



The Voice of the
Defense Bar™

The Voice

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A Breed Apart: The Legal Issues Specialist in High-Stakes Trials

By Kathryn S. Lehman and Scott M. Edson

The management of high-stakes trials requires laser focus on the facts, the law, the order of witnesses, the goals of every examination, and the levers of persuasion. In the days of Perry Mason, one lawyer might juggle all of these balls. But time and tides improve all things and specialists emerge. And so it has been with high-stakes trials and lawyers who are great persuaders, lawyers who master some scientific niche, and lawyers who specialize in the law. This article focuses on the last of this triumvirate: the legal issues specialist.

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- Counseling Drug and Medical Device Companies on Risk Prevention Strategies, September 19, 2018, 12:00pm–1:30pm CST
- Trucking Experts 101: The Trucking Attorney's "Toolbox," September 5, 2018, 12:00pm–1:00pm CST
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- Asbestos Medicine Seminar, November 8–9, 2018
- Fire Science and Litigation Seminar, September 13–14, 2018

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New Member Spotlight

Robert J. Dambrino III, Gore Kilpatrick & Dambrino



Robert J. “Robin” Dambrino III is a partner in the Grenada, Mississippi, law firm of **Gore Kilpatrick & Dambrino PLLC**. He specializes in medical malpractice litigation and regularly litigates in state and federal courts. He attended Millsaps College in Jackson, Mississippi, and graduated in 1979. He then attended the University of Mississippi School of Law (1981). He has practiced law for 37 years in Pascagoula and Hattiesburg and for...

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Quote of the Week

“Wit has truth in it. Wisecracking is simply calisthenics with words.”

—[Dorothy Parker](#) (b. Aug. 22, 1893)

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The management of high-stakes trials requires laser focus on the facts, the law, the order of witnesses, the goals of every examination, and the levers of persuasion. In the days of Perry Mason, one lawyer might juggle all of these balls. But time and tides improve all things and specialists emerge. And so it has been with high-stakes trials and lawyers who are great persuaders, lawyers who master some scientific niche, and lawyers who specialize in the law. This article focuses on the last of this triumvirate: the legal issues specialist.

The legal issues specialist comes to trial, not to open or to close, or to examine witnesses, but to take care of the law—to present thorny or even not-so-thorny arguments, to preserve the record, to insure that appropriate objections are lodged and motions made, to oversee the instructions, and in the end, to keep the post-trial trains running on time. The legal issues specialist serves as a master of the law, bringing expertise and constant legal vigilance to the trial lawyers. In high-stakes litigation, the legal issues specialist is an essential member of the trial team—and the issues that he or she addresses are both numerous and essential to winning.

Appellate Preservation

Appellate preservation is, of course, essential to the role. The legal issues specialist must know how to use the law to preserve appellate issues. Full stop. To leverage this expertise, the trial lawyers must include the specialist in strategy discussions so that he or she can (1) properly prioritize any tradeoffs between trial strategy and appellate preservation, and (2) develop the most important potential appellate issues.

Pretrial Motions

The role of the modern-day legal issues specialist stretches far beyond appellate preservation. Pretrial motions offer an opportunity not only to shape evidence that opposing counsel can use at trial, but also to educate the court about the coming trial. Trial counsel should coordinate with the specialist to craft a pretrial motions strategy that furthers both goals. If you are trial counsel, you will want to bring the specialist into the fold early to educate him or her

about your trial strategy, which evidence is most critical to you, which evidence is most critical to your adversary, and your trial themes. Armed with a detailed understanding of the case, the legal issues specialist can help craft a pretrial motions strategy.

Jury Selection

Between improper questions to the venire, improper procedure, and cause arguments, jury selection is a minefield of potential appellate error. Effectively deployed, the specialist can not only help navigate the local complexities, but also turn them to your strategic advantage by, for example, limiting the other side's improper voir dire, arguing for additional peremptory strikes, or stopping a plaintiff from improperly exercising a discriminatory peremptory strike.

