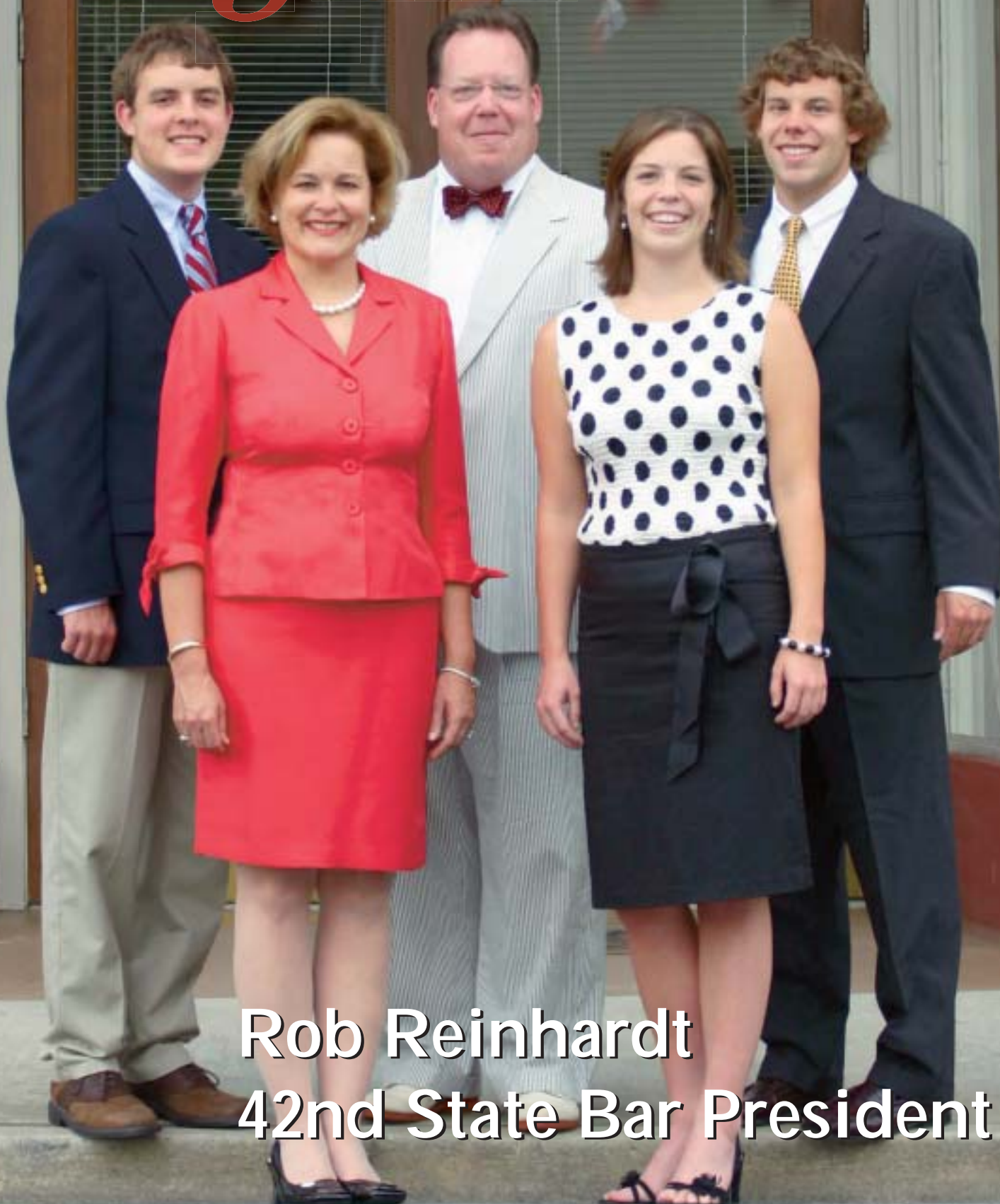


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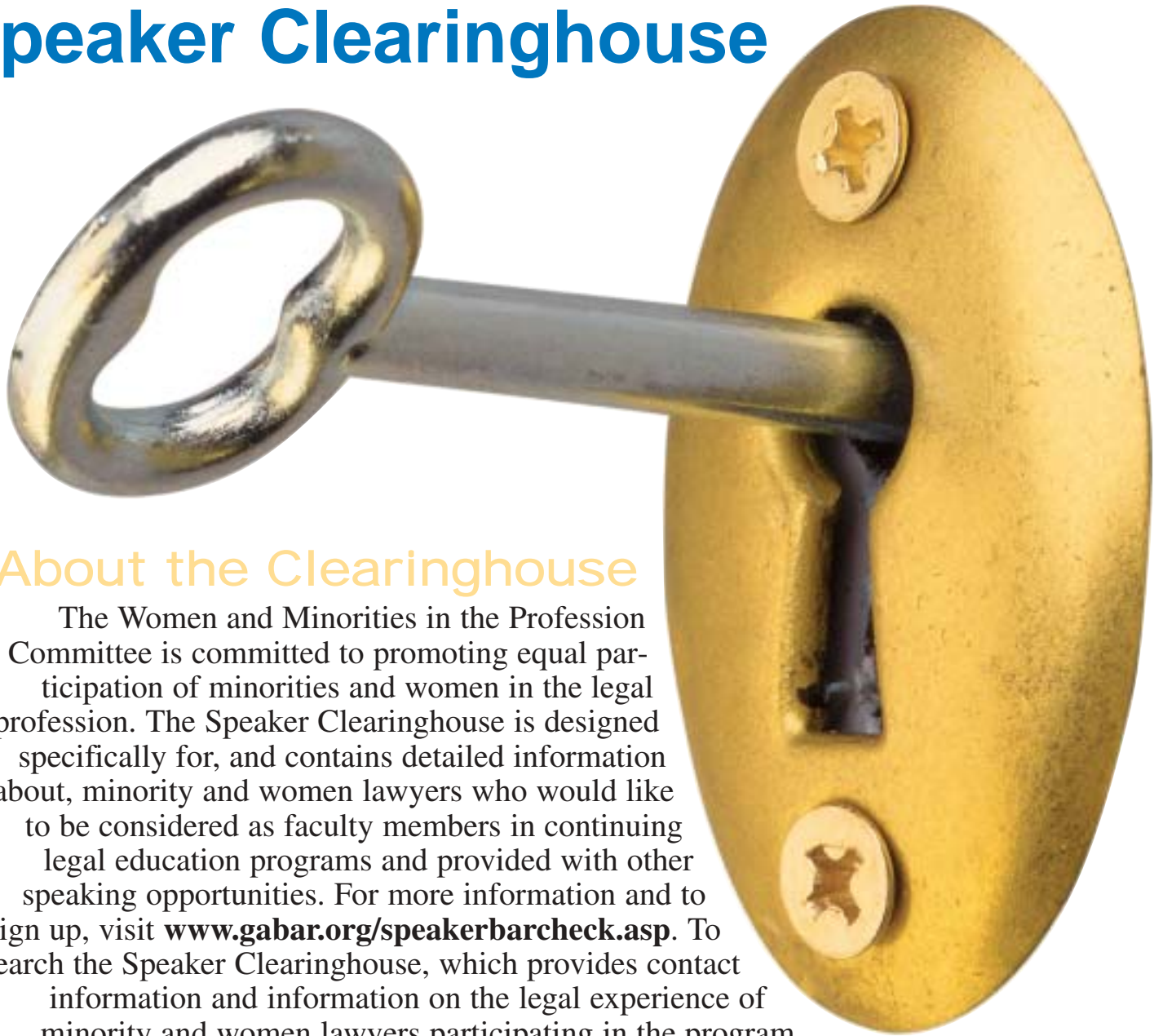
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42nd State Bar President

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The Women and Minorities in the Profession Committee is committed to promoting equal participation of minorities and women in the legal profession. The Speaker Clearinghouse is designed specifically for, and contains detailed information about, minority and women lawyers who would like to be considered as faculty members in continuing legal education programs and provided with other speaking opportunities. For more information and to sign up, visit **www.gabar.org/speakerbarcheck.asp**. To search the Speaker Clearinghouse, which provides contact information and information on the legal experience of minority and women lawyers participating in the program, visit **www.gabar.org/speakersearch.asp**.





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Consumer Assistance Program

The Consumer Assistance Program has a dual purpose: assistance to the public and attorneys. CAP responds to inquiries from the public regarding State Bar members and assists the public through informal methods to resolve inquiries which may involve minor violations of disciplinary standards by attorneys. Assistance to attorneys is of equal importance. CAP assists attorneys as much as possible with referrals, educational materials, suggestions, solutions, advice and preventive information to help the attorney with consumer matters. The program pledges its best efforts to assist attorneys in making the practice of law more efficient, ethical and professional in nature.

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

Fee Arbitration

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

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On the Cover

Incoming State Bar President Rob Reinhardt poses in front of the State Bar's Tifton office with his wife, Susan, and their children (from the left) Sam (15), Elizabeth (20) and George (22).

Cover photo by A Touch of Class Photography

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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 (17th ed. 2000). Please address unsolicited articles to: Rebecca Ann Hoelting, 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: C. Tyler Jones, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, Georgia 30303; phone: (404) 527-8736; tyler@gabar.org.

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By Rob Reinhardt

"The talented lawyers that have done the heavy lifting for us on these programs—and wrestled down considerable obstacles—are shifting into overdrive supported by the tremendous horsepower of our Executive Committee and Bar Staff."

The View From Here is Great

By Rob Reinhardt

The summer of 2004 is a terrific time to be a Georgia lawyer. Thanks to the collective energies of our Bar leaders spanning years of volunteer effort, our Bar will launch important projects that have been in "research and development" for the better part of a decade. And my good fortune is it happens on my watch.

My friends and professional comrades have rallied to assure me—and assuage their anxiety—by pointing out that I don't stand that watch alone. The talented lawyers that have done the heavy lifting for us on these programs—and wrestled down considerable obstacles—are shifting into overdrive, supported by the tremendous horsepower of our Executive Committee and Bar staff. The expressed message is that we are facing a great year. The subliminal message is that even I can't run the train far off the track.

The new Bar year offers a great opportunity to re-emphasize our efforts at member services; but a few thunderclouds remain on the horizon. As with any mandatory professional organization, there is ever-present danger of poor mem-

ber perception of the Bar. Too often feedback from our members is that intersection with the Bar means dues and discipline.

We returned from the Annual Meeting recharged and determined to renew our efforts to offer meaningful support to Georgia lawyers in their service to the public. The practice of law is increasingly demanding. The lawyer who enjoys an effective support structure is better prepared to aid clients with access to and guidance through our legal system. So if your purpose is to forecast a great year for the State Bar of Georgia, what kind of member services would be on your wish list?

How about the grand opening of a Bar Center that will provide a home to all the lawyers of Georgia? Or a research engine that will save Georgia lawyers thousands upon thousands of dollars? Maybe a mentoring program to promote the professional conduct that is the hallmark of our profession? A new and improved Membership Services Committee? Well, strap in!

Bar Center

The completion of the Bar Center has been on our radar screen for years. And some of this time it has been hard to hold the vision with the tree problems and the parking lot construction and the leasing market challenges triggered by a weak economy. The Bar Center, particu-

larly for those of us who practice outside the metro area, promises to be one of the greatest member benefits offered by any bar association.

Beyond the character of the building, evident every time you visit, I challenge you to engineer a better way to deliver value to lawyers than to make available an office building located in downtown Atlanta. Free parking is a part of the deal, as is space for client conferences and depositions. A state-of-the-art conference center will accommodate continuing legal education offerings within convenient reach of sporting events, Centennial Olympic Park and other downtown entertainment—and soon Atlanta's aquarium.

A great surprise in talking with lawyers around the state is how many of our members have not darkened the door of the Bar Center. They have a vague understanding that the Bar is about the business of restoring and refitting the Federal Reserve Building, but

the concept that a first-class facility is now available for the use of our members has not registered. Frank Jones, Cliff Brashier and the Bar Center Committee (together with Past Presidents Ben Easterlin, Hal Daniel, Jimmy Franklin, Jim Durham and others too numerous to list here) envisioned the Bar Center as a "home for the lawyers of Georgia" and have worked tirelessly through a challenging pilgrimage to bring this building to completion. For many of our members, the homecoming is overdue.

Would you pay \$200 for lifetime access to a tremendous office facility in downtown Atlanta? The Bar made that deal for you and it is coming on line this year. The dedication ceremony is planned in connection with the Midyear meeting in January 2005 and you are invited.

Casemaker

Our country law firm in Tifton is a legal publisher's dream on a

small scale. I am positioned mid-range among eight lawyers with legal experience ranging from eight to fifty years. Lawyers senior to me insist on maintaining a library of printed volumes (and I confess that I draw security from traditional digest/hard volume research). Lawyers junior to me want every bell and whistle offered by every legal research engine on the market. My old friend Chris Phelps of Elberton cautioned several years ago that lawyers who didn't access the legal information superhighway risked becoming obsolete.

All of this to explain another member benefit coming on line this year that offers great value to our members. The State Bar of Georgia is joining the Casemaker family. Jay Cook of Athens quarterbacked a committee that evaluated this program and your Board of Governors approved it at the Spring 2004 meeting. The concept of Casemaker is



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Now whenever I am asked to recommend a legal liability insurance company, I always suggest Minnesota Lawyers Mutual. It comes as no surprise to me that other lawyers feel the same way.



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the reverse of what we are accustomed to in the market of computer legal research services. The computer savvy among us have found opportunities with internet legal research that did not exist just a few short years ago. Traditional law publishers have expanded offerings so even small firms and solo practitioners have convenient access to huge research databases. And the services are priced by market forces.

Casemaker is based on a different concept. This is a legal research engine created by lawyers for lawyers. Pricing is based on cost rather than what the market will bear. Casemaker

contracts only with bar associations, who in great part define the cost of making the service available by choosing the database to be offered.

Subscribers have free access to the databases of other Casemaker states—a count of 16 as of this writing with several state bar associations indicating interest in joining the program. While Casemaker will not offer access to every resource you may need in your practice, for many Georgia lawyers it will go a great way toward covering the waterfront.

Would you pay \$9 per year for access to a legal research engine offering a database designed for Georgia lawyers? The Bar negotiated that deal for you and it will be available this year.

Member Benefits

I am always humbly grateful to anyone who will read anything I have to say; and State Bar

Communications Director Tyler Jones tells me that he intends to print the remarks I made to the Board of Governors at the annual meeting in this *Bar Journal*. So as not to presume on your good nature by being repetitive, let me make a short but earnest appeal for your input and participation in another initiative we have mapped out for this year.

The Bar's member benefit package offers great value. A short list

The Bar's antennae are up. We are in the reception mode and anxious to hear from you as to how we can effectively support you in your delivery of quality legal services to the citizens of Georgia.

includes our Consumer Assistance Program, Diversity Program, Georgia Mock Trial Competition, the Judicial District Professionalism Program (more about this below), Law Practice Management Program, the Lawyer Assistance Program, and the Unauthorized Practice of Law (UPL) Program. And this list doesn't acknowledge the opportunities for participation through our 37 sections, 32 standing committees and our Young Lawyers Division. Add the benefit to Georgia lawyers and the consumers of legal services provided by our Legislative Program, Fee Arbitration Program and Office of General Counsel. Complement this list with the vast array of public service programs that the Bar incorporates into its program of work, and I suggest that your Bar supports an agenda that offers something for all of the glorious variety of lawyers who belong to the State Bar of Georgia.

Member communication, particularly generating meaningful feed-

back, is a time-honored challenge. Poll responses are disappointing. Members who participate in the work of the Bar often do not have an appreciation of the scope of the Bar's programs. We are trying this year to sharpen the focus of our Member Benefits Committee. Working closely with Laurel Landon, the crackerjack president of our Young Lawyers Division, we have restructured the committee to

reach beyond its traditional function of assembling sources of legal support services. This year we are broadening that mission to include evaluation of

existing and potential member services as well as exploring means of more effectively communicating the availability of these services.

This year give us a little of your time and talent. Contact me or Cliff Brashier, our executive director, or your representative on the Board of Governors. Let us know what membership services are of benefit to you in your practice. Suggest services and benefits you would like for us to evaluate with the idea of making them available to our membership. The Bar's antennae are up. We are in the reception mode and anxious to hear from you as to how we can effectively support you in your delivery of quality legal services to the citizens of Georgia.

Professionalism

Another promising initiative on the horizon addresses our efforts to preserve and promote professionalism. A point of pride for Georgia

lawyers has always been the exercise of civility in the practice of our profession. We are charged with crafting the resolution of difficult disputes, where the stakes are high for our clients and the emotional level often volcanic. Great lawyers share the ability to bring to a volatile situation that brand of professional conduct that allows reason to prevail.

As the pressures of practice increase, our attention to and emphasis upon professional conduct can deteriorate. I recently heard a provocative panel discussion on professional conduct at a meeting of the National Conference of Bar Presidents. The message of the panel members was that unprofessional conduct will continue in the profession—despite the best efforts of our best lawyers—so long as the practicing bar is willing to tolerate it.

I encounter disappointing professional conduct rarely, but I confess I have been guilty of turning away because I did not want to engage in the unpleasant enterprise of questioning that conduct. And candidly, I did not serve my profession well when I did not muster the courage to say, "This kind of conduct is unbecoming to a lawyer and it diminishes all of us and the profession. I am not going to implicitly condone it by saying nothing." Nor is this a problem restricted to lawyers beginning their practice. Many of us with a considerable experience base would be well advised to consider the damage to our profession that we cause when we lower the bar.

We have two opportunities within grasp this year. The Judicial District Professionalism Program was approved by your Board of Governors several years ago. The concept of this program is to have in


place a structure where the conduct of a judge or lawyer can be addressed by that judge's or lawyer's peers and corrective action brought to bear. The program offers a meaningful option when a lawyer or judge demonstrates unprofessional conduct; and the program is underutilized. This year we hope to promote increased use. Since 1996, under the inspired leadership of John Marshall, the Standards of the Profession Committee has worked in cooperation with Sally Lockwood and the Chief Justice's Commission on Professionalism to design a means of promoting professional conduct in the practice. The concept of a mentoring program has been refined and piloted.

At the August meeting of your Board of Governors, a plan for implementation of this program will be presented. A lawyer who comes to the State Bar of Georgia will be assigned for a year to a mentor trained in counseling professional conduct; and I suggest that experienced lawyers (myself particularly) who serve as mentors will find it good therapy to re-examine our own commitment to professionalism. The program will carry a price tag of \$10 per lawyer per year. The preservation of the standards of conduct inherent in our profession is a noble enterprise. Ten dollars a year invested in a well conceived mentoring program is a bargain.

Our goal is to make the State Bar of Georgia the first resource our members think of when addressing a problem in their practice.

The prospect of a year that will see the spin up of these quality programs has to increase your enthusiasm quotient. My communications skills falter at the effort of expressing the gratitude I have for the past

presidents and leaders of the State Bar of Georgia who shouldered the load and forged the progress we will continue this year. But please hear my sincere thanks to the lawyers of Georgia for allowing me to be on deck during the upcoming year to contribute in some small way as president of this great organization.

I figure it is like my parents have explained when I have tried inadequately to thank them for their immeasurable support and counsel. They say you repay the debt by providing the same for your children. So this year your elected leadership will be about the business of honoring the service that has come before by preserving the great heritage of the Bar for those that will come after. One way we will attempt this is to emphasize member benefits and services. 

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"I'm happy to report that during the course of this Bar year, members will experience first-hand some of the benefits the Board has worked hard creating."

Your Board — Serving the Profession

By Cliff Brashier

Each year at this time I like to reflect on the commitment and dedication to the profession exhibited by the Georgia attorneys who comprise the Board of Governors. The men and women who selflessly give of themselves to serve make me proud of our profession.

For those members who may be new to the organization, the Board of Governors is the body that sets the course for the more than 35,000 lawyers licensed to practice law in Georgia. When established by law in 1963, the State Bar of Georgia was charged to:

- b Foster among the members of the bar of this state the principles of duty and service to the public;
- b Improve the administration of justice; and
- b Advance the science of law.

To accomplish these goals, the Board of Governors of the State Bar of Georgia was created. The Board meets four or five times per year, and may hold special meetings at the discretion of the president. Six members of the Board of Governors serve on the Executive Committee with the officers of the Bar. During the Board's annual meeting each year, three new members are elected to serve two-year terms. The Executive Committee meets monthly and exercises the power of the Board of Governors when it is not in session.

When in session, members of the Board of Governors serve to do the work of the Bar. This includes the administrative, financial and policy-making functions as they relate to regulating and enhancing the practice of law in the state. The Board follows the rules and bylaws governing the Bar as outlined in the *Bar Directory & Handbook*. Any change to the Bar's rules needs the approval of the Supreme Court of Georgia, and any change to the bylaws requires membership approval.

Board of Governors members are elected geographically by their peers for representation; and they are encouraged to keep their constituents informed about Bar issues. Please get to know them. They are listed in your directory and online at www.gabar.org. If you have a question regarding any Bar issue, feel free to call your Board representative or me. When serving on the Board of Governors, Board members speak with the voice of their constituents.

While Board members have a unique responsibility to both the Board and their constituents, they also have a duty to the public. Board members serve as role models for the profession in their communities and across the state.


I would like to thank the Board members who stepped down during the 2004 Annual Meeting and welcome the new Board members who took their place.

I'm happy to report that during the course of this Bar year, members will experience first-hand

some of the benefits the Board has worked hard creating. Two of the biggest benefits include:

b Casemaker, an online research service, is designed to be the primary law library for most Georgia attorneys. Attorneys in other states, where the service is offered as a member benefit, have found the system's search engine to be user friendly, powerful and a simple transition from existing legal research services.

b The Jan. 15, 2005, dedication of the Bar Center, which will lay the foundation for a cohesive organization by providing all segments of the profession access to a central gathering place. United States Supreme Court Justice Anthony Kennedy will be our special guest for the dedication.

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

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Augusta Circuit, Post 2
Chattahoochee, Circuit Post 3
Clayton Circuit, Post 2
Conasauga Circuit, Post 1
Douglas Circuit
Eastern Circuit, Post 3
Flint Circuit, Post 2
Gwinnett Circuit, Post 2
Macon Circuit, Post 2
Member-at-Large, Post 3
Paulding Circuit
Rockdale Circuit
Southern Circuit, Post 3

New

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William J. Keogh III
Peter J. Daughtery
Harold B. (Scott) Watts
James H. Bisson III
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“Young lawyers in the YLD provide valuable services to the profession and to the public.”

“Why Should a Young Lawyer Participate in the YLD?”

By Laurel Payne Landon

As I have talked to young, and not-as-young, lawyers around the state, one question keeps coming up: “Why should a young lawyer participate in the YLD?” A very good question that deserves an answer, given the competing demands on a young lawyer’s time such as family obligations, religious activities, community activities, and, oh yes, work!

