

# CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XVII

Fall 2012

No. 3



2012

## *Tradition of Excellence Awards*



The 2012 “Tradition of Excellence Award” recipients received their award at the Section Breakfast June, 1, 2012 in Savannah. (l-r) Chairman Darren Penn, David B. Bell, Augusta, (Plaintiff) H. Andrew Owen, Atlanta, (Defense), Judge Phyllis Kravitch, Atlanta, (Judicial) Lawrence S. Sorgen, Hiawassee, (General Practice) and Incoming Chair Laura Austin.

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# CALENDAR CALL

"Georgia's Largest Law Firm"

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

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## ARTICLES

- Chairman's Corner  
*Darren W. Peen* 2
- Letter to the Membership from Incoming Chairman  
*Laura Austin* 3
- 2012 Tradition of Excellence Awards

  - H. Andrew Owen  
*Introduced by Fred Gleaton* 5
  - Lawrence S. Sorgen  
*Introduced by Mark Dehler* 9
  - Judge Phyllis Kravitch  
*Introduced by Norman Zoller* 13
  - David B. Bell  
*Introduced by Amanda Bell Shailendra* 17
- Real Estate Appraisals: Regulation and Practical Tips  
*Jeremy M. Moeser* 23
- Tech Tools to Help You Make Your Case  
*Binford Minter* 29
- Tradition of Excellence Breakfast & Reception 32

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Darren W. Peen  
Section Chair



## OUTGOING MESSAGE FROM THE CHAIR

My time as chairman is coming to a close. To honor and remember the worthwhile accomplishments of the General Practice and Trial Section, I want to dedicate this outgoing message to you, the members of "Georgia's Largest Law Firm." Through the hard work and dedication of each of you, our section strives to ensure the legal world our children will inherit is more efficient and just than the one we entered fresh out of law school (which was quite a while ago for some of us).

I want to thank the Board for giving me the opportunity to serve as Chairman. It was truly a successful year. Our section sponsored in excess of 50 seminars to inform others and discuss legal matters integral to the continuation of just practice.

The General Practice Trial Institute, an intensive and engaging seminar dedicated to issues important to our section members, took place in March 2012 at Amelia Island. I think everyone involved would agree that the Institute was an insightful and worthwhile experience. Special thanks go out to Chair Mark Dehler for preparing programs that were entertaining and popular. Mark once again showed a dedication to this section beyond measure, and we are very lucky to have him on the Board.

We continued to think critically as a section about legislative matters that affect more than just our members, but the state and the nation at large. Issues such as trial advocacy, settlement strategies, jury trials, tort litigation and damages were discussed at our sponsored and

co-sponsored events.

Membership and recruitment are imperative to the legacy of the General Practice and Trial Section. New initiatives to encourage involvement included membership tables with information at every seminar, increased communication to promote the section and heighten interest as well as reminder letters to reconnect with past members. As a recruitment tool, Board members were encouraged to bring potential new members to events.

I would like to thank the editorial staff and contributors of the *Calendar Call* for continuing to produce timely articles and a quality publication. The worthwhile content of our newsletter magazine not only serves to keep us updated on section matters, but represents the dedication



Darren Penn accepts on behalf of the Section, The William B. Spann, Jr. Award.

and perseverance of numerous individuals. Co-editors Walker Garrett and David Sleppy assumed and executed the responsibilities of this project with great success.

A highlight for our section this year was receiving the William B. Spann, Jr. Award. Presented by the Access to Justice Committee and the Pro Bono Project of the State Bar of Georgia, this honor recognizes our efforts to extend critical legal assistance to the poor and marginalized as a result of "Ask a Lawyer Day."

Past Chairman Pope Langdale started "Ask a Lawyer Day" three years ago and the section has continued to work with the pro bono project program annually. Pope deserves a lot of credit for starting something that has given back to so many Georgians. Each year, hundreds of people receive valuable legal advice free of charge, as an effort to ensure that Georgia citizens are well-informed of their rights and have a general understanding of the legal process.

My proudest and most inspiring experience as Chairman came when I had the honor of hosting the *Tradition of Excellence* breakfast at the State Bar Annual meeting in Savannah on June 1 of this year. The recipients of the *Tradition of Excellence* awards excel in their respective fields, each embodying the ideals of the legal profession. A shining example to lawyers everywhere, their stories serve as evidence that perseverance and determination go a long way toward achieving goals.

*continued on page 4*

# LETTER TO THE MEMBERSHIP FROM INCOMING CHAIRMAN:

Laura Austin



Walking into the light provided by our esteemed leader Darren Penn has been an awesome experience and a challenging model to follow. Our world as we once knew it has changed so much from the days when I first took the oath to serve my fellow mankind through the blessing of the education I was afforded! Back in Texas when I was going to nursing school and working in a law office, who would have ever thought I would be where I am today? But Bill Roberts of Dallas taught me by example how a lawyer could act and how to maintain the respect of clients who entrust you with everything they have. He was a Wellers and water champion of the downtrodden, the underdog, the injured and maimed. He fought hard and clean and he never gave up. He spoke the truth. Now, I have been chosen to lead and I look forward to

the task thinking all the while that I think out of the box in so many areas it is hard to believe I am entrusted with this position. Being less than passionate or conservative never fit my demeanor! So I bring all the energy and what moderation I have garnered over the years to temper that passion to serve you and the hope to take us creatively where no leader has taken us before through your participation and support.

Here we are amid the changes in lawyering that challenge each of us to stay alert and pliable in our approach for optimum outcomes. Never, in my lifetime, has our population faced such horrifying economic crisis and the shift toward alternative methods for handling all of our affairs has been the most pressing matter on everyone's mind. Clients that once could afford services are asking for modifications to full representation and we tread new territory in accommodating both their desires to be more actively involved in their cases and their financial constraints. However, just as changes are occurring in healthcare and the legal arena, we must be alert and astutely observant in finding efficient means for enhancing our representation and meeting the needs of our communities that adjust to the climate within which we're practicing. Never before has the consumer focused on "quality assurance/outcomes" like they do today and we are expected to never miss a lick in due diligence, research or presentation. So here we are on this wild ride trying to

preserve our historical control over our profession and all the processes are changing.....and we must act, not react, with diligence, pride and integrity to meet the expectations that grow daily.

Our commitment to excellence cannot waiver. Our commitment to uphold our Constitution and the freedoms that have been afforded at the price of our brother and sister defenders must be respected as we hold fast to the faith and belief in our system of law as it goes through its metamorphosis yet again in so many areas. All of the resources of this wonderful section must be afforded everyone that can benefit from the updates, training, organized "charitable" donations of time and resources and camaraderie. We must care for each other and support one another as we care for our clients and our profession as a whole. We will draw strength from our unity – working together for the common good.

That is why one of the first issues at hand is to ask each and every one of our members to reach out to at least three folks they know or work with and invite them to join us in our quest to provide the training, support and help that is clustered within this, one of the largest sections of our bar. Everyone out there practicing as a small business person and managing a practice can benefit from knowing where and how they can get the source code to a better practice for themselves and their support staff. Additionally, those of you

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## Outgoing Message from the Chair

*continued from page 2*

The recipients are without a doubt some of the finest lawyers the state of Georgia has ever produced. Not only are they truly excellent legal professionals, they are exceptional individuals with inspiring stories to tell.

The Honorable Phyllis Kravitch, recipient of the Judicial award, has devoted her time and energy to the improvement of the lives of Georgians. The recognition for Defense was given to H. Andrew Owen, a lawyer renowned for skillfully representing his clients with integrity, humility and the highest success. Lawrence S. Sorgen was chosen as recipient of the General

Practice award. His dedication to the practice of law has not only enhanced the esteem of our profession, but has garnered well-deserved successes in the courtroom. David B. Bell, recipient of the Plaintiff award, fights tirelessly for the rights and interests of Georgians and continues to raise the bar for attorneys in our state.

The *Tradition of Excellence* reception held later that evening was another highlight I will not soon forget. What an honor it was to be in the presence of such well-regarded practitioners of the law. Associating with bright and motivated legal professionals, like-minded and devoted to the fullest performance of our obligation

to public service, the event served to reunite lawyers from across the state.

My best wishes and sincerest hopes for success go out to the section's new chairman, Laura Austin of Austin & Associates, PC. I know she will do an outstanding job leading the section through the upcoming year.

Again, I would like to thank each of you for your support and enthusiasm. It has been a privilege to serve as Chairman, an experience which has left me with valuable memories and a hearty appreciation for the efforts and endeavors of the General Practice and Trial Section.

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## Letter to the Membership

*continued from page 3*

who haven't taken the opportunity to avail yourselves of our strong voice in legislative matters, come forth and participate as we review the legislation and proceedings that affect our time honored profession and those we serve.

Secondarily, we have some of the finest and brightest members of the bar offering outstanding seminar materials and coverage of the latest trends in the law. But the strength from new blood mixed with the seasoned is invaluable and creates a class of knowledge that is unparalleled. I would personally like to invite all of our members to recruit members at large to the section and to communicate with me and any of our board members or our honored Executive Director, Betty Simms, to continue to bringing forth the newest and latest talent for presentation

of the challenges in the law to be addressed in a timely fashion to keep our seminars fresh and outstanding. Volunteers for leadership for our Institutes, CLE's and various presentations throughout the year as well as ongoing articles and debates of ever changing law and strategy for our noble publication, the Calendar Call, are invited and will continue to allow the full discourse of relevant legal matters.

And lastly, let's stir it up! Work with me to find out where we can focus to make a difference~ be it with the children who have to know the law when they step foot into this crazy new world we're in as adults ~ or is it reaching out to the soaring population that is aging faster than our society can adapt for ~or is it our struggling military families~ OR is it the disintegrating family unit

that needs new resources to keep a holding pattern and plant roots that will raise healthy and happy children that will determine our world's future? Tell me....tell this board how we can help and what you see. And don't be afraid to speak your peace even on the most difficult of subjects.....volunteer for upcoming events in sharing your talents with those that need us. Write that article that needs to be written to express your feelings on that last case that needs another look.

I thank you all for this wonderful opportunity – Let's congratulate our tradition of excellence recipients and look for this coming years outstanding practitioners to forge ahead with strength and enlightenment as the pillars of the best of the best in this, of the biggest, best and most powerful sections of the bar.



*Introduced by*  
**Fred Gleaton**

*Tradition of  
Excellence  
Award*

Good morning to you all.

When my partner, Andy Owen, asked me to introduce him today, knowing him as the plain-spoken and down to earth individual that he is, I envisioned saying something like,

"Ladies and gentlemen, here's Andy Owen, he grew up in Newnan and proudly calls himself a linthead, inexplicably he is an Alabama fan, he has survived a plane crash, a bad car wreck, and twelve years as a partner of Seaborn Jones, Mike Egan, and Fred Gleaton. Andy will now tell you some war stories which may, or may not, demonstrate why he is so deserving of this award."

Then one day last week, Andy brought me a stack of papers - the Award winner introductions from the past several years and said "Read these. This is the kind of stuff you are supposed to say about me."

Well, it was a few days before I picked up the stack. But when I did I immediately knew I was in trouble ..... and by extension, so was Andy.

Here was the former attorney general, Mike Bowers, praising Jon Peters; Hugh McNatt giving the down home story of Ray Persons, and

Robin Clark, bless her heart, writing a three page introduction for Nick Moraitakis!

Well, Andy, I have never held any elective office, I enjoy no great renown as a folksy storyteller, and to get three pages of material about you, I would have to go into some stories that, believe me, you would want me to.

