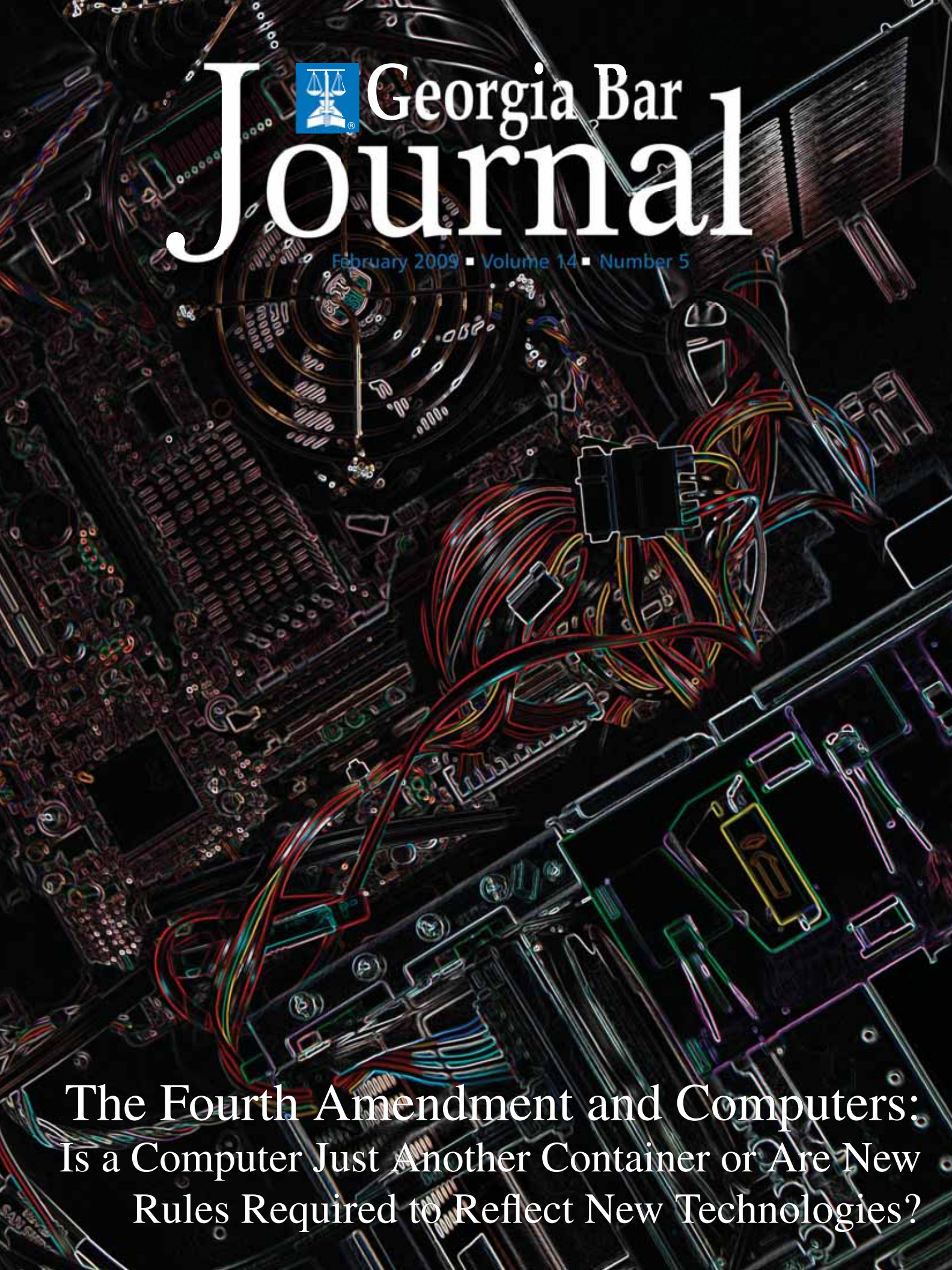
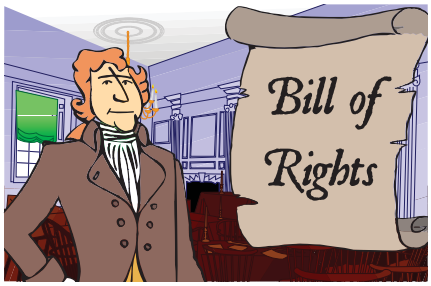
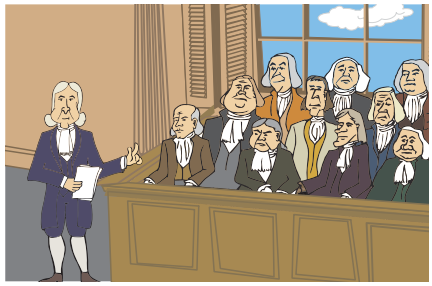
Georgia Bar Journal
February 2009 ▪ Volume 14 ▪ Number 5



The Fourth Amendment and Computers:
Is a Computer Just Another Container or Are New Rules Required to Reflect New Technologies?

Trial By Jury: What's the Big Deal?



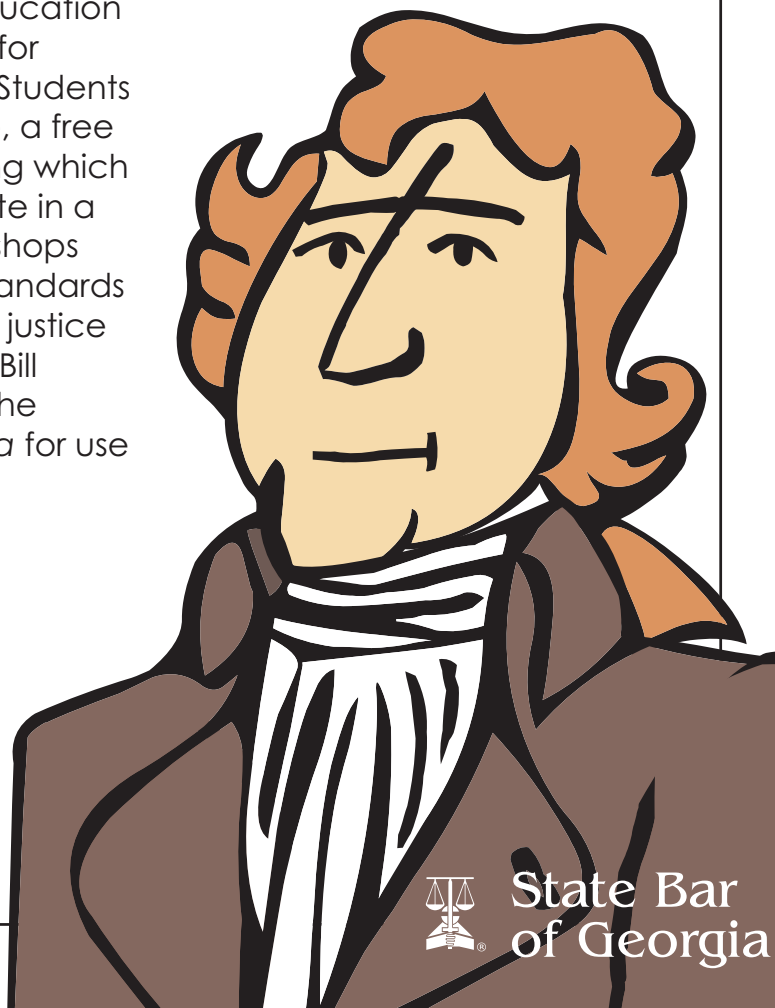



"Trial By Jury: What's the Big Deal?" is an animated presentation for high school civics classes in Georgia to increase court literacy among young people. This presentation was created to be used by high school civics teachers as a tool in fulfilling four specific requirements of the Social Studies Civics and Government performance standards.

This animated presentation reviews the history and importance of trial by jury through a discussion of the Magna Carta, the Star Chamber, the trial of William Penn, the Constitutional Convention in 1787, the Constitution and the Bill of Rights. Also covered in the presentation are how citizens are selected for jury duty, the role of a juror, and the importance of an impartial and diverse jury.

The State Bar of Georgia's Law-Related Education Program offers several other opportunities for students and teachers to explore the law. Students can participate in Journey Through Justice, a free class tour program at the Bar Center, during which they learn a law lesson and then participate in a mock trial. Teachers can attend free workshops correlated to the Georgia Performance Standards on such topics as the juvenile and criminal justice systems, federal and state courts, and the Bill of Rights. The LRE program also produces the textbook *An Introduction to Law in Georgia* for use in middle and high school classrooms.

You may view "Trial By Jury: What's the Big Deal?" at www.gabar.org/cornerstones_of_freedom/civics_video/. For a free DVD copy, e-mail stephaniew@gabar.org or call 404-527-8792. For more information on the LRE Program, contact Deborah Craytor at deborahcc@gabar.org or 404-527-8785.



State Bar of Georgia

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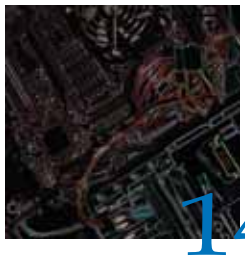
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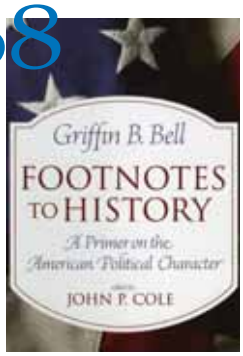

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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (18th ed. 2005). Please address unsolicited articles to: Donald P. Boyle Jr., State Bar of Georgia, Communications Department, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303. Authors will be notified of the Editorial Board's decision regarding publication.

The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; phone: 404-527-8791; sarahc@gabar.org.

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photo by www.kristenphoto.com

by Jeffrey O. Bramlett

Less Than One Penny

The Constitution of the state of Georgia—the fundamental contract between the people of our state and their government that endures each political season and every individual elected official—states: "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."[1]

All three branches of state government play a critical role in ensuring compliance with this highest duty of government. Every constitutional officer takes an oath to uphold this Constitution. But make no mistake about it; when it comes to resolving the hard questions of what it means to render "impartial," "complete" and "equal" protection of the laws governing persons and property with justice and mercy, the rubber meets the road in the courts of Georgia.

"Our courts—like every other agency of state government—are now being asked to do more with even less funding."

Judging the Performance of Georgia's Judiciary

Georgia's courts serve the people of Georgia well. The population growth and economic dynamism Georgia has experienced over the past decade is due, in no small part, to public trust earned by a judiciary that faithfully and predictably upholds the rule of law. Georgia's judicial system has successfully avoided the pitfalls of partisan politics, unpredictable pendulum swings and unfortunate corruptions that have plagued the judiciaries of our sister states to the west.

Georgia's courts have improved qualitatively in many dimensions over the past generation. Two examples make the point.

When I was called to the private bar from a federal appellate court clerkship, it was an open secret that meaningful appellate review of capital sentences did not begin until a case progressed to the federal courts on writ of habeas corpus. Some federal judges were prone to express frustration about the fact that their death penalty workloads were heavy because elected state judiciaries left the unpopular task of rigorously scrutinizing the fairness of death penalty trials to the federal judges who enjoyed life tenure. Today, even the harshest critics would have to concede that Georgia's courts and juries approach the potential imposition of capital punishment with a gravity, skepticism and rigor that simply did not exist 30 years ago.

Back then, conventional wisdom had it that filing a civil rights enforcement action against the state of Georgia in the state courts of Georgia would constitute legal malpractice. Today, it is not unusual for the state of Georgia, as a civil defendant, to invoke federal court jurisdiction and remove civil rights actions to federal court.

Georgia's courts have earned an outstanding national reputation for productivity. The Supreme Court of

Georgia was recently recognized by an independent University of Chicago study as the *most productive* state court of last resort in the United States. The Court of Appeals of Georgia handles one of the largest case loads of any court in the nation.

Our appellate courts achieve these distinctions while operating under the Georgia Constitution's "two term" rule requiring swift, as well as accurate, adjudication. Meanwhile, Georgia's trial judges, juvenile and probate judges work every day in the trenches of the justice system, applying the law to the facts on the ground with an extraordinary degree of professional excellence.

In the private sector, job performance and results like these would typically be addressed and rewarded in the compensation process. Last year, the State Bar joined with the Georgia Chamber of Commerce in advocating a long-overdue pay raise for Georgia's judicial officers. We succeeded in securing passage of judicial pay raise legislation through both houses of the General Assembly. Unfortunately, the legislation suffered a veto.

The Current Budget Challenge

The state budget signed into law for the fiscal year commencing July 1, 2008, totals $21.2 billion. Nearly 70 percent of that total is administered by the Departments of Education, Community Health, Human Resources and the Board of Regents. The Department of Corrections speaks for another $1.2 billion. We are talking billions with a "B". The entire judicial branch of state government, in contrast, was budgeted to operate on $169.5 million.

In the second half of calendar year 2008, Gov. Sonny Perdue met his constitutional responsibility to balance the state's budget in the face of declining revenues by imposing across-the-board spending reductions on the judicial branch and most other state government operations. Even before this cut, the entire judicial branch of government was operating on approximately .08 percent of state expenditures: *less than one penny* for each dollar of budgeted state expenditure.

Our courts—like every other agency of state government—are now being asked to do more with even less funding. I have attended the meetings of the Judicial Council of Georgia and I know our judicial officers are working cooperatively with the other branches of government and sharing the sacrifices all Georgians are facing in this adverse economic environment. State funding for work performed by senior judges has evaporated. The Business Court pilot program—a centerpiece of the State Bar's efforts to work with Georgia's business community to keep Georgia's business climate healthy and competitive—is in jeopardy. State funding to improve the efficiency of courts and public records management with electronic filing has evaporated. Our courts are shouldering this across-the-board cut with the only management tools available to them: reducing staff and diminishing training.

On Jan. 12, our General Assembly convened under the dark clouds of economic contraction, revenue short-

falls and painful political choices. The task ahead is to shape a state budget for the coming fiscal year. At the time this issue of the *Georgia Bar Journal* went to press, the details of the governor's budget proposals for the remainder of the current fiscal year as well as FY 2010 had not been announced.

If the General Assembly and the governor continue down the path of across-the-board funding reductions during the current budgetary process, their decisions will ignore the crucial distinction between many other state government functions—which are matters of discretionary policy—and the judiciary's constitutionally mandated responsibilities to the people of Georgia. Moreover, as the troubled economy continues to produce elevated levels of crime, strife and economic instability for the citizens of Georgia, budget cuts that cripple the ability of Georgia courts to deal promptly with these problems are simply bad public policy.

A number of state-funded programs that drive the efficient delivery of justice in our state are politically vulnerable in this economic climate. In the case of each of these programs, elimination or debilitating cuts in funding invite unpredictable results and greater state expense in the long run. These programs include the following:

The Georgia Appellate Practice and Educational Resource Center provides representation to death-sentenced inmates to ensure these cases advance through state and federal habeas corpus proceedings. Georgia is the only state in the country that does not recognize a right to counsel in habeas corpus proceedings arising over capital sentences. Established by the State Bar in 1988 as part of a multi-faceted approach to improve accuracy and reduce delay in post-conviction capital cases, the General Assembly slashed funding for the Resource Center in the most recent budget cycle.

The Resource Center was found by a recent performance audit requested by the Senate Appropriations Committee to use "fewer staff per case and lower expenditures per case than other states." Staff salaries are significantly lower than the salaries in other state departments, including the Attorney General's Office, the Capital Defender's Office and the Public Defenders Standards Council.

Additional funding cuts for the Resource Center, in the short term, pose the risk of expanded federal scrutiny of Georgia capital cases and invite further delay in the processing of capital sentences. Looking to the longer term, the Bar should carefully consider the recommendations of the Georgia Death Penalty Assessment Team convened by the American Bar Association and chaired by Dean Anne Emmanuel of Georgia State's Law School for bringing Georgia into line with all other states that have chosen to enact a death penalty option by providing counsel in habeas proceedings.

Legal Services for Victims of Domestic Violence extend government protection to low-income victims of domestic violence and the children who are products of the homes where this abuse occurs. The State Bar of Georgia successfully urged our legislature to adopt this program a decade ago; pointing out that 80 percent of Georgians favored this use of their tax dollars. Taxpayer support remains strong because the people of Georgia understand that these services often address life-and-death matters for women and children who lack the means to escape and have nowhere to turn. The 2007 Georgia Fatality Report shows that more than 500 victims, their children and others have been killed in the past four years in family violence incidents. This program saves money and lives.

Without stable funding for this effort, victims of domestic violence and the children affected by this scourge will be cut off from access to the protections available to them in Georgia courts. At best, many of these families will become clients of the overburdened child support recovery office or forced into the child protective services systems. As Linda Klein, the State Bar president who successfully drove this program through the legislature, observes: "I can only imagine the savings to the taxpayer each time a child is not placed into foster care."

Georgia Public Defenders Standards Council provides constitutionally mandated representation to indigent criminal defendants in a cost-effective manner.

Gov. Perdue deserves credit for his leadership in reforming Georgia's indigent defense system. He understands the importance of adequate indigent defense. He worked successfully with the General Assembly to fund systemic improvement and relieve Georgia's counties of the burden of providing constitutionally adequate defense to indigents by creating as a funding source increased fines, fees and forfeitures paid by solvent persons convicted of criminal offenses. Although the General Assembly has yet to appropriate the full amounts of revenue collected by these enhanced fines, fees and forfeitures for the indigent defense mission for which they were enacted, Gov. Perdue has continued to push for higher funding levels than the General Assembly has seen fit to grant. We seek to work together with the governor and the members of the General Assembly during the remainder of this session to secure the funding needed to make Georgia's indigent defense system an example of how our state government lives up to its paramount constitutional duty to all the people of Georgia.

A Call to Action

In the old Soviet Union, judges were not trusted to conduct fair trials or to decide cases based on the law and the evidence. Soviet judges got their paychecks and kept their office by obeying a tyrannical cen-

tral government's instructions. The old Soviet government assumed no responsibility for extending governmental protection to persons or property. In that society, the checks and balances of a fair, impartial and independent judiciary were a fraud.

I am grateful to live in a nation and a state where the judicial branch of government is truly fair, impartial and independent. I am perpetually inspired by how hard jurors—who are summoned to do public service, often at significant personal sacrifice or inconvenience—work to find the truth and to do justice. No human institution is perfect, and our justice system occasionally produces an outcome we find puzzling. On balance, however, the judicial branch of our state government generally delivers on the Georgia Constitution's promise of impartial, complete and equal protection of the laws governing persons and property.

Depriving the judiciary of the resources necessary to do its job well is, as Ben Franklin might have put it, penny-wise and pound-foolish. Lawyers understand these facts. Therefore, we ought not to stand idly by when further across-the-board cuts from the judicial branch budget saddle the people of Georgia with the cost of delay and the risk of inaccuracy in the administration of justice.

I urge you to magnify the collective voice of the legal profession in Georgia on these and other items of urgent public concern. Reach out to your legislators. Thank them for their public service. Speak your mind on the state government issues that matter to you. Speak up for the judicial branch of Georgia government.

The Bar's Legislative Action Network (LAN) facilitates your involvement. If you choose, the network will keep you informed on emerging legislative issues and abreast of fast-moving developments during the session where your participation can make a real difference. To declare your interest in participating in LAN, send an e-mail to membership@gabar.org with your home and e-mail addresses, or update your member profile on the Bar's website to include your home and e-mail addresses.

Finally, please understand that the Bar's ability to maintain a strong voice for the profession at the Capitol and an ongoing public education and outreach campaign on television, radio and by other means depends on your individual participation in the Legislative & Public Education Fund.[2] United as a profession, we can help our state government live up to its paramount duty. GBJ

Jeffrey O. Bramlett is the president of the State Bar of Georgia and can be reached at bramlett@bmelaw.com.

Endnotes

1. GA. CONST. art.1, § 1, ¶ 2 (emphasis supplied).
2. www.gabar.org/cornerstones_of_freedom/contribute/

For the latest developments from the 2009 session of the Georgia General Assembly, please visit www.gabar.org/programs/legislative_program/.

by Cliff Brashier

Spreading Lawyers' Good News at the Local Level

The financial woes of the American newspaper industry are no secret. The impact of competition from "new media" in recent years and the national economic downturn have significantly damaged newspaper circulation numbers and advertising revenues. Many major newspaper publishers have downsized their operations and, most notably, *The Chicago Tribune's* parent company recently filed for bankruptcy.

"Through Cornerstones of Freedom℠, we are submitting significantly more news releases about Bar programs and projects, awards, leadership elections and appointments than in the past."

To cut costs, major newspapers across the nation are reducing the size of their printed products, their editorial staffs and their coverage areas. For example, the *Atlanta Journal-Constitution* has shifted from statewide daily home delivery to a centralized, metropolitan-focused circulation region in the past year or so.

But despite the emerging dominance of cable channels and the Internet as sources of national and international news, there is evidence that any forecast of newspapers' complete demise may be premature and—as Mark Twain would say—greatly exaggerated.

Since ramping up our efforts to spread the good news of Georgia lawyers through the Cornerstones of Freedom℠ public education program, the State Bar has found that when it comes to the primary source of information about their home communities, people

across Georgia still rely on their local newspaper. This is borne out by the response Bar leaders and members are hearing regularly from their neighbors, who have read articles, opinion pieces or letters to the editor about issues affecting the legal profession and the justice system or good news about a local lawyer or judge.

Through Cornerstones of Freedom℠, we are submitting significantly more news releases about Bar programs and projects, awards, leadership elections and appointments than in the past. We have also increased our effort to comment, when appropriate, on current legislative issues and news events through op-ed columns, usually penned by the State Bar president.

A more subtle initiative has been extremely successful in generating ink at the local level. When a lawyer receives some kind of award, or an appointment to a judgeship or a position of leadership in the community, this is an opportunity for our president, Jeff Bramlett, to write a letter to the local newspaper and offer congratulations to that individual, or the local bar association or whomever is being recognized. Even upon the death of a well-known and respected Bar member, Jeff will write a letter of condolence and appreciation for their service.

Our letters-to-the-editor initiative is a win-win proposition. Not only is this an appropriate means of recognition, these pats on the back are popular with most Georgia editors who seek a balance against the multitude of letters they receive from people who are complaining or criticizing. This also gives the Bar another opportunity to publicize the important role of law and judicial independence.

The results of spreading the good news about Georgia lawyers at the local level speak for themselves. Since we began tracking publication of these articles and letters through our clipping service in July 2007, we have been able to document approximately 200 separate publications. These articles have appeared in the *AJC* and all of Georgia's major-market daily newspapers, but also in specialty legal and business publications like the *Daily Report* and, just as often in hometown weekly newspapers—small and large—literally in every corner of the state. Using the published circulation figures of these papers, the Bar's efforts have made at least 5.6 million unique reader impressions during the past year and a half.

This is just one more way in which the Bar is attempting to move the needle of public opinion about the legal profession and the justice system in Georgia. Its continued success depends in part on how well you keep us informed on the good works of Georgia lawyers and judges and the local bars in your communities. So be sure to let us know of all noteworthy achievements by your fellow Bar members.

