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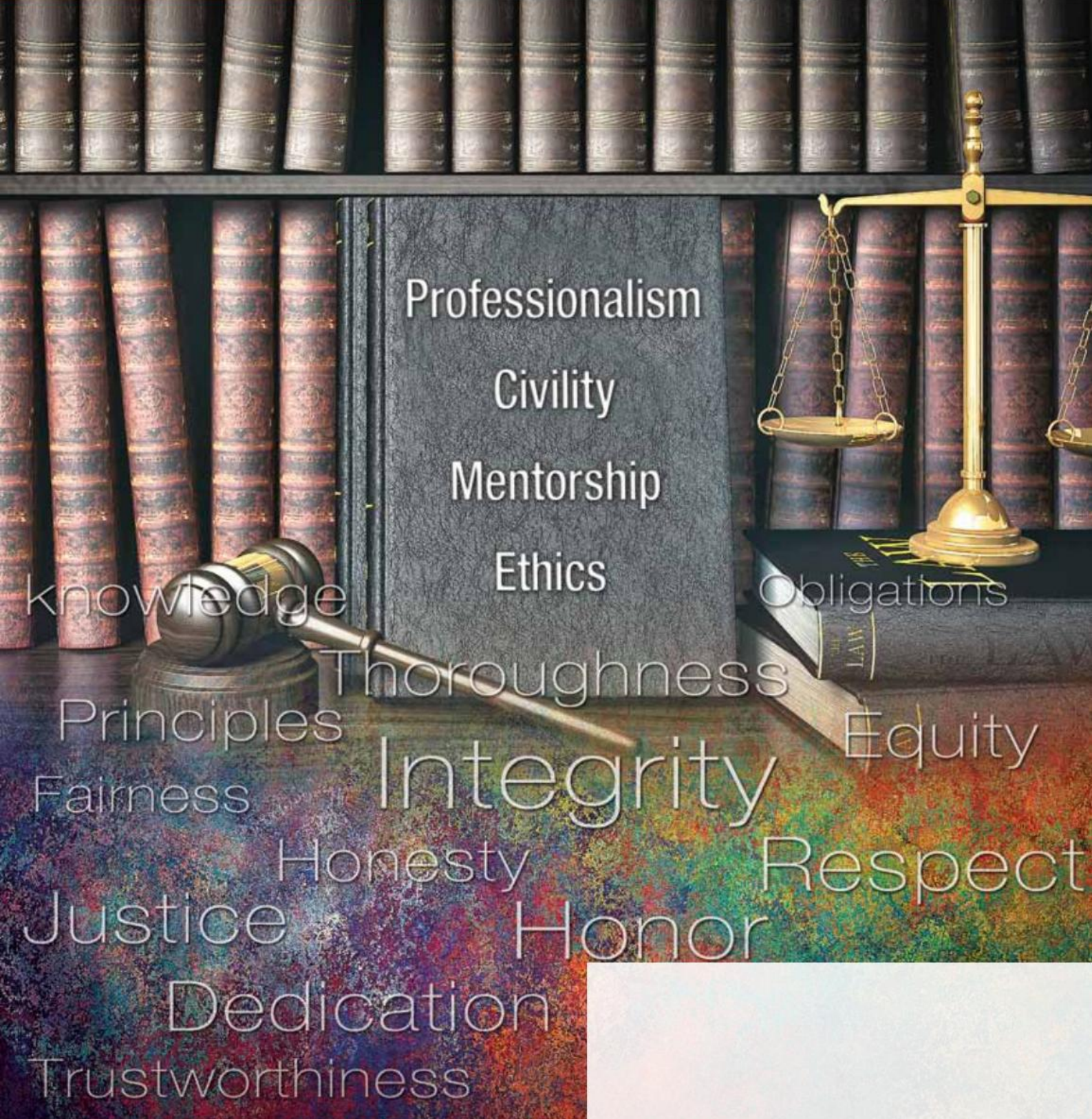
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STEPHEN D. SUSMAN:

Incomparable Innovator & Paradigm of Professionalism

*Epic/Warrior/Legendary/Trailblazer & Trial Legend/
Visionary & Innovator/Fearless/Peerless Texas Pioneer/
Egalitarian/Entrepreneur/Charismatic & Fun/
Larger than Life with a Heart of Gold/Hope Diamond/
Not a Man of Half-Measures/Outsized Influence/
Advocate of High Risk, High Reward/Susman Godfrey's
Founding Partner/Big Daddy/Not "Mr. Susman"/
Institution-Builder/Not a Cult Leader/Professor/
Friend/ Son/Father/Grandfather/Papa/
Champion of the Civil Jury System¹*

