

The background of the entire cover is a vibrant, solid orange. In the lower half, there are dark silhouettes of a man and a child. The man is on the left, standing and looking down towards the child. The child is on the right, standing and reaching up to hold the man's hand. The silhouettes are dark and feature some internal highlights, suggesting a light source from the right.

GEORGIA BAR Journal

DECEMBER 2001 • VOL. 7 NO. 3

**CHILD ENDANGERMENT:
New Challenges for the
Georgia General Assembly**

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GEORGIA BAR Journal

DECEMBER 2001 • VOL. 7 NO. 3

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INDEPENDENT JUDICIARY MAKES SYSTEM WORK



By James B. Franklin

With 2002 being an election year in which many judicial posts will be filled by the voters, I would like to address a serious issue for Georgia lawyers, and in fact lawyers across the country. The issue is judicial independence, and the critical importance a truly independent judiciary plays in our system of government.

Today, we see an unprecedented attack on our nation's judiciary and our justice system. Politicians and ideologues are trying to bully our courts into doing what they regard as politically correct, peddling the empty promise that problems faced by our society, or merely perceived problems, can be solved by limiting legal representation, limiting access to the justice system or pressuring the judiciary with the clout generated by huge campaign contributions.

The founders of our nation designed a constitutional republic based on a system of checks and balances, a form of government that is now model for the world, especially for those new democracies that have emerged in recent years. They recognize the genius behind the system of checks and balances of our system. The division of the three different functions of making, enforcing and

interpreting laws among the three different branches of government is the key component of our unique and successful system of self-government.

A fundamental part of this system, one that foreign leaders recognize as an absolute masterstroke of government design, is the existence of an independent judiciary. You can't have checks and balances without an independent judiciary. You must have judges who are above the day-to-day whims of politics and election-focused politicians to protect every citizen's individual liberties. Indeed, our progress as a society has been largely forged by a judiciary free from partisan politics.

A reading of the constitution of the Union of Soviet Socialist Republics (USSR) would leave the impression that the citizens of the USSR were constitutionally guaranteed social, economic, political and personal rights and freedoms beyond anything set forth in our constitution. Each of these rights and freedoms are set forth in the USSR document in great detail in contrast to the more general affirmation of basic freedoms as set forth in our constitution. However, we all know the real facts in that there was a tremendous gap between the actual rights and freedoms enjoyed by the citizens of the USSR and those of the USA. What was the difference — the absence of an independent judiciary under the Soviet system and the absence of a judicial branch of government with the strength and power to enforce the rights and freedoms set forth on paper?

A significant sub-part of the overall problem and one which threatens public trust and confidence in our justice system is the large sums

of money being raised and spent in judicial elections. This situation involving millions of dollars to fund judicial campaigns around the country raises serious concerns about the appearance of fairness and impartiality of judges who are forced to accept these contributions to finance campaigns for judicial office. Our justice system has only its credibility for its legitimacy; once lost, it will be difficult if not impossible to regain.

Our history is marked with examples of how the courts, working independently and free from political intrusion and oversight, have given direction to our nation in times of need. Imagine living in a country where the judge deciding your case felt obligated to call his or her local political leader before passing judgment. Would you want your judge to be told by some politician how to decide your case?

It is imperative that we, as lawyers, are trained to understand and appreciate our constitutionally balanced system, stand at the vanguard, alert and ready to articulate the necessity of fighting for an independent judiciary. We cannot allow the detractors and naysayers to undermine the delicate balance among the branches of government.

The challenge that society as a whole and we, as lawyers, face is a balancing test between preventing political demagoguery from undermining the genius of our constitutionally balanced system and at the same time protecting the first amendment and other constitutionally guaranteed rights of our citizens in the selection and retention systems for our judges.

While I do not profess to have the answers to all the issues that are raised, it is clear that the members of the legal profession must take the lead in the preservation of an independent judiciary for the protection of all our citizens from self-serving politicians, big government or from each other. ■

COMMUNICATION AND SERVICE ARE KEY

By Cliff Brashier



With this *Georgia Bar Journal*, we put to rest the final issue of the year and look toward January, the month that draws us one more year into our new millennium. I have written this column for many years now, and each issue that draws the close of another year offers an appropriate opportunity to reflect on the past year and look toward a new one.

Under the capable leadership of Immediate Past-President George Mundy and current President Jimmy Franklin, the Bar's notable activities this year include: planning successful mid-year and annual meetings; implementing the new pilot program for the unauthorized practice of law; the first-ever online Bar elections; restructuring the Bar's Board of Governors to more accurately reflect membership; finalizing arrangements for our new Bar Center, which we hope to call home in spring 2002 (see related articles on pages 24-29); and continuing what we believe are outstanding programs and services for our members, such as the Lawyers Assistance Committee and the Law Practice Management Program.

For the new year, the Board of Governors and staff will focus on building upon and expanding

services that will assist members in their practices, and develop new and exciting ways of communicating more efficiently and effectively with members. To this end, the Membership Services Committee, chaired by Ken Shigley, and the Communications Committee, chaired by Bill Cannon, are constantly looking for new and creative services to benefit you.

For the new year, the Board of Governors and staff will focus on building upon and expanding services that will assist members in their practices...

Currently, the Membership Services Committee and bar counsel are negotiating contracts for new member services that include discounts at Joseph A. Banks clothier, Paychex, Emory Vision Correction Center, the Surety Group/Sam Newbury and United Parcel Service. The Committee is also exploring other member plans of interest and looks for your input on programs you think would be of value.

The Communications Committee is researching the logistics associated with considerable advancement to the Bar's Web site. These new services are being planned to include a job bank, e-mail list distribution

(list serves), expansive links, more interactive services, more elaborate section pages and a completely new Web look. In addition, the consumer pamphlet series and the *Georgia Bar Journal* will undergo complete make-overs in the new year to offer a fresh look and improved content.

Of course, these committees, as well as myself and all Bar staff, look to our members for additional ideas that will help in your practice. In fact, we count on you for suggestions. I am always available if you have ideas or information to share; please call me. My telephone numbers are (800) 334-6865 (toll free), (404) 527-8755 (direct dial), (404) 527-8717 (fax) and (770) 988-8080 (home). ☐

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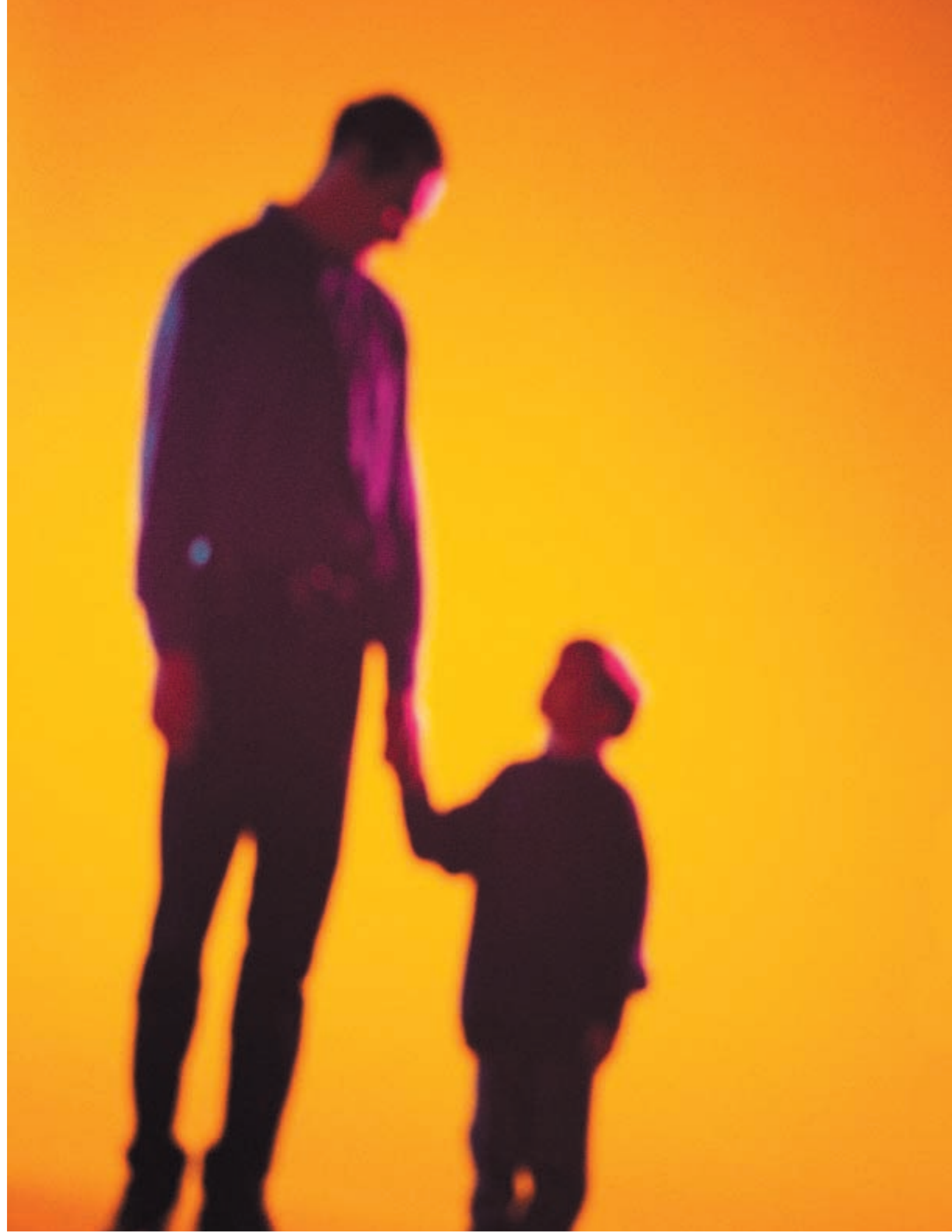
Survey of Child Endangerment Statutes

By Mary Margaret Oliver and Willie Levi Crossley

Georgia is the only state in the country with no specific criminal child endangerment statute and presently before the 2002 Georgia General Assembly is House Bill 453, drafted to create such an offense.¹ This article analyzes the issues surrounding the possible enactment of this proposed legislation.