And when you see a letter of congratulations from Jeff Bramlett in your local paper, offer a word of thanks to the editor for making space available for good news. Even in a small way, this helps fulfill the mission of the Cornerstones of Freedom℠ program to raise public awareness of Georgia lawyers' important role in safeguarding the American value of justice for all.

As always, your thoughts and suggestions are welcomed. My telephone numbers are 800-334-6865 (toll free), 404-527-8755 (direct dial), 404-527-8717 (fax) and 770-988-8080 (home). GBJ

Cliff Brashier is the executive director of the State Bar of Georgia and can be reached at cliffb@gabar.org.

Send news about Bar members and local bar associations to president@gabar.org, cliffb@gabar.org or sarahc@gabar.org.

by Joshua C. Bell

The Paper Chase

"Life is an interesting journey. You never know where it'll take you. Peaks and valleys, twists and turns, you can get the surprise of your life. Sometimes on the way to where you're going you might think this is the worst time of my life. But you know what, at the end of the road through all the adversity if you get where you wanted to be you remember what don't kill you made you stronger and all the adversity was worth it."[1]

Ever since I can remember, I have always enjoyed different types of music. I have enjoyed the rap/hip-hop genre since high school. Even though I have enjoyed rap music, I had never really listened until recently. In my life-long quest to become a better lawyer and person, I look for help wherever I can find it. I found some help in the words of T.I.

> "In my life-long quest to become a better lawyer and person I look for help wherever I can find it."

For those of you who don't know, T.I. is a very popular and successful rap star. In the song "Live Your Life," T.I. tells us that in his line of work too many people are focused on "chasing paper." Of course I believe "chasing paper" is the constant obsession with money. I also believe that many in the legal profession spend too much time concerned about the amount of money that is made by themselves and other lawyers.

I don't want anyone to be confused about what I am saying. I hope that I get rich practicing law. I hope everyone does. At a minimum, I want us all to be able to provide what is necessary for our families. My point is a simple one. Being obsessed with money to the point that clients suffer or even worse that you compromise yourself in the search for more money is a road you should never travel.

"On the way to the top you'll do anything, but how do you get your life back when you get there. . . ."[2]

There was a time in the not too distant past that I felt as if I may be on this road. I felt as if my clients were on an assembly line. The quicker I could get them gone, the more money there would be for me.

The more clients I could get, the more money there would be for me. I hope I stay off this road forever because it's very easy to get on and not so easy to get off. What's the answer? How do you stay off this road?

"What you need to do is be thankful for the life you got. Stop looking at what you ain't got and start being thankful at what you do got."[3]

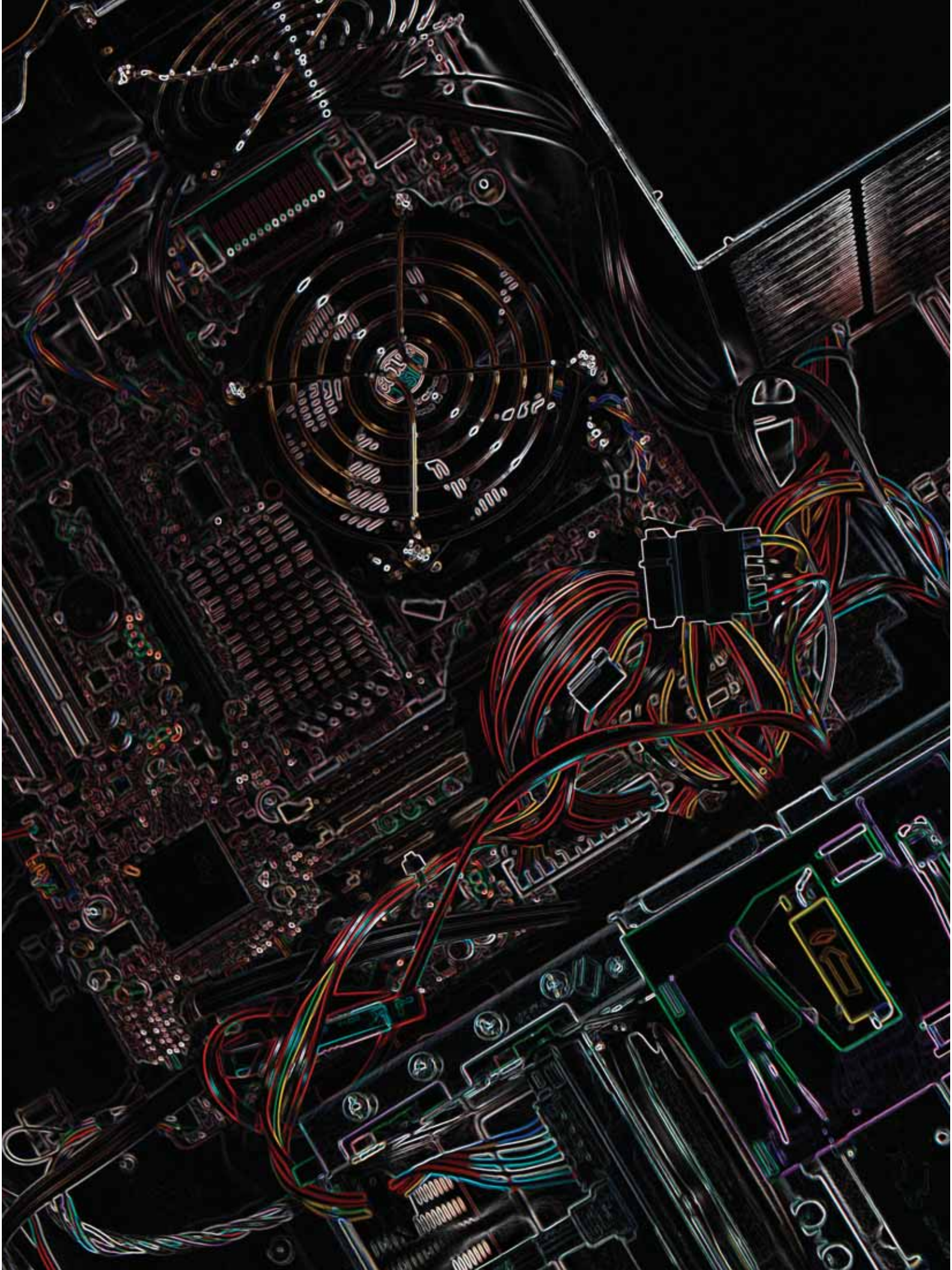
Read those lyrics again. Powerful. Honest. True. Those three words came to mind the first time I really *listened* to the song. In fact I was on a plane returning from a Bar function when I really heard what T.I. was trying to tell me. I must have listened to the song 10 times on that trip into Atlanta. While I was at the airport I witnessed something that put the meaning of those lyrics in a clearer perspective. As I was on the escalator headed to baggage claim, I heard a commotion. Several people were obviously crying. As I got to the top there were people huddled around a young man, his wife and a small baby girl. The young man was dressed in army fatigues and was returning from a tour in Iraq. He obviously had not seen his daughter or at least only had seen her briefly. The daughter was close to a year old. As I walked out of the airport to drive home, I realized that I had many things to be thankful for. Not the least of which is that I get to kiss my little boy and girl goodnight nearly every day that goes by.

The paper chase can send you on a path where scenes like I saw at the airport would go unnoticed and certainly unappreciated. What a shame that would be. Quit being focused on what others have and what else you would like to have. Be thankful for what you do have. I know I am. GBJ

Joshua C. Bell is the president of the Young Lawyers Division of the State Bar of Georgia and can be reached at joshbell@kirbokendrick.com.

Endnotes

1. From the video "Live Your Life" —T.I. featuring Rihanna
2. *Id.*
3. *Id.*



The Fourth Amendment and Computers:

Is a Computer Just Another Container or Are New Rules Required to Reflect New Technologies?

by Edward T.M. Garland and Donald F. Samuel

One hundred years ago, there was no "automobile exception" to the search warrant requirement.[1] Of course, there were no automobiles in the 18th century when the Fourth Amendment,[2] which bars unreasonable searches and seizures, was adopted as part of the Bill of Rights. Determining what is reasonable with regard to automobile searches needed to be decided for circumstances not envisioned by the authors of the Fourth Amendment.

Over the past 100 years, the U.S. Supreme Court has established a set of rules that govern the searching and seizing of automobiles, drivers and passengers. Dozens of Supreme Court decisions have focused on when automobiles may be stopped and searched; when drivers and passengers may be stopped and searched; and the duration and intensity of searches of the occupants, their luggage and the vehicle itself.

There were no computers in the 18th century, either.

It has taken 100 years for the Court to announce dozens of rules that set forth exactly what the police may and may not do when it comes to stopping and searching automobiles, but it could take more than that to craft a set of rules that address the unique problems confronting the police and citizens when it comes to searching for, and seizing, information contained in computers.

Although there is considerable debate about whether traditional Fourth Amendment jurisprudence can adequately address any issue that arises in the context of a computer search, or whether an entirely new set of rules is needed,[3] the fact of the matter is that the computer presents new and intriguing problems in the area of the Fourth Amendment, regardless of whether the courts ultimately rely on adapting old rules to solve the problems, or adopting new rules to reflect the technologies.

Law enforcement agents' increasing reliance on computer seizures reflects the undeniable fact that computers not only contain evidence of criminal wrongdoing, but are primary tools in perpetrating crimes: "The computer facilitates the terrorist organization's ability to train its members, spread propaganda and case its targets, just as it helps the identity thief locate his victims, the pornograph-

er to collect and view child pornography and the fraudster to generate fake documents."[4] According to the U.S. Census Bureau, in 2003, there were over 70 million households with laptop computers—roughly 62 percent of all households.[5]

When the Supreme Court decided *Kyllo v. United States*[6] eight years ago, the same dilemma confronted the Court: How should the Court apply a 200 year-old right to be free from unreasonable searches and seizures to circumstances (the ability to measure by thermal imaging the heat emanating from a house) that were unimaginable to the founding fathers? Justice Scalia wrote for the majority, "It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology."[7] Indeed, the traditional boundaries of current Fourth Amendment law, including the foundational requirements of expectation of privacy and particularity, to say nothing of the concepts embodied in the various exceptions to the search warrant requirement, were written by the Court when the most technologically advanced instrument was a slide rule.[8]

How, then, should a court consider whether to issue a search warrant for the search and seizure of a computer? When does a person have a reasonable expectation of privacy in the contents of a computer, and does it make a difference if the computer is used at the workplace, or is shared by other people? Must there be a showing that the target computer is likely to contain evidence or contraband, or is it assumed that *all* suspects' computers contain such evidence if the suspect is shown to be a criminal? Should the police be permitted to seize a computer when a warrant authorizes the seizure of "documents" or "records" or "other evidence of a crime" if the warrant does not expressly permit the seizure of computers or disks in the "to be seized" paragraph of the warrant? How are the search warrant exceptions such as consent searches, searches incident to arrest and inventory searches, to be applied when the target is a computer? Are there any limits to what the police can do once they seize the computer? May they look throughout its entire contents? May they do so for days, or weeks or months? May they use sophisticated forensic tools to discover what was deleted years ago, or never even viewed by the computer's owner?

When considering the application of the Fourth Amendment to computers, consider the following:

- In a typical laptop computer that a consumer buys, a person can save hundreds of thousands of documents, *totaling millions of pages*. This is the equivalent of several thousand bankers boxes of paper. The laptop on which this article was composed can save nearly 600,000 articles of this length.[9]
- The computer will enable the user to access all e-mails previously sent and received for as long as the subscriber has been using e-mail communication (compare that to the "old days" when telephone messages—"While You Were Out" slips—and correspondence were haphazardly catalogued, archived or simply incinerated).[10]
- The computer records and "remembers" every Internet site that the computer has visited, sometimes going back for years. The computer also stores the information about every Internet search conducted on the computer.[11]
- Internet cache files store every picture that has come across the computer from the Internet, including those that "pop-up" and were not consciously retrieved or saved by the person sitting at the computer.[12]
- Forensic tools that are available to law enforcement agencies (and, for that matter, the general public), can retrieve thousands of deleted messages, documents, photographs and Internet searches years after the computer user clicked the "delete" button.[13] Even emptying the recycle bin will not ensure that the information is, in fact, irretrievable.
- In cases involving larger computers or servers (such as those found at various businesses that might be the subject of a search in a white-collar case), the above statistics increase exponentially.[14]

It is no more practical for one to set forth a compact set of rules to govern the searching and seizing of computers today than it would have been reasonable for a scholar to create an entire set of rules for the searching and seizing of automobiles when the first Model T rolled off the assembly line at the Piquette Avenue Plant in Detroit on Sept. 27, 1908. Indeed, it would have been much easier to enact an entire code to guide the police with respect to the searches of automobiles 100 years ago than it would be to promulgate rules for computer searches today. After all, a luxury-class Hummer isn't that much different from a Model T, but the computers of tomorrow will bear very little resemblance to the computers of today. The day is very near when computers and tracking devices in our homes—inside our refrigerators, our home theaters, our home security systems, our cars, as well as our personal laptop computers—will be connected to the outside world in such a way that the necessity for the police actually to enter the house to conduct a search (and seize the hardware) will be laughably antiquated before the ink dries on our hypothetical new rules. Tomorrow, police investigators will simply get a warrant (hopefully), enter our computers from their precincts and obtain all the information that they desire.

The Constitution is not the only limitation on invasions of privacy. Congress and state legislatures can also enact rules that govern access

to electronic data. Congress, for example, has concluded that Title III (the federal wiretap statute) applies to e-mails.[15] Thus, the more rigorous Title III requirements must be satisfied before e-mails can be intercepted. With regard to stored e-mails (i.e., e-mails stored at AOL or Yahoo!), Congress enacted the Stored Wire and Electronic Communications and Transactional Records Access Act, which prescribes specific rules regarding law enforcement agents' ability to obtain copies of a person's e-mails from those institutions.[16] This article only addresses the constitutional issues raised in the context of computer searches.

Issues of Standing/ Expectation of Privacy

A party alleging an unconstitutional search under the Fourth Amendment must establish both a subjective and an objectively reasonable expectation of privacy in order to succeed in an effort to suppress the fruits of that search. The subjective component requires that a person exhibit an actual expectation of privacy, while the objective component requires that the privacy expectation be one that society is prepared to recognize as reasonable.[17] Obviously, a person has an expectation of privacy in the contents of a computer, just as he or she would have an expectation of privacy in a briefcase or file cabinet.[18] Certain unique features of a computer, however, render such a simplistic analysis problematic in certain circumstances.

First, of course, a computer may be shared by many people, thus enabling more than one person the ability to consent to a search of the contents. Rarely is a person's briefcase a shared container. A woman's purse is generally not equally accessible to her spouse, but computers are frequently shared by members of the family. The children play video games on the computer, and the adults might have separate e-mail accounts. Indeed, different users may even have their own passwords that they might, or might not, share with other users.

Second, at work, a computer may be subject to certain work-related rules regarding access by the employer. The computer may also be connected to a server that enables the contents to be viewed by countless other employees, thus negating any expectation of privacy.

Third, much of the contents of the computer might represent communications with another person (e-mails) or another entity. These communications, unlike phone calls, which "exist" only during the course of the communication (unless recorded by a participant), endure for a virtual eternity in the computer's archives or the Internet provider's server.

With regard to workplace computers, the basic law is clear. Generally, a person has an expectation of privacy in his personal work space at a private place of employment.[19] The Supreme Court has also recognized an expectation of privacy for public employees with respect to searches conducted by their employers.[20]

Courts have extended these cases to the employee's computer at his work station, but this expectation of privacy may be limited or even eliminated by workplace rules and protocols that expressly advise employees that their computers are subject to being audited or reviewed by agency personnel.

When an employer expressly informs employees that the contents of the computer will be monitored and examined, some courts have found no expectation of privacy.[21]

In *United States v. Ziegler*,[22] the U.S. Court of Appeals for the 9th Circuit held that an employee of a business had a reasonable expectation of privacy in his computer, even though his computer was provided by the company and he connected his computer to the company's server, which was known to have a firewall that enabled the company's IT employees to review the computer's Internet activity. Despite the accessibility of the computer to other employees, the court focused on the facts that the defendant's computer was kept in an office that he did not share with others and that he maintained a password on the computer demonstrating his subjective expectation of privacy.[23]

When an employee fails to demonstrate a subjective expectation of privacy, however, courts have not hesitated to find that there was no expectation of privacy to contest a search. In *United States v. King*,[24] the U.S. Court of Appeals for the 11th Circuit held that a soldier who connected his laptop to the military base server could not claim a legitimate expectation of privacy in the contents of the computer, including his hard drive, because he knew that other computer users could access information in his hard drive once his computer was connected to the server. The court was unconvinced that any expectation of privacy in the computer was objectively reasonable, even though King installed security settings that inhibited access to his computer by others.

Similarly, in *United States v. Barrows*,[25] the U.S. Court of Appeals for the 10th Circuit held that a city employee who connected his laptop to the city computers and left it in an open area of the office, unlocked, not password-protected and switched on even when he left for the night, failed to demonstrate an expectation of privacy in the computer's contents.

Circumstances arise in which a person loses his expectation of privacy due to the actions of third parties. Thus, a UPS or Federal Express employee, or airline personnel, may open a package or suitcase entrusted to their care. If contraband is discovered, law enforcement may conduct a co-extensive search without obtaining a search warrant. The theory is that there is no additional violation of the defendant's expectation of privacy.[26]

The 11th Circuit has also applied this reasoning to the situation of a "hacker" who surreptitiously "invaded" the defendant's computer, made copies of the contents and then supplied them to law enforcement. The 11th Circuit held that the "private search" did not implicate the Fourth Amendment.[27] Once the information was revealed to law enforcement, a further search did not invoke any Fourth Amendment protection.

What if the content of a person's computer has been observed by a repairman and he sees what he suspects is child pornography? To what extent may the police conduct a search without obtaining a warrant? Are the entire contents of the computer no longer subject to an expectation of privacy, or just the file observed by the non-state agent? In *Walter v. United States*,[28] the FBI was called by a private party to retrieve certain films that had been mistakenly delivered to the private party. The private party examined the labels on the film canisters, but did not actually view the films. The FBI went beyond what was viewed by the private party, and, therefore, was held (by a plurality opinion of the Court, which announced no unified theory) to have conducted a search that was covered by the Fourth Amendment and for which the defendant retained an expectation of privacy. By analogy, if a repairman views one file in a computer, this does not vitiate the computer owner's continued expectation of privacy in a separate file.

The question remains, how extensively may the police conduct a search based on a limited view of the target area by the private party? In *United States v. Runyan*,[29] the U.S. Court of Appeals for the 5th Circuit held that once a particular disk has been examined by a private person who provides the disk to the police, the entire disk may be examined by the police, not just the file contained on the disk that the private person viewed.[30] Other disks, however, which were found in close proximity to the disks containing contraband (and which the private searcher also provided to the police, but did not view prior to relinquishing control to the police), could not be examined by the police until they obtained a warrant. The 5th Circuit based this holding on the limitation of the "private search" exception that limits subsequent police searches to situations where "the police knew with substantial certainty, based on the statements of the private searchers, their replication of the private search, and their expertise, what they would find inside."[31]

In *United States v. Carey*,[32] however, the 10th Circuit cautioned that because of the voluminous amount of information on computers, the fact that a person has no expectation of privacy in one file or directory (because, for example, a search warrant authorized the police to search one set of files in the computer) does not mean that other parts of the computer are outside of the defendant's retained zone of privacy.[33] A recent case in the U.S. District Court for the Middle District of Pennsylvania also endorsed this view. In *United States v. Crist*,[34] the defendant's computer was discarded by his landlord when he was dispossessed from his apartment. Another person retrieved the computer and in the process of looking through the contents, discovered child pornography. He alerted the police, who seized the computer and conducted a thorough forensic

examination of the computer without first obtaining a search warrant. The government claimed that the search was permissible, because the defendant's expectation of privacy was extinguished by the prior private search. The district court disagreed. Relying on *Runyan*, the court concluded that the more extensive search conducted by the police exceeded the scope of the search that the private party pursued and therefore suppressed the evidence.

Probable Cause to Search or Seize a Computer

In order to obtain a search warrant, the police must demonstrate to a neutral and detached magistrate that there is probable cause to believe that evidence of a crime, or contraband, is located in the place that is the target of the search.[35]

In some situations, the probable cause basis for searching a computer is obvious. Perhaps someone has already seen contraband on the computer, as in *United States v. King*,[36] or perhaps the user of the computer has communicated with someone, such as an undercover police agent, by e-mail or in a chat room. Those are the easy cases. What if there is no direct evidence that the computer has contraband on it, or evidence of a crime, but there is evidence that the owner of the computer is a criminal: a drug dealer, a tax evader or a corrupt public official? Does that fact alone establish probable cause that there is evidence of the crime on the computer?

In *United States v. Zimmerman*,[37] the U.S. Court of Appeals for the 3rd Circuit held that information that a person was engaged in sexual misconduct and had shown pornography to students was not sufficient to establish that there was any pornography on his computer. This is one of the few cases in *any* jurisdiction in which a court has held that there was no probable cause to look at a computer of the target.[38] With an alarming lack of careful analysis, the Georgia appellate courts have routinely—and nonchalantly—approved search warrants authorizing the seizure of computers regardless of the apparent lack of specific knowledge that any contraband or evidence could be found on the computer.[39] Consider the paucity of legal analysis in these cases:

- *Schwindler v. State*[40]: The information presented to the magistrate established that the defendant molested a student repeatedly and showed him pornographic videotapes (apparently on a television). The court held that this was sufficient probable cause to seize computers at the defendant's house.
- *Blevins v. State*[41]: Similar to *Schwindler*, the search warrant application showed that the defendant had committed several acts of child molestation and that he was known to have photographs and videotapes of child pornography. Seizing the defendant's computers was justified based on this information. The Court of Appeals reached the same result in *Birkbeck v. State*, where there was considerable evidence that the defendant had molested his stepdaughter for several years, but no information relating to the use of a computer.
- *Daniels v. State*[42]: The defendant allegedly molested the victim numerous times. A computer was known to be present in the house, though there was no information about what was on the computer. The seizure of the computer was authorized, because computers "are often used" by child molesters.
- *Lemon v. State*[43]: The defendant was watching a pornographic videotape (apparently on a television) with his girlfriend, and they were using drugs. They had an argument, and he killed her. The court upheld the search warrant that authorized the seizure of the computer in the house because it might contain evidence regarding the couple's relationship.
- *State v. Henley*[44]: The defendant was known to have acquired illegal pornographic videotapes. A search warrant for computers was authorized, because pornographers use computers.[45]
- *State v. Hall*[46]: Police observed crack cocaine in the defendant's stove. No computer was ever seen at the location, but the officer included "this standard language" about seizing computers in the search warrant, because drug dealers use computers to facilitate drug sales.
- *Dole v. State*[47]: A warrant authorizing the seizure of "INSTRUMENTS OF COMMUNICATION, COMPUTERS" found at the defendant's home (where the defendant was believed to be distributing and receiving Valium and other controlled substances in the mail) was proper, based on the information that the defendant received the drugs at that location.