So, my friend of 35 years, this is what you get:

This is the Tradition of Excellence Award.

It goes without saying that Andy Owen has been an outstanding lawyer now for over 40 years. That will cover the "Excellence" part. And by the way, anything that goes on for 40 years certainly qualifies as a tradition.

Andy was an honor graduate of LaGrange College, and now serves on the Board of Trustees of that institution. He served his country honorably as a carrier pilot in the US Navy, so far I know only misplacing one airplane along the way.

Andy Owen graduated #2 in his class at Emory Law School. Please don't take this the wrong way, but I find this very hard to believe. I say this because I have known Andy for

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## Tradition of Excellence Award

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35 years and, while I never doubted his intellect, I never knew this fact about him until this past Tuesday. Some will say this is indicative of modesty on his part, and that may be true. I, personally, choose to believe that it has been part of a four decade long strategy of sneaking up on his opponents and partners while hiding behind his good ole boy persona.

Andy began his career as a trial attorney in Arthur Bolton's AG office, prosecuting corrupt local politicians and even one former gubernatorial candidate. He joined Hurt Richard-son Garner and Todd in private practice in 1976. While there he quickly learned the truth of the "sled dog metaphor," and opted for the better "view" in his own firm.

Of course, Andy married up, and he and his love, Ann, have raised two

daughters, Amy and Laura, and are well on their way to spoiling their three grandchildren Trammel, Virginia, and Alexander.

In 2000, he and I talked our respective partners into merging our firms. SO FAR SO GOOD!

This has been the career of an active trial lawyer. Andy has carried scores of difficult cases to successful jury verdicts. He has successfully negotiated hundreds more.

And that brings me to what I want to say about this Award, the people who have won it in the past, and in this instance, H. Andrew Owen, Jr.:

I am old enough to have known many, many past recipients of this Award, and I am struck by the common traits I have observed among these lawyers.

I am sure there are more, but I will

name three:

One is the constant energy and enthusiasm for the practice of law that all too few of us sustain on a daily basis.

Second is the optimism, competence, and reliability that calms nervous clients and overwrought partners alike.

Finally, it is the integrity, understanding of human nature, and genuine kindness that, year in and year out, makes friends of adversaries, and makes better lawyers of those around them.

So my friends, "Here's Andy Owen. I still don't know why he is an Alabama fan. He grew up in Newnan and he became one of the finest lawyers in our state."

New Section email address and phone

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Remarks by  
**Andy Owen**

As I stand here, basking in this acknowledgment by my peers, hoping a mistake has not been made and listening to the mostly kind words from Fred, there is a single emotion that comes to mind. Simply, I am overwhelmed. Obviously, I am flattered, humbled and proud, but my true feeling is my inability to wrap myself around this moment and what it means to me.

When I look at the list of recipients and marvel that you have put me in the same category with these great attorneys, that is simply overwhelming.

Just the fact that I am an attorney and not just an attorney, a litigator, and recalling the effort required to get here, makes me count my blessings as I am certain most of you do. Our profession is very special, and our specialty is particularly blessed. One of the aspects of this practice is the relationship that comes from sharing the same emotions, and experiencing the same moments of satisfaction and relief – or frustration, uncertainty and disappointment. No one knows these moments better than trial attorneys.

How did we get here? What path leads us to decide to become attorneys and, more specifically, trial attorneys? There are as many paths to practicing law and to becoming a trial attorney as there are attorneys. That is one of the many things that makes this profession so great, we are all different. I can say this unequivocally, entering the legal profession never crossed my mind until I was in my late 20's, married, and about to get out of the Navy. Obviously, I had never discussed it seriously with my wife, Ann, but all of a sudden I came in one day from the squadron and said "I think I'll go to law school."

There is a story that she and I have enjoyed repeating that her dad would tell about an old

man up in Cartersville. When this gentleman was asked about how he earned a living, he would lean back, remove the ever present cigar from his mouth and proclaim, "My wife she teach school." I can say the same, "My wife, she taught school and by doing so, got me through Law School."

When I announced to her that I was planning to enroll at Emory Law School when we moved to Atlanta, she did not miss a beat. She returned to teaching where she had taught before we were married and let me focus on studying law at the ripe old age of 28. Thus, she is directly responsible for my being an attorney.

But just supporting me through law school was not the end of her contribution to my career. The roller coaster ride that is the life of a trial attorney was not just witnessed by her but was shared. She has ridden that roller coaster with me all too many times. She brought me down to earth when I had won and thought I was the greatest thing since sliced bread. When I lost she picked me up and reminded me there are two sides to

every case. She kept me focused, making me laugh when I thought that was impossible and making me humble when I was all too proud. "Thank you" hardly seems adequate.

My daughters are here, Amy and Laura, Amy's husband, Alex, and three absolutely amazing grandchildren, Trammel, Virginia, and Alexander. What a trio!

John Donne wrote that no man is an island. Whether he knew it or not, he was describing lawyers who practice their profession in the

courtroom. None of us who have become reasonably proficient at trying a case has done it on our own. Our education as trial attorneys comes from



(r-l) Darren Peen presents plaque to H. Andrew Owen

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## Remarks by Andy Owen

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the courtroom from other attorneys, whether allies or adversaries. So many of the attorneys who provided guidance to me are on the list of past recipients of this award.

The line-up of these individuals is very humbling and causes me to wonder if someone has made a mistake and I am really not supposed to be here. It has been my privilege to try cases with so many of them, observe them and, most significantly, learn from them. My years at the Attorney General's office provided me the opportunity to try cases with such attorneys as Bobby Lee Cook, Will Ed Smith, Frank Jones, Eddie Garland, and Manley

Brown, just to name a few. After leaving the Attorney General's office, I encountered some of these same attorneys plus Paul Hawkins, Dennis Cathey, Tommy Malone, Joel Wooten, Bob Hicks, Bill Byrd, Jon Peters, Nick Moraitakis, and Andy Scherffius. Any time you provide a list you worry about leaving someone off and I'm sure I have left a number off who, like these, have had an influence not just on my legal career, but on my life.

What an amazing group of lawyers from whom to receive on the job training. Any attorney, young or old, who does not continue to learn from being in a courtroom with attorneys such as these needs to get out of the courtroom and start drafting covenants not to compete. Of particular importance to me is the fact that we learn not just how to present a case to a jury, but we experience the relationship that should exist with our fellow trial attorneys, even when we represent opposing interests. There is a story that I could relate here connected to each of these fine attorneys. A good example of this latter situation came out of a case I was prosecuting in Dodge County early in my career. Will Ed Smith, a former president

of the State Bar of Georgia and one of the first recipients of this recognition, represented the defendant. It was a very intense trial as it involved a drug ring in middle Georgia and the murder of a deputy sheriff and his wife. I stayed in a motel in Eastman, and was very much alone for the duration of the trial. One afternoon after the jury

had been excused, Will Ed came over and told me that the local bar association was having a barbecue that night. He asked me if I would go as his guest. Keep in mind, this was a murder trial and we had brought to it all of the energy and emotion you would expect in such a case. I accepted his invitation,

and he was a most gracious host. I had been practicing law for about two or three years, and learned then that just because you fought in court did not mean you could not be civil outside of the courtroom. I will always be indebted to Will Ed for that very simple, but important, lesson. And also, for having enjoyed some very good barbecue that evening.

I want to mention one other person who has been the recipient of this award and was a major influence in my professional life. . . Robert Hicks. I was in two or three cases with Bob whom I was with the Attorney General's office, and observed a truly accomplished attorney, a true gentleman and a generally delightful person who enjoyed the practice of law and enjoyed the people with whom it brought him into contact. I told Bob years after I left the Attorney General's office and he and I no longer worked together that I would periodically find myself in a situation when I would not know what course of action to take. Whenever I got into such a situation, I always asked, "What would Bob Hicks do?" He

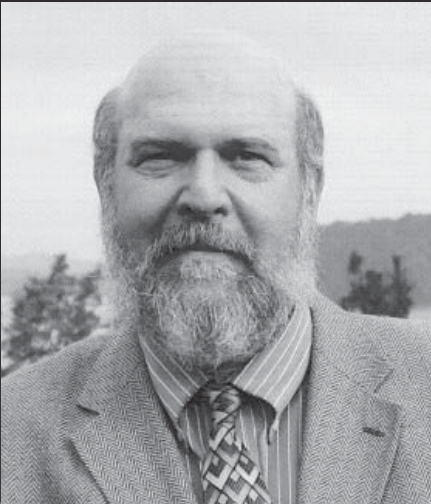


*The Owens family*

*continued on page 21*

## GENERAL PRACTICE

## LAWRENCE S. SORGEN



*Introduced by*  
**Mark Dehler**

### *Tradition of Excellence Award*

One of the truly great things about these awards is that we get a chance to honor the outstanding lawyers and judges of our time and showcase the incredible diversity of their practices as well as the diversity of our great state.

The recipient of this year's Traditions of Excellence Award in the area of General Practice is Lawrence Stuart Sorgen.

Larry has practiced in Towns and Union Counties for 35 years. Towns and Union Counties are on the Georgia - North Carolina border and together, they make up the northern half of the Enotah Judicial Circuit. For those of you who know the geography of North Georgia, you know that the southern range of the Appalachian Mountains creates a dramatic division of the Enotah Circuit with Lumpkin (Dahlonega) and White (Cleveland) counties on the south side and Towns and Union counties on the north side. There are only three incorporated cities in Towns and Union counties, Blairsville, Hiawassee, and Young Harris. To put the size of this area in perspective, there are 37 lawyers in Blairsville, which is the county seat of Union County, 29 lawyers

in Hiawassee, which is the county seat of Towns County, and Young Harris boasts 5 lawyers. I would be surprised if half of the lawyers listed with the bar actually practice. To say the least ours is a small community where all the lawyers truly know each other.

Larry was nominated for this award by a number of lawyers in Hiawassee and Blairsville, including the Honorable Murphy Miller, the Chief Judge of the Enotah Judicial Circuit, who had this to say about him:

In over twenty years of trial practice in the Enotah Judicial Circuit, as both a litigator and judge, I have yet to encounter an attorney with Mr. Sorgen's breath of legal knowledge and ability. He possesses the unique blend of intellect and attention to detail necessary for success in transactional work, but also presents cogent and persuasive arguments in the courtroom. Larry can try any case you can think of, and has.

Several lawyers wrote letters in  
*continued on next page*

## Tradition of Excellence Award

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support of Larry's nomination for this award and every one of them commented on Larry's intellect and grasp of the law, but more impressive was the fact that every one of them also said that he had served as a mentor to them and always shared his knowledge and experience very generously.

My own experience with Larry has been very similar. In the 5 years that I have practiced with him, I have found myself engaged in after hours discussions about the law and issues in the matters we are both working on. Larry has an incredibly collegial approach to the practice of law and that is one of the things that make him very deserving of this award.

Larry grew up in New York, living in the city and out in Albany while he attended and graduated from the State University of New York in Albany. Prior to his graduation from college, Larry had a little exposure to Georgia through relatives who lived in the Atlanta area. That was enough to make him want to attend law school here, which he did. Larry graduated from the University of Georgia School of Law in 1977 and almost immediately moved to Hiawassee to practice law.

Spend a few minutes talking to him and you will ask yourself, how did this guy, who clearly was raised "up north" end up in Hiawassee, Georgia? And, how has he not only survived, but thrived there for 35 years? I will leave it to Larry to cover how he chose to move to Hiawassee - - I just assumed a judge in Clarke County banished him from Clarke County, but he tells me that's not true, so, as I said, I will leave that part of the story for him to tell.

