



The Voice of the
Defense Bar™

The Voice

March 25, 2020

Volume 19, Issue 12

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This Week's Feature



From the DRI Center for Law and Public Policy Justice and the Virus

By Michael G. Jones and Teresa L. Adams

Most courts in the United States have by now issued orders and public notices regarding the novel coronavirus. They have responded to the COVID-19 pandemic in a variety of ways. Trials, court schedules, pretrial procedures, and the very administration of justice have been temporarily upended. For instance, as of March 16, the U.S. District Court for the Northern District of California closed all courthouses to the public and suspended civil and criminal trials until May 1. In Washington, the U.S. district chief judge of the District of Columbia issued an order postponing all civil and criminal trials until May 11.

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- EVIDENCE: The Building Blocks to a Successful Jury Trial, April 3, 2020, 12:00–1:00 pm CST
- Coronavirus: A Primer on Insurance Implications Arising from a Global Pandemic, Parts 1 and 2, April 6 and 7, 2020, 12:00–1:00 pm CST
- Attacking the Reasonableness of Medical Expense Claims, April 8, 2020, 12:00–1:00 pm CST

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Young Lawyers Seminar



June 24-26,
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Atlanta

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Diversity for Success Seminar and Corporate Expo



June 10-12,
2020
Chicago

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In Memoriam

- Patrick E. (Pat) Maloney

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Jennifer Hall, American Trucking Associations

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Quote of the Week

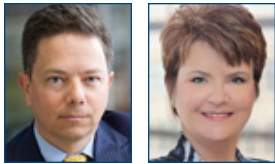
“We’ve got each other and that’s a lot.”

—“[Livin' on a Prayer](#),” song by Jon Bon Jovi, Richie Sambora, and Desmond Child ([#chicagosingalong](#)).

This Week's Feature

From the DRI Center for Law and Public Policy Justice and the Virus

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Most courts in the United States have by now issued orders and public notices regarding the novel coronavirus. They have responded to the COVID-19 pandemic in a

variety of ways. Trials, court schedules, pretrial procedures, and the very administration of justice have been temporarily upended. For instance, as of March 16, the U.S. District Court for the Northern District of California closed all courthouses to the public and suspended civil and criminal trials until May 1. In Washington, the U.S. district chief judge of the District of Columbia issued an order postponing all civil and criminal trials until May 11.

Other judicial limitations are being imposed. For example, some courts invoked the “ends of justice” exception to the criminal Speedy Trial Act to issue open-ended continuances of all trials (including criminal trials) until further notice. See General Order No. 01-20, issued by the United States District Court for the Western District of Washington on March 6, 2020; Administrative Order No. 2020-3, issued by the United States District Court for the District of Kansas on March 13, 2020. The exception allows a court to continue a criminal trial beyond the requirements of the Speedy Trial Act upon a judicial finding that “the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §3161(h)(7)(A).

Other courts issued general continuances, specifically exempting criminal matters that cannot be delayed under federal law. *E.g.*, General Order No. 20-01, issued by the United States District Court for the Middle District of Pennsylvania on March 13, 2020. Still other courts issued orders anticipating business as usual, but restricting certain persons from entering the courthouse, or requiring notice so that appropriate safeguards can be invoked. See Public Administrative Order No. 20-AO-0001-P, issued by the United States District Court for the Northern District of Iowa on March 13, 2020; General Order 20-1, issued by the United States District Court for the District of Massachusetts on March 12, 2020. But these measures are also evolving daily.

How these orders will affect the administration of justice for civil litigants remains to be seen. There is, of course, the potential for civil matters to suffer greater overall delay than criminal matters, even after the pandemic has subsided. Once the country, and the justice system, are able to resume business as usual, criminal matters may be prioritized over civil cases to comply with speedy trial rights. This might be particularly true in jurisdictions that invoked the “ends of justice” exception to continue all criminal trials indefinitely. These extensive delays thus created for many civil cases can be ruinous. Justice denied.