Although the police need not be clairvoyant and precise about the likelihood of finding evidence of a particular crime on a computer, a formulaic statement that "all drug dealers" maintain records, or "all child pornographers have Internet downloads" or "all tax evaders maintain computerized records" or "anybody suspected of murder who has a computer will have some evidence of his whereabouts at a certain time on his computer" should not suffice. The "nexus" requirement that has always been a critical aspect of the probable cause requirement[48]—that is, the requirement that evidence of the crime will be found at a specific location—should be rigorously enforced when the subject matter is the seizure of a computer. Thus, demonstrating that there is probable cause that the suspect has committed a crime is only half the showing that is required to obtain a warrant to seize the suspect's com-

puter. There must also be probable cause to believe that there is evidence of the crime, or contraband, contained in the computer.

Furthermore, in the Georgia cases cited above, there was not the slightest suggestion that the police were required to be circumspect in the review of the contents of the computers once they were seized. In essence, the search warrants in those cases authorized the police to review virtually every document ever written by the user of the computer, regardless of the content or the date that the document was authored, with nothing more than an assumption that the suspect's computer was likely to have some evidence of his criminal behavior on the computer. The lack of particularity in those warrants is discussed in the next section.

With regard to the "staleness" element of the probable cause determination, it is interesting that because deleted files can be recovered, this issue is less problematic in the case of a computer search. If there is information that a year ago the target downloaded child pornography onto his computer, the evidence will likely still be discoverable using various forensic tools, even if there is unmistakable evidence that the target deleted the images months ago.[49] Further, if there is evidence that the defendant failed to pay his taxes five years ago, records of his expenditures and income might well still be found on his computer.

The Particularity Requirement

The Fourth Amendment requires that a search warrant particularly describe the place to be searched and the things to be seized.[50] This core concern of the Fourth Amendment prevents the police from seizing anything that they find of interest in a suspect's house based solely on the fact that he is suspected of committing a particular crime. The police must apply for a warrant that particularly describes what they will be searching for, and the magistrate must issue a warrant particularly describing what may be seized. This limits not only what may be seized, but the places where the police may search.

Does probable cause to believe that some evidence might be found on a computer suffice to authorize a search of the entire computer, or should searches only extend to particular files, such as files with particular extension designations ("jpg," "doc," etc.) or programs that are more likely to contain evidence (or contraband)? Should the police be limited to documents or files created during a certain timeframe? These questions require a consideration of the "particularity" requirement in a context previously unknown in Fourth Amendment jurisprudence.

The particularity requirement prevents law enforcement from executing "general warrants" that permit exploratory rummaging through a person's belongings in search of evidence of a crime.[51] The description of the things to be seized must not be so broad that it encompasses items that should not be seized. The description in the warrant of the things to be seized should be limited by the scope of the probable cause established in the warrant. The particularity requirement ensures that agents conduct narrow seizures that attempt to minimize unwarranted intrusions upon privacy.[52]

The Georgia courts have addressed the particularity requirement in a number of cases. In *State v. Kramer*,[53] for example, the defendant was suspected of molesting children. The police obtained a search warrant that authorized the seizure of any instruments used in the crimes of child molestation. There was no evidence given to the issuing magistrate that the defendant possessed any pornographic videotapes, that the children had been exposed to any videotapes or that the defendant videotaped the children. Nevertheless, the police seized videotapes. The Court of Appeals held that the trial court properly suppressed the videotape evidence. The general description in the search warrant improperly allowed the police to exercise too much discretion in executing the search warrant. The Court of Appeals, moreover, stated that even if the warrant authorized the seizure of "videotapes" with nothing more, this would not pass constitutional muster.

In *Reaves v. State*,[54] the Supreme Court of Georgia considered a case in which the police were investigating a case of murder and cruelty to children. The warrant authorized the seizure of any "notes and papers" that would be evidence of the crimes. The court—though not without dissent—held that this clause in the warrant was sufficiently particular.

In *United States v. Riccardi*,[55] the 10th Circuit held that a search warrant that simply authorized the seizure of all computers, hard drives, floppy disks, removable media drives, etc., was not sufficiently specific, because the warrant did not limit what the FBI could do with the computer information once it was seized. That is, this warrant would enable the police to look through tax records, calendars, e-mails and every other bit of information on the computers and disks, despite the fact that the probable cause basis for the search was evidence that the defendant had obtained child pornography.[56] As one court succinctly held:

> The cases and commentary also draw a distinction between the electronic storage device itself and the information which that device contains. Thus, when the government seeks to seize the information stored on a computer, as opposed to the computer itself, that underlying information must be identified with particularity and its seizure independently supported by probable cause.[57]

Naturally, limiting the police to a search of the files in the computer marked "my criminal activities" is not required. Computer users will not catalogue their information in this way. In fact, even the extensions "jpg" or "doc" can be manipulated at the user's whim.[58] Nevertheless, in no Georgia case has *any* effort been made to limit the scope of the search of a computer. At a minimum, the searching officers should face the same restrictions that they would face if they were executing a search warrant in a suspect's home or office. Indiscriminate rummaging through all the suspect's belongings for an extended period of time would not be authorized. If the magistrate is persuaded by the warrant application that there is probable cause to believe that the computer contains evidence of the defendant's whereabouts on a certain date, then the warrant should limit the police (and the forensic agents) to searching the computer for that evidence. If the magistrate is persuaded by the warrant application that there is probable cause to believe that the computer contains evidence of the defendant's drug dealing activity, then the warrant should limit the police and their forensic colleagues to searching the computer for that evidence. This proposal recognizes that the computer itself is merely the location in which the police might expect to find evidence, and not the end result of the search. Just as a warrant authorizes the police to search a house to find certain evidence (particularly described), the police should be limited in their search of the computer to look for, and seize, particularly described evidence or contraband.

A recent 11th Circuit case[59] provides some guidance in this area. Federal law enforcement agents targeted a company that was believed to have routinely hired illegal aliens for its work force. A search warrant was obtained that directed agents to seize all computers from the location. Once the computers were seized, however, the warrant expressly limited (at least to some extent) the search that could be conducted by the agents:

> The master affidavit limited the search to specified categories of documents pertaining to a number of businesses and four individuals, and limited the chronological reach of the search to documents and records dating back to 1997. The affidavit also required the search activity to be focused on materials related to specified immigration and tax violations.[60]

Of course, if, while legitimately looking for evidence that the magistrate authorizes the agent to look for, the agent discovers some evidence of another crime, the plain view doctrine will authorize the police to seize that evidence, or as a basis for seeking an additional search warrant to search for evidence of the newly-discovered crime. If the magistrate does not limit the scope of the computer search in the first place, however, there is simply no reason to invoke the plain view doctrine, because the agent would be expressly authorized to search the entire computer for the crime that led to the seizure.

Execution of Search Warrant That Does Not Expressly Identify Computers in the "To Be Seized" Clause

If a search warrant does not specifically authorize the seizure of a computer, may the police seize a computer if the warrant does authorize the seizure of "records" or other evidence of the offenses? This issue is closely related to the particularity requirement in a search warrant. In essence, the question is whether a computer qualifies as a "particularly described" item to be seized if the computer is not specifically identified in the warrant.

In *Marron v. United States*,[61] the Supreme Court held that the Fourth Amendment prohibits general exploratory searches through the particularity requirement. This requirement must be applied with a practical margin of flexibility depending on the type of property to be seized. "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."[62]

In *Military Circle Pet Center No. 94, Inc. v. State*,[63] the Court of Appeals considered a case in which a search warrant authorized the seizure of euthanizing drugs, cruelly-treated animals that were sick, animals in a diseased and overcrowded environment and certain business records. Yet the officers seized all drugs, all animals not in perfect health and a wide range of records. The Court of Appeals held that the motion to suppress should have been granted. Although the warrant was based on probable cause and did particularly describe the items that were to be seized, a search that is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. As to what may be taken, nothing, in theory, is to be left to the discretion of the officer executing the warrant.

In *Cayce v. State*,[64] the court held that an officer in the process of executing a lawful search warrant is authorized to seize any stolen property, contraband or other item, other than private papers, that he has probable cause to consider tangible evidence of the commission of a crime, even though the property is not listed in the warrant. The discovery of the item must, however, have resulted from a bona fide search for the items named in the warrant. The warrant in this case focused on 400 pounds of marijuana. Once in the house, the police opened a jar of rice,

suspecting that it might contain cocaine. This was permissible.

When executing a search warrant to search for marijuana, officers routinely conduct a thorough search for drugs, lists of customers and any other information tending to establish a drug connection. *Martin v. State*[65] held that this is permissible and authorizes the review of papers that constitute evidence of another crime.

How do these rules apply to the seizure of computers? Several cases have held that if the warrant authorizes the seizure of records of drug-dealing, fraud or "other evidence of child pornography," the police may seize a computer at the site of a search, even if they have no idea what is actually contained on the computer.[66]

In Georgia, however, a 1996 Court of Appeals decision, *Grant v. State*,[67] held that if the warrant did not specify a computer (or computer disks) as the items to be seized, those items could not be seized, even if the items that were permitted to be seized could be found on the computer. In this white-collar crime case, the warrant authorized the seizure of many different types of documents associated with a timber fraud scheme, including various deeds, correspondence and financial documents. The police seized various documents *and* computers and computer disks:

> This was not a situation in which additional contraband was seized during the search because it was in plain view. . . . Moreover, the "[p]lain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." . . .
>
> Here, the inventory list of the items seized and [the officer's] testimony established that the scope of the search exceeded the warrant, and the Court properly determined that the search was excessive. We find no legal support for the Court's decision that practical considerations and time constraints justified the overly extensive search. Moreover, there is no factual support for this conclusion since many of the items seized which were outside the scope of the warrant (e.g., the computer, calendar) were unrelated to time constraints.[68]

Post-Seizure Conduct

The typical search of a house, of course, involves the presence of numerous law enforcement agents, armed with a warrant specifically identifying what they are permitted to seize. The officers enter the premises and look through all the closets, desks and under the mattress. Items that match the description of the items identified in the "to be seized" clause are seized. Other items that satisfy the plain view standard[69] are also seized. Then the police leave. With the seizure of computers, however, that is only the beginning of the searching process. Once the computer is removed from the house, it may be delivered to a forensic lab (either at one of numerous federal agencies, or at the GBI Crime Lab) where the contents of the computer may be examined for hours, days, weeks or years. This occurs regardless of whether the police actually know, at the time of the seizure, that any contraband or evidence of a crime is anywhere on the computer. It does not matter whether the warrant identified computers in the "to be seized" clause, the computer was seized because it qualified as a "record" that was permitted to be seized or it was simply seized because the police believed that it satisfied the definition of a plain view seizure.

When the search of the computer commences, the forensic agent needs to determine whether the magistrate delineated any limits on the scope of the search. That is, did the magistrate satisfy the Fourth Amendment's particularity requirement, as discussed above, by limiting what the agents could look for on the computer? If such limitations exist, the agent must honor those limitations.[70] Although it may be argued that any such limitation would frustrate law enforcement's legitimate goal of finding evidence of a

crime,[71] there are limits on what the police can do in a home, too, that frustrates their efforts to find every shred of evidence. After all, when searching for drugs or documents in a home, the police are not routinely permitted to tear the walls down and dissect the studs in the walls, remove the floorboards or dig up the back yard. The fact that a search of a computer, limited by the particularity clause, might cause the police to "miss" some evidence is the result of the Fourth Amendment and its particularity and reasonable-ness requirements. The Fourth Amendment causes evidence to be missed every day.

Even if the magistrate has imposed a limit on the scope of the actual search of the contents of the computer, *everything* is suddenly in plain view, and the police have limitless access and ability to view the entire contents of the computer for as long as they desire. Any discovery of evidence that was not envisioned by the search warrant might qualify as a plain view discovery under the traditional definition—the police have the right to be where they are; the document or picture is immediately apparent to be contraband or evidence of a crime—but the discovery of evidence on a computer that is being examined in a forensic laboratory is hardly what the Supreme Court had in mind when the plain view doctrine was first recognized 35 years ago.[72]

Of course, a principal concern when the police seize computers and disks based on a warrant that authorizes the seizure of records is the length of time that the police may keep the computers and disks in order to determine *whether* these containers include evidence or contraband. Imagine, by analogy, that the police were authorized to search for cocaine at a suspect's house and that they entered the house and simply took every container—every suitcase, every chest of drawers, every box—and left with these containers, not knowing what was in them! Imagine that the containers were brought to the crime lab, where they were kept for weeks or months, while technicians went through every square inch of the containers. If this scenario seems inconsistent with the Fourth Amendment, imagine that one of these boxes contains every document that the suspect has written in the past five years, including diaries, favorite recipes and letters to his mistress; every newspaper article that he has read; every picture that he has taken at every family gathering (or at every orgy that he has attended). How does this type of seizure and search (and it should be stressed that the police seize first and search later) square with the limitations of the Fourth Amendment?

In large white-collar crime investigations, the courts have generally approved the removal of file cabinets and computers from the location of a search, even if the contents are not known, in order to *reduce* the length of time that the search takes place on site.[73] Generally, these are cases in which the magistrate has approved the removal of a large volume of documents because of the likelihood that evidence of fraudulent invoices or forged contracts will be found among the thousands or millions of documents on site. When such searches occur at a business suspected of being involved in massive fraudulent activities, one hardly senses a major Fourth Amendment violation. When such seizures occur from one's home based on the alleged commission of a single crime, it is a different matter.

The general rule is that the police may not seize *every* document in a person's home if the investigation focuses on a particular crime that does not necessitate the careful review of thousands of pages of documents. In the 9th Circuit decision in *United States v. Tamura*,[74] the court cautioned against this type of limitless dragnet seizure even in the case of a company:

> It is highly doubtful whether the wholesale seizure by the government of documents not mentioned in the warrant comported with the requirements of the fourth amendment. As a general rule, in searches made pursuant to warrants only the specifically enumerated items may be seized. . . . It is true that all items in a set of files may be inspected during a search, provided that sufficiently specific guidelines for identifying the documents sought are provided in the search warrant and are followed by the officers conducting the search. . . . However, the wholesale *seizure* for later detailed examination of records not described in a warrant is significantly more intrusive, and has been characterized as "the kind of investigatory dragnet that the fourth amendment was designed to prevent." . . . We cannot sanction the procedure followed by the government in this case.[75]

Yet that is precisely what occurs every time the police seize a person's computer. Thus, while in the large white-collar case, the seizure of all the file cabinets in the corporate offices may be reasonable, in a typical case involving a search for particularly described evidence, the seizure of a person's computer results in the de facto seizure of all the suspect's private papers that have been received or written for the past several years. In virtually every case in which computers are seized, they are removed from the premises for an extended period of time, and the search of the owner's private papers—thousands, if not millions of documents—goes on for a virtually unlimited period of time.

How to limit the scope of the police search of a computer has never been satisfactorily decided. It is simply accepted practice that the

police may look through the entire contents of a computer without any further participation by a magistrate, simply on the basis that the computer *might* contain some evidence of a crime. This practice is incompatible with the requirements of the Fourth Amendment's particularity requirement or the plain view doctrine, and does not satisfy the reasonableness standard any more than a wholesale removal of every piece of paper in a suspect's house—no matter what the crime is—would be tolerated.

Some courts that have considered this problem conclude that the Fourth Amendment's "reasonableness" standard controls the length of time that the police may keep a computer and conduct the search.[76] In *United States v. Brunette*,[77] the magistrate ordered that the forensic search of the defendant's computers be conducted within the first 30 days of the seizure. The agents' failure to comply with this requirement led to the suppression of certain evidence. A recent case in Washington, however, held that the statutory 10-day limitation on the validity of a warrant does not apply to the search of a computer that has been seized pursuant to a lawful search warrant.[78]

The issue is complicated by the fact that once contraband is found on a computer (child pornography, for example) or once it is determined that the computer is an instrumentality of the crime (drug ledgers, for example), the computer is subject to forfeiture under both state and federal forfeiture laws,[79] and the owner's possessory interest is reduced, if not non-existent. In addition, the police will often make a mirror of the entire computer and return the computer itself to the owner, keeping the exact duplicate. Whether this retention of a copy of the entire computer—all the Word documents, all the e-mails, all the Internet searches, all the calendars and journals—for an eternity is "reasonable" or consistent with our concept of a right of privacy, remains to be decided.

Should a search warrant be bifurcated, initially authorizing the seizure of the hardware (the physical computer itself, despite the fact that the vast majority of information on the computer will not be evidence of a crime) and then detailing what the "forensic" examiners may examine—that is, the "files" or directories that are likely to contain evidence of the crime? Or is the judge's job simply to authorize the seizure of the entire computer, and the rest is left to the police?

A federal court in Illinois concluded that the government would be required to detail its "search protocol" prior to commencing its search, though the court approved the seizure of the target's computer.[80] The court required the government to explain how it intended to minimize the intrusion into areas that were not likely to include such evidence.

For an example of a warrant that prescribed various limitations on the search method, consider the case of *United States v. Triumph Capital Group, Inc.*[81] The magistrate authorized the search of the entire hard drive, but required that (1) certain keyword searches be conducted to minimize the intrusion; (2) in addition to keyword searches, the searching agents would be entitled to do certain manual searches through directories and folders; (3) a "taint team" would be required, which would comprise of prosecutors not involved in the investigation, who would make sure that no privileged information was shared with the prosecutors who were involved in the case; and (4) the search would be conducted pursuant to rigorous protocols that would protect the integrity of the information.

Some courts have *required* that the government use various forensic tools (not just a rudimentary "word search") to limit the government's intrusion into sensitive information that has no relevance to the investigation. Among the limits that can be imposed are "date range" limitations; limitations to "graphics" or "text" files; and limiting the search to certain software programs. Other courts, however, have rejected the requirement that the government set forth its method of conducting the search in the warrant itself, assuming that the warrant itself satisfies the particularity requirement and does not operate as a blank check authorizing the limitless rummaging through the contents of the computer. [82]

Consent Searches

In *Trulock v. Freeh*,[83] the U.S. Court of Appeals for the 4th Circuit held that a person who shares a computer with her significant other is not capable of consenting to a search of the computer's contents that were password-protected and created by the other person, if each user has a password that the other person does not know. The court compared this situation to the situation where a homeowner lacks consent to authorize the search of another occupant's room if the other occupant is permitted to maintain a separate bedroom under lock and key.

In *United States v. Buckner*,[84] the police went to the defendant's house and secured his wife's consent to "mirror image" the computer that was seen on the table in the living room. The wife said that she used the computer occasionally to play solitaire. The agents then used forensic tools to examine the contents of the computer and determined that the defendant had used the computer to engage in various fraudulent acts. The 4th Circuit held that the consent of the wife was *not* valid to enable the police to view the password-protected files on the computer, but that she had apparent authority to grant consent, because the police were not aware that files were password-protected by the defendant and had a reasonable belief that the wife had access to the entire computer's contents. Thus, the evidence would not be suppressed.

The 10th Circuit reached a similar result in *United States v. Andrus*,[85] where the court concluded that the defendant's father had apparent authority to consent to a search of the son's computer. In *Andrus*, the son had a different password from the father's, and the father did not know the password. When the police seized the computer, however, they were unaware of the existence of the password, and the forensic investigators who examined the computer did so without having to enter a password. The fact that the father did not, in fact, have the password and therefore arguably did not have the authority to consent to the search of the son's computer was not determinative, because he had the apparent authority to consent, and that appearance was sufficient to authorize the police to seize the computer and provide it to the forensic investigators for further analysis.[86]

Conclusion

Although the federal courts have begun to grapple with complex Fourth Amendment issues that confront the police and the courts when computers are seized and searched, the Georgia courts have viewed computers as little more than "another briefcase" that can be searched if there is probable cause to believe that evidence might be found therein. This simplistic view fails to recognize the scope of the searches that are being undertaken; fails to consider the amount of information found in computers that has nothing to do with legitimate law enforcement concerns and results in the violation of the particularity requirement of the Fourth Amendment and the requirement that searches and seizures be reasonable. Magistrates who are issuing search warrants in the first instance, trial courts that view the results of these searches and seizures and the appellate courts that ultimately decide the lawfulness of these searches need to begin the process of limiting the scope of computer searches and crafting rules to protect citizens' legitimate privacy rights. GBJ

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Endnotes

1. The Supreme Court first addressed what later became known as the automobile exception in the case of *Carroll v. United States*, 267 U.S. 132 (1925).
2. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV.
3. *See, e.g.*, Susan W. Brenner & Barbara A. Frederiksen, *Computer Searches and Seizures: Some Unresolved Issues*, 8 MICH. TELECOMM. & TECH. L. REV. 39 (2002); Thomas K. Clancy, *The Fourth Amendment Aspects of Computer Searches and Seizures: A Perspective and a Primer*, 75 MISS. L.J. 193 (2005); Orin S. Kerr, *Digital Evidence and the New Criminal Procedure*, 105 COLUM. L. REV. 279 (2005); Orin S. Kerr, *Searches and Seizures in a Digital World*, 119 HARV. L. REV. 531 (2005); Raphael Winick, *Searches and Seizures of Computers and Computer Data*, 8 HARV. J.L. & TECH. 75 (1994).
4. United States v. Vilar, No. S3 05-CR-621 (KMK), 2007 U.S. Dist. LEXIS 26993, at *115 (S.D.N.Y. Apr. 5, 2007).
5. U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU, "COMPUTER AND INTERNET USE IN THE UNITED STATES: 2003," at 1 (Oct. 2005), *available at* http://www.census.gov/prod/2005pubs/p23-208.pdf.
6. 533 U.S. 27 (2001).
7. *Id.* at 33-34. Justice Scalia was focusing on the extent to which new technologies enabled greater intrusions on the right to privacy, rather than the extent to which new technologies, such as computers, required a different Fourth Amendment analysis.
8. Of course, thermal imaging is not the only scientific development that has required the ourt to apply old rules to new technologies. The use of helicopters and "fly-overs" to review what is being grown in someone's backyard is also a method of searching unknown to law enforcement in the 18th century. *See* Florida v. Riley, 488 U.S. 445 (1989); California v. Ciraolo, 476 U.S. 207 (1986). The application of the Fourth Amendment to telephone wiretaps was another matter that required adapting the Fourth Amendment rules to new technologies. Katz v. United States, 389 U.S. 347 (1967).
9. http://en.wikipedia.org/wiki/Gigabyte#Consumer_confusion. This article, written on a laptop computer, consumes approximately 135 kilobytes of hard drive space. The hard drive in total can accommodate 75 gigabytes. Thus, the hard drive has the capacity to store nearly 600,000 articles of this length.
10. http://en.wikipedia.org/wiki/E-mail.
11. http://www.google.com/support/accounts/bin/answer.py?answer=54068&topic=10472.
12. *See* United States v. Triumph Capital Group, Inc., 211 F.R.D. 31, 46 n.12 (D. Conn. 2002); Barton v. State, 286 Ga. App. 49, 49-50, 648 S.E.2d 660, 661-62 (2007).
13. *Triumph Capital Group*, 211 F.R.D. at 46 nn. 6 & 8; People v. Gall, 30 P.3d 145, 161 (Colo. 2001) (Martinez, J., dissenting).
14. For example, a CD-ROM's storage capacity is 650 megabytes, the equivalent of 325,000 typewritten pages. Computer networks, on the other hand, create backup data measured in terabytes (1,000,000 megabytes). MANUAL FOR COMPLEX LITIGATION (FOURTH) § 11.446 (2004).
15. The Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended at 18 U.S.C. §§ 2510-2521).
16. Pub. L. 99-508, § 201, 100 Stat. 1861 (1986) (codified as amended at 18 U.S.C. §§ 2701-2710).
17. Katz v. United States, 389 U.S. 347, 360-61 (1967) (Harlan, J., concurring).
18. This is not to suggest, however, that *every* aspect of a computer's contents is protected by the Fourth Amendment. In *United States v. Forrester*, 495 F.3d 1041 (9th Cir. 2007), *cert. denied*, 129 S. Ct. 249 (2008), the police employed a

device that enabled them to record the "to and from" location of every e-mail that the defendant sent and received and also recorded the IP address of every website visited by the defendant's computer and the amount of data sent and received from that computer. The U.S. Court of Appeals for the 9th Circuit held that this was not a "search" that required a warrant, analogizing this investigative technique to a pen register, which is not a search. *Id.* at 1048-49. *See* Smith v. Maryland, 442 U.S. 735, 745-46 (1979). The court noted, however, that if the police actually record the URL of the search (the actual content of a website that was visited), this might constitute a search. Thus, as the court noted, discovering that the suspect visited the *New York Times* website does not amount to a search. Discovering that the suspect read a particular article while at that site might constitute a search. 495 F.3d at 1049 n.6.

