



2017

Tradition of Excellence Awards

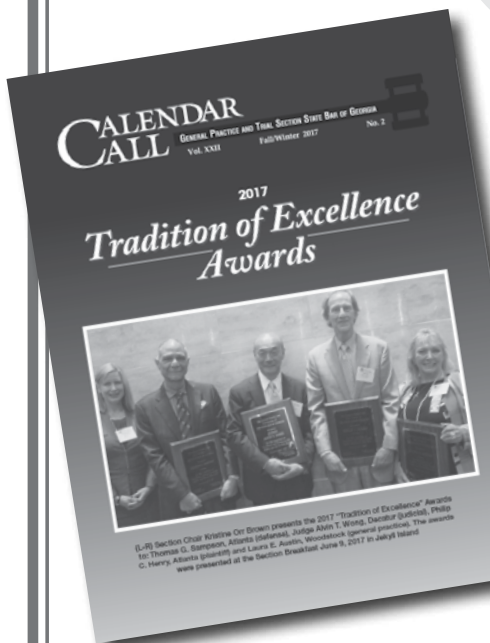


{L-R} Section Chair Kristine Orr Brown presents the 2017 “Tradition of Excellence” Awards to: Thomas G. Sampson, Atlanta (defense), Judge Alvin T. Wong, Decatur (judicial), Philip C. Henry, Atlanta (plaintiff) and Laura E. Austin, Woodstock (general practice). The awards were presented at the Section Breakfast June 9, 2017 in Jekyll Island

CALENDAR CALL

HALF PRICE SALE

Help the Section grow by signing up a new member while the fee is at half price. Copy the application from the back cover and send a check made payable to the State Bar for \$20.00 and send it to the address indicated on the form



CALENDAR CALL

"Georgia's Largest Law Firm"

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. XXII

Fall/Winter 2017

No. 2



EDITOR

David A. Sleppy

EXECUTIVE DIRECTOR

Betty Simms

2017/2018 OFFICERS

Paul W. Painter, III

Chairman

Rob Register

Chairman-Elect

Senator Blake Tillery

Secretary/Treasurer

Kristine Orr Brown

Immediate Past Chair

2017/2018 BOARD MEMBERS

Zack Thomas

Joe Durham

Ivy Cadle

Jennifer Riley

Dawn Jones

Judge Chris Edwards

Thomas E. Cauthorn

Paul Calhoun

Judge Chan Caudell

Dustin Marlow

Parker Sanders

Patrick Wheale

Robert Bozeman

Kenneth Shigley

Zahra Karinshak

James "Wick" Cauthorn

ARTICLES

- Letter to the Membership from Incoming Chairman
Paul W. Painter, III 2
- Editor's Corner
David A. Sleppy 4
- 2017 Tradition of Excellence Awards
Thomas G. Sampson
Introduced by Woody Sampson 6
- Laura E. Austin
Introduced by Joe Weeks 10
- Judge Alvin T. Wong
Introduced by Judge Dax Lopez 13
- Phillip C. Henry
Introduced by Harvey Spiegel 16
- Winning Mediation Through Professionalism
The Tone & Tenor of Mediation
Rex Smith 20
- 2017 Tradition of Excellence Breakfast and Reception 30

TRUSTEES

Albert Fendig, Jr.

Paul M. Hawkins

John C. Bell, Jr.

John T. Laney, III

Robert P. Wilson

Thomas Wm. Malone

Paul D. Hermann

Rudolph Patterson

James B. Pilcher

John E. James

Verlyn C. Baker

Paul W. Painter, Jr.

Joel O. Wooten, Jr.

J. Sherrod Taylor

John M. Hyatt

James H. Webb, Jr.

Judge Bonnie Oliver

William L. Lundy, Jr.

Danny Griffin

William F. Underwood, Jr.

Joe A. Weeks

Mark Dehler

John W. Timmons

Sally Akins

Cathy Harris Helms

Jefferson "Cal" Callier

S. Lester Tate, III

Wright Gammon

Myles Eastwood

Mary A. Prebula

Adam Malone

William P. Langdale, III

Joseph A. Roseborough

Darren W. Penn

Laura Austin

Nicholas J. Pieschel

William F. "Trey"

Underwood, III

Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be double-spaced, typewritten on letter-size paper, with the article on disk or sent via e-mail together with a bio and picture of the author and forwarded to Editor: David A. Sleppy, 649 Irvin St., P.O. Box #689, Cornelia, GA 30531, dsleppy@catheyandstrain.com.

Published by Appleby & Associates, Winston, Georgia.

LETTER TO THE MEMBERSHIP FROM INCOMING CHAIRPERSON:

Paul W. Painter, III



It is with a sense of great honor and humility that I take over as Chair of the General Practice and Trial Section. Some of the giants of our profession held this position. Tommy Malone, Joel Wooten, John Bell, and my late father Paul Painter, Jr, among others, forged this section from the state's general practitioners and trial lawyers from the small towns and rural counties across the state. The section grew under the following generations of Chairs – leaders such as Sally Akins, Lester Tate, Joe Weeks, Darren Penn and Jimmy Hurt -- and is now well established as the State Bar's largest section. I am humbled by the opportunity bestowed on me by the Board to lead the section this year and will endeavor to follow in traditional of excellence in which my predecessors led "Georgia's Largest

Law Firm."

I would like to thank Kris Brown, the outgoing Chair. Under her watchful leadership, the section hosted numerous seminars, the final year of the section's Ask a Lawyer Day pro bono project, and held our annual multi-day General Practice and Trial Institute. She handled the position with skill and grace and left it better than she found it.

I would also like to thank the Board members. Throughout year, your Board members give up their Saturdays to travel (many from the far corners of our state) to the State Bar Headquarters in Atlanta to confer about the business of our section. Every member I have encountered at those meetings in my seven years on the Board has thoughtfully considered and advocated for ideas to make this section better and followed those ideas with actions. I have never served on a more dedicated or passionate board. Rarely receiving recognition, they serve you altruistically and excellently.

Finally, I must thank our venerable Executive Director Betty Sims. Betty's value to our section and its success cannot be overstated. Quietly working behind the scenes, Betty oversees all aspects of our section's business and events ensuring their success. Moreover, she sincerely cares about our members and the section in her charge. Betty is simply indispensable to the General Practice and Trial Section and we are fortunate to have her.

It is no secret that the general practitioners from the small town and

rural counties I mentioned earlier are an increasingly shrinking group. Despite continuing need for real lawyer by the residents of those towns and counties, new shingles are not being hung near rural county courthouses. Practice area specialization, centralization of the state's social, business and political life, and the draw of the handsome salaries urban markets can pay (combined with ever-increasing law school debt) makes it difficult for small towns to lure new blood in the local bar. And even for those who choose the small town, it has become increasingly hard for them to connect with clients and scratch out a living.

The General Practice and Trial Section is looking at ways to help. Our current and former small-town GPs are working to find ways to get those lawyers in the courthouses, connect them with clients, and give them a chance to build a client base. Our seminars speak focus on real issues faced by general practitioners. If you are a small town lawyer, we are your law firm.

We are expanding how we communicate to our members and how they can communicate to each other. We are building a social media presence that we will ask all members who are members to join if they have an account on the platform. We will be talking more about that on the list-serve and in the next Calendar Call.

We are also looking to attract new members. If you have a young lawyer in your firm or know a YLD member looking to get involved have them reach out to me or anyone on our board. Likewise, if any of our

GENERAL PRACTICE AND TRIAL SECTION
COMING EVENTS 2018

January 12, 2018

JURY TRIALS

GPB-TV

January 19, 2018

DEFENSE OF A PERSONAL INJURY CASE

BAR CENTER

February 23, 2018

PLAINTIFF'S PERSONAL INJURY CASE

BAR CENTER

March 2, 2018

TRUCK WRECK CASES

BAR CENTER

March 9, 2018

MILICH ON EVIDENCE

BAR CENTER

April 4, 2018

DUI UPDATE

BAR CENTER

June 8, 2018

**TRADITION OF EXCELLENCE AWARDS
BREAKFAST AND RECEPTION**

OMNI AMELIA ISLAND PLANTATION
AND RESORT
AMELIA ISLAND! FLORIDA

members would like to get more involved, we can find a role for you.

Regretfully, we will not be holding the General Practice and Trial Institute in Spring 2018. Some administrative changes and unforeseen issues prevented us from being able to schedule the event in enough time to organize it properly. We decided if we could not provide the highest level of programming and events at the Institute that it would be better to skip a year than present a watered-down version. The Institute will be back in Spring 2019 and we expect it carry on for years to come. We will, however, host a record number of CLEs this year and our overall educational mission will not be damaged.

In addition to a fantastic lineup of seminars this year, we have our annual events at the two Bar meetings. In January, we will hold our luncheon at the Mid-Year Bar Meeting featuring Jason Carter as our speaker. In June, we will hold our Tradition of Excellence breakfast presentation and evening cocktail party honoring the recipients. If you have never attended the Tradition of Excellence breakfast, I highly recommend it. The recipients (and their presenters) are eloquent, funny, entertaining and, most of all, inspirational.

I hope to see many of you at these events and look forward to serving as your Chair.

David A. Sleppy
Editor



“It just goes to show you, it’s always something – if it ain’t one thing, it’s another”.

-Roseanne Roseannadana

Here are three real (law) life scenarios which have recently been described to me. Maybe one or more of them has happened to you or someone you know. Each raised a question in my mind about professionalism, ethics and zealous representation. I don’t know if it’s necessary or helpful to attach a label to these, however, it seems wise to be prepared for these kinds of situations and, perhaps, spread the word.

1. Deposition

Young lawyer “A” is “defending” her first expert witness deposition. Her senior partner “B” attends with her for the first two hours while the opposing lawyer “C” questions the expert. C is also a young lawyer and she is proceeding very capably. A/B’s expert is holding up well. C’s senior partner “D” is also in attendance at the deposition and sits quietly while C questions A/B’s expert. B leaves the deposition for another meeting when it appears C is wrapping up the deposition. After B’s departure and C finishes her questions, D, (C’s senior partner) asks A if it is okay if he can ask the expert some “follow-up” questions. A is not sure what to do and is not prepared for this. She decides to believe that D is following appropriate protocol and allows D to question the expert. D then proceeds to re-examine and “rough-up” A/B’s expert, scoring some key points missed by C and helpful to a summary judgment motion. Ok, not ok or who cares?

