I did not know him during those years but I've heard all the stories from his old high school buddies, whether they involved leaving a cow in the school hallway one Halloween night, racing against Lee Petty on the dirt tracks of the south, or building the fastest pickup truck in the county and outrunning all comers. Dad was an original. He lived life to the fullest until smoking and emphysema put an end to his life far too early. When he passed away in 1998, with my mother, my sister and me by his side, he had no regrets. He was one of a kind and I loved him.

But growing up, I didn't love his music. Dad and I constantly fought over music. He loved Hank Williams (Sr., not Jr.), Patsy Cline, Loretta Lynn, George Jones and Tammy Wynette, but his absolute favorite was Merle Haggard. I, on the other hand, favored the Rolling Stones, the Who and



## A World without Haggard (and Remembering Dad) - continued

countless other rock and roll acts. He called my music “screaming noise” and I called his “boring nasal twang.” Whenever we went anywhere in his truck, he would stick in his Merle Haggard 8-track tape and, just to irritate me, sing along with every song. (Full disclosure: No Lawson male has ever been able to carry a tune in a bucket, this author included.) So against my will I was force fed “Mama Tried”, “The Bottle Let Me Down” and “Okie from Muskogee” during my teen years.

Back to the AAM conference and the Opry. In 1972, when I was eleven, we went on a Griswold family driving vacation to Nashville (the only kind we ever took) so my dad could go to the Opry. It was at the old Ryman Auditorium back then and I remember it like it was yesterday. I hated it, because I hated my dad’s music. The best memory I have of that trip is of a young Dolly Parton performing that night and all the men sitting in the audience with mouths gaping and stars in their eyes. Two years later, we went back to the Opry, only this time it was at the new Opryland facility, which was much bigger and more modern. Loretta sang that night and, from what I could tell, my dad’s life was complete. I didn’t attend the Opry again for forty-two years.

And then I did visit the Opry again, on the night of April 30, 2016. I wasn’t sure how I’d feel about it, but I found out pretty quickly. As soon as I took my seat I was overcome with a feeling of *deja vu*. It was as if time had stood still for those forty-two years. Everything about the Opry reminded me of my childhood and I found myself enjoying the experience immensely. There were old stars and new stars, there were commercials and comedy acts, there were singers and square dancers. For the first hour and a half I clapped, laughed, stood on my feet and had a great time. And then, during the final half-hour segment, Vince Gill took the stage to host. His performance, from start to finish, was a tribute to Merle Haggard, who had passed away just a few short weeks before.

As Vince sat on his stool, with only his acoustic guitar and a steel guitar to back up his vocals, he sang and played some of Merle’s classics. He performed them with reverence, sincerity and raw emotion. And then he ended the night with a song he had just written to honor Merle’s memory, titled “A World without Haggard.” (The link to the performance is at the end of this piece and I hope you’ll watch it.) As he played the song, which closed the night at the Opry, you could have heard a pin drop in the arena. It was truly amazing.

My wife was to my right and a gentleman I did not know was sitting to my left. About halfway through the song, I felt a familiar presence and glanced to my left. Instead of the unknown gentleman sitting there, I saw my dad, young and vibrant, his eyes fixed on the stage, with a huge grin on his face and a tear in the corner of his eye. And in an instant he was gone. It was only then that I realized the tear was in my own eye, and pretty soon it had company. That night I felt the presence of Dad, of Merle Haggard, and of the power of true country music for the first time in years. And it was something I’ll never forget. God bless the Opry and all the good folks who work so hard to keep it alive.

Thanks AAM, for giving me a reason to go back to the Opry. Thanks Merle, for being an American original who wrote and sang his songs from the heart. Thanks Vince, for making sure we all remember Merle with such a moving tribute. And thanks Dad, for being my dad and convincing me, years too late, that country music is to be treasured. I miss that old Merle Haggard 8-track tape playing in your truck, but I miss you even more.

