



# PREPARING FOR AN EVOLVING INDUSTRY

Nossaman's David Graeler, Brad Kuhn, Rick Rayl and Artin Shaverdian share their input

**B**ecoming an expert in any field requires patience, experience, a willingness to learn and most importantly, unyielding passion. This is certainly the case for those who commit to becoming a leading expert in the right of way industry. We were fortunate enough to be given the opportunity to speak to four such experts, all of whom are partners at Nossaman LLP, a mid-sized law firm with roughly 200 attorneys and offices spanning the entire U.S.

Nossaman has a nationally recognized infrastructure practice that does large-scale procurements for public agency projects in virtually every state. They provide legal advice primarily centered around infrastructure development—from the beginning stages of procuring and financing a project, through securing environmental approvals and defeating environmental challenges, all the way to acquiring necessary property rights, overseeing construction and handling construction claims. Aside from infrastructure, eminent domain and environmental practice areas, the firm also has several complementary practice areas focused on land use, water, government relations and regulation, intellectual property, insurance recovery and other forms of litigation.

There is one more important factor that piqued our interest: all four of these individuals have spent years volunteering as dedicated IRWA leaders. Not only do they have valued experience in the world of right of way, they also have a unique understanding of how our Association is woven into the industry.

Given their unparalleled expertise and IRWA experience, we asked David Graeler, Brad Kuhn, Rick Rayl and Artin Shaverdian to give us their insight into the issues being faced in today's right of way industry, as well as what they anticipate for the future.



#### DAVID GRAELER

I am a partner at Nossaman specializing in eminent domain, real estate and various forms of commercial litigation. I first gained interest in my field of work while in law school, as I always enjoyed real property law. I was lucky to find a firm that had well-established practices in areas that were of interest. I joined Nossaman as a fourth-year lawyer in January 2003, and I am now a partner. I currently serve as Nossaman's Head of Litigation and I am co-chair of our Real Estate Practice Group. I also serve on the firm's Executive Committee, so I wear a number of different management hats. My priorities for each position vary, but I think the overarching priorities are to ensure that Nossaman continues to have a robust practice, that people feel fulfilled working here and that we deliver the highest level of service to our clients so that they may achieve their goals.



#### BRAD KUHN

My name is Brad Kuhn, and I am an attorney at the Nossaman law firm where I chair our Eminent Domain & Valuation Practice Group—likely the largest group of skilled eminent domain attorneys in the country. I have been practicing eminent domain law for nearly 15 years, primarily representing public agencies with acquiring necessary property for large infrastructure projects throughout California. I was always interested in real estate law and finance throughout undergraduate and graduate school, and I truly enjoyed understanding valuation concepts and land use issues when I was interning as a law clerk. The eminent domain work checked all the boxes as I was able to focus on these interesting subjects.



#### RICK RAYL

I've been at Nossaman and practicing eminent domain for just over 25 years. It's the only law firm I've ever worked for and while I have done lots of other types of litigation over the years, eminent domain and other real estate valuation disputes have been the primary focus of my work since I was a young associate. I never imagined myself as an eminent domain lawyer when I was in law school, but when I joined Nossaman, that's what I was initially tasked with doing. As I got to know the field and the people working in it, I found I really enjoyed it, and the rest is history. I am currently an equity partner at Nossaman and at this point, I am the most senior (in terms of years at the firm) in our practice group. I have previously served as the Practice Group Leader for Eminent Domain (the role Brad Kuhn now fills), and I have served in various firm-wide administrative roles over the years. Currently, I sit on the firm's Finance Committee.



#### ARTIN N. SHAVERDIAN

I am currently a partner of Nossaman and one of the Lead Eminent Domain and Valuation Practice Group Attorneys based in our Los Angeles Office. In collaboration with my partners, I represent public and quasi-public agencies in planning and acquiring right of way for some of the largest infrastructure projects throughout California, including utility and pipeline corridors, highway, road and rail improvements, as well as various other projects requiring right of way. On occasion and on limited basis, I also represent property and business owners to ensure they are receiving just compensation in the unlikely event that their property or business is impacted by a public project. Although my practice has more recently expanded to land use, employment, healthcare and a host of other areas, eminent domain/inverse condemnation remains a very large portion of the work I do.

