

# The Association Press

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## President's Report

Dan Balmert

### OBSERVATIONS FROM THE MOST FORTUNATE PERSON I KNOW

#### On Trying, Winning and Losing Cases

*The point is not to take the world's opinion as a guiding star, but to go one's way in life and to work unfalteringly, neither depressed by failure nor seduced by applause.*

Gustav Mahler



As if cutting the rubber chicken on the plate in front of me wasn't tough enough, I found myself seated at a judicial conference dinner next to a middle-aged, obnoxious, self-proclaimed "trial attorney" who, based upon his protestations to his captive audience, had recently experienced a defeat in the courtroom. His laments increased throughout the overly long dinner hour in direct proportion to the volume of the wine he consumed that comes with such events.

"It is not right – that jury just didn't get it," he protested, "worse, it screws up my perfect record for jury trial wins!"

In an effort to be cordial, I asked him, as I tossed \$10 into the pot that had been created at our table to be delivered to the person who most correctly predicted when the featured, retiring judge speaker would finally stop talking and sit down, about his trial experience. Predictably, it could be charitably described as minimal considering his professional age. He had, as near as I could determine, tried a grand total of about 6 jury cases during his career.

Driving home, between belches presumably caused by the marriage of the chicken and whatever was masquerading as dessert, I found myself wondering how many of the loquacious counselor's clients over the past 15 years had been "sold out" by him through overly generous settlement evaluations developed or constructed, intentionally or subconsciously, to protect his

"perfect record." The only lawyers I know with that type of performance statistic are lawyers who haven't tried enough cases.

Defining the Mendoza Line for real trial lawyers is, admittedly, a challenge. Do wins and losses define great trial lawyers? I'm interested in your thoughts.

Following a swig of Pepto, which seemed to calm the insurrection in my intestines, I found my thoughts turning to how genuine trial lawyers react when a jury disagrees with a position argued. My overall assessment over nearly 40 years is that the best of the best generally react similarly to both victories and losses. Like my spouse on the golf course, they never get too high nor too low about the results of their best efforts. By flattening out the rollercoaster of trial practice through an understanding that the scoreboard doesn't necessarily reflect appropriately zealous representation, we may become a little more comfortable with the ride. Being a great trial lawyer has a lot to do with balance.

*He that can heroically endure adversity will bear prosperity with equal greatness of soul; for the mind that cannot be dejected by the former is not likely to be transported with the latter.*

Henry Fielding

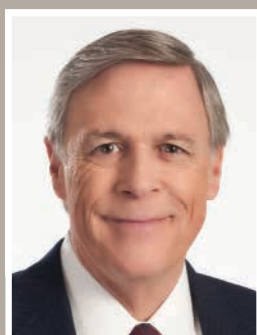
Susan and I wish each of you a joyous, healthy, and fulfilling 2015 and hope to see you in April in Ponte Vedra!

Dan

## Membership Report

Bill Staples | Walnut Creek, CA

Sometimes you just have to take a look back before you move forward again. I was looking at the Membership Reports in the Association Press going as far back as I could. There is one recurring theme. We have members, that's you. We want more members, that's them. YOU need to go get THEM!



We have an elaborate membership committee; a national chair, two national co-vice chairs, ten regional chairs and sixty-six state and province chairs. However, we still need YOU. Exceptional defense trial attorneys know who the other exceptional defense trial attorneys are and where they are. You are our best advertising source. You are our best referral source. There is no better time than now for every one of us to take a look around and nominate a new member. It's easy! Once you have a prospect, call or e-mail your State/Province Chair, your Regional Chair, the National Chairs or Peggy Schultz. We will take it from there and follow up. What could be simpler? While you are at it, be sure your firm has at least one Associate member. Applications are on the ATDA website and can either be filled out online or downloaded and sent in.