2. Liability

Case involving serious injuries on commercial premises. Key issue is the exact location where injury occurred. Liability is hotly contested and depends on where in factory the incident occurred. Opposing lawyer is deposing the adverse party. Much to his lawyers’s dismay, the deponent is not describing the location on the premises which will help lock down his case. The deponent’s lawyer begins sketching a diagram on his legal pad, tapping the diagram with emphasis - obviously hoping his client will take note. The opposing lawyer sees this before the deponent and strenuously objects before deponent sees his lawyer’s artwork. And... you guessed it... bathroom break. However, deponent’s lawyer does not leave the room for the break with his client but spends the break in the conference room texting on his cell phone. Deponent returns from the bathroom and deposition proceeds, during which deponent neutralizes his earlier testimony and nails the location in his favor. Oh well...?

3. Negotiation

(I have to use actual (but made up) numbers on this one)

Two opposing lawyers, both with several years experience. Liability is a toss-up. Lawyers are negotiating the case in good faith. Plaintiff’s demand is 600k. Defendant’s offer is 400k. Corporate 30(b)(6) deposition

goes favorably for plaintiff. Defense attorney calls plaintiff's attorney and says "if I can get you 500k, will your client take it?" Lawyer calls plaintiff, tells him the facts of life and Plaintiff agrees to accept. Plaintiff's lawyer calls defense lawyer: "Yes, we have a deal". But wait... defense

lawyer says: "Well, first I have to see if I can get it and I will do my darndest because we need to settle this." Plaintiff's lawyers starts to think "uh oh". And... you guessed it: Defendant's lawyer comes back and says "I can only get 450k. That is the most they will ever pay. Sorry

but I tried." Remaining costs to prepare for trial for plaintiff will be 30k and will require several *Daubert* motions/responses and numerous motions in limine/responses. Easy or hard decision?

CALL FOR ACTION TO SECTION MEMBERS

Please strongly consider, or ask lawyers in your firm to consider, submitting an article(s) for publication to this magazine which is published four times per year. We are the largest section of the State Bar and we accept informative articles on almost any interesting topic relating to general or trial practice. You will get CLE credit for your submission-not to mention your name, bio, and picture circulated to 2026 Bar section members and the Judiciary when the magazine is distributed.

DEFENSE

THOMAS G. SAMPSON



Introduced by
Woody Sampson

Tradition of Excellence Award

Good morning, ladies and gentlemen

It is my honor and privilege to introduce my father here this morning. It is not every day that a son gets the opportunity to publicly tell his father how much he loves and admires him. So I am going to do something a little bit different with my introduction because I do not know when I will have this opportunity again. Instead of given the traditional list of accomplishments that are typically given in an introduction, I'm going to tell you about the lessons my dad has taught me as a young man and a young lawyer. You will understand that the lessons he taught me are the same lessons which made him a great lawyer.

Life Lesson #1

One of the earliest lessons I learned was during my first little league football game when I was eight years old. I played middle linebacker and I remember my dad was there, excited and proud to watch me. Unfortunately, the game did not start off too well. We were losing pretty bad and my team was down 17-0 right before half time. Near the end of the half, the other team ran a running play

in which they handed the ball off to the tail back who ran right up the middle. He ran right pass me and I gave chase, running about 50 yards down the field. About the 20 yard line, I gave up, threw my hands up, and watched him run into the end zone. At that point, the half ended and I dejectedly walked off the field. Before I could get into the coach's huddle, my dad pulled me aside. He grabbed me by the front of my jersey and pulled me real close to his face. He said through his clinched teeth, "Son, I don't care if you win or lose, but you're a Sampson, and Sampsons never ever quit! I better not ever see you quit again."

The second half started and the other team started the half with the ball. They ran the exact same play, handing the ball off to the running back who ran up the middle right pass me again. Again, I gave chase and about 40 or 50 yards down the field, I caught him with a horse collar tackle. He fumbled the ball and my team recovered. We eventually scored and that play sparked our miraculous come back and victory. When I walked off the field, I saw my dad's beaming face and he said to me, "See, son, that's what happens

when you never ever quit.”

That’s who my dad is - a man who never ever quits.

Life Lesson #2

If anyone knows my dad, they know Tombstone is one of his favorite movies. Tombstone is an account of Wyatt Earp and Doc Holliday and the fight at the OK Corral. My dad’s favorite part is the scene in which Doc Holliday catches up with some of the Cowboys after they had shot and killed his brother. He kills several Cowboys and beats another to a pulp. My dad’s favorite part is when he gives a message to the beaten Cowboy to take back to the other Cowboys. Doc Holliday tells them, “You tell ‘em we’re coming and hell’s coming with us.”

My dad has told that story a thousand times in our office to whomever would listen. In fact, every time he tells this story, he acts as if we are all hearing it for the very first time. Every person in the office can probably recite the story even if they have never seen the movie. My dad is certainly not shy about telling the story.

I remember during one presentation the firm was giving to a Fortune 500 company we were attempting to get business from, the general counsel

of the company asked us what our litigation philosophy was. My dad looked at the general counsel, got that gleam in his eye, and said, “Have you seen the movie Tombstone?” I looked at my partner, Jeff Tompkins, and thought – “here we go again.”

But that has been the philosophy that has been ingrained in the firm he built.

And that’s how we treat every single client we have. Every trial is like a near death experience. Every client gets the same treatment. My dad has a saying, “If you are too big to work on the small cases, you’re too small to work on the big cases.”

Every client gets the very best that we have.

Life Lesson #3

The final story I’ll leave you is a personal one.

My dad has always been a good friend to me. He’s always been there to lend a helping hand or to give me a pep talk when I needed one. I remember during one particularly dark time in my life my dad saw that I was going through some things. He came and sat down and asked me what was going on. I explained to him the many things that caused me to be depressed. He listened and at the end of me spilling out my most

personal demons, he said, “Son, you need to go to church and you need to get God back into your life.” I took my dad’s advice and things got much better for me. I came out of the dark hole I was in. My dad uncannily is almost always right.

Now some may ask how putting God and family first makes you a better lawyer. Well, I’ll tell you. Having the right perspective about the priorities of life helps you approach this profession the right way. My dad is the consummate professional. He carries himself with a certain grace and dignity that I have seen no other lawyer exhibit. To my knowledge, he has never lost his temper nor spoke disparagingly to another lawyer. He has treated this profession as the noble profession and has acted accordingly.

Dad, I want you to know that I could not be more proud to be your son. I want you to know that I love you and I thank you for all the life lessons you have taught me. I could not think of a person more deserving to receive the Tradition of Excellence Award from the State Bar. If I could be half the lawyer that you are, I will be twice as good as everyone else.

Ladies and gentlemen, I present
Thomas G. Sampson, Sr.

Remarks by

Thomas G. Sampson

When my friend John Timmons called my office in early March with the message that he had good news – my first thought was that maybe he had a good referral since we had worked together before. Instead, John informed me that I was one of the recipients of the State Bar’s Tradition of Excellence Award. I was literally speechless.

To say that I am extremely humbled and honored to be a recipient of this award does not ade-

quately express the depth of my feelings. Being chosen to receive this award, joining the ranks of the extraordinary past recipients, is a singular honor for me and one that I will cherish forever.

I am honored to receive this award along with the co-honorees:

Judge Alvin T. Wong, Laura Austin and Philip C. Henry – to whom I extend my sincerest con-

continued on next page

Remarks by Thomas G. Sampson

continued from previous page

gratulations.

Upon learning of this award and reflecting on it, my first thoughts were of my loving and inspirational parents, the late George and Claretta Sampson. I grew up in Durham, NC during the heart of the Civil Rights Movement -- 1950s and 60s. My father was a lawyer and served as dean of the law school at North Carolina Central University. My mother was an English professor there. As teachers at heart, my parents expected excellence, particularly excellence in education. They understood the value of education and insisted that my three siblings and I make the most of our educational opportunities. My parents knew that education was the fastest and most sure-fire way to achieve the American dream. They had made the most of their educational opportunities and impressed upon their children to do the same. Of their four kids, they produced three lawyers and a doctor.

My dad was always my hero. He inspired me to become a lawyer, never failing to point out the significant work lawyers were doing during the Civil Rights Movement. And while I greatly admired the work of Thurgood Marshall and the many other lawyers who participated in the Movement, the lawyer I admired most lived in my house and counseled and guided me every day. My dad was the smartest person I have ever known. But he wasn't just smart. He was kind, compassionate, and caring. He was an extraordinary human being. I followed his steps to Morehouse College, his alma matter, and then on the law school.

My dear mom was a drill sergeant who could compete with anything the military had to offer. She insisted upon work before "play", and demanded that your "work" be impeccable.

In reflecting on the importance of my mom and dad in my life, the title of Oprah Winfrey's magazine column comes to mind -- What I know for sure. You see, what I know for sure is that I would not be standing before you today without the love, inspiration and support of my parents, and I thank them.

I also know for sure that there are many others without whom I would not be standing here this

morning. First among them is my dear wife of nearly 50 years, Dr. Jackie Sampson. I met Jackie when I was at Morehouse and she was at Spelman. She was my college sweetheart and has been my soul mate for life. After I finished law school at Chapel Hill, Jackie and I came back to Atlanta. I started practicing law and she worked on her Ph.D. at Emory. We lived in Emory campus housing back then. We have come a long way since those days. Jackie has stood with me through good times and bad, never ever wavering in her love and support. I am here today because of her.

I also want to thank my children -- my son and law partner, Woody Sampson, and my daughter, Dr. Alia Sampson Brown. They have been my most ardent cheerleaders. I could not be more proud of either of them. Woody, thank you for the wonderful introduction. It was heartwarming. Your grandfather would be proud of you today, but no more so than I am.

I want to acknowledge my dear friend and law partner, Jeffrey Tompkins. Jeff has practiced with me for 30 years, his entire career. I have leaned on him heavily through the years for his wise counsel and advice.

Finally, I want to thank the TKST family -- the lawyers and the support staff, many of whom are here this morning -- for their support and loyalty and for the vital role they have played and continue to play in our firm's success.

46 years ago, I set out with my late partner John Lauren Kennedy to build a law firm. I did so, taking to heart the teachings and lessons of my parents. They preached relentlessly about "giving your" best no matter what you did, in striving for the highest heights no matter what you were doing. They inculcated values such as honesty, fairness and compassion. Thus, throughout my career I have felt that it was my obligation, indeed my duty, to go far beyond what was minimally required or expected, but to rather push the boundaries and to be the best that I could be.