19. Mancusi v. DeForte, 392 U.S. 364, 368 (1968).
20. O'Connor v. Ortega, 480 U.S. 709 (1987). Whether the exclusionary rule applies, however, is a different matter, as the case of *Joines v. State*, 264 Ga. App. 558, 591 S.E.2d 454 (2003), illustrates. A school official went into the defendant's classroom and searched his computer, discovering evidence that was later used in his child molestation trial. Although the school official was obviously a public official, the search was not undertaken in a law enforcement capacity and for that reason the exclusionary rule did not apply. *Id.* at 559-60, 591 S.E.2d at 456.
21. *See, e.g.,* United States v. Simons, 206 F.3d 392, 398 (4th Cir. 2000) (CIA agent downloaded pornography to his computer, but agency rules proclaimed that all computers were open to inspection by agency personnel).
22. 474 F.3d 1184 (9th Cir. 2007), *cert. denied*, 128 S. Ct. 879 (2008).
23. *Id.* at 1190; s*ee also* United States v. Heckenkamp, 482 F.3d 1142, 1147 (9th Cir.) (defendant employed at a university who connects his computer to a network does not thereby lose his expectation of privacy in the computer's contents; court notes that others at the university did not audit his use of the computer or monitor its use), *cert. denied*, 128 S. Ct. 635 (2007).
24. 509 F.3d 1338, 1341-42 (11th Cir. 2007) (per curiam).
25. 481 F.3d 1246, 1249 (10th Cir. 2007).
26. United States v. Jacobsen, 466 U.S. 109, 125 (1984); United States v. Simpson, 904 F.2d 607, 609-10 (11th Cir. 1990).
27. *See* United States v. Steiger, 318 F.3d 1039, 1045-46 (11th Cir. 2003).
28. 447 U.S. 649, 658-59 (1980) (plurality opinion).
29. 275 F.3d 449 (5th Cir. 2001).
30. *Id.* at 465; *see also* United States v. Slanina, 283 F.3d 670, 680 (5th Cir.) (once search of certain contents of a computer and zip disk had been justified as a government workplace search, a complete search of the contents of the entire computer by the FBI was authorized without a warrant, even though the FBI examined files that were not viewed during the prior search by the employer), *vacated on other grounds*, 537 U.S. 802 (2002).
31. 275 F.3d at 463.
32. 172 F.3d 1268 (10th Cir. 1999).
33. *Id.* at 1274; *see also* United States v. Walser, 275 F.3d 981, 985 (10th Cir. 2001) (after discovering child pornography on computer being searched for other reasons, police sought and obtained new search warrant authorizing continued search for child pornography).
34. No. 1:07-cr-211, 2008 U.S. Dist. LEXIS 84980 (M.D. Pa. Oct. 22, 2008).
35. In *State v. Stephens*, 252 Ga. 181, 311 S.E.2d 823 (1984), the Supreme Court of Georgia adopted the formulation of probable cause in *Illinois v. Gates*, 462 U.S. 213 (1983), and held that in reviewing the sufficiency of information supporting a search warrant application, the magistrate must make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of crime will be found in a particular place. The duty of the reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. Corroboration by an officer of details furnished by an informant is valuable. The court cautions, however, that *Gates* represents the "outer limit" of probable cause and urges attesting officers to make every effort to see that supporting affidavits reflect the maximum indicia of reliability. 252 Ga. App. at 184, 311 S.E.2d at 826.
36. *See supra* text accompanying note 24.
37. 277 F.3d 426, 437-38 (3d Cir. 2002).
38. The U.S. Court of Appeals for the 6th Circuit recently reached a similar conclusion in *United States v. Hodson*, 543 F.3d 286, 292 (6th Cir. 2008).
39. *See* Birkbeck v. State, 292 Ga. App. 424, 434, 665 S.E.2d 354, 362 (2008).
40. 254 Ga. App. 579, 582, 563 S.E.2d 154, 160 (2002).
41. 270 Ga. App. 388, 394, 606 S.E.2d 624, 629-30 (2004).
42. 278 Ga. App. 332, 334, 629 S.E.2d 36, 39 (2006).
43. 279 Ga. 618, 621, 619 S.E.2d 613, 615 (2005).
44. 279 Ga. App. 326, 327-28, 630 S.E.2d 911, 913 (2006).
45. One recent federal appellate court decision held that if a person is known to have subscribed to an Internet site that provided child pornography to subscribers, this is sufficient to authorize a search warrant for the seizure of the subscriber's computer. United States v. Gourde, 440 F.3d 1065, 1070-71 (9th Cir. 2006) (en banc).
46. 276 Ga. App. 769, 774 n.2, 624 S.E.2d 298, 303 n.2 (2005).
47. 256 Ga. App. 146, 147, 567 S.E.2d 756, 758 (2002).
48. State v. Brantley, 264 Ga. App. 152, 153, 589 S.E.2d 716, 718 (2003); State v. Staley, 249 Ga. App. 207, 207, 548 S.E.2d 26, 27 (2001); State v. Toney, 215 Ga. App. 64, 65, 449 S.E.2d 892, 893 (1994).
49. *See* Birkbeck v. State, 292 Ga. App. 424, 434, 665 S.E.2d 354, 362 (2008); Buckley v. State, 254 Ga. App. 61, 62-63, 561 S.E.2d 188, 190 (2002) (images on computer were likely to still be on the computer long after they were disseminated, so information was not stale).
50. Maryland v. Garrison, 480 U.S. 79, 84 (1987); Reaves v. State, 284 Ga. 181, 185, 664 S.E.2d 211, 215 (2008).

51. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971); Marron v. United States, 275 U.S. 192, 195-96 (1927).
52. Andresen v. Maryland, 427 U.S. 463, 482 n.10 (1976); Hunt v. State, 180 Ga. App. 103, 104, 348 S.E.2d 467, 468 (1986).
53. 260 Ga. App. 546, 549, 580 S.E.2d 314, 317 (2003) (physical precedent only).
54. 284 Ga. at 188, 664 S.E.2d at 217.
55. 405 F.3d 852 (10th Cir. 2005).
56. *Id.* at 863; *see also* United States v. Hunter, 13 F. Supp. 2d 574, 584 (D. Vt. 1998) (seizure of law office computers in money laundering case violated Fourth Amendment, because it did not limit what the police could look for—or what crime was being investigated—with respect to the computers).
57. United States v. Vilar, No. S3 05-CR-621 (KMK), 2007 U.S. Dist. LEXIS 26993, at *117 (S.D.N.Y. Apr. 5, 2007).
58. *See* Tennille v. State, 279 Ga. 884, 884, 622 S.E.2d 346, 347 (2005) (defendant kept photographs of nude females in a user-created folder titled "2002 side jobs and receipts"). As one court observed, "Forcing police to limit their searches to files that the suspect has labeled in a particular way would be much like saying police may not seize a plastic bag containing a powdery white substance if it is labeled "flour" or "talcum powder." United States v. Hill, 322 F. Supp. 2d 1081, 1090-91 (C.D. Cal. 2004), *aff'd*, 459 F.3d 966 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1863 (2007).
59. United States v. Khanani, 502 F.3d 1281 (11th Cir. 2007).
60. *Id*. at 1285.
61. 275 U.S. 192 (1927).
62. *Id*. at 196.
63. 181 Ga. App. 657, 661, 353 S.E.2d 555, 559, *rev'd on other grounds*, 257 Ga. 388, 360 S.E.2d 248 (1987).
64. 192 Ga. App. 97, 98, 383 S.E.2d 648, 649-50 (1989).
65. 189 Ga. App. 483, 493, 376 S.E.2d 888, 897 (1988).
66. *See, e.g.,* United States v. Sissler, No. 1:90-CR-12, 1991 U.S. Dist. LEXIS 16465, at *11-12 (W.D. Mich. Aug. 30, 1991) (authorizing seizure of 500 CDs under warrant authorizing seizure of drug records); United States v. Musson, 650 F. Supp. 525, 531-32 (D. Colo. 1986) (authorizing seizure of 54 diskettes pursuant to warrant that authorized seizure of "records and writings" of whatsoever nature); People v. Gall, 30 P.3d 145, 153-54 (Colo. 2001). In *United States v. Giberson*, 527 F.3d 882 (9th Cir. 2008), the federal agents obtained a warrant to search for documents related to the target's failure to pay child support and his use of false identification documents. There was no mention of computers in the warrant. When the agents arrived, they observed a computer connected to a printer and false identification documents on the printer. The agents seized the computer, but did not search it until a second search warrant was obtained, authorizing the search of the computer for additional documents relating to the creation of false identification documents. *Id.* at 888-89.
67. 220 Ga. App. 604, 469 S.E.2d 826 (1996).
68. *Id.* at 607, 469 S.E.2d at 829 (quoting Hogan v. State, 140 Ga. App. 716, 717-18, 231 S.E.2d 802, 804-05 (1976)) (citations omitted); *see also* State v. Kramer, 260 Ga. App. 546, 548-49, 580 S.E.2d 314, 317 (2003) (warrant authorized seizure of "instruments" involved in crime of child molestation; this did not authorize seizure of videotapes found at the location of the search) (physical precedent only).
69. Horton v. California, 496 U.S. 128 (1990); Arizona v. Hicks, 480 U.S. 321 (1987); State v. Tye, 276 Ga. 559, 562-63, 580 S.E.2d 528, 531 (2003).
70. In *United States v. Khanani*, 502 F.3d 1281 (11th Cir. 2007), the court explained how the forensic agent complied with the restrictions contained in the search warrant, which are set out in the text *supra* accompanying notes 59-60:

    > [A] computer examiner eliminated files that were unlikely to contain material within the warrants' scope. The culling process winnowed down the files seized from approximately three million to approximately 270,000. FBI Agent Scott Skinner testified that agents used "keyword searches," and "if a document was opened and it wasn't . . . covered by the warrant, then it wasn't analyzed."

    Id. at 1290.
71. *See, e.g.*, *Giberson*, 527 F.3d 882 (agents had warrant authorizing them to search computer for evidence of identification fraud and discovered child pornography; after reviewing several images, a search warrant was obtained permitting thorough search for child pornography); United States v. Adjani, 452 F.3d 1140 (9th Cir. 2006) ("requiring such a pin-pointed computer search, restricting the search to an e-mail program or to specific search terms, would likely have failed to cast a sufficiently wide net to capture the evidence sought.").
72. Coolidge v. New Hampshire, 403 U.S. 443 (1971).
73. *See, e.g.,* United States v. Schandl, 947 F.2d 462, 465-66 (11th Cir. 1991); United States v. Shilling, 826 F.2d 1365, 1369-70 (4th Cir. 1987) (per curiam); United States v. Wuagneux, 683 F.2d 1343, 1352-53 (11th Cir. 1982).
74. 694 F.2d 591 (9th Cir. 1982).
75. *Id. at* 595 (quoting United States v. Abrams, 615 F.2d 541, 543 (1st Cir. 1980)) (citations omitted).
76. *See*, *e.g.*, United States v. Grimmett, No. 04-40005-01-RDR, 2004 U.S. Dist. LEXIS 26988, at *14-15 (D. Kan. Aug. 10, 2004), *aff'd*, 439 F.3d 1263 (10th Cir. 2006); United States v. Syphers, 296 F. Supp. 2d 50, 58 (D.N.H. 2003), *aff'd*, 426 F.3d 461 (1st Cir. 2005).
77. 76 F. Supp. 2d 30, 37 (D. Me. 1999), *aff'd*, 256 F.3d 14 (1st Cir. 2001).
78. State v. Grenning, 174 P.3d 706 (Wash. Ct. App. 2008).
79. 18 U.S.C. § 983 (2008); 21 U.S.C. § 881; O.C.G.A. § 16-13-49 (2007).
80. *In re* Search of 3817 W.W. End, 321 F. Supp. 2d 953 (N.D. Ill. 2004).
81. 211 F.R.D. 31, 42-43 (D. Conn. 2002).
82. United States v. Vilar, No. S3 05-CR-621 (KMK), 2007 U.S. Dist. LEXIS 26993, at *71 (S.D.N.Y. Apr. 5, 2007).
83. 275 F.3d 391, 402 (4th Cir. 2001).
84. 473 F.3d 551, 555 (4th Cir.), *cert. denied*, 127 S. Ct. 2119 (2007).
85. 483 F.3d 711, 722 (10th Cir. 2007), *cert. denied*, 128 S. Ct. 1738 (2008).
86. *See* Illinois v. Rodriguez, 497 U.S. 177 (1990).

Lawyers Foundation of Georgia Winter Update

by Lauren Larmer Barrett

The Lawyers Foundation of Georgia would like to extend it thanks to Ed & Judy Garland for opening their home for the Midyear reception. The Garland's 1912 Italian Renaissance Revival mansion provided a wonderful backdrop for this event.

As one of the first homes built on West Paces Ferry, this residence captured the guests imagination. It has been meticulously restored and the Garland's art collection, featuring many regional artists, is prominently displayed. The house was placed on the National Register of Historic Places in 1988 and has been featured in more than half a dozen movies. The warmth and charm of the Garlands is echoed throughout the gorgeous home. The hosts were joined by "Pavo," the Garland's resident dog, and "Sally Garland," the four-legged firm mascot for Garland, Samuel & Loeb. As experienced party hosts, the two canines strolled quietly among the guests while Doug Ashworth, director of the State Bar's Transition Into Law Practice Program, and Hyoun Joo Song, played the Garland's concert grand piano.

The Foundation is very grateful to all who assisted and supported this gala event. As always, the Lawyers Foundation of Georgia would also like to thank all of the supporters of the Challenge Grant Program. Their support will go a long way towards the continued viability of this program.

The Lawyers Foundation Challenge Grants program was established in 2000 and grants have been

Photos by Derrick W. Stanley

(Left to right) Hon. Mary Grace Diehl, U.S. Bankruptcy Court and Sally Lockwood, director of Bar Admissions, at the Lawyer's Foundation Reception during the State Bar of Georgia's Midyear Meeting.

award to many different local and voluntary bar associations for their pro bono and public service projects, as well as law related nonprofits for their programs. The Challenge Grants are a wonderful way for the lawyers of Georgia to give to their community.

Lauren Larmer Barrett is the executive director of the Lawyers Foundation of Georgia and can be reached at lfg_lauren@bellsouth.net.

The LFG extends a special thanks to the evenings sponsors. The Gold Level sponsors were the ***Coca-Cola Company****, the* ***Georgian Bank*** *and* ***Ikon****. The Bronze Level sponsors were* ***Mauldin & Jenkins*** *and* ***The Georgia Fund****.*

(Left to right) Bryndis Roberts and William R. Jenkins, LFG Board member.

(Left to right) Board members Pat O'Conner and Susan Cox spend time with Sharri Edenfield and Hal Daniel (1994-95) during the reception.

(Left to right) Board members Robin Frazier Clark and Sonjui L. Kumar enjoy the Garland's hospitality with Roy Amit Banerjee.

(Left to right) Judy Garland, John Garland and Kitty Hawks take a break from welcoming guests to the reception.

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Grantee Receives James M. Collier Award

by Len Horton

Georgia Bar Foundation President J. Joseph Brannen presented the 6th annual James M. Collier award to Steven Gottlieb, executive director of Atlanta Legal Aid, Jan. 10, at the Midyear Meeting of the State Bar of Georgia. This was the first time the leader of a grantee organization had received the award.

The award recognizes an individual who has done extraordinary work to assist the Georgia Bar Foundation in accomplishing its mission. It is named for James M. Collier, a Dawson lawyer who found extraordinary ways to expand the Georgia Bar Foundation's ability to assist law-related organizations helping needful people throughout the state.

According to Brannen, "Many people know that Atlanta Legal Aid under the leadership of Steve Gottlieb is a major recipient of IOLTA grant funds. What those same people do not realize is that Steve has been more than a good manager in using those grants. He and his network of legal experts have become a special resource to the Georgia Bar Foundation."

Brannen continued, "Whenever the Georgia Bar Foundation faced challenges to IOLTA, Steve has been there to assist us. For example, after the early U.S. Supreme Court IOLTA decision regarding the Washington Legal Foundation's attempt to kill IOLTA, our executive director told Steve that we needed a way to combat a growing demand to shut down IOLTA until the national litigation was resolved. Steve asked a Constitutional law expert, David Webster, to look at the problem legally and write a brief about the impact of that decision. Thanks in large part to that brief, the Supreme Court of Georgia issued an order directing the Georgia Bar Foundation to continue the IOLTA program with business as usual."

Gottlieb received his law degree from the University of Pennsylvania in 1969 and went to work for Atlanta Legal Aid. After five years he joined Georgia Legal Services in Savannah before returning to Atlanta Legal Aid in 1977 as deputy director. He has been the executive director of the organizationn since 1980.

He is a former winner of the American Bar Association's John Minor Wisdom Public Interest and Professionalism Award, the Anti-Defamation League's 1999 Elbert P. Tuttle Jurisprudence Award and the Atlanta Bar Association's 2000 Leadership Award. Gottlieb and his wife live in Atlanta. GBJ

Len Horton is the executive director of the Georgia Bar Foundation. He can be reached at hortonl@bellsouth.net.

Photo by Sarah I. Coole

Georgia Bar Foundation President J. Joseph Brannen presents the 6th annual James M. Collier award to Steven Gottlieb, executive director of Atlanta Legal Aid, at the Midyear Meeting of the State Bar of Georgia.

The Liberty County Courthouses at Hinesville

The Grand Old Courthouses of Georgia

by Wilber W. Caldwell

Liberty County's first town was the port of Sunbury, founded by Puritans in the 1750s. By the time of the Revolution, it was the second largest town in Georgia, and it became the first Liberty County seat of justice in 1783. Riceboro replaced Sunbury as the county town in 1796, and a log courthouse was built there soon after the town was surveyed. In 1836, Liberty's citizens voted to move the county seat again, and the town of Hinesville was laid out. In 1837, a two-story frame courthouse was erected in a crude carpenter Greek mode.

Twenty years later the rails of The Savannah, Albany and Gulf Railway would bypass Hinesville opting to serve the larger Walthourville, and creating McIntosh and Allenhurst along the way. Through the years, Hinesville experienced little in the way of growth, and even as late as 1910 it counted only 174 residents. Little hope had arrived in Hinesville, and the simple frame court building would serve Liberty County until 1927.

Photo courtesy of Georgia Department of Archives and History

Built in 1837. Destroyed 1927.

Although the 1837 Liberty County Courthouse can hardly be called one of "The Grand Old Courthouses of Georgia," it is typical of the vernacular frame court buildings that once covered Georgia's town squares. Across the state, more than 100 frame court buildings had been erected. The last appeared in Bryan County

at Clyde in 1901. In that year, 23 vernacular frame courthouses, very much like this one, were still in use in Georgia. The last gavel fell in a wooden courthouse in Georgia at Cusseta in 1975, and today only four wooden court structures remain standing. Such buildings speak volumes about the seemingly countless county towns where the myth of the New South had been slow to arrive. They speak of the antebellum era and reveal places where, after the Civil War, a cycle of poverty refuted the hopeful sermons so zealously preached by New South spokesmen who predicted a new era of prosperity along an ever-widening web of rail. In this context, the old courthouse at Hinesville was a historical gem. Built of heart pine, it was probably erected by slaves.

Times remained hard in Hinesville, as the late 19th century rush of New South zeal failed to arrive on Georgia's coastal plain, and as the new century dawned, what few aspirations the railroads had delivered in Hinesville faded into the gray reality of poverty, ignorance and want. Highway 84 to Hinesville remained a dirt road until 1934, but the county would pulse with vigor after the creation of Fort Stewart in 1940. GBJ

Excerpted by **Wilber W. Caldwell**, author of *The Courthouse and the Depot, The Architecture of Hope in an Age of Despair, A Narrative Guide to Railroad Expansion and its Impact on Public Architecture in Georgia, 1833-1910,* (Macon: Mercer University Press, 2001). Hardback, 624 pages, 300 photos, 33 maps, 3 appendices, complete index. This book is available for $50 from book sellers or for $40 from the Mercer University Press at www.mupress.org or call the Mercer Press at 800-342-0841 inside Georgia or 800-637-2378 outside Georgia.

Diversity Program Enters its 17th Year

by Marian Cover Dockery

Seventeen years ago, two mavericks in the legal profession, Judge Marvin Arrington, Fulton County Superior Court, and Charles Lester Jr., retired partner of Sutherland, made their commitment to diversity a reality by forming the Georgia Diversity Program (GDP). This program successfully communicates the critical need for diversity in a legal system through steering committee meetings, its educational seminars and symposiums, pipeline programs and other resources. The program's strategies for total inclusion of diverse attorneys is reflected in the composition of committee members, the topics covered in seminars and the ongoing commitment to expand its focus and embrace and recognize the needs of other excluded groups from the profession.

