

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XVII

Fall/Winter 2010/11

No. 1



2010

Tradition of Excellence Awards



The 2010 Tradition of Excellence Recipients

(l-r) Section Chair, Pope Langdale, Andrew M. Scherffius, (Plaintiff), Judge Hugh Lawson, (Judicial),
George "Buddy" Darden (General Practice), and W. Ray Persons, (Defense)

MARK YOUR CALENDAR



STATE BAR OF GEORGIA ANNUAL MEETING

**KINGSTON SHORES
MYRTLE BEACH, SOUTH CAROLINA**

GENERAL PRACTICE AND TRIAL SECTION

TRADITION OF EXCELLENCE AWARD BREAKFAST

**JUNE 3, 2011
7:00 AM TO 9:00 AM**

TRADITION OF EXCELLENCE RECEPTION

**JUNE 3, 2011
5:00 PM TO 7:00 PM**

CALENDAR CALL

"Georgia's Largest Law Firm"

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

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ARTICLES

- Chairman's Corner
Pope Langdale 2
- Letter to the Membership from Incoming Chairman
Joseph A. Roseborough 3
- 2010 Tradition of Excellence Awards
W. Ray Persons
Introduced by Hugh McNatt 4
George "Buddy" Darden
Introduced by Ambassador Gordon Giffin 7
Judge Hugh Lawson
Introduced by Dawn Taylor 11
Andrew M. Scherffius
Introduced by Mark Dehler 15
- It's Time To Get Organized
Managing Your Office When You're Not There
Leslie Walden, Barbara Mays 19
- Alternative Dispute Resolution Practical Mediation Tips
An Analysis of Mitsubishi Motors Corp. v.
David A. Sleppy 21
- New Officers/District Members 29

Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be double-spaced, typewritten on letter-size paper, with the article on disk or sent via e-mail together with a bio and picture of the author and forwarded to James W. Hurt, Jr., Hurt, Stolz & Cromwell, LLC, 650 Oglethorpe Avenue, Suite 6, Athens, Georgia 30606, jhurt@hurtstolz.com
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Pope Langdale
Section Chair



OUTGOING MESSAGE FROM CHAIR

It has been an honor and a privilege to have served as Chairman of the General Practice and Trial Section this past year. There is perhaps not a more rewarding experience than working with fellow attorneys in this Section to improve upon the practice of law and to improve upon the lives of those who are impacted by the legal profession. Our Section accomplished that with great enthusiasm, great support, and an unwavering dedication from our members.

I first want to thank our ever present and energetic Executive Director, Betty Simms. Without her, I have no doubt that this Section could not thrive as it does. Next, I would like to congratulate those who have preceded me as Chair of the Section. They have laid the framework and structure for this Section, and like building a house, each Chair adds to the foundation. Last, I want to welcome the incoming Chairman, Joseph Roseborough of Atlanta, our incoming Chair-Elect, Darren Penn, and our new Secretary/Treasurer, Laura Austin. I would also like to specially recognize Jimmy Hurt of Athens, Georgia, who continues to serve as our Editor of the Calendar Call. It is reassuring to know that the Section is going to be in such good hands.

When I became Chairman of the Section, our country was in the midst of serious economic troubles. Unfortunately, I think most would agree that our country still finds itself in the midst of serious economic troubles. When our economy faces such challenges, it affects everyone. I truly believe that in times of need,

those who are able, ought to step in and lend a hand where a hand is needed. As one of the largest Sections of the State Bar of Georgia, we did just that. I felt that it was our mission this past year to lend a legal hand and help those who are less fortunate and who are in need of legal help, but cannot afford it. Therefore, the General Practice and Trial Section partnered with Georgia Legal Services, and established an "Ask a Lawyer Day," which took place this past May. Simultaneously, free legal clinics were held in Albany, Augusta, Brunswick, Dalton, Douglasville, Gainesville, Macon, Rome, Savannah, Valdosta, and Waycross. More than 120 members of our Section volunteered their time to provide free consultations to over 300 clients in the areas of consumer law, wills, and family law. One of my proudest moments as Chairman of this Section was the willingness and dedication of our members to come forward and donate their time and services to providing pro bono legal services all across the State of Georgia. To my knowledge, this is one of the largest pro bono events occurring on a single day in the State of Georgia, and the General Practice and Trial Section made it possible. The General Practice and Trial Section received a full page article in the recent Georgia Bar Journal acknowledging this memorable effort.

Our Section also experienced an unprecedented turnout this year for its Trial Practice Seminars. This was in response, no doubt, to the unrelenting dedication of our members who chair these seminars. For instance,

at the annual Jury Trial Seminar in Atlanta, chaired by Jay Sadd and Steve Ozcomert, we had over 175 attendees; one of the largest turnouts in our history. And, at our annual 3-day Trial Practice Institute in Amelia Island, we had a record number of attendees. This was no doubt in response to the tireless work of Adam Malone and the remarkable program that he assembled.

I am proud to have had the opportunity and privilege to serve as the Chairman of this Section. This Section is privileged to have so many of you as its members; members who truly care about the profession, care about making it better for others, and care about our future. Each year, the Chairman concludes his service at our annual Traditions of Excellence breakfast. There is probably no better way to conclude a chairmanship than in the presence of the winners of the Traditions of Excellence award. The careers and accomplishments of Judge Hugh Lawson, Andrew M. Scherffius, George "Buddy" Darden, and W. Ray Persons, served to strengthen the passion for our profession that each of us have, and inspire us to become even more dedicated advocates.

In conclusion, it has been my privilege to serve as your Chair of the General Practice and Trial Law Section of the State Bar of Georgia. I look forward to working with our new Chair, Joseph Roseborough, as he continues to build upon the foundation, and we all continue to improve and enhance this Section of the State Bar.

LETTER TO THE MEMBERSHIP FROM INCOMING CHAIRMAN:

Joseph A. Roseborough



Joseph received his undergraduate degree from the University of Virginia at Charlottesville in 1979. After graduating from UVA, he served as a military officer in Germany and received a master's degree in Education from Boston University. In 1987, he received his J.D. from the University of North Carolina at Chapel Hill and he began his law practice in Atlanta with the firm of Freeman & Hawkins. He later practiced as a Senior Litigation Counsel in the law department of Georgia Pacific Corporation. He now is in private practice as a general practitioner with a primary focus on civil litigation. Joseph is married to Teresa Wynn Roseborough, also an attorney, and their daughter Courtney is a first year student at the University of Southern California.

Beginning as a younger lawyer with the YLD, Joseph has been actively involved in the State Bar of Georgia serving on numerous state bar and section committees. In 1996, he was first elected to serve on the Board of Governors representing the Atlanta Circuit, Post 24. He is a member of the Fellows Program of the Lawyers Foundation of Georgia and an active member of several Sections of the Georgia Bar. While serving as a Board Member and District Representative of the General Practice and Trial Section, he was elected as the Treasurer/Secretary of the Section in 2008 and Chairman of the Section for 2010.

Assuming the helm as Chairman of the "largest law firm in Georgia," the General Practice and Trial Section, would be a daunting task without the continued and steadfast leadership of the past chairs, and current officers, leaders and executive director of this section. For their upcoming service, I would like to give thanks and welcome to Darren Penn of Atlanta, our Section's Chair-elect; Laura Austin of Woodstock, our incoming Secretary/Treasurer; and our new Board Members Dawn M. Jones of Atlanta, Veronica E. Brinson of Macon, Robert Bozeman of Atlanta, Trey Underwood of Albany, Timothy Hall of Macon, Robert Register of Atlanta, Paul W. Painter, III, of Savannah, and Thomas R Burnside of Augusta. I would like to especially applaud the services of outgoing Chair Pope Langdale and the former Chairs that I have had the pleasure of working closely with - Adam Malone

and Mary A. Prebula. They have each been extraordinary examples whose dedication has been matched only by that of the Section's true secrets of success - Jimmy Hurt, our faithful editor of the CALENDAR CALL, and Betty Simms, our Executive Director.

An Executive and Trustee Board of 19 lawyers manage our Section of over 2,000 members. Our Board is as diverse as our membership, consisting of plaintiffs' attorneys, defense attorneys, corporate attorneys, employment attorneys, criminal defense attorneys and domestic attorneys. Our Section's leadership ensures the durability of the programs and benefits of membership of the section, including: the production of the CALENDAR CALL; liaison to other sections and the American Bar Association; a web presence; Section seminars focusing on trial practice, law staff training, office technology, mediation and basic

corporate practice; inexpensive access to an extensive audio cassette and videotape library; continued support of the Georgia High School Mock Trial Competition and the Georgia Institute of Trial Advocacy; and, continued annual recognition of outstanding lawyers and judges through the Tradition of Excellence Awards.

The members of our Section provide the leadership, brains and brawns for the bar. Our members include all types of Georgia attorneys from all corners of the State, and represent plaintiffs, defendants, individuals, and corporations. Our members' various practice areas include domestic matters, adoptions, civil litigation, as well as criminal defense.

The General Practice and Trial Section is truly there to encompass all of the general trial practice attorneys in the State of Georgia, and is here to

continued on page 20



Introduced by
Hugh McNatt

*Tradition of
 Excellence
 Award*

This is the third time I've had the pleasure of introducing the recipient of this award, and I can tell you I've moved up the last two times. The first time was Marion Pope, and then Paul Painter and now it's Ray Persons. So these last two I've had better material to work with than the first one.

One of the most pleasurable days of my life is when I received this award, and it's a humbling experience. The approbation of your peers is one of the finest events in anyone's life, and we're peers in this room. And one of the unique things about the recipient of this year's defense award, Ray Persons, is that Ray and I have known each other and been trying cases together and working together for right at 30 years. He is truly one of my closest friends, and I love him like a brother. And the thing that is unique about Ray is, this is called the General Practice and Trial Section of the Georgia State Bar. It ain't the General Practice and Litigators Section of the State Bar. This is where trial lawyers come to. Ray ain't a litigator. He files a few papers when he has to, but he goes to the courthouse and he tries cases, and

that's something that those of you who have heard for years, we have lost sight of. We file papers now. We don't try cases. Well, Ray is unusual in that he tries cases.

Ray is a son of Georgia. He came out of the red clay hills of Talbot County, and he graduated high school down in Liberty County. He went to Armstrong State College and graduated with honors. He then went to Ohio State University School of Law. His wife Wendy is with him this morning. His son Conrad has sho'nuf got a big time public job. He travels between New York City and London, England. Their daughter April is now living in London. They're two of the most outstanding people I know. There's a story that my good friend Congressman Lindsay Thomas tells about on his first campaign going down into Macintosh County to a church and the gathering, was looking for money. And he said, "I don't have any money." But he saw a young, skinny man sitting over in the back of the church; and when he left, he told one of his staffers, he said, "Get in touch with that man. I want to meet him." That man was Ray Persons. He ultimately

went to work for Lindsay. And that's his personality. That's his character. I can't say enough about him, other

than to tell you that as Senator Talmadge used to say, my warm, close personal friend, W. Ray Persons is

a stomp down, sho'nuf trial lawyer and nobody deserves this award more than he does.