Our two counties, Towns and Union, are, to say the least, a very provincial enclave of the southern Appalachians. With his physical stature and New York accent, Larry stands out. Additionally, Larry is a pretty staunch liberal, though with a

little bit of a libertarian flair, amid a sea of Republicans and Tea Partiers, though some of them still think of themselves as Democrats, but that's another story.

I have concluded the answer is that the locals and non-locals alike have come to respect Larry for his intellect, his integrity, and his hard work. He has given generously of his time, talent, and money to the community. He serves as a member of the indigent defense council for our circuit and has been a city and county attorney on multiple occasions. He is the general counsel of the BRMEMC and has had long ties as an officer in the local gun club. He eats breakfast daily with a group of local guys, who talk politics. I'm convinced they enjoy his company because they love the good natured banter over the issues of the day, which is pretty much whatever was talked about on the Sean Hannity Show the night before.

Larry and Angela also have developed a very close group of friends with whom they share their passion for Team Trivia, music, playing musical instruments, camping, boating, and just plain getting together and having fun. When you see their group of friends together, you can tell they are like family to one another.

As Chief Judge Miller said in his letter, Larry truly is a master of the law. In the past 5 years I have seen him try personal injury cases for the plaintiff, defend people charged with misdemeanors and felonies, close major real estate transactions, handle complex business acquisitions and divestitures, write wills, and even try a will contest.

I want to leave you with one story about Larry, to give you a little better insight about him. It is actually a story Larry told on himself and when I read it, I just thought, how very Larry. About 10 - 15 years ago, Larry was asked to list a couple of his most memorable cases. One of the cases he chose was one he filed in Septem-

ber of 1977, as a brand new lawyer. Larry filed suit on behalf of Ruth Lee Hemphill, an elderly widow seeking a temporary and permanent injunction against Jimmy Taff's use of a private roadway in front of her home in her subdivision. The factual scenario is a little complicated, but I will try to explain it. At the time Larry filed suit on behalf of his client, Ms. Hemphill, Mr. Taff did not own a home or buildable lot in the subdivision. His home was on real estate outside the subdivision and was accessed by a different road. Mr. Taff did own some real estate that was included in the boundaries of the subdivision, but that real estate was merely a sliver of property and not a buildable lot. The restrictive covenants for the subdivision provided for use of the subdivision roads for owners of all the buildable lots and specifically excluded Mr. Taff's non-buildable land. A temporary preliminary injunction was granted in Larry's client's favor. During the pendency of the litigation, Mr. Taff purchased another lot within the subdivision, but not one that was on the road Ms. Hemphill was trying to keep him from using. Mr. Taff was now claiming a right to use the private road in front of her house for his home outside the subdivision based upon the buildable lot within the subdivision he had just bought. With that background, I will now pick-up with Larry's narrative:

The case proceeded to trial and at the close of the evidence a directed verdict was granted in favor of the defendant, Mr. Taff. I was outraged. Having recently graduated from a fine law school, my head was filled with the knowledge of Blackstone and I had just witnessed the trial court disregard hundreds of years of established property law concerning appurtenant easements and the relationship of dominant and



servient tenements. So sure was I that my client had been wronged and the law unheeded, that I offered to pursue an appeal, pro bono.

I was very proud of my written brief and oral arguments to the Court. The law was clear and I had covered it well. We lost. The Supreme Court, without citing a single case or even reaching the intellectual issues I had raised, merely affirmed the trial court's factual interpretation of the covenants without regard or reference to

the theoretical principles and ramifications raised in my argument.

The significance of the Hemphill case is that it taught me humility. The outcome of any litigation is never to be presumed. I was convinced of the righteousness of my legal position to the point of smug arrogance. Both the trial court and the appellate court showed me in no uncertain terms the practical (as opposed to theoretical) power of the court. This case also taught me that it is always

better to be the appellee. The Hemphill case is reported at 242 GA 212 (1978).

Larry is a lawyer of incredible intellect and ability. He is also a very generous and kind soul. Larry is joined here today by his wife, Angela, and it is my honor to call them my friends. Please join me in welcoming Larry Sorgen and congratulating him on being selected to receive the General Practice and Trial Section's 2012 Traditions of Excellence Award in the area of General Practice.

## Remarks by Lawrence S. Sorgen

Thank you Mark for that gracious introduction and for your friendship. I also wish to thank you, the members of the General Practice and Trial Section of the Bar for bestowing this honor upon me.

When Mark Dehler first came to my office, looking for a place to hang his credentials, I didn't know what to expect. He was a big city lawyer who had been active in state wide politics at the highest level as well as active in the State Bar. Was he going to be too slick to stick to his chair: too high flalootin' to be comfortable around? Well, as it turned out, Mark and his office dog, first Jake and now Ellie Mae, have been a welcome addition to our building and to our community. We are from different backgrounds but kindred spirits in many ways. It is truly a pleasure to have Mark as a friend and colleague and I look forward to continuing to educate him in the mountain ways because sometimes he just doesn't get it!

When I was a third year law student, I had the opportunity through Tom Cook's prosecutorial clinic, to be lead counsel in the trial of a non-capital murder case in Clark County. I knew after that that I wanted

to be in the courtroom. After graduation I went to see the venerable, criminal defense attorney, Ed Marger, whose office was then on Powers Ferry Road on I-285 in Atlanta. I asked Ed for a job. He, in his charming and fatherly way told me, "son, go to a small town in the country, you'll have a better life for it". I took Ed's advice and I am engaged in a truly general practice of law from Hiawassee where I've had my office for the past 35 years. When I first arrived there I was a stranger in a strange land

but soon began developing enduring friendships the most important of which being that with my dearest



(r-l) Darren Peen presents plaque to Lawrence Sorgen

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## Remarks by Lawrence S. Sorgen

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and best friend, my beautiful wife Angela.

My initial mentor was Bob Del Bello, a very fine trial lawyer that spent his work week in Hiawassee and his weekends in Atlanta. Bob introduced me to the circuit judge ( we only had one for five counties), the clerks of court, and the few other lawyers in our part of the circuit. Being fresh out of law school I could handle an appeal but Bob showed me how to practice law. After a couple of years Bob gave up the commute and stayed in Atlanta where he became involved in a plaintiff's tort practice and taught night classes at John Marshall. One of the things Bob taught me was how to conduct a real estate title examination, which was an endless source of entertainment.

Back then, the man in Union County, with the sole municipality of Blairsville, was Ben Carr, an elderly gentleman, who had read for the law while apprenticing under his father-in-law in the 1930's. Ben did most of the real estate transactional work in that county for many years and since he knew everybody and their family trees, and what they owned, and what they owed, title searches seemed to be an unnecessary nuisance and waste of time. Besides, what would you learn from reading a deed with a legal description that included "thence running up the ditch and into the pasture to the place where the cow now stands; and thence running with a conditional line, the location of which I know, to the place in the woods where Joe Brown went crazy."

In Towns County, with the municipalities of Hiawassee and Young Harris, lived Kaiser Dean, a former state legislator and respected man of the law who drafted many of the land deeds for properties in and around Young Harris. Kaiser also was a man of anecdotal precision, especially in describing fixed locations for the beginning point of the land description; such as, "beginning at the pine tree outside Aunt Hattie's kitchen door". Kaiser's deeds would go on to describe lines that ran for approximate number of paces in approximate directions to

ill described locations.

In regard to old deed records, I have had the pleasure of looking through some of the oldest deed books in Towns County dating back to just after the Civil War when the county was split off from Union County, which itself was split off from Cherokee County. The clerks back then, who were the scribes of deeds, had plenty of time between the infrequent documented land transactions, and each deed was artfully and painstakingly drawn by quill pen and in calligraphy of the finest style. After the turn of the century the cursive handwritings seemed to deteriorate over time, and by the time the clerks got typewriters it all went to heck in a hand basket. With all the mis-strikes and mis-spellings many deeds became undecipherable.

Over the years the real estate based economy of the mountains grew rapidly and more lawyers moved into the area, and native sons and daughters that graduated with law degrees could come back home to stay and earn a living. For me, the old re-

records, the fast pace of development and rising land values proved to be an abundant source of real estate related litigation.

Participating in the general practice of law in a small country town is a constant learning and growth experience. Of course the scope of my practice exceeds the bounds of that little town yet still my primary service area remains the communities of the North Georgia mountains where I have represented businessmen and entrepreneurs, doctors and preachers, teachers and school children, general contractors and laborers, governmental entities and charitable organizations, rich folks and poor folks. I have represented 3 generations of the same family, and people that have no other family: I have defended clients charged with traffic violations and clients charged with murder. I've been paid by check, by cash, by produce and poultry and by Grandpa's old revolver. I've treated everyone fairly



*Lawrence Sorgen and wife Angela*

*continued on page 22*



## JUDICIAL

## JUDGE PHYLLIS KRAVITCH



*Introduced by*  
**Norman Zoller**

### *Tradition of Excellence Award*

As the former clerk of court and then the circuit executive of the United States Eleventh Judicial Circuit, I am a person for whom statistics and plain numbers have always been important. So I ask you: what do these numbers have in common: 1, 1, 1, 3, 5, 6, 15, 99, 143, and 33? The answer is: those numbers have particular meaning for one of the most gifted, dedicated, and honorable judges in the history of our Nation: Phyllis A. Kravitch. She has devoted her life to the law, deservedly merits this distinguished recognition, and has lived a life in the pursuit of justice and of excellence.

The three ones stand for the number of former law clerks who have gone on to become a federal magistrate, a general counsel to the CIA, and a general counsel to the FBI; three law clerks have become federal public defenders. Five is the number of law clerks who have clerked for a United States Supreme Court justice. Six is the number of law clerks who have become United States Attorneys; 15 is the number of law clerks who have become law professors. Ninety-nine is the total number of law clerks she has had since becoming a federal circuit judge in 1979: 33 years ago. And 143

is the number of grand clerks, the children of former law clerks.

And so, one could say that working for Judge Kravitch is a good way to excel and to advance not only in one's career but also in life as well.

But let us speak of Judge Kravitch. About her much has been said and written with respect to her quiet leadership, her integrity, her sense of fairness and of the human condition. She is a woman of successes, rejections, discrimination because of her gender and faith, frustrations, adversity, perseverance, continued successes, and in recent years: recognition. Judge Kravitch is a woman of many firsts: in 1975, she became the first woman president of the Savannah Bar Association, her hometown. She is also one of the first women to head a bar association in all the South. In 1976, she was elected the first woman Superior Court judge in Georgia paving the way for subsequent advancement of other women to judicial positions in the state. In 1979, she was the first woman to be appointed a federal judge in the Southeast and only the third woman in the history of the Republic appointed as a United States Circuit Judge.

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## Tradition of Excellence Award

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Judge Kravitch went to public school here in Savannah during the Great Depression. In what sounds like a page from "To Kill a Mockingbird", when she was about 13, Phyllis Kravitch wanted to watch her father argue a case. However, the judge ordered her out and told her father that a courtroom was no place for a young girl. Nonetheless, when one of her father's employees who was black, heard what had happened, he quietly escorted her to the balcony reserved for black spectators, where she could watch the trial, unseen from below.