There is also the potential for all types of litigation to suffer prolonged delay as the courts work through electronic filings. This risk is greater if the pandemic is long lasting or if it results in courthouses closed to court personnel as well as to the public. Curiously, the possible ramifications of the current crisis on the judicial system are similar to ones we found in our study of inadequate funding. And they may have the same resulting adverse impact on local economies. See Eric J. Magnuson et al., *The Economics of Justice*, a DRI white paper issued in 2014.

In 2014, DRI’s Center for Law and Public Policy published *The Economics of Justice*, which demonstrated the adverse impact of an underfunded judiciary on civil cases and on the economic well-being of local economies. Interestingly, though for far different and far less controllable circumstances, the limitations imposed on the justice system due to the coronavirus will have many of the same adverse effects on the civil justice system as occur with underfunded courts: less access to court personnel, reduction in staff, the closing of courts, more pressure by judges to reach settlements, the reduction in court hours, and the priority given to criminal cases over civil trials. This will result in significant delays in resolving civil cases in many jurisdictions. Studies show that delayed civil resolution inflicts widespread economic harm. A 2009 study showed a \$9 billion loss in direct revenue to Florida due to court closures and backlogs in civil cases.

As with court underfunding, the pandemic triggers the potential for prolonged delays in the justice system’s ability to resolve pending matters. See *id.* This is a serious

concern, as courts have a constitutional mandate to resolve both criminal and civil disputes. Public trust and confidence also play a vital role in the administration of justice. *Id.* Should the COVID-19 pandemic disrupt the courts' ability to fully function for too long, both of these functions could be temporarily impaired. Such impairment could result in public disillusion and loss of respect for the law with its attending serious consequences.

At least one state appellate court has canceled all oral arguments on its docket for the next several weeks. It issued a statement to litigants explaining that it will decide the affected appeals on the briefs. The court, however, will permit any litigants affected by the order to file a motion requesting a new date for oral argument.

This procedure is reasonable as a temporary response to an unprecedented situation, and it provides a way to keep many appeals moving toward resolution, even during the pandemic. Practitioners and courts alike, however, should be vigilant once the pandemic is over.

There may be pressure to adopt some of these reasonable temporary measures permanently. For example, it is more economical for appellate courts to decide matters on the briefs. Placing another barrier between litigants and appellate courts by making oral argument the exception rather than the norm would conserve judicial resources and save litigants the cost of preparation and travel.

It would not, however, necessarily serve the interests of justice. Making oral argument the exception would deprive attorneys of an important courtroom tool, and further diminish the art of judicial oral persuasion, something the legal profession is already lamenting. It will be interesting to see how changing the default position on oral argument,

even temporarily, affects litigants, practitioners, and appellate courts.

It is too early to glean any lessons from the current pandemic. Right now, courts are grappling with problems in real time. For example, a judge presiding over a four-week jury trial received general instructions from his state supreme court that would require him to self-quarantine due to his contact with someone who had traveled to Europe. The trial was in its fourth week when the supreme court promulgated the self-quarantine rule. What is the right answer here? Mistrial? Continuance? Exception to the self-quarantine mandate?

In time, there may be a real opportunity for courts to more accurately anticipate their needs during a future protracted disruption and to adopt appropriate policies, procedures, and strategies. Courts that have not yet adopted a pandemic policy must do so now, with a calamitous real-world experience sitting on their shoulders.

[Michael G. \(Mike\) Jones](#) is a member of the Judicial Task Force of DRI's Center for Law and Public Policy. He is a partner with **Martin Pringle Oliver Wallace & Bauer** in Wichita, Kansas, and maintains a thriving litigation practice, focusing on aviation law, products liability, and complex commercial litigation. Mr. Jones is also a DRI member.

[Teresa L. Adams](#) is a partner at **Martin Pringle** in Wichita, Kansas. She focuses her practice on legal research and writing for civil litigation defense matters, including aviation and product liability.