Remarks by **W. Ray Persons**

How do you follow that? Seldom do I find myself at a loss for words, but this is one of those rare moments. I thank you each and every one. I'm so humbled by this award, by recognition that means so very much to me because it comes from you. There's no one for whom I have greater esteem, regard, and respect for than fellow members of my profession; those of you in this room. I thank you so very much.

Hugh, that was a very kind introduction, but whenever you ask Hugh to do something like this, it's with some trepidation. You just never know what Hugh is going to say. You know it's going to be big and it's going to be appropriate, but you just don't know. And I'll talk a little bit more about Hugh in a moment.

But suffice to say this, Billy Jones down in Hinesville, who is a friend of mine, once said that a person is truly rich if he or she has three good friends. And I can say if you have got Hugh McNatt for one friend, you are truly rich beyond measure. You're very blessed, and indeed I am.

It's a great honor for me to receive this award. When Tommy Malone called me to say I was going to be a recipient, I nearly fell out of my chair because I didn't feel that I had done enough or that my body of work warranted an award of this stature. And I still have some doubts about whether I belong in that pantheon of former honorees, past recipients like Griffin Bell and Ben Weinberg and Frank Jones, Bobby Lee Cook, Jay Cook, Joel Wooten and the list goes on, Hugh McNatt.

Lifetime achievement, of course, you don't get there by yourself, and the person who has been by my side over the past 32 years -- will be 33 years on September 24th of this year -- is my wife Wendy, who is the brightest star in my constellation, and without whose unwavering support all of these

years, I certainly wouldn't be here today. She supported me in all these difference ventures, even when she thought I had a career in politics and went to Washington with me, and that's where I met Buddy Darden and worked on the Hill and then came to my good senses and came back to Atlanta to practice law.

I thank our children, Conrad and April, who have been a focus group for so many years, bless their hearts, listening to opening statements and closing arguments and my summarizing cases while they were trying to watch the Braves and I was talking about my lawsuits. They continue to be sources of support and inspiration. I thank my teachers back in Hinesville. I learned so many valuable lessons from them, especially my basketball coach and biology teacher, Samuel Harris, who told us, "It's not where you're from but where you're going." I had the good fortune to be born in this county and this state and raised in Liberty County, and those teachers could see far beyond the horizons. They had visions of things that I could do that they could only imagine, that they never were able to attain. I thank my parents, William and Frances Persons. My father was a career soldier. He is retired now and ailing. They taught me the value of hard work. My mother always said, "Well, hard work never killed anybody." They didn't have a lot of formal education, but they wanted to make sure that I got it. They couldn't afford to send me to college. With the help of David and Sandra Rosenzweig in Savannah, I was able to work my way through college at Armstrong State, and I hope I have been able to repay the taxpayers of the great state of Georgia for what they provided me with in that educational opportunity. Without it, I wouldn't be

continued on next page

Remarks by W. Ray Persons

continued from previous page

here today, and based on the record that I achieved there, I was able to get a full tuition scholarship to law school. While I was at law school, I met a man by the name of William Nipper who changed my life. He was a phenomenal trial lawyer but also a scholar. He was a prolific writer of journal articles for leading law reviews and professional journals, but he was also very much involved in the civic life of the community and he urged me to stay involved in the community and do things in the community. He was very active in the United Way, and he was very active in raising money for children's charities, and I took a lot of that with me. He was a terrific mentor, but perhaps the mentor to whom I owe the greatest debt is Hugh McNatt. In addition to being a wonderful friend, Hugh more than any other individual has contributed immensely to my professional growth and my professional success. Getting me involved in the work of clients like my good friend, Terry Hodges, at the Georgia Power Company and taking a chance on a skinny little lawyer who didn't have a lot of trial experience at that time. But with Hugh's help I got a lot of trial experience, and we have tried a lot of cases together.

And you know, with Hugh, every day is a new adventure and every meal is a banquet, but you just learn so much just being in his company, from trying trucking cases for Canal to trying road wrecks in the sky for Beech Aircraft or I want you to come to supper because I want you to meet the general counsel of one of these companies. He's done so much, so much for me that I'm deeply, deeply indebted to him. You just cannot have a better friend, and I know of no finer trial lawyer than Hugh Brown McNatt.

He was instrumental in my getting into the American College of Trial Lawyers and The International Society of Barristers. Of course, you don't know these things at the time you're being nominated and considered, but only after. He said, "I want you to be in whatever I'm in." That's just the kind of person Hugh is. He's just a wonderful individual.

One of the things I want to say – and I'm going to keep my remarks short, but I would be remiss if I didn't say something about pro bono. One of the great joys in being a trial lawyer is doing

some pro bono, and I had a rare opportunity to handle a pro bono case in front of Judge Lewis Sands. And when I got the call, the description was, "well, there is this prisoner who was severely beaten, and he's brought a 1983 action, and if the case survives summary judgment, we need somebody to try the case." That was before he told me that the guy was a neoNazi and Klansman. I had already agreed to take the case. We went to trial, and you can imagine the look on Judge Sands' face when I moved in limine to keep anybody from making reference during voir dire or any time during the trial to this guy's Klan membership or his being a neoNazi. He had swastikas all over him. We had to dress him up in a turtleneck to try to cover it. I tried the case. I tried my darndest to win for him. I went out and got some clothes for him. I asked Wendy if she'd go with me and she said, "You know, well, that's where I draw the line." But those are the kinds of things – of course, we lost the case because it came out that he had been convicted for a satanic killing. I tried to keep it out, but that sort of thing comes in when you take the stand, and he had to take the stand. But that's where trial work takes you. There is never a dull moment, and I love my work so much it's as though I don't have a job because I love going to work every day and doing service every day. I know of no greater opportunity to serve the public good than being a part of our noble profession.

Again, I thank you for this honor. I thank you for honoring me with your presence. I'm deeply touched. Thank you so much.

GENERAL PRACTICE

GEORGE "BUDDY" DARDEN



Introduced by
Ambassador Gordon Giffin

Tradition of Excellence Award

Good morning. Hugh McNatt is a hard act to follow, no question about that. I have to say I consider being here this morning to share with you in honoring Buddy Darden to be a real privilege. I've given enough speeches over my life that I've used the real privilege line a lot when, you know, it just sort of fits in and compliments the people you are talking about. But in this case, I really mean the words sincerely because this is a special day for me to be here with Buddy and his family. Buddy is a special person, if not unique, whose entry into each of our lives has been a true gift.

Before I eulogize -- I mean introduce Buddy, I have to acknowledge the presence of our incoming State Bar president Lester Tate. Lester, as you know I think, once worked for Buddy. The problem I have with Lester is when I joined the State Bar of Georgia, the head of the State Bar was white haired and looked like my grandfather and made me feel very young. Buddy, that's no longer the case. But we look forward to having Lester lead the State Bar over the course of the next year. George Washington Darden: Husband, father, lawyer, public servant, friend,

human being.

First, as a husband. Buddy's best decision in his life was to ask Lillian to be his life's partner. In a rare moment of weakness, she agreed. You know, I don't know whether Buddy's warmth and generosity that we all experience came naturally to him or whether it's just what he has to do to try to keep up with Lillian. We're delighted -- I'm delighted that Lillian is here with him today.

Father: Two great children; George, who is with him today, a teacher in Atlanta about to receive his Ph.D., and their daughter, Christy, who's a lawyer and mother in Washington with White & Cash. Both a testament to two loving parents, who provided a home and a model for growth and development. When you think about it, the most important job that any of us who have been blessed to have children have in life is raising those children, and it's an example of who we are as human beings, how our children grow and develop, and I think with Christy and George we see what Lillian and Buddy are made of.

Lawyer: I guess that's what we're here to talk about. I first heard of

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Tradition of Excellence Award

continued from previous page

Buddy Darden myself when I was in law school at Emory and I applied for a program -- I couldn't get a job -- so I applied for a program that if you were accepted into the program, you would be assigned to a DA's office somewhere in Georgia to work for the summer. And I got lucky, and I got accepted into the program, and I got this letter from somebody named Buddy Darden in Cobb County indicating that I had been selected to work in his office. I didn't know who Buddy was, and I barely knew where Cobb County was since I had grown up in Canada and come to Georgia to go to law school. But I was excited about that. The Buddy part concerned me a little bit. But I then got luckier, and I got offered a job by a law firm that paid more. So being the public service oriented person that I was, I took the law firm job so I could make more money and turned down the job with the DA in Cobb County. Little did I know at the time that Buddy Darden would stalk me the rest of my life.

Buddy, as his friend Norman Underwood would say, is a real live, put them in jail, put them in the jury box lawyer. For those of you newer to the practice, think about a lawyer who actually tries cases before juries. Criminal, divorce, tort, condemnation, you name it, Buddy tried it. It's interesting in his practice today I think that he's continued to have interesting assignments, and his love of public policy has involved him actually in representing all of us in the so-called water wars case, although I'm reluctant to talk about that while we're in Florida.

He's touched our practice of law actually in some other and meaningful ways. No matter what the state or federal Constitution may tell you, I think Buddy has had more impact on the judiciary in Georgia, both state and federal, than any president, senator or governor has had in our lifetime, and some of you present today know that in a very personal way. And I think his efforts to help improve our bench in Georgia have been remarkable and

something that we ought to thank him for.

While Buddy was trained as a lawyer and I'm told by David Bell that he actually saw him in a law library at one point -- but David was drinking when he told me that. I'm not sure it was true. But while he was trained as a lawyer, I think Buddy has had politics in his blood all his life. Buddy moved from enforcing and practicing law to making law by serving in the Georgia General Assembly and in Congress, as you all know. He likes to say that before Larry McDonald's socks hit the water I was on the phone to him recommending that he run for Congress. It wasn't quite that bad, but it was close.

Off he went to Congress, and as you know, he served the people of the 7th District of Georgia remarkably well and with diligence and success, but when I thought about it getting ready for these remarks, I realized that Buddy really served as our third U.S. senator because there were people all over the state and probably a lot of them in this room who didn't live in the 7th Congressional District who would go to him for help. And he never said, you're not in my district, you're not one of my constituents, you can't vote for me. He just got to work and helped. And in that respect, took a heck of a load off of the people who were elected to do that. So I think we ought to keep in mind that for a period of time Georgia actually had three U.S. senators.

Because of his instinct to help people and not to have some accountability for that help, I had to try and break him off when he came to work for our law firm because he didn't understand the principle that people were supposed to pay a fee for that help, that we were not in the public service business other than, Ray, when we're doing pro bono work as you pointed out.

