

The background of the cover is a teal-colored image of a person's face, heavily obscured by a complex, tangled web of barbed wire. The wire is sharp and metallic, creating a sense of entrapment and restriction. The person's face is visible through the gaps in the wire, but the features are blurred and partially hidden, emphasizing the theme of human trafficking and the loss of identity.

# J Georgia Bar Journal

June 2012 • Volume 17 • Number 7

**Human Trafficking:  
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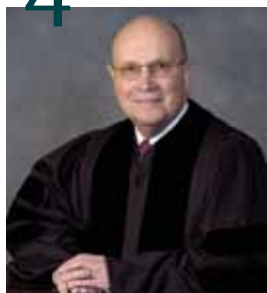
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by Kenneth L. Shigley

# Reflections on the Unexpected Privilege of the State Bar Presidency

Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are

admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

A woman wearing a formal morning coat and a no-nonsense facial expression made this traditional announcement to a packed room that a court officer had ordered to silence several minutes earlier. From behind a maroon velvet curtain appeared eight of the nine justices of the Supreme Court of the United States.

Chief Justice John Roberts read a summary of a decision written by Justice Sonia Sotomayor, who was absent. He did a workmanlike job of making slightly less soporific a decision concerning dischargeability of post-petition tax liabilities in a Chapter 12 farm bankruptcy. I could understand why such cases are assigned to junior justices. Then Georgia's Chief Justice Carol

Hunstein moved for the admission of 44 applicants, all but three of whom were members of the Young Lawyers Division. In the back of the attorneys' section of the courtroom sat three State Bar of Georgia presidents—Gerald Edenfield (2007-08, whose daughter Sharri was being admitted), Lester Tate (2010-11) and I, along with our younger friend, YLD Secretary Darrell Sutton.

After the justices disappeared behind the velvet curtain, we filed out quietly through bronze gates and downstairs to the Natalie Cornell Rehnquist Dining Room. Chief Justice Roberts dropped by to say a few words of greeting. Soon followed Associate Justice Clarence Thomas, the most illustrious son of Pin Point, Ga., who spent quite some time with our State Bar of Georgia group. He invited questions and took time for personal chats and photos with each person. Fresh from a CLE program on the Supreme

Court certiorari process, I mentioned one of my cases a decade ago in which Justice Thomas had written a vigorous dissent from the denial of certiorari. Amazingly, he immediately recalled the case, the core facts, the legal issues and a subsequent conversation at a conference with the author of the decision from which I had sought to appeal.

**"Reflecting on the intense experience of the past year, it has become increasingly clear that our profession and our legal system face significant challenges and opportunities."**



Just 19 days before the end of my tenure, this was one of many memorable moments in a year of unexpected privileges for an unlikely and undeserving State Bar president.

Many people who become State Bar president could have been identified as future bar leaders in law school. They progress through presidencies of their student bar association, young lawyers division and local bar association, then without missing a step smoothly ascend to presidency of the State Bar and beyond. Through long training and socialization, they are carefully groomed for the role.

However, I was not one of those natural Brahmins of the Bar. The State Bar presidency was not something that I or anyone else had expected to be part of my career. Through the decade of my 30s I practiced in a firm where any activity that was not directly billable was frowned upon. Three years after leaving that firm and hanging my proverbial shingle, at age 42 I attended for the first time the State Bar Annual Meeting in Savannah. Initially, it was just an excuse to park our children, then 5 and 6 years old, with my mother and take a short and incidentally deductible vacation with my wife. Knowing that I ought to attend some meeting while there, and that my bride would prefer to sleep late if possible, I signed up for the breakfast meeting of the Insurance Law Section (now Tort & Insurance Practice Section). To my surprise, I left that breakfast as secretary-treasurer of the section and one year later became the section chair.

From that one serendipitous decision to attend an annual meeting and a section breakfast cascaded scores of opportunities to speak at and chair CLE programs, publish articles in professional journals, a book deal with West and eventually a leapfrog ascent from the Board of Governors to the State Bar presidency. In material terms, the networking and exposure flowing from the random decision to attend that section breakfast generated fee revenue that covered a lot of mortgage payments, groceries, tuition bills, medical bills, kids' summer camps, sports equipment, family vacations and family vehicles.

When the opportunity arose to move up to the State Bar presidency, I had been in solo practice for 16 years. Friends jokingly told me that it was virtually impossible to practice law and make a living while serving as State Bar president, but I arrogantly assumed that my physical stamina and workaholic habits would see me through. Realizing a need for more infrastructure to support my practice while in Bar office, I joined a law firm comprised of five old friends who like me had started out in insurance defense practice before switching to plaintiffs' tort practice. They have provided moral support, logistical backup and the appearance of a firm, for which I will be forever grateful.

However, the economic reality of an essentially solo law practice remained unchanged. Working virtually full-time in the Bar presidency and also nearly full-time in my law practice with no safety net was stressful and exhausting. Somehow though I finished the course in the

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black with my credit record intact. It may take a while to lose the weight I gained through countless dinners and 2 a.m. snacks at the office, and to rebuild financial reserves, but in the end I am glad I made the leap of faith to take on the job.

The Bar presidency has broadened my perspective on our profession and justice system. One unplanned privilege was the opportunity to serve on the Criminal Justice Reform Council, seeking to help Georgia become more cost-effective about the way it deals with offenders, smart on crime as well as tough on crime. On other fronts, there were months of struggle to enable the public defender system to operate effectively within a budget while also lobbying to increase that budget. We did what we could to improve our disciplinary rules and standards of professionalism regarding lawyer advertising. Countless meetings with members of the judiciary at all levels deepened my understanding of their roles, perspectives and concerns. Working with Gov. Nathan Deal's team, Attorney General Sam Olens and numerous legislators enhanced my understanding of the complexity of policy-making at the state government level.

Some efforts fell short. For example, the proposed Juvenile Code passed the House of Representatives and the Senate Judiciary Committee but stalled due to new budget projections that appeared for the first time when there was insufficient time for careful evaluation. I expect this will be addressed in the context of continuing efforts of the Criminal Justice Reform Council, and will pass the Legislature in the next year or two.

Reflecting on the intense experience of the past year, it has become increasingly clear that our profession and our legal system face significant challenges and opportunities. I want to focus briefly on three of them: economics and the law school bubble, advertising and runners and court modernization and judicial pay.

## Economics of Law Practice and the Law School Bubble

On the east side of Forsyth Park in Savannah is the 1819 Candler Hospital building. John Marshall Law School in Atlanta is preparing to open this fall in that romantic setting the Savannah Law School, in response to the burning demand for a sixth law school in Georgia. Given their wonderful location, I expect they will attract enough students to be profitable. They may fill a real need for working adults in the Savannah area to attend their night program. On the principle that graduates of less elite law schools are on average happier than graduates of the most elite law schools, and Savannah is a great city, it may be a very successful venture. I wish them well and am tempted to apply for a faculty job.

The Savannah Law School will open, however, at a time when law school applications nationally are declining for the first time in many years in response to the huge gap in supply and demand of law school graduates. There has been much criticism of the "law school bubble" as the numbers of new lawyers produced by law schools vastly exceeds the number of available legal jobs, and universities use law schools as cash cows. Nationally, there have been reports of law schools inflating their reported statistics on graduates' employment in order to keep up their *U.S. News* ratings.

Over the past two years, there has been a 23.8 percent decline in the number of law school applicants as bright college students begin to react to the falling demand for new law school graduates. Law schools still fill their classes, though perhaps a little less competitively. I have seen projections that the supply of law school graduates in the next decade may exceed the number of legal jobs available in the economy by more than 200,000. Imagine 200,000 surplus lawyers looking for work to pay off crushing tuition loans and

pursue the dreams that led them to law school in the first place.

There are many factors involved in the gaps between supply and demand and between expectations and reality in the legal profession. Time and space do not permit a detailed analysis here of:

- Impact of crippling debt burden on new law school graduates to the point that their debt load alone might imperil the ability of some to pass a fitness review by bar examiners.
- Impact of *U.S. News* ratings of dubious merit upon law schools and their reporting of graduates' employment data.
- Corporate outsourcing of back-office legal work to India and China, where many thousands of bright youngsters are training in American law and eager to work for peanuts.
- Large firms hiring graduates as "contract lawyers" to review documents with no career track, mentoring or training on how to be a lawyer.



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- The “do-it-yourself” trend of consumers finding forms on the Internet and going *pro se* in the sorts of “meat and potatoes” legal work that many Main Street lawyers have lived on.
- Federal courts’ protection of “commercial speech” in lawyer advertising that leads to firms that do powerful marketing but poor legal work drawing in unsuspecting injury victims and settling their cases for a small fraction of value.

The net effect of these trends may be negative for both consumers and the legal profession.

## Advertising and Runners

One of the most common questions I encountered in speaking to civic groups around Georgia concerned sleazy lawyer advertising on television. Similarly, we lawyers have often complained about bad lawyer advertising and lawyers who use runners to unethically solicit unsuspecting injury victims. We get anecdotal reports of some (though not all) of law firms that advertise heavily doing substandard work for clients, selling them down the river for 10 percent of case value and fouling up the cases so badly that many reputable lawyers are afraid to touch them when the clients finally wise up and go looking for a “real lawyer.”

A body of federal court decisions regarding commercial speech and lawyer advertising are clear that the Bar cannot regulate content or taste other than to bar false and misleading advertising. But we can require a finite set of disclosures and disclaimers relevant to consumer choice. For the protection of consumers, the State Bar Fair Market Practices Committee chaired by Gerald Davidson of Lawrenceville, has proposed amendments to lawyer advertising rules in Georgia which were submitted to the Board of Governors on June 1, after the publication deadline for this article. Our proposal is to add prominent disclosures of who the advertising lawyers are, where they really are, if they are really just aggregating and referring the cases and if the person on the ad is actually an actor rather than a lawyer for whom the advertisement seeks business.

The committee also has prepared an addition to the Lawyer’s Creed regarding professionalism in lawyer advertising which has been adopted by the Chief Justice’s Commission on Professionalism, and has begun work on an aspirational statement on professionalism in lawyer advertising, to condemn sleazy practices that we cannot constitutionally prohibit. In addition, the committee has also begun work on several measures to curb more effectively the use of runners to unethically solicit injury victims.

## Court Modernization and Judicial Pay

The Georgia Constitution says we are to have a unified court system. Instead we have a fragmented, balkanized court system, and in at least one instance a turf battle that has dragged on for decades. As president, I appointed a Next Generation Courts Commission with a three-year charge to envision what the court system should look like in 20 years, and plot a course to get there.

Chaired by Hon. Lawton Stephens from Athens, the Next Generation Courts Commission includes judges, clerks and administrators from all classes of courts—superior, state, juvenile, probate, municipal, as well as a mix of practicing lawyers. Stephens organized it into committees on functional topics so that folks from all the classes of courts are drawn into working together on issues. The National Center for State Courts is providing staff support. I am hopeful that out of this creative mix will arise new solutions for institutional challenges in our judicial system.

We worked hard over the past year to create a statewide electronic court filing system similar to the federal “Pacer” system, in cooperation with a cohort of excellent superior court clerks and the Administrative Office of the Courts (AOC)a. The technology does not require reinventing the wheel. Other states that have done it have basically given Georgia their code. The IT staffs of the AOC and Superior Court Clerks Cooperative Authority, working together with vendors, could knock that out in fairly short order. The greatest challenge is political. An e-filing system must work through court clerks. We have 159 elected superior court clerks, almost all of whom are great, good-hearted public servants in their communities and sincerely want to move forward in the effective use of technology to improve service. The clerks in the 10 or 12 largest counties, where the bulk of the case filings occur, are eager to move forward on e-filing, and can play well with others. We were prepared to roll out the beta version of a Georgia e-filing system at the State Bar Annual Meeting in Savannah and install it this summer at a beta site in a suburban county. However, the effort was blocked repeatedly by a couple of strategically placed individuals guarding their turf. It is past time for Georgia to catch up with Alabama and other states on e-filing. These efforts will bear fruit sooner or later, though unfortunately not on my watch.

The more I have seen, the more convinced I have become that the balkanization of retirement systems between various classes of judges and clerks, some of which are funded in part by fees collected by their offices, helps to perpetuate turf protection and impede efforts to modernize our court system. We did not tackle in my term as State Bar president the fragmenting effect of the array of judicial branch retirement systems, and perhaps it is beyond the reach of any Bar leadership. However, someone should address this underlying force for continued fragmentation.

Judicial pay is another chronic concern. While most judges are dedicated public servants who are not motivated by money, and lagging pay is not directly tied to instances of judicial misconduct, we can take as an axiom that you generally get what you pay for. Judicial salaries are not competitive with what a successful private practice lawyer in his or her prime can earn. It is hard for lawyers to make that sacrifice in their prime earning years when they look forward to sending their children to

college. That affects the pool of applicants for judgeships.

Of course, there are always applicants for judgeships, just as there are always applicants for law schools. But the talent pool is affected by pay levels. In the 1950s, two-thirds of appointees to federal judgeships came from the private sector, from private practice. Today two-thirds of federal judgeship appointees come from the public sector. While I do not have hard data, my general observation is that pretty much the same thing happens at the state level.

It is undeniable that there are many fine judges whose prior experience was exclusively in the public sector. Some of them are among my dearest friends. But something is lacking when too many judges go to the bench with no experience in private practice or civil litigation, and who never had to represent human beings in court, and never had to deal with the economics of law practice, covering overhead, making payroll and struggling with a myriad of complicating issues that are daily headaches for practicing lawyers.

The Bar should support efforts to make judicial compensation more

competitive with what successful lawyers in their prime can earn in private practice. It may never be that there will be full parity in pay levels, but we should make judicial service less of a sacrifice for families of those who otherwise could make a great contribution on the bench.

Several times in the past year, I have been reminded of a poem I was required to memorize in fifth grade at Menlo, in Chattooga County.

*Isn't it strange that princes and kings,  
and clowns that caper in sawdust rings,  
and common folk like you and me,  
are builders for eternity?*

*To each is given a book of rules  
a block of stone and a bag of tools.  
For each must shape ere time has flown  
a stumbling block or a stepping stone.*

It is the role of the Bar to provide stepping stones and work past the stumbling blocks. 

**Kenneth L. Shigley** is the president of the State Bar of Georgia and can be reached at [ken@carllp.com](mailto:ken@carllp.com).

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by Stephanie Joy Kirijan

# Still Growing at 65 Years Young

It has been a great honor to serve as the State Bar of Georgia Young Lawyers Division (YLD) president and a rewarding experience to work with so many dedicated young attorneys around the state.

engaged—allowing the YLD to better respond to the needs of young lawyers throughout the state. The YLD has been at the forefront of inclusiveness in the State Bar, and its leadership reflects the unique characteristics of its more than 10,000 members. I am proud that this year, the YLD has its most inclusive board of directors in the organization's history.

YLD leadership set specific goals to advance the organization and exceeded expectations for a successful year. This was a milestone year as the YLD observed its 65th anniversary. Initiatives focused on advancing inclusive leadership within the State Bar through statewide outreach and improving the public perception of lawyers with community service. These goals are consistent with the mission of the YLD. When the YLD (formerly the Younger Lawyers Section) was created in 1947, its purpose was to further the goals of the State Bar, increase interest and participation of young lawyers and foster the principles of duty and service to the public.

## Inclusive Leadership

For its 65th anniversary, the YLD selected the theme of inclusive leadership. Seeing diversity and inclusion through the eyes of its members helps sustain a professional association where all feel welcomed, valued and

**“It has been a great honor to serve as the State Bar of Georgia Young Lawyers Division (YLD) president and a rewarding experience to work with so many dedicated young attorneys around the state.”**

## Statewide Outreach

To achieve its goal of greater inclusion, the YLD successfully worked to increase its statewide outreach. This focus resulted in a 30 percent average increase in meeting attendance. The YLD also hosted two statewide affiliates' conferences this year in order to assist in the engagement of young lawyers from every corner of the state. These conferences allowed young lawyer leaders to come together and share ideas for strengthening and improving the organizations that they represent and

the YLD as a whole. As a result of these conferences, young lawyers in Athens and the surrounding area are creating the Western Judicial Circuit YLD.

The YLD continued to groom leaders across Georgia through its Leadership Academy. This year, the Leadership Academy mentored 46 young lawyers interested in developing their leadership skills as well as learning more about their profession, their communities and their state.

## Community Service

The YLD had great success in leveraging its statewide network of young lawyers to improve the public perception of lawyers through community service. This year, the YLD partnered with the Office of the Attorney General and the Georgia Food Bank Association in the statewide inaugural Legal Food Frenzy. Attorney General Sam Olens encouraged the legal community to rise to the challenge and help reduce hunger in Georgia. Across the state, members of the YLD participated as city representatives to help make this event a success. More than 220 Georgia law firms and legal organizations and more than 15,500 people in cities across the state took part in the Food Frenzy. Through the Georgia Food Bank Association's system of seven regional food banks encompassing every county in the state, all donations benefitted local communities. The Food Frenzy united the legal community and helped the 1.6 million Georgians who are in need of food assistance.


The YLD focused its fundraising efforts on the Georgia Legal Services Program (GLSP), a non-profit organization providing free legal services to low-income people in civil matters in the 154 Georgia counties outside the five-county Atlanta metro area. Forty years ago, the YLD played a critical role in the creation of GLSP, and its commitment to the program continues to be important. Support from State Bar leadership and the legal community has allowed GLSP to become the program it is today. This year, YLD officers, directors and representatives took a GLSP Call to Service challenge, resulting in more than 50 percent of its leadership participating to raise money or take a pro bono case on behalf of GLSP. The YLD also hosted two of its most successful fundraisers to date, the Signature Fundraiser and the Supreme Cork, raising a combined total of nearly \$95,000 to benefit GLSP. Finally, the YLD's Public Interest Internship Program provid-

ed legal services worth \$500,000 to partner organizations; \$143,000 of that was directed to GLSP. During challenging financial times, the generosity of the legal community has allowed GLSP to continue to serve low-income Georgians. In its role as the public service arm of the State Bar, the YLD has assisted GLSP to serve the state's most vulnerable populations, helping them rebuild their lives through access to justice and opportunities out of poverty.

Through its statewide service efforts, the YLD continued to work with its partners to support substantial reform for Georgia's juvenile code as part of the State Bar's legislative initiatives. Seven years ago, the YLD Juvenile Law Committee undertook an ambitious project, funded in large part by grants from the Georgia Bar Foundation, to create a model juvenile code that could provide a framework, based on proven best practices and scientific research, for revising Georgia's juvenile code. The Proposed Model Code developed a new organizational structure, created and maintained stylistic consistency and incorporated proposals for substantive revisions that reflect best practices. The legislation was approved by the House of Representatives and the Senate Judiciary Committee but did not achieve final passage due to budget considerations. The YLD will continue to support its partners in the efforts to pass this legislation next session.

In further celebration of the 65th anniversary, the YLD paid tribute to individuals who have served as the foundation of the organization. The YLD honored its past presidents with the creation of a YLD Presidents Boardroom at the Bar Center. Each past president's photo is displayed in the boardroom, which includes 10 women and three African-Americans. The boardroom enhances the prestige of the YLD brand and advances the anniversary theme of inclusive leadership by adding diversity to the walls of the Bar Center.

The YLD also paid tribute to another pillar of the organization, Chief Justice George Carley of the Supreme Court of Georgia, for his many years of dedicated service to the bench and bar. Chief Justice Carley, who is retiring this year, epitomizes inclusive leadership through his involvement in the YLD over the past three decades. Chief Justice Carley has encouraged statewide outreach of the YLD through the High School Mock Trial program since its inception in 1988. He has also encouraged and mentored YLD officers who he has sworn in for 20 years. Because of Chief Justice Carley's dedication to generations of young lawyers, the YLD celebrated his service at the Annual Meeting with a memorable roast delivered by Hon. Lawton Stephens.

The YLD concluded another successful year by continuing to get stronger and advancing its mission through valuable programs and projects. The organization has earned generous support from the State Bar and its leadership that enables the YLD to continue its service to the profession and the public. Again, I have been privileged to serve with YLD members in every corner of the state and share in the success of this year. 

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# Human Trafficking: A Global Problem with Local Impact

by Jonathan Todres and Michael Baumrind

In March 2011, a man was sentenced to 40 years in prison for sex trafficking and other crimes, having recruited and forced 10 females from Mexico into prostitution—four of them juveniles.<sup>1</sup> In July 2011, a woman and her husband, a minister, pleaded guilty to human trafficking-related charges after having lured a 29-year-old woman from Swaziland under false premises and exploiting her as a domestic servant for two years.<sup>2</sup> In August 2011, another man was sentenced to 20 years in prison for sex trafficking a minor within the United States.<sup>3</sup> Human trafficking is a global problem, but these cases share one thing in common that might surprise many in our community: they all occurred in Georgia.

Every year, human trafficking, a grave violation of human rights and human dignity, harms millions of individuals around the world. Individuals are trafficked and exploited in numerous indus-

tries, ranging from the sex trade to a variety of labor settings, including manufacturing, agriculture, construction, mining and quarrying, fishing and domestic service.<sup>4</sup> Georgia is not immune; human trafficking persists in our own backyard. Combating this modern-day form of slavery requires efforts from all sectors of society, and attorneys are well-positioned to play an important role. This article provides an overview of the problem of human trafficking, briefly reviews current anti-trafficking law and discusses ways in which attorneys working across a number of areas of law can contribute to efforts to combat human trafficking.

## Human Trafficking

Human trafficking occurs when an individual or group uses force, fraud or coercion to exert control over a person for purposes of exploiting that individual for his or her labor or services.<sup>5</sup> Such exploitation can include sexual exploitation, forced labor, servitude or other similar practices.<sup>6</sup>

Given the illicit nature of the activity, it is difficult to determine the precise number of human trafficking victims. Recent estimates have suggested that there are more than 2 million human trafficking victims globally at any given time.<sup>7</sup> Others have suggested that the number of victims is significantly higher.<sup>8</sup> Closer to home, victims are trafficked both into the United States as well as within the United States. Human trafficking cases have been reported in all 50 states and Washington, D.C.<sup>9</sup>

Human trafficking imposes a significant and often life-threatening toll on its victims.

Trafficked persons experience physical, sexual and emotional violence at the hands of traffickers, pimps, employers and others. They are exposed to various workplace, health and environmental hazards. All of these harms are experienced by individuals trafficked here in Georgia. Atlanta is regarded as one of the top sex trafficking destinations in the United States,<sup>10</sup> and instances of domestic servitude have been reported in several Georgia communities.<sup>11</sup> The agricultural sector provides another opportunity for traffickers. As the threat of human trafficking persists, the law to combat it, here in Georgia and around the country, continues to evolve.

## Anti-Trafficking Law

In 2000, both the United States and the international community adopted a three-pronged approach to combating human trafficking. Within weeks of each other, the United States passed the Trafficking Victims Protection Act (TVPA),<sup>12</sup> and the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol).<sup>13</sup> Today, 147 countries are a party to the Trafficking Protocol, helping to create a global framework for responding to the problem.<sup>14</sup> The three-pronged mandate requires governments to: (1) criminalize and prosecute human trafficking; (2) protect and assist trafficking victims; and (3) implement prevention programs.<sup>15</sup> After more than a decade, this three-pronged mandate (sometimes referred to as the “three Ps”—prosecution, protection and prevention), and in particular the TVPA (and its three subsequent reauthorizations) and the Trafficking Protocol, form the foundation of both a U.S. and global effort to combat human trafficking.

More recently, many states have adopted anti-trafficking laws. Today, almost all states, including Georgia,

have anti-trafficking laws.<sup>16</sup> What follows is a brief summary of the major prosecution, protection and prevention measures found in federal and Georgia law.

## U.S. Federal Law

In the past decade, Congress has adopted several key pieces of legislation to strengthen the U.S. response to human trafficking in all three areas—prosecution, protection and prevention.

### Prosecution

U.S. law separately criminalizes labor trafficking and sex trafficking and provides that any individual who “knowingly recruits, harbors, transports, provides, or obtains by any means, any person for [forced] labor or services” shall be guilty of labor trafficking.<sup>17</sup> Similarly, federal law provides that “[w]hoever knowingly . . . recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or . . . benefits, financially or by receiving anything of value, from participation in [such] a venture . . .” in order to compel a person to engage in a commercial sex act shall be guilty of sex trafficking.<sup>18</sup> Penalties for sex trafficking are increased if the victim is underage. Under federal law, the movement of a victim from one locale to another is not required in order to establish the crime of human trafficking.<sup>19</sup> Moreover, when the victim is a minor, force, fraud or coercion do not need to be proven if the victim is trafficked for sex (although force, fraud or coercion must still be established when a minor is trafficked for forced labor or other forms of exploitation).<sup>20</sup> In addition, Americans who commit human trafficking offenses abroad can be prosecuted here in the United States.<sup>21</sup> Finally, federal law provides for forfeiture of any property used or intended to be used in committing acts of trafficking or derived from the commission of any such offense.<sup>22</sup>

In addition to the sanctions for traffickers, federal law provides

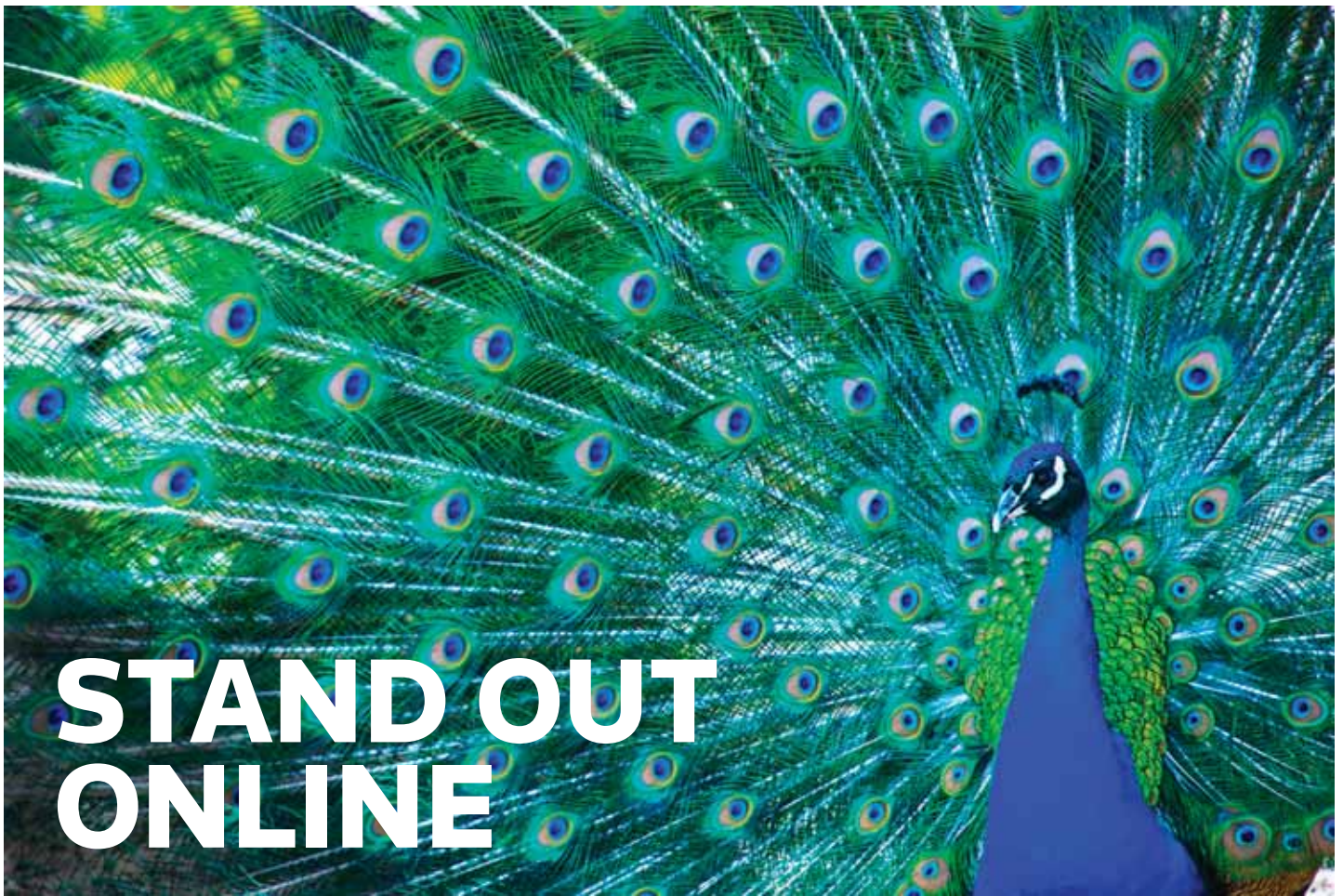
for mandatory restitution “for the full amount of the victim’s losses.”<sup>23</sup> It enables survivors to bring civil actions against their traffickers for damages and reasonable attorney fees.<sup>24</sup>

### Protection

Federal law also provides a number of measures to protect and assist both domestic and foreign victims of human trafficking. Domestic victims can seek assistance from a range of service organizations that can provide basic needs such as food, shelter and clothing, as well as legal and medical care, job training and other services.<sup>25</sup> Foreign victims can access services if they qualify for continued presence (CP) status or have submitted a bona fide application for T- or U-visa status (or, for minors, upon receipt of a certificate of eligibility from the Department of Health and Human Services).<sup>26</sup> CP status may be granted to victims who might be witnesses in the prosecution of a trafficker. To be eligible for special classes of visas for human trafficking victims (T visas) or victims of certain crimes (U visas), the victim must be willing to cooperate with prosecutors and law enforcement in the prosecution of traffickers.<sup>27</sup> Individuals who qualify under such programs are eligible to receive services to the same extent as refugees.<sup>28</sup> Both legal immigrants and undocumented foreign nationals are eligible for T and U visas, if they meet the criteria. Though each reauthorization of the TVPA has expanded protection provisions and programs, assistance to victims continues to confront two significant issues: the ongoing challenge of identifying victims of this clandestine activity and the need for additional resources to ensure all survivors receive the services necessary to recover fully and reintegrate back into the community.