For purposes of this review, a child endangerment statute shall be defined as a law creating a criminal offense, either misdemeanor or felony, which sets a

standard of criminal negligence and criminal liability, for conduct or omission of conduct towards a child that creates a substantial risk of harm to the child. The statutory definition of criminal negligence towards a child specifies or implies a legal duty that has been breached by a person who has custody and control over the child placed at risk. How the Georgia General Assembly defines the legal duty, the risk of danger a child faces, the mens rea required to create criminal liability and whether there shall be statutory



exemptions for specific kinds of conduct, are questions the courts will review carefully.

Child Endangerment Statutes in Other States

For the purpose of describing and categorizing statutes, the definition of a child endangerment statute as set forth above is stated broadly, and different states have obviously formulated different approaches to creating criminal liability for endangering a child. Some states have enacted statutes using language that specifically criminalizes endangering a child, generally defining endangerment as recklessly or with criminal negligence subjecting a child to a substantial risk of harm.² Other states have enacted criminal child abuse statutes that generally define child abuse broadly to include endangerment.³ Some states have enacted wholly separate statutes

for endangerment and for abuse,⁴ while others have used different provisions of a single statute to create separate offenses for endangerment and abuse.⁵ And still others have enacted only one provision permitting a charge of either endangerment or abuse in the alternative.⁶

Most states, specifically, include omission or failure of a duty to protect children among the lists of prohibited behavior.⁷ States use “omission statutes” to punish not only the perpetrators of abuse, but also any person who fails to fulfill his or her duty to protect a child from abuse.⁸ Under most statutes, those subject to punishment for omission are limited to parents, guardians or other persons having care, custody or control of a child. By criminalizing omissions, these statutes have the effect of creating affirmative duties for parents to protect their children from acts of abuse and neglect, as well as from risks of harm.⁹



Georgia's Current Criminal Law

Georgia is the only state that has not enacted a child endangerment statute that can fairly be defined in any of the foregoing categories.¹⁰ Georgia has enacted statutes that have been used to prosecute conduct relating to criminal acts against children, and part of the public policy discussion is whether there is a need for an additional criminal statute that defines specifically child endangerment.

Reckless conduct (O.C.G.A. § 16-5-60(b)), involuntary manslaughter (O.C.G.A. § 16-5-3(a)), contributing to the deprivation of a minor (O.C.G.A. § 16-12-1(b)(3)) and cruelty to children (O.C.G.A. § 16-5-70(b)) are frequently cited as providing sufficient statutory basis for prosecuting individuals who harm children. Proponents of a specific child endangerment statute argue first that current laws do not create liability for criminal negligence specifically directed

towards a child. Second, the proponents argue that the current Georgia statutes require proof of malice, an evidentiary standard that is difficult to meet in cases relating to breach of a custodial duty. Finally, in relation to O.C.G.A. § 16-12-1(b)(3), contributing to the deprivation of a minor, proponents argue that the only individuals who may be charged are the parent or guardian, and not others who have custody and control of a child.

In addition to arguing that statutes already exist to protect children, opponents of a specific criminal child endangerment statute also argue that the state cannot define criminal negligence to children without criminalizing accidents. It is politically difficult to vote to punish a law-abiding parent who has lost or injured a child, and this political difficulty mirrors the constitutional difficulty of arguments of arbitrary enforcement and vagueness.

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Proponents of the need for a criminal child endangerment statute cite *Hall v. State*¹¹ as one example of the weakness of Georgia's reckless conduct statute for the prosecution of conduct of an adult who harms a child. O.C.G.A. § 16-5-60(b) provides:

A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.

In *Hall*, a defendant mother charged with reckless conduct moved to quash the misdemeanor accusation, arguing the reckless conduct statute failed to provide her with fair notice that it prohibited the defendant's specific conduct of leaving young children in the supervision of another child, and that the statute therefore violated the due process clauses of the Georgia and United States Constitutions. The Georgia Supreme Court agreed in a

Rosalind Hall, the mother in the *Hall* case, left her three children, ages five, three and one years old, for approximately four hours in the care of an 11-year-old sibling who did not regularly live with the mother. While the mother was absent, the three-year-old child died of a severe head injury.

four to three decision, finding:

the Reckless Conduct Statute, O.C.G.A. section 16-5-60, as applied in this case, both (1) failed to provide persons of ordinary intelligence with the notion that it purports to prohibit leaving children in the care of an

older sibling; and (2) is vaguely worded so as to encourage arbitrary and selective enforcement by police, prosecutors, and juries, acting on an ad-hoc basis.¹²

Rosalind Hall, the mother in the *Hall* case, left her three children, ages five, three and one years old, for approximately four hours in the care of an 11-year-old sibling who did not regularly live with the mother. While the mother was absent, the three-year-old child died of a severe head injury.¹³

On appeal, the state argued that the reckless conduct statute set forth the necessary notice of prohibition against the mother's conduct based on the standard of "conscious disregard." The Court rejected this argument because the statute did not give fair notice to the mother that she could be held criminally responsible for leaving her children in the care of an almost 12-year-old child.¹⁴ Moreover, the Court held that the statute failed to provide explicit standards for those who would apply it, and therefore it was susceptible to arbitrary and selective enforcement.¹⁵

To highlight the Georgia Supreme Court's reliance on the arbitrary and selective enforcement principle, the Court states that prosecution was based on the fact that the child died and not the conduct of leaving a child unsupervised. In fact, the state would

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Recent Developments in Georgia Product Liability

By R. Hutton Brown and Laura M. Shamp

A lawnmower threw out a sharp rock that hit a child in the face, costing him his vision in the right eye. The family has come to you for advice. You learn that the lawnmower did not have a guard to prevent such objects from being expelled. You initially think that you have a strong product liability case, but since it has been a while since you handled such a case, you recognize that you need to research whether Georgia law would support such a claim. If you researched Georgia law chronologically, you would initially be skeptical about the advisability of taking the case. In 1971, in *Stovall v. Tate*¹ the Georgia Court of Appeals held that a lawnmower without such a guard was not defective as a matter of law, because

the mower worked as it was intended (i.e., it cut grass) and because the danger of the mower without the guard was open and obvious.² The law, however, has changed significantly since *Stovall*.

During the last few years, Georgia product liability law has shifted toward allowing most cases to be decided by a jury. In 1994, the Georgia Supreme Court adopted a risk-utility balancing test for determining whether a product is defective.³ In 1998, it eliminated the notorious open and obvious danger defense.⁴ In 1999, it minimized the role of summary judgment.⁵ Finally, in 2001, it clarified the rule that holds evidence of another incident of a product defect is not admissible unless there is a showing of substantial similarity.⁶



This article briefly summarizes the recent developments in Georgia product liability law. First, it provides a brief introduction to product liability law and the chaotic foundation from which the recent decisions arose. Next, it examines the landmark adoption of the risk-utility balancing test for determining defective product design. The article then discusses several subsequent refinements to product liability law. Finally, it suggests that there is still room for additional development in the law, as the courts continue to decide new cases under the re-worked framework of product liability law.

Product Liability: A Primer

Georgia product liability law provides a tort remedy to individuals who are injured by a defective product. “Defective” is a term of great importance,

because liability does not attach until the product meets the legal test of “defective” — indeed, much of the case law in the last 25 years has been about the seemingly simple question of when a product is legally defective.⁷ Although additional remedies may arise under different legal principles, such as warranty laws⁸ and consumer protection statutes,⁹ the primary remedy by which an injured person in Georgia recovers from the manufacturer of a product that produced the injury is provided by product liability law.

Because product liability cases place an emphasis on extensive discovery from the manufacturer defendant and involve significant use of expert testimony, they tend to be difficult and expensive both to pursue and to defend. Thus, it is important for the practitioner to appreciate the recent developments in this area of the law. Failure to do so could easily result in



either pursuit of a case that is imperiled legally, or in improper development of the evidence necessary to meet these new legal standards.

Common Law Hodgepodge of Rules

Product liability law in Georgia is a distinct area of tort law, which has developed, however haphazardly, through application of basic tort principles such as the duty of reasonable care. In 1968, the Georgia legislature enacted a product liability statute that provided a remedy for products that were “not merchantable and reasonably suited to the use intended.”

¹⁰ In 1975, the Georgia Supreme Court, in *Center Chemical Co. v. Parzini*,¹¹ declared that manufacturers will be held strictly liable for “defective” products. Significantly, the Court explicitly left open any functional definition of what constituted a “defective” product, stating that the definition would have to be worked out on a case-by-case basis. For example, in the *Stovall* lawnmower case, the court dismissed the action after finding that the danger of a mower expelling objects was open and obvious, applying a concept imported from the case law of New York.¹²

From this activity arose a general recognition of what have become known as the three traditional theories of product liability — negligence, strict liability and breach of warranty. Of these, the Georgia courts have been most active in developing the negligence and strict liability line of cases.¹³ Negligence actions require the plaintiff to prove a breach of a duty owed by a manufacturer to a consumer, which invokes all of the traditional negligence principles such as foreseeability of the injury, and requires proof of duty, breach, causation and damages.¹⁴ A

product-based strict liability case, on the other hand, focuses solely on whether the product is defective; the conduct of the manufacturer is theoretically irrelevant.¹⁵

Although a plaintiff must therefore prove that the product is “defective” under both negligence and strict liability theories of liability, Georgia courts struggled with providing a definition or test for “defect” since the adoption of the statute in 1968.¹⁶ The courts also struggled to maintain the distinction between the two theories, occasionally saying that

only semantics separated the two theories while elsewhere actually treating the two theories as distinct.¹⁷ As a result, a hodgepodge of rules developed without any coherent framework, and practitioners were left with little guidance as to how to go about proving a manufacturer’s liability.