Opening Statements and Closing Arguments

The legal issues specialist will hopefully not need to be active during his or her lead trial lawyer's presentations, but instead, will be very busy before and after. First, the specialist must study the plaintiff's counsel and their tactics. Armed with this knowledge, the specialist can coordinate with trial counsel to develop an objection strategy and then create a quick guide that helps trial counsel effectively execute the strategy in real time. Second, the specialist will help predict the form of the final verdict form, argue objections to the plaintiff's demonstratives, and defend against the plaintiff's objections to your demonstratives.

Mid-Trial Problems

The specialist can handle briefing on the inevitable issues that arise during trial, including evidentiary issues, witness problems, scheduling difficulties, proffers, motions for mistrials, and so on. This works best when the specialist is kept in the loop on what trial counsel is expecting so that the specialist can better peek around corners and plan for what is coming.

Witness Examination

The legal issues specialist can argue issues that are anticipated to come up during a witness examination, or

he or she can prepare materials and talking points if trial counsel will argue. This is a time when the specialist's familiarity with the facts of the case will be invaluable for issue-spotting and legal arguments that are grounded in both the law and facts of the case. The legal issues specialist can also help craft direct and cross-examinations in ways designed for maximum efficacy under the applicable rules in the jurisdiction. A devastating question on cross-examination is of no value if quickly shut down with a biting rebuke—perhaps in front of the jury—that this is not tolerated “in this state.” The legal issues specialist should be the protector who advises in advance where the lines are and how the trial team can paint inside them.

Jury Instructions and Verdict Form

The jury instructions and verdict form are not stereo instructions, but tools of persuasion. The specialist embedded in case strategy, therefore, crafts instructions that align with the team's trial strategy and are designed to be used by defense counsel in closing—while minimizing the material for the plaintiff's counsel to use argumentatively in closing.

Post-Trial Motions and Appeal

And of course, if your trial does not end in the result that you had hoped, the specialist steps in immediately with a strategy for the post-trial motions and ensuing appeal, tailored to the particulars of the case and the nuance of local practice in your jurisdiction.

Conclusion

Trial is not easy and there are few obviously “right” decisions. But in high-stakes litigating, adding an experienced and battle-tested legal issues specialist is always the right call. It is no longer enough simply to assign appellate preservation to the lawyer with the least to do. In high-value litigation, you do not want a dabbler; you want a lawyer with talent and drive who focuses exclusively on shepherding the law at trial.



Kathryn S. Lehman is a litigator at King & Spalding LLP in Atlanta, where her trial practice focuses on product liability and mass torts. She has represented a wide range of companies in the tobacco, construction, medical, food service, and transportation industries. She brings a strategic focus to discovery and trial. Ms. Lehman has worked on more than two dozen trial teams that have tried cases to verdict in the last five years. She is a member of the DRI Litigation Skills Committee.



Scott M. Edson is counsel in the Washington, DC, office of King & Spalding LLP and a member of the mass tort and toxic tort practice. He has extensive experience representing clients in complex litigation, including class actions, mass actions, and multidistrict litigation, in both state and federal court. Mr. Edson has represented clients in all stages of litigation, from initial pleadings, through discovery, trial, and appeal to state courts of last resort and the U.S. Supreme Court.

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.

Scott M. Trager



DRI member [Scott M. Trager](#), a principal of **Funk & Bolton, P.A.**’s Baltimore office, obtained summary judgment in an ERISA long-term disability (LTD) action brought by a plan participant alleging improper denial of LTD benefits. Rejecting the plaintiff’s arguments, the United States District Court for the District of Maryland (Xinis, J.) determined the plan administrator’s denial of LTD benefits, including its vocational and medical reviews, was reasonable and it did not abuse its discretion in administering plaintiff’s claim. The court granted defendants’ motion for summary judgment and denied plaintiff’s motion for summary judgment *in toto*.

The case is *Karin Reidy v. Unum Life Ins. Co. of Am., et al.*, 2018 WL 3756740 (D. Md. Aug. 7, 2018).