<https://www.youtube.com/watch?v=T9RkoFulGrk> (Vince Gill, “A World without Haggard”)

## Be the Best Mediator You Can Be

Members and guests gathered at the Hilton San Antonio Airport, in San Antonio, Texas on September 18, 2015 to learn how to Be the Best Mediator You Can Be. It was a great day with outstanding speakers and panelists. ***Dinner with a Group*** was enjoyed by those that arrived on Thursday evening. It was a nice time to reconnect before the busy training day schedule in store for Friday, and enjoy dinner with other AAM members and spouses.

A special topic, ***A View of Mediation from the Corner Office***, facilitated by Bill Lemons and Don Philbin of San Antonio, was made up of consumer panelists, also from San Antonio, sharing their expectations and dislikes for mediators. Our guest consumer panelists were: **Gail Jensen, J.D.**, Chief Legal Officer, University of Texas at San Antonio; **Abel Martinez, J.D.**, Vice President, Partner Relations, Risk Management and Compliance, H-E-B; **Lori Massey Bristette, J.D.**, Assistant Vice President of Life Operations and Transformation, USAA Life Insurance Company; and **Linda Goodnight Wright, J.D.**, Senior Business Group Counsel, Zachry Industrial, Inc. We thank them for giving up a portion of their day to be with us and to give us new ideas to keep in our view.

We also enjoyed presentations by guest speaker, **Robert Gordon, JD, PhD**, of Dallas. He filled our thoughts with the Role of Perception and Emotion in Mediation and gave us some new information about the Summary Jury Trial. Thank you, Bob, for joining us in San Antonio and sharing new information.

The remainder of the day was filled with some tried and true AAM presenters, as well as some newer AAM faces on the line-up. We especially thank these AAM members for making this event a very highly regarded training. We want to recognize, with great appreciation, **Michael Kuhn**, Houston, TX, **Amie Rodnick**, Austin, TX, **Sid McCollum**, Little Rock, AR, **Barbara Ann Allen**, Georgetown, TX, **Suzanne Duvall**, Dallas, TX, **Kim L. Kirn**, Clayton, MO, **Mark Myers**, Slidell, LA; **Francis "Hank" Raucci**, Helena, MT.

A special ending to the day was the networking reception which was sponsored by AAM member, **William H. Lemons, Mediation and Arbitration**. Food and drink was a great ending to the day with time to trade ideas and business cards before heading back to the airport shuttle. Thank you, Bill.



Consumer Panelists with Bill Lemons and Don Philbin



Michael Kuhn, Houston, TX

## Houston Chapter Adds Member Benefit

Each year, a portion of your AAM national membership dues are "rebated" to the chapter for local use. As an added benefit of membership for the 2016 calendar year, the Houston Chapter secured a full page advertisement in the May 2016, ***Houston Lawyer Magazine*** for those members practicing in Houston, for which the chapter received a rebate. The Bexar County/San Antonio Chapter has advertised in a similar fashion for many years with the members' chapter dues. This is a great use of chapter rebate monies and a great benefit to membership, as well as to promote AAM National!

Special thanks to Larry Hinojosa, [jlarryh@gmail.com](mailto:jlarryh@gmail.com), current Houston Chapter President and Trey Bergman, [trey@bergmanadrgroup.com](mailto:trey@bergmanadrgroup.com), current Houston Chapter Treasurer, for getting this put into place. <http://www.attorney-mediators.org/HoustonChapter>

