



# Tri-State Defense Lawyers Association

Vermont · New Hampshire · Maine



## Newsletter

Winter, 2008

### Good Times In the Northeast

*Phil Coffin, Maine President  
TDLA President*

As I write this column, I am looking out my window at yet another winter storm. It is about 18° F and snowing hard. I am reminded that we here in the Northeast, particularly those of us in Maine, New Hampshire and Vermont, need to be a hardy group. We regularly have harsh winter storms to contend with, and often have to deal with a more difficult economic climate than our more prosperous brothers and sisters to the south. To be successful in this environment, we all have to work hard, be competitive and stay focused. That is often not enough, however. In our increasingly electronic world, there is less opportunity for social interaction among lawyers. For that reason, I think that it is particularly helpful for lawyers with similar practices to spend some social time together in order to make the practice of law more enjoyable. In my opinion, the unique and friendly people that practice in the three states that comprise the Tri-State Defense Lawyers' Association are just such a group. I am most impressed with the camaraderie and professionalism of the lawyers that I have met and am hopeful that we can continue to grow and develop our organization into a much more mature and valuable resource for its members. In an effort to do that, DRI is helping the TDLA sponsor a series of informal get-togethers in each of the three states; Maine, New Hampshire and Vermont.

The Vermont one is currently scheduled to take place on Friday, February 15, 2008, at 4 pm at Downs Rachlin Martin in Burlington, Vermont. The New Hampshire reception will be on Wednesday, February 13, at 5 pm at Devine Millimet in Manchester, New Hampshire, and the Maine reception will be on Wednesday, March 5, at 5 pm at Lambert Coffin in Portland, Maine. I encourage all Vermont, New Hampshire and Maine defense lawyers to attend these receptions, share some wine and hors d'oeuvres and get to know each other a little better. By working together, I am convinced that we can improve our professional lives, improve the delivery of legal services in our region and achieve better results and justice for our clients. We encourage all of you to bring colleagues from your office and other defense lawyers in your community to the get-togethers. We would especially like to see as many younger lawyers as possible at these events in order to help us grow the TDLA.

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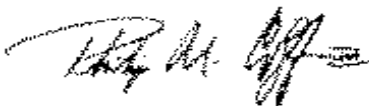
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**Phil Coffin—contd.**

The past year has been a particularly busy year for our organization. In addition to bringing Peggy Schultz on board as our Executive Director, we have now put out three newsletters and held a very successful annual meeting and CLE event. We are now planning our next annual meeting and would welcome firm and vendor sponsors for that event on September 19 and 20, 2008, as well as any thoughts or volunteers for CLE topics. Please email Peggy Schultz ([pschultz@tristatedefenselawyers.org](mailto:pschultz@tristatedefenselawyers.org)) or me ([pcoffin@lambertcoffin.com](mailto:pcoffin@lambertcoffin.com)) with your suggestions.

Phil M. Coffin



TDLA President

Maine President



## Message From Your DRI Regional Director

*Brooks McGratten, DRI Regional Director*

First, thanks to everyone who stepped forward last October and spoke to the DRI nominating committee on Matt Cairns' behalf. Thanks to your efforts, Matt is now in the chain of succession to become DRI's President. Our region has not often been represented in DRI's executive ranks. Kudos to Matt on attaining the office of Second Vice President.

Second, I must say how impressed I was with the TDLA's annual meeting in Portsmouth, New Hampshire. A strong turn out by members determined to get the TDLA off the ground fueled a lot of excitement for the organization. The momentum continues as the TDLA sponsors membership receptions in Vermont, New Hampshire and Maine in the coming weeks.

Third, mark your calendars for the DRI Northeast Regional Meeting, May 16 – 17, 2008, in Chatham, Massachusetts. The meeting this year will take place at the historic Chatham Bars Inn. Come, meet your fellow DRI and SLDO leaders and enjoy Spring on the Cape.