### Prevention

Finally, federal law has established a few human trafficking



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prevention measures. The federal government has collaborated with the Polaris Project to establish the National Human Trafficking Resource Center, which operates a national hotline to report potential human trafficking cases. The center also serves as a clearinghouse to help survivors connect with services. The U.S. government has funded state- and local-level task forces and the State Department's Office to Monitor and Combat Trafficking. Together, these strategies are meant to enhance public awareness about human trafficking. Coordinated task forces facilitate information-sharing among law enforcement to help identify potential traffickers and possible victims. Pursuant to its mandate, the State Department publishes an annual Trafficking in Persons

Report (TIP Report), reviewing countries' progress on combating human trafficking.<sup>29</sup> The 2011 TIP Report reviewed the practices of more than 180 countries, including the United States itself. Those countries judged to have failed to take sufficient steps can be subject to U.S. sanctions.<sup>30</sup>

Federal anti-human trafficking law continues to develop. As of January 2012, both the House and Senate were considering TVPA reauthorization bills, providing an opportunity to further strengthen anti-trafficking law and programs in the United States.<sup>31</sup>

### State Laws: Focus on Georgia

Almost all states, including Georgia, have anti-trafficking laws

today. As most of these laws have been adopted in recent years, many states are still in the early stages of implementing and enforcing anti-trafficking measures. The Georgia Legislature has taken several significant steps in this arena. In 2006, Georgia created two criminal offenses for human trafficking—trafficking for labor servitude and trafficking for sex servitude—with penalties of up to 20 years in prison and a minimum of one year for trafficking of adult victims and 10 years for trafficking a child.<sup>32</sup>

More recently, after a concerted effort and campaign from anti-trafficking organizations and advocates, in 2011, the Georgia General Assembly passed House Bill 200, which the governor signed into law.<sup>33</sup> The new law strengthens penalties for traffickers. Where a person coerces or deceives a child into being trafficked for labor or sex, the minimum punishment is now 25 years in prison, \$100,000, or both.<sup>34</sup> In other cases involving minors or adults, the minimum sentence is now 10 years.<sup>35</sup> The new law also increased penalties for sexually exploiting minors, with heightened penalties if the child is under 16-years-old.<sup>36</sup> The law empowers the state to seize the assets that perpetrators used in, or derived from, human trafficking activities.<sup>37</sup>

In addition to enhancing Georgia's prosecutorial powers, the new law also strengthened Georgia's protection and prevention efforts. For example, the law increases the likelihood that children caught up in and harmed by human trafficking schemes will be recognized and treated as victims by providing an affirmative defense to victims under 16-years-old against charges of prostitution or other sexual crimes committed because they were coerced or deceived while being trafficked.<sup>38</sup> The new law aims to facilitate victims' access to compensation through the Crime Victims Compensation Fund.<sup>39</sup> Finally, the law tasks the Georgia Peace Officer Standards and Training Council

and the Georgia Public Safety Training Center with developing guidelines and procedures for law enforcement to help facilitate identification of trafficking victims, explore alternatives to detention for victims and develop other means of assisting victims.<sup>40</sup>

One of the strengths of Georgia's efforts to protect and assist victims is the Georgia Care Connection Office. Georgia Care Connection is an independent, state-wide initiative of the Governor's Office for Children and Families that provides a single point of contact for child victims of commercial sexual exploitation in Georgia.<sup>41</sup> The Safety Gap Fund, a public-private partnership, is the result of a collaborative effort to establish additional funding to support commercial sexually exploited children in Georgia and cover the cost of residential treatment programs for exploited children.<sup>42</sup> In addition, the Governor's Office for Children and Families has a task force on commercial sexual exploitation of children that has helped coordinate the efforts of Georgia-based organizations seeking to combat such exploitation and ensure services for exploited children.

The Georgia Legislature continues to address human trafficking. In the 2012 legislative session, the Georgia House of Representatives voted (166 to 1) in favor of a resolution—HR 1151—to create a Joint Human Trafficking Study Commission that would examine existing law and policy on human trafficking, including best practices for serving human trafficking victims.<sup>43</sup> The House Resolution, which has now been referred to committee in the Senate, calls for the Study Commission to report its findings and recommendations, including proposed legislation, by Dec. 31, 2012.<sup>44</sup>

Although significant strides have been made in Georgia, there is still work to be done to further strengthen law, policy and programming aimed at combating human trafficking in our state and elsewhere.

## The Role of an Attorney in Anti-Human Trafficking Initiatives

As momentum builds to combat human trafficking in Georgia, attorneys can play a meaningful role in advancing such efforts. As prosecutors work to hold traffickers accountable for their abuses, other lawyers can facilitate efforts to improve services to victims and strengthen prevention programs.

For a number of years, lawyers in Georgia have worked to assist international victims of human trafficking in obtaining temporary visas. For example, the Georgia Asylum and Immigration Network (GAIN) works with law firms around Atlanta to connect pro bono attorneys with human trafficking victims who need help applying for T visas.<sup>45</sup> Similarly, the nonprofit organization Tapestry provides anti-trafficking training programs and materials including a guide to petitioning for U visas.<sup>46</sup>

Though currently underutilized, civil remedies are available to victims, and lawyers play an obvious role. Lawyers can coordinate with victim services organizations or state and federal prosecutors to identify and assist human trafficking survivors who want to seek civil remedies. For example, in 2011, King & Spalding teamed with the international human rights organization Equality Now to file a landmark case under the TVPA seeking damages on behalf of four victims of human trafficking.<sup>47</sup> The Southern Poverty Law Center has published a guide to civil litigation for human trafficking victims, which provides attorneys an opportunity to engage in such work.<sup>48</sup> This is an area of growth for attorneys who want to contribute in this area.

Opportunities for attorneys to make a difference extend beyond litigation. The health care and education sectors provide opportunities for early intervention, and possibly even prevention of exploitation of children. For example,

pimps and traffickers, at times, will take victims to the emergency room for treatment, providing a window of opportunity. Counsel to health care and education sector clients can help them develop new, or strengthen existing, guidelines and procedures for identifying potential victims. A number of service organizations with expertise in this area are available to help support such initiatives.


Finally, lawyers working with corporate clients have opportunities to assist in the development of responses to the problem of human trafficking. On Jan. 1, 2012, California adopted a new law, the California Transparency in Supply Chains Act of 2010 (California Transparency Act), which might impact a number of businesses here in Georgia.<sup>49</sup> It mandates that any manufacturer or retailer with worldwide annual gross receipts of at least \$100 million that is "doing business" in the state of California disclose on its website its policies on, and measures undertaken to, combat human trafficking and forced labor in its supply chain.<sup>50</sup> Although the California Transparency Act is limited to a disclosure requirement, one national firm suggests that companies consider the impact their response to the new law will have on "human rights organizations, consumers, investors, and other interested parties" and undertake more than the minimum steps required.<sup>51</sup>

It is anticipated that the new law will apply to approximately 3,200 global companies.<sup>52</sup> For corporate counsel here in Georgia representing major manufacturers and retailers, this law has potential implications, whether or not one's client is doing business in California, as ultimately market pressure might suggest the need to undertake similar measures voluntarily.<sup>53</sup> In addition, a bill has been introduced at the federal level that would require similar disclosure of all publicly listed companies, suggesting that such disclosure on companies' supply

chains might be required of all businesses eventually.<sup>54</sup>

The above programs and opportunities are only intended as examples of ways in which attorneys working in various fields can play a role in combating human trafficking. It is not an exclusive list and certainly does not mention many of the attorneys who already are engaged in anti-trafficking initiatives. The great breadth of practice areas in which lawyers operate position attorneys to contribute in a range of ways.

## Conclusion

Human trafficking is one of the great challenges of our generation. The notion that millions of individuals live in slave-like conditions in the 21st century should appall every one of us. Tragically, Georgia has not gone unscathed. The good news, however, is that a strong anti-trafficking community is already in place, with public sector and private sector support. Building on this work, attorneys can help advance anti-trafficking efforts and, hopefully, help put an end to this gross violation of human rights and human dignity. 



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State University College of Law and an alumnus of Teach for America. In law school, Baumrind was a volunteer researcher for the UN Inter-Agency Project on Human Trafficking.

## Endnotes

1. Press Release, U.S. Immigr. & Customs Enforcement, Head of Sex Trafficking Ring Sentenced to 40 Years in Prison (Mar. 24, 2011), <http://www.ice.gov/news/releases/1103/110324atlanta.htm?f=m>.
2. Press Release, U.S. Dep't of Justice, Press Release, Georgia Couple Pleads Guilty to Human Trafficking Charges (July 8, 2011), <http://www.justice.gov/opa/pr/2011/July/11-crt-897.html>.
3. Press Release, Fed. Bureau of Investigation, Atlanta Man Sentenced for Sex Trafficking of Minors (Aug. 3, 2011), <http://www.fbi.gov/atlanta/press-releases/2011/atlanta-man-sentenced-for-sex-trafficking-of-minors>.
4. Sian Oram & Cathy Zimmerman, *The Health of Persons Trafficked for Forced Labour*, 4 ILO GLOBAL EYE ON HUMAN TRAFFICKING 4 (2008).
5. See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319, art. 3(a) [hereinafter Trafficking Protocol] (defining "trafficking in persons"); U.N. Office on Drugs & Crime, *Human Trafficking*, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Jan. 30, 2012) (defining "human trafficking"); see also U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 7-10 (2011), available at <http://www.state.gov/g/tip/rls/tiprpt/2011/> [hereinafter TIP Report 2011] (defining trafficking in persons).
6. Trafficking Protocol, *supra* note 5, art. 3(a).
7. U.N. Global Initiative to Fight Human Trafficking, *Human Trafficking: The Facts*, [http://www.unglobalcompact.org/docs/issues\\_doc/labour/Forced\\_labour/HUMAN\\_TRAFFICKING\\_-\\_THE\\_FACTS\\_-\\_final.pdf](http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf) (last visited Jan. 30, 2012).
8. INT'L LABOUR OFFICE, ILO ACTION AGAINST TRAFFICKING IN HUMAN BEINGS 1 (2008), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_090356.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf); U.S. Dep't of State, Trafficking in Persons Report 8 (2009), available at <http://www.state.gov/g/tip/rls/tiprpt/2009/>.
9. U.S. Dep't of Education, *Human Trafficking of Children in the United States: A Fact Sheet for Schools 1* (2007), at <http://www2.ed.gov/about/offices/list/osdfs/factsheet.pdf>.
10. Sally Quillian Yates, U.S. Dep't of Justice, *Building Bridges to Combat Human Trafficking in the Northern District of Georgia*, at [http://www.justice.gov/usao/briefing\\_room/crt/prosecutions\\_human\\_trafficking.html](http://www.justice.gov/usao/briefing_room/crt/prosecutions_human_trafficking.html) (last visited Jan. 31, 2012). Atlanta is one of the 14 cities in the United States with the highest incidents of child sex trafficking. *Id.*
11. See, e.g., *supra* note 2.
12. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. § 7101 (2006)); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended in scattered sections of the U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in scattered titles of the U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in scattered sections of the U.S.C.).
13. Trafficking Protocol, *supra* note 5.
14. U.N. Treaty Collection, Trafficking Protocol—Status of Ratifications, [http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited Jan. 31, 2012).
15. TIP REPORT 2011, *supra* note 5 at 16.
16. *Id.* at 373; see also Polaris Project, *State Map*, <http://www.polarisproject.org/state-map> (last visited Jan. 31, 2012).



17. 18 U.S.C.A § 1590 (West 2011); *see also* 18 U.S.C.A § 1589 (prohibiting forced labor).
18. 18 U.S.C.A § 1591 (West 2012).
19. *See* 18 U.S.C.A. §§ 1589-91 (listing elements of the crime of human trafficking); *see also* Polaris Project, Myths and Misconceptions, <http://www.polarisproject.org/human-trafficking/overview/myths-and-misconceptions> (last visited Jan. 30, 2012) ("The legal definition of trafficking, as defined under the federal trafficking statutes, does not require transportation.").
20. 18 U.S.C.A § 1591(a)(West 2012).
21. 18 U.S.C.A § 1596 (West 2012).
22. 18 U.S.C.A. §§ 1594(d)-(e) (West 2012).
23. 18 U.S.C.A § 1593 (West 2012).
24. 18 U.S.C.A § 1595 (West 2012).
25. *See* U.S. Dep't of Justice, Office of Justice Programs, Office for Victims of Crime, Grants & Funding: OVC-Funded Grantee Programs to Help Victims of Trafficking, <http://www.ojp.gov/ovc/grants/traffickingmatrix.html> (last visited Jan. 31, 2012).
26. *See* U.S. Dep't of Health & Human Servs., The Campaign to Rescue & Restore Victims of Human Trafficking, Fact Sheet: Victim Assistance, [http://www.acf.hhs.gov/trafficking/about/victim\\_assist.html](http://www.acf.hhs.gov/trafficking/about/victim_assist.html) (last visited Jan. 31, 2012).
27. *Id.* Britta S. Loftus, Coordinating U.S. Law on Immigration and Human Trafficking: Lifting the Lamp to Victims, 43 COLUM. HUM. RTS. L. REV. 143, 191-93 (2011).
28. 22 U.S.C.A. § 7105(b)(1)(A) (West 2012).
29. *See, e.g.*, TIP REPORT 2011, *supra* note 5.
30. *Id.*
31. S. 1301, 112th Cong. (2011), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112s1301is/pdf/BILLS-112s1301is.pdf>; H.R. 2830, 112th Cong. (2011), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2830ih/pdf/BILLS-112hr2830ih.pdf>.
32. S.B. 529, 147 Ga. Gen. Assemb., Reg. Sess., § 3 (Ga. 2006); O.C.G.A. § 16-5-46 (2011).
33. H.B. 200, 151st Gen. Assemb., Reg. Sess. (Ga. 2011).
34. O.C.G.A. § 16-5-46(f)(2) (2011).
35. *Id.* § 16-5-46(f).
36. *Id.* § 16-6-13(b).
37. *Id.* § 16-5-46(g).
38. *Id.* § 16-3-6(b)-(c).
39. *Id.* § 17-5-2(3), (9).
40. *Id.* § 35-1-16.
41. Georgia Care Connection Office, <http://www.georgiacareconnection.com/> (last visited Jan. 31, 2012).
42. Press Release, Governor's Office for Children and Families, Unprecedented Private-Public Collaboration to Support Victims of Child Prostitution in Georgia (Dec. 29, 2009), [http://www.georgia.gov/00/press/detail/0,2668,113927404\\_114432867\\_180641804,00.html](http://www.georgia.gov/00/press/detail/0,2668,113927404_114432867_180641804,00.html).
43. H.R. 1151: Joint Human Trafficking Study Commission; create, <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HR/1151> (last visited Mar. 3, 2012).
44. H.R. 1151(HCS), 2012 Ga. Gen. Assem.
45. Georgia Asylum and Immigration Network, <http://www.georgiaasylum.org/index.htm> (last visited Jan. 31, 2012).
46. Tapestri, Inc., <http://www.tapestri.org/programs.aspx> (last visited Jan. 31, 2012).
47. Press Release, King & Spalding, King & Spalding Takes Unprecedented Civil Case on Behalf of Brazilian Sex Trafficking Victims (Jun. 16, 2011), [http://www.kslaw.com/News-and-Insights/NewsDetail?us\\_nsc\\_id=4910](http://www.kslaw.com/News-and-Insights/NewsDetail?us_nsc_id=4910).
48. *See* DANIEL WERNER & KATHLEEN KIM, SOUTHERN POVERTY LAW CENTER, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING (3d ed. 2008), *available at* [http://www.splcenter.org/sites/default/files/downloads/splc\\_human\\_trafficking.pdf](http://www.splcenter.org/sites/default/files/downloads/splc_human_trafficking.pdf).
49. California Transparency in Supply Chains Act of 2010, codified at Cal. Civ. Code § 1714.43 (2012).
50. Cal. Civ. Code § 1714.43(a)(1).
51. Timothy G. Hoxie et al., *California Transparency in Supply Chains Act: New Disclosure Requirements for Companies Doing Business in California to Take Effect January 1, 2012*, JONES-DAY (Nov. 2011), *available at* <http://www.jonesday.com/california-transparency/>.
52. *Christian Brothers Investment Services Leads Investor Coalition to Encourage Governor's Support of California Supply Chain Transparency Bill*, PRNEWswire, Sept. 16, 2010, <http://www.prnewswire.com/news-releases/christian-brothers-investment-services-leads-investor-coalition-to-encourage-governors-support-of-california-supply-chain-transparency-bill-103058499.html>.
53. For a more detailed review of the California law, *see* Jonathan Todres, *The Private Sector's Pivotal Role in Combating Human Trafficking*, 3 CAL. L. REV. CIRCUIT 190 (2012), *available at* [http://www.californialawreview.org/assets/circuit/Todres\\_FINAL.pdf](http://www.californialawreview.org/assets/circuit/Todres_FINAL.pdf).
54. Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. § 2 (2011).



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# Georgia's Private Papers Statute:

## A Reach Into the Past, A View of the Future

by Hon. Benjamin W. Studdard III and Adam M. Masarek

**O**.C.G.A. § 17-5-21 exempts “private papers” from search and seizure—even if the materials constitute evidence of a crime—but not if the materials are instrumentalities of a crime.<sup>1</sup> Recently, there has been an abundance of academic discussion and case law attempting to clarify the constitutional issues surrounding searches and seizures of electronically stored materials.<sup>2</sup> However, commentators and the courts have said little about the potential for Georgia’s statutory private papers exemption to limit state actors’ ability to search and seize suspects’ electronically stored materials, such as text messages, emails, digital images and videos.

O.C.G.A. § 17-5-21 inherently provides citizens more protection against searches and seizures than the Fourth Amendment does.<sup>3</sup> Historically, however, Georgia courts have largely ignored O.C.G.A. § 17-5-21 as a distinct avenue of defense for criminal defendants. From the statute’s enactment in 1966 until recently,



the courts held that the statutory private papers exemption provided no additional protection than those already provided by recognized privileges and constitutional doctrines.<sup>4</sup> However, in 2010, the Supreme Court of Georgia modified its interpretation of the statutory private papers exemption, finally acknowledging in a majority opinion that O.C.G.A. § 17-5-21 provides a distinct protection against searches and seizures of private papers.<sup>5</sup> Where constitutional and privilege-based challenges against searches and seizures have failed, a statutory private papers challenge could now succeed.

Interestingly, the Supreme Court based this new interpretation of the private papers statute on long-ago discarded U.S. Supreme Court Fifth Amendment case law.<sup>6</sup> Although no longer comprehensive constitutional authority, this case law was valid at the time the private papers statute was passed in 1966, and gives us our best view of the legislative intent behind protecting “private” papers at the time.<sup>7</sup> Since that view of constitutional law has since been considerably narrowed, the statute now enjoys its own significance, separate and apart from the Fifth Amendment.

This reach into the past to revitalize the statute prompts new ques-

tions and requires the re-examination of old ones. The Supreme Court of Georgia’s revised analysis asks anew what is “private;” now both of our appellate courts have realized that they must also ask, “what is a paper, and how does one possess it?” Recently, in *Hawkins v. State*, the Court of Appeals of Georgia recognized that a “paper” may take many forms which couldn’t have been envisioned when the statute was written.<sup>8</sup>

This article will explore what the Supreme Court of Georgia’s reach into the past means for the future of private papers protection under Georgia’s statute. What materials are now “private”? (i.e., are they an accused’s “personal property”?) Are they in her “possession”? Are there other considerations? When do they qualify as “papers”?<sup>9</sup>


## History of the Statutory Private Papers Exemption in Georgia

In 1966, the Georgia General Assembly enacted the statutory private papers exemption in Ga. Code Ann. § 27-303 (now O.C.G.A. § 17-5-21). The state Legislature has not amended the statutory language regarding private papers. Since the original enactment, there have been two landmark decisions in which

the Supreme Court of Georgia promulgated definitions for “private papers”: *Sears v. State* in 1993, and *Brogdon v. State* in 2010.

From original enactment up until *Sears v. State* in 1993, the courts did not put forth a working definition for what materials constitute “private papers.” Without much analysis, the reported decisions assumed that the statute was coextensive with the Fourth Amendment, incorporating Fifth Amendment protections against coerced self-incrimination. Hence, both the Constitution and the statute were considered to protect against seizure of “diaries, personal letters, and similar documents wherein the author’s personal thoughts are recorded.”<sup>10</sup> Having no independent significance, the statute received only occasional attention.

In *Tuzman v. State*, the Court of Appeals held that the statute cannot exempt private papers from search or seizure if the papers constitute “instrumentalities” of a crime.<sup>11</sup> Soon after *Tuzman*, the Georgia courts began a trend of holding that the statutory private papers exemption provided defendants no additional protection to those provided by the Fourth Amendment.<sup>12</sup> In two of these decisions, dissenting judges bemoaned the courts’ obfuscation of the statutory private papers exemption with constitutional doctrines.<sup>13</sup>



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In *Sears v. State*, the Supreme Court of Georgia defined “private papers” as privileged material: “the most reasonable interpretation of O.C.G.A. § 17-5-21 . . . is to restrict its reach to papers covered by privilege.”<sup>14</sup> From 1993 until recently, the appellate courts continued to adhere to the simplistic *Sears* definition for private papers.<sup>15</sup> In *Brogdon v. State*, the Supreme Court of Georgia overruled the *Sears* definition of private papers.<sup>16</sup>

## ***Brogdon*: Extending Privacy Beyond Privilege**

The Supreme Court of Georgia’s opinion in *Brogdon v. State* fundamentally altered the definition of “private papers” for purposes of O.C.G.A. § 17-5-21 analysis. In *Brogdon*’s DUI prosecution, the state obtained a search warrant for defendant’s hospital records, for purposes of showing his blood alcohol content.<sup>17</sup> The hospital had possession of the records when police seized them.<sup>18</sup> Over defendant’s private papers objection, the trial court considered the contents of the records, and found the defendant guilty.<sup>19</sup> The defendant challenged the seizure as violating the private papers exemption of O.C.G.A. § 17-5-21(a)(5).<sup>20</sup> The defendant did not challenge the seizure on any constitutional basis.<sup>21</sup>

*Brogdon* did not involve whether evidence should be considered “mere tangible evidence” or an “instrumentality” of a crime.<sup>22</sup> Rather, the decision involved whether given materials can qualify as “private papers,” period.<sup>23</sup>

*Brogdon* explicitly overruled *Sears*.<sup>24</sup> The *Brogdon* Court reasoned that the *Sears* definition for private papers was not well-grounded. *Brogdon* criticized the *Sears* privilege approach for failing to ascertain the legislative intent behind the statute. Rather than looking to “the intent of the General Assembly in enacting the statute, ‘keeping in view at all times the old law, the evil, and the remedy[.]’”<sup>25</sup> *Sears* was based on a case that was not decided

until 13 years after the enactment of O.C.G.A. § 17-5-21.<sup>26</sup> This privilege-based approach was especially confusing, said *Brogdon*, given its reference to privileges such as the “privilege for doctor-patient communications,” as “that relationship is not one recognized by the legislature as privileged.”<sup>27</sup>

After deciding that the *Sears* definition for private papers could not have been the enacting Legislature’s intent for O.C.G.A. § 17-5-21, the *Brogdon* Court decided that the state Legislature intended to codify the prevailing constitutional law of the day—specifically, the Fifth Amendment’s guarantee against compulsory self-incrimination as defined in *United States v. White*:

[T]he General Assembly exempted from a search warrant’s coverage ‘private papers’ that constituted tangible evidence of the crime for which probable cause had been shown. In 1966, the use of a person’s private papers to convict the person of a crime was seen as the equivalent of ‘forcible and compulsory extortion of a person’s own testimony’ and was forbidden by the Fifth Amendment’s right against compulsory self-incrimination.<sup>28</sup>

The *Brogdon* Court further explained:

The constitutional privilege against self-incrimination was ‘designed to prevent the use of legal process to force the accused individual to produce and authenticate any personal documents or effects that might incriminate him’ . . . It protected ‘papers and effects that were the personal property of the person claiming the privilege, or at least in his possession in a purely personal capacity’.<sup>29</sup>

Thus, *Brogdon* returns us to protection of the types of documents described pre-*Sears*—“diaries, personal letters, and similar documents wherein the author’s per-

sonal thoughts are recorded”—but announces for the first time a basis for its finding of legislative intent.