Here are the reasons I think a young lawyer should be involved in the YLD. I am sure this is not an exhaustive list, but I hope it is a helpful one that in some way answers the question.

Service

Young lawyers in the YLD provide valuable services to the profession and to the public. As members of a profession, we are obligated to give back to our communities. The YLD provides many opportunities to do so. We have 26 commit-

tees providing a wide range of services. One of our most active committees is the Community Service Committee that performs many valuable non-legal services, including taking DFACS children to the zoo and sorting suits at the suit drive at the Midyear Meeting.

Of course, there are other organizations that provide valuable community services that young lawyers can (and should) be involved with, so why serve through the YLD? Well, besides obtaining the other benefits listed below, serving through the YLD promotes a positive image of lawyers to our communities. The image of lawyers has taken a bad, and in my opinion unfair, turn in recent years and service is one way to combat the misconceptions.

Networking

Involvement in the YLD is a great way to meet and work with young lawyers across the state. With very few exceptions, we have a courteous, professional, collegial State Bar. The lawyers involved in the YLD are some of the best lawyers and best people I have ever met. I feel extremely fortunate to know lawyers in almost every city in Georgia because of my involvement in the YLD. It is a real person-

al and professional benefit to establish such a network.

Continuing Legal Education

The YLD, through its committees, provides a substantial number of CLE courses geared toward the young lawyer. In addition, this year we are offering CLE courses at our business meetings. We believe this is a valuable benefit to young lawyers from all different practice areas.

Leadership Opportunities


The YLD provides many great leadership opportunities for young lawyers, including serving as chair

of a committee, serving on the executive council, and serving as an officer. It is often difficult for a young lawyer to step into a leadership role in organizations that have older members. The YLD is a perfect place for young lawyers to develop and refine leadership skills.

Fun, Fun, Fun

Yes, the YLD provides an opportunity to have fun! Our business meetings always include receptions and group dinners so that young lawyers and their spouses can get to know one another in a relaxed atmosphere. One young lawyer friend of mine once told me that he did not want to spend his free time with other lawyers. My response to

that was and is that you are missing out on developing lifelong friendships and having a great time.

I hope I have convinced you that participating in the YLD is worth your time. If you are still skeptical, I urge you to join a committee (committee brochures recently went out) and come to our first meeting at Barnsley Gardens from August 20-22. If you do, I am willing to bet that like so many of us, you will stay involved. If you have any questions or need any information, you can always contact Deidra Sanderson, our YLD Director, or me. I appreciate the opportunity to serve you and look forward to meeting you. 



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A Look at the Law

By Beth Locker and
Melissa Dorris

A Child's Right to Legal Representation in Georgia Abuse and Neglect Proceedings

In Georgia there are nearly 14,000 children currently involved with the child welfare system,¹ and each of these children has been involved in at least one hearing in Georgia's juvenile courts. For the children and families involved, these hearings are of momentous importance. Whether it is a probable cause hearing, a termination of parental rights hearing or any of the possible steps in between, these hearings change children's lives forever. Despite the critical nature of these hearings, not all of Georgia's children receive legal representation in deprivation cases, leaving children's interests vulnerable to an overburdened and frequently inattentive system.

To fulfill its responsibility to protect the state's children, Georgia must ensure that each child receives competent legal representation in deprivation proceedings. Before additional resources are invested in this effort, however, the specific barriers inhibiting attorneys representing children from doing the best possible job must be explored. This article analyzes the federal and state statutory and constitutional sources of the right to representation for children, and identifies inconsistencies in Georgia law that contribute to systemic confusion about a child's right to representation in Georgia's juvenile courts.

A CHILD'S RIGHT TO LEGAL REPRESENTATION

Historically

The field of children's law is relatively new in comparison to the U.S. legal system. As the legal system in the United States developed, there was no notion of children's law. Parental authority was viewed as near absolute and there was no real governmental recognition of abuse, neglect or even molestation. The state had some involvement in caring for abandoned and orphaned children but even this was minimal, limited basically to providing funds to private agencies for the care of those in need. Throughout most of the 19th century, there were no laws designed to protect children. The first state child protection agency was not

founded until the late 1870s² and it was the 1935 passage of the Social Security Act that marked the first meaningful federal involvement in the issue.³ Even this initial state and federal involvement was severely limited, following a history of deference to parental rights and lack of recognition of any rights belonging to the child.⁴

Only in the 1960s with the publication of "The Battered-Child Syndrome" by C.H. Kempe in the *Journal of the American Medical Association*⁵ did widespread awareness come to the issue of child abuse. Over the next decade, interest across the nation increased as evidenced by the spread of mandatory reporting laws and an increase in federal funding.

On a parallel track, the recognition of the rights of youth was expanding in the area of delinquency. In 1967 the U.S. Supreme Court in *In re Gault* wrote: "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."⁶ Regarding the right to counsel, the court held, "[t]he child 'requires the guiding hand of counsel at every step in the proceedings against him.'"⁷ In *Gault* the ruling was explicitly limited to the delinquency context, but dicta in the case clearly affirmed an expanding judicial recognition of children's rights.⁸

Despite the court's perception of such a need in the juvenile delinquency context, the "guiding hand of counsel"⁹ has not been similarly extended to every child in deprivation proceedings. While the courts have found no constitutional basis for a child's right to counsel in this context, many state statutes specifically provide for such representation.

Federal Law – Child Abuse Prevention and Treatment Act (1974)

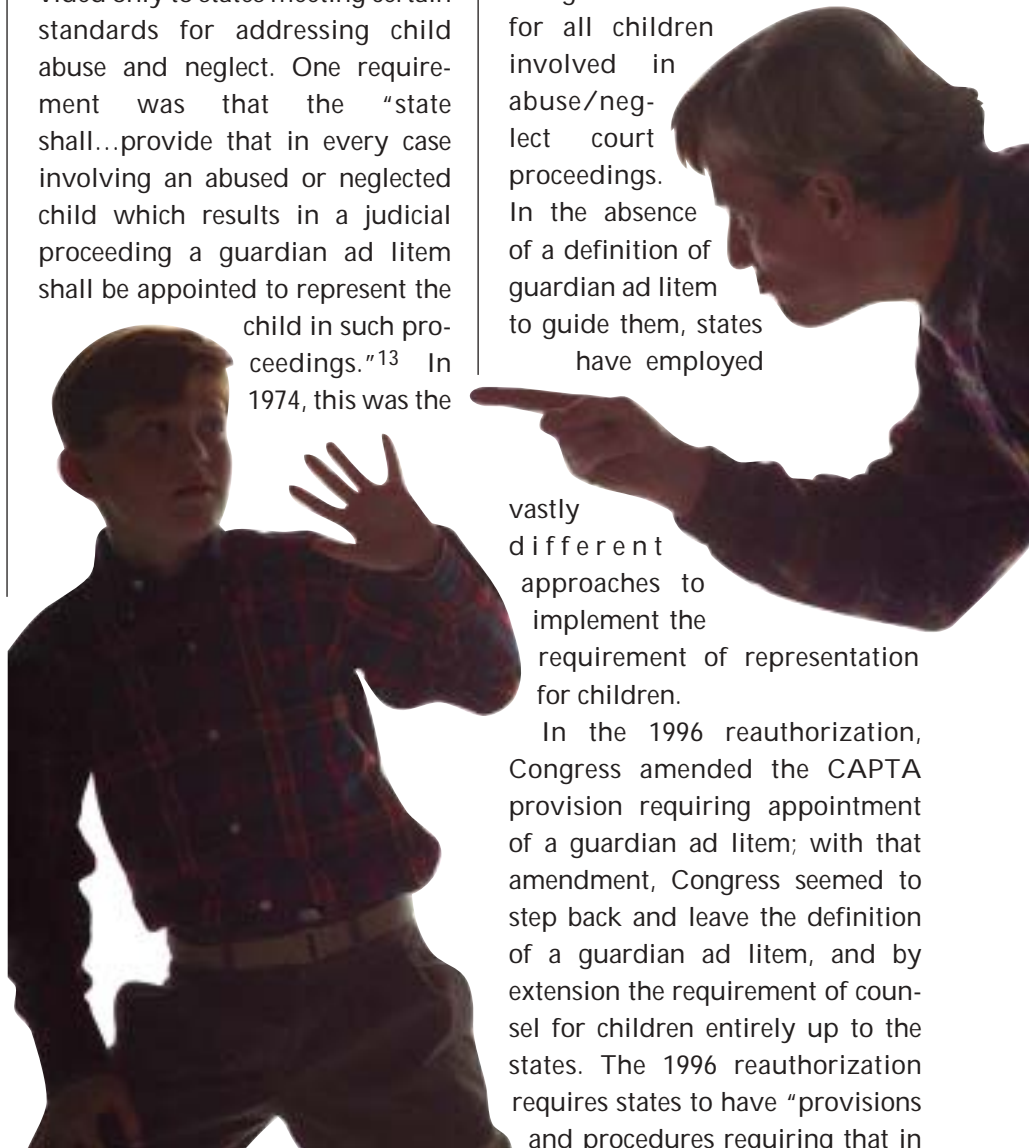
The advent of representation of children in deprivation matters largely began with passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974.¹⁰ CAPTA followed extensive congressional findings on the prevalence and severity of child abuse in the United States¹¹ and was passed with the intention of funding demonstration programs for the prevention, identification and treatment of child abuse and neglect.¹² Such funding would be provided only to states meeting certain standards for addressing child abuse and neglect. One requirement was that the "state shall...provide that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings."¹³ In 1974, this was the

extent of the commentary on a child's right to counsel. There are no definitions of guardian ad litem or representation nor is there any language in the legislative history that helps illuminate the congressional intent.

Over the last three decades, CAPTA has been reauthorized and amended multiple times, most recently on June 25, 2003, by the Keeping Children and Families Safe Act.¹⁴ As of 2003, nearly all states, including Georgia, accept CAPTA funds and thus are bound by its mandates.¹⁵ Largely because of CAPTA, nearly all states have laws mandating the appointment of a guardian ad litem for all children involved in abuse/neglect court proceedings. In the absence of a definition of guardian ad litem to guide them, states have employed

vastly different approaches to implement the requirement of representation for children.

In the 1996 reauthorization, Congress amended the CAPTA provision requiring appointment of a guardian ad litem; with that amendment, Congress seemed to step back and leave the definition of a guardian ad litem, and by extension the requirement of counsel for children entirely up to the states. The 1996 reauthorization requires states to have "provisions and procedures requiring that in



every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, *who may be an attorney or a court appointed special advocate (or both)*, shall be appointed to represent the child in such proceedings....¹⁶ The 1996 amendment failed to clarify the requirements for legal representation of children in deprivation matters, and instead, left each state to determine what model of representation would be best for its children.

CHILD'S RIGHT TO LEGAL REPRESENTATION UNDER GEORGIA STATE LAW

As discussed above, CAPTA, in part, provides federal financial assistance to state child protective services agencies so long as the state enacts legislation ensuring every child involved in a child welfare proceeding has a court appointed guardian ad litem.¹⁷ A variety of Georgia state laws address the representation of children and the appointment of guardians ad litem, however, the statutes are conflicting.¹⁸ Thus practitioners representing children in Georgia struggle to understand their roles and responsibilities to the children and to the courts in deprivation cases.

Explicit Right to Attorney in Termination of Parental Rights Cases

Proceedings to terminate parental rights offer an instance of clarity for child representatives in Georgia. Termination is the legal

process by which all parent-child ties are permanently severed. The parent and child become legal strangers, no longer possessing rights of inheritance, obligations of support, rights to sue for wrongful death or any of the other panoply of legal relationships normally inherent in a parent-child relationship.¹⁹ In such proceedings, a child is unequivocally entitled to traditional legal representation by statute.

In any proceeding for terminating parental rights or any rehearing or appeal thereon, the court shall appoint an *attorney to represent the child as the child's counsel* and may appoint a separate guardian ad litem or a guardian ad litem who may be the same person as the child's counsel. (emphasis added).²⁰

Children in Georgia, therefore, clearly have a right to legal counsel in standard termination of parental rights hearings, and other provisions of Georgia law suggest that this right is in fact even broader.

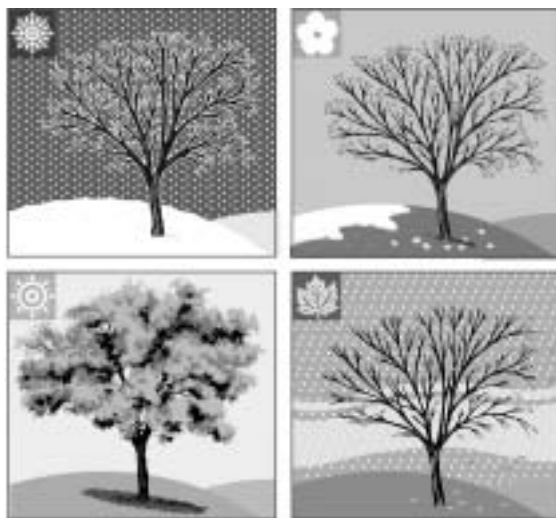
"Party's" Right to an Attorney

The general right to legal representation in juvenile court proceedings is established by Georgia statute. "A *party* is entitled to *legal* representation by counsel at *all stages* of any proceeding alleging delinquency, unruliness, incorrigibility, or *deprivation...* (emphasis added)."²¹ The language of this section expressly directs the provision of legal counsel for "parties" to the named actions. Thus, whether the right to traditional legal representation is guaranteed to children by a literal reading of the text of this section depends on whether children are included within the definition of a party to the deprivation action. Unfortunately, a definition of "party" for purposes of this sec-

tion is not statutorily provided in the code.²² Nor is there any case law addressing whether a child is to be considered a party in a deprivation hearing in Georgia.

The statute further provides that: "[c]ounsel must be provided for a child not represented by the child's parent, guardian or custodian. If the interests of two or more parties conflict, separate counsel shall be provided for each of them."²³ Again, the statutory language alone is not entirely clear. Can a neglected or abused child ever be adequately represented by his or her parent, guardian or custodian? In deprivation proceedings, is there not a high likelihood of conflict between the child and responsible adult? Can the existence of such a conflict ever be established prior to the deprivation proceedings?

In 1976, the attorney general of Georgia was asked by the commissioner of the Georgia Department of Human Resources to address this exact dilemma. In response, the attorney general relayed the position of the Georgia General Assembly that "the Juvenile Court Code is to be liberally construed toward the protection of the child whose well-being is threatened"²⁴ and that there is an "inherent conflict of interests in parental termination proceedings between the child and the parent charged with the child's continued abuse, neglect or deprivation..."²⁵ More pointedly to the commissioner's question, the attorney general wrote "I cannot see that the inherent conflict of interests between the child and his alleged abuser would differ in a deprivation proceeding [as opposed to a parental termination proceeding]...[D]eprivation proceedings arising from child abuse



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and neglect by a parent or caretaker do present a conflict of interest..."²⁶

Taking into account the attorney general's finding that in abuse and neglect proceedings, the interests of children and their parents necessarily conflict, it no longer matters if children qualify as parties. Their interests by definition conflict with those of their parents and thus they are entitled to counsel at all deprivation proceedings under § 15-11-6(b).

Attorney Roles and Additional Legislative Support

Generally speaking, advocacy of a child's position may assume three possible forms:

- b Lawyer—providing traditional legal representation;
- b Guardian ad litem—providing representation of a child's "best interests"; and
- b Split-role lawyer/guardian ad litem—providing some combination of the services of the first two possible roles.

Georgia does not specify what role the child's attorney is to play.²⁷ The duties of both lawyer and lawyer/guardian ad litem must be performed by an attorney; but, the duties of a child's representative under a strict guardian ad litem approach may be performed by a person who is not legally trained. Section 15-11-9 of the Georgia Code, addressing the appointment of guardians ad litem, can be read together with O.C.G.A. § 15-11-6(b) (addressing a "party's" right to counsel) and with the federal CAPTA requirements to provide context useful for elucidating the scope of a child's right to counsel. Addressing when appointment of a guardian ad litem is appropriate, Section 15-11-9 reads:

The court at any stage of a proceeding under this article, on application of a party or on its own motion, shall appoint a guardian ad litem *for a child who is a party to the proceeding* if the child has no parent, guardian, or custodian appearing on the child's behalf or if the interests of the parent, guardian, or custodian appearing on the child's behalf conflict with the child's interests or in any other case in which the interests of the child require a guardian....In deprivation cases, an attorney or court appointed special advocate, or both, may be appointed as the child's guardian ad litem. (emphasis added)²⁸

The syntax of this directive suggests the child is a party to a deprivation proceeding. In Georgia, appointment of a guardian ad litem is required "for a child who is a party to the proceeding."²⁹ CAPTA requires a guardian ad litem be appointed "in every case involving an abused or neglected child which results in a judicial proceeding."³⁰ To be in compliance with CAPTA, Georgia courts must appoint a guardian ad litem for every child involved in a judicial abuse or neglect proceeding. Under Georgia law, the only way for all children to be appointed a guardian ad litem is for all children to be considered parties and then under §15-11-6(b), as parties, the children are entitled to an attorney.

Georgia Indigent Defense Law Supports Legal Representation of Children

Indigent parties are entitled to appointed counsel to represent them in deprivation matters. An "indigent person" is one who, at

the time of requesting counsel, is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses for representation.³¹ The relevant code section, O.C.G.A. § 17-12-38.1, states:

State funded local indigent defense programs and local indigent defense programs shall provide legal representation for indigents in...all actions and proceedings within the juvenile courts of this state in which a person is entitled to legal representation under the Constitution of the United States or the Constitution and laws of the state of Georgia, including but not limited to actions involving...deprivation, and termination of parental rights. Nothing in this code section shall be interpreted as applying to guardians ad litem.³²

House Bill 1254, the bill creating this section of the Georgia code, was proposed to clarify that money given to counties for indigent defense may also be used for legal representation of indigent juveniles.³³ Specifically, the act provides that funds may be used for legal representation under the U.S. Constitution or the constitution or laws of Georgia.³⁴ Neither the U.S. Constitution, federal law, nor the constitution of the state of Georgia create a right to legal representation in deprivation matters, and yet, representation "including...actions involving...deprivation"³⁵ are covered by the Georgia indigent defense statute. The only remaining source of such a right would be Georgia statutory law.

Together, these sections comprise the entirety of statutory guidance available to children's representatives in Georgia. Analysis of these provisions demonstrates the confusion that manifests itself in

practice about the role and responsibility of advocates for children in deprivation cases.

CONCLUSION

Children deserve a competent attorney to represent their interests during abuse and neglect proceedings. The unique interests at stake, the complexity of the issues involved, the multidisciplinary nature of the evidence and remedies and the particular vulnerabilities possessed by children necessitate legal advocacy by representatives capable of effectively navigating the intricacies of the child welfare system. Child representatives are an essential component to juvenile court proceedings in Georgia, but their effectiveness as advocates and the strength of the system overall is diluted by a lack of clarity as to their precise role and responsibil-


ities. Without clear decisional or statutory guidance informing expectations for legal advocacy for children, uncertainties and inconsistencies inhere in representation and children's interests cannot uniformly be adequately protected. Children's voices are not being heard at the time when the future of their families is being determined.

An adversarial court process dependent on competing individual advocacy for information will not produce good outcomes for participants without competent legal representation. Children need zealous and effective legal advocacy if the child welfare system is to succeed at protecting children. Child welfare cases are complex matters with far-reaching issues that affect the lives of individual families, the well being of the larger community and the life of a child forever.


National standards recommend that children be represented at every stage of every child protection case.³⁶ In Georgia, however, representation is inconsistent, varying according to the type of hearing, the availability of court resources and the county of the child's residence at the time the state first removed the child. As a result, continuity, consistency and uniformity are sacrificed, arguably at the child's expense. Improvement of the representation now afforded children in deprivation cases is hampered by unclear and inconsistent statutory guidance for the practice.

Congress left the responsibility of establishing the scope of child representation to the states, and Georgia has responded with confusing mandates concerning when an advocate should be appointed and conflicting guidance as to whether


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legal representation is required at all. The ambiguities at the fundamental levels of the legal framework inhibit children's attorneys from being able to optimally contribute to the child protection effort.

POSSIBLE SOLUTIONS

The American Bar Association (ABA) and the National Association of Counsel for Children (NACC) recommend the model of the "child's attorney" in their jointly published "Standards for Lawyers Who Represent Children in Abuse and Neglect Cases."³⁷ This model calls for a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality and competent representation to the child as is due an adult client. While the model emphasizes independent legal representation for every child, it in no way precludes the additional appointment of a lay guardian ad litem.


Still, this model recognizes there will be occasions when the client directed model cannot serve the client and exceptions must be made (i.e. the child is pre-verbal, very young or for some other reason incapable of judgment and meaningful communication). In such cases, the attorney may rely upon a substituted judgment process similar to the role played by a lawyer/guardian ad litem designed to serve the best interests of the child, or may call for the appointment of a separate guardian ad litem.

This model provides that if the child's attorney determines the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the



lawyer shall, after unsuccessful use of the attorney's counseling role, request appointment of a separate guardian ad litem and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation. Child advocates in Georgia must engage in a conversation to determine how this model can be adapted to meet the specific needs for representation of children in the state.

Before such a conversation can have real effect, however, Georgia's Legislature must clarify the right to legal counsel for children. There are many ways to clarify such a right. These include but are not limited to adding a statement to O.C.G.A. §15-11-98 stating that in all deprivation proceedings, the child who is the

subject of the action has the right to legal counsel and such legal representation shall continue as long as the court jurisdiction continues or to expressly define the child who is the subject of a deprivation proceeding as a party to the matter. 

Authors' Note: The authors are grateful to the staff of the Barton Child Law & Policy Clinic for their ongoing support and to the many student-interns who contributed to the research and editing for this final article. Contributors include Laurie-Ann Fallon, Elizabeth Tasto, Melanie Mendenhall and Clinic Director Karen Worthington.