There is something else you can help us with. The ADTA has no members in the States of Delaware and Wyoming. I don't understand why but do know they have qualified defense trial attorneys and I am sure that some of you probably know them. Please help us identify and recruit members from these States. Call them yourselves or pass the names on to me. Either way, my goal is to have members in both states within a month of this issue of the Association Press hitting your mail boxes.

Lastly, I would like to announce our new National Co-Vice Membership Chair; Johnston Cox of Columbia, SC. He joins Denise Anderson of Tampa, FL to assist me in overseeing the Membership Committee. Those of you who know me well, know that I need all of the assistance I can get, so I welcome Johnston to our team.

### THE ASSOCIATION PRESS

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# 75th Annual Meeting – Ponte Vedra Beach, FL April 22-26, 2015



Ponte Vedra Beach is a sophisticated and breathtaking northeastern coastal city of Florida. This picturesque town is a “Hidden Gem” waiting to be explored. Don’t miss experiencing all that Ponte Vedra has to offer by taking part in one of the many conference events including the St. Augustine City Tour. The Nation’s Oldest City tour promises a rich historical view filled with fascinating architecture to pique the interest of the historian in all of us.



For those that appreciate a day out on the water, you can partake in either (or both) the Inshore Fishing at Mayport Marina excursion or the Kayaking and Hiking adventure. Enjoy a leisure day on the Inshore Fishing excursion while trying to capture some Black Bass, Snapper, Trout and Flounder with your fellow fishing mates. If more physical exercise is your passion, join in on the Kayaking and Hiking adventure to explore the Guana Tolomato Matanzas Nation Estuarine Reserve (GTM Reserve). Of course, no Kayaking and Hiking adventure would be complete without a Scavenger Hunt through the lush flora and fauna of the GTM Reserve.



Ponte Verda Club is also home to the “Official Tennis Club of the ATP World Tour” and The Ocean Course, a five time U.S. Open qualifying round golf course. This year the conference will host two tournaments for those with a competitive spark. Enjoy the true feel of playing on Har Tru clay courts while showing your tennis skills in competitive play. For the individuals that relish a true challenge, golfing on the Ocean Course with its 99 strategically placed sand bunkers is the tournament for you.



It is our hope that you not only take advantage of the educational portion of this conference but also all the wonderful events and amenities that Ponte Vedra Inn & Club has to offer from the spa to kayaking.



## New Members

### Monté Williams | Morgantown, West Virginia

Monté L. Williams is with the firm of Steptoe & Johnson, PLLC, in Morgantown, West Virginia. Monté attended the West Virginia University College of Law, obtaining his J.D. in 2003. Monté's wife, Ariann Williams, is a Neonatal Nurse Practitioner.



Monté focuses his practice on energy, personal injury, first party insurance, and governmental liability litigation. Monté is Chair of the Marketing for DRI Trial Tactics Committee, a Member of the DRI Young Lawyers Long Range Planning Committee, and a Member of the West Virginia Defense Trial Counsel Board of Directors. In his spare time, Monté likes to exercise, motorcycle ride and golf.

### Brent Ruther | Burlington, Iowa

Brent Ruther is with the firm of Aspelmeier, Fisch, Power, Engberg & Helling, PLC, in Burlington, Iowa. Brent attended the University of Denver College of Law and obtained his J.D. in 1993. Brent has two children, Annaka, 17, who will be attending Iowa State University College of Engineering in the Fall of 2015, and Mia, 15, a sophomore at Burlington Community High School. Brent practices in the area of civil litigation focused in insurance defense, construction litigation and employment law. Brent is a recipient of the Iowa Defense Counsel Association Edward Seitzinger Award for outstanding board member, 2002-2003. Brent has held the following leadership positions in defense organizations: the Iowa Defense Counsel Association (former member Board of Directors 2001-2007); the Iowa Defense Counsel Board of Editors 2011-present; and the Iowa Defense Counsel Association Chair, Workers Compensation and Torts Committee 2012-present. Brent participates actively in triathlons and other endurance related sports and training, and spends the rest of his time coaching softball...and working.