In today's political environment, it seems that we are sorrily missing

people in public office who, one, are willing to work with those in the opposite party to accomplish productive public policy goals and, two, have the courage to do the right thing. Buddy epitomized the kind of elected officials who would work with Democrats or Republicans in the public interest. His good natured, get it done attitude did not wear a party label, but most importantly, Buddy had personal and political courage to do the right thing.

In 1993, I vividly recall when President Clinton presented his budget to Congress, a budget that the President believed was designed to lead our country towards a balanced federal budget and a better economy. It was designed to get us there by both cutting spending and raising revenue and unfortunately, raising revenue involves raising taxes, but you just can't get there without both sides of that equation. Several of us told Buddy, he'll probably get the votes for that in the House, and if you vote for it, it will be characterized as a tax increase and you will be at risk of losing your job. Buddy's answer was, "I know, but it's something we have to do as a country." A year later, that vote did cost him his job. Six years later we had a budget in surplus and the strongest economy in our country in decades. Oh, how we could use a few more Buddy Dardens in Congress today.

My last criteria, human being, and the most important criteria in my judgment, that can be applied to someone. Are you genuine, do you care about others, are you motivated only by money or status? On the human being scale, Buddy Darden ranks at the top. Have you ever noticed how he knows everybody's name everywhere. He's not running for public office any more. It's not something that he needs to do. It's because he cares who you are, where you're from, what you do, what your parents did, what their relatives did. It's like being with an encyclopedia of Georgia. Within three months of his coming to

work with our law firm, he knew more people in that firm than I did and I had been there for years.

Most of you already have experienced this, but if you have a problem and you tell Buddy, it becomes his. If you need five minutes of his time, he'll give you the afternoon. If you need a friend, there's nobody better to turn to. Personally I've been blessed to be around a number of talented lawyers and public officials in my life. There's no one on my personal list whose friendship is more genuine,

whose values are more stable and whose friendship means more to me.

And I've looked at the list of previous recipients of this auspicious Tradition of Excellence award, many giants of law practice in Georgia over the decades, some of whom are here with us today. Buddy Darden, a son of Hancock and Cobb Counties, for a lifetime of professional and public service is more than deserving to join their ranks.

Remarks by **George "Buddy" Darden**

Thank you very much, and thank you so much to my good friend Ambassador Gordon Giffin. I feel like I just attended my own funeral, and I really enjoyed it. Thank you so much to my fellow attorneys and to the persons who are responsible for my receiving this award. I am truly honored and humbled to be here, not just among the recipients but this group who means so much to me. I will be eternally grateful.

You know, when I first found out I was going to get the award, I felt, frankly, a little undeserving, but I've gotten the blame for a lot of things I didn't deserve in my life. So sometimes these things have a tendency to even themselves out. As many of you know, I've had a very, very interesting journey during my practice of law, which began on May 10th, 1968, and I was sworn in by Honorable Conley Ingram seated back here to the present day. And so for the last 40 some-odd years, it's been my pleasure, my privilege to be a member of this ancient and honored profession. And incidentally, on the 40th anniversary of my being sworn in as a member of the Bar, I had an opportunity to play with my tennis group, who is here today, and Judge Ingram and I on the 40th anniversary of our Bar defeated a much younger team that morning, and incidentally, it's good to see Judge Adams and Judge Thrash here today, too. As some of you might expect, when playing tennis with three judges, you never get a chance to make a call.

Gordon mentioned my first career as district attorney. I was so proud and so humble to be district attorney for Cobb County, youngest in the state. Four years later I was the youngest ex-DA in the state. And so I was elected into private practice for several years as a sole practitioner. If you want to know what the practice of law is all about, be a sole practitioner where every dime that comes into the firm you generate and every penny that goes out you write the check for. That's called cost control and keeping the overhead down. And then, of course, I

had the opportunity to go to the state legislature, and as Gordon said, during my legislative term, Larry McDonald was unfortunately shot down by then the Soviet Union. And as the plane he was on was falling down from the sky, Gordon was on the phone, "You got to announce; you got to announce." And that's one of the few times I didn't follow Gordon's advice and went ahead and waited a few days.

We ran that first election to Congress 1983. In six weeks we spent \$110,000 and had money left over. But then I went to the Congress, and I did have six very productive and very rewarding years in Congress for which I will always be grateful. And that's when I found out that it's a whole lot easier to change the law than to go to court and take five years trying to change it that way. That's when I found out that political law is very much a part of it.

But the year was 1995. It was January, and I had a great resume. I had done a lot of wonderful things. I had a wonderful family. I was 51 years old. I had been to Congress. I had been a state legislator. I had been a DA, but I was unemployed and I was broke. And that's not a very good feeling, but then that's when I started talking to law firms, and everybody wanted to talk to me, by the way. Everybody wanted to know what I could do for them and maybe what I ought to do, but Gordon Giffin and Clay Long said, "Let's go to work. Come to work for us and let's find out what we can do." That's the kind of man Ambassador Giffin is. "Let's go ahead and do it. Let's not sit back. Let's go ahead and move forward."

And I will always be grateful, and I will always be grateful to Long, Aldridge & Norman it was then, and now it is McKenna, Long & Aldridge because they took me in. And as Gordon said, I had been doing all this stuff for free. I didn't realize that you

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Remarks by George "Buddy" Darden

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were supposed to charge money for it. I found out it wasn't such a bad gig after all. So for the last 15 years, I've been at McKenna, Long & Aldridge, which we are known by now, and it's been a wonderful ride. And I have re-invented myself in that firm at least five times.

Last year we got to looking around, we had a condemnation case to try, and nobody had ever tried a condemnation case. So I volunteered to do it and went out to Paulding County and tried it for four solid days. The best case I ever tried. I really thought they were going to give us money we didn't want. After four days of trying and getting every piece of evidence and every ruling I needed in my favor, guess what, the jury gives me exactly what the county had offered me two years before that time. So we all need to be reminded what it's all about. It's really not about us as lawyers, it's about the case and it's about the jury and it's about justice and common sense.

So let me say that the reason my step along the way has been so good has been as Gordon said, because of my wife, Lillian. We got married in

1968. We've got our 43rd wedding anniversary coming up. And we are immensely proud of our son, George, who is with us today, who is a public school teacher in the Atlanta Public Schools, and also our daughter, Christy, who is a journalist and then has become a lawyer against my advice, I might add. But we are proud of her and our three granddaughters as well.

I'm going to close by giving you a couple of lessons I've learned in the practice of law very briefly. Try to be yourself. Try to be courteous to everybody. There will always be another day. Always try to be on time because usually the guy that shows up is the guy that is going to win. You never win in absentia. Try to treat everybody with respect and the way you want them to treat you. Always tell the truth because that way you don't forget what you said the time before. And perhaps as all the previous rules are, the most important one is in the general practice, when possible you should always get your fee in advance. Thank you very much.

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JUDICIAL



JUDGE HUGH LAWSON

Introduced by
Dawn Taylor

Tradition of Excellence Award

Morning. I know some of y'all are going, "Now, who is she?" I am Hugh Lawson's daughter. My mom is here, Barbara Lawson, my husband, Jim Taylor, he's also a lawyer, together we are a family of 8. My parents raised three girls and three boys. They are pretty successful. I think we all are. My stepsister is Ph.D. in English. My other sister is a master's teacher in the public school system. My brother is a lieutenant colonel in the Air Force. My other brother is an engineer, and I have a brother who is salesman, medical sales. So I think my parents have done a great job of raising us.

Hugh is my father, not through DNA but because he raised me, and a lot of my uncles have been heard to say that if it weren't for Hugh in our lives, my brothers and I would probably either be in jail or dead. Hugh took my brothers and I, some unruly farm children, and he really remade us in his image, and I think that is probably a little bit of why I'm an attorney.

One of the occupational hazards that I find in my career -- I've been a prosecutor in Gwinnett since about 1995 working for Danny and have only recently opened my own prac-

tice, a sole practitioner. I call my husband a lot and ask him questions because he is about the only one that will take all my calls 20 times a day. Where do I file this? How many copies? But one of the occupational hazards that I have is when I meet people across the state and they find out that I'm Hugh's daughter, their face lights up and they begin to gush literally about how great he is, about how great it is to practice in front of him, and about how fair he is, about how promptly he rules, and all of you know how important that is these days. And, it is a great experience, to have that happen to you as a daughter because it's unsolicited, and people will tell you a story about something that he said or a note that he wrote to them. And it is a wonderful -- always a wonderful report of who Hugh is.

And I think that that is part of what makes him excellent, that so many people, like Mr. Darden says, he knows them, he knows their names and he knows their first names and their families. He is a great man. The attributes that he has, I am going to go into that in a little bit, but first I want to tell you a

continued on next page

Tradition of Excellence Award

continued from previous page

little bit about where he came from, how he was raised. He grew up in Hawkinsville, Georgia, born in 1941, graduated from Hawkinsville High School. He went to the Emory University and graduated from undergraduate in 1963, and in 1964 graduated from law school, which all I can really figure out is that is before there was so much law and it was so much easier. I don't know how it only took one year. Hugh left Emory, and he started to practice with his father, Roger Lawson. Hugh describes his private practice with his father, who in keeping with the first name tradition, we all called him Rog, he speaks with delight about how much fun that they had traveling around the state and representing all sorts of people in all sorts of matters.

Hugh was appointed to the Superior Court bench for the Oconee Judicial Circuit in 1979, and he served there for 17 years. He is a man that is dedicated to public service, and there are many things that he took part in over the time he was a Superior Court judge. He was on many boards and commissions. I probably shouldn't name them all, but I can and I will. He was chairman of the Pulaski County Board of Education. He was a member of the Board of Industry and Trade, the Georgia World Congress Center Authority, the Judicial Council of Judges, the Judicial Qualifications Commission, the Joint Commission on Alternative Dispute Resolution, and the Georgia Board of Court Reporting. He was a director of a bank for a while. He sits on the board and is a trustee on the Foundation for the United Methodist Children's Home. My parents are life-long members of the United Methodist Church of Hawkinsville where if something ever happens to them, I am quite sure we will all have to move home and go there because they are the backbone of that church. My mother directs the choir, and Hugh taught my brothers and I Sunday school for as many years as I can

remember, and to the point when we all finally said, "We get it, Hugh. We got it. Hand the reigns off to someone else." Hugh served the people of the Oconee Judicial Circuit and the people of this state in his community service, but he did while he was serving the family. Hugh made us breakfast every morning that I can remember, piles and piles of oatmeal. He made us poached eggs, which I still hate to this day. And Hugh would wake us up every morning to get to school by popping whatever toe he found out from under the cover and tell us to get up and get busy.

