

Georgia
Bar

Journal

December 2002 ■ Volume 8 ■ Number 3



Non-discriminatory
Jury Selection in Georgia

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December 2002 ■ Volume 8 ■ Number 3

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On the Cover

Striking Out in the Batson Box: A Guide to Non-discriminatory Jury Selection in Georgia

The *Batson* challenge in jury selection is misunderstood by many in the field.

Edward D. Tolley and Jason J. Carter address the issue on page 12.

Departments

- 4 From the President
- 8 From the Executive Director
- 10 From the YLD President
- 48 Bench & Bar
- 52 Office of the General Counsel
- 53 Lawyer Discipline
- 55 Law Practice Management
- 58 South Georgia Office
- 59 Pro Bono Page
- 60 Section News
- 63 In Memoriam
- 65 CLE Calendar
- 71 Notices
- 72 Classified Resources

Georgia Bar Journal

December 2002 ■ Volume 8 ■ Number 3

Legal

19 Natural Gas Deregulation in Georgia: A Market in Transition

By Charles T. Autry and Roland F. Hall

Features

- 28 Historic Law School Hosts 2002 Fall BOG Meeting
By Robin E. Dahlen
- 31 State Bar Expects Another Productive Legislative Year
By Mark Middleton
- 34 Georgia Bar Foundation Awards \$2.3 Million in Grants
By Len Horton
- 35 Cumulative IOLTA Revenues Surpass \$50 Million
By Len Horton
- 38 East Meets West: Georgia Delegation Explores China
By George Mundy
- 41 Three Governors: Herman Talmadge, the Georgia Supreme Court and the Gubernatorial Election of 1946
By Lucian Emery Dervan
- 46 The Grand Old Courthouses of Georgia:
The Henry County Courthouse at McDonough
By Wilber W. Caldwell

Publisher's Statement

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Advertisers Index

AAA Attorney Referral Service.	29	Insurance Specialists, Inc.	33
ANLIR.	51	John Rubio, ELPDG	6
Arthur Anthony.	43	LexisNexis.	IFC
Best Law Firm Solutions.	45	Litchfield Plantation.	17
Butterfield, Reimer & Associates	42	Mainstreet	47
Daniels-Head Insurance	15	Merchant & Gould	IBC
Daniel Turner Builders	23	Mitchell Kaye Valuation	11
DSI Technology	57	Real Estate Exchange Services.	9
Georgia Lawyers Insurance Co.	2	SoftPro Corporation.	21
Gilsbar, Inc.	7	South Georgia ADR Service, LLC	5
Golden Lantern	61	West Group.	25, 37, 72, BC
Gregory Connor	44		



As lawyers, we need to educate the public and remind them of the importance of indigent persons having equal access to our legal system.

By James B. Durham

Indigent Defense: Responsibility and Reform

“It is the policy of this state to provide the constitutional guarantees of the right to counsel and equal access to the courts to all its citizens in criminal cases.” This is the policy of the state of Georgia as set forth in the Georgia Indigent Defense Act adopted in 1979. The State Bar of Georgia supported this policy prior to 1979, in 1979 and continues to support it today. The legislature further states that it is the policy of this state to provide: adequate defense services for indigent defense persons accused of a crime; adequate compensation for counsel who represent indigent defense persons accused of a crime; and guidelines to ensure indigent persons receive a fair trial. In addition, the state sought to ensure the independence of counsel when representing indigents and accepted the responsibility for funding the indigent defense system. It should be a goal of all Georgia lawyers to assist our state in attaining the policies and principles promulgated in this act.

Unfortunately, more than 20 years after the enactment of the statute, the goals set forth have not been fully achieved. Although attorneys and Superior Court judges throughout the state have worked diligently to achieve the goals of the act, they have not always had access to the necessary resources. There are a number of issues concerning the quality of the delivery of legal services to indigent persons accused of a crime, and these problems can be catego-

rized into two broad areas — inadequate funding and a lack of uniformity in the quality of legal services delivered.

Individual counties bear the primary responsibility for funding indigent defense in this state. Indigent defense is a constitutionally mandated public responsibility and should be fully funded by the state that authorized it. As a result of the state of Georgia not accepting the funding responsibility, there are discrepancies throughout the state

in funding levels. These disparities in some areas of the state result in inadequate resources to fund indigent defense appropriately and adequately. In addition, individual counties oversee the manner in which the delivery of legal services are provided. Although many counties do an excellent job of providing indigent defense, with 159 counties and 159 potentially different delivery systems, the risk of discrepancies in the quality of the services delivered multiplies.

The burden placed upon some systems leads to over-worked attorneys and attorneys without the adequate resources to investigate cases. Due to these difficulties, attorneys make mistakes that often

lead to claims of ineffective assistance of counsel and a depletion of resources for new trials. One county incurred expenses totaling \$256,519.46 to retry a single death penalty case. This equaled more than 10 percent of the county's anticipated revenue for that year. The Supreme Court of Georgia Guideline 6.1, which tracks the caseload recommendations established by the American Bar Association in 1973, recommends a maximum of 150 felonies per year for a full-time defender. In Georgia, this is not always the case. One public defender has reported that during one seven-week period a single attorney disposed of 90 felonies, far in excess of the recom-

mended level. Three years ago, in another jurisdiction, a single contract defender handled 685 cases (felonies and misdemeanors). United States District Court Judge Marvin Shoob has ordered Fulton County to meet the caseload limits of Guideline 6.1, the only instance where that guideline has been made mandatory for a county.

The need for indigent defense reform is, unfortunately, all too apparent. The State Bar's Board of Governors originally recommended the creation of the Chief Justice's Commission on Indigent Defense in January of 2000. The commission has been carefully considering data from all over the state and has listened to participants in the indigent defense

system and their recommendations. The State Bar of Georgia made a presentation to the commission in May of 2002. We requested the commission consider the following six principles in its deliberation:

1. Indigent defense is a constitutionally mandated public responsibility.
2. Indigent defense is a state responsibility and should be fully funded by the state at a level that adequately protects the constitutional right to effective assistance of counsel in criminal proceedings.
3. In order to ensure a uniform quality of representation throughout the state, Georgia should adopt a public defender system, organized by judicial circuits, that relies on appointed counsel for conflict and overflow work and is subject to discernable professional standards administered uniformly on a statewide basis by an independent oversight commission. The commission should be authorized to permit judicial circuits to implement alternative delivery systems if the commission determines that the alternative system is designed to meet or exceed the quality of indigent defense representation provid-


ed by public defender systems and that the alternative system complies with all applicable uniform state standards relating to indigent defense representation.

4. The process for selecting and compensating indigent defense counsel should assure that indigent defense counsel and prosecutors are comparably compensated and that indigent defense counsels are afforded the same degree of professional independence as that of privately retained criminal defense counsel.
5. Indigent defense counsel should be provided investigators, paralegals and expert witnesses necessary to make an independent assessment of the case and to assure fairness and due process throughout each stage of the proceeding.
6. Georgia should provide indigent defense counsel in capital post conviction proceedings and in other post conviction proceedings that involve a sentence of life or other substantial period of imprisonment.

Obviously, the commission will have many points to deliberate beyond these six principles. It is charged with an extremely difficult task. We believe, however, its work will be the start of needed reform to the indigent defense system in Georgia.

It is a commonly held belief that indigent defense is an unpopular cause outside the legal community. The State Bar of Georgia should help educate the public and the media about the importance of a citizen's right to defend himself or herself when accused of a crime. People often confuse the concept of being "hard on crime" with all citizen's rights to defend themselves

when accused of a crime. We often forget the judicial system does not punish the accused, but only punishes the convicted. People more readily understand the concept of freedom, within the context of defending one's country when threatened by an aggressor. The concept of defending our freedom by making sure every citizen, irrespective of their financial background, has the resources to defend himself or herself when accused of a crime is much more difficult for people to comprehend. Nonetheless, a citizen's right to defend himself or herself when accused of a crime remains a cornerstone of freedom in our country. It is one of the freedoms our forebears gave their lives to attain. The absence of this right caused many of them to seek out America more than 200 years ago. We must make every effort to preserve a legal system that is a model for the preservation of freedom throughout the world.

This is an issue that not only affects lawyers, but it affects all of society. As lawyers, we need to educate the public and remind them of the importance of indigent persons having equal access to our legal system. We expect the decision of the Supreme Court Commission on Indigent Defense by the end of the year. This could be the best opportunity since the 1960s, and since the enactment of the Georgia Indigent Defense Act, that the State Bar has had to facilitate change in the indigent defense system. We need the input, the support and the energy of all of the lawyers in Georgia to help bring about a long-awaited change in a system that defines our state and country. 

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The Bar Center truly offers a unique opportunity to enhance law-related education for Georgia students and the general public.

By Cliff Brashier

Bar Center: Enhancing Law-Related Education

The State Bar of Georgia's new Bar Center has been designed to provide exceptional facilities for public education regarding the judicial process and the rule of law in the United States. While most other state bar associations own their buildings, none have sufficient space to offer anything comparable to the extensive law-related educational programs outlined below. This one component of the Bar Center offers a significant opportunity not heretofore available and has been extremely well received by every public leader who has reviewed our plans. Working with the Georgia Law-Related Education Consortium in Athens, Ga., the 33,000 plus members of the State Bar will be honored to offer Georgia's citizens the best educational opportunity of this type in the United States.

The Bar Center is strategically located in the heart of the state's most sought after school field trip venues, which include CNN Center, Centennial Olympic Park, the High Museum and the recently announced Aquarium/World of Coke complex, to name a few. With many schools seeking educational experiences for all elementary, middle and high school classes, the demand far exceeds the supply. As such, it is estimated that approximately 50,000 Georgia children each

school year will benefit from their interactive day as participants in the judicial process at the Bar center.

The Bar Center's conference floor contains over 40,000 square feet devoted exclusively to judicial, legal and public educational functions. Extensive renovations are planned for this floor to accommodate the large number of students, attorneys and judges who will use it daily. Several areas of special interest for public education are planned as follows:

Courtroom — A mock courtroom will greatly enhance law-related education in Georgia. The Constitution, Bill of Rights and the freedoms all citizens enjoy will take on new meanings as students observe the judicial process in action. Staff members will use age appropriate, scripted trials to create a lasting impression of the importance of the rule of law in our society. The students will be assigned roles (judge, prosecutor, defense counsel, bailiff, court reporter, witness, defendant, plaintiff and juror) with everything scripted except for the jury's verdict, which will be voted on by the student jurors. We believe this experience will greatly enhance the students' education of the judicial system. Since lawyers and judges will be attending meetings and seminars at the Bar Center on most days, they will be invited to observe the students and participate by offering supportive comments or answering questions. In addition, the courtroom will be used by the State Bar's High School Mock Trial Program, in which over 100 schools and over 1,500 students from throughout Georgia participate annually.


Museum of Law — The State Bar plans to work with the Georgia Legal History Foundation and other interested parties to host a museum of law, which will also be open to school tours and other public uses. Famous Georgia trials and significant U.S. Supreme Court decisions will be featured. This unique addition will be one of the few museums in the United States that will be dedicated to the education of our citizens on the history and importance of the judicial branch of government in the preservation of the freedoms guar-

anteed by our Constitution and laws. The Bar Center will also archive and display original legal documents and other law-related historic exhibits.

Woodrow Wilson's Law Office— The law office furniture used by U.S. President Woodrow Wilson when he practiced law in Georgia is presently in storage at Georgia State University. A historic replica of his office as it existed in 1882 will be re-opened for public viewing at the Bar Center. The project will bring together existing memorabilia and information on Wilson's life as a young Georgia lawyer and his family background, both before and after he became the 28th president of the United States. A videotaped presentation will accompany the exhibit and will illustrate the social and cultural legacy of the Wilson Era in Georgia.

Civic Groups and Charitable Organizations — When not in use for professional activities, the meeting and conference facilities of the Bar Center will be available for public uses.

The Bar Center truly offers a unique opportunity to enhance law-related education for Georgia students and the general public. I encourage all of you to tour the facility and share our vision for the Center. Please feel free to bring your family, friends, clients and colleagues with you when you visit.

As always, I am available if you have ideas or information to share; please call me. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 and (770) 988-8080 (home). 



By Derek J. White

Our Credit With Others Has Improveth

My first article for the *Georgia Bar Journal* was titled, "Every Single Act Either Weakeneth or Improveth our Credit With Other Men. . . ." At the ABA/YLD Fall Conference, held Oct. 9 -12, 2002, in Cincinnati, Ohio, our reputation (credit) as a State Bar was notably improved.

The ABA/YLD is comprised of the officers of the ABA/YLD and officers of several affiliate State Bar Younger Lawyers Divisions (State YLD), such as the State Bar of Georgia YLD. These officers have periodic conferences to share the nuts and bolts of successful programs and projects of the individual divisions to provide a conduit for replicating them across the nation. It was at an ABA/YLD conference where our annual Great Day of Service Project was first exposed to the officers of the State Bar of Georgia YLD.

Prior to the commencement of a conference, the ABA/YLD selects outstanding programs and projects from the many submitted by the various affiliate state YLDs. Those selected are presented at an ABA/YLD conference by a repre-

sentative of the state YLD that made the submission.

Our YLD Truancy Intervention Project was one of the many programs and projects submitted and selected for presentation at the Fall Conference. Fortunately for us, as a Bar, Caren Cloud of Kids In Need of Dreams (KIND), Inc., provided the attendees with a highly inspirational presentation of our project. Cloud is a co-chair of our YLD Truancy Intervention Project, along with YLD Director Kevin Snyder of Parker, Hudson, Rainer & Dobbs in Atlanta. Although Snyder was unable attend the conference, we do appreciate his dedication and hard work as a volunteer with the Truancy Project. His efforts, although unseen by most, are appreciated by those children with whom he comes in contact.

If you see or learn of any person who volunteers with any project of our profession, please take the time to tell them "Thank You."

From the very beginning of the presentation, Cloud riveted the conference attendees to their seats with some of the hard facts that led to the inception of our Truancy Project. The Truancy Project was started approximately 11 years ago in response to the number of students who were attending court proceedings more than they were attending school due to truancy. In 1994, over 15,000 children went through the Fulton County Juvenile Court system. Thirty percent of those children were under the age of 13. More telling of the severity of truancy in the state of Georgia is that 82 percent of all adult prison inmates are high school dropouts.

Across the nation, a student drops out of school every 10 seconds of every school day. Dropouts are six times more likely to be unwed parents and seven and a half times more likely to be dependent on welfare than graduates. Each school failure costs society a minimum of \$440,000 in lost earnings and taxes over the lifetime of the individual. Finally, truancy is the number one predictor among boys and the number two predictor among girls of future criminal activities.

After stating these alarming statistics, Cloud kept the audiences attention by explaining the inception of the Truancy Project in the state of Georgia. Judge Glenda Hatchett, former chief judge for the Fulton County Juvenile Courts, and Terry Walsh, the YLD president of the State Bar of Georgia at that time, brainstormed and devised what is now our Truancy Intervention Project for the state of Georgia. Luckily, they realized early that there needed to be a pri-


vate partner to help the Court and Bar manage this project. Thus, KIND, Inc., was incorporated and initially funded by a Centennial Gift to the Atlanta Community, as donated by the firm of Alston & Bird of Atlanta.

As a result of the efforts of a few members of our legal community over 11 years ago, a project that was essentially started with one attorney, one staff member and one juvenile court judge has become a project overseen by the Fulton County Juvenile Court System, KIND, Inc., the Atlanta Bar Association, the State Bar of Georgia YLD, over 200 volunteer attorneys and 50 non-attorney volunteers. Since its inception, the Truancy Project has served over 1,700 students in the Atlanta area. The success of the project is now being replicated throughout the state in other cities, such as Savannah and Columbus. Hopefully, the success of the project will reach all corners of our great state.

Finally, Cloud concluded her remarks by explaining why the Truancy Intervention Project of Georgia was so successful. She attributes its success to the caring nature and dedication of the members of the Bar. Dedication epitomized by those who saw the need of the project in order to provide a needed bridge for the widening gap of educational disparity in our state.

This presentation by Cloud, where she expounded on the good and selfless deeds of our fellow Bar members, truly improveth our credit (as a bar) with others. And there are many other worthwhile Bar projects that provide a service to our community and profession

that could be touted. However, these projects are successful only because attorneys such as Cloud, Snyder, the other YLD officers and directors, our Board of Governors of the State Bar and countless volunteers that have pledged to make a difference in our communities, our profession and our state.

So, if you see or learn of any person who volunteers with the Truancy Intervention Project or any project of our profession, please take the time to tell them "Thank You." For it is the unselfish deeds that go so unsung, yet are so needed. 

ENDNOTES

1. The Complete Works of George Savile, First Marques of Halifax. (1789).
2. Facts cited in Cloud's presentation paper.
3. *Id.*

A Look at the Law

By Edward D. Tolley
and Jason J. Carter

Striking Out in the Batson Box: A Guide to Non-discriminatory Jury Selection in Georgia

"The defense strikes juror number 23 your honor."

"Objection, your honor. This is racially motivated. The defense has used all of its strikes only on white jurors and under Batson v. Kentucky, jurors can not be stricken because of their race."

"Well," the judge asks the defense counsel, "Do you have an explanation?"

"Your honor, I'm the commissioner of the Little League here in town. I have met enough parents to know which ones are going to cuss a nine-year-old for dropping a foul ball. This juror is that kind of person. As a matter of fact, this juror's nephew plays on one of our teams and that kid's father is no longer allowed at games. This is not the kind of juror the defense is looking for..."

"This appears to be a race neutral explanation. Unless the prosecution has more evidence of discriminatory intent, the objection will be overruled."



Jury selection is crucial in every trial, and even a single mishandling of a *Batson* challenge based on race or gender discrimination can result in an otherwise fair trial being overturned. Yet, despite its widespread use and its grave importance, the *Batson* challenge is still misunderstood by many in the field.

This article provides a brief background on the current law, explains the anatomy of a *Batson* challenge, and examines the most common pitfalls involved in ensuring that jurors are not excluded in a discriminatory way.

FOUNDATIONS OF THE CURRENT LAW

In 1965, the U. S. Supreme Court decided *Swain v. Alabama*,¹ establishing that the Equal Protection Clause of the Fourteenth Amendment ensured a black defendant access to a trial where jurors of his or her own race were not stricken solely because they were black. Under the *Swain* regime, however, a defendant could not prove that a prosecutor was discriminating against jurors based on that defendant's trial alone. Courts required evidence that the entire system was "perverted" in order to overturn a conviction.

Two decades later, the Court scrapped this evidentiary requirement. *Batson v. Kentucky*² reiterated that the defendant's rights under

the Equal Protection Clause forbid the prosecutor from challenging potential jurors based solely on the juror's race.³ Moreover, *Batson* allowed the defendant to make a showing of discrimination by relying solely on the facts of his own case. The so-called "*Batson* challenge," based only on selection of jurors in the trial at hand, was born.

The *Batson* logic was soon extended. The Court, in *Powers v. Ohio*,⁴ allowed white defendants to object to prosecutors' exclusion of African-Americans from the jury. The race of the defendant became irrelevant and the Equal Protection claim that is the basis for a "*Batson* challenge" was not only based on the defendant's rights, but on the juror's right not to be excluded because of his or her race. Based on this logic, the court also extended *Batson* to cover civil trials,⁵ reasoning that a juror's rights were no different when he or she was excluded improperly by civil litigants.

These decisions paved the way for *Georgia v. McCollum*,⁶ which created the so called "reverse-*Batson* challenge." In *McCollum*, the Court held that a prosecutor can challenge a defendant's strikes if they are racially biased. Because the Constitution only proscribes state power, in order for the violation of the potential juror's rights to fall under the 14th Amendment, this decision forced the Court to make a drastic theoretical leap and consider the criminal defendant a state actor.

Soon thereafter, the court extended *Batson* to cover gender-based discrimination as well.⁷ Today, any discrimination based on gender or race, regardless of whether the juror is a member of a protected class, is improper.⁸

TODAY'S LAW: THE ANATOMY OF A BATSON CHALLENGE

The U.S. Supreme Court prescribed the form of a *Batson* challenge in the 1995 case *Purkett v. Elem*.⁹ As shown in the little league example above, there is a three-step process to challenging a peremptory jury strike as discriminatory: Step one, the opponent, or challenger, of the strike must make out a *prima facie* case of discrimination. Once this case is made, step two, the burden of production shifts to the proponent of the strike to come forward with a race neutral explanation for why the particular juror was stricken. Once this minimal burden of production is met, step three, the opponent or challenger of the strike must meet its burden of persuasion and prove to the judge that the strike was actually motivated by discriminatory intent.¹⁰

In Georgia, and in the Eleventh Circuit, this system of analysis is followed closely, with Georgia courts adding a state law requirement that the explanation also be "case related."¹¹ (This may be a problem for the defense in the Little League example!) Moreover, *Batson* and "reverse-*Batson*" challenges are analyzed in virtually the same way,¹² so there is little difference between challenging a defendant's strikes, and challenging those of the state.

Step 1: The Prima Facie Case: "Objection, your honor. This is racially motivated. The defense has used all of its strikes only on white jurors..."

Whether a *prima facie* case of racial discrimination exists is a

The proponent of the strike need only articulate a race-neutral explanation, and then the burden shifts to the opponent of the strike to prove purposeful discrimination.

question of fact for the judge. In both the Eleventh Circuit and state courts, great deference is given to the trial judge's finding in this regard.¹³ This threshold question is thus very difficult to appeal and is quite important in eliminating the use of discriminatory strikes.

An indication of racial discrimination can arise due to a pattern of strikes, or to a single strike that appears motivated by race or gender. Georgia courts have recognized *prima facie* cases where the defendant used all of his peremptory strikes against white venirepersons,¹⁴ where the defendant used 11 of 12 strikes to remove white people from venire,¹⁵ where the state used all of its peremptory strikes to exclude black jurors,¹⁶ where the state used nine of 10 strikes against black jurors,¹⁷ where the state used six of 10 peremptory strikes plus one alternate strike to eliminate all of the potential black jurors from the panel.¹⁸ Further, a *prima facie* case existed where the State used all of its strikes to exclude black people, even when the percentage of African-Americans on the petit jury was greater than the percentage on the venire.¹⁹

Even when there is no clear pattern, a *prima facie* case may exist against certain strikes where there appears to be stereotyping. For example, in a case where black jurors were struck for seemingly minor mistakes on a jury questionnaire, "showing signs of immaturi-

ty," or certain forms of eye contact, the court noted that these may reflect stereotypical attitudes and should be given increased scrutiny.²⁰ A court also found that the state's explanation that it was striking a juror because the juror had a monogrammed gold tooth, was based on an impermissible racial stereotype.²¹

This initial step in the analysis is an issue of fact for the judge. If the opponent of the strike shows the indicators of discrimination, courts move to step two of the analysis.

Step 2: Burden of Producing an Explanation: "Your honor, I am the commissioner of the Little League here in town..."

This step in the process is more noteworthy for what it is not. If there is a *prima facie* showing of racial discrimination, the judge will order the proponent of the strike (or strikes) to explain their reasoning. However, *there is no decision made as to the validity of the explanation at this point*. This is where most problems with *Batson* challenges arise, and mistakes at this stage often lead to trials being overturned.