It is interesting to note that, in the realm of constitutional jurisprudence, *White*’s definition of the allowable scope of searches and seizures of personal papers and effects under the Fourth Amendment has been considerably narrowed by more recent U.S. Supreme Court decisions.<sup>30</sup> However, the Georgia General Assembly has not amended O.C.G.A. § 17-5-21(a)(5) to reflect changes in the case law. In effect, said the *Brogdon* Court, the Georgia Legislature chose to crystallize the Fifth Amendment self-incrimination jurisprudence of 1966 by enacting the private papers statute. The *Brogdon* Court accordingly adopted the holding in *United States v. White* as the definition for “private papers” for purposes of deciding O.C.G.A. § 17-5-21 issues:

Thus, the ‘private papers’ that were subject to O.C.G.A. § 17-5-21(a)(5)’s exemption from a search warrant’s coverage were those papers that belonged to the accused or were, at the least, in his possession . . . . Since the medical records that were the subject of the search warrant in the case at bar were neither the personal property of appellant nor were they seized from his possession, they did not constitute the ‘private papers’ that are exempt from coverage of a search warrant in Georgia under O.C.G.A. § 17-5-21(a)(5).<sup>31</sup>

Defense counsel’s clever argument didn’t end up doing much for Mr. *Brogdon*, but it gave new life to the private papers statute, and raised a host of interesting future questions. Before *Brogdon*, the statute was either considered co-extensive with the constitution, or co-extensive with Georgia law relating to privileges; there was no unique private papers analysis. After *Brogdon*, the statute for the first time has the potential to protect criminal defendants from the seizure

of incriminating evidence, beyond the protections offered elsewhere. This means that Georgia courts and lawyers must perform a multi-step analysis to decide whether certain seized materials warrant exclusion under O.C.G.A. § 17-5-21(a). If materials are “private,” “papers,” and not “instrumentalities” of a crime, then the trial court should exclude the materials from evidence under O.C.G.A. § 17-5-21. For purposes of this article, these issues are easiest to discuss in reverse order.

## What Materials are “Instrumentalities of a Crime”?

Materials cannot receive private papers exemption if they constitute instrumentalities of a crime. Although O.C.G.A. § 17-5-21(a)(1) states that state actors can lawfully seize private papers if the papers are instrumentalities “of the offense in connection with which [a search warrant] is issued,” the Supreme Court of Georgia has interpreted O.C.G.A. § 17-5-21(b) to allow seizure, during lawfully conducted searches, of instrumentalities of *any* crime.<sup>32</sup> The decisions that addressed this issue simply held that materials in question either were “designed, intended for use, or [were] used in the commission of” a crime, or were not.<sup>33</sup> For example, in *Ibekilo v. State*, the Court of Appeals rejected the defendant’s argument that a ledger containing accounts for sales of illegal drugs constituted private papers.<sup>34</sup> The Court in *Ibekilo* summarily concluded that such documents are “instrumentalities of a crime,” without applying any sort of test or analysis.<sup>35</sup>

## What are “Papers”?

The appellate courts have given us only a few examples for what they will find to constitute “papers.” *Brogdon* cites with approval the list enumerated in *Smith v. State*: “diaries, personal letters, and similar documents wherein the author’s personal thoughts are recorded.”<sup>36</sup>



There was once a day when the Georgia courts couldn’t conceive of an electronically transmitted document as a “document.” In *Department of Transportation v. Norris*, the Court of Appeals of Georgia held that the ante-litem notice required prior to suing the state could not be given by facsimile because that notice must be “given in writing.”<sup>37</sup> A fax transmission, the Court explained, “is an audio signal via a telephone line containing information from which a writing may be accurately depicted, but the transmission of

beeps and chirps along a telephone line is not a writing, as that term is customarily used. Indeed, the facsimile transmission may be created, transmitted, received, stored and read without a writing, in the conventional sense, or hard copy in the technical vernacular, having ever been created.”<sup>38</sup>

Much more recently, the Court of Appeals of Georgia held that a cell phone text message constitutes “printed matter however reproduced,” such that sexually explicit text messages knowingly

sent to a minor constitute a violation of O.C.G.A. § 16-12-103.<sup>39</sup> The Court reasoned that “[t]ext messages are ‘printed matter’ in the sense that they are comprised of words or numbers capable of being read by the recipient . . . By using the phrase ‘however reproduced,’ the General Assembly signaled its intent that printed matter need not be in any particular form.”<sup>40</sup>

Surely, we are well past the days of wondering whether the electronic version of a document is, in fact, a “document.”<sup>41</sup> Likewise, the notion that “private papers” must in fact involve paper would seem foolish in this day when many documents may be created electronically, never to be translated onto paper at all. Nor has it ever been thought that constitutional or statutory construction was limited to the technology in use at the time of drafting; rather, the search for legislative intent has always focused on adaptation of original intent to new inventions as they arise.<sup>42</sup>

*Hawkins* primarily involved a constitutional challenge to police officers’ seizure of text messages obtained from a defendant’s cell phone.<sup>43</sup> In *Hawkins*, the defendant sent text messages to her drug dealer, not knowing that an officer had his cell phone. The officer arranged a meeting with defendant at a local restaurant to sell drugs. When defendant arrived, the officer

observed Hawkins drive into the parking lot shortly thereafter. He then observed Hawkins entering data into her phone, and he almost contemporaneously received another text message on the [drug dealer’s] cell phone, in which Hawkins announced her arrival at the restaurant. The officer approached Hawkins’s vehicle, identified himself, and placed her under arrest for unlawfully attempting to purchase a controlled substance. . . . [A]s an incident to her arrest, police searched Hawkins’s vehicle and found

her cell phone inside her purse. The officer searched for, and found on Hawkins’s cell phone, the text messages that he had exchanged throughout the day with Hawkins. To preserve these text messages, the officer downloaded and printed them.<sup>44</sup>

The Court of Appeals upheld the trial court’s determination that the search was a valid “search incident to arrest” that did not violate the Fourth Amendment.<sup>45</sup> However, Judge Blackwell’s majority opinion in the Court of Appeals’ decision cites *Brogdon* to note that electronically stored materials might qualify as “private papers” for purposes of O.C.G.A. § 17-5-21:

Indeed, it is easy to imagine that cell phones with text messaging or email functionality . . . may contain a significant number of the electronic equivalent of private papers, which are exempted under Georgia law from the coverage of a search warrant when they merely are evidence of a crime.<sup>46</sup>

Because of such privacy concerns, the majority opinion, again in dicta, recommended treating a cell phone as “a container that stores thousands of individual containers in the form of discrete files.”<sup>47</sup> “Just because an officer has the authority to make a search of the data stored on a cell phone (that is, just because he has reason to ‘open’ the ‘container’) does not mean that he has the authority to sift through *all* of the data stored on the phone (that is, to open and view all of the subcontainers of data stored therein).”<sup>48</sup>

However, the Court of Appeals’ language regarding private papers is strictly dicta. The appellant-defendant challenged the search of her cell phone only on Fourth Amendment grounds—not under O.C.G.A. § 17-5-21. Because the appellant in *Hawkins* did not present a private papers argument on appeal, the Court of Appeals

decided the case solely on Fourth Amendment grounds. The Court of Appeals held the search was a properly conducted search incident to arrest, and therefore not in violation of the Fourth Amendment.<sup>49</sup>

The Supreme Court of Georgia affirmed the Court of Appeals’ ruling in an opinion released on March 23, 2012.<sup>50</sup> The Supreme Court also decided the case solely on Fourth Amendment grounds, upholding the Court of Appeals’ determination that a cell phone is analogous to a container for purposes of the Fourth Amendment. The Supreme Court of Georgia’s opinion did not address the statutory private papers exemption, but agreed with the Court of Appeals’ analogy of a cell phone to a physical “container.”<sup>51</sup> The Court agreed with the Court of Appeals that “a search of a cell phone incident to arrest . . . ‘must be limited as much as is reasonably practicable by the object of the search.’”<sup>52</sup> The *Hawkins* Court of Appeals decision shows that at least some members of Georgia’s appellate courts are willing to consider that *Brogdon*’s broad definition for private papers can cover electronic data.<sup>53</sup>

## What Materials are “Private”?

Assuming that electronic documents can be considered candidates for private papers treatment, then, the new *Brogdon* definition for what is “private” gives us at least two interesting questions. *Brogdon* tells us that materials may qualify as private papers if they are the accused’s “personal property” or “at the least, were in his possession.”<sup>54</sup> What, then, is “personal” to the defendant? And how does a document, especially an electronic document, qualify as being “in the possession” of the defendant?

## What is “Personal”?

*Brogdon* is based on *United States v. White*, and *White* deals with when a document is “personal” to the defendant. In *White*,



the defendant was a union official who sought to block the government from obtaining union records in his possession by claiming that they were private papers. The U.S. Supreme Court disagreed, reasoning that the records couldn't be private, since they were not White's private property.<sup>55</sup>

Surely it makes sense that a defendant cannot claim a privacy interest in records that he possesses, not as his own property, but as a representative of an organization of which he is merely an agent. But what if the defendant and the organization are one? What if the organization is a business, and the defendant is the sole proprietor thereof? Pre-*Sears*, Georgia courts construed the private papers exception as categorically excluding all business records. In *Ledesma v. State*, the Supreme Court of Georgia held that "a ledger reciting drug transactions; two desk calendars recounting drug transactions and the name of a drug

courier; deposit slips for Wes-Mer Chemical Company found at [the suspect's] business; a business license of Wes-Mer Chemical Company; and an employment contract between a third party and Wes-Mer Chemical Company" were not private papers.<sup>56</sup> In *State v. Smith*, the Court of Appeals interpreted *Ledesma v. State* to mandate that papers "of a business and not a personal nature" cannot receive private papers protection.<sup>57</sup>

Post-*Brogdon*, these cases may be subject to re-examination. Arguably, the business records of a sole proprietorship are the "personal property" of the owner. It's unclear whether Georgia courts will now construe "personal property" to mean "not business related," as in *Ledesma* and *Smith*, or to mean "not held in a representative capacity," as in *White*.

### What is "Possession"?

In 1966, it wasn't that hard to determine whether records were in

someone's possession; you just had to locate the paper. Today, there may well be no paper. For instance, as we write this article, it has no physical existence. We see it on the computer screen, but is that where it is? No; we can turn off the screen, but the document still exists, wherever it's stored.

But increasingly, people do not store their documents locally; they exist somewhere in the cloud. The creator probably does not even know where the computer or computers are that house their documents. Suppose, for instance, we store this document on a Google Docs account. Google Docs allows a user to store documents on a Google server from the user's computer, then access them from any computer or smart phone. The user can also share documents on his Google Docs account with other users, and choose whether to allow others to edit those documents. Typically, the user does not save the document to a local drive;

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instead, the primary document resides on Google's server.<sup>58</sup>

If the document resides on a Google server somewhere, is it in our possession? Or have we given it to Google? "The Georgia appellate courts," the Court of Appeals of Georgia recently stated, "have held consistently that one has no reasonable expectation of privacy in information voluntarily conveyed to another and maintained in the business records of another."<sup>59</sup> The context of this statement was the alleged privacy of internet service subscriber information, obtained by the police from Comcast. The question was not difficult, given that the defendant was using someone else's wireless network; but the Court expressed skepticism that the subscriber would have had any expectation of privacy in those records, either. The Court analogized to prior cases dealing with telephone billing records and bank records.<sup>60</sup>

But what if we placed the document on Google Docs because we know that Google's privacy policy says they will not look at it, and will not let anyone else look at it without our consent?<sup>61</sup> Does it matter if we've shared the docu-

ment with friends? And what if Google then changes its privacy policy to say, "well, maybe, under certain circumstances, we might look at your docs"—did the document just leave my possession?

Would it make a difference if our Google Docs were located on our hard drive instead of "in the cloud" somewhere? That's the model used by a different service, Dropbox.<sup>62</sup> Dropbox allows the user to save a document on his own local drive; the Dropbox software then sends the document to Dropbox's server, which transmits to every computer that user uses. Thus, instead of carrying around a flash drive, like we used to do, we can draft this article on a work computer and save it to a Dropbox file. When we get home at night, we can open it on a home PC and find the latest version already waiting. And we can share it with others, or not, by placing it in shared folders.

A focus on the physical location of a non-physical object like an electronic document would seem to be as outdated as requiring a private paper to exist on paper. In 1966, keeping physical possession of a record was a logical way of keeping it private. In a new century, courts seeking to apply private papers pro-

tection to electronic documents will have to measure an owner's reasonable expectation of privacy in any given method of remote storage. Perhaps we have a greater expectation of privacy in thoughts saved on Google Docs than in photos uploaded to a Facebook account; perhaps greater still my expectation that no one will see the documents we back up to Carbonite.<sup>63</sup> And if we show intent to keep the document private by encrypting it, all the better—regardless of where the server may be.

What about materials such as text messages or emails? Is a text message the author's "personal property" or "in her possession" if police obtain it directly from her wireless carrier via subpoena? Somebody deletes a note she typed for herself, but the police obtain a copy from her computer's "recycling bin"—was that email still her property or in her possession when police seized it? If the police seize a cell phone after the owner drops it while fleeing from officers, is a saved voicemail nonetheless the phone owner's property and in his possession, considering he can access the voicemail from a different phone?<sup>64</sup> If a friend sends a text message, is that

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message the recipient's "personal property," considering the friend or the wireless provider can access it freely without my permission? If a friend sends us an email, but "un-sends" it before we read it, is it still (or was it ever) our property or in our possession?

## Conclusion

It seems clear that after *Brogdon* and the Court of Appeals' decision in *Hawkins*, defendants will increasingly include O.C.G.A. § 17-5-21 private papers exemption challenges to searches and seizures in their motions to suppress. The apparently broad applicability of the rein-vigorated private papers exemption provides a boon to criminal defendants. But, the new significance of the *Brogdon* definition of "private papers" will force the appellate courts to pay more attention to this area of the law than they have in the past.

The application of the statutory private papers exemption to materials seized from electronic devices presents especially interesting issues. It seems certain that electronically stored materials will be deemed to be "papers" for purposes of the private papers statute; however, no court has yet addressed the special issues of privacy and possession inherent in text messages, emails and documents stored on remote servers. A focus on reasonable expectations of privacy rather than physical location or "possession" may be more appropriate for electronic documents.

The Supreme Court of Georgia reached into the past to reinterpret the statutory private papers exemption; application of the doctrine to modern and future communication technologies will require our courts to address 21st century privacy concerns. 



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## Endnotes

1. O.C.G.A. §§ 17-5-21(a)(1) (2011); 17-5-21(a)(5); 17-5-21(b); *Brogdon v. State*, 287 Ga. 528, 529-30, 697 S.E.2d 211, 213-14 (2010).
2. *See, e.g., United States v. Jones*, 132 S. Ct. 945 (2012); Stephanie Francis Ward, 411: *Cops Can Read Txt Msgs: States split over warrantless searches of cellphone data*, A.B.A.J., April 2011, at 16; Orin Kerr, *Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531 (2005).
3. *See Brogdon*, 287 Ga. at 529, 697 S.E.2d at 213; *Smith v. State*, 192 Ga. App. 298, 301, 384 S.E.2d 459, 462-63 (1989) (Beasley, J., concurring in part and dissenting in part); *Lowe v. State*, 203 Ga. App. 277, 281, 416 S.E.2d 750, 754 (1992) (McMurray, J., dissenting).
4. *See Sears v. State*, 262 Ga. 805, 806-807, 426 S.E.2d 553, 556 (1993), *overruled by Brogdon*, 287 Ga. at 528, 697 S.E.2d at 211; *Ledesma v. State*, 251 Ga. 885, 889-890, 311 S.E.2d 427, 432-433 (1984); *Lowe*, 203 Ga. App. at 280, 416 S.E.2d at 753; *Smith*, 192 Ga. App. at 298, 384 S.E.2d at 460.
5. *Brogdon*, 287 Ga. at 533-534, 697 S.E.2d at 216.
6. *Id.*
7. *Id.*
8. *See Hawkins v. State*, 307 Ga. App. 253, 257-258, 704 S.E.2d 886, 891 (2010) (*aff'd*, *Hawkins v. State*, No. S11G0644 (Ga. Mar. 23, 2012)).

The Court of Appeals' opinion in *Hawkins* cited *Brogdon*, 287 Ga. at 533-34, 697 S.E.2d at 216-217.

9. *See Brogdon*, 298 Ga. at 529-34, 697 S.E.2d at 211-16 (new private papers definition).
10. *See, e.g., Smith v. State*, 192 Ga. App. 298, 298, 384 S.E.2d 459, 459 (1989).
11. *Tuzman v. State*, 145 Ga. App. 761, 766-767, 244 S.E.2d 882, 887 (1978).
12. *See, e.g., Mooney v. State*, 243 Ga. 373, 385, 254 S.E.2d 337, 347 (1979); *Felker v. State*, 252 Ga. 351, 371-72, 314 S.E.2d 621, 639-40 (1984); *Ledesma v. State*, 251 Ga. 885, 890, 311 S.E.2d 427, 432-433 (1984); *Smith*, 192 Ga. App. at 298, 384 S.E.2d at 459; *Lowe v. State*, 203 Ga. App. 277, 280, 416 S.E.2d 750, 753 (1992).
13. *See Smith*, 192 Ga. App. at 300, 384 S.E.2d at 462 (1989) (Beasley, J., concurring in part and dissenting in part) ("I do not reach the Federal or the State Constitutional issues . . . because there is a violation of the state statute and no need to go farther."); *Lowe*, 203 Ga. App. at 281, 416 S.E.2d at 753 (McMurray, J., dissenting) ("The majority relies heavily on a Fourth Amendment analysis in determining that the warranted search of defendant's jail cell was proper. It is my view that such an analysis is unnecessary. 'After all, Georgia has long granted more protection to its citizens than has the United States.'") (*quoting Creamer v. State*, 229 Ga. 511, 515, 192 S.E.2d 350, 353 (1972)).
14. *Sears v. State*, 262 Ga. 805, 807, 426 S.E.2d 553, 556 (1993).
15. *See, e.g., Hale v. State*, 220 Ga. App. 667, 670, 469 S.E.2d 871, 875 (1996) (handwritten letter not covered by any privilege); *Walsh v. State*, 236 Ga. App. 558, 560, 512 S.E.2d 408, 411 (1999) (three slips of paper on which defendant wrote child pornography website URLs were not covered by any privilege); *Heckman v. State*, 276 Ga. 141, 146, 576 S.E.2d 834, 839 (2003) (notebook pages not covered by any privilege).
16. *Brogdon v. State*, 287 Ga. 528, 697 S.E.2d 211 (2010).
17. *Id.* at 528-29, 697 S.E.2d at 213.
18. *Id.*
19. *Id.* at 529, 697 S.E.2d at 213.
20. *Id.*
21. *Id.*

22. *Id.* at 530 n. 2, 697 S.E.2d at 214 n. 2.
23. *Id.* at 534, 697 S.E.2d at 216-217.
24. *Id.* at 531, 697 S.E.2d at 214 ("In light of the deficiencies of our approach in *Sears*, we disavow its result and now undertake the task of discerning the intention of the 1966 General Assembly that enacted O.C.G.A. §17-5-21.").
25. *Id.* at 530, 697 S.E.2d at 214 (internal citations omitted).
26. See *Mooney v. State*, 243 Ga. 373, 254 S.E.2d 337 (1979).
27. *Brogdon*, 287 Ga. at 530-531, 697 S.E.2d at 214 (citing *Elliott v. Georgia Power Co.*, 58 Ga. App. 151, 197 S.E. 914 (1938)).
28. *Id.* at 533, 697 S.E.2d at 216 (quoting *Boyd v. United States*, 116 U.S. 616, 630, 6 S. Ct. 524, 532 (1886)).
29. *Id.* (quoting *United States v. White*, 322 U.S. 694, 698, 64 S. Ct. 1248, 1251 (1944)).
30. See, e.g., *Andresen v. Maryland*, 427 U.S. 463, 472, 96 S. Ct. 2737, 2744 (1976); *Fisher v. United States*, 425 U.S. 391, 401, 96 S. Ct. 1569, 1576 (1976). See also Robert S. Gerstein, *Demise of Boyd: Self-incrimination and private papers in the Burger court*, 27 UCLA L. Rev. 343 (1979).
31. *Brogdon*, 287 Ga. at 533-34, 697 S.E.2d at 216-217 (citations omitted).
32. See *Id.* at 529, 697 S.E.2d at 213 (citing *Sears v. State*, 262 Ga. 805, 806-07, 426 S.E.2d 553, 556 (1989); *Ledesma v. State*, 251 Ga. 885, 890, 311 S.E.2d 427, 432 (1984); *Ibekilo v. State*, 277 Ga. App. 384, 626 S.E.2d 592 (2006); *Nichols v. State*, 210 Ga. App. 134, 435 S.E.2d 502 (1993)).
33. See, e.g., *Ledesma*, 251 Ga. at 890, 311 S.E.2d at 433; *Ibekilo*, 277 Ga. App. at 386, 626 S.E.2d at 595; *Nichols*, 210 Ga. App. at 136, 435 S.E.2d at 505; *Martin v. State*, 189 Ga. App. 483, 493, 376 S.E.2d 888, 897 (1988); *Tuzman v. State*, 145 Ga. App. 761, 766-67, 244 S.E.2d 882, 887 (1978).
34. *Ibekilo*, 277 Ga. App. at 386, 626 S.E.2d at 595.
35. *Id.*
36. *Smith*, 192 Ga. App. at 298, 384 S.E.2d at 460 (emphasis added) (cited in *Brogdon*, 287 Ga. at 534, 697 S.E.2d at 216; *Hawkins v. State*, 307 Ga. App. 253, 258, 704 S.E.2d 886, 891 (2010)). See also *Brogdon*, 287 Ga. at 533, 697 S.E.2d at 216 (quoting *United States v. White*, 322 U.S. 694, 698, 64 S. Ct. 1248, 1251 (1944) ("documents and effects" can receive exemption)); *Grant v. State*, 198 Ga. App. 732, 735, 403 S.E.2d 58, 61 (1991) (Court said in dicta that checkbooks can receive private papers exemption).
37. *Department of Transportation v. Norris*, 222 Ga. App. 361, 362, 474 S.E.2d 216, 217 (1996) (*vacated on other grounds by Norris v. Department of Transportation*, 268 Ga. 192, 193 n.1, 486 S.E.2d 826, 828 n.1 (1997)).
38. *Id.* at 362, 474 S.E.2d at 218.
39. *Frix v. State*, 298 Ga. App. 538, 543-44, 680 S.E.2d 582, 587 (2009).
40. *Id.* (citing MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 987 (11th ed. 2008) (definition of 'print' includes 'to display on a surface (as a computer screen) for viewing')). Strangely, the text message was deemed *not* to constitute "electronically furnishing obscene materials to minors" under O.C.G.A. §16-12-100.1, because that code section contemplates furnishing the materials by computer or floppy disk, and everyone knows that a cell phone is not used to store information like a computer or floppy disk.
41. Indeed, as we create the article you are reading, our computers suggest that we file it with our other documents in a directory labeled "My Documents."
42. See, e.g., *Kyllo v. United States*, 533 U.S. 27, 40, 121 S. Ct. 2038, 2046 (2001) ("While it is certainly possible to conclude from the videotape of the thermal imaging that occurred in this case that no 'significant' compromise of the homeowner's privacy has occurred, we must take the long view, from the original meaning of the Fourth Amendment forward.").
43. *Hawkins v. State*, 307 Ga. App. 253, 704 S.E.2d 886 (2010) (*aff'd*, *Hawkins v. State*, No. S11G0644 (Ga. Mar. 23, 2012)).
44. *Id.* at 254, 704 S.E.2d at 888-889.
45. *Id.* at 256, 704 S.E.2d at 890.
46. *Id.* at 258, 704 S.E.2d at 891 (citing *Brogdon v. State*, 287 Ga. 528, 533-34, 697 S.E.2d 213, 216 (2010); *Smith v. State*, 192 Ga. App. 298, 384 S.E.2d 459 (1989)).
47. *Id.* at 258, 704 S.E.2d at 891 (quoting *Orin Kerr, Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531 (2005)).
48. *Id.*
49. *Id.* at 259, 704 S.E.2d at 892.
50. *Hawkins v. State*, No. S11G0644 (Ga. Mar. 23, 2012).
51. *Id.*
52. *Id.*
53. See *Hawkins*, 307 Ga. App. at 258, 704 S.E.2d at 891. In *Henson v. State*, No. A11A1830 (Ga. App. Feb. 16, 2012), the Court of Appeals repeated their privacy concerns expressed in their decision on *Hawkins*. "we take this opportunity, as we did in *Hawkins v. State*, with regard to cell phones, to remind law-enforcement officers to exercise caution when searching the contents of personal computers . . . '[A] computer is akin to a virtual warehouse of private information'." (citing *Orin S. Kerr, Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531, 532 (2005)).
54. *Brogdon v. State*, 287 Ga. 528, 533, 697 S.E.2d 213, 216 (2010).
55. *United States v. White*, 322 U.S. 694, 698, 64 S. Ct. 1248, 1251 (1944).
56. *Ledesma v. State*, 251 Ga. 885, 890, 311 S.E.2d 427, 432 (1984).
57. *Smith v. State*, 192 Ga. App. 298, 298, 384 S.E.2d 459, 460 (1989). The *Brogdon* Court cited *Smith* and *Ledesma* in support of its reasoning. *Brogdon*, 287 Ga. at 534, 697 S.E.2d at 216.
58. An overview of Google Docs, <https://support.google.com/docs/bin/answer.py?hl=en&answer=49008> (last visited Apr. 3, 2012).
59. *Hatcher v. State*, No. A11A2416 (Ga. App. Mar. 15, 2012).
60. *Id.*
61. Google Privacy Policy, <http://www.google.com/policies/privacy> (last updated Mar. 1, 2012).
62. Dropbox, <http://www.dropbox.com> (last visited Apr. 3, 2012).
63. Carbonite, <http://www.carbonite.com/en> (last visited Apr. 3, 2012).
64. Normally, one surrenders any privacy interest in abandoned property. See, e.g., *Teal v. State*, 282 Ga. 319, 328-329, 647 S.E.2d 15, 23-24 (2007). This could be one area where the private papers statute provides more rights than the Fourth Amendment.

# 2011 Georgia Corporation and Business Organization Case Law Developments

by Thomas S. Richey

*This is an overview from a 2011 survey of Georgia corporate and business organization decisions. For the full survey, including an extended discussion of each of the decisions, you may download or print it at the following link: <http://www.bryancave.com/2011-ga-survey/>. This article is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed here are those of the author only and not Bryan Cave LLP. The author would like to acknowledge and thank Vjollca Prroni, Danielle Parrington, Ann Ferebee and Tiffany McKenzie for their valuable assistance with this article.*

**T**his article catalogs the case law developments concerning corporate and business organization law issues in decisions handed down by the Georgia state and federal courts during 2011. It catalogs decisions regarding points of corporate, partnership and limited liability company law, as well as addressing transactions and litigation involving those organizations, their management and investors. A few decisions address matters of first impression or appear to have significant precedential value. Many others illustrate and confirm settled points of law or are instructive for the legal issues that typically arise in a corporate law practice or in business organization disputes.

2011 yielded decisions concerning duties of disclosure, shareholder inspection rights, LLC operating agreements, the rights of partners who are creditors

of the partnership and partnership dissolutions, the failure of a key condition in an acquisition agreement, derivative action issues, a “common enterprise” theory of joint liability, an insolvency requirement for piercing the corporate veil, common law preference claims, the nondischargeability of breach of fiduciary duty claims, a definitive Supreme Court of Georgia decision on the fiduciary shield doctrine and much more. Also included this year are selected 2011 decisions from the Georgia Business Court, several of which ruled on the exclusivity of dissenters rights in public company mergers.

To make the overview easier for the reader to navigate and locate decisions of interest, it is organized in sections listing decisions, first, by entity type—decisions that focus specifically on corporate, limited liability company and partnership issues—and, second, by business transaction and litigation issues that are generally common to all forms of business organizations. A final section covers selected decisions handed down in 2011 by the Georgia Business Court and other state trial courts.

