

GEORGIA BAR Journal

OCTOBER 2001 • VOL. 7 NO. 2



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GEORGIA BAR Journal

OCTOBER 2001 • Vol. 7 No. 2

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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (17th ed. 2000). Please address unsolicited articles to: Marissa Anne Pagnattaro, J.D., Ph.D., State Bar of Georgia, Communications Department, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA, 30303-2934. Authors will be notified of the Editorial Board's decision regarding publication.

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Layout and Design by Lenz Design & Communications, Inc. 119 E. Court Sq. #201, Decatur, Georgia

PUBLISHER'S STATEMENT

The *Georgia Bar Journal* (ISSN-1085-1437) is published six times per year (bi-monthly) by the State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303-2934. © State Bar of Georgia 2001. One copy of each issue is furnished to members as part of their State Bar dues. Subscriptions: \$36 to non-members. Single copies: \$6. Periodicals postage paid in Atlanta, Georgia. Opinions and conclusions expressed in articles herein are those of the authors and not necessarily those of the Editorial Board, Communications Committee, Officers or Board of Governors of the State Bar of Georgia. Advertising rate card will be furnished upon request. Publishing of an advertisement does not imply endorsement of any product or service offered. **POSTMASTER:** Send address changes to same address.

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JUSTICE WILL PREVAIL



By James B. Franklin

The unimaginable horror of September 11 will forever be with each and every one of us — as lawyers and as citizens of this great nation. In the aftermath, we struggle to make sense of a senseless act and live in apprehension of possible additional terrorist attacks.

We applaud the police, firefighters and other rescue workers who have worked diligently to rescue the injured, clear the debris and go about the grim task of finding bodies in the wreckage. We have, once again, been shown what the label “hero” means.

I offer my most heartfelt condolences to the families and victims of this horrific and cowardly act of terror, the likes of which we have never seen. May we never know this horror again, and may we all work together in the healing process.

Our democracy is strong and justice will prevail. That is the message we hear repeatedly from our President and other leaders. This is the message we must help deliver to our fellow citizens. As lawyers, a sense of justice is the foundation in all that we do — the core of our profession. It is up to us to help steer our country on a course

that ultimately leads to justice and, at the same time, sends a clear message to terrorist everywhere that our economy and way of life will not be destroyed by their acts against America and our people.

We, as a people, will overcome these vile and vicious events. As we have throughout our history, the legal community has stepped up and demonstrated patriotism and a commitment to community service. As lawyers, these dastardly acts violate every tenet and principle of any system of laws and justice, particularly ours. Just as our governmental leaders have rallied in a

Our democracy is strong and justice will prevail. That is the message we hear repeatedly from our President and other leaders. This is the message we must help deliver to our fellow citizens.

rare and refreshing spirit of cooperation and bipartisanship, we should support the effort by joining with our President and Congress in this war to rid society of the threat of terrorism.

As lawyers, we have a special responsibility in our democratic society, especially in a time like this. Lawyers are the guardians of the laws of our land, protectors of individual liberties, and we ensure that the freedoms we cherish are not trampled upon. The rule of law has always prevailed over terrorism and destruction, and it will again. We ask all lawyers to be especially mindful in this time of crisis of the need to uphold the rule of law

and to help our government mold a response that will assure that true justice is realized, while minimizing any intrusion upon the individual rights and freedoms that make our system so unique and great.

Many members of the State Bar of Georgia are volunteering to help, either through donating blood, providing financial assistance or supporting the other relief efforts. The tremendous response from lawyers across America and in Georgia is heartening in this time of national need.

The Bar has received a number of calls from lawyers asking how they can help. We have responded by establishing an account through the Lawyers Foundation of Georgia to accept monetary contributions to be sent to the Red Cross. Lawyers wishing to make a contribution should contact Lauren Barrett at (404) 527-8617 or lauren@gabar.org.

In addition, the Young Lawyers Division of the Bar has set in motion an effort to encourage lawyers in every community to donate blood and is working to put in place a system to provide pro bono legal assistance to Georgians who have been affected, and to Georgia military personnel who need assistance with

personal affairs like wills, powers of attorney and durable powers of attorney for health care. Members, whether a young or old lawyer, who wish to volunteer their time and services should contact Tony Boga, Legal Aid of Cobb County, (770) 528-2565, tboga@yahoo.com.

I thank members of the Bar for their extraordinary contributions during this difficult time, and I urge all lawyers to contribute in any way possible. We can be proud as a profession and as a people of the tremendous showing of unity and solidarity in America and across the world. Justice will prevail.

God Bless America! ☞

MEMBERSHIP STATS REFLECT DIVERSITY

By Cliff Brashier



How many lawyers practice in Georgia? Is that number growing? Where do they practice? How many are female? The State Bar's membership department fields these and many similar questions daily. I hope you find some of the following answers to be of interest.

There are 32,780 members of the State Bar of Georgia. There are other lawyers not included in that number, such as in-house counsel and law professors who reside in Georgia but are licensed in other states. The net growth rate is approximately 900 lawyers per year.

Of this total number, 7,636 maintain their State Bar of Georgia memberships but reside in other states and countries. Sixty-one percent are inactive members.

The remaining 25,144 live in Georgia. Ninety percent of these are active members.

By comparison, the Georgia Bar Association was founded in 1884 with 167 members and \$5 annual dues. That statewide association was voluntary and, therefore, does not reflect the total lawyer population at that time.

The State Bar of Georgia was created as a unified bar in 1963 by order of the Supreme Court of Georgia as an act of the Georgia

General Assembly. There were 4,700 members with \$15 annual dues.

There has been a 697-percent growth in the number of Georgia lawyers since 1964. The increase in the general population during that same period of time was 110 percent. Today, the Georgia lawyers/public ratio is 1:364.

Of the active lawyers who reside in Georgia, 80 percent practice in the Northern District, 12 percent in the Middle District and eight percent in the Southern District. Approximately 75 percent are within a 60-mile radius of Atlanta.

We have 9,789 female members. In 1963, approximately three percent of law school graduates were female. Today, it is 50 percent.

Younger lawyers comprise 28 percent of our members. That percentage is decreasing annually.

Our oldest member was born in 1896 and admitted to practice in 1922. Our oldest practicing member was born in 1906 and admitted in 1926.

All of this confirms what you already knew. Our profession is growing. Georgia has the 9th largest bar in the nation. The rate exceeds

the growth rate of the general population. We are aging and are no longer male concentrated. Our profession is also more diverse in many other aspects, but the State Bar does not maintain other background data.

If you need information not included in aforementioned summary, please call our Membership Department. They receive a large number of calls daily and are always glad to help.

Your comments regarding my column are welcome. If you have suggestions or information to share, please call me. Also, the State Bar of Georgia serves you and the public. Your ideas about how we can enhance that service are always appreciated. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). ☐

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Misdemeanor Sentencing in Georgia

By Gary S. Vey



As misdemeanor prosecutors, we see variations on the following scenario all too often.

SCENE: A State Courtroom somewhere in Georgia.

Bailiff: Your Honor, we have a verdict.

Judge: Bring in the jury. [jury enters courtroom]

Ladies and gentlemen, have you reached a verdict in the case of State vs. John Smith, charged with driving with an expired license plate?

Foreperson: We have, Your Honor. We find the defendant guilty as charged.

Judge: Very well.

[sternly] Mr. Smith, the jury having found you guilty, it is my duty now to impose sentence. You have shown no remorse during these proceedings, and I understand this is your fourth expired tag conviction this year. I therefore sentence you to the statutory maximum, a fine in the amount of \$100.

Mr. Bailiff, call the next case, please.

Bailiff: State vs. Maxine Jones, charged with failing to wear a seat belt.

Judge: [imploringly] Ms. Jones, you've sat here all during our previous jury trial. Are you still insisting on having a jury trial in your case, knowing that the maximum sentence is a fine of \$15.

Ms. Jones: [adamantly] Oh, yes, Your Honor.

Judge: [resignedly] Very well, then. Mr. Bailiff, please bring in the next jury panel.

.....

The foregoing dramatization illustrates just one problem with Georgia's current system of classifying traffic violations and other minor offenses: the right to a costly, time-consuming jury trial for even the most petty of offenses. Other problems include the expense of appointing counsel for indigent defendants, particularly in minor cases where there is no realistic prospect of a jail sentence, the imposition of widely disparate sentences for the same offense by judges in different jurisdictions and the incongruity of identical maximum sentences for such dissimilar offenses as improper parking¹ and family violence battery.² This article analyzes that system as it relates to sentencing, points out some of the legal, practical and philosophical implications, examines alternative approaches used in other states, and recommends corrective legislative action.

Misdemeanor Sentencing: A System in Need of Change

Although there is very little literature specifically concerning misdemeanor sentencing, Malcolm Feeley's 1979 study, *The Process is the Punishment*,³ examined

the handling of minor criminal case in the Court of Common Pleas of New Haven, Conn. The premise of Feeley's book is that the process, including the costs, financial and otherwise, of having one's case handled through the system is, the punishment. In this process, the normative outcome - each defendant being represented by counsel, having a full and fair hearing on the merits before an impartial trier of fact, and suffering no adverse consequences solely for asserting those rights — gets lost in the shuffle. The "adjudicative ideal" is sacrificed to the God of Efficiency, on the altar of Speed.⁴ Feeley suggested several reforms, such as the decriminalization of petty offenses, reducing the grade of some offenses from misdemeanor to "violation" or "infraction," and allowing more cases to be handled through a forfeiture-of-bond procedure, as is typically done in minor traffic cases.

Constitutional Provisions

Reform of this nature must, however, be consistent with both constitutional and statutory requirements. The Constitution of the United States provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the assistance of counsel for his defense."⁵ The right to a jury trial in all non-petty criminal cases applies to the states by virtue of the Fourteenth Amendment. This right attaches when the maximum penalty for an offense exceeds six months' imprisonment.⁶ The Supreme Court in *Gideon v. Wainwright*⁷ held that felony defendants are entitled to appointed counsel. In *Argersinger v. Hamlin*⁸ the court expanded that protection to state misdemeanor defendants in cases where imprisonment may result.

Under Georgia's Constitution, the "right to trial by jury shall remain inviolate. In criminal cases, 'the defendant shall have a speedy and public trial by an impartial jury.'" Further, "[e]very person charged with an offense against the laws of this state shall have the privilege and benefit of counsel."¹⁰ The Georgia Supreme Court has construed *Argersinger*, supra, to require the appointment of counsel in misdemeanor cases only where the defendant is sentenced to actual imprisonment.¹¹ In practice, however, attorneys are often appointed for defendants who face no sanction more serious than a fine.

Statutory Provisions

Georgia's statutory law defines "misdemeanor" and "misdemeanor of a high and aggravated nature" as "any crime other than a felony."¹² There is no grade of petty offense or infraction below the level of a misdemeanor. In addition to the offenses enumerated in Title 16 (the criminal code), many violations of Title 40 (the motor

vehicle code) are classified as misdemeanors.¹³

Chapter 10 of Title 17 (criminal procedure) addresses sentencing and punishment. In general, a misdemeanor is punishable by a fine of not more than \$1,000, by confinement for not more than 12 months, or both.¹⁴ A misdemeanor of a high and aggravated nature (an “H&A misdemeanor”) is generally punishable by a fine of not more than \$5,000, by confinement not to exceed 12 months, or both.¹⁵ In

contrast to the two-for-one jail time credit accorded “standard” misdemeanants, those sentenced to incarceration for H&A misdemeanors receive only four days per month earned time allowance.¹⁶

Notwithstanding these general maximums, many misdemeanors have specific sentencing limitations.¹⁷ A number of misdemeanors also have statutory minimum sentences.¹⁸

The criminal code, Title 16, generally categorizes crimes by offense type. Chapter 5, “Crimes Against the Person,” includes such misdemeanors as simple assault,¹⁹ battery and simple battery,²⁰ reckless conduct²¹ and stalking (first offense).²² Battery convictions become H&A misdemeanors when they involve a second offense against the same victim,²³ or when the victim is pregnant,²⁴ 65 years of age or older,²⁵ a sports official²⁶ or when the offense occurs on a public transit vehicle or in a public transit station.²⁷

The “Sexual Offense” misdemeanors of Chapter 6 include: statutory rape where the offender is no more than three years older than the victim;²⁸ public indecency;²⁹ solicitation of sodomy;³⁰ prostitution;³¹ adultery;³² and fornication.³³ Sex-related H&A misdemeanors include: pimping;³⁴ pandering;³⁵ and sexual battery.³⁶ Chapter 7 misdemeanors include “Damage to and Intrusion upon Property” include criminal trespass,³⁷ interfering with government property (or that of a public utility),³⁸ destroying a mailbox,³⁹ and littering.⁴⁰

Chapter 8, “Offenses Involving Theft,” are misdemeanors in Georgia where the value of the stolen property is \$500 or less.⁴¹ The major exception, and the one most frequently prosecuted, is theft by shoplifting. Until 1998,

shoplifting property worth more than \$100 was a felony. Since then, the threshold amount has been raised to \$300.⁴² There are numerous Chapter 9 misdemeanors involving “Forgery or Fraudulent Practices,” ranging from fraud in obtaining public housing⁴³ to operating a credit repair business.⁴⁴ The one most frequently seen, however, is deposit account fraud, or writing bad checks.⁴⁵

Misdemeanor violations of Chapter 10, “Offenses Against Public Administration,” most often include obstruction of, or giving false information to, a law enforcement officer.⁴⁶ Most common among Chapter 11’s “Offenses Against Public Order and Safety” are disorderly conduct,⁴⁷

public drunkenness,⁴⁸ loitering and prowling,⁴⁹ harassing phone calls⁵⁰ and carrying a concealed weapons.⁵¹

Chapter 12 of Title 16 defines “Offenses Against Public Health and Morals” and includes such misdemeanors as contributing to the delinquency of a minor,⁵² smoking in public places,⁵³ cruelty to animals,⁵⁴ gambling⁵⁵ and distributing obscene material (H&A misdemeanor).⁵⁶ Of the Chapter 13 offenses involving controlled substances, the only misdemeanor typically prosecuted is possession of less than one ounce of marijuana.⁵⁷

A number of other miscellaneous misdemeanors are peppered throughout various other Code titles. With the exception of the fish and game violations of Title 27, commercial vehicle violations of Title 32 and cases of underage alcohol possession under Title 3, these other violations form a minuscule proportion of misdemeanor cases actually prosecuted.