“Defect” Defined

In 1994, the Georgia Supreme Court began to turn chaos into order when it adopted the “risk-utility balancing test” for determining design defect cases in *Banks v. ICI Americas, Inc.*¹⁸ In *Banks*, nine-year-old Marlo Strum died after ingesting rat poison that he found in an unmarked, unlabeled container he apparently mistook for candy.¹⁹ Unfortunately, the poison’s manufacturer, ICI Americas Inc., designed the product without many of the safety features then available to avoid just this sort of tragedy. For example, they could have added an aversive agent to make the poison unpalatable to humans and domestic animals, but not to rats, or added an emetic agent which would have caused a human to vomit and expel the poison immediately after swallowing it.²⁰

In a significant departure from generally accepted product liability law, the Georgia Court of Appeals held that although a jury could conclude that the poison’s design “created a latent danger” to humans, and that this danger was reasonably foreseeable to ICI, such findings would not support a “design defect” claim because the poison “functioned as intended” or, in other words, it killed rats.²¹ Thus, even though the court acknowledged that a safer alternative design was feasible and the danger of the

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poison was latent, it nevertheless held that the product was not defective and, therefore, the plaintiffs could only recover if the product's warnings of the latent or hidden danger were insufficient.²²

The Georgia Supreme Court granted certiorari and used the case as a vehicle to bring clarity to an area of law that it acknowledged it had overlooked.²³ In reversing the Court of Appeals' ruling that the rat poison was not defective as a matter of law, the Georgia Supreme Court adopted the "risk-utility balancing test" for "design defect" claims.²⁴ This test, which had been in use in a number of other jurisdictions, requires the manufacturer to balance the risks inherent in a product design against the utility or benefit derived from the product.²⁵ The Court also identified several of the factors that should be considered in a risk-utility balancing, including:

- (1) the usefulness of the product;
- (2) the gravity and severity of the danger posed by the design;
- (3) the likelihood of that danger;
- (4) the avoidability of danger (i.e., the user's knowledge of the product), the publicity surrounding the danger or the efficacy of the warnings accompanying the product, common knowledge of the product's danger and the expectation of danger;
- (5) the user's ability to avoid danger;
- (6) the state of the art at the time the product is manufactured;
- (7) the ability of the manufacturer to eliminate the danger without impairing the usefulness of the product or making it too expensive, in other words a feasible alternative design; and



(8) the feasibility of spreading the loss in the setting of the product's price or by purchasing insurance.²⁶

In particular, during its analysis of the risk-utility test, the Court emphasized the significance of the availability of an alternative safer design, noting that the:

alternative safer design factor reflects the reality that it often is not possible to determine whether a safer design

would have averted a particular injury without considering whether an alternative design was feasible. The essential inquiry, therefore, is whether the design chosen was a reasonable one from among the feasible choices of which the manufacturer was aware or should have been aware.²⁷

In adopting the risk-utility test, the Court effectively abandoned any meaningful distinction between negligence and strict liability claims by providing one test for determining a design defect. Having done this, however, the Court stated that it was not wholly abandoning all distinctions between the two distinct theories of negligence and strict liability.²⁸ Since there is only one test for defect, it is difficult to see how this distinction will make any real difference in the way cases are tried. Moreover, the Supreme Court recently stated that "the heart of a design defect case is the reasonableness of selecting from among alternative product designs and adopting the safest feasible one" so that "there is no significant distinction between negligence and strict liability for purposes of the risk-utility analysis."²⁹

Thus, in the lawnmower example, a plaintiff would need to prove that the lawnmower without a guard was defective because, under a balancing of the various factors, it was more reasonable to select a design where the mower had a guard. The plaintiff could put on evidence about the feasibility of installing a guard over the chute, such as expert testimony about how such a guard could be installed, evidence showing that other lawnmower manufacturers had such a guard, and evidence showing that it would be

inexpensive to install such a guard. By contrast, the defendant could put in evidence that the danger was commonly known and thus avoidable. Under *Banks*, it appears that a lawnmower without a guard could be considered defective and, in fact, it is probable that manufacturers now put such guards on lawnmowers in part because of the exposure to civil liability created by not doing so.

“Open and Obvious Danger” Defense Eliminated

When the Supreme Court held in *Banks* that common knowledge of the danger was one factor in the balancing test, it cast serious doubt on the viability of the common law defense known as the open and obvious danger rule. That rule provided that when the danger from a product

... a plaintiff would need to prove that the lawnmower without a guard was defective because, under a balancing of the various factors, it was more reasonable to select a design where the mower had a guard.

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was obvious, even when the danger could have been readily eliminated, the product was not defective as a matter of law.³⁰ After the Court in *Banks* listed obviousness of danger as one of the factors to be balanced, it seemed inconsistent to retain a rule where that one factor — the danger's obviousness — could be outcome determinative.

It was not until 1998, however, that the Georgia Supreme Court addressed the issue again, but when it did so, it did so un-

equivocally. In *Ogletree v. Navistar Int'l Transp. Corp.*,³¹ a fertilizer truck that did not have an audible back-up alarm backed over a man, killing him. The Court of Appeals held that the danger of the truck backing up was open and obvious, and therefore the product was not defective.³² In rejecting the open and obvious

danger rule as an absolute defense, the Supreme Court in *Ogletree* resoundingly confirmed its ruling in *Banks* that the patency of a particular defect is but one of many factors to be considered in determining the reasonableness of design decisions.³³ Thus, the open and obvious danger rule can no longer be considered to be the absolute defense to liability that it once was, but merely one of many factors weighed in a risk-utility balancing.

The lawnmower case is an appropriate example of how the *Banks* rule changes the result in specific cases. As noted, before *Banks*, the Court of Appeals had ruled that a lawnmower was not defective if it

had no guard because the court found that the danger of objects being expelled was obvious.³⁴ After *Banks* and *Ogletree*, the obviousness would not be decisive.

Summary Judgment Narrowed

Just as it did with the open and obvious danger defense, the Georgia Supreme Court has significantly narrowed the availability of summary judgment in products liability cases. Before *Banks*, manufacturer defendants were occasionally able to prevail at the summary judgment stage under a number of different theories.³⁵ After *Banks*, the bar was left with uncertainty as to whether the appellate courts would continue to sanction summary judgment in a significant number of product liability cases.

In a repeat visit by the *Ogletree* case³⁶ (a case resulting in eight appellate decisions), the Court of Appeals again ordered the dismissal of the plaintiff's case on the ground that the absence of a backup alarm was not a defect under Georgia law.³⁷ The Court of Appeals rather painstakingly analyzed the record in the case to determine what evidence supported or failed to support the plaintiff's assertion that the fertilizer truck was defective. Although the court noted evidence which supported plaintiff's claim in its analysis, such as the technical feasibility of installing the alarm, it concluded that the weight of the evidence sufficiently supported the defendant's argument that the product was not defective so that summary judgment was appropriate.³⁸

The Georgia Supreme Court again accepted certiorari and again reversed the Court of Appeals' opinion. The Court held that summary judgment should only be granted in those rare cases in which the plaintiff fails to produce any evidence to support his claims under the risk utility test.³⁹ The Court specifically stated that summary adjudication "will rarely be granted in design defect cases when any of

Thus, the open and obvious danger rule can no longer be considered to be the absolute defense to liability that it once was, but merely one of many factors weighed in a risk-utility balancing.

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(the risk-utility) elements is disputed” and that “the adoption of the risk-utility analysis in this state has actually increased the burden of a defendant, in seeking a judgment as a matter of law, to show plainly and indisputably an absence of any evidence that a product as designed is defective.”⁴⁰

Therefore, as a practical matter, it will be the rare product liability case that is dismissed prior to trial. Theoretically, under the language of *Ogletree*, if a plaintiff puts forward any evidence showing that any one of the risk utility factors points to a defect, then the case should survive a summary judgment motion. In the lawnmower example, if all a plaintiff showed was that other manufacturers installed a guard over the chute thus proving its feasibility, then that would be sufficient to avoid summary judgment. It is still too early to tell whether plaintiffs’ paths will be this easy. Courts historically have shown a great reluctance to allow product suits where the plaintiff has acted grossly negligently to bring about his predicament or when the asserted claim is simply counterintuitive. Only time will reveal whether difficult cases will induce courts to lapse back into creating doctrines that prevent cases from going to trial or whether, in fact, the doors will generally be open to plaintiffs bringing product liability suits who have some evidence to support their claim. It does seem apparent, however, that the Georgia Supreme Court in *Banks* and *Ogletree* demonstrated a clear preference for product liability cases to be decided by juries rather than judges.

“Other Incidents” Revisited

Georgia courts have long held that other instances of a product’s alleged defect are admissible to show notice, defect, negligence and the need for punitive damages, when there is a showing that the other instances are “substantially similar.”⁴¹ Two recent cases clarified the nature of the evidence

required to show that the other incident is “substantially similar” enough to be admissible in a product defect action in Georgia.

In *Ray v. Ford Motor Co.*,⁴² the Georgia Court of Appeals held that a Ford database containing other instances which had been reported to Ford of automatic



transmission vehicles rolling after the keys had been removed, the same circumstance that had caused plaintiff’s injury in that case, were not admissible without introduction of the underlying source documents for the database. Similarly, in February of 2001, the Supreme Court held in *Cooper Tire and Rubber Co. v. Crosby*,⁴³ that tire adjustment data (i.e., data maintained by the tire manufacturer regarding tires returned due to alleged defects) was not admissible without an

“independent showing of substantial similarity” between the data sought to be introduced and the purported tire defect that allegedly caused the plaintiff’s death.⁴⁴ Although neither *Cooper Tire* nor *Ray* changed the law regarding the admissibility of other similar incidents in Georgia, they did raise questions concerning the “quality” of evidence Georgia courts expect to be presented before ruling that other incidents are substantially similar and, thus, admissible.

Typically, evidence of other incidents of a product failure is in the hands of the manufacturer. *Cooper Tire* requires that the product at issue and the product in the other incident sought to be introduced “share a common defect” and that the defects “share the same cause” in order to establish substantial similarity. Yet to the extent that a manufacturer denies that its product is defective, it is unlikely that the evidence it supplies through discovery will directly show the connections required by *Cooper Tire*. In other words, a manufacturer’s documents are unlikely to state “customer injured because no guard.” Given that the actual products are likely to be unavailable, it appears that *Cooper Tire* will require plaintiffs to go outside a defendant’s documents to additional evidence to show another incident is substantially similar.

