

TRIBUTE

IN MEMORY OF RODERICK GLEN AYERS, JR. (1947–2017) PROFESSOR OF LAW ST. MARY'S UNIVERSITY SCHOOL OF LAW

THE HONORABLE CRAIG A. GARGOTTA
WILLIAM R. "DICK" DAVIS, JR.

On September 27, 2017, Glen Ayers, a former professor at St. Mary's School of Law, passed away suddenly and unexpectedly. Two of our alumni—Bankruptcy Judge Craig A. Gargotta (1989) and William R. "Dick" Davis, Jr. (1983)—have provided this tribute to an icon of San Antonio's bankruptcy bar. Both men can credit Glen Ayers with setting them on the path to a career in insolvency law. They both studied bankruptcy law under Glen while at St. Mary's and worked for and with him after graduation.

Judge Gargotta interned in then-Judge Ayers' chambers as a third-year law student. Glen was leaving the bench in October 1989, and convinced his replacement, Ronald King (now the Chief Bankruptcy Judge for the Western District of Texas) to keep Judge Gargotta on. Judge Gargotta then served as Judge King's Law Clerk from (1989) to (1990). Before assuming the bench in 2007, Judge Gargotta was involved in several cases with Glen, collaborated with him (and others) on a bankruptcy practice book for the State Bar of Texas, and spoke at the same conferences, although not on the same panel. Glen tried several cases in Judge Gargotta's court, bringing their relationship full circle.

Similarly, Davis had the pleasure of working with Glen for more than twenty years at Langley & Banack, Inc. Glen was Davis' professor, mentor, law partner, and most importantly, one of his closest friends. Davis was asked to speak about Glen at the 2017 Westbrook Conference held at the University of Texas – Austin in November 2017.

After his remarks, numerous other attendees commented that the conference simply was not the same without Glen "holding court" in the lobby during the CLE presentations.

Glen Ayers—with his commitment to education and life-long learning—was a tremendous asset to St. Mary's. Glen will be dearly missed by all who had the privilege of knowing him. While we are devastated to lose such a wonderful individual, we are grateful for the honor of calling him Professor, Judge, partner, colleague, and most of all, friend. His loss will be felt deeply in our community for many years to come.

* * *

Glen Ayers was one of a kind and had a significant impact on the San Antonio legal community. He served as Chief Bankruptcy Judge for the Western District of Texas, practiced as a lawyer, taught law school, and often spoke at CLE events. His intellect and courtroom abilities were well known and respected. Glen was a seasoned trial lawyer, excellent examiner of witnesses, and had a "Matlock" courtroom demeanor. When news of his sudden death circulated through the San Antonio bar community, personal remembrances and stories flooded the internet. Depending on how you knew Glen, the personal stories about him fell into several categories reflecting his legal service.

Glen was born and raised in rural South Carolina. He was an only child and treasured by his parents. The stories Glen told about his early years are indicative of a life grounded by relationships. His stories—already lengthy—were further expanded by digressions explaining how individuals were related to one another, to some noteworthy individual, or to someone completely unrelated to that particular story. These relationships, the way people were connected to one another, wove a tapestry that set the stage for Glen's formidable abilities as a narrator.

As a young man, Glen followed in his father's footsteps and attended Clemson University. Unsurprisingly, he formed life-long friendships with his fraternity brothers and fellow officer candidates. Glen earned a B.A. in History from Clemson University and attended the University of North Carolina at Chapel Hill, where he was a Woodrow Wilson Fellow, to obtain a Master's degree in History. In recent years, Glen started vacationing with some regularity in South Carolina, visiting the Clemson campus and his friends who retired in the area.

After college, Glen was commissioned as an armor officer in the United States Army and his active duty commitment was deferred so he could complete his Master's degree. Although the Vietnam War was raging, he was never deployed overseas, nor was he ashamed to tell you that he was

thankful for the lucky break. It was, in fact, a literal “break” that kept him stateside. During a training exercise, a fellow officer slipped while loading artillery. A 250-lb shell fell on Glen, breaking his leg and making him ineligible to deploy. Many of his college classmates were not so lucky. When he reminisced about them, he was reverent about their sacrifices and struggles, and took pains to mention the honors they had earned, as well as their service on behalf of their country.

Glen used his GI Bill to attend law school at the University of South Carolina. He was a member of the Law Review and graduated *summa cum laude*. Glen would later earn an LLM from Harvard Law School.

Glen was extremely proud of his alma maters. He had buttons with school crests sewn onto three navy blazers, owned at least one Clemson orange and purple bowtie, and on casual Fridays, he could frequently be seen sporting spirit gear of one or another school. Glen was very proud of his education and the opportunities it provided for him.

Glen Ayers the Lawyer

Glen started private practice in Dallas at Coke & Coke. His first boss was Patrick Higginbotham, now a Judge on the Fifth Circuit Court of Appeals. In 2016, Glen was in New Orleans to argue a case before the Fifth Circuit and ran into Judge Higginbotham and his law clerks at breakfast. Glen took a moment to greet his former boss and get to know, however briefly, the law clerks.