Diversity has evolved to include many things. We can talk about geographical diversity, generational diversity and the diversity of thought. The reality is that in our quest to become a diverse profession, we are embracing first and foremost women, minorities and members of the lesbian, gay, bisexual and transgender community. The State Bar of Georgia Diversity Program designs a strategy to successfully

improve representation of all groups in the Bar by first addressing the issue through its CLE programs. Showcasing leaders in our profession of all backgrounds is necessary to impress upon those nonbelievers that diversity is not just the right thing to do, but it is also good business. The program educates its participants by bringing law school deans, professors, judges, general counsels and law partners together to explain to our members why the best teams are the diverse teams of educators, judicial panels, in-house counsel and law firm partners. With teams that include those of different races, nationalities, religions, gender and sexual orientations, we discover a diversity of ideas. With a diversity of ideas, we are more prepared to face the challenges of the global playing field.

Hearing some of the leaders of the State Bar discuss their own personal journeys during our recent "Diversity Program Conversations" confirms that we are more alike than we are different.

On Sept. 18, Justice Robert Benham, a GDP honorary chair, and Charles T. Lester Jr., program founder, discussed their journeys with Valerie Jackson of National

Photo by Jennifer R. Mason

(Left to right) Avarita L. Hanson, executive director of the Chief Justice's Commission on Professionalism, interviews Chief Justice Leah Ward Sears during "A Conversation With Leah Ward Sears" in Spring 2008.

Public Radio at the annual CLE and luncheon. They shared their stories of how a segregated Georgia impacted their upbringing and how their commitment to diversity grew from life experiences. Justice Benham mesmerized his audience with stories of how he spent three years in law school, isolated and ignored by his fellow students. He recounted how years later one fellow law student invited him to speak at a Rotary program. During that program, the attorney introduced Justice Benham and surprised him by apologizing for his past behavior before the audience, blaming his racist conduct on his upbringing.

Charlie Lester engaged his listeners with his story of growing up in a white Atlanta with a mother who was very enlightened. It was not unusual that through his mother's volunteer efforts, diverse groups of women met in his home and since his contact with people of color was limited, this exposure was an additional educational experience for him. Lester blamed himself for not getting to know more African-Americans, and it was in law school where he met Arrington with whom he later co-founded the GDP.

Chief Justice Leah Sears recalled her journey in another conversation held in the spring of 2008. An African-American woman of many accomplishments, Justice Sears amazed some of the younger attorneys because she was so "down to earth" and faced the same challenges that we all do. Some of her comments evoked laughter from the attendees when she conveyed that a typical day may include making toast and tea for her husband before leaving for work; her mother telephoning her about the big sale on white blouses at Macy's right before she goes on the bench; and her son who graduated with an honors degree in physics from the University of Virginia explaining to her his new work, which she hardly understood.

Those conversations with the State Bar members can only be described as a recent oral history that is both enlightening and educational. The program plans to continue to present "Conversations" in 2009.

Seminars led by attorneys, bar leaders and consultants of all backgrounds ignite the ongoing discussion relative to the paucity of women and minority general counsels, equity partners and partners at law firms and keep the fire burning under an issue that is hardly resolved.

The annual business development CLE program has been a work in progress. This year's presentation includes a three-part seminar sponsored by UPS, Alston & Bird and the Coca-Cola Company. Part one, presented on Jan. 28 at the State Bar, featured law partners who are leading rainmakers for their firms. Their experience, knowledge and business development strategies were the focus of the discussion. Because diversity has changed the way corporations evaluate firms during the hiring process, the panelists addressed this issue as well. The panel was led by Sam Woodhouse, Woodhouse Law Firm, and included: Richard Sinkfield, Rogers & Hardin; Francisco Gonzalez, Adorno & Yoss (Miami); Lawrie Demorest, Alston & Bird; Roy Hadley, Powell Goldstein; and June Towery, Nelson, Mullins, Riley & Scarborough.

Part two of the program, scheduled for March 26, will feature the general counsels of Equifax, UPS, the Coca-Cola Company, the City of Atlanta and the Fulton County Law Department. Individuals from these companies will give advice to attendees on how to prepare for the business development meeting and what their expectations are in meeting prospective outside counsel. General counsels from the foregoing companies will select attorneys with whom they wish to meet in a separate meeting scheduled for the spring from previously submitted online applications. Attorneys in private practice who wish to register should visit www.gabar.org/programs/georgia_diversity_program/. GBJ

Marian Cover Dockery is an attorney with a background in employment discrimination and the executive director of the State Bar of Georgia Diversity Program. For more information on the Diversity Program, go to www.gabar.org/programs/georgia_diversity_program/.

Kudos

Irvin & Keller LLC announced that **A. McArthur Irvin** was elected as a **fellow** of the **College of Labor and Employment Lawyers**. Election as a fellow is the highest recognition by one's colleagues of sustained outstanding performance in the profession, exemplifying integrity, dedication and excellence.

Siskind Susser managing attorney **Karen Weinstock** has written ***The H-1B Book*** published by Immigration Law Weekly. The *H-1B Book* is the premier vehicle for immigration lawyers and paralegals, in-house counsel and corporate HR representatives to understand the H-1B visa, which is the primary visa used by American companies to hire professional foreign nationals.

Brian D. Burgoon was appointed to serve as the **co-chair** of the **Florida Bar's Disciplinary Review Committee**, which oversees the prosecution and appeals of disciplinary offenses committed by Florida lawyers. Burgoon was also re-elected as an out-of-state member of the Florida Bar Board of Governors, a position he has held since 2000. Burgoon is a sole practitioner with The Burgoon Law Firm, LLC, in Atlanta, and focuses his practice on commercial litigation, civil litigation and personal injury.

The **Hon. Mary Grace Diehl**, U.S. Bankruptcy Judge for the Northern District of Georgia, was recognized by the **International Women's Insolvency & Restructuring Confederation** as a **"Woman of the Year in Restructuring."** The award was created in 2006 to recognize women who have made extraordinary contributions to the practice of reorganization and corporate turnarounds.

Humphries

Douglass

J.D. Humphries III and **R. Daniel Douglass** were selected by their peers as two of ***The Best Lawyers in America***® for construction law. Humphries, the office executive partner of **Stites & Harbison, PLLC**, in Atlanta, has more than 30 years experience handling sophisticated business transactions and difficult litigation. Douglass also handles complex construction disputes involving multiple parties, including acting as a mediator and arbitrator. *The Best Lawyers in America*® is a nationally recognized referral guide to the legal profession that has been published biennially since 1983.

David J. Burge was **appointed** by Gov. Sonny Perdue to the **board** of the **Georgia Real Estate Commission,** which licenses and regulates Georgia real estate brokers, salespersons and property managers. Burge is a partner with Smith, Gambrell & Russell, LLP, in Atlanta, where he practices commercial real estate law.

Taylor

Street

Kilpatrick Stockton announced that partner **Earle Taylor** was formally admitted as a **fellow** to the **American College of Bond Counsel**. The American College of Bond Counsel was formed in 1995 for the purpose of recognizing lawyers who have established reputations among their peers for their skill, experience and high standards of professional and ethical conduct in the practice of bond law.

The firm also announced that partner **Phillip Street** was named **"One of the 25 Most Influential People in the Southeast Technology Community"** by *TechJournal South Magazine*. This year's select group of deserving individuals was chosen from a pool of hundreds of well-qualified members of the Southeast tech community. Street currently co-chairs the Health & Life Sciences Practice Group.

Kilpatrick Stockton was recognized as the top intellectual property (IP) firm, and also as the top trademark firm, for 2008 in North America at the 2008 World Leaders International IP Awards program. The firm received the **North America Law Firm of the Year for IP Award** as well as the **Excellence in Trademark Practice/Litigation Award**. In the trademark category, the editorial board decided that the firm's successes were so substantial that it withdrew the category from voting and made the decision itself.

Ragland

Thomson

Womble Carlyle Sandridge & Rice, PLLC, announced that attorneys **Bill Ragland** and **John Thomson** were selected to **Georgia Trend's Legal Elite 2008**. For the sixth year, *Georgia Trend* magazine surveyed members of the State Bar to determine the most effective attorneys in 10 practice areas. Ragland was selected in the field of intellectual property, while Thomson was chosen in the practice area of bankruptcy & creditor's rights.

Timothy E. Moses was **elected** as **chairman** of the **2009 Board of Trustees for Leadership Georgia**. Moses is a partner and shareholder with Hull, Towill, Norman, Barrett & Salley where he handles intellectual property, technology and employment matters, as well as general business counseling and startups. Leadership Georgia stands apart as one of the nation's oldest and most successful leadership-training programs for young business, civic and community leaders with the desire and potential to work together for a better Georgia. Its primary purpose is to identify, train, and inspire a network of emerging young leaders, whose ages typically range from 25 to 45 years old.

Bennet D. Alsher, a partner with Ford & Harrison LLP, has recently been **appointed** to the **National Commission of the Anti-Defamation League (ADL)**. The commission includes more than 150 ADL volunteers throughout the United States. The work of the commission spans various issues which include protecting civil rights, promoting American-Israel relations, training law enforcement personnel, and fighting extremism and bigotry against all races and religions.

Tony Turner, a partner with **Cohen Pollock Merlin & Small, P.C.**, has been **named** to ***Worth* magazine's** prestigious list of **Top 100 Attorneys for 2008**. Turner was one of only two Georgia lawyers included on the list and the only one specializing in estate planning. Turner provides counsel in estate and charitable planning, business succession, asset protection, and trust and probate administration.

Robert L. Rothman, partner with **Arnall Golden Gregory LLP**, was **elected** to **The American Law Institute**, an organization founded to improve the law and the administration of justice. Rothman is one of only three Georgia attorneys included in the newest membership class. Election to The American Law Institute is highly-selective and based on significant professional achievements, demonstrated leadership and a commitment to the health of the U.S. legal system.

Gerald Pouncey, one of the Southeast's most highly-respected environmental attorneys, has **joined** the **board** of **The Georgia Chamber of Commerce**. Pouncey serves as chair of the environmental group at Morris, Manning & Martin, LLP. His work focuses on brownfields, or environmentally-impacted properties, including state and federal superfund sites.

On the Move

In Atlanta


Woody


Ditzel


Tobin

Kessler, Schwarz & Solomiany, P.C., announced the addition of three divorce litigators. **Thad Woody, Sean Ditzel** and **Darren Tobin** joined the firm as **associates**. The firm is located at Centennial Tower, 101 Marietta St., Suite 3500, Atlanta, GA 30303; 404-688-8810; Fax 404-681-2205; www.kssfamilylaw.com.


Devenow


Klaus


Labitue


Ferris


Dumbacher


Eanes


Howell


Mackay

Hunton & Williams LLP announced that eight new **associates** joined the firm: **Rachel Devenow, Shelly Klaus** and **Ian Labitue** (Capital Finance & Real Estate); **Christyne Ferris** (Global Capital Markets and Mergers & Acquisitions); **Robert Dumbacher** and **Leslie Eanes** (Labor & Employment); **Jimmy Howell** (Litigation & Intellectual Property); and **Annie Mackay** (Resources, Regulatory & Environmental). The firm's Atlanta office is located at Bank of America Plaza, Suite 4100, 600 Peachtree St. NE, Atlanta, GA 30308; 404-888-4000; Fax 404-888-4190; www.hunton.com.


Foulke


Subramanian

Fisher & Phillips LLP announced that former assistant secretary of labor for the Occupational Safety and Health Administration (OSHA) **Edwin G. Foulke Jr.** joined the firm as a **partner** in the Workplace Safety and Catastrophe Management Practice Group. In his government role, Foulke headed OSHA where he oversaw a staff of more than 2,200 safety and health professionals, whistleblower investigators and support personnel.

The firm also announced that **Deepa Nagam Subramanian** has joined the Atlanta office as an **associate**. Subramanian's practice will focus on labor and employment law representing management. The firm is located at 1500 Resurgens Plaza, 945 E. Paces Ferry Road, Atlanta, GA 30326; 404-231-1400; Fax 404-240-4249; www.laborlawyers.com.

The Ramos Law Firm announced the addition of **Tiffany K. Yamini** as an **associate**. Yamini will concentrate her practice in Medicare secondary payer compliance and lien resolution. The firm is located at 1800 Peachtree St., Suite 620, Atlanta, GA 30309; 404-355-3431; Fax 678-904-5645; www.ramoslawfirm.com.

Burr & Forman LLP announced that **Oscar N. Persons** joined its Atlanta office as **senior counsel**. Persons is a recently retired partner of Alston & Bird LLP and a nationally known litigator. The firm's Atlanta office is located at 171 17th St. NW, Suite 1100, Atlanta, GA 30363; 404-815-3000; Fax 404-817-3244; www.burr.com.

Kindu A. Walker and **Michael E. Memberg** joined **The Finley Firm, P.C.**, as **associates.** Walker's practice areas will focus on workers' compensation and general civil litigation with a concentration in products liability, automotive litigation, premises liability and civil rights defense of governmental entities. Memberg's practice areas will focus on civil litigation and workers' compensation. The firm's Atlanta office is located at 2931 N. Druid Hills Road, Suite A, Atlanta, GA 30329; 404-320-9979; Fax 404-320-9978; www.thefinleyfirm.com.


Mir


Talley

Donya Mir and **Caroline S. Talley** have joined **Parker, Hudson, Rainer & Dobbs LLP**. Mir is an associate on the firm's bankruptcy team and Talley is of counsel with the tax and employee benefits team. The Atlanta office is located at 285 Peachtree Center Ave., 1500 Marquis Two Tower, Atlanta, GA 30303; 404-523-5300; Fax 404-522-8409; www.phrd.com.

In Bogart

M. Kim Michael, formerly of Cook, Noell, Tolley, Bates & Michael, LLP, has formed the new firm of **M. Kim Michael, P.C.** Michael will continue to concentrate in the areas of domestic relations and misdemeanor criminal law. The firm is located at 1361 Jennings Mill Road, Bogart, GA 30622; 706-548-7867; Fax 706-548-1945.

In Columbus

William M. Cheves Jr. has joined the law office of **Carlock, Copeland & Stair, LLP**, as an **associate**. His practice focuses on civil litigation in Georgia and Alabama. The firm's Columbus office is located at 1214 First Ave., Suite 400, Columbus, GA 31901; 706-653-6109; Fax 706-653-9472; www.carlockcopeland.com.

In Decatur

R. Stephen Roberts announced the opening of **R. Stephen Roberts, P.C.** He will continue to practice criminal litigation. Roberts was formerly chief assistant district attorney for DeKalb County, and most recently a partner at Peters, Roberts, Reynolds & Rubin, P.A. The firm is located at One Decatur Town Center, 150 E. Ponce de Leon Ave., Suite 200, Decatur, GA 30030; 404-377-2544; Fax 404-963-0120; www.gadefenselaw.com.

In Savannah

Lee, Black, Hart & Rouse, P.C., announced that **Thomas Hollis** was named **partner** and the firm will now be known as **Lee, Black, Hart, Rouse & Hollis, P.C.** Hollis' practice focuses on residential and commercial real estate transactions, real estate litigation and domestic litigation. The firm is now located at 7395 Hodgson Memorial Drive, Suite 200, Savannah, GA 31406; 912-233-1271; Fax 912-232-7344.

In Valdosta

Young, Thagard, Hoffman, Smith & Lawrence, LLP, announced that **Stephen Dale Delk** and **Brian Jason Miller** have become associated with the firm. Delk and Miller's practices will focus on defense litigation throughout South Georgia. The firm is located at 801 Northwood Park Drive, Valdosta, GA 31602; 229-242-2520; Fax 229-242-5040; www.youngthagard.com.

In Boston, Mass.

American Realty Capital announced that **Kamal Jafarnia** was named **executive vice president and chief compliance officer** of Realty Capital Securities, LLC, the dealer manager for its affiliated real estate investment offerings, and senior vice president of American Realty Capital Advisors, LLC. Jafarnia will be responsible for overseeing the day-to-day compliance activities for Realty Capital Securities, LLC. Realty Capital Securities, LLC, is located at Three Copley Place, Suite 3300, Boston, MA 02116; 877-373-2522; Fax 857-207-3397; www. americanrealtycap.com.

In Rochester, N.Y.

Scott D. Piper, founding partner of Piper Schultz LLP, has merged his labor and employment law practice with **Harris Beach**. He joins Harris Beach as a **partner** in the **labor and employment law practice group**. The firm's Rochester office is located at The Granite Building 130 E. Main St., Rochester, NY 14604; 585-419-8800; Fax 585-955-4970; www.harrisbeach.com.

In Paris, France

Salans LLP announced that **Barton Legum** joined as a **partner** and head of its **investment treaty arbitration practice**. Legum is recognized as a leader in international arbitration, in particular for his accomplishments in the field of investment treaty arbitration. The firm's Paris office is located at 5 Malesherbes Blvd., Paris, France 75008; +33 1 42 68 48 00; Fax +33 1 42 68 15 45; www.salans.com.

If you have information you want to share in the Bench & Bar section of the *Georgia Bar Journal*, contact Stephanie Wilson at stephaniew@gabar.org.

Give the File Back!

by Paula Frederick

"It was a long time coming, but payday is finally here," your partner gloats, rubbing his hands together. "Mrs. J thought she could weasel out on her outstanding bill after she fired us. Now she's finally got a hearing date, and she needs her file. Ha! No fee, no file! I've got her right where I want her."

"Al," you say patiently. "I know she owes us money…a *lot* of money. But you can't hold her file until she pays! She has a hearing next month!"

"I'm just exercising my rights under the Attorneys' Lien Statute," Al responds.

"Yeah?" you reply. "Mrs. J will probably exercise her rights too, and call the Bar on you."

Your partner rolls his eyes. "The statute gives me the right to hold any papers of a client until my fee is satisfied."

"And the Bar Rules give you the obligation to minimize harm to your client when you withdraw," you remind him.

"But we didn't withdraw! We were fired! And we gave her copies of everything as we went along…"

"Bar Rule 1.16(d) talks about 'termination of representation'," you point out. "It doesn't matter whether you've withdrawn or been fired. And Mrs. J doesn't just need copies of what we've already sent her, she needs the whole shebang—the pleadings and discovery filed by both sides, correspondence between us and opposing counsel, and most importantly, the photos and original documents she brought in when she hired us."

"I don't get it," Al protests. "Are there *any* circumstances when a lawyer can hold a file to guarantee a fee?"

Very few.

Bar Rule 1.16(d) requires a lawyer to take steps to protect the client's interests when representation ends. Among other things, the Rule requires the lawyer to "surrender papers and property to which the client is entitled."

Formal Advisory Opinion 87-5 clarifies that "the file" includes everything created during billable time—files and papers for which the client will be charged, and work product intended for use in the case.

Even when a case is over, a client might suffer harm from not having a copy of the file. The Advisory Opinion confirms that "it would be only in the rarest of circumstances that a client could be deprived of his or her files without eventually suffering some prejudice."

If there is a prior agreement that makes the client responsible for copying costs, the lawyer may bill the client for copying the file. However, even if the client refuses to pay, the lawyer must provide the copies and add the charge to the client's outstanding bill.

Occasionally a lawyer will decide to give the client the *original* file in order to avoid the cost of copying. That decision is risky, because the lawyer is without information to defend himself against a later claim of malpractice or other misconduct.

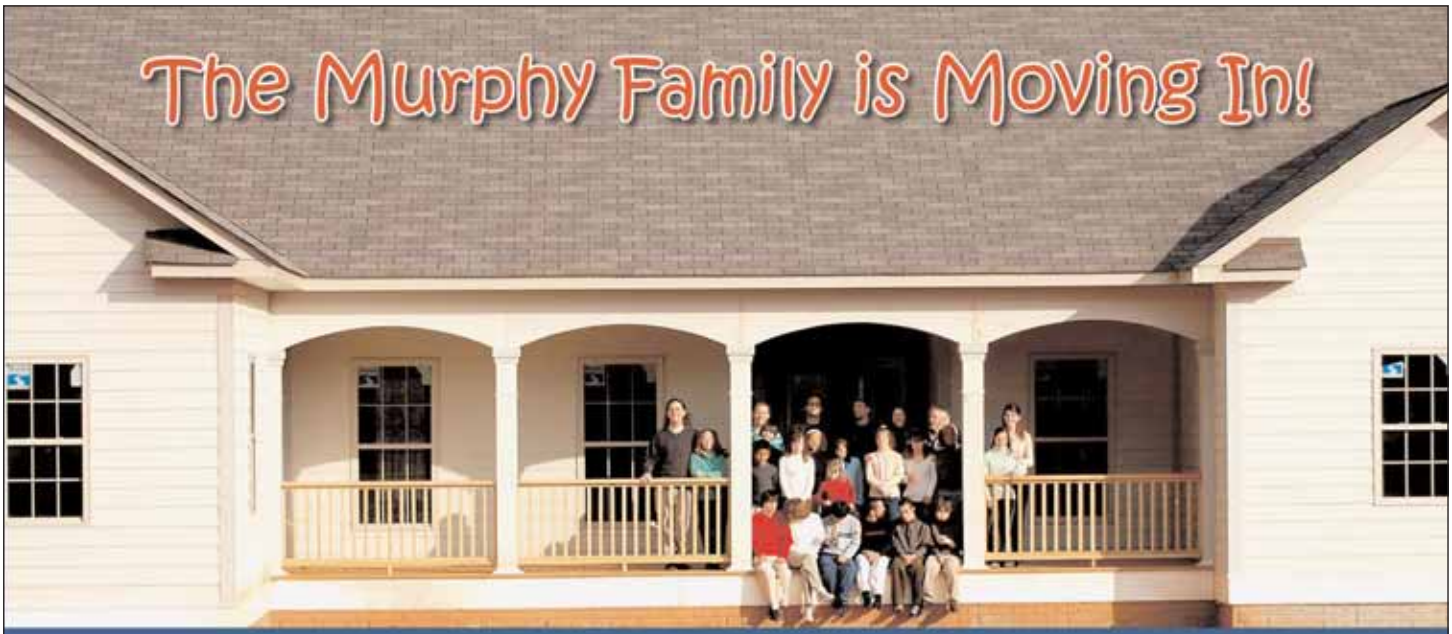
Back in the office, Al clings to his dream of collecting from Mrs. J. "Can't we at least charge her the costs of mailing?" he asks.

"I suppose we could, but if she doesn't pay we'll just have to add it to the bill," you remind him. "I'd rather take the high road—send it to her and be rid of the whole headache."

"So much for my rights under the lien statute," Al replies. GBJ

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

The Murphy Family is Moving In!



The Keenan's Kids Foundation has completed the Murphy House Project, which began nearly four years ago.

This very special project is for a very special family of children with Down syndrome, most who are medically fragile and have other special needs.

The whole family – all 22 of them – has moved into this bigger, better home thanks to your support!

Now that the Murphy's have made it into their new home, more support is needed to help them maintain the house and provide care when John and Jeannette Murphy cannot.

Special thanks to Kristen Lewis at Smith, Gambrell & Russell, LLP for her pro bono creation of the irrevocable trust and special needs trust fund to protect the Murphy family children now and into the future.