COVID-19

Bvvrrr...Woosh...Ping

Connecting, Coping, and Caring While Working at Home

By Emily G. Coughlin

Like many of you, last week was the first time our small law firm went completely virtual. At 6 a.m., I grabbed my morning cup of coffee and a glass of water as the torrent of morning emails, texts, and calendar invites filled the air. With each *Bvvrrr* of vibrating texts and emails, I responded with a tap and a *Woosh!* As each client, firm member, or colleague demanded attention on a case, new COVID-19 challenge, or DRI business, I became more focused and less aware that I was still in my pajamas, sitting at my dining room table. Eventually, it slowed down a bit and I looked up at the clock. It was noon, my cup of coffee still full but cold, and the water untouched. Before grabbing a new cup of coffee, I took one more call, but this time the call was interrupted by a *Ping...Ping* and another... *Ping* in the background. When I hung up, I noticed that the *Pings* were an endless stream of text messages from DRI friends from all over the country. I scrolled and read the text messages. They were not about business. Rather, they were filled with comfort and humor to help us connect, cope, and smile. Suddenly, the busy stress-filled morning faded.

Connecting is important. I don't like the term "social distancing." I hope the media begins to drift away from it. The term should be replaced with "physical distancing." We are social beings and the texts and calls from family and friends reveal how important staying socially connected really is. Although virtual, a community of friends is still there to help us cope. Even though it's through a text message, I can still see the personalities and faces behind each.

Togetherness and shared experiences help us cope, but humor helps us heal and rejuvenate to keep going. From the off-color memes, to the cross-continent recipes of various alcohol-infused elixirs, to sharing the challenges of working from home, each text brings its own comfort with warmth, a virtual hug, and a smile. When Sara



Turner, DRI Retail and Hospitality Committee Chair, texted a description of her upcoming online DRI series on "effectively working from home, managing teams from home, staying sane, etc." (stay tuned for details) the following responses *Pinged* through my phone:

- "Great idea...Working from home while homeschooling 3 kids...challenging my sanity, for sure."
- "Same here...keep worrying if things are clean enough and it takes me away from my work to clean some more."

- "How am I supposed to work when I just heard the boys say close the door so it doesn't explode into the hallway?"
- "I don't EVER leave these conversations except when I'm doing yoga live streamed on my phone."

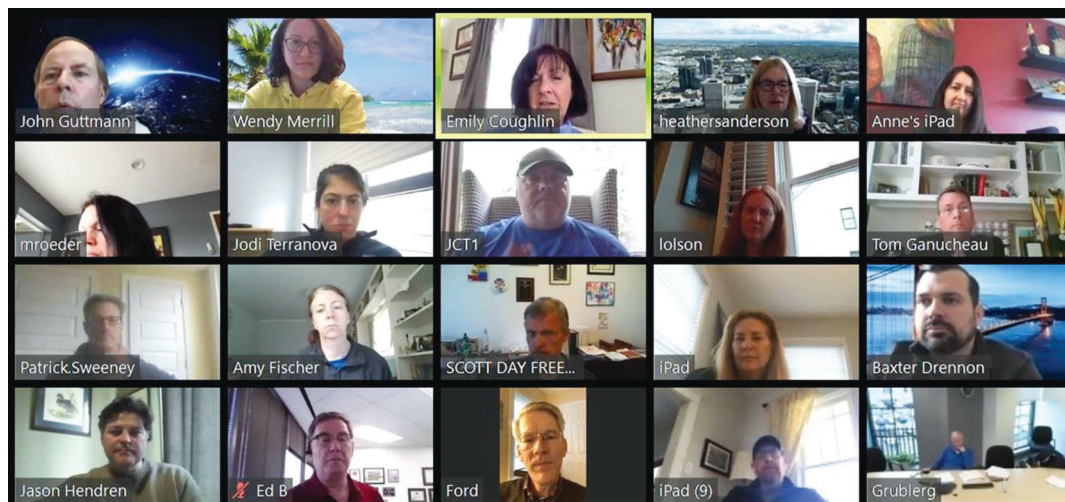
Ironically, although we are physically distant, these *Pings* help us cope—even laugh—and share how much we care.