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ENDNOTES

1. On October 1, 2003 there were 13,942 children in care in the state of Georgia. See Georgia's statewide data submission from the DFCS Evaluation and Reporting Section to the Adoption and Foster Care Analysis and Reporting System (AFCARS), Federal DHHS ACF.
2. Most child law scholars attribute the beginnings of U.S. children's law to Etta Wheeler, a New York City tenement nurse and a nine-year-old girl named Mary Ellen. In December of 1873, Ms. Wheeler is reported to have first discovered Mary Ellen in an apartment where she was regularly being beaten by her foster parents. Over the next several months, Ms. Wheeler reported Mary Ellen's plight to police and to charities but to no avail. Finally, out of desperation, Ms. Wheeler turned to Henry Bergh of the Society for the Prevention of Cruelty to Animals. Using the laws banning animal cruelty, Mr. Bergh was able to get a judge to intervene and remove Mary Ellen from her foster home. This was the beginning of court intervention to protect children from abuse. Several years later, the state of New York responded by establishing the nation's first child protective agency and passing the first state child abuse law. *See, e.g.,* Robert W. Ten Bensel et al., *Children in a World of Violence: The Roots of Child Maltreatment in The Battered Child 3* (Mary Edna Helfer et al., eds., 5th ed. 1997).
3. The Social Security Act of 1935 created Aid to Dependent Children, offering financial assistance to single mothers. Title IV-B of same Act provided funds to encourage prevention and protective services for children in need and these funds were largely used to pay for foster care. Patricia A. Schene, *Past, Present, and Future Roles of Child Protective Services*, 8(1) *The Future of Children*, 23, 27 (Spring 1998).
4. 48 A.B.A.J. 719, 720 (1962).
5. C.H. Kempe, et.al., Silverman, *The Battered-Child Syndrome*, 181 J.A.M.A. 17 (1962).
6. *In re Gault*, 387 U.S. 1, 13 (1967).
7. *Id* at 36 citing *Powell v. State of Alabama*, 287 U.S. 45, 69 (1932).
8. *Id* at FN25. Citing "the late Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, in a foreword to *Virtue*, Basic Structure for Children's Services in Michigan (1953), p. x: 'In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provision as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as chattel.'"
9. *In re Gault* at 36.
10. Child Abuse Prevention and Treatment Act (CAPTA), P.L. No. 93-247, 88 Stat. 4 (1974) (codified at 42 U.S.C. §§5101-5107 (1988)).
11. H.R. Rep. No. 93-685; S. Rep. No. 93-308 (1974).
12. CAPTA, P.L. 93-247, S. Rep. No. 1191 (1974).
13. CAPTA at Sec. 4 (b) (2)(G).
14. Keeping Children and Families Safe Act of 2003, Pub. L. No. 108-36, 117 Stat. 800 (2003).
15. The exceptions are Indiana, Pennsylvania and California. Jennifer Walter, *Averting Revictimization of Children*, 1 J. Ctr. for Children & Cts, 45 (1999).
16. CAPTA, P.L. 104-235, S. Rep. 919 at Sec 107(b)(2)(A)(ix) (1996).
17. *Id.*
18. *See O.C.G.A. 15-11-98 and Compare O.C.G.A. 15-11-9 with O.C.G.A. 15-11-6(b).*
19. Statutory requirements for the termination of parental rights under Georgia law can be found at *O.C.G.A. § 15-11-94*.
20. O.C.G.A. § 15-11-98(a) (2002).
21. O.C.G.A. § 15-11-6 (2002)
22. *See* O.C.G.A. § 15-11-2 (2002) Definitions.
23. O.C.G.A. § 15-11-6(b) (2002).
24. 76 Op. Ga. Att'y Gen. 131 (1976).
25. *Id.*
26. *Id.*
27. The Georgia Supreme Court Child Placement Project has compiled "Guidelines for Georgia's Attorney Guardians Ad Litem in Child Deprivation Cases." These guidelines, while extremely useful for their intended purpose of assisting attorney guardians ad litem throughout Georgia in improving the quality of representation in juvenile court, are merely aspirational. Further, they do not address the advantages or disadvantages of the various attorney roles, let alone come to a conclusion on the preferred model of representation. The guidelines are available at http://www.childwelfare.net/mrb/projects/gal_guide.html.
28. O.C.G.A. § 15-11-9(b) (2002).
29. *Id.*
30. CAPTA at Sec. 4 (b) (2)(G).
31. O.C.G.A. § 15-11-6(a) (2002).
32. O.C.G.A. § 17-12-38.1 (2002).
33. *See* Karin L. Allen, "Legal Defense of Indigents: Provide Indigent Defense Funds to Defend Indigent Juveniles," 11 Ga. St. U.L. Rev. 135 (1994) (relying on telephone interview with Rep. Charles Thomas, House District No. 100 (Mar. 25, 1994).
34. *Id.* at 136.
35. O.C.G.A. § 17-12-38.1 (2002).
36. Marvin Ventrell, *Legal Representation of Children in Dependency Court: Toward a Better Model - The ABA (NACC Revised) Standards of Practice*, NACC Children's Law Manual Series, 167 (1999).
37. *Id.* at 173.

First Tuesday

By Gerry Carty

Andy Clemons' name appeared first on the sign in front of the door, but not by seniority. Danny Twickenham had been a closing attorney in Paulding County for years and had the experience, connections and foresight to know that "Clemons and Twickenham" had the synergy to succeed. The firm had grown to seven lawyers in five years and closed most of the real property deals for 20 or so banks and lending institutions in an area stretching on a northwestern swath of country from Cobb through Paulding into Bartow Counties, north of Atlanta.

The region had exploded with growth in the 1990s, as had the firm of "Clemons and Twickenham" but there were days when Andy wondered if this parallel growth caused personal problems comparable to

those that the counties were experiencing. Was his soul stuffed into an aluminum trailer—albeit metaphorical—on a high school campus in some recently pastoral part of the county? Was his mind gridlocked on a 10-mile traffic jam on the highway of life?

There was no doubt that tedium got him down, but the life of a closing lawyer wasn't always tedious. There was always First Tuesday—the first Tuesday of the month when Andy, as the foreclosure specialist for his firm, got to go to the courthouse and 'cry' the foreclosed properties for auction.

Andy liked First Tuesday. The usual gang was always there—five

or six lawyers from McMalla Praymer, and two or three from Swartnegger and Nuckols, the firms which did most of the foreclosures in North Georgia, sprinkled with a bunch of locals. 'Crying out', the long recitation of foreclosure sale *caveats* and property descriptions, had to be done word for word, or else the foreclosure might not stick. Tom Maddox, one of the local lawyers, had begun doing his in a different accent or 'voice' for each. In one Tom would be Humphrey Bogart, on another he would be Jimmy Cagney or Jimmy Stewart, and so on. He even brought props—hats and fake noses usually. Everyone

Annual Fiction Writing Competition

The Editorial Board of the *Georgia Bar Journal* is proud to present "First Tuesday," by Gerry Carty of Atlanta, as the winner of the *Journal's* 13th Annual Fiction Writing Competition.

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

would try to guess who he was doing. Helen Wick from McMalla, not to be outdone, would counter with her rendition of Garbo or Bacall or Roseanna Roseannadana. Soon the impersonations became more obscure and they had a good old time making small side bets on who was who. Later, they all went to lunch together.

Though he liked First Tuesday and looked forward to it, it depressed him a little to know that this was the highlight of his month. He wished something would happen to make what he did more interesting.

In the spring of 2002 it did.

\$

Billy-the-Bic Clancy, a native born son of the soil of Cobb, never saw a bank he didn't like. He had robbed most of them in the area and had been the most prolific, if not the most successful, bank robber North Georgia had seen in the 1990s. No small feat, considering he spent much of that decade in federal prisons.

In March of 2000, paroled after a long stretch, Billy Clancy liked to say he had finally learned his lesson. He would never rob a bank again. Never with an accomplice, that is. From now on, he told himself, I'm going to be a Conspiracy of One.

Anytime he depended on someone else, he got sold out. Once he had even stayed out of trouble with the law for three years until his 'co-con-spir-ay-tor'—in the drawn-out language of the federal prosecutor who tried his case—had been picked up in Needles, California—Needles, California!—for some

petty misdemeanor. Unfortunately, it was one of those federal misdemeanors no one even knew existed—selling flammable insulation or something like that—and to save his own neck he had offered Billy up on a plate. It hardly seemed fair: A misdemeanor the equivalent of ripping the label off a mattress in



exchange for a major felony: the First State Bank job on Northside Parkway of Feb. 14, 1996. His own, personal Valentine's Day massacre but, ironically, a sweetheart deal for the co-conspirator who had already done his time for it.

When Billy Clancy walked out of prison with \$25 in his pocket and a bus ticket back to Marietta, he repeated his resolve like a mantra, "From now on, a Conspiracy of One."

Three days later, in the city of Dallas in Paulding County, he

walked into the First State Bank and pulled off the biggest heist in the history of the county: \$200,000 in cash. No gun. No weapon, Just a Bic pen held against the inside pocket of his London Fog coat. No dye bombs. No big-bellied, old-guy security guard getting in the way. No *co-con-spir-ay-tors* to louse things

up. Just Billy the Bic on a bicycle with a sports bag slung over his shoulder, pedaling furiously on the back roads from Dallas back to Marietta. Not a police car in sight.

Fifteen years as a concrete finisher, when he was not robbing banks or in jail, had taught Billy to lay a slab smooth as a baby's bottom. Grandpa Jimmy Clancy and his wife Emma, living in an old shotgun shack by the Civil War Cemetery, had long-needed their back porch, which was just padded dirt, slabbed in. They were Billy's only kin and were pleasantly surprised when he showed up to do the job with a dozen 80-pound bags of concrete weighing down the back of his old pick-up truck.

By dinner time the slab was done. Billy told them to keep off it for a few days till it cured.

Strange, they thought, how they hadn't seen him in three years then suddenly he appears to do a job they'd been asking him to do for a decade.

That night, Billy bought himself a ticket to Matamoros on one of those minibuses which leave the corner of Buford Highway and Chamblee Tucker Road in Atlanta, bound for all parts of Mexico. He had \$10,000 in his pocket, a \$190,000 under the slab and a six-pack of Pabst Blue Ribbon under

A wire fence down the center of the quadrangle divides it into two exercise areas. On one side, low risk, white-collar criminals exercised, free to come and go as they please. Their moderately risky brethren exercised on the other side under lock and key.

his belt. He knew he would sleep contentedly all the way to the border. He had to visit some friends in Matamoros, settle some debts, then cut up to Needles, California, and settle that other score. He'd be back in a few years to re-do the concrete job. He chuckled to himself as he lowered his head and heaved himself into the bus. A Conspiracy of One. Yeah.

Raising his head once he pulled himself up into the minibus and swung his rear into his seat, he saw that the bus driver had turned and was staring at him, giving him a certain look he knew immediately, and with sinking sensations, recognized. This was no Mexican bus driver. This man had gringo written all over him. Federal gringo.

"William Robert Clancy," he said, "You're under arrest for the robbery of the First State Bank of Paulding County."

Billy looked around. Some Mexicans, looking weary and settled in for the long haul, watched his face with little curiosity. In back of him and outside the bus, at least six other federal agents with guns drawn confirmed what the driver had said.

It turned out that a camera at an ATM across the street from the bank had been struck by a painter's ladder earlier that morning and had swiveled around to catch Billy getting on his bike further up the street, sports bag slung across his shoulder. The bike, not Billy, had been quickly traced. Billy's 'unin-

vited, co-con-spir-ay-tor' had been a clumsy painter.

\$

Two years later, Father McMahon, the prison chaplain, sat in the visiting room of the federal prison with Diane Clancy, waiting for Billy to be brought in. Moments like these distressed him more than most. It was hard on prisoners when kin died and they couldn't go to the funeral or obtain- what was it they called it nowadays?—closure. Hard. Very hard.

Billy came in and looked from the chaplain to his sister-in-law, whom he hadn't seen in years, not since his brother passed. They wouldn't be there if it wasn't something important.

He licked his lips and sat down. "Grandpa?" he said.

Diane Clancy nodded. The priest reached out and patted Billy's hand on the table.

"Your grandpa passed last week, Billy. Diane just got the word and came to see me first."

Billy looked at his sister-in-law.

"I've been in California, Billy. Otherwise, I'd have known sooner."

"How's grandma taking it?" Billy asked.

Diane and the priest exchanged looks.

"Billy," Diane said, "Your grandma's got a condition called episodic senile dementia. Some days she knows your grandpa died, other days she doesn't."

"What about the house?" Billy asked.

His visitors were surprised by the question. Though Billy seemed in shock, he didn't appear to be grieving.

"Before your grandma went into the assisted care facility she rented the house to a family with eight kids, Billy. When she was lucid, that is."

"Eight kids!" Billy exclaimed. "You call that lucid? The house's only got two rooms."

The chaplain was about to say something, but he held his tongue. It was reasonable, after all, for the only kin to think about the inheritance. Grief had many outlets.

"Trouble is, Billy," Diane went on, "the man who rented it also got an option to buy it from grandma."

Billy thought about a man and his wife and eight children running around that little house. There would always be someone there. Soon they'd want to expand it and they'd have plumbers and footings contractors rooting around in the dirt. This was not good news.

"So it won't be mine?"

Diane shrugged, then looked at the priest, but found no answers in his face. She turned back to Billy.

"I reckon if grandma sells it, you'll get the money if she dies. If she doesn't spend it first."

Billy's shock and confusion were palpable. The priest told himself that he should give Billy the benefit of the doubt and assume it was a manifestation of grief. The meeting seemed to be over.

"I'll pray for you Billy, and I'll say a Mass for the repose of the soul of James Clancy."

"Call me if you need to talk, Billy," Diane said. She handed him a piece of paper with a local number on it. "I won't be going back to California 'til after the funeral."

\$

Most of the day following Diane Clancy's visit, Billy walked around in a daze. At three o'clock that afternoon, he made a point of being in the prison yard near the fence. The St. John's River Federal Penitentiary just outside Jacksonville, Florida, is a medium risk prison. A wire fence down the center of the quadrangle divides it into two exercise areas. On one side, low risk, white-collar criminals exercised, free to come and go as they please. Their moderately risky brethren exercised on the other side under lock and key.

Billy Clancy always did his time well. Even though the authorities were displeased at not recovering the take from the First State Bank, they believed his story that an accomplice who had since died stole it from him. Conveniently, one of his old cohorts had died recently and the feds knew this and seemed to accept that explanation. Soon he was a trustee.

He waited till Alvin Bigglewhite showed up with his usual companion. The two men walked down the other side of the fence, deep in conversation, with their heads bowed and their hands joined behind their backs. Billy had seen them often walking like this and knew the reputation of Bigglewhite.

"You the jailhouse lawyer?" he called across the fence as Bigglewhite drew close.

"The appellation does not please me," the man said, stopping and

looking up. "And you would be Billy the Bic?"

Billy was both shocked and flattered to be recognized. Bigglewhite, he knew, had been a CPA on the outside who'd gotten involved in some fraudulent stock transaction. The scam had been explained to Billy in a dozen different ways, none of which he fully understood.

"I got a hypothetical," Billy said.

The man chuckled. "A 'hypothetical' is what someone has when he does not want to pay me for my counsel," he said.

"I kin pay," Billy said, insulted.

"Then hypothecate, my friend."

Billy did so. The hypothesis led to one question: how do you get possession of someone else's house?

"The laws vary from state to state," Bigglewhite said, after listening. "Which state would we be talking about here?"

"We ain't," Billy said, his eyes narrowing. "This here's a hypothetical."

"*Hypothetically*, which state?" Bigglewhite said testily, "you can't expect me to give you good advice if I have no information."

"Georgia—maybe," Billy said, after deliberating whether to give it up.

"Ah. Then Georgia, being a non-judicial foreclosure state, the only way an individual can get possession of someone else's property is by buying it at a foreclosure on the courthouse steps."

"But what if Gran—but what if the owner didn't have no mortgage?"

Billy knew that Grandpa Clancy would never borrow. The old man must have said it a million times.

"Then only by descent and distribution. When the owner dies, it goes to the next of kin."

Billy was not happy. He had a lot more questions, but couldn't figure

out how to present them hypothetically.

"Can I talk to you again if I need more advice?" he said.

"Certainly," Bigglewhite said. "The clock is running. Send me two packs of Camels for today's session."

The two men walked on. Billy returned to his cellblock, deep in thought.

"Isn't Billy the Bic the one who robbed that bank?" Bigglewhite began, after the two had walked in silence for a while.

"In Paulding County, Georgia," his companion cut in. "I lived close to there at the time. He got to keep the loot."

They walked on in silence for a while.

"A small house in Georgia which isn't worth much," Bigglewhite ruminated.

"With no mortgage," his companion said.

Father McMahon was walking across the quadrangle, looking hurried as usual, his cassock blowing in the breeze.

"Oh, Father," Bigglewhite called out, "we were very sorry to hear of Billy Clancy's bereavement."

"Yes," said the priest, slowing down but not stopping. "He seems stunned by it though not grieved. It should hit him by tomorrow."

The two men looked at each other.

"If we were to send a mass card today, what was the name of the deceased?"

The priest fished in his cassock pocket and pulled out a piece of paper.

"James Clancy," he said. "It's very compassionate of you to show your concern."

"It's the least we could do," said Bigglewhite. "And where will he be buried?"

"The funeral mass is at St. Luke's in Marietta, Georgia. As to the burial—I don't know, I'm afraid. Send your card to Billy or directly to the church."

The priest excused himself and hurried on. The two men began walking again.

"A small house in Marietta, Georgia, owned by James Clancy, which has no mortgage. Why do you suppose Billy the Bic would be so obsessed by such a house?"

"A small mortgage might be appropriate," his companion said.

Bigglewhite laughed. "You're thinking ahead of me," he said. "But in the right direction."

\$

Billy went back to the cellblock. He lay down on his bunk, his mind in a whirl. None of the advice given him had been either encouraging or helpful. He cursed himself for not preparing his hypotheticals better. But most of all, he was concerned that he had given too much away. The flattery aside, he had been shocked to realize that Bigglewhite knew who he was. Did this make a difference? Perhaps. What had he actually said?

A small house in Georgia owned by someone who didn't believe in mortgages. That was all. Surely there were a million small houses in Georgia. How could anyone ever know which had mortgages and which didn't? He told himself he was being foolish to worry. Still, just in case, he went to the public phone in the hallway and made a call to Johnny Krizek, the lawyer who represented him on his last bust.

"Billy, I wouldn't know a mortgage from a moose," Krizek said, after listening to a series of Billy's hypotheticals. "I only do criminal law. But if you call the Atlanta Bar

Association they'll give you some real estate lawyers' names."

Billy used up his quarters speaking to lawyers.

Then he called his sister-in-law, Diane.

\$

New business usually came to Clemons and Twickenham by way of a phone call, followed by a 'loan package' from a lender. If it was a foreclosure, it came to Andy, who checked the details of the package then put matters in motion. As clients were almost always corporate lenders, he rarely met one nor did he feel a need to. A foreclosure was in essence a collection effort. If the debtor paid the back-payments on the mortgage, the lender called the foreclosure off.

If the debtor didn't pay, the house was sold on the courthouse steps. Either way, the work got done.

So, he was surprised one morning to come in and find there was a Veronica Dillard waiting to see him in his office about a foreclosure.

"I represent the Lotus Trust and Investment Company," she told him. "The details of the property to be foreclosed are in this package. We are particularly concerned with being the highest bidder and getting possession of this particular property as soon as possible."

She informed him her company was from out of state. Andy took a little time to tell her how long the process would take and explained the legal rights of the tenant—all routine matters he would have discussed over the phone with a client in normal circumstances. When she left, he dictated his usual preliminary letters. It was a very small foreclosure of a little shotgun shack on Cemetery Row in Marietta, but it got the same attention as any

other. He wondered why she had stressed that she wanted possession. Usually a lender wanted someone else to buy the property, even though nine times out of ten the lender ended up buying it back.

\$

A week later, he was again surprised to enter his office and be told there was someone waiting for him about a foreclosure. In his type of practice the only place you might meet a live client would be on the golf course or at a cocktail party. Andy's partner did all the *schmoozing*. Andy preferred to do the work.

"I'm the man who rents the property on Cemetery Row, in Marietta, James Callaghan," his visitor began. "I got this here letter from you." He held up a much folded piece of paper. Andy glanced at it and recognized it as the standard letter he sent to all sitting tenants when he was about to foreclose on a property.

"Sit down, Mr. Callaghan."

The man sat. He had a squarish, solid look about him. His hair was slicked across his head and his suit, though clearly old and off the peg, was pressed and neat. His face was broad and open and he began to talk again in a low, humble yet confident voice.

"I met Jimmy and Emma Clancy when I did some volunteer work for the meals-on-wheels program," he said, "that was when we was in the shelter, you know. My wife and three daughters was in one shelter for wimmin and me and the five boys was in another for males only. We come down from Pennsylvania last spring cause there was no work for bricklayers and soon I got some jobs and now I lay bricks for myself and I guess I'm doing okay. So,

Jimmy and Ms. Emma Clancy took a liking to us, and when Jimmy died Emma knew she was going into one of them assisted living places, so she says to me, 'Mr. Callaghan, you can have my house for \$200 a month and if you want to buy it in a year you can do so for \$35,000.'

Andy was tempted to interrupt James Callaghan several times and explain what he told most tenants: a foreclosure invalidated the lease, his 'hands were tied' and so on. This was hard enough to do by phone. It was almost impossible to do face-to-face. Besides, there was something truly honest and Dickensian about this man and his story. Andy let him continue.

"See, there ain't much room on the lot over there, but I can build on about sixteen feet at the back and build a second floor and get three more bedrooms." Andy could see him thinking this out in his head as he spoke. "I can buy all the windows at the salvage yard. I know how to frame and sheetrock and I been laying bricks since I was fourteen."

Ultimately, Andy had to cut him off.

"Mr. Callaghan, you have my sympathy. But if this foreclosure goes through the most time you can legally get in the house is about 60 days."

Callaghan left his office, despondent.

Andy sat glumly staring at the wall after the man left. Sure, he could have told him that by manipulating the system he could still be in the house in nine months. But the client clearly said she wanted possession as soon as possible.

\$

A week later, Andy was, again, surprised to arrive at his office and be told there was someone waiting for him. About a foreclosure. His office was becoming a zoo.

The woman held up a badge and flashed it quickly.

"Agent Sandra Lenford," she said, "F.B.I."

Andy's breath left him as he immediately thought of a dozen federal matters he might have overlooked in recent closings.

"Everything I say is confidential and should not leave this office otherwise a major undercover operation will be blown," Agent Lenford told him once she sat down.

Andy relaxed, knowing it was not about him or the firm.

"Have you ever heard of the First Tuesday Mob?" Agent Lenford asked.

Andy thought of his bunch of impersonators on the courthouse steps and again became concerned. So

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when did it become illegal to cry a foreclosure in the voice of Jimmy Durante?

Assuming his silence meant he had not, she went on. "This is a bunch of crooks who go around the country looking for properties which have certain things in common which make them prime targets for foreclosure fraud."

"Like what?" Andy asked.

As she explained, one property came to mind. Normally, it never would have but there was a specific reason. After he met James Callaghan, Andy had been unable to put the man out of his mind. He made some inquiries and discovered that the little house on Cemetery Row was owned by a senile widow, now in a home, whose husband had died some months before. This, of itself, was not unusual. Death and senility were two of the leading causes of foreclosure. Every banker and lawyer knew that.

What puzzled Andy Clemons was that according to the security deed filed at the courthouse, the mortgage had been taken out only four months before and was the first record of any mortgage on the property in fifty years, as long as the old couple had owned it. Why would they borrow now? It made no sense.