The Myth of the “High and Aggravated” Misdemeanor

The General Assembly has not chosen to classify or rank these various charges for sentencing purposes. As a result of its failure to classify these crimes, the General Assembly from time to time expresses its distain for certain offenses by designating them as “misdemeanors of a high and aggravated nature.” Typically, this designation follows an effort to “get tough” about

As a result of its failure to classify these crimes, the General Assembly from time to time expresses its distain for certain offenses by designating them as “misdemeanors of a high and aggravated nature.” Typically, this designation follows an effort to “get tough” about politically-sensitive “hot-button” issues of the day.

politically-sensitive “hot-button” issues of the day.

The reclassification of these offenses is, as a practical matter, ineffective. Despite the General Assembly’s efforts to make some misdemeanors more serious than others, the aggravated punishments available for these offenses are infrequently imposed. Judges rarely sentence misdemeanor defendants to pay the maximum fines, and even more rarely impose substantial jail sentences. When the H&A misdemeanant receives the same sentence as other violators, the statutory distinction is rendered meaningless, and legislative intent to discourage these aggravated offenses is frustrated.

Sentencing Minor Offenders in Other States

Other states have addressed these problems by expanding the categories of offenses and by limiting the punishment available for certain classes. For example, Connecticut divides misdemeanors into three classes: Class A, with a possible sentence of up to one year; Class B, with sentences up to six months; and Class C, with sentences up to three months.⁵⁸ In California, there are three grades of offenses: felonies, misdemeanors and infractions.⁵⁹ Infractions are minor violations for which a fine of no more than \$250 may be imposed.⁶⁰ Since infractions do not carry the possibility of a jail sentence, the defendant is entitled to neither appointed counsel nor a jury trial.⁶¹

Pennsylvania divides non-felony offenses into four classes. First-degree misdemeanors carry sentences of up to five years in prison; second-degree misdemeanors, up to two years; and third-degree misdemeanors, up to one year. A fourth category, “summary offenses,” is limited to sentences of no more than 90 days in jail.⁶²

In Washington, the lowest grade of offense is that of misdemeanor, limited to no more than 90 days to serve and a fine of up to \$1,000. An intermediate category, “gross misdemeanor,” encompasses that state’s remaining



crimes below the felony level.⁶³

Ohio has five misdemeanor offense levels. First-degree misdemeanors are subject to fines of up to \$1,000 and no more than six months in jail; second-degree, up to \$750 and 90 days; third-degree, up to \$500 and 60 days; fourth-degree, up to \$250 and 30 days; and “minor misdemeanors,” subject only to a fine of not more than \$100.⁶⁴

Massachusetts courts are authorized to treat certain misdemeanors as “civil infractions.” While fines of up to \$5,000 can be imposed, there is no possibility of jail time for

such a violation, and thus no right to appointed counsel.⁶⁵

Under Missouri law, Class A misdemeanors are those punishable by more than six months in custody and a fine of up to \$1,000. Class B misdemeanors are limited to a fine of \$500 and 30 days to six months, and Class C offenses call for fines of up to \$300 and no more than 30 days in jail. A fourth category, “infractions,” is limited to a fine of \$100 and no jail time.⁶⁶

The most comprehensive misdemeanor sentencing structure is North Carolina’s. In that state, misdemeanors are divided into four classes, and the prior criminal record of the defendant is set at one of three levels. Based on the grid created, sentences range from one to 10 days of community corrections (for a first offense, Class 3 misdemeanor) to up to 150 days in jail (for a Class A1 misdemeanor committed by a person with a prior record).⁶⁷

A Proposal for Georgia Misdemeanor Sentencing

Georgia should adopt a classification structure similar to those of other states. Only the most serious misdemeanors should require jury trials and attorneys should not be appointed for very minor offenses. This classification structure should reduce or eliminate interjurisdictional sentencing disparities and, most importantly, more serious misdemeanors, such as those involving violence or drunk driving, would no longer be limited to the same maximum punishments as more trivial violations.

In formulating a rational sentencing policy for Georgia misdemeanors, the first task is to determine what variables to emphasize. While it is possible to formulate multidimensional guidelines encompassing numerous sentencing-related variables, it is more important that the end product be simple to understand and to apply. As a result, the two-dimensional approach used in North Carolina seems most appropriate. The obvious variables to be emphasized are: (a) the gravity of the offense; and (b) the record of the offender.

The next step is to determine which of Georgia's current misdemeanors to assign to each of the new offense classes. Four new classes of misdemeanors are proposed, designated in descending order of seriousness as Class A, Class B, Class C and Class D. For the most part, Class A would consist of those misdemeanors now or hereafter designated as "high and aggravated." The maximum penalty for offenses in Class A, as is now provided for H&A misdemeanors, would be a fine of \$5,000 and up to 12 months in jail. Jury trials would be available only for Class A violations.

Class B offenses would consist of serious traffic offenses such as first and second DUI's and suspended license charges, racing, reckless driving and hit-and-run. Also

included would be second or subsequent offenses of obstruction of police, possession of marijuana, underage alcohol possession, theft, prostitution and contributing to the delinquency of a minor, as well as first offenses of battery, stalking, cruelty to children and carrying concealed weapons. The maximum fine for Class B offenses would be \$1,000, and jail time of up to six months could be imposed.

Class C offenses would include: speeding more than 30 miles over the limit; driving without insurance or a license; simple battery and simple assault; criminal trespass and related offenses; writing bad checks; littering; making false reports or giving false information to police; public drunk / pedestrian under the influence / disorderly conduct; and first offenses of obstruction, prostitution, theft, public indecency, reckless conduct, contributing to the delinquency of a minor, possession of marijuana and underage possession of alcohol. Penalties for Class C misdemeanors would include fines of up to \$500 and up to 90 days in jail.

Finally, Class D misdemeanors would be the equivalent of "infractions" in some of the other surveyed states. No jail time would be involved, but fines of up to \$250 could be imposed. This category would include: minor moving traffic violations; driving without a tag, a seat belt, proper equipment, proof of insurance, or driver's license in one's

Table 1 — Proposed Sentencing Guidelines
for Georgia Misdemeanors

		Offender Category					
		I	II	III	IV	V	
Offense Class	A	Fine (\$) Jail Time (days) Comm. Service (days)	500-1000 0-10 5-10	1-2000 10-30 10-20	2-3000 30-60 15-30	3-4000 60-120 20-40	4-5000 120-360 25-50
	B	Fine (\$) Jail Time (days) Comm.Service (days)	100-200 0-5 3-5	200-400 5-15 6-10	300-600 15-30 9-15	400-800 30-60 12-20	500-1000 60-180 15- 30
	Jail	Fine (\$) Time (days) Comm.Service (days)	50-100 0-2 0-2	100-200 2-5 2-4	150-300 5-10 4-6	200-400 10-30 6-10	250-500C 30-90 10-20
	Jail	Fine (\$) Time (days) Comm.Service (days)	0-50 0 0	50-100 0 0	75-150 0 0	100-200 0 0	150-250D 0 0

possession; commercial vehicle violations; and fish and game offenses. Because no jail time is possible, these offenses could be “paid out of court” by the forfeiture of a cash bond, thus saving the violator the costs of repeated court appearances. There also would be no need to appoint attorneys in Class D cases.

In Class A, B or C offenses, community service could also be imposed in addition to the penalties herein prescribed.

This proposal addresses at least 90 percent of Georgia’s most common misdemeanors. The remaining misdemeanors can be inserted into the most appropriate category based on their gravity.

In addition to categorizing the offenses, the violators need to be categorized. In a variation of the North Carolina approach, a value should be assigned to prior convictions.

Having no prior misdemeanor or felony convictions would be scored as “zero.” Each prior misdemeanor conviction that is not related to the current offense should be valued at “one,” each related misdemeanor conviction at “two.” Unrelated felony convictions should be scored “three,” and related felonies should be worth “four”

points. For example, a defendant charged with prostitution who has only one prior conviction for burglary, an unrelated felony, would score a “three.”

In addition, the aggregate of these values should be grouped into five “criminal history” categories. A total of zero points would place an offender in Category I. Category II contemplates point totals of from one to three; Category III, from four to six; Category IV, from seven to nine; and Category V, 10 or more points.

Georgia should adopt a classification structure similar to those of other states. Only the most serious misdemeanors should require jury trials and attorneys should not be appointed for very minor offenses.



Having created four categories of misdemeanors and five categories of offenders, all that remains is to construct a sentencing grid from those two variables, and to insert therein recommended sentencing guidelines for fines, jail time and community service. An example of such a grid is presented as Table 1.

Conclusion

The first hurdle to be overcome in implementing such a proposal in Georgia is getting the General Assembly to make the necessary changes to the penalty provisions of current laws. There will be resistance to lowering the maximum sentences on some offenses, especially if doing so might be seen as being "soft on crime," even though the maximum sentences are rarely if ever imposed. A concentrated lobbying effort by the entire spectrum of people involved in the criminal justice process — police, court administrators, defense attorneys, prosecutors, judges and others over several legislative sessions will undoubtedly be required. In the interim, judges can use the proposed guidelines in their own courtrooms, modifying them as necessary so as to comport with the current statutory minimums and maximums for each offense, and prosecu-

tors can use these guidelines for formulating sentencing recommendations.

This proposal addresses the majority of the problems with Georgia's misdemeanor sentencing structure. By narrowing the range of possible penalties for a given offense, the instances of substantial sentence disproportionality between judges or jurisdictions can be eliminated. By limiting the maximum jail sentence for all but the most serious of offenses to six months, the number of costly jury trials can be sharply curtailed. The expense of providing appointed counsel can also be reduced and the cost to the defendant of required court appearances can be avoided through the bond-forfeiture procedure. Finally, the perceived inequity of having the same maximum penalties for both truly petty infractions and fairly serious crimes is addressed by the classification system. Public confidence in the legal system will be enhanced when the sentence fits both the offense and the offender. ☐



Gary S. Vey has served as a misdemeanor prosecutor in the State and Recorder's Courts of Gwinnett County for more than 14 years. He received his J.D. in 1978 from the University of Georgia, where he is now pursuing a doctoral degree in political science.

Endnotes

1. O.C.G.A. §40-6-202 (2001).
2. O.C.G.A. § 16-5-23.1(f) (1999).
3. Malcom M. Feeley, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT*, (1979).
4. Feeley, *THE PROCESS IS THE PUNISHMENT*, ch. 9.
5. U.S. Const., amend. VI.
6. *Ballew v. Georgia*, 435 U.S. 223 (1978).
7. 372 U.S. 335 (1963).
8. 407 U.S. 25 (1972).
9. Ga. Const. Art. 1, § 1, 111 (a) (1998).
10. Ga. Const. Art. 1, §1, ¶14 (1998).
11. *Capelli v. State*, 203 Ga. App. 79, 416 S.E.2d 136 (1992), citing *Brawner v. State*, 250 Ga. 125, 296 S.E.2d 551 (1982); *Johnston v. State*, 236 Ga. 370, 223 S.E.2d 808 (1976).
12. O.C.G.A. § 16-1-3 (1999).
13. *See, e.g.*, O.C.G.A. §40-2-2 (2001), O.C.G.A. §40-6-1. 14 (2001), O.C.G.A. § 1710-3 (1997).
14. O.C.G.A. § 17-10-3 (1997).
15. O.C.G.A. § 17-10-4(a) (1997).
16. O.C.G.A. § 17-10-4(b) (1997).
17. *See, e.g.*, O.C.G.A. § 40-6-253 (2001); § 3-3-23.1(b)(1) (2000); § 16-8-61(b) (1999); § 16-5-45(b)(2)(A) (1999).
18. *See, e.g.*, O.C.G.A. § 40-6-391 (2001); O.C.G.A. § 40-6-395 (2001); O.C.G.A. § 40-5-121 (2001).
19. O.C.G.A. § 16-5-20 (1999).
20. O.C.G.A. § 16-5-23, 16-5-23.1 (1999).
21. O.C.G.A. § 16-5-60(b) (1999).

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LEGAL ARTICLE

FAMILY VIOLENCE AND MILITARY
PROCEDURES IN GEORGIA:

An Introduction for Non-Military Lawyers

By Vicky O. Kimbrell

Gruesome stories of violence and murder among family members are constantly in the news.¹ To combat this epidemic, Georgia enacted specific civil and criminal statutes for the express purpose of ending acts of family violence.² Similarly, the federal government has recently passed new laws to provide new rights, remedies and monies for services to help victims.³ Family violence cases involving military service members add another layer of legal complexity to the process. Further, much of military law is governed by policies and procedures set out in regulations, instructions and directives not readily available or familiar to the non-military attorney. The purpose of this article is to introduce the non-military lawyer to these procedures and the military terminology with which the attorney must become familiar to use the legal system to protect a victim of family violence from a batterer who is in the military.

Military and Civilian Jurisdiction in Family Violence Cases

Georgia has 14 military bases across the state, including Army, Navy, Air Force and Marine posts.⁴ In a case involving a victim or an abuser assigned to one of these posts, a civilian attorney must first determine whether the state or federal government has jurisdiction over the military installation. Most military installations are under the exclusive jurisdiction of the federal government, which has full legislative authority within its borders. Accordingly, civilian law enforcement authorities cannot necessarily serve or enforce state civil protective orders or arrest abusers on base.⁵ Instead, the assistance of military authorities is generally required. However, pursuant to Department of Defense Directive 6400.1, military personnel are required to cooperate with civilian authorities in addressing the problems of family violence.⁶

To deal with jurisdictional conflicts, military policies encourage each installation to develop Memorandums of Understanding or Agreement (MOUs or MOAs) to assure cooperation between military and civilian agencies. An MOU or MOA is a written agreement between a military installation and various local entities, such as law enforcement agencies, child protective services, legal services and family violence shelters, that outline jurisdiction, enforcement procedures and community resources for victims.⁷

These agreements typically provide that when family violence involving an active duty member occurs off base, civilian authorities can arrest and prosecute the case themselves or refer the case to officials on the military installation.⁸ If the active duty member is tried in a civilian court, the military later can take its own separate action against the

soldier.⁹ If the family violence occurs on base, the attorney assisting the victims should obtain a copy of the MOUs that define local military and civilian jurisdiction, procedures and resource agreements in their areas. If MOUs do not already exist, the attorney can encourage their development.