### Dina L. Torrisi | Chicago, Illinois

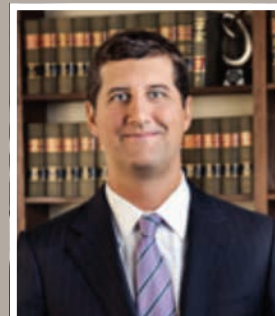
Dina L. Torrisi is a partner with HeplerBroom, LLC in Chicago. Dina obtained her J.D. from The John Marshall Law School in Chicago in 1994. She has two daughters, Gessica, age 14, and Gianna, age, 11. Dina practices in all areas of



insurance defense, but her primary area of focus is medical malpractice. She also represents health professionals in licensing and disciplinary matters. Dina is a columnist for the Illinois Defense Counsel Quarterly and a member of DRI, Illinois Association of Defense Trial Counsel and Chicagoland Healthcare Risk Management Society. When Dina is not working or trying to keep up with her daughters, she enjoys Pilates.

### Edwin Wallis, II | Memphis, Tennessee

Edwin E. Wallis, II is with the firm of Glassman, Wyatt, Tuttle & Cox, P.C., in Memphis, Tennessee. Ed attended the University of Richmond, TC Williams School of Law, obtaining his J.D. in 2004. Ed's wife, Jenna,



is an interior designer. Ed and Jenna have two boys, Edwin, 6 and Butler, 4. Ed concentrates his practice in the areas of legal malpractice, real estate litigation, construction litigation, commercial litigation, probate litigation, and general civil litigation. Ed has been named a Mid-South Super Lawyer, and is a former clerk to the Hon. S. Thomas Anderson, Western District of Tennessee. Ed is the Editor in Chief for the Richmond Journal of Law & Technology. Ed's father is a long-time ADTA member, Ed Wallis, Jr., from Jackson, Tennessee. Ed enjoys cheering on the Memphis Grizzlies, travel, food and surf fishing.

### **Erik J. Pless | Green Bay, Wisconsin**

Erik J. Pless is with Everson, Whitney, Everson and Brehm, in Green Bay, Wisconsin. Erik attended the University of Wisconsin Law School, and obtained his J.D. in 1993. Prior to law school, he attended Wisconsin Lutheran College, graduating in 1990. Erik has two daughters, Kira, 17 and Anika, 14. Erik concentrates his practice in personal injury, insurance coverage, bad faith, product liability, professional malpractice, premises, lemon law and mold litigation. Erik has been a Wisconsin Super Lawyer and served on the Board of the Wisconsin Defense Counsel. In his spare time, Erik competes in Ironman triathlons.



## **About Our Members**

### **Changes afoot at Montgomery, Kolodny, Amatuzio & Dusbabek**

Kevin Amatuzio and Mike Montgomery advise that effective January 1, 2015, the firm name will change to MONTGOMERY AMATUZIO DUSBABEK CHASE LLC. ADTA emeritus Joel Kolodny and his wife Susan are great friends of the ADTA and this Firm. Joel requested that his name be removed (he retired from litigation practice several years ago) to avoid the suggestion of possible conflicts in Joel's thriving mediation practice. ADTA members Mike, Kevin, Pete Dusbabek and Max Jones, and the rest of the Firm, continue to wish Joel and Susan all the best. The Denver office of MADC will be relocating the first of the year, to take the 16th Floor of the Mountain Towers office complex, at East Mississippi Avenue, 16th Floor, Denver, Colorado 80246. Kevin, a past President of the Colorado Defense Lawyers Association, was appointed special counsel to the CDLA to represent its membership in seeking a Formal Ethics Opinion from the Colorado Supreme Court Ethics Committee on the issue of whether, or to what extent, insurer retained defense counsel can properly appear on behalf of an absent defendant served in a liability lawsuit under statutes allowing substituted service on the liability insurer when the

insured cannot be found. Kevin thanks the several ADTA members who responded to a blast e-mail by providing information as to how their particular jurisdictions deal with that issue. Todd Vriesman departed the firm to accept appointment as a District Judge in Colorado's First Judicial District.