**Q: What is it about your profession that you feel most passionate about?**



**BRAD KUHN:** IRWA's mission to improve quality of life through infrastructure development truly resonates with me. I am passionate about what we do, and I take great pride in seeing our public improvements become a reality. I love hearing stories about how a project I worked on made a difference in someone's life; things like being able to take a light rail line home from work in time to make dinner for the family as opposed to sitting in hours of congestion or ensuring clean water is available to a new community.



**ARTIN SHAVERDIAN:** As Brad mentioned, in our role as counsel for these agencies delivering much needed infrastructure projects, we are making a real difference when we get people out of cars and onto trains for more productive commutes. We work on projects to deliver housing, water, gas, electricity and other life necessities. We are making a real difference with what we do as legal advisors in the right of way field.



**RICK RAYL:** And these are differences that we can literally see and feel. The first major infrastructure project I worked on was acquiring right of way for Orange County's cutting-edge toll road system, the first of its kind in California. When I started in the early 1990s, the roads were just visions on paper. Now, I see those roads every day and most days, I commute on one of them. It's a great source of pride to know I had a role in making that project a reality. After 25 years, I can see projects around California and know that I am one of the reasons they exist and serve our communities.



**DAVID GRAELER:** That's a great point. Having practiced in this area for a number of years, I can now drive around Los Angeles and see many different projects that I had a part in making a reality. These include numerous new schools constructed by the Los Angeles Unified School District, numerous different light rail lines constructed by the Los

Angeles County Metropolitan Transportation Authority (LA Metro) and the massive grade separation project built by the Alameda Corridor Transportation Authority. I really enjoy partnering with clients to identify their particular goals and objectives. It's tremendously fulfilling to work collaboratively with clients to help them meet their goals. This is particularly true with work in the right of way industry because I predominantly represent public agencies, so we work toward constructing public projects that will benefit the community that I live and work in.

**Q: What do you believe are the primary issues affecting today's right of way/infrastructure real estate industry?**

**RICK RAYL:** I think one primary issue is that much of our nation's infrastructure was constructed decades ago, and while it was built to last, that lifespan is now at or near its end. We simply do not have the resources to build the new projects we need while updating or rebuilding some of that old infrastructure. I also think government regulation and project opposition means that it takes far too long to bring a project to fruition. By the time a major project gets through its environmental review process and any litigation over that process that follows, more than a decade can easily pass. We need to find a way to bring good projects to fruition more efficiently and cost effectively. One way we do that is by using the "design-build" procurement method, which is designed to streamline the design and construction process. In theory, this is a great concept and for most aspects of the project, it does seem to save time and money in many instances. But for those of us in the right of way side of the infrastructure field, "design-build" can be a curse. Rules and regulations involved in acquiring right of way have not caught up to this method of procurement and as a result, we often find ourselves trying to condemn necessary property before a project design (or designer) even exists. This can present real problems, creating unique right to take challenges. In the right of way industry, we need to find solutions to the problems with "design-build" procurement. It is not going away; it provides too many benefits to the project as a whole, and I don't think our industry has responded quickly enough to the challenges this new paradigm presents.

**ARTIN SHAVERDIAN:** I agree. The nation's (and in particular this state's) infrastructure has or is reaching the end of its useful life. While this provides an opportunity for our industry as many projects are slated for the foreseeable future, the lack of personnel in the right of way industry who have the necessary skills to support agencies and their staff is a concern. The pool of right of way professionals—including appraisers, acquisition agents, relocation agents, experts, counsel and others—does not appear to be growing. Ensuring that there is a new generation of well-trained right of way professionals should be a priority. This is a daily challenge for our agency clients, right of way firms and attorneys in the industry.