Glen left private practice to enter the world of academia for a while (more on that below), but did not stay out of the courtroom for long. While Glen was teaching at St. Mary’s, he was working at Oppenheimer and handled the *Handy Andy, Inc.* bankruptcy case. The case involved interesting and complex questions about the intersection between bankruptcy and labor laws, in large part because there were numerous employees belonging to various unions. Furthermore, the case needed to be handled especially deftly, because the grocery chain involved was an institution in San Antonio, having a presence in the city since the 1930s and a dominant market share for much of its existence before its 1981 bankruptcy filing. Glen’s mix of practicality, creativity, and respect for history were the perfect combination for this particular case.

Glen later worked at Cox & Smith Incorporated¹ for a few years and then moved to Washington, D.C. to open Vinson & Elkins, LLP’s bankruptcy

1. Cox & Smith Incorporated is now known as Dykema Cox & Smith.

practice in that city. Glen tried cases up and down the East Coast and made many friends before returning to San Antonio. Glen's great souvenir from D.C. was the camel hair overcoat he bought while he lived there. Because he wore it only a few times each year once he returned to San Antonio, it lasted him the rest of his life, as did the friendships he formed.

Glen returned to San Antonio in 1996 and joined the bankruptcy practice at Langley & Banack, Inc. For twenty-one years, he was a resource, a cheerleader, and a friend to everyone in the firm. The standing joke around the firm was that when you went to lunch with Glen, you would earn CLE. He was never too busy to answer a question and had a knack for making everyone feel like the most important person in the world. At Christmas, Glen gifted his colleagues with pies he made himself, including his signature homemade crust that would make many grandmothers green with envy. Who knows where Glen found the time to perfect a recipe and technique for pie crust. This seemingly incongruous hidden talent was just part of his charm.

Glen Ayers the Judge

Glen served as a Chief Bankruptcy Judge from 1985–88. Notwithstanding his short tenure on the bench (he always remarked that he needed to return to private practice to support his family and pay for college), Glen left his mark on the judiciary and bar. His personality permeated his courtroom; he was warm, courteous, and unique in his own way. For example, he found that Muzak was a benefit to the bankruptcy estate. He treated new lawyers in his court with respect and patience. He displayed an acute interest in the cases he tried and the lawyers and parties that appeared before him.

Although his tenure on the bench was short, he had ample opportunity to opine on tricky and important questions since the Bankruptcy Code had replaced the Bankruptcy Act in 1978. Due to the economic meltdown of the 1980s, the Bankruptcy Court's docket was heavy, and Glen presided over many cases in San Antonio and traveled to Waco, Midland, and El Paso before the Bankruptcy Courthouses were connected for teleconferencing. Many of his opinions are still good law today and they all display his admirable capacity for analyzing complex legal questions and writing an opinion that provided clear and useful guidance for practitioners. For example, in *In re Durst*², Glen thoughtfully analyzed the interaction between

2. *In re Durst*, 84 B.R. 83 (Bankr. W.D. Tex. 1987).

the Texas Construction Trust Fund Act and section 523(a)(4) of the Bankruptcy Code, which exempts from discharge any debt for “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]”³ The ruling that violating the Construction Trust Fund Act does not automatically constitute grounds for denying a discharge provides lawyers with clear jurisprudence, which in turn provides clear guidance to their clients. Similarly, his opinion *In re Kipp*,⁴ concisely and eloquently distinguishes between examinations conducted under Federal Rules of Bankruptcy Procedure 2004 and discovery conducted under Federal Rules of Bankruptcy Procedure 7026–7037, ruling that once an Adversary Proceeding is filed, the parties may no longer conduct “unrestrained fishing expeditions” under Rule 2004.⁵ Even more than his pithy and practical opinions, Glen’s judicial demeanor—respect for his colleagues, the bar, debtors, and creditors alike—and his work ethic continue to shape the professional and collegial bankruptcy bar in San Antonio.

His colleague, former Bankruptcy Judge Leif Clark, noted that Glen took him in as a friend when he first became a judge. They spent time together over lunch discussing cases, counsel, and one of Glen’s favorite subjects—cars. Judge Clark remarked how sad he was when Glen left the bench but how much he enjoyed having Glen appear in his court. Judge Clark commented that after he left the bench to become a mediator, he had several mediations with Glen. Judge Clark observed that Glen always displayed good judgment and practicality in his mediations. Judge Clark further noted that Glen loved lawyers and the practice of law because he enjoyed people too much and could have never retired. Ultimately, Glen made the right choice to continue to practice and be with people.