In 1941, she graduated from Goucher College, a women's college in Baltimore, where a cousin of her mother had gone about 30 years earlier. She applied to Harvard Law School but she was rejected because, as they said in a letter to her, "we assume from your name and college that you are a woman, and we do not accept women in our law school". At that time, of course, Harvard Law School was not alone in its not accepting women students. Phyllis Kravitch was accepted, however, as one of two women in her class at the University of Pennsylvania Law School, was an editor of the law review, and although in those days exact class rankings were not kept as they are today, she was told she finished second academically in her 1943 graduating class. And she completed law school in just two years. These were also the days when some law professors did not ever call on women for recitation or analysis of a case or legal concept.

Following law school she sought jobs with some two dozen law firms but was not accepted at any of them, principally because of her gender or her religion. She also interviewed for a clerkship for a justice on the United States Supreme Court and despite her excellent academic record was not appointed. And so Phyllis Kravitch returned to her home in Savannah to practice law with her father, Aaron Kravitch. He had gone to the Univer-

sity of Georgia as an undergraduate, then to Penn Law School beginning in 1913. He was a lawyer who Judge Kravitch says loved the Constitution, and despite widespread criticism for the difficult cases he took on, he built a practice that included representing poor clients, women, and African-Americans, as Judge Kravitch would do as well.

There are many stories one could relate about Judge Kravitch as a judge or as a courtroom lawyer, and many of you here today probably could relate your own personal favorite. One, a one liner, in typical crisp judicial style, Justice Blackmun wrote in *Bush v. Singleton* in 1994 (988 F.2d 1082), "I am inclined to agree with Judge Kravitch (opinion concurring in part and dissenting in part), and would grant certiorari on the issue whether counsel rendered effective assistance as required by the Sixth and Fourteenth Amendments." Short and succinct.

Two years ago, several of Judge Kravitch's staff, collaborating on the occasion of one of her significant birthdays, recalled that "the early 1970s were not easy for Judge Kravitch. Her older sister, Rosalind, died in December 1970, and her father passed away in April 1971. Moreover, discriminatory attitudes were still rampant in the South. When lawyer Phyllis Kravitch tried a case in one Georgia county, opposing counsel repeatedly referred to her as "that Jew-woman-lawyer," like it was one word. But times were changing, and the presiding judge warned counsel that if he persisted in such name calling, he would be held in contempt".

While practicing law in Savannah, attorney Phyllis Kravitch organized a television program similar to "The Layman's Lawyer". As a result of her work, the Savannah Bar received an award for the best bar program two years in a row. Meanwhile she fought against the discriminatory implementation of the death penalty in *Manor v. Georgia*, a companion case to *Furman*

*v. Georgia*, in which the United States Supreme Court ultimately held at that time the State's death penalty was unconstitutional.

About ten years ago, former Chief Judge J. L. Edmondson interviewed Judge Kravitch before a group of the Eleventh Circuit's staff attorneys. Judge Edmondson said, and here I am going to quote him at some length, "One of the things that both Justice Cardozo and Justice Holmes write about is the study of law is largely a study about history" . . . In our national anthem the last line talks about the land of the free and the home of the brave which I think is a beautiful line of poetry but more important, I think is intended to teach us something every time we hear the song sung or hear it played. (That is), if our nation wishes to be free, it must be a nation filled with brave people".

Judge Edmondson goes on, "Without courage, without bravery, history will teach us there will not be freedom". He concluded saying, "I would suggest to you that one of the things that you will see over and over again (is that) . . . Judge Kravitch has been brave over and over and over again. That she has taken on challenges that other people could not or at least did not take on and that by virtue of having done those things, she has made this part of America and the nation a better place."

I worked for the Eleventh Circuit for about 27 years, and I know first-hand how admired and respected Judge Kravitch is. She has enjoyed caring and supportive relationships with all the administrative staff; for many years with judges of the Old Fifth Circuit: especially Elbert Tuttle, Irving Goldberg, Lewis Morgan, whom she succeeded on the bench, Frank Johnson, Tom Clark, all of blessed memory; her good friend Jim Hill, and all the Eleventh Circuit chief judges: John Godbold, Paul Roney, Gerald Tjoflat, Joseph Hatchett, Lanier Anderson, Larry Edmondson, and now

Joel Dubina. I recall at one of the circuit judicial conferences, then-Chief Judge Godbold publically singled out Judge Kravitch, referring to her as a “tiger on the bench”, and said that he always wanted her to be on his team.

Over the years Judge Kravitch has received many accolades including being named Savannah’s Most Influential Woman in 1978, and receiving honorary doctorates from Goucher College and Emory University. She was the first recipient of the ABA’s Margaret Brent Women Lawyers of Achievement Award, and the Hannah Solomon Award from the National Council of Jewish Women. Recognized for her wisdom and insight, she has served on the selection Committee of Rhodes Scholars; the White House Fellowship Selection Committee; the Truman Scholars Selection Committee; and the Edward Devitt Distinguished Service to Justice Award Selection Committee which honors usually only one Article III judge each year, to cite a few. Looking at her work as a general practitioner, as a trial lawyer, as a superior court judge, and as a federal court appellate judge, if there were the title of master judge, she would have earned it long ago.

In 2008, following an introduction by Judge Kravitch of Justice Clarence Thomas at an Eleventh Circuit Appellate Practice Institute, Justice Thomas observed, “Today there’s a lot of self-

congratulations, and I have yet to hear her engage in any of that. As others take bows, she can always walk tall for what she has accomplished and what she has not talked about.” She and Justice Thomas go back a long way: Justice Thomas’s grandfather

when the court was created, until April 30 of this year, Judge Kravitch authored over 2,800 opinions. From July 1986 until April of this year, she participated in the termination of over 10,000 appeals on the merits. And as a senior judge she remains active: during calendar years 2010 and 2011 alone, she authored 257 opinions.

Notably, Judge Kravitch sat on the first all-female oral argument panel in the Eleventh Circuit in January 2004 along with Judges Frank Hull and Rosemary Barkett. Throughout her career and since her assumption of senior status in 1996, she has been and remains an extraordinarily productive and thoughtful judge. She has faithfully upheld and is emblematic of the federal judiciary’s tradition of excellence. Judge Kravitch is a national treasure.

I am confident that there is no one in this room, or indeed at the bar, who would not wish for her that ancient Biblical blessing: (ad mayah ve-essrim shana), “may you live to be 120”. I am proud, humbled,

and honored to introduce to members of the General Practice and Trial Law Section of the State Bar of Georgia and our guests, this caring, gracious, brave and courageous pioneer, this pathfinder, and trailblazer: United States Senior Circuit Judge Phyllis Adele Kravitch.



*Darren Penn presents plaque  
Judge Phyllis Kravitch*

was one of Aaron Kravitch’s clients here in Savannah.

I began this introduction with some numbers, and I now will conclude with a few more. Judge Kravitch was born in August 1920 so you can calculate how young she is.

In her work on the Eleventh Circuit Court of Appeals, from October 1981,

## *Remarks by* **Judge Phyllis Kravitch**

I want to thank Norman Zoller for his introduction and to express my appreciation to the General Practice Section for selecting me for this honor. It is especially significant to me because I remember so well the beginning of my practice 68 years ago. The week after I was admitted to practice I accompanied my father, who was a trial attorney, into the court

and sat at the counsel table while he tried the case. The next day the presiding judge called him to say that every attorney who had been in the courtroom or had passed by and had seen me at the counsel table had called the judge to object to my presence in

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**Remarks by Judge Phyllis Kravitch**

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the courtroom because they felt that a courtroom was no place for a woman. The Judge agreed that I should limit my practice to work that could be accomplished in the office. My father, not one to be influenced by local prejudices, just said "Your Honor she has been admitted to practice and has as much right to come into court as any of the male attorneys". For the next 10 years I was usually the only woman in the courtroom. There were no women on juries, no women judges, court reporters or other court personnel. There were other discriminatory practices in the courtroom. African Americans were relegated to sit in the balcony and were addressed by their first names. I remember being reprimanded by the Judge in one my first cases for addressing a witness, a school principle, as "Mrs". There were

no public defenders and appointed counsel were not compensated. No Federal Habeas changed during the ensuing years especially the past 30 years to extend the protective reach of the Constitution to all citizens of Georgia and to give real meaning to the term "Equality under the Law" both in the courts and society as a whole including schools and workplace. Some of these changes were brought about by judicial rulings, others by legislative enactment but members of the Bar played a major role in the enactment of all of these changes.



*(l-r) Hon. Tom Cauthorn congratulates Judge Phyllis Kravitch*

I am proud to be a member of a profession that has done so much to ensure the constitutional rights of all citizens.

Again I am grateful for the honor you bestow upon me this morning and to express my appreciation.



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## PLAINTIFF

## DAVID B. BELL



### *Tradition of Excellence Award*

*Introduced by*  
**Amanda Bell Shailendra**

It is such an honor to stand before you today and introduce one of this year's Traditions of Excellence award recipients. This is a special honor for me because, unlike most everyone else here this morning, I am not a lawyer. My brother David recently graduated from UGA Law. He's in Athens today studying for the bar. My brother Peyton will soon be attending law school in the fall but today he's in DC working - he is the press secretary for Congressman John Barrow. That left my youngest brother, Jordan, an engineering major at Georgia Tech, or me. Jordan - you can thank me later.

In preparing for today I looked over my dad's resume. At the top it states, David Baggarly Bell, attorney, small business owner, and father. His resume is quite impressive, has sat on the boards of the Georgia League of Conservation Voters, the Metro Augusta Chamber of Commerce, the Daniel Field Airport Commission, or the Augusta Richmond County Coliseum Authority. But, today, I'd like to focus on traditions. Because traditions are something David Bell does with excellence.

Like his father and his older brother John and older sister Martha, Dad graduated from The Academy

of Richmond County. He spent 4 years at The Citadel in Charleston, and thrived under the leadership of Coach Bunch - winning the Southern Conference double's title. Today, he sits on the Board of Visitors for his alma mater's School of Humanities and Social Service. Also, like his father, Dad served as the President the University of Georgia's Law School Alumni Association. Serving those institutions that have shaped you along your way. What an excellent tradition.

Following his time in Charleston, he was a Lieutenant in the US Army and then served as a staff assistant to Senator Herman Talmadge. While working for the US Senate in 1974, he met his wife Susie, who was also working for Senator Talmadge. Perhaps a tradition that he didn't mean to start - 28 years later I met my husband, Paul while we both worked for Senator Max Cleland. Sometimes you don't know the traditions you've started.

Many of you know that my father is a great lawyer. It is, after all, his success and reputation as a lawyer that is the cause for him being honored today. You could point to the million-dollar verdicts he

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## Tradition of Excellence Award

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received in Richmond, Columbia, and Burke counties – all three counties in his local judicial circuit. But he doesn't define success by big verdicts - dad believes that every case, big or small, deserves the same attention, hard work, and positive outcome for his client.

Also today, I want to share with you some excellent traditions you may not know about. The things he does that don't appear in the papers or even in the courtroom. True excellence is not achieved through self-gratifying successes. A tradition of excellence is forged through hard work, humility, and difficulty. The things that he does without telling anyone are probably the things that define him the most.

For example, many of you may not know that several years ago, our youngest brother was the recipient of several blood transfusions when he was diagnosed with an ongoing case of Ulcerative Colitis. After Jordan was better, Dad reflected on how important it was for Jordan's survival that volunteers had donated blood. Although afraid of needles, he decided to overcome his fear and donate enough blood to replace the transfusions that Jordan received. In his usual style, he's gone above and beyond and now he receives awards and prizes from American Red Cross – he's donated so much blood over the past few years.

