



2011

Tradition of Excellence Awards



The 2011 “Tradition of Excellence Award” recipients (l-r) Matthew H. Patton, (Defense), Cathy Cox, (General Practice), Nicholas C. Moraitakis, (Plaintiff), Judge M. Yvette Miller, (Judicial) and Section Chair, Joseph A. Roseborough, who presented the awards at the Section breakfast.

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Chairman Joseph Roseborough



CALENDAR CALL

"Georgia's Largest Law Firm"

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XVII

Fall 2011

No. 1



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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 Co-Editors: R. Walker Garrett, 233 12th St., Suite #900. The Corporate Center, Columbus, GA, 31901, rwalkergarrett@gmail.com and David A. Sleppy, 649 Irvin St., P.O. Box #689, Cornelia, GA 30531, dsleppy@cathyandstrain.com.

Published by Appleby & Associates, Austell, Georgia.

Joseph A. Roseborough
Section Chair



OUTGOING MESSAGE FROM THE CHAIR

When I assumed the helm as Chairman of the General Practice and Trial Section (the "GPTS"), aptly described as the "largest law firm in Georgia," I saw it as a daunting task. As I look back on my year, I am honored by the opportunity I have had to serve as the Chairman of this awesome Section. During this past year, I was privileged to work with some of the best lawyers in Georgia and to be a small part of the outstanding accomplishments of the Section that is the standard bearer of the Georgia Bar and the best example of tireless service and dedication of Georgia lawyers.

Our achievements and the continuing success of the GPTS are the result of the efforts of each of our members and a host of leaders from around the state, who helped make my service to this extraordinary Section light work. In leaving the Chairman's post, I would like to thank and applaud each and every member and friend of the GPTS; and, I would like to acknowledge a few whose special service was invaluable to me and our Section.

First, it will be no surprise that my greatest thanks goes to Betty Simms, our Executive Director. Betty not only provides the oil that enables our Section to function smoothly year after year, she is the essential piece without which none of our parts would work. More than any other one person, the future of our Section is brightest because of Betty.

I would also like to thank each of the Chairpersons who preceded me and whose continued service to our

Section is invaluable. Each of these outstanding leaders placed a block in the firm foundation of our Section and helped to cut a deep groove of success that I found easy to follow. I am especially indebted to past Chairs Mary A. Prebula, Adam Malone and W. Pope Langdale, III, whose counsel and service were invaluable to me.

The list of members and friends of our Section who provided exemplary service during my tenure as Chairman is too extensive for a single issue of our Calendar Call. But I would like to use this last message to thank a few who are representative of our special and dedicated membership and friends.

First, I would like to thank each member of our Board of Directors. As representatives of the best and brightest lawyers in Georgia, our Board's commitment and dedication ensures the continued success of our Section and made my Chairing this Section an absolute pleasure. I would like especial to acknowledge and thank the new members of our Board, particularly 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. Despite the rigors of everyday law practices, these super lawyers jumped in and contributed mightily to the leadership and success of our Section.

I cannot miss an opportunity to applaud and to again thank Jimmy Hurt for his long time service to our

Section as the Editor of the Calendar Call. Jimmy has relinquished the helm of the Calendar Call to our new Co-Editors, R. Garrett Walker and David A. Sleppy. It is reassuring to know that the Calendar Call is going to be in such good hands.

The many successful programs sponsored by our Section serve to highlight the leadership, commitment and dedication of our members, as representatives of the outstanding lawyers in Georgia, to service and to the betterment of our profession. One of the most exemplary programs was the Section's 2011 edition of our annual 3- day Trial Practice Institute held in March on Amelia Island. The huge success of our 2011 Trial Practice Institute is a testament to all members of our Section. But special thanks go to W. Pope Langdale, III, the immediate Past Chairman of the GPTS and the Program Chair of our 2011 Trial Practice Institute. As a result of Pope's tireless efforts, we had a record number of attendees and remarkable program. As the outgoing Chairman of the Section, I look forward to following Pope's lead and serving as the Program Chair for the next Trial Practice Institute coming in March of 2012.

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 M. Yvette Miller (Judicial Nominee),

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LETTER TO THE MEMBERSHIP FROM INCOMING CHAIRMAN:

Darren W. Penn

Harris Penn Lowry DelCampo LLP400 Colony Square
1201 Peachtree Street, Suite 900
Atlanta, Georgia 30361



Back to Basics

What a distinct honor and privilege it is for me to follow in the footsteps of some of the greatest legal professionals in the State of Georgia as I assume the sizeable responsibility of leading the Georgia Bar's largest Section – the General Practice and Trial Section.

I first want to extend my sincerest thanks and gratitude to Outgoing Chairman Joseph A. Roseborough for his decisive and successful leadership of "Georgia's Largest Law Firm" this past year. He did an outstanding job of keeping the section moving in the right direction and leaves mighty big shoes to fill!

I also want to thank our leadership team for 2011–2012 including the Board Members of the section as well as Betty Simms, our fearless and outstanding Executive Director. They

are key to the continued success of our Section as are each of you, our members.

As summer fades into fall each year, the air gets crisp and my beloved Georgia Bulldogs prepare to take the field for yet another season. Anticipation is always high. It seems to me that whether it ends up being a good season or I am going to cheer on the Dawgs during tough times depends whether the team is taking care of the fundamentals that are so key to a successful program.

The most successful college programs stick to the basics – those skills and techniques that have made them so successful over the years, including Georgia, with countless fans in the state and across the southeast. That's the key to a winning season.

The same is true for us as legal professionals. We've got to ensure that we have the basics solidified. Stick with what makes this state – and, in particular, our Section – one of the greatest collaborations of legal experts anywhere.

My guess is, if I were to ask each of you why you chose the practice of law, I would hear more often than not: to help people and make a difference: to advocate. That desire lies in each of us. Perhaps it's time to stoke the glowing embers of that passion into a roaring fire.

As a Section, we have a tremendous opportunity – and I even say an obligation – to effect change. Let's reclaim that fiery purpose we all felt

the day we entered this most noble profession and do all that we can to take care of the basics that are so important to helping each of us as professionals thrive: education, communication and participation.

Education

We as lawyers must work together to inform our elected officials on how pending legislation will affect the practice of law in this state for individuals, corporations and various communities. We need to speak with one voice – clearly and loudly – on legislative issues, protecting this noble profession. To that end I have appointed a committee to deal specifically with this area and encourage each of you to participate wholeheartedly in the effort.

In addition, there will be many opportunities for continued education and outreach. This is one of the strongest areas of our section. Lunch and Learns, seminars, and CLEs are all on the agenda for the upcoming year. Our Board is working hard to ensure the very best speakers with the most compelling topics. If you have ideas, suggestions or would like to get involved in the planning of any of these activities, we welcome your assistance! Please contact Betty Sims or myself to volunteer today.

Communication

Plans are underway to tweak our website, adding more information, resources and forums for sharing ideas among members of the Section.

We will also add a "Member News"

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Letter to the Membership

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section to the site where we will publish a few sentences on the latest happenings in your individual practices. This provides an excellent way for members to get to know each other as well as explore ways to partner and better serve your clients.

You will also see periodic e-blasts with updates on Section activities, events and breaking news. Please take time to read them and respond. Your participation and feedback are vital to our success.

Participation

Get involved! While the General Practice and Trial Section provides so

many outstanding benefits to its members, your experience in the Section is primarily up to you. It's what you make of it.

Attend meetings. Volunteer for events. Serve through our community outreach project, "Ask-a-Lawyer Day" which will be coming up in October. This will be a wonderful opportunity to give back to the community and we need all the volunteer lawyers we can get.

We're looking at possible changes to our popular "Tradition of Excellence" awards that could make this an even bigger event.

If you have ideas on how we can im-

prove any area of our Section, I want to hear about it personally. I welcome the feedback!

Finally, the leaders featured on the following pages, recipients of this year's "Tradition of Excellence" awards, certainly are outstanding examples of the best our profession has to offer. I hope you will join with me in congratulating them on this honor as well as committing to make this year the best yet.

Working together we can, in fact, solidify the basics that make our Section the best law firm in Georgia.

Outgoing Message from the Chair

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Matthew H. Patton (Defense Nominee), Nicholas C. Moraitakis (Plaintiff Nominee), and Cathy Cox (General Practice Nominee), served to strengthen the passion for our profession that each of us have, and inspire us to become even more dedicated advocates.

Finally, the GPTS is privileged to have so many outstanding members; members who truly care about the profession, care about making it better for others, and care about our future. I will always be proud and honored to have had the opportunity to serve as your Chair of the General

Practice and Trial Section of the State Bar of Georgia. I look forward to working with our new Chair, Darren Penn, as he continues to build upon the foundation, and we all continue to improve and enhance this Section of the State Bar.

New Section email address and phone

betty.gpt@att.net
(404) 550-6307

DEFENSE

MATTHEW H. PATTON



Introduced by
J. Henry Walker, IV

Tradition of Excellence Award

Good Morning. It is my honor and privilege to introduce Matthew H. Patton as the winner of the Traditions of Excellence Award for the Defense Category.

I was reminded that this is not a roast, but just an introduction. I am not supposed to tell a lot of stories about Matt or at least I am not going to put them in the print version. It suffices to say that in addition to being a great lawyer, Matt lives a very interesting life and always has a lot of "activity" in his life. I will leave the storytelling for another time.

I am going to stick to the script and talk about what is true and simply cannot be debated. Simply put, Matt Patton epitomizes excellence in the practice of law and is a worthy recipient of this award. A tradition of excellence is a perfect way to describe Matt's legal career. As Matt Patton taught so many others in our firm, the right way to represent a client and to win your case is to make sure you litigated every step of the case thoughtfully, carefully and with a clear purpose. He never believes in just "playing out the string" while litigating a case. That is why clients come to him for their "bet the company" matters. Time and time again, he has proven if

you are in a legal gunfight, you want Matt Patton on your side.

In addition to his trial excellence, Matt Patton attempts to make a difference in the lawyers and clients that he works with at the firm. He genuinely takes an interest in your life, your family and your interests. He freely shares sage advice on how to live a meaningful life. He is a deep faith-based person who pursues all of the things he is involved in with zeal. He is not afraid to be "the man in the arena" as Theodore Roosevelt so eloquently described.

While Matt Patton is known in the firm as being a diligent task master, he is never any more demanding on an associate or colleague than he is on himself. This approach that centers on excellence has made him a very successful lawyer. He is also the consummate professional. It was amazing how at the end of most of his cases, Matt had the respect and the friendship of the lawyers on the other side.

Matt is a legend within our firm of Kilpatrick, Townsend and Stockton. The Kilpatrick firm in one version or another has been around since 1874 with many great lawyers. For nearly

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Tradition of Excellence Award

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50 years, Matt Patton has been the firm's go-to trial lawyer. Some of his peers and colleagues describe Matt better than I can.

Miles Alexander wrote of Matt that "Most great firms have at least one litigator who brings unique quintessential skills and dedication to representation of his or her firm's clients. That is the lawyer to whom both the firm and its clients look when they have their very existence at risk. In our firm, that lawyer, a giant among his exceptionally talented peers, has been Matthew Patton to whom generations of lawyers look to for guidance, training and mentoring, while the firm's clients look to him for counseling and brilliant trial skills."

- **Joe Beck** wrote "I will never forget trying to prepare for meetings with Matt about cases; it was as if I were about to argue the case in court. Matt asked smart and tough and impossible to foresee questions of me from at least four angles: as if he were the Judge; as if he were opposing counsel; based on his consideration of what was 'right and just'; and from his perspective of what was the likely pragmatic result. It was a remarkable education, not only for the cases at hand, but also as a lesson about how to litigate and think about cases."
- **U.S. District Court Judge Marc Treadwell**, who worked with Matt while an associate at KT, wrote "I have often given credit to Matt for whatever success I had as a trial lawyer . . . what I learned from him during those four years I have applied every day in my professional life

since then.

- Even now Matt continues to mentor young lawyers. **John Jett, an associate at Kilpatrick Townsend** said "Matt's commitment to me, and to many younger lawyers before me, is an example of the tradition of excellence that Matt embodies. He has imparted the skills, lessons, and wisdom that he gleaned from years of practicing law onto generations of younger lawyers, of which I am the most recent beneficiary."