Family Advocacy Programs

The Secretary of the Department of Defense (DOD) is required by statute to establish regulations to address incidents of domestic violence involving physical injury.¹⁰ In response, the Secretary established by directive the DOD Family Advocacy Program policy to prevent, identify and treat family violence.¹¹ Each military branch has implemented a Family Advocacy Program with its own set of policies and procedures regarding the treatment of family violence and the armed services personnel who commit family violence.¹² Most recently, the Secretary of the Defense has encouraged a collective and long-term strategic plan to keep victims safe and hold batterers accountable.¹³

The DOD directive instructs each of the armed services to establish a Family Advocacy Committee and appoint a Family Advocacy Officer at each installation. The Committee is responsible for evaluating reports of family violence and determining whether the abuse is substantiated, suspected or unsubstantiated.¹⁴ The Committee is also charged with recommending appropriate treatment actions to an abuser's commanding officer.¹⁵ The DOD additionally sets out procedures to advise abused spouses of the availability of emergency medical and social care, information related to crime-victim compensation and the availability of programs within the community.¹⁶ More specific procedures are set out within each military service's rules, regulations or policies.¹⁷ After assuring the safety of the victim, the practitioner's first contact on a military base should be with the base Family Advocacy Program.

Military Protective Orders

Similar to civil protective orders, military commanders can issue military protective "no-contact" orders to ensure the safety and security of military personnel and protect other individuals from persons within the command.¹⁸ "No-contact" orders can also provide financial support. For an order over 10 days in duration the military member must have an opportunity to be heard and respond to the allegations. "No-contact" orders are administrative and are not enforceable except within the military administrative procedure. Military orders do not meet the requirements under the full faith and credit provisions of the Violence Against Women Act and are not enforceable by local, county or state law enforcement agencies or across state lines.

However, valid orders entered by a Georgia court, or any other state court, or political subdivision, tribal government, commonwealth or territory against a military member must be afforded a presumption of enforceability against the military member in a state court.¹⁹

Compensation Programs for Victims of Family Violence

Quite often the most important issue for victims of family violence is the economic security of their family. A victim will often return to an abusive household when there are no other alternatives for food and shelter, especially when children are

... it is unlawful for a person who is convicted of a crime of domestic violence, or who is subject to a restraining order as a result of domestic violence against an intimate partner, to possess any firearm or ammunition.

involved. Public benefit programs that may be able to assist victims include Temporary Assistance for Needy Families (welfare), food stamps, Medicaid, Peachcare,

Social Security or Supplemental Security Income. Victims of abusers in the military who are spouses, former spouses or dependent children may be able to receive transitional compensation support payments from the military.²⁰ These payments may be available when the member of the armed forces is convicted of an abuse offense and when the member is being administratively separated from active duty or court martialled.

Certain retirement payments may also be available for abused dependents under a specific federal provision for the payment of retirement benefits to a dependent spouse



or former spouse²¹ or under the Uniform Services Former Spouses Protection Act.²² Dependents may also be entitled to commissary privileges and some limited medical care. Application forms and inquiries should be made through the Family Advocacy Program at each military installation.

Family violence victims in Georgia may also be entitled to up to \$10,000 in compensation benefits under the Georgia Crime Victim Compensation Program.²³ This program, run by the state of Georgia's Criminal Justice Coordinating Council (CJCC), provides compensation to family violence victims for medical expenses, counseling expenses, funeral expenses, and lost wages or support. The criminal conduct must be reported to law enforcement within 72 hours, unless there was a good cause for not reporting, and an application must be made with the CJCC within 180 days of the crime.²⁴

Firearms and Military Abusers

The Lautenberg Amendment was enacted to address the deadly problem of abusers who own or possess firearms. Under this statute, it is unlawful for a person who is convicted of a crime of domestic violence, or who is subject to a restraining order as a result of domestic violence against an intimate partner, to possess any firearm or ammunition.²⁵ To qualify under this statute, a civil protective order must prohibit the "harassing, stalking or threatening an intimate partner . . . or child of such intimate partner or person, or engaging in other conduct which would place an intimate partner in reasonable fear of bodily injury."²⁶ An intimate partner is defined as a current or former spouse, co-parent or one who cohabits or has cohabited with the subject of the protection order.²⁷ The offender must have been afforded due process

Georgia Supreme Court Approves New Family Violence Temporary Protective Orders

By Vicky O. Kimbrell

ON JULY 31, 2001, THE GEORGIA SUPREME Court approved five new order forms in family violence cases that are required by O.C.G.A. §19-13-53. The new orders include: a Family Violence Act Ex Parte Order; a Family Violence Act Six Month Order; a Stalking Act Ex Parte; a Stalking Act Six Month Order; and a Dismissal form. The orders were adopted in compliance with, and to be compatible with, the new Georgia Family Violence Registry.

The new Georgia Family Violence Orders will allow Temporary Protective Orders (TPO) to be entered on a centralized data base that will be accessible to judges and law enforcement. When the registry is in place, law enforcement will be able to check the central database to determine if a TPO has been entered against an abuser. Judges will also have access to the registry to determine if a civil order has been entered.

The new orders comply with the federal Full Faith and Credit Act at 18 U.S.C. § 2265. Under that statute, a family violence order issued by a court in one state must be accorded full faith and credit by a court of another state when the order is entered in compliance with

the statute. Therefore, a TPO entered in Georgia will be fully enforceable outside of the state as if it were the order of the court of the second state. No domestication or certification is necessary for a Georgia order to be enforceable in another state, or another state's order to be enforceable in Georgia.

The Orders also provide the information that is necessary so that a victim's order will be entered on the National Criminal Identification Center and eventually on the Georgia Crime Identification Center network.

The new orders also assure compliance with 18 U.S.C. § 922(g)(8), so that it is illegal for a person to possess a firearm when subject to a Georgia Family Violence Act or Stalking Act Protective Order.

The new orders were first recommended by the Georgia Commission on Family Violence. They were then approved by the Rules Committee of the Council of Superior Court Judges and finally adopted by the Georgia Supreme Court. The forms are available at the Georgia Supreme Court Web site at <http://www2.state.ga.us/Courts/supreme/unirules.htm#fvexparte>. A downloadable version of the forms are available in Word and Wordperfect from the Georgia Legal Services Web site at www.glsp.org. ☒

prior to the conviction, including notice of the right to counsel and the opportunity for a jury trial, if applicable.²⁸

Obviously, the Lautenberg Amendment raises significant issues in its application to military abusers. If only a civil protective order is issued, military personnel and law enforcement officers may be exempted from the firearm restrictions when they are on duty.²⁹

However, no exception exists for military service members or law enforce-

The new Georgia Family Violence Orders will allow Temporary Protective Orders (TPO) to be entered on a centralized data base that will be accessible to judges and law enforcement. When the registry is in place, law enforcement will be able to check the central database to determine if a TPO has been entered against an abuser.

ment personnel who have been criminally convicted of domestic violence.³⁰

The United States Attorney's Office and the Office of Alcohol, Tobacco and Firearms provide a good resource for information about the enforcement of the Lautenberg Amendment.

Conclusion

Family violence victims with abusers who are in the military face many of the same obstacles that civilian

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victims face — economic dependency, lack of access to the courts and sporadic enforcement of orders. Victims and their civilian attorneys also have an additional layer of unfamiliar military regulations and procedures to negotiate. The commanding officer of the abuser can provide the most effective relief or be an almost insurmountable barrier to safety and protection for the victim.

Simply becoming familiar with the terminology and bureaucratic structures ingrained in military culture is a burdensome task. While attorneys representing victims are accustomed to focusing on the safety of the victim and the punishment of the batterer, military policies emphasize the interests of the military in maintaining order and safety within its ranks.

To adequately represent and assist victims who have military connections, the outside civilian lawyer must be able to understand and use both the governing regulations and the operational procedures of the local military installation to which the abuser is attached. As in civilian cases, effective protection and safety for victims requires the coordinated efforts of the community to provide victim-focused crisis intervention services to the victim and batterer accountability. 



Vicky O. Kimbrell is the family and health law specialist attorney for Georgia Legal Services. She received her J.D. from the University of Georgia. She is a Governor's appointee to the Family Violence Commission. Kimbrell received a 2001 EPIC award from Emory Law School for her service to persons in need. She is also a member of the Georgia Asian Pacific American Bar Association.

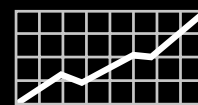
Endnotes

1. See, e.g., Mary Lou Pickel, *Doctor's Ex-Wife Told Police She Was Captive in Her Own Home*, ATLANTA JOURNAL-CONSTITUTION, July 22, 2001, at A1; Beth Warren, *Feds Arrest Mail Bomb Suspect*, ATLANTA JOURNAL-CONSTITUTION, July 20, 2001, at A1.
2. See Georgia Family Violence Act, O.C.G.A. §§ 19-13-1 to -4 (1999 & Supp. 2001); Stalking Act Protective Orders, O.C.G.A. §§ 16-5-90 to -91 (1999 & Supp. 2001); Employer Family Violence Protective Orders, O.C.G.A. § 34-1-7 (Supp. 2001); Davis-Redding v. Redding, 246 Ga. App. 792, 794, 542 S.E.2d 197, 199 (2000).
3. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, §§ 1001 – 1109, 114 Stat. 1464, 1491 – 1503 (2000) (codified in various sections, including 8 U.S.C. § 1154 (Supp. 2001) (battered immigrant women pro-

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- tections); 18 U.S.C. § 2265 (Supp. 2001) (full faith and credit); 18 U.S.C. § 2261A (2001) (interstate stalking); 18 U.S.C. 922 (g)(8) - (9) (2001) (gun restrictions for batterers)).
4. Albany Marine Corps Logistics Base, Athens Navy Supply Corps School, Atlanta Naval Air Station, Fort Benning, Dobbins Air Reserve Base, Fort Gillem, Fort Gordon, Hunter Army Airfield, Kings Bay Submarine Base, Fort McPherson, Marine Aircraft Group 42, Moody Air Force Base, Fort Stewart, Robins Air Force Base.
 5. Family Advocacy Program, Army Regulation ("A.R.") 608-18, app. at D-1a (Sept. 1995) (available at <<http://www.USAPA.army.mil/gils/epubs6.html>>).
 6. Family Advocacy Program, Department of Defense Directive No. 6400.1, ¶ 5.2.8 (June 1992).
 7. See, e.g., Marine Corps Family Advocacy Program Standing Operating Procedures, Marine Corps Order ("MCO") 1752.3B, app. at F-1a (July 1994).
 8. *Id.* at ch. 4.
 9. *Id.*
 10. 10 U.S.C. § 1058 (1998).
 11. Family Advocacy Program, Department of Defense Directive No. 6400.1, ¶ 4.1 (June 1992).
 12. Family Advocacy Program, Army Regulation ("A.R.") 608-18 (Aug. 1998); Family Advocacy Program, Secretary of Navy Instruction ("SECNAVINST") 1752.3A (Sept. 1995); Marine Corps Family Advocacy Program Standing Operating Procedures, Marine Corps Order ("MCO") 1752.3B (July 1994); Family Advocacy Program, Air Force Instruction ("A.F.I.") 40-301 (July 1994); Family Advocacy Program, Coast Guard Commandant Instruction ("COMDTINST") 1750B (Feb. 1998).
 13. DEFENSE TASK FORCE ON DOMESTIC VIOLENCE, REPORT 49 (Feb. 2001) (available at <<http://www.dtic.mil/domesticviolence/Report.pdf>>).
 14. Family Advocacy Program, Department of Defense Directive No. 6400.1, ¶ 6.2 (June 1992).
 15. *Id.*
 16. *Id.* at ¶ E3.1.1.3.1.
 17. See Family Advocacy Program, Army Regulation ("A.R.") 608-18 (Aug. 1998); Family Advocacy Program, Secretary of Navy Instruction ("SECNAVINST") 1752.3A (Sept. 1995); Family Advocacy Program, Air Force Instruction ("A.F.I.") 40-301 (July 1994); Family Advocacy Program, Coast Guard Commandant Instruction ("COMDTINST") 1750B (Feb. 1998).
 18. See e.g., Robins Air Force Base Instruction 51-202m (March 15, 2000) ("The Unit [Commander] will issue a 'no contact order' that includes verbal contact, written contact and contact through third parties on and off the Air Force installation").
 19. The full faith and credit provision of the Violence Against Women Act requires that every jurisdiction in the United States recognize and enforce all valid protective orders entered by a state and its political subdivisions. 18 U.S.C. § 2265 (Supp. 2001).
 20. 10 U.S.C. § 1059 (1998 & Supp. 2001).
 21. 10 U.S.C. § 1408(h) (1998).
 22. Uniform Services Former Spouses Protection Act, 10 U.S.C. §§ 1072, 1076(e), 1086, 1408(h), 1447, 1450, and 1451 (1998 & Supp. 2001).
 23. Crime Victim Compensation Act, O.C.G.A. § 17-15-1 to -14 (2000).
 24. For eligibility information and an application for crime victim compensation benefits contact the Criminal Justice Coordinating Council at 503 Oak Place, Atlanta, Ga. 30349; (404) 559-4949; or <<http://www.ganet.org/cjcc/index.html>>.
 25. Lautenberg Amendment, 18 U.S.C. § 922(g)(8) - (9) (2000).
 26. 18 U.S.C. § 922(g)(8)(B) (2000).
 27. 18 U.S.C. § 921(a)(32) (2000).
 28. 18 U.S.C. § 921(33)(B) (2000).
 29. 18 U.S.C. § 925 (2000).
 30. 18 U.S.C. § 925(a)(1) (2000).