Edward J. Fanning, Jr., and David R. Kott



McCarter & English partners and DRI members [Edward Fanning](#) and [David Kott](#) successfully argued for the adoption of the *Daubert* factor-based standard for the ad-

missibility of expert testimony in all civil cases in New Jersey. Appearing before the New Jersey Supreme Court in the closely watched *In Re Accutane Litigation*, Fanning and Kott represented New Jersey’s largest trade associations: the HealthCare Institute of New Jersey, the New Jersey Business & Industry Association, the Commerce & Industry Association of New Jersey, and the New Jersey State Chamber of Commerce. In a brief authored by both partners and argued by Fanning, McCarter urged the court to adopt the *Daubert* standard, arguing that the longstanding perception that New Jersey’s rules for the admissibility of expert testimony were weaker than those in federal and other state courts made New Jersey a magnet for mass tort litigation. In a landmark decision finding that the plaintiffs’ expert testimony alleging the acne treatment Accutane caused Crohn’s disease was unreliable and based on flawed methodology, the New Jersey Supreme Court embraced the arguments made by McCarter by holding that New Jersey’s rules of evidence will now include the factors developed under *Daubert* to assess the reliability of expert testimony in civil cases. A resounding win for Hoffman-La Roche, the ruling was also a broader victory for business and industry groups, including DRI, that had long urged the court to update its standard on the admissibility of expert evidence.

Annual Meeting Attendees Receive Free Access to Select DRI Webinars



Do you need another reason to attend the 2018 DRI Annual Meeting? Annual Meeting attendees will receive **free** access to multiple DRI webinars on practice management and legal trends that connect you to expert advice and strategies for your firm. This \$350 value will be made available to attendees after the DRI Annual Meeting. [Register](#) by **September 19 to save \$200** on your registration fee and look forward to more of the quality legal education content you expect from DRI. We look forward to seeing you in San Francisco! #DRI2018AM



What's New with DRI Circles?

- Added chat functionality within a business referral
- Added functionality to broadcast a message within a group
- Increased circles limit to 250 participants
- Videoconferencing

Your lawyer-to-lawyer connections just became even easier and even more valuable. DRI Circles is an app that allows members to connect with each other by establishing personal networks or "circles." Through DRI Circles, you can create networks based on practice area, geographic region, shared interests, etc. The DRI Circles app allows you to send messages, set up meetings, refer and track business, references and more on your mobile device. Join



DRI Circles today or update your app to get even more out of your membership.

Important Note: *If you are already utilizing the DRI Circles app, you will need to delete the current version and download the newest version to take advantage of these newly added features. Upon downloading the updated version, you will be notified of any future enhancements via Apple or Google.*



<https://itunes.apple.com/us/app/dri-circles/id1292016061?mt=8>



https://play.google.com/store/apps/details?id=com.dri.circles&hl=en_US

Are You Missing Out on LegalPoint™?

LegalPoint™ (formerly DRI Online) is a members-only service providing DRI members with exclusive access to a vast online library of DRI articles, books and materials. DRI members can search thousands of documents and filter them by practice area and resource. LegalPoint™ includes content from:

- *For The Defense*
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- Committee Newsletters
- Defense Library Series (DLS)—NEW!
- Seminar Materials
- DRI Defense Wins Reporter

In addition to searching all of DRI's LegalPoint™ content, you can also access Defense Library Series (DLS) books separately and review the table of contents and individual chapters. If you have not yet accessed LegalPoint, please [click here](#) to view a brief video and find out what you are missing.

Leverage the expertise of leading defense practitioners and find the on-point articles and resources you need with LegalPoint™. Visit <https://www.dri.org/legal-resources> for more information.

DRI Cares

Helping the Homeless at the GDLA Annual Meeting!

Doing great things for the community has become part of the **Georgia Defense Lawyers Association's** DNA. Inspired by DRI's toiletry drive collections, the GDLA collected over 400 items at their Annual Meeting in Hammock Beach, Florida, in June 2018. These items will be donated to DRI to use as part of the toiletry kit assembly that will take

place on October 19 during the DRI Annual Meeting. In partnership with Compass Family Services, DRI hopes to assemble 1,000 toiletry kits and collect over 20,000 items to help the homeless in the Bay Area. Thanks to the GDLA for their tremendous help making this project a success!



GDLA Treasurer Jeff Ward, DRI State Rep Matt Moffett, DRI Regional Director Ted Freeman, GDLA Immediate Past President Sally Akins, GDLA President Hall McKinley, GDLA President-Elect Dave Nelson, and GDLA Secretary George Hall.