### **Plunkett Cooney Receives Best Honors**

Plunkett Cooney, where Mary Massaron Ross practices, has been named one of the Midwest's oldest and largest law firms and has been ranked as one of the 2015 "Best Law Firms" by *Best Lawyers* and *U.S. News & World Report*. Four of the firm's offices received tier-one ratings in multiple practice areas. Criteria for inclusion included firm practice areas, expertise, responsiveness, integrity, major legal assignments, cost-effectiveness, pro-bono commitment and diversity, among others.

### **Fred Raschke Presented with Founders Award**

At the recent Texas Association of Defense Counsel Annual Meeting, in San Antonio, Fred Raschke was presented the 2014 TADC Founders Award for those "whose work with and for the Association has earned favorable attention for the organization and effected positive changes and results in the work of the Association." The meeting was capped off with Friday night Hawaiian shirt event.

### **James W. Jennings, Jr. Receives 2014 Excellence in Civil Litigation Award at the Annual Meeting of the Virginia Association of Defense Attorneys**

James has practiced law at Woods Rogers PLC for more than 45 years. James concentrates in defending personal injury cases in the areas of FELA, products liability, and premises liability. He also handles insurance coverage, intellectual property, contract disputes, construction, product failure, municipal and local government, land use, and estate administration.

"As a trial lawyer, I am deeply appreciative of this recognition by fellow defense lawyers," said James W. Jennings, Jr., Principal, Woods Rogers.





James received his bachelor's degree and JD (magna cum laude) from Washington and Lee University and is presently an adjunct professor at the Washington and Lee School of Law. He is a long-standing member of DRI, has served on its Board of Directors, and received its Exceptional Service Award. He is Past President of the Association of Defense Trial Attorneys, the Virginia Association of Defense Attorneys and the Virginia Chapter of ABOTA. He has served as Chair of the Board of Editors of the Journal of Civil Litigation and on the Board of Editors of the Defense Counsel Journal. James is listed in *Best Lawyers in America*, *Chambers*, and *Super Lawyers*. He also holds a place on *Virginia Business*' Legal Elite.

Woods Rogers' President Tom Bagby said, "We are fortunate to have James as a colleague and friend. His contributions to our firm are great and many and he is well-deserving of this prestigious award."

**James M. Campbell, President of Campbell Campbell Edwards & Conroy, has been elected a Fellow of the International Society of Barristers.**

The International Society of Barristers, established in 1965 and with a membership of approximately 700 trial lawyers nationally and internationally, is dedicated to excellence in advocacy, the preservation of the adversary system, defending the right to trial by jury, and encouraging young lawyers to enter the field of trial practice. Membership is by invitation only. Candidates who are nominated by Fellows go through a rigorous selection and approval process. It is indeed a high honor to be made a Fellow.

Mr. Campbell graduated from Boston College in 1980, *magna cum laude*, and the University of Virginia School of Law in 1983. He has bar admissions to practice in Massachusetts, Florida, Maine and New Hampshire. His District Court admissions include Massachusetts, Middle District of Florida, New Hampshire, Connecticut,

Maine, and Vermont. Appellate Court admissions are the First and Eleventh Circuits, and the U.S. Supreme Court. Mr. Campbell serves as national, regional and local trial counsel for a variety of major national and international corporations and insurers, and is responsible for supervising and coordinating litigation not only throughout New England, but other regions of the country. He has tried more than 100 cases in 15 states, and is a Fellow of the American College of Trial Lawyers and a Diplomate of the American Board of Trial Advocates. According to the *Legal500* Mr. Campbell is routinely hailed as 'one of the best' in his field, and is consistently included as one of the *Best Lawyers of America for Products Liability Litigation – Defendants*, and is listed as one of the Top 10 Most Highly Regarded Individuals in Products Liability Defense by *Who's Who Legal*.