"What the First Tuesday Mob usually looks for is an announcement in the paper that people are going away for a long time—you know, retired couple goes to Ethiopia with the Peace Corps, John and Jill Smith about to sail around the world. Next thing the First Tuesday Mob does is check to see if there's a mortgage. Half the time there isn't because the couple usually settle all their debts before they go in the expectation of com-

ing home to a cozy debt-free retirement. So what the First Tuesday Mob does, is put a false mortgage on the house—a simple enough task with false signatures, false notary seal and so on—foreclose on it in three months, sell it on the courthouse steps to someone who has to pay cash and make off with the cash, leaving everyone behind to sort out the mess."

Andy had called Veronica Dillard of the Lotus Trust and Investment Company on her cell phone to see if she would allow James Callaghan and his family to stay in the small house on Cemetery Row till it was sold. After all, what was the point of dispossessing them right away?

But she was adamant. The Trust wanted possession immediately following foreclosure. He advised her that legally Callaghan could stay for a couple of months. He then told her what he had not told Callaghan—that if the man was smart and worked his appeals, he could still be there in nine months.

It had occurred to Andy that the least he could do for James Callaghan and his family without having a conflict of interest would be to get him some money to move. He told Veronica Dillard that the only way she could ensure his departure was to offer to pay him to leave and hope he accepted.

"Do it," she said.

"How much?"

He thought she might say a couple of hundred.

"Whatever it takes," she said.

"What if that were thousands?"

"Whatever it takes. Get him out and after we foreclose, we'll pay him."

He told Callaghan. They agreed that he would quit the property on First Tuesday in exchange for

\$5,000. Andy was pleased that he could do this much for him.

"If I understand correctly what you're telling me," Andy said when Agent Lenford had finished, "the First Tuesday Mob doesn't care about taking over the house it forecloses on. It only wants the money from the sale?"

"Right."

She seemed to notice something change in his eyes.

"Did you have a property in mind, Mr. Clemons?"

"Yes," he said. "But the pattern doesn't fit. The company foreclosing wants possession. It doesn't seem interested in the money from the sale."

"That can be a trick," Agent Lenford said, "just to throw you off. They come in and say they know they'll have to buy the property back because there'll be no other bidders. So you think it's just a routine foreclosure. After all, don't most of them go back to the bank? But once they get to the courthouse steps they pretend to be surprised that there *are* other bidders and they don't bid themselves. Then the bid from someone else could be so low—\$50,000 on a property that's worth \$100,000, for example—that you, as the foreclosing attorney, immediately give your seller the cash you collect rather than wait a few days. After all, you got a cashier's check from the buyer, so you have nothing to clear the bank. Why make them wait? Then, when problems show up later, the seller- and the cash- are long gone."

Andy was alarmed. Why was it that he only had a cell phone number for Veronica Dillard and had never heard of the Lotus Trust and Investment Company before?

The FBI had done its homework. When he told Agent Lenford about

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First Tuesday came. Andy made sure he was on the courthouse steps by 10 a.m., the time he could legally begin to cry properties.

his doubts regarding 14 Cemetery Row and how he had negotiated a \$5,000 payoff to get the tenant out, all with the encouragement of the lender, she unfolded the local legal newspaper at the foreclosure advertising section and threw it down in front of him. Circled in red was Andy Clemons' announcement of the foreclosure of that property.

She would have agents on the courthouse steps on First Tuesday, she said. Andy should complete the sale and pay the tenant to get him out now, just in case. The FBI would put a tail on Veronica Dillard. When Andy gave her a deed or the proceeds from the sale, they would move in on her right away.

Agent Lenford left and returned half an hour later with an envelope with \$5,000 in it. That was for James Callaghan, she said, to make sure that he, his wife and eight children were clear of the property by First Tuesday morning, just in case there was any reason the First Tuesday Mob would show up there. They had never been violent before, but who knew? Agent Lenford said there was some kind of urban legend locally that the old man, Jimmy Clancy, had stashed his life savings in the house—a ridiculous rumor really, but that might be another reason why Veronica Dillard had expressed an interest in getting the property.

\$

First Tuesday came. Andy made sure he was on the courthouse steps by 10 a.m., the time he could legally begin to cry properties. There were about 50 buyers and a

few lawyers already there. He looked around as he cried his first few foreclosures. The bunch who did the impersonations—his own First Tuesday Mob—usually didn't begin arriving until just before noon. When it came time to cry the James and Emma Clancy property on 14 Cemetery Row, he looked for Veronica Dillard. She acknowledged him from the edge of the crowd. He looked for Agent Lenford. He couldn't see her. He tried to pick out the FBI agents, but it was impossible. The foreclosure crowd was half casual, half suit-and-tie. Anyone could have been an FBI agent. He began to cry the Clancy property.

When he opened the bidding he knew that if what Agent Lenford told him was correct—that if Veronica Dillard was a fraud, part of the First Tuesday Mob—she wouldn't bid or, at the least, bid so low there would be higher bids. He made a mental *a-ha* when she opened the bidding at \$10,000.

"Do I hear any further offers?"

Nothing at first, but as he began to knock down the property, other bids began. Slowly at first and then in a tumult until he had it at \$40,000. Veronica Dillard hadn't bid since \$30,000. He was sure now that she was part of the First Tuesday Mob. He had almost finished knocking it down.

"Going twice, going thr—"

"\$41,000," Dillard cried.

No one topped her offer. He knocked the property down to her.

Andy was puzzled. It made no sense if she was in it for the money.

When a lender bought the property back, no money changed hands.

"Is that family still on the property?" she asked him when he congratulated her on the sale.

"No. They've already left. I need your \$5,000 to pay them."

She gave him a check from the Lotus Trust and Investment Company.

"Mail the deed to us," she said. "I have to go."

Andy watched her leave, to see if she was being followed. But no tail was apparent. That, he supposed, was the way it should be. He couldn't see Agent Lenford anywhere.

He wondered about 14 Cemetery Row the rest of that day and over the next few days, but he heard nothing and went about his business. Maybe the FBI didn't tell you they'd arrested people after a sting? He looked for something on the local news on TV but saw no mention of it.

\$

On the Friday following First Tuesday, he was surprised to get a call from the bank. The \$5,000 check he had deposited to the firm's trust account to pay back the FBI had bounced—not actually bounced, but it had been drawn on a bank which didn't exist. He was not as surprised when a few days later the package he had sent to the Lotus Trust and Investment Company came back in the mail stamped "no such name, no such address." He was even less surprised, but apprehensive, when he had a visit from the FBI a few days later.

"I suppose you're looking for your money," he said to the agent.

"What money?"

"The \$5,000 Agent Sandra Lenford gave me which I gave to James Callaghan."

The agent looked puzzled.

"We don't have an Agent Sandra Lenford. Who's James Callaghan? I'm here to ask you a few questions about a counterfeit check your firm deposited, which we're particularly interested in because it appears to have been printed on our presses at the St. John's River Federal Penitentiary in Florida."

\$

Billy the Bic called his sister-in-law and congratulated her on a job well done.

"Course, you understand if you don't have my money waiting for me once I've done my time, you're gonna be named as my accomplice in the First State Bank job?"

Diane Clancy understood. The money would be waiting.

Billy still believed in a Conspiracy of One, but a

Conspiracy of Two was as good as it got this time.

\$

Andy Clemons was pleased to call James Callaghan and tell him that he still had his lease with a purchase option on the house at 14 Cemetery Row.

"We can go back?"

"Right now, if you want."


"And who do I give the \$5,000 back to?"

Andy thought for a moment.

"Beats me, James. Why don't you just keep it. Buy those windows and bricks with it."

"I've got one more question, Mr. Clemons. I went back to the house the day of the foreclosure. I know you told me not to and I'm sorry about that, but I left some of my tools there. I'm tryin' to unlock the back door when this woman comes


around the corner with a shovel and a five-pound hammer in her hands, like she's fixing to dig a hole. Says she's from the mortgage company. Only thing is, when I open the back door and we look inside—someone's already gone an' dug a hole. This woman, she almost faints, then she pulls herself together and takes off. You know what's going on, Mr. Clemons?"

Andy hadn't a clue. But he knew one thing, he would never look at First Tuesday the same after 14 Cemetery Row. 



Gerry Carty attended Langside College, Glasgow, Scotland, before coming to Atlanta where he graduated from John

Marshall Law School in 1980. He has practiced plaintiff's personal injury law since then.



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Education, Fun, Fellowship Highlight Annual Meeting

By C. Tyler Jones

Lawyer and poet Wallace Stevens once said, "The summer night is like a perfection of thought." Stevens' poetic sentiment especially rang true for attendees during the opening night of the State Bar of Georgia's 40th Annual Meeting in Orlando, Fla., June 17-20.

Opening Night Gala

The gentle breeze that blew through Universal's CityWalk® during Thursday's section-sponsored Opening Night Gala carried the laughter of children and attorneys alike as they enjoyed good food, dancing and camaraderie. Attendees and their families had exclusive use of Pat O'Brien's® Orlando, Bob Marley's — A Tribute To FreedomSM and CityJazz® during the block-style party.

Immediately following the opening night festivities, the Lawyers Foundation of Georgia and the Young Lawyers Division sponsored events, giving attendees an excuse to extend their fun-filled evenings.



Photos by C. Tyler Jones

Some members of the 2003-04 Executive Committee take a break following the State Bar's 197th Board of Governors meeting.

Back to Business

The successful opening night set a positive tone for the meeting as attendees got back to business Friday by attending CLE sessions, law school gatherings, breakfast meetings and much more. The more ambitious attendees began their day with the YLD/LFG 5K Fun Run.

A first for the conference was the new board member breakfast, which gave new board members a chance to meet each other and ask Bar leaders questions. Following

the early morning meetings, attendees gathered to attend the plenary session (see Awards, page 53).

After the awards portion of the 196th meeting of the Board of Governors, Past President Linda A. Klein provided a report on the Georgia Committee on Ethical Campaigns; the Hon. Norman S. Fletcher, chief justice of the Supreme Court of Georgia, updated Board members on the state of the Georgia judiciary, and the Hon. J. D. Smith, chief judge of the Court of Appeals of

Georgia, delivered a report on the Georgia Court of Appeals. Bar President William D. Barwick announced that the following Georgia lawyers and law firms will be honored at the ABA's Annual Meeting in August: C. Wilson DuBose for the Harrison Tweed Award; Linda A. Klein for the Margaret Brent Award; Roy E. Barnes for the Pro Bono Publico Award and Sutherland, Asbill & Brennan for the National Public Service Award.

One of the highlights of the conference was the Women and Minorities in the Profession *Brown v. Board of Education* luncheon program. Guest speaker Linda Brown Thompson recounted memories from her youth when, as a 7-year-old third grader, she was forced to walk six blocks to ride a school bus despite the fact that there was a white school seven blocks from her home. Thompson also discussed the role her father, Oliver Brown, played in the *Brown* case.

Board Meeting Highlights

The 197th meeting of the Board of Governors took place Saturday, where Barwick ceremoniously turned the meeting over to Rob Reinhardt, who would be sworn in as president during the Inaugural Dinner.

Board meeting highlights include:

- Laurel P. Landon providing a report on the YLD, including the benefits of participating in YLD activities.
- The Board, by unanimous voice vote, approving the following presidential appointments to the State Disciplinary Board:

Investigative Panel:

District 8: Don Huskins, Eatonton (2007)

District 9: Barbara Bishop, Lawrenceville (2007)

District 10: Steven Hathorn, Covington (2007)

See Meeting Page 34



Outgoing Bar President Bill Barwick passes the gavel to incoming Bar President Rob Reinhardt as Susan Reinhardt watches.

Annual Meeting Exhibitors

ABA Members
Retirement Program
Best Law Firm Solutions
Boyken International, Inc.
BridgeSpan Technologies
Brown Reporting Inc.
Bruce Wood CPA, PC
CaseSoft
Doherty Duggan & Rouse Insurors
Esquire Deposition Services
Gilsbar
H Legacy Solutions
Homestar Mortgage Services
Huey & Associates
Insurance Specialists, Inc.
Keeley and Associates
Kudzu.com
Law Practice Management, State Bar
Lawyers Foundation of Georgia
Legalink
LexisNexis
Minnesota Lawyers Mutual
Peachtree Planning Corporation
Pro Bono Project, State Bar
Ross-Smith Pecan
Sections, State Bar
Stetson University College of Law
The Georgia Fund
Thomson West
Uniquely Nancy Jewelry & Gifts
Women & Minorities in the Profession Committee

Happy New Bar Year!

Annual Meeting Attendees Begin
2004-05 Bar Year in Style



(Above) Outgoing President William D. Barwick opens one of his gifts.
(Left) Board Member Samuel M. Matchett and a guest dance during the Opening Night Gala.



(Above) Kevin and Courtney Moore, Chuck and Christi Hodges, Ashley and YLD President Andrew Jones at the YLD's Cocktail & Dessert Party, which followed the Opening Night Gala.
(Left) La Ronda Denise Barnes and S. Kendall Butterworth attend the Supreme Court of Georgia reception.



Women and Minorities in the Profession *Brown v. Board of Education* luncheon guest speaker Linda Brown Thompson explains the impact the *Brown* decision had on her life as committee members look on.



(Above) Board Member and DeKalb Superior Court Judge Anne Workman and Supreme Court of Georgia Justice Carol W. Hunstein attend the Supreme Court of Georgia reception.

(Left) Incoming Bar President Rob Reinhardt, Supreme Court of Georgia Chief Justice Norman S. Fletcher and Past President Robert M. Brinson take a coffee break during the meeting.



(Above) DeKalb Juvenile Court Judge Linda Y. Bratton-Haynes, William Alexander and Avarita L. Hanson enjoy the Opening Night Gala.

(Left) Missouri Bar President William M. Corrigan Jr., Louisiana Bar President Michael W. McKay and Florida Bar President Kelly Overstreet Johnson attend the visiting bar presidents' dinner as guests of State Bar of Georgia President Rob Reinhardt.

Executive Committee

The Executive Committee consists of officers and six members of the Board of Governors elected by the Board.

President:

Rob Reinhardt, Tifton

President-elect:

Robert D. Ingram, Marietta

Immediate Past President:

William D. Barwick, Atlanta

Secretary:

Gerald M. Edenfield, Statesboro

Treasurer:

Jay Vincent Cook, Athens

YLD President:

Laurel P. Landon, Augusta

YLD President-elect:

Damon Erik Elmore, Atlanta

YLD Immediate Past President:

Andrew W. Jones, Marietta

Executive Committee

At-Large Members:

Jeffrey O. Bramlett, Atlanta
Bryan Michael Cavan, Atlanta
Phyllis J. Holmen, Atlanta
David S. Lipscomb, Duluth
Aasia Mustakeem, Atlanta
N. Harvey Weitz, Savannah

Meeting Continued From Page 31

At-Large: John Reinhardt, Tifton (2007)

- b The Board, by unanimous voice vote, approving the following presidential appointments to the Formal Advisory Opinion Board:

At-Large: H. Michael Bagley, Atlanta (2006)

At-Large: James W. Friedewald, Marietta (2006)

At-Large: Walter Kelley, Albany (2006)

Georgia Assoc. Criminal Defense Lawyers: Christopher A.

Townley, Rossville (2006)

Georgia District Attorneys Association: Richard E. Currie, Waycross (2006)

Emory University: Professor James B. Hughes, Jr., Atlanta (2006)

Georgia State University: Professor Anne S. Emanuel, Atlanta (2006)

Investigative Panel: Susan Smith Jones, Peachtree City (2005)

- b The Board directing the State Bar and related entities to open appropriate accounts with such



State Bar President Bill Barwick presents Deborah Grant with the Employee of the Year award.

State Bar Sections

Special thanks to the following sections for their support of the meeting:

Platinum Level (\$5,000)

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Labor and Employment Law

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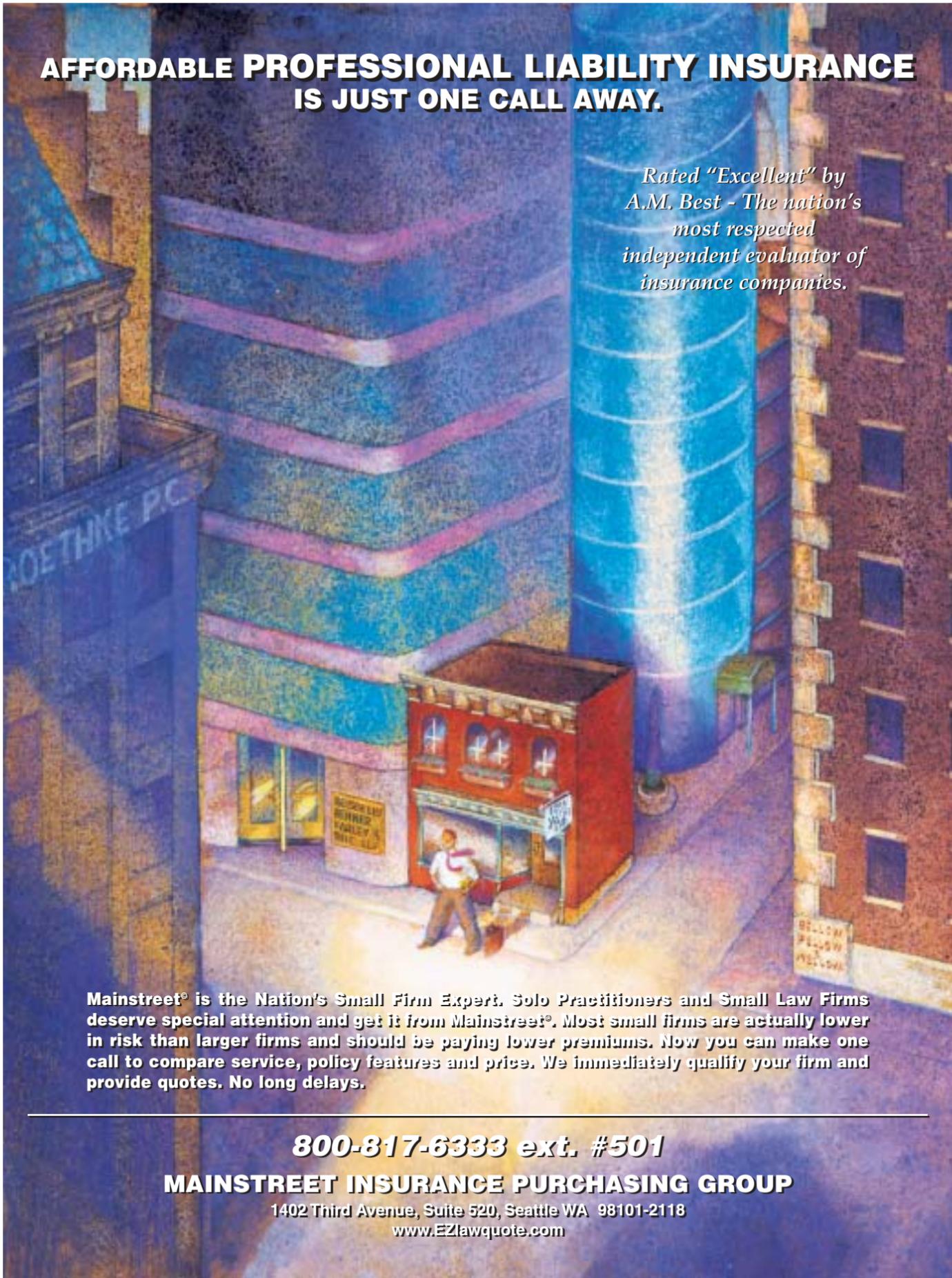
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Legal Economics Law
Real Property Law

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International Law
Product Liability Law
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Past President Bob Reinhardt, Board Member Thomas R. Burnside Jr., Board Member Huey W. Spearman and wife Brenda and William D. Reinhardt II attend the the Supreme Court of Georgia reception.

banks in Atlanta, but excluding any banks that do not participate in the IOLTA Program.

- b The Board designating KPMG Peat Marwick, LLP, as the independent auditing firm to audit the financial records of the State Bar for the fiscal year 2003-04.
- b The Board approving proposed rules amendments to the Fee Arbitration Program.
- b The Board approving the creation of a Judicial Section.
- b The Board electing Phyllis Holmen, N. Harvey Weitz and Jeffrey O. Bramlett to serve on the Executive Committee.
- b The Board electing Cliff Brashier to serve as executive director for the 2004-05 Bar year.
- b The Board approving the appointment of Mary Margaret Oliver, for a three-year term, to the Chief Justice's Commission on Professionalism.
- b The Board approving the appointments of James W. Boswell III, James A. Clark, Diane F. LaRoss and Sarah

Lamar, for two-year terms, to the Georgia Legal Services Board.

- b Barwick and Tom Boller providing a report on the Bar's legislative activities.
- b Reinhardt providing an update on the 2004 Judicial Poll, which was mailed to all active, in-state Bar members on June 22.

As the meeting came to a close, Reinhardt addressed the Board with his proposed program of activities for the 2004-05 Bar year (see New President Speech, page 38).

Changing of the Guard

On Saturday evening, the justices of the Supreme Court of Georgia were honored at a reception preceding the Presidential Inaugural Dinner. As the reception drew to a close, the doors to the grand ballroom swung open and attendees were greeted with music and two giant screens flashing pictures of attendees participating in the previous day's events.

Following dinner, Reinhardt's father, Bob, who was State Bar pres-

ident during the 1980-81 Bar year, officially swore in his son as the 42nd president of the State Bar of Georgia. After stepping on stage, the elder Reinhardt asked Rob to put his left hand on the Bible, raise his right hand and repeat the following:

I do solemnly swear that I will execute the office of president of the State Bar of Georgia, and perform all the duties incumbent upon me, faithfully, to the best of my ability and understanding, and agreeable to the policies, bylaws and rules and regulations of the State Bar of Georgia; the laws and constitution of the state of Georgia; and the Constitution of the United States. So help me God.

After repeating the oath, Rob said, "Daddy, I'll do the best I can."

After the swearing in and the passing of the gavel, Barwick came back on stage to present two special Bar awards. C. Wilson DuBose of Madison was named the 2004 recipient of the State Bar of Georgia's Distinguished

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Three Gavel

ABA Members Retirement
Program
Keeley and Associates
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Two Gavel

Brown Reporting, Inc.
Esquire Deposition Services
Insurance Specialists, Inc.
Real Property Section of the State
Bar of Georgia


One Gavel

Legalink
Minnesota Lawyers Mutual
SecureImpact, LLC

Service Award. This award is "the highest honor bestowed by the State Bar of Georgia for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia." Barwick also presented the State Bar of Georgia Employee of the Year award to Deborah Grant, a legal assistant in the Office of the General Counsel, who has faithfully served the Bar since Nov. 12, 1990.

Following the awards presentation, former State Bar President James B. Durham asked Barwick to join him on stage. Durham presented Barwick with a framed Jack Davis' caricature of Barwick with Uga, the University of Georgia's mascot. In keeping with tradition, Durham also informed Barwick that he would receive a set of custom-fitted golf clubs.