Finally, my thanks to all of you for electing me as your regional director. Matt leaves big shoes to fill. I look forward to working with you all to build a strong TDLA and DRI presence in northern New England and to have some fun along the way. Feel free to contact me about any question you may have about DRI or other SLDOs in our region.



## Punitive Damages Hot Issue in Vermont

*Charity Clark, Vermont President*

In Vermont, the future of punitive damages continues to be in the news. In September, the Defense Research Institute (DRI) filed its first ever *amicus* brief in a Vermont court in the case *Jensen v. Cashin*. The issue before the Vermont Supreme Court is whether punitive damages are available, against a minor, under Vermont's wrongful death and survivor statutes. On behalf of DRI, Tom Hayes and Bonnie Shappy of Hayes & Windish in Woodstock argued that expanding the scope of punitive damages by making them available under these statutes is the province of the Legislature, not the Court. The Court is expected to hold oral arguments in the spring. We will have an update on this historic case in our fall newsletter.

The Vermont Legislature may also take up the issue of the availability of punitive damages. Sen. John Campbell, an attorney and member of the Senate Judiciary Committee, recently introduced a bill that would dramatically expand the scope of availability of punitive damages. S.272, "An Act Relating to Allowing Punitive Damages for Intentional Misconduct and Gross Negligence," would make punitive damages available in *all* civil actions and in cases where the defendant lacked intent. It would also make punitive damages available against a business for the acts of any of its employees. Significantly, in our view the bill fails to provide any of the constitutional safeguards that the U.S. Supreme Court has held are required for awards of punitive damages. We are closely monitoring this bill.

Finally, Downs Rachlin Martin (DRM), in conjunction with TDLA, will be hosting a cocktail reception for the Vermont defense bar at DRM's Burlington offices on Friday, February 15 at 4 p.m. We are pleased to have as a special guest the Northeast's DRI Regional Representative Matt Cairns of Ransmeier & Spellman in New Hampshire. I hope that you will join us on the 15th for some winter cheer!

Charity Clark

Vermont President

### ***Things people actually said in court !***

ATTORNEY: Doctor, before you performed the autopsy, did you check for a pulse?

WITNESS: No.

ATTORNEY: Did you check for blood pressure?

WITNESS: No.

ATTORNEY: Did you check for breathing?

WITNESS: No.

ATTORNEY: So, then it is possible that the patient was alive when you began the autopsy?

WITNESS: No.

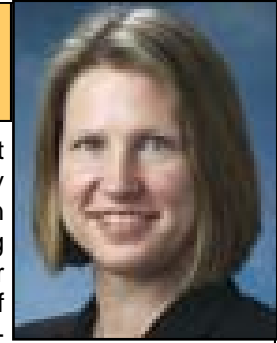
ATTORNEY: How can you be so sure, Doctor?

WITNESS: Because his brain was sitting on my desk in a jar.

ATTORNEY: I see, but could the patient have still been alive, nevertheless?

WITNESS: Yes, it is possible that he could have been alive and practicing law.

## A Brief Update On Federal Judicial Pay Legislation



Carrie J. Legus  
Vermont DRI Rep

Unlike many of the associated local organizations, DRI does not typically get involved in legislative efforts. Support for increased pay for the federal judiciary stands as one exception. In June 2005, DRI issued a "Position Statement . . . In Support of Increased Federal Funding of the Judiciary." Accordingly, last Spring DRI supported the Vermont membership in writing a letter to Vermont's Senator Leahy, who chairs the Judiciary Committee, expressing the "bipartisan" support of the local bar for that anticipated legislation. As DRI's Vermont State Representative, I coordinated with the VBA and VTLA presidents to send the letter under all three signatures. Last summer, Senator Leahy introduced legislation to authorize the first significant pay raise in decades. Just last Thursday, January 31, 2008, the Senate Judiciary Committee passed the legislation. Similar legislation passed the House of Representatives Judiciary Committee in December 2007. Senator Leahy is encouraging the full Senate to enact this important legislation quickly. For further details see: <http://leahy.senate.gov/press/200802/020108.html>.