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Georgia Legal Services Program: Thirty Years of Success

By Sarah I. Bartleson

THE LEGAL AID COMMITTEE OF THE YOUNGER Lawyer Section of the State Bar of Georgia took the first step toward creation of a legal services program in 1970 when leaders such as H. Sol Clark, chair of the committee, and A. James Elliott sought and received approval by the Bar's Board of Governors to establish Georgia Indigents Legal Services. A year later, Georgia Legal Services Program (GLSP) was born.

This year marks the 30th anniversary of the program, a true success story that began in 1971 as a project of the Young Lawyers Division of the State Bar of Georgia. Since its inception, the GLSP has worked hard to fulfill its mission of equal access to justice under law to all people of Georgia. As an independent, nonprofit organization, GLSP provides free legal services to low-income people in civil matters in the 154 Georgia counties outside the five county Atlanta metropolitan area.

The First Decade: Building a Foundation

Building a solid foundation to prove that Georgia Legal Services "was here to stay" encompasses the goal of the first decade, as explained by Bettye Kehrner, the program's first executive director.

The Young Lawyers Section of the State Bar of Georgia incorporated the GLSP program in 1971 as a result of a three-year study by the Section, which found "a distressing disproportion between the actual need for legal services by those who cannot afford them, and the present supply of legal services available to them."

The program flourished and grew to meet the ever-increasing need for its services. The program's budget, for example, began at \$215,000 in 1971 and climbed to \$7.2 million in 1980. By the end of the program's second year in 1972, 34 staff attorneys and 15 paralegals were working on 11,484 cases.

Cases of the 70s

GLSP has a history of representing people with disabilities, including children. As a result of the first GLSP case to be heard by the United States Supreme Court, *J.L. & J.R. v. Parham*, children do not needlessly remain in state mental health institutions. GLSP filed suit on behalf of 47 children abandoned in Central State Hospital. After nine years of litigation, the case resulted in a consent order in 1984. Children were required to be reviewed periodically by an impartial medical panel to determine whether continued hospitalization was necessary. Wards of the state or children who lack parental involvement in their treatment have a right to a GLSP attorney to challenge the commitment. Over the years, more children have received the community-based mental health care that they need, rather than being institutionalized.



Officers of Georgia Indigents Legal Services, Inc., meeting with Family and Children Services Director Jim Parham and Deputy Director Herschel Saucier, in the GILS offices in Atlanta. Pictured above from left to right are: John Meyer (staff); John Cromartie (staff); Phil Heiner; Nancy Cheves; Jim Parham; Bill Ide; Betsey Neely; Hershel Saucier; Bettye Kehrner (staff); Jim Elliott and Ben Shapiro (with backs to camera).



One of the defining features of GLSP is its longstanding commitment to meeting the needs of Georgia's low-income rural population. Housing often is substandard if it is affordable. The federal government, through the U.S. Department of Agriculture (USDA), operates a program, which can enable even low-income persons to own their own homes and create community and family stability.

However, in the late 70s, GLSP staff encountered large numbers of persons who were facing foreclosure because of loan delinquencies following loss of jobs or illnesses in the families. Although the program requires specific loan servicing and options to assist borrowers, USDA was failing to do so, which resulted in defaults on mortgages. GLSP filed *Williams v. Butz* to challenge the agency's failure to provide notice of the servicing options that could help the borrowers save their homes. The agency signed a consent order agreeing to specific language making Georgia one of two states in which borrowers in this program receive loan servicing after a notice of acceleration.



As a result of requiring the government agency to follow the law, thousands of Georgians have been able to keep their homes. In the late 90s, when GLSP saw clients whose acceleration notices did not have the court-ordered language because of a change at the USDA national level, GLSP attorneys secured a new agreement with the state office of USDA to halt all scheduled foreclosures and reissue notices with information about the availability of loan servicing.

During the first years of GLSP, people sought help to address voting rights issues. Former GLSP paralegal Melissa Faye Greene details one such case in her book, *Praying for Sheetrock*. The second GLSP case to reach the United States Supreme Court, *Rodgers v. Lodge*, ended at-large electoral districts in Burke County and set a new national standard for voting rights cases. A focus on human needs brought by the newly elected African-American officials elected since the Supreme Court's decision in 1982 has helped the county construct a new health department and provide other services benefiting all residents.

The Second Decade: Reduced Services, Funding Hardships

Federal budget cuts of the 80s reduced the GLSP's staff by nearly half. Only a small percentage of Georgians who needed services were receiving them. Those struggling with problems stemming from inadequate education, poor health care, a scarcity of jobs and red tape governing public benefits were assisted, as well as possible given a serious shortage of resources.

In response, the private bar stepped in to help. With grants, individual contribu-

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tions and the willingness of Georgia lawyers to take more pro bono and reduced-fee cases, the GLSP weathered a rough financial storm.

As the GLSP ended its second decade, nearly 200,000 cases had been resolved for Georgians. This accomplishment gave the program a deserving reputation as one that helped uphold the basic democratic principle that all people are entitled to equal justice under the law.

Cases of the 80s

GLSP continued to represent parents in a variety of cases. *J.J. v. Ledbetter* affirms the rights of parents whose children are placed in foster care to help reunite the family. When a Protective Services caseworker came and took away a young woman's only son without warning, she went to GLSP. Attorneys filed suit challenging the arbitrary practice of taking children. As a result of a ruling of the U.S. District Court in Augusta, Georgia's Department of Family and Children Services must develop a specific plan of services to help reunite a family. Parents objecting to the plan are entitled to a fair hearing, and they and their attorneys have access to records to see what concerns have been cited about the family.



The Georgia Supreme Court established the constitutional standards protecting parents from state interference with the custody of their children in the 80s with the GLSP case of *Blackburn v. Blackburn*. GLSP represented a mother who had her child taken by a trial court because of her poverty and instability. The Georgia Supreme held that third parties must prove present parental unfitness by clear and convincing evidence to remove a child from a parent's custody. The Georgia Supreme Court found the parent was presently exercising maturity, good judgment and resourcefulness in providing for her child on a limited income.

In another case, when Sean Reed started his first year of high school, his mother was happy to hear him say, "I think I'll do OK, if I can manage to stay out of fights." Not the normal words that would warm a mother's heart, but in this case, they did. For years, Sean was severely handicapped, and it seemed he might be disabled for the rest of his life. A fire in his home when he was three years old left him severely burned over 36 percent of his body, including face, neck and scalp. With the assistance of GLSP, Sean and his family were able to get the medical treatment Sean needed over the years to help him grow and become healthy.

The Third Decade: New Challenges

The third decade, like its predecessors, was marked with dramatic swings in political support for legal services in Washington, D.C. In 1992, a very supportive national Legal Services Corporation board was appointed. Legal services programs looked forward to increased federal funding and a more supportive environment.

The tide turned in 1994 when Congress pledged to reduce the role of the federal government. Talk again turned to elimination of federal funding for legal services and the old allies — the organized bar (including the State Bar of Georgia under the leadership of then-president Hal Daniel), a bipartisan congressional coalition of moderates and many others — rose to protect LSC. Despite the supporters' best efforts, funding for 1996 was cut by 25 percent and GLSP lost 30 percent of its lawyer positions. Additionally, severe restrictions on staff attorney activities and new reporting requirements were imposed by language in the 1996 appropriations bills.

The cut in federal funding forced a new push to diversify funding. The State Bar worked to beef up its campaign for GLSP and the Georgia Bar Foundation stepped in with emergency funding and increasing support in following years. Most importantly, former State Bar of Georgia President Linda Klein initiated an effort in 1997-98 to secure \$2 million from the Georgia General Assembly for legal services for victims of domestic violence, aimed at helping GLSP and the Atlanta Legal Aid Society



(ALAS) replace at least some of the lost federal funding. A strong coalition of supporters led by Klein and Bar lobbyist Tom Boller produced results, and that funding has endured and even grown, enabling GLSP and ALAS to represent thousands of victims across the state.

The cuts in resources and the domestic violence initiatives also spurred new efforts to involve the private bar in the delivery of legal services to low-income Georgians, including projects to respond to legal needs of reservists called to duty in the Gulf War, and in 1994, 1995, and later, to legal needs of disaster victims of Tropical Storm Alberto, Hurricane Opal and several tornadoes.

Disaster legal assistance has now become a well-organized collaboration between the State Bar's Younger Lawyers Division, the Pro Bono Project and GLSP. Another new project developed in collaboration between GLSP and the Pro Bono Project is the ABC Project, which places volunteer transactions lawyers with community-based organization clients who need help in developing enterprises involving affordable housing, job creation and job training, microenterprise ventures, and community land and cultural preservation.

Cases of the 90s

With a smaller staff, but no shortage of potential clients, the 90s were a time of collaboration. In the first statewide civil pro bono project, GLSP partnered with the Atlanta Volunteer Lawyer Foundation and Nelson Mullins Riley & Scarborough, LL.P. to create the SSI Kid's Disability Project to provide information and representation to parents of children with disabilities who were being terminated from Supplemental Security Income by the Social Security Administration (SSA). Through a toll-free hotline, thousands of parents received information about the termination process and hundreds who could not resolve their cases received referrals to volunteer attorneys.

The Project worked with the Georgia Department of Medical Assistance to give notice to recipients of the availability of the Project's hotline, identified due process violations in Social Security's appeal process, and worked with the American Bar Association (ABA) to call upon SSA to reissue termination notices to children on whose behalf no appeal had been filed with a new appeal date and the hotline number.

During this period, GLSP worked with the Fund for the City of New York to develop an internet domestic violence project to make Georgia-specific forms available to persons in domestic violence shelters and victims assistance offices for them to file petitions for temporary protective orders under the Georgia Family Violence Act. GLSP attorneys recognized that they could not handle every case, but could use staff expertise to develop the set of forms. The Project, one of two in the county, enables GLSP and its collaborators to assist more victims.

A Focus on the Future

GLSP is looking forward to the future with a dedicated staff of 200, including 95 lawyers and 40 paralegals to serve the 154 counties outside the metro Atlanta area. GLSP continues to explore new ways of serving more clients and meeting new needs, with new sources of funds and new delivery methods, such as legal helplines, forms and instructions to help poor pro se litigants, and community education sessions. It is working to expand its network of volunteer attorneys and to offer new opportunities for more volunteers to participate. "Our mission to provide access to justice and opportunities out of poverty for low-income Georgians has not changed," declares GLSP Executive Director Phyllis J. Holmen. "And we will continue to search for new ways to fulfill that mission." ■



This is Not Kiddie Court Anymore

By Judge William L. Tribble

WITH THE PASSAGE OF THE STATE-FUNDING bill for juvenile courts last year, I became the first full-time juvenile court judge for the Dublin Judicial Circuit, which covers Laurens, Twiggs, Johnson and Treutlen counties. For the 23 years prior to becoming a juvenile court judge, I

had a small-town general practice that included representing the Division of Family and Children Services (DFCS). As such, I saw the need for full-time juvenile court judges firsthand. When the judgeship opportunity came, I took it, along with a pay cut. I did so because public service and the chance to be involved in the beginning of a new era in juvenile law is more important to me than my salary, and I

look forward to serving my circuit for years to come.

During the first five months of this year, 626 new cases have been filed in the Laurens County Juvenile Court (the largest county in the circuit). These cases are largely delinquency proceedings (443), but also include a considerable number of deprivation (132) and traffic (51) matters. My court is very busy contending with the demands of this caseload. We regularly schedule three days a week for all necessary hearings. The other two days are reserved for emergency or time-sensitive hearings. This scheduling does not leave much time for my administrative duties and, to satisfy the strict time limits, court is even open on the weekends.

However, my responsibilities are not limited to the courtroom — community outreach is imperative. I attend local meetings, give speeches and generate support for the community-based programs that assist the court in meeting the needs of abused and delinquent chil-



dren. In my rural circuit, volunteers whose service is crucial to our functioning run many of the programs for children.

In my short judicial tenure I have seen the benefits of using rehabilitation instead of

punishment. Rather than send one troubled young woman to boot camp as a traditional response to her drug use, I was able to change her home environment. The love and support provided by her grandparents were sufficient to transform her into a drug-free honor roll student. After witnessing many successful outcomes, I am convinced that the juvenile court system should be generously supplemented with community-based alternatives to detention. Our communities need more foster parents, more mentoring programs, more summer job opportunities for youth and more emergency placements.

It is time to recognize that juvenile law practice is neither a second-class pursuit nor a refuge for those who cannot do anything else. The complexities of the specialized issues require highly skilled, full-time lawyers and judges. I have tried too many cases where children have been severely beaten, sodomized and raped by members of their own families. I have tried every kind of criminal

I have tried too many cases where children have been severely beaten, sodomized and raped by members of their own families. I have tried every kind of criminal delinquency matter except murder. In fact, one family who began their journey through the Laurens County Juvenile Court in 1977 is still on my caseload.

delinquency matter except murder. In fact, one family who began their journey through the Laurens County Juvenile Court in 1977 is still on my caseload.

Georgia has made much progress in juvenile law. The

state now funds the salaries for our specialized juvenile court judges. This investment will better our society for generations. But, we need to continue to push for more reforms for our state's kids. Juvenile court judges, just like superior court judges, need to obtain financial assistance from the state to meet their administrative duties. Georgia has neglected children's issues for a long time and we cannot afford to be complacent any longer. While the need is great, the reward is far greater. ☐



Judge William L. Tribble is the first full-time Juvenile Court judge for the Dublin Judicial Circuit, beginning in the position in January 2001. He is a 1970 graduate of the University of Georgia, and a 1973 graduate of the University of Georgia School of Law. Before serving on the bench, Judge Tribble worked in general practice.

Correction

In the *Georgia Bar Journal* article about IOLTA accounts (August 2001, p. 50), the following sentence "No 1099 should be sent to the law firm since the interest is income to the Foundation" was mistakenly changed to read "A 1099 form should be sent to the law firm since the interest is income to the Foundation." To clarify, no banks should ever send a 1099 form to a law firm for the

interest generated on the firm's IOLTA account. The interest generated is income to the Foundation. Since the Foundation is a charitable 501(c)(3) organization, the bank does not need to send a 1099 form to the Foundation either. The *Journal* regrets any misunderstanding. For further clarification, contact Len Horton, Georgia Bar Foundation executive director, at (404) 527-8700.

