

# A Tribute to Mark T. Banner, 1950–2007

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*The IP world was greatly saddened to learn of the death of former ABA-IPL Section Chair Mark T. Banner on December 30. Mark passed away in Tucson, Arizona, after a five-year battle with cancer.*

There were many times during the past few years when Mark showed us he was winning one of his toughest battles. He approached cancer like a seasoned trial lawyer: he marshaled the facts, hired world class experts, and made strategic decisions based on the available information. Through it all, Mark exhibited his characteristic drive and sense of humor. He passed away despite all efforts to defeat the odds for these many years.

Mark was an extraordinary individual: attorney, educator, astute tactician, and partner who lived an exemplary life. I was blessed to have known him, to have worked with him as his partner, and to have been his friend for more than thirteen years.

Incredibly funny, keenly intelligent, and well-rounded, Mark could also be demanding. The latter characteristic made him and those around him seek excellence in all they did: advocacy, work, relationships, and firm matters. He sought, demanded, and attained the very best from himself and from everyone around him.

Many in the IP community and the entire legal profession considered Mark not only one of the best IP trial lawyers in the United States, but also one of the country's best trial lawyers, period. For several years he was featured in *The Best Lawyers in America* and designated one of the Illinois' "Super Lawyers." He was also named one of the "Top Ten Lawyers for Illinois" outside the IP field and he appeared on the cover of the *Super Lawyers Magazine*. *Who's Who Legal* identified Mark as "a born litigator" who deserved a place at the "top of the list," and *Chambers USA* called him a "leader in the field" whom they would "go to . . . for an important case."

Mark had an uncanny ability to process complicated fact patterns and to crystallize issues and key facts. He created memorable themes and a solid case theory that clearly defined the controversy at hand for discovery and trial. He would tell young associates and law students in our Patent Trial Advocacy class at Georgetown University Law Center that "all roads lead to trial." He insisted that early case analysis demanded this approach—in order to save cost in the end and remain focused on proving what was required to win the case.

I vividly recall PowerPoint presentations Mark would prepare "on the fly" to emphasize this important concept when he was teaching trial advocacy. In my mind's eye, I see the bold arrows from various clearly identified issues all leading to one central location on the slide entitled "TRIAL." He often reminded students that litigation is anything but glamorous and sometimes even requires a willingness "to like the taste of your own blood." At the same time, he

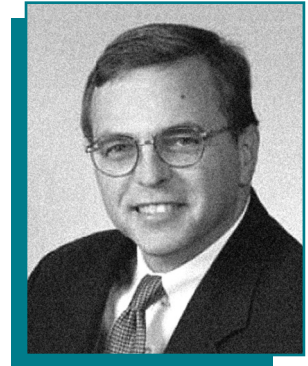
coaxed and encouraged reticent, inexperienced trial attorneys not to be afraid to learn by taking an active role in litigation, telling them, "you need to be willing to stand at the plate and swing before you can hit."

Mark's prowess in the courtroom was buttressed by a keen legal and analytical mind that transcended narrow principles of IP decisional law and wove in the fabric of general law, all to reflect the reality of his legal positions in a way that not only was easy to understand, but also was reasonable and cogent. This thinking proved to be a powerful ally in persuading appellate judges and is reflected in recent decisions by the Supreme Court and the Federal Circuit. Mark's appellate advocacy was next to none.

Mark's desire to teach and train future litigators and advocates led him to serve as a lead teacher in several Master/Post degree programs at The John Marshall Law School and Chicago-Kent College of Law with Hon. Paul R. Michel, Chief Judge, United States Court of Appeals for the Federal Circuit. It is a testament to his innate ability that he was asked by Judge Michel to help teach these programs after the judge had observed his impressive skills while he was still a program student. In reviewing the videotape of Mark's student performance, Judge Michel used the words "really astounding."

Both when teaching and in trying cases, Mark demanded that key points be identified and simplified. If a key point could not be reduced to a simple sentence or, more importantly, to a single headnote, he required more thought and effort to reduce the point to its essence. Communication and simplicity of argument was his mantra, and Mark was its chief spokesperson. The Georgetown Trial Advocacy class is a NITA-styled course ("learn by doing") that requires students to assume the role of trial counsel in conducting witness examinations and performing various trial tasks. Often, the teacher, in critiquing a student's presentation, actually demonstrates for the student how to better perform the task. Mark was a master at simply, agilely, and persuasively explaining and performing the required task to his students. His gift as trial attorney extended to his ability to *truly* teach, varying the performance to conform to a student's style. Many students have commented on Mark's ability both to instruct and persuade. One talked of the "privilege" to learn trial techniques from "the funniest professor ever who couldn't be more experienced and knowledgeable."

But a recitation of professional accomplishments—no matter how impressive—does not begin to paint a full picture of one's personal qualities. This is certainly true of Mark who, notwithstanding his seemingly tough veneer,



loved to help others.

In the Forward for the *Patent Trial Advocacy Casebook*, published by the ABA and NITA and co-authored by Mark, he referred to teaching as a “labor of love.” He went on:

It has to be. As any adjunct professor of law today knows, teaching a course while engaged in a full-time law practice in today’s environment is not something that earns one more prestige with your peers, more time with your family, or more money. What it does earn is the sheer joy of helping younger and eager students progress in their professional development . . . . Each year we experience the joy of watching our students’ skill in trial presentation improve. . . . “We are grateful for the opportunity to teach this course . . . and, most of all, to meet and work with the many young professionals who make this labor of love so rewarding.

Mark made many significant contributions to the ABA-IPL Section that will always reverberate with the Section and the ABA. He was Chair of the Section in 2002–2003, a position that had also been held by his father, Donald W. Banner, more than three decades earlier, and one presently held by his sister, Pamela Banner Krupka.

During all times—including those heated Section debates at Council meetings or in Business Sessions, when issues can become confused and diluted—Mark always provided focus and reality. He had a real sense for what issues would “play” in the greater ABA and before Congress. Mark’s mere rising to be heard had the impact of silencing members so they could clearly hear his succinct, thorough and analytical approach to the problem at hand.

Many on Council clearly recall Mark’s sharp wit and ability to redirect a meeting. A great example began with our use of the phrase “motherhood and apple pie” to characterize a proposal that is without great substance but also without real harm. Later, at a Section long-range planning meeting that seemed to be more on long than it was on planning, Mark enlivened the proceedings by changing the hackneyed expression to “mother pie.” Now that phrase is a part of the lexicon of our dialogue, and we think fondly of Mark every time it is uttered.

Mark brought energy, wit, strategy, keen intellect, leadership and humor to whatever he touched. He has left us with wonderful memories of a man who loved life and who left us far too soon. I will miss him, and the Section will miss him. ■