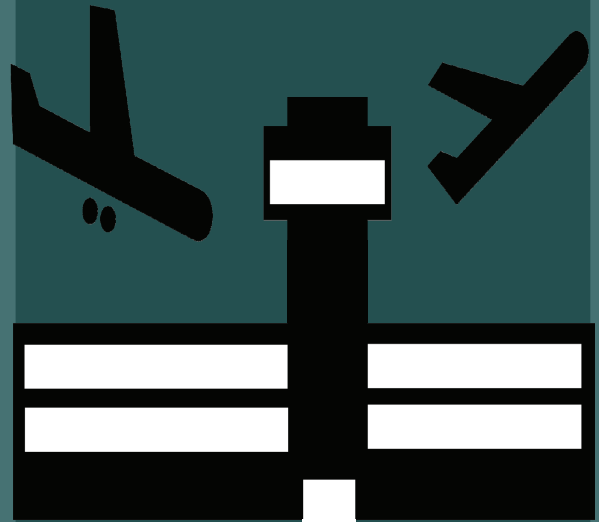
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[www.attorney-mediators.org](http://www.attorney-mediators.org)

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Doubletree Hotel at Hobby Airport  
Speakers begin at 8:15 am and  
end at 5:15 pm

Free shuttle to the terminal and  
hotel.



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## SAVE THE DATE

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AAM Advanced  
Attorney-Mediator  
Training  
Fly-in Fly-out  
September 16, 2016

## Emotional and Evaluative Elements of Mediation

By Philip J. Glick, Esq., Chicago, IL

When one mediates a dispute, it may surprise the mediator that the parties may be unwilling to objectively look at the case. Indeed, an intelligent person can choose to stick to a position that ignores obvious reality, possibly even in the face of advice of Counsel to the contrary. Why does this happen? I think it is a kind of pleasure principal at work. Indeed, it is immensely pleasing to justify one's actions, even where serious risk is created. One bathes in the glow of his or her own goodness and righteousness while the other side is perceived to be trying to avoid responsibility and is guilty of legal, economic and moral wrong. It's like a theatrical production, with casting, choreography, and publicity all by the party who refuses to see the truth. Much has been written on this topic, with demonstrations of the brain's reaction to good news and bad. I am not a scientist, but I have observed the behaviors discussed in this paragraph, and from a practical viewpoint I think that if the mediator fails to deal with these behaviors, the mediation can run into a blank wall.

So what can the mediator do? My experience is that the mediator needs to first join the emotional angst by letting the party know that the emotional reaction is understood. Never mind for the moment that the realities of litigation will operate largely independent of the emotions. For now, the party must see that the mediator is empathic and engaged. Why? because that is the best way to gain connection and credibility in the eyes of the party. Without these elements the mediator's words will be empty and may fall on deaf ears, no matter how correct they are. Consider our own experience. When we speak to a capable person who is empathic to our situation, we tend to ascribe intelligence, empathy and truthfulness to that party. When we speak to someone we know is not interested in our well-being (a typical sales person), we are not interested in his or her views.

One note of caution: The mediator should be careful not to agree that the party is correct, for therein lies the trap of sounding duplicitous later, when the mediator seeks to home in on the risks and costs, and the advisability of settlement. Thus, the mediator discusses the case from the party's viewpoint, and when the mood permits, begins to reframe the events and the "bad acts" of the other side in a realistic way.

When the discussion takes on a more realistic character, the mediator can begin to seriously discuss the actual case. What are the claims and defenses and the evidence? What will be required in terms of cost to continue the litigation? What is the risk of an appeal or of difficulty to collect a judgement? What is the risk of a an adverse outcome?

When the emotional elements and evaluation of the case are both vetted, real discussion of the settlement possibilities can begin. Often this starts out on an unrealistic note, with the plaintiff asking too much, and the defendant offering too little. My experience has been to suggest that this kind of unrealistic bargaining can harm the mediation, and that parties should adjust the offers-counteroffers to keep the ball in play. Usually they do as suggested, but if not I often bring the offers to the other side anyway. I know there is some risk, but when they hear the reaction, real offers usually evolve. Also, the initiation of the offer-counteroffer process is almost always worth some risk.

(continued)

Mediation involves the human decision making process. That is rarely a purely fact driven or emotion driven process, thus it is best to deal with both elements in order to get to an agreement. Few people really want the aggravation and cost of litigation. The mediator helps them to see the way out of what they may, with some justification, regard as a maze, especially when the mediator is the voice of reason, and appeals to their common sense and self-interest.