Many other lawyers that Matt has litigated against, mentored, or appeared before, wrote similar words of support, including Justice Hines and Justice Carley. But it was not all good. Bob Steed, self proclaimed funnyman, thought so much of him (or maybe so little) that in his letter supporting Matt's nomination he wrote "I have known Matthew Patton, man and boy, for over 50 years. Frankly, I never liked him all that much." Mr. Steed did, however, think enough about Matt to publish at least two chapters in separate books about Matt Patton and his adventures.

On a personal note, I consider having the opportunity to have Matt Patton as a mentor and friend one of my greatest blessings in life. As I have said many times, "if I became a good lawyer, it was because Matt Patton made me into one." He only knows one way of doing things and that is the right way. One of his favorite proverbs that he used to tell all new associates that worked for him was as follows:

For Want of a Nail

*For want of a nail the shoe was lost.
For want of a shoe the horse was lost.
For want of a horse the rider was lost.
For want of a rider the battle was lost.
For want of a battle the kingdom was lost.
And all for the want of a horseshoe nail.*

He equates this proverb to the importance of excellence at every stage of the way in litigation. He is great at seeing the whole forest, but also knows the importance of the individual trees that make up the forest. Indeed, excellence is typically not usually just one main act, but a series of little acts done exactly the right way. Matt teaches that by doing everything right every step of the way in litigation, you have a much better chance of getting your client a good result.

To just describe Matt as a great lawyer would be to miss a lot. He is truly a renaissance man who cares deeply about his family and friends. Among other things, Matt is also an outdoorsman, a historian, a collector, a politician, a poet, a philosopher and even an occasional psychiatrist. Throughout his entire life, he truly has been driven to reach his full potential and to make the world a better place. It is my pleasure to introduce Matt Patton as the winner of the Traditions of Excellence Award for the Defense Category.

Remarks by
Matthew H. Patton

My deepest thanks to the Section for this award. It is made even more significant to me by the comments of my friend Henry Walker, his and John Jett's nomination of me and by the distinguished members of the bench and bar who supported that nomination. It is a pleasure to be in the company of those whom you honor today. When I learned I was to receive this honor, I became uneasy. Oh, I was delighted to have the recognition, but I began to question whether I deserved it. When I saw a list of those who have been thus honored in the past, I really got concerned.

You see, I have been fortunate to know almost all of these 100 lawyers and judges so honored over the last 25 years. Just a few of their names will help you understand how I feel:

Griffin Bell, Edgar Neely, Bobby Lee Cook, Robert Elliott, Frank Love, Eddie Garland, Harold Murphy, Marion Pope, George Carley, Tommy Malone, Ben Weinberg, Jim Butler, and 88 other great lawyers and judges.

Seeing so many friends here this morning calls to mind the story of the man who upon his release from the chain gang reformed and became a preacher, but neglected to tell the deacons everything about his past. One Sunday morning as he arose to read the scripture upon which he intended to preach, he noticed that one of the men with whom he served time ten years before had entered the church and was seated in the back pew. After a flush of surprise, the preacher adroitly adjusted to the changed circumstances and announced: "Today I will preach on Obadiah 2:14: 'He who seeth me now and sayeth nothing, him I will reward later.'"

I make the same offer to those here who know me too well.

I want to share with you some thoughts about my life work as a lawyer and then some thoughts about our profession.

I have been blessed with many opportunities. I have lived in our state in places which exposed me to all kinds of people in all walks of life.

I was born in Carrollton, Georgia. I lived in the town and on a cattle farm in the country. I lived in Hapeville, East Point and all over Atlanta – Druid Hills, Buckhead and in north

Fulton County. When I was fifteen I became a radio announcer and disc jockey at world famous WLBB in Carrollton. We called it "We Love Butter Beans" but never on the air. Tom Vassy was both my Sunday School teacher and the general manager at the station. He gave me that opportunity for which I shall always be grateful and the experience gave me some of the self-confidence a trial lawyer needs.

The schools I attended contributed much to my life. They were the public schools of Fulton County and Atlanta, Georgia Military Academy, Carrollton High School, Darlington School – in all 10 years of public school and 2 years of private school.

I worked while I went to college at Duke University: the library, the anatomy department of the medical school, the Dietetics Department of the Hospital, Housemaster in a Freshman Dormitory. I sold encyclopedias – Americana and later Britannica. I worked as a psychiatric aid at Norton Hospital in Louisville while a student at Southern Baptist Theological Seminary. I taught as a substitute teacher in all Senior and Junior High Schools in Louisville and was an Intern Chaplain at Central State Psychiatric Hospital in Kentucky, and at Baptist Hospital in Nashville where I also did graduate work in psychology at Vanderbilt.

The most important thing I learned in clinical training was to listen. As a part of the training, I was required to write verbatim transcriptions of interviews with patients and to analyze what was really going on in these communications. Developing the ability to listen to another person was the most important skill I ever learned to prepare for being a trial lawyer. I hope I never lose it! It takes time, but it is worth it.

One night I heard a Viennese psychiatrist speak at Vanderbilt Medical School. His name was Victor Frankl. He, his wife, his mother and father were imprisoned by the Nazis. He survived. His family did not. He said that night, what he has written in his great book, Man's Search for Meaning: "Man can accept the what if he understands the why." What a lesson for us to learn as human beings! What a lesson for us to learn as trial lawyers.

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Remarks by Matthew H. Patton

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I entered Emory Law School in 1961. I worked as a clerk for Arnall Golden and Gregory. I was fortunate to pass the bar while a student and became a law assistant to Justice Bond Almand of our Supreme Court at a salary of \$9,000 a year while still at Emory. What a job! Judge Almand had been a trial judge before appointment to the Supreme Court. He knew all the law. I was basically his typist.

One day at lunch at the Judicial Building I sat with other law clerks and one of the Justices. During our conversation I commented that I had been in school for so long that I had not been able to buy the kind of clothing that I needed as a lawyer. The Justice graciously offered to call a friend in Bremen who owned a suit factory and "fix me up" with a couple of suits. After lunch he took me to his office and asked his clerk to get the owner on the phone. "Roy," said the judge, "we have a young man at the Court who is doing a wonderful job. He is just brilliant. We could not write our opinions without him. I want you to meet him." This was heady stuff and I was feeling great until the Justice put his hand over the phone and said, "What's your name son?" *Sic transit Gloria mundi.*

I asked Judge Almand one day, "Judge, what does it take to become a great lawyer?" He replied without hesitation, "Great clients."

I had a chance to test his answer when I joined Kilpatrick Cody Rogers McClatchy & Regenstein in December 1963. What an education that became. The brilliant minds, the depth and breadth of experience. One of the partners had a long quote from Daniel Webster about how to succeed in the practice. He delivered this to young associates whom he judged were not fulfilling their potential. The last sentence was "To be a great lawyer one must first be a great drudge."

I never received this quotation but I later found its corollary in the diary of Benjamin Disraeli, the great British Prime Minister. Disraeli had studied for the Bar but wrote in his diary that he had given up the idea of becoming a lawyer because he had come to realize that to become a great lawyer, he must give up any hope of becoming a great man. Because of the great lawyers I have known who have also been great men, I know that Disraeli was wrong. But we

who are trial lawyers know the dangers that lurk in the shadow of the desire to become "a great lawyer." We must not forget our own humanity and the humanity of those we serve and of those we oppose.

What of us and the lawyers of the future?

We hear a lot about "profession." We hear of professional baseball, basketball and football players, professional comedians, professional dancers and actors. Who is a "professional"? You and I are a part of one of the three classical professions: medicine, the law, the clergy.

Years ago I found the definition of "profession" in Webster's Third International Dictionary which rose to a higher literary status than mere definition. It inspired me and I believe it will inspire you as it has other lawyers with whom I have shared it.

Profession:

A calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service

What I have come to love during the past 48 years is helping people and businesses meet the legal challenges of our world. Dealing with other lawyers, allies and opponents, and lawyers who are judges, has been and continues to be an exciting, challenging and rewarding calling.

We in this Section are perhaps the last, best repository of the law as a profession. We are not so narrowly focused, not so highly specialized, that we lose the vision of "the rendering of a public service."

Let's keep it that way.

GENERAL PRACTICE

CATHY COX



Introduced by
Judge A. Wallace Cato

Tradition of Excellence Award

Good Morning!

I bring you greetings from south Georgia and the South Georgia Judicial Circuit - the land of the gnats and, it seems to be the land of pro se divorces and guidelines deviations, and certainly Georgia's version of the 'land down under'. I am honored to be here this morning to participate in an event that recognizes members of our profession who have excelled in their field, members of our profession who stand tall among the elite of our profession. Having had my head in the public trough for some forty-five years as a Representative, District Attorney and Superior Court Judge, I've had the opportunity to view the entire array of our profession from several perspectives. Today is very special to me to be allowed to share with you in honoring Cathy Cox as the recipient of the Tradition of Excellence Award.

Cathy is the oldest of four siblings, all girls. The Cox family has always been extremely involved in public service. Cathy's Grandfather, E. W. Cox, served the City of Bainbridge as its Mayor for years. Her father, Walter Cox, served for many years

as Mayor of the City of Bainbridge and as a Representative in the Georgia House of Representatives. Cathy's sister, Glennie Bench, is presently serving as a Member of the Bainbridge City Council and has served on the State of Georgia Port's Authority. The whole family has had an amazing appetite for public service. Cathy's Mom is an extremely talented and accomplished artist whose work is widely known and admired. Cathy is married to Mark F. Dehler, who is an attorney practicing in Hiawassee and Decatur, Georgia.

I've known Cathy pretty much all her life. She and her sisters, three sisters, are my children's ages. In fact, both of my daughters were roommates with Cathy's sisters at UGA, Karen roomed with Karen and Nancy roomed with Kim. Growing up in a small town like Bainbridge can prepare one for the vicissitudes of life. It also means that everybody knows your business, and I know much of Cathy's. Don't worry Cathy, I know what reciprocity is. I won't, if you won't.

Cathy began her pursuit of college at the Abraham Baldwin

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Agricultural College where she received an Associate of Science in Horticulture in 1978. Have you ever noticed that people who have degrees in Horticulture seem to have an objective perspective of life in general? Cathy then enrolled in the University of Georgia, Grady College of Journalism, receiving a Bachelors of Arts in Journalism, *Summa Cum Laude*, in 1980.

Armed with her degree in Journalism, Cathy went to work at *The Times* in Gainesville, Georgia, as a Reporter from 1980 to 1982. She covered general assignments and the police beat. She, then, came back home and went to work for *The Post-Searchlight*, in Bainbridge, where she exhaustively researched the career and history of former Georgia Governor S. Marvin Griffin and wrote special feature articles for the newspaper.

Cathy obtained her Juris Doctorate from Mercer University, Walter F. George School of Law, *Magna Cum Laude*, in 1986. While at Mercer, she served as Editor in Chief of the *Mercer Law Review*. It was my privilege to administer the oath of attorneys to Cathy, Cheryl Fisher Custer, former Director of the JQC, and Cheryl's husband, William V. Custer, all at the same time in Bainbridge, on June 9, 1986. Cathy, then, went to work with Hansell & Post in Atlanta, from 1986 to 1988, serving as an associate in the firm's civil litigation section, representing business clients in general contract disputes, antitrust matters and environmental issues.

In 1988, Cathy came back to Bainbridge, and became a partner with the firm of Lambert, Floyd & Conger. She was the first female attorney admitted to regular practice in the South Georgia and Pataula Circuits. This is where I really got to know Cathy professionally. She was one of the most tenacious lawyers I have ever observed. She was always prepared and ready to do battle. She

knew the difference between the majors and the minors. She handled most of the litigation for the firm and it seemed that she carried more than her share of the load. In every respect she was a credit to the profession. It was fun as a judge to watch her try a case. She made her presence known to her fellow members of the bar.

I doubt that she will remember this, but in 1992, she was pondering the decision whether to run for the legislature from our district. We had a prayer meeting in my office on the matter and I finally said to her, "Cathy, I order you to run for the seat." She was concerned that her partners would be mad with her if she ran. I doubt very seriously that my verbal 'order' was the reason for her running, but she did and was elected. She served in the House of Representatives for District 141, representing the counties of Decatur, Miller, Seminole, and Early from 1993 to 1996. This was the same seat her father had previously held.