According to the U. S. Supreme Court, the "explanation" does not have to be persuasive or even plausible.²² The only issue at this stage in the game is the facial validity of the explanation. Unless discriminatory intent is inherent in the articulated reasons, those reasons will be considered race-neutral.²³

It is only *after* this burden of production is met that the court then

calls on the *opponent* of the strike to bear the burden of persuading the judge that there exists discriminatory intent. "The ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the *opponent* of the strike."²⁴

A number of cases have been overturned because the second and third steps of the *Batson* analysis were combined and the trial court improperly required the striking party to justify the strike in step two, instead of making the opposing party prove discriminatory intent in step three.²⁵

Indeed, in Georgia "a party may strike from mistake, or from ignorance or from idiosyncrasy as long as the reasons do not relate to a juror's race."²⁶ This is perhaps the only area in which the term "peremptory" still applies. A trial court cannot reject a race/gender-neutral explanation for striking a juror on grounds that it is not credible or that it is whimsical, but must accept it, at this stage, if it is "facially neutral."²⁷

The proponent of the strike need only articulate a race-neutral explanation, and then the burden shifts to the opponent of the strike to prove purposeful discrimination.²⁸

The Eleventh Circuit even uses a "dual motivation" analysis to allow a strike where there is an explicitly racial motivation along with a legitimate motivation, if the legitimate explanation would have been sufficient to motivate the strike. In *King v. Moore*,²⁹ for example, the prosecution explained their strike in two ways. The first explanation was explicitly racial — they were going to strike a juror because she was a black woman; the second was different and legitimate. The court held that the state met its bur-

den of production and the opposing party failed to meet its burden of persuasion because a *Batson* error only arises in circumstances where the legitimate reason is insufficient *itself* to motivate the strike.³⁰

Georgia courts, it seems, have a slightly different approach. There is language in some Court of Appeals decisions that once a discriminatory motivation is found, it cannot be overcome by other race or gender-neutral reasoning.³¹ In any court, it is difficult to fail to meet the burden of production at this stage of the analysis.

Step 3: The Burden of Persuasion: Can the prosecution prove the Little League reason is pretextual?

Once the proponent of the strike meets their minimal burden of production and articulates a race neutral reason for their strike, the opponent, or challenger of the strike, must persuade the judge that the reason is “pretextual” and the strike is actually made with discriminatory intent.³² As stated above, the reason for the strike can be based on idiosyncrasy, mistake, ignorance or whim, but it cannot be based on race or gender.³³ Keeping in mind that the opponent of the strike bears the burden of proving that the proffered race-neutral explanation is mere pretext, the article now turns to an analysis of explanations and their race neutrality.

Initially, in trying to prove that discriminatory intent exists, there are two very helpful facts. First, courts have held that when the make up of the group excluded by one party closely parallels the racial makeup of the venire, almost any neutral explanation will suffice. But, as the racial make-up of those excluded by strikes “deviates further and further from the statistically expected result, it is increasingly likely that race bias — -intentional or not — is the real reason for the disparity and greater scrutiny must be given to the proffered explanations...”³⁴ Second, although no presumption arises if race neutral reasons are not neutrally applied, this is evidence of pur-

Indeed, courts have held that any *Batson* claim should be made before the jurors selected to try the case are sworn in order to remedy the situation as efficiently and effectively as possible.

poseful discrimination.³⁵ Indeed, “the opponent of a strike may carry its burden of persuasion by showing that similarly situated members of another race were seated on the jury.”³⁶

There are many examples of race-neutral explanations. Employment and age have been held to be race-neutral factors.³⁷ Where a court struck an unemployed black nightclub singer, the reasons were racially neutral because unemployment could show lack of commitment and dedication to community.³⁸ A court ruled that discriminatory intent was neither proven nor inherent where a black defendant struck three whites, one of whom was “familiar with drugs,” one was “pro-prosecution” and the other strike was unexplained.³⁹ A strike based on the fact that jurors were students was found race-neutral (but was improper because it was not “case related”).⁴⁰ Sleeping or inattentiveness is a race-neutral and case related reason to strike a juror.⁴¹ It was race-neutral for a prosecutor to strike a juror who sat behind the defendant’s mother on the morning of jury selection, knew the defendant’s mother and the prosecutor had prosecuted the defendant’s cousin.⁴² Race-neutral reasoning was found where the state used nine out of 10 strikes on black venirepersons, but eight of them knew the defendant or his

family, one indicated he knew something of the case, had counseled inmates in jail and had a pending suit against a police officer, and the prosecution’s reasons were clear and reasonably specific.⁴³ Moreover, familiarity with the defendant or the defendant’s family has been explicitly held race-neutral.⁴⁴

New trials are granted surprisingly often, however, where discriminatory motivation is found. The Court found clear error where the prosecution used six of 10 strikes and one alternate juror strike to eliminate all of the black people from the panel and then explained that they were striking all the jurors with the same last name as defendants prosecuted by the district attorney’s office.⁴⁵ Moreover, it was not race-neutral to strike a black juror because he is a member of an all black professional organization and believes that “racism is everywhere,” including the judicial system,⁴⁶ or because a juror was a member of the NAACP.⁴⁷

In a case involving gang activity, a district attorney struck two black public housing residents reasoning that their dislike of gang members would make them biased. This was not held discriminatory as a matter of law, but the court reiterated that ordinarily strikes based on residential location alone *are* discriminato-

ry.⁴⁸ In two similar cases, prosecutors struck jurors based on the hunch or advice of a third party—the sheriff in one case and the victim’s widow in the other—and in both cases the appellate court remanded the cases demanding further explanation.⁴⁹

In *Parker v. State*,⁵⁰ the state failed to articulate race-neutral reasons for striking three African-Americans where the prosecutor’s explanations included the fact the one of them appeared to be sleeping, one had a dour expression on her face, and one appeared “hostile” and was unemployed. The court ruled that the explanations reflected unacceptable stereotypical attitudes to particular groups and could not serve as the basis for exercising peremptory strikes.

In a case involving gender discrimination, where the defendant was accused of beating to death a homosexual man who tried to sodomize him, a *Batson* issue arose because the prosecution used all six of its peremptory strikes against male jurors, apparently theorizing that males would be less sympathetic to the homosexual victim.⁵¹ The court found that discriminatory intent was not proven because several of the excused jurors had expressed hostile attitudes toward gay men. The court ruled that these were gender-neutral reasons and that the opponent of the strikes did not carry its burden of persuasion as a matter of law.


In *Hernandez v. New York*, a case dealing with discrimination against Latinos, the U.S. Supreme Court ruled that a prosecutor could strike Latino jurors if he or she believed that the particular juror would not defer to the “official” translation of anticipated Spanish language testimony.⁵² The Court

held that there was no *per se* violation because the prosecutor had established two groups — those that would defer to the official translation and those that would not — and Latinos and non-Latinos were in each group.

PROCEDURAL ISSUES AND CONCLUSION

In addition to the actual trial procedure of a *Batson* challenge, there are other procedural issues that attorneys should be aware of. While the U. S. Supreme Court has allowed for the preservation of a *Batson* claim despite “inartfulness,”⁵³ it is still possible to waive your rights to make a *Batson* challenge by failing to file a timely objection to the opposing side’s peremptory strikes.⁵⁴ Indeed, courts have held that any *Batson* claim should be made before the jurors selected to try the case are sworn in order to remedy the situation as efficiently and effectively as possible.⁵⁵ It is also extremely important, in the course of making objections, to preserve on the record the racial or gender composition of the panel, the petit jury and the jurors who were stricken.⁵⁶ The issue of racial or gender discrimination in the selection of the jury must be preserved for appeal.

Understanding the way in which *Batson v. Kentucky* and its progeny impact the way juries are selected will allow lawyers to ensure their clients get a fair trial, and will prevent the costs of appeals and new trials. But, more importantly, because the vigilance of lawyers is the very essence of our system of rights, in choosing juries it falls

upon attorneys to demand that race and gender discrimination not be tolerated. 



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ENDNOTES

1. 380 U.S. 202, 85 S.Ct. 824 (1965).
2. 476 U.S. 79, 106 S.Ct. 1712 (1986).
3. It is important to note that the *Batson* decision is based solely on the 14th amendment. The Sixth Amendment, with its “fair cross-section” requirement, does not prohibit the prosecutor from exercising its preemptory challenges to exclude potential jurors based on race. The Sixth Amendment has been construed to mean that if the *venire* is a fair cross section of the community, the petit jury need not be. *Holland v. Illinois*, 493 U.S. 474, 110 S.Ct. 803 (1990).
4. 499 U.S. 400, 111 S.Ct. 1364, (1991).
5. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 111 S.Ct. 2077, (1991).

6. 505 U.S. 42, 112 S.Ct. 2348 (1992).
7. *J.E.B. v. Alabama*, 511 U.S. 127, 114 S.Ct. 1419 (1994).
8. Regarding application to white jurors *see e.g.*, *U.S. v. Allen-Brown*, 243 F.3d 1293 (11th Cir. 2001) (*Batson* is not limited to racial minorities, but applies to anyone who is excluded from a jury because of their race).
9. 514 U.S. 765, 115 S.Ct. 1769 (1995).
10. *Id.*
11. *Parker v. State*, 219 Ga. App. 361, 464 S.E.2d 910 (1995) (see especially J. Pope’s concurrence, reiterating the need, under State law, to enunciate a case related reason for a strike in addition to the requirements of *Purkett*).
12. The Eleventh Circuit explicitly rejected the idea that greater scrutiny is required when the challenge is to the defendant’s strikes. *U.S. v. Stewart*, 65 F.3d 918 (11th Cir. 1996). Georgia Courts have done the same implicitly, but have overturned several cases where the burden of persuasion regarding discriminatory intent was shifted improperly to the defendant. See n. 26 *infra*.

13. *U.S. v. Stewart*, supra n.10; *See e.g. Ayiteyio v. State*, 254 Ga. App. 1, 561 S.E.2d 157 (2002).
14. *Burkett v. State*, 230 Ga. App. 676 497 S.E.2d 807 (1998).
15. *Williams v. State*, 249 Ga. App. 292, 548 S.E.2d 63 (2001); *Hinson v. State*, 237 Ga. App. 366, 515 S.E.2d 203 (1999).
16. *Lingo v. State*, 263 Ga. 664, 437 S.E.2d 463 (1993).
17. *Ford v. State*, 262 Ga. 558, 423 S.E.2d 245 (1992); *Berry v. State*, 262 Ga. 614, 422 S.E. 2d 861 (1992); *Mattison v. State*, 215 Ga. App. 635, 451 S.E.2d 807 (1994) (prosecutor using five of six strikes on African-Americans);
18. *Ridley v. State*, 235 Ga. App. 591, 510 S.E.2d 113 (1998).
19. *Smith v. State*, 263 Ga. 224, 430 S.E.2d 579 (1993); *see also Weems v. State*, 262 Ga. 101, 416 S.E.2d 84 (1992) (fact that percentage of blacks on jury was greater than percentage of blacks in array after peremptory strikes was inadequate to prove that there was no *Batson* violation).
20. *Tharpe v. State*, 262 Ga. 110, 416 S.E.2d 78 (1992).
21. *Rector v. State*, 213 Ga. App. 450, 444 S.E.2d 862 (1994); *see also Congdon v. State*, 262 Ga. 683, 424 S.E.2d 630 (1993) (strike based on fact that juror was a member of a certain race and lived in a certain neighborhood was based on impermissible stereotyping).
22. *Purkett*, 514 U.S. at 768
23. *Id.*
24. *Hinson v. State*, 237 Ga. App. 366, 368, 515 S.E.2d 203, 205 (1999); *see also Jackson v. State*, 265 Ga. 897, 463 S.E.2d 699 (1995).
25. *See e.g., Chandler v. State*, 266 Ga. 509, 467 S.E.2d 562 (1996); *Williams v. State*, 249 Ga. App. 292, 548 S.E.2d 63 (2001); *Smith v. State*, 229 Ga. App. 765, 494 S.E.2d 757 (1997); *Burkett v. State*, 230 Ga. App. 676, 497 S.E.2d 807 (1998) (court found specifically that trial judge combined steps two and three of the *Batson* analysis by finding prematurely that an explanation was pretextual and placing the burden of persuasion on the proponent of the strike).
26. *Ayiteyio v. State*, 254 Ga. App. 1, 2-3, 561 S.E.2d 157, 159 (2002).
27. *Leeks v. State*, 226 Ga. App. 227, 483 S.E.2d 691 (1997).
28. *Malone v. State*, 225 Ga. App. 315, 484 S.E.2d 6 (1997).
29. 196 F.3d 1327 (11th Cir. 1999).
30. *Id.* *See also Wallace v. Morrison*, 87 F.3d 1271 (11th Cir. 1996) (prosecutor's admission that race was "a factor" in the exercise of peremptory strikes does not, by itself, establish a *Batson* violation).
31. *Rector v. State*, 213 Ga. App. 450, 444 S.E.2d 862 (1994).
32. *See Purkett, supra*, n.9; *O'Neal v. State*, 226 Ga. App. 224, 482 S.E.2d 478 (1997).
33. *See Ayiteyio, supra*, n.27.
34. *Ford v. State*, 262 Ga. 558, 423 S.E.2d 245, 247-8 (1992).
35. *See e.g. McKibbons v. State*, 216 Ga. App. 389, 391, 455 S.E.2d 293, 295 (1995).
36. *Hinson v. State*, 237 Ga. App. 366, 369, 515 S.E.2d 203, 206 (1999).
37. *Burkett v. State*, 230 Ga. App. 676, 497 S.E.2d 807 (1998); *Gilbert v. State*, 226 Ga. App. 230, 486 S.E.2d 48 (1997) (employment); *Chandler v. State*, 266 Ga. 509, 467 S.E.2d 562 (1996) (race neutral reasons found where white jurors were struck because they were employed as supervisors and had authoritarian personalities).
38. *Minor v. State*, 264 Ga. 195, 442 S.E.2d 754 (1994).
39. *Crutchfield v. State*, 218 Ga. App. 360, 461 S.E.2d 555 (1995).
40. *Chunn v. State*, 210 Ga. App. 209, 435 S.E.2d 728 (1993).
41. *Hood v. State*, 245 Ga. App. 391, 537 S.E.2d 788 (2000).
42. *Hall v. State*, 261 Ga. 778, 415 S.E.2d 158 (1991).
43. *George v. State*, 262 Ga. 436, 421 S.E.2d 67 (1992).
44. *Hightower v. State*, 220 Ga. App. 165, 469 S.E.2d 295 (1996).
45. *Ridley v. State*, 235 Ga. App. 591, 510 S.E.2d 113 (1998).
46. *Randolph v. State*, 203 Ga. App. 115, 416 S.E.2d 117 (1992) (court held that juror's belief that the judicial system contained racism was not dispositive of bias); *see also Walton v. State*, 267 Ga. 713, 482 S.E. 2d 330 (1997) (strike not race-neutral where prosecutor's explanations that juror felt there was a dual system of justice, and that juror knew a particular black attorney were not supported by the record and where the trial judge offered a "neutral" explanation on the prosecution's behalf).
47. *Ledford v. State*, 207 Ga. App. 705, 429 S.E.2d 124 (1993).
48. *Smith v. State*, 264 Ga. 449, 448 S.E.2d 179 (1994). *See also Congdon v. State*, 262 Ga. 683, 424 S.E.2d 630 (1993) (stereotyping based in part on place of residence was not a race-neutral reason to strike).
49. *Congdon v. State*, 262 Ga. 683, 424 S.E.2d 630 (1993) (sheriff was key prosecution witness and requested that the juror's be struck because of their place of residence and his belief that all black people in that location disliked him); *Lewis v. State*, 262 Ga. 679, 681, 424 S.E.2d 626 (1993) (state does not satisfy burden of providing race neutral reason "by stating that its peremptory challenges were exercised in deference to the wishes of an individual concerned with the case.")
50. *Parker v. State*, 219 Ga. App. 361, 464 S.E.2d 910 (1995).
51. *Tedder v. State*, 265 Ga. 900, 463 S.E.2d 697 (1995).
52. *Hernandez v. New York*, 500 U.S. 352, 111 S.Ct. 1859 (1991).
53. *Ford v. Georgia*, 498 U.S. 411, 111 S.Ct. 850, (1991).
54. *Greene v. State*, 260 Ga. 472, 396 S.E.2d 901 (1990).
55. *State v. Sparks*, 257 Ga. 97, 355 S.E.2d 658 (1987).
56. *See Love v. State*, 205 Ga. App. 27, 421 S.E.2d 125 (1992) (Defendant did not preserve record sufficiently. Colloquies are included in record but are not competent evidence of facts observed); *see also Merritt v. State*, 201 Ga. App. 150, 410 S.E.2d 349 (1991) (Alleging that strikes are "suspect" is insufficient, party has burden to show it affirmatively in record); *Adams v. State*, 199 Ga. App. 541, 405 S.E.2d 537 (1991) (Defendant's attorney preserved on the record facts tending to show discrimination, but failed to make motions or objections to strikes. Issue was not preserved for appeal).

A Look at the Law

By Charles T. Autry
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Natural Gas Deregulation in Georgia: A Market in Transition

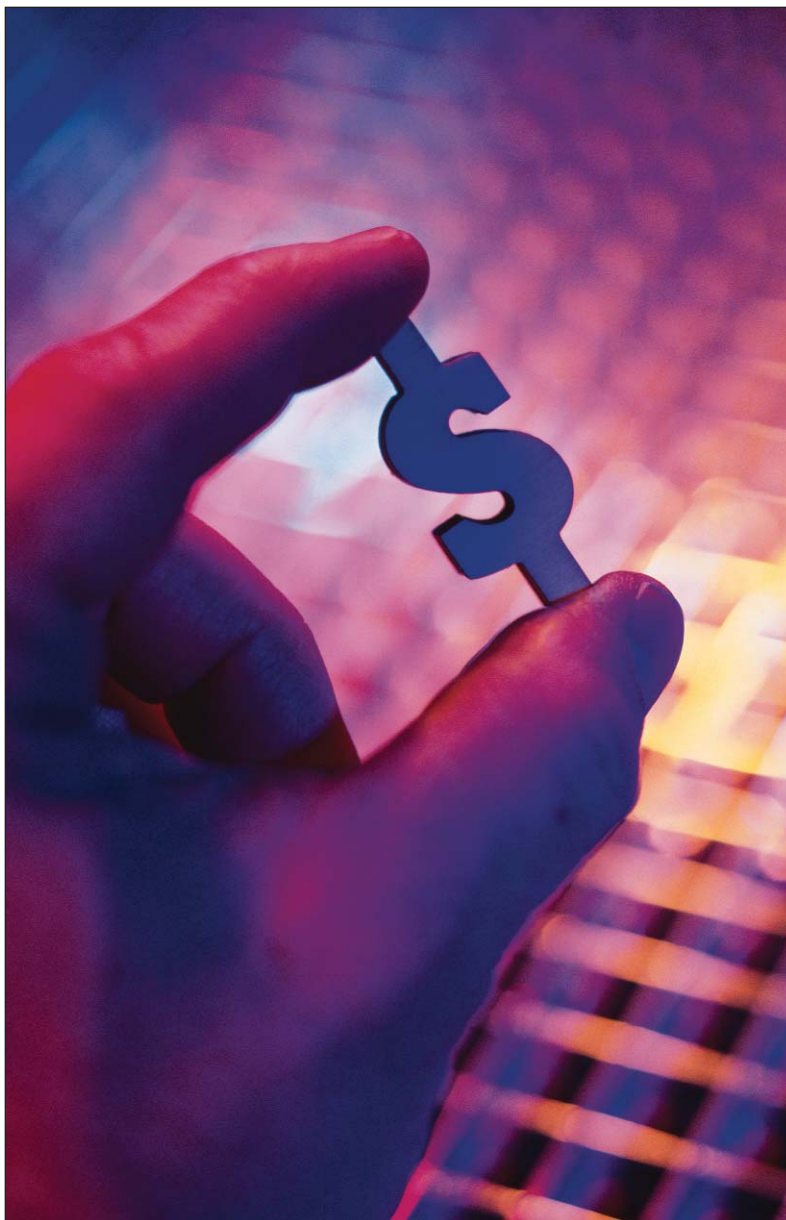
Natural gas deregulation in Georgia has yielded unexpected difficulties, as evidenced by a barrage of consumer complaints and a call by some consumers, lawmakers and regulators for a return to re-regulation.¹ The recently passed amendments to the Natural Gas Competition and

Deregulation Act of 1997 (the Act)² attempt to address many of these difficulties, and ensure that Georgia will remain at the forefront of the nationwide movement toward deregulation of the retail natural gas industry.

After post-deregulation consumers complained of improper billing, dramatically higher gas bills and improper disconnections, lawmakers in both the Georgia House and Senate proposed bills to bring back regulation.³ However, the breadth of the new amendments, contained in the 2002 Natural Gas Consumer's Relief Act (the Amendments),⁴ signal that the governor and the General Assembly, at least at present, are committed to continuing what has become the largest "test market" in the United States for retail natural gas deregulation, with over 1.4 million customers in Georgia now able to select their natural gas supplier.⁵ The Georgia model has been recognized as the "first real example of the development of a fully competitive retail market for natural gas in the U.S."⁶

The amendments fall into three basic categories:

- **Increased Competition.** Many of the Amendments are aimed at increasing competition, most notably by allowing the natural gas affiliates of electric membership corporations (EMCs) to enter the natural gas market.



■ **Consumer Protection.** The Amendments also provide increased consumer protections, including a consumer Bill of Rights, customer service standards and standards governing marketing efforts.

■ **Distribution of Costs.** Finally, the Amendments aim to achieve an acceptable balance for the distribution of costs among residential consumers, small commercial consumers, and large commercial and industrial customers.

This article will first discuss the context in which Georgia's deregulation program was developed and will briefly examine the restructuring of the wholesale and retail natural gas markets. The article will next discuss the Amendments and their impact on Georgia's retail natural gas market.

RESTRUCTURING OF THE WHOLESALE NATURAL GAS MARKET

Retail natural gas restructuring in Georgia came about in reaction to major changes in the structure of the nation's natural gas industry that began over 20 years ago. As late as the 1970s, every step of natural gas production, transportation and distribution was regulated. The prices charged by producers and pipelines were subject to federal regulation, while state agencies regulated the prices charged by the local distribution companies (LDCs), such as Atlanta Gas Light Company, that sold the gas to retail users. In the 1970s, various pressures caused by shortages in the interstate gas markets resulted in calls for deregulation of wholesale

natural gas prices and interstate pipelines.

A. Federal Efforts

Gas marketing began to evolve as an unregulated industry in the late 1970s when congressional legislation and Federal Energy Regulatory Commission orders deregulated wellhead gas prices and restructured interstate pipeline operations.⁷ Pipeline companies became primarily transporters, allowing producers, LDCs and marketers to play a larger role in supplying natural gas to end users. Utilities could buy gas at unregulated prices directly from producers, and non-regulated gas marketers could buy and sell gas using the pipeline transportation network and provide packages of gas supply and services. The numbers of national, regional and local non-regulated gas marketers swelled in order to take advantage of the new competitive environment, and many of those marketers were affiliates of producers, LDCs and pipeline companies.