Barwick remained on stage to introduce guest speaker Carl Hiaasen, who has worked for *The Miami Herald* since 1976. Hiaasen attended Emory University and graduated with a degree in journalism from the University of Florida in 1974. In the 1980s, Hiaasen turned his hand to fiction. He is the author of numerous best-selling novels: *Double Whammy*, *Skin Tight*, *Native Tongue*, *Strip Tease*, *Stormy Weather*, *Lucky You*, *Sick Puppy*, *Basket Case*, and *HOOT*, a Newbery award-winning book for young readers.

Living up to his reputation as "unbelievably funny," Hiaasen kept attendees laughing with his sarcastic humor at the expense of the state of Florida and its residents. 

C. Tyler Jones is the director of communications for the State Bar of Georgia.



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President Focuses on Enhancing Current Bar Programs

By Rob Reinhardt

The following is the speech delivered by incoming President Rob Reinhardt to the Board of Governors on June 19. In it, he outlines some of his expected goals and programs for the coming Bar year.

This morning's meeting provides me the great opportunity to address distinguished members of our judiciary, past presidents of the State Bar, members of our Board of Governors and other colleagues, comrades and pilgrims at the Bar about the areas of emphasis we have targeted for this year.

In going about the business of engineering a program of work, your starting point has to be taking a measure of the scope of the State Bar's programs. By any standard, the State Bar's effort is formidable. The yeoman's work of the Bar is accomplished through its sections and committees—37 sections marshal the talent of Georgia lawyers in various areas of the practice. Thirty-two standing committees work to improve the delivery of legal services to members of the public and sup-



Photos by C. Tyler Jones

Rob Reinhardt takes the oath of office from his father, Past President Bob Reinhardt, as his wife Susan and mother Mary John watch.

port the operation of the State Bar. Eight special committees now exist providing focus and leadership in areas that will benefit all of us that support the legal system in Georgia.

Bar Computer-Accessed Legal Research—Jay Cook and Chris Phelps and their committee did a terrific job in examining and bringing to your Board of Governors what we anticipate will be a milestone in member benefits: the Casemaker research system.

A **Bar Center Committee** consisting of dedicated lawyers working under the inspired leadership of Frank Jones has tackled all obstacles to occupancy of the Bar Center—and they have been sub-

stantial—such that we see the dedication of that facility on our time horizon.

Court Futures, under the able leadership of Hon. Ben Studdard, is mid-stride in a two-year study aimed at providing recommendations for the protection of the independence and effectiveness of our judiciary.

Wilson Dubose coordinated the efforts of our **Indigent Defense Committee** to support our lobbying team quarterbacked by Tom Boller in strategizing the Bar's noble legislative effort to insure that legal services provided in defense of indigent persons insure they are protected by, rather than a victim of, our legal system.

John Marshall has assembled a team of our best and brightest and working with Sally Lockwood and the Chief Justice's Commission on Professionalism has brought to the Board of Governors a mentoring program to enhance and preserve **Standards of the Profession**.

You understand that this heroic effort doesn't anchor in any leadership I have provided—I simply have the good fortune of these initiatives coming to maturity on my watch. The foundation of this progress lays on the shoulders of our past presidents and the lawyers who worked to bring these projects to completion. It is a great satisfaction to me to be positioned to participate in some small way to promote and showcase the results of the investment of time, talent and energy of Georgia lawyers who have gone to bat for the State Bar.

Now if you don't believe that the prospect of driving this wagon train is intimidating to a country lawyer from Tifton, Ga., I want to correct your thinking. My comfort level comes from realizing that the president of this great organization benefits from the support and counsel of a talent pool that is unmatched. Let me outline for you the support structure that will protect the lawyers of Georgia from the leadership deficit that many of my friends suggest is upon us.

The **Board of Governors** brings seasoned judgment of over 150 of the best lawyers in Georgia—counseled by the experience of our past presidents—to bear on issues that come before the Bar. I cannot overstate my confidence in the Board. You don't have time for me to recite the numerous occasions where I came into a meeting uncertain as to the best course of action to hear a discussion that recharged



Newly elected President Rob Reinhardt takes a few moments during his Inaugural Dinner to introduce his many family members in attendance.

my energies about resolving whatever problem we were addressing. The collective resources of your Board of Governors can craft amazing results—and candidly, my thinking is that we have not awakened to the full potential of what our profession can accomplish with the common effort not only of our Board, but the coordinated effort of over 35,000 lawyers under the leadership of our Board.

Executive Committee: My undeserved privilege is to serve with accomplished lawyers that do you proud on your Executive Committee. Please allow me to recognize them: Bryan Cavan of Decatur, Gerald Edenfield from Statesboro, Phyllis Holmen of Atlanta, David Lipscomb of Lawrenceville, Aasia Mustakeem from Atlanta and Harvey Weitz from Savannah. With the support and input of our Immediate Past President Jim Durham, and Young Lawyer's Division President Andrew Jones and President-elect Laurel Landon—these folks set the compass for the lawyers of Georgia and they do a astonishingly good job.

Bar staff: The reality of a staff that year-in and year-out turns in superlative performance is that the membership comes to expect that level of support and can underestimate the tremendous amount of coordination and effort that keeps the State Bar's programs on track. One of the benefits of working through the ranks as I have—through the Finance Committee and as treasurer—is the opportunity to draw a measure of the professional staff that manages the affairs of the State Bar. Here we are unsurpassed. Cliff Brashier amazes me with the issues he stays on top of. Sharon Bryant moves silently through all programs of the Bar and makes sure they are functioning. Sue Harvey not only monitors our operating budget in excess of \$6 million, but she has over the last several years become a contracting projectionist of some considerable talent. And only because of time constraints do I not mention individually many staff members who serve us well by their efficiency and dedication.

Having maybe increased your comfort level that the State Bar

won't founder given the checks and balances provided against elected leadership, let me outline for you our ambitions for the upcoming year. No one has ever accused me of being a great visionary, but my read is that the field of vision of the State Bar is crowded. In this Bar year, we will:

- b Maintain the broad array of programs that we sponsor to improve the delivery of legal services to the public and ensure that all perspectives of our membership are effectively incorporated into our programs;
- b Coordinate the dedication of the Bar Center (that was first planned for April 2002) by January 2005;
- b Implement the Casemaker computer research system through the State Bar Web site and provide spin up training for our members;
- b Continue to address the preservation of professionalism in the practice of law on two fronts: (1) by promoting the mentoring effort proposed by the Standards of the Profession Committee developed through a pilot over several years and skillfully presented in the report from John Marshall and his group and (2) increase utilization of the Judicial District Professionalism Program put in place by the Board of Governors; and
- b Continue our legislative effort to effectively monitor and respond to proposed legislation that would impact in major ways the delivery of legal services to the public.

If we are able to do all these things, we will have in my mind stayed the course. If that labels me a "caretaker" president, I will wear that label with pride.

There is one area where we are working to reorganize and jump-start our effort—and that is member services. In broad brush, I want to alert you to what we are about. While I have admitted I don't bring to this job great vision or impressive horsepower, I state to you without qualification that I can contribute the perspective of a lawyer in the trenches. Against an experience base of law practice for some 25 years, I understand the pressures of the practice. I know the revenue curves are flatter than the expense curves. I hear and observe lawyers who are frustrated with the effort of wrestling with the increasing stress of providing legal services to the public. The State Bar can't resolve all the pressure points of practice. But I want to revisit an old missionary function of the State Bar and that is the provision of support to practicing lawyers.

As a fledgling member of the Board of Governors, I remember Eddie Garland's advice to the Board that we owe our members the effort of identifying what services we can offer that effectively support the practicing Bar and getting about making those services available. Candidly, the Bar offers an impressive array of member services. The *Bar Directory* outlines two pages of services and benefits targeted at our members. We offer quality programs to those of our members who take advantage of them. But the truth is that—like any organization with a membership exceeding 35,000 folks—we have to continually communicate to our members the value of benefits provided by the State Bar of Georgia.

Our Member Benefits Committee traditionally has recommended services and products to our members that offer special value not oth-

erwise available in the open market. This year, our ambition is to continue and expand that function while broadening the effort of that committee to include identifying services and benefits that our members want and effectively communicating the benefits that we offer. Mechanically, we are restructuring the committee into three subcommittees with these charges:

- b One subcommittee will develop a program of publishing recommended providers of legal services. "Recommended" in this context does not mean endorsed. It means that the Bar will identify for lawyers the various sources for legal support services through our various communication media;
- b A second subcommittee will tackle the time-honored problem of developing feedback from our members on what services would provide meaningful benefit to their practice. Recently we gathered South Georgia Board members at the Tifton office to plow this ground. We not only generated great enthusiasm in brainstorming these questions—but these Board members went back and posed the questions to their local bar associations. What do you want the State Bar to offer? Do you take advantage of programs that are in place—Law Practice Management and the Judicial District Professionalism Program? Have you needed the Lawyer Assistance program? Are you using the Bar Center? Admittedly, one of the most frequent requests from our members—and that is true for Bar Associations nationwide—is for health insurance. You are aware that we continually look for ways to provide competitive

A Family Affair

South Georgia Native Follows in Father's Footsteps

By Bonne Cella

In August of 1980, the *Georgia Bar Journal* cover page featured newly inaugurated State Bar President Bob Reinhardt. If you are too young to remember, 1980 was the year Ronald Reagan was elected president of the United States; Pac-Man was all the rage and there was a lot of speculation about who shot J.R. (If you don't know who he was, you are definitely too young to be a lawyer.) A brand new BMW cost around \$12,000, and the State Bar of Georgia consisted of 13,191 members. It was also the year Bob's son, Rob, began practicing law.

Twenty-four years later, as new State Bar President Rob

Reinhardt and his family grace the cover of the August 2004 *Georgia Bar Journal*, certainly many things in our society have changed. It is encouraging to note that commitment to family and dedication to the profession of law, and to the community at large, is still a constant with both of these Bar leaders.

Rob's election as president of the State Bar of Georgia will mark the first time that a son has followed his father to this esteemed position. Coming from a family of lawyers, and marrying into the same, Rob has garnered a remarkable understanding of the challenges faced by, in his words, "the lawyer in the trenches."

His younger brothers, Bill and John, practice law in Tifton at Reinhardt, Whitley, Wilmot, Summerlin & Pittman. Incidentally, John and Bill are just as hilarious as Rob — all three sons having inherited their mother Mary John's gift of humor. Rob's wife, Susan Langstaff Reinhardt, formerly of Albany, Ga., also grew up in a household of attorneys with her father, Bob Langstaff, and brothers, Pope, Tommy and Bobby, all members of the State Bar of Georgia.

Rob's many friends appreciate his extraordinary knowledge and quick wit. From his earliest days in school, he was able to balance lofty scholastic pursuits with active involvement in sports, music and his community. Other enviable traits are a genuine love of people, humility and the pursuit of excellence in his profession. He has an infectious optimism — you just feel better after a "Rob Encounter."

His friends in Tifton and around the state wish him well as he serves more than 35,000 members of the Bar. Just as there was in 1980, there will be a skilled driver at the wheel, safely navigating the State Bar. For Rob is very much like his beloved 1965 Lincoln Continental: solid and authentic, with room for many friends, well-traveled, in good working order, and a true classic that brings a smile as it draws near.

Bonne Cella is the office administrator at the South Georgia Office in Tifton.



(Left) President Rob Reinhardt and Past President Bob Reinhardt.



(Below) The Reinhardt family—Rob, Susan, Sam, Elizabeth and George—pictured with Rob's beloved 1965 Lincoln Continental.

This year is beginning with great promise, and I hope to report next June that we accomplished some of the goals we set about. The message I want to leave you with is that we need you on board, occupying the first-class seat reserved for you, as this train leaves the station.

coverage—but against the ANLIR experience I will confess we are gun shy. We will continue this effort as we evaluate the value of programs, look at the programs of other states that deliver value to their members and ask our membership what we can do that will benefit them in their day-to-day practice. This is heavy lifting, but you understand what we are trying to do with this subcommittee; and

b A third subcommittee will be charged with communicating to our membership the benefits we offer. The State Bar offers much support to our members in their practices. But I also acknowledge that the message is often not being heard—and in some instances our programs are underutilized. The specific function of this subcommittee will be to explore effective avenues of getting the word out on the support services offered by the State Bar.

We are enthused about our scheduled meetings. In August, our Board will meet in Atlanta, and that meeting will be followed by a trip to New York. Michelle Priester has arranged a great schedule of activities. Our response so far has been encouraging and I hope you can go with us. The fall meeting will be at Callaway in conjunction with the

Steeplechase—get a chance to do some work and watch the ponies. Midyear meeting will be in Atlanta—Justice Kennedy of the U. S. Supreme Court has accepted the second invitation Frank Jones has issued to him to keynote our Bar Center dedication. Spring meeting will be a drive-in meeting at the Bar Center—a request of board members and consistent with our emphasis of attracting as many of our members as we can to utilize and enjoy the Bar Center. For the Annual Meeting we are returning to Savannah where many of us have great memories of past annual meetings.


I invite your participation and support of the State Bar in its outstanding array of programs and functions. Many more are worthy of mention but I have imposed on your attention too long. You have allowed me an opportunity that I do not deserve on merit. You know it and I know it. I'm standing here talking about a year as president only because of your generous support. And to accomplish what we have set out for this year, we need your continued support and counsel.

The great personal benefit the State Bar has always provided me is that it helps me see the practice as more than my next crisis. I come to these meetings and watch the way

you go about your practice and your lives, and it causes me to ratchet up the level of my practice. I go back to Tifton recharged about the opportunities of the practice of law. But more than the personal satisfaction of working in harness with talented comrades, we as members of the State Bar are stewards of a system of justice that has convinced us all that our individual rights are inalienable and supreme. The function of government is to promote us as individuals.

Now I don't pretend to be greatly traveled—although it has become apparent in the last months that I am better traveled than Robert Ingram—but the inevitable impression you draw in visiting other countries on this globe is that we set the standard. In Japan, if the government targets 7 percent economic growth and that means less cars and refrigerators for domestic consumption, the population accommodates that goal. Countries of Eastern Europe are struggling to overcome decades of oppression accomplished by compromising their legal systems.

Every night the evening news highlights the problems of establishing a government in eastern countries who do not share our heritage of respect for individual rights. Preserving our system of laws doesn't mean we can't improve it. But we have the noble and vital charge of preserving a system that is the foundation of our civil liberties.

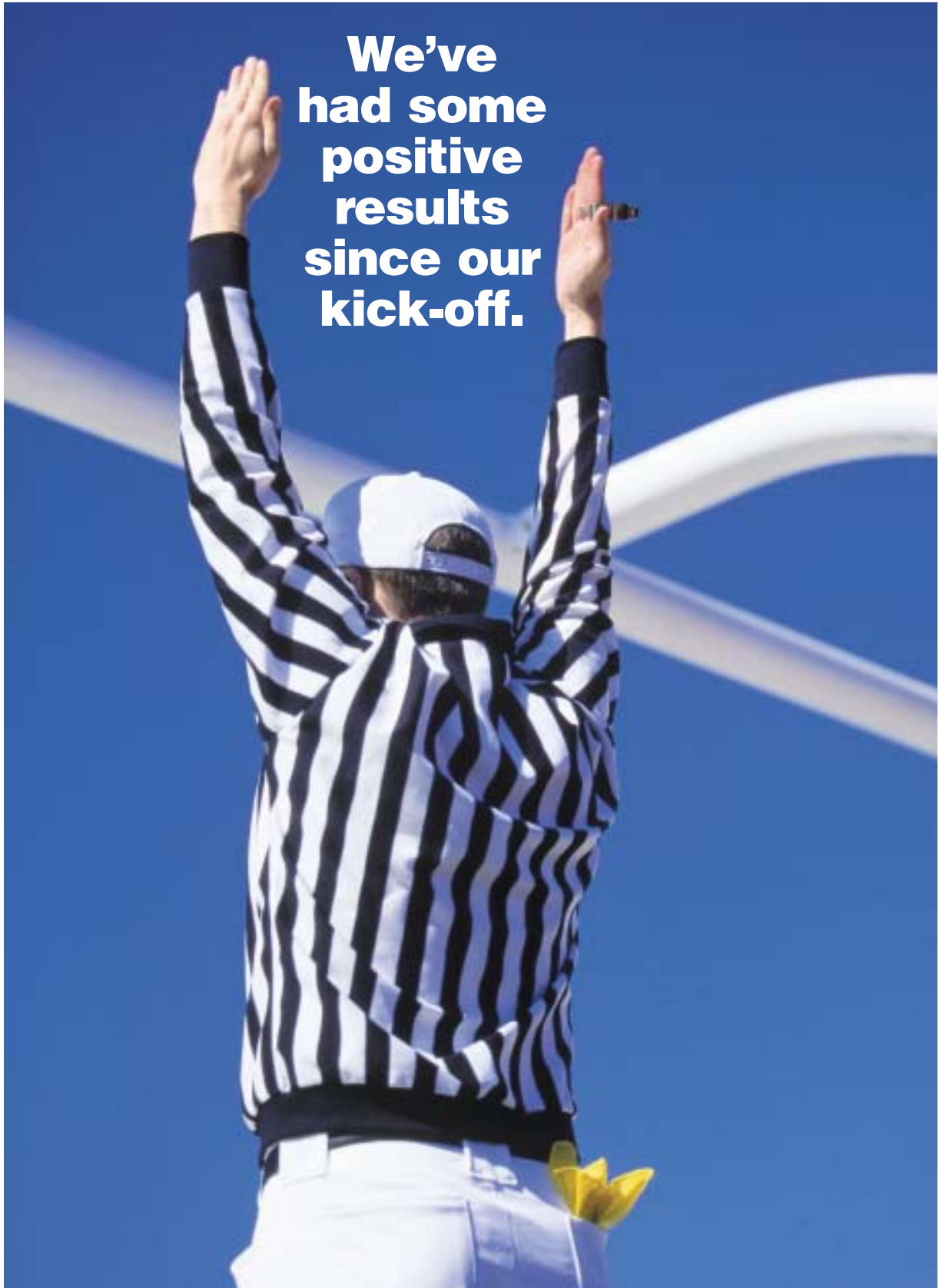
This year is beginning with great promise, and I hope to report next June that we accomplished some of the goals we set about. The message I want to leave you with is that we need you on board, occupying the first-class seat reserved for you, as this train leaves the station. 

Since our kick-off two years ago, Georgia Lawyers Insurance Company has achieved some pretty remarkable results. We've signed on lawyers from throughout the state and actually exceeded our two-year goal by more than double. The response we've received demonstrates the appeal of our game plan—to serve the professional insurance needs of lawyers and only lawyers. Our clients know that we understand their needs better! We're not just here to defend insureds against malpractice suits, we're here to provide risk management services to help them avoid liability issues in the first place. *No wonder Georgia Lawyers has quickly established itself as the best team in the field.*

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**We've
had some
positive
results
since our
kick-off.**



Barwick Reflects on Great Bar Year

By William D. Barwick

The bylaws of the State Bar of Georgia specify the duties of the president. One of the responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia." Following is the report from President William D. Barwick on his year, 2003-04, delivered on Friday, June 18, at the State Bar's Annual Meeting.

With a week to go in my Bar presidency, I had the opportunity to address a local bar association at one of its monthly

lunch meetings. I jokingly informed them that if they had asked me to speak at the beginning of my year, they would have gotten a lengthier speech, full of details about the goals I wanted to accomplish, rather than a year-end summary of the things we actually finished this year. For one of the few times in my life, I want to avoid that joking reference in this article, because we really did accomplish (or at least concluded) a number of major initiatives important both to our members and to the general public.

Bar Center

I am pleased to begin this report by noting that two long-term projects of interest to our profession, the passage of an indigent defense reform bill and the completion of the State Bar Conference Center will be completed by the end of this calendar year. We have owned the State Bar building since 1997, and we have been working in it and leasing office space out since 2001. We have finally found the resources to complete the conference and educational center on the third floor, which will allow us to make this the meeting place and focal point of our profession for decades to come. If you have not



Outgoing Bar President William D. Barwick and wife Donna attend an Annual Meeting event at Islands of Adventure.
(Right) Barwick displays a special gift from wife Donna.



Photos by C. Tyler Jones

had the opportunity to visit this building yet, you will have that opportunity in the near future, either for a committee meeting or a CLE program. I guarantee that you will be impressed.

Indigent Defense

With regard to indigent defense, countless hours of volunteer work have finally achieved the goal of creating a uniform indigent defense program throughout this state, one funded by the state and with oversight to ensure constitutionally mandated protections to criminal defendants without the ability to hire an attorney. We are still in the fine tuning process of this program, and much remains to be done, but the fact is that with the help of the organized bar, our Legislature and governor have found a way to both create and fund this program in the last two sessions.

Many lawyer members of the Legislature who worked tirelessly for this goal are retiring this year, and some may lose their seats in contested elections. They will forever own the gratitude of the organized bar for their work on an issue that had no political mandate other than the dictates of conscience.

Mentoring Program

Another program that has been in the works for several years is the Standards of the Profession Committee's mentoring program, which should begin a three-year pilot project in 2005. For years, the State Bar of Georgia has struggled with the problem of training new lawyers to be more professional in their conduct and practice. The usual solution has always been to throw a videotaped seminar at younger lawyers, which is the fun-

damental equivalent of being raised by wolves.

Under John Marshall's committee, the new mentoring program will allow every beginning lawyer in the state of Georgia, approximately 900 per year, to have an actual "go-to" lawyer of some experience (in the same firm or not), who will be available for advice, counseling, review and, if necessary, course correction. In implementing this program, some past projects will be eliminated, including the beloved "Nine Trial Experiences" that were previously necessary before a young lawyer could actually litigate a case in court (the Supreme Court has reportedly approved this request). Also under consideration is the possible elimination of the "Bridge the Gap" seminar, which has honed younger lawyers' crossword puzzle skills over the years.

Casemaker

In the area of member benefits, I am pleased to report that the State Bar of Georgia will soon join the Casemaker consortium, which will allow every lawyer in this state to have free online access to Casemaker, a computer assisted legal research tool with a fast and powerful search engine. The cost of this program has required us to raise dues by \$9 per member, but the benefits to be derived from Casemaker will allow law firms of every size and public sector lawyers to have access to online computer research without any hourly charges.

In addition, we have access not only to Georgia appellate and statutory sites, but also to law libraries of the other 15 states that are members of the consortium. This number is expected to grow, as will the federal reporters available to members of

the consortium. Not everyone will need this service, but the benefit that the vast majority of Georgia lawyers will enjoy appears to be truly remarkable. This service should be available to our lawyers beginning in January 2005.