After several years -- after the 17 years he served as Superior Court judge, he decided -- well, maybe a little bit before that, he decided maybe he was ready for the next grand adventure, and he cast his lot for the Supreme Court. After a couple of failed attempts at that, he decided that he would just go home and console himself with a lifetime federal appointment. And he was appointed in 1996 by Bill Clinton to the Middle District of Georgia for the 11th Circuit. Hugh has served there ever since as chief judge from 2006 to 2009. He has taken senior judge status, but don't be fooled, he still has an active caseload. And I think the only thing that means is that he comes home every now and then early on Thursday and whenever my mama tells him he needs to come home. He has every intention I think as continuing as senior judge and working as hard as he ever did.

That's where Hugh's been and what he has done over the years, but one of the qualities, I guess, when I think about what makes him deserving of this award of excellence -- and, of course, I'm biased because he raised me, but there are many things that I can tell you about him. Anyone who knows him, knows that he is very wise and well spoken. He is -- I guess he rules the written word. If you have ever received a letter from him, if you can read his handwriting,

it is wonderful to read, and I collect those and cherish them. Not only does he counsel people, his friends and community, but he has always made himself available to whom-ever calls. We grew up in a very small town, and there was night after night when I was in high school, and middle school even, that the phone would ring, and a lot of times it was during supper. And, of course, the phone never rang for me during supper or during high school. But when Hugh would take those calls, it would usually be somebody from his community who needed him, who needed his advice, who didn't know who else to call; and while he may have used a few choice words before he took the call, since it was usually during supper, he would always take it and he would listen and he would give whatever advice that he could to those people. He was always available for them. It got so bad that my parents actually had a phone installed by the tub so he didn't have to get out to take the calls. And I'm not kidding.

Hugh is an ethical person, and he's an ethical judge. A lot of the stories I hear are about how truly fair he is and professional. One of the cases I think that shows the essence of who he is, is a case that some of you may remember that he took over when he first got to the federal bench where some lawyers were accused of doing some unethical things hiding some results, and he took the money the defendant company had to pay and he divided it among the four law schools, four accredited law schools at the time, to be used for their education on ethics. There is an annual symposium that was established using that money, the money that the attorneys had to pay as a fine, sort of, went to the Chief Justice's Commission on Professionalism. That is kind of Hugh, he takes a bad situation and he makes it into something better, something for the good of all. And he commands respect when he

does that, but he also -- even in those situations -- gives you back, I think, an equal measure of respect, and that's what makes him so great. He inspires to be the best that they can be. If you people have ever practiced in front of Hugh or been grounded by him, I think that one of the things that I have learned and that comes to my head, I was reading a book by Rick Bragg the other day, and this phrase jumped out at me about the things that he taught me that I think made me such, I think, a good lawyer -- I have never really been scared of tough judges in part because when you see the size of him and if you ever seen him mad, my children say, don't make Hugh mad. It's a scary sight. But one thing that he taught me, and these are Rick Bragg's words, "It is one thing to be sure of yourself, and it is another to have someone tell you to quit dancing, look them in the eye and tell them the truth, even if it hurts your pride." And that is what Hugh taught me, and I think that's why my brothers and I particularly

went from one path to another because there he was always making us quit dancing and tell him the truth and be the person that he saw in us.

The one final thing that I think makes him so deserving of this award is that he is unchanged by the power and success that he has accomplished, the things that he has accomplished in his life, and he treats what I see in answering those phone every night when I was growing up, but in seeing him on the street in our hometown and whoever he meets whether it's in the courtroom, here, in the gas station in our hometown, he is the same. This is a story from when I was in college. I had a friend who was invited down to Hawkinsville to spend time with the family, and I told her, just come into town, park at the Zippy Mart, call my parents and somebody will come and get you, and you can follow them home, and they will show you where to go. And so she did. And I guess she knew that Hugh was a judge, and that's about all she knew about him.

So there she sat, and in a minute she said she looked over and there was a guy that had pulled up in a faded Dodge pickup truck, beat up, he had overalls on, a bandana around his head, sweat dripping off his face. And she kind of looked away, and looked back over in a minute. He was looking at her, and he said, "You Deb?" "Yes." He said, "Follow me." And so Deb, being from up north, with the Yankee's worst nightmare in her head, followed him hoping for the best. I guess scenes of Deliverance were coming to.

But Hugh is a great man, and as I said, he is unchanged by the success and the things that he has achieved in life, and I think that's what makes him so great. He has served the people of this state in many capacities for 31 years with a head full of common sense. And I would like to present to you a great man, a great father, a great judge, a great lawyer and great husband, Hugh Lawson.

Remarks by **Judge Hugh Lawson**

Why do y'all have this meeting in the middle of the night? Dawn, when I asked you to make the presentation that you have just made, I assumed that you would do it with due regard to the truth, and I think you got it about right. Because virtually all of the public speaking that I do now comes in the form of charges to juries and because I've never had an original thought in my life, I'm going to use my notes. The simple words thank you, which since the dawn of civilization have suffice to cover the waterfront in terms of gratitude and appreciation, seem inadequate at this moment. Nevertheless, I extend my heartfelt gratitude and thanks to be honored with this recognition by this particular group which consists of the cream of the Georgia Bar, as well as those lawyers who routinely undertake the solution of problems of people and try to prevent

the breakdown of organized society by stepping into the breach of human disputes and finding some resolution short of gunfire and knife fights is particularly satisfying. Although I have, through the years, worked pleasantly and satisfactorily with various specialists in various areas of legal practice, at the end of the day it is with this group that I ultimately identify, and in your company I feel most at home.

As a lawyer, I was in general practice, and for the past 31 years I've been a general practitioner of the legal arts as a judge. In my judgment there is no better, no more useful, no more satisfying way to render legal service than general practice. I'm particularly proud to be included in a group that in-

Continued on next page

Remarks by Judge Hugh Lawson

continued from previous page

cludes Andy Scherffius, Ray Persons and Buddy Darden. Any one of these lawyers have far more legal knowledge than I will ever possess, and if they were to combine their talents, they would collectively possess more legal acumen than Sir William Blackstone and Lord Coke put together.

As the day for this event approached, I was anxious about what I might say today, and I hoped to avoid saying anything inappropriate. In an excess of caution, I went to the website of this section and read the responses of all of those who have been honored with this award. My fears were relieved. My anxiety evaporated. I learned from my reading that nothing is inappropriate, and at this relatively early hour of morning, this group will sit still for almost anything.

Most of those honored said something personal about themselves, and that seems appropriate if not carried to extremes. It might interest you to know that I am not a self-made man. I've had more help getting through 68 years than did the Hebrews in passing from the fleshpots of Egypt to the Promised Land of Canaan. The only thing that I lacked was a cloud by day and a pillar of fire by night, but I had other assets. I had a mother and a father who wanted the best for me and tried to move heaven and earth to see I got it whether I wanted it at the time or not. I had grandparents who supported my parents as they labored to make a man of me. I have five sisters who humored and spoiled me and gave me a sense of self-confidence which remains with me yet in some small degree. I'm blessed with a wife who has loved me and supported me and looked after me on the mountain tops and in the valleys. Barbara has been my chief cheerleader and critic. Her cheers make me walk like I was stepping on logs, and her criticisms keep my feet on the ground and remind me what a damn fool I can be from time to time. As Dawn has told you, I have 6 children and 13 and a half grandchildren. Getting them all raised and educated and over fools hell has been an enlightening and expensive experience, but I have no more idea today than when I started as to how to motivate a child to academic excellence.

That notwithstanding, all have undergraduate degrees, some have postgraduate and professional degrees and one has a Ph.D. I brought one of them that you just heard as an exhibit. The rest

of them are just as slick, and I wish they could be here so I could show them off. I have learned that the raising of a family is a life-long project and is not concluded when the youngest becomes sui juris. Parental obligation evidently extends to infinity. I went to a bank recently to discuss a loan. The loan officer wanted to know about my assets and investments, and I told him that my investments so far have been chiefly in food.

I've had the support and instruction of countless lawyers and judges and law clerks who have advised and counseled me when I requested it, and sometimes when I did not. Finally, I've been privileged to belong to the greatest of all fraternities, that is to say, the legal profession. I cannot imagine what I would have done had I not become a lawyer. Lawyers have come in for some heavy cussing lately, and some of those doing most of the cussing would like to condemn us to the pit of fire and brimstone. Perhaps some of us should be, but if so, I agree with Mark Twain's observation, "Heaven for climate, hell for society."

I like lawyers and prefer their company, which is generally the merriest, the wisest, the most comfortable and entertaining and instructive of any society available. The subset of lawyers called judges can be stuffy at times, but I've learned to deal with that. And this brings me around full circle when I declare that general practice and the trial bar comes closest to exemplifying what is finest about the practice of law, which is, of course, the service and protection of our fellow women and men.

Again, I thank you for this great honor. I'm the most fortunate of men. I'm humbled and filled with pleasure and satisfaction that you should feel me worthy.

PLAINTIFF

ANDREW M. SCHERFFIUS



Introduced by
Mark Dehler

Tradition of Excellence Award

Let's see, I get to follow a United States ambassador, Hugh McNatt, and an incredible daughter. It is my honor to come up and to introduce to you today Andrew Scherffius, the plaintiff's Tradition of Excellence Award winner this year.

I was flattered when Andy asked me to do this. I was a little bit surprised, and then I realized, well, of course, just look at us, we're twins: Arnold Schwarzenegger and Danny Devito. Andy reminded me immediately, and at least a dozen times this morning, that this is not a roast. And for those of you all who ever have the opportunity to roast Andy, please let me know because I've had so many people volunteer so many things that would be much more appropriate at a roast. And despite your observation, your Honor, I'm going to pass on some of those here today, if out of no other reason than the interest of time. Suffice it to say, I mean brothers from the Kappa Sigma fraternity at Georgia called and told me things about Andy. That is how far back and how consistent the roasting material is out there should y'all decide to do that. Andy did go to the University of Georgia undergraduate. He was actually there initially as a basketball star. He wasn't

able to play, but did go to the University of Georgia on a basketball scholarship. He went on to be the president of the Interfraternity Council at Georgia and to law school at Georgia where he was a member of the Law Review.

Andy started his practice at the firm that many of us who will show our age remember, Neeley, Freeman & Hawkins. They were quite the law firm in metro Atlanta for many, many years. And Andy and the last year's recipient of this award, Bill Bird, practiced there together for five years until they started what we all knew as probably the quintessential plaintiff's firm in the metro area at least, Bird & Scherffius. Today he is joined by his partners, Bill Ballard, Eddie Still, Greg Feagle, and the retired Tammy Ayres sends her regards.