B. Effects on State and Local Markets

The first impact of interstate deregulation on the retail markets was on large commercial and industrial customers. Beginning shortly after the advent of deregulation in the interstate market, state governments and agencies began allowing LDCs to provide unbundled services to large commercial and industrial customers, an action which gave customers the option of purchasing natural gas separately from transportation services.⁸ Large customers were then able to bypass the LDCs and arrange for distribution services to be provided by third parties. Today, the majority of the nation's large-volume customers, such as electric generating

facilities, have the option of choosing a supplier other than their local natural gas utility.

The focus of deregulation has now turned to customer choice programs for residential and smaller commercial natural gas customers. States have been slow to engage in retail restructuring for residential and smaller commercial customers, primarily because of concerns about customer service, billing and reliability. Because of these concerns, state retail choice programs for residential gas customers did not appear until the mid-1990s.⁹ Customer choice programs are at work in over 20 states, either through legislative enactment or through private utility programs.¹⁰

C. Restructuring Efforts in Georgia

The Georgia model for retail competition remains the most fully-developed example of a competitive retail market for natural gas. Signed into law in April 1997, the Natural Gas Competition and Deregulation Act established a framework for the transition to a restructured retail market in which gas marketers could compete to serve retail customers. Georgia's two investor-owned LDCs, Atlanta Gas Light Company (AGL) and United Cities Gas Company, were given the option of unbundling gas sales from distribution service.¹¹ If an LDC took this option, the LDC would eventually become a pipes-only distribution company, with the LDC distributing gas sold to consumers by marketers certified by the Commission. AGL elected this option.¹²

Unlike pilot programs in other states, Georgia's program provided that once an LDC elected to unbundle sales, full retail competition could occur almost immediately.

Under the Act, the LDC would be required to exit the commodity sales function, and firm retail customers would be forced to select a gas marketer. Deregulation took place in less than a year and involved 1.4 million retail customers in AGL's service territory.¹³ In August 1999, the retail customers in AGL's service area that had not yet chosen a marketer were randomly assigned one, and by October 1999 AGL had exited the merchant function and provided only distribution services.

AMENDMENTS TO THE ACT

While many of the Amendments contained in the 2002 Natural Gas Consumers' Relief Act are directly aimed at resolving problem areas identified by consumer complaints,

other Amendments address the basic framework of Georgia's restructuring effort. Many of the Amendments were suggested by a Blue Ribbon Task Force (Task Force) that was created in 2001 by Gov. Roy Barnes in order to address issues arising from deregulation.¹⁴ On Feb. 5, 2002, the Task Force issued a Final Report with conclusions and recommendations based on testimony presented to the Task Force, summaries of approximately 14,000 consumer complaints and reports received from various agencies and entities.

The concerns expressed by the Task Force in its Final Report are representative of those expressed since deregulation by the public, the Commission and lawmakers, and can be distilled into three basic areas:

- More competition is needed in order to gain the full advantages of a deregulated market.

- Rules must be set that establish greater protection for residential customers.
- An acceptable balance must be achieved for the distribution of costs among the different types of customers.

The new amendments are discussed below in relation to each of these areas.

A. Amendments Intended to Increase Competition

The Task Force found that despite the initial influx of marketers into Georgia, as of early 2002, four marketers controlled 94 percent of the deregulated market.¹⁵ The Task Force identified the need to maintain a competitive market with improved options for consumer choice, and it specifically recommended removing the barriers that prevented EMCs from entering the natural gas market.

The Amendments related to increased competition can be broken down into the following areas: (1) billing and meter reading services; (2) interstate capacity assets; (3) price regulations in non-competitive market areas; and (4) lifting restrictions on EMCs.

(3) Lack of Competition – Temporary Directives

- Under the Amendments, if more than 90 percent of firm retail customers in a particular delivery group are served by three or fewer marketers, the presumption arises that market

because of their ability to access EMCs' familiarity with many of the services common to the gas industry, such as customer service and billing, and because of consumers' experience with the reliability and continuity of the EMCs standing behind their gas affiliates.²³

The most wide-ranging changes related to competition are those that allow natural gas affiliates of EMCs to enter the natural gas market in Georgia.

(1) Billing and Meter Reading Services

- Under the Amendments, a company can perform "customer services" without obtaining a certificate, with such services "including without limitation billing, meter reading, turn-on service, and turn-off service."¹⁶

(2) Interstate Capacity Assets

- At present, AGL handles interstate transportation and storage for some marketers in exchange for a monthly charge. Under the Amendments, by July 1, 2003, the Commission must hold a hearing regarding a plan for assignment of interstate capacity assets (interstate pipelines and out-of-state gas storage capacity) held by AGL (except for assets required for balancing). The plan, if adopted, will allow assignment of assets to marketers who meet technical and financial requirements for managing such assets.¹⁷
- To the extent assignment occurs, marketers will no longer be able to rely on AGL to arrange for transportation and storage, and will either have to acquire the necessary expertise and manage resources themselves or purchase such services from another marketer.

conditions are not competitive, and the Commission may impose temporary directives on marketers, including price regulations.¹⁸

- Temporary directives can also be issued if the Commission determines that prices paid by customers in a delivery group are "not constrained by market forces and are significantly higher than such prices would be if they were constrained by market forces."¹⁹

(4) Allowing EMCs into the Market

The most wide-ranging changes related to competition are those that allow natural gas affiliates of EMCs²⁰ to enter the natural gas market in Georgia. The Georgia Electric Membership Corporation Act,²¹ which governs the business activities that EMCs may engage in, had previously been interpreted as precluding EMCs from entering the natural gas market. The Amendments now allow "EMC gas affiliates"²² to apply for and obtain certificates of authority to become gas marketers, although EMCs are still not allowed to directly enter the market. EMC gas affiliates are uniquely positioned to provide a new element of competition to the natural gas market in Georgia

(a) Requirements for Obtaining Certificate of Authority

- Under the Amendments, the Commission's order granting the certificate of authority must include terms and conditions to govern the relationship between the EMC and its affiliate that "prevent cross-subsidization between the provision of electricity and the provision of natural gas services, . . . encourage and promote fair competition in the overall retail natural gas market, and . . . protect the privacy of both electric and natural gas consumers."²⁴
- The terms and conditions in the order granting the certificate must require the EMC and its gas affiliate to fully allocate all electricity activity costs and gas activity costs between the EMC's electricity activities and the gas activities of its gas affiliate, and to develop a cost allocation manual that establishes rules for the pricing of transactions between the EMC and its gas affiliate to ensure that cross-subsidization does not occur.²⁵
- The Commission may require that the EMC offer customer services to all marketers at the same rates and on the same

terms and conditions as offered to an affiliate. Such services must be on a confidential basis, such that the EMC does not share information regarding a marketer with any other marketer, including its EMC gas affiliate.²⁶

(b) Requirements for Relationship Between EMC and Gas Affiliate

The boundaries of the permitted relationship between an EMC and its gas affiliate are specified by statute and the Commission's rules:

- Not more than one-half of the persons serving as directors of a gas affiliate can at the same time serve as directors of an EMC.²⁷
- An EMC's investment in, loan to, or guarantee of the debts and obligations of an EMC gas affiliate cannot exceed a specified percentage, and investments and loans cannot reflect rates available through the use of tax exempt financing and cannot be tied to loans from or guaranteed by the federal or state government.

B. Consumer Protections

The Commission received over 14,000 complaints from consumers after the 1997 deregulation, and the Governor's Office of Consumer Affairs, as well as the marketers themselves, received many additional complaints.²⁸ In addition, numerous news articles criticized deregulation, which was described as "a nightmare of billing and cost-hike problems for residential consumers"²⁹ and as a "major failure of public policy."³⁰ Over 125,000 disconnections occurred in 2001. Thus, it is only natural that the bulk of the Amendments are aimed at providing protection for consumers.

The Act's major changes in this area include choosing a regulated provider that will serve low-income and high-risk consumers; the creation of a "Bill of Rights" for consumers; and a requirement that the Commission adopt rules requiring disclosure statements and standards for service. These Amendments can be divided into the following categories: (1) establishment of a regulated provider; (2) conditions of service; (3) required disclosure of information; (4) billing; (5) remedies; and (6) Bill of Rights.

(1) Regulated Provider

- One of the biggest changes is the establishment of a regulated provider to serve two classes of consumers: (a) low-income residential consumers (designated as Group 1); and (b) high risk consumers who have been unable to obtain or maintain service (designated as Group 2).³¹
- The regulated provider is required to establish rates for each class of consumer.
- The Commission selects the regulated provider through a competitive request for proposals. The selection process takes place every two years, although the Commission in its discretion can extend the term to three years or terminate service after one year.³² The Commission has selected SCANA Energy Marketing, Inc., as the initial regulated provider.

(2) Conditions of Service

- Under the Amendments, the Commission was required to issue rules and regulations establishing service quality standards for AGL.³³ The rules adopted by the Commission set standards for the customer service, billing and meter reading

services provided by AGL to marketers and consumers, and require AGL to meet certain benchmarks as to turn-on/turn-off service, call center response time, and forecasting.³⁴

- The Commission is required to review performance at least annually.³⁵
- The Commission can have an independent auditor examine compliance with the service quality standards.³⁶
- The Amendments also required the Commission to adopt rules establishing service quality standards for marketers and the regulated provider.³⁷ The rules adopted by the Commission require marketers to: meet benchmarks established by the Commission in certain areas, such as call center service, billing accuracy, and responsiveness to computer inquiries; require the filing of quarterly reports; and require the Commission to review compliance on an annual basis.³⁸
- In addition, the Commission was required to adopt rules governing marketers' terms of service for consumers.³⁹ The rules adopted by the Commission provide minimum terms of service and specify the disclosure statement to be given

to consumers.⁴⁰ The requirements include:

- Each marketer must obtain Commission approval of policies for handling billing disputes and requests for payment arrangements.⁴¹
- Advertised prices must now be presented in a standard pricing unit.⁴²
- Consumers are given a three-day right of rescission after receiving a disclosure statement stating prices and terms of service.⁴³
- Marketers may not request disconnection of service where bills were not sent in a timely manner, and must offer a reasonable payment arrangement prior to disconnection.⁴⁴

(3) Required Disclosure of Information

- The new Bill of Rights for consumers includes the “right to receive accurate, easily understood information about gas marketers, services, plans, terms and conditions, and rights and remedies.”⁴⁵
- Marketers must provide disclosure statements that allow for comparison of prices and services on a uniform basis and that state the terms of service and the marketer’s payment and cancellation procedures. The disclosure statements must include specified information concerning the components of charges and billing methods.⁴⁶
- Bills “shall be accurate and understandable and shall contain sufficient information for a consumer to compute and compare the total cost of competitive retail natural gas services.”⁴⁷ Certain specified information must be included on all bills.

- Marketers are now required to file any changes in terms and conditions at least 30 days prior to the effective date of such changes. The Commission can suspend the effective date for up to 90 days “if it appears to the commission that the proposed terms and conditions are unconscionable or are unfair, deceptive, misleading or confusing”⁴⁸

(4) Billing

- Under the Amendments, late fees are now limited, and marketers are required to give consumers a reasonable amount of time to pay bills before late fees or penalties are applied.⁴⁹
- When a billing error is reported to a marketer, the marketer now has 30 days to correct the billing error, and if the marketer does not do so, the burden of proof is on the marketer to show that the bill is correct.⁵⁰
- The marketer cannot impose a late fee or penalty or disconnect service while the billing error is being disputed if the disputed amount constitutes the total amount of the past due balance.

(5) Remedies

- The Act now makes clear that a marketer’s certificate of authority can be revoked or suspended if the Commission finds that the marketer has failed “repeatedly” or “willfully” to meet obligations to consumers under the Act, the Commission’s rules and regulations, or the certificate.⁵¹
- The Commission is to provide for consumer protection rules that have “self-executing mechanisms” that will resolve complaints in a timely manner, and that encourage marketers to resolve complaints without recourse to the PSC.⁵²

- Retail customers now have a cause of action when damaged by a marketer’s violation of any order of the PSC or any of the PSC’s rules concerning marketers’ terms of service, billing practices, and “substantial” violations of rules concerning provision of information to consumers, and can recover actual damages, incidental and consequential damages, and attorney’s fees.⁵³

- Such violations are also declared to constitute a violation of the Fair Business Practices Act.⁵⁴

(6) Bill of Rights

- The amendments provide a Bill of Rights that includes the following:
 - All consumers must have access to reliable, safe and affordable gas service, including high quality customer service.⁵⁵
 - Consumers have the “right to receive accurate, easily understood information about gas marketers, services, plans, terms and conditions, and rights and remedies.”⁵⁶
 - All consumers must receive accurate and timely bills.⁵⁷
 - The statement of intent by the General Assembly now specifically states that “protecting natural gas consumers in this new reliance on market based competition is the most important factor to consider in any decision to be made in accordance with this Article.”⁵⁸

C. Shifting of Costs

A major issue involved in retail restructuring concerns the shifting of costs among the different types of retail customers. Before deregulation,

lation, state regulators typically required rate structures using cross-subsidies; in other words, large commercial and industrial customers were effectively charged more to subsidize residential and small commercial customers.⁵⁹ In those states that have experimented with deregulation, the trend has been that large customers, with more negotiating power, have experienced more price benefits than residential customers and small commercial customers.

With regard to Georgia, the Blue Ribbon Panel noted that while a small number of natural gas users – including large industrial customers – received lower prices after deregulation, most users, especial-

ly residential consumers, experienced higher prices.⁶⁰ The difference in savings had also been widely reported in the media.⁶¹ The Panel noted:

In the Atlanta Gas Light Company service territory, the firm customers pay for the entire cost of the distribution system. Interruptible customers pay no more than the marginal costs to serve them. When the Act was passed, approximately \$50 million in costs was shifted to firm customers. The current system does not prohibit marketers from placing these charges on interruptibles, but it discourages this in practice.⁶²

The Panel also noted that at least

one of the concerns causing the shift in costs was that large customers would bypass the local distribution system. The Panel noted the possibility that the Commission could authorize AGL to impose a surcharge on interruptibles to go toward meeting AGL's revenue requirements for the distribution system, but did not resolve the issue or make any recommendation.⁶³ The amendments do in fact shift more costs to large customers.

■ The amendments require the Commission to establish a surcharge for interruptible customers "sufficient to ensure that such customers will pay an equitable share of the cost of the distribution system over which

such customers receive service.”⁶⁴ The surcharge is collected by marketers and paid into the Universal Service Fund. An exemption is made for certain hospitals with a high percentage of Medicare and Medicaid patients.

- If there are any amounts in the Fund in excess of \$3 million at the end of a calendar year, the excess funds can be used by the Commission to provide refunds to all retail customers.
- The amendments increase the percentage of AGL revenues from interruptible service that are earmarked for the Universal Service Fund.⁶⁵ “The effect of this is to increase the amount of money paid by the interruptible customers going into the Universal Service Fund, so that the . . . Fund can be utilized to assist low-income persons in paying for their natural gas and can be utilized for natural gas refunds to all retail customers under the new law.”⁶⁶
- The amendments establishing the regulated provider were also intended in part to eliminate subsidization of high-risk customers by other customers.⁶⁷

CONCLUSION

Although the problems resulting from Georgia’s deregulation model arose in part from outside forces, such as rising wholesale costs and an unusually cold winter in 2000, most would agree that many of the problems resulted from the accelerated pace of deregulation and the lack of preparedness of marketers entering the Georgia market. While the most publicized of the new amendments, such as those providing additional protection for consumers, go a long way toward rem-

edying these problems, the retail natural gas market in Georgia remains a market in transition. CBI



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ENDNOTES

1. See Doug Gross, *Georgia Tackling Natural Gas Woes*, Online Athens, March 3, 2002, available at http://www.onlineathens.com/stories/030302/view_0303020076.shtml. In early 2001, the then-current Chairman of the Georgia Public Service Commission, testifying before the Georgia House and Senate Appropriations Committees, called gas deregulation a “failure” and stated that he favored re-regulation. See Electric Consumers’ Alliance, *ECA Newsletters*, Feb. 2001, available at <http://www.electricconsumers.org/News/Newsletters/0201news.htm>.

2. 1997 Ga. Laws 798 (codified in scattered sections of O.C.G.A. §§ 46-4-150 to 166).
3. Dave Williams, *State of the Senate Address Gives Barnes Pulpit to Push Agenda*, Online Athens, Jan. 26, 2002, available at http://www.onlineathens.com/stories/012702/new_0127020050.shtml.
4. 2002 Ga. Laws 499.
5. These statistics were obtained from the Internet site of the Energy Information Administration, a statistical agency of the United States Department of Energy. See http://www.eia.doe.gov/oil_gas/natural_gas/restructure/restructure.html.
6. George R. Hall, *Consumer Benefits from Deregulation of Retail Natural Gas Markets: Lessons from the Georgia Experience*, Study prepared for AGL Resources, Inc., by PHB Hagler Bailly, Inc., at 5 (March 10, 2000).
7. For a discussion of the various orders issued by the FERC, see generally Elisabeth Pendley, *Deregulation of the Energy Industry*, 31 Land & Water L. Rev. 27, 30-32 (1996).
8. *U.S. Natural Gas Markets: Recent Trends and Prospects for the Future*, Energy Information Administration, Office of Integrated Analysis and Forecasting, U.S. Dept. of Energy, at 20.
9. For a state-by-state analysis of the history and current status of retail choice programs, see http://www.eia.doe.gov/oil_gas/natural_gas/restructure/restructure.html.
10. See *id.* See also Blue Ribbon Natural Gas Task Force, Final Report to Governor Roy E. Barnes and General Assembly of the State of Georgia at 8 (Feb. 5, 2002) [hereinafter Blue Ribbon Report].
11. O.C.G.A. § 46-4-154.
12. United Cities Gas Company has no immediate plans to deregulate its services.
13. Blue Ribbon Report, *supra* note 10, at 7.
14. The Task Force was created by an Executive Order issued by Governor Barnes on November 18, 2001. Blue Ribbon Report, *supra* note 10, at App. 1.
15. *Id.* at 10.
16. O.C.G.A. § 46-4-152(7). See *id.* § 46-4-153(a)(1).
17. O.C.G.A. § 46-4-155(e)(13).
18. O.C.G.A. § 46-4-157(b) & (c).
19. O.C.G.A. § 46-4-157(d).

20. Electric membership corporations are nonprofit cooperative organizations that were first formed in the 1930s to bring electricity to rural areas of the United States. The Rural Electrification Act, 7 U.S.C. § 901, now known as the Rural Utilities Service, was enacted by Congress in 1936, and empowered the Rural Electrification Administration ("REA") to begin a program to encourage the availability of electric power in rural areas.

The objective was to provide electricity to those sparsely settled areas which the investor-owned utilities had not found it profitable to service. To this end REA makes long-term low-interest loans to approved [EMCs] organized and owned by their consumer members . . .

Salt River Project Agr. Imp. & Power Dist. v. Fed. Power Comm'n, 391 F.2d 470, 473 (D.C. Cir. 1968). There are forty-two EMCs in Georgia.

21. O.C.G.A. §§ 46-3-170 to 541.
22. An "EMC gas affiliate" is a separately organized entity of which the majority interest is owned, held by or managed by one or more EMCs and which applies for a certificate of authority.
23. Under the Amendments, the gas activities that an EMC gas affiliate can perform do not include marketing and distribution of liquified petroleum gas (propane).
24. O.C.G.A. § 46-4-153.1(b).
25. O.C.G.A. § 46-4-153.1(b)(1)(A).
26. O.C.G.A. § 46-4-153.1(b)(2).
27. O.C.G.A. § 46-4-153.1(e).
28. Blue Ribbon Task Force Report, *supra* note 10, at 5 & App. 8.
29. Tom Barry, *Deregulation Remains Key Issue for Georgia Utilities*, Atlanta Bus. Chronicle, Jan. 11, 2002, available at <http://atlanta.bizjournals.com/atlanta/stories/2002/01/14/focus12.html>.
30. Matthew C. Quinn, *Public Pressure Sure to Make Deregulation a Hot-Button Issue*, Atlanta Journal-Constitution, Jan. 11, 2002, at 81.
31. O.C.G.A. § 46-4-166(a).
32. O.C.G.A. § 46-4-166(a), (b), (f).
33. O.C.G.A. § 46-4-158.1(a)(1).
34. Ga. Comp. R. & Regs r. 515-7-7 (Service Quality Standards for the Electing Distribution Company).
35. O.C.G.A. § 46-4-158.1(d).
36. O.C.G.A. § 46-4-158.1(g).
37. O.C.G.A. § 46-4-158.1(a)(2).
38. Ga. Comp. R. & Regs r. 515-7-8 (Service Quality Standards for Certificated Marketers and Regulated Provider).
39. O.C.G.A. § 46-4-158.2(1)-(9).
40. Ga. Comp. R. & Regs r. 515-7-9 (Natural Gas Marketers' Terms of Service).
41. Ga. Comp. R. & Regs r. 515-7-9-.02(8).
42. Ga. Comp. R. & Regs r. 515-7-9-.02(1).
43. Ga. Comp. R. & Regs r. 515-7-9-.05.
44. Ga. Comp. R. & Regs r. 515-7-9-.04.
45. O.C.G.A. § 46-4-151(9).
46. O.C.G.A. § 46-4-158.3(1)(A)-(M).
47. O.C.G.A. § 46-4-158.3(2).
48. O.C.G.A. § 46-4-160(j).
49. O.C.G.A. § 46-4-160(h).
50. O.C.G.A. § 46-4-160.2).
51. O.C.G.A. § 46-4-153(b).
52. O.C.G.A. § 46-4-160(a)(3).
53. O.C.G.A. § 46-4-160.5(a).
54. O.C.G.A. § 46-4-160.5(b).
55. O.C.G.A. § 46-4-151(b)(9)(A).
56. O.C.G.A. § 46-4-151(b)(9)(B).
57. O.C.G.A. § 46-4-151(b)(9)(F).
58. O.C.G.A. § 46-4-151(a)(4).
59. Kenneth W. Costello & Daniel J. Duann, *Turning Up the Heat in the Natural Gas Industry*, Reg.: The Cato Rev. of Bus. & Gov't., Vol. 19, No. 1 (1996).
60. Blue Ribbon Report, *supra* note 10, at 10.
61. See, e.g., Chris Holly, *Gas Deregulation is No Peach – Study*, The Energy Daily, Sept. 13, 2000, at 1.
62. Blue Ribbon Report, *supra* note 10, at 25.
63. *Id.*
64. O.C.G.A. § 46-4-154(e).
65. O.C.G.A. § 46-4-154(b).
66. Memorandum to Members of the Georgia House of Representatives from State Representative Jimmy Skipper, at 8, Apr. 15, 2002.
67. *Id.* at 16-17.