For me, each text is not an interruption but a friend checking in to see how I am and an opportunity for me to check in on him or her. While we may be distant, we are not apart. A DRI friend from Canada took a break yesterday from her workday to say, "Hello, my friend." That text, traveling across the border from someone I met years ago when we were both DRI state representatives, helped warmly remind me that DRI is far more than a professional organization. We are a community of friends and families that are connected through thick and thin to care for each other both personally and professionally. Let's use this organization to help us all get through the challenges that lie ahead. For example, DRI has developed a Coronavirus Information Center available on the DRI website that contains a range of resources to assist you with navigating the COVID-19 crisis. Please keep checking back, as it will be updated regularly. <https://dri.org/about/coronavirus-resources>.

In addition, on Monday, March 23, at 12:00 p.m. EDT, I began hosting a Zoom Meeting to connect as many of us as possible on a daily basis for a hot cup of coffee and a warm “Hello, my friend.” Going forward, I will be present for fifteen minutes of Community Coffee each day with all of you, my friends across the nation and around the world, at DRI. I hope to see your smiling faces on my screen.

To connect with DRI COMMUNITY COFFEE each day at 12:00 PM EDT (no password or ID required), join Zoom Meeting at <https://zoom.us/j/832258568>.

DRI President-Elect [Emily G. Coughlin](#) is a founding partner of the firm of **Coughlin Betke LLP** in Boston. Her practice concentration includes over 25 years of broad-ranging civil litigation experience and trying cases on behalf of small and large businesses, healthcare providers, and insurers. Her extensive state and federal court trial experience includes cases involving construction-related litigation, employment liability, professional liability, products liability and premises litigation.



DRI Announces New Webinar Pricing

Due to the current situation, DRI has elected to change its webinar pricing model to provide its members with more flexibility and added benefit. Effective immediately, members can gain access to DRI webinars on a per seat basis. The new pricing model will enable members to access and view online programs from anywhere and at any time. Once a webinar is purchased, users will also be able to access the online session through their account on a continuous basis. Should you have any questions related to DRI webinars or this new pricing structure, please contact DRI Customer Service at 312.795.1101. Please note the only way to receive CLE credit is to be individually registered.

Don't miss these upcoming webinars:

- [Your New Virtual Law Firm](#) (April 2): FREE
- [EVIDENCE: The Building Blocks to a Successful Jury Trial](#) (April 3): \$50 per seat

- [Coronavirus: A Primer on Insurance Implications Arising from a Global Pandemic Parts 1 and 2](#) (April 6 and 7): \$99 per seat for DRI members – includes both sessions
- [Attacking the Reasonableness of Medical Expense Claims](#) (April 8): \$50 per seat
- [“What the Heck Is Going On?”: The Evolution of the Nuclear Verdict](#) (April 10): \$50 per seat
- [Evaluating Talent: Best Practices for Screening and Onboarding New Talent](#) (April 16): \$50 per seat
- [Juror Confirmation Bias: Powerful, Perilous, Preventable](#) (April 28): \$50 per seat

Learn more about DRI webinars and register for them [here](#).

And The Defense Wins

Keep The Defense Wins Coming!

Please send 250–500 word summaries of your “wins,” including the case name, your firm name, your firm position, city of practice, and e-mail address, in Word format, along with a recent color photo as an attachment (.jpg or .tiff), highest resolution file possible (*minimum* 300 ppi), to DefenseWins@dri.org. Please note that DRI membership is a prerequisite to be listed in “And the Defense Wins,” and it may take several weeks for *The Voice* to publish your win.

Raymond Groble and Matthew Hammer



On February 25, 2020, the Seventh Circuit Court of Appeals affirmed a summary judgment that was secured by DRI members and **Daley Mohan Groble PC** partner [Raymond Groble](#) and associate [Matthew Hammer](#), on behalf of their client, BNSF Railway Company, in a Title VII case brought by a railroad employee. Both Mr. Groble and Mr. Hammer are based in Chicago.