Probably the thing that struck me the most about Andy's experience, and I think is unique in the plaintiff's practice today, is the diversity of cases that Andy has handled. I knew him first as a medical malpractice lawyer. That's where we first ran into each other many years ago, but he is probably much better known for his

Continued on next page

Tradition of Excellence Award

continued from previous page

aviation cases. Andy's aviation experience is probably among the best in the country, and I say that truly without reservation. I knew generally about those kind of things, but Andy has handled incredible cases involved with the premises liability, swimming pool accidents, security of apartment complexes, truck wreck cases, automobile accident cases. You name it in the plaintiff's practice, Andy has done that representation.

And he's a lawyer's lawyer. And that's a saying that people use I think a little bit too flippantly sometimes. But probably some of the most moving information I got was from lawyers who have been opposed to him in cases, large law firm defense cases, who then called him up when they got an opportunity to handle a really good plaintiff's case for the firm. And he's had some incredible successes handling those kinds of cases for the large firms.

But probably the thing about Andy's practice that was the most impressive to me as I surveyed the waterfront were the people with whom he litigated the most telling me that Andy's graciousness, whether he won or whether he lost, was just always nothing but the most incredible. He

at every turn does the right thing. He always does the ethical thing. The rule of thumb for Andy in discovery is if we are even having a discussion about whether it should be produced, it should be produced. And that is the kind of professionalism that he brings to the table in every case. Another lawyer who works against him on some cases said to me, he really raises the bar in every case he's in. He's been likened to a thoroughbred racing horse who is just simply the finest trial lawyer that many people have ever seen and been able to practice with.

Andy has been recognized by different organizations. The Georgia Trial Lawyers named him trial lawyer of the year. An interesting one that I wasn't aware of was that the United States Supreme Court appointed him to two terms for the Advisory Committee for the Federal Rules of Civil Procedure. These are things that are simply not lightly granted. Those are incredible accolades. But if you ask Andy, I think that he would tell you that the greatest joy and the thing that he works the hardest at is being a very good dad; and as we approach Father's Day, I want to mention Andy's daughter Elizabeth and son Andrew are

incredible children. They're actually young adults now. They're not children. They wish they could be here today, and frankly, I wish I could introduce them here today. But you will discover there are only two things that Andy Scherffius has not been successful at doing. One of them is accepting awards like this. He doesn't handle it well, and you're going to see that in just a minute. And the second thing is retiring. Andy has tried to retire to Montana several times. It's never quite worked out. Like that thoroughbred racing horse, he keeps being called back for one more race, and Andy because he has great empathy -- you know, the plaintiff's practice, if you stop and think about it, a great case for the lawyer is usually a horrible case for the client. It's just that is a fact of life. And it is Andy's empathy and his work and his just incredible skills that make him a great trial lawyer. But, Andy, you aren't going to be able to retire. We're just not going to allow it. And, frankly, as long as there are CEOs out there that are telling us they're worried about the little people, I don't think you will need to.

It is my honor to introduce to you, Andy Scherffius.

Remarks by

Andrew W. Scherffius

There's this fleeting, momentary sense of great empowerment when you stand here as the last speaker of the day and realize everybody's future this afternoon depends on how long I speak. I have asked that they block the exit doors, and I see this gentleman has taken care of exit number two back there. I plan to limit my remarks to two 45 minute sections with a break between the two, but nobody will be allowed to leave the room at that time.

I really appreciate Mark Dehler's remarks. He was kind enough to do this over great objection. It took something like 75 phone calls to him until he agreed to do it, and I had reserved the right to censor all of his remarks. That was another three and

a half hour meeting, and then I just gave him some prepared remarks that I came up with. So I can tell you today that everything that he says is completely accurate, and without reservation I can tell you that he told you the exact and total truth about the recipient for the plaintiff's bar.

Having put that aside and recognizing that he was speaking totally about somebody that I do not even recognize, let me just say that it is a great honor, and as everyone has noted, an enormous privilege to be able to have this award from your peers. I think that when you practice law or are on the bench or participate at all in the legal system to have some recognition from your peers is probably the highest

honor you can have.

I think my career can be summed up maybe in two cases, the first two I ever tried, and it's never been dull. I have worked at Neeley, Freeman & Hawkins, an incredible trial firm. Also, as many of you know, some of the most interesting characters in the world who have ever practiced trial law were in that firm. There was nobody like Edgar Neeley. There will never be another Edgar Neeley. Joe Freeman, Paul Hawkins, Al Parnell, Bruce Welch, just wonderful people to practice law with. I think the first two cases that I was assigned to go try, one was about two months after I started practicing law, and it was in Floyd County. I won't mention any names because the good warm earth has covered up both the judge and the defense lawyer, who was also a judge. And in my first case, I think it was probably about \$5,000 worth of some kind of subrogation loss. And as I stood up for the voir dire for the plaintiff, the person who had suffered this terrible loss to their automobile, the objections started. "Judge, objection." Judge: "I sustain your objection." "Judge, objection." Judge: "I sustain your objection." And this went on throughout the entire case, which terminated about three hours earlier than I anticipated and with a directed verdict for the defendant. When the judge stood up and asked the judge for a directed verdict without argument, it was granted. So that was my first jury trial. And I went back to the office with this terrible news, and everybody had great fun making fun of me for about the next two weeks. But interestingly enough, at Neeley, Freeman & Hawkins, they allowed me to appeal that case and the money got paid. I think we might have compromised for \$3,000. My second experience was in Putnam Superior Court about three or four months later on another major piece of subrogation litigation for The Home Insurance Company. I think by then they entrusted me with up to about \$7,500 in damages. I traveled down there in my Volkswagen Rabbit that had quite a few miles on it with all the files for the week in the back seat, and that's how things were done. You went from courthouse to courthouse to courthouse in those days with subrogation files in the back. And so I met the insured who amazingly show up for some of these, and we went to pick a jury, and based on my past experience, of course, I was quite concerned about where it was going to go. So one of my questions obviously -- and again most of these people have been covered up by the good earth, so I won't mention names -- was in effect do you know the defense lawyer. Now,

I'm in Eatonton, Georgia. There were about five lawyers back in 1974 in Eatonton. Of course, everybody knew the defense lawyer. And all the hands go up. And I start asking questions about it, and finally one of the more elderly gentlemen in the back row in overalls -- somebody mentioned something about overalls earlier -- raised his hand. And the judge said, "Do you have a comment or question?" And the gentleman on the panel just simply said, "Son, it hurts him." I know my eyes went like this. I said, "Sir, excuse me?" He said, "We all know Mr. Blank. It hurts him." And what he meant by that, of course, was that my defense lawyer in the case did not have the best reputation around the county. And so I didn't know what to say. Of course, I did the thing that all young lawyers do when they don't know what to say, I kept talking. Right now I would like you to envision, if you can, please, that you are sitting in your car, and you're the number one car at the railroad crossing. It has been a very long train coming by. You are late to your hearing in front of an unforgiving Judge Lawson, and you had best be on time. And the train has been interminable, and you look down the track, and there is finally the caboose. You can see it. It is miles away, but it's coming. Well, ladies and gentlemen, I am the caboose. I'm the caboose here today, and I promise you that I, too, shall pass, and you will get on about your business, and my remarks will not be very long from here forward.

I do want to say that it is an incredible experience to be called upon by people in the community, by citizens, by folks you know and folks you never have even had the opportunity to see or talk to. To represent them with their problems in a court of law, is an incredible honor, a privilege that very few other professions, other businesses, other occupations can come close to matching. To be able to go into a court of law and present a case to a jury is, I think, a humbling, incredible opportunity to serve people and to be involved in a way that very few folks will ever get involved. And I've been blessed over many years to have that chance.

I look around this room. I see people I've known from the day I started practicing law. Actually back in law school and even before. My best friends are lawyers and judges. And my best opportunities to have fun are with lawyers. But when it all gets right down to it, I think what we share together is that little fraternity of people -- and there is not a lot of us -- that have an opportunity to try cases, who get

Continued on next page

Remarks by Andrew W. Scherffius

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to go into the court, who get to appear in front of jurors, members of the community, peers of us all to decide many times for complex and life-changing issues.

So when I think of the practice of law, the people I think of first, I think, are the clients I've had the opportunity to represent. Think about being a client in a disastrous case going and basically turning your future over to someone you hardly know. That's pretty humbling. Secondly, I think of the people that I have actually practiced closely with, the partners, the people who gave me a chance. Neeley, Freeman & Hawkins took a huge gamble. And those people remained my mentors for years and years and years and I hope in some sense I have been able to mentor others as they have come along.

I think of my partners presently and in the past. Bill Bird, a past recipient of this, and I formed a firm. I don't think between us -- well, would you do it again today knowing what you know. Well, I don't know. But I remember he and I walked into the old BankSouth in Atlanta and asked for a loan. It took a lot of guts for the gentleman sitting there to grant that loan to us, and we started a law firm having no idea what we were getting into and had a wonderful time over the years practicing law together. Since then I've practiced law with many other fine lawyers, Jim Butler, Joel Wooten, two past recipients of this award. And I'm presently associated with three gentlemen who came down to be here today: Bill Ballard, Eddie Still, Greg Feagle. Couldn't be finer people to spend time with. And Tammy Ayres, who recently had the good sense to retire and is enjoying it. So the next people I think of, of course, are the members of the bench that have in my opinion, always demonstrated in this state and other places I've been, the highest levels of integrity and a real desire to make sure that whatever the issues are, whoever the people are, no matter how complex or simple the case, that the rulings are fair and just and are done only out of the sense of a determination that reaches the heart and truth of the matter. And I think of other people not associated with the practice of law directly that have been such a huge help to me. So I think it was Judge Lawson who mentioned his parents. Without them, of course, and without that drive they instilled in all of us to get to where we are, nothing would have happened. And the opportunity that they presented totally selflessly cannot be replaced. The brothers, sisters, other family members. But it all comes

back I think in the last 36 years to the lawyers I've been able to practice law with. It's been a wonderful experience.

There is one quote -- you know, when you don't have much to say, you turn to quotes -- from Edmund Burke who, as you know, was an 18th century Irish everything really. He was an educator, philosopher, politician. He had the pleasure of living in a very dynamic time, as we do, I think going to show in a couple of hundred years. But a couple of hundred years ago, he was living through the American Revolution and the French Revolution. He had a lot of interesting things to say about lawyers at a time when lawyers, as with now, were not the most popular profession. He said, you know, in a book that recently came out, the author is -- this is a senior moment, thank you. Jack Bracho. He has a book out now called, "The Revolutionaries." It is about the people who were at the heart of the American Revolution. And he quotes Edmund Burke -- and I checked it out -- in one of his books, and he says, you know, the men who were involved with the law and were privileged to study the law are men that -- renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. They augur misgovernment at a distance and snuff the approach at tyranny at every breeze. And I think that pretty well sums up how the legal profession serves civilization, serves our nation and serves our country and many times in kind of a thankless way. And again, it's just a huge honor and privilege to be a part of that.