Georgia Lawyers and Bankers Exceed Record for Awards to Law-Related Programs

By Len Horton

AT ITS GRANT DECISIONS MEETING ON SEPT. 7, 2001, the Georgia Bar Foundation awarded \$3,099,100 to 42 different organizations throughout Georgia. This year's awards exceeded last year's dollar amount by more than \$400,000 and set the record for the greatest discretionary awards in the Foundation's history. In addition to the discretionary grants, almost \$3 million was awarded in mandatory grants. By order of the Supreme Court of Georgia, in fiscal year 2000-2001, the Georgia Indigent Defense Council received \$2,392,624 and the Georgia Civil Justice Foundation received \$598,156.

The Foundation, recipient of Interest On Lawyer Trust Accounts (IOLTA) money by order of the Supreme Court of Georgia, provides major funding to providers of civil legal services to those who cannot afford legal representation and who meet certain income restrictions. A total of \$467,100 was given to Atlanta Legal Aid and \$1,401,300 to Georgia Legal Services, both record awards.

In addition to these two organizations, the Foundation also awarded funds to other providers of civil legal services. The Georgia Access to Justice Project, the Georgia Law Center for the Homeless, the Southern Center for Human Rights, the Disability Law and Policy Center and the Pro Bono Project of the State Bar of Georgia received awards totaling \$280,000. To spotlight one of these organizations, the Disability Law and Policy Center is working to encourage access to buildings for people with disabilities. The importance of access for the disabled was made clear in the reports that many people, sitting in their wheelchairs on various floors of the World Trade Center buildings after the attacks, were unable to use the stairwells.

The Foundation also awarded several other grants for assistance to low income people in the criminal justice system. The Georgia Justice Project, the Athens Justice Project and the BASICS Program of the State Bar received awards totaling \$100,000. The BASICS Pro-

gram, under the dynamic leadership of Ed Meniffee, provides assistance to prisoners who are about to be released, teaching them skills to find and hold a job without reverting to crime.

With the guidance of Doug Ammar and financial support from the Foundation and several other organizations, the Georgia Justice Project and the Athens Justice Project are transforming criminals into law-abiding, tax-paying citizens. Men and women long ago written off are themselves writing future testimonials to these programs by becoming what they would have been with the family support and love such as they receive from the staff of these two programs.

Immigration issues have become a matter of concern to the Foundation Board and to many other Georgians, as the demand for economical labor has brought thousands of people into the state. Catholic Social Services, Southeast Georgia Communities Project and the Supreme Court of Georgia's Commission on Equality received awards totaling \$88,600. To spotlight one of these programs, the Commission on Equality is developing a court interpreter certification program to ensure that language is no longer an impediment to justice. Interpreter candidates for certification are required to demonstrate written and oral proficiency and to undergo a judicial orientation, which includes interpreter ethics. A criminal background check also is required. Certification is offered in Spanish, Cantonese, Haitian, Creole, Laotian, Korean, Polish, Russian, Vietnamese, Arabic and Somali.

Programs to help women and children who need legal assistance, advocacy and sometimes refuge received funding from the Foundation. The Adopt-A-Role Model Program in Macon, Ash Tree Organization in Savannah, Atlanta Volunteer Lawyers Foundation, The Haven in Valdosta, The Center for Children and Education in Macon, Cherokee Child Advocacy Council in Woodstock, the Children's Advocacy Center of Colquitt County in Moultrie, Rome's Exchange Club Center for the Prevention of Child Abuse, Four Points in Rossville, Georgia CASA, Golden Isles Children's Center in Brunswick,

Halcyon Home in Thomasville, Rome's Hospitality House for Women, the Macon-Bibb County Teen Court, Murphy-Harpst Children's Centers in Cedartown, the Savannah Area Family Emergency Shelter and the Sexual Assault Center of Northwest Georgia in Rome received a total of \$348,600. These awards reflect a major commitment of the Foundation to help those who are particularly vulnerable in Georgia.

Another concern about Georgia's children is the high school dropout rate. The Foundation targeted these children with major support (\$87,000) of Kids in Need of Dreams (KIND). The goal is to expand throughout Georgia the already successful Truancy Intervention Project in Fulton County. The Foundation also gave a \$10,000 grant to Youth Challenge Academy Foundation for programs at Ft. Stewart and Ft. Gordon to encourage dropouts to complete their high school education.

Other efforts to educate Georgia's youth continued to receive a high priority. The Youth Judicial Program of the State YMCA introduces 11th and 12th graders to our judicial system by having them debate both sides of an issue before a panel of lawyers and judges. The recipient of \$10,000 this year, it is a very popular and effective program that has been supported by the Foundation annually since 1986.

Also, the YLD High School Mock Trial Committee, which has also received grant awards from IOLTA money annually since 1986, received \$58,000. Stacy Rieke has the program on track to continue its national leadership. The program has become an effective and popular part of a comprehensive, law-related educational curriculum in many Georgia schools.

Another major educational effort targeting Georgia's school children is the Georgia Law-Related Education (LRE) Consortium of the Carl Vinson Institute of Government at the University of Georgia, which is ably managed by Anna Boling, its executive director. This year's grant award of \$103,900 insures that the Consortium will help provide "civics" education to children from kindergarten through the 12th grade. The Foundation is also encouraging the Spanish translation of *An Introduction to the Law in Georgia*, and the addition of a chapter on immigration law, which is being written by Nancy Quynn. Quynn is an immigration law expert who has volunteered many hours assisting Latinos in Georgia.

Other educational programs receiving funding include The Georgia First Amendment Foundation, the Georgia Unit of the Recording for the Blind and Dyslexic, and Georgia Public Broadcasting. The Georgia First Amendment Foundation received \$20,000 to help conduct a series of workshops in rural Georgia to educate people about the importance of holding business meetings only when in view of the public.

This organization also promotes respect for the First Amendment. The Georgia Unit of the Recording for the Blind and Dyslexic produces audio tapes so blind and dyslexic law students and lawyers can learn about the law. One of the most frightening things that can happen to anyone is to discover that someone has stolen his or her identity. The Georgia Bar Foundation is helping Georgia Public Broadcasting produce an educational video to do something about it. A complete listing of all grant awards is available from the Georgia Bar Foundation headquarters.

At a time when so many Americans are at last realizing the importance of pulling together to solve major problems, the Georgia Bar Foundation, under the direction of the Supreme Court of Georgia, has already put together a powerful partnership that will have generated since 1986 approximately \$50 million by the end of the current fiscal year to solve law-related problems in Georgia. On behalf of the Board of Trustees, we thank you for participating in IOLTA and joining with other Georgia lawyers and bankers in attacking some of our state's most pressing problems. ☒

Len Horton is executive director of the Georgia Bar Foundation and has been running IOLTA for the Supreme Court of Georgia since 1986.



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Annual Fiction Writing Competition

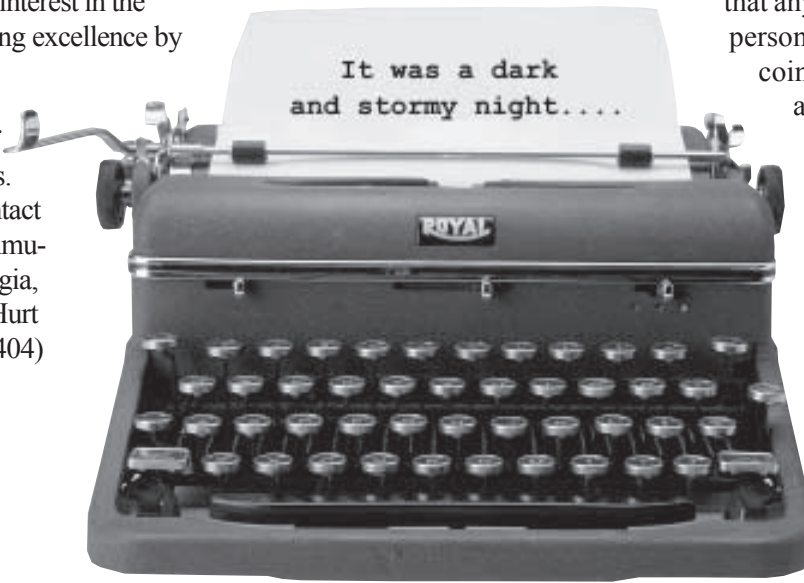
THE EDITORIAL BOARD OF THE *GEORGIA*

Bar Journal is pleased to announce that it will again sponsor the Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the Bar and to provide an innovative vehicle for the illustration of the life and work of lawyers. For further information, contact Joe Conte, Director of Communications, State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303; (404) 527-8736.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Editorial Board of the *Georgia Bar Journal*:

1. The competition is open to any member in good standing of the State Bar of Georgia, except current members of the Editorial Board. Authors may collaborate, but only one submission from each member will be considered.
2. Subject to the following criteria, the article may be on any fictional topic and may be in any form (humorous, anecdotal, mystery, science fiction, etc.). Among the criteria the Board will consider in judging the articles submitted are: quality of writing; creativity; degree of interest to lawyers and relevance to their life and work; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The Board will not consider any article that, in the sole judgement of the Board, contains matter that is libelous or that violates accepted community standards of good taste and decency.
3. All articles submitted to the competition become property of the State Bar of Georgia and, by submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events in purely coincidental and that the article has not been previously published.
4. Articles should not be more than 7,500 words in length and should be submitted in an electronic format.
5. Articles will be judged without knowledge of the identity of the author's name and State Bar ID number should be placed only on a separate cover sheet with the name of the story.
6. All submissions must be received at State Bar headquarters in proper form prior to the close of business on **Jan. 25, 2002**. Submissions received after that date and time will not be considered. Please direct all submissions to: Fiction Writing Competition, *Georgia Bar Journal*, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303. The author assumes all risks of delivery by mail.
7. Depending on the number of submissions, the Board may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the Board. Contestants will be advised of the results of the competition by letter. Honorable mentions may be announced.
8. The winning article, if any, will be published. The Board reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the Board not to be of notable quality. ☐



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GEORGIA WINS ANOTHER NATIONAL CHAMPIONSHIP



By Pete Daughtery

At the American Bar Association (ABA) meeting in Chicago, the Georgia Young Lawyers Division (YLD) won the Award of Achievement presented by the ABA Younger Lawyers Division. The Award of Achievement recognizes excellence achieved by young lawyers in implementing public service and bar service projects. The Georgia YLD edged out Texas and Virginia to win its second "comprehensive" award in five years.

The Georgia YLD also won the best service project to the public, the best service project to the bar, and won a second place award for its newsletter program. In the area of bar awards, this was like winning the National Championship and claiming the Heisman and Outland trophies all in the same year. The comprehensive award is particularly gratifying because it is a recognition of the hard work put forth by all of the committee chairs, committee members, officers and the directors, to have a successful year in all areas of service.

While the YLD is proud of all its committees, two specific projects were selected by the ABA to receive special recognition. The Comprehensive Pro Bono Project, chaired by Tracey Roberts of Arnall, Golden & Gregory, won Best Service Project to the Public.

The committee has raised more than \$100,000 for legal services in the last two years. The Membership Initiative, chaired by Jon Pope of Hasty, Pope & Ball, won for Best Service Project to the Bar. Pope's presentations to law firms about the YLD resulted in a new wave of recruits to work on YLD projects in the future. Both of those

The Georgia YLD also won the best service project to the public, the best service project to the bar, and won a second place award for its newsletter program. In the area of bar awards, this was like winning the National Championship and claiming the Heisman and Outland trophies all in the same year.

chairpersons and Elena Kaplan, who authored our application for the Award of Achievement, as well as the other committees and their chairpersons who worked so hard throughout the year,

are to be congratulated for a remarkable year. Of course, all of these accolades were received during the Bar year in which Kendall Butterworth was the YLD president and she deserves special recognition, as well, for all of her hard work.

Georgia's strength in creating innovative programs will be featured at the next ABA conference in St. Louis on Oct. 25, 2001. Young bar leaders from across the country meet at national conferences twice a year to share ideas on their successful projects and programs, and to showcase their efforts in small group workshops or panel discussions. Young bar leaders receive materials for implementing these successful projects in their home states. Roberts' campaign for Legal Services, entitled "Greedy for the Needy," will be a featured presentation in St. Louis. The spring conference is scheduled to take place in Denver on May 16, 2002.

Even if you have not been involved in the local Georgia YLD, you can start by attending one of the ABA/YLD conferences. These national conferences help introduce young lawyers to counterparts across the country, as well as provide substantive programming to assist in the law practice. Five scholarships, totaling \$200 each, are available from the ABA to help defray expenses, and the YLD also has its own scholarships, also at \$200, to help defray costs for persons attending these conferences.

The Georgia YLD Scholarship Program for ABA meetings is named in honor of Ross Adams, a Georgia YLD past president, who died earlier this year. Ross believed mightily in the goals of public and bar service shared by both the Georgia YLD and ABA/YLD, so it is particularly fitting for this scholarship program to bear his name. I know Ross would be extremely proud of the numerous awards the YLD received for its work this past year, and he would be equally proud that his name is associated with efforts to sponsor that continued success in the future. ☐

THE GEORGIA COUNCIL OF Court Administrators presented **Chief Judge Elizabeth E. Long**, Fulton County Superior Court, with an **Award of Excellence** at the 2001 Program of the Year Award ceremony. Fulton Superior Courts received Awards of Excellence for the Atlanta/Fulton County Automated Case Disposition System, Families in Transit and Assisting Children in Transition seminars, and the Family Law Information Center.

Chief Judge A.L. Thompson, Fulton County State Court, received an **Award of Excellence** from the Georgia Council of Court Administrators at the 2001 Program of the Year Award ceremony. The court received the honor for its e-Filing process,

which provides service to the public by allowing around-the-clock access to the court and providing a paperless solution to the management of thousands of records.

The **Family Law** section of the **State Bar of Georgia** selected **Judge Mary E. Staley** as its 2001 recipient of the **Joseph T. Tuggle Jr. Professionalism Award**. The Family Law Section annually confers the award to an individual who exemplifies those qualities of promoting professional conduct within the section. Staley has served as Superior Court Judge for the Cobb Judicial Circuit since 1993. She also served the Cobb County State Court as Judge from 1983-1992.

