



Association of Attorney-Mediators

AAM-a-gram

March 2014

“...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.”

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President’s Message –

In the next sixty days, we’ll be in Atlanta, Georgia for a superb advanced training program put together by Michael Leech, our President-Elect. Ross Stoddard will be our moderator, so you know we’ll have an informative and entertaining time as we earn some CLE. You told us in our strategic planning surveys that high quality advanced training was one of the most important activities for our association. That remains our number one goal. Based upon your comments last fall we met that goal at the Houston program. I expect the conference in Atlanta to be the same high quality as last fall’s.

One of the other goals that came out of our strategic planning session was to grow our membership. Our mission is similar to Captain Kirk’s....”to boldly go where no man has gone before.” And so, in an effort to expand our membership and go where we’ve never gone before, we chose Atlanta and have already received new applications from that area. The conference will take place at the J.W. Marriott in Buckhead, the uptown district of Atlanta, near plenty of restaurants, bars and upscale shopping. Friday night, we’ll have cocktails and dinner at Shula’s 347 Grill where we should enjoy a relaxing time visiting with each other.

Another important development this year is the increase in insurance coverage for our members. I tend to forget about this very important benefit to being a member. The insurance claim coverage has increased from \$250,000 to \$500,000 while the aggregate remains the same at \$2,000,000. There is important information in this newsletter reminding everyone of required wording to mediation participants for insurance coverage.

Your Board of Directors has been working hard to implement our strategic plan’s goals – excellent advanced training and expanding into new areas of our country. None of this would be possible without the dedication and hard work of our executive director, Brenda Rachuig. She is the force that keeps us moving ahead. We wouldn’t be where we are today without Brenda. Brenda is completing her fifteenth year of service to AAM this year. When you say hello to Brenda in Atlanta tell her how much you appreciate her and give her a big thank you!

See you in Buckhead!

Mike Patterson, AAM National President

WELCOME

A Special Welcome to New AAM Members

We are pleased to announce the following new AAM members (since the last newsletter):

Harold Adkins,	<i>Baton Rouge, LA</i>	Laura Maresca,	<i>Denver, CO</i>
Fran Brochstein,	<i>Houston, TX</i>	Dyann McCully,	<i>Fort Worth, TX</i>
Leif Clark,	<i>San Antonio, TX</i>	Joseph Paulk,	<i>Tulsa, OK</i>
Ronald Fisher,	<i>St. Louis, MO</i>	Richard Reed,	<i>San Antonio, TX</i>
Hale Freeland,	<i>Oxford, MS</i>	James Reiman,	<i>Evanston, IL</i>
Tom Fuller,	<i>Dallas, TX</i>	Leslie Sacanowicz,	<i>San Antonio, TX</i>
Wade Hallisey,	<i>Murphy, TX</i>	Donna Solomon,	<i>Ft. Lauderdale, FL</i>
Charles Hanor,	<i>San Antonio, TX</i>	Alyce Spruell,	<i>Tuscaloosa, AL</i>
Debra Horberg,	<i>Skokie, IL</i>	Anastasia Svigos,	<i>Chicago, IL</i>
Jeannine Host,	<i>Addison, TX</i>	Paul Van Osselaer,	<i>Austin, TX</i>
Julie Johnson,	<i>Dallas, TX</i>	Karen Vervaecke,	<i>Omaha, NE</i>
Daniel Kelley,	<i>Chicago, IL</i>	John Wooldridge,	<i>Houston, TX</i>
Melvin Kennedy,	<i>St. Louis, MO</i>	Diane Worth,	<i>Wichita, KS</i>

We welcome you to the Association of Attorney-Mediators and look forward to your active participation within this organization! Please let an officer of a local chapter or a member of the national AAM board know what AAM can do for you and how you would like to become involved in AAM's activities.

Where Do I Find It On The Website???

Board of Directors and Chapter Presidents Rosters - <http://www.attorney-mediators.org/aboutaam>

Annual Insurance Coverage Letter: <http://www.attorney-mediators.org/Sys/Login?ReturnUrl=%2fmembers>

You will need to log in to the members area. You will also find mediation forms for members' use, a forum to share your thoughts, and a way to log in to your personal profile to update the information and keep it current.