One group I failed to mention but I think, are all the people who have opposed me in cases. And many of them have been highly successful, unfortunately, in opposing me in cases. What you can say about the people who oppose you, I think, is was one of the Greek philosophers -- I think it was Aristotle -- the man who wrestles with you makes you stronger. And I firmly believe that. That goes to the heart of our adversary system and our litigation, our trial work that we do, and I think through the adversarial process the truth manages to come out.

The word I've heard several times today is humbled, humbling, with great humility, and I share all of that with every recipient here today. It is a very humbling experience to be able to appear before such an august group of very, very fine lawyers and judges and accept this award. I thank you very much.

It's Time To Get Organized

Managing Your Office When You're Not There

Leslie Walden, CPO and Barbara Mays

Has this ever happened to you? You've just walked into your office after spending the past two days in court. There are 150 unread emails in your inbox and 35 voicemails – clients with a question or those who haven't heard back from you, as well as colleagues with requests and who need answers now. On your desk, the inter- and intra-office mail is spilling over and there are notes from the office staff scattered about. One look at your calendar, and, to your chagrin, you see that you missed two appointments. You wonder how long it will take to catch up from two days out of the office while continuing to handle your ongoing work load.

In this article we will explore ways to handle these types of scenarios. And in addition, we suggest practical steps to prevent this situation from happening in the first place. The easy-to-use techniques will help you ...

- Manage your time more effectively
- Handle your work load more efficiently
- Streamline your office procedures
- Maintain and build stronger client relationships
- Relieve stress
- Reduce the risk of careless mistakes

What can you do to keep your office running smoothly when you will be

out of the office and unreachable for several days? Below are some tips...

- Reschedule clients and others affected by the change in plans as much in advance as possible.
- Leave an out-of-office message on your email and voicemail saying that you are not available. Provide the name and number of your assistant.
- Alert meeting attendees if you believe you may need to cancel at the last minute.
- Meet with your assistant and explain what needs to happen in your absence.
- Check your planner routinely to make certain there are no conflicts in the coming days that might need to be rescheduled.
- Schedule time to review your to-do list and do some upfront planning. This can also be an ideal time to think and be creative.
- Set up specific folders in your email system so your assistant can move emails to the appropriate folder.
- Make sure your assistant is aware of your schedule, your day-to-day workflow and your preferences in handling specific situations. Discuss contingency plans ahead of time and leave detailed instructions. Designate someone your assistant can turn

to for questions and concerns.

- Organize your desktop and office so others will be able to quickly locate what is needed in your absence. Leave your tasks and pending items in files so your assistant (or anyone else) can refer to them during your absence.
- Designate a specific briefcase for your 'Read and Review' material that you can take with you during downtime.
- Create a menu of outgoing email and voicemail messages to use in different circumstances.
- Keep contact information (including new clients) up-to-date in your computer. That way you and your assistant can locate a specific contact when needed.
- Sync your PDA regularly, giving you access to your planner and your contacts when you are out of the office.
- Create specific boxes to house different types of papers: working on, research, waiting for information, statute of limitations and a conflict of interest file. Label them so everyone knows where specific papers belong.

Let's look again at the opening scenario now that you have incorporated these tips. You have just returned from spending two days in court and

continued next page

Letter to the Membership

continued from page 3

faithfully represent all of its members by providing its members with the support that they need in their practice.

A lot has changed since I became a Georgia trial lawyer 24 years ago, but a constant has been the extraordinary and exemplary leadership of our bar. Despite persistent attacks on our profession, unprecedented economic upheavals, and political torrents, it is more exciting than ever to be a Georgia lawyer. I encourage each member of our section to join me in promoting and continuing the projects and initiatives of the General Practice & Trial Section of the Georgia Bar.

It's Time To Get Organized

continued from previous page

your office looks entirely different. Important and urgent matters have been attended to and everything is under control.

- Over 150 unread emails have been sorted into folders and you can focus on the 25 that need immediate attention; 20 are in your case specific folders; 45 were deleted by your assistant; 35 are in your 'Read and Review' folder; and 25 pertain to upcoming events, including courses offering CLEs.
- Clients who have sent emails and left voice messages are not expecting an immediate reply.
- Of the 35 voicemail messages, your assistant has designated 10 as priorities, 15 as needing no response. Ten were taken care of by your assistant. After you attend to the priority calls, you will respond to the seven calls from colleagues pertaining to specific cases, the two calls from your golf buddies about the weekend game, and the message from your mother wondering why she has not heard from you.
- The mail is categorized by importance and similar items are grouped together. For example, important mail would be notice of depositions, pleadings, motions and other notices which have deadlines and need action, bills to be paid, and checks. Less important mail would be notifications about upcoming conferences and meetings, announcements, and invitations. Magazines and periodicals can be kept in one spot.
- Messages from the office staff are divided by importance and priority.
- No missed appointments.

Try gradually to add one or two of these tips to your office management. Once you have incorporated them into your routine, add another

one. The goal is to eventually use these tips both when you are out of and in your office. Though for the most part these changes are small and easily implemented, they make a big difference in the smooth operation of your office. You are on the same page as your support team, and they are happier with a regimen to follow -- and with less last minute or after hours crises. You are less stressed and have greater control over your day. And being less stressed and more organized, you can focus on the things that count: more billable hours, more revenue, and more profits for the firm. Don't forget to call your mother.

Submitted by:

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Alternative Dispute Resolution Practical Mediation Tips

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I.

NEGOTIATION AND ADR.

Negotiation is a part of everyday life. Everyone negotiates something everyday. It is a process of social interaction and involves back-and-forth communication designed to reach some agreement between one party and another party. Negotiations can involve a contract, a family dispute, a lawsuit, divorce or a peace accord between nations. The typical scenario is for each side to take a position, argue in favor of that position, and then make concessions with the other side in order to reach a resolution of the dispute or a compromise.

The most commonly used form of dispute resolution is the process of negotiation. Negotiation is also part and parcel of all the processes on the dispute resolution continuum between avoidance and war. In other words, negotiation typically surfaces at some point during the dispute resolution process and often complements and accompanies the process as it continues.

In a typical mediation - whether it's a two-party or multi-party negotiation - one party has a goal and the other party(ies) have a goal and those goals are usually not the same. The parties, of course, ultimately want to reach a resolution but the terms of the

resolution, i.e., the parties' respective obligations and duties, generally are not the same. Without some sort of facilitation, an impasse is likely and will be followed by litigation. In a standard negotiation neither side trusts that the other side is truly presenting their "true goal" (i.e., usually the final number they really want) and, therefore, the other side will not present its true final goal. The facilitation which the mediator brings to the table is what pure negotiation lacks. A mediator can serve as the cushion/ insulation between the two parties and can use "shuttle diplomacy" to employ methodologies

continued on page 24

Alternative Dispute Resolution

continued from previous page

to break an impasse. The mediator enables the parties to posture without truly posturing in the presence of the other side because the mediator carries the messages between the parties and diffuses the posturing element which is present in most pure negotiations.

The most traditional negotiation strategy is known as "positional bargaining". Positional bargaining involves trying to improve the chance that the settlement reached is favorable to you by starting out with an extreme position; by stubbornly holding onto it; by hiding your true views from the other party and by making small concessions during negotiations in order to keep the process going in the hope that a compromise will be reached.¹ In positional bargaining, the parties come to the negotiations with a predetermined maximum that they will accept (or give up) with no expectation of ever reaching that maximum point. The parties view each other as adversaries with clear winners and losers. Significant posturing takes place and small concessions are made by each party in the hopes that eventually a compromise will be reached. The controversy resolves when the parties can reach a settlement range which overlaps each other's expectations. Settlement in this manner often requires years of discovery and trial preparation before serious negotiations take place. Positional bargaining involves the "take it or leave it" and "see you in court" approach.

Interest-based bargaining is a strategy which is taught to neutrals who employ it in the realm of alternative dispute resolution. Interest-based bargaining or "principled negotiations" (as defined by Fisher and Ury) involves focusing on the real problem at hand, the real interests of the parties and the needs of the parties. The parties are encouraged to define their common problems, their common interests and move the discussion jointly towards the problem. The

goal is for the parties, working with the mediator or neutral, to generate a framework for resolution of the dispute for the benefit of everyone.

With interest-based negotiations, the focus is shifted away from positional statements towards joint problem solving of the underlying issues. The goal is to (a) separate the people from the problem (eliminate egos, emotion and inflammatory rhetoric); (b) focus on interests, not positions; (c) invent options for mutual gain; and (d) use objective criteria (what's your best alternative to a negotiated settlement, also known as "BATNA").² Interest-based bargaining is particularly useful in disputes which involve on-going relationships whose viability is desirable. Such relationships are seen in the commercial world, contract disputes, divorce and child custody disputes, labor disputes and disputes which involve public interests.

II.

INTEREST-BASED VS. POSITIONAL BARGAINING IN PERSONAL INJURY CASES.

It is easy to see why negligence/personal injury cases are particularly susceptible to hard core positional based bargaining. The opposing parties view each other as the enemy and these types of cases are particularly prone to negotiations based on power, threats, manipulation and secrecy instead of problem-solving. The injured party wants to get the most amount of money possible and the tortfeasor/insurance carrier wants to pay the least amount of money. However, it is possible to use interest-based bargaining techniques even in the context of personal injury lawsuits, particularly in a mediation setting. The overlapping interests of both parties are to end a lawsuit or prevent it from being filed. Additionally, both sides want to minimize time and expense and eliminate the risks which necessarily exist in the trial of a lawsuit. Ad-

ditionally, interest-based bargaining can involve structured settlement strategies which may be beneficial to both parties.

During the negotiation and mediation process it is helpful to be aware of a concept known as "BATNA". The reason you negotiate is to produce something better than the results you can obtain without negotiating. The key question, therefore, is what is your "Best Alternative To a Negotiated Agreement"? This is a useful standard against which any proposed settlement offer can and should be measured.³ In contrast, when evaluating one's BATNA, you must also evaluate your WATNA, i.e., your "Worst Alternative To a Negotiated Agreement". In the context of a personal injury case, it is easy to go through this process with your client during the negotiation process. From a plaintiff's standpoint, you must consider the likelihood of a favorable verdict, the amount of that verdict, the percent of probability that the jury will reach that verdict and then you must consider the cost of obtaining that verdict in terms of actual costs, attorney's fees (maybe the attorney's fee contract provides for more fees if the case is tried), deposition costs, and psychological costs to the client. If your Best Alternative to a Negotiated Agreement in terms of actual hard numbers ends up being less or near the final best offer on the table, a lawyer is well advised to go through this exercise with his client in order to demonstrate just what the risks are. The same holds true for the defendant.

III.