Some of you may know about his adventurous side. He loves planning trips around our beautiful state to places many of us had never taken the time to visit before. We've been to Dahlonaga, Lake Blackshear, Brasstown Bald, St Marys, and the historic city of Madison. White water rafting adventures, hikes along beautiful trails throughout the Georgia mountains, and canoeing through the Okefenokee. He's taken friends and family, including many of you in this room on his adventures - bringing us all along in his tradition of

spending time outside and enjoying the special places that surround you.

Dad is also a man of tremendous faith, and he walks the walk. Several years ago, he read a devotional that called readers to take care of the widows and widowers in their community. Close to that time, one of Dad's mentors lost his loving wife. Dad, reflecting on his recent devotional decided that he would begin calling his mentor every day. And, just like his decision to give blood, he followed through, and to this day calls his dear friend every single day.

He has even extended this daily tradition by adding a phone call to each one of his children and his mother, Martha Bell Daniel. He may not realize it or not, but part of the tradition is that my siblings and I share his messages with one another – especially when he gets confused and calls us by the wrong name or instead of saying, "talk to you soon big guy" to David he says "talk to you soon, big girl" to me. "It's a beautiful day in Augusta, GA" is a typical start to our conversations and "gotta run – I have a call coming in" is his favorite way to get off the phone. Dad – just so you know, Peyton does the best impression of you.

He's not afraid to call a friend when he knows that things aren't going well and he knows just when someone needs that extra word of encouragement, or that note in the mail.

He spends time giving free legal advice at our church's Benevolence Ministry to folks who need his help. He knows that for some people, just having an attorney stand by your side when asking for child support or your first time in court makes all the difference. Sharing your talents and knowledge with others – a great tradition indeed.

And he's great at starting traditions too. When Dad was the President of GTLA he started the annual Past

Presidents dinner. A chance to discuss law, the past year, and to keep those engaged who have served the organization over the years.

I wonder if my great-grandmother knew, when she sold her diamond ring in order for my grandfather, John Chapman Bell, to attend law school at the University of Georgia, if she knew the incredible tradition that she was starting for our family. Since her sacrifice, 8 Bell family members have graduated from UGA's Law School - I think it's fair to say - it's become quite a Bell family tradition of excellence.

David Baggarly Bell, attorney, small business owner, father... it is certainly my honor to introduce you this morning. Your tradition of excellence has been earned through hard work, humility, and service. Congratulations on your award and thank you for letting me be a part of that tradition today.

M. Nash  
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Remarks by  
**DAVID B. BELL**

I like practicing law. To me Law is an honored profession. I am proud to be called a lawyer.

However during my 35 years at the bar I have seen changes in how we are perceived.

When I first began representing individuals, a certain number of my clients would call me Mr. David. It was when I was young, inexperienced and learning my way. However when clients called me Mr. David it was a show of respect for our profession and those clients listened to me and followed my advice - even when it was not seasoned with wisdom or experience.

Now after years of trying cases, writing briefs and practicing law in the trenches, I would hope that my advice is of a higher quality than in those early years. Yet no clients now call me Mr. David. All too often there seems to be a competition between the lawyer and the client.

Why is that? Why is our profession not as respected?

If you want to see what the public thinks of us, then all you have to do is watch a television program. Watch Law & Order or The Good Wife. Unfortunately the popular T.V. shows paint Judges unfavorably and criminal defense attorneys as the lowest form of humanity. In one episode of Law & Order, the Assistant DA was celebrated for refusing to shake hands with a defense attorney. ( Not a very professional act) As attorneys, why are we less congenial, less professional and more accusatory of one another?

Why does the public see us in this unfavorable light?

First, the damage done to our profession by advertising lawyers is significant:

Tag lines such as :

I'll supersize your settlement. Or, Turn your wreck into a check.

Law suits are serious. Victims, negligently injured, should not be trivialized.

Yet advertisements that promote - 1 800 win win one. Or, One call, that's all, make our profession look like jack pot justice is the reality and jurors can be manipulated.

Second reason for our low esteem is that the public expects more from each of us.

Law is an honored profession. Each of us in this room remembers the day we received our acceptance to law school. It was a day of rejoicing. We all worked hard to master three years of legal studies. We were celebrated when we graduated from Law School.

The public knows we worked hard and they expect us to act like we are special.

When we join a church or house of worship, we, as lawyers get asked to serve on committees, to serve as deacons or elders, we teach Sunday School. The public knows we can handle these tasks and they expect us to live up to their expectations for our profession.

If we join a civic club or social club, we are asked to be on the board of directors.

The public expects us to take leadership rolls in charitable and service organizations.

The public knows we each possess the ability to lead and to contribute. And we all know lawyers who are heroes. I, like all of you, have lawyers I look up to - may I mention a few?

I think of my Atticus Finch - He is Hardy Gregory - a lawyer who, for me, sets the gold standard.



(r-i) Darren Penn presents plaque to David Bell.

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## Remarks by David B. Bell

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I think of Allen Childs and Bill Reed who never took advantage of, or tried to embarrass a young lawyer.

I think of Bob Norman, Pat Rice and David Hudson, lawyers in the firm that hired me as an associate. They each set a high standard for me and taught me invaluable lessons.

Then there are judges like Chief Justice George Carley and Marion Pope who inspired me.

And I am grateful for my brother who set a wonderful example, by always practicing law with dignity, excellence and conviction.

How can we restore our reputations as lawyers?

First, I never laugh at lawyer jokes. To me they are not funny.

Second, we have to represent every client and pursue, each case, with passion and our best ability.

Third, we have to see good in our adversaries. It's ok to win and lose fairly but personal attacks should be discouraged.

Fourth, we all need an outside life. There must be some passion outside of law - a hobby - a sport or fun activity. Something we can talk about and something fun to do.

Fifth, we have to at times use our skills to help people in need even if they can't pay.

Above all we must put our clients first. When our clients accept that we are fighting for them, we gain the respect and admiration expected of our profession.

Thank you for allowing me to receive this award. It is an honor and privilege to stand before you. I pledge to always strive to merit the tradition of excellence set by the General Practice and Trial Sections of the Georgia Bar.



*David Bell and daughter Amanda  
Bell Shailendra*

## SIGN UP A NEW MEMBER TODAY

Make copies of the back of Calendar Call and sign up some new members today and truly make this "Georgia's Largest Law Firm".

## Remarks by Andy Owen

*continued from page 8*

was one of my earliest role models along with other colleagues at the Attorney General's office, like my three canoeing buddies, Harold Hill, Bob Castellani and Tim Sweeney, who was my law partner until his untimely death.

As trial attorneys in moments like these, we focus our attention on cases we have tried, tactics we have employed, and results we have enjoyed. There is another facet to our work as trial attorneys that reflects our need to work together and the trust we should have in each other. Pre-trial resolution of cases, settlements, are rarely discussed because they do not carry the glamour or excitement of a courtroom battle. But we must concede that mediations and settlement discussions occupy a significant amount of our time. Why does this warrant mention? It demonstrates in a way hard to describe the wary trust we hold for each other. None of us would be so naïve to accept the first offer or accede to the first demand. But when we are negotiating with our colleagues, we trust each other's experience and reputation to reach a resolution to our case that serves all parties well without the lengthy courtroom battle, expense and risk. Obviously, it is not something we go back to the office and describe in glowing terms or discuss at bar meetings or CLE sessions. But it is something we have done toward accomplishing our primary goal. We have served our clients well.

This is not what we talk about when asked about being a trial attorney. We usually reel off all of the platitudes of satisfaction in helping someone and accomplishing something of meaning, and the adrenaline rush of a trial. But there is yet another side to the experience that is not often described. Being a trial attorney can be very lonely. There was one incident in my pre-law life that prepared me for being a trial lawyer as much as any law school course or on-the-job training that followed.

I was a pilot in the Navy during the 60's, flying a carrier based ECM and radar aircraft. I was scheduled for a night launch which was almost as frightening as a night carrier landing. I was the second junior plane commander on the carrier which meant that about 80% of my flights were at night. I never got used to them. On this particular night, we taxied up to the catapult, and my plane was connected to the catapult in all of the right places.

These connections were designed to break at a certain pressure which would indicate the catapult had generated sufficient power to launch us off the end of the deck at the proper air speed. I advanced the throttles to full power, and one of the connections broke prematurely. The result was not enough air speed and a night swim for this pilot. Fortunately, the carrier did not run over the plane or me and I managed to get out only to see the carrier steaming off into the distance. When I came to the surface, all that was visible was the carrier moving away. Bobbing up and down in the middle of the ocean with just a life preserver on, on a very dark night, might well be the loneliest feeling in the world.

Why is this story relevant to what we are doing here today? That lonely feeling was very similar to the feeling we often have in a courtroom, even a crowded courtroom. We often feel very alone as decisions must be made in a split second with no time for consultation and often no one to consult. We make the decision alone, and we alone bear the responsibility for that decision.

The jury leaves the courtroom and, later, the bell rings indicating a verdict has been reached. Again, I feel very much alone. Watching the jury file into the jury box quite often reminds me of watching that carrier steaming off in the night.

This may be a bit melodramatic, but it is not that far-fetched. We have incredible highs, like when the helicopter came hovering over me to pick me up, and we have some depressing moments, like coming to the surface and seeing nothing but a very dark night and the running lights of the carrier trailing off in the distance. But we continue to do it in spite of the emotional roller coaster. We do it because the attorney who goes to court to resolve disputes is the primary force for the rule of law in a civilized society. I am proud to be a trial lawyer and to be in a position to walk into a court of law, represent a client before twelve strangers and match wits with one of you. When it's over, I am honored to shake hands with the other attorney and know that our relationship remains intact as we move on to other matters. What an incredible profession to be able to do this. What an honor for me to be here. As I said earlier, I am simply overwhelmed.

## Remarks by Lawrence S. Sorgen

*continued from page 12*

and with respect, even those who may seem not to deserve it; and I've been honored to be well trusted and well-respected in turn.

It is difficult to maintain a general practice where I must deal with the many different areas of law that are in play and impact the lives of my diverse clientele. The reward is the sense of well being that comes from the knowledge and feeling that I am an integral part of the community that I serve and that I have helped many people both during their best and worst of times.

Nothing seems to reveal the soul of a community, and the confluence of the best and worst of times, more than the interface of life, death and the criminal law. I'd like to share such an experience with you.

Roger was a bad man; he was a bully as a teenager, and a mean and violent drunk as an adult. After several years of tumultuous relationship, his wife Becky divorced him and of course got custody of the children. Often when Roger would exercise his visitation he would terrorize his ex-wife by calling her, and in his drunken manner, ask her where the kids are when he knew that the last time she saw them was when he drove away with them in his car; or he would simply tell her, in his drunken slur, that he'd lost the kids. After awhile, and having had enough, Becky told Roger that he could not pick up the children when he had been drinking.

One afternoon Roger called and in his bullish manner told Becky he was coming to get his kids. Roger was drunk and Becky was afraid so she took the kids to her parents' house. Becky's parents, Herman and Mary, were good country folks, honest, hard-working, and dedicated to family. Herman comforted his daughter and grandchildren and promised to protect them. It didn't take Roger long to figure out where Becky had gone with the children and he showed up at Herman and Mary's house where all the doors were locked. Roger began banging on the walls and windows demanding his kids. Herman gathered the family together in the living room and stood there, like a sentinel, with a 12 gauge shotgun in his hands. As Roger began banging on the front door, hurling threats and obscenities, Herman shouted out "don't try to come in here Roger, just go away". As Roger kicked in the front door, Herman let loose with a blast of #6 shot and Roger staggered back into the driveway and fell.