Check out www.keenanskidsfoundation.com for more information, and for special contributions or in-kind donations, visit www.murphyhouseproject.com to find out how you can help this amazing family.

keenan's kids foundation

Discipline Summaries

(October 24, 2008 through December 11, 2008)

by Connie P. Henry

Disbarments

Louis Dante' diTrapano
Charleston, W.Va.
Admitted to Bar in 1994

On Nov. 3, 2008, the Supreme Court of Georgia disbarred Attorney Louis Dante' diTrapano (State Bar No. 222825). This action arose out of the order entered by the West Virginia Supreme Court of Appeals annulling diTrapano's license to practice law based on his guilty plea of possession of firearms while being an unlawful user of and addicted to controlled substances.

Suspension

James A. Elkins Jr.
Columbus, Ga.
Admitted to Bar in 1965

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of James A. Elkins Jr. (State Bar No. 243200) on Nov. 17, 2008, and ordered that he be suspended from the practice of law for six months. Elkins represented two clients in civil proceedings. He failed to keep his clients informed of the status of the cases, he failed to act with reasonable diligence in representing the clients and he failed to inform the clients of a 90-day suspension he received while the representations were ongoing.

In mitigation Elkins cooperated with the State Bar and is sincerely remorseful for his actions. The Special Master noted in aggravation Elkins's prior disciplinary history.

Suspension and Public Reprimand

Neil Lovett Wilkinson
Atlanta, Ga.
Admitted to Bar in 1992

The Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Neil Lovett Wilkinson (State Bar No. 760040) on Oct. 28, 2008, and ordered that he be given a public reprimand and be suspended from the practice of law for one month. Wilkinson made or allowed to be made false statements to the Superior Court of Cobb County and the Court of Appeals of Georgia, and negligently failed to correct those false statements. The Court of Appeals found Wilkinson in contempt and fined him $1,000.

In mitigation, Wilkinson stated that he had no prior disciplinary offenses; and that while his inattention and negligence had a cascading effect, they did not constitute a pattern of misconduct; that he did not act with a dishonest and selfish motive; that he complied with the disciplinary process and acknowledged his misconduct; that the court system was the primary victim of his misconduct and opposing parties ultimately prevailed in the underlying litigation; that he promptly paid his fine; and that he regrets his misconduct. Several attorneys and clients filed affidavits attesting to Wilkinson's character and Wilkinson's attorneys averred that he did not intentionally mislead the courts.

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 Oct. 24, 2008, three lawyers have been suspended for violating this Rule, and one lawyer has been reinstated. GBJ

Connie P. Henry is the clerk of the State Disciplinary Board and can be reached at connieh@gabar.org.

Update Your Member Information

Keep your information up-to-date with the Bar's membership department. Please check your information using the Bar's Online Membership Directory. Member information can be updated 24 hours a day by visiting **www.gabar.org/member_essentials/address_change/.**

Lost and Found:

Smart Data Storage Tricks for the Busy Lawyer

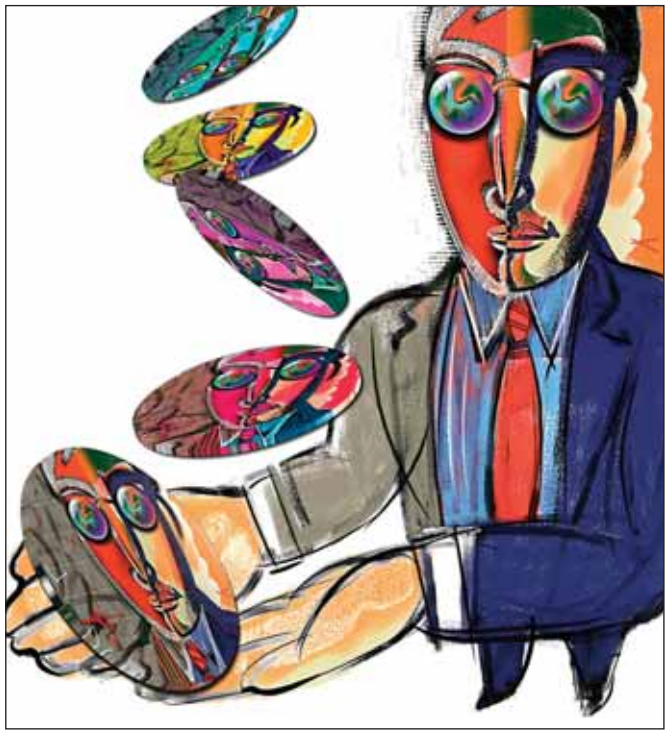
by Natalie R. Kelly

The one thing that seems to stand in the way when it comes to working more efficiently is not knowing where something has been saved. It's great when there is a system already in place that makes sense and works well for saving and finding documents and files. However, the lack of such a system can create one of the most time-consuming and aggravating problems that haunt otherwise, would-be productive workers, a bad system for storing and retrieving information.

Once you have mastered navigating the newest Windows world or can glide over the screens on the Mac with ease, you may still find that just simply locating data can be a problem. So here are nine tips to help you get back to work by making it easy to find and store data.

Start With Smart Policies on Filing, Document Management and Storage in General

Whether you are working with old-school manila folders or in well-organized electronic file folders, you should have a policy that everyone in the firm adheres to when it comes to saving files. For instance, you may decide that all client work files are to be stored on a shared network drive and not the machine's local c:/ drive. Naming the files is another discussion altogether, but get down the location for storing your files first. Then you can concentrate on whether to name it "Tom Jones brief 2 1 2009" or "2 1 09 Jones T - 0900187 brief on dogbite statute," or simply "jones brief 02 01 09."



Keep the Number of Places You Have to Look For Information to a Minimum

Like narrowing the boundaries in a game of hide and seek, if you know that all of your client information is stored in the "CLIENTS" folder on your network, you don't have to go on a hunt over everyone's computers for something that pertains to any one client. Note: There are some times when you may need to store files on local machines or save with a folder scheme such as "ATTORNEY" instead of "CLIENT." However, most firms seem to work with the "CLIENTS" folder scheme over a shared network drive. This can make it easier to backup and keep information together.

Use Indexing and Searching Programs to Speed Up Your Search

After utilizing the standard search programs that come on your computer, Finder for the Mac or

Windows Desktop Search for Windows machines, consider utilizing one of the top contenders among commercial index search programs: Copernic (www.copernic.com), X1 (www.x1.com) and Google Desktop (via www.google.com). But be careful when working on the settings so that you do not inadvertently share data in a way you do not intend, as some of these programs require storage of some data on remote computer servers.

Look For Stand-Alone Document Management Programs, or Practice (Case) Management Systems That Have a Built-in Indexing and Search Functionality

Some of the most notable programs are Worldox (www.worldox.com), Interwoven Worksite (www.interworven.com; formerly iManage) and Open Text (www.opentext.com; formerly Hummingbird). Other solutions to investigate include eCopyDesktop (www.ecopy.com), DocStar (www.docstar.com) and Drivve (www.drivve.com); and the list could go on. The Law Practice Management Program can help you find suitable solutions from the numerous products that exist for document management needs.

Be Careful About What You Expose in Your Saved Data

Do not put yourself in the embarrassing position of exposing details behind a document you should not or do not want to disclose by way of metadata. You should understand when and where metadata can be your friend, too. For instance, you can speed up the Windows desktop searches and expand the areas for searching when you fill in some document properties fields that would sometimes contain information that could fall into the category of potentially dangerous metadata. However, you should practice using secured documents for highly sensitive work product. Contact our office for ways to secure your documents.

Organize Your Filing Hierarchy

If going "paperless" was your New Year's resolution, you should address where electronic files are being stored. Even with the power of the programs mentioned in the steps above, a good filing hierarchy can save time and keep you moving right along with your work. After all, you still have to stop, think about key words, enter search terms and connectors and then run your search; and then perhaps do it all over again if you don't get the data you were looking for in the first place.

Don't Forget to Incorporate Good Practices Into Your Overall Disaster Recovery Procedures

Layered backups (multiple methods of backups) and keeping tapes, external hard drives and other backup copies in local and remote locales can help you retrieve data quickly.

Keep Key Documents and Information Within Reach

You can save document links on your computer desktop, or create a folder for key documents on your network. It's also easy to carry around a thumb or flash drive with key information. Just don't forget to secure your drives! Using macros for quick generation of key information is yet another way to get at your data quickly.

Learn Retrieval Tricks for the Programs You Use

For instance, in Windows Explorer screens, you can designate which fields of information or which properties of a document you can see in the "Details" view. The fields can be chosen by right-clicking on the column header area and then simply checking off the additional fields you want to display. There is even a "More..." area to access additional information. Once in the columns on your display you can sort the field by clicking on the column headers. So, you could add the date a document was created and sort the column to easily find the document you created last September.

Being able to quickly put your hands on what you need may help you work faster. These steps offer simple suggestions to help you find the information you save and store in a shorter amount of time. To learn additional techniques to enhance work productivity, contact the Law Practice Management Program for more assistance.

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.

New Tools for You for Educating Georgians on Legal Issues

by Betty Hudson, Anna Boling and Mike Monahan

New community legal education materials are now available for Georgia lawyers. The Law and Government Education Project at the Carl Vinson Institute of Government at the University of Georgia has developed and launched a lengthy series of flash media presentations developed to connect lawyers and people with legal problems.

The 18 flash media presentations are available online in multiple locations, including www.Legal Aid-GA.org, and are available on CD-ROM. The legal education materials consist of automated voice-over PowerPoints covering a variety of Georgia and federal law topics, focusing on typical legal issues that respond to the needs of middle and low-income people in Georgia. For example, the average 20-minute presentations cover topics such as eviction, marriage and divorce, and immigration issues. You can view the presentations in either English or Spanish, and each presentation concludes with a list of service providers or referral resources. The presentations are designed to be used in group settings with lawyers serving as facilitators of the presentations and follow-up discussion.

The Law and Government Education Project's mission is to contribute to the development of an informed, participating populace within the state of Georgia. The project decided to put prepared community legal education materials into the hands of lawyers and lawyer-supervised advocates who, in turn, would adopt the materials and use them for presentations for people within their communities. The project's theme of connecting lawyers and their communities supports the State Bar's Cornerstones of Freedom℠ program.

Visit http://media.glsp.org to see all available flash media presentations, or contact Betty Hudson at hudson@cviog.uga.edu, to receive a CD-ROM.

The ultimate goal of this project is to foster a deeper understanding of rights and responsibilities under the law and an understanding of how our government and legal system function.

These presentations result from a novel partnership with the Institute of Government and law schools at the University of Georgia and Mercer University. Under the direction of a law professor, interested students develop the PowerPoint presentations and accompanying scripts. The topics are chosen with the input of legal services providers and social service

agencies. Law student involvement extends to making live presentations to groups in their communities. Lawyers who would like to volunteer to work with a law student in presenting the legal education tools to community groups may contact Public Service faculty member Betty Hudson at hudson@cviog.uga.edu.

CD-ROMs were distributed to the 14 regional offices of the Georgia Legal Services Program (GLSP) located across the state to use as part of their community education efforts. The current direction of the legal education tools project is toward web-based access. The Law and Government Education Project has joined with the GLSP and the State Bar of Georgia Pro Bono Project to host the materials on their media server (http://media.glsp.org) and websites, allowing for greater access by lawyers and lawyer-supervised advocates.

Over the last two years, this project has received support from the Georgia Bar Foundation and the Georgia Civil Justice Foundation. There are many opportunities for continued development of this project, including potential project development with other law schools. In addition to developing presentations, we hope students from each of these schools will use the materials by making live presentations to community groups in Georgia.

In its role to provide information and tools to volunteer lawyers in Georgia, the State Bar of Georgia Pro Bono Project will promote the flash media presentations in its communications with Bar leaders and other lawyers as part of a comprehensive effort to help lawyers manage their pro bono activities. GBJ

Betty Hudson is the director of the Law and Government Education Project and provides legal and technical assistance on a wide range of issues for the Carl Vinson Institute of Government and can be reached at hudson@cviog.uga.edu.

Anna Boling is the co-director of the Law and Government Education Project and provides legal and technical assistance to faculty and staff in the Governmental Training and Education Division at the Carl Vinson Institute of Government and can be reached at boling@cviog.uga.edu.

Mike Monahan is the director of the State Bar of Georgia Pro Bono Project and can be reached at mikem@gabar.org.

Sections Provide Exciting Opportunities for Professional Development

by Derrick W. Stanley

As 2008 wound down and 2009 began, the sections of the State Bar of Georgia were active in planning events and conducting lunch and learns. The past few months have included many exciting and well-attended events.

On Nov. 11, the Bar Center hosted a Section Leadership Training. This event provided section chairs and other officers an opportunity to attend an informational lunch meeting where Bar staff gave short presentations on the purposes of their departments to further educate the officers on the opportunities and programs that are offered. Bar President Jeffrey O. Bramlett and Executive Director Cliff Brashier also gave welcoming remarks to the attendees. ICLE and Capitol Partners Public Affairs Group were on hand to describe how mutual collaboration is beneficial to sections. As with all section events, the opportunity to network with fellow attorneys was an added benefit.

The **Entertainment and Sports Law Section** held their Fall Sports Law Seminar on Dec. 3, at Phillips Arena. Two CLEs were offered, "Recent Developments in Sports Related Litigation" and "Careers and Hot Topics in In-House Sports." A short reception was followed by a night of basketball as the group attended the Hawks game. Fortunately, the home team cooperated and sent everyone home with a win.

Photo by Tanya Windham

The Atlanta Bar IP Section co-hosted a Holiday Reception with the State Bar of Georgia IP Section on Dec. 18, at the Four Seasons. *(Left to right)* Secretary/Treasurer Bradley K. Groff, Immediate Past Co-chair William M. Ragland Jr. and Elizabeth Ann Morgan.

The **Intellectual Property Law Section** completed 2008 with opportunities for their members to gain some CLE credit and capped everything off with a holiday party. On Dec. 4, the copyright committee co-hosted a CLE with the Southeast Chapter of the Copyright Society at Kilpatrick Stockton, "Fair Use,

Photos by Derrick W. Stanley

The Hon. John J. Ellington addresses the Government Attorneys' Section at the State Bar of Georgia Midyear Meeting.

Mash-Ups and Digital Sampling: Time to Change the Tune." Some section members chose to participate in the litigation committee's "Standing and Other Pre-Suit Considerations in Patent, Trademark and Copyright Cases" at the Sutherland offices, also on Dec. 4. The patent committee held a lunch-and-learn at the State Bar on Dec. 9, "The Aftermath of *In Re Bilski*." A large crowd attended to discuss how the new standard may affect patent practice. The section finished the year with a holiday party at the Four Seasons Atlanta. The party was held in conjunction with the **Intellectual Property Law Section** of the **Atlanta Bar Association**. Members of both groups had a great time.

The new year began strong with many sections participating in meetings and events during the Midyear Meeting of the State Bar. On Jan. 7, the **Labor and Employment Law** section met over breakfast while the **Taxation Law** enjoyed a lunch. That evening, the **Family Law** and **Immigration Law** sections held receptions at the Bar Center. The **Dispute Resolution** section started things off on Jan. 8 with a breakfast, while the **School and College Law**, **Government Attorneys** and **Health Law** sections had lunches featuring high profile speakers. The **Appellate Practice**, **Intellectual Property Law** and **General Practice and Trial** sections had lunch meetings at the Bar Center on Jan. 9. The **Criminal Law** section also held an executive committee meeting at the Bar. The **Fiduciary Law** section held a lunch presentation at STATS in Atlanta while the **Aviation Law** section held a lunch at the Downwind Restaurant and Lounge at PDK Airport in Chamblee. GBJ

Derrick W. Stanley is the section liaison for the State Bar of Georgia and can be reached at derricks@gabar.org.

Members of the Health Law Section participated in a lunch-and-learn at the Midyear Meeting.

Getting the Most Out of Casemaker:

Multi-State Searches

by Kimberly White

In the December 2008 Casemaker article, you learned about the "Result Order" feature which allows you to determine how your opinions will be listed. We continue to show you all of the benefits of Casemaker's functionality and introduce you to Multi-State searches. Unlike other online legal research databases, there are no additional fees charged to research another state's case law. However, please be mindful that every state's library menu is not set up the same way. Also, please be sure to click the currency icon that is available at the top of each state's library menu to see how current the cases are in each state's database.

Conducting Multi-State Searches

In order to access the multi-state database, click the "Full Library Menu" icon located in the Casemaker Tool Bar (see fig. 1). From the "Full Library Menu" you can gain access to the Federal Library, libraries for all 50 states and the Multi-State Searches. You would then click on the "Multi-State Searches" option, which will give you access to the appropriate library menu (see fig. 2).

In the "Multi-State Searches" library you can choose to research State Court Opinions or State Ethics Opinions. Then you would click search next to either State Court or State Ethics Opinions. From here you see that you have the ability to find case law in any state just by clicking the box adjacent to whichever state you desire to research (see fig. 3).

When conducting a search in the "Multi-State Searches" area, you would perform a search using the same "Full Document Search Query" search functions that you would use in the state of Georgia case law search area. If you wish to search all 50 states simultaneously, click on the "Select All" button (see fig. 4). You will know you have selected this option properly because check marks will be visible in the boxes adjacent to all 50 states. You would "Deselect All" states in the same manner (see fig. 5).

Please remember that when you look up cases according to the radio button indicators you must use the "Citation" field below to locate the correct information. You can use these radio button options along with keywords inside of the "Full Document Search Query" field to narrow down your search to the most relevant opinions.

For example, try to locate state court opinions in all 50 states that discuss the use of red light cameras. In order to conduct this search, you would simply click the "Select All" button at the bottom of the "Multi-State Searches" advanced search tab (see fig. 6).

Next, you would type the keywords "red light cameras" in the "Full Document Search Query Field" (see fig. 7). When you click "Search," your results will be displayed in the standard Casemaker default of date descending order (see fig. 8).

Casemaker is the most economical and effective tool for attorneys researching case law in other states. The searches are straightforward and most of all, they are available to our members at no additional cost. The "Multi-State Search" function allows you to search case law in all 50 states at the same time or one at a time and the information provided is comprehensive and reliable. GBJ

Kimberly White is the member benefits coordinator of the State Bar of Georgia and can be reached at kimberlyw@gabar.org.

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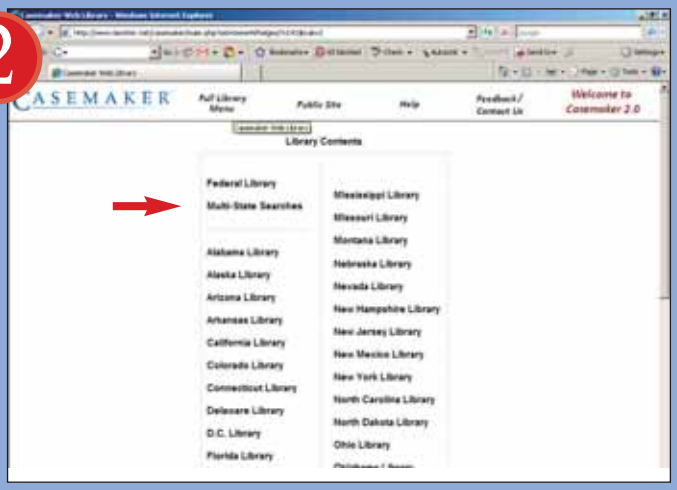
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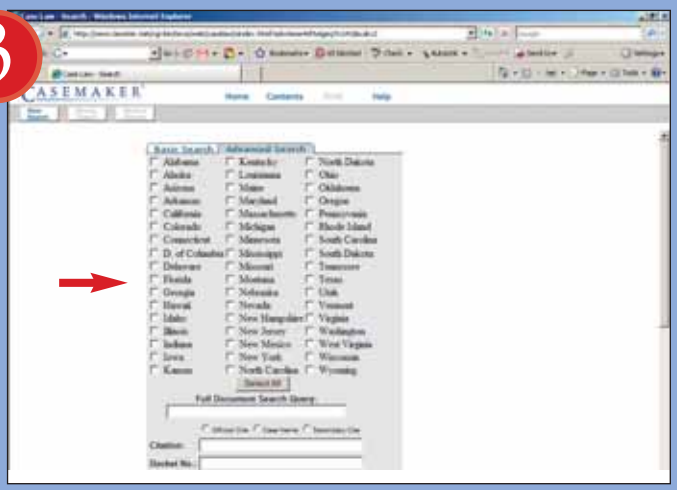
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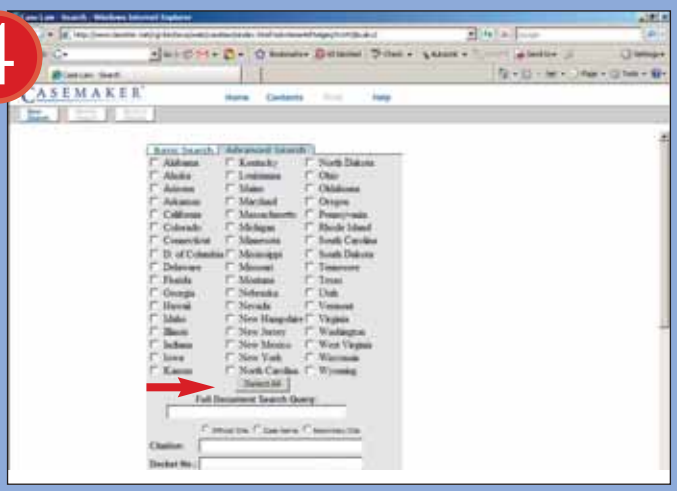
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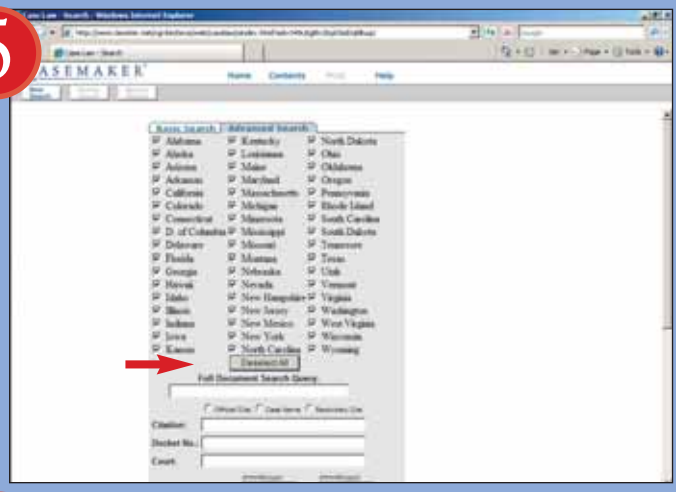
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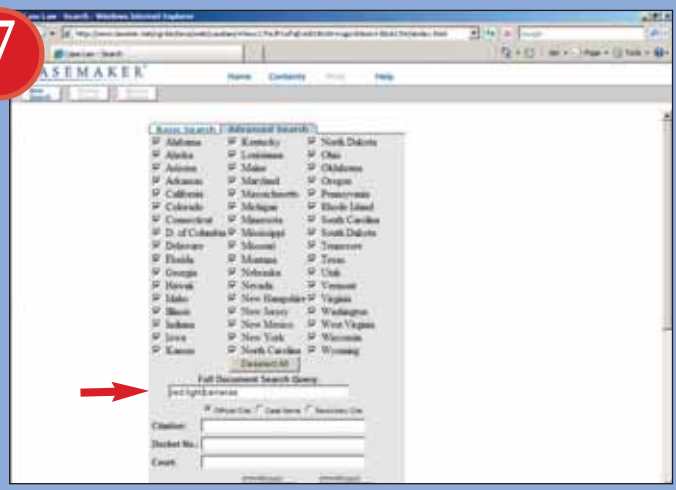
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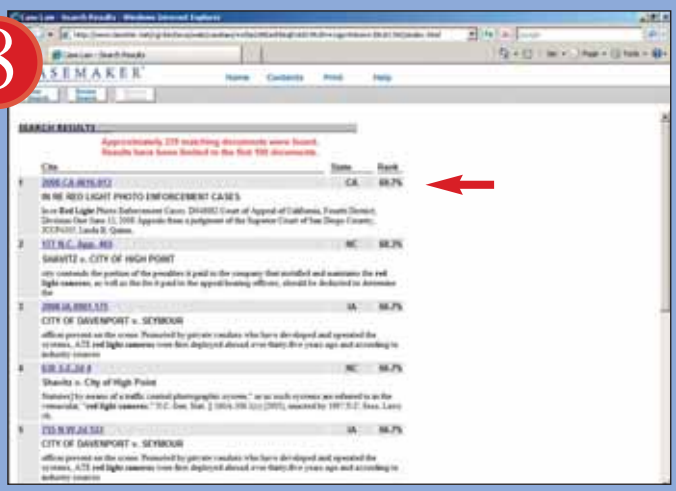
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Shanitz v. City of High Point
CITY OF DAVENPORT v. SEYBOUR

Improve Your Prose Through Poetic Devices

by Karen J. Sneddon and David Hricik

Oliver Wendell Holmes Jr. wrote that "the law is not the place for the artist or the poet."[1] While, no doubt, a security deed is not the place to try out a cute metaphor, the law does abound with rich imagery, metaphors, allusions and room for creativity. Just think of the phrase "pierce the corporate veil."[2]

Your legal writing can be improved by taking advantage of two basic tools of the poet: alliteration and rhythm.[3] Below is a brief description of these devices and techniques to incorporate these poetic devices into legal writing.[4]

Alliteration

Alliteration, consonance and assonance are related but distinct concepts. Alliteration is the "repetition of the sound of an *initial* consonant or consonant cluster."[5] The traditional tongue-twisters ("See Sally sell seashells by the seashore") exemplify alliteration. Sometimes confused with alliteration are assonance and consonance.[6] Assonance is the repetition of *internal vowel* sounds, as in "The rain in Spain stays mainly in the plain." Consonance is the repetition of *internal consonants or consonant clusters*, as in "pitter patter."