Discipline Report

One of the most important functions of a unified bar is lawyer discipline. For the 2003-04 Bar year, the



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activity in the Office of the General Counsel (OGC) looked like this:

- b The help line averaged 21 calls per day;
- b Lawyers in OGC participated in 52 CLE programs;
- b Although 136 lawyers received some level of discipline, this represents only about .03 percent of the Bar membership;
- b The disciplinary breakdown follows:

29 Letters of Admonition

25 Investigative Panel Reprimand

26 Interim Suspensions

1 Review Panel Reprimands

4 Public Reprimands

29 Suspensions

22 Disbarments

- b The number of people requesting grievance forms increased by 1,059 when compared with the previous year. The number increased from 3,052 in 2002-03 to 4,111 in 2003-04. We need to improve our bedside manner;
- b The number of grievances returned decreased by 240 when compared to the previous year. The number decreased from 2,712 in 2002-03 to 2,472 in 2003-04;
- b OGC reviewed and dismissed 2,185 grievances and sent 306 to the Investigative Panel for further investigation. This represents an increase of 17.24 percent in the number of cases that were sent to the Investigative Panel;
- b The Overdraft Notification Program received 561 notices from financial institutions. Three hundred twelve of these cases were dismissed after initial inquiry. This leaves 249 people who needed more help in explaining their "bookkeeping methods." After the dust settled, 21 were sent to the Investigative Panel for investigation. Again the group who

cause the problems is very small in comparison to the Bar population; and

- b During the year, OGC was involved in 36 fee arbitration enforcement cases. These are matters that are handled in the state system when the lawyer refuses to be bound by the award of the arbitrators, and while we want to continue this program, these are very difficult and time consuming cases.

The OGC staff continues to be its greatest asset. I cannot say enough about these dedicated hard working people. Besides bringing some of the bad guys to justice, they also help a number of careless lawyers from becoming bad guys in the first place.

Unfinished Business

When the year began, I knew that I would be starting several new projects that could not be completed within the year, although substantial progress was made on several of these initiatives, due in large part to the enthusiastic efforts of committee leaders and members. The proposal to establish a business court in Georgia is well along, and it is hoped that a pilot program can be established sometime at the next Bar year, or at the end of 2005 at the latest. This proposal was mentioned at some length in my last "President's Page" editorial, and since that time, there has been strong support given by the Supreme Court of Georgia to initiate a complex commercial litigation court within the state court system, using specially trained senior judges, and facilities provided by the Superior Court of Fulton County.

Our efforts to have the state Legislature adopt uniform rules of evidence modeled after the Federal Rules of Evidence have not pro-

gressed as far as I would have liked, possibly because a considerable amount of effort and attention was expended during the legislative session to address inadequacies in tort reform proposals that were being initiated on behalf of various industries and professions. The tort reform debate will continue for a number of years to come, but I do believe that there is core resistance in our profession (and not just from the trial lawyers) to legislation that is outcome determinative, such as caps or immunities. This is particularly so when the proposed caps and immunities favor certain businesses and professions, rather than the public as a whole.

The tort reform debate highlights our continued need for an increase in the number of lawyers serving in our Legislature. Sadly, we may dip below the 18 percent level that presently exists, unless we individually support lawyer candidates. I continue to believe that the public will be best served if we maintain an adequate percentage of attorney/legislators in the General Assembly, on both sides of the aisle, who will be able to bring a lawyer's special skills to the drafting of laws.

This brings me finally to an area of concern that has risen this year, and which will also be a major agenda item for future Bar leadership: the conduct of judicial elections. A year ago, I predicted that 2004 would become the most contentious year of judicial elections in Georgia since these elections were made nonpartisan in the mid 1970s. I hoped that I was wrong, as I so often am, but this time I had the bad luck to be somewhat prescient.

I had the good fortune to convince Judge Ben Studdard to focus the Court Futures Committee on the issue of judicial elections, study-

ing at first the way judges have traditionally been selected in Georgia, as well as in other states, and trying to determine if there was a particular methodology that provided for both accountability and independence within the judiciary.

We are faced today with an unprecedented number of judicial races at every level and in every part of our state. For the most part, these campaigns have been conducted with integrity, and in keeping with the spirit of the former guidelines of the Judicial Qualification Commission. Unfortunately, there are groups within our state that long for a Georgia version of Alabama's Supreme Court Justice, Roy Moore. It would be great if these groups would continue to devote their time and energy to their previous agenda of returning our state's educational system to the 14th century.

In the coming months, Judge Studdard's committee will present proposals to the Board of Governors regarding proposed legislation that will impact judicial elections. We can anticipate a call for campaign finance, perhaps longer judicial terms, and an official seat on the Judicial Nominating Commission for one or more representatives of the State Bar of Georgia. In all likelihood, we cannot make judicial elections go away, but we can and should make them better. We do not do this to protect incumbents. We do it to protect the integrity and independence of our judicial system.

And now, it is time for me to say a number of thank-you's, and then goodbye. First, I would like to thank our Bar staff for a truly incredible job this year in making my presidency into a silk purse. Although sorely tested this year, Cliff Brashier can make almost anyone look halfway competent in this job. He has been ably

assisted by my longtime friend from my days as Younger Lawyers President, Sharon Bryant. For public relations and communications, Tyler Jones has done an incredible job this year, his first, and I hope we can keep him with us for years to come. While I could go on and single out virtually every member of the Bar staff, I would like to give my family's special thanks to Michelle Priester, who worked tirelessly this year under brutally demanding conditions to make each and every one of our Board meetings and Executive Committee meetings into unprecedented successes. She too is an invaluable asset of the State Bar of Georgia.

I have already spoken about our General Counsel's Office, and the hard-working men and women who serve there. As president of the Younger Lawyers Section (now the Young Lawyers Division) in 1984, I was on the Executive Committee that hired Bill Smith as general counsel, and it was one of the best decisions the State Bar of Georgia ever made. For their tireless insistence on warning the president about potential legal pitfalls, I unkindly nicknamed Bill Smith and Bob McCormick the "Blues Brothers." I apologize, Bill and Bob, although it was a pretty funny line.

I spoke last year about both the diversity and the tenure of our Executive Committee. For the last five years or so, a very cohesive core of attorneys has served together on this committee. This has enabled us to maintain an organizational memory within the State Bar during this period, which has strengthened our decision-making ability. I am particularly grateful to my longtime friend, Jim Durham, who will be making his final appearance today as a member of the Executive Committee, and of the Board of

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Governors. He has served us well, and I know that we will continue to call upon him for guidance and assistance in coming years. With regard to my successor, Rob Reinhardt, I will say a few more words tomorrow night when I introduce him at the inaugural dinner. He is our first "legacy" president, and he brings to this job approximately 15 years of experience on the Board of Governors and as an Executive Officer, as well as being genetically hotwired for Bar leadership.

I would now like to thank each and every member of the State Bar Board of Governors, but I would like to single out one member in particular. Donna Barwick has served on the Board of Governors since 1987. As president of the Younger Lawyers Section in 1988, she was the first woman to serve on the Executive Committee. She was also the first woman elected in a statewide bar

race as one of Georgia's representatives to the ABA House of Delegates, where she still represents us some 20 years later. She has done all this while successfully raising two children (three if you count me), and has been the most thoughtful counselor that any president of this organization could have. I for one think she has a future in Bar leadership.

To the other men and women of this august body, I could not have accomplished anything this year without your hard work, tough questions and loyal support. Several years ago, I became worried that the Board of Governors was developing an "us versus them" attitude. For the last two years, I have only seen an "us" frame of mind, with lawyers considering and approving measures that did not necessarily help their firms or their practices, but which benefited the rank and file members of our

profession throughout the state. It is my sincere hope that this collegiality and professional respect will continue in the future.

And now, it is time to go. It is customary for an outgoing Bar president to announce how fervently he or she looks forward to returning to the practice of law, and to laying down the burdens of office. For me, I must confess that I have honestly enjoyed this last year as much as I have enjoyed any task in my legal career. If I have done a passable job, the people in this room are entitled to the credit, but I am here to claim all of the enjoyment. It has been a wonderful honor for me to be the president of this organization, and to serve the 35,000 men and women who are lucky enough to call themselves Georgia lawyers. On behalf of my family, my law partners, and myself I thank you from the bottom of my heart. God bless you all and goodbye. 



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SIXTH ANNUAL JUSTICE ROBERT BENHAM AWARDS FOR COMMUNITY SERVICE

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**Robert Benham, Justice
Supreme Court of Georgia**

CALL FOR NOMINATIONS

The Community Service Awards Selection Committee and the State Bar of Georgia invite nominations for the Sixth Annual Justice Robert Benham Awards for Community Service.

NOMINATING GUIDELINES

To be eligible a nominee must: 1) be admitted to the State Bar of Georgia; 2) be currently in good standing; 3) have carried out outstanding work in community service; 4) not be a member of the Selection Committee; and 5) not be engaged in a contested judicial or political contest in calendar year 2004.

Nomination Packet should include:

- I. Nominator Information** Name (contact person for law firm, corporate counsel or other legal organization), address, telephone number and e-mail address.
- II. Nominee Information**
Name, address, telephone number, e-mail address. Nominee's resume or description of nominee's background and relevant activities should be included.
- III. Nomination Narrative**
Using as many pages as necessary, explain how the nominee meets the following criteria:

These awards recognize judges and lawyers who have combined a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government-sponsored activities or humanitarian work outside of their professional practice. These judges' and lawyers' contributions may be made in any field, including but not limited to: social service, education, faith-based efforts, sports, recreation, the arts, or politics. Continuous activity over a period is an asset.

Specify the nature of the contribution and identify those who have benefitted.
- IV. Letters of Support**
Include three (3) letters of support from individuals and organizations in the community that are aware of the nominee's work.

Awards will be presented at a special ceremony in Atlanta.

SUBMISSION OF MATERIALS Send nomination packet to:

Mary McAfee
Chief Justice's Commission
on Professionalism
Suite 620, 104 Marietta Street, N.W.
Atlanta, Georgia 30303
(404) 225-5040

Nominations must be postmarked by October 1, 2004.

Lawyers Foundation of Georgia at the 2004 Annual Meeting

By Lauren Larmer Barrett

Were we in a small Italian village, or Orlando, Fla.? It was sometimes hard to tell. Except, of course, when you heard the screams from the roller coasters and other exciting rides just around the bend. The Portofino Bay Hotel at Universal Studios in Orlando is a beautiful location, far removed from Georgia in spirit.

The Silent Auction was even bigger and better this year. With 85 items to bid on, the Annual Meeting attendees kept their pens flying at the auction, especially in the last half hour during the Lawyers Foundation/Pro Bono Bloody Mary Reception. Thanks to all those who participated—both the donors and the bidders.

The Fun Run followed a winding and picturesque route around the hotel grounds, and all the participants completed the run, to be



Photos by C. Tyler Jones

The singer at CityJazz® led Past President Charlie Lester and other Fellows in a number of line dances during the After Hours Reception.

greeted with their just reward of a bright and colorful t-shirt, and an even more welcome treat, cold water to drink.


The Fellows Meeting, held each year to provide the Fellows of the Foundation with an update on the Foundation and to elect the officers and trustees of the Foundation, was held on Thursday, June 17, when many folks may have preferred to be at the theme parks, in the pool or

on the links. Nonetheless, we had a good turnout, and a very interesting discussion about the accomplishments of the LFG and its fellows. (See page 51 for new trustees and officers.)

The Annual Fellows Dinner became an After Hours Reception this year. We closed down one of the venues at CityWalk® at Universal Studios. CityJazz® is a beautiful venue, with inviting

booths and a great view from the bar. Our sultry torch singer wowed us with her voice, and then delighted us all with our own dancing skills as she led us in a number of line dances. The spectacular dessert buffet and open bar conspired to make all attendees happy.

To all those who support the Lawyers Foundation of Georgia, thank you! The continued growth of the foundation is due to your participation and contri-

butions. If you have any questions about the activities, events and programs of the foundation, please contact Lauren Larmer Barrett, 104 Marietta St. NW, Suite 630, Atlanta, GA 30303; lfg_lauren@bellsouth.net; (404) 659-6867. 

Lauren Larmer Barrett is the executive director of the Lawyers Foundation of Georgia.



(Top Left) Mark Bullman and Rebecca Burnaugh enjoy their time at the After Hours Reception.

(Top Right) Carol and Tom Chambers attend the reception.

(Above) Lauren Larmer Barrett stands among the 85 items up for bid at the LFG's Annual Silent Auction.

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C. Wilson DuBose Receives Distinguished Service Award

By Daniel L. Maguire

President Harry S. Truman once said, “We know that helping others is the best way—probably the only way—to achieve a better future for ourselves.” If this is truly the case, then the future looks bright for the Bar’s 2004 Distinguished Service Award recipient, C. Wilson DuBose.

DuBose, of Madison, received the highest honor bestowed by the State Bar of Georgia “for conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia” during the June 19 inaugural dinner at the State Bar’s annual meeting in Orlando, Fla.

Prior to the award ceremony, DuBose had no idea he was this year’s recipient. In fact, he had not planned on attending the inaugural dinner; he had decided to spend the evening with his family instead. Fortunately, outgoing President Bill Barwick and Executive Director Cliff Brashier caught wind of this and hatched a plan to have DuBose, who chairs of the Bar’s Indigent Defense Committee, give a speech



C. Wilson DuBose receives the Distinguished Service Award from outgoing President William D. Barwick.


about the State Bar’s work on indigent defense. To ensure his participation, Chief Justice Norman Fletcher called DuBose to emphasize the importance of his speech. So DuBose prepared a 25-minute presentation that never left his pocket.

Selfless as always, upon receiving the Distinguished Service Award, DuBose said he was thrilled by the Bar’s accomplishments in the area of indigent defense. “We saw a need...we embraced it wholeheartedly, and we saw it through,” he said.

DuBose was instrumental in the passage of HB 770, the bill that created the Georgia Public Defense Standards Council. His efforts led to the Bar winning the ABA’s 2004 Harrison Tweed Award, which recognizes the extraordinary achievements of state and local bar associa-

tions that develop or significantly expand projects or programs to increase access to civil legal services to poor persons or criminal defense services to indigents.

DuBose began the practice of law in 1974, after earning a bachelor’s degree magna cum laude from Harvard University and his law degree from the University of Virginia School of Law. He is a member of the Georgia and South Carolina Bars, as well as the American Bar Association, and has served on the Board of Governors since 1998. DuBose practices in the areas of commercial and appellate litigation, construction law, alternative dispute resolution, employment law and corporate advice and counsel.

In addition, DuBose has served as president of the Atlanta Bar Association, as a group leader for the Morgan County Board of Education Strategic Planning Task Force, as a member of the Atlanta Volunteer Lawyers Foundation’s board of directors, as a mentor for Big Brothers/Big Sisters of Atlanta, and as a member of 1,000 Lawyers for Justice. 

Daniel L. Maguire is the administrative assistant for the Bar’s communications department and a contributing writer for the Georgia Bar Journal.



Photos by C. Tyler Jones

Outgoing President William D. Barwick stands with award recipients following the awards ceremony.

Bar Honors Excellent Members

By Sarah I. Bartleson

Many individuals in the legal profession were honored for their hard work and dedication to the legal community of Georgia at the 2004 Annual Meeting of the State Bar of Georgia at the Portofino Bay Hotel in Orlando, Fla.

"One of the most pleasant duties of being Bar president, aside from welcoming new admit-

tees to the practice of law at various swearing in ceremonies, truly has to be what comes next," President Bill Barwick said before presenting the awards.

"This time of year we get to honor so many people, committees and sections that have done so much work for us," he said. "The State Bar of Georgia, the Board of Governors and even the Executive Committee, rely upon the sections, committees, and the rank and file members that do the day-to-day work for so many things that are important to this organized and unified bar. This is our opportunity to say thanks."

Chief Justice Professionalism Awards

In honor of the late Chief Justice Thomas O. Marshall, the Bench and Bar Committee Professionalism Award is now the Chief Justice Thomas O. Marshall Professionalism Award. The 3rd Annual Professionalism Awards honor one lawyer and one judge who have and continue to demonstrate the highest professional conduct and paramount reputation for professionalism. This year's recipients are:

Thomas C. Chambers III,
Chambers & Rice Law Offices,
Homerville, Ga.

Hon. Philip F. Etheridge,
Superior Court Judge, Atlanta
Circuit, Atlanta, Ga.

Voluntary Bar Awards

The Excellence in Bar Leadership Award, presented annually, honors an individual for a lifetime of commitment to the legal profession and the justice system in Georgia, through dedicated service to a voluntary bar, practice bar, specialty bar or area of practice section. This year's recipient is the late **Donald Wampler Gettle**, as nominated by the Cobb County Bar Association (see page 55 for more information).

Awards of Merit are given to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serving their communities. The bar associations are judged according to size. This year's recipients include:

51-100 members: **Henry County Bar Association**

251-500 members: **Gwinnett County Bar Association**

501 members or more: **Cobb County Bar Association**

The Best Newsletter Award is presented to voluntary bars that provide the best informational source to their membership, according to their size:

251-500 members: **Gwinnett County Bar Association**

501 members or more: **Atlanta Bar Association**

In 1961, Congress declared May 1 as Law Day USA. It is a special time for Americans to celebrate their liberties and rededicate themselves to the ideals of equality and justice under the law. Every year, voluntary bar associations plan Law Day activities in their respective communities to commemorate this occasion. This year's recipients



Nichole A. Reynolds and Kelley Powell accept the Award of Merit for Henry County Bar Association from President Bill Barwick.

for the Law Day Award of Achievements are:

51-100 members: **Blue Ridge Bar Association**

101-250 members: **Dougherty Circuit Bar Association**

251-500 members: **Gwinnett County Bar Association**

501 members or more: **Cobb County Bar Association**

The Best New Entry Award is presented to recognize the excellent efforts of those voluntary bar associations that have entered the Law Day, Award of Merit or Newsletter competitions for the first time in four years. This year's recipient is the **Savannah Bar Association**.

The President's Cup Award is a traveling award presented annually to the voluntary bar association with the best overall program. This year's recipient is the **Gwinnett County Bar Association**.

Pro Bono Awards

The H. Sol Clark Award is named for former Georgia Court of Appeals Judge Clark of Savannah,

who is known as the "father of legal aid in Georgia." The Clark award honors an individual lawyer who has excelled in one or more of a variety of activities, which extend legal services to the poor.

The H. Sol Clark Award is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project in 2004 to **Rita A. Sheffey**, having demonstrated professionalism and proven commitment to, and support for, the delivery of civil legal services to the poor. Since 1995, Sheffey has directed the Southside Legal Clinic, sponsored by her firm, Hunton & Williams, LLP; served on her firm's Pro Bono Committee since 1992; has guided legal aid and pro bono programs through board service; and has been instrumental in the creation of innovative pro bono services and policies to expand volunteer lawyer involvement in the delivery of legal services to the poor.

The William B. Spann Jr. Award is given each year either to a local bar association, law firm project or

A Tribute to Donald Wampler Gettle (1930-2003)

By Margaret Gettle Washburn

Donald Wampler Gettle passed away July 3, 2003, from lung cancer. He was a very young 72 years old. My father, known as Don to his friends and Professor Gettle to his students, was a trial attorney, a golfer, a friend, a husband, a father and a beloved law school professor. Throughout his legal career, his goal was that lawyers should always maintain their professionalism—that a lawyer's reputation was his livelihood and a lawyer's word was his bond.

Gettle began his college education at Virginia Polytechnical Institute (Va. Tech), with plans to attend law school. But his induction into the U.S. Army in 1953 delayed his plans. He was honorably discharged from the Army in 1954 and enrolled in Catawba College, in Salisbury, N.C., where he completed his bachelor's degree in history in 1956, with honors.

Upon graduation, Gettle went to work as an engineer for Southern Bell Telephone and Telegraph Company in Winston-Salem, N.C., but never lost sight of his goal to become a lawyer. After three years in Winston-Salem, he requested a transfer to Atlanta, and enrolled in Emory University Law School. While in law school, Gettle was elected by his peers to the Order of the Coif, was vice president of Phi Alpha Delta legal fraternity, and was assistant editor of the *Georgia Bar Journal*, Emory staff.

Prior to graduating with high honors from Emory Law School on

Aug. 25, 1962, Gettle passed the Georgia Bar exam and began working at the law firm of Fisher & Phillips. Gettle eventually created the firm of Gettle, Jones and Fraser with offices in Atlanta. He taught at Atlanta Law School from 1965 until retiring in 1985. He also taught in the Master of Laws program at Woodrow Wilson College of Law.

"He was an outstanding teacher, incredible," said Howard Cook, chief judge of the State Court in Gwinnett County and a student from 1973 to 1975. Cook was a member of the select group of students to whom Gettle taught bar exam skills, a smattering of the law and professionalism nearly every Saturday at his law office. "He would teach you things you couldn't get in an academic setting. He taught you how to use what you learned in school," said Cook.¹ "He made law so much fun that you learned in spite of yourself," said Linda Wade Gettle, who studied with "Professor Gettle" from 1983 to 1985 and married him in 1989.² The Gettles assisted with coaching high school teams in the early years of the Georgia High School Mock Trial competitions.

Georgia Supreme Court Justice Robert Benham, who spoke at Gettle's memorial service, recalled, "When I was the only African-American practicing around Cartersville in 1971, Don welcomed me and encouraged me. He believed that lawyers should be problem-solvers, and their role was to help heal the community rather than divide the community. There's no numbering the people he inspired to be lawyers and judges."³

"They say there are no more heroes, but Don Gettle was my hero and my inspiration," said Larry Smith, a director and appellate judge at the State Board of Workers Compensation in Atlanta. "Don was the personification of what a lawyer should be. He was intimidating and demanding in the classroom at times but he was trying to get us ready for the courtrooms. It was inspiring to me that Don worked in the trenches of the courtrooms during the day and then taught us at night. I learned the nuances and skills of cross-examination from Don. He inspired all of us that were going to be lawyers and that were in other professions as well."

On July 6, 2003, during the funeral services, Gwinnett State Court Chief Judge Howard Cook asked those in attendance that had graduated from Atlanta Law School to please stand. The number of former students that stood in respect for my father still brings tears to my eyes. Cook looked around the large room and said, "This is the legacy of Donald Gettle."

Margaret Gettle Washburn is a sole practitioner in Lawrenceville, Ga. She currently serves as the editor of the *Gwinnett County Bar Association Newsletter*, editor of the *Georgia Council for Municipal Court Judges News Bulletin* and vice chair of the Local Bar Activities Committee for the State Bar.

Endnotes

1. Derrick Henry, *The Atlanta Journal-Constitution*, July 6, 2003.
2. *Id.*
3. *Id.*

a community organization in Georgia that has developed a pro bono program that has satisfied previously unmet needs or extended services to underserved segments of the population. The award is named for a former president of the American Bar Association and former executive director of the State Bar of Georgia.

The William B. Spann Jr. Award is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to **Benjamin Arthur Land** and the Columbus, Ga., firm of **Buchanan & Land, LLP**, for commitment to legal services for the poor through their outstanding efforts on a pro bono basis to represent a low-income client from trial court through the Georgia Supreme Court on an insurance matter with repercussions for all Georgians. Land, at the considerable expense of his time and resources—and those of his firm—provided exemplary service on behalf of a client unable to afford legal services. Land's impressive advocacy on behalf of his pro bono client clearly defines his dedication to professionalism and the call to

service, and gives testimony to the strong commitment to the community of Buchanan & Land, LLP.