As a college student I was fortunate to attend Morehouse during the presidency Dr. Benjamin E. Mays, just as my father had. Dr. Mays was unquestionably one of the greatest educators of the 20th Century, and the impact he had on the

lives of so many African American men is unparalleled. He didn't just inspire Dr. Martin Luther King, Jr., he inspired legions of African American men to aspire for excellence and the highest of heights. His influence and mentorship made a lasting impression on me. I have also tried to live by one of Dr. Mays' notable quotes:

Whatever you do, strive to do it so well that no man living and no man dead and no man yet to be born could do it any better.

I shall continue my quest to reach that goal.

Thank you.



We can always use
articles for Calendar
Call future editions.

If you would like to submit
an article along with bio and
picture to:

David Sleppy,
Editor Calendar Call
649 Irvin Street
P.O. BOX #689
Cornelia, GA 30351
dsleppy@catheystrain.com

GENERAL PRACTICE

LAURA E. AUSTIN



Introduced by
Joe Weeks

Tradition of Excellence Award

Good Morning,

I have the distinct honor of introducing the 2017 Tradition of Excellence Award Recipient in the General Practice category.

Laura Austin graduated from Texas Women's University with a Bachelor of Science Degree in the field of Nursing. She began her medical career at Parkland Memorial Hospital, in Dallas, Texas, saving lives in the critical care burn unit. Of course, having only one full-time job was simply not enough, so she simultaneously worked nights and weekends for a law firm, and later for the courts in Dallas.

Her legal ambition was fueled by her uncle who had served in the Texas Attorney General's office. She considered attending medical school, but decided that being a trail-blazing trial attorney was her true ambition.

She worked her way through law school while raising a family and working a full-time job. After law school, she established and operated a medical staffing business, practiced law, and in her spare time, served with distinction as a Judge in the Cobb County Magistrate Court.

I think we see a pattern, here.

Laura is a certified mediator and arbitrator and has served as an expert witness on many medical cases. She is AV Rated by Martindale-Hubbell and continues to maintain a busy practice. She won't be able to fully enjoy this weekend because she has a complex medical malpractice case beginning next Monday.

About two years ago, Laura accepted representation in a case for almost no fee. A young man was in serious trouble. Laura realized that this young man could be saved; however, he was addicted to Xanax and had experienced a psychotic breakdown. Wearing both her medical hat and her lawyer hat, she obtained appropriate treatment for that young man and resolved his legal issues. By the way, that young man successfully completed his freshman year of college a couple of weeks ago. That story represents the way that Laura practices law every day.

If I had one word to describe Laura, it would be: tenacious. She is tough and unrelenting when she fights on behalf of her clients. I believe it was Shakespeare who

observed that, "Hell hath no fury like
Laura when she is really P.O'd."

It is with great pleasure that I present
to you, the 2017 Tradition of Excellence

Award Recipient, Laura Austin.

Remarks by
Laura E. Austin

An attitude of gratitude is required for such an honor! In my 38 years of service in law, I have so many who have contributed to my success – and being able to surround myself with the amazing litigators of our section has humbled me. First, I want to thank and honor Betty Simms who first introduced me to this section and without whose constant support and direction I would never have been able to get to this level. Joe and Pam Weeks, thank you for always being there for me.

Then, there is my sweet mother, Darlene Stewart, who taught me strength and perseverance as the oldest of 7 children. Her work ethic and ability to multitask brought me to the forefront at a young age. Her continuous efforts to improve her situation in life through hard work and study were a perfect example for me to follow.

My uncle, Edgar Cale, who was an Assistant Attorney General for the State of Texas was a quiet suggestion of where I would wind up after I started nursing school. When Joe asked me, why law, I told him that when I was working at the burn unit at Parkland Memorial Hospital and part time in the law office, the lawyers seemed to have a lot more fun than the residents I worked with and I just didn't want to work 24/7 – LITTLE DID I KNOW HOW JEALOUS THE LAW COULD BE OF MY TIME!

I must thank my children, Elizabeth and Jessica, who gave up parts of their childhood for me.

Elizabeth Malcom and her husband, Travis lent me their talents especially in computerization as that has never been my strength. Liz has taught me how kindness and love could be incorporated into my practice without losing legal strength so I could pursue my dreams. Now I support her dreams, whatever they may be.

And my daughter Jessica Austin-Hashimoto, an accomplished 911 trainer for Cherokee County and air craft carrier veteran who trained to Olympic standards in ice skating has shown me her strength and compassion as she forges forward

for her degrees and helps those with less strength in crisis situations. She has made me the proud grandmother of my only grandson, Anthony Colazo, an outstanding ROTC cadet, swimmer and student who I pray makes his mark on the world in a big way for the good of mankind.

And lastly, thank you to my husband, Greg Moss, who has sacrificed so much of our time together so that I could chase my dreams. You know, he told me the one thing he remembers from McGiver and Murder She Wrote, two of the few programs that he was able to get in South Africa, was the novel concept of "innocent until proven guilty" that America stood for. Now that he's a proud U.S. Citizen, he has seen how our system of justice works and he's behind me all the way fighting for justice.

So in looking at how I got here, Joe Weeks asked, "Laura, how did you get to be a Judge and why did you go from nursing to law?"

My sales pitch was-

My education and experience have allowed me to develop a success oriented approach to all matters, whether they be management, nursing and medicine, final decision making, financial, legal or entrepreneurial efforts.

I am a "think outside the box" creative and energetic professional who believes that to capture the hearts, loyalty and most creative energy of the clients and staff you work with, you must inspire them by both word and deed through example. I do not fear making unpopular decisions.

My loyalty to my team/clients/colleagues/family is unmatched and I'm free to travel or relocate! I have and will gladly speak publicly in any arena called upon. I love to share what I learn!

I believe I can do anything- put it before me with clear expectations, sufficient information and resources to get it done and I'll do my best to accomplish the task! I am a credentialed mediator

continued on next page

Remarks by Laura E. Austin

continued from previous page

and arbitrator and have sat as a Judge so I speak with authority about the facts. However, being practical and learning to find reasonable solutions in this day and age is a priority.

I can produce numerous current client, employee and attorney recommendations for consideration of my true focus of professional representation.

My foundational skills are vast and afford me the knowledge base that most people find challenging. I'm a little smart but tenacious for resolutions. I can troubleshoot a problem, situation, case, and prioritize effectively. I am a problem solving, hard working quick study for new material.

I have been gifted with keen intuition and a wonderful spiritual compass to work with my clients, associates, opposing counsels/parties and numerous State and Superior Court Judges -- this alone is a remarkable blessing that can't be taught, only learned through experience and

demonstrated effectively in daily practice with integrity.

Mutual growth and benefit...that's the goal. I have been a Supervising Manager and successful entrepreneur and know first hand how important it is to not waste payroll dollars and time. I don't forget those who started like I did, at the bottom, and worked their way up.

Although from a modest law school, I worked my way through which I am proud of. I like to think that I am creative, use humor and serious management styles combined to get the job done of evidence.

And Lastly, I am so grateful for all of those that supported me and mentored me and shared with me their pleadings, their advice, their suggestions and knowledge. You have all made me who I am and I appreciate it.

**It is time to start
thinking about a
worthy candidate for
the 2018 "Tradition of
Excellence" award.**

Go to the section webpage at gabar.org and click on section then section webpages and follow the prompts. You will find the nomination letter, the nomination form and list of past recipients. We need your nominations by March 02, 2018 in order to be considered by the nominating committee.

JUDICIAL

JUDGE ALVIN T. WONG



Introduced by
Judge Dax Lopez

Tradition of Excellence Award

I have the honor and pleasure today to introduce my colleague, my friend, and my mentor, the remarkable Judge Alvin T. Wong. When people speak of Judge Wong, the same words are often repeated: Trailblazer, founder, pioneer, pathfinder. While these are apt descriptors, I think of him differently. When I think of Judge Wong, here is what comes to mind.

The Court of Appeals affirms his decisions before he makes them.

His rulings are typically welcomed with standing ovations.

Supreme Court justices ask him for his autograph.

Defendants send him thank you cards after he puts them in jail.

He makes walking a dachshund named Coco through Decatur square look manly.

He makes doing step aerobics look cool.

For me, he is indeed the Most Interesting Judge in Georgia.

From the time he immigrated to the United States from Hong Kong at the age of 14, Judge Wong's path to the bench can be described as anything but typical. When he first arrived in the U.S., his father enrolled him at the Fishburne Military School

in Virginia.

After obtaining an undergraduate degree from Auburn University, he moved to Atlanta and started working as an insurance underwriter. But Judge Wong knew he was not passionate about the insurance game, so he decided to attend night classes at the John Marshall Law School, where he obtained his JD.

When he graduated, I think it is fair to say that Judge Wong was young and hungry and essentially unemployed. He would hang out at the courthouse offering his service to any attorney willing to employ him or teach him the practice of law. I think many a young lawyer graduating today should take a lesson from Judge Wong. In hopes of learning his trade, it was not uncommon for Judge Wong to take court appointed cases where he could charge \$25 for a misdemeanor case and \$50 for a felony case.

For the next 18 years, Judge Wong was the epitome of a street lawyer, a true generalist, the last of a dying breed of lawyer. But his work caught the eye of a prominent Atlanta law firm, Gambrell Stolz (which is now

continued on next page

Introduction by Judge Judge Dax Lopez

continued from previous page

Baker Donelson). They recruited him to join their ranks as a partner and why not, he was after all at that time probably the most interesting lawyer in Georgia.

During this time frame, Judge Wong demonstrated leadership in helping to address many of the diversity issues facing our profession and also mentored many young minority lawyers. To that end, Judge Wong was instrumental in founding The Georgia Asian Pacific American Bar Association, an organization that is thriving to this day as evidenced by their sold out Gala just a few weeks ago. He is also significantly involved with the National Asian Pacific American Bar Association, and he continues to chair its law school moot court competition. His commitment to diversity is so strong that he was a founding member of the Georgia Hispanic Bar Association.