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Historic Law School Hosts 2002 Fall BOG Meeting

By Robin E. Dahlen

The University of Georgia Law School in Athens, Ga., served as the backdrop for the 188th meeting of the Board of Governors of the State Bar of Georgia. State Bar President James B. Durham, of Brunswick, presided over a productive and informative board meeting, which included a portion dedicated to intense discussion in the form of breakout sessions on the issue of multidisciplinary practice (MDP). In addition, attendees enjoyed the traditional Friday evening reception, which was held in the law school rotunda, and a tailgate party prior to the University of Georgia versus New Mexico State football game on Saturday afternoon. The Dawgs, consequently, won the game 41 to 10.

Appointments and Nominations

The Board, by unanimous vote, approved the appointment of Gary C. Christy, of Cordele, for a three-year term to the Judicial Qualifications Commission. The Board unanimously approved the reappointment of Aasia Mustakeem, of Atlanta, for a two-year term, and George E. Mundy, of Cedartown, to fill the expired term of William E. Cannon Jr., of Lake Junaluska, N.C., to the CCLC Board of Trustees. The Board received the following officer nominations: Jeffrey O. Bramlett, of Atlanta, and J. Vincent Cook, of Athens, for the position of treasurer; Robert D. Ingram, of Marietta, for the position of secretary; and George R. Reinhardt Jr., of Tifton, for the position of president-elect. The Board, by

unanimous vote, nominated the following attorneys to a two-year term to the Georgia ABA Delegate: George E. Mundy (Post 2); Myles E. Eastwood, of Atlanta (Post 2); and Donna G. Barwick, of Atlanta (Post 4). Election ballots for the aforementioned contested races will be mailed in December 2002.

Advisory Committee on Legislation

Following a report by Jeffrey O. Bramlett, committee chair, the



Supreme Court Justice Carol Hunstein and BOG Member Dennis O'Brien (right) visit with Chuck Jones, who will graduate from the University of Georgia School of Law in 2005, during the Friday night reception.

Board passed, by unanimous vote, the following:

Appellate Practice Section — Certification of Questions of Law to the Georgia Supreme Court: Currently, Federal Appellate Courts can certify questions of Georgia law to the Supreme Court of Georgia. This proposal requires that a change in Court Rules, legislation and an amendment to the Georgia Constitution would also allow Federal District Courts (trial courts) to certify questions as well. This matter was approved last year and passed the full Senate and House Judiciary without trouble. It was held in the house Rules Committee in the closing days of the session.

Georgia CASA — Appropriations Request: Currently, the state funds the Georgia Court Appointed Special Advocates at a level of \$1,095,000. The request for the FY 2004 Budget is an increase of \$390,000 to develop new programs and enhance the existing program.

Georgia Indigent Defense Council:

- **Juvenile Discovery Bill.** This bill creates a mechanism for discovery in juvenile cases. The bill passed last year, but was vetoed because of a costly amendment that was tacked on the bill. The bill allows for juvenile defen-



Lawyer's Foundation of Georgia Executive Director Lauren Barrett presents State Bar President Jim Durham with a contribution for the new Bar Center during the BOG meeting on Friday afternoon.



Above left: State Bar President Jim Durham and his wife, Kathleen, during the Saturday pre-game tailgate party. Above right: BOG members enjoy the Friday night reception held at the University of Georgia Law School. From left: Allegra Lawrence, Bettina Yip and Karlise Grier.



Meeting attendees get geared up for the Georgia football game at the pre-game tailgate party on Saturday morning. From left: Julie Daughtery, former YLD Immediate Past President Pete Daughtery, YLD President Derek White and Kelli White.



BOG member Joseph Roseborough (left) and former State Bar President Rudolph Patterson discuss the finer points of Georgia football at the Friday night reception.



State Bar President Jim Durham (right) visits with BOG member Dow Kirkpatrick during the Friday night reception.



State Bar President-Elect Bill Barwick and his wife, BOG member Donna Barwick, pose for the game during the pre-game tailgate festivities.



BOG member Nancy Jean Whaley and her husband, John, show off their team colors during the pre-game tailgate party.

dants to seek discovery from the prosecution and, when applicable, allows the prosecution to seek information on the juvenile's alibi.

■ 2003-2004 Budget Request:

The Georgia Indigent Council (GIDC) is seeking an additional \$4,793,989 in the State FY 03-04 Budget for its Grants to Counties subsidies. This amount would: increase the state contribution to 20 percent of the total, up from the current 11.35 percent; a \$300,000 increase to \$537,935 for the new Improvements Grants Program; and a \$307,052 increase to the Multi-County Public Defender's office to add four additional staff people.

■ Supplemental Budget:

GIDC is seeking an \$115,000 increase to the Multi-County Defender's budget for moving expenses, and \$21,542 for a 2.25 percent cost-of-living adjustment.

Business Law Section — Georgia Limited Liability Company Revision:

This bill would: change Georgia law to allow a person without an economic interest in an LLC to be a member or manager of an LLC; grant voting rights to certain members and managers by written operating agreement; and allow non-members to own an interest in profits, etc., of an LLC. This change would conform Georgia's law to the Delaware statute.

Bar Center and Treasurer's Report


President Durham provided an update on the Bar Center. Due to delays caused

by the litigation regarding the trees, construction overruns and an extremely adverse leasing market, it is projected that the Bar needs an additional \$7 million in equity to complete the Bar Center project. Based on current fundraising estimates, the Bar has raised \$1.5 million and my soon receive another \$1.5 million toward the needed equity. Additional fundraising efforts continue. In addition, George R. Reinhardt Jr. provided the Income Statement by Department for the 12 months ending June 30, 2002.

Related Organizations

President Durham presented a resolution to Rudolph N. Patterson, of Macon, recognizing the Georgia Bar Foundation as being one of the most successful IOLTA programs in the country. In addition, Lauren Barrett, executive director of the Lawyers Foundation of Georgia, presented a \$250,000 contribution to the Bar for the Bar Center.

Additional Business

State Bar Past-President Linda A. Klein, of Atlanta, provided a report on MDP, which lead into several breakout sessions to further discuss the topic. The Board also received a copy of UPL Advisory Opinion No. 2002-01. Delia T. Crouch, of Newnan, reminded members of the Board of Georgia Legal Service's annual campaign and encouraged all members to participate. State Bar President-Elect William D. Barwick, of Atlanta, provided a report on the 2004 Annual Meeting, which is scheduled to be held June 17-20 in Orlando, Fla. 

Robin E. Dahlen is the assistant director of communications for the State Bar of Georgia.

State Bar Expects Another Productive Legislative Year

By Mark Middleton

In the midst of a monumental election year, the State Bar's leadership and its legislative representatives have been busy preparing for the 2003 Session of the General Assembly. The conclusion of the lengthy 2002 regular session provided no break as the State Bar and its committees and sections have been active on several key issues.

As always, with the 2003 session approaching, the State Bar's Advisory Committee on Legislation (ACL) has met to consider several proposals from the State Bar sections. Also, the Fiduciary Law Section's Guardianship Committee, having concluded its review of the Guardianship Code, has prepared a proposal for significant reorganization of Title 29 of the Code.

Meanwhile, the Chief Justice's Commission on Indigent Defense

continues to work toward making recommendations regarding criminal justice issues, and the business community readies a package of tort reform items. "This year is bringing great challenges and opportunities, and I am confident that we will be up to the task," stated State Bar President Jim Durham.

New 2003 Legislative Agenda Items

This fall, various State Bar sections have once again prepared legislative proposals comprised of issues of importance to the State Bar. The ACL has considered these proposals and forwarded recommendations to the State Bar's Board of Governors.

In response, the Board of Governors



passed the following proposals at its September meeting:

1. Certification of Questions of Law to the Georgia Supreme Court: Currently, only federal appellate courts can certify questions of Georgia law to the Supreme Court of Georgia. This proposal, which requires an amendment to the Georgia Constitution, would also allow Federal District Courts to certify questions as well. This matter was approved last year and passed the Senate before being caught up in the last minute flurry of bills at the end of the session.

2. Georgia CASA Appropriations Request: Currently, the state funds the Georgia Court Appointed

Special Advocates at a level of \$1,095,000. The request for FY 2004 Budget is an increase of \$390,000 to develop new programs and enhance existing program. The State Bar has been a major supporter of the CASA program's appropriation efforts for many years.

3. Georgia Indigent Defense Council Legislative and Appropriations requests: The State Bar's Indigent Defense Committee recommended support for the Indigent Defense Council's proposal to create a mechanism for discovery in juvenile cases. A similar bill passed last year, but was vetoed because of an amendment that was tacked on the bill. The bill allows for juvenile defendants to

seek discovery from the prosecution and, when applicable, allows the prosecution to seek information on the juvenile's alibi. The Indigent Defense Council's budget request was also made part of the State Bar's legislative agenda. The request includes the following items:

- An additional \$4,793,989 in the State FY 03-04 Budget for its Grants to Counties subsidies. This amount would increase the state contribution to 20 percent of the total amount spent on indigent defense, up from the current 11.35 percent;
- A \$300,000 increase to \$537,935 for the new Improvements Grants Program;
- A \$307,052 increase to the Multi-County Public Defender's office to add four additional staff people; and
- A \$115,000 increase in the Supplemental Budget to the Multi-County Defender's budget for moving expenses, and \$21,542 for a 2.25 percent Cost-of-Living adjustment.

4. Georgia Limited Liability Company Revision: This proposal is designed to strengthen the Georgia LLC statute in order to make Georgia more competitive with the State of Delaware. Currently, many Georgians are forced to go to Delaware to create business entities in order to accomplish sophisticated business transactions. This proposal seeks to address that problem and will

- Allow a person without an economic interest in an LLC to be a member or manager of an LLC;
- Grant voting rights to certain members and managers by written operating agreement; and
- Allow non-members to own an interest in profits, etc., of an

2002-2003 State Bar Elections

You are encouraged to vote online in the 2002-2003 State Bar Election. Casting your vote online should be even easier than last year! In the Elections area of the State Bar's Web site, you can view an up-to-date list of all candidates beginning in December. Bios and pictures for Officer candidates, Board of Governor's candidates (in contested races) and YLD Officer candidates can be viewed at the click of a mouse.

For a few days during the first week of December, all active bar members will have the opportunity to vote **EARLY** via the Web site at www.gabar.org **BEFORE** the paper ballots are mailed. Every vote received online represents the saved cost of a paper ballot. We encourage you to take advantage of this opportunity, as it will be much more cost efficient and a better use of your dues monies. Rest assured that your vote will be kept confidential and that no preliminary counts will be tallied. Bar staff will not have access to the data.

For those of you who do not choose to vote via the Internet, a paper ballot will be mailed on Dec. 13, 2002, and you can still choose to research the candidates online. All votes must be in by 12 p.m., Jan. 22, 2003, to be valid. We will have the results available Jan. 24, 2003.

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LLC. This change would conform Georgia's law to the Delaware statute.

Other issues will undoubtedly be added to the State Bar's legislative agenda at the Midyear Meeting in January. "I am grateful for the level of the expertise that our sections and ACL members bring to the deliberation of these important issues," said ACL Chairman Jeff Bramlett. The deadline for submitting proposals to the ACL for the Midyear Meeting is Dec. 9, 2002.

Guardianship Code Revision

The Fiduciary Law Section's Guardianship Code Revision Committee has worked diligently to produce recommendations that reorganize, modernize and clarify the statutes relating to the guardianship of persons and property of minors and adults.

The proposed revision provides distinct chapters for provisions relating to children and adults.

Georgia State University professor Mary Radford, the committee's reporter, and fiduciary law expert Bill Linkous, the committee's chair, have done a great service to the State Bar in this effort. The Council of Probate Court Judges has acted to support the package. The ACL is expected to act on the proposal at its December meeting.

Indigent Defense

The State Bar has committed considerable time to monitoring the activities of the Chief Justice's Commission on Indigent Defense. This Commission, which was formed at the request of the State Bar, has taken several months to review the status of criminal justice and appears to be poised to make recommendations. Various mem-

bers of the State Bar have participated as members, and the legislative representatives and Indigent Defense Committee members have monitored the proceedings with interest.

While the State Bar has not approved any specific legislation, the Board of Governors did pass a resolution setting forth its support for dramatic improvements in the quality of representation provided for indigent defendants.


Tort Reform

The State Bar is also closely monitoring a package of tort reform proposals that is being prepared for introduction in the 2003 Session. Such a package is likely to include provisions relating to expert witness qualifications, the dismissal rule, the abolition of joint and several liability, and a cap on non-economic damages.

The State Bar's leadership will determine which of these specific provisions, if any, are rightfully within the scope and purpose of the State Bar's legislative efforts. Because of legal limitations imposed on any mandatory bar's lobbying efforts, the State Bar generally focuses its activities to matters affecting the practice of law and /or the access to justice, and foregoes involvement on issues

that are strictly political in nature.

Summary

Just as 2002 was a busy and productive year for the State Bar, 2003 promises more of the same. As the Bar continues in the 2003 General Assembly, do not hesitate to contact your legislative representatives and section chairs regarding issues of importance to you. 

Tom Boller, Rusty Sewell, Wanda Segars and Mark Middleton are the State Bar's professional legislative representatives. They can be reached at (404) 872-2373, via fax at (404) 872-7113, or by e-mail at tom@bsspublicaffairs.com and mark@middletonlaw.net. Also, the State Bar's legislative agenda can be found online at www.gabar.org/legislat.asp.

Georgia Bar Foundation Awards \$2.3 Million in Grants

By Len Horton

At its meeting at the State Bar of Georgia's new Bar Center on Sept. 13, 2002, the Board of Trustees of the Georgia Bar Foundation awarded a total of \$2.3 million to 33 different law-related organizations in Georgia.

The Georgia Legal Services Program and Atlanta Legal Aid together received \$1.5 million, making the total grant awards given to both organizations more than \$17 million since IOLTA came to Georgia. Other providers of civil legal services to people who cannot afford to pay for representation received more than \$220,000. Those organizations included Aid To Children of Imprisoned Mothers, Catholic Social Services, the Disability Law and Policy Center of Georgia, the Georgia Law Center for the Homeless, Halcyon Home, The Haven, Hospitality House for

Women, Northeast Georgia Council on Domestic Violence, the State Bar of Georgia's and Georgia Legal Services' Pro Bono Project, and the Savannah Area Family Emergency Shelter.

In addition to supporting organizations providing civil legal services, the Georgia Bar Foundation awarded a total \$51,000 to the following organizations providing legal assistance to those charged with crimes: Athens Justice Project, which is patterned after the highly-successful Georgia Justice Project run by Doug Ammar in Atlanta; and the Southern Center for Human Rights, which is led by nationally recognized Stephen Bright. By order of the Supreme Court of Georgia, the Georgia Indigent Defense Council receives 40 percent of net IOLTA revenues.

Supporting Georgia's Children

Children continue to be a high priority for grant awards

from the Georgia Bar Foundation. Macon's Adopt-A-Role Model program, which provides mentoring for kids at risk of getting in serious trouble with the law, received \$25,000. The Ash Tree Organization in Savannah received \$15,000. The Children's Tree House in Columbus, which is a model for how to bring together in one location virtually every organization in the community working to help children, received \$15,000. The Golden Isles Children Center in Brunswick received \$15,000 for its child advocacy work. The 7th Judicial Administrative District ADR Office in Cartersville received



\$10,000 to fund mediators in child deprivation cases. Terry Walsh's Truancy Intervention Project, which is based in Fulton County, received \$75,000 to help expand the program throughout Georgia.

The Law-Related Education Consortium of the Carl Vinson Institute at the University of Georgia, which is a major force for educating kids about our form of government and why it is so important to us all, received \$75,000. Since IOLTA was created in Georgia, this organization has received awards totaling \$992,022. Another educational program created for children is the Youth Judicial Program of the State YMCA of Georgia. It received \$10,000, making its total \$96,400 since IOLTA began. The Young Lawyers Division High School Mock Trial program, which receives its core funding from the Georgia Bar Foundation, received \$58,000. This program, under the capable leadership of Stacy Rieke and benefiting from the personal interest of Justice George Carley, has received \$525,000 since IOLTA began in Georgia.

Disputes regarding custody of children can be devastating for families and frustrating for courts. The Georgia Bar Foundation awarded several grants for guardian ad litem programs. The Atlanta Volunteer Lawyers Foundation (AVLF) program, like many programs supported by Bar Foundation funds, has become a model for other areas of the state. AVLF received \$25,000. Marty Ellin and Dan Bloom are continuing the work of Debbie Segal in helping similar programs get started in other areas of the state. Four Points, which received \$20,000, is

Continued on page 37

Cumulative IOLTA Revenues Surpass \$50 Million

By Len Horton

In 1986, as Georgia's voluntary IOLTA program struggled to get off the ground, the possibility of seeing \$50,000 in one month seemed to be an impossible dream — \$500,000 in a month might logically be attributed to insanity or more probably an addition error. Several other states with smaller lawyer populations were reporting greater revenues from their Interest On Lawyer Trust Accounts programs. Something was clearly wrong in Georgia. But what?

Interviews with literally hundreds of Georgia attorneys turned up nothing. Maybe what was needed was a super salesman. Even lawyers familiar with banking law had no idea what might be wrong. Many bankers also had no idea why our revenues were so slow to take off. Even bankers who were also lawyers had no idea. Lawyers with major investments in banks had no idea. Georgia IOLTA revenues were struggling and hardly creating even an upward blimp on a graph of monthly revenues. Maybe IOLTA was not meant for Georgia.

Something was soaring, even if it wasn't IOLTA revenues. My frustration was reaching ionospheric levels, and it showed no inclination to return to earth. Either find the answer or find a new job. And a therapist wouldn't be a bad idea either.

A banker who was a vice president at C&S was sympathetic and willing to brainstorm with me about the problem. A pretty fair amateur therapist, Loyd Smith was smart, outspoken and a devoted banker who was used to trying to help solve problems.

"Wouldn't it be funny if what was wrong was the law itself?" he asked me one day at lunch. He went on to explain how the growth of C&S had been nearly blocked by laws that limited branching throughout Georgia. It was more of a musing than an assertion, but I was desperate for anything.

Later that afternoon, I called Loyd and asked him what percentage of Georgia cities and towns was covered by C&S. Eighteen percent of all the cities and towns in Georgia had C&S branches in them. The remaining places had other, mostly smaller, banks serving them. Thanks to Loyd, I had my theory. I contacted my counterpart in the state Georgia was most often compared unfavorably with: North Carolina. When the largest bank in North Carolina started offering IOLTA accounts, in what percentage of the cities and towns were IOLTA accounts available? The answer came quickly: 89 percent. I had my answer. It was as if Georgia were playing North Carolina, and the score was: Georgia 18, North Carolina 89.

For the first time I understood what I was facing. Knowing what was wrong helped me realize the importance of signing up rural banks as well as big city banks. I set up a telephone calling system and started making the revenues graph go up while my frustration level started coming down. There were still sad moments ahead as, for example, when NCNB won C&S in a hostile takeover. Loyd had his wonderful way of summing things up.

Continued on page 36

"You take a Georgia baby and a North Carolina baby and cut off the legs of the Georgia baby," he said. "Then you wait 20 years and ask the two of them to run a 100-yard dash. Who, do you think, is going to win?" He went on to explain that Georgia banking laws had inadvertently killed the banking industry in the state and made even Georgia's major bank vulnerable to takeover by an aggressive North Carolina bank. "That explains why North Carolina banks are buying Georgia banks instead of the other way around," he said.

With Loyd's help I began to understand what would be necessary to make IOLTA thrive in Georgia. We surpassed the \$50,000 per month level when IOLTA was voluntary and began to look at what it would take to move IOLTA revenues to an even higher level. With the unrelenting help of then State Bar President Jim Elliott, the Supreme Court of Georgia created opt-out and then mandatory IOLTA, and the world changed immediately.

Monthly IOLTA revenues surpassed \$500,000 year before last, and, best of all, cumulative IOLTA revenues since IOLTA began in Georgia surpassed \$50 million during July 2002, a figure of which all Georgia lawyers and bankers should be proud.

Name a law-related organization that is trying to do good things to help people in Georgia. The odds are that the Georgia Bar Foundation, through your IOLTA contributions, is helping or has helped them. More than \$13 million has gone to Georgia Legal Services, more than \$4.3 million to Atlanta Legal Aid, almost \$1 million to the Law-Related Education Consortium at the University of Georgia, more than \$600,000 to start the Office of Dispute Resolution, more than \$500,000 to the BASICS program of the State Bar of Georgia, \$500,000 to start the Lawyers Foundation of Georgia, almost \$500,000 to the YLD Mock Trial program of the State Bar



Rudolph Patterson, former State Bar president and secretary of the Georgia Bar Foundation, accepts a proclamation congratulating the Foundation on the \$50 million milestone.

of Georgia, almost \$350,000 to the Pro Bono Project of Georgia Legal Services and the State Bar of Georgia, more than \$4.3 million to the Georgia Civil Justice Foundation and, the biggest one of all, almost \$17 million to the Georgia Indigent Defense Council.


At the Sept. 27, 2002, meeting of the Board of Governors of the State Bar of Georgia, President Jim Durham read a proclamation congratulating the Georgia Bar Foundation on the \$50 million milestone. Rudolph Patterson, secretary of the Bar Foundation and former president of the State Bar of Georgia, accepted the award.

This incredible success would not have been possible without the help of Georgia bankers. In Georgia they have played a bigger role than perhaps they have in any other state in the union. In recognition of their assistance, the Georgia Bar Foundation is the only bar foundation to have as its president a full-time banker. The Georgia Bar Foundation is also unique in that it is the first to have a full-time banker as treasurer at the same time that it has a full-time banker as president. The Supreme Court of Georgia recognizes the importance of banker par-

ticipation in making grant decisions and in setting policy for the Georgia Bar Foundation and considers two board positions to be banker positions. Furthermore, please note that most of the work done to make IOLTA accounts send interest to the Bar Foundation is done by bankers.

As impressive as the work of bankers and lawyers has been in generating \$50 million over the last 16 years, the next 16 should be even more impressive — \$75 million to \$80 million is a reasonable expectation. These funds are so crucial for virtually every law-related program in Georgia that I cannot imagine Georgia's future without IOLTA. No comparable funding source is anywhere in sight.

The world, however, is not yet perfect. The Washington Legal Foundation has challenged the constitutionality of IOLTA in Massachusetts, Texas and the state of Washington. IOLTA won totally in Massachusetts and partially in the state of Washington, but was not so lucky in Texas. The Washington case will be argued before the Supreme Court of the United States on Dec. 9, 2002. The Texas case may or may not be consolidated with the Washington case. Regardless, the final decision will be made before the end of June 2003.

The IOLTA community was taken by surprise in the Texas case. This time IOLTA supporters are fully prepared. No matter what decision is made, the Georgia Bar Foundation has John Chandler, Charlie Lester and the resources of Sutherland, Asbill & Brennan pledged to help us. We also have the many talents of David Webster, a constitutional lawyer and scholar. We will win in the Supreme Court of the United States; I believe that. But, if we don't, together we will find a way to save the estimated \$75 million for Georgia. We owe the thousands of Georgians who rely on funding from the Georgia Bar Foundation no less than our very best effort. 

such a program in LaFayette, and the Chatham County Domestic Relations Initiative in Savannah received \$30,000.