The Dan Bradley Award honors the commitment to the delivery of high quality legal services of a lawyer of Georgia Legal Services Program or the Atlanta Legal Aid Society. The award honors the memory of Georgia native and Mercer Law graduate Dan J. Bradley, who was president of the Federal Legal Services Corporation.

The Dan Bradley Award is presented by the Access to Justice Committee of the State Bar of Georgia to **Eleanor M. Crosby**, founder and former director of the Georgia Seniors Legal Hotline and former attorney with both Georgia Legal Services Program and the Atlanta Legal Aid Society, for her exemplary service and dedication to the delivery of legal services to the poor and to the ideals of the legal profession.

The A Business Commitment (ABC) Pro Bono Business Law Award honors the business law pro bono contributions of an individual lawyer, corporate legal department or law firm to the non-

profit and community economic development sectors in Georgia.

The ABC Pro Bono Business Law Award is presented by the State Bar of Georgia's ABC Committee to **Gerald L. Blanchard**, associate general counsel for Bank of America Corporation, for professionalism and strong commitment to the delivery of pro bono business law services to the nonprofit and community economic development sectors in Georgia, exemplified by his service to the Cobb Microenterprise Center and his demonstrated commitment to increased pro bono activity of corporate counsel during his tenure as president of the Georgia Chapter of the American Corporate Counsel Association.

Congratulations to all of these individuals who put forth their energy and dedication to the practice of law in Georgia. 

Sarah I. Bartleson is the assistant director of communications for the State Bar of Georgia.

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PHILIP R. TAYLOR – St. Simons Island
F. BRADFORD WILSON, JR. – Macon

No Easy Decision

Local Bar Activities Committee Reviews Quality Entries

By Margaret Gettle Washburn

The Local Bar Activities Committee met on May 14 to review the entries

for this year's awards, which were presented at the Annual Meeting. As usual, all the entries were excellent and made our decisions difficult.

Blue Ridge Bar

The Blue Ridge Bar Association received the Law Day Award for bar associations of 51-100 members. Their members appeared as guest columnists throughout the year as part of the "From the Bench and Bar" section of the Cherokee Tribune newspaper.

The Blue Ridge Bar Association recognized National Crime Victims Week with a local confirmation by County Commissioner Mike Bird, presented to District Attorney Gary Moss.

There were also several other activities including meeting with local Boy Scout troops and sponsoring the local Oratorical Competition.

The annual Law Day program took place April 27 at a joint meeting of the Blue Ridge Bar Association and the Rotary Club of Canton.

Dougherty Bar

The Dougherty Bar received the Law Day Award for bar associations of 101-250 members. Their Law Day activities included a mayoral proclamation from the Albany mayor, an essay contest, and a high school literary project. The Dougherty Bar Association members also participated in a Great Day of Service, provided high school speakers, presented speakers for the Darton College Law Day, provided courthouse tours and other activities. Congressman Sanford Bishop gave the Law Day address.

Henry County Bar

The Award of Merit for bar associations of 51 to 100 members was awarded to the Henry County Bar Association. The Henry County Bar has doubled in membership over the past five years. They have monthly luncheon meetings in addition to an annual holiday party.

The bar provides a quarterly newsletter and also communicates with bar members through e-mails in order to remind members of special events and meetings. The members hosted a forum for the candidates of the court of appeals, giving the candidates the opportunity to speak to the voters of Henry County.

Gwinnett County Bar

The Gwinnett County Bar Association received the Law Day Award and Award of Merit for bar associations of 251-500 members. They celebrated Law Day 2004 with many activities, including a partnership with the Gwinnett County Schools in the "Law Related Education Week." The partners prepared an educational material book which was distributed to social studies teachers at each of Gwinnett's 95 public schools. Gwinnett County Bar members traveled to individual schools and spoke on legal topics of interest. Tours of the courthouse were made available to all schools. The students participated in the ABA "Fifty" poster competition and the

posters were put up at the Gwinnett County Courthouse. A Duluth High School senior was awarded the Law Day \$500 scholarship and first place in the essay competition.

The annual Judges Reception took place at the Gwinnett Justice and Administration Center on May 5. The Law Day 2004 banquet took place on May 7 at the Gwinnett Civic Center and featured speaker Mike Luckovich, the 1985 Pulitzer Prize Winner and current editorial cartoonist for *The Atlanta Journal-Constitution*.

Cobb County Bar

The Cobb County Bar Association received the Law Day Award and Award of Merit for bar associations with over 500 members. Their Law Day festivities this year celebrated 50 years of service.

Debra Halpern Bernes presided over this golden anniversary celebration. This included the 50th anniversary celebration and several projects to accomplish professional, educational, social and civic goals.

On May 8, 1953, the 52 Cobb County lawyers who formed the Cobb County Bar Association celebrated their beginnings with a dinner attended by the governor and other dignitaries at the Marietta County Club.

On May 2 over 750 Cobb County Bar Association members celebrated 50 years of service to the community. One of the Law Day activities was a luncheon held at the Cobb Galleria where attendees renewed their commitment to the law profession and Supreme Court Justice Harris Hines administered the oath. Superior Court Judge Adele Grubbs was on hand as the Alexis Grubbs Memorial Scholarship was awarded to several Marietta High School seniors.



Jennifer Dickinson accepts the award for Best New (Newsletter) Entry on behalf of the Savannah Bar Association from outgoing Bar President William D. Barwick.

Best Newsletter

The Gwinnett County Bar Association received the Best Newsletter Award for bar associations of 251 to 500 members. The Atlanta Bar Association received Best Newsletter Award for bar associations of 501 or more members. The Best New Entry was awarded to the Savannah bar association. All of the newsletter entries did a great job in keeping their members informed.


President's Cup

The President's Cup was awarded to the Gwinnett County Bar Association. The President's Cup is awarded to the Bar Association that has the overall best program.

Excellence in Bar Leadership

The Excellence in Bar Leadership Award was awarded to the late Donald Wampler Gettle, who was nominated by the Cobb County Bar Association (see page 55 for more information on Gettle).

The Local Bar Activities Committee extends congratulations to all applicants and award recipients. We wish every voluntary Bar in Georgia had submitted an application. It is an honor to review and recognize the community service and civic leadership provided by the lawyers in this state.

The committee strongly recommends and encourages the presidents of the local bars to keep scrapbooks of their bar initiatives to submit for next year's competition. Local Bar Activities Committee members are always happy to attend local bar monthly luncheons, or any other events in which food is involved. Feel free to contact any committee member to provide comments or suggestions regarding the awards. 

Margaret Gettle Washburn is the vice chairperson of the Local Bar Activities Committee for the State Bar of Georgia. She can be reached at washburnlaw@bell-south.net.

KUDOS

IP Law & Business Magazine recently ranked Kilpatrick Stockton LLP's patent litigation practice 19th out of all U.S. firms in the category of "Firms that Defended the Most Cases." To be eligible, cases had to be filed in 2003. The firm also announced that it was named the "Leading Georgia Firm for Intellectual Property" in the 2004-05 edition of **Chambers USA: America's Leading Business Lawyers**. Kilpatrick Stockton also led all Georgia firms with the most lawyers named "Leading Individuals in Intellectual Property," including Miles Alexander, Anthony Askew, Joseph Beck, William Brewster, James Ewing, James Johnson and Jerre Swann.

Winship E. Rees, of Winship E. Rees, P.C., has been elected **chairman of the City of Suwanee Zoning Board of Appeals**. Rees will continue to represent clients in transactional real estate matters, probate and estate planning.

The Juvenile Law Committee of the Young Lawyers Division recently named the **2004 Child Advocates of the Year**. They included Wendi Clifton, Child Advocate of the Year; Mary Hermann, Child Advocate Attorney; Amy V. Howell, Juvenile Defender; and the Hon. Velma C. Tilley, Juvenile Court Judge.

Holt Ney Zatcoff & Wasserman, LLP, announced that the firm is celebrating its 20th anniversary this year.

Anna E. Daly of Cozen O'Connor in Charlotte, N.C., received the **2004 Pro Bono Attorney of the Year Award** from Pro Bono for Nonprofits, a program of the Mecklenburg County Bar. The Pro Bono for Nonprofits program provides volunteer legal assistance to charitable organizations. Daly was selected in recognition of her work with Optimist Park, a low-income neighborhood, to prevent the construction of a hot asphalt mixing plant in the area that would have ruined the neighborhood's revitalization plans.

William H. Kitchens, of Arnall Golden Gregory LLP, was elected to the **Georgia Biomedical Partnership's board of directors**. The GBP was founded in 1989 with the mission to grow the life-sciences industry in Georgia. The organization serves members at any phase of growth, from startups to Fortune 500 companies. Kitchens is an adjunct professor at the Emory University School of Law; he was also recently named to the "Georgia Super Lawyers 2004" list published in *Atlanta Magazine*.

Judge Ann Elizabeth Barnes, Judge M. Yvette Miller and Judge Herbert E. Phipps of the Georgia Court of Appeals all received their **Master of Laws in the Judicial Process** degrees from the University of Virginia law school in Charlottesville, Va., in May. The Georgia Court of Appeals is the busiest appellate court in the United States.



William M. Ragland Jr. was installed as the **2004-05 president of the Atlanta Bar Association** at its annual meeting in May. He is the 97th lawyer to hold the position.

Ragland has been active with the Atlanta Bar Association for years, serving as first vice president, second vice president and as secretary. He is also a past chair of the association's Litigation Section and its Continuing Legal Education Board of Trustees.

The **Atlanta Volunteer Lawyers Foundation** honored Kilpatrick Stockton with the **2004 Phil Heiner Award** for pro bono work. The presentation was made at the Atlanta Bar Association's annual luncheon. The AVLJ also recognized Kilpatrick Stockton managing partner **Bill Brewster** with an award for his 10 years of dedication in the Saturday Lawyers Program.

The Burton Foundation and the Association of Legal Administrators announced that **Smith, Gambrell & Russell's** custom magazine, *Trust the Leaders*, was selected as the inaugural winner of the **Burton Award** for best law firm publication. *Trust the Leaders* is published quarterly and mailed to more than 10,000 clients, friends and colleagues of SGR. Now in its fifth year, the purpose of the Burton National Awards Program is to reward law firms and law students who use plain, modern language and avoid archaic, stilted "legalese."



Baker Donelson announced that President Bush named **Robert C. Divine** as the **first Principal Legal Advisor (General Counsel) of the U.S. Citizenship and Immigration Services Department**. The USCIS is

a division of the Department of Homeland Security and was established in March 2003. Divine has been a leader in the field of immigration law for more than 17 years. He is the author of *Immigration Practice*, a 1,400-page treatise on immigration law that is updated annually and is in its 10th edition.



David M. Zacks, a partner in the Atlanta office of **Kilpatrick Stockton LLP**, was named to the **Board of Advisors of the Emory University School of Medicine**. He will serve an initial three-year term.

Zacks was also recognized as one of the leading health care attorneys in the nation in "The Best Lawyers in America®."



Hunton & Williams attorney **Joel K. Gerber** received the prestigious **Charles R. Yates Award** for exceptional volunteer service in connection with the 2003-04 Annual Corporate Campaign for the Arts

Center Friends Committee of the Woodruff Arts Center. The award is presented annually to one volunteer from each of eight committees who demonstrate excellence in fundraising; it recognizes these outstanding volunteers for their enthusiasm, dedication and loyalty. Gerber was recognized at a celebration at the governor's mansion honoring the Woodruff Arts Center Patron Circle of Stars; his name will be added to a plaque in the Woodruff Circle Room.

Powell, Goldstein, Frazer & Murphy LLP announced that partner **W. Scott Sorrels** was appointed as the **Area 6 President of the Southern Region of the Boy Scouts of America**. He was sworn into office at a recent national meeting of the BSA held in Chicago. The Southern Region covers 13 states from Virginia to Texas; Area 6 covers 10 councils located in Georgia, Tennessee, Kentucky and Mississippi, and serves more than 60,000 youth. Sorrels has served on the regional executive board for the Southern Region; in his new position, he will serve on the executive committee of the regional board. He also has roles in the Atlanta Area Council and the Northeast Georgia Council of the BSA.

McGuireWoods LLP received a **Gold IMA award** in an independent survey that reviewed and rated the Web sites of the 250 largest law firms in the United States. **InterMarketingAttorney.com** conducted the survey; sites were judged in five categories, including design, content, usability, interactivity and intangibles. This was the third year for McGuireWoods to receive an IMA award.

Roy E. Barnes will receive one of five **2004 American Bar Association Pro Bono Publico Awards** during the ABA annual meeting in Atlanta in August. ABA President Dennis W. Archer will host the Pro Bono

Publico Awards Luncheon. The ABA Standing Committee on Pro Bono and Public Service established the awards in 1984 to recognize lawyers, law firms and other legal institutions for extraordinary or noteworthy contributions to extending free legal services to the poor and disadvantaged.



Donald P. Ubell of **Parker, Poe, Adams & Bernstein L.L.P.** in Charlotte, N.C., was included in the *Chambers USA Guide to American's Leading Business Lawyers*. He leads the firm's public finance practice

group and has extensive experience in general governmental, higher education and health care finance.

The **American Health Lawyers Association** listed **McGuireWoods LLP** as seventh in the number of lawyers who belong to the AHLA, the nation's largest educational organization devoted to legal issues in the health care field. The listing was published in the AHLA's June issue of *Health Lawyers News*. The firm's health care department represents three of the largest health care systems in the United States, two of the 10 largest surgery center companies in the country, and two of the six largest dialysis facility companies in the nation. McGuireWoods has 36 lawyers who are members of AHLA.

ON THE MOVE

In Athens

Former ambassador and U.S. Rep. **C. Donald Johnson** joined the **University of Georgia School of Law's Dean Rusk Center** as interim director. He is responsible for managing the center and will work to strengthen and enhance its visibility and initiatives. The Dean Rusk Center is located in Dean Rusk Hall, University of Georgia, Athens, GA 30602-6012; (706) 542-5172; Fax (706) 542-5556.

In Atlanta

Schiff Hardin LLP added **Michael K. Rafter** as a partner in the firm's Atlanta office. Rafter joins Schiff Hardin from Holland and Knight LLP in Atlanta, where he was a partner. He will be a member of the firm's corporate and securities group. His practice focuses in corporate finance and mergers and acquisitions. Rafter is a member of the American and Atlanta Bar Associations and is also a certified public accountant. Schiff Hardin's Atlanta office is located at 1230 Peachtree St., 18th Floor, Atlanta, GA 30309-3574; (404) 806-3800; Fax (404) 806-3801.

Edgar C. Snow Jr. joined **Burr & Forman** as a partner. He will practice in the Atlanta office's financial services and banking group. Snow serves on the State Bar's Business Law Section Executive Committee; he was formerly a partner with Jones Day. The office is located at Atlantic Station, 171 17th St. NW, Suite 1100, Atlanta, GA 30363; (404) 815-300; Fax (404) 817-3244.

Holt Ney Zatzoff & Wasserman, LLP announced that **Michael V. Coleman** joined the firm as a partner, and **Tara N. Evans** joined as an associate. Coleman and Evans will continue their practices in the area of general business law. The firm is located at 100 Galleria Parkway, Suite 600, Atlanta, GA 30339; (770) 956-9600; Fax (770) 956-1490.



Kathleen J. Jennings joined the Atlanta office of **McGuireWoods LLP** as a partner in the labor and employment department. She will represent employers in a variety of employment litigation matters, including

sexual harassment, discrimination, non-compete covenants, wrongful discharge, and enforcement or breach of employment agreements. The firm's Atlanta office is located at The Proscenium, 1170 Peachtree St. NE, Suite 2100, Atlanta, GA 30309-7649; (404) 443-5500; Fax (404) 443-5599.

Kilpatrick Stockton LLP announced that **Tony Smith** and **Tom Wilson** joined the firm's construction practice group as partners in the firm's Atlanta office, and **Hayley R. Ambler** joined the firm as an associate. The office is located at 1100 Peachtree St., Suite 2800, Atlanta, GA 30309-4530; (404) 815-6500; Fax (404) 815-6555.

Levine & Smith, LLC announced that **Paul J. Coburn** has become associated with the firm. The office is located at One Securities Centre, 3490 Piedmont Road NE, Suite 1150, Atlanta, GA 30305; (404) 237-5700; Fax (404) 237-5757.

George Q. Sewell was recently named **Senior Vice President and General Counsel** of **The Facility Group Inc.** and its affiliated companies. The Facility Group Inc. is a fully integrated design and construction firm that designs and builds industrial facilities, schools and jails throughout the U.S. and Europe. Sewell has 30 years of experience in the construction industry in various business and legal roles. He was previously a partner at Smith, Currie & Hancock in Atlanta. The Facility Group Inc.'s Atlanta office is located at 2233 Lake Park Drive, Suite 100, Atlanta, GA 30080; (770) 437-2736; Fax (770) 437-3935.

Bodker, Ramsey, Andrews, Winograd & Wildstein, P.C. moved to a new office in the heart of the Buckhead business district. The new location is One Securities Centre, 3490 Piedmont Road, Suite 1400, Atlanta, GA 30305; (404) 351-1615; Fax (404) 352-1285.

Ford & Harrison announced that **Christopher Butler**, **Jeffrey Hackney** and **Jermaine Walker** joined the firm as associates. Butler focuses on employment litigation matters; Walker practices labor and employment law litigation and is a member of the airline group. Hackney represents employers with respect to union organizing drives, unfair labor practice charges, and federal court proceedings and regularly appears as an advocate for management in labor arbitration hearings. All three attorneys will practice in Ford & Harrison's Atlanta office, which is located at 1275 Peachtree St. NE, Suite 600, Atlanta, GA 30309; (404) 888-3800; Fax (404) 888-3863.

In Columbus

Page, Scrantom, Sprouse, Tucker & Ford, P.C. announced that their firm has relocated to the Synovus Centre, 1111 Bay Ave., Third Floor, Columbus, GA 31901; (706) 324-0251; Fax (706) 323-7519.

In Macon

Camille Hope, the **Chapter 13 Trustee in Macon, Ga.**, announced the addition of **Tony D. Coy** as a staff attorney with her office. This office is responsible for administering cases in the Macon and Athens divisions of the Bankruptcy Court for the Middle District of Georgia. Coy was previously in private practice in Athens. The office is located at 111 Third St., Macon, GA 31202; (478) 742-8706; Fax (478) 746-4488.

In Chattanooga, Tenn.



Leitner, Williams, Dooley & Napolitan announced that **Thomas O. Sippel** is now of counsel with the firm. His practice emphasizes civil defense litigation, primarily in commercial litigation and workers' compensation. Sippel will be based in the firm's Chattanooga office, which is located in the Pioneer Building, Third Floor, 801 Broad St., Chattanooga, TN 37402; (423) 265-0214; Fax (423) 266-5490.

New Rules on MJP, But They Aren't Really Relevant to Georgia Lawyers

By Paula Frederick

The good news? By order of June 9, 2004, Georgia's Supreme Court adopted new rules permitting Multijurisdictional Practice (MJP)¹. The bad news? The rules are more relevant to out-of-state lawyers than to Georgia practitioners.

MJP benefits non-Georgia lawyers by clarifying and easing the terms under which they may engage in the temporary practice of law in Georgia. It does not have any impact on the ability of Georgia lawyers to practice law in other jurisdictions; that conduct is governed by the UPL statutes and ethics rules of the various jurisdictions. Georgia lawyers, therefore, stand to benefit most if other states jump on the MJP bandwagon.

The MJP rule amends Georgia Rules of Professional Conduct 5.5, 8.5 and 9.4. Additions to Rule 5.5 allow a non-Georgia lawyer to establish a *temporary* presence in Georgia under certain circumstances²:

- a) When the out-of-state lawyer associates with a Georgia lawyer who actively participates in the case;
- b) Pre-litigation services performed in anticipation of the lawyer being admitted *pro hac vice*;
- c) ADR proceedings related to the lawyer's home practice; and
- d) Other services arising out of the lawyer's home practice.

Rule 5.5(d) contains specific allowances for an in-house lawyer to provide legal services to an employer/client, and for practice pursuant to federal law or regulation.


Out-of-state lawyers are still prohibited from opening an office in Georgia or other-

wise establishing a "continuous and systematic presence" in the state.

The remainder of Rule 5.5 provides for expanded practice by "foreign lawyers," those licensed by a foreign nation but not by the Supreme Court of Georgia.

The changes to Rule 8.5 contain the regulatory scheme for MJP, and provides that a lawyer providing legal services in this state is subject to Georgia's disciplinary authority. The changes to Rule 9.4 strengthen reciprocal enforcement of disciplinary orders from other jurisdictions.

In truth, it does not make much sense to talk about the new rules in terms of "benefit" to Georgia lawyers. Georgia is the 11th state to adopt rules on MJP since the American Bar Association issued its recommendations on the topic in 2002. In 12 other states, recommendations on MJP are pending before the highest court. Five states have not yet acted on reports from their MJP committee, and 23 states are still studying the issue. As individual states finalize their review of this important issue, Georgia lawyers will benefit from increased clarity governing their interstate practice.

For more information on MJP and the efforts under way in many states to adopt MJP rules, visit www.abanet.org/cpr/jclr/jclr_home.html. 

Paula Frederick is the deputy general counsel of the State Bar of Georgia.

Endnotes

1. The Court's order amends the Terminology section of the rules, as well as Rules 5.5, 8.5 and 9.4.
2. See Rule 5.5(c) for a more thorough description of the circumstances under which a non-Georgia lawyer may establish a temporary presence in this state.

Discipline Notices

(April 10, 2004 through June 14, 2004)

By Connie P. Henry

DISBARMENTS/VOLUNTARY SURRENDER

Dietrich W. Oellerich Jr.
Hephzibah, Ga.

Dietrich W. Oellerich Jr. (State Bar No. 050075) has been disbarred from the practice of law in Georgia by Supreme Court order dated May 3, 2004. Oellerich represented the executor of an estate. The estate loaned \$120,000 to a statutory close corporation in which Oellerich was the only shareholder. The loan, which was approximately one-third of the estate's total assets, was evidenced by a promissory note containing terms favorable to the corporation and was not secured by collateral. Ultimately, the corporation defaulted on the note. Oellerich filed for bankruptcy protection and the debt was discharged. Oellerich's judgment on behalf of the executor was or could have been affected by his own personal, financial, property or professional interests. In mitigation of discipline the court found that Oellerich has no prior disciplinary record, that he was cooperative in the proceeding, and that he has a good character and reputation. In aggravation of discipline the court found that he refused to acknowledge any wrongdoing and was indifferent about making restitution.

Rolf DeDamm
Bellevue, Wash.

Rolf DeDamm (State Bar No. 215630) has been disbarred from the practice of law in Georgia by Supreme Court order dated May 24, 2004. DeDamm resigned from the Washington State Bar Association in lieu of disbarment. He failed to answer or reject a Notice of Discipline filed by the State Bar of Georgia.