In 1998, Judge Wong announced he would seek election to the DeKalb State Court. In doing so, he became the first Asian Pacific American to seek election in Metro Atlanta. In a race of 5 candidates, Judge Wong first made it into a runoff and then emerged victorious in the general election winning by only 430 votes. By winning, he became the first Asian Pacific American to win a judgeship in the entire southeast.

Since his election almost 19 years ago, Judge Wong has left an indelible mark on both the judiciary and the profession as a whole. Here are just a few highlights.

In 2004, he helped establish the DeKalb County DUI Courts, one of the first substance abuse treatment courts in the State of Georgia. He has presided over this court ever since, and has helped countless individuals transform their lives while making our communities and particularly our streets safer.

He has served on numerous bar and civic organizations including: DeKalb Volunteer Lawyers Foundation, Board Member; Atlanta Bar Association, Chair, Judicial Section; Georgia Commission on Access and Fairness in the Courts; State Bar Disciplinary Board's Investigative Panel, Chair; Judicial Council of Georgia's Pro Se Litigants Study Committee.

He is the recipient of too many awards to name. Indeed, at some point they ran out of awards to give him so they named one after him and since 2014 GAPABA awards the Judge Alvin T. Wong Pioneer Award.

Some interesting tidbits you may not know about Judge Wong:

What other Judge has had a public beef with a rock star? A few years ago, Judge Wong sentenced Kid Rock to 80 hours community service. Kid

Rock asked if he could serve that time playing concerts for the troops in the Middle East. Judge Wong declined and thus ensued a major battle which has spilled over to YouTube and some other media outlets. Take a moment and google it.

A few years ago, the New York Times sought to identify the characteristics that would lead someone to be happy. They identified the following would make people happy: tall, Asian, Jewish, married and over the age of 60 living in Hawaii. Interestingly, they found one man who fit that description and his name is Alvin Wong. While our Al Wong only fits a few of those characteristics, it is not a stretch to say that our Al Wong is very happy.

On a personal note, Al has been a mentor and friend to me while on the bench. Whenever I am struggling with a difficult decision, I can always count on Al to give me sound advice. Al has strong legal instincts that balance what the law requires with what justice requires. I am lucky to be able to call him my colleague and more importantly, my friend.

Judge Wong is truly deserving of the 2017 Tradition of Excellence Award, as he is after all the Most Interesting Judge in Georgia.

Remarks by Judge Alvin T. Wong

Good morning. Thank you for joining us at this incredibly early hour. And thank you for this incredible honor.

I was born and raised in Hong Kong – a U.S. citizen because my father had served with the U.S. Marines during World War II.

I was so well behaved that my parents shipped

me off to military boarding school in Virginia at age 14, saying “do well, son.”

This Sunday, June 11th, marks 42 years since I was sworn in as a member of the State Bar of Georgia. It was a thrilling moment, followed immediately by: what in the world do I do now?

I owe a debt of gratitude to two respected law-

yers, who helped shape my future.

Attorney Hugh Head gave me my first job as a law clerk, while I waited for the bar results. Six months later (on my 25th birthday), he told me, it's time to go out on your own, you're fired. But not before giving me the chance to try my first civil case.

Judge Charlie Weltner (later Chief Justice of the Georgia Supreme Court) appointed me to my first felony case (drug possession with conspiracy to distribute) in Fulton Superior Court, for a whopping \$50 fee.

So, within one year of being admitted, I had already tried a civil and a criminal jury case. I was totally hooked on the adrenaline of the courtroom.

After practicing for 20-plus years, I decided to pursue a lifelong dream to become a judge -- the pinnacle of our profession.

In 1998, I ran for the State Court bench of DeKalb County -- and won by a slim margin, beating out four other candidates.

The victory galvanized the Asian American community like never before, and we made history as the first APA judge to be elected in the southeast.

Part of the credit goes to my role model and mentor, Ronald Lew, now a Senior U.S. District Judge of the Southern District of California.

He counseled me about running for office; treating lawyers and litigants with respect; seeing the big picture in every situation; and most importantly, giving back to the community.

My commitment to community service began unexpectedly.

I will never forget how excited I was to get my first minority bar directory -- only to find African-American and female lawyers listed inside.

I called my friends at the State Bar and said: "What do I look like, a potted plant?" That's when I learned the lesson, be careful what you ask for!

Next thing you know, I was involved in all kinds of volunteer activities, both in and out of the legal community, and in and out of the Asian community.

In 1993, Law Professor Natsu Saito and I decided to start a Georgia chapter of the National Asian Pacific American Bar Association.

We went through the State Bar directory, circling the names of anyone who sounded like they

might be Asian, and managed to find 10 people, the minimum needed to form a local chapter. Today GAPABA is 400 strong.

I was only the second APA lawyer admitted to the Georgia Bar (back in 1976). For the next 10 years, there were no others around.

Today, we are an integral part of the legal landscape.

At my swearing-in ceremony -- on a particularly chilly January day-- my former law partner and current ABA President Linda Klein quipped: "It will be a cold day in Decatur, when Al Wong becomes judge!"

When Justice Carol Hunstein administered the oath of office, little did we know -- that I would be the first and only APA trial judge in a court of record in the south, for over a decade.

Little did we know -- that it would be 12 years, before Judge Carla Wong McMillian (an Augusta native) would be appointed to the Fayette State Court, and then to the Georgia Court of Appeals.

Little did we know -- that it would take 16 years before Meng Lim would stand for election in rural Georgia (Tallapoosa Circuit) and beat the odds to become the state's first APA superior court judge.

It is the business of the courts to protect and safeguard the constitutional rights of everyone.

A diverse judiciary reflects inclusion and gives the public confidence and trust that their communities will have a voice.

That is why I remain vigilant about diversity issues in the bar.

Our courts must reflect the fabric of the communities in which we live.

The past 18 years have flown by in the blink of an eye, 18 amazing years. And I have loved every minute of it.

We lost my father back in 1979. Not until then, did I understand and appreciate the sacrifices my parents made, to provide an education for me and my siblings.

I would like to think, if he was here today, that he would say: "Well done, son!"

Finally, I want to thank each of you -- for all you do in the community; for being champions of justice and all things good; for letting me be a part of the Georgia Bar family... and honoring me in such a special way.

Thank you!

PLAINTIFF

PHILLIP C. HENRY



Tradition of Excellence Award

Introduced by
Harvey Spiegel

I cannot tell you how honored I feel that my friend Phil Henry asked me to introduce him. But I believe that the true that the mark of a man is not what his friends say, but what his adversaries say. And for Phil, that is universal praise. Every conference I have ever been to where a defense attorney mentions the names of plaintiff's lawyers they respect or admire, invariably Phil's name is on that list. Phil is routinely referred cases by defense attorneys, and often by medical malpractice adjusters whose family members have medical legal issues, and once he was even referred a case by a doctor he had formerly sued.

To what does Phil owe this universal admiration and his incredible success?

First, a little history. Phil grew up in Lafayette, Georgia. His father did not have the opportunity to go to college, but he valued education and made sure that his children went to college, and two of them, Phil and his brother Bryant, went to law school. Phil graduated from UGA undergrad Samford law school, both with honors. Before law school he married his wife of 43 years, Sue. They have 2 wonderful children, and now, his true

pride and joy, 3 beautiful granddaughters. After a year practicing law in Birmingham, Phil moved to Atlanta and joined Phillips Hart and Moseley in 1980 doing insurance defense, primarily medical malpractice defense. Seven years later, Phil and two other defense attorneys left the financial comfort and stability of good defense practices to form a plaintiffs firm specializing in medical malpractice and other personal injury cases. The first few years were difficult. They started the firm with almost no cases and no money. They took out second mortgages to pay the bills. But after a few years Phil was on a roll. And that roll has continued to this day.

Perhaps that history demonstrates some of the qualities that have led to Phil's success. The optimism and courage necessary to leave a stable defense job is the same optimism and courage he instills in his clients and demonstrates to the jury. Also, Phil has a incredible enthusiasm for the practice of law. He is not the kind of lawyer who lets others do the work and then jumps in as the closer. Rather, he is intimately involved in his cases from day one, from the drafting of the complaint through depositions and motions

and trial and appeal. And when he gets his teeth into a case, he does not let go. If one angle does not pan out, he tries another. He sees both the forest and the trees- he knows the day-to-day details of the case but also can see the big picture and the overriding principles. And he has an incredible mind. I don't know how many times I have discussed an issue in one of my cases with Phil and he will bring up some point from a deposition of another witness a year earlier that I had completely forgotten about. And the crazy thing is, I had taken the deposition and had only told what had transpired to him, but he remembered the detail. And I can not count how many times when discussing legal issues Phil says something like- there was a case about 30 years ago that held such and such. And he is always right.

One of the truly special things about Phil is his steadiness, his absolute calm. He is completely unflappable. And it is that calm and steadiness that endears him to clients and jurors alike, not to mention his partners who find his calm a stabilizing force in difficult times. How can you not trust someone who exudes such confidence and authority without any hyperbole or exaggeration. Phil is never flashy, and almost never raises his voice. I say almost never because

usually during closing argument Phil does get angry. And when he does, it comes as such a shock to everyone in the courtroom that his point rings true.

Phil exudes confidence. I don't know if it is a confidence that comes from done plaintiffs and defense work so he can see both sides, or from knowing he is as prepared as he can possibly be, or if it comes from just being Phil. But the confidence is real. It was demonstrated several years ago at a trial against an emergency room doctor. Phil was just finishing up the Plaintiffs case. His world renown ER expert had just decimated the defendant doctor. The jurors came back into the room after a break and an elderly juror fell and smashed her head. The defendant doctor immediately rushes over to assist the injured juror. For those of you who do not do medical malpractice work, this is a nightmare for a plaintiffs lawyer. The defendant is now the hero. Of course EMS was called and the juror transported to the hospital. Dogma says you ask for a mistrial. But Phil was confident that he had put on a convincing case, that it had gone well, and he did not request a mistrial. The jury returned a nice verdict for the plaintiff. After the verdict Phil polled some of the jurors and asked them how this incident affected them. One juror looked

at him and said, didn't you hear what she was saying. Phil said no, what did she say. She said "Don't let him touch me, don't let him touch me."