I was home relaxing when the phone rang. "Lar-

ry, this is Mary. Herman just shot Roger". "Is he dead", I asked. "I think so". "Have you called the sheriff?" "Yes", she replied. "O.K." I said, "I will be right over and don't touch anything". When I arrived the sheriff was already there and had spoken with the family. The town doctor who served as coroner and medical examiner, was summoned to the scene. I counseled with Herman and the other adult family members, and then the sheriff and I conferred about what should happen next. Neither one of us wanted Herman to be arrested pending further investigation, so we concurred to suggest to the coroner to call for an inquest as soon as he finished the autopsy. I was invited to watch the medical examination which confirmed the cause of death as being "shot dead while drunk". The next day a coroner's jury was summoned and evidence was presented to them. After a short deliberation, they ruled it to be a case of justifiable homicide because they all knew that Roger needed killin'.

Things have definitely changed over time. The practice of law in the N. E. Georgia Mountains has become more sophisticated. Since the establishment of the Enotah Judicial Circuit, twenty years ago, we have been benefitted by some very fine Superior Court Judges on the bench, led now by Chief Judge, The Honorable Murphy C. Miller. In the adjoining Appalachian Circuit, Judges Brenda Weaver, Roger Bradley and Amanda Mercier are all highly regarded. The uniform rules have brought a level of consistency throughout the courts so there is no longer a patchwork quilt of rules and expectations as you travel from county to county, and circuit to circuit. The number of attorneys and the standard of the Bar has gotten higher. What was once a homogeneous population has become somewhat more diverse. Hiawassee now has traffic lights and fast food restaurants, 3 story buildings and 3 lane roads. The old mountain ways and culture are fading into memories to be marketed to the tourists; but it is still a wonderful place to live and practice law.

I truly appreciate the State Bar's recognition of the value and contributions made by the general practitioner and I humbly accept this award mindful of the many other small town general practitioners who have dedicated themselves to serve the law and their communities.

Thank you.



# Real Estate Appraisals: Regulation and Practical Tips

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The term "real property" may cause many litigators, especially young lawyers, to cringe. For some, it may conjure memories of first year Property class where words like "fee tail" and "easement appurtenant," were discussed as routinely as the weather, and usually through cases involving English manors or foxes. The concepts often seemed daunting, distant, and antiquated.

For those litigators who chose practice areas because of this experience, I am sorry to report that it is nearly impossible to ignore real property. Most litigators will at some point become involved in cases that involve real estate. Bankruptcy cases, business disputes, shareholder fights, trust and estate actions, insurance defense matters, divorce actions, fore-

closure lawsuits, and even certain kinds of personal injury actions are just a few of the many types of cases that can touch on real estate. It can be the focus of the litigation, such as in real estate ownership disputes, foreclosure actions, or eminent domain proceedings. It also can be a secondary aspect of the litigation, which often means it can affect damages. For example, shareholder ownership fights frequently involve disputes over corporate asset values, including real property. Similarly, estate cases routinely involve issues concerning the division of real property.

Ultimately, litigation involving real property issues most likely will require an appraisal or competing appraisals. Sometimes the appraisals are created independent of the

litigation. Other times, parties will have appraisals prepared for the lawsuit. A good real estate appraisal can be helpful to an advocate's position, while damaging to an adversary. Conversely, a skilled adversary can take advantage of an opponent's weak real estate appraisal and use it to his or her advantage.

Most significantly, an appraisal can drive the value of a case, either upward or downward. However, an appraisal also can impact cases in other significant ways by doing, among other things, the following:

- reflecting on a client's (or counsel's) credibility;
- facilitating settlement or efforts to get a case to mediation;

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## Real Estate Appraisals: Regulation and Practical Tips

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- allowing for a more objective assessment of a case's value (by the client or the opposing party);
- impacting the efforts at which a party may prosecute or defend a case;
- educating the fact-finder about case details; and
- possibly allowing for the admission of otherwise inadmissible, yet helpful, facts to the extent related to the appraisal.

Just as an expert witness can be located to provide virtually any opinion, appraisers can provide divergent opinions as to the value of real estate. Not all appraisals are the same. Therefore, effective client advocacy requires recognition of the strengths and weaknesses of an appraisal.

What should an advocate look for in an appraisal? Below is an overview of both appraiser regulations that can impact the validity of an appraisal, and practical considerations when analyzing or preparing appraisals.

### The Regulation of Appraisers

Regulation of appraisers and appraisals is governed by a unique and complex array of federal law, state law, and private organizational standards. These regulations establish whether an appraiser is qualified to make a particular appraisal and can affect an appraisal's validity.

To determine whether an appraiser is qualified to prepare an appraisal, it is helpful to understand the basic regulatory structure and the relevant standards guiding appraisers. Attorneys also should determine whether the appraiser who prepares an appraisal is (1) familiar with relevant appraisal standards, (2) registered, certified, or licensed, and (3) a member of any professional appraisal organizations or has any substantive appraisal designations.

### Determine whether the appraiser is familiar with relevant appraisal standards.

In 1986, as a result of instability in the real estate and mortgage market, nine professional appraisal organizations formed the Committee on Uniform Standards of Professional Appraisal Practice. The Committee agreed on a generally accepted set of appraisal standards called the Uniform Standards of Professional Appraisal Practice ("USPAP"). The various organizations then adopted the USPAP.

In 1987, the Appraisal Foundation, a private, yet quasi-governmental non-profit organization, was established. The Appraisal Foundation created an independent board called the Appraisal Standards Board ("ASB") to interpret and amend the USPAP. The ASB updates the USPAP every two years and also issues advisory opinions. The USPAP are the generally accepted standards for professional appraisal practice and have been adopted by Congress.

In 1989, Congress passed the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") which provides a federal regulatory framework for real estate appraisers. See 12 U.S.C. § 3331-3335. As part of the FIRREA, the federal government adopted the USPAP and appraiser qualification criteria established through the Appraisal Foundation to govern real estate appraisals utilized in "federally related transactions." See 12 U.S.C. §§ 3331, 3339. In addition, the FIRREA caused the creation of the Appraisal Subcommittee to monitor the Appraisal Foundation. See 12 U.S.C. § 3332(b). 2

The State of Georgia also requires compliance with the USPAP for certain types of real property appraisals. As discussed in more detail below, certain appraisers must take courses on the USPAP for purposes of being licensed or certified. See

Ga. Comp. R. & Regs. §§ 539-3-.01(2), 539-1-.15(1), and 539-1-.16. For non-federally related transactions involving real estate, the Georgia Real Estate Appraisers Board (the "Board") has created its own standards entitled "Standards for Developing and Reporting an Appraisal." Id. at § 539-3-.02.

Accordingly, an appraiser's familiarity, or lack thereof, with USPAP or the Georgia standards could bear on the quality or validity of an appraisal that is at issue. Attorneys should investigate whether the appraiser has familiarity with the standards and whether the appraisal was conducted in conjunction with the USPAP or Georgia standards.

### Determine whether the appraiser is legally qualified to perform the appraisal at issue.

The Appraisal Foundation created another board called the Appraiser Qualifications Board ("AQB"). The AQB was formed to develop appraiser qualification criteria, including education, experience, and examination requirements, for appraisers to obtain state certification and licensing.

In conjunction with the AQB, the FIRREA requires all states to develop systems for licensing and certifying real estate appraisers for purposes of federally related transactions. In turn, those appraisers who are appropriately licensed or certified by the states can prepare appraisals for certain federally related transactions. The Appraisal Subcommittee monitors the certification and licensing process to ensure that all state certified and licensed appraisers satisfy the criteria established by the AQB. See 12 U.S.C. §§ 3332(a)(1), 3345.

Pursuant to the FIRREA mandates, the State of Georgia created the previously-referenced Board. The Board is responsible for establishing rules and regulations governing ap-



praisers in Georgia that are compliant with the FIRREA, and thus the Appraisal Foundation requirements. The Board also establishes regulations governing appraisers for non-federally related transactions. See generally O.C.G.A. § 43-39A-1, et seq.

The Board has established four appraiser classifications, and under many circumstances it is a violation of Georgia law for a person to engage in real estate appraisal activity in Georgia without first obtaining a classification designation. O.C.G.A. § 43-39A-24. The four classifications, which can be found in Chapter 539-1-16 of Board's Rules, are as follows:

- (1) *State Registered Real Property Appraisers ("Registered Appraiser")*: This classification permits an appraiser to perform appraisals on any type of real property except when the appraisal is to be used by a lender in a federally related transaction. See Ga. Comp. R. & Regs. § 539-1-.16(1).
- (2) *State Licensed Real Property Appraisers ("Licensed Appraiser")*: This classification permits an appraiser to perform any appraisal a Registered Appraiser can perform, and the following additional appraisals: (a) "federally related transactions of non-complex one to four residential units having a transaction value of less than \$1,000,000;" (b) "any other real estate having a transaction value less than \$250,000;" and (c) transactions that may be approved by certain federal regulatory agencies for other federally related transactions. A Licensed Appraiser is not permitted to appraise real estate in federally related transactions when a development analysis/appraisal is necessary and utilized. See Ga. Comp. R. & Regs. § 539-1-.16(2).
- (3) *State Certified Residential Real Property Appraiser ("Certified*

*Appraiser")*: This classification permits an appraiser to perform any appraisal a Registered or Licensed Appraiser can do. In addition, for federally related transactions, a Licensed Appraiser can appraise one to four residential units regardless of the value or complexity of the transaction, and transactions that may be approved by certain federal regulatory agencies. See Ga. Comp. R. & Regs. § 539-1-.16(3).

- (4) *State Certified General Real Property Appraiser ("Certified General Appraiser")*: This classification permits an appraiser to appraise any type of real estate for any purpose. See Ga. Comp. R. & Regs. § 539-1-.16(4).

Each of these classifications requires different amounts of experience, coursework, including courses on the USPAP, and testing. Because of the varying requirements for each, an appraiser's use of the term "registered," "certified," or "licensed" each means something unique in Georgia, and the terms are not interchangeable. When an attorney learns that an appraiser is "certified," "licensed," or "registered," the attorney should not assume that the appraiser is permitted by the state or federal government to conduct all types of real estate appraisals.

Efforts should be made to determine whether the appraiser is allowed to conduct the appraisal that is at issue. If the appraiser does not have the requisite classification level, it should be determined whether the appraiser nonetheless has the skill, experience, and training necessary for the appraisal at issue. Therefore, questioning the appraiser about any classification is important.

Notwithstanding these four classifications, Georgia law provides exceptions to the appraiser classification requirements. See O.C.G.A.

§ 43-39A-24(b). Significantly, "any person who testifies to the value of real estate or real property in the courts of this state" is not required to obtain an appraiser classification. See O.C.G.A. § 43-39A-24(b)(5). Thus, in the litigation context, a witness can prepare an appraisal and testify about the value of real estate without having obtained an appraiser classification. The general rules of evidence and expert witness testimony would otherwise govern that witness' testimony. See e.g. O.C.G.A. § 24-9-67.1 Of course, however, an appraiser classification could affect the appraiser's credibility and the weight to be given to the appraiser's testimony or to the appraiser's appraisal itself. Likewise, there may be limits to the use of the appraisal outside of the litigation context.