Sharing the Wealth

Several organizations that could be included in more than one category also received grant awards. The BASICS program of the State Bar of Georgia, which is effectively managed by Ed Menifee, educates prisoners in various D.O.C. facilities about how to survive outside prison without resorting to a life of crime. It received \$60,000. Since 1986, BASICS has been awarded \$516,901.

The Center for Children and Education, based in Macon, has established a name for itself as an authority regarding the law as it applies to children in school. Its education hotline helps parents solve problems regarding school discipline and support services. The award was for \$10,000, and \$40,000 has been awarded in total since 1998.

Rome's Exchange Club Center for the Prevention of Child Abuse received \$25,000. Under the hands-on supervision of Sam Evans, a no-nonsense man who is the Board president, this organization provides supervised visitation and a safe place where children can be transferred from one parent to another.

The Georgia Center for the Law in the Public Interest received \$15,000 to help in its environmental work.


The shortage in Georgia courtrooms of interpreters has become a major problem. Both Presiding Justice Leah Sears and Justice Carol Hunstein have expressed concerns about this problem. The Georgia Bar Foundation awarded \$15,000 to support the Georgia Commission on Interpreters.

The Georgia First Amendment Foundation (GFAF), under the leadership of Hollie Manheimer, has become an acknowledged resource regarding the law applicable to public meetings and public records. It is not unusual for news organizations and governments to seek Manheimer's advice. Georgia's former Chief Justice Charles Weltner, a strong advocate of open meetings and open records, became the lawyer for whom GFAF's annual banquet was named. GFAF received \$16,000.

The last of the organizations difficult to categorize is the Recording for the Blind & Dyslexic, Georgia Unit, which is based in Athens. This organization, led effectively by Lenora Martin, received \$5,000 to record legal and law-related books so that the blind and dyslexic can more easily learn.

In addition to the grant awards already mentioned, a \$750,000 grant was awarded to the State Bar of Georgia in April to help fund the Bar Center. Furthermore, mandatory payments to the Georgia Civil Justice Foundation (10 percent of net IOLTA revenues as required by order of the Supreme Court of Georgia) amounted to \$488,235.

All together, these awards are an awesome contribution to Georgia by the

lawyers and bankers of this state. Even with serious economic conditions and with IOLTA interest rates at an all-time low, the Georgia Bar Foundation, pursuant to its mission created by order of the Supreme Court of Georgia, awarded the fourth largest total grant awards in its history. While many grantees received less than they expected versus last year, the lawyers and bankers of Georgia continue to work together to make a significant difference in the ability of these grantees to help Georgians. 

Len Horton is the executive director of the Georgia Bar Foundation.

East Meets West: Georgia Delegation Explores China

By George Mundy

Several years ago while attending an American Bar Association meeting, I had dinner with a good friend, Richard Pena, a former president of the State Bar of Texas. Richard told me about his experiences leading a State Bar of Texas delegation to China, which was sponsored by the People to People Ambassador Programs. People to People Ambassador Programs, headquartered in Spokane, Wash., is an organization originally founded by President Eisenhower to promote friendly relations among all countries through the medium of scientific, professional and technical exchange. Richard indicated that the China trip was one of the most unique and enjoyable things he had ever done.



The Georgia delegation gathers in front of the Palace Museum in Taipei.

Georgia Forms a Delegation

Approximately a year ago, as immediate past president of the State Bar, I was invited by the People to People Ambassador Programs to form a State Bar of Georgia delegation to visit China. Having some knowledge of the Texas experience, I decided to give it a try.

The People to People personnel put together an all-inclusive, two-week trip to China, involving stays in Beijing, Shanghai and an exten-

sion to Hong Kong for those who were interested. Their planning included excellent hotels, all transportation needs, shopping and site seeing opportunities, as well as most meals in excellent restaurants. However, the professional focus of the delegation was to meet with our legal counterparts in China to compare and discuss similarities and differences in our two legal systems. We were particularly focused on access to legal services in China, as well as the role of an attorney in China.

A preliminary agenda was concluded and the State Bar of Georgia as well as the People to People to Ambassador Programs, began to invite State Bar of Georgia members as potential delegates. The trip opportunity was disseminated to our membership through letters, announcements at Bar meetings and in the *Georgia Bar Journal*, as well as CLE flyers.

Within two months it was clear we would be successful in forming a delegation. Over 600 of our members expressed interest in the trip and received documentation. We eventually received a commitment from 33 of our members and guests to form the State Bar of Georgia delegation. The People to People personnel indicated a delegation of 25 is considered large and a delegation of 33 is considered exceptional. Many of our delegates communicated prior to the trip and we even designed State Bar of Georgia lapel pins to use as gifts for our hosts in China.

The Journey Begins

On Sept. 5, 2002, the delegation assembled in Los Angeles, where we were able to meet each other and the travel manager who would accompany us throughout the trip.

Our delegation consisted of 25 members of the State Bar of Georgia and eight guests or spouses. Our members came from many locations in Georgia, as well as several members from other states. Delegates ranged from a former managing partner of a large Atlanta law firm to single practitioners and everything in between. We quickly learned that the State Bar of Georgia delegation was diverse, interesting, friendly and knew how to have a good time.

In Los Angeles we were briefed on what to expect in China and

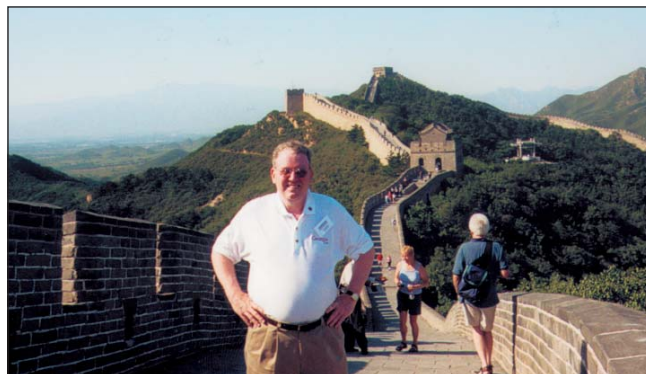
proper protocol. Beginning at 11:45 p.m., we flew 13.5 hours, crossing the International Date Line and losing a day to arrive in Hong Kong. After a layover of several hours, we flew to Beijing. Many of us had been traveling at this point nearly 30 hours. We checked into the five star Kunlun Hotel, had a wonderful buffet meal and everyone went to bed early. China is exactly a 12-hour time difference from Georgia.

Beijing, the political and administrative center of the People's Republic of China, governs more than 3.5 million square miles of territory and no less than 20 percent of the world's population. It is one of the largest and fastest growing municipalities in modern China, home to some 12 million people. Although Beijing is an extremely modern city and is busy preparing for the 2008 Olympic Games, the city has serious problems with traffic congestion and air quality.

On Saturday and Sunday, September 7 and 8, we were able to do a significant amount of site seeing, including the Forbidden City, The Summer Palace, Tian'anmen Square and the Great Wall. I am proud to report that many of our State Bar of Georgia delegates made it to the highest point of the



Members of the delegation stand on the steps of the Municipal Court in Shanghai.



Former State Bar President George E. Mundy poses in the restored section of the Great Wall of China.

Great Wall at the Badaling Section. Our guides and interpreters were excellent and very candid in discussing Chinese problems, such as the one child policy, the AIDS epidemic and minority population concerns.

Comparing Notes

On Monday, September 9, our delegation meetings began with a briefing from three deputy ministers from the Chinese Ministry of Justice. They gave us an overview of the Chinese legal system and this sparked an interesting question and answer session. It seemed the Chinese were just as interested in the American system as we were in theirs. In the afternoon, we met with a Chinese law firm, which had been founded by an American in 1985. We quickly learned that any

professional with a command of the Chinese language would have unlimited opportunities in China. This particular firm now had offices in eight cities and appeared to be very successful.

On Tuesday, September 10, our delegation met with the senior class of the Peking University School of Law. The students were very interested in the role of lawyers in the United States. They had many questions for our delegation on how matters were resolved in America. This session ended with a tour of the beautiful Peking University Campus. That afternoon we met with the All China Lawyers Associations, which is a mandatory bar association to which all Chinese lawyers belong. We learned that there are approximately 100,000 lawyers in China today to serve almost 1.8 billion people. Twenty-five years ago there were no lawyers in China. One of their bar associations biggest concerns was how to raise revenue without raising dues. It appeared they had the same dilemma as our own bar association.

On Wednesday, September 11, we flew to Shanghai. Shanghai, the fourth largest city in the world, is one of China's most cosmopolitan areas, virtually the only one, which strikes an immediate familiar chord with most western visitors. Shanghai has a population of more than 14 million people, of whom more than half live in the urban core. The city considers itself the leading cultural and educational center of China although they also experience traffic and air quality problems. We learned that Shanghai has more than 3,000 skyscrapers over 30 stories and they are building 150 more. There were no skyscrapers in Shanghai 25 years ago. Our delegates were struck with how modern and futur-

istic the city appears. We visited the famous Yu Garden and the Old Town area of Shanghai and strolled along the famed Bund.



State Bar of Georgia lapel pins were produced as gifts for the hosts in China.

On Thursday, September 12, we met with another prosperous Chinese law firm but the most interesting experience was that afternoon observing a civil trial at the Shanghai Municipal Court. Our delegation watched an entire trial in a modern courthouse with up to date translation facilities. That evening after an excellent dinner the delegation enjoyed seeing a Chinese acrobat show.

On Saturday, September 14, we had another delegation meeting with a law firm and had an interesting discussion of the practical aspects of practicing law in China. It is obvious the world is a much smaller place than it was even a few years ago. The afternoon was free for shopping and touring and that evening our delegation enjoyed a farewell dinner featuring the famous Peking duck.


Further Exploration

On Sunday, September 15, we flew to Hong Kong, where most of the delegation returned home. However, a number of us took advantage of an extension to Hong Kong and enjoyed its many sites

for three more days before returning home. We enjoyed excursions to the Kowloon Peninsula, Victoria Peak and Repulse Bay, where many Chinese still live in floating ships or junks. Those of us who extended to Hong Kong also had incredible shopping opportunities and certainly contributed to the overall Hong Kong economy.

Broadening Horizons

Since returning home, I have heard from most of our delegates. The reaction to our experience was overwhelmingly positive with everyone saying the trip exceeded their expectations. Not only did we have the opportunity to see and experience some unique and exotic locations, we also had the opportunity to interact and learn from our counterparts in China. Our accommodations were beautiful, transportation was convenient and comfortable, the food was sometimes unrecognizable, but many times delicious. While we had concerns about Chinese water quality, no one in the delegation experienced health concerns. We found the Chinese to be friendly, interesting, energetic and totally committed to development of a modern and western lifestyle. This trip and serving as delegation leader was simply one of the most unique, enjoyable and gratifying experiences of my life.

The State Bar of Texas has sponsored six separate delegations to locations all over the world. The State Bar of Florida is about to send its first delegation to China. I hope the State Bar of Georgia will offer future opportunities of this type to our membership. 

George E. Mundy is a former president of the State Bar of Georgia.

Three Governors:

Herman Talmadge, the Georgia Supreme Court and the Gubernatorial Election of 1946

By Lucian Emery Dervan

Herman Talmadge, who died March 21, 2002, was a governor, senator, and Georgia icon who controlled state politics for much of the last half of the 20th century. While many events in Talmadge's life deserve attention, one event in particular stands out amongst the trials and tribulations, victories and scandals in this long American political life. In 1946, the Georgia gubernatorial election brought a state government to its knees, a state Supreme Court to the height of its power and Talmadge into the national spotlight as a revolver totting aspiring governor.



Herman Talmadge served as governor of Georgia from 1949 to 1955.

The Election of 1946

In 1946, as Ellis Arnall completed his final year as Georgia's governor, the only primary that mattered in Georgia during this period, the Democratic primary, was beginning to heat up. Prevented from running for re-election under Georgia's constitutional term limits, Arnall's chosen successor was James Carmichael, a state legislator and supporter. The main opposition for the primary endorsement

was Eugene Talmadge. Eugene Talmadge, often referred to as the "wild man from Sugar Creek," was a Democratic demagogue who had served as Georgia's governor from 1933-1937 and 1941-1943 when he was defeated by Arnall.¹

As the campaign evolved, Talmadge dominated the issues and made the entire election about white supremacy. This focus on race occurred because of two federal court decisions involving the right of blacks to vote in primaries. First, in 1944, a Texas court ruled that blacks must be allowed to vote in electoral primaries. This decision was followed quickly by the filing of a similar suit in Georgia by Primus King against the Muscogee County Democratic Committee. King won the suit in federal court in 1945 and, after being affirmed by the Fifth Circuit, Georgia's appeal to the United States Supreme Court was denied. Talmadge, however, was intent on preventing blacks from voting in the primaries and promised a "Democratic white primary." While Talmadge failed to create a whites-only primary, the issue



Herman Talmadge campaigns in Royston, Ga., during the 1948 gubernatorial race. Talmadge defeated Gov. M. E. Thompson in a special election.

helped mobilize voters in rural counties for his candidacy. This strategy was successful, and Talmadge won the Democratic primary on July 17, 1946.²

While most general elections in the South during this period involved little more than confirming the Democratic nominee, the Georgia general election of 1946 was approached slightly differently by some. As the Democratic convention approached in October, Eugene Talmadge was already ill and confined to a Jacksonville, Fla., hospital. In response to these concerns, Herman Talmadge, Eugene's son, initiated a write-in campaign for himself. The reason for this was

his belief that should his father die before assuming office, the Georgia Constitution delegated the authority to the legislature to elect a governor from the two remaining candidates with the most votes.³ Those who were concerned had their worries validated as November arrived — the general election was on November 5 and Eugene Talmadge won the election while still in the hospital.

In all great events, there is one decisive moment when the debacle begins. For Georgia, that moment arrived on Dec. 21, 1946, when Gov.-Elect Eugene Talmadge died. Knowing a storm was brewing in the capital, the story in the newspaper next to the pronouncement of Talmadge's death was a piece titled, "3 Leaders Loom for Governorship."⁴ Immediately, Herman Talmadge (hereafter "Talmadge") began campaigning for support in the legislature. At the same time, Gov. Arnall declared that he would remain in office until such time as a special election was held and a successor chosen. While Talmadge and Arnall began a war of words, the

third possible governor, M.E. Thompson, who had been elected Georgia's first lieutenant governor, waited on the side-lines.

In early January, Arnall shifted strategies and aligned with Thompson. The attorney-general, Eugene Cook, issued a ruling stating that the legislature did not have the authority to elect a governor and that Gov. Arnall would remain in the office until Thompson was inaugurated lieutenant governor. On January 14, despite Arnall's insistence he still held title to the office, the legislature took up the issue of electing a governor. It has been reported that as the session began, Thompson aides began serving laced drinks to Talmadge supporters in an effort to pass a resolution instilling Thompson as governor.⁵ Any such attempt failed, however, and the overwhelmingly pro-Talmadge legislature began preparing to elect him governor. A problem arose, however, when Talmadge forces discovered he had only 617 write in votes, placing him third among the remaining candidates. As noted above, the constitution only permitted the legislature to select a governor from the next two highest vote recipients. The legislature adjourned briefly and reconvened with a miraculous 58 new votes for Talmadge from his home county. It should be noted that these uncounted votes were all in the same handwriting, in alphabetical order and some of the voters were dead at the time of the election. These new write-in votes gave Talmadge the lead with 675 votes.

The legislature moved immediately to elect and inaugurate Talmadge, who then made his way to the governor's office upstairs where Arnall had barricaded him-

self in with several supporters. Talmadge and his aides broke down the door and a fight erupted resulting in numerous injuries, including a broken jaw for Thad Buchanan, an Arnall supporter. The evening ended peacefully, however, with Arnall being escorted safely home as Talmadge and 8,000 to 10,000 of his supporters filled the capital.

The next day the locks were changed, but Arnall still arrived for work as if he were governor. Unable to enter his office, Arnall conducted business at a desk in the capital rotunda. This temporary facility was abandoned by Arnall when pro-Talmadge supporters lobbed firecrackers into the desk area, after which point Arnall retired to a nearby law office, though Talmadge supporters claimed he had commandeered the men's bathroom. The day was not any less dramatic for Talmadge, who arrived for his first day as governor with a .38 caliber Smith & Wesson in his pocket.

Almost immediately after Talmadge's inauguration, Arnall filed suit attempting to enjoin Talmadge from acting as governor. While the court set a hearing for February 7, more dangerous moves were being made by the Arnall and Talmadge camps as each fought for control of the military. During World War II, the Georgia National Guard was mobilized and, as a result, another institution called the State Guard was created as its temporary replacement within the state. In 1946, however, the National Guard had returned, yet the State Guard had not been disbanded. To make matters worse, the National Guard supported Talmadge and the State Guard supported Arnall. The troops were

mobilized and positioned around the capital, but conflict was averted. At one point, however, Talmadge troops seized furniture from Arnall's secretary and stenographer and took control of the switch board. As citizens feared a war may break out on the streets of Atlanta, Arnall and Talmadge each acted as governor and denied the other's authority to control the executive branch of government.

Thompson, who had been on the side lines during much of the clash between Arnall and Talmadge, reemerged on January 18 when he was sworn in as lieutenant governor. Shortly after the ceremony, Arnall resigned and Thompson claimed to have succeeded to the office of governor. Thompson was then substituted as plaintiff in the suit initiated by Arnall, which became the focal point of the dispute. The battle was no longer spilling into the streets or taking place in the corridors of the state capital. After Thompson's assumption of power, two governors sat in separate offices and claimed to be the rightful holders of executive power. The dispute would last for two more months until the Georgia Supreme Court finally resolved the matter.

The Courts

Three major suits became the focus of the judiciary's involvement in the controversy. In each, the underlying question was who held rightful title to the office of governor. To resolve this issue, the courts had to examine the state constitutional mandate that the legislature may only intervene in the election if "no person shall *have*" a majority of the vote. What made the analysis particularly difficult was the fact that Eugene Talmadge had received a majority of the vote in the election, but, because of his subsequent death, no one possessed a majority at the time the legislature published the results. The question remained, therefore, had the constitutional requirements for legislative intervention been met?

The first suit, as discussed above, was initiated by Arnall and later carried on by Thompson, who was substituted as plaintiff after assuming the office of governor. The case was heard by Judge Walter C. Hendrix, who ruled in favor of Talmadge. The lengthy decision came to the conclusion that the constitution did not intend the legislature only be able to act if no one, including the deceased, Eugene Talmadge, had received a majority.

A dispute over the highest office in the state had involved barricaded doors, fights in the capital, armed militias surrounding government buildings and candidates carrying weapons to protect themselves as they attempted to exercise the executive powers.

Construing the Constitution as we do, it is clear that the General Assembly had the right to decide when there was no election by the people. It did decide that on account of the death of the Governor-Elect there had been no election by the people. In our opinion the Constitution then put the duty and responsibility on it to elect and install a Governor. This duty and responsibility it decided as it saw fit. When it acts within its authority courts cannot interfere.⁶

Under this interpretation of the constitution, Arnall had not continued in office until Thompson was sworn in as lieutenant governor, and, therefore, Thompson had not succeeded to the office of governor.

The second case was *Bryars et al. v. Thompson*, in which Thompson sued the Board of Pardons and Parole to force them to deliver certain information to him as governor. Heard by Judge Claude Porter

in Floyd County, the court this time supported Thompson.

[T]he General Assembly was, under this provision of the Constitution, without jurisdiction to declare any person to have been elected governor of Georgia, there sole right being confined to the right to declare that Eugene Talmadge had received a majority of the votes cast for governor of Georgia in said election; that therefore, Ellis Arnall continued in office as governor until his resignation; and that M.E. Thompson having been elected and so declared by the General Assembly, and having qualified as lieutenant governor of the State of Georgia, upon said resignation becoming effective, became acting governor of Georgia...⁷

Thus, the lower courts were now split over who was the rightful governor.

The final case was *Fulton National Bank of Atlanta v. Talmadge et al.*, in which the bank filed suit to determine whether Talmadge or Thompson rightfully controlled state funds held by the bank. The case was decided by Judge Bond Almand in Henry County and, concurring with Judge Hendrix's opinion, upheld Talmadge's claim to the office.

The answer seems to be that governments, like human beings, have frailties [sic] and

imperfections, but that when popular elections do not achieve a result, representative government steps in to prevent a complete breakdown. Government, like life, must go on.⁸

The cases now stood two for Talmadge and one for Thompson. The State Supreme Court would have to resolve the issue lest the uncertainty that inhabited the capital continue indefinitely.


The three cases from the lower courts were appealed directly to the Georgia Supreme Court and were argued and decided together. The reason for moving the issue directly before the Supreme Court was to speed up the case. The Chief Justice of the Georgia Supreme Court remarked, "[i]f counsel for both sides should agree to accelerate the hearings in the several cases involving the governorship before the Supreme Court, I am sure the Court would entertain such a motion."⁹ Agreeing to the accelerated appeals process, the three cases were docketed for March 6 before the Georgia Supreme Court.

On March 19, 1947, the Georgia Supreme Court, in a 5-2 decision, ruled that Thompson was rightfully governor, and the controversy was over as quickly as it began.¹⁰ The opinion, written by Justice Duckworth, begins with the issue of whether the court has jurisdiction to decide the controversy. While the opinion admits that issues, which are purely political,

Pick Up
Gregory Conner
October page 40

are not within the jurisdiction of the court, the court holds that where the construction of a constitutional provision is in question the judiciary holds exclusive jurisdiction. Therefore, the court considers whether under the Georgia Constitution the General Assembly had the power to elect Herman Talmadge governor. In finding that the General Assembly acted outside its power, the court states “[i]n this State all power and sovereignty repose in the people.” The power to elect a governor, therefore, does not transfer to the legislature unless the voters fail to give a candidate a majority of the vote. In the current situation, the court notes, Eugene Talmadge received a majority of the votes cast and, therefore, regardless of his death, the conditions precedent for legislative intervention were not present. While Eugene Talmadge possessed a majority, his death prevented him from being sworn in as governor and, therefore, this inability of the majority vote recipient to assume office created a necessity for Gov. Arnall to remain in office. The court concludes its opinion by noting that upon the resignation of Gov. Arnall, Lt. Gov. Thompson had a duty and responsibility to assume the office of governor and execute its functions. Thus, Thompson is “entitled to perform all of the duties and exercise all the authority which by the constitution and laws are imposed upon the governor of this state.”¹¹

After the opinion was handed down, Talmadge stepped aside graciously. A dispute over the highest office in the state had involved barricaded doors, fights in the capital, armed militias surrounding government buildings and candidates carrying weapons

to protect themselves as they attempted to exercise the executive powers. In the end, however, the judiciary intervened to quell the emotion and danger of the situation and peacefully end the controversy. The matter was not over for Thompson and Talmadge, however. While Georgia settled down in the following months under the leadership of Gov. Thompson, Talmadge prepared to make another bid for the office he felt entitled to in 1947. Talmadge did not have to wait long. In 1948, Talmadge defeated Thompson in a special election. 