Annual Statement of Dues and Registration Fee Paid for Events for Tax Purposes:

Under View Profile, see the heading Invoices and Payments. You must be logged in to your account to view this information.

Newsletters – Archived and Current: Under the Resources tab see Newsletters. <http://www.attorney-mediators.org/newsletters>.

Great Day in Houston

The AAM Advanced Attorney-Mediator Training in Houston, on November 8, 2013, was a very successful and enlightening program. We were hosted by the DoubleTree by Hilton near the airport, and were surprised to find a very nice facility which was undergoing a complete remodel. There were a few construction noises in the background, but the event was handled in a very smooth way and everyone was delighted with their sleeping accommodations and the meeting facilities. The Italian buffet lunch was a big hit and we have been asked to put this on the agenda again. This was truly a “fly-in, fly-out” and the convenience of the airport shuttle was amazing in a city as large and bustling as Houston. We will continue to hold this training on the second Friday of November, as it is a great way to get your CLE’s before the end of the year!

A group of seventeen early arrivals joined the board, after their face-to-face board meeting, for a casual dinner together on Thursday evening. A special thank you to this group of volunteer board members that continually give their time to stay on top of the issues and concerns pertaining to AAM. This “evening before” dinner has been deemed a great part of AAM trainings, as it gives everyone a chance to meet and renew AAM friendships prior to the beginning of the CLE work day. Eight newer AAM members, attending an AAM conference for the first time, joined the dinner group and it was nice to get to know them without the hustle and bustle of the busy CLE day. Watch for the “evening before” dinner on future registration forms as it will continue to be offered.

This program offered something for everyone, with outstanding speakers and panelists. A very special thank you to the speakers and panelists that gave their time to speak to us and even entertain us: **Elaine Block, Nancy Huston, Trey Bergman, Bryan Coleman, Kathleen Roth, Doug Shaw, Tom Woodrow, Ron Wiesenthal, Julie Benkoski, Liz Simon, Mike Amis, Courtenay Bass, and Suzanne Mann Duvall.**

The reviews for this program could not have been better and tell us we are on the right track with continuing to highlight these superb trainers and speakers at our CLE events. We will continue to read each evaluation and try to incorporate the requests of attendees. We hope to see you at the two day event, the Advanced Attorney-Mediator Training and Annual Meeting, on April 25 and 26, 2014, in Atlanta, Georgia.



Michael Leech, AAM President-elect, welcomes everyone to Houston showing his true “Texas” spirit with the help of his cowboy hat.

Association of Attorney Mediators “AAM”

By: John W. Hughes,
Aledo, TX

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To learn about what AAM says about itself, go to www.attorney-mediators.org.

It defines itself as:

“What is AAM?”

AAM is a nonprofit trade association of qualified independent attorney-mediators. Members must meet qualifications and ethical standards, which meet or exceed state or federal requirements for mediators. AAM's 400 plus members have collectively mediated in excess of 300,000 cases.”

I want to tell you some things about AAM that one should know in the hope that it will bring to you the respect for the organization and its members that it has brought to me. I have been a member for years and a past-president of AAM.

In part, AAM desires to protect “mediation”. The process as we know it in civil litigation became prominent with the enactment of our Alternative Dispute Resolution Statue, Tex. Civ. Prac. and Rem. Code Sec. 154, in the late 1980's. AAM long-time member, Justice Frank G. Evans, is the principal drafter.

AAM sponsors two seminars each year: One at its National Conference in the spring and the other in the fall. These conferences are superior sources of continuing education in the art of mediation. The presenters are mediators of extensive experience and are excellent speakers. The National Conferences have been in various cities, from San Diego to Chicago, to New Orleans, St. Louis, Kansas City, Texas' larger cities, and even Little Rock. Mediators attend them from many different states. The camaraderie and cross-pollination of ideas and procedures are enriching.

The objective is to maintain the highest ethical and skills levels of the participants for the sake of

providing the public with the most competent mediators.

Not only that, AAM provides for self-discipline of its members and malpractice insurance coverage. The insurance is a group policy which covers both mediation and arbitration within the United States. The insurance premium is included in the annual dues, which makes it very affordable.