HANDLING A MEDIATION: START TO FINISH.

What?

Almost any dispute is susceptible to successful mediation. Contract disputes, personal injury and prop-

erty damage cases, divorce and child custody actions, employment disputes, ADA claims, private or public nuisance cases and public disputes involving citizens, interest groups and/or government officials. Some cases may not be appropriate for mediation or ADR. These include test cases; suits seeking new developments or clarifications in the law; wholly frivolous suits; cases seeking to establish precedent or resolving Constitutional issues; cases in which one or both sides refuse to negotiate in good faith and disputes in which the vindictiveness of one or both of the parties cannot be satisfied in any other way but by a jury verdict.⁴

Why?

Mediation, and ADR in general, saves money compared with litigation because it requires less extensive discovery, less legal research and less witness preparation. It saves time in terms of trial preparation, calendar calls and court schedules. The parties are able to set a time certain to handle their dispute. In a successful mediation the result is final and not subject to appeal. The parties are far more likely to live up to agreements which they reach jointly and with common input and which are not “adjudicated”. Mediation is conducted in a more relaxed setting and with less formal procedures than litigation. It is, therefore, less stressful to both the parties and the lawyers. The parties get a chance to “vent” and tell their own story. The parties get to hear the other side’s story firsthand in a setting other than a courtroom. Mediation, and most other ADR, is confidential and can be conducted in private and is not subject to public scrutiny. In mediation, the parties have more control of the process. They can select the mediator, whereas in the court one cannot select the judge or the best jury for the case. In mediation, the parties also

retain control of the resolution process itself. They can frame their own solutions and agreements to settle the dispute. ADR, and mediation in particular, is far more likely to preserve on-going relationships than a litigation setting. This is particularly important in commercial settings, business disputes and in divorce actions where the parties need to recognize the importance of a relationship which endures after the dispute has ended. Oftentimes, the opposite result is reached through litigation.

When?

Mediation can be held anytime during the course of a dispute. It is not uncommon to hold mediations prior to the filing of a lawsuit and at anytime during the pendency of a lawsuit. Some courts have court-annexed mediation, however, remember that voluntary mediation cannot occur without the agreement of both parties. Probably the most important thing to keep in mind when considering mediation is that it needs to be held before opposing parties have “drawn their lines in the sand”. If either or both of the parties have reached a point in negotiations or settlement discussions of “take it or leave it”, then a mediation is probably going to be ineffective; unless the sole purpose of the mediation is to try and help the client understand why he or she should take the pending settlement offer.

Where?

Mediations can be held anywhere where you can get the parties and a mediator together. If it is a private mediation, typically the mediation is held at the offices of the mediation service. It can also be held at the office of the mediator or the office of one of the parties’ lawyers. We have mediated cases at courthouses and

hotel conference rooms.

Who?

There are many qualified U.S. Alternative Dispute Resolution services and firms listed in Martindale-Hubbell in their Dispute Resolution Directory. Each state has many highly qualified mediators and neutrals registered with the State Office of Dispute Resolution. Nationally, the American Arbitration Association (telephone: 800/925-0155) offers any type of dispute resolution process you require. Internationally, the International Chamber of Commerce (“ICC”), headquartered in Paris, France provides for voluntary “conciliation” when both parties agree under its “Rules of Optional Conciliation.” The ICC also offers Arbitration Services and many international commercial contracts provide for mandatory dispute resolution through the ICC.

How?

(1) Procedure

A voluntary mediation can be scheduled by simply picking up the phone or writing your opponent and suggesting that a mediation take place. The parties then agree on a mediation firm and/or private mediator. Alternatively, if the mediation is court-ordered, a mediator and a date will be assigned to the parties.

At the beginning of the mediation, a joint session is held with the mediator, the parties, the parties’ attorneys, and any other interested persons which may have reason to appear at the mediation, such as a representative of an excess carrier or a person with expertise in structured settlements. If the case involves a personal injury or another dispute in which one of the opposing parties is

continued on page 26

Alternative Dispute Resolution

continued from previous page

insured, oftentimes the actual defendant will not be present; however, a representative of his insurance carrier should be. This first meeting is known as the "opening session" or "joint session". The mediation begins with introductory remarks from the mediator concerning the mediation procedure and rules concerning the mediation, including those of confidentiality and the agreement by each party to mediate in good faith. In the introductory remarks, the mediator should try to establish a positive tone and comfortable environment in which the parties understand that the goals are common concern and working together to resolve the dispute.

After the introductory remarks by the mediator, each side typically makes opening statements. Generally this is done by the parties' lawyers, however sometimes the parties themselves actually make the opening statements. Usually, after the parties' lawyer is finished making his opening statement, the mediator will give the actual party an opportunity to make a statement or comments as well. The length and complexity of the opening statement varies with the nature of the case, the number of parties who are involved in the case and what issues are involved in the case. After the opening statement,

sometimes the mediator will ask what the posture of the settlement negotiations is, however, generally settlement discussions do not take place during this first joint session.

After the opening statements are concluded, the mediator will separate the parties and will hold a series of individual meetings with each side, known as a "private caucus". The mediator will typically go back and forth between the two parties using a kind of "shuttle diplomacy" method to discuss the issues with the parties; identify the real interests of the parties; engage in "reality testing" with the parties to determine whether their expectations and goals are realistic; and to facilitate settlement discussions between the parties. It is important during these private caucuses, that counsel for the disputants be prepared to discuss legal and factual issues which arise. During these private sessions, hard discussions about settlement possibilities take place. Demands and offers are exchanged and analyzed.

It is important to remember, and to stress to your client, that everything which is said at the private caucus between the parties and the mediator is confidential. Only that information which the parties expressly allow the mediator to disclose to the other side, is related by the media-

tor. All other information, emotional venting, hostility and statements of what you might secretly settle for remain confidential until expressly released by the parties.

After these series of private caucuses, the case may settle or the case may reach an impasse. Sometimes the mediator finds it helpful to hold another joint session with the lawyers and the parties or sometimes hold a joint session with the lawyers for each side and the mediator alone. It is common for the mediator to bring all the parties together for one final meeting to announce that a settlement has been reached or, alternatively, to thank the parties for their good faith efforts at mediation and to suggest that further negotiations take place if an impasse has been reached. If a settlement has been reached, the mediator will commonly have the parties sign a memorandum of understanding setting out the terms of the settlement in writing so that the settlement agreement has been memorialized before the parties leave. It is important to remember that, even though the case may not actually settle at a mediation, the channels of communication can remain open. Further negotiations and even a follow-up mediation should not be ruled out simply because the case does not get settled at the mediation.

Practical Tips for Mediating

- Be aware that under most state's ethical rules, a lawyer has a duty to advise his client about ADR. Therefore, discuss with your client the various forms of Alternative Dispute Resolution early on in the case so that they are aware of alternatives to litigation and/or trial. Of course, a lawyer should do this as a matter of regular practice even if it is not required.
- If you receive a court-order for mediation, consider asking the Court to allow you to arrange a private

mediation so that you and your opponent can choose the mediator and the date.

- Know in advance what "style" your particular mediation calls for and choose your mediator accordingly.
- Call the mediation service ahead and be sure that a television, DVD, Power Point equipment, easel and any other necessary presentation devices are available. If necessary, request a large room and be sure

that there a number of available caucus rooms depending on how many parties are involved in the case.

- Prepare fully for the mediation. Know the facts of your case and be very familiar with the relevant law which applies to the issues in your case. Bring copies of relevant caselaw applicable to the legal issues which may arise or need to be discussed at the mediation.
- Bring most, if not all, of your doc-

umentary and tangible evidence to the mediation. Blow up all relevant documents, charts and photographs so that you can use them in your opening statement and can refer to them during the joint session. Besides helping you be prepared and have a coherent and logical presentation, the presentation of your evidence and document enlargements during your opening statement sends a clear message to the other side that you are preparing to go to trial and will go to trial in the event that the mediation is unsuccessful.

- Have all special damages and other documents relating to medical expenses, lost wages, property loss values, lost profits, commissions, consequential damages flowing from breach of contract, permanent impairment ratings, future medical expenses, life care plans, economic value of the life assessments, etc. fully prepared and ready to present to the other side for review. Consider making a notebook or package of these for the lawyers, parties and mediator.
- Prepare all relevant arguments which support your own position and anticipate your opponent's arguments and prepare effective counter-arguments which may arise during the course of the mediation regarding the facts and/or the law.
- Carefully plan your mediation strategy and methodology just as if you were choreographing your trial strategy. This will include determining which negotiation style is best suited for your personality and this particular mediation, i.e., whether it is a "cooperative" or "competitive" style of negotiation. Be aware that a greater percentage of "cooperative" negotiators are viewed as effective by other law-

yers than competitive advocates which use adversarial and positional bargaining.⁵

- In serious injury or complex cases try to bring another lawyer to assist you. It is immensely helpful to have someone watching and listening to the mediation, particularly while you are talking.
- In your opening statement, emphasize areas of agreement and keep in mind that the mediation setting is much different from the litigation setting. Personal attacks and inflammatory rhetoric have no place in the opening statement of a mediation. Emphasize areas of agreement instead of taking positions as to what you will or will not accept by way of settlement.
- Use the opening statement to convince the other party (as opposed to the mediator or the other party's lawyer) why your view of the case is legitimate and bears serious consideration.
- In a catastrophic case, the counsel for a defendant corporation should seriously consider having a representative of the corporation there to express sincere regret and apologies to the family and/or survivors. This is not only the morally right thing to do but it also can generate a lot of good will which can affect the negotiating process after the parties break into private caucuses.
- Make a reasonable evaluation of your case and discuss this with your client prior to the mediation. In most serious cases, this will involve doing at least one focus group.
- Prior to the mediation, do a verdict research survey in your venue and talk to other lawyers who have obtained a verdict in similar cases in your venue. Obtain copies of these

verdicts if possible because, often in rural venues, these verdicts do not get reported.

- Bring a calculator.
Bring a laptop and/or have access to legal research at the mediation. Legal issues do arise at mediation and a quick answer to a question by the mediator or opposing party can have a significant impact - both on your credibility and on the substance of the mediation.
- Bring an updated list of costs and expenses which have been incurred in the case thus far.
- Have some knowledge about structured settlements and how they work and why they might be beneficial in your case. Have a "structured settlement" person standing by so you can get some rough numbers by telephone, or, bring this individual to the mediation.
- Be absolutely certain, in advance of the mediation, that the person with the authority to pay the money or make other decisions about the settlement of the case is actually going to be present at the mediation. There is nothing more discouraging and aggravating than preparing for, and appearing at, a mediation where it is announced that the representative for one side or the other only has limited authority and must make telephone calls or meet with committees in order to actually get the case settled.
- Know the policy limits of the insurance policies including those of the excess carrier and know the dynamics of how policy limit demands upon each respective carrier may influence how the other interacts with the defendant and other carriers.

continued on page 28

Alternative Dispute Resolution

continued from previous page

- You have invited them to the dance, so dance! Negotiation has ritualistic phases. If you are unwilling to engage in the different phases of negotiation, you will either accept less; pay more to settle the case; or reach less agreements. Do not rush the negotiation when the case gets into private caucus. Be prepared and willing to talk about ancillary legal and factual issues during the private caucuses with the mediator and send him back to the other side to talk about such issues too. These techniques act as a lubricant to keep the negotiation process going and show that you are not simply operating from a pure positional standpoint but are willing to consider the opinions and interests of the other side.