DRI Cares

Golf and Art? Yes! Attendees at the ADLA Top Golf Event Donated Art Supplies for Alabama Alzheimer's Association

Following the tremendously success public service event at their annual meeting in June, the **Alabama Defense Lawyers Association** (ADLA) realized that their members are looking for more opportunities to give back. That's why at the recent ADLA Top Golf networking event on August 9, the ADLA Board decided to include a public service component! This time, ADLA members collected donations

of art supplies to benefit [Alzheimer's of Central Alabama](#). The art supplies will be donated to adult daycare centers where art therapy is provided to individuals who are suffering from this disease. Representatives from Alzheimer's of Central Alabama attended the Top Golf event to collect the donations. Thanks to ADLA for coordinating this great public service event!



Upcoming Seminars

Young Lawyers and Claims Professionals Boot Camp, September 14, 2018

dri	Young Lawyers and Claims Professionals Boot Camp
	September 14, 2018 Chicago REGISTER TODAY


This one-day seminar is tailored to young lawyers and claims professionals who are engaged in the practice of insurance law or who handle insurance claims. The smaller seminar size (limited to 50 attendees) lends itself to an interactive experience with insight and feedback from an outstanding group of seasoned presenters composed of nationally recognized insurance practitioners and industry executives. Attendees will learn the fundamentals of important insurance coverage issues as well as claims-handling considerations and strategies that are vital to a successful career. Attendees will also have the opportunity to engage with the faculty and other seminar attendees and work through real-world hypotheticals. This is a must-attend seminar for any young attorney or professional in insurance! [Click here](#) to view the brochure and register for the program.

Northeast Regional Claims Conference, September 27, 2018

dri	Northeast Regional Claims Conference
	September 27, 2018 Hartford, CT REGISTER TODAY

Now in its fourth year, this annual, one-day seminar gathers the country's top insurance professionals in Hartford, the historic home of liability insurance, to discuss the latest, cutting-edge insurance coverage and bad-faith issues and to provide unsurpassed networking opportunities. In addition to the rich formal program, we again present an interactive networking luncheon of table-moderated discussions on a variety of claims-handling or insurance or bad-faith topics. This is a fully accredited CE and CLE program. [Click here](#) to view the brochure and register for the program.

Asbestos Medicine Seminar, November 8-9, 2018

dri	Asbestos Medicine Seminar
	November 8-9, 2018 Austin, TX REGISTER TODAY

Pack your boots and two-step south by southwest to Austin for DRI's 2018 Asbestos Medicine Seminar! This seminar brings together the finest litigators with the top experts in medicine and science to provide an insightful and interactive event. With presentations on the latest in asbestos and talc litigation and the application of knowledge to case work-up, this seminar is a must for practitioners of all levels. No trip to the "live music capital of the world" would be complete without mixing songwriting talent with litigation skills. Attendees will enjoy lively networking receptions, where business development is the name of the game. You'll depart with invaluable information to keep you at the forefront of asbestos and talc defense. [Click here](#) to view the brochure and register for the program.

Fire Science and Litigation Seminar, September 13-14, 2018

dri	Fire Science and Litigation Seminar
	September 13-14, 2018 Washington, D.C. REGISTER TODAY

With four controlled burns the week before the seminar and a flashover burn demonstration the day before, we are literally burning down the house to make this an exciting and relevant seminar. It will take fire science and litigation techniques into the real world, using photographs, video, and data from controlled burns, incorporating them into presentations about fire behavior, fires involving products found in home and office environments, and trial tactics to manage technical and graphic evidence. This seminar is for new and experienced attorneys and will help with every fire case on your docket. [Click here](#) to view the brochure and register for the program.

Upcoming Webinars

Dumb Things: Eminently Avoidable Legal Ethics Mishaps, September 18, 2018, 1:00–2:00pm CST



The presentation will cover various examples of dumb things that lawyers do and explain how firms can avoid obvious mistakes arising from unthinking action or inaction (the low-hanging fruit of risk avoidance). [Click here](#) to learn more and register for the webinar.