Some have said that the people are in no greater danger than when the legislature is in session. Since Texas is a leader in mediation across the country and has a statute that provides the most protection of confidentiality for mediation (an essential element of effective mediation), AAM has retained a lobbyist to watch for legislation that might adversely affect the process of mediation. It is not that a legislature wishes to harm the process, but out of ignorance may include provisions in a particular statute that has that effect. When such an event occurs, selected members from AAM meet with the relevant legislatures, committees, and advisors to inform them of the effect of their proposed legislation. Such service to the community has thus far protected a most successful and beneficial process from such legislative activity. AAM members in other states are taking up this same process. This year, however, with approval of the AAM Board, many AAM members have formed a separate entity to carry on this process. AAM is supportive and its members participate. The new organization is TAMC headed by Mike Amis, a mediator in Dallas, Texas.

Mediators generally deal with lawyers and not other mediators. Therefore, in our practice we have little or no contact with other mediators. Because mediation is more of an art than a technical process, a mediator may become less effective due to not having his peers honing his/her skills and reminding him/her of ethical dangers. For example: Confidentiality is essential. If a mediator breaches this duty by informing one side of something the other side considers confidential, harm may occur because of the mediator's failure. It destroys the mediation, harms someone, and ruins the mediator's reputation. There are pitfalls, land mines, and other such events that can cause a mediator to make this mistake. The AAM seminars remind and instruct its participants regarding these areas, dangers, and mistakes. Great length is taken to remind us not to fall into one of these traps. Lawyers will ask

questions of a mediator to test if he/she is protecting confidentiality before sharing confidential information that can help the process. A mediator not subjecting him or herself to this type of training may be less likely to be on guard against breach of confidentiality traps.

AAM also has Chapters in several locations; Mississippi, Illinois, St. Louis, Oklahoma and in several regions of Texas; North Texas, Central Texas, Houston, San Antonio/Bexar County; East Texas. Many of these chapters hold monthly or semi-monthly meetings for an ongoing mini-CLE for their members with a speaker and time to get together locally with their mediator peers on a regular basis. The North Texas Chapter currently meets in Dallas on a semi-monthly basis, but a Fort Worth area meeting could be put into the works, as well.

I hope that this short article will encourage mediators to take a look and participate in AAM. AAM's website is www.attorney-mediators.org and you can become a member under "Join AAM", view and search the members directory under "Find A Mediator", keep up to date on CLE offerings, and there are very good articles there under "Resources". Subscribe to be put on AAM's email notification system and you will be kept informed of all the happenings. You can call the AAM office if you need help with anything. The contact information for the AAM National Office is:

Association of Attorney-Mediators
Post Office Box 741955
Dallas, Texas 75374-1955
1-800-280-1368

972-669-8101; 972-669-8180 fax; www.attorney-mediators.org; email: aam@attorney-mediators.org



We're listening! Contact AAM with comments, questions, concerns, suggestions.

1-800-280-1368 aam@attorney-mediators.org

Watch Your Email Inbox

Again this year, we will vote in new board members at the Annual Meeting in Atlanta, Georgia, on April 26, 2014.

Watch your email inbox for the proxy, which should arrive soon. We will have two vacancies to fill. The Nominating Committee will be publishing the bios of their suggested candidates with the proxy.



Please fill out and return the proxy, whether you will or will not be present at the Annual Meeting.

A special thank you to those members offering to fill these vacancies!

✓ You're Covered

AAM Group Liability Policy Limits Raised

As of January 1, 2014, the limits on the group liability insurance policy have been raised to **\$500,000/\$2,000,000 aggregate with a \$500 deductible per claim**. Your letter of coverage arrives with your membership renewal confirmation email. If you have not received a confirmation, the AAM National office may not have received your **Membership Qualifications 2014** – which must be received to complete the membership renewal. *The insurance question on the qualifications must be answered in order to be listed for insurance coverage.* This group policy covers mediations and arbitrations conducted within the United States, and is included in the membership dues. See page 7 of this newsletter for special requirements of the insurance policy. Questions? Contact aam@attorney-mediators.org



Our **volunteer** AAM board members are awesome! Be sure to thank them for giving their time!

Is Georgia On Your Mind?