On another note, commendations to both Charity Clark and Walter Judge are in order for revitalizing the Vermont sector of the local defense organization. I encourage all to attend the TDLA reception they are sponsoring on February 15, 2008. Finally, our Vermont DRI membership remains stable. We are up two members from a year ago, but down one since November. Any Vermont TDLA members who have not joined DRI should consider doing so. I will gladly speak with any such TDLA members at the upcoming reception about the benefits of DRI membership. I hope to see you there.

## Downs Rachlin Martin, PLLC

*In conjunction with the*

### Tri State Defense Lawyers Association

*cordially invites you*

*to attend a cocktail reception  
in DRM's Burlington office at*

*199 Main Street  
Burlington, VT*

*February 15, 2008  
4:00 p.m.*



*Take advantage of this opportunity to connect  
with other Vermont defense bar attorneys in a relaxed atmosphere.*

## VERMONT CASE BEFORE U.S. SUPREME COURT

By Walter E. Judge, Jr.  
*Downs Rachlin Martin, PLLC*

### VERMONT CASE INVOLVING FEDERAL PREEMPTION OF DRUG LABELING IS NOW BEFORE THE U.S. SUPREME COURT

A case arising out of Vermont, with serious national significance, is currently pending in the United States Supreme Court. Wyeth v. Levine, U.S. No. 06-1249. In this case, pharmaceutical manufacturer Wyeth is seeking to overturn a \$7 million personal injury/products liability verdict awarded to Diana Levine by a Vermont jury and affirmed by the Vermont Supreme Court. Wyeth argues that Levine's state-based negligence claim is preempted by the federal Food and Drug Administration's (FDA) approval of a drug label.

#### *The Case Below*

Phenergan, the defendant Wyeth's drug, was injected inadvertently into an artery in Levine's arm using an "IV push" administration method. This injection severely damaged the artery, caused gangrene, and led to the amputation of Levine's hand and forearm. She sued Wyeth for negligence and failure-to-warn, asserting that Wyeth's warning of the known dangers of injecting Phenergan intravenously was inadequate. Wyeth argued that its warning label was approved by the FDA and that federal law preempted the plaintiff's claim, contending that "any state common law duty to provide a stronger warning about the dangers of administering Phenergan by IV push conflicts with the FDA's approval of the drug's label." The jury found for the plaintiff and awarded almost \$7 million. Wyeth appealed to the Vermont Supreme Court. The Court joined several other courts' failure-to-warn decisions in drug cases when it affirmed the lower court's ruling that FDA approval of a drug's label does not preempt state failure-to-warn claims. Levine v. Wyeth, 2006 VT 107, --- A.2d ---, 2006 WL 3041078, 2006 Vt. LEXIS 306, Vermont Supreme Court, Oct. 27, 2006. The Court emphasized its belief that federal labeling requirements are a floor, not a ceiling, for state regulation. The majority relied on 21 C.F.R. 314.70 (c), which allows a manufacturer, under certain circumstances, to alter a drug's label when necessary, without prior FDA approval. Therefore, according to the majority, Wyeth could have warned against administering Phenergan through an IV push. The Court dismissed Wyeth's argument that it had, in fact, submitted a stronger warning for FDA approval in 2000, but that the FDA had rejected the proposed new warning and insisted that Wyeth stick with the original warning – the one that Levine asserted was inadequate. The Chief Justice dissented, stating that: (1) it would be impossible for Wyeth to comply with both state and federal law, and (2) that the state law claim is an obstacle to federal purposes and objectives.

#### *Wyeth's Appeal to the U.S. Supreme Court and the Parties' Positions*

In 2007 Wyeth sought review in the U.S. Supreme Court. The Supreme Court granted cert and invited the U.S. government to submit an amicus brief on whether the FDA labeling rules should pre-empt state law. The U.S. government argued for federal pre-emption, but urged the Court not to act in this case pending its decisions in two other pre-emption cases.