**DAVID GRAELER:** The need for new infrastructure and new right of way personnel is certainly important, which is why from my perspective, the primary issue is probably funding. Public agencies face great pressure to deliver projects on time and on budget. Delays often result in huge penalties for public agencies, so our ability to deliver right of way timely is a crucial component of what we do. I've also noticed in recent years the challenge public agencies have in identifying their right of way needs when dealing with a design-build project. As Rick alluded to, while

design-build affords many positives and flexibility in building the actual project, it also often results in a public agency taking more right of way than may ultimately be needed. This, in turn, can expose a public agency to greater claims and challenges, and it also presents some interesting valuation issues. I've also had to use engineers and other technical experts more frequently than in the past. But this can be a very good thing because the work we do may actually identify creative solutions in assessing right of way needs.

**BRAD KUHN:** I definitely think *that* should be the biggest focus: finding ways to fund and cost-effectively deliver projects with new and creative methods. And let's not forget the need to address climate change. As everyone else has mentioned, these issues come up in virtually every project.

**Q: What changes in the industry do you anticipate over the next 10 years?**

**ARTIN SHAVERDIAN:** Technology has evolved greatly in the last 20 years and continues to progress at light speed. With the advent of autonomous vehicles, hyperloop and other similar technologies, there will be new needs (such as a need for new regulations) and new opportunities for the right of way professional to accommodate these technologies.

**DAVID GRAELER:** Yes, I also think technological changes will continue to impact the practice of law and the right of way industry broadly. Additionally, we will still be encountering budget challenges and certainly in Southern California, I see no end in sight to population growth. This will continue to place substantial pressure on housing and infrastructure. Thus, I expect the number and scope of public projects to be significant going forward. I also believe climate change will continue to present challenges for us in California. In particular, wild fires triggered by electric utility companies will be an ongoing struggle. I suspect we'll see changes in California law addressing inverse condemnation liability for these types of natural disasters. And if we extend the crystal ball out a bit further, there will undoubtedly be a managed retreat or other right of way issues tied to rising sea levels along parts of the California coastline. Of course, these issues are not unique to California, as many parts of our county have experienced or will experience these challenges.

**BRAD KUHN:** I'm with David on this one. I believe climate change will be an industry-changer. We will need to identify new ways to address sea-level rise, wildfires, natural disasters and changes to our environment. As both Artin and David said, we will need to find new ways to address these impacts through innovative new technologies. We will need to focus on how to improve our aging infrastructure to address our changing environment. I also believe funding and infrastructure delivery methods will change significantly over the next 10 years. Funding resources are becoming scarcer, and projects need to be built much more efficiently and timely. I expect to see a greater emphasis on private funding and delivery of public improvements.



Finally, I believe affordable housing will likely be a major emphasis of our industry, along with all the infrastructure needed to support such housing.

**RICK RAYL:** This is maybe more “hope” than “anticipate,” but I really hope the right of way profession and the various regulatory agencies that oversee it (particularly the federal agencies that fund so many large-scale infrastructure projects) can continue to work through the issues that design-build procurement creates, and can find ways to modify the required processes and procedures for right of way acquisition to align more closely to how major infrastructure projects actually work these days. As a starting point towards addressing at least some of these issues, I was part of a team that authored a legal research digest for the Transportation Research Board’s National Cooperative Highway Research Program. The book, “Liability of Design-Builders for Design, Construction, and Acquisition Claims,” details many of these concerns, though focused on the design-builder. It can be accessed at this link: <http://www.trb.org/main/blurbs/173607.aspx>

### Q: What advice do you have for right of way professionals to prepare for these upcoming changes?



**DG:** Stay informed and always try to learn new things. I like to think of lawyers as problem solvers. Keeping well-informed and learning new strategies will enable us to bring more creative solutions to future problems. I’m sure this translates to all aspects of the right of way industry.

**BRAD KUHN:** Start looking towards the future and plan for anticipated changes. Become familiar with the interplay between our environment, our approach to funding and delivering projects, and the needs of our communities. There is so much overlap in all our related practice areas and it is extremely beneficial to have the “big-picture” in mind when approaching our work and understanding how it fits within the industry.

**ARTIN SHAVERDIAN:** Think outside the box and as mentioned, plan ahead for these changes. Communicate with agency staff and think about the impacts of technology and these changes on what you’re working on today. Adapt to your environment and stay informed.