It was clear that the adjustment data kept by the tire manufacturer would not by itself satisfy these criteria. Therefore, the Court held that plaintiff had not shown that the incidents were substantially similar. Similarly, in *Ray*, the Court held that Ford's database information was not admissible without verification of the underlying data: "In the absence of underlying source documents or any other verification of the database, the trial judge lacked sufficient information to determine whether the incidents were substantially similar to Ray's accident."⁵⁰

The 1998 Court of Appeals case of *Barger v. Garden Way, Inc.*,⁵¹ is consistent with *Cooper Tire* and *Ray*. In *Barger*, the Court allowed evidence of another incident of product failure through the videotaped deposition of a person who had been injured by the same product on a previous occasion.⁵²

Thus, in the lawnmower example, although other instances of injury from the lawnmower likely will be admissible, it appears that the courts will require a close connection between the evidence submitted and the actual incident. A printout merely showing 400 instances of people being injured while using a lawnmower manufactured by defendant, without more, likely would not be admitted, while the testimony of 10 people who were actually injured from objects expelled from a lawnmower of the make and model as had injured plaintiff likely would be allowed.

Conclusion

For the practitioner representing the boy injured by a lawnmower, the recent transformation in Georgia product liability law means the difference between a case that would have been dismissed by a court and one that would likely have been successfully decided by a jury. Beginning with *Banks*, the Supreme Court took over the reins of product liability law from the Court of Appeals by consistently issuing rulings that demonstrate a clear preference for having juries, not judges, decide cases. In so doing, it has assisted all practitioners by providing a coherent framework to follow in preparing and trying a product liability case. Although there will always be continuing issues which will flesh out existing principles in the law, it seems apparent that the general conceptual framework has been clearly laid out by the Georgia Supreme Court. New decisions are likely to be consistent with this general trend toward juries deciding the vast majority of product liability cases. ■



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Endnotes

- 124 Ga. App. 605, 184 S.E.2d 834 (1971).
- Id.* at 614, 184 S.E.2d at 838.
- Banks v. ICI Americas, Inc.*, 264 Ga. 732, 450 S.E.2d 671 (1994).
- Ogletree v. Navistar Intl. Transp. Corp.*, 269 Ga. 443, 500 S.E.2d 570 (1998).
- Ogletree v. Navistar Intl. Transp. Corp.* 271 Ga. 644, 646, 522 S.E.2d 467 (1999).
- Cooper Tire & Rubber Co. v. Crosby*, 273 Ga. 454, 543 S.E.2d 21 (2001).
- See, e.g., Mann v. Coast Catamaran Corp.*, 254 Ga. 201, 326 S.E.2d 436 (1985); *Honda Motor Co. v. Kimbrell*, 189 Ga. App. 414, 376 S.E.2d 379 (1988).
- See, e.g., O.C.G.A. § 11-2-314.*
- See, e.g., O.C.G.A. §§ 10-1-390, 393.*
- O.C.G.A. § 51-1-11.
- Center Chemical Company v. Parzini*, 234 Ga. App. 868, 218 S.E.2d 580 (1975).
- 124 Ga. App. 605 at 610 184 S.E.2d at 838.
- Breach of warranty claims are premised under contract law and fall into two categories, breach of express warranty and breach of implied warranty. Express warranties are those warranties which a manufacturer explicitly provides to the consumer along with the sale of the product, and accordingly tend to be very limited. Implied warranties arise by operation of law, but can be limited by the manufacturer. Because these contractual claims are rarely the focus of a product liability case since tort remedies now provide all the necessary remedies in most situations, it is beyond the scope of this article to address them.
- See generally MALESKI, GEORGIA PRODUCT LIABILITY*, 11-14 (2D ED. 1993).
- Id.* at 36-39.
- See, e.g., O.C.G.A. § 51-1-11 (providing that product is defective if it is "not reasonably suited to the use intended")*; *Hunt v. Harley-Davidson Motor Co., Inc.*, 147 Ga. App. 44, 46, 248 S.E.2d 15 (1978) (holding that motorcycle without crash bars was not defective because product worked for purpose it was intended).
- See, e.g., Home Ins. Co. v. Caterpillar, Inc.*, 202 Ga. App. 522, 414 S.E.2d 735 (1992); *Banks v. ICI Americas, Inc.*, 264 Ga. 732, 450 S.E.2d 671 (1994).

18. 264 Ga. 732, 450 S.E.2d 671 (1994). *It is important to note that Banks and this entire discussion relate only to design defect cases. These are cases in which an entire line of products is challenged. Manufacturing defects, by contrast, arise in situations where the product for some reason is not made as it was designed to be made, such as where an assembly line mistake is made. See generally, MALESKI at 110-12.*
19. 264 Ga. at 732, 450 S.E.2d at 672.
20. Banks, 11 Ga. App. 523, 524, 440 S.E.2d 38 (1993).
21. Id. at 526, 440 S.E.2d at 40-41.
22. Id. at 527, 440 S.E.2d at 42.
23. 264 Ga. at 733, 450 S.E.2d at 673.
24. Id. at 734, 450 S.E.2d at 674.
25. Id. 450 S.E.2d at 674.
26. Id. at 673, 450 S.E.2d at 675, n.6.
27. O.C.G.A. § 51-1-11.
28. 264 Ga. 732, 734 n.3, 450 S.E.2d at 674, n.3.
29. Jones v. Nordictack, Inc., _ 6a _, 550 S.E. 2d 101 (2001).
30. Hunt, 147 Ga. App. at 46, 248 S.E.2d at 16.
31. 269 Ga. 443, 500 S.E.2d 570 (1998).
32. Ogletree v. Navistar Intl. Transp. Corp., 227 Ga.App. 11, 488 S.E.2d 97 (1997)
33. 269 Ga. at 444, 500 S.E.2d at 572.
34. Stovall, 124 Ga. App at 614, 184 S.E.2d at 840.
35. *These opinions typically came down from the Court of Appeals in an unpredictable fashion. In addition to the open and obvious danger doctrine, a manufacturer could occasionally avoid a jury trial when an appellate court found, for example, that the product worked as intended without a latent defect, Stovall, 124 Ga. App. at 611, 184 S.E.2d 840, or when the product complied with a federal standard, Honda Motor Co., 189 Ga. App. at 419, 376 S.E.2d 383.*
36. Ogletree v. Navistar Int'l Transp. Corp., 236 Ga. App 89, 511 S.E. 204 (1999).
37. Id. at 92-94, 511 S.E.2d at 208.
38. Id. 511 S.E.2d at 209.
39. 271 Ga. 644, 646, 522 S.E.2d 467, 470 (1999).
40. Id. at 647, 522 S.E.2d at 470.
41. Skil Corp. v. Lugsdin, 168 Ga. App. 754, 309 S.E.2d (1983) (*holding evidence of prior complaints of saw malfunctions on other models with similar closure devices admissible to show notice*); Rose v. Figgie Int'l, Inc., 229 Ga. App. 848, 851-52, 495 S.E.2d 77, 82 (1998); (*finding evidence of explosions in fire extinguishers produced at the same plant around the same time relevant to the issue of whether the fire extinguisher at issue was also defective*); Harley-Davidson Motor Co. v. Daniel, 244 Ga. 284, 260 S.E.2d 20 (1979) (*concluding that recall letter is relevant evidence on the issue of whether the product was defective when it left the manufacturer*); Atlanta Coca-Cola Bottling Co. v. Burke, 109 Ga. App. 53, 58-59, 134 S.E.2d 909, 914 (1964) (*stating evidence of another Coke bottle with foreign substance admissible if shown to come unchanged from same plant*); Mack Trucks v. Conkle, 262 Ga. 539, 436 S.E.2d 635 (1993); Ford Motor Co. v. Stubblefield, 171 Ga. App. 331, 319 S.E.2d 470 (1984).
42. 237 Ga. 316, 514 S.E.2d 227 (1999).
43. 273 Ga. 454, 543 S.E.2d 21 (2001).
44. Id. at 454; 543 S.E.2d at 23.
45. Mack Trucks, 263 Ga. at 544, 436 S.E.2d at 640.
46. Skil Corp., 168 Ga. App. at 755-756, 309 S.E.2d at 923.
47. Rose, 229 Ga. App. at 853-854, 495 S.E.2d at 83.
48. Barger v. Garden Way, Inc., 231 Ga. App. 723, 499 S.E.2d 737 (1998).
49. 273 Ga. at 456, 543 S.E.2d at 24.
50. 237 Ga. App. at 319, 514 S.E.2d at 231.
51. 231 Ga. App. 723, 499 S.E.2d 737.
52. Id. at 729, 499 S.E.2d at 743-744.



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Bar May Leave City if it Can't Build Deck

Editor's note: Following are articles relating to the State Bar of Georgia's new headquarters and the controversy surrounding the removal of nine trees to construct the new parking garage. The first article is reprinted with permission from the Oct. 26, 2001, issue of the Fulton County Daily Report. The article summarizes the situation as it currently exists.

The Bar's position on the new building, the parking structure and the Bar's commitment to downtown Atlanta is printed after the Daily Report article. This material is presented so that members will be accurately and adequately informed about this issue. The Bar leadership believes this project has been approached and implemented in the most conscientious and responsible way possible and invites member review.

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Clifton A. Brashier stands in a vault the size of a three-bedroom house, spreads his arms to mimic the thickness of the massive metal door, and talks, wistfully, of the day when this room once dedicated to money will become a law library.

Brashier, the State Bar of Georgia's executive director, is taking visitors on a tour of the recently vacated Federal Reserve building on Marietta Street.

Though the Bar owns the building, Brashier says there's a chance it won't move in. The Bar is on the losing end of a battle over whether it can cut down trees to expand its parking deck. Without parking revenue, Brashier says the Bar can't afford the building and may have to sell it and move out of Atlanta, to the suburbs or even another city such as Macon.

Without the expanded parking, Brashier says, the Bar can't rent extra square footage in the building to tenants; it can't host on-site Continuing Legal Education programs; and it can't earn extra money from tourists and business people who need a place to leave their cars.