Other exceptions to the classification requirement in O.C.G.A. § 43-39A-24(b) include the following:

- (1) Individuals who "do not render significant professional assistance in arriving at a real estate appraisal" opinion. See O.C.G.A. § 43-39A-24(b)(1)(A).
- (2) Individuals who assist the appraiser but do not sign the report or make any representations regarding the report to a third party. See O.C.G.A. § 43-39A-24(b)(1)(B).
- (3) A licensed real estate agent, who in the course of the real estate brokerage business, gives a price opinion. See O.C.G.A. § 43-39A-24(b)(2).
- (4) Registered foresters who appraise standing or growing timber for non-federally related loan transactions who issue "certified" appraisals. See O.C.G.A. § 43-39A-24(b)(3).
- (5) Owners of property who express an opinion of value on "real estate or real property leased or to

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## Real Estate Appraisals: Regulation and Practical Tips

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be acquired by such owner." See O.C.G.A. § 43-39A-24(b)(4).

- (6) Officers or employees of a government agency in the conduct of official duties, not including eminent domain. See O.C.G.A. § 43-39A-24(b)(6).
- (7) Persons appraising real estate "exclusively for the use of a bank, a savings and loan association, or a credit union." See O.C.G.A. § 43-39A-24(b)(7).

In sum, if an appraiser who prepared an appraisal does not have a classification designation, or even if a classification is not required, counsel should carefully consider whether the appraiser has the requisite skill to issue the appraisal.

### **Determine whether the appraiser is a member of any professional organizations and has obtained any professional designations.**

To further complicate matters, there are different professional organizations and organizational designations for real estate appraisers. Many real estate appraisers list an array of acronyms after their names. Sometimes these acronyms carry substantive meaning and require specific skill-sets, education, or training beyond that required by federal or state law. Other times, they may sound impressive but carry no substantive meaning.

Perhaps the most well known professional appraisal organization is the Appraisal Institute, which was the product of a 1990 merger of two long established organizations known as the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers. The Appraisal Institute sponsors two meaningful professional designations: "MAI" and "SRA." These designations can only be used once certain comprehensive training and educational requirements are satisfied.

MAI is the awarded designation for commercial real estate appraisers. The acronym "MAI" does not stand for anything specific and, despite popular belief, does not mean "Member, Appraisal Institute." Thus, a lawyer should not be fooled into assuming that a member of the Appraisal Institute is necessarily an MAI-designated appraiser who has satisfied the significant prerequisites. Likewise, an attorney should confirm whether an appraiser who designates himself or herself as "MAI" is not simply a member of the Appraisal Institute. SRA is a similar designation for residential real estate appraisers.

The American Society of Appraisers is another well known professional organization for appraisers. It, too, has a designation that it awards once certain substantive requirements are satisfied: "ASA," also referred to as "Accredited Senior Appraiser."

The American Society of Farm Managers and Rural Appraisers is an additional well-established professional organization focused on, as the name indicates, rural and agricultural assets. While not limited to real estate appraisals, it seeks to establish standards for rural appraisals and farm management. It has two designations that its appraiser members can obtain: (1) Accredited Rural Appraiser, and (2) Real Property Review Appraiser.

There are other appraiser professional organizations besides the foregoing. Therefore, an attorney who is analyzing an appraisal or seeking an appraiser should inquire about the appraiser's membership in organizations and the requirements, if any, for certain organizational designations. Membership in professional organizations and achievement of professional designations by themselves (or lack of membership and professional designations) do not indicate whether an appraiser is or is not qualified to provide an accurate

appraisal. However, they may add to the credibility or detract from the credibility of an appraiser depending on the organizations and designations with which the appraiser may or may not be affiliated.

Certainly, red flags might be raised when an appraiser references multiple professional designations, when none carry any substantive meaning and the appraiser lacks any other meaningful appraisal experience. Similarly, appraisers who belong to well established professional organizations but lack any designations by those organizations may simply be padding their resumes.

### **Practical Considerations**

Just like any other expert, an appraiser can have all of the best classifications, credentials, training, and experience, yet produce a weak appraisal. A litigator should carefully analyze an appraisal prepared by an opponent or other party and not assume that an appraisal prepared by a well regarded appraiser is necessarily accurate. Likewise, a litigator who employs an appraiser to prepare an appraisal should ensure that the appraisal is as strong as possible, and if it is not, be prepared to recognize and defend any weaknesses in the appraisal. Even without being trained as an appraiser, there are basic factors that an attorney should consider when analyzing or having an appraisal prepared.

#### **Consider Property Inspections**

Appraisals are sometimes conducted without a physical inspection of the property. Other times, inspections occur but they are done in such a cursory manner that the inspection is not insightful. While situations exist when an inspection is not necessary, or the appraiser cannot obtain access to the property or portions of the property, the appraisal generally

will be more accurate if the property is fully inspected.

A physical inspection allows for the condition of the property to be assessed and to validate assumptions that may have been made in the appraisal. It also provides the appraiser with the opportunity to learn about other unique aspects of the property that could affect value and are not referenced in records.

While this seems like rather obvious advice, I have seen appraisals where the appraisers either did not inspect the property, or simply drove by the property. In these situations, the appraiser did not have accurate information about the property's condition so the failure to inspect detracted from the appraisal's accuracy.

When litigating a case and an appraiser is retained, counsel should consider seeking access to the property pursuant to O.C.G.A. § 9-11-34(a)(2). If access is not obtained, by at least requesting access the attorney should be in a better position to defend the appraisal. Requesting access and being denied most likely will appear better to the fact-finder than either not requesting access or not physically inspecting the property when the option is available. If the property is not accessed and verifiable information about the property's condition is not available, the attorney also should consider asking the appraiser to make certain assumptions about the property's condition that are referenced in the appraisal.

### **Recognize Significant Aspects of the Property**

Similarly, an appraisal should recognize and address any unique aspects of a property such as the property's location, including presence on a flood plain, and physical condition. Ignoring those aspects can detract from the appraisal's accuracy and the appraiser's credibility. Sometimes

the failure to address or recognize those aspects can be profound.

Recently, I was involved with the deposition of an opposing party's appraiser. The case involved, among other things, competing appraisals of commercial real estate. During the deposition, the appraiser was questioned about whether he knew of problems with the property's location. The appraiser mentioned that there was barbed wire fencing, which suggested there could be crime issues. The appraiser did not reference any other issues.

The appraiser did not know whether the property had ever flooded. He also could not recall whether the property was on a flood plain. However, he admitted that flooding needs to be addressed in appraisals, and that site problems could affect value.

It turns out that the property at issue was on a flood plain (and referenced on publicly available maps as being on a flood plain) and had recently been flooded during a flooding of a nearby creek. When that flood occurred, the water level rose several feet inside the building. There also had been prior floods of the property. In short, the flooding presented a serious problem with the property's marketability and value which the opposing appraiser did not consider and my client's appraiser did consider.

Ultimately, the opposing party's appraiser valued the property at over \$2 million. My client's appraiser valued the property at well less than \$1 million. Although the case involved other issues, the case settled with our client happily agreeing to convey the property to the opposing party. The result of this case might have changed if the opposing party's appraiser had prepared a more accurate appraisal.

### **Find Good Comps**

An appraiser's use of comparable sales ("comps") is necessary for most

appraisals. The use of good comps can separate a solid appraisal from a weak appraisal. For properties that are leased, the use of comparable lease amounts is also important.

Sometimes appraisers fail to consider sales or leases that are, in fact, comparable to the sale or lease of the subject property. Likewise, appraisers may not have an appropriate understanding of the property market in the area where the subject property is located. Depending on the purpose for the appraisal, appraisers may intentionally (or unintentionally if not familiar with the property or location) use comps that are not consistent with the property's true market value. Instead, the comps used may be relied on to decrease or increase the property's value.

Regardless of whether the client is relying on an appraisal or critical of the appraisal, the attorney should investigate the comps being used and the appraiser's familiarity with the area. If the comps turn out to be poor and not reflective of other similar properties or leases, the appraisal will carry little weight.

In the same example case referenced above, the opposing party's appraiser admitted that he was not familiar with the area where the property was located. He also could not recall whether other properties were for sale or lease in the immediate vicinity of the subject property. Furthermore, he could not provide any details during his deposition regarding the last sale or lease of property on the same street as the subject property (which had similar parcels of commercial property). Of course, he failed to provide any comps for similar properties located on a flood plain. Instead, the comps he used were intended to drive the value of the property up, but the comparable properties were not, in fact, comparable.

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## Real Estate Appraisals: Regulation and Practical Tips

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### **Determine whether the Appraiser does his or her homework.**

Most importantly, whether selecting an appraiser or critiquing an appraiser, an attorney should determine whether the appraiser is careful. A good appraiser will work hard and investigate the property as much as he or she can.

Preparation is critical. If the appraiser does not know the property, this can be used against the party relying on the appraisal. If the appraiser does his or her homework and knows the property well, the appraisal could be outcome determinative.

The fact that an appraiser works for a large consulting firm or regularly prepares appraisals for well regarded businesses does not necessarily mean that the appraiser will do a good job for that specific appraisal. Conversely, there are many appraisers who work for themselves who regularly put the time and effort into developing an accurate, well supported appraisal.

If selecting an appraiser or relying on a previously prepared appraisal to support a position, an attorney should learn about the appraiser and determine whether the appraiser did the necessary work to support the

appraisal. If the appraiser cut corners and the client is relying on that appraisal, it is better to know in advance than to be surprised later. If there is the opportunity to have an appraisal prepared, it should be prepared to stand up to criticism regardless of whom prepares it.

An attorney that is attacking an appraisal should also determine whether the appraiser was careful. Even if the nature of the dispute does not justify the preparation of a competing appraisal or the identification of a testifying expert appraiser, the attorney may want to consider retaining an appraiser on a consulting basis. This consulting appraiser could provide valuable information about the strength or weaknesses of the appraisal at issue.

Going back to the deposition example one more time, the appraiser for the opposing party in that case simply did not do his homework. The fact that he worked for a big consulting firm did not change the validity of the appraisal. He did not inspect the property, consider important factors related to the specific property at issue, or provide relevant comps. Had the case not settled, the flaws of the appraisal would have been ex-

posed to the fact finder. In turn, this could have adversely affected that party's position on other issues.

### **Conclusion**

Analyzing and having appraisals prepared should involve the same kind of thought and effort as preparing for other aspects of a case. Counsel should spend time learning about any appraiser who has prepared a real property appraisal that is at issue and determine how the appraiser arrived at the valuation. When selecting an appraiser, an attorney should seek an appraiser who understands the relevant appraisal standards, carries the appropriate appraisal classification, and is credentialed to appraise the property at issue. When using an appraiser, ensuring that the appraiser does the necessary work is critical. At the end of the day, an appraisal can have significant effects on the litigation, including the outcome.



# Tech Tools to Help You Make Your Case

## Binford Minter

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*Bin obtained his undergraduate degree from UGA in 2002. As an undergraduate, he spent 5 months studying at the Universidad de Cuyo in Mendoza, Argentina in 2001. After college, he taught English as a second language in Chile and Panama and then worked at TSYS, Inc. as an Instructional Designer until 2007.*

*Active in the local community, Bin is a member of the Young Lawyers Division of the Columbus and Georgia Bar Associations, the Columbus Trial Lawyers Association, and Chattahoochee Bar Association. He has also served on the Board for the Columbus Museum's Young Contemporaries, is an Associate District Justice District for Phi Alpha Delta Law Fraternity, International, and has twice participated as a pro dancer for the Alzheimer's Association's Dancing Stars of Columbus Memory Gala charity event.*

*Over the last five years, a weak economy and an oversupply of attorneys have been forcing the legal industry to evolve. As clients of all stripes have sought to become more efficient, attorneys have had to follow suit. This article is the first in a series of three that will address technological solutions available for cost-conscious attorneys who want to improve their efficiency. It is written with mid-sized to small firm or solo practice attorneys in mind because they are less likely to have access to the best and latest legal technology (and more likely to find themselves at a technological disadvantage as a result).*

Juror Number 2 is a veteran. He has 20/40 vision in his right eye, and suffers a detached retina in his left. You could not tell this by looking at him. He is seated on the back row, behind Juror Number 8, who does not like wearing her hearing aid in public. Juror 8 also has a habit of nodding when addressed because "it makes things easier." Seated three

seats over and closer to the plaintiff is Juror 11, a colorblind teenager with a very short attention span. Behind him is Juror 5, a middle-aged woman perennially tired from two jobs and toddler grandchild. In a chair next to the jury box sits a fit, childless newlywed with excellent hearing and eyes like a hawk. She is an alternate juror. Will Juror 2 be able to read the fine

print of the contract you intend to show them? Can Juror 8 hear and understand video deposition testimony? Is your colored diagram wasted on Juror 11? Will the Microsoft PowerPoint slideshow you prepared for your opening argument put Juror 5 (or more of them) to sleep?