## Duties and Liabilities of Corporate Directors, Officers and Employees

In one of 2011's more significant decisions, *Patel v. Patel*, 761 F. Supp. 2d 1375 (N.D. Ga. 2011), the U.S. District Court for the Northern District of Georgia addressed an open issue in the development of Georgia law on negligent misrepresentation claims, holding





that corporate officers and directors were not liable to investors for alleged negligent misrepresentations in the corporation's offering documents because they did not have any "direct communications" with the investors. The Court of Appeals of Georgia in *Gordon Document Products, Inc. v. Service Technologies, Inc.*, 308 Ga. App. 445, 708 S.E.2d 48 (2011) affirmed summary judgment on breach of fiduciary duty claims against a former non-officer employee for alleged wrongful solicitation of employees because his employment agreement expressly provided that he did not have authority to bind the corporation and, in any event, a fiduciary duty with regard to customer relations would not support a claim for wrongful solicitation of employees. The Court in *Dempsey v. Southeastern Industrial Contracting Co.*, 309 Ga. App. 140, 709 S.E.2d 320 (2011) found no personal liability on the part of a corporate CEO for an alleged failure to train employees in proper safety procedures. The U.S. District Court for the Southern District of Georgia in *Life Alarms Systems, Inc. v. Valued Relationships, Inc.*, et al., 2011 WL 1167174 (S.D. Ga., Mar. 28, 2011) held that officers

and employees acting within the scope of their duties are protected from liability for tortious interference with contract where the corporation's actions are privileged. The Court of Appeals of Georgia addressed claims of personal liability in two cases involving loans. In *Elwell v. Keefe*, 312 Ga. App. 393, 718 S.E.2d 587 (2011) the Court held that corporate officers signing a note in a representative capacity were not personally liable on the debt and in *PlayNation Play Systems, Inc. v. Jackson, Inc.*, 312 Ga. App. 340, 718 S.E.2d 568 (2011) it held that, because guarantees must be strictly construed, a personal guarantee signed by an owner of a corporation was unenforceable because it failed to properly identify the corporate debtor.

## Corporate Stock and Debt Ownership and Rights

In 2011 the Court of Appeals of Georgia decided three cases involving shareholders' rights to inspect corporate books and records. In a case of first impression, the Court in *Mannato v. SunTrust Banks, Inc.*, 308 Ga. App. 691, 708 S.E.2d 611

(2011), addressed the authority of a corporation under O.C.G.A. § 14-2-1602(e) to adopt bylaws limiting shareholder inspection rights for shareholders owning 2 percent or less of the corporation's stock, holding that the statutory limitation preempts a 2 percent shareholder's common law right of access to books and records. In *Advanced Automation, Inc. v. Fitzgerald*, 312 Ga. App. 406, 718 S.E.2d 607 (2011), the Court ruled that O.C.G.A. § 14-2-940's provision for exclusive jurisdiction over an action involving shareholder oppression claims in a statutory close corporation does not affect the venue of an inspection rights proceeding filed by the same shareholder against the same corporation in a court where its registered office is located. In *Grapefields, Inc. v. Kosby*, 309 Ga. App. 588, 710 S.E.2d 816 (2011), the Court held that the award of attorney's fees in an inspection rights proceeding is subject to the "any evidence" standard of review.

A corporate director's claim for rescission of her purchase of stock in a bank holding company in *Griffin v. State Bank of Cochran*, 312 Ga. App. 87, 718 S.E.2d 35 (2011), was

barred because her access to information regarding the bank's financial condition rendered reliance on the alleged misrepresentations unreasonable. In *Capital Financial Services Group, Inc. v. Hummel*, 313 Ga. App. 278, 721 S.E.2d 108 (2011) the Court held that claims for conversion of a securities account were insufficient because notification to the brokerage firm of the entry of an injunction in a divorce case did not constitute an exercise of "dominion" over the account. In *Akanthos Capital Management, LLC v. CompuCredit Holdings Corp.*, 770 F. Supp. 2d 1315 (N.D. Ga. 2011), corporate noteholders were held not to be barred by the indenture's "No Action Clause" from asserting extra-contractual fraudulent transfer claims against insiders and those claims were not deficient despite the lack of allegations of insolvency, illegality or default.<sup>1</sup>

## Nonprofit Corporations

In two separate decisions involving the ownership of church real estate, *Presbytery of Greater Atlanta, Inc. v. Timberridge Presbyterian Church, Inc.*, 290 Ga. 272, 719 S.E.2d 446 (2011) and *Rector, Wardens and Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Georgia Inc.*, 290 Ga. 95, 718 S.E.2d 237 (2011), the Supreme Court of Georgia employed the "neutral principles" doctrine and legal rules of general application, local church articles of incorporation and national church membership agreements to find that local church property was held in trust for the benefit of the national church organizations.

The Court of Appeals of Georgia in *Partnership Housing Affordable to Society Everywhere, Inc. v. Decatur County Board of Tax Assessors*, 312 Ga. App. 663, 219 S.E.2d 556 (2011) held that a nonprofit was not entitled to the ad valorem tax exemption for charities because of its non-charitable use of funds. In a contest over control of a nonprofit

corporation, *Harris v. The Southern Christian Leadership Conference, Inc.*, 313 Ga. App. 363, 721 S.E.2d 906 (2011), the Court upheld the trial court's determination of the validity of two disputing factions' claims to incumbency and the effectiveness of their meetings and actions and affirmed a ruling that former directors of the corporation had breached their fiduciary duties by pursuing a lawsuit without authorization and using corporate funds to pay the resulting litigation expenses.

## Limited Liability Company Developments

In *St. James Entertainment LLC v. Crofts*, --- F. Supp. ---, 2011 WL 3489992 (N.D. Ga. Aug. 8, 2011), the District Court held that neither a provision in an agreement to form an LLC that permitted pursuit of other opportunities nor an exculpatory clause barred claims against one of the LLC members for allegedly diverting a business opportunity that had been presented to the company. The Court of Appeals of Georgia in *Moses v. Pennebaker*, 312 Ga. App. 623, 719 S.E.2d 521 (2011) held that the valuation of an LLC interest for purposes of conversion and breach of fiduciary duty claims was properly determined as of the date when the LLC could no longer carry on its business, not a later date on which judicial dissolution was ordered.

During 2011, the U.S. District Court for the Middle District of Georgia issued three decisions dealing with a dispute in a two-member LLC. In *Denim North America Holdings, LLC v. Swift Textiles, LLC*, 2011 WL 97238 (M.D. Ga. Jan. 12, 2011), the Court held that the LLC's participation in a lawsuit instituted by one member against the other was unauthorized under its operating agreement, thus the LLC's joinder was fraudulent and could not destroy diversity of citizenship and defeat federal court jurisdiction. In *Denim North America Holdings, LLC v. Swift Textiles, LLC*, 2011 WL 318127 (M.D. Ga. Jan. 28,

2011), the Court held that, under O.C.G.A. § 14-8-6(b), LLC members are not "partners" and partnership fiduciary duties are inapplicable to the LLC. It ruled that the fiduciary duties owed by a managing member of an LLC were applicable to a member entitled to appoint half of the members of the LLC's board of managers. It dismissed conflict of interest claims because the operating agreement contained a provision opting out of the LLC Code's conflict of interest rules as permitted under O.C.G.A. § 14-11-307(a). In *Denim North America Holdings, LLC v. Swift Textiles, LLC*, 816 F. Supp. 2d 1308 (M.D. Ga., 2011), the Court ruled on summary judgment, addressing specific allegations of fraud in the inducement concerning the plaintiff's entry into the LLC and reaffirming its ruling that an LLC member entitled to appoint one half of the members of an LLC's board of managers may owe fiduciary duties as a managing member under O.C.G.A. § 14-11-305.

## Partnership Law Developments

The Georgia courts handed down several decisions in 2011 addressing partnership issues, in addition to the *Denim North American* decision, cited above. In *The B&F System, Inc. v. LeBlanc*, 2011 WL 4103576 (M.D. Ga. Sept. 14, 2011), the Court addressed the requirements for the formation of a general partnership, holding it to be a jury issue, discussed the imputation of knowledge among partners and from officers to a corporation, held that partners could not be "strangers" to a contract for purposes of wrongful interference claims, but ruled differently as between corporations and their shareholders and required evidence of insolvency for veil-piercing claims. The decision is noteworthy for its consideration of a seldom-asserted alternative "common enterprise" theory of joint liability. In *Day v. Nu-Day Partnership, LLLP*, 289 Ga. 357, 711 S.E.2d 689 (2011), the Supreme Court of Georgia held

that the ultra vires doctrine applies to actions of a business entity, not the actions of its owners in transferring their interests. The Court of Appeals of Georgia in *Sutter Capital Management, LLC v. Wells Capital, Inc.*, 310 Ga. App. 831, 714 S.E.2d 393 (2011) held that a limited partnership's investor list was not a trade secret. In an instructive decision, the Court in *AAF-McQuay, Inc. v. Willis*, 308 Ga. App. 203, 707 S.E.2d 508 (2011) addressed the rights and conduct of partners that are creditors of the partnership, holding that they are fully entitled to take actions consistent with their rights as creditors, but can be held liable for exceeding those rights. In an action to recover for a share of lost profits from the misappropriation of business opportunity, the Court in *McMillian v. McMillian*, 310 Ga. App. 735, 713 S.E.2d 920 (2011) permitted discovery of financial records from a competitor allegedly benefiting from the opportunity. In *Moses v. Jordan*, 310 Ga. App. 637, 714 S.E.2d 262 (2011), the Court found issues of fact in a claim for wrongful dissolution of a general partnership under O.C.G.A. § 14-8-38(b) of the Georgia Uniform Partnership Act, noting that the power to dissolve a partnership must be exercised in good faith.<sup>2</sup>

## Transactional Cases

In *Yi v. Li*, 313 Ga. App. 273, 721 S.E.2d 144 (2011), the Court of Appeals of Georgia considered the effect of a franchisor's refusal to approve the sale of a franchised business, holding that the failure to satisfy an express condition precedent to performance of the contract for sale of the business did not support rescission because the contract did not obligate the seller to fulfill the condition. The Court in *Thompson v. Floyd*, 310 Ga. App. 674, 713 S.E.2d 883 (2011) found issues of fact in a business broker's claim for fees for sale of a business, including whether the "CEO" was acting in a personal or agency capacity and whether the agreement was

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sufficiently definite to be enforceable. The Court in *West v. Diduro*, 312 Ga. App. 531, 718 S.E.2d 815 (2011) construed a contract for sale of a business to require only a conveyance of corporate assets, not the seller's stock in the corporation. The 11th Circuit Court of Appeals in *United States v. Fort*, 638 F.3d 1334 (11th Cir. 2011) dealt with the timing for tax purposes of the receipt of restricted shares that were deposited into an escrow account with restrictions on transfer, holding that receipt occurred on deposit when the taxpayer received dividend and voting rights and market risk, rather than later when the escrow and restrictions expired.

## Litigation Issues

### Derivative Action Procedure

Two decisions in 2011 addressed the rule in *Thomas v. Dickson*, 250 Ga. 772, 301 S.E.2d 49 (1983) that permits shareholders in a close corporation to assert claims directly to recover for injuries to the corporation if the interests of all shareholders are represented in the case and creditors would not be adversely affected. The Court in *Wood v. Golden*, 2011 WL 2516704 (N.D. Ga. June 23, 2011) found a direct action permissible to assert a closely held corporation's claims, but in *Southland Propane, Inc. v. McWhorter*, 312 Ga. App. 812, 720 S.E.2d 270 (2011) the direct action exception was held inapplicable

because the interests of creditors were not protected.

In *Anderton v. Bennett*, 2011 WL 4356505 (N.D. Ga., Sept. 16, 2011), the District Court held that because of the interest of the Federal Deposit Insurance Corporation as receiver of a failed bank (FDIC-R) in claims for mismanagement of the bank, the FDIC-R was entitled to intervene in an action involving stock-based employment benefit plans asserting claims for alleged wrongdoing by officers and directors of the bank. The Court of Appeals of Georgia in *Crittenton v. Southland Owners Association, Inc.*, 312 Ga. App. 521, 718 S.E.2d 839 (2011) ruled that claims based on irregularities in an election of directors were derivative, not direct, because the defendants' alleged conduct breached duties to the corporation and all its shareholders. The Supreme Court of Georgia in *Brown v. Pounds*, 289 Ga. 338, 711 S.E.2d 646 (2011) invalidated a corporate bylaw amendment adopted by the corporation's board of directors because it conflicted with provisions of a derivative action settlement.

## Alter Ego, Piercing the Corporate Veil and Other Forms of Secondary Liability

The District Court for the Southern District of Georgia in *Great Dane Limited Partnership v. Rockwood Service Corporation*, 2011



WL 2312533 (S.D. Ga. June 8, 2011) held that allegations of insolvency are essential to a veil-piercing claim because otherwise the plaintiff has an adequate remedy at law. In a noteworthy decision by the District Court for the Middle District of Georgia, *Tindall v. H&S Homes, LLC*, 2011 WL 5827227 (M.D. Ga. Nov. 18, 2011), the Court recognized a Georgia common law preference claim against corporate insiders for preferring their interests to those of other creditors of an insolvent corporation and held that such claims are governed by a six-year statute of limitations for breaches of trust. In *In re Palisades at West Paces Imaging Center, LLC (Watts v. Peachtree Tech. Partners, LLC)*, 2011 WL 4459778 (Bankr. N.D. Ga. Sept. 13, 2011) the U.S. Bankruptcy Court for the Northern District of Georgia held that LLC members, whose membership interests were redeemed by the LLC pursuant to a settlement when the LLC was insolvent, could be subject to fraudulent conveyance claims for recovery of the funds received in the redemption. In a rather remarkable decision, the Court in *Terrell v. OTS, Inc.*, 2011 WL 2619080 (N.D. Ga. July 1, 2011) held that a solely owned corporation could be held liable on a theory of negligent entrustment for its shareholder's battery of an employee because the shareholder's knowledge of prior incidents and his tendency to commit battery were imputed to the corporation.

### Jurisdictional Cases

The Supreme Court of Georgia in *Amerireach.com v. Walker*, 290 Ga. 261, 719 S.E.2d 489 (2011) expressly rejected the "fiduciary shield" doctrine, holding that long arm jurisdiction may be exercised over corporate officers based on their conduct in their official capacities. The Court in *Azalea House LLC v. National Registered Agents, Inc.*, 415 Fed. Appx. 958, 2011 WL 679413 (11th Cir. Feb. 25, 2011) held that a registered agent appointed pursuant to O.C.G.A. § 14-2-504 owes

only a duty of reasonable care when receiving service of process for the LLC.

### Evidence—Business Records Act

Four 2011 decisions by the Court of Appeals of Georgia addressed issues under the Georgia Business Records Act exception to the hearsay rule. The Court in *Saye v. Provident Life and Accident Ins. Co.*, 311 Ga. App. 74, 714 S.E.2d 614 (2011) (en banc) held that the Business Records Act does not authorize the admission of documentary evidence of telephone conversations. Documents were found admissible under the Act in *Melman v. FIA Card Services, N.A.*, 312 Ga. App. 270, 718 S.E.2d 107 (2011) (credit card records were properly admitted as business records without testimony as to their truthfulness, accuracy or completeness), *Ellington v. Gallery Condominium Association, Inc.*, 313 Ga. App. 424, 721 S.E.2d 631 (2011) (condominium association account ledger of assessments was properly admitted as business records), and *Dawson Pointe, LLC v. SunTrust Bank*, 312 Ga. App. 338, 718 S.E.2d 570 (2011) (loan history properly admitted as business records was held sufficient to prove interest owed without evidence of prime rate specified in promissory note).

### Director and Officer Liability Insurance

In *Empire Fire & Marine Ins. Co. v. Ison*, 2011 WL 1326057 (M.D. Ga. Apr. 6, 2011), coverage for officers, directors, employees and shareholders provided under company liability and umbrella policies was held to have been released in a prior settlement.

### Nondischargeability of Breach of Fiduciary Duty Claims

Four decisions from the U.S. Bankruptcy Court for the Northern District of Georgia ruled on various aspects of the nondischargeability of claims under 11 U.S.C. § 523(a) (4) (fraud or defalcation by fiducia-

ries) in close corporation and LLC disputes, in the process addressing a wide range of business organization issues. In *In re Kwang Cha Yi*, 2011 WL 1364229 (Bankr. N.D. Ga. Apr. 11, 2011), the Court held that § 523(a)(4) does not apply to pre-investment conduct because at that stage there is no fiduciary duty. It also held that shareholder claims to enforce inspection rights must be brought against the corporation, not its officers. In *In re Riddle*, 2011 WL 2461896 (Bankr. N.D. Ga. April 6, 2011), the court held that claims of fraud can constitute debts, but corporate fiduciary relationships do not suffice for purposes of 11 U.S.C. § 523(a) (4). In an extensive opinion, the Court in *In re McClelland*, 2011 WL 2461885 (Bankr. N.D. Ga. June 8, 2011) addressed LLC formation, considered direct vs. derivative claims, holding the direct action exception under *Thomas v. Dickson, supra*, to be inapplicable, and found personal liability for conversion of investor funds by an LLC manager to be nondischargeable, but not under § 523(a)(4) because LLC managers are not fiduciaries under § 523(a)(4). The Court in *In re Richards*, 2011 WL 1522327 (Bankr. N.D. Ga. March 18, 2011) held that the LLC entity form does not shield a managing member from liability for fraud in which she participated.

### Miscellaneous Litigation Procedure Issues

In *Omni Builders Risk, Inc. n/k/a Best Value Insurance Services, Inc. v. Bennett*, 313 Ga. App. 358, 721 S.E.2d 563 (2011), counsel of record was held to lack apparent authority to settle where the CEO/majority shareholder had personally attended the mediation at which the settlement was allegedly reached. In *SN International, Inc. v. Smart Properties, Inc.*, 311 Ga. App. 434, 715 S.E.2d 826 (2011) the Court of Appeals of Georgia remanded the trial court's decision in a sale of business case stating that the complexity of the case required findings of fact and


conclusions of law. Finally, the Court in *D.C. Micro Development, Inc. v. Briley*, 310 Ga. App. 309, 714 S.E.2d 11 (2011) held that the compensation of a receiver for a corporation was a matter within the trial court's discretion.

## Georgia Business Court and Other Significant State Trial Court Business Organization Decisions

The Georgia Business Court and other Georgia Superior Courts rendered decisions in 2011 concerning the exclusivity of dissenters' rights under the Georgia Business Corporation Code in five cases brought by shareholders in putative class actions challenging merger transactions involving publicly-held Georgia corporations. In *In re Radiant Systems, Inc. Shareholder Litigation*, Civil Action No. 2011-CV-203228 (Fulton Sup. Ct. Aug. 10, 2011), finding dissenters' rights to be exclusive, the Business Court denied a motion to permit expedited discovery in a shareholder class action seeking to enjoin a third-party tender offer and back-end merger for alleged breaches of fiduciary duty by management and the board in allegedly failing to obtain adequate value for the company's stock, engaging in a "flawed" sale process, and failing to disclose material information in the company's Form 14D-9 filed with the Securities and Exchange Commission. In *Kramer v. Immucor, Inc.*, Civil Action No. 2011-CV-203124 (Fulton Sup. Ct. August 12, 2011), the Business Court denied a motion to expedite proceedings in a similar case relying on and based on the reasons set forth in the *Radiant Systems* decision. The Business Court in *Shaev v. EMS Technologies, Inc.*, Civil Action No. 2011-CV-203036 (Fulton Sup. Ct. Aug. 25, 2011), denied a motion to expedite proceedings in a shareholder class action brought to enjoin a tender offer and sec-

ond stage merger, based on the exclusivity of dissenters' rights, citing *Radiant Systems* and *Kramer v. Immucor*. Two other trial court decisions addressed similar claims and likewise denied relief on the same or similar grounds: *Schorsch v. Immucor, Inc.*, Civil Action No. 11-A-7776-1 (Gwinnett Sup. Ct. Aug. 16, 2011) (denying a motion for interlocutory injunction) and *In re Servidyne, Inc. Shareholder Litigation*, Civil Action No. 2011-CV-202977 (Fulton Sup. Ct. Aug. 17, 2011) (denying a motion for expedited discovery and expedited proceedings in a shareholder class action suit on the grounds that the appraisal remedy was both an exclusive remedy and an adequate remedy at law).

In decisions involving other corporate and business organization issues, the Business Court in *GAA Nicholson Advisors, LLC v. Cortland Partners, LLC*, Civil Action No. 2010-CV-191111 (Fulton Sup. Ct. Jan. 27, 2011) held that an LLC operating agreement requirement of unanimity for major decisions did not apply to the agreement's buy-sell provisions. In *Estate of Joy W. O'Brien v. Conza*, Civil Action No. 2010-CV-188721 (Fulton Sup. Ct. May 9, 2011), the Court denied a motion to dismiss claims against the managing partner of a limited partnership for tortious deprivation of a business interest and against the majority shareholder of a corporation for breach of fiduciary duty. The Business Court in *Peevy v. Brown*, Case No 2010-cv-180583 (Fulton Sup. Ct. Apr. 5, 2011), approved a class action settlement in a suit contesting the fairness of a merger of a Delaware corporation over objections that the settlement provided inadequate benefits to the class. The Court in *Greenwald v. Odom*, Civil Action File No. 2008-CV-154834 (Fulton Sup. Ct. Feb 9, 2011) granted summary judgment on claims for fraud and negligent misrepresentation based on allegedly inaccurate oral statements regarding future revenues and financial condition and

omissions from written offering materials,<sup>3</sup> and in *South Coast Life Liquidity, LLP v. Sterling Currency Group, LLC*, Civil Action File No. 2009-CV-175697 (Fulton Sup. Ct. April 18, 2011) denied motions to dismiss and for more definite statement as to fraud counterclaims. 



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## Endnotes

1. The district court decision was reversed this year by the 11th Circuit in *Akanthos Cap. Mgt., LLC v. CompuCredit Holdings Corp.*, \_\_\_ F.3d \_\_\_, 2012 WL 1414247 (11th Cir. Apr. 25, 2012) (upholding bar of no action clause). In a companion appeal by CompuCredit the 11th Circuit had ruled that the noteholders' collective action in rejecting CompuCredit's tender offer for their notes at less than par and their demand for full payment did not violate the Sherman Act; however, that decision has been vacated for en banc consideration, *CompuCredit Holdings Corp. v. Akanthos Cap. Mgt., LLC*, 661 F.3d 1312 (11th Cir. 2011), vacated, (11th Cir., en banc, Apr. 16, 2012).
2. Reversed by the Georgia Supreme Court in *Jordan v. Moses*, 2012 WL 1571545 (Ga. S. Ct. May 7, 2012) (holding that claims for wrongful dissolution of a partnership do not require an attempt to appropriate the "new prosperity" of the partnership).
3. Affirmed in part, reversed in part, *Greenwald v. Odom*, 2012 WL 400710 (Ga. Ct. App., Feb. 9, 2012).

# 2012 Legislative Review

by Tom Boller

**A**lmost one year ago, Gov. Nathan Deal signed HB 265 creating the Special Council on Criminal Justice Reform (the Council). At that ceremonial signing in the Hall County Drug Court, Deal said, “While we foresee this effort uncovering strategies that will save taxpayer dollars, we are first and foremost attacking the human costs of a society with too much crime, too many behind bars, too many children growing up without a much needed parent and too many wasted lives.”

From that beginning in 2011, with support and assistance from the speaker of the house, the lieutenant governor and the chief justice of the Supreme Court, the Council began its work of developing new options of sentencing reform and community-based corrections and rehabilitation for non-violent offenders.

During the summer and fall of 2011, the Council reviewed and considered volumes of Georgia-specific statistical data and information and ultimately developed a report and recommendations for consideration by the General Assembly. HB 1176, introduced by Rep. Rich Golick (R-Smyrna), chairman, House Judiciary, addressed many of the Council’s recommendations: 1) strengthens and expands drug courts, mental health courts and other accountability courts, 2) revises sentencing guidelines for burglary, theft, forgery, fraud and drug possession, and 3) enhances the Department of Correction’s ability to manage probationers and to prepare non-violent offenders for release and finding jobs. HB 1176 overwhelmingly passed the House and Senate with bipartisan support and was signed into law by Deal on May 2.



While HB 1176 is a major step forward, Deal is expected to extend, by executive order, the Special Council on Criminal Justice Reform so their work can be continued as they consider issues of mandatory minimum sentencing, minor traffic offenses and enhanced community-based rehabilitation services.

In addition to the historic achievement of criminal justice reform, the governor and General Assembly made an equally significant impact on indigent defense in the 2012 session. Substantial funding increases for the Public Defender Standards Council in the FY 2012 and FY 2013 budgets were proposed by the governor and





(Left to right) Gov. Nathan Deal; Sen. Ronald B. Ramsey Sr. (D-Decatur); Douglas County District Attorney David McDade; Sen. Bill Hamrick, Senate Judiciary Chair (R-Carrollton); and Chief Justice Carol W. Hunstein at the signing of the Criminal Justice Reform Bill (HB 1176).




(Left to right) Kade Cullefer, VP Legal Georgia Chamber of Commerce; Glenn P. Hendrix, Arnall Golden Gregory LLP; Robert West, vice chair of Metro Chamber's Council on Global Commerce; Rep. Wendell Willard, House Judiciary Chair (R-Sandy Springs); State Bar President-Elect Robin Frazer Clark; Gov. Nathan Deal; Sen. Bill Hamrick, Senate Judiciary Chair (R-Carrollton); State Bar President Ken Shigley; Past President Bryan Cavan (2009-10); Prof. Doug Yarn, Georgia State University College of Law; and David Raynor, senior VP, Government Affairs, Georgia Chamber, at the signing of the Georgia International Commercial Arbitration Act (SB 383).

approved by the General Assembly. The FY 2013 appropriation for the Council is \$40.4 million—the first budget ever to exceed \$40 million and the first budget to approximate the amount raised by fees designated by the General Assembly to fund the indigent defense system.

International business and the global economy are playing an increasingly significant role in creating jobs and the economic growth in Georgia. Since arbitration is the method of choice in resolving disputes in international transactions, the State Bar actively promoted leg-

islation modernizing our international commercial arbitration code. Passage of this legislation will make Georgia an attractive location for international commercial arbitration and will assist our in-state businesses in the global economy. Doug Yarn, law professor at Georgia State University, drafted the legislation and the State Bar partnered with the Georgia Chamber of Commerce and the Metro Atlanta Chamber in advocacy for passage.

In addition to these three important legislative accomplishments, the State Bar successfully worked on budget initiatives that provide funding for the Georgia Appellate Resource Center, legal services for victims of domestic violence and continuing judicial education. The Bar actively supported Attorney General Sam Olens' initiative on open records legislation and worked with House and Senate leadership to pass the Uniform Interstate Discovery and Depositions Act and the Uniform Partition of Heirs Property Act. For a complete review of all Bar-endorsed legislation and other legislation of interest to attorneys in the 2012 session, visit the State Bar's website at [www.gabar.org](http://www.gabar.org).

Gov. Deal and members of the General Assembly, especially the lawyer-legislators, are to be commended for their service and leadership in supporting our courts and the judicial branch of government. The State Bar is appreciative of the support of local bar associations across the state, attorneys who voluntarily give their time and expertise to serve on the Advisory Committee on Legislation and legislative committees of the various sections, and all attorneys who support the Bar's legislative program. 



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# A Defense of the Heart

by Lt. Col. Leonard M. Cohen

## 21st Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present “A Defense of the Heart,” by Lt. Col. Leonard M. Cohen of Beavercreek, Ohio, as the winner of the *Journal*’s 21st Annual Fiction Writing Competition.