He says the Bar already has explored selling, and found the only interested parties were telecommunications companies who want the building for a switching facility to house only equipment, not people.

It's not what he wants.

Brashier has a vision for the old Fed.

As his footsteps echo in the empty halls of the 320,000-square-foot building, he describes how the Fed's former Money Museum will become a mock courtroom, how the vast Frank Lloyd Wright-inspired conference facilities one day will host 40 to 50 percent of the state's Continuing Legal Education courses, and how the Bar will rent excess space to nonprofits such as the Georgia Legal Services Program.

Owning the Fed building, according to Brashier's vision, gives the Bar the means to create a venue that will bring together lawyers from all over the state. The building will even host a program to teach school kids about the law, and Brashier estimates some 40,000 could visit each year.

But with all the changes slated for the old bank building, one thing remains the same, at least for now. As it was with the Fed, so it is with the Bar: It's all about money.

Bar Finances

Brashier heads an organization that in its last fiscal year, ended June 30, 2001, had a total expense budget just over \$5.2 million. Its revenue—derived primarily from member dues—was about \$6 million. That leaves \$800,000 or so to earn interest until needed for future expenses, which Brashier says increase by 6 to 8 percent per year.

There's much more to the Bar's expense budget than the building, or the parking deck.

The largest portion of the Bar's expenses was \$2,456,697 in salaries for the 56 people who are slated to move into modest gray tweed cubicles and, for higher-ups, the pragmatic, right-angled luxury of an enclave of large offices.

Brashier says salaries overall are budgeted to increase about 6 percent in the current fiscal year. At this point, the Bar has budgeted for and filled only one new job: an assistant to the chief operating officer.

The Bar also spent nearly \$500,000 on various meetings, travel, seminars, training and the expenses associated with its many sections and committees. Of that, \$92,166 was expense reimbursement for high-ranking Bar officers. Brashier says that's not enough, and that most end up paying other costs out-of-pocket.

The Bar's immediate past president, George E. Mundy, says he had used up his allotment about eight months into his term as president. He had access to \$20,000 for expenses, plus a \$7,500 supplement for travel since he lives outside Atlanta, in Cedartown.

"I'm guessing it probably cost me \$10,000 to be bar president," he says. "It's a sacrifice. I enjoy doing it, but it's a sacrifice."

Mundy says the money is spent mostly on travel to meetings, including four or five Board of Governors meetings, budget and financial meetings, and minority bar meetings. There is also airfare, hotel and meals for American Bar Association meetings and Southern Conference of Bar Presidents meetings in six far-flung cities.

"If the president wasn't going to all of these, there'd be a lack of direction," says Mundy.

Building Revenue

But that is, to some extent, ancillary to the Bar's building, and its attendant problems. Last year, the Bar spent more than \$475,000 on rent and utilities.

The new building, which the Bar has paid off, could slash the organization's housing costs by more than half, to an estimated \$242,000, according to budget projections.

It also could open up new sources of revenue, because with 40,000 square feet on each of its eight floors, it is far larger than the Bar needs. Brashier estimates the organization could gross \$1.5 million a year from renting all but two of its eight floors to nonprofit legal groups and other tenants.

To get those tenants, however, the Bar needs to expand the existing 172-space Fed parking deck, according to Brashier. He envisions one that could hold 500 cars. Extra spaces, used by downtown visitors and business people, could net \$600,000 a year, he says.

To get that new deck, the Bar must fell nine 40-year-old oak trees in a pocket park immediately adjacent to the

existing garage. On Oct. 18, the Atlanta Tree Conservation Commission denied the Bar's request for a tree-cutting permit, siding instead with Trees Atlanta and 27 others who have fought to preserve the park. (*Daily Report*, Oct. 19, 2001)

Brashier says the Bar has not yet decided whether it will appeal to the Fulton Superior Court.

If the Trees Have It

Delay costs money. Mundy says he's heard estimates that the tab for delay may be \$50,000 a month. Brashier says that's primarily opportunity cost from lost parking revenue, but also could include the cost of having to extend or find a new lease which might run \$33,000 or more a month while paying operating expenses of \$125,000 or so a month on the Fed.

The Bar had planned to move into its new building in March.

But with no parking deck, there will be no revenue from tenants or parkers, and the building can't support itself, according to Brashier.

If the Bar sells the building, it likely will have to move outside Atlanta, Brashier says.

A week ago, the Bar's Executive Committee appointed a small committee to investigate alternate locations. The group already has contacted a real estate agent.

He describes looking at and rejecting some 30 downtown properties before purchasing the Fed. Some were too expensive—\$90 to \$100 per square foot for land only. Others were too run-down. Still others didn't have easy access to MARTA, the airport and the all-important on-site parking.

"We could have built a building with 80,000 square feet and it would have cost more than this," says Brashier of the \$9 million Fed building.

The Bar can't stay at the Hurt Building long-term because it has outgrown the 25,000 square feet it leases, says Brashier. Also, the lease expires March 31, 2002, with no options to renew or extend. The Bar could renegotiate if the Hurt Building hasn't already leased the space, he says.

Now the Bar pays \$20 to \$21 per foot per year to rent its Hurt Building offices; it paid \$27 per square foot to own the old Fed, which has money-making potential.

But without those tenant rents and parking fees, the Bar simply can't afford the old Fed. Brashier says the building needs \$22 million in renovations.

About \$1.5 million will be paid for by a private foundation—Brashier won't name it—that donated the money to lure the Bar downtown. Another \$1.5 million comes from profit the Bar made by renting the building back to the Fed for four years.

That means there's a potential \$19 million loan. Of that, the proposed parking deck will cost \$8 million to \$9 million; another \$4.5 million to \$5 million will go for the up-front costs of tenant improvements and real estate commissions. The remaining \$8 million or so will pay for engineers, architects, consultants, renovations and oh, yes, arborists who will plant trees to replace and add to those removed from the pocket park.

Impact on Financial Future

Even with all the hassle and expense, Brashier defends the Bar's need to own its own building.

As Brashier points out, the members have paid for the building. A \$50 assessment added to dues for four years brought in \$6 million; the rest came from CLE fees collected by the Commission on Continuing Legal Education, which gave the Bar \$3 million for access to the third floor conference rooms for CLE seminars.

The Bar currently has a net growth of 900 members per year, which means that in 50 years, the now more than 32,000-member Bar could balloon to 77,000 mem-

bers. More members mean more staff and more staff need more space, he says.

Though he's quick to say that even in 50 years the Bar won't need all of the Fed's square footage, he adds that conversations with and financial analyses of other bar organizations have shown him that those who own their buildings ultimately are more financially efficient.

For now, the Bar can't see its future for the trees. Nine of them, to be exact, that stand between it and the permit needed to build the parking deck that will make its revenue from tenants and tourists viable.

On a recent day, the much-debated pocket park, which is about 70 percent concrete and 30 percent trees and shrubs, appeared to hold the contents of a very dirty pocket. Crumpled newspapers and cigarette butts littered the ground. The park's only occupants - for several hours, at least - were two men, curled in sleep on its benches.

Mundy says he's still hopeful that the Bar can proceed with its plans. But, he acknowledges, there are some public relations issues: "Lawyers against trees? How's that going to come out?" ■

West group new art
“The Deadline is
fast approaching”
1/2 page bw

New State Bar of Georgia Building: A Commitment to Downtown Atlanta

By James B. Franklin
President, State Bar of Georgia

I. Overview

In 1995, the State Bar of Georgia began to plan for its future space needs. From the outset, ownership was preferred over leasing for fiscal prudence. The State Bar considered both buying an existing building and constructing a new one. It was expected that funding would come from Georgia lawyers and private gifts with no contributions from the State of Georgia or the public.

The State Bar wanted to have a home for the legal profession that would satisfy three fundamental needs.

- The first was to provide a large conference center for continuing education for lawyers, judges and their staffs; for professional meetings; for legal and judicial conferences; for computer/technology training; and for other professional activities. In order to better qualify them to represent members of the public, all active Georgia lawyers are required by the rules of the Supreme Court of Georgia to attend at least two days of continuing legal education each year. Forty thousand square feet in the new center will be devoted to this important use. At present, the continuing legal education programs take place in hotels and other commercial conference centers.
- The second need was for office space with room for future growth for the State Bar staff, and for other legal and judicial related entities working to enhance the judicial system and to promote the administration of justice in our state.
- The third and final need was for excellent geographical access, primarily to support the conference function. This included air travel, public transportation and personal transportation. Adequate parking was

essential to serve the personal transportation requirement during all business hours and many evenings and weekends. With over 32,000 members and numerous public guests, all three modes of access are critical to the successful use of the building.

As the capital of the state and the center of business and governmental communities, downtown Atlanta was the preferred location. For two years, the Bar searched for a building or tract of land that would meet the three primary needs. In 1997, just as the Bar was about to give up and go to another location, the Federal Reserve Building became available subject to the condition that the Federal Reserve Bank could continue occupancy of the building until its new facility was completed in 2001. The building already had a large conference floor, ample office space, and access to the airport, MARTA and limited parking with expansion potential. In late 1996, a purchase plan was developed and approved by the State Bar's 138 member Board of Governors who are elected statewide. It included both the renovation of the building and expansion of the parking deck. This was reported to the public by the media and to all Georgia lawyers by the State Bar in January and February 1997 - over four years ago. The purchase was closed in April 1997.

The State Bar's commitment to downtown Atlanta is significant for many reasons.

- The Bar plans to use and maintain this classic building indefinitely. It is large enough to meet the Bar's needs for at least the next 50 years. Purchase inquiries have been rejected and there are no plans to sell it to developers who have expressed significant interest.
- The conference function will bring hundreds of guests per day to Atlanta on a regular basis from throughout the state, nation, and world. Local area hotels, restaurants and other downtown merchants will benefit greatly. In addition, the building will be available to supple-

ment the convention space of downtown hotels, the World Congress Center and other meeting facilities.

- Lawyers who practice throughout the state have clients with cases and business transactions in Atlanta. The downtown area would be the most convenient location to help them better serve their clients. Again, downtown vendors will benefit.