**RICK RAYL:** This one is pretty easy. You need to keep up with current trends, and understand how the laws and regulations affecting right of way evolve. A great way to do that is to be active in IRWA, which tracks these things closely. As a shameless plug, particularly for practitioners in California, you can also follow Nossman’s blog, [CaliforniaEminentDomainReport.com](http://CaliforniaEminentDomainReport.com).

### Q: Speaking of IRWA, how did you first learn of and join the Association?



**AS:** As a young lawyer I was introduced to the IRWA by my firm colleagues. I have been an active member of Chapter 1 since the early 2000s and an associate member of Chapters 2, 27, 42, 57 and 67.

**DAVID GRAELER:** I also first learned of the IRWA through Nossaman. Shortly after joining the firm in 2003, I was encouraged to become a member of Chapter 1, and I’ve been a member ever since.

**RICK RAYL:** Membership in IRWA has actually been a cornerstone of attorney development at Nossaman since I joined the firm in 1994. Most of us have sat on the Board of one (or more) IRWA Chapters over the years.

**BRAD KUHN:** As you can likely tell by now, Nossaman has a long line of attorneys that have served as Chapter Presidents, and we have been involved in IRWA for decades. It was expected that any new attorney working in the eminent domain field participate in IRWA and personally, I have really enjoyed my experience.

### Q: You have all been greatly involved in the Association. Please tell us more about your various IRWA leadership positions.



**RR:** I have been a member of both Chapters 67 and 57. I’ve also spoken at and been involved with Chapters 1 and 11 over the years. My primary IRWA “home” has been Chapter 67 in Orange County, where I started off presenting the “Case of the Month” at our meetings and later held all of the various board positions. I am currently a Past President of the Chapter.

**BRAD KUHN:** I have served virtually every role at the Chapter level, from overseeing events and the newsletter to serving as Secretary, Treasurer, Vice-President, President-Elect and President. I have been involved in four Chapters (Los Angeles, Orange County, Inland Empire and San Diego). Additionally, I have served as IRWA’s General Counsel for the past four years, which has really opened my eyes to the size, significance and collaboration of our industry, as well as the amazing individuals that all work towards a common goal.

**DAVID GRAELER:** My first leadership role in Chapter 1 was to chair the Fall Seminar for three or four years. After that, I was elected to the executive board and served as Chapter 1 Secretary, Treasurer, President-Elect and President. I recently rejoined the board to chair a committee that will be making a bid on behalf of Chapter 1 to host the Annual Education Conference in 2024 when IRWA celebrates its 90<sup>th</sup> anniversary. Yes, this is a shameless plug to garner early support, but you can never start too early! In all seriousness, Chapter 1 is where it all began and we haven’t hosted the conference since 1971. We are well past due!

**ARTIN SHAVERDIAN:** I've served as Chapter 1 Secretary, Treasurer, President-Elect and President. I currently lead the Chapter 1 Nominations and Elections Committee. In addition, I'm very much involved as an associate member in Chapters 2, 27, 42, 57 and 67. I have and continue to regularly speak at the various Chapters on matters in the right of way profession including legal issues. I have also attended and presented at many International Education Conferences. Finally, I'm currently serving on the 2024 Education Conference Bid Committee with the goal of bringing the 90<sup>th</sup> Education Conference to Southern CA.

**Q: How has IRWA helped your career and professional goals? What are some of the biggest challenges you faced during your IRWA leadership experience?**



**BK:** IRWA has provided me with an opportunity to meet and work with a fantastic group of individuals, and it has allowed me to better understand our industry and other practices. Volunteering—particularly as General Counsel—has been very rewarding, as I have been able to participate in the future direction of our organization. Of course, serving in this position and addressing difficult changes in the organization has certainly been the biggest challenge as well.

**DAVID GRAELER:** I've really appreciated the collegiality of IRWA members. It's a great way for people in the right of way industry to come together and talk about matters of common interest. The education is also vital. I've learned much and I've also enjoyed speaking at many IRWA seminars.