**Vermont Case - contd.**

In response to the U.S. government's position, Levine argues that the Supreme Court should not wait, but should deny review in this case now and let the verdict stand. She urges that the two pre-emption cases currently pending before the Court do not involve the same statutes and issues as her case. One involves a medical device, which is governed by a different federal statute, and the other case involves the effect of a Michigan tort reform statute. Further, Levine argues that FDA pre-emption does not apply because her case does *not* involve "differing judgments" by the FDA and the Vermont jury as to what the Phenergan label should say. Repeating the Vermont Supreme Court's rationale, Levine argues that the FDA does not prohibit drug makers from adding new warnings based on new information about dangers, and that Wyeth learned of the dangers of "IV push" administration and could have and should have added a warning without prior FDA approval. Therefore, because federal pre-emption is not implicated, argues Levine, the Supreme Court should deny review.

Wyeth argues that U.S. Supreme Court review is appropriate because the decision below conflicts with other state or federal appellate decisions on drug labeling preemption, and frustrates the FDA policy for uniform drug labeling.

It is not clear when the U.S. Supreme Court will decide this important case.

Wyeth is represented by Vermont DRI member Joseph O'Rourke of Rutland, Vermont.

Save  
the  
Date!

**TRI-STATE DEFENSE  
LAWYERS  
ASSOCIATION**

**WINTER SOCIAL**

**FEBRUARY 13, 2008**

**5:00 P.M. - 7:00 P.M.**

**DEVINE MILLIMET**

**111 AMHERST STREET**

**MANCHESTER, NH 03101**

## **New Hampshire Update**

*Mary Ann Dempsey, Wiggin & Nourie, P.A.*

Much like our sister states of Maine and Vermont, the New Hampshire branch of TDLA will be hosting a mid-winter social event that is open to all members of the organization as well as those interested in joining.

It is scheduled to take place on February 13, 2008 at the law firm of Devine Millimet in Manchester, New Hampshire. The event will take place from 5:00-7:30 p.m. and drinks and appetizers will be served. If you can attend, please R.S.V.P. Chris Poulin at [cpoulin@devinemillimet.com](mailto:cpoulin@devinemillimet.com).

The event is social in nature – no speeches or CLE's . . . . It is a great occasion to simply stop by after work and take the opportunity to network and talk with other members of the organization throughout the state. Those of us who attended the First Annual TDLA Meeting in Portsmouth last September had the opportunity to do the same at the cocktail hour and dinner program on the first evening and really enjoyed it.

We hope that you will make every effort to stop by the social event and support the organization. Please bring colleagues and associates as well. One of our primary goals in reinvigorating the defense bars of Maine, New Hampshire, and Vermont through the formation of TDLA was to build and foster friendships and contacts among members of the defense bar. The mid-winter social event is one effort in which we can get together, relax, and enjoy each other's company. We hope to see you all there !!!

Believe it or not, we are already in the process of organizing TDLA's Second Annual Meeting for September 2008. Portsmouth, New Hampshire will once again be the location and we are planning a two-day event with a social evening followed the next day by a half-day CLE-program and opportunities to sightsee, shop and golf.

Finally, TDLA and DRI will be hosting a seminar this spring in New Hampshire on DRI's report on Threats Facing the Judiciary. Please look for details on the seminar which will be forthcoming.

### **UPCOMING SEMINARS OF INTEREST**

#### **IN NEW HAMPSHIRE**

***Building Your Civil Trial Skills***

***February 13, 2008***

***9:00 – 4:30***

**Holiday Inn, Concord, NH**

For more information, go to [www.-nbi-sems.com](http://www.-nbi-sems.com)

*New Hampshire Update—contd.*

***Midyear New Hampshire Bar Meeting***

February 15, 2008

Grappone Conference Center, Concord, NH

For more information, go to [www.nhbar.org](http://www.nhbar.org)

***Successfully Litigating Employment Discrimination***

February 21, 2008

9:00-4:30 p.m.