The purposes of the competition are to enhance interest in the *Journal*, to encourage excellence in writing by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. As in years past, this year’s entries reflected a wide range of topics and literary styles. In accordance with the competition’s rules, the Editorial Board selected the winning story through a process of reading each story without knowledge of the author’s identity and then ranking each entry. The story with the highest cumulative ranking was selected as the winner. The Editorial Board congratulates Cohen and all of the other entrants for their participation and excellent writing.

**M**onday evening, 1700 hours, at Robins Air Force Base, Ga. Usually the sound of the national anthem tells me it’s time to start packing up, but not tonight. My court-martial’s in two days.

Technically, it’s Senior Airman Matthew Bolin’s court-martial, since he’s the one who ran off when he was scheduled to deploy to Afghanistan. But I’m his assigned military defense counsel, so I’ll be right there with him every step of the way. Except for the jail time, of course.

I’m sitting at my desk reading the stipulation of fact we’ll be using for Bolin’s guilty plea. His duty history had been stellar—Airman of the Quarter, honor guard, promotion below-the-zone—until he disappeared for four days. The local police spotted him sleeping on a bench in what passes for a mall in the booming metropolis of Warner Robins and gave him an armed escort back to see his Uncle Sam, who’d missed him terribly. Bolin’s been sleeping in a cozy pretrial confinement cell ever since, waiting to swap his career and G.I. Bill for the honor of a federal conviction. Not a great trade, but he’s hardly in the best bargaining position.

I hear a knock at my door and the face of my defense paralegal, Staff Sgt. Wendy Perry, appears. “Go home, it’s quitting time,” I say.



Perry ignores me, as is her habit, and comes in and closes the door behind herself. She points back towards the waiting area.

"There's a Molly Winslow here to see you, sir."

Molly Winslow?

"Have her make an appointment, I'm working on Bolin."

Perry seems entertained. "Even if she says she's Bolin's civilian defense lawyer?"

Huh?

"Says she wants to talk about her client," Perry says. "I can tell her you're out if you want, visiting Bolin in jail."

"Son of a—"

Perry swallows a smile.

Ah, that's the way it is. "That's good, Perry, you got me," I say. "Just remember, payback's hell—now go home and play games with your husband."

"Uhm, sir, about Ms. Winslow . . . no joke, she's out there. Really."

But of course she is; why wouldn't she be? The only law I've been able to count on lately is Murphy's, and, as they say, Murphy's an optimist.

"Well don't just stand there, Perry, show her in."

When Ms. Winslow appears, she's at least got the look-like-a-lawyer thing down. She's wearing a tailored navy-blue suit, and has a leather briefcase in her left hand and a purse that says money hanging over her shoulder. Early thirties, maybe, brown hair cut in what I think's called a wedge, splitting the air as she strides over to my desk. She looks straight at me with green eyes and extends her right hand.

"Molly Winslow," she says. Her grip's firm.

"Jack McClure," I say, and try not to crack her knuckles.

"Sorry to barge in, but I represent Matt Bolin. His father sent me."

I raise an eyebrow. Bolin had left me with the impression his parents were dead. "You got an I.D. card?"

Ms. Winslow reaches into her purse and hands me a business card.

"I meant an I.D. card, to get on base . . . reserves, National Guard, something like that?"

Ms. Winslow shakes her head. "Sorority sister from college sponsored me on, lives on base with her husband, a pilot."

"You've never been in the military?"

"Is there a problem?"

I look at her business card. Across the top in gold-leaf print it says Winslow, Bolin & Banks. The address is on West Peachtree, in Atlanta.

"Bolin's father's a lawyer?"

"Yes."

"That explains why he exercised his rights so promptly when the cops picked him up. About the only thing he's done right."

"Matt's a good kid," Ms. Winslow says, her eyes becoming a darker green.

"Didn't say he wasn't . . . just saying his judgment ain't been so hot lately."

"Where is he now?"

"Pretrial confinement facility, five minutes away. The military magistrate thought four days of hide-and-seek to avoid a war made him a flight risk, given he didn't come back on his own and all."

"He's in jail?"

"More like after-school detention, with bars and no hall pass."

No smile from Ms. Winslow.

"How long's he been there?"

"About 30 days."

"I need to see him," Ms. Winslow says, twisting a button on the front of her jacket. "The sooner the better."

"If you'd told me you were coming—"

"We just heard about it yesterday. One of Matt's buddies knew his father was a lawyer, tracked down the phone number and caught Mr. Bolin at the office last night."

"And you rushed down first thing today."

Ms. Winslow's green eyes flash. "We had to figure out the best thing to do."

"Why isn't dad here?"

"Excuse me?"

"Mr. Bolin . . . if it was my son, I'd want to represent him."

"Think that'd be a good idea, a father arguing his son's case to the jury?" Molly shakes her head. "I'm sure they'd trust him."

Her voice has a certain tone. Dumbass, it says.

"The court members," I say.

"Sorry?"

"You said jury . . . in the military, they're called court members. Probably a good idea to learn the lingo if you want credibility." Dumbass.

The skin tightens around her eyes.

I wave her business card. "The Winslow on here's you, I take it?"

"That's right."

"So Mr. Bolin's sent you down to take care of his boy."

Her face flushes. "All that matters to you is I'll be handling the case from here on."

"Really? You know his court-martial's Wednesday morning, right?"

"I've handled a trial or two, Mr. McClure."

"It's Capt. McClure," I say, pointing to the epaulets on my shoulders. "It's a military rank, which works out great because it's going to be a military trial . . . called a court-martial, by the way."

Her eyes are starting to look a bit like green laser gun sights.

"Ever seen a court-martial, Ms. Winslow? Not counting 'A Few Good Men,' I mean . . . which, just to clue you in, was total bullsh—"

"Why don't we skip the sarcasm, captain."

This time her tone manages to suggest the orifice associated with a proctologist's specialty area. I have to admit, she has a certain style.

"Let's face it, Bolin needs the best representation he can get," I say. "You show up out of the blue at the 11th hour . . . without even the courtesy of a phone call, I might add . . . and don't even know the first thing about how a court-martial works, much less—"

"You about finished, captain?"

Yes indeed, a certain flare.

"No, I'm not finished," I say, but I am. Fact is, it's a guilty plea. A third-year law student could handle it as part of a clinical program. Anyway, if Bolin gets his own lawyer, there's nothing I can do about it except salute smartly and follow orders. Ms. Winslow appears able to handle a guilty plea, that's for sure.

"Well," I say, "if we're going to work together, is it Ms. or Mrs.?"

She stares at me.

"Is there a Mr. Winslow?"

"What business—"

"Would you prefer I call you Ms. or Mrs. Winslow?"

"Oh . . . I don't . . . Molly. Just Molly."

I punch the intercom button on my phone and ask Perry to call the confinement facility and find out when they can have Bolin ready for a meeting with his lawyers.

"Roger that," Perry says, "and congratulations on doubling the size of the legal team."

I hang up and grab the stipulation of fact off my desk, wave it at Molly. "I was doing the final proof-read of his pretrial plea agreement when you got here."

"Plea agreement?"

"They threatened to charge desertion at first . . . posturing . . . ended up going with intentionally missing a movement—which, you'll be glad to know, has nothing to do with a lack of fiber."

Still no smile.

"Bolin agreed to plead guilty for a cap of 30 more days in jail and a bad conduct discharge."

Molly sighs.

"We still get to argue for less in sentencing," I say. "A court-martial has a findings and sentencing portion . . . we plead guilty, that takes care of the findings part, then we parade his achievements in front of the court members, talk about his tender years, we'll probably get less."

"What's the max if he doesn't plead?"

"Dishonorable discharge, two years confinement, reduction to the

lowest enlisted rank and forfeiture of all pay and allowances."

Molly massages her forehead.

"He'll do fine," I say, "they're just hoping for the kick. He's tossed out, he'll find something else—seems like a smart kid."

Of course, most employers try not to hire from the pool of available convicted felons.

"I appreciate what you've done so far, I really do," she says. "I think we can make a good team on sentencing."

"I'll do what I can, Ms. Winslow."

"Molly, please."

"Well, Molly, what do you say we go see Bolin?"



We ride over to the pretrial confinement facility in Molly's Mercedes, surrounded by the warm smell of leather. My Corolla always smells like a day-old sack of Krystal burgers with cheese.

When we park and go inside, the security forces duty officer at the front desk, Tech. Sgt. Logan, looks at Molly, then at me with a question on his face. I clue him in. Logan gives Molly a quick run-down on dos and don'ts, peeks at her driver's license, then walks down the hall to get our boy.

"I'll bring him to the visitor's room," he says, over his shoulder.

I steer Molly in the right direction and follow her. I'm thinking about how we might divide up the trial when Molly turns around and puts a hand on my chest.

"I'll meet with him alone first," she says.

Huh?

She drops her hand. "Get him through the shock of finding out his father knows he's in jail, cover some personal stuff . . . I'll come get you."

"I see."

"I promise. It'll only be a few minutes."

I walk back to the lobby.

Forty minutes later, Logan pulls himself away from the Stephen King novel he's reading. "How much longer you think she's gonna be?"

"I promise it'll only be a few minutes," I say.

After another 20 minutes or so—who's counting?—Molly reappears. "Sorry," she says, and heads for the exit door.

"Whoa, hang on there, teammate. You might not have noticed, but I haven't been in the game yet."

Logan lowers his book.

Molly's still moving towards the door when I step in front of her.

"What's going on, Ms. Winslow?"

She glances at Logan, who pretends to read, and puts a hand up to her mouth. "He's not bleeding anymore," she says.

"He cut himself . . . with what?" I start toward the visitor's room as Logan jumps up and grabs a first-aid kit from a hook on the wall.

"No!" Molly sounds like a mother whose toddler's about to run off the sidewalk into traffic.

Logan and I stop.

"You said he's bleeding," I say.

Molly runs her hands through her hair. "Pleading," she says, "I said he's not pleading anymore."

My mouth opens, but I can't remember what language I speak.

"He made a mistake, Jack . . . he doesn't want a federal conviction for making a mistake."

"Maybe he should've thought of that before he committed a federal offense."

Logan's watching us.

"Allegedly committed," I say.

"It's his call on what to plead, you know," Molly says.

"Thanks for the lesson in Criminal Defense 101."

Molly waves her briefcase at the parking lot. "We ought to start putting our case together."

We?

"Correct me if I'm wrong, Ms. Winslow, but I believe it was you, and only you, who's managed to take something that was under control all the way to major-league goat-roping in—how long you been here?"

The green laser-sights are back.

"—less than two hours, one of which I spent sitting out here by myself."

Logan frowns.

"So here's an idea . . . you put it together. If you're half as good at trial prep as you are at client control, it shouldn't take more than 15 minutes. You'll have time left over for Humpty Dumpty."

Logan snorts and I glare at him.

"I'll take Bolin back to his bunk, if that's all right with y'all," he says, and leaves.

Molly and I trudge out to her car in silence—the loud, screaming kind. I direct her back to my office by pointing each time we need to turn. When we get there, I have to pull out my keys and unlock the outside door because Perry's smarter than me. She's gone home.

"Where should I drop my stuff?" Molly says.

I put her at a table in the corner of my office.

The solitary benefit of a change in plea will be seeing the senior trial counsel, Capt. Warren Pegram, come unglued when he hears about it in the morning. Since he'll have to get his witnesses rounded up and prove his case, it's possible he'll be more pissed than me. Theoretically.

Problem is, he won't have trouble proving anything. Yeah, it'll add a slight hassle factor, but he's got all the evidence he needs to get his finding of guilty. So it's still a sentencing case—except the only limit on what can happen to Bolin is the max.

"Hey," Molly says, "does the military break its crimes into elements like we do in civilian practice?"

No, we still try cases like they did when dinosaurs roamed the earth.

I pick a folder up off my desk, hand it to her. It contains a copy of the charge against Bolin and copies of the pages from the Military Judges Benchbook and Manual for Courts-Martial that cover the elements. I also have pages for affirmative defenses I review for every case, no matter whether they seem to apply or not, so I don't miss anything. Elements, definitions, judge's instructions—everything you always wanted to know about

missing a movement but were too ignorant to ask.

Speaking of ignorant, Molly sits down in one of my overstuffed client chairs and starts reading. I sit behind my desk and crank up my computer. Maybe I can find something on Westlaw covering what to argue when you have no facts or law.

Out of the corner of my eye, I see Molly waving a piece of paper. "They're charging missing a movement through design, not neglect, right?"

I nod without looking up.

"According to this, they have to prove specific intent," she says.

I consider how as I nod in a way that says, Bravo, you can read.

"So if they can't prove specific intent, we win," Molly says. "Find a way to show he didn't intentionally miss his flight and—"

I can't help myself. "Sure . . . and while we're at it, let's prove the existence of God."

"Can you go back to not talking?"

"Oh, I'm sorry. He vanishes for nearly a week starting on the very day he's supposed to deploy, then doesn't come back until the cops catch him." I stroke my chin. "Coincidence? I think not."

"There's gotta be—"

"If it looks like a duck, walks like a duck, quacks like a duck, guess what? I suppose we can argue he isn't a chicken."

"Real helpful," Molly says. "What he is, is a boy . . . a boy who lost it for some reason, acted out of character."

"You talking about when he turned down the plea agreement?"

"Jack . . . what's that short for anyway—jackass?"

I shrug.

We work a couple of hours with no flash of genius. Our fallback's calling witnesses to testify to Bolin's character for obedience to orders—hoping the court members overlook the problem with that last big order. We decide that I'll handle the character witnesses and the cross-examination of the prosecution witnesses, while Molly takes care of Bolin's direct.

That still leaves the problem of what he can possibly say that will help, but you can't have everything.

"Let's call it a night," I say, "start fresh tomorrow."

"Couldn't they not have a trial," Molly says, "just let him get out?"

"Discharge in lieu of court-martial . . . we offered, they said no."

"Who's they?"

"Mostly the SJA—staff judge advocate—he's the head lawyer," I say. "Commanders follow the SJA's advice on something like this."

"Then we need to talk to this SJA."

"Been there, done that."

"Not me," she says.

The hope on her face keeps me from saying anything, but I think about how her talk with our client turned out.



In the morning, I'm the first one to the office. Perry gets in a few minutes later and starts to ask how things went, but stops when she sees my face. I have her call the legal office and set up an appointment with the SJA as soon as he's available.

The SJA, Col. Russell P. Farnsworth III, enlisted in the Marine Corps right out of high school. Two years later, he was in the Nevada desert in August participating in Red Flag, the mother of all joint-service war exercises. He and his fellow jarheads were stripped down to their skivvies living in canvas tents, eating field rations and drinking water out of sizzling metal canteens like real men, talking about how the Air Force "warriors" were probably sitting in air-conditioned pre-fabs washing down steak and shrimp with cold beer. They'd all laughed when one tattooed marine with particularly well-developed biceps said, "Guess that's why we call 'em a sister service."

When Farnsworth's hitch was up, he went to college on the G.I. Bill, then law school on an academic full-ride. Seven years of school surrounded by civilians made him miss the military lifestyle, so he



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**Playground Safety Campaign**  
Survey of metro area playgrounds



**Toy Safety Campaign**  
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decided to return to the Marine Corps as a JAG. He was just putting pen to enlistment paper when, for some reason, Aesop's fable about the sour grapes came to mind.

I'd heard him tell the story 18 times.

"What are y'all going to do with the SJA?" Perry says.

"Beat a dead horse. Track down Capt. Pegram, too."

Perry looks at me.

"New plea," I say, "not guilty . . . your face is going to freeze that way, Perry."

Molly gets in at 0800 hours, and we ride over to meet with Farnsworth at 0815. Farnsworth's cordial enough, listening politely, nodding and pursing his lips at the appropriate times. But he doesn't ask a single question. Instead, once Molly's finished, he puts on his sympathetic face and says, "Sorry, Ms. Winslow, this has to go to court."

He straightens his tie in the reflection off the glass covering his law school diploma and explains that if Bolin walks away with just an administrative discharge, every time there's a war, there'd be a line around the block of other airmen asking for the same thing. Molly

seems to shrink for a moment, then shakes his hand and thanks him for his time. She drops me off at my office and goes to prep Matt for his testimony.

"I'll be a while," she says.

She was.



The day of the court-martial, I'm up at 0500 hours. I feel like I slept 10 minutes. Court's scheduled to start at 0800 with a session to cover preliminary matters before the court members are seated. I'll be running on adrenaline and water like I do for every case, not able to eat until we break for the night. Fear of screwing up always churns my insides. I figure it's a healthy fear given that I usually come out on top.

Coming out on top in Bolin's case would be a sentence equal to, or less than, the cap I'd negotiated in his long lost pretrial agreement. I don't see it happening.

When I get to the courtroom, Logan has already brought the star of the show over from his pretrial confinement cell. Bolin and Molly are sitting at the defense table, heads close together whispering. Even from 10 feet away,

I can see the red rims around Molly's eyes.

Pegram comes in and heads straight for me. "Still pleading not guilty or did you flip a coin and change your mind again?" he says, and struts over to the prosecution table. A fungible captain from the base legal office is already there sitting second-chair.

At 0800 on the dot, the bailiff says "All rise," and our assigned military judge, Lt. Col. Judith Jackson, comes in. Except for voir dire, which she runs herself, Judge Judy lets the lawyers do their thing without too much interference. She knows the law as well as most military judges do, if not better. How that can help us, I have no idea.

Within an hour, we've seated the court members and finished both openings. Capt. Fungible did the prosecution's, telling a simple story, because it is a simple story. I did ours, slogging through a standard "don't make up your mind until you've heard all the evidence" pitch. What else could I say?

Pegram calls Bolin's commander and first sergeant as his first two witnesses, and I cross each of them pretty much the same way.

"You learned everyone was accounted for except one airman, right?"

"Correct."

"When you heard the missing airman was Bolin, you thought that couldn't be right, didn't you?"

"The last name I expected to hear."

"Why's that?"

"He was the best airman we had."

"You believed there was no way Bolin would intentionally fail to show up for duty, right?"

"Correct."

"Because you'd observed and heard of Bolin's devotion to duty?"

"Correct."

"Knew his reputation for obedience to orders?"

"I did . . . we'd never had a problem."

I end with a slew of questions that cover all of Bolin's accomplishments I know about. His commander and first shirt throw in some more stuff as well, God bless them.

Killjoy Pegram takes a little shine off the apple on redirect.

"But you came to learn that Bolin didn't show up, didn't you?"

"Yes."

"Did he call to say he wasn't coming?"

"Not that I'm aware of."

"Did he show up late because of car trouble?"

"Not that I know."

"In fact, after his flight left without him, the first time you saw him again was after the Warner Robins police department apprehended him and turned him in, right?"

"That's correct."

"Do you consider that acceptable duty performance?"

"No."

I guess the good news is since I was able to get our favorable character evidence on cross of the commander and first sergeant, we won't need to call them in our case in chief.

The prosecution's last witness is one of the Warner Robins police officers who caught Bolin. His direct's so easy, Pegram lets

Fungible do it. Once it's over, Pegram puts on his best James Earl Jones voice and says, "The government rests."

"Does the defense have any evidence to present?" Judge Judy says.

Molly stands. "The defense calls Airman Matthew Bolin."

Bolin inhales like a person who's been underwater too long, then pushes up out of his chair and walks to the witness stand. As he's sworn in, his right arm forms a perfect squared corner at the elbow, though his "I do" has a discernible tremor.

"Airman Bolin, why didn't you show up for your deployment flight?"

Getting right to it . . . smart.

Bolin grits his teeth and says nothing.

Then again—

Molly walks up in front of him. "Let me ask it like this, when were you first notified you'd be deploying to Afghanistan?"

"The first time I heard?"

"Yes."

"Right after commander's call in June, seven of us were told we'd be deploying in August."

"How did you feel when you heard?"

"Excited . . . that's what we train for, why I joined." Bolin sits up straighter. "Maybe a little nervous, but mostly excited."

"At that time, did you think about not going?"

"Not at all."

"Let's move to the day you were supposed to go, August 29, you didn't show up for your flight, did you?"

Bolin shakes his head. "No, I didn't."

"Part of being in the military is the possibility of being in harm's way?"

"Yes."

"When you joined the Air Force, you knew you might have to go to war one day."

"I fully expected to."

"Did you miss your deployment because you were scared to go?"

"Not of going to war, no."

Molly walks to the end of the jury box farthest away from Bolin. "Please tell us what you were scared of."

Bolin wets his lips. When he speaks, it's almost a whisper. "My mother," he says.

One of the court members covers his mouth with his hand, while a couple of others shake their heads. All of them look disappointed.

I can relate.

I peek at Pegram. He isn't bothering to hide his smile.

"How did your mother keep you from deploying, Airman Bolin?"

"She sent me a letter."

"A letter?"

"Yes."

"When did you get her letter?"

"The day before the deployment."

"What did it say?"

Pegram is on his feet. "Your honor, it sounds like we're getting into hearsay."

Molly doesn't hesitate. "We're not offering the content of the letter for its truth, judge, we're offering it for its effect on Airman Bolin."

Judge Judy peers over her glasses at Pegram, who shrugs. "Overruled," she says, "for now."

Pegram sits down, waiting to hear what's in the letter.

I'm right there with him.

"What did your mother's letter say?"

"That she was proud of me, how well I was doing in the Air Force."

Pegram's smiling again.

"That kept you from making your plane?"

"No."

"What else did she say?"

Bolin's head is down.

"Matthew . . . tell the court members what else, if anything, she said."

Bolin acts like a man whose best friend just betrayed him with a kiss. "She said she didn't know how she'd make it if something happened to me . . ."

The tremor in his voice is back.

". . . if she lost me, like she lost my brother."

Pegram isn't smiling anymore. "Objection to the hearsay."



"Not offered for the truth, your honor," Molly says.

"Overruled."

"What did that mean to you, that she couldn't lose you like she'd lost your brother?"

"Objec—strike that."

"I had a brother . . . who died."

Every court member's eyes are locked on Bolin.

"What happened?"

"I don't know the details, it happened before I was born." Bolin hangs his head. "It's like a family secret nobody talks about."

"Do you have any living brothers or sisters?"

"No."

"You were an only child when you were born?"

"I was."

Molly lowers her voice. "What kept you from deploying, Matt?"

Bolin crosses his arms, uncrosses them.

"I was afraid of what might happen to my mom, that's why I couldn't go."

"Couldn't—why do you say couldn't?"

"I mean I wanted to go, it was my duty to go, but I couldn't . . . like I was powerless, not in control of myself."

"When you felt powerless, not in control of yourself, when are you talking about?"

"The day I was supposed to deploy, when I was getting ready to drive to base ops to catch our plane."

"Can you describe what happened?"

"I . . . I remember loading my car, but after that, I don't know. I must've driven somewhere, I couldn't tell you where."

"Given your character for following orders—testified to by your commander and first sergeant—why didn't you tell someone you weren't going to show up?"

"Your honor." Pegram sounds whiney.

"You'll get a chance to argue your case in closing, Ms. Winslow," Judge Judy says.

Molly nods. "Why didn't you

call your first sergeant or commander and tell them you where you were, what was going on?"

"I don't know, I don't remember thinking about it . . . don't remember anything."

"Has this ever happened to you before?"

"No."

"Do you remember the police waking you up at the mall?"

"Not the moment they did, no, but I remember the officers helping me to their car, taking me to the base."

"Were you aware you were in trouble?"

"No . . . I remember thinking I needed to get back, that I was deploying soon, but I didn't know I'd missed it."

"Let's focus on when it first dawned on you that you missed your deployment . . . when was that?"

"When I got to the base and security forces read me my rights. They told me I was suspected of desertion."

"No more questions," Molly says.

When Judge Judy asks if there's any cross-examination, Pegram's out of his chair before she can finish the question.

I got to give Pegram credit, he gave it his best shot. He must've asked Bolin a hundred questions about each and every detail of the four days he was gone—where did you eat, where did you sleep, what did you see, what were you feeling? Will the Braves ever win another World Series? Bolin answers every question with some variation of I don't remember or I don't know. By the end, Pegram's frustration is almost too painful to enjoy.

Pegram tries to salvage it with one last question. "You've had a very convenient memory lapse, wouldn't you say, Airman Bolin?"

Matthew Bolin gives him a thousand-yard stare. "I wish I could remember, sir," he says. "I really do."

The thing is, he looks like he means it.

"Redirect, Ms. Winslow?"

"The defense rests, your honor."

The prosecution elects not to put on any rebuttal evidence, and Judge Judy sends the court members out while we go through the jury instructions she'll read after closing arguments. Pegram makes a half-hearted attempt to keep out the instruction on evidence negating mens rea, arguing not enough evidence was presented for the court members to reasonably find Bolin had an emotional condition that might negate specific intent.

"What trial were you watching, Capt. Pegram?" Judge Judy says.

During his closing, Pegram never hits his stride.

Molly, on the other hand, is remarkable. As she gets near the end, she asks the court members to pay particular attention to the instruction the judge will give them regarding Bolin.

"He was in limbo, lost to everyone, including himself. When you leave here in just a few minutes to decide what Matthew Bolin's future holds—to decide whether he leaves here able to continue to serve his country and to excel, or whether he leaves here a convicted felon—think about how inconsistent missing that flight was with everything else you've heard about Matt."

She walks over and puts her hands on Bolin's shoulders.

"This young man's heart, a heart filled with concern for his mother, ruled his actions. He was so worried he lost the ability to choose, the ability to form the legal intent to commit a crime. If Matthew Bolin's guilty of anything, he's only guilty of being unable to make a choice he felt could destroy his mother."

Molly steps out to the edge of the defense table to wrap it up.

"I wonder . . . what would a mother say if she had Airman Bolin as a son?"

Pegram twitches, but keeps his seat.

"She'd probably tell him how grateful she is that he loves her, tell him that he doesn't need to carry her burden anymore . . ."

Molly turns toward Bolin.  
". . . because you gave me the strength to carry it by growing up into the kind of man any mother would be proud of."

Pegram chews on a fingernail.

"And I expect his mother would be able to tell him one last thing, too." Molly turns back to the court members and takes a moment to make eye contact with each of them. "Take the second chance the court members gave you when they came back with their verdict of not guilty, and keep on making everybody proud, son."

The courtroom is silent as Molly makes her way to the defense table and sits down. Judge Judy raises an eyebrow at Pegram, who shakes his head. After the judge instructs the court members and sends them off to deliberate, I drive over to my office to wait. Molly stays with Bolin.

Less than two hours later, the call comes that they've reached a verdict.



Once the verdict's announced, and the post-trial details are taken care of, Molly follows me back to my office parking lot. When she gets out of her car, she's holding her cell phone.

"Be there in a minute," she says, "I need to call his father."

When I get inside, Perry's at her desk in the waiting area. "You won again, sir," she says.

"She won, Perry, I just watched."

I make my way into my office and sit in my chair. I need a beer. Five minutes later, Molly comes in and starts gathering her stuff.

"You held out on me," I say.

She stops shoving papers into her briefcase.

"Turns out you're quite the trial lawyer."

"I told you I'd tried a few."

"Yeah, but you didn't tell me everything, did you?"

Molly goes back to packing, and I wait until she's finished.

"Definitely sandbagged me," I say.

She turns her head.

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"Should've realized a lot of women use their maiden names professionally, I guess."

"I couldn't take a chance on it slipping out," she says, "wouldn't want them to know, right?"

"The jury?"

"Court members, Jack, that's what we call them in the military."

We both laugh.

"They would've trusted you anyway, Mrs. Bolin."

"Maybe, but how did—"

"Some legal research while the court members were deliberating. You were so good, I had to see what kind of cases you'd tried before."

Molly smiles. "Do I detect some professional jealousy?"