As for challenges, it's been quite a few years now and you tend to recall things with rose-colored lenses. For me, it was probably balancing my time between a busy legal practice and the demands of the board. Fortunately, all of the volunteers were eager to help and exceptionally talented, so that made things much easier. Beyond that, I seem to recall that we were focused on getting more people to attend our seminars, courses and luncheons. Based on what I've seen recently, we've made great strides.



**ARTIN SHAVERDIAN:** Among others, some of the basic keys to success in any industry is professional development and social interaction with colleagues. The IRWA has been a wonderful platform for both. I have learned tremendously from some of the industry's leaders at the many seminars, classes and professional development opportunities provided by the IRWA. In addition, interaction and continued collaboration with my right of way colleagues has allowed for the fostering of relationships and increased business development opportunities.

A challenge for any leader is to ensure you are surrounded with the best and most qualified team. Fortunately, Chapter 1 is full of some of the hardest working and devoted members, eager to serve in various roles. While the Chapter 1 team accomplished a significant number of milestones, the one true challenge for Chapter 1 remains the large geographic region it covers and the ability to increase member participation at the various events. However, by hosting events at different venues around Los Angeles, we were able to gain participation from members who otherwise would not attend due to traffic and time constraints.

**RICK RAYL:** The nice thing about IRWA is that it contains such a vast cross section of professionals in the industry. As an attorney – and particularly a young attorney – I did not necessarily need to spend my time solely with other attorneys. IRWA is filled with appraisers, right of way consultants,

public agency employees and essentially anyone else who touches the right of way industry as a profession. The ability to interact with all of those professions early in my career was priceless. And because IRWA membership requires a time commitment, the people there were not all right of way professionals, but they certainly had some passion for the field. This self-selection process created a great group of people. Being able to engage with several IRWA Chapters exposed me to the professionals in several geographic regions, giving me connections with people throughout Southern California.

One of the challenges that has faced Chapter 67 at various times over the years is keeping an engaged Chapter membership. At times, but not always, we have had limited large-scale infrastructure projects taking place in Orange County. When the big projects are in Los Angeles, San Bernardino/Riverside and San Diego, it is inevitable that those Chapters (1, 57 and 11) will have an easier time keeping up a robust, active membership. And





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because the Chapters are all so geographically close to one another, people who had historically been Chapter 67 members would often drift to one of the other Chapters if that was where the work was. Fortunately, Chapter 67 has had some great leadership over the years, and it doesn't hurt that we now have more right of way work going on in Orange County.

**Q: What advice do you have for those in your field considering IRWA membership?**



**DG:** Do it! It's a great organization and you won't regret it.



**BK:** This is a wonderful group where you will make lifetime friendships, and you will get to know clients and other consultants that you will come to work with over your career.



**AS:** It really is one of the best investments you can make in advancing your career. The IRWA provides you with the ability to develop professionally and make yourself marketable, whether to your employer or to your next client.



**RR:** Anyone who works in the right of way profession should spend time with IRWA, for the various reasons listed above. Few of us have expertise in all aspects of the right of way profession, and since we tend to work directly with people who have similar experiences and expertise, getting into IRWA provides that opportunity to interact with people in other parts of the field. Understanding what other right of way professionals do – and how they do it – has been invaluable for me, and I think the same would be true for anyone in this field.

But I will also say this: merely joining and attending random meetings is unlikely to yield the benefits I've described, and a person doing that may conclude after a few months that IRWA has little to offer them. But if you get involved in your Chapter, you will soon get to know some of the other talented professionals involved and everything will change. Take a minor role with minimal commitment and see how things go. I will warn you: don't be surprised if a few short years later you find yourself working your way through the board positions on the path to Chapter President. Finally, I have attended and spoken at several of the Annual International Conferences over the years. I strongly encourage anyone who has never been to one to find a way to go. They are a lot of fun, but more importantly, the ability to interact with right of way professionals from around the country (and, indeed, around the world) will leave you with some new perspectives of right of way that you would never gain if you focused only on your local Chapter your entire career. 🌟