II. Parking

While the engineering reports showed the building to be in excellent condition with a useful life of at least 50 years, the existing parking deck has both structural and design problems. With exposed and rusting rebar, delamination and cracking of concrete, water penetration in exposed cracks, concrete spalls, paint delamination and water ponding, the useful life of the existing deck is not long, even with immediate repairs. More importantly, the narrow width of the front half of the deck causes it to be fundamentally inefficient and unsafe, as it does not conform to the minimum engineering standards for public parking decks. To correct all these problems and to greatly enhance its aesthetics in the neighborhood, a new modern parking deck will be built to replace the existing one. This will be an asset not only to the building, but also for downtown Atlanta.

The new deck will park approximately 500 cars. Its sole purpose is to support the mission of the building. Adequate, guaranteed, convenient, secure parking is **essential** for the Bar Center project to succeed in downtown Atlanta.

- The 40,000 square conference floor is expected to host approximately 1,000 meetings, seminars, computer training, judicial and legal conferences annually. A single large continuing legal education seminar can draw over 600 attendees. While some will use airlines, MARTA and other public transportation, approximately 80 percent will use personal vehicles. The State Bar's challenge is to attract conference sponsors to 104 Marietta Street. Our venue competitors are the conference centers and large hotels in metro Atlanta outside of downtown. Nearly all offer ample parking. Sponsors of conferences will choose our competitors unless we can at least match their parking conveniences.
- The 140,000 square feet of rentable office space (plus 60,000 square feet of storage/vault space in the basement) requires competitive tenant parking, especially in this economic period of high supply. Even with a new parking deck with a capacity of 500 cars, we can only offer one space per thousand square feet. (The remainder of the parking is vital to the conference floor.) Most new office buildings offer a minimum of one space

per thousand and strive for a two per 1,000 ratio. Some even reach a ratio of five parking spaces per 1,000 square feet. Our leasing agent has confirmed that any reduction in parking will have a major and adverse impact on both our rental rate and our vacancy rate.

- Today, State Bar staff uses 60 parking spaces. With Georgia's lawyer population growing at a rate of 900 per year, the Bar's staff will more than double during the 50+ year useful life of this building.

- With \$9 million already invested, \$19 million in new debt to finance the remaining construction/renovation, and annual operating expenses of over \$1.5 million, the revenue from leasing and evening/week-end event parking is *absolutely* required to meet our debt service and operating expenses.

- The beauty of the classic building will be enhanced by the updated green space and the new parking deck that will match the building's height and exterior lines, hide the appearance of the parked cars and add much architectural beauty to downtown Atlanta. With the negative appearance of the existing deck, this represents a much needed improvement.

III. Trees

The members of the State Bar care greatly about trees, green space and our environment. No person involved in the Bar Center project would remove even one tree if it could be preserved in a reasonable manner. Every effort has been made to reflect that care in the new parking deck. The site consists of 1.74 acres including approximately 0.4 acres of green space. The State Bar will retain and substantially enhance a majority of this green space including all of the 372 feet that fronts on Marietta Street. Our plans include:

- Twelve large willow oaks will be saved.
- The minimum possible number of the existing oaks — only nine all told — will be removed. However, a total of 35 additional trees will be planted including 14 willow oaks, 10 redbuds, three dogwoods, two treeform burford hollies and six Athena elms.
- Shrubs, flowers, lighting and benches will be preserved and enhanced in the green space.
- A professional landscape architect has been hired to properly plan the green space.

- A leading arborist has been hired to care for the existing trees both during and after construction.
- All new trees will be planted to meet or exceed COPA standards, as well as those of SPI District 1, the district in which the building is located.
- The green space is currently bordered by a low iron fence. It has been used primarily as a smoking site by employees of the building and the adjacent *Atlanta Journal-Constitution* with some use by homeless people. While maintaining the green space as privately owned property, the fencing will be removed and new entrances will be added to make the area more inviting to residents and visitors in the area. A designated smoking area will be located inside the new parking deck.
- Overall visibility and security will be enhanced by the elimination of the recessed pocket area that is more secluded from Marietta Street.
- The cut in the median on Marietta Street will be closed and new trees planted. Bollards will be added to afford more vehicular protection to the trees in the Marietta Street median fronting the State Bar building. The State Bar will maintain the trees in the median from Spring Street to the Grady statue.

Much effort was given to other ways to save more of the existing green space and trees.

- The total parking capacity was kept at the level necessary to support the conference/tenant functions.
- The existing deck's foot print was increased only to the extent necessary to meet *minimum* engineering standards for a public access parking facility. Were the existing footprint to be used, 12 levels would be possible, but each level would park only 15 cars for a total of 175. It would require a confusing and dangerous double helix tight design. It could not offer the direct conference floor access that is critical to the use of that floor.
- The option to move the existing trees to Centennial or another public park was considered, but found not to be feasible on the advice of arborists. The age of the willow oaks would make their survival after a move highly unlikely.
- The option to purchase a near-by site for the new parking deck was considered, but found to be cost prohibitive due to a land price of more than \$8.5 million.

- Alternative designs to save even more trees were studied, but found not to be feasible because we could not achieve sufficient parking capacity to sustain the goals and economic feasibility of the project at this location.

- The option to lease deck space in nearby commercial lots was considered, but found not to be practically or economically feasible because the conference function requires parking that is guaranteed to be available even on days with large special events at the World Congress Center, Philips Arena, the Georgia Dome, Centennial Park and area hotels.


The option to let conference attendees and tenants find commercial parking on their own was considered, but found not to be feasible because of the competition from other office buildings and suburban conference venues that do offer ample, convenient parking.

The State Bar's plan for the enhancement of the green space and its trees is clearly within all the requirements of the City of Atlanta's tree ordinance. For that reason, the city's arborist has approved the plan including the removal of the nine trees. The arborist's decision was appealed by Trees Atlanta and 27 individuals to the City's Tree Conservation Commission. After a hearing on Oct. 17, 2001, the Commission voted in favor of the appellants and overruled the City's Arborist. The State Bar has received the written opinion of the Commission, and has appealed that decision to the Fulton County Superior Court.

IV. The Future

When the State Bar's plan is implemented, this classic, historic building, along with its new parking deck and its extensive green space, will exceed the highest standards on Marietta Street. No other building will have trees and green space comparable to the State Bar Building. It will be an attractive asset to downtown Atlanta.

However, it should be noted that parking is so *critical* that any further reduction in parking will cause both the mission and the revenue required to service the debt to be lost. The probable result would be for the Bar to abandon the project, sell 104 Marietta Street, and consider a suburban site for a future Bar Center. This would be most unfortunate for both the State Bar and downtown Atlanta.

If the planned new deck and building renovation occurs, the State Bar of Georgia is committed to continued good stewardship and care of this classic building and green space as its permanent residence in downtown Atlanta. 

State Bar Expects Another Productive Legislative Year

By Mark Middleton

AS AN ACTION-FILLED 2001 COMES TO AN END, the State Bar's legislative efforts have begun for the 2002 Session of the General Assembly. The year began with an historic legislative session that brought the change of the state flag and continued State Bar success in advancing important issues such as the revision of UCC Article IX.

After the 2001 regular session, the State Bar's legislative efforts continued as members and the professional staff supported section activities, advanced carry-over legislation and monitored the Special Sessions of the General Assembly. "A busy legislative year brings challenges, and I am pleased that we have been up to the task," stated State Bar President James B. Franklin.

Special Sessions

The General Assembly convened this summer for the primary purpose of redrawing the congressional and General Assembly district maps. However, other matters were added to the governor's charge, including a bill requiring the Department of Motor Vehicles to provide the board of jury commissioners with pertinent jury pool information. The other major bill passed during the extraordinary session outlawed video poker in Georgia.

New 2002 Legislative Agenda Items

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

In response, the Board of Governors passed the following proposals at its November meeting:

Georgia Indigent Defense Appropriations Request

The Georgia Indigent Defense Council seeks an additional \$4,770,357 in state funding for its multi-county public defender's offices, new grants and continuation grants. The largest component of the request is the \$4.3 million dollar increase in the continuation grants, which would increase the state participation to 20 percent of the total costs (from the current 11 percent). Currently, the state is spending approximately \$5.4 million on the continuation grants.

CASA Appropriations Request

Currently, the state funds the Georgia Court Appointed Special Advocates at a level of \$1,095,000. The request for the FY 2003 budget is an increase of \$403,000 to develop new programs and enhance the existing 37 programs.

Domestic Violence Appropriations

Currently, the state appropriates \$2.2 million to non-profit entities to provide legal representation to the victims of domestic violence. The request is for an additional \$100,000 for a total appropriation of \$2.3 million.

Non-Partisan Election of District Attorneys

This proposal would add the office of district attorney to the list of judicial positions that are elected on a non-partisan basis. The State Bar will play a supportive role in the effort to pass this legislation.

Certification of Questions of Law to the Georgia Supreme Court

Currently, Federal Appellate Courts can certify questions of Georgia law to the Supreme Court of Georgia. This proposal, which requires a change in court rules, legislation and an amendment to the Georgia Constitu-

tion, would also allow Federal District Courts to certify questions to the Georgia Supreme Court as well.

Other issues will undoubtedly be added to the State Bar's legislative agenda at the Midyear Meeting in January. The ACL anticipates the sections will bring proposals affecting juvenile discovery, UCC Article Five (letters of credit), direct appeals and data base protection. "I am very impressed with the expertise that our sections and ACL members bring to the deliberation of these important issues," said ACL Chairman Thomas Burnside of Augusta. The deadline for submitting proposals to the ACL for the Midyear Meeting is Dec. 3, 2001.

Passage of Carry-Over Bills Expected

The State Bar also expects passage of other agenda items that carried over to the second year of the two-year session. One bill is Senate Bill 253, authored by Sen. Greg Hecht (D-Jonesboro), which provides technical amendments to Section 601.1 of the LLC statute. "Senator Hecht has been a great friend to the State Bar," stated Legislative Representative Tom Boller. "We appreciate his help on this important bill."