From 1996 to 1999, Cathy served as Chief Operations Officer and Executive Counsel for Georgia Secretary of State, Lewis Massey, and managed all daily operations of the five operating divisions of that office.

Cathy was elected in 1998, and re-elected in 2002, to the office of Georgia Secretary of State. She was responsible for the management and operation of a State constitutional office with a \$32 million dollar annual budget and 350 plus employees. Cathy served as Secretary of State from 1999 to 2007, and was recognized nationally as a leader in utilizing innovative technology to improve government services by being named one of *Governing* magazine's top 11 Public Officials in 2002.

She received her Honorary Doctor of Laws from Mercer University in 2007. Spring quarter of 2007, Cathy was selected to fill the Carl Sanders Chair of Political Leadership at the

University of Georgia School of Law, to serve as full time visiting professor, teaching "Law and Politics" and "Election Law" to upper level law students.

In June of 2007, Cathy was tapped to serve as President of Young Harris College. As such she serves as the Chief Executive Officer of the college and has led the transition from a two-year to a four-year status in her first 18 months on the job. Under her administration, the college has doubled the size of the faculty in three years and achieved record enrollments for four consecutive years.

In summation, Cathy Cox is the personification of what a good lawyer should emulate. She simply exudes those qualities and character traits that recipients of the Tradition of Excellence Award should have. She is truly a mover and a shaker, a real trail blazer. She is never satisfied with the status quo. Cathy is always looking for an opportunity to make a difference. I can think of no one more deserving of the award.

Thank you for allowing me to present her.

Remarks by Cathy Cox

I cannot even begin to tell you how honored, and humbled, and even a little embarrassed I am by this recognition today. When I first learned from my husband Mark Dehler that I had been selected for the General Practice Traditions of Excellence award, I said, “Don’t you have to be really old for that?”

As a loving – and smart – husband, and a good lawyer, he didn’t really answer that question...

But seriously, to follow in the footsteps of recipients like the late Denmark Groover and Speaker Tom Murphy – two recipients I had the privilege of introducing for this award, and other legendary giants of our profession like Bobby Lee Cook, Hardy Gregory, and a number of you in this room this morning – is more than a little bit overwhelming.

So I thank you, first, for even mentioning my name in the same breath as those who have so deservedly been recognized in this way in previous years.

When Mark told me I was to receive the “Traditions of Excellence” award, he also said I had to find someone who would introduce me. Now Mark has had a lot of experience doing that – just last week at his Rotary Club he introduced me as the weekly program by googling my name and finding all the things someone named Cathy Cox has done – which included being a yoga teacher, a professor of physics in Nevada, a pianist trained at the Royal Conservatory of Canada, and a psychic palm reader!

But I kept coming back to Judge Wallace Cato as the person who probably knew as much about me as a lawyer, a politician, and a person as anyone other than Mark. And just as Judge Cato said, we’ve known each other a long, long time. Both of us have turned from our horticultural training into Bar members, and both of us have probably wondered from time to time whether working with plants might have been a smarter career choice!

You may or may not know that Judge Cato is now the senior-most Superior Court Judge in the state of Georgia – he was appointed to the bench in 1978 by Gov. George Busbee, after serving as the South Georgia Circuit’s district attorney. And his very first stint at public service came at the age of 28, when he was elected to the Georgia House of Representatives and served two terms.

Knowing that about Judge Cato, I very definitely remember the conversation he recounted when

I sought his counsel about running for the House myself in 1992. I had the political genes – my father Walter Cox had served in the House for almost 16 years when he died in 1989, and reapportionment was making a newly configured district look very attractive to me. I had talked to my senior law partner about it, because he, too, had served a short time in the House, but he quickly dismissed the idea as something I should forget about because legislative service was not conducive to building a law practice, he told me.

Dejectedly, I went to Judge Cato to get his advice, and he said – he ordered! – that if I really wanted to run, I should just do it.

And but for that conversation, a whole host of things in my life would have been very different. So, even though working with plants might have been easier from time to time, Judge, and continuing my practice in rural southwest Georgia would have been rewarding, I am grateful you ordered me to take the “road less traveled,” for it has been a fascinating one.

When you boil it down, I am guessing that the selection committee really chose me for this award because I may have used my law degree in more occupations than any other Georgia lawyer! I could be the most “general” general practitioner around.

I went to law school with the intention of learning about the law so that I could be a better prepared newspaper reporter – but practicing law really opened my eyes about the incredible breadth and depth of a legal education.

I am glad I cut my teeth as a litigator. First at Hansell & Post in Atlanta, where some truly superb lawyers like Kent Mast, now the general counsel of Equifax, John Parker, Lee Garrett, David Bailey, Allen Maines, and Jule Felton, and Mary Prebula was a great associate mentor -- they all took a chance on a young lawyer with a deep Southern drawl and taught me how you practice law to perfection. They set the highest standards in their practices and I learned so much from them.

And the greatest thing about being a litigator, at least when I started out, was that you not only had to develop a backbone and the ability to think quickly on your feet – the skills that help you survive in a pressure-cooked courtroom, but

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Remarks by Cathy Cox

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you also were exposed to a wide variety of legal issues. Whatever problem your client had – be it a contract dispute, an intellectual property issue, a failed real estate transaction, an anti-trust claim initiated by the Justice Department, or an allegation of defective pipe manufacturing – you, the litigator, had to learn all the nuances of the issue and prepare to sue, or defend, on behalf of your client. It is the world's greatest school – every litigation matter is an opportunity for learning something new.

After getting used to being called a “big city lawyer,” I moved back to my hometown of Bainbridge when my Dad was diagnosed with cancer, and joined the firm of Lambert, Floyd & Conger.

The first case I tried in South Georgia was a Yost case – remember Yost, before frivolous litigation damages were codified? Well, my canny senior partner threw me to the wolves in the neighboring county and said, “Go handle this little Yost case against the Sheriff of Miller County.”

Oh, yeah. I can win a case against the Sheriff of Miller County in a Miller County courtroom before a Miller County jury that elected him. Yeah, right. Well, when the opposing counsel gave his opening statement, he sneared and pointed at me, saying to the jury, “I’m a poor ‘old sole practitioner, but she’s from one of those BIG FIRMS over in Bainbridge!” And I was – the biggest law firm in Bainbridge – four lawyers!

Everything is relative! Of course, I lost that case – but won it on appeal when then-Court of Appeals Judge George Carley asked me during oral argument whether I was describing a classic “home-cooking” kind of case that didn’t taste very good.

Practicing in Bainbridge I got my share of litigation – and my partners Harold Lambert, George Floyd and Tom Conger, told me I could handle all the anti-trust cases that ever came in the door. Of course, none did – so I did everything from divorce and child custody, contract cases, and even indigent defense for a short time when all lawyers in the county had to take appointed cases. I wrote wills, handled adoptions, represented the hospital and a bank, and helped form non-profits. When I got sick and tired of feuding divorcees, I asked Tom Conger to let me close real estate loans.

In a small town practice, you do whatever walks

in the door – every day. It was grueling sometimes, it was hard to get paid a lot of the time, but it was a wonderful, wonderful learning experience that has served me well in every other forum I’ve since worked.

I ultimately took my law degree into the Georgia Legislature – which is perhaps the most FUN I ever had as a lawyer. To understand the law – and to be able to write it and revise it – is a heady experience. And to have had that opportunity in the “golden days” of the Judiciary Committees with great minds like Roy Barnes, Tom Cauthorn, Denny Groover, Larry Walker, Tommy Chambliss, Tom Bordeaux, and Tom Campbell right there at the table with you, and Mary Margaret Oliver across the hall chairing the Senate Judiciary Committee, well, this was an absolutely joyous experience for a young lawyer who likes to learn.

In the Secretary of State’s office, my law degree served me well because I got sued all the time! I was able to converse with the State Law Department about the appropriate response to cases, and even got admitted to the US Supreme Court so I could accompany them on the reapportionment cases of the last decade. As a lawyer, I also knew first-hand why improving service in the Corporations Division would make life better for lawyers – and their clients – all over the state. I didn’t need an interpreter when we settled some of the largest securities cases in the nation against huge investment houses. As a lawyer, I understood the application of the laws and rules governing elections when I was chairing the State Elections Board. Being a lawyer, and having practiced in diverse areas of law, made me a far, far more effective Secretary of State.

My law degree helped me teach law. Rebecca White, the Dean of UGA’s School of Law, gave me the opportunity to teach Election Law and a seminar on Law and Politics in the Carl Sanders Chair of Political Leadership.

And my law degree even helped me get my current job as a college president. Bert Lance, one of the trustees at Young Harris, called me when they were starting a search for president, and asked if I’d be interested in applying. I said, “Well, Bert, I have a JD, not a PhD.” To which he said, “Well, you have a D!”

That JD – which is considered a terminal degree

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JUDICIAL

JUDGE M. YVETTE MILLER



Tradition of Excellence Award

Introduced by
Judge Sara Doyle

Good morning, it is my pleasure to introduce to you the judicial tradition of excellence award winner. This is my first time introducing a winner of an award so I did my research on what is expected and found that oftentimes over the years the introducer spent 15 minutes talking about him or herself and then said a few words about the winner. Well I am going to save you all the 15 minutes about me: my name is Sara and I work with this year's winner at the Georgia court of appeals.

Now about her:

Judge Yvette Miller has spent her life serving the people of Georgia and in doing so has created a path for others like her to follow. At a very early age, Yvette knew that she wanted to be a lawyer. It was her mother, however, who planted the seed in her brain about becoming a judge. I had the pleasure of sitting by Ms. Miller at a recent event and she told me that when Yvette expressed an interest in the law, she looked at Yvette and said you might consider even becoming a judge. She said Yvette looked at her intently, clearly keen on the idea. Yvette's mom even gave her a little gavel to remind her along the way, which Yvette still has today.

Judge Miller is a native Georgian from Macon. In the 7th grade, with the help of her family she integrated the public schools of Bibb county as the first African-American to attend Walter P. Jones school. She went on to graduate from Mercer university with a B.A. degree, cum laude, and then from Mercer law School in 1980.

Now I don't know if many of you know this fact, but while Yvette was in law school, she was selected as the first African-American woman to hold the title of Miss Macon. Now, I will tell you that I searched long and hard on the internet to try and find a picture of Yvette in the pageant but wasn't able to do so. What I did learn from my Google search was that she works tirelessly for the legal profession and the community.

In addition to graduating from Mercer law, Yvette also obtained a Masters of Law in litigation from Emory and a Masters of Law in judicial process from the University of Virginia.

Judge Miller's legal career is also amazing. She worked for the department of housing and urban development, was a law clerk for Fulton County State Court Judge William Alexander, then joined the Fulton

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Tradition of Excellence Award

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county DA's office as one of its first female prosecutors handling felony rape and murder cases. Judge Miller then worked in-house for Marta (Metro Atlanta's rapid transit authority) as senior in-house litigation counsel.

For most that would be a full career. But not for Judge Miller. She then moved to south Georgia and became a part-owner, general manager and general counsel of the first minority-owned new Ford Lincoln-Mercury dealership in Jesup, Georgia and one of the first such owners in the state.

And while managing the dealership for those of you who have never worked at a car dealership, it is always long hard work days. I spent a summer at a car dealership as a greeter. One day I was talking to one of the salesmen and asked how he could work so many hours every day. His response was no one who makes over a 100k a year works a 40 hour week. But I digress, while Yvette managed the dealership, she set up a private practice and became the first female attorney to practice in Jesup and throughout the Brunswick circuit.

Judge Miller had a distinguished career as a lawyer and business person, but what about that little gavel?

Yvette's judicial career began as a part-time Magistrate Judge in Fulton county in the late 80s. In 1989, she became an Administrative law Judge with the State Board of Workers' Compensation, and in 1992 Governor Miller appointed her Director and Judge of the Appellate Division of the State Board of Workers' Compensation, making her the first woman, first African American woman and youngest person ever to hold the position. 4 years later, Governor Miller appointed Yvette as judge on the State Court of Fulton County where she worked until her appointment to the Court of Appeals in 1999 by Governor Roy Barnes. She has been re-elected state-wide two times, without opposition and so you all know, she will be on the ballot for the third time in 2012 (next year), so make sure to support her!