Glen Ayers the Teacher

Glen taught at The University of Mississippi’s law school in Oxford, Mississippi for several years. Glen loved teaching, and in 1981, he returned to San Antonio to take up a post at St. Mary’s School of Law teaching the Uniform Commercial Code and Bankruptcy. Glen was enormously proud of his students and delighted in their success. Glen’s wit, inspiration, and humor is the reason why a number of his students went into bankruptcy practice, including the authors of this tribute. All of his former students

3. 11 U.S.C. § 523 (a)(4) (2016).

4. *In re Kipp*, 86 B.R. 490 (Bankr. W.D. Tex. 1988).

5. *Id.* at 491.

consider him a mentor and a friend. Glen never took attendance for any of the classes he was teaching, yet his classes were always full. A number of his students referred to him as "Bowtie Bubba" due to his propensity to wear bow ties and his pronounced southern drawl. His years of practice complemented his teaching style, which allowed him to weave stories from his practice into the subject matter he was teaching. Glen could teach in a manner that was both entertaining and instructive.

Glen always had a sense of humor with his students. One of his former students told of an occasion during final exams in which students booby-trapped Glen's car with a smoke grenade. The students gathered around awaiting Glen to go out to his car and start it. The car made it about ten feet before being covered in smoke. Undeterred, Glen exited the car to join his students for a few beers before the smoke would clear. Never missing an opportunity to engage in conversation, Glen spent the time recounting a number of war stories with his students before returning to his car. Glen took great pride in all of his students, and, if you were fortunate enough to have been one of Glen's students, he would always introduce you as his former student.

While Glen eventually left the classroom, he never lost his love for teaching and continued to foster legal education. He was a Contributing Author to several publications, including *Collier on Bankruptcy*, and gave numerous continuing education presentations. He hoped to return to his role as educator as he decreased his private-practice workload, and the bar would have been lucky to have him educate yet another generation of young lawyers.

Glen Ayers the Conversationalist

Glen had many qualities: a keen intellect, great humor, a warm personality, and a distinctive southern drawl. His most notable quality was his engaging conversation and title as unequalled raconteur. Many lawyers and friends cited his willingness to make contact with someone first, and to make that new friend feel welcome. Glen was well read and the subject matter did not matter—he read everything. Glen was conversant on many topics, including the classics, religion, history, and politics. Despite his enormous knowledge and propensity for sharing it, Glen was never pompous. He was simply a Renaissance man, unceasingly curious about the human experience, and voracious in his quest to understand more.

For example, Glen could speak on Calvinism and Lutheranism, and the differences and dynamics between them. He could make *Gulliver's Travels*

interesting and topical. Glen could stream jokes and witty comments that would have any crowd laughing. He could combine his knowledge of religion and bankruptcy by noting the relationship between ancient church tithing and the allowance for church contributions in a bankruptcy budget. Glen could transition from his Sunday school class teaching to an intricate issue of bankruptcy law all in the same conversation. In any setting, Glen could make you feel part of the conversation.

Glen's love for others was never more evident than in his deep and abiding love for his family. Glen was married to Jan for forty-five years and she was unequivocally the love of his life. It was not unusual for them to have lunch together during the week or for Jan to come by the office for a brief visit if she happened to be downtown. Together Glen and Jan raised two children, Roderick III and Claudia, both talented artists like their mother. In 2015, Claudia and her husband George welcomed a daughter, Ellie, who was the apple of her Pa-Pa's eye. Glen's office was a physical manifestation of his vast love for his family. Artwork by both his children was situated across from his desk where he could view it frequently. And there were many, many pictures—his grandparents' farm in the early 1900s, his parents, Glen and Jan's wedding, Roderick and Claudia's birth announcements, Glen teaching in Mississippi and carrying Roderick piggy-back around the campus, and the kids' high school graduation pictures. He was always surrounded by his family.

While Glen loved practicing law, he did not live to work, but worked to live. He and Jan traveled extensively, including trips to China, Italy, and the United Kingdom along with shorter trips around the United States to visit family and friends. Glen returned from these trips full of interesting stories about the sights he had seen and the people he had met along the way. Within the last year, Jan and Glen sold their suburban home and bought a place in Helotes, Texas that was situated on acreage. Glen enjoyed working around the property, fixing fences, and pulling out stumps with his Mercedes SUV because he had not yet found a tractor he liked for the right price. Glen was delighted to have returned to his country roots and was busily installing bookshelves to accommodate his and Jan's prodigious book collection.

Glen's heart was as big as his personality. He established a scholarship in his father's name at Clemson University, and one in his mother's name at her alma mater, Mars Hill University. When Glen was not enriching the lives of his co-workers and family members, he spent time volunteering for the Veteran's Legal Clinic and judging law school mock trial and moot court

competitions. Glen had most recently donated a number of Bibles to the Wounded Warrior Project.

Upon Glen's passing, many remarked that God was going to have His hands full and Heaven was going to hear many good stories. Possibly the best attribution to Glen is that all we can do when we leave this earth is leave behind a good name. Glen did that and much more.