Radisson Hotel, Manchester, NH

For more information, go to [www.nbi-sems.com](http://www.nbi-sems.com)

***Litigating to Win Through Advanced Trial Advocacy***

February 26, 2008

9:00-4:30 p.m.

Radisson Hotel, Manchester, NH

For more information, go to [www.nbi-sems.com](http://www.nbi-sems.com)

***7<sup>TH</sup> Annual Labor and Employment Law Update***

April 3, 2008

9:00-4:30 p.m.

N.H. Bar Association Seminar Room, Concord, NH

For more information, go to [www.nhbar.org](http://www.nhbar.org)



## **Tri State Defense Lawyers Association**

### **Annual Meeting**

September 19 and 20, 2008

Portsmouth, New Hampshire

Hilton Garden Inn

*More Information Coming Soon*

**Mark Your Calendar!**





## The National Trend Towards Recognizing the Claim of Negligent Credentialing: Where do Maine, New Hampshire and Vermont Stand?

By Alicia Curtis, *Lambert Coffin*, Maine

In a recent decision adopting the tort of negligent credentialing of a physician by a hospital, the Minnesota Supreme Court outlined the bases for a national trend towards recognition of this tort. Negligent credentialing claims expand the potential liability of hospitals by establishing an independent cause of action against a hospital for physician malpractice. Many physicians working in a hospital are not hospital employees, but rather are granted privileges to use the hospital facilities by a peer review committee known as a credentialing committee. The claim rests on an allegation that the hospital's credentialing committee was negligent in extending hospital privileges to a physician when it knew or should have known the physician was not competent. The highest courts in Maine and New Hampshire have yet to consider whether to adopt this tort, and it has been argued that the privileged and confidential status accorded peer review records by statutes in both states presents insurmountable legal and practical challenges to the viability of such a claim. The recent Minnesota decision raises the possibility that medical malpractice claimants might succeed in bringing a negligent credentialing claim, however, although practical problems of proof remain.

The plaintiffs in *Larson v. Wasemiller* sued two surgeons for negligence in performing a gastric bypass surgery. 738 N.W.2d 300 (Minn. 2007). The plaintiffs joined the hospital in which the surgery had been performed, alleging it was negligent in granting surgery privileges to one of the surgeons, Dr. James Wase Miller. *Id.* at 302. The hospital moved to dismiss for failure to state a claim. Similar to Maine, New Hampshire and Vermont, Minnesota statute requires that information acquired by a review organization or by an individual acting at the direction of a review organization shall be kept confidential and shall not be subject to subpoena or discovery. Min. Stat. § 145.64 (2007). The proceedings and records of the review organization are not subject to discovery and cannot be introduced into evidence during a malpractice trial arising out of the matters considered by the review organization. *Id.* Unlike Maine and New Hampshire's statute, it goes on to specify that information otherwise available from original sources is not immune from discovery, and that individuals involved in a review organization cannot be prevented from testifying about matters "within the person's knowledge," so long as the individual does not testify about her testimony before the review organization or her opinions formed as a result of its hearings. *Id.* (Vermont statute contains these two exceptions.) Unlike Maine and New Hampshire, another Minnesota statute further states that a peer review organization shall not be liable for damages due to a decision when it made reasonable efforts to determine the facts on which it based its decision. Min. Stat. § 145.63 (2007).