She has served on the Court of Appeals with distinction for twelve years. On January 1, 2009, Yvette became the first African-American female chief judge of the court and after two hard-fought successful years, is now a presiding judge of our panel with Chief Judge Ellington. Fortunately, I think we are pretty easy to keep in line.

I can't say enough about Judge Miller's reign as chief judge. She faced a terrible economy, budget cuts, the deaths of Judge John Ruffin and Judge Debra Bernes, the retirement of Judge Ed Johnson, Judge Alan Blackburn and long time clerk, Bill Martin, not to mention the coming of two new judges: Judge Blackwell and Judge Dillard. And she did so with grace, poise and a smile on her face, all the while meeting her constitutional deadlines of getting her opinions out. She weathered the storm and the court is a better place for her contributions.

And all the while she was continuing to work for the legal profession and the community. I am not able to name everything, but here is just a sampling of the things she has done:

Judge Miller was a founding member of the Judicial Section of the Gate City Bar and inducted into its Hall of Fame in 2008; she was the president-elect and vice-president of the Georgia Association of Black Women Attorneys. She has sat on the Board of Directors for the Georgia Association of Women Lawyers and the Judicial Section of the Atlanta Bar Association. She served as chair of the Supreme Court Committee on Public Trust and Confidence and the Georgia Student Finance Commission. She was a trustee of Leadership Georgia and sits on the Board of Visitors of Mercer Law School, as well as Boards of the Supreme Court Commission on Substance Abuse, the YMCA of Greater Atlanta, Kids Chance, the Girl Scout Council of NW Georgia and the National Alliance for the Mentally Ill.

Now this is not the only award Judge Miller has received. There are actually many, but I am only going to

tell you about two.

First, in 2010, she received the "Investing in Dreams" award from DeKalb Technical College Foundation in partnership with the Atlanta Chapter/Youth United for Prosperity NFL alumni for her outstanding works of charity and contribution to the betterment of society. I learned about this honor through my Google search which came up with a u-tube video on Judge Miller, which I promptly watched. On it Judge Brenda Cole and the ombudsperson for Chattahoochee Technical College described Yvette as a tenacious, smart, dynamic, committed, admirable and fun. Yvette was 1 of only 5 receiving this award in its inaugural year. Yes another first.

Second, I had the pleasure of seeing Judge Miller honored by the YMCA at its 2011 Salute to Women of Achievement. Each year, the YMCA, an organization whose mission is to eliminate racism and empower women, recognizes ten accomplished women in Atlanta who represent what every young girl hopes she can and will become. I was in awe at the list of previous honorees and as you can see from the story of Yvette's life I have just told you, she clearly exemplifies what every young girl hopes she can and will achieve.

I would be remiss in not mentioning that some of Yvette's best qualities are not her dedication to the legal and civic communities, but her dedication to family and friendship. Judge Miller is the first to ask about your family with a genuine smile on her face. It has been a pleasure to work with her these past few years. She has been a great co-worker, but more importantly a good friend.

Please join me in congratulating presiding Judge M. Yvette Miller on receiving this very distinguished award.

Remarks by
Judge M. Yvette Miller

Good morning to you all!

Thank you Judge Doyle for that very generous introduction. Judge Doyle has become my dear friend and colleague since her arrival at the Court of Appeals. She is truly an asset to us all. Again, thank you.

Thank you to the members of the General Practice and Trial Section of the State Bar for awarding me the Tradition of Excellence Award. I was so thrilled when I first spoke with Betty Simms, Executive Director; Joseph Roseborough, Chairman; and Mary Prebula, who served on the Board, about receiving this prestigious Award. My first thought was that many of my mentors that I look up to, all of whom are giants in the legal profession, have received this Award from the General Practice and Trial Section of the State Bar of Georgia. I also thought about the elite group of women lawyers who have been recipients of the Tradition of Excellence Award, women such as Phyllis Holmen, Judge Dorothy Toth Beasley, Judge Faye Sanders Martin, and Justice Carol Hunstein. All I can say is that I am truly humbled and honored to follow in the footsteps of so many great lawyers and judges. To this year's Award recipients, I commend you and feel privileged to stand here with you today.

Early in life, as a little girl growing up in Macon, Georgia, I envisioned myself as a lawyer. Back then, the scene I pictured was the one I watched every week on Perry Mason. Of course, when I grew up and became a member of the Bar, the scene I envisioned featured not Perry Mason, but rather a lawyer from this Section of the Bar, the General Practice and Trial Section. YOU have always represented and epitomized what lawyers are truly all about. Whether it was Judge Griffin Bell, Jim Butler, Tommy Malone, Joel Wooten, Ray Persons, or Hugh McNatt in the courtroom, I have always been in awe of so many of the trial lawyers in this Section of the Bar. In each of these individuals, I see much more than some lawyer representing a person who had been wronged or providing a defense for a corporation that had been sued. These are lawyers with integrity and good character, who not only desire to win on behalf of their clients, but who also strive to do the right thing for society and improve the life of Georgians. This is the type of lawyer whom I have always aspired to become and

the lawyer that we all promised to be when we first took the lawyer's creed and legal oath.

To me, becoming a trial lawyer meant the opportunity to help stop injustices faced every day by both defendants and plaintiffs alike. It also meant an opportunity to make a real difference in these peoples' lives. That is, I wanted to be that "voice for the voiceless." And providing that voice is what trial lawyers do on a day to day basis – not only when you are representing your clients in the courtroom, but also as leaders in your communities.

Judges do this same thing – they provide a voice for the voiceless when issuing a decision or ruling in a case that resolves the issues for the litigants, and in the case of appellate judges, for future litigants as well. Our legal community is enhanced by many outstanding judges who have been recognized with this Tradition of Excellence award. Past judicial recipients include individuals such as Justice Robert Benham, Judge Marion Pope, and Judge Hugh Lawson, just to name a few; they have all made tremendous contributions to not only the State Bar, but most importantly, to the rule of law and the legal profession as a whole.

I also want to take a moment to thank my parents for the sacrifices they made for my brother and me. I will always love my father and appreciate the confidence he gave me because he always told me I could be a lawyer, even though it is a male-dominated profession. My lovely mother instilled in me that I could become anything I wanted to be if I was willing to work hard and get a good education. My parents supported me in every way possible – not only financially and emotionally, but also by encouraging me to go to law school to become a lawyer despite never having met a female lawyer at that point in my life. Because of my parents, I have never doubted that "if you first believe it, you can achieve it." It is for these reasons that a little girl from middle Georgia was able to grow-up and become the Chief Judge, and now Presiding Judge, on the Court of Appeals. I hope that I am living proof to young people that have a goal of becoming a lawyer that dedication and hard work, along with a good education, opens up doors not only for men, but also for women.

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Remarks by Judge M. Yvette Miller

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I love what I do and I enjoy helping people. Life every day is a new adventure. I love lawyers. I loved practicing law, and for many years now, I have enjoyed being a judge. My mission has been, and continues to be, to serve all Georgians through my work as a Judge on the Georgia Court of Appeals!

Thank you again for honoring me with this Award. It is an absolute privilege to have my peers recognize me in this way, and I am both thrilled and touched by this honor. Thank you so much.

2011/2012
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Introduced by
Robin Frazer Clark

Tradition of Excellence Award

It is my distinct privilege and honor to introduce to you today the recipient of the Traditions of Excellence Award for Plaintiff's Attorney, Nicholas "Nick" C. Moraitakis. Without question, Nick Moraitakis is one of the most compassionate, caring, loyal and loving persons I have ever known, and his services to our profession and the community are exemplary.

Nick graduated from Emory College of Emory University in 1974 and received his Juris Doctor from Emory University School of Law in 1977. His career as a trial lawyer has given him a unique perspective on our Civil Justice System as he has represented parties on both sides of the "V." Nick spent the first fourteen years of his career in the defense firm of Fain, Gorby, Reeves and Moraitakis and its successor firm in downtown Atlanta. As a defense attorney Nick tried over 60 cases involving truck and car wrecks, products liability, premises safety and insurance contract disputes. In 1993, Nick and his law partner, Glenn Kushel, began a plaintiff's practice dedicated exclusively to the representation of individuals injured or killed as a result of medical

malpractice, nursing home abuse, trucking and car wrecks, products and premises safety. Nick and Glenn successfully argued the case of *Kennan v. Plouffe* to the Georgia Supreme Court, which resulted in the landmark decision holding that a defendant physician, a faculty member of the Medical College of Georgia, was not immune from suit under the Georgia Tort Claims Act. That case ultimately was resolved for an amount exceeding seven and a half million dollars, and Nick was off and running.

Nick also was lead counsel in a significant case against the City of Atlanta, Marriott Hotels and a myriad of engineers and product manufacturers stemming from a catastrophic sewer collapse in the parking lot of the Midtown Courtyard Hotel in Midtown Atlanta. The case was complex litigation involving an array of issues including architectural and professional engineering duties, professional standards in the field of geotechnical engineering and the liability of a municipality. Nick has represented numerous victims of crimes that occurred at MARTA stations.

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Tradition of Excellence Award

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Nick has developed a reputation in his practice as representing the underdog in life, the disenfranchised who would have no voice but for Nick. One recent example of this is Nick's successful representation of the Estate of Miss Kathryn Johnston, a 93 year old woman who was violently killed by Atlanta Police Officers in a raid on her house. Acting upon a fraudulent warrant obtained by using knowingly false information, a team of Atlanta Police Officers burst into the home of Miss Johnston, who was a law-abiding citizen; fatally shooting her; and then planting drugs in her house to attempt to cover up the illegal entry into her home. Subsequently, the attempted cover-up by the Atlanta officers was exposed when a confidential informant eventually went to the FBI and exposed the truth.

Nick filed suit on behalf of Miss Johnston for violation of her constitutionally protected rights and after three years of hard-fought litigation in Federal Court, the case settled for nearly \$5 Million. This also resulted in the disbandment of an unscrupulous division of the Atlanta Police Department known as the "Red Dog Squad" and four officers pled guilty to crimes and received significant prison sentences. Nick was quoted in the Atlanta Journal and Constitution: "Clearly a terrible wrong was committed in this tragic case. In the end, the city was forced to step up and right this wrong, as well as can be under our system of laws. It is always gratifying to be on the side seeking and receiving justice."

I had the privilege of coming to know Nick through our work together in the Georgia Trial Lawyers Association. Nick was the Legislative Chair for GTLA and it was my good fortune to be able to work with him and learn much of what I know about politics by watching Nick. Through the years of our friendship,

I have only observed Nick to have one bad habit, only demonstrated while on the golf course, and that is the nasty habit of dipping snuff. Now understand, the first time we played golf together, I have to admit I was thrown for a slight loop when, before we teed off on the first hole, he said he needed to ask me a serious question. And, being the mediocre golfer that I am, nervous to be playing with the likes of Nick Moraitakis, I immediately wondered whether he was going to inquire about my handicap, and whether I was going to slow him down, and I jumped to the painful conclusion that we were getting off to a rocky start for our first round together. Instead, the serious question was: "Do you mind if I dip?" Hmmmm. Now, I am from Kentucky, where every man dips or chews tobacco while playing golf, among other things, so a golf partner having a cup of quid in the cart was no biggie to me. So, of course, I said "No, please go right ahead" and from then on Nick and I got on famously and had a delightful round. I thought, "At least he was polite and asked first." I have to note that it is through our work in such organizations as GTLA and the State Bar of Georgia that we are given these opportunities to build relationships with people such as Nick Moraitakis for without them, Nick's path and mine may have never crossed. I am eternally grateful that they did.

In addition to his incredible professional accomplishments, Nick has served his community with the same level of dedication and commitment. Nick was elected to the Georgia General Assembly and served in the House of Representatives from 2003-2004 representing the 42nd House District. Upon his leaving the House, that body passed a Resolution honoring Nick that read in part:

"WHEREAS, during his term as

a State Representative, he quickly gained a reputation among his peers as a true statesman and he served all citizens of his representative district and of the State of Georgia with fairness and impartiality and WHEREAS, a seasoned attorney and community activist, Representative Moraitakis came to this body superbly well equipped to contribute to the betterment of the state and from his first days under the Gold Dome, he began quietly influencing legislation he felt important to his constituents and to the state... he will long be remembered for his forthright manner, his sense of perspective and his unflinching dedication to his office."