Voir dire may be over, but that

*continued on next page*

## Tech Tools to Help You Make Your Case

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does not mean you can stop thinking about your audience. After all, a trial lawyer's success depends, at least in part, on presentation skills. While electronic presentation tools will not guarantee a favorable verdict, a quality presentation that accounts for the jury's vision, hearing, and attention span will increase the odds that all jurors understand your version of the facts, even if they do not accept them.

Returning to the jurors, imagine that they will be your captive audience for a civil trial to last several days. You intend to show them documents, photographs, diagrams, and video deposition testimony. How can you best present this evidence to twelve individuals who probably wish they were somewhere else?

First, think about how you want to present your documents. Perhaps there are a few key emails that you must highlight for the jury, and several more that you would like to show them. Alternatively, suppose you want to walk the jury through a contract, with special focus on a specific provision.

You could have all of the important text read into the record, but that is your worst option. Individuals are less likely to remember or contextualize what they hear compared to what they see.<sup>1</sup> Still, some attorneys will prefer to eschew technology and play the underdog. When facing off against a larger firm equipped with the latest trial presentation software (such as inData's TrialDirector or LexisNexis' Sanction 3), an old school lawyer with a giant notepad and a magic marker can earn the

jury's sympathy. However, younger lawyers should be careful attempting this tactic because there are increasingly fewer citizens who are not acquainted with some degree of technology. The sympathy jurors extend to an "old dog" may not extend to a younger one who should have learned his tricks. It is also doubtful that a little sympathy is worth limiting your presentation to the jury in the first place.

Taking your presentation up a slight notch, you could have a local print-shop enlarge text on posterboards, but this option may not be cost effective considering that three, double-sided posters could add up to over \$500. Print and copy stores vary in cost, but FedEx Office charges \$39.99 for a single 18" X 24" poster, \$89.99 for one 24" X 36". Posters also present other problems. How will you transport them to trial? What if you want to underline or write on them? Most important of all, how visible will the text be to all of the jurors? Given these numerous issues, using posters is not practical, but you have better options.

In many federal courts, you will be able to take advantage of the court's own technology. For instance, many federal courts around the nation have visual presenters made by Elmo, a ninety year-old Japanese company with subsidiaries worldwide. Often referred to by the company's name, an "elmo" visual presenter can be thought of as a state of the art overhead-projector that does not require transparent copies or non-permanent markers. "Elmos" deliver real-time, high definition video of documents or three dimensional objects, and they also have "whiteboard" capabilities, allowing a presenter to draw shapes or write colored text for the audience without affecting the original document or item; everything can be erased with the push of a button. One can master the use of an "elmo" in minutes, and it should not be difficult scheduling a time with the court

to practice. It is a safe bet that a court equipped with a visual presenter will also have one or multiple monitors for the jury, which means you will not have to bother with a projector or screen.

Should you find yourself in a court lacking the latest bells and whistles, you could rely on your very own "elmo." Elmo's MO-1 is an ultra-portable document camera that weighs 1.3 lbs. and plugs into your computer via a USB cable. It retails for \$399 (the wireless version of the MO-1 costs an additional \$500). Should you want to have the same whiteboard capabilities of an "elmo" in court, you can purchase Elmo's CRA 1 wireless tablet for \$399. Both the CRA 1 and the MO-1 can be used together without the need for a computer, but a computer is required for charging; and you will need to charge each one overnight during your multi-day trial. Use with a computer also opens up more user options with the tablet. Note that either Elmo product can work with non-Elmo products.

If you think you would use it frequently enough, a document camera and tablet might be worth the approximate \$800 (plus tax and shipping) expense. Fortunately, there are cheaper options for achieving the same effect. First, by no means has Elmo cornered the market on document cameras. A search for "document camera" on Google or Bing will lead to a host of alternative models. Second, you can make your own document camera using a web camera, zip ties, and either a desk boom microphone stand or a flexible desktop lamp. There are countless "how to" videos and articles on this topic online. Third, you can scan your documents as .pdf files and show them on a projector the same way you might display photographs.

Since efficiency is one of your goals, you will prefer to display all of your media the same way. Even if you have someone helping you, the more complicated you make

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<sup>1</sup> Cohen, Michael A., Todd S. Horowitz, and Jeremy M. Wolfe. "Auditory Recognition Memory Is Inferior to Visual Recognition Memory." *Proceedings of the National Academy of Sciences* 106.14 (2009): 6008-010



your presentation, the more likely it is that something will go wrong. Therefore, you should practice with your equipment no matter what you decide to use. With a document camera, you should definitely familiarize yourself with the device's zoom and lighting features. The downside of a document camera is that it is real time video feed that captures all the real time movements underneath it. Also, a document can have bent edges and wrinkles, and a photo can have glossy finish and a convex shape. It will look unprofessional if the jury sees the edge of a book holding down your document or your magnified hands titling a picture under the light. A document or picture scanned using an image scanner (or created electronically to begin with) will always be properly aligned and have a crisper, more professional appearance.

To show an image file such as a .pdf, you will need a projector and a screen. Note that you will also need a projector and screen to display anything under a document camera, unless the court provides them. With many multimedia projectors designed for office use, you do not need your laptop on hand to display images or even a Microsoft PowerPoint slideshow. You can get by with a USB flash drive. First, you will have to save your file or files to your flash drive, but you can then plug the drive into a projector with a USB port, to navigate through your files using the projector's remote control or machine controls

Use of a computer with your projector is nonetheless preferable. Even after rehearsals, it can be a headache navigating through files and folders using your projector's controls. To get an idea for the difficulty, compare using the navigation buttons on your DVD player with using your computer mouse; the latter gives you flexibility to go where you want, while the former can only take you up, down, left, and right. Fur-

thermore, you are better off having your files saved on a flash drive and on your laptop's hard drive in case one fails. An inadvertent sideswipe is all it takes to bend your flash drive and render it useless. Incidentally, you may have guessed that the more USB ports on your laptop the better.

When it comes to buying a projector, you should consider two things: brightness and resolution. Brightness is measured in lumens. A lumen is a unit of measure for the total amount of visible light emitted by a source. A standard 60 watt incandescent bulb puts out a little over 800 lumens, which is not that bright in a well-lit room. Keep in mind that having the lights of the courtroom dimmed is probably not an option, and the further the projector is located from the screen, the less bright it will seem. Accordingly, your projector will need to be significantly brighter than the courtroom for the jury to appreciate it without squinting. That said, you should look for a projector with at least 2600 lumens.

Resolution refers to the amount of data that can be displayed on the screen at any given time. Technically speaking, resolution indicates the number of pixels the projector uses from side to side and top to bottom. In layman's terms, the higher the resolution, the more detailed the image. A projector's native resolution will be measured by a number (e.g. 800x600, 1024x768, 1280x800), but each number has a corresponding acronym (e.g. SVGA, XGA, WXGA). A higher resolution is not necessary for basic charts, graphs, and PowerPoint presentations, but it will serve you well for documents and photographs. Remember that contract you wanted to show the jury? A higher resolution projector will allow you to zoom in on a specific section of the contract without sacrificing too much clarity.

A higher resolution projector is also more likely to match the native resolution of your laptop. A match is

desirable in order to get a projected image that is just as sharp as the image on your laptop screen. An SVGA (800x600) projector will still display a signal coming from a 1366x768 laptop, but the picture will suffer and not be as clear as it would be coming from a WXGA (1280x800) projector or better. You can always change your computer's screen resolution to match the projector, but it will distort your screen image from what you are used to, and that change will appear significant on your laptop. Generally speaking, a projector with a WXGA (1280x800) native resolution or better is ideal for use with most modern laptops. Epson, Optoma, and InFocus are some of the major brand names in projectors, and all offer a range of products. Just be careful to distinguish between projectors intended for business use and those meant for home entertainment. Expect to spend between \$500-1000, depending on how nice a model you want.

You will still need a screen, though. Before purchasing one, you might call the court first to inquire if they have one, and, if so, what size it is. Aspect ratio will be the primary concern in your choice of a projector screen. If you project an image with a 16:9 aspect ratio on a 1:1, or square, projection screen, you will find that your image has to be much smaller than you would like in order to fit within the confines of the screen. In other words, you will have to shrink your rectangular image lest it overextend to the right and left. Video depositions are almost always recorded in a 4:3 aspect ratio, which creates less of an issue on a square screen, but you should still expect some degree of the letter box effect due to simple geometry. Accolade makes a portable (but heavy) projection screen that can stretch from 4:3 ratio to 16:9. At \$150, the "Duet" is affordable as well. Both screens and projectors can

*continued on page 34*

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## Tech Tools to Help You Make Your Case

*continued from page 31*

be ordered through any major office supply chain.

Will you be able to display video from from a Blu-ray or DVD disk with your projector? The answer is, yes, provided you have a Blu-ray or DVD player (the two are not synonymous). Many newer laptops have a Blu-ray drive, but if your projector has an HDMI input, you will be able to play from a Blu-ray or DVD player directly. Again, the resolution of your projector will determine the quality of the image.

Last, but definitely not least, you have to consider sound. Air conditioning can muffle weak sound and make it incomprehensible for a juror with bad hearing. This is another reason why you should be familiar with your courtroom. Does the court have a sound system you can connect to your computer? Is it reliable?

Projectors have built-in speakers, but you will be better off buying a pair of computer speakers or disconnecting the pair attached to your home or office desktop computer and connecting them to your audio source in court.

In summary, there is an abundance of electronic solutions that can help your presentation, but none without a price. In making a tech purchase to improve your practice, you should conduct a careful a cost-benefit analysis. How important is having this equipment in your next trial? How often will you use this in subsequent trials or hearings? Are there other applications for it in your practice? Is there a cheaper alternative that will suit you just as well? Also, in buying any electronic equipment, you should shop for discounted prices online.

If you do not have \$1000-1500 in your budget for these expenses, consider lobbying your local bar to collectively donate equipment to a particular court so that everyone will be on the same playing field. Just remember that all machines break down at some point, and someone will have to maintain and repair the equipment. And if you lack a tech-thumb and worry about your ability to manage the equipment, you can always outsource. Talk to a college or high school student with an interest in law about helping you out in exchange for some trial experience. In short, obstacles are really only excuses. Your job is to present your client's case as well as you possibly can. Think of electronic presentation equipment as tools that will help you do your job...and win

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# Thank You

*The General Practice and Trial Section thanks the many Team Leaders and Volunteers who participated in the “Ask A Lawyer Day”. Without your help, we could not have offered free legal assistance to those in need in our state.*

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