A second agenda item that carried over is House Bill 646, authored by Rep. Robert Reichert (D-Macon). This bill passed the House, and received favorable recommendation by the Senate Special Judiciary Committee before being caught up in the last minute flurry of bills in the Senate Rules Committee. This Fiduciary Law Section initiative provides clarity to the law relating to the renunciation of a future interest. "This clarification will

assist estate planning attorneys in advising their clients," said Mark Williamson of the Fiduciary Law Section.

Bills Opposed by the State Bar

State Bar legislative representatives also expect another active year for monitoring and opposing various legislative initiatives affecting scope of practice or separation of powers issues. Among the bills of interest carrying over are Senate Bill 146, which would allow corporate employees to represent corporations in garnishment actions, House Bill 333, which purports to allow non-lawyers to represent individuals in certain immigration matters, and House Bill 418, which would allow individuals to designate agents in property tax matters.

Summary

Just as 2001 was a busy and productive year for the State Bar, 2002 promises more of the same. As the State Bar continues its efforts in the 2002 General Assembly, do not hesitate to contact your legislative representatives and section chairs regarding issues of importance to you.

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

New House Judiciary Chairman Named

THE STATE BAR IS PLEASED TO WELCOME an old friend as the new chairman of the powerful House Judiciary Committee. Tom Bordeaux (D, Savannah) has been named by the speaker to replace the outgoing chairman, Jim Martin, who was named commissioner of the Georgia Department of Human Resources earlier this year.

Chairman Bordeaux has been a member of the General Assembly since 1991, when he won his first political race. He is now in his sixth term. Chairman Bordeaux previously chaired the Ethics Committee and continues to serve there, as well as the Industrial Relations Committee and the Health and Human Ecology Committee. He previously served as floor

leader to then-Gov. Zell Miller.

A graduate of the University of Georgia School of Law, Chairman Bordeaux practices law in Savannah with an emphasis on trial practice and personal injury work. He is married to the Rev. Nelle McCorkle Bordeaux, and they have a daughter, Annie Lillian Bordeaux. ☐



Board of Governors Holds Educational Conference

By Robin E. Dahlen

ONE OF THE NATION'S GREATEST AND MOST historic cities set the stage for the Board of Governors (BOG) Summer Meeting, August 23-26, 2001. Prior to departing for a three-day educational tour of Boston, members of the BOG convened at the Airport Hilton in Atlanta to address State Bar business.

Highlights from the Board Meeting include:

- The Board unanimously approved the Member Benefits Committee's recommendation that the American Bar Association (ABA) Members Retirement Program be recommended as a member benefit.
- President James B. Franklin provided an update on the Bar's first broadcast e-mail to all Bar members, which will be utilized by the president in the future to update members on important issues.

• State Bar Executive Director Cliff Brashier provided an update on Bar Center activities, including parking deck and leasing issues. (See related articles on pages 24-29.)



State Bar President James B. Franklin (left) introduces Harvard Law School Professor Arthur Miller.

• George E. Mundy, State Bar past president, provided a report on the State Bar of Georgia 2002 Delegation to the People's Republic of China, which is sponsored by the People to People Ambassador Program.

• YLD President Peter J. Daughtery reported on the various activities of the YLD, including its recent long-range planning retreat, committee chair orientation and YLD Summer Meeting. In addition, he announced that the YLD won the following ABA Awards of Achievement: first place overall in the comprehensive division; first place for its membership initiative; first place for its comprehensive pro bono initiative; and second place for its newsletter.

- The Board, by unanimous vote, approved the appointment of Lisa Chang, of Atlanta, to a two-year term to the Board of Trustees of Georgia Legal Services.
- The Board, by unanimous vote, approved recommending to the Board of Bar Examiners revisions to the Attorney's Oath as follows:

I, _____, swear that I will truly and honestly, justly and uprightly conduct myself as a member of this learned profession and in accordance with Georgia Rules of Professional Conduct, as an attorney and counselor; and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God.

Bean Town Welcomes the Bar

After business matters were addressed, 85 BOG members and spouses took advantage of the Bar's educational tour of Boston, which was made possible by the generosity of the Bar's corporate sponsors — LexisNexis, Insurance Specialists Inc., ANLIR and West Group. Upon arrival, attendees were treated to a welcome reception at the Swissôtel Boston and then a New England lobster feast at the Union Oyster House, the oldest restaurant in continuous service in the United States (serving since 1826).

On Friday, BOG members were given the opportunity to earn CLE credits during the "Going to Harvard — The Easy Way" program and tour. The tour focused on the historic Harvard Law School and its place in the legal history of the United States. Attendees were then treated to a lecture by Arthur Miller, Bruce Bromly Professor of Law at Harvard Law School.

The remainder of the three-day excursion found attendees exploring many areas of Boston, including Harvard Yard, Quincy Market, Old North Church and Copley Square. ☐

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



1. BOG members and their guests were treated to an extensive tour of the Harvard campus. 2. BOG members and their guests pose for the camera in front of the historic John Harvard statue on the Harvard campus.

Electronic Filing in Fulton County: A Foundation and Forecast

By Juanita Hicks

IT IS 9:30 A.M., MONDAY, AT FULTON SUPERIOR Court and court employees are busily preparing to start the day. Today, like most at the Superior Court, oral arguments by counsel on pending motions will be heard. Before the end of the day, the Clerk's counter will have reviewed, stamped, rejected and entered hundreds, if not thousands, of filings into the Court's docket. And, of course, workers will photocopy, file and docket some more. Just a typical day at Fulton County Superior Court? Think again.

While on the surface everything appears to be the same, but in reality case and docket management at the Superior Court are dramatically different. Rather than starting the day with clerks searching for and organizing files, both behind the bench and in the Clerk's Office, court employees will now start the day booting up computers and logging on to a Web site.

Motions and Orders that require judge signatures can be pulled up and accessed online and filings submitted in cases that will be heard that day can be immediately viewed online. The court no longer needs to deal with attorneys who argue "proper service" and claim they did not get notice of hearings. Now, judges simply log on to the Web site and instantly check the date and time each party was notified of a filing. Before the first hearing of the day, court employees will know who will be present and prepared.

For the past year, electronic filing (eFiling) has been the method of filing, service and case management for

asbestos litigation in Fulton Superior Court. Fulton County is helping lead a transformation occurring in the legal industry; litigation has changed forever in Fulton County. Now, instead of paper pleadings piling up in the Clerk's office and cluttering a judge's bench, all law firm and court

personnel filing into the court's asbestos cases have simultaneous access to files via the Internet.

How Did We Get Here?

In late 1999, with litigation levels soaring in the county, the Court faced increasing difficulty managing the amassing paper that was resulting from our heavy load of mass tort cases. The Superior Court was simply out of space, and was quickly running out of staff to manage the expanding mountain of paper. It was critical the Court quickly find

a means to streamline the mass tort cases — to make the retrieval of filings easier, to minimize the possibility of lost files in the courthouse and to provide case parties enhanced access to the documents.

eFiling, although not even an industry understood term at the time, was a favored option to the growing paper dilemma. When the Superior Court was researching the eFiling project, it was one of less than 15 courts in the nation implementing or engaged in an eFile pilot project. Fulton County State Court also implemented eFiling six months prior to Superior Court's implementation. Together, the Superior Court judges and the Superior Court Clerk's Office determined that an eFile solution was the



best use of the existing court technology infrastructure, staff and taxpayer dollars.

In June 2001, Fulton County Superior Court celebrated its one-year eFile anniversary – celebrating this first anniversary was a true milestone and proved the success of the eFile project. The results were not, however, achieved without hard work and the need to overcome some important obstacles. Initially, many of the obstacles the Superior Court faced were change management issues both from the court and from law firms who were not comfortable with eliminating paper copies of court records. “Care, custody, and control” concerns were also voiced about the court records and what would happen if CourtLink, the eFile vendor, were to shut down.

The Superior Court helped dispel fears by positioning the eFile project as a joint “pilot” effort, putting in place Court provisions and assurances that the electronic record was just as secure and valid, if not more so, than paper versions. For eFile cases, Georgia Rules did not require written signatures and file-stamps to certify the authenticity of an eFiled document. Fulton Superior’s plan also met the needs of the public, because the Internet provided an enhanced level of “open access” to the court documents.

The eFile project was not positioned as a replacement to the Court’s current process, but rather as a modification to certain steps in the process. Once the technology was installed and activated, CourtLink worked to enhance the technology to assure local attorneys and those filing from outside the county that they could use the service with ease and confidence.

The State Bar of Georgia recognized the Superior Court’s eagerness to “find a better way” to manage the mass tort litigation and backed the drive for change. An influencing force for law firms was how eFiling would ultimately facilitate better client relationships and better case management by lowering their costs to clients because of reduced time spent in the creation, delivery, distribution and maintenance of documents.

How Has it Worked?

eFile is a win for everyone involved. It is the duty of the Court Clerk’s Office to maintain and provide access to court documents. The Clerk’s Office is now the cornerstone of efficiency at Fulton Superior Court. eFile is a more secure way to maintain a record, the public has open access to the records over the Internet and parties, once limited in the hours in which they could file documents with the Clerk, can now file 24 hours a day, seven days a week. In addition, the Clerk’s Office spends far less time chasing paper files through the courthouse.

eFile efficiencies have also created wins for the judges. Judge staff spends less time in the administrative pitfalls of case management and more time on moving dockets.

A snapshot of some of the efficiency eFile has brought to Superior Court judges can be shared through an experience Judge Philip Etheridge, who resides over asbestos and other complex litigation cases at Fulton Superior Court, had earlier this year. Late one evening, Judge Etheridge was contacted by an attorney regarding an emergency motion that needed to be heard early the following morning. Motions from both sides had been filed that evening after the court had closed. Using our eFile service, Judge Etheridge was able to log on to the Web service to access and review all the documents in the case well before the court opened. Judge Etheridge was prepared with all the information he needed to hear the case, which he’d only learned about the evening before, because of the eFile service.

With eFiling, the Superior Court experiences efficiencies that are passed on to law firms working with Superior Court. The law firms receive faster, better and improved access to dockets, judges and documents. In turn, law firms pass on the efficiencies in the form of cost savings to their clients.