The Minnesota Supreme Court took up the certified question: does Minnesota recognize a cause of action for negligent credentialing? *Larson v. Wase Miller*, 738 N.W.2d at 303. The Court found that negligent credentialing was a natural extension of established common law rights, because it was analogous to the claim of negligent hiring recognized in Minnesota, and closely related to the tort of negligent selection of an independent contractor, recognized in the Restatement (Second) of Torts § 411 (1965). *Id.* at 305-06. The Restatement articulates a duty to use reasonable care in selecting an independent contractor, when the contractor is hired to do work involving the risk of physical harm, or to perform any duty owed by the employer to third persons. *Id.* at 306. The Court also based its decision on Minnesota case law recognizing that hospitals owe a duty of care to patients to protect them from harm by third persons, analogous to the special duties owed to a guest by an innkeeper and to a passenger by a common carrier. *Id.* at 305. Furthermore, the Court noted that at least 27 states recognize the tort of negligent credentialing, whereas only two courts considering the existence of the action have rejected it. *Id.* at 306-07. Courts in other states adopting the tort viewed it as either a form of corporate negligence, an extension of the hospital's duty of care for the safety of its patients, an extension of the tort of negligent hiring, or an iteration of the tort of negligent selection of an independent contractor. *Id.* at 307-09.

*National Trends—contd.*

Most of the decisions from other jurisdictions, as discussed by the Minnesota Supreme Court, are predicated on a duty owed directly to the patient by the hospital to protect the patient from harm. The Minnesota court cited several reasons that other courts have recognized that duty, even in the absence of an employer/employee relationship, when adopting the tort of corporate negligence, a broader tort encompassing negligent credentialing. For instance, the community hospital's evolution in its corporate structure and in the public's eye into a comprehensive health center "responsible for arranging and coordinating total health care" creates a duty towards patients to use reasonable care when making credentialing decisions. *Id.* at 307-08.

The Minnesota court found that the statute privileging the testimony and records of a credentialing committee was no bar to a claim of negligent credentialing. *Id.* at 310. Minnesota's statute, like those of other states that have recognized the tort, contains an exception for discovery of information "otherwise available from original sources" or "within a person's knowledge" from sources outside the credentialing committee. *Id.* Furthermore, the claim is based not only on what was known at the time of the credentialing decision, but also what the hospital should have known. *Id.* A plaintiff could prove a claim of negligent credentialing through testimony, for instance, that a physician's disabling addiction was a matter of general knowledge within the hospital, without recourse to proving the credentialing committee even knew or discussed the addiction. Further, a plaintiff could prove the credentialing committee's decision making process regarding all physicians was flawed, in failing to ascertain whether any physician applying for privileges had been reported to the National Practitioner Data Bank, for instance. The Minnesota court in fact found that its state statutory scheme impliedly recognized the claim, because of the "original sources" and "personal knowledge" exceptions, and because the limitation on liability for decisions of the credentialing committee essentially codified the common law negligence standard for the committee's actions.

The Vermont statute protecting peer review documents from discovery contains the same two express exceptions as the Minnesota statute. 26 V.S.A. § 1443 (2007). In that state, the tort of negligent credentialing has been implicitly recognized by the highest court. *Wheeler v. Central Vt. Medical Center, Inc.*, 582 A.2d 165 (Vt. 1989). The Maine and New Hampshire statutes contain no express language like the "original sources" and "personal knowledge" exceptions, however. NHRSA 329:29 (2007); 24 M.R.S.A. § 2510-A (2007). Nor has the highest court in either state considered the viability of a negligent credentialing claim.

In Maine, case law limiting a hospital's duty towards patients treated by independent physicians provides a strong defense against a negligent credentialing claim. The Maine Law Court has expressly declined to recognize a theory of corporate negligence against a hospital for failure to adopt rules and policies regulating the actions of independent physicians practicing within its walls. *Gafner v. Down East Community Hospital*, 1999 ME 13, 735 A.2d 969. In *Gafner*, the court acknowledged that hospitals are now perceived as comprehensive health care centers that "provide and monitor all aspects of health care." *Id.* at 977, ¶ 35. Yet it was reluctant to impose duties on the hospital to control and monitor independent physicians when such a duty might have unintended effects on health care costs and the nature of care provided by staff physicians. *Id.* at 978, 979, ¶ 37, ¶ 43. Furthermore, it noted that hospitals are already extensively regulated by the legislature, and the Maine Health Security Act requires that a hospital extend privileges to a physician commensurate with the physician's training, experience, and professional competence. *Id.* at 978, ¶ 39. The court declined to place additional duties on the hospital in the absence of express legislation. *Id.* The court did partly base its decision on the fact that few other jurisdictions have recognized a theory of corporate negligence for failure to adopt rules and policies. *Id.* Arguably, the Maine Law Court might similarly decline to create a duty towards patients by hospitals in making credentialing decisions, in the absence of an employer/employee relationship and when the duty has policy implications best left to the legislature. And by reason of the lack of express exceptions in their statutes privileging peer review committee documents, Maine and New Hampshire might be two states that escape the national trend towards adoption of the claim of negligent credentialing.