Being conscious of alliteration is critical because it has the potential to confuse and distract. On the other hand, alliteration can increase the power of legal writing. Point headings present a particularly persuasive opportunity for alliteration. Consider the following example:

> The employer's rapid, retaliatory reaction trampled Plaintiff's First Amendment rights.

The alliteration infuses the heading with a sense of undue haste, furthering the substantive meaning of the sentence. By following the alliterative phrase with the strong verb "trampled," the point heading underscores the substantive meaning. The key is being deliberate with alliteration and avoiding pervasive reliance on alliteration. Otherwise, the use of alliteration can cause confusion and consternation.

Rhythm

Rhythm is a "cadence, a contour, a figure of periodicity, any sequence of events of objects perceptible as a distinct pattern capable of repetition and variation."[7] Without bogging you down in "feet" and "iambs,"[8] rhythm is a musical quality that you can inject into your writing to engage the reader. One famous example of rhythm is "Hiawatha's Departure" from "The Song of Hiawatha" by American poet Henry Wadsworth Longfellow:

> By the shore of Gitchie Gumee,
> By the shining Big-Sea-Water,
> At the doorway of his wigwam,
> In the pleasant Summer morning,
> Hiawatha stood and waited.

A sing-song rhythm is likely not what you want in your legal writing. However, neither is the typical legal writing rhythm, which is flat and monotone. This tone

results from lengthy and lightly punctuated sentences. Often in legal writing, each sentence within a paragraph is longer than the preceding one, and internal punctuation consists only of a couple of commas after introductory clauses.

Rhythm can easily be injected into your writing by varying sentence length and punctuation. As to sentence length, rather than having most sentences be 25 words, consider varying the sentence length. With the aid of commas, semicolons and colons, sprinkle a few even longer sentences in your writing. Follow with a short sentence. A short, staccato sentence will stand out and convey a memorable point to the reader. As to punctuation, vary clause placement (as long as this does not alter the meaning of the sentence).

Consider the following two examples of rhythm from well-known opinions:

> A different conclusion will involve us, and swiftly too, in a maze of contradictions. A guard stumbles over a package which has been left upon a platform. It seems to be a bundle of newspapers. It turns out to be a can of dynamite. To the eye of ordinary vigilance, the bundle is abandoned waste, which may be kicked or trod on with impunity. Is a passenger at the other end of the platform protected by the law against the unsuspected hazard concealed beneath the waste? If not, is the result to be any different, so far as the distant passenger is concerned, when the guard stumbles over a valise which a truckman or a porter has left upon the walk? The passenger far away, if the victim of a wrong at all, has a cause of action, not derivative, but original and primary. His claim to be protected against invasion of his bodily security is neither greater nor less because the act resulting in the invasion is a wrong to another far removed.[9]

> The law does not refrain from searching for the intent of the actor in a multiple of circumstances; and in some cases the general command to ascertain intent is not susceptible to much further refinement. In this instance, however, the question is not whether to believe a witness but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard paper which, it is said, might not have registered a vote during the machine count. The factfinder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.[10]

While the first paragraph, from Justice Cardozo's opinion in *Palsgraf,* resounds with movement (perhaps more than most legal writers would feel comfortable with), both passages inject a sense of rhythm. The sentences vary in length and construction. This rhythm helps to keep the reader engaged.

So, consider how alliteration and rhythm can enrich your own writing. GBJ

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

David Hricik is an associate professor at Mercer Law School who has written several books and more than a dozen articles. Mercer's Legal Writing Program is currently ranked as the number one legal writing program in the country by U.S. News & World Report.

Endnotes

1. Oliver Wendell Holmes, Jr., Collected Legal Papers 29 (1920). For an analysis of the actual incorporation of verse into judicial opinions, see Mary Kate Kearney, *The Propriety of Poetry in Judicial Opinions*, 12 Widener L.J. 597 (2003).
2. One line we're sure you're tired of hearing misused is Shakespeare's line: "The first thing we do, let's kill all the lawyers." William Shakespeare, *Henry IV, Part 2*, act 4, sc. 2. In context, the line praises lawyers and the law, but those who have not actually read the play often quote it to condemn lawyers and the law. Read the play to see why!
3. For a further discussion of the relationship between law and poetry, see Edward J. Eberle & Bernhard Grossfeld, *Law and Poetry*, 11 Roger Williams U. L. Rev. 353 (2006). *See also* James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (1985).
4. Allusion—references to literature, myths, art, events, or places—is another poetic device that can be used in legal writing. A recent ABA article explored allusions to literature in judicial opinions. Richard Brust, *Author! Author!: Great Books Mean Great Decisions*, 94 A.B.A. J. 14 (June 2008) (citing M. Todd Henderson, *Citing Fiction*, 11Green Bag 2d 171 (2008)). *See also* Parker B. Potter, Jr., *Wondering about Alice: Judicial References to* Alice in Wonderland *and* Through the Looking Glass, 28 Whittier L. Rev. 175 (2006).
5. The New Princeton Encyclopedia of Poetry and Poetics 36 (eds. Alex Preminger and T.V.F. Brogan 1993) (emphasis added).
6. http://ezinearticles.com/?Alliteration,-Assonance-and-Consonance&id=675686.
7. The New Princeton Encyclopedia of Poetry and Poetics 1066-67 (eds. Alex Preminger and T.V.F. Brogan 1993).
8. Discussion of meter often accompanies discussion of rhythm. For purposes of this installment, we have focused on the topic of rhythm.
9. *Palsgraf v. Long Is. R.R. Co.*, 162 N.E. 99, 100 (N.Y. 1928) (opinion written by Justice Cardozo). For consideration of the rhythm of a different passage of *Palsgraf*, see Stephen V. Armstrong & Timothy P. Terrell, *The Subtlety of Rhythm*, 12 No. 3 Persp. 174 (2004).
10. *Bush v. Gore*, 531 U.S. 98, 106 (2000) (per curiam).

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Lincoln on Professionalism

by Dawn M. Jones

The Atlanta Bar Association in partnership with the Chief Justice's Commission on Professionalism scooped the American Bar Association and the National Lincoln Bicentennial Commission by planning and presenting an excellent, unique CLE program featuring highlights of the career of President Abraham Lincoln, the bicentennial of whose birth is celebrated in 2009. On Oct. 28, 2008, a crowd of over 130 lawyers attended the innovative CLE titled "Lincoln on Professionalism" held at the State Bar of Georgia.

Photos by Dawn M. Jones

(Left to right) Professionalism panelists C. David Butler, Shapiro Fussell LLP; Hon. Hugh Lawson, U.S. District Court, Middle District of Georgia; C. King Askew, Brinson, Askew, Berry, Seigler, Richardson & Davis LLP; W. Ray Persons, King & Spalding LLP; and Bettina Wing-Che Yip, AT&T Mobility.

During the two-hour program, attendees were educated and entertained with this multi-media CLE. Recorded vignettes presenting stories about Abraham Lincoln's life and law practice were interspersed with music, pictures and quotes to provide a stimulating backdrop for panel discussions. Divided into two one-hour segments, panelists from various backgrounds and practice settings gleaned lessons learned from each vignette and drew similarities (and differences) between then and now. The diverse group of panelists included the Hon. Hugh Lawson, U.S. District Court, MDGA; the Hon. Thelma Wyatt

Cummings Moore, former judge, Superior Court of Fulton County; C. King Askew, Brinson Askew Berry Seigler Richardson & Davis LLP; the Hon. Roy E. Barnes, The Barnes Law Group; B. J. Bernstein, The Bernstein Firm PC; Prof. Timothy W. Floyd, Mercer University School of Law; W. Ray Persons, King & Spalding LLP; and Bettina Yip, AT&T Mobility. The panel discussions were led and directed by moderators C. David Butler, Shapiro Fussell LLP, and A. Bryan Baer, Foltz Martin, LLC.

The concept behind this seminar was to use examples from Lincoln's life then, both personally and professionally, to show lawyers today how to conduct themselves in a professional manner. This served multiple purposes: to illustrate how many of the challenges lawyers face today mirror challenges faced by lawyers in those times; to underscore the belief that tenets of professionalism are consistent throughout history; and to highlight positive aspects of Lincoln's life that are compelling exemplars for new and seasoned lawyers. Recurrent qualities serving as central points of discussion for the vignettes, as evidenced by Lincoln's life and law practice, included civility, honesty, fairness, integrity and dignity. These are qualities every good lawyer should aspire to possess.

Now, some contend that Abraham Lincoln's actions may at times have been prompted more so by political ambitions than by strong moral convictions. Regardless of his motivations, one cannot deny that his words and deeds helped to move this country toward equality, justice and fairness for all. Like many other historical American figures in our nation's history, including Martin Luther King Jr., Lincoln's words and deeds worked to bring us together as one nation.

The concept for this CLE project would have remained in the minds of the planners had it not been for the fortitude and persistence of Mary Lynne Johnson, Atlanta Bar Association CLE director. In September 2007, Johnson coordinated the first Lincoln CLE committee meeting to develop this concept. With the leadership of Johnson and C. David Butler, Brian "Buck" Rogers, Rogers & Goldberg LLC, Tim Floyd and Dawn Jones, King & Spalding LLP, the committee put pen to paper to begin developing vignettes that would eventually become part of the CLE presentation. Over the course of the year leading up to the program presentation, additional "Lincolneers," as Johnson termed them, were added to the Lincoln CLE committee, including A. Bryan Baer, Foltz Martin LLC; James D. Blitch IV, Kidd & Vaughan LLP; John C. Bonnie, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC; Edward D. Buckley III, Buckley & Klein, LLP; D. Lake Rumsey, Law Office of D. Lake Rumsey; and Ian E. Smith, King & Spalding LLP.

Each addition to the Lincoln CLE committee brought a new and unique perspective on the project as it continued to develop and grow, becoming more of a reality with each meeting. Initially, the meetings were held approximately

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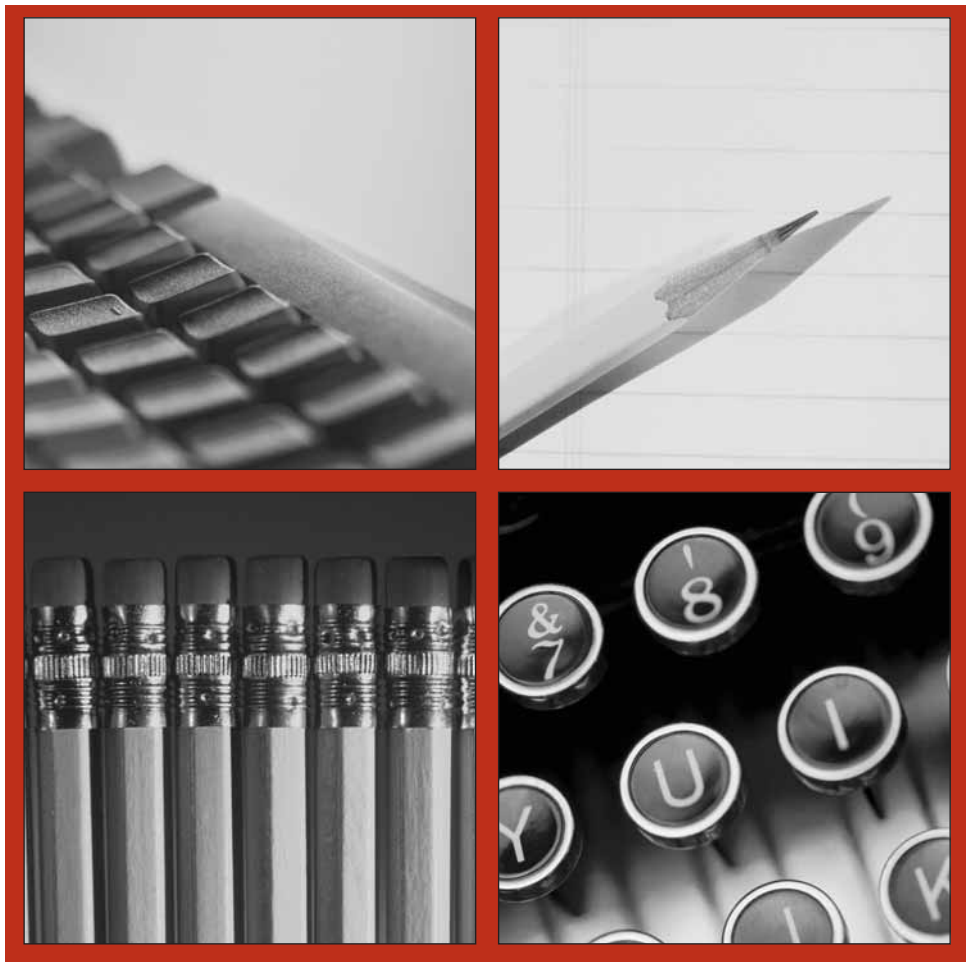

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(Left to right) CLE panelists A. Bryan Baer, Foltz Martin, LLC; B.J. Bernstein, The Bernstein Firm PC; Hon. Thelma Wyatt Cummings Moore, Superior Court of Fulton County; Hon. Roy E. Barnes, The Barnes Law Group, LLC; and Timothy W. Floyd, Mercer University, Walter F. George School of Law.

every other month with monthly meetings scheduled as necessary to keep the program on track. Johnson also worked hard to regularly update committee members on developments between meetings. She worked diligently with the production company, EventStreams, which polished the committee's work until the luster of this praiseworthy program shone through.

Some months into the planning, the committee reached out to the Chief Justice's Commission on Professionalism to partner with and help fund this project. The proposed partnership occurred naturally, as hoped, to expand the use of this program throughout Georgia. It was understood that the Commission may have a particular interest in this professionalism CLE program. The Commission, celebrating its 20th anniversary year, gave an immediate and enthusiastic response and hopes this program is used nationally and even internationally.

Avarita Hanson, executive director, Chief Justice's Commission on Professionalism, served as a liaison between the Lincoln CLE committee and the Commission, providing helpful input and posing appropriate questions as the actual program date drew near. It may be surprising to some to hear that the high level of enthusiasm and excitement for this program among the committee members never waned. In fact, each new addition to the committee over the course of the year cemented the dedication of existing committee members to making this program a reality.

The committee members who were not Lincoln scholars or enthusiasts at the beginning of this project became very familiar with Lincoln and his life through research and review of books. Required reading affording insight into Lincoln's life and achievements was offered to every committee member who worked on the project to better equip them for the work ahead. Working to bring this project to fruition, the committee sought to identify racially, culturally and geographically diverse panelists with varied backgrounds and types and levels of work experience, to bring different perspectives to the discussion and inspire broader audience participation. In an attempt to stay true to Lincoln's era and provide some level of authenticity to the recorded vignettes, there was very little evidence of diversity.

Since the bicentennial of Lincoln's birthday is Feb. 12, it is especially significant that this program was offered in the fall, perhaps foretelling one of the most historic presidential inaugurations in our country's history on Jan. 20, the day after the Martin Luther King Jr. holiday. It is hoped that this new year will bring an era of greater understanding for and tolerance of the differences of the American people, and a celebration of the commonalities that bind us together in this country. Let us hope that Lincoln's last words during The Gettysburg Address still ring as true today as the day he spoke them in 1863: "…that this government of the people, by the people, for the people, shall not perish from the earth." GBJ

Dawn M. Jones is a senior associate in King & Spalding's Tort and Environmental Practice Group, an advisor to the Chief Justice's Commission on Professionalism and a leader in numerous bar associations.

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Karl Barbour
Marietta, Ga.
Atlanta Law School (1964)
Admitted 1977
Died November 2008

Hon. Griffin B. Bell
Atlanta, Ga.
Mercer University Walter F. George School of Law (1948)
Admitted 1947
Died January 2009

John C. Ethridge
Elberton, Ga.
Emory University School of Law (1955)
Admitted 1955
Died December 2008

Pamela Kay Hecht
Marietta, Ga.
John Marshall Law School (1999)
Admitted 2000
Died August 2008

Richard A. Herold
Ellijay, Ga.
University of Florida College of Law (1975)
Admitted 1995
Died November 2008

Jerry T. Hinson
Dunwoody, Ga.
Emory University School of Law (1968)
Admitted 1968
Died December 2008

Paul H. Kehir
Atlanta, Ga.
Woodrow Wilson College of Law (1974)
Admitted 1974
Died December 2008

James P. McLain
Atlanta, Ga.
University of Georgia School of Law (1950)
Admitted 1950
Died November 2008

James C. Merkle
Waynesville, N.C.
Emory University School of Law (1957)
Admitted 1956
Died September 2008

Davis Reid Merritt
Lawrenceville, Ga.
Emory University School of Law (1955)
Admitted 1955
Died August 2008

Harvey A. Monroe
Jonesboro, Ga.
Massey Law College (1970)
Admitted 1970
Died December 2008

Ronald G. Power
Port Richey, Fla.
John Marshall Law School (1978)
Admitted 1978
Died April 2008

William F. C. "Bill" Skinner
Decatur, Ga.
Emory University School of Law (1968)
Admitted 1967
Died November 2008

Alex W. Smith III
Atlanta, Ga.
University of Georgia School of Law (1949)
Admitted 1948
Died November 2008

Steven George Tepper
Sherman Oaks, Ca.
University of San Diego School of Law (1986)
Admitted 1996
Died August 2008

F. Thomas Young
Valdosta, Ga.
University of Georgia School of Law (1960)
Admitted 1960
Died October 2008

Hon. Griffin B. Bell died in January 2009. Bell was born in Americus, in 1918. He attended Georgia South-western College before joining the U.S. Army in 1941. During World War II, he served five years in the transportation corps, rising from private to major. After the war, Bell attended law school at Mercer University graduating *cum laude* in 1948. While a law student, he passed the Bar exam and served as the first city attorney for Warner Robbins.

After graduation, he practiced law in Savannah and Rome until he joined King & Spalding as a partner in 1953. He became managing partner of the firm in 1958. Bell served as senior partner until January 2004, at which time he became senior counsel to the firm.

In 1961, President John F. Kennedy appointed Bell to serve as a U.S. Circuit Judge on the 5th Circuit Court of Appeals. Bell served on the 5th Circuit for 15 years until 1976 when he returned to King & Spalding.

From 1977-79, Bell served as the 72nd attorney general of the United States. He led the effort to pass the Foreign Intelligence Surveillance Act in 1978. The Carter administration, advised by Bell, greatly increased the number of women and minorities serving on the federal bench. Bell recruited an 8th Circuit judge, Wade McCree, an African-American, to serve as solicitor general of the United States, and Drew S. Days III, an African-American lawyer for the NAACP Legal Defense Fund he had admired in oral arguments before him, to head the Civil Rights Division. Bell successfully led the negotiations to divide his former appellate court, the 5th Circuit spanning from Georgia to Texas, into two courts: a new 5th Circuit based in New Orleans and an 11th Circuit based in Atlanta. Bell also led efforts to professionalize the Federal Bureau of Investigation after Watergate and recruited another federal appellate judge to recommend to the president as director, the Hon. William Webster of the 8th U.S. Circuit Court of Appeals.

After Bell resigned as attorney general in August 1979, President Carter thereafter appointed him as special ambassador to the Helsinki Convention. Bell returned to King & Spalding where he served as chairman of the management committee from 1980-83 and chairman of King & Spalding's first policy committee from 1985-87. He was a member of the American College of Trial Lawyers, serving as its president from 1985-86. He was also a member of the American Law Institute.

Bell was the initial chairman of the Atlanta Commission on Crime and Juvenile Delinquency. During 1980, he headed the American delegation to the conference on Security and Cooperation in Europe, held in Madrid. In 1984, Bell received the Thomas Jefferson Memorial Foundation Award for Excellence in Law. From 1985-87, Bell served on the Secretary of State's Advisory Committee on South Africa, and in 1989, he was appointed vice chairman of President George H. W. Bush's Commission on Federal Ethics Law Reform. During the Iran Contra investigation, he was counsel to President Bush.