"No doubt, since after that I went through property records to see what kind of house a real trial lawyer would live in . . . and there you were . . . on a deed with your husband."

"Nice to know you respect my privacy."

"No offense, they're public records." I stand up. "And by the way, you look a good 10 years younger than 42."

Molly's green eyes are bright. She tugs the strap of her purse over her shoulder, picks up her briefcase and sticks her hand out across my desk.

"How we started," I say, and shake her hand. "Glad it worked out the way it did, I really am."

"Me too, Jack."

I walk her out to the parking lot and open her car door for her, wondering if she'll stop to see Matt one

more time before she heads back to Atlanta. "I still can't believe you're old enough to be his mom."

"Never said I wasn't."

"That's true."

She surprises me with a quick kiss on the cheek before she gets in her car and drives away. Molly Winslow Bolin, a woman full of surprises.

The other thing my research found was no evidence of a second son. No birth certificate, no death certificate, no nothing.

To be fair, I can't call that a surprise. Not when she threw the question out in front of us all, right there in her closing argument.

What would a mother say if she had Airman Bolin as a son?



**Lt. Col. Leonard M.**

**Cohen** practices government procurement law at Wright-Patterson Air Force Base, near Dayton,

Ohio. He grew up in the Atlanta area, graduated from Georgia State University and went to work for a local cosmetics company. Fired for failing to appreciate the weighty difference between the lipstick shades ruby-red and coral-red, he ran away and joined the Air Force, serving on active duty for 20 years—first as a helicopter pilot, then as an attorney. He received his J.D. from Wake Forest University and LL.M. from George Washington University. He can be reached at [leonard.cohen@wpafb.af.mil](mailto:leonard.cohen@wpafb.af.mil).

## Kudos

>



Dial



Rafter



Tyler



Wilson



Jett



Rahman

**Kilpatrick Townsend & Stockton LLP** announced that partner **Audra Dial** was selected by the **National Multiple Sclerosis (MS) Society-Georgia Chapter** to be a part of its **MS Leadership**

**Class of 2012**. This honor is bestowed on business executives who demonstrate the essential values of leadership in their professional and personal lives. The MS Leadership Class serves as a platform for men and women to enhance their leadership skills while they champion social responsiveness.

Partner **Michael Rafter** was appointed the **board president** of **Atlanta Legal Aid Society, Inc.** As Atlanta Legal Aid's 67th president, Rafter leads the board in overseeing the operations of the society and advising the executive director and staff on operational matters, presides over board and executive committee meetings and assists with fundraising.

Partner **Michael Tyler** was one of 10 recipients of the 13th annual **Justice Robert Benham Awards for Community Service**. Since 1998, these awards have honored lawyers and judges in Georgia who have made significant contributions to their communities and demonstrate the positive contributions of members of the Bar beyond their legal or official work.

Partner **Tom Wilson** was named **co-chair** of the **International Bar Association's International Construction Projects Committee**. The committee, the largest international organization of construction lawyers, provides an opportunity for practitioners to share knowledge and experience from construction projects around the world. All aspects of construction and engineering law are covered, from traditional building and civil engineering contracts to complex integrated project-financed infrastructure projects.

Associate **John Jett** was appointed to the **National Board of the Young Lawyers Division of the Federal Bar Association (FBA)**. The Young Lawyers Division works to increase the interest of younger lawyers in the FBA's activities, and to assist in the establishment, improvement and coordination of active younger lawyers in each chapter and circuit of FBA.

Associate **Robbin S. Rahman** was selected for the **2012 Fellows Program** of the **Leadership Council**

on **Legal Diversity**, a national organization made up of the legal profession's top general counsels and managing partners. Rahman joins a class of 134 attorneys from around the country.

>



Podolsky



Acree

**Carlton Fields** announced that **Gail Podolsky**, an associate in the firm's Atlanta office, was elected **president** of the **American Civil Liberties Union of Georgia (ACLU)**. In addition to her

new role and commitment and support of the ACLU, she also partners with the ACLU on pro bono cases.

Shareholder **Catherine Salinas Acree** will serve a two-year term as **second vice president** of the **Atlanta Legal Aid Society**. The Atlanta Legal Aid Society provides referrals and legal representation to people who otherwise cannot obtain access to the court system. The organization serves clients who have a viable case and reside in the counties of Fulton, DeKalb, Clayton, Cobb and Gwinnett. Case work includes housing, consumer fraud, public benefits, employment, education, health, spouse abuse and child custody cases. They also represent those who are elderly, disabled and mentally ill, or who have AIDS, cancer or ALS.

>



**Burr & Forman LLP** announced that Birmingham partner **Carol H. Stewart** was elected to the **Council of the Alabama Law Institute**, the governing body of the institute. This prestigious elected position is awarded to just six practicing lawyers

from each of the seven congressional districts in the state of Alabama. The institute works closely with the Legislative Reference Service in the annual proper placement and codification acts passed by the legislature within the Code of Alabama. The Legislative Reference Service prepares the vast majority of bills for each session for the legislature, while major code revision work, such as revision of an entire section of law, is handled by the Alabama Law Institute.


>




The **Council of Superior Court Judges** awarded **Hon. Perry Brannen Jr.** the **"1st Annual Emory Findley Award for Outstanding Judicial Service."** The award is named for the late Atlantic Judicial Circuit Superior Court Judge

**Emory Findley**, who served in that role from 1976-94. The annual award will be given to honor a judge who exemplifies Findley's virtues of visionary leadership, resolve and dedication.



- >  **Smith Moore Leatherwood LLP** announced that **Barry Herrin** was presented with the **American College of Healthcare Executives (ACHE) Senior-Level Healthcare Executive Regent's Award**. The award recognizes Herrin's notable contributions to health care management excellence, to the achievement of ACHE's goals, and to numerous civic and community organizations.

- >  **HunterMaclean** announced that partner **Dennis Keene** was one of three statewide recipients of the **Georgia High School Mock Trial Competition Outstanding Attorney Coach Award**. Keene has served as an attorney coach in Region 14, which includes Savannah and Brunswick, since the 2000 mock trial season and has coached Savannah Country Day School high school students since 2001.

- >  Gov. Nathan Deal appointed **Greg J. O'Bradovich**, an associate with **Cantor Colburn LLP**, to the **Board of Governors of the George L. Smith II Georgia World Congress Center Authority (GWCCA)**. Located in the heart of downtown Atlanta, the GWCCA—which includes the 3.9 million square foot convention center, the 71,250-seat Georgia Dome and 21-acre Centennial Olympic Park—ranks among the top five largest convention destinations in the country as well as one of the best sports and entertainment campuses in the world.

- >  **Taylor English Duma LLP** announced that **Lacrechia G. Cade** was the recipient of the Louisiana Diversity Council's **2012 Multicultural Leadership Award**. Cade was recognized for her tireless efforts and achievements as the founding president of the Louisiana Association of Black Women Attorneys.

- >   **Hunton & Williams LLP** announced that **Rita A. Sheffey**, a partner in its litigation and intellectual property practice, was named a **POW! Award** winner by Womenetics, an online resource community that empowers women through resources, tools and events. Sheffey was one of 12 award winners from across a broad range of disciplines and was selected for her achievements and service to the legal profession.

**Christopher C. Green** received an **International Law Office "Client Choice Award"** for excellent client service in the capital markets category. Green is the exclusive winner in this category for the United States. The awards recognize law firms and partners around the world that stand apart for the excellent client care they provide and the quality of their service, based on a subscriber survey of corporate counsel.

## On the Move

### In Atlanta

- > **JAMS** announced the addition of **Hon. J. D. Smith** and **Ralph B. Levy** to its panel. Smith will serve as an arbitrator, mediator and special master for disputes in a variety of areas including administrative law, appellate, employment, insurance, personal injury/torts, professional liability and real property. Levy will serve as an arbitrator, mediator and special master for disputes in a variety of areas including accounting/finance, banking, bankruptcy, business/commercial, insurance, professional liability, real property and securities. The JAMS Atlanta Resolution Center is located at One Atlantic Center, 1201 W. Peachtree St. NW, Suite 2650, Atlanta, GA 30309; 404-588-0900; Fax 404-588-0905; [www.jamsadr.com](http://www.jamsadr.com).

- >  **The Hilbert Law Firm, LLC**, announced that **Mark Ford** joined the firm's litigation department as **of counsel**. Ford is a seasoned commercial trial lawyer, business attorney and health care lawyer. The firm is located at The Terraces North, 400 Perimeter Center Terrace NE, Suite 900, Atlanta, GA 30346; 770-551-9310; Fax 770-551-9311; [www.hilbertlaw.com](http://www.hilbertlaw.com).

- >    **The Finley Firm, P.C.**, announced that **A. McCampbell "Mac" Gibson** joined the firm as a **partner**.

Gibson's commercial litigation practice focuses on real estate disputes, eminent domain and condemnation matters, premises liability, construction litigation and business coverage disputes.

**Austin J. Hemmer** and **Daniel P. Hendrix** joined the firm as **associates**. Hemmer's practice focuses on business coverage, catastrophic injury, class action & mass torts, premises liability, product liability, subrogation and workers' compensation. Hendrix's practice focuses on business coverage,

class action & mass torts, premises liability, product liability, subrogation and workers' compensation. The firm is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; [www.thefinleyfirm.com](http://www.thefinleyfirm.com).



DuPre

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Whitlock

**Miller & Martin PLLC** announced that **William A. DuPre IV** was appointed **chair** of the firm's **commercial department** and **Christopher E. Parker** was appointed **co-chair** of the firm's **labor & employment department**. DuPre represents a variety of business clients including corporations, shareholders, trustees, financial institutions and syndication agents in commercial litigation, bankruptcy and restructuring. Parker's practice focuses on the representation and counseling of companies in matters pertaining to the workplace and the protection of their intellectual property and trade secrets.

**Charles A. Brake Jr.** joined the firm as a **member**. Brake joined the firm's **commercial department** where he practices in the areas of real estate, corporate finance and investment management. **David C. Whitlock** joined the firm's **labor & employment department** as **of counsel** where he practices in the immigration and international law group. The firm is located at 1170 Peachtree St. NE, Suite 800, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; [www.millermartin.com](http://www.millermartin.com).

> **Alston & Bird LLP** announced that partner **Karol V. Mason** returned to the firm as a **member** of its real estate finance & capital markets group. Mason primarily works out of Atlanta, but is also based in Raleigh and Washington, D.C., where she spent the last three years serving as a U.S. deputy associate attorney general under the Obama administration. Mason concentrates her practice in the area of public and project finance, as well as providing guidance in the area of government investigations. The firm is located at One Atlantic Center, 1201 W. Peachtree St., Atlanta, GA 30309; 404-881-7000; Fax 404-881-7777; [www.alston.com](http://www.alston.com).

> **Constangy, Brooks & Smith, LLP**, announced that **Glen R. Fagan** was promoted to **partner**. He is a member of the firm's litigation section and his practice focuses on employee relations counseling and representing companies in employment disputes.

**Andrew Nelson** joined the firm as an **associate**. He focuses his practice in workers' compensation defense. The firm is located at 230 Peachtree St. NW, Suite 2400, Atlanta, GA 30303; 404-525-8622; Fax 404-525-6955; [www.constangy.com](http://www.constangy.com).

> **Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C.**, announced the addition of **Kimberly Johnson** as an **associate**. She focuses her practice on complex litigation, personal injury, products liability and appellate practice. The firm is located at 3455 Peachtree Road, Suite 925, Atlanta, GA 30326; 404-523-7706; Fax 404-524-1648; [www.pmkkm.com](http://www.pmkkm.com).

> **Shawn Lanier** joined **Nelson Mullins Riley & Scarborough LLP** as a **partner**. Lanier focuses his practice on real estate development, including all aspects of property and air rights acquisition, development, operation, financing and disposition. The firm is located at 201 17th St. NW, Suite 1700, Atlanta, GA 30363; 404-322-6000; Fax 404-322-6050; [www.nelsonmullins.com](http://www.nelsonmullins.com).

> **Gray Pannell & Woodward LLP** announced that **James R. Woodward** joined the firm's Atlanta office as a **partner**. His practice areas include tax incentives, securities and public finance. The firm is located at One Buckhead Plaza, 3060 Peachtree Road NW, Suite 730, Atlanta, GA 30305; 678-705-6280; [www.gpwlawfirm.com](http://www.gpwlawfirm.com).

> **Schulten Ward & Turner, LLP**, announced that **Martha A. Miller** joined the firm as a **partner**. Miller concentrates her practice in the areas of bankruptcy and creditors' rights. The firm is located at 260 Peachtree St. NW, Suite 2700, Atlanta, GA 30303; 404-688-6800; Fax 404-688-6840; [www.swtlaw.com](http://www.swtlaw.com).

> **Thompson Law Group, LLC**, announced their relocation. The firm concentrates its practice in the areas of employment law, business law and consumer law. The firm is located at 423 Piedmont Road, Atlanta, GA 30305; 404-816-0500; Fax 404-816-6856; [www.thomlaw.net](http://www.thomlaw.net).

> **Kilpatrick Townsend & Stockton LLP** announced the addition of **Laura Rashedi Buller** to the firm's Atlanta office. Buller joined the firm as an **associate** on the global sourcing and technology team in

the corporate finance and real estate department. She focuses her practice on commercial and outsourcing transactions and technology licensing. The firm is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; [www.kilpatricktownsend.com](http://www.kilpatricktownsend.com).

&gt;



Hitch



Webb

**Burr & Forman LLP** announced that **Scott E. Hitch** and **Patrick B. Webb** joined the firm. Hitch is **counsel** in the firm's environmental practice group, where he focuses primarily

on environmental litigation. Webb is **counsel** in the firm's banking and real estate practice group and focuses on all aspects of commercial real estate, commercial loan transactions from both lender and borrower sides, and commercial leasing from both the landlord and tenant sides in all sectors, as well as commercial real estate development, financing and investing. The firm is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; [www.burr.com](http://www.burr.com).

&gt;



Perignat



Kiella

**Holt Ney Zatcoff & Wasserman, LLP**, announced that **Melissa J. Perignat** was made a **partner** of the firm and **Melody C. Kiella** joined the firm as an **associate**. Perignat and Kiella both

practice in the firm's litigation group. The firm is located at 100 Galleria Parkway, Suite 1800, Atlanta, GA 30339; 770-956-9600; Fax 770-956-1490; [www.hnzw.com](http://www.hnzw.com).

&gt;



Connell



Smith

**Boyd Collar Nolen & Tuggle LLC** announced that **Katie B. Connell** and **Dawn R. Smith** were elected to **partner**. The firm is located at 3330 Cumberland Blvd., 100 City View, Suite

999, Atlanta, GA 30339; 770-953-4300; Fax 770-953-4700; [www.bcntlw.com](http://www.bcntlw.com).

&gt;



**Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC**, announced that **Jason Poulos** joined the firm as **special of counsel**. His practice areas include catastrophic injury, commercial litigation, consumer litigation and class action defense, environmental and toxic tort, insurance coverage, international arbitration and product liability litigation.

The firm is located at 3344 Peachtree Road NE, Suite 2400, Atlanta, GA 30326; 404-876-2700; Fax 404-875-9433; [www.wwhgd.com](http://www.wwhgd.com).

&gt;



**Stites & Harbison, PLLC**, announced that **Melissa J. Davey** joined the firm's Atlanta office as an **associate**. Davey joined the creditors' rights & bankruptcy service group, where her practice focuses primarily on representing institutional lenders and other creditors in bankruptcy. The firm is located at 303 Peachtree St. NE, 2800 SunTrust Plaza, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; [www.stites.com](http://www.stites.com).

&gt;

**Paul Hastings LLP** announced that **Phillip Street** and **Craig Smith** joined the firm's health care and life sciences practices as **partner** and **of counsel**, respectively. They both joined from Kilpatrick Townsend, where Street co-chaired the health and life sciences group. The firm is located at 600 Peachtree St. NE, 24th Floor, Atlanta, GA 30308; 404-815-2400; Fax 404-815-2424; [www.paulhastings.com](http://www.paulhastings.com).

&gt;



Greaves



McCullough



LaLonde

**James Bates Brannan Groover LLP** announced the addition of **Kimberly B. Greaves** as **of**

**counsel** and **associate Amy J. McCullough** to the firm's health care practice and **Michelle T. LaLonde** as **of counsel** to the firm's corporate practice. The firm is located at The Lenox Building, 3399 Peachtree Road NE, Suite 1700, Atlanta, GA 30326; 404-997-6020; Fax 404-997-6021; [jamesbatesllp.com](http://jamesbatesllp.com).

## In Athens

&gt;

**John W. Timmons Jr.**, **James C. Warnes II**, **Cecilia P. Mercer** and **Mary Elizabeth Forwood** announced the formation of a partnership practicing law under the name of **Timmons, Warnes & Associates, LLP**. **Adam M. Cain** and **Rachel G. Grimes** are **associates** with the firm and **Mia So** is a **staff attorney**. The firm is located at 244 E. Washington St., Athens, GA 30601; 706-548-8668; [www.classiccitylaw.com](http://www.classiccitylaw.com).

## In Augusta

&gt;



**David Dekle**, formerly a partner with Fulcher Hagler LLP, announced the opening of his law practice, **David P. Dekle, P.C.**, focusing on the representation of injured victims throughout Georgia, including wrongful death, professional



negligence, product liability, automobile accidents and insurance disputes. The firm is located at 3504 Professional Circle, Suite B, Augusta, GA 30907; 706-922-7460; Fax 706-243-4656; [www.daviddeklelaw.com](http://www.daviddeklelaw.com).

### In Brunswick

>



**Casey J. Viggiano** joined the **Atwood Law Firm, P.C.**, as an **associate**. Viggiano's practice areas include contract, franchise and business law, family law and civil litigation. The firm is located at 1515 Newcastle St., Brunswick, GA 31520; 912-264-4211; Fax 912-264-1204; [www.atwood-lawfirm.com](http://www.atwood-lawfirm.com).

### In Buford

>



**Stephen B. Tippins Jr.** joined **The McGarity Group, LLC**, as an **associate** with the firm's litigation team. The firm is located at 1305 Mall of Georgia Blvd., Suite 100, Buford, GA 30517; 770-932-8477; Fax 770-932-8437; [www.themcgaritygroup.com](http://www.themcgaritygroup.com).

### In Columbus

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**Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C.**, announced the addition of **Shaun P. O'Hara** as an **associate**. O'Hara focuses his practice on tort liability, personal injury, products liability, class action litigation and commercial litigation. The firm is located at 1111 Bay Ave., Suite 450, Columbus, GA 31901; 706-324-0050; Fax 706-327-1536; [www.pmkkm.com](http://www.pmkkm.com).

> **Page, Scrantom, Sprouse, Tucker & Ford, P.C.**, announced that **Elizabeth W. "Betsy" McBride** joined the firm as a **partner** and **Heather H. Garrett** joined the firm as an **associate**. McBride represents individuals in the areas of family law, consumer bankruptcy and civil litigation. Garrett represents individuals and corporations in the areas of general litigation, municipal liability, products liability and corporate representation. The firm is located at 111 Bay Ave., Third Floor, Columbus, GA 31901; 706-324-0251; Fax 706-243-0417; [www.columbusgalaw.com](http://www.columbusgalaw.com).

### In Macon

>



Stroup



Schell

**James Bates Brannan Groover LLP** announced the addition of **Kim H. Stroup** as **of counsel** to the firm's bankruptcy practice and **Ross S. Schell** as **of counsel** to the firm's real

estate practice. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; Fax 478-742-8720; [jamesbatesllp.com](http://jamesbatesllp.com).

### In Marietta

>

**Browning & Smith, LLC**, announced that family law attorney **Deborah S. Ebel** joined the firm as **of counsel**. Prior to joining the firm, Ebel was an attorney and partner at McKenna Long & Aldridge, LLP, for 27 years. She represents clients in all aspects of family law and domestic relations, including divorce, paternity, legitimization and child custody. The firm is located at 31 Atlanta St., Suite 201, Marietta, GA 30060; 770-424-1500; Fax 404-424-1740; [www.browningsmith.com](http://www.browningsmith.com).

>



**Lyle & Levine, LLC**, announced the addition of **Amanda Mathis** as an **associate**. Mathis focuses her practice on estate planning, probate, guardianship and conservatorship. The firm is located at 274 Washington Ave., Marietta, GA 30060; 770-795-4992; Fax 770-421-9989; [gaestateplan.com](http://gaestateplan.com).

>



**Tracy L. Rhodes** announced the opening of **Tracy Rhodes, Attorney at Law**. The firm concentrates on family law, including divorce, custody, child support, property division and alimony. The firm is located at 376 Powder Springs St., Marietta, GA 30064; 770-590-1529; [www.tracyrhodeslaw.com](http://www.tracyrhodeslaw.com).

### In Valdosta

>

**Young, Thagard, Hoffman, Smith, Lawrence & Shenton, LLP**, announced that **Christine D. Clay** became associated with the firm. Clay practices in the area of civil litigation. The firm is located at 801 Northwood Park Drive, Valdosta, GA 31604; 229-242-2520; Fax 229-242-5040; [www.youngthagard.com](http://www.youngthagard.com).

### In Jacksonville, Fla.

>



**Creed & Gowdy, P.A.**, announced that **Jennifer S. Richardson** joined the firm as an **associate**. Richardson practices exclusively in the areas of state and federal appellate litigation. The firm is located at 865 May St., Jacksonville, FL 32204; 904-350-0075; Fax 904-350-0086; [www.appellate-firm.com](http://www.appellate-firm.com).

## Fulton County Law Week Committee's "Future Leaders of America" Project

by Patrick G. Longhi, chair, Washington Workshops Subcommittee

The Fulton County Law Week Committee is an annual collaborative effort among bar associations, legal organizations and the Fulton County courts to commemorate Law Day, both by celebrating the rich heritage of our legal system and informing the public of the importance of the rule of law and providing a greater appreciation and understanding through its various projects. I have represented the Sandy Springs Bar Association as its Law Day chair since 1997, but this year chaired a "Future Leaders of America" pilot project seeking scholarships for worthy high school juniors in Fulton County to study national government and politics this summer in Washington, D.C., with the Washington Workshops Foundation, which has been conducting student programs successfully there since 1967.

The following winning scholarship applicants were recognized as "Future Leaders of America" by their scholarship sponsors who believe the best way to secure the future of our nation is by investing in the promise of our nation's youth.

- King & Spalding Scholarship awarded to Tarrek Shaban
- Sandy Springs Bar/Malone Law Scholarship awarded to Michael Hochman
- Greenberg Traurig Scholarship awarded to Macheo Colby
- Weinberg, Wheeler, Hudgins, Gunn & Dial Scholarship awarded to Chinelo Egbosiuba

The scholarships were presented by a representative from each sponsor along with other awards from the Atlanta Bar Association and the Fulton County courts at the committee's annual awards ceremony in April at the State Bar of Georgia. Those in attendance included representatives of the sponsors, scholarship recipients with their parents, committee chair Fulton Superior Court Judge T. Jackson Bedford Jr., ceremony host Atlanta Bar Association President Rita Sheffey and Fulton Magistrate Judge Melynee Leftridge representing the Fulton County state court bench.



Photo by Sarah I. Coole

(Left to right) Scholarship recipients Tarrek Shaban, Michael Hochman, Macheo Colby and Chinelo Egbosiuba.

# Dealing with Incapacitated Clients

by Paula Frederick

"I'm worried about Mrs. Franco," your paralegal says as she enters your office. "She called today to ask when you were going to meet to go over her complaint."

"Huh?" you ask. "Didn't we do that last week?"

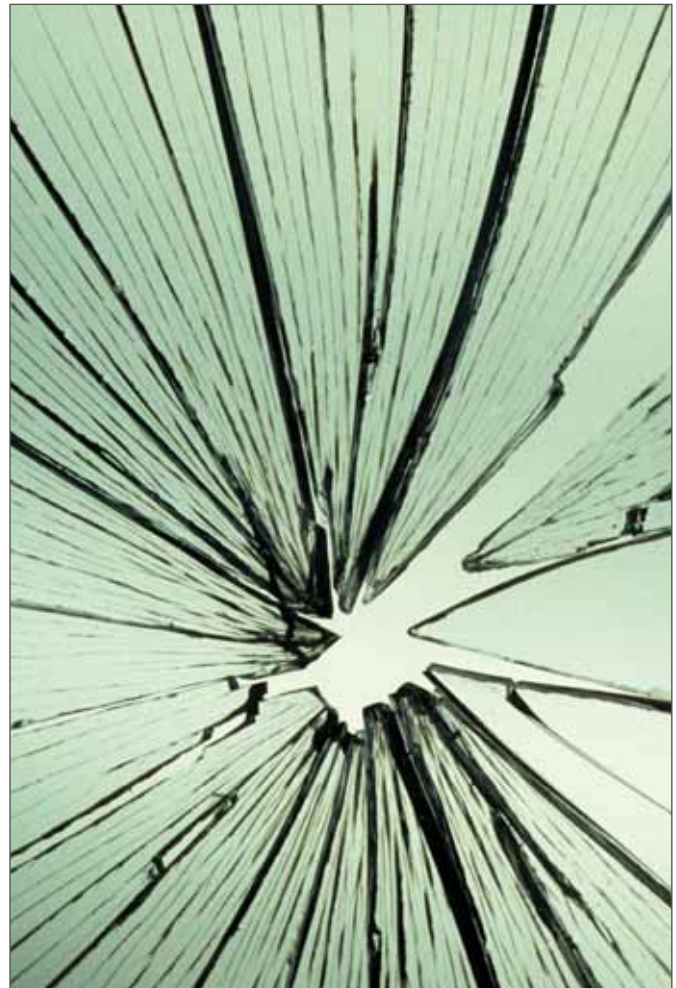
"That's the point," your paralegal responds. "She had forgotten all about it. Haven't you noticed that she isn't as sharp as she used to be?"

"Well, I guess it's not a good sign that she fell prey to that financial fraud scheme," you admit. "But it didn't take her long to realize she had been scammed, and she was sharp enough to hire us to straighten things out."

"Last week was different, though," you recall. "She didn't seem to understand what it is we're trying to do with the lawsuit; I had to explain it all over again. I almost lost my patience with her because she asked the same questions a dozen times. I just figured she was distracted."

"Did you know her son Cory dropped her off for the appointment last week?" your paralegal asks. "He says she doesn't like to drive anymore; she's been nervous ever since she got lost going home from the mall. Maybe we should call Cory; we can ask if he has noticed any change in her behavior."

"Aw, come on!" you protest. "We can't call our client's son to ask if he thinks his mother is losing it! He'll slap her in a nursing home so fast her head will spin!





Besides—I don't think she's incapacitated, she's just a little forgetful."


"What if you're wrong? You're a lawyer, not a psychiatrist," your paralegal points out. "You may be a good judge of people, but you are not an expert in detecting and diagnosing early onset Alzheimer's."

Good point. What should a lawyer do when she suspects that her client suffers from diminished capacity?

Rule 1.14 of the Georgia Rules of Professional Conduct provides some guidance. It requires that the lawyer maintain a normal client-relationship with the client to the extent possible. It also allows a lawyer to "take reasonably necessary protective action" on behalf of a client with diminished capacity under some circumstances, by doing things such as consulting with others who can protect the client.

However, mere suspicion that a client may be losing capacity does not give a lawyer free rein to substitute his judgment for that of the client. The lawyer must try to determine the extent of the client's incapacity while protecting the client's confidences and secrets.

Comment 6 to Rule 1.14 suggests that the lawyer take into account whether the client can articulate reasoning leading to a decision, the variability of the client's state of mind and his ability to appreciate consequences of a decision. The lawyer may evaluate the consistency of the client's decisions with the known long-term commitments and values of the client.