It should be! The upcoming Advanced Attorney-Mediator Training and Annual Meeting is sure to be a blockbuster! *Like an old sweet song*, Ross Stoddard and a dozen top notch AAM members and mediators from the South, along with our audience of experienced mediators will keep *Georgia on [your] mind* in coming months, helping you resolve tough cases with insightful ideas and inventive tools. Practical, specific and interactive, the program is process-oriented *the whole day through*. From mediator selection to final caucuses and closing, we'll grapple with problems that occur at each stage of the mediation process—including thorny ethical issues. *In peaceful dreams, the road leads back to Atlanta* for the AAM Annual Meeting.

The evening before the conference begins, there will be a casual dinner gathering for those “early arrivals” that don't want to eat alone. Be sure to show your interest on the registration form so we know to include you in the details. **Friday evening, AAM will host dinner and cocktails at Shula's 347 Grill**, just a block away from our host hotel, the JW Marriott Atlanta – Buckhead. Friday evening dinner and cocktails are included in the registration fee for attendees. Bring your spouse or guest, and enjoy time with other mediators from around the country. The food selections are Long Island Strip Steak or Pan Seared Atlantic Salmon – it is sure to be fun evening with delicious food!

Buckhead is a beautiful suburb of Atlanta, but only a short cab or train ride to the many tourist attractions that are available; CNN Headline News, Coca-Cola, the Aquarium, the High Museum, the Botanical Gardens. No weather worries for something to do, as the JW Marriott is connected to Lenox Square Mall with many upscale stores, shops, boutiques, and restaurants. Atlanta, and Buckhead, have so many places to eat and visit,

plan to stay a day or two longer to enjoy everything. There is a wonderful rooftop bar and restaurant at the W Hotel, a few blocks from our venue and it is a great place to enjoy a beverage and the city skyline of downtown Atlanta! Be sure to check out the “Things to Do in Atlanta” on the AAM website at <http://www.attorney-mediators.org/Atlanta-Information>. We've tried to make it easy for you to plan your itinerary before you go!

On Saturday morning, we will hold the Annual Meeting and we need your vote! Watch for your proxy to arrive in your email inbox prior to the conference. We will vote on new directors and welcome the new President and President-elect. Continental breakfast is provided for attendees.

Saturday afternoon will once again showcase our popular **Bonus Marketing Segment**. This segment does not offer CLE credit, as the majority of states will not allow credit for marketing topics or segments. This year, we have Michele Gibson of Digital Smart Tools, LLC, joining us to give us tips and pointers that will help guide us into the digital world, with Trey Bergman leading the usual roundtable format that everyone enjoys. A hot buffet lunch is available for purchase for this segment.

Again, we hope to see you in Atlanta and if you need assistance with travel or registration, please call or email Brenda in the AAM National Office. 1-800-280-1368 or aam@attorney-mediators.org www.attorney-mediators.org/register



This information is provided to AAM members each year with their membership renewal confirmation. Please note the requirements of the insurance policy highlighted below. *Note: AAM's agent at Complete Equity Markets, Betsy Thomas, retired in January 2014. Please note the contact information for Kaitlyn Hassall's, her replacement.

IMPORTANT INFORMATION ABOUT AAM'S PROFESSIONAL LIABILITY INSURANCE COVERAGE

The Association of Attorney-Mediators (AAM) carries a policy of Arbitrators and Mediators Professional Liability Insurance that covers all of the Association's members who are in good standing. This article contains basic information that every member should know about AAM's insurance coverage and underwriter, requirements of the insurance policy, and procedures to follow if a member is notified of a claim or potential claim.

Insurance Coverage and Underwriter

The limits of AAM's insurance policy are \$500,000.00 per claim, with an aggregate amount of \$2,000,000.00. There is a \$500.00 deductible for each claim. Underwriters at Lloyd's, London are responsible for 100% of AAM's coverage. AAM's policy begins on January 1 of each year and ends on January 1 of the following year.

REQUIREMENTS OF THE INSURANCE POLICY

AAM's insurance policy requires that its members provide mediation participants with the following information:

- a **written** statement to all parties explaining the member's role as a neutral intermediary and stating that the member may not act as an advocate for either party.
- in cases where the member assists in preparing a written settlement agreement in connection with the provision of dispute resolution services, a **written** statement advising each participant to have the settlement agreement independently reviewed by the participant's counsel before executing the agreement.