Counseling Drug and Medical Device Companies on Risk Prevention Strategies, September 19, 2018, 12:00pm–1:30pm CST



Pharmaceutical and medical device manufacturers encounter numerous risks which, if not handled properly, could lead to litigation. Risks include the challenges of properly marketing products, complying with numerous regulations and emerging adverse events. Mass tort litigation, and challenges based on the False Claims Act and the Antikickback Statute among others, pose perpetual risks along with handling the erosion of time tested defenses such as the learned intermediary doctrine. With an ever-shifting tide, it is important to stay current on these topics. Register now to learn from top attorneys whose focus is watching for and defending against these risks. [Click here](#) to learn more and register for the webinar.

Trucking Experts 101: The Trucking Attorney’s “Toolbox,” September 5, 2018, 12:00pm–1:00pm CST



This “Lunch and Learn” webinar will address common types of experts used in trucking litigation, how to locate an appropriate expert for your case, and when to use an expert. Panelists will also discuss the selection and use of experts from the time that counsel first gets “the call,” through the discovery period and trial, from identifying and agreeing upon the scope of work, effective use of trucking experts to develop case themes and defenses, crafting demonstratives that work, common “expert pitfalls,” and preparing for *Daubert* or *Frye* challenges. We will discuss the trucking attorney’s toolbox of possible experts to retain, including the use of accident reconstructionists, biomechanical engineers, human factors experts, trucking safety experts, and others. [Click here](#) to learn more and register for the webinar.

The ALI Restatement on Liability Insurance: What You Need to Know (Part 1), September 11, 2018, 12:00pm–1:30pm CST



This webinar will present an overview of the major coverage issues addressed in the recently approved ALI Restatement on Liability Insurance, which took almost a decade to finalize, involving significant drafts and revisions based on input from both the carrier and policyholder bars. [Click here](#) to learn more and register for the webinar.

DRI Membership—Did You Know...

DRI's Career Center



Ambition is the first step to success. The second is action. DRI's Career Center can help with your next step.

Looking for a new job?

- Apply for 100+ Jobs from **employers hiring today**.
- Get new **jobs sent to your inbox** with a Job Alert.
- Post your resume to all employers (even confidentially).

Hiring?

- DRI offers employers **two options for job posting** distribution—to the DRI Career Center only or to all of the network partner job boards in the Legal Job Exchange Network.
- If you choose to post your job onto the **Legal Job Exchange Network**, your job will not only appear on the DRI Career Center, but will also be distributed to the job boards of the partner sites as well.
- Additionally, if you purchase a job posting onto the network, you will **gain access** to all of the professional profiles in the network.
- Search resumes or set up a **resume alert** to be emailed to you.
- Manage applications and get **valuable reporting** information.

Go to <https://dri.org/career-center> for more details.

FACT: Benefits can't work if you don't use them.

New Member Spotlight

Robert J. Dambrino III, Gore Kilpatrick & Dambrino



Robert J. “Robin” Dambrino III is a partner in the Grenada, Mississippi, law firm of **Gore Kilpatrick & Dambrino PLLC**. He specializes in medical malpractice litigation and regularly litigates in state and federal courts. He attended Millsaps College in Jackson, Mississippi, and graduated in 1979. He then

attended the University of Mississippi School of Law (1981). He has practiced law for 37 years in Pascagoula and Hattiesburg and for 22 years in Grenada.

Robin is admitted to practice in all state and federal courts in Mississippi, and holds memberships in the Mis-

issippi and Federal Bar Associations and the Fifth Circuit Court of Appeals Bar Association, as well as the United States Army Court of Military Appeals and the United States Army Court of Military Review.

Robin is past chair of the Military Affairs Committee and Hospital Law Section of the Mississippi Bar Association. He has served on the editorial board of the Mississippi Defense Lawyers Association, and has authored numerous articles on medical malpractice. He is past president of the Grenada County Bar Association and South Central Mississippi Bar Association. He is a combat veteran and was awarded the Bronze Star Medal in Iraq.

Quote of the Week

“Wit has truth in it. Wisecracking is simply calisthenics with words.”

—**Dorothy Parker** (b. Aug. 22, 1893)