The employee alleged national origin and citizenship discrimination, retaliation, and harassment in violation of Title VII after the railroad allegedly refused to change the employee’s citizenship status in an internal database, declined to promote the employee to conductor after he complained to Human Resources about his citizenship status, and placed a symbol next to his name on a public employee roster to indicate that he was ineligible for promotion to conductor.

In a motion for summary judgment, the defense for BNSF Railway argued that the employee’s claims were time barred because he failed to timely file a charge with the EEOC within 300 days of those alleged events. The U.S. District Court for the Northern District of Illinois agreed and granted summary judgment in favor of the railroad. The employee appealed to the Seventh Circuit.

The central issue on appeal was whether an intake form completed by the employee constituted a charge for purposes of the timeliness of his Title VII lawsuit. The employee contended that the intake form constituted a charge and rendered timely his Title VII claims. The defense argued that the intake form did not constitute a charge because it did not request remedial action or trigger investigation by the agency. Rather, the intake form was a pre-charge screening form used to provide relevant information to the agency so that it could determine whether and how to investigate.

The Seventh Circuit agreed with the BNSF Railway appellate team. *Amen Ra v. BNSF Railway Company*, No. 19-1428, 2020 WL 897613 (7th Cir. Feb. 25, 2020).

The appellate court unanimously affirmed the summary judgment in favor of BNSF Railway in a succinct, four-page, per curiam opinion. The decision reinforces the importance of ensuring that plaintiffs satisfy administrative requirements before filing employment discrimination lawsuits.

DRI Cares

CCRT Helps NC's Hungry

During the **DRI Corporate Counsel Roundtable**, held earlier this month at the Omni Grove Park Inn in Asheville, North Carolina, attendees supported the [Manna Food Bank](#) by packing 150 weekend food bags for local school kids who

would otherwise go hungry. **#DRICares** was thrilled to be able to help the Asheville community!



Public Service Project
MANNA Food Bank
MANNA Packs for Kids

| CONNECT | GROW | LEARN | The DRI Community

Upcoming Seminars

Employment and Labor Law Seminar, May 20–22, 2020



If you're a management-side employment and labor attorney or in-house counsel, you don't want to miss DRI's Employment and Labor Law Seminar, May 20–22 in Denver. Participate in sessions featuring the latest developments in matters critical to employers and those who advise them. Save \$100 when you register by April 20. [Click here](#) to view the brochure and to register for the program.

Diversity for Success Seminar and Corporate Expo, June 10–12, 2020



Hear nationally recognized thought leaders and political commentators discuss diversity-related issues during DRI's Diversity for Success Seminar and Corporate Expo, June 10–12 in Chicago. Session topics include how to combat juror biases; how to advise clients on mitigating employment risks in the evolving world of diversity; how to promote inclusion in the workplace; and more. Register online by May 11 to save \$100. [Click here](#) to view the brochure and to register for the program.

Young Lawyers Seminar, June 24–26, 2020



Join other young lawyers and counsel in Atlanta, June 24–26, for DRI's Young Lawyers Seminar. Hear from exceptional in-house and outside counsel on topics sure to improve your practice. Sessions include Trial Prep from Day Zero, Elevate Your Elevator Speech, Mediation 101, and more. Save \$100 when you register by May 26. [Click here](#) to view the brochure and to register for the program.

Upcoming Webinars

Your New Virtual Law Firm—FREE Webinar, April 2, 2020, 12:00–1:00 pm CST



This pandemic has brought new challenges to how we work. We are now all remote workers, which requires equipment, connectivity, and ways to share information, while still maintaining a secure environment. This webinar will address the elements necessary to operate in this “new world” and suggest ways to get there quickly, efficiently, and safely. [Click here](#) to register for this free seminar.

EVIDENCE: The Building Blocks to a Successful Jury Trial, April 3, 2020, 12:00–1:00 pm CST



This course seeks to provide insight into the effect of evidence on the success of the defense during a jury trial. It will provide information on the different types of evidence, the method by which to obtain that evidence, and the admissibility of that evidence at trial. [Click here](#) to register.