Where there is doubt, a lawyer may seek guidance from an appropriate diagnostician. The lawyers in the Office of the General Counsel are also available to discuss just how and when the lawyer might take protective action as allowed by Rule 1.14(b). 



**Paula Frederick** is the general counsel for the State Bar of Georgia and can be reached at paulaf@gabar.org.

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# Discipline Summaries

(February 11, 2012 through April 24, 2012)

by Connie P. Henry

## Voluntary Surrender/Disbarments

### Searcy Donald McClure III

Valdosta, Ga.

Admitted to Bar in 1982

On Feb. 27, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Searcy Donald McClure III (State Bar No. 484205). McClure is facing felony charges for possession of cocaine in the Superior Court of Dougherty County.

### Paul Owen Farr

Americus, Ga.

Admitted to Bar in 1993

On March 5, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Paul Owen Farr (State Bar No. 255432). Farr suffers from an illness that impairs his ability to practice law.

### Joan Palmer Davis

Marietta, Ga.

Admitted to Bar in 1990

On Feb. 27, 2012, the Supreme Court of Georgia disbarred attorney Joan Palmer Davis (State Bar No. 210810). Davis received \$1,200 from a client but failed to appear for a hearing and effectively withdrew from the case without advising the client or otherwise communicating with him. Davis' answers to the grievance and the resulting Notice of Investigation were untimely. The Court found that Davis lied in her answer to the Notice of Investigation and in her testimony before the special master in the disciplinary case by claiming falsely she had appeared for the hearing in the client's case.

In a second matter Davis again failed to file a timely response to a properly served Notice of Investigation arising out of a grievance filed by a different client.

The Court took into consideration Davis' disciplinary history, the aggravating factors noted above, and the absence of any factors in mitigation. Justice Benham did not participate.

### Gary Mixson Wisenbaker

Savannah, Ga.

Admitted to Bar in 1980

On March 19, 2012, the Supreme Court of Georgia accepted the petition for voluntary surrender of license of attorney Gary Mixson Wisenbaker (State Bar No. 771450). On Nov. 16, 2011, Wisenbaker pled guilty to wire fraud.

### Xavier Cornell Dicks

Stone Mountain, Ga.

Admitted to Bar in 1991

On April 24, 2012, the Supreme Court of Georgia disbarred attorney Xavier Cornell Dicks (State Bar No. 221142). Dicks was hired to represent a client in a suit to enforce a mechanic's lien to recover \$175,000. Although Dicks was aware that the statute of limitations would expire on Dec. 15, 2007, he did not file an action to enforce the lien until Jan. 18, 2008. In July 2009, Dicks informed his client that the action had been dismissed due to the expiration of the statute of limitations. He also presented his client with a release that released Dicks from any causes of action arising out of Dicks' handling of the suit in exchange for Dicks' promise to pay the client \$25,000 by Sept. 28, 2009. Under the release, the client also agreed not to file a Bar complaint against Dicks. Dicks did not inform the client that he should have another lawyer look at the release before he signed it. The client's signature on the release is notarized by Dicks' paralegal, but at the hearing, the client testified that he did not sign the release before a notary and that only he and Dicks were present when the release was signed. Dicks failed to file a timely response to the State Bar's Notice of Investigation and although he promised in his petition for voluntary discipline that he would pay restitution of \$25,000 to his client, he has only paid about \$6,000. Dicks received Investigative Panel reprimands in 2003 and 2009. Those cases involved a similar pattern of Dicks abandoning clients, but trying to justify his

conduct by expressing doubts about the merits of the clients' cases.

## Suspensions

**Creighton W. Sossomon**

Highlands, N.C.

Admitted to Bar in 1970

On March 5, 2012, the Supreme Court of Georgia suspended attorney Creighton W. Sossomon (State Bar No. 667300) for a period of one year with conditions for reinstatement. This order was based on identical discipline imposed in North Carolina due to Sossomon's representation of clients with adverse interests. Sossomon's reinstatement is conditioned on proof that he has been reinstated in North Carolina and that he has met all the conditions for reinstatement imposed in that state.

**William M. Peterson**

Warner Robins, Ga.

Admitted to Bar in 1988

On March 19, 2012, the Supreme Court of Georgia suspended attorney William M. Peterson (State Bar No. 574660) for a period of three years with conditions for reinstatement. Peterson represented a client in a criminal matter at the trial level and ceased his representation after the client entered a guilty plea. Peterson told the client he would send the file to the client so the client could pursue post-conviction remedies. Peterson did not send the file and, after the client filed a grievance with the State Bar, Peterson falsely told the Investigative Panel that he had sent the file to the client. Peterson surrendered the file to the client after the Investigative Panel notified him that it was directing the Office of General Counsel to file a Formal Complaint against him.

In another case Peterson was appointed to serve as appellate counsel to a recently-convicted man and failed to communicate with the client or to respond to the client's numerous letters requesting information about the status of the appeal and Peterson's efforts on his behalf. After the client filed a grievance, Peterson falsely told the Office of the General Counsel that he had requested a transcript of the client's trial so he could take action on the appeal. It was not until Peterson was informed that a Formal Complaint was being filed that he ordered the transcript and pledged to work on the client's appeal.

Letters of support from attorneys practicing in the same geographical area as Peterson noted that Peterson's violations occurred at a time when his law practice was dissolving and he was experiencing medical issues that required hospitalization over an extended period of time. Peterson's reinstatement is conditioned upon certification from a physician or the Lawyer's Assistance Program that his physical impairment no longer impedes his ability to practice law. Justices Hunstein, Melton and Nahmias dissented.

## Congratulations to the 2012 State Mock Trial Team from Henry W. Grady High School in Atlanta!

*The Grady mock trial team  
placed second in a field of  
46 teams during the 2012  
National High School Mock  
Trial Championship in  
Albuquerque in May.*

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The Law Practice Management Program is a member service to help all Georgia lawyers and their employees put together the pieces of the office management puzzle. Whether you need advice on new computers or copiers, personnel issues, compensation, workflow, file organization, tickler systems, library materials or software, we have the resources and training to assist you. Feel free to browse our online forms and article collections, check out a book or videotape from our library, or learn more about our on-site management consultations and training sessions, 404-527-8772.

## **Consumer Assistance Program**

The purpose of the Consumer Assistance Program (CAP) is to serve the public and members of the Bar. Individuals contact CAP with questions or issues about legal situations, seeking information and referrals, complaints about attorneys and communication problems between clients and their attorneys. Most situation can be resolved informally by CAP's providing information and referrals to the public or, as a courtesy, contacting the attorney. CAP's actions foster better communications between clients and attorneys in a non-disciplinary and confidential manner, 404-527-8759.

## **Lawyer Assistance Program**

This free program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment, 800-327-9631.

## **Fee Arbitration**

The Fee Arbitration program is a service to the general public and lawyers of Georgia. It provides a convenient mechanism for the resolution of fee disputes between attorneys and clients. The actual arbitration is a hearing conducted by two experienced attorneys and one non-lawyer citizen. Like judges, they hear the arguments on both sides and decide the outcome of the dispute. Arbitration is impartial and usually less expensive than going to court, 404-527-8750.

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### Marcea O'Brien-Carriman

Atlanta, Ga.

Admitted to Bar in 2005

On April 24, 2012, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney Marcea O'Brien-Carriman (State Bar No. 141878) and imposed an 18-month suspension. O'Brien-Carriman shared fees with a non-lawyer and made false statements to the State Bar in connection with its investigation.

As aggravating factors, the special master considered that the respondent initially made dishonest responses to the State Bar and had received an Investigative Panel reprimand in 2010.

As mitigating factors, the special master noted the respondent's inexperience in the practice of law, her lack of a mentor to guide her in her solo practice, stress and anxiety brought about by a heart condition that necessitated several medical procedures and the exacerbation of that stress by the failure of her solo practice. He further found that the respondent did not act with an ill or selfish motive and that no harm came to any clients as the result of her splitting fees with the nonlawyer. Finally, the special master considered that the respondent admitted her guilt, showed a genuine remorse and does not appear to be at risk for similar violations.

### Brenden E. Miller

Jonesboro, Ga.

Admitted to Bar in 2000

On April 24, 2012, the Supreme Court of Georgia suspended attorney Brenden E. Miller (State Bar No. 506214) for 12 months with a condition for reinstatement. Miller filed a bankruptcy petition on behalf of a client in 2004. After that petition was dismissed for the client's failure to maintain payments to the Trustee, Miller filed a second petition on May 14, 2009. On March 16, 2009, the client sent Miller a copy of a foreclosure notice dated March 4, 2009. The notice stated that the property would be subject to foreclosure

in 60 to 90 days from the date of the letter. After learning that the lender had rejected the client's payment, Miller did not make an effort to determine if the property was being advertised for foreclosure, and the property was foreclosed upon prior to May 14, 2009. During the time of the representation, the client had difficulty contacting and communicating with Miller.

In aggravation of discipline, the special master found that Miller had substantial experience in the practice of law and is a bankruptcy lawyer by trade. In mitigation, the special master found that Miller had no prior disciplinary record and no dishonest or selfish motive. The special master also found that Miller is a solo practitioner and is remorseful. The State Bar had no difficulty communicating with Miller prior to the filing of the formal complaint, but around the time of the filing of the complaint, Miller left the country to care for his father, who was ill. Miller did not inform the State Bar of his departure and discovered upon his return that he was in default.

Respondent's reinstatement is conditioned upon the completion of 12 hours of continuing legal education in the area of law office practice and management.

### Public Reprimands

#### James Bunkey Swain

Roswell, Ga.

Admitted to Bar in 1994

On March 5, 2012, the Supreme Court of Georgia accepted the petition for voluntary discipline of attorney James Bunkey Swain (State Bar No. 693830) and ordered that he receive a public reprimand. Swain was hired to create an irrevocable trust for a client's father, who was hospitalized out of state. Swain created the documents and gave them to his client for the purpose of obtaining the father's signature on the documents. When the client returned the documents they had the father's signature, but the signature was not witnessed or notarized. Swain called

***"He who is his own lawyer  
has a fool for a client."***



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the client's father in the presence of two witnesses and asked him if he signed the documents. When the client's father acknowledged that he had signed the documents, Swain notarized the signature outside his presence.

In mitigation, Swain has no prior discipline, no one was harmed and he did not deceive, defraud or take advantage of anyone.

### Interim Suspensions

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Feb. 11, 2012, three lawyers have been suspended for violating this Rule and one has been reinstated. 



**Connie P. Henry** is the clerk of the State Disciplinary Board and can be reached at [connieh@gabar.org](mailto:connieh@gabar.org).

# New Blog from LPM and OGC Debuts

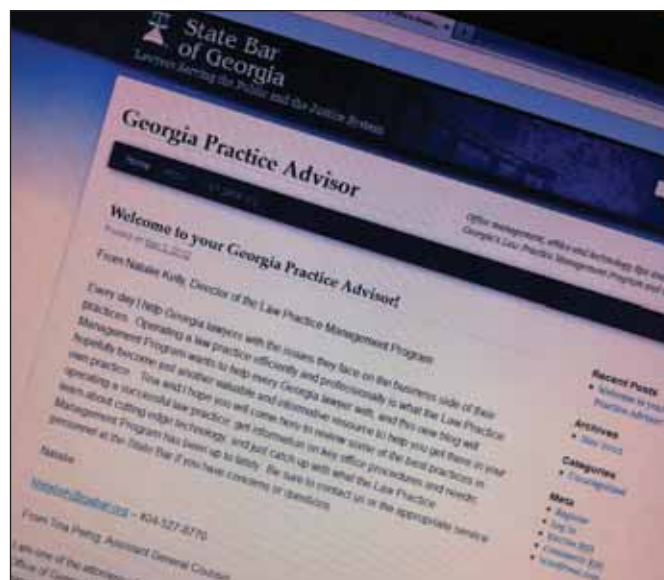
by Natalie Kelly and Tina Petrig

**B**y the time you read this article, you will have hopefully unburied the treasure of a new service from the Bar's Law Practice Management Program and Office of General Counsel—the Georgia Practice Advisor blog. This new blog from the director of the Law Practice Management Program, Natalie Kelly, and Tina Petrig, assistant general counsel from the Office of General Counsel, is designed to provide current information and general feedback on the hottest topics and trends in law office management, legal technology and ethics for Georgia practitioners.

Members of the State Bar call the Bar Center every day looking for answers to questions that relate to how they should do something in their practice. Sometimes, it's to find out whether or not they are even permitted to do that something. The Georgia Practice Advisor was created to help with many of these questions and concerns. As you can see in the welcoming post we really want members to be able to get helpful information and advice on topics that are relevant to their everyday practice.

We hope that this practical treatment of specific issues affecting a broad range of law practices and topics will make the blog yet another useful State Bar resource designed to help improve your practice and your delivery of legal services. In fact, some of the first issues we hope to tackle will be those coming directly from frequently asked questions and recent events, and include topics like:

- A Review of ABA TECHSHOW 2012
- Managing Trust Accounts in Georgia
- A Closer Look at Cloud Computing in the Law, and What is it Anyway?



- How Long Do I Have to Keep Client Files?
- Can I Do That on My Law Firm Website?
- Social Media Concerns for Georgia Lawyers

As you might imagine, there is much to come with so many new advances in technology and ever-changing practice and management styles developing as a result of our new economy. We hope you stay tuned, and help out with some useful comments, too.

To access the Georgia Practice Advisor blog, go to [www.georgiapracticeadvisor.wordpress.com](http://www.georgiapracticeadvisor.wordpress.com). Let us know what you think! 



**Natalie R. Kelly** is the director of the State Bar of Georgia's Law Practice Management Program and can be reached at [nataliek@gabar.org](mailto:nataliek@gabar.org).



**Tina Petrig** is an assistant general counsel in the Office of the General Counsel and can be reached at [tinap@gabar.org](mailto:tinap@gabar.org).





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# Website Launches New Calendar to Register for Events

by Derrick L. Stanley


**O**n April 20, the State Bar launched a new content- and feature-rich website for its members. The new site is the culmination of many months of hard work by volunteers, staff and developers. You will notice that important member benefits and highly-used features are now prominently displayed on the homepage. For example, you can log in to the website, search for an attorney in the online directory or perform a search of the entire website as soon as you land on [www.gabar.org](http://www.gabar.org). *(Hint: If you have bookmarked pages from the old site, they will no longer work due to the updated navigation on the site.)*

A new feature that is particularly helpful to section and committee members is the calendar feature. This new function now displays all events that are happening at the Bar Center and remote offices. You can also filter the results to tailor the output to your specifications. Some combinations may not yield results, if this happens, just reduce your filters.

The calendar can now be selected from any page on the site. If you look at the top of each page, you will see a static black bar with several tabs. This is one of the places where you can access the calendar. Simply click on the calendar button and you will be able to view the unfiltered calendar of events. (see fig. 1). On the left side of the calendar, you will see the "Filter Events By" box. This allows you to narrow your search. Please note that all events at the Bar Center are now housed in this calendar and a filter will make it easier to find certain types of events. Once you find the event you are interested in, you can click on the "[+] More Details" link at the end of the description to get more information (see fig. 2).

If you click on the title of the event, you will go to the page that provides you with all the information about the particular event (see fig. 3). This page also provides you with information and a link to register. If this is an event that is sponsored by an entity of the Bar, you will have the option to "Click here to login and register." This link will take you to the login page where you can login to the Bar's website (see fig. 4). If you are already logged in, the link will read "Register here," and will take you to the registration page (see fig. 5). Once you have logged on, the system will return you to the registration screen. You may now click "register" and follow the prompts. After verifying your information (*note that changes made here will not update your membership record*), you will be taken to the function screen. Select your function by placing a check in the box next to the price (see fig. 6). Some events will allow you to purchase more than one ticket. After clicking "next," you will be taken to the summary screen. The next screen is the shopping cart screen; this displays all items you have requested to purchase. Please note that if there are old items in your shopping cart, you will need to delete them by clicking the orange X to the right of the price prior to proceeding. Registrations for events that have passed will prevent you from checking out and items that are still current will be charged to your credit card. The next screen will ask for credit card payment information. Once this information has been submitted, you will receive an email confirmation of the transaction.

This process describes only one way to access the section events. As you become familiar with the new and improved [gabar.org](http://www.gabar.org), you will find more ways to register for events and maximize this greatly enhanced member benefit.

As always, should you require assistance in registering for a meeting or have questions that are not covered in this article, please visit [www.gabar.org/committeesprogramssections/sections/](http://www.gabar.org/committeesprogramssections/sections/) or contact Derrick Stanley at 404-524-8774 or [derricks@gabar.org](mailto:derricks@gabar.org). 



**Derrick W. Stanley** is the section liaison for the State Bar of Georgia and can be reached at [derricks@gabar.org](mailto:derricks@gabar.org).



figure 1



figure 2

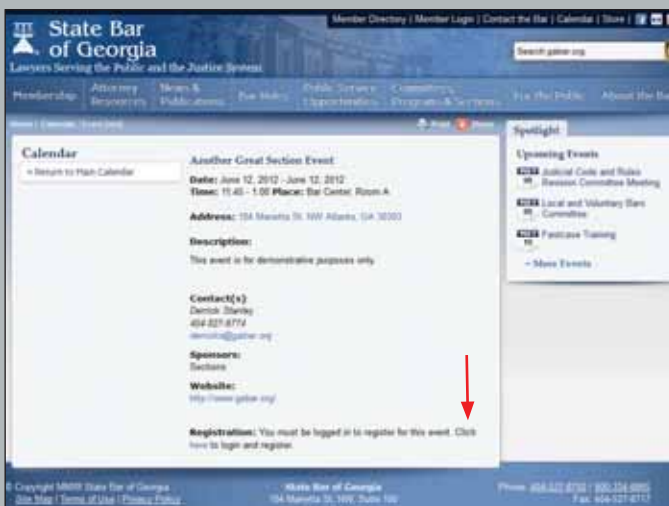


figure 3



figure 4



figure 5



figure 6



# Exploring Fastcase

by Sheila Baldwin

**W**hile it's true that most attorneys use Fastcase for basic case law research, the other Fastcase libraries or resource areas hold useful information. Within the Georgia database, one can search the following areas: Statutes, Regulations, Constitutions, Court Rules, Attorney General Opinions, Law Reviews and Journals. This article will discuss the content contained within each library as well as the search methods to find the documents you are seeking.


All document types are listed on the Search drop-down menu (see fig. 1) or under the column "Start a New Search."

For example, click on statutes and select Georgia from the list of jurisdictions (see fig. 2). At the top of this page choose a search type; Keyword (Boolean), Natural Language or Citation Lookup and then enter either keywords, citations or both. Searching for the requirements for a modification of child support you might choose Boolean (keyword) search and the terms (*modify and support*) *not custody* to get 50 results, most being found in Title 19, the code that deals with domestic relations. To focus within Title 19 add "19" in the query string which narrows the results to 24 cases. To search the statutes from a full index of the Georgia Code by Title, choose the "browse" option to the left of "outline view" and open the Georgia Code using the "+" sign (see fig. 3). Scroll down to open Title 19 Domestic Relations, scrolling again to open Chapter 11 Child Support (Article 1 to 3.) Rather than continuing to open in the expanding mode you have the option to click on a heading of a section which will open a list to the right of the screen in document view. In this view you have access to document tools such as printing, emailing and saving to favorites. Open Article 3, Support Proceedings and then Part 6 to examine Support Orders where you will see several sections that will be on point (see fig. 4).

All documents other than case law can be searched two ways as described in the previous paragraph for statutes; by word search or browse/outline view.

To find the content contained in any of the Fastcase libraries or resource areas, select the area of interest from the drop down box and select a jurisdiction and then look below the search query field to see all available search areas or choose the outline view and scroll down the list to access all content within this area.

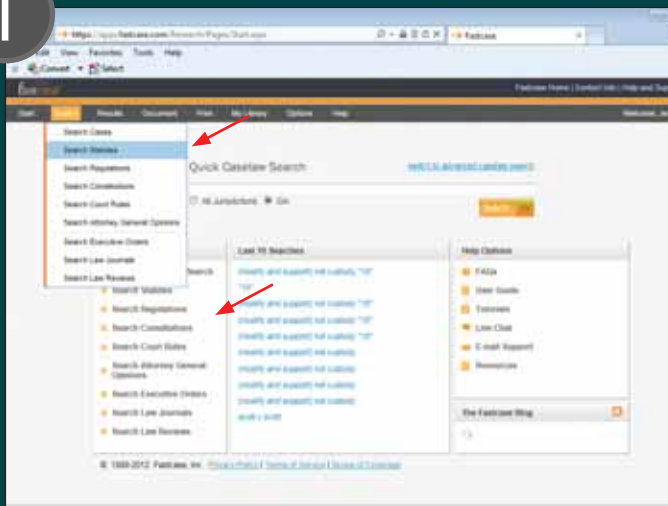
- Statutes—All states; Georgia Code (2009-2011).
- Regulations All states; Code of Federal Regulations (1996 to current), the Federal Code (1994 to current) and the Internal Revenue Service Regulations (1954 to 2011).
- Constitution—U.S.; all states; Georgia (2009) current.
- Court Rules—This library is extensive including federal courts at various levels and within numerous areas. In Georgia one can search any of 14 courts, some of which include the Rules for the Supreme Court of Georgia and the Court of Appeals as well as the Georgia Uniform Rules for Probate; Juvenile Court; Magistrate Court; Superior Court; State Court Rules and Municipal Court Rules. To see all the rules including The Georgia Rules of Professional Conduct Procedural Rules and the Georgia Rules of Professional Conduct, scroll to the bottom of the outline view.
- Executive Orders—Four states including Georgia (2011) current.
- Law Reviews and Law Journals—Law Journals contain the *Georgia Bar Journal*, *Emory Law Journal* and *Emory Bankruptcy Developments Journal*. Law Reviews contain the *Georgia State Law Review*, *Mercer Law Review* and *Emory International Law Review*.
- Attorney General Opinions—All states; Georgia Attorney General Opinions (2011) current.

Take some time to explore all that Fastcase has to offer. Don't forget to take advantage of all the help options available at the Fastcase website, [www.fastcase.com](http://www.fastcase.com) and feel free to contact me at 404-526-8618 or [sheilab@gabar.org](mailto:sheilab@gabar.org) with any comments or questions. 

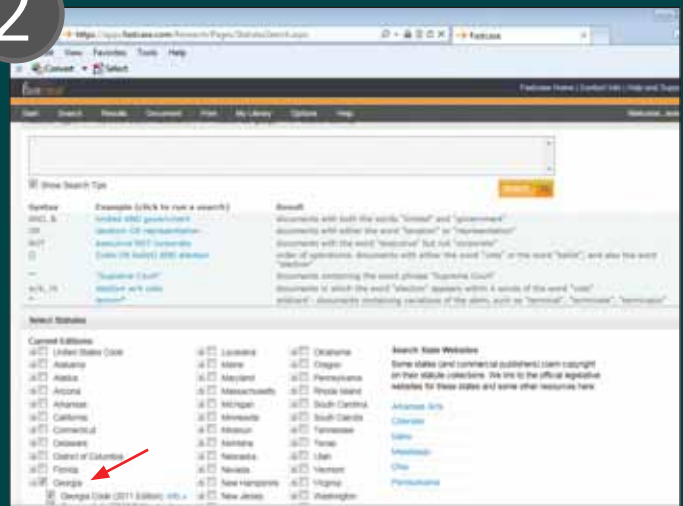


Sheila Baldwin is the member benefits coordinator of the State Bar of Georgia and can be reached at [sheilab@gabar.org](mailto:sheilab@gabar.org).

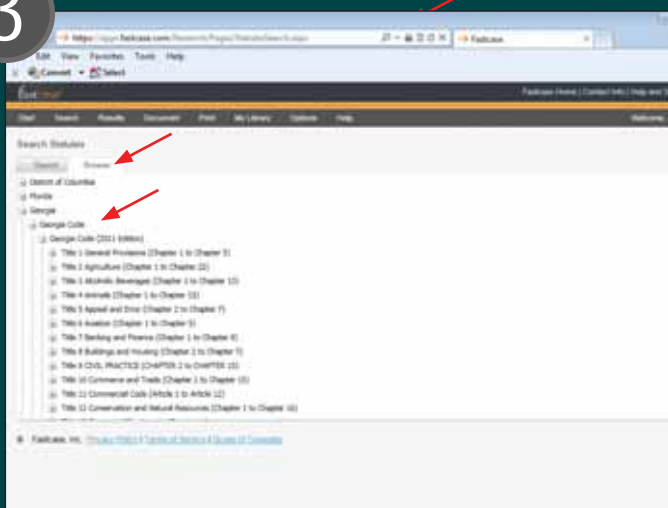
1



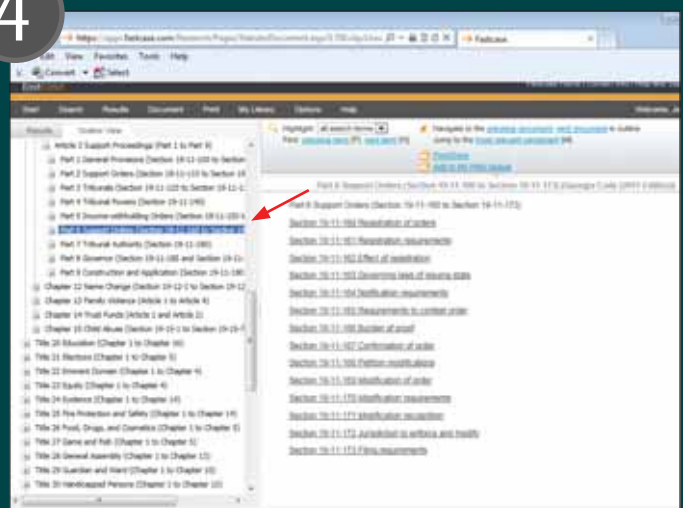
2



3



4



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Webinars designed for paralegals or legal assistants are offered at no charge, providing an added benefit to our attorneys. Find these and other Fastcase training options scheduled on the calendar on the homepage of the State Bar of Georgia.

# Stopping the Insanity: 10 Tricks to Overcome Writer's Block

by Karen J. Sneddon and David Hricik

## Writer's Block Happens to Us All

**W**e've all had that moment. The clock ticks as we gaze transfixed at a blank screen. Writer's block. Writer's block can grip even the most seasoned writer. We may be grappling with a worrisome web of conflicting authorities or scrambling to locate any authority. We may be overwhelmed with a seemingly endless string of unpersuasive arguments or suffering from an embarrassment of richness with too many compelling points. In any case, writer's block is that paralyzing moment when the words don't flow.

One thing we've learned is that change helps overcome writer's block. This installment shares some strategies to help you overcome it.

### Take a Hike

Procrastination may be the thief of time, but you can't get blood from a turnip. Rather than continue to stare despondently at the blank screen, take a break. Take a walk to get the blood circulating. Take some deep breaths to clear your mind. A few minutes away from the computer (or paper) can revitalize you and allow you to resume your project.

### Change Your Space

As comfortable or familiar as your writing environment may be, change it. Move to a conference room, your kitchen table, a park bench or even the other side



of your desk. Consider switching from typing to hand-writing (or vice versa) to create a new writing environment. By altering your environment, you may awaken your writing powers.

### Do Something Else

Letting other projects, such as cleaning the refrigerator crisper or reordering a bookshelf, distract you may be an avoidance tactic. However, it can be difficult to focus on a task when suffering under the weight of a list of pressing projects. So, cross off some other task. Clear out the overflowing inbox or return voicemails.