Finally, the trait that best characterizes Phil is integrity. Defense attorneys and malpractice adjusters send their friends and family to Phil because they know he is scrupulously honest. From providing an honest and thorough evaluation of a potential case, to dealing honestly with the client and opposing counsel, to presenting an honest case to the jury, Phil is all about the truth. And Phil genuinely cares. In his understated quiet way he demonstrates concern and kindness not only to his clients and his law partners, but also to young lawyer. He has helped countless young lawyers start out on the plaintiff's side, and has even been a generous and understanding adversary for young defense attorneys. He aggressively pursues his cases through a keen intellect and exhaustive preparation, not by taking cheap shots or unnecessarily harassing the other side.

Tom Carlock said "Phil is what we call quality, quality all the way." And so I present to you one of the finest lawyers I have ever known, Phil Henry.

Remarks by

PHILLIP C. HENRY

Thank you Harvey for that very generous introduction. You know how much I respect and admire you, so those comments mean a lot to me.

Let me begin by congratulating Laura, Judge Wong, and Tom. Also, my sincere thanks to the General Practice and Trial Law Section of the State Bar for this very special award.

We all know that an award to a single person that recognizes a history of activity over a long period of time is founded on guidance, support and help from many others who are not up here

with me but who are equally deserving of recognition.

Like all others, I stand here because of the many who have guided, taught and supported me my entire life.

Forced to reflect on why I am here, I realized I have benefitted from two different families; my legal or professional family and my non-legal family.

Mine is not a hard luck story or a tale of hard-

continued on next page

Remarks by Phillip C. Henry

continued from previous page

ship with regard to either of my families.

Instead I have been blessed from day one by both families.

Biologically, I hit the parental jackpot. My parents were unbelievably good people. They provided love, support, encouragement and guidance at every step along the way. They taught by example the virtues of hard work, honesty and decency in all that you do. Each received recognition and awards by and from their community for all the contributions they made. There is a street in my hometown of LaFayette, Georgia named after my father called Fred Henry Avenue. It leads to the local golf course that he worked tirelessly to create. There is a day named in honor of my mother, Emily Henry Day, in recognition of her love of and contributions to the City of LaFayette. These are but one example for each representing years of giving of themselves.

My brother Bryant, and my sister Marilyn, were cut from the same cloth. Being the youngest, I benefitted from the way they carried forward the examples laid down by our parents. That continues to this very day.

I then had the incredibly good fortune, while still a teenager in college, of having a blind date with the beautiful young girl who would become my wife. Sue and I are now celebrating our 43rd year of marriage. She has been a tremendous partner to me in all aspects of my life. She is what some call a lifer. We married before law school, so she supported me financially and emotionally while I was in law school. Every step along the way she has provided support, encouragement and wise counsel about professional and non-professional issues that have appeared over the long course of time. Here is one example of her trust, encouragement and belief in me. It was 1986. Our first child was one year old. I was gainfully employed, happy in my work, making decent money and most importantly, secure in my future. Those are very important features for that time of life. I received a call on a Wednesday from a friend telling me he and another friend were leaving their firm the following Monday to start a new firm and wanted me to join them. This was completely out of the blue. If I went with them, we would be switching from a defense

firm, with hourly work and steady paychecks, to become a plaintiffs firm. We would be taking no business with us and we would have no income for the foreseeable future. Sue was out of town with our daughter visiting her parents. I called her and told her about this invitation. I asked her what she thought. She said if it is something you want to do, do it. I did it. Under no circumstances would I be standing here this morning without her belief in me and her support.

Together, our two greatest accomplishments are our children Elissa and Alexander. They bring me great joy and have certainly kept me grounded. I have appreciated their support and understanding over the years when the practice of law sometimes kept me from being there with them, whether physically or emotionally.

Now let me recognize my professional family. I had the good fortune of working for a solo practitioner by the name of John Lavette both during and after law school in Birmingham. He was a true independent spirit. He was committed to giving voice to those who did not have one. He recognized the importance of every person having access to good legal representation in order to provide a level playing field no matter what ones social or financial status. It was a great beginning in the trenches.

When I came to Atlanta in 1980, my boss was George Hart. He was a fearless defense lawyer who was also a very decent human being. Despite a strong desire to win every case, I learned from George that litigation has boundaries, some legal and some moral, and that it is not all about winning. That is a valuable lesson for a young lawyer early in his career seeking to make his way.

Over the last two decades, I have had the privilege of practicing with an assemblage of lawyers and staff that I think have no equal. The lawyers, Harvey Spiegel, Clay Milling, Wendy Huray, Marla Eastwood and along the way, Joe Fried, along with our staff of Angel Moore, Debbie Sullivan, Trish Keeney, Melanie Wheeler, and previously Shawn Smith, are just stellar. Their dedication, pride in their work and work ethic permeates everything they do. They have all been great partners in every respect.

Finally, I will always have a special fondness for my collaborations with Wendy and Marla. Although diminutive in size, they are giants in every other respect. Almost daily, I find myself sitting in my office with them discussing issues, problems, strategizing or being schooled on the law by them. Those two, along with our nurse Debbie, who pa-

tiently schools me on medicine, make me appear smarter and better than I ever could have hoped to be.

I am very humbled by and grateful for this recognition and share it with many others. Thank you.

Winning Mediations Through Professionalism

The Tone & Tenor of Mediation

By: Rex D. Smith

Henning Mediation & Arbitration Service, Inc.

3350 Riverwood Parkway, Lobby – Suite 75 Atlanta, Georgia 30339

(770) 955-2252

rsmith@m-legal.com



Rex D. Smith was admitted to the Georgia Bar in 1976. In his 40 years of active practice he tried over 100 cases and had a strong trial and appellate practice. Mr. Smith has handled over 2,250 mediations/arbitrations. He has been selected by his peers to "Best Lawyers in America", "Georgia Super Lawyers" and holds the AV® Preeminent rating, the highest possible Martindale-Hubbell Peer Review Rating. Is experienced in personal injury, construction, products liability, wrongful death, professional negligence, medical malpractice, aviation, nursing home litigation and premises liability law.

Dispute resolution has been an integral part of society since the dawn of humanity. The Bible's admonition of an eye for an eye was actually an early form of limiting the response when one was injured by another. Early on when a man was injured his clan would respond to the injury by killing the malfessor, his brother, wife, manservant, maidservant, donkey and anyone who looked like him. Killing feuds were the order of the day.

The Code of Hammurabi was one of civilization's earliest codifications of the law and also established a measured response:

*If a man destroys the eye of another man, they shall destroy his eye.
If he breaks a man's bone, they shall break his bone.¹*

One early form of dispute resolution which perfected the art of candle making was in Burma where each contestant would light a candle at the same time and the winner was the owner of the candle that burned the longest. One that I'm sure would please the soccer fans of today was found in New Guinea where an aggrieved party would round up his friends and relatives to stand face to face with his aggressor and his clan with hands behind their backs and kick others shins until one side retreated².

We find humor in these methods until we recall our antiquated custom of dueling. At least the earlier forms of dispute resolution did not lead to the death of prominent members of society, yet in 1804 the Vice President of the United States shot and killed a person of such renown and respect that his portrait is immortalized on our currency: Alexander Hamilton.³

Our Anglo-Saxon heritage went through various forms of seeking resolution of issues indulging such time honored variations as carrying a hot iron for 9 paces to see if a man's hand was burned, throwing the malfessor bound by his hands and feet in the water to see if he would float (thus rejected by the water and guilty) or sink (thus guiltless but no less drowned) and my personal favorite retrieving brass bracelets from boiling water to determine guilt by whether or not the skin was burned.⁴

From these early objective but presumably flawed techniques our heritage led us to the jury system which has matured into a cornerstone of our democracy. However, litigation has its problems leading William L. Dwyer⁵ to identify the six deadly sins of litigation. Dwyer compared them to six of the seven original Seven Deadly Sins.

1. Overconcentiousness = anger.



2. Expenses = avarice
3. Delay = pride (*in the form of a stubborn refusal to change outmoded ways*)
4. Fecklessness = slough
5. Hyper-technicality = envy (*hyper technical judges envy, and try vainly to emulate, the deities' unique quality of perfection*)
6. Overload = gluttony

Our focus in this paper is how do we avoid the deadly sins in litigation through the use of mediation and their resultant poisons, anger, expense, delay, etc in order to conduct a trustful, contention free and successful mediation.

Prepare for Mediation Like you Prepare for Trial

Imagine this scenario. You receive a call from a new client. He advises you that he has a significant trial that begins Monday morning at 9:00 AM. He suggests that you meet at the courthouse at 8:30 Monday. He will tell you all about the case then and you can try the case right after that at nine.

I would anticipate you would feel more preparation should go into the process. Unfortunately some attorneys view mediation as requiring the same preparation as this misguided client.

If you have ever painted a house you may have hear the old adage: "Painting is 90% preparation 10%

application." Edison once described genius as 99% perspiration and 1% inspiration. Trials and mediation to be performed at the top of our craft require the same sweat equity. You must prepare carefully. Think through your case. Prepare your outlines. Research the law that may be important. Organize your file so that all necessary documents are readily available. Prepare and think carefully about your opening presentation. The skills you use in the courtroom are readily transferable to mediation and are best delivered when honed. Prepare, prepare, prepare. Do not be like many lawyers who in the course of the mediation begin diving in their brief cases and staring at the floor with their head under the table and speaking to the floor "I know these documents are in here somewhere".

In this paper we will discuss the basics of mediation preparation and presentation.

Organize the Team

Prior to the mediation the foundation should be established by careful thought as to who will attend the mediation. The logical starting point is the mediator. Attention needs to be paid to not only how well the mediator

is acceptable to your side but is the mediator a person that will be accepted and respected by your opponents. Highly emotional cases need skilled diplomats to diffuse the emotions.

As counsel you are significantly responsible for input into the decision as to who will represent your side of the case. Do you bring a named Defendant such as the driver of a truck owned by a trucking company? If insurance is involved do you bring an adjuster or claims professional with little skill in handling mediations or ask for a representative who is more seasoned? Does the case call for gender considerations? In a sexual assault or sexual discrimination case should your company representative be a woman?

A major reason mediations fail is because one party does not bring a person with sufficient authority to resolve the matter. In an insurance setting at times the defendant will send a representative with little or no authority. To add to the difficulties the person present has no ability to reach a person with the authority to resolve the matter. I believe that if all parties with appropriate authority are available that a significant number of additional cases could be settled at mediation. There are certainly cases where the parties have legitimate good faith differences of opinion as to the eventual resolution

continued on next page

The Tone & Tenor of Mediation

continued from previous page

of the case. Some cases simply are not ripe. Additional information has to be developed. An expert may need to be deposed as the parties have divergent positions to the final opinion of the expert. Sometimes there are outstanding claims that exist that rulings on motions for summary judgment are essential for the resolution of the matter. Some cases simply need to be tried.