Throughout his career, Bell was a steadfast supporter of his alma mater, Mercer University, serving as a trustee and helping raise more than half a billion dollars in gifts to Mercer. He served six terms on the university's board of trustees, dating back to 1967, and was chairman of the board from 1991 to 1995. In 1983, he was named Mercer's first distinguished university professor. Over the years, Bell was a frequent lecturer and panelist at Mercer's law school.

In addition to his wife, Bell is survived by a son, Griffin B. Bell Jr.; granddaughter, Katherine Bell McClure; grandson, Griffin B. Bell III; and five great-grandchildren. GBJ

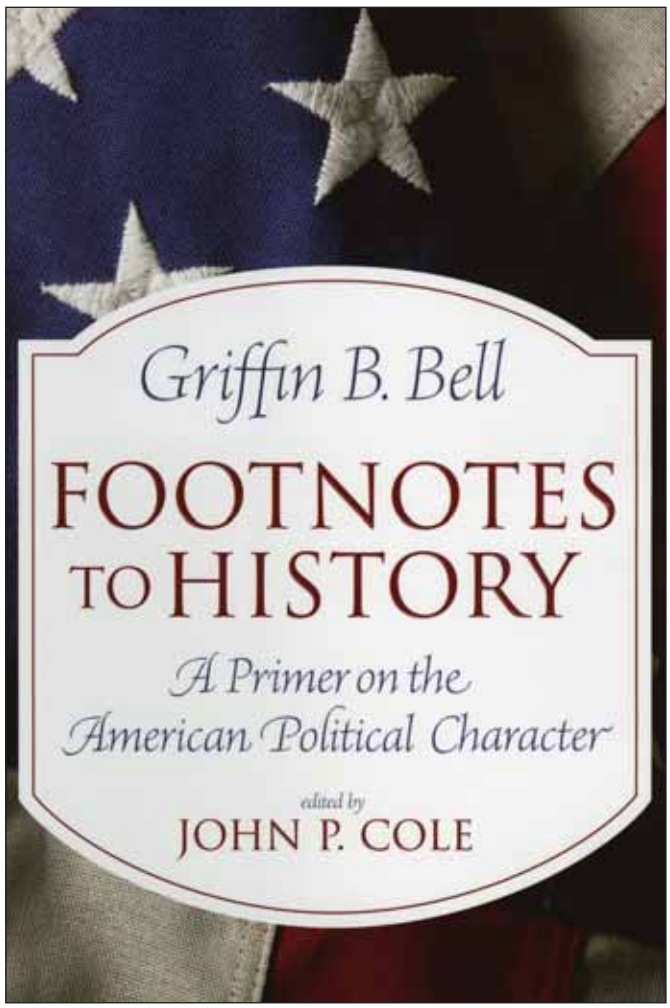
Footnotes to History:

A Primer on the American Political Character

by Griffin B. Bell, edited by John P. Cole
Mercer University Press, 186 pages

reviewed by Hollie Manheimer

Perhaps the Hon. Griffin B. Bell's life should be included within this volume, wherein he assembles brief but incisive examinations of the lives of American patriots, some famous, some not, who have marked their place in American history. With the assistance of lawyer John P. Cole, Bell offers the reader lessons in character—what contemporary citizens can learn from the contributions of historical patriots. The volume is a compilation of Bell's lectures delivered to a dinner club, perhaps what we might call a salon, "devoted to intellectual conversation," and each chapter is footnoted with the date and place of delivery of the subject lecture.



From the Revolutionary War era, Bell focuses a chapter on George Washington, several on Thomas Jefferson, and one each on John Marshall and Aaron Burr. From the Civil War era, he selects Joshua Lawrence Chamberlain, John Singleton Mosby, and Generals Grant, Lee and

Sherman as character studies. Bell includes Lewis F. Powell Jr., and Oliver Wendell Holmes, as well. While all of the vignettes are rich in detail, the overriding theme in each chapter is the character, caliber and mettle of the individual subject. Bell asks, and asks us to ask of other historical figures: how are their examples and thinking applicable to contemporary problems?

For example, the book's second chapter examines George Washington as a military officer. We learn that Bell presented this paper initially on Feb. 22, 2006, George Washington's 274th birthday. The chapter provides rich detail concerning General Washington's military service and significant detail as to some of the Revolutionary War battles. Nevertheless, Bell focuses the reader on his subject's character. Regardless of the battles fought, many of which were lost, Washington persevered. From Bell's careful examination of Washington's life, he draws his own conclusion: "Whatever his doubts and fears, Washington kept up the fight long enough to know his enemy, to take back the momentum, to give time for the French to join the fray, to give legitimacy to the new American government." The overriding principle of character in Washington's life: leadership in the face of adversity.

Similarly, Bell provides his own interpretation of the famous surrender scene between Generals Grant and Lee in the waning days of the Civil War. The volume notes that he presented this paper on Jan. 31, 1991, and again, the chapter is laden with detail. The chapter reprints the text of the correspondence between the generals as they begin to negotiate whether or not there will be a surrender, and if so, its terms. We also learn the occasional odd fact, showcasing Bell's thorough research: "Grant was never much on military pomp. One reason: he was tone deaf, and military music was especially annoying to him." Bell concludes the chapter with an analysis of the "unconditional surrender" demanded by Grant, and shares the reasoning of both Grant and Lee. But again, the detail of the chapter is less important than its themes. In this chapter, Bell urges his reader to focus on honor, dignity and style, be it in victory or defeat.

Of course, the book has its comic moments. Chapter six recounts the trial of Aaron Burr, who served as vice president during 1801–05 under President Thomas Jefferson. Subsequently, Burr challenged Alexander Hamilton to the well-known duel, in which Hamilton was killed and after which the vice resident "fled to Pennsylvania to escape arrest and continued to serve out the final months of his term as vice president. It is said that he handled his duties well as vice president…" this, despite the fact that he was charged with murder. The detail with which Bell recounts each story is compelling, and provides a nice balance to the emphasis on character which is Bell's primary objective. He writes that one of Burr's defense lawyers "was a firebrand type of lawyer who kept a jug of whiskey at the counsel table. Whether the whiskey made him more vigorous is not known, but he was indeed vigorous."

Character trumps detail and that is where Bell asks us to focus. While Washington, as noted above, exhibited leadership in the face of adversity, Joshua Lawrence Bell, "the best educated soldier[] in the Union Army," was a man of conviction. John Sington Mosby, "[o]ne of the legendary figures of the Civil War," would take any assignment, and work it to completion regardless of its scope or difficulty. Similarly, Bell examines John Marshall in the context of the idea of a strong executive branch, and Thomas Jefferson in the context of the idea of separation of church and state and religious freedom. The strength of the respective characters of each of Bell's subjects enabled them to make a contribution to American history.

However, Bell does not only look backwards. He acknowledges the difficult times of today, and appears optimistic. As the volume concludes, Bell renews the call for public service, and points out that these historical figures are good examples. The publication looks forward to a new chapter in U.S. history and urges renewed commitment to traditional notions of patriotism—of which we often lose sight during immediate crises. As Bell closes the book, he encourages us to ask and answer this question: "What is it that we want as a nation and as a member of the world community?" Bell believed that it is the responsibility of citizenship to ask and answer these questions. His final publication points the reader towards a few examples of lives well-lived wherein we might find some answers. GBJ

Hollie Manheimer practices law at Stuckey & Manheimer, Inc., and is the executive director of the Georgia First Amendment Foundation, a grass roots non profit organization formed in 1994 to promote freedom of information in Georgia through education and advocacy. A graduate of Dartmouth College, Manheimer received her J.D. from Emory University School of Law and holds two masters' degrees, one in English from New York University and one in Communications from Georgia State University.

February-March

FEB 10
NBI, Inc.
Adoption Law Start to Finish
Atlanta, Ga.
6 CLE Hours

FEB 11
ICLE
Banking Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 12
Atlanta Bar CLE
Family Law: Managing Client Expectations
Atlanta, Ga.
6 CLE/1 E/ 1P
See www.atlantabar.org for details

FEB 12-13
ICLE
Social Security Law
Atlanta, Ga.
See www.iclega.org for location
9 CLE Hours

FEB 12
ICLE
Secured Lending
Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 12
ICLE
License Revocation & Suspension
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 12
Emory University School of Law
Thrower Symposium
Atlanta, Ga.
5 CLE Hours

FEB 12
Lorman Education Services
Foreclosure and Repossession
Macon, Ga.
6 CLE Hours

FEB 13
ICLE
Residential Real Estate
Satellite Broadcast – Live
See www.iclega.org for locations
6 CLE Hours

FEB 13-14
ICLE
Estate Planning Institute
Athens, Ga.
See www.iclega.org for location
9 CLE Hours

FEB 13
ICLE
Trial of Leo Frank
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

FEB 19
Atlanta Bar CLE
Law, Literature and Legal Ethics and Professionalism
Atlanta, Ga.
3 CLE/2 E/1 P
See www.atlantabar.org for details

FEB 19
ICLE
Residential Real Estate
Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 19
ICLE
Advanced Debt Collection
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 19
ICLE
Elder Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

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.*

FEB 19-20
The Seminar Group
2009 Southeast and GA Wetlands and Water Law
Atlanta, Ga.
11.5 CLE Hours

FEB 20
Atlanta Bar CLE
REALLY Doing Business in China
6 CLE
Atlanta, Ga.
See www.atlantabar.org for details

FEB 20
ICLE
Georgia Auto Insurance
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 20
ICLE
Workers' Compensation for the GP Satellite Broadcast – Live
See www.iclega.org for locations
6 CLE Hours

FEB 20
ICLE
Entertainment Law Institute
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 23
ICLE
Beginning Lawyers Program
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 24-25
ICLE
CLIG Training Sessions (Civil & Family)
Atlanta, Ga.
See www.iclega.org for location
12 CLE Hours

FEB 25
NBI, Inc.
International Estate Planning
Atlanta, Ga.
6 CLE Hours

FEB 26
ICLE
Workers' Compensation for the GP Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

FEB 26
ICLE
Inside the Courtroom /Personal Injury
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 27
Atlanta Bar CLE
Advanced Workers' Compensation
6 CLE
Atlanta, Ga.
See www.atlantabar.org for details.

FEB 27
ICLE
Nuts & Bolts of Employment Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 27
ICLE
Georgia Appellate Practice
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

FEB 27
ICLE
Eminent Domain Satellite Broadcast – Live
See www.iclega.org for locations
6 CLE Hours

FEB 27
Lorman Education Services
Zoning Subdivision & Land Development Law
Atlanta, Ga.
6 CLE Hours

FEB 27
NBI, Inc.
Find it Fast on the Net – Strategies for Using the Web in Your Law Practice
Atlanta, Ga.
6 CLE Hours

February-March

FEB 28
ICLE
Bar Media (Tentative)
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 4
Atlanta Bar CLE
Immigration Relief for Juveniles
Atlanta, Ga.
4 CLE/1 T/1 P
See www.atlantabar.org for details

MAR 4
Atlanta Bar CLE
The Asylum Project
Atlanta, Ga.
4 CLE/1 T/1 P
See www.atlantabar.org for details

MAR 4
Atlanta Bar CLE
Representing Victims of Domestic Violence in TPO Hearings
Atlanta, Ga.
3.5 CLE/1 T/1 P
See www.atlantabar.org for details

MAR 4
ICLE
Whistleblower
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 5
ICLE
Fundamentals of Health Care
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 5
ICLE
Product Liability Institute
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 6
ICLE
Construction Law for the GP
Satellite Broadcast – Live
See www.iclega.org for locations
6 CLE Hours

MAR 6
ICLE
MBA Concepts for Lawyers
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 6
ICLE
Proving Damages
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 6
Lorman Education Services
Sales & Use Tax
Macon, Ga.
6.7 CLE Hours

MAR 10
ICLE
Chief Justice's Commission on Professionalism 20th Anniversary
Atlanta, Ga.
See www.iclega.org for location
1 CLE Hours

MAR 11
Atlanta Bar CLE
Representing Arab/Muslim-Americans in the Post-9/11 Era
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 11
NBI, Inc.
Real Estate Litigation in Georgia
Atlanta, Ga.
6 CLE Hours

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.*

MAR 12
Atlanta Bar CLE
Grandparent/Relative Caregiver Adoption Project
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 12-14
ICLE
General Practice & Trial Institute
Atlanta, Ga.
Amelia Island, Fla.
12 CLE Hours

MAR 12
ICLE
Construction Law for the GP Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

MAR 12
ICLE
Metro City & County Attorneys
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 12
ICLE
Workouts, Turnarounds & Restructurings
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

MAR 13
ICLE
Long-Term Disability
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 13
ICLE
Civil Litigation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 13
ICLE
Professionalism & Ethics Update Satellite Broadcast – Live
See www.iclega.org for locations
2 CLE Hours

MAR 17
Atlanta Bar CLE
Guardian ad Litem Training
Atlanta, Ga.
8 CLE/1 E/1 P
See www.atlantabar.org for details

MAR 17
ICLE
When There's More Than a Legal Problem
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 17
ICLE
Selected Video Replay
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
Atlanta Bar CLE
Family Law for Low-Income Clients
Atlanta, Ga.
3.5 CLE/1 P
See www.atlantabar.org for details

MAR 18
Atlanta Bar CLE
Advising the Start-Up Nonprofit: Pro Bono for Transactional Lawyers
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 18
Atlanta Bar CLE
Advanced Guardian ad Litem Training
Atlanta, Ga.
4 CLE/1 P
See www.atlantabar.org for details

February-March

MAR 18
ICLE
Selected Video Replay
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
ICLE
Winning at Mediation
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 18
ICLE
Surviving the Crash
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 19
Atlanta Bar CLE
Wills and Advance Directives Project
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 19
ICLE
Toxic Torts
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 19
ICLE
Professionalism & Ethics Update Satellite Rebroadcast
See www.iclega.org for locations
2 CLE Hours

MAR 20
Atlanta Bar CLE
Advocating for the Truant Child
Atlanta, Ga.
4 CLE/1 E/1 T/1 P
See www.atlantabar.org for details

MAR 20
ICLE
International Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 20
ICLE
Corporate Internal Investigations
Atlanta, Ga.
See www.iclega.org for location
7 CLE Hours

MAR 20
ICLE
How to Handle Business Disputes (Tentative)
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 20
ICLE
Cross-Examinations
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 20
NBI, Inc.
The Probabte Process From Start to Finish
Atlanta, Ga.
6.7 CLE Hours

MAR 20-21
Atlanta Bar CLE
Advanced Employment Law Conference & Retreat
Lake Lanier Islands, Ga.
12 CLE/1 E/1 T/1 P
See www.atlantabar.org for details

MAR 25
Atlanta Bar CLE
Housing Law and Practice for Pro Bono Attorneys
Atlanta, Ga.
6 CLE/1 P
See www.atlantabar.org for details

MAR 25
ICLE
Beginning Lawyers
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

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.*

MAR 25
NBI, Inc.
Helping Your Client Select the Best Entity Option
Atlanta, Ga.
6.7 CLE Hours

MAR 26
ICLE
Consumer Law Section Seminar
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 26
ICLE
Carlson on Evidence
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 27
Atlanta Bar CLE
Local Police Enforcement of Immigration Laws
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 27
ICLE
Trials of the Century
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 27
ICLE
Advanced Securities Law
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 27
ICLE
Successful Trial Practice
Satellite Rebroadcast
See www.iclega.org for locations
6 CLE Hours

MAR 27
Atlanta Bar
Local Police Enforcement of Immigration Laws
Atlanta, Ga.
3 CLE/1 P
See www.atlantabar.org for details

MAR 30
ICLE
Winning Settlement Demand Packages
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 30
ICLE
Internet Legal Research
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 30
ICLE
Contempt of Court
Atlanta, Ga.
See www.iclega.org for location
4 CLE Hours

MAR 30
NBI, Inc.
Family Mediation
Atlanta, Ga.
6 CLE Hours

MAR 31
Atlanta Bar CLE
Addressing the Legal Needs of People with Multiple Sclerosis
Atlanta, Ga.
3.5 CLE/1 P
See www.atlantabar.org for details

MAR 31
ICLE
Cash's Trials, Tips & Tales
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

MAR 31
ICLE
Traumatic Brain Injury
Atlanta, Ga.
See www.iclega.org for location
6 CLE Hours

First Publication of Proposed Formal Advisory Opinion No. 06-R1

Pursuant to Rule 4-403(c) of the Rules and Regulations of the State Bar of Georgia, the Formal Advisory Opinion Board has made a preliminary determination that the following proposed opinion should be issued. State Bar members are invited to file comments to this proposed opinion with the Formal Advisory Opinion Board at the following address:

State Bar of Georgia
104 Marietta Street NW
Suite 100
Atlanta, Georgia 30303
Attention: John J. Shiptenko

An original and twenty (20) copies of any comment to the proposed opinion must be filed with the Formal Advisory Opinion Board by March 16, 2009, in order for the comment to be considered by the Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. Any comment submitted to the Board pursuant to Rule 4-403(c) is for the Board's internal use in assessing proposed opinions and shall not be released unless the comment has been submitted to the Supreme Court of Georgia in compliance with Bar Rule 4-403(d). After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia.

PROPOSED FORMAL ADVISORY OPINION NO. 06-R1

QUESTION PRESENTED:

Is it permissible for an attorney to compensate a lay public relations or marketing organization to promote the services of an attorney through the advertising means listed in Rule 7.2 of the Georgia Rules of Professional Conduct?

SUMMARY ANSWER:

Yes. An attorney may utilize a lay public relations or marketing organization to promote the services of the attorney through the advertising means listed in Rule 7.2 of the Georgia Rules of Professional Conduct if:

(1) The attorney pays a flat or fixed fee (unrelated to the actual number of people who contact or hire the attorney and unrelated to a percentage of the fee obtained for rendering legal services) for the rights to receive communications from potential clients generated by the marketing;

(2) The communication of the lay public relations or marketing organization is not false, fraudulent, deceptive or misleading;

3) The fees paid by the attorney to the organization are the usual and reasonable fees charged by the organization; and

(4) The organization does not go beyond the ministerial function of placing callers in contact with participating attorneys based upon the attorney's geographical location.

OPINION:

Rule 7.3(c) of the Georgia Rules of Professional Conduct addresses the permitted role of lay public relations or marketing organization in promoting an attorney's services. The Rule provides in part:

> (c) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client; except that the lawyer may pay for public communications permitted by Rule 7.1 and except as follows:
>
> (4) A lawyer may pay the usual and reasonable fees charged by a lay public relations or marketing organization provided the activities of such organization on behalf of the lawyer are otherwise in accordance with these Rules.

It is sometimes difficult for an attorney to discern the line between payment for legal advertising that is permitted under Rule 7.1 and payment for a referral that is prohibited under Rule 7.3(c), especially in the context

of television and internet media. Rule 7.3 outlines the exception for an attorney to advertise utilizing a lay public relations or marketing organization; however, the role of a lay public relations or marketing organization is not defined by the Georgia Rules of Professional Conduct. Group advertising such as provided by lay public relations or marketing organizations has been addressed by the American Bar Association and several states with regard to certain television group advertising "800" numbers (e.g. "Injury Helpline")[1].

Opinion 2001-2 of the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline draws the distinction between a payment for an advertisement and a payment for a referral by analyzing the services provided by the organization.

> When an attorney pays an entity to perform only the ministerial function of placing the attorney's name, address, phone number, fields of practice, and biographical information into the view of the public that is considered payment for an advertisement, not payment for a referral, unless the context suggests otherwise. When an attorney pays an entity for activities that go beyond the ministerial function of placing an attorney's name, address, phone number, fields of practice, and biographical information into the view of the public, the attorney may be paying for referral services.

The case of *Alabama State Bar Assn. v. R.W. Lynch Co., Inc.*, 655 S. 2d 982, 984 (1995) is insightful, as it articulates some of the distinct characteristics of group advertising as compared to a referral service. Gleaning from a 1989 report drafted by the American Bar Association Standing Committee on Lawyer Referral and Information Service, the Alabama Supreme Court noted that group advertising commercials have several distinct characteristics and they are as follows:

> (1) The commercial expressly informs the public that it is a paid advertisement for the listed attorneys;
>
> (2) The calls are in no way screened by the answering service;
>
> (3) The caller's potential legal needs are not evaluated in any way, shape or form;
>
> (4) No representation is made to the caller regarding an attorney's experience or skill;
>
> (5) A caller is forwarded to an attorney only on the basis of the geographical area in which the caller lives;
>
> (6) The attorney is contractually obligated to provide a consultation to the caller who resides in the attorney's geographical area;
>
> (7) The attorneys who pay for the advertisement are the only persons who speak with the caller concerning the caller's legal situations; and
>
> (8) The attorneys who participate in the advertising program pay a flat-rate fee for the advertising which is unrelated to the number of calls or types of calls that are forwarded to the attorney.

The 7.3(c)(4) "usual and reasonable fees" charged by a lay public relations or marketing organization must be unrelated to the number of calls actually submitted to the attorney or fees generated in that the organization is paid by the attorney for the right to receive all calls from potential clients who live in a designated area.

Further, the lay public relation or marketing organization must not screen calls in an effort to make any judgment or evaluation of the needs of the caller so that all the organization does is perform the ministerial function of providing the contact information to the attorney and potential client.

Therefore payments for services that go beyond the ministerial function would be improper unless the entity is a lawyer referral service pursuant to Rule 7.3(c) of the Georgia Rules of Professional Conduct. Additionally, payments to a lay public relations or marketing organization based upon the actual number of people who contact/hire the attorney or payments based upon a percentage of the fee obtained from rendering legal services are considered payment for a referral and as such are prohibited .

Essentially, there is no real difference between a lawyer placing an advertisement on a billboard, in a phonebook or on television which lists the attorney's area of practice and contact information (as permitted by Rules 7.1 and 7.2) from a lawyer using a marketing organization to assist in the lawyer's advertising effort; however, the fees paid must not be dependent upon the actual number of potential clients forwarded to the attorney or fees generated and the organization must have no discretion in sending potential clients to the attorney which is generally based upon the geographical location of the attorney. Whenever a law-related marketing or advertising company offer services that go beyond merely a ministerial function of providing the attorney's information and/or requires payment calculated on a per call or volume-based formula, the attorney should be aware that payment to the company will be considered an improper referral fee under Rule 7.3(c).

Endnote

1. Some of the states which have addressed this question are Alaska, North Carolina, Texas, Washington, Florida and Ohio. With the exception of Florida, all of these states, as well as, the American Bar Association, have concluded that such advertising is group advertising and is permissible.

Books/Office Furniture & Equipment

"LegalEats, A Lawyer's Lite Cookbook: is a fun legal-themed cookbook, with easy to prepare gourmet recipes, targeted to the legal community. A "must" for any lawyer with a demanding palate, **"LegalEats"** makes a great gift and is a welcome kitchen shelf addition. Available at leading online bookstores such as Barnes & Noble and Amazon.com.

Property/Rentals/Office Space

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