Be prepared to answer the following questions for the mediator - and it is a good idea to discuss what your answers are going to be with your client so that neither you nor your client are taken by surprise/knocked off guard:

1. If you try the case 10 times how many times do you win?
 2. What is your best day in court in terms of a verdict?
 3. What is your worst day in court in terms of a verdict?
 4. What is the verdict range?
 5. What will be your total cost to get to and complete a jury trial?
- **SURPRISES:** For the Plaintiff, it is usually not a good idea to try and surprise the opposing party at a mediation. This is because insurance companies and/or corporate defendants have too many decision makers and too many levels of authority which must be climbed in order for the "surprise" (for example, affidavit from an ex-employee, smoking gun document,

etc.) to have any immediate effect. Give the Defendant your "smoking guns" before the mediation (unless you truly need to save it for trial). Additionally, plaintiff's counsel may lose a valuable ally in defendant's counsel if defense counsel is surprised by this heretofore unknown evidence and therefore has not informed his client. On the other hand, a defendant can sometimes effectively surprise plaintiff's counsel with documents (for example past medical records, photographs, financial records, standards of practice, etc.) and this can have a dramatic impact on the decisions made by the plaintiff's counsel and plaintiff. This is especially true if the plaintiff has not been truthful with his attorney.

- Realize that your opening statement is your time to try your case to the person who actually will make the decision about settling or not settling without any rules of evidence or restrictions about what you can or can't say.
- From the plaintiff's standpoint, your presentation should point out clearly that you are not there to demand what you want or what you need but that you are here to assess what a jury is likely to do in your venue with your case based on what you know about previous similar cases in that venue. From a defendant's standpoint, the reciprocal should be recognized - i.e., defendant is not here to pay the minimum figure he believes is fair but is there to pay a fair figure based on what a jury might do.
- Be prepared to discuss, either in the opening statement or with the mediator in private caucus who can then relate it to the other side, the prevailing juror attitudes and why your case will appeal to juror attitudes or why the opposing side's case will not appeal to prevailing juror atti-

tudes. Recent jury focus group work has shown that the following are the most common prevailing attitudes nationwide:

Juror Attitudes

1. Personal responsibility/accountability.
 2. Fault finding against the plaintiff. Higher standard for plaintiff than for defendant.
 3. "Stuff" happens. The world is a dangerous place and you are not entitled to get paid for everything that happens to you.
 4. Suspicion of lawyers, court system, witnesses; most cases are illegitimate.
 5. Victimization. Everyone wants to be a victim and get something from someone else. "You can't blame everything on somebody else."
- Do not waste time in the opening statement or in private caucuses trying to convince the mediator that you are right and that you will win the case. The mediator is there to facilitate the process; to carry information back and forth between the parties; and to help the parties look realistically at the case. Although the mediator may have some persuasive influence with each party, whether you convince the mediator that you are going to win your case is irrelevant. Resist this temptation.
 - As a plaintiff, realize that your goal in most cases is to convince the defendant to pay you money. If this is somehow humiliating, or your ego interferes with this task, don't engage in the mediation/negotiation process (and consider another line of work). As a defendant your goal is to convince the individual plaintiff why he/she can lose the case.
 - Think about preparing and playing a settlement video during your

opening statement, particularly in a catastrophic or complex commercial case and even if the opposing counsel's lawyer has already seen it. Think (very carefully) about playing part of videotapes from focus groups which you have done in your case or showing the other side some of your written focus group results - if they are favorable to you that is. Alternatively, think about relating this information generally to the mediator during private caucus so that he can mention this as a strength of your case to the other side.

- Discuss hard money numbers and/or realistic settlement options with your client prior to and during the mediation. Definitely go through a BATNA and WATNA exercise with your client. Alternatively, get the mediator to do it during caucus if you have a problem client.
- Have a jury verdict survey done with the results of cases (state wide and nationally) that are similar to yours. Remember the good verdicts (plaintiff's or defense) can be used to help show your own client what is reasonable while at the same time demonstrating to the opposition what may happen at trial. You can contact "Jury Verdict Research" at 800-341-7874, to get your verdict research done with a 48-hour turnaround.
- Be prepared to tell the client at the mediation exactly how much money he or she will clear in the event a certain figure is accepted in settlement.
- If you have a problem with your client, consider approaching the mediator outside the presence of your client and informing the mediator that your client needs some serious "reality testing". Often it will help a client who has unreal-

istic goals or expectations to hear the reality of what can happen in a lawsuit or at a trial from an experienced mediator who has no stake in the outcome of the case. This way it doesn't seem like you are trying to "sell them down the river" in order to get the case settled. When a disinterested third party is telling them they can actually lose their case (or get less money/pay more money) at trial (and why) it can sometimes keep negotiations going.

- If the case appears to be moving toward an impasse, think about requesting a face-to-face meeting with the individual on the opposing side who actually makes the settlement decision. Such a meeting can be particularly effective between counsel for the plaintiff and the insurance adjuster or corporate representative with ultimate authority to pay the money on the case. A last ditch, credible, sincere and personal meeting when the mediation appears to be reaching an impasse can often result in a surprising settlement of the case at the final hour.

Bracketing: Be familiar with the concept and methodology of bracketing, also known as "conditional offers." This can be a very effective way of breaking an impasse. You can rely on the mediator to explain bracketing to your client; however, you should have some working knowledge of how it works so that when the mediator mentions it you will know what the process is. Bracketing essentially works like this: One party - let's take the plaintiff - will say "Our formal demand is \$2,000,000 but if the Defendant will offer \$500,000 our demand will be \$1,500,000." As you can see, the midpoint of the plaintiff's bracket is \$1,000,000. The defendant, of course, will not accept the plaintiff's bracket/conditional

offer but can respond in kind with a bracket of its own.

Thus, the defendant might respond by saying "We reject that demand and that bracket; however, we will make a formal offer of \$100,000 but if the plaintiff will demand \$1,000,000, we will offer \$250,000." The midpoint of the defendant's bracket is \$625,000. The parties now know, without committing, that the plaintiff will take at least \$1,500,000 (and clearly less) and the defendant will pay at least \$250,000 (and clearly more). Several numbers (messages) become significant:

- (a) the midpoint of the two parties' respective bracket midpoints - in this case \$812,500 (the mid-point between \$1,000,000 (plaintiff) and \$625,000 (defendant);
- (b) the midpoint between the parties' formal demands/offers - here \$1,050,000 (\$1,500,000 (plaintiff) and \$100,000 (defendant);
- (c) the midpoint between the parties two highest numbers - here \$875,000 (\$1,500,000 (plaintiff) and \$250,000 (defendant);

This is a way of doing several things:

1. Sending a clear message about a party's willingness to pay/accept a certain amount without committing to a lower or higher number than the "formal" demand/offer.
2. Expediting the mediation and reducing the range between the parties' real settlement numbers. This is because the message is sent by virtue of the brackets versus the formal demands/ offers. Bracketing can narrow the range between the parties and get them to a resolution in an expedited fashion. It allows the parties to send and read clear messages from each

continued on page 30

Alternative Dispute Resolution

continued from previous page

other during the process. In reality, you have two negotiations going on simultaneously - the parties' formal demands/offers and then (the more significant negotiation) which is the bracket offers/ demands. If the case does not settle the parties' "formal" demand and offer are what remain on the table.

Mediator's Number: If the parties are at an impasse, consider using the "mediator's number," sometimes called the mediator's "proposal." Be familiar with this concept. Although the mediator should explain what it is, be sure you are not hearing it for the first time in front of your client. The mediator's number is used at the end of the mediation/negotiation in order to break an impasse. The mediator, since he is familiar with the demands and offers which have been exchanged and the underlying "messages" which have been sent by the parties during the negotiation, will arrive at an informed and credible "mediator's number." The number will be presented to both sides - usually separately. The mediator then requests that each party give him/her a "yes" to the mediator's number.

Otherwise, the mediator publishes to the parties two "no's." The response of the parties remains completely confidential. The mediator does not disclose what each party individually said; he discloses to the parties only two "yeses" or two "nos". This means, of course, that when the mediator confidentially hears one "yes" and one "no" he/she will only publish two "nos". The mediator does not disclose if one party gives a "yes" to his number. The mediator's number can be a very effective method of breaking an impasse.

- If the case does not settle and an impasse is reached, this does not necessarily mean that negotiations are over. A cooling-off period can often be helpful. If an impasse does develop, at least try to agree with the other side to keep the lines of communication and negotiation open.

IV.

ETHICAL CONSIDERATIONS

Be aware that under the "ethical Consideration" in most U.S. states, lawyers have an express duty to advise their clients about the various forms of alternative dispute resolu-

tion. When a matter is likely to involve litigation, a lawyer has a duty to inform the client of forms of dispute resolution which might constitute reasonable alternatives to litigation. Make sure you advise your client early on in your relationship of the existence of various forms of dispute resolution and suggest that it may be a viable option to litigation and that, if litigation is imminent, some form of alternative dispute resolution might be appropriate at some point.

V.

CONCLUSION

ADR can be as flexible and creative as the parties want to make it. There are a multitude of ADR processes from which to choose. You have a duty to advise your client of these processes. Everyone hears the statistic that 90 plus percent of lawsuits get settled. ADR allows you to control when that event occurs to a greater degree than litigation. ADR also allows practitioners to follow Abraham Lincoln's sage advice: "Persuade your neighbors to compromise whenever you can...as a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough."⁶

FOOTNOTES

¹ Fisher and Ury, *Getting to Yes*. (Penguin Books, 1991), p. 6.

² Fisher and Ury, *Id.*, pp. 10-12, 100.

³ *Id.*

⁴ G. Williams, *Effective Negotiation and Settlement*, 2-5, 1981; Yarn, *supra*, § 5-6.

⁵ Charles B. Craver, *Effective Legal Negotiations and Settlement*, p. 14 (George Washington University Press, 1994)

⁶ Abraham Lincoln, *Notes for Law Lecture* (July 1, 1850) found in *Two Complete Works of Abraham Lincoln*, 140, 142, (John G. Nicolay and John J. Hay eds. 1894).

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