Claim Procedures

Claims happen, and sometimes they are filed against our members. If a member is notified of a possible legal action, the member must notify the insurance carrier representative named below. Notice of possible legal action includes any notification that a legal action will be taken against the member, including a letter or telephone call, personal conversation, or knowledge of a potential situation that may give rise to a claim. Notice of possible legal action is not limited to a member's receipt of a summons and complaint. Any member who receives notice of a possible legal action, as described in this paragraph, must notify the following insurance carrier representative by certified mail:

Mr. Rob Badgley
Locke Lord LLP
111 South Wacker Drive, Suite 4200
Chicago, Illinois 60606
rbadgley@lockelord.com Phone 312-443-1865

A member who receives a summons and complaint must forward a full and clear copy to Mr. Badgley. Any relevant information the member believes may help Mr. Badgley in understanding the matter should also be included. A member who receives a letter indicating possible legal action must send a copy of the letter to Mr. Badgley by certified mail.

Copies of all information and claims provided to Mr. Badgley must also be sent to AAM's insurance agent, as follows:

Kaitlyn Hassall for Lawrence T. P. Molloy
Complete Equity Markets, Inc.
1190 Flex Court
Lake Zurich, IL 60047 Phone 800-323-6234

AAM also requires that members notify it of potential claims when they apply for membership and each year as a part of the membership renewal process. AAM requests that a copy of any actual claim filed be sent to: Association of Attorney-Mediators, P. O. Box 741955, Dallas, Texas 75374-1955.

A member may not admit liability for or settle any claim or incur any costs or expenses in connection therewith without the written consent of the underwriters, who are entitled to take over the conduct of the defense of any claim in the name of the member.

Is Rule 169 the Beginning of the End of Mediation?

Mike Amis, Dallas, TX

Mike Amis is Co-Chair of the Texas Attorney-Mediators Coalition (TAMC), a Texas advocacy organization dedicated to promoting and preserving Texas court-annexed mediation. Below are edited portions of his presentation on January 17 to a meeting of the ADR Section of the State Bar of Texas

In November, 2012, then-Associate Justice Nathan Hecht was quoted in "Texas Lawyer" as follows: "I hope it [Rule 169] will help us get our business back from arbitration and make it possible for young lawyers to get more courtroom experience. I hope it will be an enormous boost for the civil trial system. . . . It's just a way — as lawyers talk about all the time — what they used to do in the old days, you work up a file, you go to the courthouse, you pick a jury, you put your evidence on a couple of days, you get your decision, and go on."

As many of us know, court-annexed mediation originally was prohibited in the Rule 169 promulgated in November 2012 and sent out for comment as required. The efforts of the spontaneously-formed Texas Attorney-Mediators Coalition, TAMC, were successful, and the modified Rule 169(d)(4) became effective March 1, reinstating the mediation powers of parties and courts provided by Chapter 154 and other Texas statutes.

In October 2013, judges and trial lawyers from New York, New Jersey, South Carolina, Colorado, Arizona, Nevada, Utah, Colorado, and Texas gathered in Austin for the "National Jury Summit - The Expedited Jury Trial". How to save the civil jury trial is a national conversation focused on how the judicial systems of the states can offer litigants trials more promptly and cost-effectively. All eyes are on Texas in light of our newly-enacted expedited trial statute and Rule 169 of the Texas Rules of Civil Procedure which mandates its provisions for cases seeking \$100,000 or less.

From its founding, AAM's mission has been, and is today, to support and promote professional and qualified attorney-mediators who are committed to the proposition that the existing system can fulfill its intended purpose now through the use of court-annexed mediation. By statute, there is another, parallel, consistent policy of Texas: the peaceful resolution of disputes. Our state has two distinct policies which are in harmony with each other: the prompt, fair, cost-effective resolution of civil actions, TRCP Rule 1, and the fair, prompt, cost-effective resolution of disputes, Chapter 154. One might think they are identical, but they are no more the same than having a cheap, quick, fair fight with right of appeal is the same as cheaply, quickly, fairly ending the fight and closing the file right then.