You as the litigator need to think through all the issues of who is needed to be around the table to resolve the matter. If a person or representative that you think is essential to resolution is not available to you, give the party who has the ability to have that person present a call and make sure they will be available. A defendant may call the plaintiffs counsel and confirm the plaintiff will be present or if for some reason they are not, satisfied themselves that the Plaintiff will be available by phone or full authority rests with a representative who will be present. A common occurrence is that there are multiple layers of insurance coverage for a defendant. If a plaintiff knows that the case can not settle within the underlying limits of insurance a call to the defendants counsel inquiring as to the availability of a representative of the excess carrier may be very prudent.

Once you have organized your team, have a team meeting. Best plans are assembled in person but at least prepare your representatives by conference call. You, as counsel, are the quarterback, the choreographer, the director and each member of your team has a role to play. They will play it best when they know your blueprint for a successful mediation.

Keep Your Eyes on the Prize

A major step in a mediation and helping to build a bridge to success is to know clearly what your objec-

tive is. The obvious objective is to resolve the dispute, settle the case, agree to a resolution or bring the parties to a meeting of the minds. Unfortunately, many of us and our clients from time to time have failed to see the obvious and have other agendas. Your opponent may want to show the other side he's right and you are wrong. Other objectives can be:

- (a.) Delay;
- (b.) Teach those sorry so and so's a lesson;
- (c.) Annoy, aggravate or irritate the other side; and
- (d.) Discovery

In my opinion while every mediation must be approached with a good faith effort to resolve the dispute, don't lose sight of the fact that a mediation is worth its time and expenditure for the information you are provided on a silver platter by the other side.

Where else can you get the other side to sit down and brief you on their case, often in writing with exhibits and using the themes you are likely to hear in opening argument.

Prepare for mediation like you prepare for trial. Prepare your client and make sure your team is aware of your plan. It is easier to avoid mediation conflict if your clients are well prepared and understand the goal. If the goal is to resolve the conflict and you have a bitter and angry representative, who you know can't hold their tongue and miss an opportunity for insult, keep your eyes on the prize and leave them at home. If you can't leave them at home, prepare them for success by educating them on the importance of using a diplomatic approach. Prepare any witnesses carefully and school them on the difference between mediation and trial. Get everyone's agreement on what you want to accomplish and your clear advice on how to avoid negativism

and condescension that can cause you to fail to meet your goal.

Don't Sweat the Small Stuff

How many times have you brought a mediation to almost a successful conclusion by agreeing on the major points and then the negotiation begins on how the agreement is going to be structured. The Plaintiffs want their money immediately. The Defendants want all the liens removed and an indemnity clause. Furthermore, the Defendants want a confidentiality agreement. These are generally matters of major importance but minor in the scheme of the settlement. It is my suggestion that you write a letter to your opposition before the mediation so that they have your list of conditions well before they are tired, angry and ready to get out of there and when a relatively minor matter can be not only a source of contention but a potential dealbreaker. Send your opposition a letter. Spell out very clearly the conditions that you would want such as a dismissal, a complete release, an indemnity agreement, removal of liens and subrogation interests, confidentiality agreement and how long it is going to take you to get the money. That way you will know well in advance of the mediation that the smaller matters are resolved or a thing that you thought was a small matter is a big matter and you can get it worked out during the course of the day without surprising your opposition with a relatively minor matter.

I represented a major air carrier for almost 20 years. Their insuring agreements were such that it took approximately 8-10 weeks to fund any substantial settlement. It did not take me long to discern that this is not information that is well received after a long and difficult negotiation. I thus started writing to counsel about 30 days prior to a mediation that my client would require this amount of time. It is a protocol that is outside

the expected norms of our practice. I once had a recipient of such a letter call and with a touch of righteous indignation inform me that this was totally unacceptable and he would not agree to such a stipulation. I then explained the reasons for such a long delay. With the level of money that was involved we had funding agreements that required small payments to be transferred from all over the globe and this was a reality that I had little control of. We discussed that if we settled the case even with this delay he would receive compensation for his client months or years earlier than with the alternative of a trial. He then agreed to simply price his settlement offer with the knowledge there would be a delay.

An eleventh commandment in our business is: There shall be no surprises at mediation. Communicate clearly to your opposition small issues that may be important to your client so that they don't become stumbling blocks at a critical juncture.

Educate the Mediator

If we are practicing our craft at the highest level during the course of a mediation we will have the mediator advocating our position to the other side in caucus. In order for the mediator to be an effective advocate of our positions she must be educated. I can not over emphasize this part. In most mediations that are handled by attorneys there is some degree of complexity to them. In 2009 the average settlement that I served as a neutral was just under one million dollars. The range was from under one hundred thousand to in excess of eight figures. Almost all cases had issues of liability, medical issues, causation, questions of law, engineering, or other applied sciences. I have said that Einstein can understand all these issues on the fly but us mere mortals who are mediating these complicated matters need a lit-

tle prep time. We now have scientific evidence to back up the old saying that you make better decisions after you "sleep on it."

Take the time to send the mediator some materials to give them a basic understanding of the case. It is not necessary for you to prepare a formal briefing paper in each case but if you take the time to do so it not only prepares the mediator it also prepares you and if read by your client and members of your team it helps prepare all parties you need to prepare. At a minimum send the mediator a copy of the complaint, demand letters, briefs on important or dispositive issues, cases that are significant, redacted opinion letters, medical summaries or anything that you think will make the mediator a better advocate for your side.

I once mediated a very tragic case where everything turned on an accident reconstruction involving site distance and speeds. An unusual set of circumstances involving a small convertible vehicle, slight dip in an otherwise clear roadway and a left hand turn gave a defendant a very plausible argument on liability. Defendants provided me with a complete copy of their accident reconstruction report. Having and understanding this information was critical to resolution of the case. Plaintiffs were represented by very capable counsel and being able to articulate the nuances of the defense led to resolution.

The war stories on educating the mediator are legion. For our purposes, don't miss this opportunity. While some mediators may take a different position, I feel that a phone conference or in major and complex cases a personal meeting with counsel ahead of time is appropriate and invaluable. Educate the mediator.

Educate Your Client

Every person in America has some basic understanding of trials. Re-

solving disputes by a jury verdict is a cornerstone of our democracy. We have all either been in court, traffic court, served as a juror or seen plays or movies about trials. Famous books, movies, and plays such as *Kill a Mockingbird* are part of our cultural fabric.

Older generations grew up with Perry Mason and younger ones with *Boston Legal*. We all know what the Judge does, where the jury sits, how the lawyers work we even know about the court reporters. Americans know trials.

Many Americans do not know mediations. Unless you are in the business of litigation, insurance or corporate matters, you may be new to mediations. Take the time to explain the differences to your client. They need to know why we have a different approach to the mediation that we will have at trial. Your client needs to know why you are being nice to the other side. A good litigator goes to trial with a metaphorical switch blade knife. His job at trial is to gut the opposition on the stand and wipe the blood off on his pants as he is walking back to this table announcing "No further questions." After a while you develop a little taste for it.

At mediation you have a different agenda. You are the diplomat. You are trying to sell your point of view. While trials and mediations are transferrable skills, they are different. My default at mediation is diplomacy, graciousness, politeness. We are trying to reach an agreement. We are looking for a win win. Different forums. Different skills.

Prepare your client for this different venue. Going back to the theme of preparing for mediations like you prepare for trial, prepare your client the same way. Explain the differences. People are more comfortable and present better when they understand their roles. If your client or

continued on next page

The Tone & Tenor of Mediation

continued from previous page

representative is going to open their mouths, you need to know what is going to come out. Think carefully what your client can add to the process and rehearse and prepare them for their roles.

Educate Your Opponent

Take the time to have a frank conversation with your opponent about the case.

Each side should have a good idea of their opponent's thinking about resolution. If you are defending a case you should elicit and receive an opening demand. You should have some idea of where and how your opponent believes the case should be resolved.

Knowing in advance who the other side is bringing to the mediation can give you some insights into resolving the case. In the garden variety personal injury case a short check list would include the following items for discussion.

1. An opening Demand
2. Who will be present
3. Any Lien issues
4. Medicare set asides
5. Structured settlement. – Will the plaintiff be interested in structuring some portion of the settlement.
6. Conditions on any offers
7. Insurance coverage available
8. Any areas of sensitivity to the clients

Each case has its own issues but think about what is important to you and your client and address those issues with your opponent.

Meeting and Greeting

The Honorable Jack P. Etheridge in his book *Coming to the Table, A Guide to Mediation in Georgia* in his chapter on negotiation pointers and techniques, points out that you must be keenly aware of when the mediation begins. If you walk in to the reception area of the mediator's office and your

opposition is there, many times your clients simply nod to their clients and head off to another area to avoid each other.

However, this is your opportunity to put your best foot forward and set a positive tone. Introduce yourselves. Make sure your clients are introduced. Take the opportunity to engage in small talk and treat your opposition with respect. This is an opportunity to set the table for a successful mediation and remove contentiousness by being a cordial and pleasant person. It also gives you an opportunity to bring your client to life. All of a sudden the other side discovers that your side has individuals with children, families and interests outside of litigation. Don't miss this opportunity.⁷

Compliment Your Opposition in Front of Their Clients

This is subtle. I usually introduce this point by saying only do this if you want to be paid. However, it also may be one of the poorest handled points I raise in practice. Only do this if you can be honest and sincere. If you know your opponent or their firm or corporation and can say truthfully nice things about them in front of their client what you are doing is building confidence in your opponent for their client. If we are skillful in our use of mediation techniques we will over time convert our opponents from advocates in the morning to counselors in the afternoon. That is one and a primary goal of mediation. As we enter into the mediation we must expect to hear all of our opposition's strong points and our weak points. We know we are going to be confronted by an advocate. Over the course of the day as we work towards a settlement we hope that offers will reach the table and that the other side is going to have to give serious thought to. The target of the attorney's art changes from advocating their point of view

to counseling their client on whether a settlement should be reached. Here is where the subtle compliment, both truthful and sincere, can now pay dividends. Does the ultimate decision maker, the plaintiffs, insurance representatives, corporate executives, etc. have confidence in their counsel? If you have made a positive reflection on their counselor early in the morning it may be the straw on the camels back that helps resolve the case in the afternoon.