Coronavirus: A Primer on Insurance Implications Arising from a Global Pandemic, Parts 1 and 2, April 6 and 7, 2020, 12:00–1:00 pm CST



COVID-19 has brought the world to a standstill. In a matter of weeks, it has resulted in the infection of over 200,000 people in over 150 countries. Thousands of people have died. The World Health Organization has declared it a global pandemic. In its wake, COVID-19 has not only threatened the health of the global population, it has shaken the core of the global economy, resulting in losses in the hundreds of billions and prompting the United States to propose a trillion-dollar stimulus package to aid individuals and businesses in their effort to survive the economic effect of this virus. The effect of COVID-19 on the insurance industry is likely to be significant as the exposures arising from this global pandemic prompts an analysis of myriad insurance risks under a variety of products for first-party property and business interruption benefits, event cancellations, and liability claims. This two-part presentation will explore the emergence of COVID-19 and its effect on insurance risks. [Click here](#) to register.

Attacking the Reasonableness of Medical Expense Claims, April 8, 2020, 12:00–1:00 pm CST



Plaintiffs routinely request damages for overinflated medical expenses. This program offers strategies for collecting the evidence necessary to attack these damages. The end result is intended to give jurors a behind-the-scenes look at how plaintiffs’ doctors and lawyers build a claim. [Click here](#) to register.

In Memoriam

Patrick E. (Pat) Maloney



DRI is sad to report that Past President **Patrick E. (Pat) Maloney** passed away March 22 after courageously battling a long illness. Information concerning a memorial was not available at the time of publication.

DRI Membership—Did You Know...

Save More with Laurel Road

Wouldn't it be great to save up to \$20,000 on your law school loan? What can you do with that money in your wallet? Buy a home or a car, invest in your business, cover health-care insurance for a year, or build up a savings account?

Did you know that DRI members receive an extra .25 percent discount when refinancing student loans with [Laurel Road](#), DRI's newest partner and endorsed student loan

refinancing provider? Those who select auto pay receive an additional .25 percent discount. There are no origination fees or prepayment penalties.

Laurel Road's new Parent Plus Program allows you to refinance your child's Parent Plus Loan at reasonable rates.

DRI membership pays you back! Check out [Laurel Road](#).

State Membership Chair/State Representative Spotlight

Vermont

State Membership Chair



Walter E. Judge, Downs Rachlin Martin PLLC

Areas of Practice: Litigation.

DRI member since 1992.

Walter's experience with DRI: "I have loved every minute of my years with DRI—fun and information meetings, wonderful people and connections, great resources, legal research, publications, experts, attorneys across the country with expertise and experience, among other things."

Fun Fact: "One, I get to live in Vermont. Two, I love craft beer and Vermont has the world's best beer! Three, see numbers one and two."

State Representative



Daniel R. Long, Paul Frank + Collins PC

Areas of Practice: Employment and labor law and litigation.

DRI member since 2019.

New Member Spotlight

Jennifer Hall, American Trucking Associations



Jennifer Hall is the general counsel and executive vice president for legal affairs for the **American Trucking Associations** (ATA), a national organization representing the interests of the trucking industry.

As chief counsel, Ms. Hall is responsible for ATA's legal affairs, including the ATA Litigation Center. Both ATA and the Litigation Center engage in litigation to advance and protect the interests of the motor carrier industry in federal and state courts around the nation, as a direct party, an intervenor, and as an amicus curiae.

Before coming to ATA, Ms. Hall spent a decade as a professional staff member at the House Transportation and

Infrastructure Committee, most recently as general counsel and deputy staff director.

Earlier in her career, Ms. Hall has worked with the Federal Emergency Management Agency and the House Committee on Oversight and Government Reform as well as in the private sector.

She has a bachelor's degree from the University of Arizona and is a graduate of the University of Notre Dame Law School.

Quote of the Week

"We've got each other and that's a lot."

—"[Livin' on a Prayer](#)," song by Jon Bon Jovi, Richie Sambora, and Desmond Child ([#chicagosingingalong](#)).