For all the grief we give the folks under the Gold Dome...I think they got that one right.

Nick has also been a servant in his House of Worship, the Greek Orthodox Cathedral of the Annunciation in Atlanta. The Patriarch of the Greek Orthodox Church has bestowed upon Nick the honor of being named an Archon of the Ecumenical Patriarchate. Part of the Ecumenical Patriarchate's ministry is in the protection and outreach of the Orthodox faith, as well as in the witnessing of that faith. It is the highest lay position and holiest center of the Orthodox Christian Church throughout the world. All Greek Orthodox feel that they are constituents of one essentially spiritual community, wherein "when one member suffers, so do all." It is a true sense of unity in diversity. The Ecumenical Patriarchate is a symbol of unity, rendering service and solidarity to the Eastern Churches and its pastoral role and responsibility have earned the characterization of the Ecumenical Patriarchate as "the golden beacon of Orthodoxy, preserving the unwaning brilliance of Christianity." Nick's appointment by his faith community honors him

and perfectly reflects the kind of man he is – a man of service.

In spite of all of Nick’s professional and public service accomplishments, he would be the first to admit they are nothing compared to the joy he finds in his family. He admittedly “outkicked his coverage” when he married his beautiful wife, Effie, to whom he has been married for 32

years. They have two daughters, Lia Ann and Maria Alexandra, who are the lights of his life.

Judge Harold Murphy once noted in an opinion “there are precious few white horses tied up outside the courthouse.” I can tell you without equivocation that one of those white horses belongs to Nick Moraitakis. It is his profound love of God and

neighbor that has been the hallmark of Nick Moraitakis, as lawyer, statesman, husband, father and friend. And when motivated by love, as Nick is, who can be against you? Take it from a trial lawyer, love is the only winning argument. I proudly give you Nicholas Moraitakis.

Remarks by

Nicholas C. Moraitakis

Let me first thank my good friend, Robin Clark, for her kind introduction and for all of her work on behalf of the Bench, the Bar and our civil justice system. Robin has been a pioneer in her leadership of the Georgia Trial Lawyers Association and continues to be so with the State Bar of Georgia. We appreciate your leadership accompanied by a steady hand and a level head. We appreciate you Robin Clark.

To those of you here today, and to those responsible for this recognition, no words of appreciation can appropriately reflect that which I feel. Let me say simply “thank you”. Please understand that to be recognized for a Tradition of Excellence, from the people in this room, is the greatest compliment that I can receive. Indeed, there is no other group I treasure more receiving recognition from. This is a distinct honor from the most meaningful of friends.

I look with awe at the list of past recipients of the Tradition of Excellence Award and wonder aloud why my name should be added. I am sure I speak for all of us when I say that awards and recognition are not things we seek. We wake up every morning, go to work, and give it our very best every day, all day. That is what we seek: to do our best and be our best. Many people: family, friends, mentors, co-workers, adversaries and judges contribute to placing us in a position to appreciate the severity of our mission and be the best we can be in its undertaking.

As trial lawyers of course, we frequently find ourselves up at 4:00 o’clock in the morning getting ready for a hearing, prepare opening statements or cross examination. Our families are often on the receiving end of our reaction to irrational

hours and, at the end of the day, what we may deem irrational results from juries, and yes even sometimes from judges. So I first thank and salute my family; my daughters Lia (24) and Maria (16), who could not be with us today as they are each on their own travels; and most importantly my lovely wife of 32 years, Effie. Effie helps build confidence when in doubt, lends support in each endeavor and keeps my thinking straight when it wanders astray. (I will say, however, in the privacy of our own home she will let me have it when I really screw up.)

Let me give you an example of the level of Effie’s trust and support. We had been married about 9 years and in 1988 I decided to run for the United States Congress. When I relayed the idea to Effie, it was not met with a great deal of enthusiasm. She was quick to point out that we had a 14 month old child, that I was a very busy insurance defense lawyer, that we had a significant mortgage payment and perhaps most importantly that I had absolutely no chance of winning. It was easy for her to be right about the age of our daughter, the nature of my legal work and the size of our mortgage. Little did I know of her acumen for political consultation as I was trounced in the Democratic Primary by a fellow named Ben Jones. You may remember Ben; he became famous for playing Cooter in the Dukes of Hazard. With that said, if there is any interest in reconsidering the wisdom of my selection, I will certainly understand.

It has been my good fortune to practice with, litigated with, litigated against and thus be

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Remarks by Nicholas C. Moraitakis

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influenced by a myriad of fine lawyers and wonderful people. I started my first job in 1977 with Don Fain, Mike Gorby and Mike Reeves. Through them I gained a full understanding of the significance of preparation and a healthy appreciation for the technical pitfalls which keep us awake at night.

The first time I went into court as a lawyer was with my first boss, Don Fain. We were representing a trucking company defendant and the plaintiff was represented by a prior recipient of this award and a giant in the practice of law, Paul Hawkins. Sitting second chair with Paul was another recent recipient of this award, Bill Bird. Bill and I sat and assisted our senior partners, soaking up the opportunity to learn. I remember at one point during his closing argument, Paul Hawkins leaned over to the jury, making his case in a whispered tone. Don Fain stood up and addressed Judge Osgood Williams with an objection, based on the fact that he could not hear what Paul was saying. Without missing a beat, Paul turned his head to Don and said in a voice that could be heard by all "that's because I'm not talking to you". Judge Williams had no chance to rule on the objection because the laughter was too loud. Everybody in the courtroom got a big kick out of the exchange except for me and Don. The jury came back with an award for Paul and Bill's client far in excess of the amount we had offered.

A lesson in courtroom opportunities and perhaps needless objections.

I have had wonderful partners in both the defense and plaintiffs practices of law. More recently, Roger Mills and then Al Pearson. I was blessed to have the opportunity to practice with one of the finest young men I've ever known, who unfortunately left us too early, Arnold Gardner. Arnold was a kind and gentle man who saw the good side of everything and everyone and influenced those of us who spent time with him to do the same. His memory will be eternal.

I have been particularly rewarded the last 19 years to have practiced law with the smartest and most capable lawyer I have ever known,

Glenn Kushel. Glenn is both a big picture and little picture guy. While he can certainly see the forest, he knows the status of every tree. While I love him to death, I hate to have him proofread any of my work. From time to time I will spend hours preparing a particular document and hand it to Glenn, with the confidence that I have all bases covered. Inevitably, the pages come back full of red ink, corrections and additions. One of my goals in life is to one day hand Glenn something to read which will come back looking at least partially similar to the document I gave him to read in the first place. Thanks for putting up with me Glenn. You are a great partner and a great friend.

The lesson taken from this relationship is always have a partner who is younger and smarter than you are.

For two years in law school, I served as a law clerk for the law firm known as Henning Chambers & Mabry. There I worked with Bo Chambers and Walter McClelland, both of whom remain friends to this day. This was a great opportunity for a young law student to be exposed to very talented lawyers. Walter has often times reminded me of the story where he sat second chair to Bo in a trial where the firm was representing the driver of a car that simply rear-ended the plaintiff. In his closing argument, Bo argued that the plaintiff's car was stopped in front of the defendant, and the while liability might seem clear, he said "my client wasn't a helicopter; he couldn't go over him. He wasn't a submarine; he couldn't go under him." In later years both Walter and I tried that same argument in front of juries who looked at us as if we had a screw loose or a marble missing.

There was also the case in which Bo represented a female plaintiff whose breast augmentation surgery had gone awry. He called the defendant doctor as his first witness and began with this question: "Doctor, why are my clients' breasts all cattywampus?" After everybody in the courtroom, including the judge and defense lawyer, stopped laughing, the doctor went on to explain to Mr. Chambers that he could not respond to that question because "cattywampus" was not a medical term. Never

one to miss an opportunity, Bo said “Well you know what I mean doctor, one of em’s pointing this way and the other’s pointin’ that way”. The trial was won with the cross examination of the very first witness.

We are so lucky for our exposure to people like Paul Hawkins and Bo Chambers, who demonstrate a courtroom flair derived from confidence which is so successful for them. From this we all learn to be ourselves; be the best of ourselves and grow our own confidence and courtroom presence.

I do want to mention my father, who passed away almost thirty years ago at age 54 while lifting boxes on his job at Happy Herman’s Liquor Store. He tried to teach me a number of lessons; two in particular which I remember. The first was “If you don’t have anything good to say about somebody, just keep your mouth shut.” That was a lesson I really did not learn very well. And I think with a straight face, I can attribute the need for fierce advocacy as part of the reason for my indiscretion in this regard.

As the son of an immigrant, my father felt it important to provide for his children better opportunities than those that were afforded him. This lesson he sought to instill in us: to work hard to provide the next generation with every opportunity to succeed . . . in essence to leave things better off when you depart than you found them when you arrived. That did seem a lesson worth learning and passing on. As I got older and studied history, I found a similar expression

written by a lawyer, one of our Country’s founding fathers.

In a letter that John Adams wrote to his wife Abigail while he was serving the colonies in France, he wrote as follows:

I must study politics and war, that my sons may have liberty to study mathematics and philosophy . . . in order to give their children a right to study painting, poetry, music, architecture. . .

That is one of my favorite thoughts and I point it out at this time simply as a guiding principle for all, both in law and in life.

- I appreciate the opportunity and am mindful of the responsibility of the privilege of practicing law;
- I look forward to waking up every morning and trying to do my best every day, all day;
- I thank you for your thoughtfulness;
- I respect your good work;
- I will strive to continue a tradition of excellence. I will remember you and this day forever.

John F. Kennedy used to quote the ancient Greeks as saying, “*True happiness is the full use of your powers along lines of excellence in a life affording scope.*”

For all of us today, we celebrate the pursuit of this special form of happiness and for that I give you my thanks.

Remarks by Cathy Cox

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in academia -- has continued to serve me well as I now govern a small liberal arts college that I hope will turn out a new crop of law students. My legal training helps me on a daily basis with a wide variety of contract issues, labor and personnel issues (I had to terminate several tenured faculty soon after I arrived...), environmental issues -- we just had an EPA peer audit, never-ending zoning issues with the local city government (we've constructed more than \$40 million in new facilities over the past 3 years), and it especially comes in handy with those parents of students who threaten to sue you whenever you have to discipline their children.

So -- as I tell numerous students nowadays who come to talk to me about the possibility of going to law school -- it is the world's greatest education. It is perhaps the most flexible of all professional degrees because it is so much more than an education in a specific discipline -- it is intense training in critical thinking and problem solving -- skills that serve you well no matter what jobs you do in the future.

And when young law students or recent graduates talk to me about their desire to go into politics, I give them all the same advice -- please, please go practice law for a few years! The experience you will gain by representing clients in all manner of legal situations will give you far better preparation for political service than will becoming a political groupie, embedded in the shallow sound bite wars of today's partisan camps. Practicing law, especially in a general practice, is a lesson in life -- the very best lesson in life I can think of, and I wish far more of our elected officials had that kind of grounding.

I am so proud to be a lawyer -- and I know that you are, too. Proud that I have battled other good

lawyers in courtrooms around this state. Proud to have witnessed some outstanding judges make tough, controversial rulings because they knew and respected the law. Proud that I have been about to solve problems in a traditional law practice and in a number of non-traditional jobs as well because I knew how to make the law work for my clients and my employers. I'm very proud to be married to a good lawyer who shares my respect for the highest standards of law practice.

I'm also proud that I don't think like most other people -- I think like a lawyer. I can argue -- civilly -- and that sure seems to be a lost art! Our legislature is now down to some 35-40 lawyers out of the 236 House and Senate members -- and I guarantee you we'd see a better work product and actual substantive debate coming out of there if we had more actively practicing lawyers drafting our laws! Some of you in this room should run!

I've remained an active member of the State Bar since Judge Cato swore me in 25 years ago because my status as a lawyer, and as a general practitioner, has been the foundation of everything else I've done over those years.