Lucian Dervan is a 2002 graduate of Emory University School of Law and an associate with King & Spalding. Dervan received his B.A. from Davidson College. The opinions expressed herein are solely those of the author and do not necessarily represent the opinions of King & Spalding.

Endnotes

1. The other two candidates in the Democratic primary were Eurith Rivers, another former Governor, and Hoke O’Kelly, a disabled war veteran.
2. See James F. Cook, *THE GOVERNORS OF GEORGIA* 232-33 (Mercer Univ. Press 1995).

3. This belief was because of Article V, section I, Paragraph IV of the Georgia Constitution of 1945 which read in part, “but, if no person shall have such majority, then from the two persons having the highest number of votes... the General Assembly shall immediately, elect a Governor...”
4. M.L. St. John, *3 Leaders Loom for Governorship*, ATLANTA CONSTITUTION, Dec. 22, 1946, at 1.
5. See Gary Pomerantz, *When Georgia had Three Governors*, ATLANTA JOURNAL AND CONSTITUTION, Dec. 29, 1996, at 4D; *Georgia’s Three Governors Controversy*, at www.gdnpeachnet.edu/faculty/s-buchanan/governor.htm (last visited Dec. 5, 2000).
6. James B. Sanders, *THE GEORGIA GUBERNATORIAL CONTROVERSY OF 1947* 71 (1947) (unpublished thesis, M.E. Thompson Collection, Special Collections and Archives, Robert W. Woodruff Library, Emory Univ.) (quoting Arnall v. Talmadge, No. 1693 (Henry County Superior Court Feb. 12, 1947)).
7. *Id.* at 72 (quoting Bryars et al. v. Thompson, No. 15792 (Floyd County Superior Court Feb. 7, 1947)).
8. *Id.* at 74 (quoting Fulton National Bank of Atlanta v. Talmadge et al., Number 15798 (Henry County Superior Court Feb. 15, 1947)).
9. M.L. St. John, *High Court would Speed Action in Governor Case*, ATLANTA CONSTITUTION, Feb. 11, 1947, at 1.
10. Thompson v. Talmadge, 201 Ga. 867, 872 (Ga. 1947).
11. *Id.* at 898.

The Grand Old Courthouses of Georgia:

The Henry County Courthouse at McDonough

By Wilber W. Caldwell

Henry County was created from land ceded to the state of Georgia by the Creek Indians in the 1821 Treaty of Indian Springs. One of the five original counties cut from this massive tract between the Ocmulgee and Flint Rivers, Henry established its county seat at McDonough in 1823 and completed a fine brick vernacular courthouse there in 1831.

By the mid-1880s, McDonough lay at the junction two railroads, and agitation for a new courthouse had begun. In November of 1896, county records reveal that Atlanta architect, Andrew J. Bryan, had been selected to design Henry's monument to the county's growing expectations. But by the time the notice to contractors appeared in the *Henry County Weekly* in February of 1897, the plans of another Atlanta architect, James Golucke, were cited as the accepted design. We are given no reason for

the last minute switch, and we can only presume that when Golucke presented his new Richardsonian design, the quality and charm of his creation eclipsed Bryan's more Spartan visions of the Romanesque Revival.

Although modest in scale and restricted by a surprisingly small budget (the building's original contracted cost was only \$13,789), the Henry County Courthouse is a comfortable combination of Henry Hobson Richardson's monumental Richardsonian Romanesque style and Henry County's comfortable rural tastes. Golucke applies Richardson's Romanesque vocabulary freely, featuring a massive arched entrance, distinctly Richardsonian window groupings and em-




Built in 1897 by James Wingfield Golucke, architect.

ploying granite banding and bold stone voussoirs to mimic the American master's signature polychromy. Although this was Golucke's first of many Richardsonian Courthouses in Georgia, it is certainly his finest, and he virtually copied the plan in later designs in Union, Schley, Jones and Baker Counties.

Between 1894 and his death in 1907, Golucke designed 27 courthouses in Georgia. Just as this prolific Atlanta architect would later tame the wildly Baroque excesses of American Beaux-Arts Classicism, he would first wrestle with the massive masculinity of the Richardsonian beast. Henry Hobson Richardson's buildings transcended their Romanesque vocabulary to create a unique language, a strangely modern and yet unmistakably

Picturesque tongue that combined mass and movement and projected a singularly American and powerfully urban aura. On the face of it, nothing could have been more inappropriate for tiny McDonough in 1897. But here Golucke's genius surfaces. Employing the Romanesque vocabulary of Richardson, Golucke fashioned his own intimately personal Romanesque Revival, which although modern, was also softly rural, disarmingly rustic and strangely pastoral. Like the pure Romanesque architecture of Richardson's medieval models in France and Spain, it was the architecture of a simple, struggling people who lived very close to the land. Here was a building to capture the divided mind of the South. It spoke to Henry County's modern aspirations, and at the same time, it seem-

ingly reveled in the brooding nostalgic distorted sense of history that soothed the angry tormented spirit of a defeated agrarian Old South come face to face with the modern age. 

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

KUDOS

Forty-two **Kilpatrick Stockton** lawyers have recently been honored by their peers in *The Best Lawyers in America* 2003-2004. The Atlanta-based attorneys are among a larger group of 69 Kilpatrick Stockton attorneys honored in this year's publication across the firm's seven domestic offices. The following were honored: **Miles J. Alexander, Richard R. Cheatham, Alfred S. Lurey, Joel B. Piassick, Dennis S. Meir, Susan A. Cahoon, A. Stephens Clay IV, Randall F. Hafer, Miles J. Alexander, Richard R. Cheatham, W. Randy Eaddy, Daniel T. Falstad, Hilary P. Jordan, Larry D. Ledbetter, Colvin "Corky" T. Leonard III, James D. Steinberg, David A. Stockton, G. Kimbrough Taylor, Michael H. Trotter, William J. Vesely Jr., Joseph M. Beck, Richard A. Horder, Rupert M. Barkoff, Phillip H. Street, David M. Zacks Jr., Miles J. Alexander, Anthony B. Askew, Joseph M. Beck, William H. Brewster, Joan L. Dillon, James L. Ewing IV, Jamie L. Greene, James D. Johnson, John S. Pratt, Dean W. Russell, Stephen M. Schaezel, Jerre B. Swann, Virginia S. Taylor, William H. Boice, Richard R. Boisseau, James H. Coil III, Diane L. Prucino, Tim Carssow, Candace L. Fowler, Harold E. Abrams, R. Alexander Bransford, and Harold E. Abrams.**

Additionally, the following Atlanta-based Kilpatrick Stockton attorneys were recognized as lawyers who have been listed for 20 years, in all 10 editions of *The Best Lawyers in America*: **Harold E. Abrams, Miles J. Alexander, Alfred S. Lurey and Joel B. Piassick.**

Merchant & Gould has recently earned some industry accolades. In its September issue, *Managing Intellectual Property* listed the firm among the top 25 biggest IP practice firms in the United States. In its May issues, *IP Worldwide* named the firm in its list of "Frequent Filers" as one of the top five plaintiff firms for IP litigation, and *Intellectual Property Today* listed the firm second in its index of top trademark firms. And, in its July issue, *IP Worldwide* cited the firm as one of the "Leaders of the Pack" in its annual "Who Protects IP in America" article.

Nezida S. Davis was recently appointed chief of the Atlanta field office of the U.S. Department of Justice's Antitrust Division. Prior to her appointment as chief, Davis served as the office's assistant chief for seven years. **Glenn D. Baker** was recently appointed assistant chief of the Atlanta field office.

Fisher & Phillips LLP partner, **Claud L. "Tex" McIver**, has been elected the new incoming chair of the Labor and Employment Law Section of the Atlanta Bar Association. A senior partner at Fisher & Phillips LLP, McIver has more than 30 years experience in labor and employment law.

Emory University School of Law has received a gift of \$250,000 from Atlanta attorney and Emory Law

School Council member **David H. Gambrell** to provide initial funding for the first phase of a teaching and courtroom technology project. The gift will fund new teaching technology in classrooms, and the law school's Tuttle Courtroom will become an "electronic courtroom," containing state-of-the-art computer and court-reporting equipment.

Fisher & Phillips LLP has added another western U.S. office. The firm has merged with **Gordon & Meneghello, P.C.**, a labor and employment law boutique in Portland, Ore. With this merger, Fisher & Phillips has five offices and 46 attorneys in the western United States.

Georgia State University College of Law, which opened its doors on Sept. 13, 1982, recently celebrated its 20th anniversary with a party for alumni, friends and the university community. The party was a kick-off for a year-long celebration at the school. Fully accredited by the American Bar Association since 1990 and a member of the prestigious Association of American Law Schools since 1995, the College of Law is gaining national recognition for its faculty scholarship, student and alumni successes, innovative programs and trailblazing use of technology.



C. Murray Saylor Jr., a partner in the **Saylor Law Firm LLP** in Atlanta, was elected president of the **American Association of Attorney-Certified Public Accountants (AAA-CPAs)** at the organization's recent national convention in Jackson Hole, Wyo.

The **Supreme Court Historical Society** selected **Sutherland Asbill & Brennan LLP** litigation partner **Teresa Wynn Roseborough** as one of two attorneys to re-argue the famous Supreme Court case *Gibbons v. Ogden* which, in 1824, broadly defined Congress's right to regulate commerce. The re-enactment was part of the society's annual National Heritage Lecture, which took place in the Supreme Court's chambers in September.

Steve O'Day, Smith, Gambrell & Russell's Environmental Law Practice Group lead partner, is making a fight against a development near Savannah his personal cause. O'Day has been named senior litigation counsel by the Southern Environmental Law Center. As his first task, he will take over their fight against Emerald Pointe, a development which recently was granted a permit to build three bridges across state-owned marshlands.

ON THE MOVE

In Atlanta

Schulten Ward & Turner, LLP, announced that **William C. McFee Jr.** joined the firm as of counsel. McFee will continue his practice in commercial real estate and business organizations. The firm is located at 260 Peachtree St., NW, Suite 2700, Atlanta, GA 30303; (404) 688-6800; www.swtlaw.com.

Freed & Berman, P.C., announced that **Suzanne Deddish** and **Steven Wagner** have become associated with the firm. Deddish was previously associated with Hunter, Maclean, Exley & Dunn of Savannah. Prior to joining the firm, Wagner served as law clerk to the Hon. Charles A. Pannell Jr. The firm is located at 3423 Piedmont Road, NE, Suite 200, Atlanta, GA 30305; (404) 261-7711; Fax (404) 233-1943; www.freedberman.com.



Gardner

Hutter

Kent



Maxwell

McKeon

Needle & Rosenberg named five new, non-equity officers. New officers include **Nancy K. Gardner**, **Jacqueline M. Hutter**, **Daniel A. Kent**, **Lawrence D. Maxwell** and **Tina Williams McKeon**. The office is located at The Candler Building, 127 Peachtree St., NE, Atlanta, GA 30303-1811; (404) 688-0770; Fax (404) 688-9880.

Alembik, Fine & Callner, P.A., announced the addition of **Andrew B. Goldberger**, **David T. Hodges**, **Wayne S. Melnick**, **Michele A. Ritz**, **Stacey Ferris-Smith**, **Monica L. Wingler** and **Joseph M. Winter**. The office is located at Marquis One, Fourth Floor, 245 Peachtree Center Ave., Atlanta, GA 30303; (404) 688-8800; Fax (404) 420-7191; www.AFCLaw.com.



Brooks

Horne

Kresky

Lore



Pickering

Hopkins

Wright

Nelson Mullins Riley & Scarborough, L.L.P., announced the addition of several partners to the law firm's Atlanta office. **Steve Brooks**, **Lew Horne**, **Caroline Kresky**, **Steve Lore**, **Rusty Pickering** and **Anita Wallace Thomas** were brought on as partners to the firm. Two additional attorneys, **Kay Hopkins** and **Bright Wright**, were added as of counsel. The firm is located at 999 Peachtree St., NE, First Union Plaza, Suite

1400, Atlanta, GA 30309; (404) 817-6000; Fax (404) 817-6050; www.nmrs.com.

Kilpatrick Stockton LLP announced the addition of **Richard B. Hankins** and **Keith W. Kochler** to the firm as partners in its labor and employment practice group. The firm's office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309-4530; (404) 815-6500; Fax (404) 815-6555; www.kilpatrickstockton.com.

Kilpatrick Stockton LLP announced the election of **Debbie Segal** as partner. Segal has served as full-time pro bono counsel at Kilpatrick Stockton since January 2001 when the firm created the position, the first of its kind in Georgia and the Carolinas. The firm's office is located at Suite 2800, 1100 Peachtree St., Atlanta, GA 30309-4530; (404) 815-6500; Fax (404) 815-6555; www.kilpatrickstockton.com.

Joan G. Crumpler has joined the law firm of **Dawson & Manton**. Crumpler joins the firm's civil litigation practice, which includes civil trial litigation, premises liability, medical malpractice, wrongful death, products liability and automotive personal injury. Crumpler will also focus on insurance coverage and consumer law issues. The firm is located at 328 Alexander St., Marietta, GA 30060; (770) 919-7554; Fax (770) 499-0502; www.dawsonmanton.com; jgc@dawsonmanton.com.

McKenna Long & Aldridge LLP announced that **Edward A. Kazmarek**, **W. Scott Laseter** and **Carol R. Geiger** are joining the firm's environmental law practice as partners. Most recently, Kazmarek, Laseter and Geiger practiced with Kilpatrick Stockton. The firm is located at 303 Peachtree St., NE, Suite 5300, Atlanta, GA 30308; (404) 527-4000; Fax (404) 527-4198.

Douglas Ashworth has left the firm of Green and Ashworth to join the legal staff of the **Council of Superior Court Judges**. In his private practice, he represented various local governments, including the Franklin County Board of commissioners, the Franklin County School District and the cities of Lavonia and Carnesville. In his position with the Council of Superior Court Judges, his responsibilities include assisting judges with death penalty habeas corpus cases. The council office is located at 18 Capital Square, Suite 108, Atlanta, GA 30334; (404) 657-5951; ashworthd@www.gajudges.org.



After more than 13 years with the State Bar of Georgia, Office of the General Counsel staff member **Duane Cooper** left to pursue an opportunity as the deputy solicitor general with the **Solicitor General of the State Court of Fulton County**.

Gladstone, Doherty & Associates, PLLC, announced that **Maria Sheffield** has joined the firm as an associate in its Atlanta office. Sheffield was previously with the Georgia Department of Insurance, where she served as agency lobbyist and general

counsel to the department's regulatory services division. Sheffield specializes in insurance regulatory law and government relations. The firm is located at 3330 Cumberland Blvd., Suite 500, Atlanta, GA 30339; (770) 933-6270; Fax (770) 675-3490.

Levine & Smith, LLC, announced that **Rebecca S. Olson** and **Todd A. Orston** have become associated with the firm, located at One Securities Centre, 3490 Piedmont Road, NE, Suite 1150, Atlanta, GA 30305; (404) 237-5700; Fax (404) 237-5757.

The Atlanta Law firm, **Davis Law Group, P.C.**, has recently become affiliated with the Washington, D.C., and San Francisco firm of **Belli, Weil & Grozbean, P.C.** The Atlanta firm will be known as **Belli, Weil, Grozbean & Davis, LLP**. The firm will continue to represent clients in the areas of catastrophic injury and wrongful death litigation, family law, criminal defense, civil litigation and real estate, and other transactional matters. The Atlanta office is located at 8010 Roswell Road, Suite 200, Atlanta, GA 30350-7024; (770) 993-3300; Fax (770) 552-0100.



Attorney coaches are needed for high school teams throughout Georgia

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*Harrison High SchoolKennesaw
Johnson High SchoolGainesville
*McIntosh High SchoolPeachtree City
Middle GA HomeschoolersMacon
*North Cobb High SchoolKennesaw
Paideia SchoolAtlanta
*Richmond Hill High SchoolRichmond Hill
Riverdale High SchoolRiverdale
*Southwest Magnet SchoolMacon
*Tri-Cities High SchoolEast Point
Walton High SchoolMarietta
Woodward AcademyCollege Park

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In Columbus

Page, Scrantom, Sprouse, Tucker & Ford, P.C., announced that **Robert C. Brand Jr.**, **Judson P. Grantham** and **Thomas F. Gristina** have become partners in the firm. The firm is located at 1043 Third Ave., Columbus, GA 31901; (706) 324-0251; Fax (706) 323-7519.

In Conyers

Talley, Sharp & French, P.C., announced that **Teri L. Smith** has become associated with the firm. The office is located at 1892 Ga. Highway 138, SE, Conyers, GA 30013; (770) 483-1431.

In Macon



Bryan D. Scott announced the formation of **The Law Office of Bryan D. Scott**. The Law Office of Bryan D. Scott will primarily concentrate on commercial and business advice and litigation, personal injury, wills/estates/trusts and student

hearings and appeals. The office is located at 3416 Vineville Ave., Macon, GA 31204; (478) 477-0016; Fax (478) 477-3020; bscott@scottlawoffice.com; www.scottlawoffice.com.

In Savannah



A. Robert Casella has become associated with the law firm of **Weiner, Shearouse, Weitz, Greenberg & Shaw, LLP**. His practice will be concentrated in criminal and civil litigation and appeals. The office is located at 14 East State St., Savannah, GA 31401; (912) 233-2251; Fax (912) 235-5464.

In Washington, D.C.

After 26 years with the law department of AT&T, **Roger A. Briney** has joined the Washington, D.C., office of **Davis Wright Tremaine LLP** as of counsel. Briney joins the firm's telecommunications and litigation practice groups, and will focus his practice primarily on state and federal government procurement and telecommunications. The office is located at Suite 450, 1500 K St., NW, Washington, DC 20005, (202) 508-6600; Fax (202) 508-6699; www.dwt.com.

In West Palm Beach, Fla.



Lewis, Longman & Walker, P.A., announced that **Kristin K. Bennett** has joined the firm's West Palm Beach office as an associate. Bennett was previously assistant counsel with the Environmental Protection Commission of Hillsborough County. The firm is located at Suite 1000, 1700 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; (561) 640-0820; Fax (561) 640-8202.

No Harm, No Foul

Your associate sits in the armchair across from you, fidgeting nervously. “I wanted to let you know that I’ll be leaving at the end of the month,” she says. I plan to open my own law office.”

“I’m sorry to hear that, Brooke,” you say. “I guess I’ll need to get with you about the files you’ve been working on so that I’ll be up to speed on them by the time you leave. I’ll have to brush up on procedures in the new Family Court — you’ve been doing all the domestic cases and I’m rusty.”

“That’s just it,” she replies. “I’m hoping to take the domestic cases with me. I’ve already called the clients whose files I’m working on and asked if they want me to continue to handle their cases...”

“That sneaky whippersnapper!” your partner fumes upon hearing the news. “She’s not only walking out on us, she’s trying to steal our clients! I’m going to have her brought up on charges before the Bar!”

“Calm down,” you say. “I’m not sure Brooke has done anything wrong.”

“But she has solicited our client’s business and stolen cases right out from under our noses — that can’t be ethical!”

A quick look through Part VII of the Georgia Rules of Professional Conduct confirms your hunch that Brooke is acting within the scope of the rules. The prohibitions on solicitation do not apply to existing clients. Since Brooke was actively working on the files, her telephone calls were not communication “with a prospective client for the purpose of obtaining professional employment” within the meaning of Rule 7.3.

Formal Advisory Opinion 97-3 further clarifies the ethical considerations for a departing lawyer who wants to communicate with clients of the former law firm. The Opinion allows communication only where


the departing lawyer had significant contact with or actively represented the client. It prohibits the departing lawyer



from providing any misleading information about the facts or circumstances under which the lawyer is leaving the firm. Within those restrictions, however, the lawyer may notify clients of his or her departure, new location, and willingness to continue to provide legal services to the client and the client’s right to the lawyer of his or her choice.

While Brooke has not violated the letter of the rule or the Formal Advisory Opinion, it probably would have been more professional for her to notify the firm of her departure before telephoning clients. The Formal Advisory Opinion provides that a “joint notification by the law firm and the departing attorney to the affected clients. . . is the preferred course of action for safeguarding the client’s best interests.”

Lawyers who find themselves in this position typically are able to resolve informally any disputes as to fees, transfer of files and notice to the courts about a change in counsel. In the rare instance when a firm is not able to work things out with a departing lawyer, the lawyers should remember the mandate of Formal Advisory Opinion 97-3 that “the main consideration underlying our Canons of Ethics is the best interest and protection of the client.”

Feel free to call the Bar’s Ethics Hotline at (404) 527-8720 or (800) 334-6865, ext. 720. 

Discipline Notices

(Aug. 21, 2002 – Oct. 14, 2002)

By Connie P. Henry

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

Timothy John Jones

Augusta, Ga.

Timothy John Jones (State Bar No. 403915) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 16, 2002. In 1994 Jones agreed to represent a client in a personal injury matter. Although he told the client he was negotiating a settlement, he settled the case without her authorization and never filed a lawsuit. When Jones received the settlement check, he deposited it in his escrow account and used the funds for his own benefit. Jones relocated his office but failed to inform his client. When the client finally reached him, he advised her that he had paid the doctor's bills, when he had not. In December 1999 the client called Jones and found that his telephone had been disconnected. In January 2000 Jones called his client and told her he had settled her case and would mail her a check for \$2,000 within a week. On or about Feb. 27, 2000, Jones sent the client a check for \$1,400, but the check was returned for insufficient funds.

John Thomas Rutherford

McDonough, Ga.

On Sept. 16, 2002, the Supreme Court of Georgia accepted the Petition for Voluntary Surrender of License of John Thompson Rutherford (State Bar No. 621455). On March 26, 2002, Rutherford pled guilty in the Superior Court of Henry County to three counts of bribery in violation of OCGA §16-10-2.

Larry James Eaton

Fayetteville, Ga.

On Sept. 16, 2002, the Supreme Court of Georgia accepted the Petition for Voluntary

Surrender of License of Larry James Eaton (State Bar No. 237880). Eaton represented an individual and a corporate client in a dispossessory matter. He abandoned the matter and failed to communicate with the individual client about the status of the case. In aggravation of discipline, the Court took into consideration Eaton's substantial experience in the practice of law and his prior disciplinary offenses.

SUSPENSIONS

Brace W. Luquire

Columbus, Ga.

By Supreme Court of Georgia order dated Sept. 16, 2002, Brace W. Luquire (State Bar No. 461400) has been suspended from the practice of law in Georgia for a period of 12 months, with conditions for reinstatement. Luquire was hired to represent a client in claims arising from an automobile accident. He failed to take any action on the client's behalf. The Court considered Luquire's prior disciplinary history in aggravation of discipline.

Paul Henry Wyatt

Atlanta, Ga.

By Supreme Court of Georgia order dated Sept. 30, 2002, Paul Henry Wyatt (State Bar No. 779225) has been suspended from the practice of law in Georgia for a period of one year commencing 10 days from the date of the order. Respondent pled guilty in the United States District Court for the Northern District of Georgia to a criminal information, which charged him with two counts of Misrepresentation and Concealment of Facts.

Keith H. Salmon

Warner Robins, Ga.