## A Word from Lou

Lou Scofield | Beaumont, TX

Tips for closing argument: For all the years I have authored this column I have avoided writing a definitive piece on closing argument because it is a treacherous topic. After all, closing argument is the "cherry" on top of the trial. It is the one point in a trial that *you think* you can bring your personal charisma, style, charm, intellect, knowledge, skill, and talent into play, all at the same time, all to save your client's unappreciative and underserving neck. Elsewhere in the case you can use one or more of your assets on the above list, but not all at once. Of course if you think this, you are wrong. It is not that big a deal.

The bloated reputation of closing argument stems from two things: 1) Its place in the case, the last hurrah to the jury, and 2) The long, relatively uninterrupted, block of time you get to stand in front of the jury and bloviate. Fact is, if you have not won your case *before* closing argument, you are in big trouble.



Still it is a fun part of the case, and our delusion as to its importance makes it special...especially if you have a larger audience in the courtroom than the jury. So it is worth writing about. Here goes.

Just because many of you are smarter, more successful, and/or more talented than I am, you think your way of doing it is best. It may not be, especially if in undergraduate school you were a Literature or Poli Sci or Art major. References to Shakespeare, politics, or Vermeer do not a powerful closing make. The best closing arguments are made by folks with undergraduate degrees in Geology, because the best closing arguments are nothing more than a limited string of vivid statements of the obvious. How can I say such a thing? Isn't there an expression: "Only fools state the obvious?" Well, yes, but I always thought this expression to be simultaneously self-proving and insulting to

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*Concede what you must concede,  
but always follow a concession with  
a "But what really matters is..."*

---

its author. What's more, it is not true. Stating the obvious, very vividly, at the conclusion of the case, is our stock in trade. Amen? You have just spent a whole trial, with all its parts, developing and repeating, throughout, your theory of the case and the evidence to support it. In the closing argument you remind the jury of your theory of the case, and systematically point to the evidence that proves it. You figuratively say to them, "See I told you so. It is right here!" (while pointing up or down, whichever is appropriate.)

Of course there are some rules on how best to do this, most of which I have stolen. Some follow:

- A. Start by reminding the jurors of their oath.
- B. Elevate them to the moment and show them your respect for them, and their role. They love this part, but only if you show them that you really mean it.
- C. Remind yourself that it is not all about you.
- D. Be yourself (don't try to be someone else.) If you don't your words will ring hollow.
- E. Adhere to strictest honesty (never say anything not supported by the evidence.) If you don't, even if you stray only once, your words will ring hollow.
- F. Concede what you must concede, but always follow a concession with a "But what really matters is..."
- G. Never attack opposing counsel, it makes you look weak and detracts from your case. Always do the opposite. Appreciate his or her skills. Speak of how good, and crafty, your opposition is: "Isn't Tom just the best? He could talk a cat into a swimming pool."
- H. Never call a witness a liar. Leave it to your jurors to do that in their deliberations. You can, however, come close by using deflective phrases. For example, you can make almost any insult palatable by adding the phrase "... God bless him." Such as, "Plaintiff's expert desperately kept claiming my sparks machine was defective, but God bless him, he just couldn't stick with the facts to do it." "God bless him" can be used repeatedly. It is much better than the deflective phrase "...With all due respect." That phrase wears out too fast.
- I. Remind the Jurors of what you said you would show them, and remind them where you did so.
- J. Cover every issue in the case. Jurors notice if you miss one and might think it a concession.
- K. Never have more than 5 main points per issue. Better to have only 3. Best to have only 1. No matter how many more "great points" you think you have (you will be tempted by them to violate this rule), your audience will only put up with 5, tops. And they won't forgive you for the rest that you drag them through.
- L. Respect the juror's intellect. Or to put it a bit differently, don't talk down to them. They will "get it" if you deliver the information accurately, even with complex facts.
- M. End with gratitude and a reminder to them of their role.