## New Additions to the AAM Board of Directors

The AAM Annual Meeting was held on April 30, 2016 at 8:30 a.m. at the Gaylord Opryland Resort and Conference Center, Nashville, TN. The following board members were elected and we welcome them to the board of directors.

Meet our three new board members:

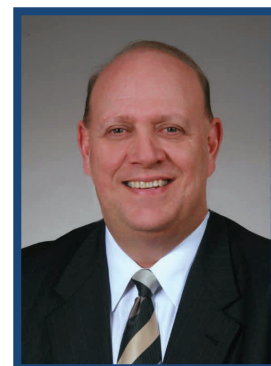
**Robert Berliner** practices in Chicago, IL and has been an AAM member since 2009.



**Paul Clote** practices in Houston, TX and has been an AAM member since 1992.



**John Trimble** practices in Indianapolis, IN and has been an AAM member since 2007.



**WELCOME TO THE BOARD!**

## NO Pictures With Your Electronic Devices in the Courtroom!

By Charla Beall, Attorney-Mediator

On April 19, 2016, an historical event took place. The swearing-in ceremony of attorneys into the Bar of the U.S. Supreme Court. Wait, you may say that those ceremonies happen on a regular basis. After all, there are an estimated 230,000 members of the Bar of the U.S. Supreme Court, and about 4000 are added each year. Furthermore, the U.S. Supreme Court website ([www.supremecourt.gov](http://www.supremecourt.gov)) has guidelines and forms for the admission of attorneys, including “Small Group Admissions - Argument Days” and “Large Group Admissions - Nonargument Days” along with “Bar Admissions Instructions” and “Bar Admissions Forms.”

Submit an “Application for Admission to Practice” signed by two sponsors, a Certificate of Good Standing verifying good standing and admission to practice law before the highest court of the state for at least three years, and pay the required registration fee.

True, these guidelines and processes infer a sense of tradition and normalcy in these events. And yet, April 19th’s swearing-in ceremony was unique, special and made the news.

This swearing-in ceremony, like others, lasted only a few minutes. The court session, like others, only a couple of hours. However, the steps to making an historical event happen took much longer.

In 2013, the Deaf and Hard of Hearing Bar Association (DHHBA) was formed. The group began a discussion: getting the largest group ever of deaf and hard of hearing attorneys admitted to the Bar of the U.S. Supreme Court at one time, in the process, raise awareness and encourage deaf and hard of hearing to pursue legal careers. It is estimated there are less than 300 deaf and hard of hearing attorneys in the U.S. Add to the event the use of American Sign Language (ASL) and Communication Access Realtime Translation (CART) so deaf and hard of hearing attorneys can fully participate in the ceremony. Therein lies a great challenge. The use of electronic devices is a very big issue. The U.S. Supreme Court bans the use of such devices in the courtroom. Therefore, the CART via Wi-Fi to electronic devices such as a tablet, laptop, or smartphone doesn’t fit in with the rules. It would not be the first time a request is made to use CART in the courtroom. In 1982, pre-ADA era, during the oral arguments of *Board of Education v. Rowley* (458 U.S. 176), Michael Chattoff, a deaf attorney, obtained permission for and used CART. In 2004, in *Tennessee v. Lane* (541 U.S. 509), Elise Roy, also a deaf attorney, brought in a stenographer in order to use CART during oral arguments. There are precedents for the use of CART in the courtroom. It is just not the usual way of conducting oral arguments, or for that matter, the swearing-in ceremony. DHHBA contacted the court marshal’s office and others to talk about their goal of admitting the largest group of deaf and hard of hearing in a single ceremony. According to court guidelines, a small group admitted on the day of oral arguments is limited to 12 attorneys. But, for DHHBA, 12 can be and would be the largest group of deaf and hard of hearing ever sworn-in at one time. There are discussions and preparations

made. The preparations include setting up a restricted local password Wi-Fi system so that CART could be provided. On the screens of the electronic devices, the size of the text can be adjusted per individual preferences. A group of 13 deaf and hard of hearing attorneys would be sworn in, special exception for the use of CART via Wi-Fi to electronic devices in the courtroom plus the 2 ASL interpreters so that all attorneys could actively participate. Thirteen attorneys? Guidelines specify 12. The Clerk's Office was contacted and asked if another attorney could be added to the group, an attorney who is hard of hearing and legally blind. Permission was given. Thank you. The group is going to be 13 big.