## Vermont Supreme Court Enforces Pollution Exclusion in Homeowner's Insurance Policy

By Bret Powell, *Powell Orr & Bredice, PLC*

Homeowners sustained property damage when a falling suitcase in their basement broke an oil line valve allowing 160 gallons of heating oil to spill. The insurer agreed to pay for damages to the tank and valve, but denied coverage for clean-up costs, damage to the basement structure and damage to personal property.

The Supreme Court concluded that the policy's pollution and contamination exclusions precluded coverage for structural damage, that the release of oil was not an "explosion" and that there was no coverage for damage to personal property. The policy excluded "loss...caused by" listed events and "loss consisting of" listed conditions. The insurer was obligated to cover loss for the oil tank and its contents, but not for other basement fixtures since damage to the tank was caused by the falling suitcase and was not the result of pollution or contamination.

The Court also upheld denial of coverage for the personal property claim, rejecting the homeowner's assertion that the event was an "explosion". The Court stated that the oil spilled because of the suitcase striking the valve, not because of any internal pressure of the oil. Sperling v. Allstate Indemnity Company, 2007 Vt. 126.

Powell Orr & Bredice, PLC served as counsel for the insurance company in this matter.

If you have any questions about this or other issues relating to subrogation, contact Bret. P. Powell at 802-878-1500 ([bpowell@poblaw.net](mailto:bpowell@poblaw.net)) or Patricia S. Orr ([psor@poblaw.net](mailto:psor@poblaw.net)).

**NOTE:** The foregoing is NOT intended as legal advice to any person, but is intended only for the purposes of providing general information.

**Lambert  
Coffin**  
attorneys at law

*In conjunction with the*

**Tri State Defense Lawyers Association**

*cordially invites you to attend a cocktail reception*

*in Lambert Coffin's office at*

**477 Congress Street - 14th Floor  
Portland, ME**

**March 5 2008  
5:00 p.m.**

## To Make You Think

William McKinley, the 25th U. S. President, once had to choose between two equally qualified men for a key job. He puzzled over the choice until he remembered a long-ago incident.

On a rainy night, McKinley had boarded a crowded streetcar. One of the men he was now considering had also been aboard, though he didn't see McKinley. Then an old woman carrying a basket of laundry struggled into the car, looking in vain for a seat. The job candidate pretended not to see her and kept his seat. McKinley gave up his seat to help her.

Remembering the episode, which he called "this little omission of Kindness," McKinley decided against the man on the streetcar. Our decisions - even the small, fleeting ones - tell a lot about us.

Adapted from *Presidential Anecdotes*, Paul F Boller Jr., Penguin Books

## DRI Membership

If you are member of TDLA and wish to join DRI, you can receive one-year free membership. If you are a Young Lawyer with five years or less of practice, you will also receive a certificate for FREE attendance at a future DRI seminar which is good for two years from the date you join DRI.

Go to DRI's website at [www.dri.org](http://www.dri.org) to complete the membership application.

## Help Make the Newsletter Provide What You Need

You can improve the Newsletter by providing input as to what you would like to see included. You can also write and submit articles for approval and publication. Member announcements, awards, updates, etc. are also needed. We will take submissions at any time for review and placement in the upcoming Newsletter.

Send your suggestions to: [www.tridenselawyers.org](http://www.tridenselawyers.org)

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