Today in Texas, I believe that we are at a very interesting time in our assessment of the civil trial system. In 1990, Dallas district courts carried between 1100 and 1300 cases at any one time. Harris County - each court carried 2000 cases. Today, Dallas' district courts are carrying around 700 cases. Workers comp cases gone. Medical Malpractice cases, in large measure, gone. Arbitration is being increasingly promoted and upheld. Young lawyers are having great difficulty in trying cases. Who or what is to blame? Arbitration? Mediation? Judges? And, yes, what about "mandatory ADR"? Sky-rocketing costs? And, with increasing globalization, how about transnational ADR? We want the world to come to Texas, and it wants to come, but the world doesn't want to come to a Texas courtroom. The world, Europe, wants to arbitrate in London, and asks us to "please sign on the dotted line of the contract."

In the push for quicker, cheaper trials, there is the temptation to eliminate court-annexed mediation. The ability of a party to seek an order compelling mediation, a referring court's power to order mediation over objection and to order that reasonable fees be paid to a qualified mediator is the foundation upon which all else rests: voluntary mediations, courses in colleges and law schools, training programs, mediation organizations

such as AAM, and trial court efficiencies in administering civil justice all were largely non-existent in Texas prior to the courts ordering mediation. In this national conversation, we need to speak up. We've been sitting down at the end of the table convening mediations for 25 years. We're not potted plants, we can contribute.

We know one thing: we only try 3%. If we were to google "what percentage of civil cases settle." we would get the Phoenix News article referencing the 2005 National Center for State Courts study of 75 major metropolitan counties in the country. The disposition rate prior to trial through settlement, dismissal, or summary judgment - both jury and non-jury - proved to be 97%. That's right, when we talk about the conduct of the trial itself, we're talking about what we do 3% of time.

AAM's members, along the with trial judges, know about the system. If we were an advocate in a pending case, we know how we would use our statute. We would know when to object to a referral, we would know when to mediate and who to do it with. We would be pro-active, because we would know the truth - the overwhelming odds that the case would settle. Brutsche said it in 1990 - mediation isn't about settlement, it's about early settlement. A Dallas district judge in 1991 put it to me this way, "Amis, the success rate of you mediators of 80% doesn't impress me. I've got a 95% success rate. I'm for mediation because it moves that settlement date up earlier, so I can cut down my administrative time and use that savings of time on being a judge and deliver a better quality of justice."

Mediators, especially AAM's members, are the only ones who can speak up for our trial lawyers, our clients, the courts - the 97%. Missing in much of the save-the-jury-trial discussion is the voice of the client who, for a myriad of reasons, cannot abide another day locked into a case and who can compel the other side to show up and talk seriously about resolving that case right then. We are that voice. We are the voice of the trial judge whose courtroom is hostage to the case which has gotten out of control with clients and lawyers who are filing unnecessary motions and objections. We are the voice for the 3% cases which could be tried sooner and less expensively if the 97% were leaving the system earlier.

Will we provide those voices? That is the question before the house right now. Why do the TTLA, ABOTA, and TADC have representation in Austin. They know that things at both the Court and the legislature can happen quickly based on admittedly intelligent but uninformed reasoning. Will you join TAMC? What will you do to defend Chapter 154? We know that in any civil lawsuit a minimum of 4 human beings are involved - two lawyers and two clients. We know how toxic any lawsuit can become. We know human nature. Do we honestly think that at the right time, before one or more run out of money, before they simply give up, all four will get together and decide, hey, let's go spend a day mediating? Do we honestly think that will happen if there is not a credible possibility that the court will order us to do that? It will not and has not happened to any measurable extent in any jurisdiction in this country.

Will we defend our statute and the others calling for mediation? Some of you may remember the cowboy hero, star of the silver screen, Hopalong Cassidy - there was Gene Autry, the Singing Cowboy, there was Roy Rogers, King of the Cowboys, and there was Hoppy - who would look out to our living rooms while eating a bowl of Cheerios telling us boys and girls that "If you want to be like Hoppy, you've gotta eat like Hoppy! Well, we can either be Hopalong Cassidy or Limplong Cassidy, it's up to us. We should be in the conversation: we know about these things. The Supreme Court, the policy makers, the vast numbers of trial advocates seeking to serve their clients and simply support their families, the clients who need their lives improved greatly by getting that case done now, can't we give them a voice? We can do just that in Texas by joining Texas Attorney-Mediators Coalition (TAMC). You can join TAMC by going to www.texasamc.org or by emailing me at amismediat@aol.com.

Special thanks to John Feather, Newsletter Editor, for his continued assistance in getting the AAM-a-gram ready to go!