James Scott Callan
Rome, Ga.

On May 24, 2004, the Supreme Court of Georgia accepted the voluntary surrender of license of James Scott Callan (State Bar No. 104588). Callan entered a plea of guilty to sexual battery, a *nolo contendere* plea to false imprisonment, and a plea of guilty to five charges of simple battery in the Floyd County Superior Court.

Stephen Eric Redd
Alpharetta, Ga.

Stephen Eric Redd (State Bar No. 597278) has been disbarred from the practice of law in Georgia by Supreme Court order dated June 7, 2004. Redd wrote four checks on his escrow account. The bank refused to honor three of the checks due to insufficient funds in the account. The fourth check was honored but left the account overdrawn. On one occasion Redd deposited significant personal funds into the account to cover a dishonored check. Redd did not respond to the charges made by the State Bar.

SUSPENSIONS

Steven H. Koval
Atlanta, Ga.

On May 24, 2004, the Supreme Court of Georgia indefinitely suspended Steven H. Koval (State Bar No. 428905) from the practice of law in Georgia for one year with conditions for reinstatement. In January 2000 a client paid Koval a \$5,000 retainer to file a lawsuit. Although Koval did some work on the case, he failed to file the suit, failed to communicate with the client and, after being

fired from the case, failed to return the retainer.

In another case in November 1999, a couple hired Koval to draft their wills. Although they paid him \$425, he failed to perform the work or communicate with them. After the clients filed a grievance, Koval refunded the money.

In a third case, in May 2000 Koval accepted an \$850 retainer from a client for estate planning services. He failed to perform the work or communicate with the client. After the client filed a grievance, Koval refunded the \$850.

Richard W. Summers

Atlanta, Ga.

On June 7, 2004, the Supreme Court of Georgia suspended Richard W. Summers (State Bar No. 692025) for a period of six months. Summers received a \$25,000 settlement check which he placed in trust on a client's behalf. He held the check from September 1997 to July 2002, during which time the balance in the trust

account was sometimes insufficient to cover his obligation to the client.


William S. Shelfer

Decatur, Ga.

On June 7, 2004, the Supreme Court of Georgia suspended William S. Shelfer (State Bar No. 640100) from the practice of law for a period of two years with conditions for reinstatement. Shelfer was named executor of a client's estate. After the client died, Shelfer opened a bank account on behalf of the estate and from October 1999 through September 2001 he wrote checks on the account for his personal use and in excess of what he was entitled. The total amount of unauthorized funds exceeded \$100,000. Despite repeated requests, Shelfer failed to provide the primary beneficiary with any information about the status of the estate. Shelfer resigned as executor of the estate only after the beneficiary obtained another attorney and filed a grievance.

In mitigation of discipline the Court cited the fact that he made restitution to the client, he had no prior disciplinary record, his cooperative attitude, his character and reputation, his physical and mental disability, his rehabilitation, and his remorse. Shelfer must successfully participate in the Lawyer Assistance Program prior to reinstatement.

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 April 10, 2004, five lawyers have been suspended for violating this rule and four have been reinstated. 

Connie P. Henry is the clerk of the State Disciplinary Board.

Consumer Pamphlet Series



The State Bar of Georgia's Consumer Pamphlet Series is available at cost to Bar members, non-Bar members and organizations. Pamphlets are individually priced at 25 and 75 cents each plus shipping. Questions? Call (404) 527-8761.

The following pamphlets are available:

Auto Accidents › Bankruptcy › Buying a Home › Divorce › How to Be a Good Witness › How to Choose a Lawyer › Juror's Manual › Lawyers and Legal Fees › Legal Careers › Legal Rights of Nursing Home Residents › Patents, Trademarks and Copyrights › Selecting a Nursing Home › Selecting a Personal Care Home › Wills

Visit www.gabar.org/cps.htm for an order form and more information or e-mail daniel@gabar.org.

"And Justice for All"



2004 State Bar Campaign for the Georgia Legal Services Program, Inc. (GLSP)

*Did **YOU** know that...*

...the Georgia Legal Services Program helps kids in crisis.



Your campaign gift helps low-income families and children find hope for a better life. GLSP provides critical legal assistance to low-income Georgians in 154 counties outside the metro Atlanta area.

The State Bar of Georgia and GLSP are partners in this campaign to achieve "Justice for All." Give because you care! Contribute on your State Bar Dues Notice, or use this coupon to mail your gift today!

YES, I would like to support the State Bar of Georgia Campaign for the Georgia Legal Services Program. I understand my tax-deductible gift will provide legal assistance to low-income Georgians.

Please include me in the following giving circle:

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| <input type="checkbox"/> President's Circle \$1,500 - \$2,499 | <input type="checkbox"/> Donor's Circle \$ 125 - \$ 249 |
| <input type="checkbox"/> Executive's Circle \$ 750 - \$1,499 | <input type="checkbox"/> or, I'd like to be billed on (date): _____ |
| <input type="checkbox"/> Leadership Circle \$ 500 - \$ 749 | for a pledge of \$ _____ |

Pledge payments are due by December 31. Pledges of \$500 or more may be paid in installments with the final installment fulfilling the pledge to be paid by December 31. Gifts of \$125 or more will be included in the Honor Role of Contributors in the Georgia Bar Journal.

Donor Information:

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Please check one: ☐ Personal Gift ☐ Firm Gift

GLSP is a non-profit law firm recognized as a 501(c) (3) by the IRS.

Please mail your check to: State Bar of Georgia Campaign for Georgia Legal Services • PO Box 999 • Atlanta, GA 30301



*Thank you for your
generosity!*

"Turn On The Power – Volume II" is Scheduled For October In Savannah

By Natalie R. Thornwell

Last year, the attendees of the Bar's first Solo and Small Firm Institute and Technology Showcase, titled "Turn On The Power," rated the program as one of the best ever in the history of Georgia ICLE programming. This year, the Second Annual Solo and Small Firm Institute and Technology Showcase sponsored by the State Bar's Law Practice Management Program and the State Bar's General Practice and Trial Section is planned for Oct. 7-9 in Savannah, at the Savannah Marriott Riverfront Hotel.

This year's conference is slated to be another wonderful gathering of solo and small firm practitioners and law office staff looking to network and learn more about technology and managing the law practice. Below are some of the planned highlights and information for this CLE event which offers a full year's worth of CLE credit to attendees.

Dynamic Keynote Presentations

Keynote addresses will be delivered by former Georgia Gov. Roy Barnes and by Jay Foonberg, author of the ABA's bestselling

book, *How to Start and Build a Law Practice*. Learn about the similarities of running a state and a small law practice from Gov. Barnes during the conference's opening luncheon. On the last morning of the conference, come and hear what Foonberg has to share on *The Power of Good Ethics, Good Clients, and Good Profits*.

Featured Presenters and Book Signing Reception

Along with the stellar keynoters, the following are some of the featured presenters for this year's program:

- David Masters—author of *The Lawyer's Guide to Adobe Acrobat* and owner of a real "paperless" law office;
 - Sharon Nelson and John Simek—national experts in computer forensics and security;
 - Craig Ball—national computer forensics specialist and the most dynamic presenter on PowerPoint for lawyers in the nation; and
 - Mark Rosch—legal research specialist and co-author of *Fact-Finding on the Internet*.
- Attendees will be able to join all of the authors at a book signing reception during the conference.

Educational Sessions

Because this is a CLE event, the full program is based on CLE sessions in four tracks: practice management; substantive; litigation (Friday only); and technology. Conference goers will be able to choose from over 30 ses-

sions. Some of the sessions being presented this year are:

- b 60 Hot Practice Tips, Top Web sites and Useful Gadgets in 60+ Minutes
- b Lessons Learned: Practicing in a Small Town
- b Hip, Hip, HIPPA: What You Need to Know
- b Powerful Fee Collection Practices
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- b Security Essentials for the Small Law Office Network
- b Lexis vs. West—The Products Showdown

...and many, many more!

Conference Exhibitors

Conference attendees will be able to see first hand the wares of vendors whose products and services are designed just for solo and small firm practitioners. Exhibit breaks have been included in the program so attendees and exhibitors can interact and learn more about each other's needs and products and services. Vendors also agreeing to sponsor this year's conference at the time of this article include: TABS3/PracticeMaster and The Georgia Fund.


Program Sponsors

The roster of program sponsors for this year is:

- b Atlanta Bar Association's Solo Practitioner/Small Firm Section
- b Port City Bar Association
- b Savannah Bar Association
- b State Bar of Georgia's General Practice and Trial Section
- b State Bar of Georgia's Law Practice Management Program
- b State Bar of Georgia's Legal Economics Section

Conference Registration

Georgia Bar members will receive notices and a registration flyer from ICLE. Discounted registration fees are in place for law office staff. You should plan to register early for this year's conference via the flyer or online at www.icle-ga.org. You can also get more information at www.gabar.org/lpm.asp or contact me at (404) 527-8770 or natalie@gabar.org.

We look forward to seeing you in Savannah in October! 

Natalie R. Thornwell is the director of the Law Practice Management Program of the State Bar of Georgia.

Did you know?

- (There are 35,438 members in good standing.
- (The State Bar of Georgia is the ninth largest bar in the United States.
- (There are 8,350 out-of-state members.
- (26% of the Bar is under age 35.
- (32% of the Bar is female.
- (More than 18,650 members reside in metro Atlanta.
- (The Bar anticipates growth of 1,300 new members a year.
- (There are 23,380 section members with 17,070 individual members who belong to one or more sections.
- (The Bar experienced 62% growth from 1990 to 2004.
- (Bar members cover a wide age range from those born in 1902 and admitted in 1925 to those born in 1979 and admitted in 2002.
- (66% of our members list an e-mail address.
- (113 members reside outside the United States in 26 foreign countries.
- (789 members have been admitted to practice for 50 years or more.
- (The State Bar has members residing in all 50 states.
- (The Bar has a \$7.2 million operating budget.
- (The Bar has 60 full-time employees, and one part-time employee.

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Sections Wrap Up Bar Year With a Variety of Events

By Johanna B. Merrill

Continuing the tradition, many of the Bar's sections sponsored the Opening Night Gala at the State Bar's 2004 Annual Meeting, which took place at the Portofino Bay Hotel in Orlando, Fla. Twenty-five sections contributed a record amount to the event, which was a blowout block party at Universal Studio's CityWalk® on June 17.

The Bar had exclusive use of three of the venue's restaurants—Pat O'Brien's® Orlando, Bob Marley's—A Tribute to FreedomSM and CityJazz®—and attendees were delighted with samplings of food and drink from each of the different venues.

On June 18, five sections, including **Criminal Law**, **Taxation Law**, **School & College Law** and **Tort & Insurance Practice**, hosted breakfast meetings in conjunction with the Annual Meeting. The **General Practice & Trial Section** presented their annual Tradition of Excellence Awards Breakfast, where four members of the Bar were presented with the Tradition of Excellence Award, which is given each year to outstanding lawyers and judges who have demonstrated a lifetime of achievement in the law and service to the public and the Bar. This year's recipients were: James T. McDonald, defense; Wayne W. Gammon, general practice; Chief Justice Norman S. Fletcher, judiciary; and John C. Bell Jr., plaintiff.

During the Plenary Session on June 18, Bar President William D. Barwick presented the section awards, which are given to outstanding sections for their dedication and service to their areas of practice, and for devoting endless hours of volunteer effort to the pro-



Alan S. Clarke, chair of the Entertainment & Sports Law Section, receives the Section of the Year award from outgoing Bar President William D. Barwick.

fession. The **Entertainment and Sports Law Section**, chaired by Alan S. Clarke, earned distinction as the Section of the Year. The **Family Law Section**, Thomas F. Allgood Jr., chair, and the **Intellectual Property Law Section**, Scott M. Frank, chair, were presented with awards of achievement.

During their 197th meeting, the Board of Governors approved the creation of the **Judicial Section**, the 37th State Bar section. According to their bylaws, the section's purpose is to "foster professionalism and excellence in the judiciary, to encourage improvements in judicial process and court operations, to increase input from non-judicial bar members upon judicial procedures and court operations, and to encourage interaction between the bench and bar of the State Bar of Georgia." To join the Judicial Section, submit your name, Bar number, contact information and the \$10 dues to the Bar's Membership Department at 104 Marietta St. NW, Atlanta, GA 30303.

Activity has not been limited to the Bar's Annual Meeting. The sections wrapped up the year with their own annual meetings, summer institutes and receptions.

On May 27-29 the **Family Law Section** convened at the SanDestin Hilton in Destin, Fla., for their annual Family Law Institute, which was co-sponsored by ICLE. The Institute featured a full-day interactive, participatory session where attendees used hand-held electronic transponders to decide relevant issues in the practice of family law. A panel of judges then discussed the results. The section plans to analyze and present the data to the superior court judges at their annual summer seminar.

The **Entertainment and Sports Law Section's** annual meeting took place June 2 at the Clubhouse in Lenox Square. The CLE luncheon, titled "The State of the Entertainment Industry in Georgia c. 2004," featured a panel with representatives from the Georgia Film, Video and Music Commission, the Recording Academy, the National Television Academy, Georgia Lawyers for the Arts and the American Society of Composers, Authors and Publishers. Prior to the presentation, the section elected new officers who will serve two-year terms that began July 1. The new officers are: Lisa Kincheloe, chair; J. Martin Lett, vice-chair of entertainment; Bruce Siegel, vice-chair of sports; Mark Lindsay, secretary/treasurer; and members-at-large Steve Sidman and Uwonda Carter.

The annual meeting of the **Technology Law Section** took place June 3 at Arnall Golden Gregory in Atlanta. The CLE luncheon, titled "Emerging Legal Issues Concerning Nanotechnology," featured speaker Bryan W. Bockhop, a partner in Arnall Golden Gregory's patents team. At the meeting, officers for the 2004-05 Bar year were elected. The new officers are: Janine Anthony



Chief Justice Norman S. Fletcher, Wayne W. Gammon, James T. McDonald Jr., and John C. Bell Jr. are presented the 2004 Tradition of Excellence Award by General Practice and Trial Section Chairman W. Wright Gammon Jr.

Bowen, chair; Suellen Bergman, vice chair; Michael Stewart, secretary.

The **Intellectual Property Law Section** hosted a reception welcoming intellectual property summer associates at the Park Tavern on June 15. The purpose of the reception was to educate summer associates interested in pursuing careers in intellectual property law about the opportunities and benefits of practicing intellectual property law and to provide the summer associates with an opportunity to mingle with their future colleagues. The event was well attended by summer associates in Atlanta-area law firms, as well as by practicing attorneys in the IP field.

NEWS FROM THE SECTIONS


Appellate Practice Section

By Christopher McFadden

Crawford v. State, __ Ga. App. __, __ S.E.2d __, Case Number S04A0589, 2004 Fulton County D. Rep. 1911, 2004 Ga. LEXIS 455 (June 7, 2004).

The statute that provides for extraordinary motions for new trial, O.C.G.A. § 5-5-41, was amended in 2003 to add subsection (c), which set out in detail a procedure that makes DNA testing available to persons who have been convicted of a serious violent felony and who are able to show a substantial possibility that DNA evidence would exonerate them. In *Hames*, the Supreme Court, over a strong dissent, and notwithstanding statutory language that seems to mandate a hearing, held that a trial court may judge the merits of such a motion without granting a hearing. The *Hames* court also held that the denial of such a motion can be appealed through the discretionary appeal procedure.

General Practice and Trial Section

The General Practice and Trial Section's new address is 104 Marietta St. NW, Suite 650, Atlanta, GA 30303; (404) 550-6307; Fax (770) 438-9567; e-mail bettygpt@mind-spring.com. 

Johanna B. Merrill is the section liaison of the State Bar of Georgia.

The Lawyers Foundation Inc. of Georgia sponsors activities to promote charitable, scientific and educational purposes for the public, law students and lawyers. Memorial contributions may be sent to the Lawyers Foundation of Georgia Inc., 104 Marietta St. NW, Suite 630, Atlanta, GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible.

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The Lawyers Foundation of Georgia furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia.

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a lasting remembrance. Once a gift is received, a written acknowledgment is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

Information

For information regarding the placement of a memorial, please contact the Lawyers Foundation of Georgia at (404) 659-6867 or 104 Marietta St. NW, Suite 630, Atlanta, GA 30303.

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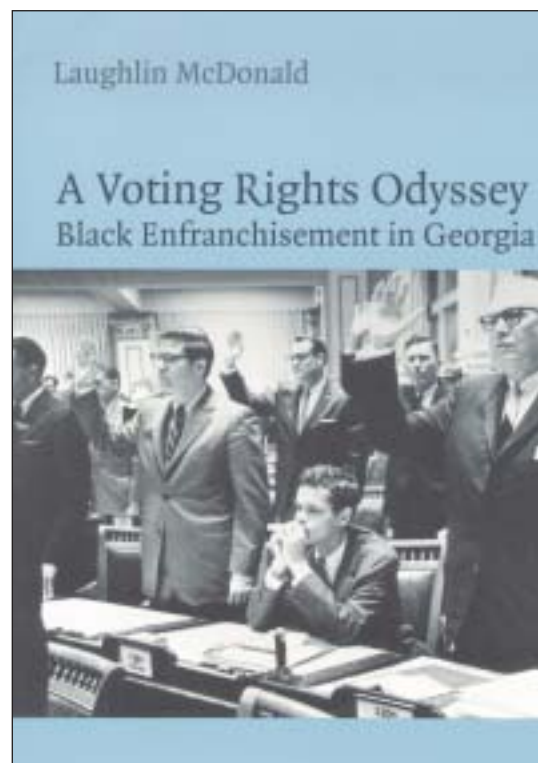
A Voting Rights Odyssey: Black Enfranchisement in Georgia

By Laughlin McDonald, Cambridge University Press (2003), 262 pages
Reviewed by Milner S. Ball

Laughlin McDonald's book, *A Voting Rights Odyssey: Black Enfranchisement in Georgia*, is a welcome, readable contribution to the history of his subject. McDonald, who has directed the American Civil Liberties Union's Voting Rights Project for more than 30 years, has been a major player in some of the events he writes about. However, his book is not a warrior's memoir, it is a history of Georgia and America's ongoing struggle over the enfranchisement of black citizens.

The odyssey begins with slavery and ends at the start of the 21st century with the confusion of the Supreme Court's jurisprudence of majority-minority voting districts. McDonald observes in his introduction that much has been written about discrimination in voting in the South during and after Reconstruction but that, until now, no study has focused solely on Georgia "and told the story of the prodigious struggle for equal voting rights from beginning to end, from slavery to the present day."

The story opens in 1865. As soon as the Civil War ends, the state sets about recreating the white man's Georgia. This work is briefly



interrupted by the occupying U.S. Army's enforcement of black registration. By 1872 the white supremacy project is well under way again. McDonald chronicles the steady progress of virulent racism over the course of the ensuing decades: 132 reports of lynchings in the 1890s; 450 by 1930. The Legislature's effective disenfranchisement of blacks produces the total elimination of black representation in 1908, an exclusion that continues until Leroy Johnson is elected to the state Senate in 1962. The details of the oppressive methods employed, from killings to ridiculously selective literacy tests, make the

account of these years informative, heartbreaking and compelling.

In the 1940s, the abolition of white primaries and the repeal of the poll tax provide some aid to black participation in democracy. More comes from President Truman's integration of the armed services in 1948 and the Supreme Court's clear turn to desegregation in 1954. But, as McDonald notes, the reality of voting in Georgia continues to be complete, rigid segregation until the 1960s, when the Supreme Court enters the field with its "one person, one vote cases" and validates the county unit system, the malapportionment of the House and Senate, and the structure for electing representatives to Congress. These cases initiate the cycle of struggles over apportionment of voting districts that begins anew with each decennial census.

Among the early consequences of this "second reconstruction" are Johnson's election to the Senate from Fulton County and encouragement for courageous individuals who labor to develop black participation in voting, often in the face of severe, white intimidation. McDonald provides *juste* vignettes of big-hearted people in small places on one side of the struggle and of established political leaders arrayed on the other.

Anxious attempts to rescue white supremacy from black enfranchisement employ violence and a bag of tricks: more tests of literacy and understanding, at-large elections, numbered posts, staggered terms, majority-vote requirements, and abolition of polling places. The intervention of the U.S. Supreme Court is required to overcome the Georgia House's refusal to seat Julian Bond in 1966.


McDonald surveys the Civil Rights Acts of 1957, 1960, and 1964, and finds that they provide some protection of voting rights, but not enough. Then comes the Voting Rights Act of 1965, "without doubt the toughest civil rights law ever enacted by Congress." In addition to its general coverage, the Act targets certain jurisdictions, like Georgia, where discrimination in voting is flagrant. McDonald notes that, after much time and massive litigation, the Act has its intended effect in Georgia: It breaks "the white stranglehold on state and local politics."

This is not a voluntary redistribution of political power but the result of litigation enforcing the Act, "almost the entire burden of [which] was borne by the civil rights community."

A chapter devoted to redistricting updates the struggle. The most recent backlash to black success has taken shape as legal challenges to majority-minority voting districts drawn in response to the 1990 census. Starting with *Shaw v. Reno*, McDonald traces the Supreme Court's trail of closely divided,

confusing, litigation-inviting opinions about "wrongful" districts in Georgia and elsewhere, and he raises telling questions about the continuing racial components of redistricting.

A *Voting Rights Odyssey* concludes with the moving story of Keysville in Burke County. It is a parable of hope and promise from a community that has thrived and blossomed in large part because of the Voting Rights Act.

The book is a fresh reminder of just how slowly and grudgingly we have made the journey from a "universal" suffrage available only to white males, to a right extended to freed male slaves, to women, to Native Americans, to young people from the age of 18, and then to blacks in fact and not in pronouncement only. McDonald has drawn on his vast experience in the struggle to give us a timely, vivid and important story. It is well done. 

Milner S. Ball is the Caldwell Professor of Constitutional Law at the University of Georgia School of Law.

Submissions Wanted for New Humor Column

In the next few months, the *Bar Journal* will start a new feature: a humor column. We are presently soliciting contributions. If you have humorous anecdotes that you would like to share from your practice, from the courtroom, or just from your day-to-day lawyer life, we want to hear about it. Please limit submissions to 500 words.

Send your submissions to:
Humor Column
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Notice of and Opportunity for Comment on Amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. § 2071(b), notice and opportunity for comment is hereby given of proposed amendments to the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Eleventh Circuit.

A copy of the proposed amendments may be obtained on and after Aug. 2, 2004, from the Eleventh Circuit's Internet Web site at

www.ca11.uscourts.gov. A copy may also be obtained without charge from the Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth St. NW, Atlanta, GA 30303 [phone: (404) 335-6100]. Comments on the proposed amendments may be submitted in writing to the Clerk at the above street address by Sept. 3, 2004.

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Have a suggestion on how to improve the *Journal*?

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