On Sept. 30, 2002, the Supreme Court of Georgia issued an order indefinitely sus-

pending Keith H. Salmon (State Bar No. 622695) from the practice of law in Georgia, with conditions for reinstatement. In July 1999, Salmon agreed to represent a client in a divorce case and received a \$100 fee. After sending a demand letter that he proceed with the case, Salmon finally filed her divorce on July 11, 2000. The parties entered into a settlement agreement and the client paid Salmon an additional \$200. Salmon closed his office in January 2001, and failed to notify his client, nor did he return her calls. In March 2001 the Court notified the client that her case had been dismissed for want of prosecution. Salmon returned his client's call with respect to the dismissal and told her he would file the agreement and revive the case, but he took no further action.

PUBLIC REPRIMAND

Michael Joseph Davis Jr.
Atlanta, Ga.

On Sept. 13, 2002, the Supreme Court of Georgia ordered that Michael Joseph Davis Jr., (State Bar No. 212040) be administered a public reprimand in open court by a judge of the Superior Court where Davis resides or where the actions resulting in discipline occurred. A client retained Davis to represent him in the appeal of a criminal conviction. Davis received partial payment and advised the client's former counsel that he would take over the representation. Davis failed to timely file a brief and enumeration of errors, which resulted in the dismissal of the client's appeal.

FORMAL LETTER OF ADMONITION

Daniel L. Henderson
Temple, Ga.

On Sept. 13, 2002, the Supreme Court of Georgia accepted the Petition for Voluntary Discipline of Daniel L. Henderson (State Bar No. 345460) for a Formal Letter of Admonition. Henderson was appointed to represent a client in the appeal of a criminal matter. The client made numerous attempts to contact Henderson, but got no response. Although, Henderson eventually handled the client's post conviction proceedings, he admitted that his failure to communicate with his client caused the client worry and concern.

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 Aug. 21, 2002, two lawyers who were suspended for violating this Rule have been reinstated.

INACTIVE CASES

Five cases were moved to inactive status by the Supreme Court after attorneys were disbarred.


SUSPENSION LIFTED

Donald O. Nelson
Townsend, Ga.

By order dated Sept. 16, 2002, the Supreme Court of Georgia lifted the suspension of Donald O. Nelson (State Bar No. 537800). In 1995, Nelson was suspended from the practice of law after pleading guilty to a crime involving moral turpitude.

REINSTATEMENT

Alan Austin Gavel
Sarasota, Fla.

On Sept. 16, 2002, the Supreme Court of Georgia accepted the petition for reinstatement of Alan Austin Gavel (State Bar No. 288010). On Sept. 14, 1998, the Court imposed a suspension from the practice of law for a period of 36 months, with conditions for reinstatement. Gavel complied with all conditions for reinstatement. 

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



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Your Year-End Practice Management Checklist

By Natalie R. Thornwell

Whether you are a sole practitioner, small-firm, corporate, government or large-firm attorney, you can benefit from taking a look at the way you have been doing things with an eye towards improving. So, with the New Year upon us, let's start reviewing 2002 and planning for 2003 and beyond. Use the following year-end checklist to help you get a head start on improving your law office.

Year-End Office Management Review

- ✓ Do you have a written policies and procedures manual?
- ✓ Do you have enough staff for the workload of your firm? If not, have you planned on hiring additional staff?
- ✓ Do you need to hire an office manager or administrator?
- ✓ Have you reviewed your salaries and benefits offerings recently?
- ✓ Do you need to open a branch office?
- ✓ If you are in a partnership, do you have a written partnership agreement?
- ✓ Do you have an associate training and review program?
- ✓ Do you have regular (monthly at least) meetings for partners and/or associates?
- ✓ Have all employees signed employment agreements with the firm?
- ✓ Does every position (not person) in your firm have a written job description, including yourself?

- ✓ Do you have proper malpractice insurance coverage?
- ✓ Do you have written and signed fee agreements for every client you represent?
- ✓ Do you perform a conflict of interest check on every new client?
- ✓ Do you use file opening and closing checklists for each client file?
- ✓ Do you have a detailed disaster recovery plan that you have shared with everyone in your office?
- ✓ Have you reviewed your filing and storage procedures lately?
- ✓ Is your vendors list up-to-date with all of the correct contact and product/service-specific information?
- ✓ Are all of your legal research products/services current?
- ✓ Have you recently completed an inventory of your law office library for completeness and relevancy to your current practice areas and needs?

Year-End Technology Checks

- ✓ Do you have up-to-date computer systems for the entire office?
- ✓ Are the computers in your office networked together so you and your staff can easily share work product and network devices like printers and copiers?
- ✓ Is your network reliable?
- ✓ Do you have the latest service releases, fixes and patches needed for your hardware and software systems?
- ✓ Is your Internet connection reliable?
- ✓ Have you prepared a technology budget for the coming year(s)?
- ✓ Does your current technology budget include funds for training?
- ✓ What are the training methods you have used for keeping you and your staff up on the software tools you are using in your law practice?

- ✓ Do you have or need a network administrator in-house or can you use an outside vendor?
- ✓ Are all of your technology vendor contracts current and relevant to your present technology situation?
- ✓ Are your monitors adequate, especially for staff, if they are in front of the monitor all day?
- ✓ Do you have a regular backup and restore routine for your daily work product?
- ✓ Do you keep backups both off and on site?
- ✓ Are you in need of a PDA – (Palm, Handspring, or Blackberry), Pocket PC, or all-in-one (Phone + PDA) device

- for working while away from the office?
- ✓ Can your office fax from the desktop?
- ✓ Are your telephone, voicemail and other communication systems up to date?
- ✓ Do you have computerized case management, time and billing, and accounting systems that are appropriate for a firm of your size?
- ✓ If you are a litigation firm, are your litigation support tools adequate for the courtroom?
- ✓ Do you have a firewall set up for your office (and home) networks?
- ✓ If you are striving to become paperless, do you have a high-

end sheet fed scanner with appropriate OCR scanning software?

- ✓ Does your technology promote firm “knowledge management?”

Year-End Financial Checks

- ✓ Are you billing monthly or as soon as you complete a matter or major parts of a matter?
- ✓ Do you review your accounts receivable monthly and have staff follow-up with non-paying clients?
- ✓ Do you track and bill for all expenses incurred on behalf of your clients?



The Georgia Law-Related Education Consortium:

- encourages, develops, and supports LRE programs
- promotes the inclusion of LRE in pre-K, K-12, post-secondary, and adult curricula;
- promotes public awareness concerning the benefits of a comprehensive law-related education program; and
- collects and disseminates information about state and national LRE programs and resources.

Annual projects of the Consortium include a newsletter, *The LRE Circuit*; promotion of LRE Week activities; a poster contest; awards for outstanding LRE teachers, supporters, and students; teacher training; curriculum development; and support of other LRE activities throughout the state.

As you can see, the Consortium is an active, multi-faceted organization with many available resources. Please consider joining us. We believe you will be greatly rewarded.

☐ Regular Member [\$10] ☐ Supporting Member [\$20] ☐ Sustaining Member [\$35]

☐ Silver Member [\$50] ☐ Gold Member [\$100] ☐ Platinum Member [\$200]

☐ Lifetime Member [\$500] Members at this level are not asked to contribute membership dues following the first year, but may choose to pay dues or make donations as desired.

Name: _____

School/Organization: _____

Address: _____

city

state

zip

Phone No.: _____

Make checks payable to: Georgia LRE Consortium.

Mail to: Georgia LRE Consortium • J.W. Fanning Bldg. / Univ. of GA • 1234 S. Lumpkin St. • Athens, GA 30602

- ✓ Have you been charging interest on past-due account balances?
- ✓ Do you have your books up-to-date?
- ✓ Do you track time for all matters regardless whether you are charging by the hour or charging a flat fee?
- ✓ Is time-tracking required of all employees?
- ✓ Are your operating and trust accounts balanced and reconciled through last month?
- ✓ Have you paid all of your required quarterly and annual taxes for the year?
- ✓ Do you have an accountant or bookkeeper?
- ✓ Have you met with your accountant or bookkeeper to go over your chart of accounts and reporting needs for the coming tax year(s)?
- ✓ Have you developed a budget for your firm?
- ✓ Is your payroll processed on time and with the appropriate withholdings?
- ✓ Does your payroll service send you regular reports on your account?
- ✓ Are you and your associates brining in the amount of revenue you budgeted for over the past year?
- ✓ Have you written off uncollectible accounts for the year?
- ✓ Have you reached your billable hours goals for the year?
- ✓ Have all shareholders in the firm received current profit and loss statements?
- ✓ Do you share firm financial information with staff to enhance productivity?

Year-End Marketing Assessment


- ✓ Did you bring in new clients in the past year?

- ✓ Is your written marketing plan up-to-date?
- ✓ Have you met recently with your top-paying clients?
- ✓ Have you met recently with your lowest-paying clients?
- ✓ Have you been in your own reception area lately?
- ✓ Are you getting feedback on your service from your existing clients via a client satisfaction survey?
- ✓ Do you have a Web site that invites new business?
- ✓ Have you changed/do you need to change your firm brochure?
- ✓ Are client-focused newsletters offered via e-mail?
- ✓ Are all of your practice areas covered in your client newsletter marketing?
- ✓ Do you accept online or credit card payments?
- ✓ Are you in the habit of creating and sharing with your clients a case plan and budget?
- ✓ Does your file closing letter invite repeat and new business?
- ✓ Does your advertising set you apart from the competition?
- ✓ Do you carry high-quality business cards?
- ✓ Have you developed an "electronic business card" and marketing message for all of your e-mail correspondence?
- ✓ Are you getting the best deal on your Yellow Pages advertising?
- ✓ Have you developed a marketing script for use by your staff when asked, "What does your firm do?"
- ✓ Have you monitored how and why clients chose you as their attorney?
- ✓ Have you been fired by any of your clients?
- ✓ What do you say when someone asks, "What do you do?"

- ✓ Does your firm "brand" really fit the firm?

Resources for the New Year

You may find that you desperately need to improve certain areas of your practice after completing the above checklist. The Law Practice Management Program will gladly assist you with materials from our resource library; an e-mail query response; a no-cost telephone consultation; or a low-cost, in-person consultation to help with any of your specific practice management needs. In fact, your first New Year's resolution should be: contact the Bar's Law Practice Management Program at (404) 527-8770 or 8772; visit the Law Practice Management Program online at www.gabar.org/lpm.asp; or e-mail us at natalie@gabar.org to help improve your practice.

The Law Practice Management Program wishes you a happy and prosperous New Year! 

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


Activities Abound at South Georgia Office

By Bonne Cella

Attorneys from several different South Georgia areas convened at the State Bar South Georgia Office recently for a 2002 update titled "Preventing Legal Malpractice Claims and Ethics Complaints." The program was a service of the State Bar of Georgia, in conjunction with American National Lawyers Insurance Reciprocal (ANLIR).

The South Georgia Office was also a training ground for volunteers who will help with a new domestic violence shelter in the Tifton Judicial Circuit. The shelter, to be named Ruth's Cottage, should be completed and fully funded in the next year. The training was provided by Halcyon Home in Thomasville and focused on handling crises phone calls.

The South Georgia Office recently facilitated an "Ethics over Lunch" program for the Houston County Bar Association. Preysh Maniklal, vice chairman for the Investigative Panel of the State Bar of Georgia, presented the program.

The South Georgia Office also facilitated a "Professional Enhancement Program" (PEP) for the Lookout Mountain and Catoosa Circuits. PEP is a service of the State Bar of Georgia and includes useful and helpful subject matter. 

Bonne Cella is the office administrator of the State Bar's South Georgia Office.

The South Georgia Office is available to assist local bars.

If your bar association needs assistance with programs, contact the Satellite Office of the State Bar of Georgia at (800) 330-0446 and they will facilitate the program for you.



Attorneys from several different South Georgia areas gather for the ANLIR program at the South Georgia office. Panel members included State Bar Treasurer Rob Reinhardt, State Bar Deputy General Counsel Paula Frederick and Jill Wells of ANLIR.



Volunteers who will help with a new domestic violence shelter in the Tifton Judicial Circuit prepare for domestic violence training at the South Georgia Office.

Volunteer Attorneys Gain New Training

By Mike Monahan

On Aug. 27, 2002, ABC, A Business Commitment Committee of the State Bar, and the Atlanta Bar Association sponsored a training session for more than 20 volunteer lawyers at State Bar headquarters on property tax appeal hearing procedures. Jeff Plowman, a partner at Nelson, Mullins, Riley and Scarborough, is the ABC pro bono attorney for the Lynwood Park CDC. ABC is helping Lynwood Park residents who have filed property tax appeal hearings to obtain pro bono legal assistance.

"Together We Can" is the motto of the Lynwood Park Community, an African-American community located in an unincorporated section of northwest DeKalb County. Surrounded by more affluent neighborhoods, Lynwood Park residents live in a community of approximately 300 homeowner families of whom over 98 percent are African American. In 1995, following a very intense situation where some properties in the community were in the process of being developed for upper income housing, the community made a commitment to improve the quality of life in Lynwood Park. The initial result of this action was the formation of the Lynwood Park Community Project, whose priorities are affordable housing and youth development.

The Lynwood Park Community and its residents are now threatened by the pro-




Volunteer lawyers gather at the Bar Center to discuss property tax appeal hearing procedures.

posed DeKalb County property tax increase. Some elderly residents' assessments would result in a 300 percent property tax increase. As a result of a community educational effort, 120 residents of Lynwood Park have filed a timely appeal of their assessments. These individuals need volunteer attorneys to represent them at a hearing of their appeal before the DeKalb County Board of Equalization.

ABC Committee member Plowman moderated this session by providing:

- A brief overview of Lynwood Park;
- An outline of the process of a property tax appeal in DeKalb County;
- Issues to be raised on appeal; and
- Legal materials on the hearing appeal.

Among the law firms who participated in the training were King & Spalding, Cohen & Caproni and W. Wheeler Bryan.

If you would like more information, or would like to volunteer for this project, contact Mike Monahan, State Bar of Georgia Pro Bono director, at mike@gabar.org or (404) 527-8762. 

Mike Monahan is the director of the State Bar's Pro Bono Project.

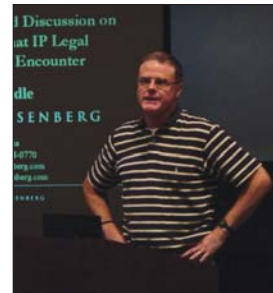
Special Events Fuel Section Activities

Members of the **Administrative Law Section** recently met at the State Bar's headquarters to plan for the year. Members will receive a membership directory by the end of this year. A questionnaire has been circulated to members to learn the interests of its members and identify volunteers for several planned projects. The section is chaired by Frances Cullen Seville.

The **Aviation Law Section** is already gearing up for its Feb. 7, 2003, seminar, which will feature several interesting guest speakers. The line-up for the seminar includes: David Kennedy, a former Navy test pilot and technical consultant on films *"Pearl Harbor"* and *"Behind Enemy Lines;"* John Goglia, member of the National Transportation Safety Board; David Boone, of the firm Schaden, Katzman, Lampert and McClune, who will speak on Daubert motions; and section member Mark Stuckey, of Macon, who will give a presentation on the 9/11 Victims Fund and related legislation.

The **Environmental Law Section** held its annual summer seminar at the Hilton in Sandestin, Fla. The event was a resounding success. The section began holding brown bag lunches for members with informative speakers several years ago and they continue with monthly meetings that are well attended. In November, the section co-sponsored a one-day Water Law Seminar with the Agriculture Law Section at the Marriott Marquis Hotel in Atlanta.

The section has established an endowment at Georgia State University in honor of the late A. Jean Tolman of Arnall Golden & Gregory LLP. The section is chaired by Anne H. Hicks.



William Needle addresses members of the Intellectual Property Law Section during an event held at the Bar Center.

The **Family Law Section**, chaired by Emily "Sandy" Bair is, as always, busy. The section has just completed their summer Family Law Institute. To see pictures of this year's institute, go to the section's Web page on the State Bar's Web site at www.gabar.org and view more than 100 pictures. Next year, members will travel to Amelia Island, Fla., for the 2003 Institute. Another newsletter full of informative articles has been circulated to members. For a limited time, this newsletter will be featured on the Web page of the section.

The **Intellectual Property Law Section** is off to a running start this year. The largest section event yet to be held at the new State Bar headquarters was led by the IPL Section Licensing Committee on Sept. 12, 2002, with William Needle speaking on both intermediate and advanced licensing issues that IP legal professionals may encounter. On Oct. 2, 2002, the section's Patent Committee conducted a patent roundtable meeting at King & Spalding, with speakers Joseph R. Bankoff and Christopher J. Sprigman of King & Spalding, and John L. North from Sutherland, Asbill & Brennan, speaking antitrust and patent litigation. And finally, the Trademark Committee of the section held a luncheon on Oct. 10, 2002, with Schuylla M. Goodson, trademark counsel with The Coca-Cola Company, Dinisa Hardley, of Thomas Kennedy Sampson & Patterson, Michael Hobbs of Troutman Sanders LLP, and Ginabeth Hutchinson, of Alston & Bird, speaking on the topic of "Electronic Trademark Filings: A New Reality with the PTO."

Intellectual Property and Entertainment & Sports Sections partnered in a three-state seminar in the sunny locale of Puerto Vallarta in November. Attendees earned an entire year of CLE credit while there.

School & College Law Section members have just received a new and improved section newsletter. The section is chaired by Patrick W. McKee and the newsletter editor is Melvin B. Hill Jr. In addition, section members recently enjoyed a very successful meeting at Amelia Island, where Supreme Court of Georgia Chief Justice Normal Fletcher made a surprise visit.

Browse the Web — the State Bar's Web site that is at www.gabar.org. Click on "Member Resources" and again on "Sections." All 35 sections are represented on this newly designed site. Many post their newsletters, event notices and resource information. A section member roster is posted on each section Web page and this information is updated nightly. For those section members who would like to receive advance notices of section events and newsletters, list your e-mail address with the Bar.

Fall is a busy time for section ICLE seminars. An overview of upcoming seminars is available at www.iclega.org and registration can be accomplished online. There is also a link to ICLE under "Section Meetings" on the State Bar's Web site.

Holiday get-togethers are being planned for many of the sections. For information on "How to Join A Section," visit the State Bar's Web site and join the fun! Bar members can join at any time during the Bar year.

Plans for section meetings during Midyear Meeting of the Bar are

in full swing. The dates for the section meetings are Thursday and Friday, January 9-10, 2003, at the Swissotel in Atlanta. Over 22 sections will be represented at this year's meeting and that's a record. A brochure is available on the Bar's Web site and all active bar members will receive a brochure in the mail. Register early to receive the lower registration price.

NEWS FROM THE SECTIONS

Appellate Practice Section

By Christopher J. McFadden, Chairman, and Kenneth A. Hindman, Section Member

1. CASES

No Transfer of Case if Appeal Incorrectly Filed in Superior Court
■ *Sawyer v. City of Atlanta*, 2002 WL 1751349 (Ga.App. July 30, 2002).

Sawyer was convicted of several traffic misdemeanors in the City Court of Atlanta. The 1996 legislation which "re-created" the City Court provided for appeals in such cases to "...the appropriate appellate court of this state...." Sawyer filed a Notice of Appeal to the Superior Court of Fulton County, which was dismissed for lack of jurisdiction. In a decision by a seven-judge panel, the Court of Appeals held that Sawyer's appeal

from the City Court should have gone to the Court of Appeals, rather than to Superior Court, and that the Superior Court was therefore correct in dismissing the appeal.

The Court of Appeals held that the rules permitting transfer of an appeal filed in the wrong court to the correct court applied only to cases in the Court of Appeals or the Georgia Supreme Court. Those rules, the court said, did not permit a Superior Court to transfer an incorrectly filed appeal to the Court of Appeals. The court suggested, however, that Sawyer would have been permitted to amend his Notice of Appeal to designate the correct court, but he did not do so.

Judge Eldridge filed a vigorous dissent, pointing out that (1) the Georgia Supreme Court had transferred several incorrectly-filed cases to Superior Court; (2) that the Court of Appeals opinion ran against the Court's policy of deciding cases on the merits whenever possible; and (3) that the law which required Sawyer to appeal to the Court of Appeals was easily misunderstood, because the governing provision was not found in the appeals "section" of the Code, but in a separate volume.

2. NEW COURT OF APPEALS RULES

The Georgia Court of Appeals has enacted a new set of rules, effective September 5, 2002. The full text of these rules can be found at [Noteworthy items include:](#)

- Rule 1: Document Requirements — now specifies that Times New Roman Regular 14pt

(Western) is an acceptable font.

- Rule 23: Briefs — now requires that briefs and applications (see Rule 30) have 2" margins at the top and 1" on the sides and bottoms. This eliminates the eccentric 1 1/2" left margin requirement.
- Rule 27 (c) (2): Structure and Content — it is now discretionary with the Court to consider unsupported errors to be abandoned, rather than mandatory.
- Rule 28: Oral Argument — The word "ordinarily" has been added to subsections (b) and (f), which deal with the number of attorneys arguing and the order in which cases are called. This is to make it clear that the Presiding Judge has the discretion to vary the procedure, if needed. In subsection (c), the Court eliminated the rule that the appellant's conclusion is "confined to matters covered in the argument of opposing counsel." This change would appear to make it easier for an appellant to "sandbag" his opponent by raising new matters in the conclusion, though it is doubtful that the Court intended that consequence. A new subsection (h) specifies that the Presiding Judge decides all questions or issues that come up at oral argument.
- Rule 30: Applications for Interlocutory Appeal — Some subsections have been renumbered. New subsection (b) provides that applications should follow the format requirements for briefs. A new subsection (f) requires that responses be filed within ten days after docketing, but states that a response is not required.
- Rule 31: Applications for Discretionary Appeal — Some subsections have been renumbered. Two changes parallel those in Rule 30: subsection (b) provides that applications should follow the format requirements for briefs; subsection (f) specifies a ten-day deadline for the response and announces that a response is not

required unless the court so orders.

- Rule 41 (f) (2): Motions — Provides that a criminal defendant must consent in writing to the withdrawal of his appeal has been clarified; when the State is the appellant, a criminal defendant is not entitled to prevent the State from withdrawing its appeal.

Technology Law Section

By David Keating,
Section Member

The White House's Critical Infrastructure Protection Board issued the National Strategy to Secure Cyberspace on Sept. 18, 2002. The National Strategy is an advisory document that makes a series of recommendations for the protection of the nation's information technology systems and networks. The document presents these recommendations in five categories or "Levels." Level 2 sets forth recommendations for business entities, referred to as "large enterprises."


The legal import of the document comes largely from the fact that it is one of the first authoritative statements in support of a generalized legal duty on the part of businesses to protect their information systems and networks from unauthorized access, use, and disruption. If an enterprise fails to put in place adequate information security measures, the National Strategy asserts, it can incur substantial economic losses from information security breaches, whether through a loss of assets, an interruption in business operations, or a loss of customer and investor confidence. Losses of this nature, the document suggests, can further result in shareholder claims against the directors and officers of the business for breach of their fiduciary duty of care. The National Strategy in Level 2 also opines that security breaches can result in damage to third-party systems and networks, possibly leading to additional claims back against the enterprise directly.