The international law firm of **Jones, Day, Reavis & Pogue** was ranked No. 1 among legal advisors by **Thomson Financial** for the first six months of 2001 for completed merger and acquisition deals with U.S. targets. In transaction data recently released by Thomson, Jones Day received credit from 125 deals with an aggregate value of \$230.7 billion.

The **Western Circuit Bar Association** presented former **District Attorney Harry Gordon** with a plaque recognizing his 28-year tenure in office. He was appointed by Gov. Jimmy Carter in 1972 and held office for seven terms.

Hon. William T. Moore Jr., U.S. District Court Judge for the Southern District of Georgia, recently received the **University of Georgia Baseball Letterman's Club Distinguished Letterman's Award**.

United Way of America recognized **Holland & Knight**, the fifth largest law firm in the United States, as one of the three **Spirit of America Summit Award** winners. Holland & Knight received this

award for the second year in a row for its continued employee campaigns, corporate contributions and commitment to the United Way's efforts to focus resources on the most important needs in communities across the country. They are the first and only law firm to receive such national recognition.

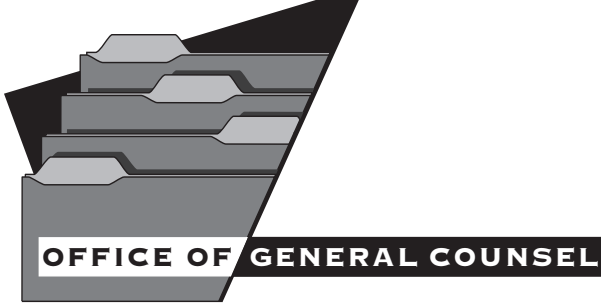
Dana C. Moore, director of Records Center Services with Powell, Goldstein, Frazer & Murphy LLP, was elected **second vice president** for the **Atlanta Chapter of Association of Records Managers and Administrators (ARMA), International**. Moore also received two awards from ARMA, including "Webmaster for 2001" and "Committee Manager of the Year."

The law firm of **Baker, Donelson, Bearman & Caldwell** announced that **Stephen E. Roth** has been named chair of the firm's commercial litigation group.

Carlton E. Joyce, a partner at **Bouhan, Williams & Levy**, was named president of Emory University's Board of Governors. Prior to his appointment as president, Joyce was the chairperson of the Alumni Relations subcommittee. Joyce is also a member of Emory's Board of Visitors. ■

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File Retention: What's the Ethical Thing to Do?

YOU'VE GOT BANKERS BOXES with closed files stacked everywhere — in the closets, the basement storage area and even in your attic at home. Wills from estates probated in the last century vie for space with divorce decrees from clients who have long since remarried. It sure would be great to get rid of some of that stuff.

What do the ethics rules say about file retention? Is it ever acceptable to throw away the file from a closed case? Do you have to track down the former client to attempt to return original documents? When you are disposing of a file, can you simply put it in your office trash can and count on the cleaning service to respect its confidentiality?

The Georgia Rules of Professional Conduct are surprisingly silent on the issue of file retention. Aside from Rule 1.15(I), which requires a lawyer to keep trust account records for a minimum of six years,¹ the ethics rules don't require lawyers to keep closed case files for any particular length of time.

The statute of limitations for a typical disciplinary grievance is four years. Since the rules also provide for a two-year tolling of the statute if the offense or offender is unknown or if the offender cannot be found, the Office of General Counsel (OGC) advises callers to the Ethics Hotline to keep closed files for a minimum of six years.²

OGC also suggests that you check with your malpractice insurer before destroying closed files, since

the concerns regarding malpractice may differ from the ethics issues. In fact, the folks at ANLIR, the Bar-endorsed insurance carrier, recommend that a lawyer keep closed files for 10 years. Barbara Evans, director of marketing at ANLIR, believes that the longer you keep a closed file the safer you are. She suggests that certain types of cases, such as real estate, wills/trusts and matters related to juveniles, tend to have a longer life and merit storing the file even more than 10 years.

So you've decided to toss those files. How do you go about it?

First, if you did not return original financial records, photographs or other items with sentimental value to the client at the time that you closed the case, you certainly should attempt to return them before you destroy the file. If you can't find the client, use your best business judgment to decide whether to keep the documents indefinitely. Either way, you won't be committing an ethics infraction if you make the decision in good faith.

Second, how do you dispose of a large volume of files in a way that ensures confidentiality? Any method of destruction which includes reasonable precautions to protect confidential and secret information is fine with the OGC. It may not be reasonable to expect a lawyer to personally feed each page of a client's file to the shredder. On the other hand, if you practice on Main Street where there is heavy pedestrian traffic, it might

not be reasonable to put a bankers box of closed files out on the sidewalk Friday for garbage pickup the following week. A lawyer may reasonably use the services of a paper management or recycling company that disposes of documents in a confidential manner.

Don't forget that the Bar's Law Practice Management Program can assist your staff in establishing file retention and destruction policies. If you have specific questions about this or other ethics topics, please call the OGC Ethics Helpline at (404) 527-8720 or (800) 334-6865. ☒

Endnotes

1. Rule 1.15(I)(a) of the Georgia Rules of Professional Conduct states in part: "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation."
2. Bar Rule 4-222(a) states: "No [disciplinary] proceeding shall be brought unless a Memorandum of Grievance has been received at State Bar of Georgia headquarters... within four years after the commission of the act. ... [T]his limitation shall be tolled during any period of time, not to exceed two years, that the offender or the offense is unknown, the offender's whereabouts are unknown, or the offender's name is removed from the roll of those authorized to practice law in this State."

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Aviation Section Honors WWII General

THIS PAST JULY, THE AVIATION Section of the State Bar of Georgia held a dinner honoring Gen. Paul Tibbets, the command pilot of the B-29 Enola Gay, which was the aircraft that dropped the first atomic bomb on Hiroshima, Japan, during World War II. Close to 200 attended the dinner, which was held at the Crowne Plaza in Atlanta and featured a United States Air Force Color Guard, as well as a reading in honor of the “missing man.” The reading was made by Mitch Twa, the outgoing Group Commander of the Atlanta Chapter of the World War II Round Table and a B-25 gunner in the China/Burma Theater during World War II.

John Webb, program director for the Aviation Section, introduced Gen. Tibbets, and Edward McCrimmon, vice-chairman of the section led the audience in prayer, honoring the

sacrifices of veterans in World War II. Mayor Lillian Webb of the City of Norcross presented Gen. Tibbets with a key to the city.



A pre-med student, Gen. Tibbets dropped out of college to join the Army Air Corps as a pilot. He began his military flying in 1938, and was flying from a base in North Carolina

to Georgia when he heard of the Japanese attack on Pearl Harbor.

Gen. Tibbets was transferred to England where he led a number of bombing raids on Europe. During one of his bombing raids, his B-17 was riddled with gunfire injuring his co-pilot and a gunner. After extensive combat flying in Europe, Gen. Tibbets returned to the United States and was put in charge of the formation of the 509th Composite Air Wing. Since the mission of the unit was top secret, the Composite Air Wing required both bombers and transport aircraft. The unit could not have its materials transported by organizations that were not “secure.” Once, when Gen. Tibbets’ wife observed him in the presence of a number of men wearing white suits, he did not tell her they were nuclear physicists. Rather, he told her they were plumbing engineers. She then persuaded



1. Gen. Paul Tibbets signs copies of his book in the company of (l to r) Aviation Section Vice-Chair Ed McCrimmon’s sister, Carol Craig, Alisha McCrimmon and Lisa McCrimmon. 2. John Webb, program coordinator for the Aviation Section, addresses attendees at the dinner honoring Gen. Tibbets. 3. Alan Armstrong (right), Aviation Section chair, and Ed McCrimmon, section vice-chair, wait to meet with Gen. Tibbets following dinner. 4. Close to 200 attended the recognition dinner at the Crowne Plaza in Atlanta.

one of the engineers to assist her in resolving an issue in her residence — a clogged drain.

Gen. Tibbets' outfit possessed the code name "Silverplate," and when that code name was used, whatever he required, in terms of aircraft or personnel, was supposed to be satisfied. One general who did not comply with his requests for transport airplanes was demoted from general to major.

Gen. Tibbets' outfit was not considered a conventional outfit. Five men under his command had convictions for murder or manslaughter. One at a time, the men were called into his office. He told them that if they did their jobs effectively after the successful completion of the

mission, he would give them the materials collected on them and a match. Following the successful bombing missions on Hiroshima and Nagasaki, Gen. Tibbets, true to his word, gave the five men the materials. As it turns out, these five men received the equivalent of an executive pardon, and the identity of these five men remains a secret to this day.

An interesting aside in relation to the dinner honoring Gen. Tibbets was the fact that a Japanese television film crew from Hiroshima filmed the presentation by Gen. Tibbets, which aired on Japanese television on August 6th. Ironically, August 6th was the date the first atomic device was dropped on Hiroshima by the Enola Gay.

At 87 years old, Gen. Tibbets can still pass a flight physical and two of his crewmen are still living. After making his remarks and receiving a standing ovation, Gen. Tibbets remained to autograph copies of his book, *The Return of the Enola Gay*. Gen. Tibbets also mentioned that the motion picture "Above and Beyond" was made honoring his exploits during the war.

The dinner honoring Gen. Tibbets was made possible by the hard work of John Webb, program coordinator for the Aviation Section, who enlisted the support of the World War II Roundtable and ensured that this program was a success. ☐

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WHO'S WHERE

In Atlanta

Dennis J. Webb, William E. Zschunke, E. Alan Miller and Marvin D. Dikeman announced the formation of their new firm **Webb, Zschunke, Miller & Dikeman, LLP**. In addition, the firm announced the addition of **Brian R. Neary**, formerly with Carlock, Copeland, Semler & Stair, LLP, to the firm. Neary has joined the firm as a partner and will focus on plaintiffs' medical malpractice, death and catastrophic injury cases. The firm is located at 15 Piedmont Center, Suite 1020, 3575 Piedmont Rd., Atlanta, GA 30305; (404) 264-1080; Fax (404) 264-4520.

Beryl Bergquist Farris of **Beryl Farris LLC Immigration Law** has moved to 1986 Montreal Rd., Atlanta, GA 30084; (678) 937-0713; Fax (678) 937-0914; e-mail Beryl@greencards.nu.

Kramer & Thomas, LLC, announced that **Sanford A. Wallack**, formerly with the Fulton County Conflict Defender, Inc., has become an associate with the firm. The firm is located at 170 Mitchell St., Atlanta, GA 30303; (404) 527-6645; Fax (404) 527-6647.

J. Michael Dendinger, Attorney at Law, P.C., announced the expansion of the firm's Dunwoody office at Independence Square effective in August. The new address is 1858 Independence Square, Suite A, Dunwoody, GA 30338; (770) 392-1130; Fax (770) 391-1970.

Merchant & Gould announced the addition of two attorneys to its office that opened in June. **Allan G. Altera**, formerly at Needle & Rosenberg, P.C., in Atlanta, was

named an officer. **Leonard J. Hope**, formerly at Christensen, O' Connor, Johnson, Kindness, PLLC, in Seattle, was named an associate. Merchant & Gould is located at the Georgia-Pacific Center, 133 Peachtree St. NE, Suite 4900, Atlanta, GA 30303; (404) 954-5056; Fax (404) 954-5099.

Duane Morris & Heckscher, LLP, announced the expansion of its Atlanta office with the addition of partner **Gregory P. Youra** to the firm's health law practice. The firm is located at Suite 2440, 945 East Paces Ferry Rd., Atlanta, GA 30326; (404) 495-4960; Fax (404) 495-4901.

Charles A. Mobley, a former Administrative Law Judge with the State Board of Worker's Compensation, has joined the Atlanta office of **Allen, Kopet & Boyd, PLLC**, as the head of its Worker's Compensation section. Allen, Kopet & Boyd is located at One Paces West, Suite 1730, 2727 Paces Ferry Rd., Atlanta, GA 30339; (770) 435-7260.

Schnader Harrison Segal & Lewis LLP announced that **Donald B. Mitchell**, formerly an associate, was elevated to partner status. He is a member of the Business Services Department and the Aviation Practice Group. The firm is located at Suite 2800, Sun Trust Plaza, 303 Peachtree St., Atlanta, GA 30308-3252; (404) 215-8132; Fax (404) 223-5164.

In Danielsville

The law firm of **Graham & Associates** announced that **Daniel J. Cahill Jr.**, former director of the paralegal studies program at Athens Technical College and a former assistant prosecutor with the Clayton

County District Attorney's Office, has joined the firm. Cahill will practice in the areas of domestic relations, criminal defense and business litigation. The firm will now operate under the name of **The Graham Law Firm, L.L.C.**, with their office remaining at 66 General Daniels Ave. South, Danielsville, GA 30633; (706) 795-2184; Fax (706) 795-5484.

In Savannah

Ellis, Painter, Ratterree & Bart LLP announced that **Edward L. Newberry Jr.** has become associated with the firm, practicing in the areas of insurance defense litigation and environmental law. The firm is located at 2 East Bryan St., 10th Floor, Savannah, GA 31401-2802; (912) 233-9700.

In Columbus

The **Law Office of Samuel W. Oates Jr.** announced that **Traci Green Courville**, formerly of Love and Willingham, joined the firm in June. The firm is located at 1043 First Ave., Columbus, GA 31901; (706) 327-8000; Fax (706) 327-8088.

In Albany

Langley & Lee, LCC, announced that **Christina L. Folsom**, formerly of Vansant, Corriere & McClure, P.C., in Albany, has become an associate in the firm. The firm's office is located at 412 West Tift Ave., Albany, GA 31701; (229) 431-3036; Fax (229) 431-2249.

In Brunswick

James B. Durham, William C. McHugh and **Beth M. Duncan**, formerly of the law firm of Fendig, McLemore, Taylor, Whitworth & Durham, P.C., announced the formation of the law firm of **Durham, McHugh & Duncan, P.C.** The firm is located at 12 St. Andrews Court, Brunswick, GA 31520; (912) 264-1800; Fax (912) 264-4480.

In Huntsville, Ala.