As the day gets closer, DHHBA is communicating about the rules and logistics: Absolutely NO PHOTOS WITH YOUR ELECTRONIC DEVICES. How many are using interpreters? How many devices will be used? How many guests? You are allowed one per attorney. Meet at 8...be on time...ABSOLUTELY NO PICTURES TAKEN IN THE COURTROOM WITH YOUR ELECTRONIC DEVICES! A press release was posted on the DHHBA web-site ([www.deafbar.org](http://www.deafbar.org)). The names of all those to be sworn-in was listed. Several articles appeared online, including: "Deaf Lawyers to Join Supreme Court Bar in Mass Ceremony", The National Law Journal ([www.nationallawjournal.com](http://www.nationallawjournal.com), April 11, 2016); "Group of deaf lawyers will be sworn in to Supreme Court bar", ABA Journal ([www.abajournal.com](http://www.abajournal.com), April 12, 2016, 12:36 pm CDT); and, "US Supreme Court To Welcome Deaf Attorneys to Bar in Unique Ceremony", Voice of America ([www.voanews.com](http://www.voanews.com), April 12, 2016, 6:14 am).

April 19th comes. Arriving at the courthouse finds a long line of people waiting to get into the U.S. Supreme Court Building. The group meets around the corner and takes lots of pictures before going in. After going through security, the group meets at the designated sign. Going up the steps to a conference room gets the first of many 'No, you really can't take pictures of the group on the way up to the conference room. You can take pictures in the conference room, but not anywhere else.' Continental breakfast is served in the conference room and soon after, instructions for how the session will go. More pictures are taken. When it is time to go into the courtroom, an additional reminder is made to 'Leave ALL your electronic devices here in the conference room.'

That really does happen, but that isn't really the plan for this group. This group is not leaving behind those electronic devices for which prior approval and exception has been made. 'The Clerk will be brought in to get those through security, but, remember, ABSOLUTELY NO PHOTOS OR PICTURES with your devices WHEN IN THE COURTROOM.'

After going through security located just outside the courtroom doors, several members of the group do have the electronic devices in hand. The cavernous marble courtroom can seat around 400. CART reporter is ready. Interpreters are ready. Some seats are moved a bit closer so there is enough room for everyone to be sworn in. Now, everyone waits. Everyone stands, and the Justices come in. First are the announcements of case decisions.

Then the swearing-in portion begins. Motions are made. John Stanton, a Justice Department attorney who happens to be deaf, makes the motion for the DHHBA group. The motion is granted. Before taking the oath, a statement of congratulations. Now, raise your right hand to take the oath taken by countless others before. Except .....

This announcement of decisions and this ceremony is being realtime translated/captioned via

restricted Wi-Fi access and signed by two ASL interpreters. And, Chief Justice Roberts uses sign language after the motion is made.

There you have it. A total of 37 lawyers sworn-in on April 19, 2016, including 12 deaf and hard of hearing attorneys using CART and ASL. (Yes, 13 were to be sworn in; on the day however, there were only 12.) The swearing-in ceremony was formal, traditional, and yet, unique. Oral arguments for two cases followed. The first, Case 15-420, U.S. v Michael Bryant Jr, considered the use of prior tribal court convictions in later non-tribal court sentencing. In the second oral argument, Case 15-7, Universal Health Services, Inc V. Escobar Universal Health Services, Inc. v. United States and Massachusetts, ex rel, Julio Escobar and Carmen Correa, there was a discussion about whether a billing practice (services billed as being performed by doctors not necessarily actually performed by doctors) can be considered fraud or breach, and where does one draw the line in deciding if there is fraud. Does one consider the intent and use of the services or products being purchased (examples, boots that were made of cardboard and could not be worn on people's feet, or meat that is rancid and inedible), or does one look at only the language of the contract (boots are boots, meat is meat).