But I still like to learn -- and there's no better learning environment around than that experienced by a general practitioner.

We have thousands of good Georgia lawyers toiling in their law practices every day -- but there are also many like me, who are putting their legal skills to work in very non-traditional arenas. Thank you for recognizing me today as one of those outside-the-box attorneys who have taken the "road less traveled." I'm proud to be your sister at the Bar.

Implications of Intrafamily Tort Immunity in Auto Collision Cases

R. Walker Garrett



R. Walker Garrett is an associate at the law firm of Harp & Callier, LLP in Columbus, Georgia. The firm practices exclusively in the area of plaintiff's personal injury with an emphasis on wrongful death, FELA, medical malpractice, brain and spinal cord injury, and other serious personal injury claims. Walker graduated from Huntingdon College in Montgomery, Alabama, in May 2007, magna cum laude. While at Huntingdon, he played varsity tennis, starting at both top singles and top doubles positions. As a freshman, he was invited to participate in the United States Air Force Academy assembly on global governance. Also at Huntingdon, he served as his fraternity president for two consecutive terms and also served as Treasurer of the Student Government Association. In his junior year, Walker was one of 17 college men chosen from across the United States to be selected for the fully-paid Quest to Greece Scholarship which involved a summer studying Greek philosophy and traveling to Greece with the other participants and a professor from Emory.

Walker graduated from Mercer Law School in May 2010 with a Certificate in Advanced Legal Writing, Research and Drafting. While at Mercer he was awarded the CALI Award for the highest grade in Advanced Legal Research, and he served as research assistant for Tax Professor, Monica Armstrong. Walker clerked with Harp and Callier during the summer of 2009 and joined the firm as an associate immediately after taking the bar exam in August 2010.

Walker is a member of the Rotary Club of Columbus, the Georgia Trial Lawyers Association, Columbus Young Professionals, and is the youngest member to serve on the Board of the Huntingdon College National Alumni Association. He is also the editor of the Calendar Call magazine.

I. Background of Intrafamily Tort Immunity

Georgia applies family tort immunity to bar lawsuits between spouses, minor children and their parent or guardians, and between minor siblings, but subject to many exceptions. The intrafamily tort immunity doctrines operate to bar actions between family members for personal torts committed by one family member against another member of the intermediate family, except where the traditional policy reasons for applying the doctrines are absent. Shoemake v. Shoemake,

200 Ga. App. 182, 183 (1991). The main rationale behind intrafamily tort immunity is preservation of family tranquility. Newsome v. Dept. of Human Resources, 199 Ga. App. 419, 420 (1991). Family immunity doctrines foster family harmony by preventing lawsuits between family members. Larkin v. Larkin, 268 Ga. App. 127, 128 (2004).

Intrafamily immunity has been justified because of the legitimate state interest of preserving the "family unity for the good of society in general." Jones v. Swett, 244 Ga. 715 (1979) (barring action by children against stepfather for wrongful death of mother he murdered because of

interspousal immunity; since mother could not bring negligence action against husband if she was alive, neither could stepchildren.). Judicial creation of the family immunity doctrines recognizes the public policy interest in keeping families together by avoiding "proceedings which tend to disrupt the family tranquility." Stapleton v. Stapleton, 85 Ga. App. 728, 729 (1952); Clabough v. Rachwal, 176 Ga. App. 212, 213-214 (1985) ("The preservation of the family unit is of such utmost importance in this state that it has recently been given stature in our state constitution. 'To promote the interest and happiness of the citizen and of the family...we

the people of Georgia...do ordain and establish this Constitution.' 1983 Ga. Const., Preamble."). Additional reasons for family immunity include avoiding fraudulent and collusive lawsuits and preventing depletion of the family exchequer. Claubough, 176 Ga. App. at 213; Larkin, 268 Ga. App. 127.

Generally, the relationship status of the parties, for determining if an immunity applies, will be determined at the time of filing the lawsuit rather than the time of the tortious act. Larkin, 268 Ga. App. at 128 ("The time at which these policies are relevant is the time of suit or thereafter, not the time of the facts that led to the suit."); see Nelson v. Spalding County, 249 Ga. 334 (1982); see Arnold v. Arnold, 259 Ga. 150 (1989); see Claubough, 176 Ga. App. 212. The family status is determined at the time the lawsuit is filed because that is the relevant time for purposes of preserving family harmony. Larkin, 268 Ga. App. 127.

A. Interspousal Immunity

Interspousal tort immunity existed at common law and has been confirmed by statute. O.C.G.A. § 19-3-8 (1983); Bassett v. Harrington, 247 Ga. App. 425 (2000). The legislature codified the existence of interspousal tort immunity as developed by common law prior to July 1, 1983, thereby approving and perpetuating the then existing case law. Bassett, 247 Ga. App. 425; Harris v. Harris, 252 Ga. 387, 388 (1984).

If interspousal immunity did not apply, there would be problems with recovery of wife against husband ("taking from Peter to Pay Paul"). Robeson v. International Indem. Co., 248 Ga. 306, 309 (1981). Even when a lawsuit between spouses poses no threat to the family tranquility, interspousal immunity has been applied because of the fear that non-adversarial suits between spouses would be fraudulent, collusive, or frivolous. Id. at 308 (Where defendant spouse is insured and both spouses

will benefit if plaintiff wins, there is an even greater risk of fraudulent or collusive claims). If either of the underlying policies of fostering marital harmony or of avoiding fraudulent or collusive lawsuits, are implicated in a lawsuit, the doctrine of interspousal immunity will be applied. Yates v. Lowe, 179 Ga. App. 888, 889 (1986).

Collusion is still possible even when only the estates are involved in the suit. Id. at 889; Larkin, 268 Ga. App. 127 (Even though there was no marital harmony to protect at the time the lawsuit was filed since both spouses were dead, interspousal immunity still applied because of the possibility of fraud or collusion where the estates were represented by the same person and husband's estate acknowledges that wife's estate may have insurance coverage applicable to husband's claims. "[Wife's] estate could concede fault in the suit in an effort to obtain insurance proceeds for the benefit of both estates.").

In Larkin, the doctrine of interspousal tort immunity precluded the estate of the deceased husband from maintaining a negligence action against the estate of his deceased wife, in light of possibility of fraud or collusion under the facts of the case. 268 Ga. App. 127. There, the same person represented both estates, and because the husband's estate acknowledged that the wife's estate might have insurance coverage applicable to the husband's claims, there was a danger that the wife's estate could concede fault in the suit in an effort to obtain insurance proceeds for the benefit of both estates. Id.

In addition to the general policy reasons for family immunity, interspousal immunity has been justified as necessary to "preserve the sanctity of marriage" by avoiding the disruption to marital harmony from truly adversarial suits between spouses. Bearden v. Bearden, 231 Ga. App. 182, 184 (1998). Since interspousal

immunity has been codified, courts are hesitant to abrogate the doctrine because of the belief that such expressions of public policy should come from the legislative branch. Robeson, 248 Ga. at 309.

(1) When interspousal immunity applies

Interspousal Immunity will apply when parties to a tort action marry each other subsequent to the filing of their claim against each other. Bassett, 247 Ga. App. 425; Robeson, 248 Ga. at 307 ("marriage extinguishes antenuptial rights of action between husband and wife, and after marriage the wife cannot maintain an action against her husband based on tortious injury to her person, though committed prior to coverture."). In Gates, the wife's action for damages resulting from a motorcycle accident that occurred before she married her husband, but which was filed after she filed for divorce from her husband, was barred by the doctrine of interspousal tort immunity because the wife was aware of her possible tort claim against her husband, but then chose to marry him and extinguished her right to any possible claim. Gates v. Gates, 277 Ga. 175 (2003). Therefore, if a husband and wife were married at the time of the accident or became married after the time of the accident but before filing, even if they obtained a divorce following the accident, interspousal immunity will bar tort actions for personal injury between them.

In cases where the policy justifications for interspousal immunity do not apply, the immunity will usually not bar the lawsuit. Jones v. Jones, 259 Ga. 49 (1989); Harris, 252 Ga. 387 (spouses estranged for 10 years prior to tortious act; no marital harmony to preserve). Interspousal immunity "may be abrogated when there is no marital harmony or unity to preserve and where there is no possibility of collusion." Johnson v. Georgia Farm

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Bureau Mutual Ins. Co., 273 Ga. App. 623, 625 (2005) (After wife died due to ex-husband's negligence in motor vehicle accident, the need to preserve familial harmony between the children and their mother or between mother and her ex-husband no longer exists.); Fleming v. Fleming, 246 Ga. App. 69, 71 (2000) (Where no marital harmony to preserve and there is little likelihood of collusion, the doctrine of interspousal immunity did not bar wife's tort claims even if they had arisen during the marriage.); Bearden, 231 Ga. App. at 184 (Where wife presented uncontroverted testimony that her and husband had not lived together as husband and wife for more than six years and had no hope for reconciliation at the time of the motor vehicle accident, husband was not entitled to summary judgment as a matter of law because this created a conflict in evidence as to a marital issue.); Trust Co. Bank v. Thornton, 186 Ga. App. 706, 707 (1988) (Interspousal immunity did not apply because the policy concerns for it were lacking).

In Harris, the doctrine of interspousal tort immunity did not apply to bar the wife's damages claim against her estranged husband for personal injuries sustained in the collision of her automobile with the automobile driven by her husband where, at time of collision, they had been separated for approximately ten years with only sporadic attempts at reconciliation, the husband cohabited with another woman during such time, and there was no hint of collusion between husband and wife or of intent to defraud insurance company. Harris, 252 Ga. at 388; See also Holman v. Holman, 73 Ga. App. 205 (1945) (Wife could not maintain malicious prosecution action against husband although they had been living separate and apart for two years before the acts complained of).

"Only in extreme factual situations

will appellate courts deviate from a strict application of the general rule regarding interspousal immunity... [e.g.] a lengthy separation or act of violence which clearly evidences the termination of marital harmony to a degree sufficient to deter any reasonable apprehension of collusion between the spouses or their estates." Stanfield v. Stanfield, 187 Ga. App. 722, 723 (1988) (Interspousal immunity still applied to bar suit, even when husband and wife divorced after the motor vehicle accident and the plaintiff contended that the marriage was already practically dissolved before the accident.); Harris, 252 Ga. 387; Robeson, 248 Ga. 306 (Interspousal immunity barred the action because the reasons behind the immunity were present.); Shoemaker, 200 Ga. App. 182 (Slight inference of lack of marital harmony by filing of lawsuit itself is not enough evidence to demonstrate that the policies behind interspousal immunity do not apply).

While personal injury actions between spouses are generally prohibited, actions for damage to "separate property" are not barred by spousal immunity. O.C.G.A. § 19-3-9 (1983). Therefore, the immunity will not prevent a wife recovering against her husband for damage to her vehicle caused by her husband's negligence. Hubbard v. Ruff, 97 Ga. App. 251 (1958). When the negligent injury is to a property interest, interspousal immunity does not operate to bar recovery. O.C.G.A. § 19-3-9 (1983) (protecting right to separate property interest).

(2) Wrongful Death

Interspousal Immunity does not act as a bar to wrongful death claims. Jones, 259 Ga. at 50 (O.C.G.A. § 19-3-8 held unconstitutional as applied to wrongful death actions; application of the interspousal immunity doctrine violates the constitutional guar-

antee of equal protection because it arbitrarily distinguishes between classes of wrongful death claimants.)

"There are two policy considerations that are traditionally advanced as the object of the interspousal immunity doctrine: (1) to foster marital harmony by preventing suits between spouses; and (2) to avoid fraudulent or collusive lawsuits. Robeson v. Int. Indemnity Co., 248 Ga. 306 (282 S.E.2d 896) (1981). In the context of a wrongful death action, neither of these justifications for the doctrine adhere. First, and most obviously, there can be no marital harmony to foster when one spouse has died. Second, the deceased spouse cannot conspire or collude with the defendant spouse. Although there may be some possibility of collusion between the defendant spouse and the wrongful death claimant if liability insurance is available, we believe that the possibility of collusion is not realistically greater than in any suit where insurance is involved. The possibility is particularly unlikely where, as here, the wrongful death claimant is the emancipated stepdaughter of the deceased. Moreover, the potentiality for fraud exists in any litigation and should not be a valid basis for denying a right of action to legitimate claimants."