Sofia Adrogué had the luxury of meeting Steve thirty years ago, working for and learning from him at Susman Godfrey, trying a case with him in federal court in Puerto Rico, having the honor of preparing with him as he participated in the Trial of Hamlet in federal court, and, most impactfully and unforgettably, benefitting from his encouragement and guidance in her role as she envisioned and serves as the Editor, ALM's TEXAS BUSINESS LITIGATION,

with fellow Co-Editor, Hon. Caroline Baker. Hon. Caroline Baker has had the honor and privilege of serving as a Judicial Advisor to the Civil Jury Project at NYU School of Law and working with Steve to fully develop another brainchild of his—the Young Lawyers in the Courtroom Program, which was designed to provide young lawyers meaningful and substantive speaking opportunities in the courtroom. Thankfully, Steve was able to see this invaluable pro-

gram come to fruition. The Young Lawyers in the Courtroom Program, in conjunction with the Houston Young Lawyers Association and with the full support of the Houston Bar Association, was implemented in the Harris County district courts in 2018.²

The Fifth Edition of our TEXAS BUSINESS LITIGATION³ treatise is dedicated to the late Stephen D. Susman. There are no words to describe the loss for many, personally and professionally. We sought to capture his irrepressible spirit and commensurate professionalism via an amalgamation of descriptive words for truly a sui generis fellow lawyer. His legacy and imprimatur are palpable and everlasting.

I. Commercial Litigation in the 21st Century—the Aftermath of the "Vanishing Trial"

In paradigmatic Susman form, the legendary trial lawyer dedicated countless hours and commensurate resources to address why jury trials are vanishing. He sought to give fellow lawyers, the judiciary, and the community at large a roadmap to keep jury trials from becoming extinct,⁴ aware of the numbers taking a precipitous decline across state and federal courts nationwide. In point of fact, during the last fiscal year, in Texas state courts, 0.11% or less of the cases were disposed of by jury trial.⁵

Aware that litigation in the 21st century remains the subject of vigorous substantive debate and commensurate study, Steve envisioned, lead, and funded the Civil Jury Project in 2015 at NYU School of Law, a "collaborative effort between law students, lawyers, judges and political bodies across the nation" to "examine the factors leading to decline in civil jury trials and educate the legal community and the public on methods to revitalizing the dying system."⁶

To date, the Civil Jury Project has engaged over 331 judicial advisors, seventy-one judicial advisors emeritus, seventy-three academic advisors, and forty-five jury consultant advisors who focus on educating the public on their

right to a jury trial, informing the public of jury trials' alarming decline, and advocating for the utilization of tools to reduce the costs of trial such as time limits and jury innovations (including juror questions, early instructions to the jury, and interim arguments).

Steve's commitment to addressing commercial litigation trial work in the 21st century, as well as the aftermath of the vanishing trial, was not new. To promote efficiency and professionalism, he developed a set of pretrial agreements that his namesake firm, Susman Godfrey, proposed to opposing counsel.⁷ Steve's initial inspiration merits repetition.

Because I was blessed by being involved only in complex commercial cases and with good opposing counsel, I was able to develop a set of Pretrial Agreements that my firm has been proposing to opposing counsel for over a decade.... The key to the efficacy of such a Pretrial Agreement has always been to attempt to reach agreement on as many of these items as possible before discovery begins. Once you are in the heat of battle, what appears to be good for one side is often deemed to be bad for the other; therefore, it is hard to reach agreement at that point.⁸

Steve's Pretrial Agreements were so effective at achieving collegiality and order, that the project continued to evolve, resulting in the development of a set of *trial* agreements⁹ (which are accessible via a working website appropriately named, "Trial By Agreement").¹⁰ The objective of "Trial by Agreement" aligns with Steve's principled, competitive, professional and pragmatic approach to litigation by way of "reduc[ing] expense, stress and many of the uncertainties that are associated with pretrial rulings

and jury trials."¹¹

I truly believe that Trial Agreements are worthy of full discussion among experienced trial lawyers and judges well in advance of pretrial. My at-

uncertainty of pretrial rulings and a jury trial.¹²

II. Training Young Lawyers in an Era of Fewer Jury Trials

Another example of Steve's indelible impact was his teaching and training of young lawyers, mentoring and sponsoring them even before doing so was *en vogue*. Professionalism and civility were part and parcel of that mentorship. State-of-the-art programs like the Young Lawyers in the Courtroom Program perfectly demonstrate that, as always, what Steve promoted, he delivered—he walked his talk:

In this time of 'vanishing' trials, I feel like an old dinosaur hunter. There is no need to teach those skills to youngsters if there are no dinosaurs around. That said, I do think there are many opportunities for young lawyers to practice their litigation skills by participating in mock trials. We also have a rule at our firm that any lawyer that works on a case is entitled to stand-up time at the trial. We can only teach by sharing the limited trial experiences that we have. Jurors love to see a young lawyer get opportunities to question witnesses.¹³

Steve advanced the much debated and scrutinized "roadmap for reform"¹⁴ for our 21st century civil justice system. As his colleagues so poignantly noted at the Civil Jury Project at NYU School of Law, "[Steve] crisscrossed the country at his own expense to talk to trial attorneys, trial judges, and most importantly, jurors."¹⁵ He "advanced jury innovations" and "was a champion of and a cheerleader for"...the purest, fairest, most inclusive and robust expression of direct democracy that the world has ever seen."¹⁶



Steve with his wife, Ellen, and son Harry, a partner at Susman Godfrey LLP.