Opening Presentation

This paper has so far dealt with our preparation for this moment. We have given thought and attention to who we should have present, given consideration to preparing ourselves, the mediator, the clients and our opponents. We have tried to consider all the details of any agreement we may enter into and finally tried to set the right tone with subtle details like greeting the opposition. All of this was preparation for the opening caucus. Seize this moment like the Roman advice to seize the day. Carpe Diem. Don't squander this opportunity. Give it consideration and great preparation. As Judge William S. Duffey pointed out in his book "A Life in the Law: Advice for Young Lawyers", the difference between a good lawyer and a great one is the ability to gain agreement. Here is your opportunity.

The first rule of war is to "know thy enemy". In mediation know who the decision maker is. Sometime this is not as easy as it looks. However, speak to the opposition with great consideration to who this will be. After mediating a thousand cases I believe that the opening should be dominated by the golden rule. Talk to the other side as you would want to be talked to. Intimidation only works on rookies and the weak. It fails 99 out of 100 times. Talking tough hardens positions. The greatest folly is missing the opportunity, do

not waive openings. In our litigation process this is your only opportunity to talk to the other side.

Be honest, sincere, and candid. Explain as you would explain to your mother, a trusted friend, a client, someone whose opinion you care about, why you see the case the way you do. Start by looking your adversary in the eye, talk directly to them. Don't mumble, look down or be hurried. For heavens sake if you are delivering an apology do not look like you just want to get this out of the way so you can get on to other things. If you are apologizing or having someone apologize make sure you can do it without making the other side mad. Many times an apology is made when the parties part and I meet in private caucus with the other side the first words out of their mouths are "That was insincere" or "That was a joke."

I saw a movie one time where one Roman soldier asked another soldier "How do you talk to women?" The second soldier thought for a moment then said "Its like when your trying to get a horse into a corral and they don't want to go. Be calm, be gentle speak softly. Speak like your talking to a spooked horse." I know this is an oversimplification, I know it's silly and exaggerated but it has a kernel of truth. In the opening you are trying to convince someone of your point of view. You are selling your position. If you have read any of Dale Carnegie's books or other sales books, pull them out and re-read them. Here is where your inner salesperson comes to the forefront. Sell your position.

Lord Arthur Balfour a former Prime Minister of Great Britain was once described by an adversary: "one of the most interesting young men in the House.... A pleasing specimen of the highest form of culture and good breeding which stands to the credit of Cambridge University. He is not without desire to say hard things of the adversary opposite,

and sometimes yields to temptation. But it is ever done with such sweet and gentle grace, and is smoothed over by such earnest protestations of innocent intention, that the adversary rather likes it...."⁸

You are advocating your clients position and it is incumbent on you to say "hard things." This in a litigation forum is essentially the only opportunity to address your adversary directly. Do not miss this opportunity. Have a sincere, frank conversation with the other side. Explain why you see the case differently, what facts and law are important. Don't talk down to them, use big words, or do anything that puts them on the defensive. Think hard about how to best accomplish your goals. Adopt the language used in the Balfour quote "pleasing.... highest form of culture and good breeding....sweet and gentle grace.... smoothed....earnest...innocent intention..." While this language is over a century old we understand it well. Openings at mediation are just a corollary of The Golden Rule. Speak to your adversary as you would want to be spoken too.

I once had a friend describe the process this way. You want to tell your adversary to go to Hades and exactly how to get there. However, tell them in such a way that they will go away knowing that they will enjoy the journey.

Pay Your Respects

A significant percentage of mediations involve the resolution of personal injury cases. No matter what the case a greeting at the beginning that recognizes the aggrieved party's loss, thank them for their agreement to be present and a kind word for their recovery is a literal cornerstone for a successful mediation. If it is not sincere don't deliver it. People can smell insincerity a mile away and it is clearly counterproductive.

My career has brought me the chal-

lenge of representing clients who are often Defendants in wrongful death cases. You must realize what may be a routine business day for you is part of the grieving and healing process for the other side, the day of hopeful closure for your adversaries. Anger is a natural reaction to a loss, whether of a loved one, business opportunity or marriage. If appropriate, start the mediation by acknowledging that loss. "I'm very sorry for your loss" delivered honestly and sincerely goes a long way to establishing a rapport with your adversary unfiltered by your opponent. Rare is the person who has not lost a loved one and can truly identify with the loss of another human being. It costs you nothing, admits nothing but establishes a positive tone and for your work.

I once had a case where I represented a personal care home in which a 22 year old client had drown in a bath tub. It is a very bad start to a case to have a client of a personal care home drown in a bathtub. Such businesses are in the business of providing assistance to people who can not adequately handle their activities of daily living by themselves. We provide such care 24 hours a day, 365 days a year. A personal care home is directed by the State to establish and follow regulations so such incidents do not happen.

In this particular case the young lady who drowned was perfectly healthy until she was 14. She was a straight "A" student and was the apple of her father's eye. She was a bright, pretty, athletic little girl filled with energy and promise. Unfortunately, when she was fourteen she developed a significant and severe seizure disorder. The seizures were so severe that her doctors never clearly understood what caused them and had great difficulty in controlling them. At 16 she had a seizure that was so severe she had a stroke and became hemiplegic, that is she

continued on next page

The Tone & Tenor of Mediation

continued from previous page

was paralyzed on one side of her body. She also started having significant behavioral issues and these behaviors became so severe that at 18 her family could not cope with her at home and had to have her admitted to assisted care in a personal care home. At 22 she drowned in our bathtub. Her father loved her just as much if not more than we love our children because she so needed his love and attention. He was faithful in his visits and assistance to his daughter.

After her demise a wrongful death action was brought and in an inauspicious start for our defense the state's investigation into this event had led to a very long list of violations on our part of the state regulations.

I eventually went to depose the father and at the beginning of the deposition I told him I was very sorry for his loss. It was sincere. I knew he was grieving for the loss of his daughter, especially or possibly more so since she had suffered such a terrible affliction in her life. My sincerity came from an understanding of losses in my life. You don't get to be my age in the United States of America without getting nicked up along the way. I then processed to do my job and take the deposition of the father.

We proceeded toward trial. We mediated the case without success. We pretried the case and we were going to have to try the case in what I perceive as the most unfavorable venue for a defendant in Georgia. I had advised my client I was concerned that the verdict was going to be very unfavorable. In my vernacular I had told them I thought my opponent was going to tattoo me.

I then received a call from counsel for the plaintiffs. He said "Rex, I would like to share with you a very interesting phone call I just had with my client. He has instructed me to accept your last offer over my objection." I said well, I'm very glad we were able to settle the case. He then

said he wanted to tell me why his client wanted to settle. "My client told me to tell you, that you are the only person on the other side who ever told him you were sorry for his loss and he just didn't want you to worry about this anymore."

It was sincere and heartfelt. It was just one father speaking to another father. The apology had nothing to do with the litigation. It cost nothing but it set the right tone and for this gentleman put the case in the right environment to resolve a very difficult matter for all parties.

If confronted by a client who tells you they don't want to deliver any apology or thoughtful word, refer them to the old point "Keep your eyes on the prize". Ask what do you want to accomplish? How do we both do that? Even in a business dispute, an argument over a contract, a greeting of "John, I'm sorry we are having this problem, I know its disruptive to you and your business and we will work with you to resolve it" sets up your day for success while an icy glare starts you down the road to failure.

The Art of Listening

It goes without saying that professionals know to listen during the opening joint mediation session when your opponent is presenting its case. However, your clients may not and they need to be forewarned. You must also bite your tongue and listen, truly listen to the other side's presentation. Make careful notes on issues that need to be addressed, identify the decision maker of the case and observe what and who is driving the other side. You can only do this by carefully exercising a lost art, the art of listening.

Advise your clients and representatives beforehand of this protocol. Make sure your clients do not interject acrimony into your work by angrily challenging a remark they disagree with. Counsel your clients

ahead of time and identify those clients that need the most counseling and counsel them the most.

Recently I was involved in a difficult mediation involving six different defendants with six competing interests in which a well respected and talented lawyer made statements that were absolutely and undeniably false. Five lawyers and hosts of representatives held their tongue. When our time came, we were able to refute the statement but in a non-offensive way, a way that did not embarrass the attorney and cause him to dig in his heels or strain to prove a point not worthy of our time. It was done by holding our tongues until the appropriate moment.

Diplomacy

Diplomacy. Doing what your Mama taught you. Minding your manners. All of these things that we were taught since childhood and honed in adulthood are the essentials of setting the tone for a successful mediation. Making your arguments in a polite and reasonable manner even if you disagree with the other side or even if the other side is being offensive to you provides an atmosphere of cooperation. While you may have very strong points to be made, they can be made frankly and politely. In many respects you are an ambassador for your side and your job is to sell your point of view.

You can sell that point of view more often when the other side understands that you are presenting your points with respect and in a way not to offend. All of these things we were taught as children. Sometimes the art of advocacy that we use in the courtroom or in cross-examination is detrimental to the mediation process. It is my recommendation to simply present your arguments and points with respect.

Pay Your Respects – Part Two

In few situations are we called as

lawyers or advocates more highly to gain agreement than in mediation. All of our skills come to bear in this process. Mediation can rightly be called an art. It is where all our training, all our preparation comes to fruition.

In establishing the tone for a successful mediation, it is my recommendation that you give a first offer that recognizes the realities of the case. Proposing a solution that is so far out of the realm of reason that it can only offend establishes framework that is difficult for both you and the mediator to overcome. Give serious thought to what would be an appropriate response, what would be a successful conclusion, and give the other side the clear message that you want to resolve the dispute. Go back to the heading of *Eyes on the Prize*, what do you want to accomplish? If you are simply doing this for discovery or to annoy or harass the other side, this isn't necessarily a proposal to accomplish those goals. However, if your goal is to resolve the dispute, let the other side know that you are serious about this right from the beginning.