Id. at 49-50 (footnote omitted). There is no possibility of spousal collusion where the marriage ended in the death of one or both of spouses as a result of the negligence, and the tort action was not being brought by a surviving spouse. Segars v. Southern Guar. Ins. Co. of Georgia, 192 Ga. App. 265, 266 (1989) (Immunity does not bar the cross-claim by plaintiff

ex-husband against the estate of his former wife seeking to recover for wrongful death of their daughter.). So if one of the potential plaintiffs was killed as a result of the collision, the wrongful death claim on behalf of the decedent will not be barred by any family immunity.

(3) Intentional Torts

Interspousal immunity will not protect the tortfeasor spouse when an intentional tort committed is so egregious or violent that the marital relationship no longer exists. Stanfield, 187 Ga. App. 722. Once the marital relationship is destroyed, there is no longer anything for the immunity to protect. Id. Therefore, interspousal immunity will not bar an action between a husband and his wife if the tortfeasor spouse acted intentionally to cause the wreck or was speeding while driving drunk because such acts are sufficiently egregious to destroy the marital relationship which the immunity seeks to protect. Without a marital relationship to protect, the policy reasons for interspousal immunity no longer apply and the innocent spouse may sue the tortfeasor spouse.

B. Parental Immunity

Georgia courts have applied the doctrine of parental immunity because of the possibility of inheritance, by the parent, of the amount recovered in damages to the child caused by the parent as well as seeking to avoid interference with parental care, discipline, and control. Clabough, 176 Ga. App. at 213.

For application of parental immunity, the status of a parental or an *in loco parentis* relationship is determined at the time a lawsuit is filed and thereafter, rather than at the time the tortious act occurred. Newsome, 199 Ga. App. at 421-422; Bennett v. Bennett, 194 Ga. App. 197, 199 (1990) (Where defendant grandparent was

appointed a legal guardian of child before trial court entered order for summary judgment, defendant met all the requirements of loco parentis status and was protected by parental immunity.); Harris v. Hardman, 133 Ga. App. 941 (1975) (Grandmother not protected by parental immunity where she was not in loco parentis with child); Mohorn v. Ross, 205 Ga. App. 443 (1992) (Parental immunity still applied to separated father who had a parental relationship with child). Once the foster parent-child relationship no longer exists between the parties, the policy for granting parental immunity is no longer applicable as to the concern for the quality and stability of that relationship. Newsome, 199 Ga. App. at 422 (parental immunity does not apply after defendant's children were removed from their house after fire and placed with another foster family, so that defendants did not stand in loco parentis to the children at the time the lawsuit was filed.). "...[W]hen there is a change in the status of the relationship between the parties in the interval between the tortious act and the filing of the action, the time of filing governs [because] the object of preserving family harmony does not control when there is no family status at the time of filing the action." Queen v. Carey, 210 Ga. App. 41 (1993) (Parental immunity applied to step-grandfather where the evidence show defendant was the only means of supporting plaintiff, plaintiff lived with defendant, and defendant had raised plaintiff because of lack of support from plaintiff's father; defendant was essentially plaintiff's guardian.).

Noncustodial parents who are exercising parental duties, such as paying child support, are protected by parental immunity. Blake v. Blake, 235 Ga. App. 38 (1998) (The public policy reasons for parental immunity still exist where divorced

father exercises parental duties. In such a situation, there is still a need to maintain parental discipline and there is also a risk of friendly or collusive action. Therefore, parental immunity applies to such noncustodial parents upon these facts.). In Blake, a divorced father had parental immunity from liability to two minor children for injuries sustained in automobile accident; the father was carrying out parental duties at time of accident as he drove children to school, even if he was not exercising visitation rights. 235 Ga. App. 38.

In Coleman, an eleven-year-old boy who was injured in an automobile collision while he was a passenger in vehicle operated by his father was an unemancipated minor as to his father, although his parents were divorced and primary custody of him was placed with the mother, because the father provided support so that the father-son relationship continued as did the father's responsibility to provide for his son. Coleman v. Coleman, 157 Ga. App. 533 (1981). Thus the doctrine of parental immunity precluded suit filed by minor's mother as next friend against father. Id.

Assumption of the status and obligations of a parent without formal adoption creates status "*in loco parentis*." Clabough, 176 Ga. App. at 214 (Where decedent's plaintiff son has lived and continues to live with defendant, who is now his legal guardian, since plaintiff's mother died, parental immunity bars suit against defendant even though plaintiff was not a resident of defendant's household when his right of action accrued at decedent's death.); Maddox v. Queen, 150 Ga. App. 408 (1979) (Parental immunity protected defendant grandfather from action by plaintiff child's father where father did not exercise any parental duties). The doctrine

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of family immunity will still apply because “plaintiff and defendant now have an ongoing ‘familial’ relationship” which is threatened by a lawsuit between the parties, particularly where they live in the same home and defendant is willingly taking plaintiff in as her own child. Id.; Morris v. Brooks, 186 Ga. App. 177, 179 (1988) (Because plaintiff resumed a familial relationship with his natural father after the accident and at the time the lawsuit was filed, defendant stepfather lost the parental immunity because there was no longer a parental relationship between plaintiff and defendant.).

A parent may maintain an action against an adult child. Davis v. Cox, 131 Ga. App. 611 (1974); Hollingsworth v. Hollingsworth, 165 Ga. App. 319 (1983) (Public policy doctrine of family immunity does not preclude adult son from suing father). Once child became 18 years old and sui juris, he had no family immunity protection even if he lived at home. Hennessy Cadillac v. Pip-pin, 197 Ga. App. 448 (1990). Conversely, an emancipated adult child may not use the doctrine of intra-family tort immunity to shield himself from liability to a parent. Queen, 210 Ga. App. 41.

Therefore, if a seventeen year old child was driving, he cannot be sued by his parents because of parental immunity. However, if he turns eighteen before the lawsuit is filed, he could be sued by any potential plaintiff because reaching the age of majority removes the immunity protection. Likewise, he can sue any potential defendant because family immunity will not affect his rights as a plaintiff.

While an unemancipated minor child has no cause of action against a parent for simple negligence, he may maintain an action for personal injury against a parent for a willful or malicious act, provided it is such

an act of cruelty as to authorize forfeiture of parental authority. Buttrum v. Buttrum, 98 Ga. App. 226 (1958) (Speeding and driving drunk is sufficient cruelty to overcome parental immunity.); Wright v. Wright, 85 Ga. App. 721 (1952) (Holding that a jury question existed as to whether a parent’s willful and wanton misconduct of driving under the influence triggered the child’s emancipation.).

A parent is liable for willful or malicious wrong done by him to his unemancipated minor child, living with and under custody and control of such parent, if the wrongful act was such as would authorize judgment depriving parent of parental control over child, as in case of cruel treatment thereof, as by willfully and maliciously exposing child’s life and health to dangers inherent in parent’s operation of automobile at excessive speed while intoxicated. Wright, 85 Ga. App. 721; MacGrath v. Hoffman, 156 Ga. App. 240 (1980) (Plaintiff, the mother of child killed in automobile accident, failed to present any evidence of an act of cruelty sufficient to sever parental relationship and evidenced by wanton and malicious conduct on the part of deceased, who was father of child and driver of vehicle which struck a truck in the rear when truck was sitting still in lane of traffic, and thus family immunity doctrine was applicable, preventing recovery by plaintiff against executrix of father’s estate); Wisembaker v. Zeigler, 140 Ga. App. 90 (1976) (regardless of allegation of sufficient liability insurance to pay judgment sought, doctrine of parental immunity precluded mother’s recovery against estate of deceased father for death of son caused by merely gross negligence of the father.).

B. Sibling Immunity

Sibling immunity applies the same rules and exceptions as parental

immunity. Sibling immunity does not apply where defendant, an emancipated child, is sued by plaintiff, sibling. Arnold v. Arnold, 259 Ga. 150 (1989) (defendant minor could be sued by another family member once defendant reached the age of majority if before the trial court entered its order granting summary judgment because sibling immunity doesn’t apply once defendant is by law an adult.); Hennessy, 197 Ga. App. at 450 (In plaintiff sibling’s lawsuit against minor defendant, if defendant reached majority before judgment and within the statute of limitations, plaintiff’s parents can maintain a third party action for contribution against defendant “even though that right to contribution did not accrue until after judgment or disposition through compromise or settlement.”).

II. How will plaintiffs recover damages?

If the family immunity issue is not overcome, sometimes children injured by a tortfeasor parent can sue the parent’s employer. Bradley v. Tenneco Oil Co., 146 Ga. App. 161 (1978); Garnto v. Henson, 88 Ga. App. 320 (1953) (Held even though wife could not sue husband, interspousal immunity was personal to him and did not relieve the master from liability.); Stapleton, 85 Ga. App. 728 (Held child could sue mother’s employer in negligence for injuries sustained in a car driven by mother in the course of her employment). Also, if the car is not marital property but rather is separate property owned solely by one spouse, the injured spouse might be able to recover for damage to the car because interspousal immunity does not bar a spouse’s property actions against the other spouse.

If the family immunity issue is overcome, there may still be problems

with recovering full damages from the insurance provider due to common "family exclusion" clauses in the insurance policy itself. Stepho v. Allstate Insurance Company, 259 Ga. 475, 477 (1989) ("Insurer is entitled to rely on the [intrafamily] exclusion as to sums above those required by our compulsory insurance law."). In Stepho, the policy exclusion "for injury to any person related by blood to insured and residing in insured's house" was not enforced where the parent sued his adult tortfeasor son for injuries to minor child in motor vehicle accident because there is no tort immunity and enforcement of the exclusion clause would leave the injured party unprotected. Id. Therefore, the exclusion was against public policy and could not stand. Id. However, an exclusion will apply to sums above the mandatory coverage required by Georgia's compulsory insurance law. Id.

"An intrafamily exclusion will be upheld if it does not unfairly penalize an innocent victim or expose the insured to unanticipated liability." Hoque v. Empire Fire and Marine Ins. Co., 281 Ga. App. 810, 811 (2006) (Where insured has been compensated under his general liability policy for the full amount required under Georgia compulsory insurance law, enforcing the intrafamily exclusion does not violate public policy). There is no requirement of an additional clause in the policy warning plaintiff that the exclusion will apply to sums above minimum insurance amount required by law. Id. A plaintiff could have objected to the exclusion before signing the policy and by not doing so, he consented to the exclusion. Id.

A family exclusion clause "does not limit coverage to ex-husband on his individual claim for recovery of medical expenses and loss of services due to the children's injuries." Johnson, 273 Ga. App. at 626. In Johnson, because plaintiff

was the insured's ex-husband and not a family member, his "claim was not derivative of the children's own claims for their personal injuries." Id. Since the ex-husband brought his claim for his own losses, the family exclusion did not apply. Id.

III. Effects of Family Tort Immunity on Unrelated Third Party Defendant Actions

Interspousal immunity as in O.C.G.A. § 19-3-8 "included the rule against third party actions for indemnity or contribution against a plaintiff's spouse." New v. Hubbard, 206 Ga. App. 679, 680 (1992). In Hubbard, plaintiff was a passenger in a vehicle driven by her husband and was injured when that vehicle collided with one driven by defendant. Id. Plaintiff sued defendant, and defendant filed a third party contribution claim against plaintiff's spouse, which was barred by the doctrine of interspousal tort immunity. Id.; Southern Ry. Co. v. Brewer, 122 Ga. App. 292 (1970) (Since plaintiff's husband cannot be sued by plaintiff wife for negligence, defendant husband cannot be a joint tortfeasor with a third party defendant). However, a subsequent marriage after a wreck occurs will not act as a bar to contribution.

While by choosing to become man and wife each spouse gives up any tort claims he or she may have against the other, it does not follow that the marriage also extinguishes the pre-existing rights of third persons. To impose such a rule would operate as a manifest injustice against third persons and would not serve any conceivable consideration of public policy which might support the doctrine of interspousal immunity such as protection of familial harmony and the avoidance of collusive suits.