David L. Berdan, formerly of Kilpatrick Stockton in Atlanta, was

made a shareholder in the firm of **Lanier Ford Shaver & Payne P.C.** in Huntsville, Ala. Berdan, a registered patent attorney, practices in a variety of areas involving intellectual property. The firm's office is located at 200 West Side Square, Suite 5000, Huntsville, AL 35801; (256) 535-1100; Fax (256) 533-9322.

In West Palm Beach, Fla.

Christine D. Hanley, principal, and **Sally Still**, senior associate of **Christine D. Hanley & Associates, P.A.**, are now board certified in labor & employment law by the

Florida Bar. The firm is located at 1000 Southern Blvd., 2nd Floor, West Palm Beach, FL 33405; (561) 659-5646; Fax (561) 659-1260.

In Chattanooga, Tenn.

Husch & Eppenger, LLC, announced that **Mark Hackett** has joined the firm's Chattanooga office as a member in the Litigation Practice Group. He will also be actively involved with the Health Law Group. Husch's Chattanooga office is located at 736 Cherry St., Chattanooga, TN 37402; (423) 266-5500; Fax (423) 266-5499. ☐

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North Fulton Bar Association: Striving for Excellence

By Robert J. Hulsey

IN 1933, WHEN MILTON COUNTY merged with Fulton County to create present-day Fulton County, with its length of 71 miles, there were not enough lawyers living or working in the North Fulton area to even think about a bar association. But, by 1980, lawyers living and working in the area of Fulton County

above the Chattahoochee River saw a need for a local bar association or section to better represent their interests and those of the general public.

Driving as much as 30 miles to get to court in the county seat of Atlanta highlighted the

unique geographical perspective of the North Fulton lawyer. His or her concerns often could not be met by membership in only the State Bar or in the Atlanta Bar Association.

After a year of exploring options, including a possible North Fulton section of the Atlanta Bar Association or a possible combination with the Sandy Springs Bar Association, North Fulton lawyers banded together to instead form a bar association of their own. The

North Fulton Bar Association (NFBA) was officially chartered in April 1981.

The primary purpose of the new bar association was to give members the opportunity to meet, socialize and foster better professional relationships with fellow North Fulton lawyers. In addition, the NFBA served as a forum for lawyers to receive information regarding significant legal issues affecting the North Fulton area. The NFBA has been

meetings on the fourth Wednesday of each month from September through May, and invites speakers to present talks of interest to NFBA members. Past speakers include Gov. Roy Barnes, Secretary of State Cathy Cox, judges of the Court of Appeals, and judges of both the Superior Court and State Court of Fulton County.

One of the most popular programs of the past year was the "Homecoming," celebrating

the 20th anniversary of the NFBA, at which all charter members were invited to return as guests of the bar association to hear a roundtable discussion led by charter members and past presidents Bill Garrett and Clifford Alexander about the early

2001-2002 North Fulton Bar Association Officers and Directors

President	Cam S. Head	Director	Patrick J. Gibbs
President-Elect	Fred D. Burkey	Director	Robert J. Hulsey
Treasurer	Meg Gibson	Director	Linda C. Liss
Secretary	Nicholas J. Pieschel	Director	Janis Rosser
Past President	Robert T. Russell	Director	Kimberly A. Warden
Director	John C. Bach		

very successful in promoting its goals. In fact, this effort has been recognized by the State Bar of Georgia on several occasions. The NFBA has won the "Award of Merit" as the best voluntary bar association, including its most recent award in June 2001.

Today, approximately 100 members enjoy the benefits of 20 years of the tradition of excellence established by the NFBA in its service to members and to the community. The NFBA holds dinner

years of the NFBA.

The NFBA holds two annual social functions that have become a "must" for members and not just because a ticket to each is included in the price of membership. The June barbecue is held at a facility on the banks of the Chattahoochee River. The NFBA invites all Fulton County judges, judges of the Supreme Court and the Court of Appeals, as well as various Fulton County, Roswell and

Alpharetta officials to attend as its guests. This gathering enables members of the bench and bar to get to know one another in a relaxed, casual setting. The Holiday Party, held every December in historic Roswell, serves the same function, but also affords members the opportunity to participate in the holiday toy drive, sponsored by the North Fulton Child Development Center, by donating gifts for children in need.

The NFBA also maintains projects to benefit the community and to advance community understanding of the law. During its 20-year existence, the NFBA has maintained a close relationship with North Fulton Charities, providing legal services as requested and assisting in food drives. In 2001, the NFBA sponsored

a nine-week People's Law School in conjunction with the Senior Enriched Living program, which was taught by member volunteers. The school covered topics ranging from consumer rights, wills and estates, grandparents' rights and family law, to court and legislative systems. For Law Day, members spoke at area schools on the legal system and lawyers' roles in it. Members also volunteered to be on the indigent defense list used by the Roswell and Alpharetta municipal courts. The NFBA also provided entry fees and volunteer coaches to teams from four area high schools in the YLS State Bar Mock Trial Competition.

Members receive an annual directory that includes not only information regarding each member's

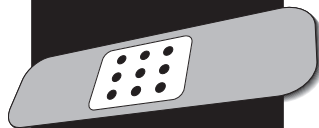
address, telephone number, fax number and e-mail address, but also three areas of practice listed by the member. This facilitates referrals among members. This information also is available on the NFBA Web site at www.northfultonbar.com, along with information on the monthly meetings. Members also receive a monthly newsletter.

The North Fulton Bar Association looks forward to continuing to grow with the North Fulton area and to continue to be of service to its members, the bench and to the public. ☐

Robert J. Hulsey is senior counsel with McCalla, Raymer, Padrick, Cobb, Nichols & Clark LLC in Roswell, and is a past president of the North Fulton Bar Association.



1. Senior Judge Elmo Holt, Fulton Superior Court, waits to begin the swearing-in ceremony for North Fulton Bar Association officers at the June 2001 barbecue. 2. Incoming President Cam Head congratulates outgoing President Bob Russell on a job well done. 3. (l to r): Boo and Wayne Elliott join Judge Dee Downs, Fulton Superior Court, her husband, Steve Andrews, and Mr. and Mrs. George Coleman, Fulton County chief of police, for fellowship during the June 2001 barbecue. 4. Paul Howard, Fulton County district attorney, is caught in line during the June 2001 barbecue.



Alcohol/Drug Abuse and Mental Health Hotline

If you are a lawyer and have a personal problem that is causing you significant concern, the Lawyer Assistance Program (LAP) can help. Please feel free to call the LAP directly at (800) 327-9631 or one of the volunteer lawyers listed below. All calls are confidential. We simply want to help you.

Area	Committee Contact	Phone
Albany	H. Stewart Brown	(912) 432-1131
Athens	Ross McConnell	(706) 359-7760
Atlanta	Melissa McMorries	(404) 522-4700
Florida	Patrick Reily	(850) 267-1192
Atlanta	Brad Marsh	(404) 888-6151
Atlanta/Decatur	Ed Furr	(404) 231-5991
Atlanta/Jonesboro	Charles Driebe	(404) 355-5488
Cornelia	Steven C. Adams	(706) 778-8600
Fayetteville	Glen Howell	(770) 460-5250
Hilton Head	Henry Troutman	(843) 785-5464
Hazelhurst	Luman Earle	(912) 375-5620
Macon	Bob Daniel	(912) 741-0072
Macon	Bob Berlin	(912) 745-7931
Norcross	Phil McCurdy	(770) 662-0760
Rome	Bob Henry	(706) 234-9442
Savannah	Tom Edenfield	(912) 234-1568
Valdosta	John Bennett	(912) 242-0314
Waycross	Judge Ben Smith	(912) 285-8040
Waynesboro	Jerry Daniel	(706) 554-5522

VOTE ONLINE

You are encouraged to vote online in the 2001-02 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 December 14, 2001, **and** you can still choose to research the candidates online. All votes must be in by 12:00 p.m., January 23, 2002, to be valid. We will have the results available January 25, 2002.

WWW.GABAR.ORG

Satellite Technology Trial Run

By Bonne D. Cella

A TRIAL RUN ON SATELLITE technology recently made it possible for South Georgia attorneys to appear before the Supreme Court without having to make the long and costly trip to Atlanta. Former Chief Justice Robert Benham had asked the State Bar office in Tifton to help coordinate the event, due in large part to Justice Benham's belief that the court "should be up to date with the technology that is available."

When two cases came up on the Supreme Court calendar that involved South Georgia attorneys, Clerk of Court Sherie Welch advised the State Bar office that it was time for the trial run. The attorneys slated to take part in the court experiment were Alvin Leaphart and John B. Johnson III, Jessup, Ben Mills, Fitzgerald, and Tom Pujadas, Ocilla.

With their cases ready to present, the attorneys met in Tifton at Abraham Baldwin Agricultural College (ABAC). The justices, seated in an Atlanta courtroom, were projected onto a screen that resembled a "Hollywood Squares" format.

Criminal justice students and teachers, guests and news media filled the meeting room at ABAC. The camera panned to Chief Justice Normal Fletcher, who welcomed the Tifton group to his courtroom. New ABAC President Mike Vollmer, who is also a member of the State Bar, welcomed the court to the college.

After the court hearings, Pujadas was interviewed by television station WALB-Channel 10 and said, "Litiga-

tion is so expensive. This process saved a lot of money for my clients. There were a few little rough spots, but this is the first time the court has heard a case via satellite."

Justice Benham's court experiment was a complete success. In fact, the Supreme Court of Georgia has the most technologically advanced courtroom of any state appeals court in the nation. Each of the seven justices has a computer monitor, hard drive and keyboard at their station.

From the bench, Justice Benham e-mailed his remarks to WALB for the 6:00 p.m. news broadcast. "The court was extremely pleased with the manner in which the session was held and the professional conduct of the lawyers in the proceedings," remarked Benham. "We have been concerned for some time about the public's trust and confidence in the legal system because of the enormous cost and delay. Hearings such as the one held through video conferencing between Atlanta and Tifton will allow us to handle legal matters quickly, inexpensively and fairly. We appreciate the cooperation of the lawyers, community and the State Bar of Georgia." ■

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



1. Criminal justice professor Tony Fitzgerald (left) and ABAC President Mike Vollmer prepare to beam up to Atlanta for the court proceedings. 2. Alvin Leaphart (left) and John B. Johnson III are ready for the virtual court encounter. 3. Tom Pujadas conducts an interview with WALB-Channel 10 news.

IN MEMORIAM

The Lawyers Foundation of Georgia Inc. 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., 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 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.

William S. Ashley Jr. Greensboro, Ga.	Admitted 1973 Died June 2001	Boisfeuillet Jones Atlanta, Ga.	Admitted 1937 Died July 2001
Benjamin H. Baldwin Dublin, Ga.	Admitted 1956 Died June 2001	H. E. Kinney Dalton, Ga.	Admitted 1947 Died October 1996
Jesse W. Bush Macon, Ga.	Admitted 1939 Died March 2001	George H. Lane Atlanta, Ga.	Admitted 1949 Died January 2001
John W. Chambers Sr. Atlanta, Ga.	Admitted 1954 Died June 2001	Charles H. Lumpkin Jr. Carrollton, Ga.	Admitted 1968 Died July 2001
Harry L. Cooper Atlanta, Ga.	Admitted 1966 Died July 2001	Virlyn B. Moore Jr. Atlanta, Ga.	Admitted 1934 Died June 2001
Mary C. Creech Savannah, Ga.	Admitted 1939 Died July 2001	Robert C. Norman Augusta, Ga.	Admitted 1941 Died July 2000
James W. Curtis Athens, Ga.	Admitted 1940 Died July 2001	J. Robert Owens Atlanta, Ga.	Admitted 1961 Died August 2001
Robert Y. Dewar Valdosta, Ga.	Admitted 1940 Died January 1995	Martin H. Peabody Atlanta, Ga.	Admitted 1947 Died June 2001
Christopher W. Duncan Martin, Ga.	Admitted 1981 Died July 2001	Rex T. Reeves Hapeville, Ga.	Admitted 1946 Died July 2001
R. U. Harden Waynesboro, Ga.	Admitted 1931 Died July 2001	Garvis L. Sams Marietta, Ga.	Admitted 1950 Died August 1999
Robert B. Ferrell Woodbury, Ga.	Admitted 1959 Died June 2001	Hugh E. Smith Jr. Atlanta, Ga.	Admitted 1974 Died July 2001
Russell A. Ford Marietta, Ga.	Admitted 1949 Died March 2001	Albert W. Stubbs Columbus, Ga.	Admitted 1936 Died 2001
Eugene H. Gadsden Savannah, Ga.	Admitted 1955 Died August 2001	H. Reginald Thompson Swainsboro, Ga.	Admitted 1940 Died June 2001
Duncan Graham Vidalia, Ga.	Admitted 1932 Died May 2000	Fred A. Tillman Santa Fe, N.M.	Admitted 1974 Died August 2001
Q. Robert Henry Rome, Ga.	Admitted 1956 Died February 2001	E. F. Tucker Decatur, Ga.	Admitted 1947 Died May 2001

Correction: Robert S. Lanier Jr. was mistakenly listed as deceased in the August 2001 Georgia Bar Journal. Robert S. Lanier, father of Robert S. Lanier Jr., is deceased. The error is deeply regretted.

daniels head insurance pickup 6/01 page 64 bw

The **Lawyers Foundation of Georgia** furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. These memorials include information about the individual's career and accomplishments, like those listed here.

Memorial Gifts are 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*.

For **information** about placing a memorial, please contact the Lawyers Foundation of Georgia at (404) 526-8617 or 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303.



Discipline Notices (June 25, 2001 - August 15, 2001)

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

William D. Hentz
Lafayette, Ga.

William D. Hentz (State Bar No. 348206) voluntarily surrendered his license to practice law in Georgia after being convicted of a federal crime. The Supreme Court accepted the petition for voluntary surrender on July 16, 2001. Hentz admitted in his petition that on April 20, 2001, he entered a guilty plea to knowingly and intentionally dispensing a narcotic drug.

SUSPENSIONS

J. Malik Abdullah Frederick
Queens Village, N.Y.

On Jan. 23, 2001, J. Malik Abdullah Frederick (State Bar No. 225110) was convicted of various federal felony offenses. By order dated July 16, 2001, the Supreme Court of Georgia accepted Frederick's petition for voluntary suspension of his license pending an appeal of his criminal conviction in federal court.