On the legislative front, President Bush recently signed into law the 21st Century Department of Justice Appropriations Authorization Act (H.R. 2215), which includes the Technology, Education, and Copyright Harmonization (TEACH) Act and technical amendments to the Copyright Act. The TEACH Act amends the Copyright Act to provide more flexibility to accredited nonprofit educational institutions to make copyrighted instructional materials available over the Internet as part of "mediated instructional activities."

The Technology Law Section of the State Bar of Georgia is an association of attorneys from solo practitioners to members of the largest firms in the State, and from start-ups to multi-national corporations. Members hail from across Georgia and from across the country. The Section has an active agenda of meetings, seminars, and functions throughout the year at which members can network, receive information about cutting-edge issues facing attorneys and their clients in this area of practice, and engage in community service activities.

The Section held its 17th Annual Technology Law Institute at the Georgia Center for Advanced Telecommunications Technology (GCATT) in Atlanta on Oct. 3-4, 2002. The seminar included presentations on the latest developments in technology law and a roundtable panel discussion with questions from attendees. The Section also coordinated another successful volunteer day at Tech Corps Georgia on Nov. 3, 2002.

The following is a list of upcoming Section events. For more information, please visit the Technology Law Section's Web page at www.computerbar.org.

- Quarterly Section Meeting: Dec. 17, 2002
- Mid-Year Section Meeting (in conjunction with the State Bar Mid-Year Meeting): Jan. 9, 2002
- Technology Law Boot Camp: To Be Announced 

In Memoriam

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.

Michael Adilman
Savannah, Ga.
Admitted 1953
Died March 2002

Willis I. Allen
Irwinton, Ga.
Admitted 1938
Died April 2002

Claud R. Caldwell
Augusta, Ga.
Admitted 1932
Died June 2002

William H. Cone
Savannah, Ga.
Admitted 1948
Died May 2002

Lennie F. Davis
Columbus, Ga.
Admitted 1938
Died March 2002

Robert J. Durden
Atlanta, Ga.
Admitted 1979
Died May 2002

William M. Exley Jr.
Savannah, Ga.
Admitted 1950
Died July 2002

Winfield M. Fickle
Stone Mountain, Ga.
Admitted 1950
Died September 2002

William J. Forehand
Tifton, Ga.
Admitted 1947
Died September 2002

Glenn Frick
Atlanta, Ga.
Admitted 1949
Died March 2002

Emil Lamar Gammage Jr.
Cedartown, Ga.
Admitted 1952
Died September 2002

Bert N. Garstin
Cumming, Ga.
Admitted 1951
Died September 2002

John E. Griffin
Athens, Ga.
Admitted 1948
Died August 2002

William W. Griffin
Atlanta, Ga.
Admitted 1947
Died May 2002

Christopher E. Harvey Jr.
Decatur, Ga.
Admitted 1950
Died September 2002

E.T. Hendon Jr.
Decatur, Ga.
Admitted 1949
Died July 2002

Jackson L. Hudson
College Park, Ga.
Admitted 1978
Died March 2002

Robert A. Kahn
Roswell, Ga.
Admitted 1993
Died June 2002

Emile J. Languirand
Villa Rica, Ga.
Admitted 1949
Died August 2002

Jerry K. McDermott
Birmingham, Ala.
Admitted 1974
Died September 2002

Laura Matlaw Murphy
Atlanta, Ga.
Admitted 1977
Died September 2002

Wilbur A. Orr
Washington, Ga.
Admitted 1948
Died January 2002

Paul W. Painter
Rossville, Ga.
Admitted 1943
Died September 2002

Franklin H. Pierce
Augusta, Ga.
Admitted 1937
Died May 2002

Mary Jean Ivey Royer
Roswell, Ga.
Admitted 1963
Died October 2002

Jesse Paul Scaife
Fort Gaines, Ga.
Admitted 1941
Died January 2002

Thomas L. Thompson Jr.
Columbus, Ga.
Admitted 1950
Died June 2002

Joe B. Tucker
Ringgold, Ga.
Admitted 1956
Died February 2002

John J. Yanskey
Marietta, Ga.
Admitted 1933
Died January 2002

Laura Matlaw Murphy, 50, Atlanta, Ga., died Sept. 21, 2002, from a long battle with amyotrophic lateral sclerosis, also known as Lou Gehrig's disease. Murphy graduated from Emory Law School in 1977, and was a court clerk for the Georgia Court of Appeals and the Georgia Supreme Court from 1984 to 1999. Along with her law career, Murphy was known for her running and writing. In the 1970s, she was a founder of the Atlanta Track Club's women's competitive team, which put her in the forefront of women's running. When she was no longer competitive, she volunteered at the finish line of the Peachtree Road Race. For the column she wrote for the track club's monthly magazine, *Wingfoot*, she won a gold award from the Georgia Magazine Association in 2001. Murphy is survived by: her husband, Kent Murphy; a daughter, Sarah Murphy; her mother, Julia Matlaw; and a brother, John Matlaw.

Emil Lamar Gammage Jr., 75, Cedartown, Ga., died Sept. 21, 2002. Gammage co-founded the law firm of Mundy and Gammage. He was a member of both the Alabama and Georgia State Bar Associations, the Georgia Trial Lawyers Association,

the American Trial Lawyers Association, Polk County Bar Association and Bar Register of Preeminent Lawyers. In 1989, Gammage was named Claimant Attorney of the Year. He also served as chairman of the Workers Compensation Section of the State Bar of Georgia. He is survived by: his wife, Zan Henslee Gammage; four children, Karen Gammage Harvey and her husband Sam Harvey, Miles Lamar Gammage and his wife Laura Gammage, Rebecca Gammage "Toodles" Jolley and her husband Lex Jolley, Anne Lee Gammage Kitchens and her husband Steve Kitchens; nine grandchildren, Rebecca, Same and Miles Harvey, Henslee Bullard, Meg and Annalee Gammage, Eleanor Jolley, Zachary Lamar Kitchens and Zan Kitchens; and two great-grandchildren, Connor Bullar and Emma Grace Harvey.

In Memory of:

JAMES C. BRIM JR.
Robert M. Brinson
Benjamin F. Easterlin IV
Rudolph N. Patterson
Thomas Heyward Vann Jr.
Williams Family Foundation of Georgia, Inc.

GUY F. DRIVER JR.
Mr. Donald W. Thurmond

E. LAMAR GAMMAGE
Robert M. Brinson

ANDREW J. HILL JR.
David H. Gambrell

HOWARD W. JONES
Robert M. Brinson

SARAH McALPIN
Harold T. Daniel Jr.

LAURA MURPHY
Harold T. Daniel Jr.

JUDGE PAUL PAINTER
Weiner, Shearouse, Weitz,
Greenberg & Shawe, LLP

H. HOLCOMBE PERRY JR.
Robert M. Brinson
Benjamin F. Easterlin IV
Kirk M. McAlpin
Rudolph N. Patterson

DAN BESSENT WINGATE SR.
H.T. Marshall



Memorial Gifts

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 acknowledgement 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.

CLE/Ethics/Professionalism/Trial Practice

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

December

	<p>10 NATIONAL BUSINESS INSTITUTE <i>Construction Defect Claims in Georgia</i> Atlanta, Ga. 6 CLE</p>
<p>9 PRACTISING LAW INSTITUTE <i>12th Annual Advanced Patent Prosecution Workshop</i> New York, N.Y. 9.8 CLE with 1 ethics</p>	<p>10 LORMAN BUSINESS CENTER INC. <i>Finance: The Basics</i> Savannah, Ga. 6.7 CLE</p>
<p>9 PRACTISING LAW INSTITUTE <i>Fundamentals of Patent Prosecution Winter 2002</i> San Francisco, Calif. 16.3 CLE with 1 ethics</p>	<p>10 LORMAN BUSINESS CENTER INC. <i>Solving Water Intrusion and Mold Problems in Georgia</i> Athens, Ga. 6 CLE</p>
<p>9 PRACTISING LAW INSTITUTE <i>Coping with US Export Controls 2002</i> Washington, D.C. 13.5 CLE with 1 ethics</p>	<p>11 NATIONAL BUSINESS INSTITUTE <i>Uninsured and Underinsured Motorist Law in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 ethics</p>
<p>9 PRACTISING LAW INSTITUTE <i>Second Annual Institute on Securities Regulation in Europe</i> London, England 13 CLE with 1 ethics</p>	<p>12 ICLE <i>Representing Small Business Owner</i> Statewide Video Replay 6 CLE</p>
<p>9 NATIONAL BUSINESS INSTITUTE <i>Examining the Principles of Collaborative Law in Georgia</i> Atlanta, Ga. 3 CLE with 0.5 ethics</p>	<p>12 ICLE <i>Landlord & Tenant Law</i> Atlanta, Ga. 6 CLE</p>
<p>10 ALI-ABA <i>Real World Document Drafting</i> Philadelphia, Pa. 6 CLE with 0.5 ethics</p>	<p>12 ICLE <i>Guardianship – Proposed Legislation</i> Atlanta, Ga. 3 CLE</p>
<p>10 NATIONAL BUSINESS INSTITUTE <i>Georgia Land Use</i> Atlanta, Ga. 6 CLE</p>	<p>12 ALI-ABA <i>Trying and Winning a Civil Antitrust Case</i> Washington, D.C. 12 CLE with 1 ethics</p>

<p>12 NEW YORK UNIVERSITY SCHOOL OF CONT. & PROF. STUDIES <i>Institute on State and Local Taxation</i> New York, N.Y. 12.5 CLE with 1 ethics</p>	<p>13 ALI-ABA <i>Advanced Writing and Editing for Lawyers</i> Philadelphia, Pa. 6.8 CLE</p>
<p>12 NATIONAL BUSINESS INSTITUTE <i>Construction Issues in Ohio</i> Columbus, Ohio 6.7 CLE</p>	<p>13 ALI-ABA <i>Advanced Writing and Editing for Lawyers with Workshop</i> Philadelphia, Pa. 10 CLE</p>
<p>12 CHATTANOOGA BAR ASSOCIATION <i>The New Disclosure and Corporate Governance</i> Chattanooga, Tenn. 6 CLE</p>	<p>13 PRACTISING LAW INSTITUTE <i>20th Annual Institute on Telecommunications Policy & Regulation</i> Washington, D.C. 9 CLE</p>
<p>12 CHATTANOOGA BAR ASSOCIATION <i>Ethics and Professional Responsibility</i> Chattanooga, Tenn. 6 CLE with 6 ethics</p>	<p>13 TENNESSEE BAR ASSOCIATION <i>The Tennessee Environmental Law Forum</i> Nashville, Tenn. 6 CLE</p>
<p>12 CHATTANOOGA BAR ASSOCIATION <i>Who is Watching You</i> Chattanooga, Tenn. 2 CLE</p>	<p>13 KENNESAW STATE UNIVERSITY <i>Strategies for Preventing Malpractice</i> Rome, Ga. 3 CLE with 1 professionalism and 3 trial</p>
<p>13 ICLE <i>Recent Developments</i> Atlanta, Ga. 6 CLE</p>	<p>13 LORMAN BUSINESS CENTER INC. <i>Fundamentals of Intellectual Property Law</i> Atlanta, Ga. 6 CLE with 0.5 ethics</p>
<p>13 ICLE <i>Trial Tactics from the Masters</i> Statewide Video Replay 4 CLE</p>	<p>14 THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA <i>16th Annual Weekend with the Stars</i> New York, N.Y. 9.3 CLE with 9.3 trial</p>
<p>13 ICLE <i>Products Liability — Motions</i> Atlanta, Ga. 3 CLE</p>	<p>16-17 ICLE <i>Selected Video Replays</i> Atlanta, Ga.</p>
<p>13 ALI-ABA <i>Deposing Witnesses for Trial</i> Washington, D.C. 6 CLE 1 ethics</p>	<p>17 PROFESSIONAL EDUCATION SYSTEMS INC. <i>Nursing Home Negligence</i> Various Dates and Locations 6 CLE with 0.5 ethics</p>

<p>17 US DEPARTMENT OF JUSTICE - OFFICE OF LEGAL ED. <i>Money Laundering & Asset Forfeiture for Prosecutors</i> Columbia, S.C. 16 CLE with 1.0 ethics</p>	<p>19 ICLE <i>Trial Tactics from the Masters</i> Statewide Video Replay 4 CLE</p>
<p>17 NATIONAL BUSINESS INSTITUTE <i>Choice of Business Entity in Georgia</i> Atlanta, Ga. 6.7 CLE with 0.5 ethics</p>	<p>19 NATIONAL BUSINESS INSTITUTE <i>How to Draft Wills and Trusts in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 ethics</p>
<p>17 PROFESSIONAL EDUCATION SYSTEMS INC. <i>Nursing Home Negligence</i> Various Dates and Locations 6 CLE with 0.5 ethics</p>	<p>19 CHATTANOOGA BAR ASSOCIATION <i>Legislative Outlook in Tennessee Taxation</i> Chattanooga, Tenn. 1 CLE</p>
<p>17 US DEPARTMENT OF JUSTICE - OFFICE OF LEGAL ED. <i>Money Laundering & Asset Forfeiture for Prosecutors</i> Columbia, S.C. 16.0 CLE with 1 ethics</p>	<p>20 ICLE <i>Trial Advocacy</i> Atlanta, Ga. 6 CLE</p>
<p>18 NATIONAL BUSINESS INSTITUTE <i>Choice of Business Entity in Georgia</i> Atlanta, Ga. 6.7 CLE with 0.5 ethics</p>	<p>20 ICLE <i>Labor and Employment Law</i> Atlanta, Ga. 6 CLE</p>
<p>18 ALI-ABA <i>Persuasion Workshop</i> Philadelphia, Pa. 7 CLE with 1 ethics</p>	<p>20 ICLE <i>Matrimonial Law Trial Practice Workshop</i> Atlanta, Ga. 6 CLE</p>
<p>18 PRACTISING LAW INSTITUTE <i>California MCLE Marathon 2002-2003</i> Various Dates and Locations 6 CLE with 4 ethics</p>	<p>20 NATIONAL BUSINESS INSTITUTE <i>Property Tax Law in Georgia</i> Atlanta, Ga. 6.7 CLE</p>
<p>18 NATIONAL BUSINESS INSTITUTE <i>Medical Malpractice in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 ethics</p>	<p>January 2003</p>
<p>19 ICLE <i>Reel Justice: Power, Passion & Persuasion</i> Atlanta, Ga. 6 CLE</p>	<p>6 UNIVERSITY OF MIAMI SCHOOL OF LAW <i>37th Annual Heckerling Institute on Estate Planning</i> Miami, Fla. 30 CLE with 4 ethics</p>

<p>7 DISTRICT OF COLUMBIA <i>DC Rules of Professionalism</i> Various Dates and Locations 5 CLE with 3 ethics</p>	<p>17 ICLE <i>So Little Time, So Much Paper</i> Atlanta, Ga. 3 CLE</p>
<p>10 ICLE <i>Winning Settlement Demand Packages</i> Atlanta, Ga. 6 CLE</p>	<p>17 ICLE <i>Advanced Appellate Practice</i> Atlanta, Ga. 6 CLE</p>
<p>10 ICLE <i>Advanced Legal Writing</i> Atlanta, Ga. 6 CLE</p>	<p>17 NATIONAL INSTITUTE OF TRIAL ADVOCACY <i>Power Point for Litigators</i> Various Dates and Locations 6.8 CLE</p>
<p>14 NATIONAL BUSINESS INSTITUTE <i>Recent Decision and Development Affecting Commercial Law in Georgia</i> Atlanta, Ga. 3 CLE</p>	<p>17 LORMAN BUSINESS CENTER INC. <i>HIPAA Compliance</i> Jacksonville, Fla. 6.5 CLE</p>
<p>16 ICLE <i>Negotiated Corporate Acquisitions</i> Atlanta, Ga. 6 CLE</p>	<p>21 LORMAN BUSINESS CENTER INC. <i>The Basics of Drafting Wills and Trusts in Georgia</i> Atlanta, Ga. 6.7 CLE</p>
<p>16 NATIONAL BUSINESS INSTITUTE <i>Nursing Home Malpractice in Georgia</i> Savannah, Ga. 6 CLE with 0.5 ethics</p>	<p>22 NATIONAL BUSINESS INSTITUTE <i>Legal Issues Facing the Construction Industry in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 ethics</p>
<p>16 LORMAN BUSINESS CENTER INC. <i>Employee Fringe Benefits</i> Atlanta, Ga. 6 CLE</p>	<p>23 ICLE <i>Plaintiff's Personal Injury</i> Atlanta, Ga. 6 CLE</p>
<p>16 LORMAN BUSINESS CENTER INC. <i>What You Need to Know About Public Records and Open Meetings in Georgia</i> Atlanta, Ga. 6.7 CLE</p>	<p>23 ICLE <i>Eminent Domain Trial Practice</i> Atlanta, Ga. 6 CLE</p>
<p>17 ICLE <i>Trial Tactics from the Masters</i> Statewide Video Replay 4 CLE</p>	<p>23 LORMAN BUSINESS CENTER INC. <i>Nuts and Bolts of 401 (k) Plans</i> Athens, Ga. 6.7 CLE</p>

23 LORMAN BUSINESS CENTER INC. <i>Georgia Exempt Organizations and the Unrelated Business Income Tax</i> Atlanta, Ga. 6.7 CLE	30 LORMAN BUSINESS CENTER INC. <i>What You Need to Know About Public Records and Open Meetings</i> Savannah, Ga. 6 CLE with 0.5 ethics
24 ICLE <i>Art of Effective Speaking for Lawyers</i> Atlanta, Ga. 6 CLE	31 ICLE <i>Recent Developments</i> Statewide Video Replay 6 CLE
24 ICLE <i>Building on the Foundation</i> Atlanta, Ga. 6 CLE	31 ICLE <i>Jury Selection and Persuasion</i> Atlanta, Ga. 6 CLE
24 ICLE <i>Alliances, Joint Ventures and Partnerships</i> Atlanta, Ga. 4 CLE	31 ICLE <i>Franchising</i> Atlanta, Ga. 6 CLE
28-29 ICLE <i>Selected Video Replays</i> Atlanta, Ga.	31 ICLE <i>Nuts and Bolts of Business Law</i> Atlanta, Ga. 6 CLE
29 LORMAN BUSINESS CENTER INC. <i>Mortgage Foreclosures</i> Atlanta, Ga. 6 CLE	31 GEORGIA STATE UNIVERSITY <i>The Presidents Authority Over Foreign Affairs</i> Athens, Ga. 5 CLE
30 ICLE <i>Cross Exam of Experts</i> Atlanta, Ga. 6 CLE	31 LORMAN BUSINESS CENTER INC. <i>Construction Management/Design-Build in Georgia</i> Savannah, Ga. 6.7 CLE
30 ICLE <i>Employment Law</i> Atlanta, Ga. 6 CLE	
30 LORMAN BUSINESS CENTER INC. <i>Charitable Giving in Georgia</i> Atlanta, Ga. 7.2 CLE	1 ICLE <i>Bar-Media Relations</i> Atlanta, Ga. 6 CLE

February 2003

CLE Calendar

4 ICLE <i>Bridge the Gap</i> Atlanta, Ga. 6 CLE	13 ICLE <i>Emerging Issues in Debt Collection</i> Atlanta, Ga. 6 CLE
4 NATIONAL BUSINESS INSTITUTE <i>Handling the Generation</i> Atlanta, Ga. 3 CLE	13 ICLE <i>Bare Knuckles with the Judges</i> Atlanta, Ga. 4 CLE
4 CHIEF JUSTICES COMMISSION ON PROFESSIONALISM <i>Orientation on Professionalism</i> Atlanta, Ga. 2 CLE with 1 ethics and 1 professionalism	13 ICLE <i>Zoning</i> Savannah, Ga. 6 CLE
7 ICLE <i>White Collar Crime</i> Atlanta 6 CLE	14 ICLE <i>Georgia Auto Insurance Claims Law</i> Savannah, Ga. 6 CLE
7 ICLE <i>Abusive Litigation</i> Statewide Broadcast 6 CLE	14 ICLE <i>Common Carrier</i> Atlanta, Ga. 6 CLE
7 ICLE <i>Georgia Auto Insurance Law</i> Atlanta, Ga. 6 CLE	14 ICLE <i>Residential Real Estate</i> Statewide Broadcast 6 CLE
7 ICLE <i>Aviation Law</i> Atlanta, Ga. 6 CLE	14-15 ICLE <i>Estate Planning Institute</i> Athens, Ga. 9 CLE
12 NATIONAL BUSINESS INSTITUTE <i>Sophisticated Section 1031 Transactions in Georgia</i> Atlanta, Ga. 6.7 CLE with 0.5 ethics	19 NATIONAL BUSINESS INSTITUTE <i>Environmental Compliance Law in Georgia</i> Atlanta, Ga. 6 CLE with 0.5 ethics
13 ICLE <i>Abusive Litigation</i> Statewide Video Replay 6 CLE	

Proposed Amendments to the Rules of the U.S. Court of Appeals for the Eleventh Circuit

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

A copy of the proposed amendments may be obtained on and after Dec. 3, 2002, 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., N.W., 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 Jan. 3, 2003.

State Bar Audited Financial Report

Pursuant to the State Bar of Georgia's Bylaws, the 2002 Audited Financial Statement is available for members interesting in reviewing the document.

It is available online at www.gabar.org/financials.pdf.

A printed copy is also available by contacting the Bar's communications department at (800) 334-6865, (404) 527-8736, joe@gabar.org.

United States Postal Service		
Statement of Ownership, Management, and Circulation		
1. Publication Title Georgia Bar Journal	2. Publication Number 0 2 1 7 - 5 6 0	3. Filing Date 9-30-02
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Managing Editor (Name and complete mailing address) Joe Conte State Bar of Georgia 104 Marietta St. NW, Suite 100, Atlanta, GA 30303		
10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)		
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11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box <input checked="" type="checkbox"/> None		
Full Name	Complete Mailing Address	
12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one) <input checked="" type="checkbox"/> Has Not Changed During Preceding 12 Months <input type="checkbox"/> Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)		

13. Publication Title Georgia Bar Journal		14. Issue Date for Circulation Data Below August 2002	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		29,100	29,200
b. Paid and/or Requested Circulation			
(1) Paid/Requested Outside-County Mail Subscriptions Stated on Form 3541 (Include advertiser's proof and exchange copies)		0	0
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e. Free Distribution Outside the Mail (Carriers or other means)		105	115
f. Total Free Distribution (Sum of 15d and 15e)		220	237
g. Total Distribution (Sum of 15c and 15f)		28,840	28,921
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j. Percent Paid and/or Requested Circulation (15c divided by 15g times 100)		99.1	98.2
16. Publication of Statement of Ownership <input checked="" type="checkbox"/> Publication required. Will be printed in the December 2002 issue of this publication. <input type="checkbox"/> Publication not required.			
17. Signature and Title of Editor, Publisher, Business Manager, or Owner <i>Joe Conte Managing Editor</i>		Date September 30, 2002	
I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).			
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