The Evidence

In presenting your heavy and difficult arguments, let the evidence do the talking. In every mediation you have to make decisions on what you are going to disclose. In the vast majority of my mediations I have made the decision that I am going to disclose most everything in a true effort to conclude the case. There are some times when you cannot do this. When you know that if you can't resolve the case and you have to try it, there are certain conflicts and contradictions that you are going to let your adversary explain for the first time from the witness stand. However, my recommendation is that you let the evidence speak for itself. Prepare your slides, exhibits, handouts and other presentations based on the evidence. Let your adversary be in the role of a juror. What will a juror

think when the Plaintiff is claiming substantial lost wages yet the certified tax returns show a different amount. How does the Plaintiff view the videotaped deposition of the physician where the physician questions the truthfulness of your adversary? How does the Plaintiff respond to his own deposition testimony that is in conflict or contradicts his current position? Let your adversary make their own judgments but show them the evidence that the jury is going to hear and then let them make their decision on how a jury or fact finder will view this evidence. One phrase I often use is "I wasn't there but here is the evidence a jury will have to consider." If your adversary has inconsistencies, equivocations or outright falsehoods, prepare for those so that your adversary is hearing his own words. Prepare videos, graphs and other evidence so that they can make their own judgments concerning their inconsistencies.

Let the evidence do the talking.

"Like Water Off a Duck's Back"

It is a rare case in which you are not confronted with confrontational statements or your client at least is not confronted with a statement that could cause a strong negative response. Counsel your clients beforehand not to show emotion, not to take offense, to listen and respond in an orderly fashion. Don't take the bait. Don't let your adversary escalate the tone of the conversation. Once again, keep your eyes on the prize.

"You Mind the Teacher"

There is a third party present. It is someone that you obviously have some regard for because you are paying them a significant sum of money to listen to the dispute and counsel you on it. It is my recommendation that you listen to the mediator, take their counsel on what issues are helpful and what issues are not. Since you took the time to meet with the mediator, you

agreed to this particular mediator, realize that while they may have a different point of view, the mediator has probably done this many times and they may have a good feel for what is going to be successful in resolving your dispute. I once had a case in an aviation matter in which a Plaintiff asks three separate times in settlement discussions for an unlimited first class pass for air travel. While we had explained that that was not a possibility, on the first time that we made an offer in which we included opening a frequent flyer account and providing them with bonus miles, it was accepted. This was from listening to the mediator and getting an understanding from the other side as to what was important to them. Make sure that you give your neutral respect and take their guidance.

"Don't Get on your High Horse, Don't be Too Big for your Britches and Don't Feel Like you have to Take them Down a Notch or Too"

All these southernisms have to do with arrogance. All of us are guilty of it at one time or another but it is a human frailty that we can all sniff out a mile away. Arrogance or haughtiness in any of its varied forms can only cause you difficulties in resolving your conflict. Don't allow it to creep into your speech or actions and counsel your client not to have it in theirs. I once took a videotaped deposition for preservation of a witness whose words were very helpful to me but the arrogance in which the deponent delivered those words was so poor that I didn't even order the videotape. Make sure neither you nor your client interject this poison into your case.

The goal of all mediations should be the resolution of the conflict. Simply minding your manners, and paying respect to your adversary will set a tone to help you accomplish this goal.

continued on next page

The Tone & Tenor of Mediation

continued from previous page

Patience, Creativity, Persistence, and Compromise

I always begin my Mediations with an opening that stresses four things. I tell people that if we are going to resolve our case it will take patience, creativity, persistence, and compromise. My opening usually ends with the following:

"We have the best people in the world to resolve this case in this room. Mr. and Mrs. Plaintiff you were there. You know this case, how it has affected you and your family. Your Attorney has studied this case and is an expert in resolving these types of matters through litigation or mediation. We also have the defendants, their representatives who know the case from their point of view. The insurance representative who is with us is a professional in resolving matters of this type, this is what she does everyday. Same thing with the attorneys for the Defendant they have been litigating and mediating cases for years. They have studied this file. Thus we have the most knowledgeable and most interested people in the world to discuss and resolve this matter by agreement as opposed to turning this matter over to a judge and jury who would impose a decision upon us.

If we are going to settle this case today it is going to take four things: patience, creativity, persistence, and compromise. This is an important case to everyone who is here so we have to be patient with each other and also patient with the process. We have to be creative. Sometimes there are ways to resolve cases that maybe we have not thought of before and sometimes being creative is as simple as thinking about the case from the other person's point of view or for that matter from a judge or jury's point of view. We have to be persistent. We can not just easily give up. I have no plans for this evening and while I do not

expect this case to go into the night or evening I will stay here as long as we are making progress and I'll ask everyone else to be persistent too.

Finally, is compromise. I have yet to have a case where all parties thought the case should resolve the same way so we have to keep our minds open for compromise.

Patience

I can not stress enough how important patience is for the mediation process. It is a lost virtue. We Americans are a busy and industrious people. Law, Medicine and Commerce are not built by patient people. Yet to allow a mediation process to work we have to have patience to allow our agreement and thoughts to filter through to our adversaries, to let them seep in their brains like a fine tea. It takes time for this process. I have had cases where people have accepted or paid hundreds of thousands of dollars more or less because they had a plane to catch, or traffic to beat. If it is important enough to get everyone together in one room it is important enough to give it the time it deserves. Practice the biblical virtue of patience when you mediate a matter.

I often tell people when giving a talk on mediation that I can tell you one thing about almost everyone in the room. That is you are Type "A" personalities. You did not get where you are in life by being a wall flower. You people make things happen. You are more than likely a type A personality or have a lot of type A in you. And type A people are impatient. The prayer of a type A personality is "Lord give me patience but give it to me now!" "All good things come to those who are patient."

Creativity

The Law, Medicine, Commerce, and Engineering are filled with creative people. When you are in a mediation more likely than not

you will have a roomful of creative people. I often tell people you may not be able to paint like Picasso or sing like Sinatra but you people are creative. You can tumble ideas and concepts around in your mind. Mediations are a wonderful canvas for the creative. Business people are always coming up with creative solutions and proposals, and creativity is a very important element of mediations. Understanding what your adversary needs and wants is often key for a resolution.

A simple story of creativity illustrates the point. I was once involved in a case where the grandmother of a fourteen year old grandson was raising him. She also was candid that she was worried he was running with the wrong crowd at school. While he was respectful to her at home she had serious concerns as to what direction his friends in school were taking him.

Unfortunately, her grandson had been involved in an accident where he had lost sight in one eye. She was servicing as the Conservator for her grandson in a lawsuit to recover damages for his injury. The parties had agreed to mediate the case.

At mediation the Defendants brought a structured settlement professional. On the defendants initial offer they structured their offer to settle the case where the young man received a college fund, thus a sum of money in August when he was 18, 19, 20, and 21. They then gave him a lump sum of money when he turned 25 and a final lump sum when he was 30. Upon receiving this structured payout of the defendants offer to settle the grandmother realized for the first time that she could control the flow of money to her grandson. She would not simply have to turn six figure money over to her grandson when he turned eighteen.

I often ask at presentations where you think I would have been at

nineteen if I had received six figure money when I was eighteen. I would have been in one of two places. If I was lucky I would have been in the jail house. Confined yet alive. If I was unlucky I would have been in the cemetery of the Centralhatchee Methodist Church.

The case settled as soon as the grandmother understood how structures work.

We spent the rest of the day working out the amount and the details.

There are literally thousands of ways to be creative at mediation. I have been told of a mediation where a manager of a K-Mart told a mediator at the end of the day "you go tell the Plaintiffs if we settle this case today the Plaintiff can come in my store tomorrow and pick out the biggest TV we have and I'll deliver it

and install it for him." The mediator returned to the Plaintiff and told him what the manager had promised.

The Plaintiff's only question was: "The biggest TV?"

Be creative. Think about win-win solutions for you and your client. This is an opportunity for you to express yourself in becoming a great lawyer or negotiator.

Getting people to agree.

Persistence

Don't ever give up. Stick to it. Anybody can give up. Only the good ones will persevere. We are paid to be the grown ups in the room. Act like one. We are not paid to get tired, frustrated or impatient. Put a candy bar in your brief-case. Be patient. Be creative and stick to it. My mother used to tell me if it was easy they

wouldn't need us.

Compromise

I often tell people that I have never had a case at mediation where all parties agreed as to how the case should be resolved. We have to keep our minds open for compromise.

The art of compromise is what has made our country great. It is how we resolve matters, both great and small. It is how we came to form our nation, fashion our laws and build our businesses. Keep an eye open for ways in which the parties can find resolution.

Mediation is a great tool for service to your clients. It can help you resolve matters for your clients in a timely and cost effective way. I hope this paper has brought a few new ideas to you.

FOOTNOTES

¹ Dwyer, William L.; "In the Hands of the People", St. Martin's Press, N.Y. 2002, p. 13

² Id. Dwyer, pp. 14-16.

³ Dwyer, p. 8.

⁴ Dwyer

⁵ Dwyer, p. 118

⁶ Dwyer, p. 128

⁷ Etheridge, Jack P.; *Coming to the Table, a Guide to Mediation in Georgia*, American Lawyers Media, L.P. 1994, p. 92

⁸ Robert K. Masee, "Dreadnoought: Britan, Germany and The Coming of the Great War, 2009 Random House, Inc. N.Y. 1991, p. 315.

2017 Tradition of Excellence Breakfast

June 9, 2017

Jekyll Island Convention Center, Jekyll Island, Georgia



Sampson Family



Laura Austin and Joe Weeks



Philip and Alexander Henry



*L-R Judge Carla Wong McMillian,
Judge Alvin Wong and his wife
Jeannie Lin*



*Everyone enjoyed the Great Food,
Great Friends and Great Time at the*

Tradition of Excellence Reception



NOTES

INSIDE BACK COVER
(BLANK)

Editor:

David A. Sleppy, 649 Irvin St., P.O. Box #689,
Cornelia, GA 30531

PRESORTED
STANDARD
U.S. POSTAGE
PAID
Atlanta, Georgia
Permit No. 1447

GENERAL
PRACTICE &
TRIAL SECTION

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA



"Georgia's Largest Law Firm"

APPLICATION FOR MEMBERSHIP IN THE GENERAL PRACTICE & TRIAL SECTION OF THE STATE BAR OF GEORGIA

For members of the State Bar of Georgia:

Name: _____

State Bar #: _____

Address: _____

City, State & Zip: _____

E-Mail: _____

Application date: _____

Cost: \$40, payable by check to the State Bar of Georgia, and send to:
The General Practice & Trial Section, 104 Marietta Street, NW, Suite #650, Atlanta, GA 30303

Signature