Steve founded the Civil Jury Project in 2015 at NYU Law School.



Steve with law partners Neal Manne and Lee Godfrey

titude is to take whatever agreements I can get—the idea being that any such agreements advance the ball and make pretrial and trial more professional and efficient, not to mention making trial more understandable to the jury. Trial by Agreement is a way of reducing expense, stress and the

III. Moving from the Physical Courtroom to a Courtroom in Cyberspace

Cognizant of the COVID-19 enigmatic times, the April 2020 Newsletter of the Civil Jury Project at NYU School of Law commenced with Steve's strikingly prophetic observations, noting that "[t]he COVID-19 pandemic has accelerated courts' turning to technology in order to deliver justice. It will have far reaching effects for all of us—and for our justice system."¹⁷ Steve also appropriately remarked that the list of considerations of "moving from the physical courtroom to a courtroom in cyberspace is long,"¹⁸ including the following brilliant Susmanesque inquiries: (i) constitutional concerns of having jurors deliberate remotely; (ii) would this decrease or increase costs for an already burdened system?; and (iii) would a virtual trial deliver the same quality of justice?


Steve vehemently believed that juries are the views of the community and sacrosanct; thus, he invited his team, including the Civil Jury Project's Judicial Director, the Honorable Mark A. Drummond, to survey and analyze how a virtual trial would work. As a result, the Civil Jury Project, armed with several hundred judicial and academic advisors and Steve's gravitas, turned the focus to best practices for virtual jury trials.

To be clear, a virtual trial for Steve, Judge Drummond, and the Civil Jury Project, like for all of us, is not the same as being in trial in person. Steve created his legacy being present in the courtrooms; now, the mission is to anticipate what is next and determine how best to move efficiently and safely through this global pandemic and beyond. Undoubtedly, we will be training young lawyers to communicate and advocate, at least in some measure, virtually rather than in person. How is professionalism learned and exemplified in such environments? Such questions abound in this hybrid world.

Yet, we have no other option. Pres-

ervation of the right to jury trial is the key. Regardless of how individual states decide to tackle the challenges of this new world, it is clear that proactive communication and consistent reassurance will be necessary to maintain public confidence and maximize participation in the jury process.

Here's to authentic, empathetic, realistic, belligerent optimism as we seek to navigate, innovate, and litigate in this "new normal" emulating the *joie de vivre* of Steve. Speaking about Susman Godfrey's democratic structure and culture as well as his professional legacy, Steve's words are immensely moving and spot on: "I want them to say, He was very fair. He was very honest. He loved to play...And he was very proud of doing things the right way. The moral way. The ethical way. And I have been. I have been."¹⁹

Here's to our Super Sus, our Sui Generis Stephen D. Susman. He epitomized *Carpe Diem*. 

Veni, Vidi, Vici!
May he rest in peace.

Sofia Adrogué is a seasoned trial partner with Diamond McCarthy LLP, a 10-year Texas Super Lawyer and Latino Leaders U.S. "25 Most Influential Hispanic Lawyers" and "Most Powerful Women in Law." She serves as the Editor of the TEXAS BUSINESS LITIGATION treatise and has published and/or spoken on over 250 occasions. She has received over 40 awards and has been recognized for her public service by the City of Houston with a proclamation of July 10, 2004 & December 18, 2018, as "Sofia Adrogué Day."

Hon. Caroline Baker served the citizens of Harris County as a judge for 21 years before retiring at the end of 2018 as a senior judge. Board Certified in Personal Injury Trial Law and a member of the American Board of Trial Advocates, Judge Baker was consistently rated "Outstanding" in the Houston Bar Association Judicial Polls and received the 2017 "Trial Judge of the Year" Award from the Texas

Association of Civil Trial and Appellate Specialists, as well as the Mexican American Bar Association of Texas 2018 Service Award for "Outstanding Public Service in the Community as a District Court Judge."

Endnotes

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8. Stephen D. Susman, *Category Archives: Pretrial Agreements*, TRIAL BY AGREEMENT: AGREEMENTS FOR OPPOSING COUNSEL, <https://trialbyagreement.com/category/pretrial-agreements/> (last visited Oct. 8, 2021); see Sofia Adrogué & Hon. Caroline Baker, *Litigation in the 21st Century: The Jury Trial, The Training & The Experts—Musings & Teachings from David J. Beck, Lisa Blue, Melanie Gray & Stephen D. Susman*, THE ADVOCATE (State Bar Litigation Section Report, Austin, Tex.), Fall 2011 at 16.
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11. *About Trial Agreements*, TRIAL BY AGREEMENT: AGREEMENTS FOR OPPOSING COUNSEL, <https://trialbyagreement.com/about/about-trial-agreements/> (last visited Oct. 8, 2021).
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16. *Id.*
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18. *Id.*
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