It's been said that the whole idea of closing argument is to give your jurors hooks on which to hang their arguments on your behalf in the jury room. I agree. That is why making your closing argument "a limited string of vivid statements of the obvious" works.

Finally, if you are the defense counsel in the case, in the end you will have to sit down and shut up, while your opposition gets to close. Two things to deal with this sorry fact. First, use Dan Flatten's close, "Now I'm out of time. Because the Plaintiff has the burden of proof, they have the last turn at speaking to you. Like a mule in a hailstorm I just have to take it, without a chance to counter whatever he says. So as he's talking, I ask you to remember the evidence, and that I'd have plenty to say about it if I had another turn." Second, always interrupt the plaintiff's final closing, even if just to show your flag. It is not improper because, without fail, plaintiff's counsel will always say something in the final closing that will invite, or even require, a speaking objection. Ahem.

## What's New in My State

Dina L. Torrissi | Chicago, IL

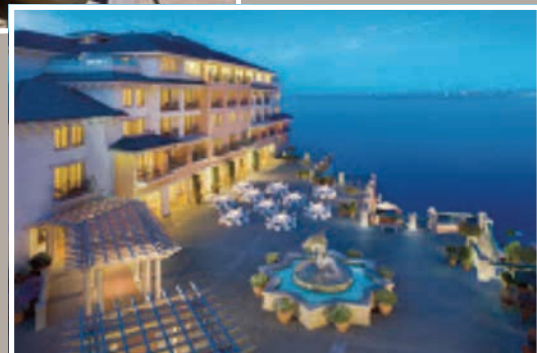
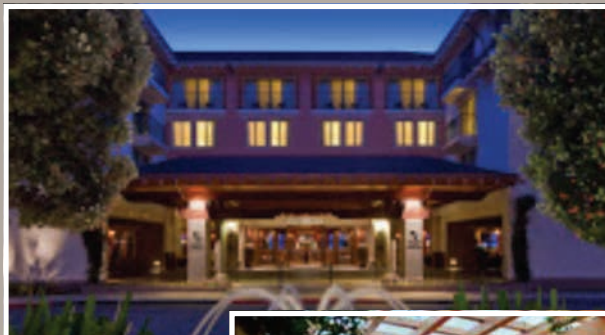
Please welcome our newest columnist and author, Dina Torrissi, of HeplerBroom in Chicago, Illinois. Dina, whose picture and biography is in the New Members section, defends primarily medical malpractice cases. Dina is also a regular columnist for the Illinois Defense Counsel Quarterly. Many thanks to Bob Webner, who is retiring in his role as the columnist for this section. We appreciate all of Bob's hard work over the years to make "What's New in My State" an interesting and educational resource for ADTA members.



## Save the Date 2016

**2016 ADTA Annual Meeting,  
Monterey California  
Monterey Plaza Hotel and Spa, Monterey, CA  
April 20, 2016 – April 24, 2016**

Experience the beauty of the Northern California coastline with ADTA in April 2016. Mark your calendars!





## News, Rumors, Gossip and Innuendo

Amy Bozarth | Edwardsville, IL

Heidi E. Ruckman is proud to announce that her son, Christopher Hamilton Ruckman, won his first piano competition. Heidi's husband, P.S. Ruckman, Jr. (Editor, Pardon Power Blog) is coauthoring a book on the history of presidential pardons with former Washington Post reporter and Pulitzer Prize winner, George Lardner.

Dedi Walker reports that member Bruce L. Walker continues his law practice part-time, while remaining involved in Access to Justice and Legal Aid, and serving as President-elect of the Iowa State Bar Association which leads to many meetings and travel.

Dedi Walker herself is involved in a variety of volunteer activities centered around providing food and housing. Dedi travelled to Nicaragua at the end of January for the second time with Habitat for Humanity. Both Dedi and Bruce love spending time with their family, especially their three granddaughters, and traveling to warmer climates.

### For more information about ADTA or any questions, please contact:

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