Adjourned and everyone stands.

Overall, this is a positive experience. There are some concerns about everyone being able to see interpreters and CART keeping up with the spoken word. Afterwards, there is publicity. There are Facebook and Twitter postings, and additional articles about the swearing-in ceremony, including: "Chief Justice Welcomes Deaf Lawyers into Supreme Court Bar", The Wall Street Journal (<http://blogs.wsj.com>, April 19, 2016, 12:45 pm ET), "Supreme Court Chief Justice learned sign language to swear in deaf attorneys", The Washington Post ([www.washingtonpost.com](http://www.washingtonpost.com) April 19); and, "U.S. Chief Justice uses sign language as deaf attorneys sworn-in", Reuters ([www.reuters.com](http://www.reuters.com), April 19, 2016 5:25 pm EDT). Reuters's article begins with "In an historical first", and explains this event is believed to be the first time sign language had been used by a Supreme Court Justice from the bench. He signed: Your motion is granted.

Yahoo's "US Supreme Court swears in a dozen deaf lawyers", ([www.yahoo.com](http://www.yahoo.com), April 19, 2016) indicates the diversity of attorneys sworn in. The group "...included representatives from disabilities groups, Kansas practitioners Charla Beall and Leonard Hall, and US Customs and Border Protection attorney-advisor Reema Radwan."

A swearing-in ceremony that was a fairly normal event for the others sworn in that day turned out to be internet headlines for the deaf and hard of hearing lawyers, Supreme Court and the Chief Justice. Within a couple weeks after the ceremony, a letter was sent out by the Clerk welcoming the new members to the U.S. Supreme Court Bar, and to expect a certificate approximately 10 weeks. An e-mail follows with the instructions to confirm the accuracy of the attorney's name etc for the certificate. Though the swearing-in ceremony has ended, DHHBA members consider this event to be a beginning as well.

Later, group members shared pictures via e-mail. None are from inside the cavernous courtroom though. Remember, ABSOLUTELY NO PHOTOS ARE TO BE TAKEN IN THE COURTROOM!!!! Except .....



There are sketch artists who frequently attend court hearings to sketch scenes in the courtroom. There is a sketch of the interpreter signing and a couple of the deaf and hard of hearing attorneys either looking at the electronic devices with CART or watching that interpreter to follow the spoken word.

There is a picture of an historical event.



## AAM Welcomes New Members

We are pleased to announce the following new AAM members as of the last printing of the newsletter.