Thomas Matthew Conway
McDonough, Ga.

By order dated June 25, 2001, the Supreme Court of Georgia accepted Thomas Matthew Conway's (State Bar No. 182540) petition for voluntary suspension from the practice of law in the State of Georgia for a period of three years with conditions on reinstatement. Conway took money from his corporate employer's accounts for the purpose of supporting his drug and alcohol addiction.

PUBLIC REPRIMAND

Alexander J. Repasky
Marietta, Ga.

On June 25, 2001, the Supreme Court accepted the petition for voluntary discipline of Alexander J. Repasky (State Bar No. 601050) and ordered him to receive a public reprimand and meet certain conditions. In four separate

cases, Repasky willfully disregarded his clients' cases. In two cases he accepted a \$1,000 retainer fee. In addition to receiving the public reprimand, Repasky must immediately refund \$1,000 each to the two clients involved and submit within 90 days of the Supreme Court order to a consultation with the Law Practice Management Program.

REVIEW PANEL REPRIMAND

Christopher Mark Miller
Jasper, Ga.

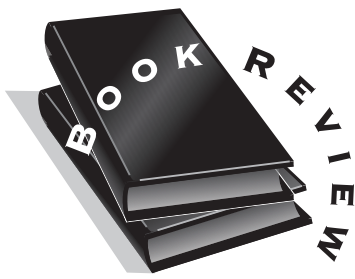
On June 25, 2001, the Supreme Court accepted the petition for voluntary discipline of Christopher Mark Miller (State Bar No. 506428) and ordered him to receive a review panel reprimand. Miller filed a Chapter 11 bankruptcy petition for his clients in order to forestall foreclosure on their farm. The U.S. Trustee filed a motion to dismiss or convert the bankruptcy case to a Chapter 7 case for failure to file financial reports and failure to propose a reorganization plan. Although Miller did file monthly financial reports for April through October 1999, he never filed the plan of reorganization. Miller withdrew from the case in January 2000, and in February the bankruptcy case was converted to Chapter 7.

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Continued from page 14

22. O.C.G.A. § 16-5-90 (1999).
23. O.C.G.A. § 16-5-23.1(d) (1999).
24. O.C.G.A. § 16-5-23.1(h) (1999).
25. O.C.G.A. § 16-5-23.10) (1999).
26. O.C.G.A. § 16-5-23.1(l) (1999).
27. O.C.G.A. § 16-5-23.1(g) (1999).
28. O.C.G.A. § 16-6-3(b) (1999).
29. O.C.G.A. § 16-6-8 (1999).
30. O.C.G.A. § 16-6-15(a) (1999). Interestingly, while the Georgia Supreme Court held Georgia's sodomy statute unconstitutional, at least as it applied to private consensual activity. (*Powell v. State*, 270 Ga. 327, 510 S.E.2d 18 (1998)), it has since upheld this statute banning the solicitation of that activity. *See Howard v. State*, 272 Ga. 242, 527 S.E.2d 194 (2000), which may lend validity to the old adage that one should be careful what one asks for.
31. O.C.G.A. § 16-6-9 (1999).
32. O.C.G.A. § 16-6-19 (1999).
33. O.C.G.A. § 16-6-18 (1999).
34. O.C.G.A. § 16-6-11 (1999).
35. O.C.G.A. § 16-6-12 (1999).
36. O.C.G.A. § 16-6-22.1 (1999).
37. O.C.G.A. § 16-7-21 (1999).
38. O.C.G.A. § 16-7-24, O.C.G.A. § 16-7-25 (1999).
39. O.C.G.A. § 16-7-27 (1999).
40. O.C.G.A. § 16-7-43 (1999).
43. O.C.G.A. § 16-9-55 (1999).
44. O.C.G.A. § 16-9-59 (1999).
45. O.C.G.A. § 16-9-20 (1999).
46. O.C.G.A. § 16-10-24, O.C.G.A. § 16-10-25 (1999).
47. O.C.G.A. § 16-11-39 (1999).
48. O.C.G.A. § 16-11-41 (1999).
49. O.C.G.A. § 16-11-36 (1999).
50. O.C.G.A. § 16-11-39.1 (1999).
51. O.C.G.A. § 16-11-126 (1999).
52. O.C.G.A. § 16-12-1 (1999).
53. O.C.G.A. § 16-12-2 (1999) (penalty limited to fine of \$10-\$100).
54. O.C.G.A. § 16-12-4 (1999) (second offense is an H&A misdemeanor).
55. O.C.G.A. § 16-12-21 (1999).
56. O.C.G.A. § 16-12-80 (1999).
57. O.C.G.A. § 16-13-2(b) (1999).
58. C.G.S.A. § 53a-36 (1999).
59. CAL. PENAL CODE, § 17 (1999).
60. CAL. PENAL CODE, § 19.8 (1999).
61. CAL. PENAL CODE, § 19.6 (1999).
62. PA. CONS. STAT. ANN. § 106 (1995).
63. WASH. REV. CODE ANN. 9A.04.040 (2000).
64. OHIO REV. CODE ANN. § 2929.21 (2001).
65. MASS. GEN. LAWS ANN. CH. 277, § (70c) (2001).
66. MO. ANNS TAT. 560. 016 (1999).
67. N.C GEN. STAT. § 15A-1340.23 (1999).

[illegible][illegible]



NET PAINS

republic.com, Cass Sunstein, Princeton, 224pp, \$19.95.

Reviewed By Peter Canfield

FOR MANY, THE INTERNET, WITH ITS interactivity and evolving ubiquity, is fertile ground for a promising new strain of more diverse and participatory democracy, its growth unretarded by any cloud of government regulation.

Not so for Cass Sunstein, the thoughtful and prolific Karl N. Llewellyn Professor of Jurisprudence at the University of Chicago Law School and author of *republic.com*.

Stressing “the founders’ belief that for a diverse people to be self-governing, it was essential to provide a range of common experiences,” Sunstein and *republic.com* warn that the Internet, by “granting individuals an unlimited power to filter,” threatens to eliminate such commonality. Personalized news – seeing, hearing and reading only what we want to —

may appeal to us as consumers, he argues, but its potential for “excessive fragmentation” should alarm us as citizens.

Common experiences benefit societies, Sunstein explains, by providing a kind of “social glue, facilitating efforts to solve shared problems, encouraging people to view one another as fellow citizens, and sometimes helping to ensure responsiveness to genuine problems and needs, even helping to identify them as such.” His example is economist Amartya Sen’s “astonishing finding” that in the

history of the world there has never been a famine in a society with a free press and democratic elections. The two ensure common knowledge and a means to act upon it, which

Citing the protester on a public street, Sunstein explains that a democracy benefits when its citizens have unwanted or unplanned exposures to a wide variety of people and views. Customized news will decrease these exposures, he says.

combine to pressure government to ensure that people generally have access to food.

Where do we get these common experiences? Over the centuries, communities have become larger and more diverse, technology has advanced and the source of common experience has evolved. In the 19th century, de Tocqueville noted, “Only a newspaper can put the same thought at the same time before a thousand readers.”¹ In the last century, this mass media has expanded to include radio, television and cable. Tomorrow, Sunstein complains, we may just have the Internet, and the Internet’s “Daily Me,” he argues, will be no substitute.

Citing the protester on a public street, Sunstein explains that a democracy benefits when its citizens have unwanted or unplanned exposures to a wide variety of people and views. Customized news will decrease these exposures, he says. He warns that other aspects of the Internet will only make matters worse. “For countless people,” he observes, “the Internet is producing a substantial decrease in unanticipated, unchosen interactions with others. Many of us telecommute rather than going to work; this is a rapidly growing trend. Rather than visiting the local bookstore, where we are likely to see a number of diverse people, many of us shop for books on Amazon.com. Others avoid the video store or the grocery because

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Kosmo.com is entirely delighted to deliver *Citizen Kane* and a pizza. Because of MP3 technology, a visit to the local music store may well seem a hopeless waste of time.”

Moreover, Sunstein warns, the kind of civic engagement that the Internet and its interactivity is likely to engender will also be counter-democratic. Noting the proliferation of sites devoted to a single subject and point of view, he observes and provides at some length a socio-mechanic explanation of why this new technology is not promoting mutual understanding but rather “dramatically increasing people’s ability to hear echoes of their own

voices and to wall themselves off from others,” breeding group polarization, extremism, and even hatred and violence. After the Oklahoma City bombing, he relates, an anonymous notice was posted to not one but dozens of Usenet news groups, listing all the materials in the bombs and exploring ways to improve such bombs in the future.

To head off these tendencies and the “tyranny of the status quo,” Sunstein offers a number of “modest and incremental” suggestions, some voluntary, some requiring government action. For example, government subsidization of “deliberative domains,” sites on the Internet “where people with different views on various specified issues (civil rights, children, gun control, etc.) can meet and exchange reasons, and have a chance to understand, at least a bit, the point of view of those who disagree with them.” Also, what he calls “must carry” rules: requirements that the most popular sites display links to “sites designed to educate people and to promote public attention to public issues” and that sites with “distinctive political views” offer links to – and even automatically connect viewers to – sites with opposing views. The effect, he explains, would be to create for Internet users the equivalent of “sidewalks” in cyberspace. “Attempting to have access to the Web site of *Time* magazine,” for example, “they might find themselves opening a page to Citizens for Control of

Nuclear Power as well. This is indeed an intrusion.” But, he asks, “is it much different from daily life on a street or in a park?”

What of Sunstein’s warnings? Absent substantial new restrictions, will the Internet harm democracy and create new electronic, and even real, Beirut? The historical track record for predictions of this sort is not good. According to *Bowling Alone*, a more empirically based book on the collapse and revival of American community: “For those of us who wish to anticipate the impact of the Internet on social relations, the astounding series of poor predictions

about the social consequences of the telephone is a deeply cautionary tale.”² For example, the telephone industry for years saw no value in and even discouraged use of the telephone for “socializing.” Doctors worried that it would increase the number of unnecessary house calls.

Similarly, of television in its infancy, poet T.S. Eliot observed that, “It is a medium of entertainment which permits millions of people to listen to the same joke at the same time, and yet remain lonesome.”³ But, Sunstein seems to concede that for all its warts, television today is a very powerful positive source of common experience.

And with respect to the Internet, which already affords easy access to virtually every point of view imaginable, Sunstein’s predictions seem particularly suspect. Sunstein’s Internet critics decry his concerns as overblown. They

point, for instance, to empirical evidence – an extensive survey of American public opinion released this spring by the University of Chicago’s National Opinion Research Center – finding that those who use the Internet are more tolerant of diverse viewpoints than those who do not.⁴ And they call his suggestions unnecessary, unconstitutional and sometimes just silly. With respect to “must carry,” for example: “The proposal doesn’t increase the variety of views to which we have access; it doesn’t increase the number of speakers who can reach us. It just imposes a customer service obligation on every Web site owner,” like requiring Amazon.com to provide a link along the lines of:



“Open-Minded Intellectuals Who Agree With Cass Sunstein Might Be Turned Around By These Authors” or permitting links to Web sites featuring controversial opinions only after a government window opens warning, “The views expressed on the requested website are potentially seditious or at least unsettling and may be hazardous to the health of the republic unless weighed against the more mainstream and acceptable attitudes and opinions held by most Americans, which may be found at”⁵


Remarkably, *republic.com* makes clear that Sunstein might well concede the validity of many of these criticisms. Would he be surprised, in other words, if his fears are not realized? No, the book is full of disclaimers that the harms may never happen. Would he be offended by doubts as to the need for or workability of his proposed “fixes?” Again, no, the book is also full of disclaimers that they may well be. But would he be offended by claims that his proposals violate the First Amendment? Absolutely.

What Sunstein has characterized elsewhere as a New Deal for the First Amendment is what this book is really about. Indeed, at times, the book’s near-demonization of the Internet seems constructed not so much to illuminate real problems as to create a stage to try out his new First Amendment theory. What is a shame is that he devotes so little time – and the book is at its least convincing – in explaining the theory’s basis.

The prevailing conception of the First Amendment – one that First Amendment attorney Floyd Abrams has called “so much a part of American popular culture that it sounds more fit for the *Jeopardy* board than a Supreme Court opinion”⁶ – is Justice Oliver Wendell Holmes’ observation that freedom of speech means the free trade of ideas, including freedom for the speech we hate. But Sunstein rejects this ‘hands off’ view of the First Amendment, which he denigrates as viewing self-government as an exercise in “consumer” sovereignty. He favors instead

one that he attributes to Justice Louis Brandeis in which government has an affirmative obligation to manipulate the means of communication so as to ensure that as “citizens” we each are exposed to a diversity of viewpoints. In the words of columnist George Will, Sunstein “does not read the amendment as a ‘shall not’ stipulation that proscribes government interference with individual rights. Rather, he reads it as a mandate for active government management of the public’s ‘attention.’”⁷

What *republic.com* is missing is any compelling logic for this approach. Nowhere is there any meaningful discussion of the inevitable: that government will skew public discussion in its favor. As Abrams has noted, “It is at the very heart of the First Amendment to deny government the authority to pick and choose among speakers and messages, determining that some may and others may not be heard – and how often.”⁸

As a “citizen” in the Sunstein sense, I applaud his attention to these issues. As a “consumer,” I’m just not buying. 

Peter C. Canfield is a partner in the Atlanta office of Dow, Lohnes & Albertson, specializing in media law and litigation. He graduated in 1976, with honors, from Amherst College, where he was an editor of the student newspaper. He received his J.D. from Yale Law School in 1979, where he was an editor of the Yale Law Journal. Canfield clerked for United States Court of Appeals Judge Frank M. Johnson, Jr. (Eleventh Circuit) and United States District Judge Myron Thompson (M.D. Ala.) and served as an attorney with the Civil Rights Division of the United States Department of Justice. He is a founding director of the Georgia First Amendment Foundation.

Endnotes

1. Alexis de Tocqueville, *Democracy in America*, ed. J.P. Mayer, trans. George Lawrence (Doubleday, 1969), 517-518.
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