Byington v. Lee, 150 Ga. App. 393,

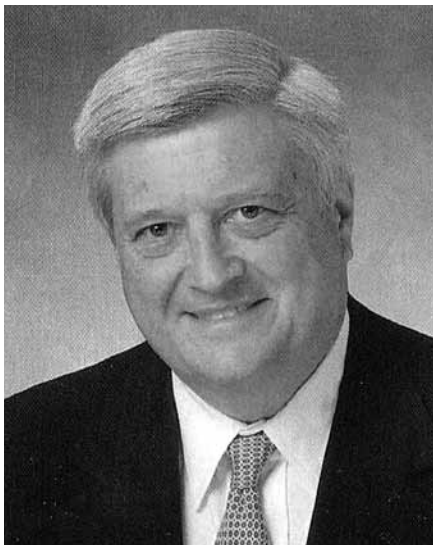
394 (1979) (third party defendant's right to seek contribution against defendant husband when the collision occurred was not extinguished by defendant's subsequent marriage to plaintiff wife.).

CONCLUSION

Any wreck involving family members suing one another can present a variety of challenges for both plaintiffs and defendants. Due to the complications of intrafamily tort immunity and family exclusion clauses in insurance contracts, any attorney should be cautious before taking cases representing family members against other family members in tort lawsuits. Those immunities may serve to prevent recovery altogether or limit such recovery to the mandatory minimum liability insurance limits.

Trial Themes - Developing a Theme from Beginning to End

Dennis T. Cathey



Dennis T. Cathey is a member of the law firm of Cathey & Strain, P.C. of Cornelia, Georgia, founded in 1974. He received both his B.A. degree (1967) and his J.D. degree (1970) from the University of Georgia. A past president of the Mountain Circuit Bar Association and former member of the Board of Governors of the State Bar of Georgia, he is also a member of the American Bar Association, the American Association of Justice and the American Board of Trial Lawyers. He is a fellow of the American College of Trial Lawyers and a past recipient of the State Bar of Georgia Traditions of Excellence Award. He is a past president of the Georgia Trial Lawyers Association. He has an active civil trial practice which is principally in the areas of personal injury law, products liability and business litigation. He is a frequent lecturer at seminars in those areas of law.

I.

Develop the Theme of Your Case Early and Build Upon It

The theme of your case is simply defined as what your case is about. The theme is the story you are going to tell in a nutshell. The theme of your case depends on a number of factors, including the identities/personalities of the parties, liability/causation issues, and the nature and extent of the damages. In a products case, the theme may be that the manufacturer had actual notice of a hazard and took no steps to remedy it or that the plaintiff refuses to accept responsibility for the wreck or is shifting blame to the deep pocket. In a catastrophic burn case, the theme can focus on the unbearable pain of the victim so that the jury can actually feel how the slightest movement of air in the room caused excruciating pain. In a contract case, a man did not keep his word.

The tentative theme of your case can be developed during the initial stages of your investigation and can be flexible. The resilience of the theme can be explored and built upon during each stage of your case. During discovery, the theme can be developed extensively. Through participation in alternative dispute resolution and in focus groups, your theme can be tested and adjusted. If you focus on the theme of your case during each step in the litigation process, by the time you are sitting down to prepare your opening argument, it

will be clear to you and thus you will be able to effectively communicate it to the jury.

Many lawyers fail to develop a theme even through closing argument. In this writer's opinion, this is a drastic error. It is essential that an effective advocate develop and build a theme from the time the case is accepted until the conclusion of his closing argument. Themes help the jury understand evidence and allows them to consider you summary of the case before actually getting into formal deliberations. Some lawyers, attempt to focus on one word themes for their cases. For example, "indifference" for medical malpractice cases; "accountability" or "personal responsibility" for liability cases; "greed" or "honesty" for commercial cases; "secrecy" or "blame shifting" in product liability cases.

In order for a jury to actually hear your case and believe it (as opposed to simply listening to it), you must focus their attention on **your** part of the case from the very beginning of the trial. The successful trial lawyer can get the jury's attention and hold this attention by the selection of a trial theme. This is done by selecting a narrow focus, or catch phrase, and maintaining a high visibility of this theme throughout the trial and relating it to the main points of the trial as it progresses.

Jurors often have difficulty understanding and paying attention to what goes on during a trial because

they are unfamiliar with courtroom procedures and are unable to absorb large portions of what goes on in the courtroom, especially in highly complex and technical cases. Jurors are first questioned by lawyers during voir dire; they then hear different versions of what the case is about in the conflicting opening statements; witnesses offer contradictory testimony, etc. As a result, much of the actual content of the trial is lost and what remains in the jury's mind is essentially an impression. It is the lawyer's trial theme which must create and maintain this impression.

II.

The Theme and the Opening Statement

A lawyer needs to use the opening statement to present both the **theme** and **tone** of his case. During pre-trial preparation of the case, the lawyer should begin developing the theme of his case and building upon it as the case progresses. The theme is the catch phrase that the jury can remember easily and relate to.

It is useful to set up an "Opening Statement" file early on in the case. Whenever you have an idea relating to the theme or see something useful in the newspaper, internet, list serves, advance sheets or technical literature, simply stick it in the file. When the time comes to prepare your opening, these random notes and bits of information may prove invaluable in constructing the argument.

One of the most important functions of the opening statement is to present the theme and tone of your case to the jury. You can often begin your opening with a succinct statement of the theme by saying, for example, "This case is about accountability;" "profits over safety;" "accepting personal responsibility." This puts the theme squarely in front of the jury and allows you to build on it during the presentation of the evidence.

The tone of your case is loosely tied to the theme of your case. However, the tone relates more directly to the attitude and tempo which you as the lawyer project to the jury in your opening and, later, in your examination of the witnesses. The tone relates to the mood or attitude which the counsel has. Just like the theme, the tone may depend on a number of factors, including the nature of the wrong claimed, the identity and personalities of the parties, the nature of the defense and the composition of the jury. For instance, in a products case where the manufacturer knew about the hazard but did nothing to remedy it, the tone may be one of attack or even tempered hostility. In a case where there is clear liability but the defendant is lying to try to mitigate fault, a tone of indignation and even sarcasm may be appropriate. On the other hand, if the defendant has admitted to a common driving error which resulted in a catastrophic injury, or if the plaintiff has acknowledged pre-existing similar injuries/conditions, a tone of understanding but firmness may be more appropriate. A tone which is appropriate or effective for one case may be totally wrong for another. Choose your tone carefully.

III.

Repetition - Remind the Jury of Your Theme

"Tell them what you are going to tell them. Tell them. Tell them what you told them." This is the concept of "planned redundancy". It is a highly effective and recommended method of communication. See John E. Crawford, "Make the Listening Easy for Jurors" (*Trial*, June 1996, pp. 55-56). Use the opening statement to begin this process by communicating your theme, follow through during the presentation of the evidence, and emphasize it again during your closing. Go back to the theme whenever the opportunity arises during the trial.

If you can accurately and effectively capture the essence of your case with the theme, and repeat it often, the jury will see the case through your eyes and will be more open to persuasion.

IV.

How to Develop your Theme

It has been said that your theme must never contradict any of the indisputable facts in the case. If it does, the jury will reject it and your theme collapses. See Herbert J. Stern, *Trying Cases to Win* (Wiley Law Publications, 1991) at p. 80. Use analogies to strengthen your theme. Choose a theme that sells and try to tie the theme to a higher cause which will engage the jury emotionally --- for example, making their county safer. The key to an effective and persuasive theme is that the jury accept it unconditionally. It cannot, therefore, clash with facts not in dispute. In order to isolate your theme, you must "go for the jugular" and keep it simple, concise and believable. What about evidence which is harmful to your case and which does not comport nicely with your theme? Stern recommends, and most trial lawyers would agree, that you "give it away". In other words, do not ignore such evidence but raise it early in your opening argument before the defense has a chance to use it against you.

A great way to test your case theme (as well as prioritization of your evidence) is to present it to a jury focus group. A focus group can help you judge whether you are on the right track with your theme and will sometimes cause you to change the theme and focus of your case. A jury focus group is an excellent litigation research tool and is invaluable in enabling an attorney to assess the merits of his case and to determine what aspects of his case he should focus on. It is a way to help streamline your case. It is highly advisable, in seri-

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Trial Themes - Developing a Theme from Beginning to End

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ous cases, to do more than one focus group or at least to do a focus group which includes more than one jury panel. It is also recommended that the deliberations of the various jury panels be videotaped so that the tapes may be reviewed later along with the questionnaires filled out by the mock jurors. Formats for jury focus groups vary widely and a lawyer is restricted only by his creativity in determining how to organize and plan a focus group. There are many professionals who will be happy to plan and direct a focus group for you and charge you accordingly.

V.

Using the Theme in Closing Argument

Closing argument is the culmination of the trial lawyer's presentation of his client's case. It is the final opportunity to present the plaintiff's case theme to a jury in a highly persuasive manner. Since the theme of the trial is built from the outset; begun during voir dire and fleshed out during opening argument, direct testimony and cross-examination, the key is to make the closing argument one important part of a more or less seamless presentation. Otherwise, the jury is likely to see closing argument as one last delay, built in for the ego gratification of the lawyers before they can finish their jobs and go home. Closing argument should be nothing more than the principled and persuasive application of law to a particular set of facts.

The closing argument should highlight the items of the trial that are important and which hopefully weigh in your client's favor. The lawyer is empowering the jury, a concept which requires recognition of the fact that cases are won not in closing argument but in the jury room during deliberations. Closing argument should solidify the opinions of those jurors leaning in your client's favor

and provide them with arguments to use during deliberations to persuade their fellow jurors.

Closing argument is explanation. The jury should be informed why they should believe one eye witness over another. The charge of the court is highlighted and emphasized and the jury is told why the law compels a verdict in favor of your client. It is not a time for becoming bogged in minutia and repeating every item of testimony from the trial or giving them a blow-by-blow replay of the trial. This insults the jury by implying that its members have not been listening carefully. More importantly, such an approach destroys any perception of the lawyer's sincerity and belief in the case and it implies an inability to determine the critical issues. The scope of closing argument is controlled by the sound discretion of the trial court and will not be interfered with unless that discretion is manifestly abused. Banks v. Kilday, 88 Ga.App. 307, 76 S.E.2d 642 (1953).

During your closing arguments, you should be yourself and remember the concepts of primacy and recency. Primacy relates to the intensity of belief. People tend to remember more deeply that which they hear first, and first impressions are most important. Since one is more likely to accept and believe that which he hears first; give your strongest points first and do not hold back key items for later delivery in your presentation. Recency is the psychological premise that people tend to remember longest the thing that they hear last, the most recent thing they hear. As a general rule you should argue climax to anti-climax rather than anti-climax to climax. In other words, argue from your strongest point to your weakest point, not vice versa. Since a juror's attention is highest at the very beginning of the closing argument and at the very end, you should begin your closing argument in strong fashion with vivid imagery which you hope, because of

primacy, will become a deep felt conviction by a juror. The end of your closing argument should be another high point. You should re-state your theme and finish with some basic concept of right or wrong which simply can't be refuted.

In closing argument make use of the fact that human beings remember pictures better than words and therefore incorporate the charts, graphs and photographic enlargements and demonstrative evidence referred to above in your closing argument. The use of such materials is permitted by O.C.G.A. §9-10-183.

CONCLUSION

Jury polls consistently find that sincerity is one of the most appealing attributes of an advocate. This fact has several important effects upon the presentation of your theme and tone. Not everyone can be Clarence Darrow, and the jury is likely to resent the trial lawyer who attempts to be him but fails. The trial lawyer must be brutally honest in self-evaluation or enlist the aid of those who will be honest in determining the style of presentation. Most communications experts believe that a simple, conversational style of address is the most effective form of conveying one's sincere belief in the information being conveyed. If you are ordinarily a soft-spoken person, bombast will be seen as what it is – an act. Never copy some other lawyer's style – develop your own.

On the other hand, it is well to be aware that the rules of plagiarism do not apply in choosing a theme. While society may not be so homogenous today that the advocate can rely on a jury's familiarity with phrases and metaphors taken from literature, nonetheless, a well-turned phrase can effectively communicate the message. Sincerity in tone and a simple, truthful theme are the only consistently effective ways to convey your case's strengths.

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