Matthew Blair, Midland, TX

K. Marshall Dye, Dallas, TX

Heidi Echols, Homewood, IL

Bradford Felder, Lafayette, LA

Stephen Fogle, San Antonio, TX

Ed Grant, Cheyenne, WY

Louise Gross, Lincolnwood, IL

Mark Hawkins, Austin, TX

Sharon Hicks, Weatherford, TX

William Holloway, Chicago, IL

Steven Howard, Houston, TX

Ernest "Hank" Jones, II, Lexington, KY

Laura Josephson-Bernat, Vernon Hills, IL

Sanford Kingsley, San Francisco, CA

Kimberlee Kovach, Austin, TX

Lance LaBelle, Rancho Santa Margarita, CA

Richard Ladd, Bristol, TN

Bruce McKenna, Tulsa, OK

Dylan Moench, Austin, TX

Catherine Moore, Springfield, MO

Renee Rusch, Driftwood, TX

Stanley Santire, Houston, TX

Lisa Schiffman, Dallas, TX

Christopher Starck, Mundelein, IL

Bentley Story, Forrest City, AR

Brian Tagtmeier, Houston, TX

Robin Taylor, Houston, TX

Amy Taylor, Houston, TX

Rodney Townsend, Orange, TX

Wendy York, Albuquerque, NM

Welcome to the **Association of Attorney-Mediators!**

*Welcome*

## Meet the AAM President and President-elect

### AAM President 2016-2017—Jeff Kilgore



**Jeff Kilgore** was a trial lawyer when he decided the disputants could benefit greatly from crafting their own settlement with help of their attorneys. He started focusing on mediation and arbitration in 1998 and has continued to grow his practice and training by participating in seminars and courses on a regular basis. He also has taught mediation courses at the University of Houston AA White Dispute Resolution Center and has chaired and co-chaired mediation trainings in advanced family mediation. He has completed over 1600 mediations in contracts disputes, construction, insurance issues, property law disputes, securities, probate and family law matters. His primary office is in Galveston, Texas and he works out of the Greenway Mediation Center when requested. Jeff is married to Mary Kilgore and has three children Chris, Adam and Kelsey, and grandchildren, Tierney and Aislynn. He enjoys sailing, boating, nature photography, and grilling for friends and family. He has been in law practice 42 years this month. Jeff has been a member of AAM since 1999.

### AAM President-elect 2016-2017—Debra Leo



**Debra B. Leo** is the Alternative Dispute Resolution (ADR) supervisor and expert mediator for Alabama and Mississippi. Debra contracts with and provides technical expertise to private mediators. She develops, designs, and delivers training modules on basic and advanced mediation skills for the federal government on a national basis and gives presentations and training on various areas of employment law. She also mediates complex cases involving all issues of employment law.

Debra serves on the Alabama Supreme Court Commission on ADR (past Chairman), she is President of Alabama Academy of Attorney Mediators and has served as an adjunct professor at Birmingham School of Law. She is on the FINRA Panel of Neutrals, the Better Business Bureau's Panel of Neutrals, and is on the Alabama Supreme Court's roster of mediators and arbitrators. Ms. Leo has over 30 years of experience with EEOC and has served in the capacities of enforcement supervisor, charge receipt supervisor, enforcement investigator, systemic investigator, and management information specialist. She has received the Chair's Silver Excellence in Leadership Award, and is four-time recipient of the Chair's Organizational Performance Award, as well as numerous recognitions by professional organizations. She was named Arbitrator of the Year by the BBB in 2006.

She received a Bachelor of Science Degree in Mechanical Engineering, Tau Beta Pi, from the University of Alabama in Birmingham and a Juris Doctorate Degree from Birmingham School of Law. She was admitted to the Alabama State Bar in 1998.

*As always, thank you to John Feather, Newsletter Editor, for his assistance!*

**PHOTOS**

**SAN ANTONIO, SEPTEMBER 18, 2015**



John Kelly and Fran Brochstein enjoy Dinner with a Group—San Antonio, September 2015



John Dewey Watson, Sandra Watson, Elizabeth Woodruff, John Dowdy



Kim Kirn, Ron Wiesenthal, Jeff Kilgore, Mike Leech, John Delaney and Kay McCollum



Linda Michler, Stevann Wilson, Kim Kirn and Ron Wiesenthal

***MORE PHOTOS***  
***SAN ANTONIO, SEPTEMBER 18, 2015***



Luncheon Speaker—Sid McCollum



Networking Reception



Sid McCollum, Bill Lemons, Bill Towns, Don Philbin, John Dowdy



Jim Young and Bill Lemons

**PHOTOS**  
**NASHVILLE, APRIL 29 & 30, 2016**



Debra Leo, Anne Shuttee, Cecilia Morgan, Gloria Portela and Beverly Baker



Ross Stoddard, Bud Silverberg, Suzanne Duvall, Cecilia Morgan and Gary McGowan



***MORE PHOTOS***  
***NASHVILLE, APRIL 29 & 30, 2016***



**GRAND OLE**  
**OPRY**