With one task crossed off the to-do list, it may be easier to focus on writing.

## Forget the Rules

Our familiarity with form and conventions, as well as our high expectations of our final work product, can immobilize us. Shake off the shackles of convention to earn a reprieve with free writing. Find a quiet spot, take out some blank paper, and write continuously for seven minutes. No editing. No revising. No consulting authorities. Just write. This stream of consciousness approach can get ideas flowing again. Even though free writing won't produce text to be used in the final, polished document, free writing may unlock unrecognized thoughts and reactions. This confidence-boosting technique may remind you of how much information you have to share, or a better way of phrasing it.

## Draw a Picture

Engage with the material in a different way. Draw a timeline of the events. Draw a diagram of the procedural posture of the case or the events in issue. Doing so can give you a renewed perspective and so renew your approach.

## Make an Outline

Tried and true but often neglected, outlining provides a readily discernible structure to cluster ideas. Outlining can go the way of case briefs in law school when deadlines loom. Nevertheless, the prewriting technique of outlining helps develop and sequence arguments. Outlining may get you over the block and back into productive writing.

## Do an Elevator Pitch

Looking for the main argument? Searching for a pithy theme? Compose an elevator talk (also called an "elevator pitch"). Suppose you had only 30 seconds to share the subject of your work. What would you say? What authorities or facts would you highlight?

## Become a Journalist

Who? What? When? Where? Why? How? Answering these journalistic questions can help you approach a project from a new perspective to discover hidden insights.

## Set a Schedule


Caught in a cycle of writing then editing? Waiting for inspiration to strike before composing a sentence? Break the project into component parts and make a schedule to tackle each part in turn. When writing a brief, for example, allocate one hour to writing the statement of facts. After the hour has elapsed, move onto the statement of jurisdiction for 10 minutes. Provide five minutes to write the question presented and so on. Forcing yourself to work within a self-imposed schedule forces

you to write something and move on. Then, you can come back and edit the entire project.

## Begin at the End

Introductions are notoriously difficult to write. Issue statements never seem to be finished. Start at the end and work your way back to the beginning.

## Conclusion

Next time you are faced with the blank screen, try one of these writer's block busting strategies to get you writing. You may find one that works for you regularly, or it may take a combination. But the old adage that it is insanity to continue to do what you've done and expect a different result applies to writer's block, too. 



**Karen J. Sneddon** is an associate professor at Mercer Law School and teaches in the Legal Writing Program.



**David Hricik** is a professor at Mercer Law School who has written several books and more than a dozen articles. The Legal Writing Program at Mercer Law School is currently ranked as the nation's No. 1 by *U.S. News & World Report*.

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 **MARSH**

# Professionalism Personified

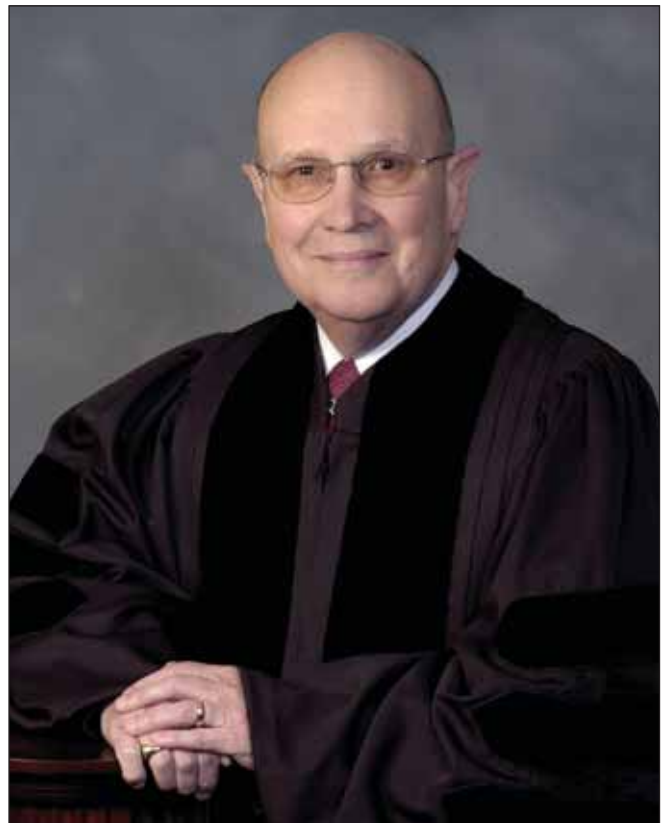
## A Conversation with Chief Justice George H. Carley

by Jennifer M. Davis and Avarita L. Hanson

**S**upreme Court of Georgia Chief Justice George H. Carley demonstrates an outstanding profile of professionalism. An esteemed jurist, former legislator and practitioner of law, his distinguished career personifies professionalism in practice and action. We were honored to interview Chief Justice Carley in the Supreme Court banc room. He provided us with an interesting retrospective on his life experiences that certainly reveals why he exemplifies Georgia's professionalism movement.<sup>1</sup>

Born in Jackson, Miss., Chief Justice Carley received both his A.B. and J.D. degrees from the University of Georgia. His official Supreme Court biography excerpt tells us:

After being admitted to the Bar in 1961, Carley practiced law briefly in Atlanta. From 1963 until his appointment to the bench, Carley engaged in the private practice of law in Decatur. He served in the Georgia House of Representatives in 1966. He was partner in charge of litigation with the Decatur firm of McCurdy & Candler 1971-79. He was the attorney for the Housing Authority of the city of Decatur. He served as a special assistant attorney general handling eminent domain cases for the DOT. Carley



Chief Justice George H. Carley, Supreme Court of Georgia

Photo courtesy of the Supreme Court of Georgia

was appointed to the Court of Appeals of Georgia by Gov. George D. Busbee on April 5, 1979, and was elected to a full six-year term in 1980. He was re-elected in the 1986 and 1992 General Elections. He served as chief judge from 1989-90 and presiding judge from 1991-93. On March 16, 1993, Gov. Zell Miller appointed him to the Supreme Court of

Georgia. He was elected to a six-year term in 1994 and re-elected in the 2000 and 2006 General Elections. Gov. Miller also swore him in as presiding justice on July 1, 2009.<sup>2</sup>

Chief Justice Carley was sworn in as Chief Justice of the Supreme Court of Georgia on May 29, 2012, and will serve until his retirement on July 17, 2012. His reflections in this dialogue demonstrate that he has been a uniquely dedicated and humble leader not only on Georgia's appellate courts, but also throughout his career.

Q. Your dad was a public health engineer, and you grew up in many U.S. cities, including overseas in Burma as a teen. So, what or who along the way inspired you to become a lawyer?

A. It's funny but I haven't been asked that question in 40 years. Just recently Justice Nahmias was addressing a group of Decatur High School students. Since I graduated from Decatur High, I went with him. There someone asked Justice Nahmias that very question, and he gave the exact same answer that I would have given. My 10th grade civics teacher, Miss Emily Norton, got me so interested in the three branches of government that it became the only thing I really cared about in high school. From then on, I knew I wanted to be a lawyer.

Q. Now it's evident to me why you've been so committed to the High School Mock Trial Program—you're reaching kids who are just as impressionable as you were at that age. It would be interesting to tally up those who came through the High School Mock Trial system then became a lawyer because of your involvement and inspiration. I'm sure there are plenty.

A. There are several. One is Kevin Epps. He was on the Clarke Central team that won the

national title in 1999; he now is an assistant D.A. and is very active in the High School Mock Trial Program. He's just one of many. But even those who do not go on to become lawyers are better informed about our judicial process, and I think that education is invaluable for Georgia's citizens.

Q. Moving on with your career—so you're a lawyer at this point. What then inspired you to become a judge? What made you want to take that next step?

A. I think many trial lawyers consider at some point whether they want to be a judge. A lot of them opt not to pursue it because of financial or other reasons. I knew I wanted to be a judge after about three or four years of practicing trial law; the opportunity, however, came along not exactly when I wanted it. I had tried once before for the Court of Appeals in 1976 when Judge McMurray was appointed. At that time I was really young—in my mid-thirties. Then in 1979, Robin Harris, president of Decatur Federal, called me and said, "George, this is your time; Busbee wants to appoint you." I said, "But, Robin, I'm really enjoying my practice. I don't want to do it right now." He said, "Do it now or forget it." So, I made a decision immediately and never regretted it.

Q. Now is this one of those unilateral decisions you've been accused of making without your wife Sandy's input? I heard one was the day your son was born, when you announced to Sandy at the hospital that you'd quit your job to open your own practice.

A. I did consult her this time, because there was an agreement between us. Before, when I was practicing, I preferred she do her interior design only for free, not as a business. So, if she let me do this—go to the court—

she could open her business. She did and she did very well. So, it was a good move for the both of us.

Q. Shifting to professionalism, you were chief judge of the Court of Appeals in 1989 when the professionalism movement was born in Georgia. Do you have any early memories of its beginnings with then-Chief Justice Marshall, Justices Clarke and Weltner, and others?

A. I distinctly remember the professionalism ideal being conceived under their leadership, and I was honored to serve on the first Chief Justice's Commission on Professionalism and attend its inaugural meeting. I even remember going over to the Hurt Building (where the State Bar was then headquartered) with Justices Clarke and Weltner, and interviewing Bucky Askew, who became the Commission's first executive director.

Q. Did you anticipate how professionalism would explode nationwide and that Georgia would be regarded as a leader in this area?

A. I will admit that I didn't. But I would do anything Harold Clarke wanted and Weltner and Marshall, too, so I was committed to supporting their plan. They were all so firmly committed to rooting this concept in Georgia that it doesn't surprise me the seeds they planted have flourished beyond our borders. I believe Harold's definition of professionalism remains the essence of it: "... the idea that ethics is a minimum standard which is *required* of all lawyers, while professionalism is a higher standard *expected* of all lawyers." So, no, I didn't anticipate that my colleagues' idea would become a national model, but I'm proud that it did.

Q. It's now been 23 years that lawyers have been asked to focus



not only on ethics, which is governed by Bar rules, but also to act in a loftier, more aspirational, manner. Do you think the professionalism movement has impacted the practice of law in Georgia?

A. I hope it has and I think it has. But, of course, I'm in the courts so all I can do is read between the lines of the record, and listen to lawyers talk. In some ways the profession is not as friendly, as collegial, as it used to be when I practiced. That may be simply because we have a lot more lawyers, many more than when I practiced. So, I certainly hope that professionalism has made a difference and I'm sure it has, because it has kept to a minimum the things that I dislike so much. For example, we often see where lawyers obviously have had a disagreement about a discovery problem, a deposition or something, and the notice wasn't exactly right. When I was practicing, I don't think I ever had to send a notice of deposition. I'd just call up the lawyer and say, "When can I take the deposition of your client and where?" And it was vice versa. I understand that is not done quite as frequently today. And so professionalism must have helped, because we don't see quite as many of those disagreements in court as we likely could.

Q. Do you think that our technology-focused world is impinging on civility? One example that comes to mind, as you alluded to before, is the lost art of the phone call. People are emailing and texting, and just don't take time to pick up the phone.

A. Well you've got to realize that you're talking to somebody who, unlike a lot of my colleagues, is not into technology. But, thank goodness, my law assistants are, and my administrative assistant is and our younger judges are. From a judicial standpoint, I think technology has been help-

ful in the court system. But, yes, I do think the art of telephone calls and snail mail, and even handwritten notes, has been lost. I think it's more meaningful to receive a handwritten note than an email.

Q. What do you think the best part will be about being chief justice?

A. Number one, I don't think it is deserved. It's only because Carol Hunstein graciously offered to step aside and let me serve as chief for a short period of time, and my colleagues supported her decision. She didn't have to do that and I would have never asked her. Her selflessness is professionalism at its finest. Frankly, though, it's symbolic. I'll be able to retire as chief. In a month and a half, I won't have accomplished a whole lot. To borrow from our friends in the medical profession, I hope to "do no harm." I just want to hold the status quo that she's so wonderfully created, and I think I can do that. But the greatest part—although this is selfish—is that I will become the only person who has been both the presiding judge and chief judge of the Court of Appeals and presiding justice and chief justice of the Supreme Court. There has been one other person who was chief judge and chief justice, and that was Sen. Richard Russell's father, Richard Russell, Sr. So it will be especially meaningful to make history. But I tell you still the nicest thing about it is the fact that my chief and my colleagues supported it.

Q. Beyond the historical milestone, what do you want your legacy to be?

A. More importantly, I want it to be absolute adherence to the law and hard work. That's what I've tried to do for 33 years on both courts. The law comes first. That's what the people elected me for—adherence to the law, even though I may or may not

be in the minority in each case. I may be in the majority and be split 4-3. My only objective is to ensure that what I write, or what I support, is principled. Then I think I've accomplished what I wanted.

Q. It has been reported that the Court of Appeals was a cold court before you joined its ranks; then a new day dawned.

A. Yes, the Court of Appeals was then considered a cold court, meaning the judges did not ask questions. In fact, many did not read the briefs. There was a school of thought that it was better to hear it and then study it. But I would be bored to tears if I didn't know what the case was about. So I and Norman Underwood both started that—spending time really studying the cases. When I argued before this court, it was a cold court. In fact, I did a lot of appellate work, and when we would walk out of court, we'd shake hands with the opposing lawyers. That's not always done anymore and I miss that. Anyway, after leaving the courtroom I would say to the other side's lawyer, "How about betting a Coca-Cola on who's got this case?" All you would have to do, in either appellate court, was pick the only judge who asked questions and that would be who had the case 99 times out of 100. Today I defy you to pick it, because we're all familiar with the case—in both appellate courts.

Q. What professionalism advice would you give younger lawyers? I know you do this all the time, because you interact with them so often through the High School Mock Trial program, the State Bar Young Lawyers Division and more.

A. Do what is right, even if it's hard. Even if it may hurt you a little, do what is right no matter what—to your colleagues, to your clients, to

the court—over and above what is ethically required. Do what's right. That's the core of professionalism.

Q. Now, are you still going to wear a coat and tie in retirement?

A. Forever.

Q. Because it is so ingrained in you? I did read in Bill Rankin's 2009 *Atlanta Journal-Constitution* article<sup>3</sup> about the origin of your signature attire. Rankin reported you even wore your "uniform" riding down into the Grand Canyon, noting, "The mule didn't mind."

A. I adopted that dress code while at the University of Georgia Law School, which, like most law schools in the nation then, had mostly male students. We were required to wear a coat and tie to class. I just never stopped. But I enjoy it.

Q. Well, you not only talk the talk, you walk the walk and you literally wear the wear. Next, speaking personally as a non-lawyer and someone who has been around the State Bar and courts for many years, I've always seen you treat everyone so equitably. Someone might work in the mail room, or they might be a judge; it doesn't matter. Everyone is the same in your eyes.

A. Everyone. People kid me because I always call people by "Ms." or "Mr." but that's the

respect they deserve. And no matter what job they have, it is important—no matter what it is. And I'm just lucky enough to have gotten one that I love every minute of every day.

Q. You are such a gift to all of us, and certainly a role model for professionalism. Who were your mentors?


A. Robin Harris, Charlie Hyatt, Scott Candler Jr., and Harold Clarke—those were the four major ones. In fact, Judge Clarke was the chief justice when I came to this court. It's an honor to have followed in his footsteps, becoming chief. As far as in history, my favorite justice is Logan Bleckley.

Q. Why is that?

A. Because he was so smart and his opinions are witty and thorough. Whenever I can quote him, I quote him.

It is not hard to see how a 10th grader fascinated with government would go on to become one of only 29 individuals who have served our great state as chief justice of the Supreme Court. Miss Norton, who Chief Justice Carley recently learned is still living, should be proud of the legacy she helped create.

State Bar Past President John C. Sammon, the chief's former partner at McCurdy & Candler, sums up his long-time friend's passion for the profession: "The law is his avocation, not just his

vocation." If he is not with his family, at church, at Sanford Stadium—in coat and tie, of course—or elsewhere at his alma mater, he can usually be found at the office. Sammon adds, "Chief Justice Carley's work ethic and integrity are legendary." He is professionalism personified. 



**Jennifer M. Davis** is the executive director of the Georgia Defense Lawyers Association. She is a public member of the Chief Justice's

Commission on Professionalism. She formerly served as director of communications at the State Bar of Georgia, where she worked from 1988-2000.



**Avarita L. Hanson** is the executive director of the Chief Justice's Commission on Professionalism and can be reached at [Ahanson@cjcpga.org](mailto:Ahanson@cjcpga.org).

## Endnotes

1. *Judge George H. Carley*, GA. ST. B. J. 68 (Feb. 1992).
2. *Presiding Justice George H. Carley*, Supreme Court of Georgia, available at: <http://www.gasupreme.us/biographies/carley.php>.
3. Bill Rankin, *Justice A Unique Voice on High Court*, ATL. J. CONST. (Nov. 24, 2009), available at: <http://www.ajc.com/news/justice-a-unique-voice-211837.html>.

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## In Memoriam

In Memoriam honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the Bar in our state. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

**W. Bradley Hale**  
Thomaston, Ala.  
University of Alabama School  
of Law (1956)  
Admitted 1960  
Died November 2011

**George Terry Jackson**  
Savannah, Ga.  
University of Georgia School  
of Law (1971)  
Admitted 1971  
Died March 2012

**J. Robert Joiner**  
Snellville, Ga.  
University of Georgia School  
of Law (1976)  
Admitted 1976  
Died April 2012

**Johnie T. Joiner**  
Atlanta, Ga.  
Woodrow Wilson College of Law  
(1971)  
Admitted 1971  
Died February 2012

**Sylvia Jean Junn**  
Duluth, Ga.  
University of California-Davis  
School of Law (2002)  
Admitted 2007  
Died April 2012

**Henry Worthington Lewis**  
Atlanta, Ga.  
Mercer University Walter F.  
George School of Law (1982)  
Admitted 1982  
Died April 2012

**Richard W. Littlefield Jr.**  
Atlanta, Ga.  
University of Georgia School  
of Law (1973)  
Admitted 1973  
Died April 2012

**Denver L. Rampey Jr.**  
Elberton, Ga.  
Mercer University Walter F.  
George School of Law (1968)  
Admitted 1967  
Died April 2012

**Mark M. Silvers Jr.**  
Savannah, Ga.  
University of Georgia School  
of Law (1969)  
Admitted 1969  
Died April 2012

**Alice Caldwell Stewart**  
Atlanta, Ga.  
Emory University School of Law  
(1981)  
Admitted 1981  
Died April 2012

**Eugene S. Taylor**  
Atlanta, Ga.  
University of North Carolina  
School of Law (1954)  
Admitted 1955  
Died January 2012

**Robert F. Thompson**  
Acworth, Ga.  
Emory University School of Law  
(1970)  
Admitted 1971  
Died February 2012

**Paul Webb Jr.**  
Helen, Ga.  
Harvard Law School (1950)  
Admitted 1949  
Died April 2012



**W. Bradley Hale** died in November 2011. He was born in Mobile, Ala., in October 1933, the son of Kathleen Bradley Hale and Ernest Everett Hale. He grew up in Montgomery, Ala., and graduated from the University of Alabama in 1956 earning A.B. and LL.B degrees in five years. He was elected to Phi Beta Kappa and was president of the SAE fraternity. In 1958, he received an MBA degree from the Harvard Business School.

Hale practiced law for 31 years at the Atlanta law firm of King & Spalding. He was continually involved with evolving governance and management issues at King & Spalding, chairing the first committee to address that topic in 1974. He was elected the firm's first managing partner of the modern era in 1984. Hale served on the board of directors of Oxford Industries, Inc., and Crawford & Company for 25 years and on the board of Lanier Business Products until its merger with Harris Corporation. He served for 20 years on the board of directors of the Bank of Commerce, the Sheffield family bank in Americus, Ga., and took the lead in 1982 in its merger with First National Bank of Atlanta. He represented an heir of



Howard Hughes and served on the board of Summa Corporation, the holding company for the Howard Hughes Estate. He was a founding trustee of the Southern Federal Tax Institute and a member of the American College of Trust & Probate Counsel. He retired from the firm in 1991.

Throughout his career, Hale devoted himself to supporting and leading nonprofit organizations. He had a keen interest in historic preservation. He served as an early chairman of the Georgia Trust for Historic Preservation and as a founding chairman of the Advisory Board of the Georgia Historical Society, and later went on to receive the highest lifetime achievement awards from both of these organizations. Hale was a trustee of the National Trust for Historic Preservation and served as chairman of the Atlanta Historical Society. He served for seven years as vice chairman of the board of Sweet Briar College and chaired its presidential search committee. Hale was an active parishioner and vestryman at All Saints Episcopal Church. He was a member of the Piedmont Driving Club, the Knickerbocker Club and the North Carolina Society of the Cincinnati.




**Richard W. Littlefield Jr.** passed away in April 2012. A native of Jesup, Ga., Littlefield was the son of the late Hazel Harper and Richard Wells "Snookie" Littlefield Sr. He was educated in the public schools of Jesup and Wayne County. He received his undergraduate degree from Emory University in 1970 and his J.D. degree from the University of Georgia School of Law in 1973. Littlefield's leadership abilities emerged early when he pledged the Sigma Alpha Epsilon fraternity at Emory, where he served as entertainment chairman for the chapter and later when he was elected vice president of his first

year law school class. He continued as a well-respected member of the State Bar of Georgia throughout his career in the practice of law in both the public and private sectors.

Littlefield began his legal career with the support and guidance of the late Ronald Adams and Glenn Thomas Jr. He served as assistant district attorney for the six-county Brunswick Judicial Circuit. He resided with his family on St. Simons Island and he practiced law in Brunswick from 1973 to 1983. During this time, Littlefield was elected to represent State Senate District 6, where he served three terms. During his devoted service in the Georgia Senate, he was vice chairman of the Judiciary Committee and secretary of the Insurance Committee. He served on the governor's Select Committee on Juvenile Justice, the governor's Select Committee on Constitutional Revision (1979-82) and on the Georgia Code Revision Commission (1981-87). After his first year in office, Littlefield garnered the highest ranking among his fellow senators by the Southern Center for Studies in Public Policy. He received the "Friend of Children" award from the Georgia Council on Children, an outstanding service award from the Georgia Municipal Association, a leadership award from the Wayne County Young Farmers and a legislative leadership award from the Georgia State Crime Commission, among many other distinctions. Clark College Atlanta recognized him for his advocacy on behalf of children, the elderly and working people of Georgia.

After three terms in the Senate, Littlefield relocated permanently to the Atlanta area, where he practiced law in the corporate sector for nearly 30 years. He was the regional managing attorney for Zurich Insurance Group for 10 years, overseeing 10 legal offices across the country. In 1999, Littlefield had the opportunity to return to the legislature to assist

the late Sen. René Kemp as legal advisor to the Senate Judiciary Committee. He went on to serve as executive counsel to Lt. Gov. Mark Taylor and, later, serving as the director of the joint Senate Information and Research Offices, where he mentored many young people who aspired to careers in public service and public policy. He was currently serving in a house counsel capacity, providing legal representation for the Travelers Insurance Company, Workers' Compensation section.

Littlefield enjoyed a good round of golf, a glass of good wine, music of all kinds—from classical to country—and he was a gifted gardener. He enjoyed travel and was most happy when he and his wife, Beverly, could relax at their favorite Beach Bar at the Island Beachcomber on St. Thomas, U.S.V.I., where they had been meeting cherished friends each year for the last 20 years. Of his many achievements, he was most proud of the accomplished adults his children have become. 

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# June-August

<b>JUN 8-15</b>	ICLE <i>Urgent Legal Matters in Alaska</i> Seattle, WA See <a href="http://www.iclega.org">www.iclega.org</a> for location 13 CLE
<b>JUN 21</b>	ICLE <i>Recent Developments</i> Atlanta, Ga. Bar Center 6 CLE
<b>JUN 21</b>	ICLE <i>Trial Advocacy</i> Atlanta, Ga. Bar Center 6 CLE
<b>JUN 22</b>	ICLE <i>Professionalism, Ethics and Malpractice</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 3 CLE
<b>JUN 29-30</b>	ICLE <i>Southeastern Admiralty Law Institute</i> Amelia Island, Fla. See <a href="http://www.iclega.org">www.iclega.org</a> for location 9 CLE
<b>JUL 12-14</b>	ICLE <i>Fiduciary Law Institute</i> St. Simons, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE
<b>JUL 20-21</b>	ICLE <i>Environmental Law Summer Seminar</i> St. Simons, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 8 CLE

<b>AUG 1-2</b>	ICLE <i>Real Property Law Institute Rebroadcast (May 2012)</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE
<b>AUG 17</b>	ICLE <i>Arbitration</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE
<b>AUG 17</b>	ICLE <i>Nuts &amp; Bolts of Family Law</i> Savannah, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE
<b>AUG 23</b>	ICLE <i>Contract Litigation</i> Atlanta, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 6 CLE
<b>AUG 31-SEPT 1</b>	ICLE <i>Urgent Legal Matters</i> St. Simons, Ga. See <a href="http://www.iclega.org">www.iclega.org</a> for location 12 CLE

**Note:** To verify a course that you do not see listed, please call the CLE Department at 404-527-8710. Also, ICLE seminars only list total CLE hours. For a breakdown, call 800-422-0893.

# 2012 LAW SCHOOL ORIENTATIONS ON PROFESSIONALISM

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Nickname: \_\_\_\_\_

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Bar#: \_\_\_\_\_

Please pair me with: (optional) \_\_\_\_\_

Note: phone, fax numbers & email addresses may be shared with group leaders and the law schools.

(Please check appropriate box)

LAW SCHOOL	DATE	TIME	RECEPTION/LUNCH	SPEAKER
Emory	Fri., August 17	*Emory does not need volunteers at this time*		TBD
<input type="checkbox"/> Georgia State	Tues., August 7	3:00 - 5:45 p.m. (tentative)	5:45 - 6:45	TBD
<input type="checkbox"/> John Marshall	Sat., August 11	9:00-11:30 a.m. (tentative)	11:30 - 12:30	TBD
<input type="checkbox"/> Mercer	Fri., August 10	1:30 - 3:30 p.m. (tentative)	3:30-4:30 p.m.	TBD
<input type="checkbox"/> UGA	Fri., August 10	2:00 - 4:30 p.m. (tentative)		TBD

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fax (404) 225-5041 • email: Nneka@cjcpa.org. **Thank You!**

Demonstrating that professionalism is the hallmark of the practice of law, the Law School Orientations have become a central feature of the orientation process for entering students at each of the state's law schools over the past 19 years. The Professionalism Committee is now seeking lawyers and judges to volunteer to return to your alma maters or to any of the schools to help give back part of what the profession has given you by dedicating a half day of your time this August. You will be paired with a co-leader and will lead students in a discussion of hypothetical professionalism and ethics issues. Minimal preparation is necessary for the leaders. Review the provided hypos, which include annotations and suggested questions, and arrive at the school 20 minutes prior to the program. Pair up with a friend or classmate to co-lead a group. Please consider participation in this project and encourage your colleagues to volunteer.



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## Proposed Amendments to Uniform Superior Court Rules 17 and 39 and Proposed New Rule 48

At its business meeting on Jan. 19, 2012, the Council of Superior Court Judges approved proposed amendments to Uniform Superior Court Rules 17 and 39 and proposed new Rule 48. A copy of the proposed amendments may be found at the Council's website at [www.cscj.org](http://www.cscj.org).

Should you have any comments on the proposed changes, please submit them in writing to the Council of Superior Court Judges at 18 Capitol Square, Suite 104, Atlanta, GA 30334 or fax them to 404-651-8626. To be considered, comments must be received by Monday, July 23, 2012.

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