The Future Looks Bright

To understand the impact eFile has made on Fulton Superior, just look at the numbers. As of October 2001, 1,500 asbestos cases are online, and well over 28,000 documents have been filed since the inception of eFiling. In September 2001 alone, 92,000 pages were filed and served electronically in Fulton!

In 2001, Fulton Superior Court recently took another big step forward and became one of the first courts to accept Original Complaints and Petitions via electronic filing.

Fulton Superior Court has already experienced tremendous success with eFile, and the future of eFile in Fulton is extremely promising. Currently, the Superior Court is discussing the expansion of eFile into additional case types including: Silicosis (Silica); Family Division and Child Support Enforcement; and other mass tort cases.

Georgia judges, clerks and attorneys are fueling a transformation in the legal process by trading in the pen and quill for a mouse and the Internet. An estimated 200 courts nationwide now participate in electronic filing projects — a statistic that validates electronic filing is a growing national trend. For the courts and clerks in Fulton County, it’s rewarding to know they were among the first. ☐

Juanita Hicks was first elected clerk of the Fulton County Superior Court in 1988, and re-elected in each election thereafter. Hicks is currently president of the National Association for Court Management. She can be contacted at jaunitahicks@mindspring.com.

AUDITED 2001 FINANCIAL STATEMENT



303 Peachtree Street, N.E.
Suite 2000
Atlanta, GA 30306

Independent Auditors' Report

The Board of Governors
State Bar of Georgia:

We have audited the accompanying statements of financial position of the State Bar of Georgia (the "State Bar") as of June 30, 2001 and 2000, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the State Bar's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the State Bar as of June 30, 2001 and 2000, and its changes in net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

July 27, 2001

STATE BAR OF GEORGIA

Statements of Financial Position

June 30, 2001 and 2000

	2001	2000
Assets:		
Cash	\$ 3,394,086	1,596,300
Money market funds	10,894,332	9,039,975
Investments (note 3)	131,487	2,054,897
Accounts receivable	179,127	140,413
Receivable from related parties (note 7)	71,607	149,112
Prepaid and other assets	281,186	143,639
Furniture, fixtures, and equipment, at cost, less accumulated depreciation (note 4)	133,764	182,630
Bar Center Building and equipment, at cost, less accumulated depreciation (notes 4 and 12)	8,267,104	8,180,863
Total assets	\$ 23,352,893	21,487,739
Liabilities:		
Accounts payable	\$ 587,634	604,538
Accrued vacation	168,359	153,561
Deferred income	4,089,695	3,594,577
Health claims reserve	209,451	292,462
Payable to Pro Bono	—	35,680
Payable to Client Security Fund	2,525,069	2,537,140
Deferred compensation payable (note 8)	403,288	429,729
Deferred income Bar Center	148,080	956,026
Note payable (note 12)	—	1,201,600
Total liabilities	8,133,596	9,799,316
Net assets:		
Unrestricted:		
Undesignated	1,614,261	1,209,249
Board designated (notes 9 and 10)	13,286,770	10,196,782
Total unrestricted	14,901,031	11,406,031
Temporarily restricted (note 11)	318,266	282,392
Total net assets	15,219,297	11,688,423
Commitments and contingencies (notes 5, 6, 8, 12, and 13)		
Total liabilities and net assets	\$ 23,352,893	21,487,739

See accompanying notes to financial statements.

AUDITED 2001 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Statement of Activities

Year ended June 30, 2001

	Unrestricted	Board-	Temporarily	2001	2000 Total
	Undesignated	Designated	Restricted	Total	(memo only)
Revenues and other support:					
Fees:					
License	\$ 5,271,093	—	—	5,271,093	4,494,097
Advertising	202,757	—	—	202,757	193,018
Membership	122,802	—	—	122,802	142,067
Total fees	5,596,652	—	—	5,596,652	4,829,182
Contributions	—	500,000	—	500,000	989,826
Section dues	—	509,726	—	509,726	478,933
Convention and meeting fees	—	291,587	—	291,587	274,382
Unrealized loss on investment	(16,121)	(8,597)	—	(24,718)	(131,637)
Interest income	217,515	272,502	—	490,017	494,593
Rental income (note 12)	—	812,000	—	812,000	812,000
Assessment income (note 12)	—	1,578,774	—	1,578,774	1,545,522
Other	84,743	141,140	—	225,883	131,640
Total other revenues	392,167	4,196,962	472,243	5,061,372	4,595,259
Net assets released from restrictions (note 11)	—	(436,369)	—	(436,369)	—
Total revenues and other support	5,988,819	4,637,331	35,874	10,658,024	9,424,441
Expenses:					
Program expenses:					
Counsel	2,185,426	—	—	2,185,426	2,104,601
Membership	347,368	—	—	347,368	378,127
Meetings	90,349	—	—	90,349	90,615
Communications	637,405	—	—	637,405	696,740
Consumer Assistance Program	345,417	—	—	345,417	304,798
Fee arbitration	221,848	—	—	221,848	216,127
Lawyers' Assistance Program	73,309	—	—	73,309	45,009
Law Practice Management	173,246	—	—	173,246	193,077
Younger Lawyers	215,136	7,088	—	222,224	212,698
Board of Governors	61,804	—	—	61,804	73,028
Section expense	—	543,928	—	543,928	532,566
Mock trial	—	137,890	—	137,890	119,870
Bar media conference	—	58	—	58	30,648
Legislative	—	189,172	—	189,172	181,727
Families and courts	—	4,042	—	4,042	260,239
Conventions and meeting	—	462,178	—	462,178	69,950
Georgia Diversity Program	5,893	77,508	—	83,401	76,000
Pro bono	76,000	—	—	76,000	12,500
Supreme Court Grant	—	10,600	—	10,600	153
CLU School	—	—	—	—	25,000
Standards of the Profession	33,000	10,611	—	43,611	10,000
President's Program	10,000	—	—	10,000	10,000
Total program expenses	4,426,131	1,442,477	—	5,868,606	5,633,473
Management and general	857,676	400,868	—	1,258,544	1,285,473
Total expenses	5,283,807	1,843,345	—	7,127,150	6,918,946
Change in net assets	705,012	2,793,986	35,874	3,530,874	2,505,495
Other changes in net assets - transfers (note 10)	(300,000)	(300,000)	—	(600,000)	—
Net assets, beginning of year	1,209,249	16,196,782	283,392	11,688,423	9,182,928
Net assets, end of year	\$ 1,614,261	\$ 15,286,770	\$ 318,266	\$ 15,219,297	\$ 11,688,423

See accompanying notes to financial statements.

STATE BAR OF GEORGIA

Statement of Activities

Year ended June 30, 2000

	Unrestricted	Board-	Temporarily	2000
	Undesignated	Designated	Restricted	Total
Revenues and other support:				
Fees:				
License	\$ 4,494,097	—	—	4,494,097
Advertising	193,018	—	—	193,018
Membership	142,067	—	—	142,067
Total fees	4,829,182	—	—	4,829,182
Contributions	—	500,000	489,826	989,826
Section dues	—	478,933	—	478,933
Convention and meeting fees	—	274,382	—	274,382
Unrealized loss on investment	(91,086)	(140,551)	—	(231,637)
Interest income	278,956	215,637	—	494,593
Rental income (note 12)	—	812,000	—	812,000
Assessment income (note 12)	—	1,545,522	—	1,545,522
Other	88,907	42,713	—	131,640
Total other revenues	276,777	3,828,656	489,826	4,595,259
Net assets released from restrictions (note 11)	—	(427,239)	(427,239)	—
Total revenues and other support	5,105,959	4,255,895	62,587	9,424,441
Expenses:				
Program expenses:				
Counsel	2,104,601	—	—	2,104,601
Membership	378,127	—	—	378,127
Meetings	90,615	—	—	90,615
Communications	696,740	—	—	696,740
Consumer Assistance Program	304,798	—	—	304,798
Fee arbitration	216,127	—	—	216,127
Lawyers' Assistance Program	45,009	—	—	45,009
Law Practice Management	193,077	—	—	193,077
Younger Lawyers	200,307	12,791	—	212,698
Board of Governors	73,028	—	—	73,028
Section expense	—	532,566	—	532,566
Mock trial	—	119,870	—	119,870
Bar media conference	—	30,648	—	30,648
Legislative	—	181,727	—	181,727
Conventions and meeting	—	260,239	—	260,239
Georgia Diversity Program	—	69,950	—	69,950
Pro bono	76,000	—	—	76,000
Supreme Court Grant	—	12,500	—	12,500
CLU School	—	153	—	153
Standards of the Profession	25,000	—	—	25,000
President's Program	10,000	—	—	10,000
Total program expenses	4,413,429	1,220,644	—	5,633,473
Management and general	785,366	500,107	—	1,285,473
Total expenses	5,198,795	1,720,751	—	6,918,946
Change in net assets	(92,836)	2,535,744	62,587	2,505,495
Other changes in net assets - transfers (note 10)	5,455	(5,455)	—	—
Net assets, beginning of year	1,296,670	7,666,493	219,805	9,182,928
Net assets, end of year	\$ 1,209,249	\$ 10,196,782	\$ 282,392	\$ 11,688,423

See accompanying notes to financial statements.

AUDITED 2001 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Statements of Cash Flows

Years ended June 30, 2001 and 2000

	2001	2000
Cash flows from operating activities:		
Change in net assets	\$ 3,530,874	2,505,495
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	426,171	416,905
Net realized and unrealized loss on investments	18,688	131,637
(Increase) decrease in accounts receivable	(38,714)	3,797
Decrease (increase) in receivable from related parties	77,505	(61,726)
Increase in prepaid and other assets	(137,747)	(2,622)
Decrease in accounts payable	(16,884)	(143,777)
Increase in accrued vacation	14,795	28,985
Increase in deferred income	495,118	903,808
(Decrease) increase in health claims reserve	(83,011)	78,895
Decrease in payable to Pro Bono	(35,680)	(13,190)
Decrease in payable to Client Security Fund	(12,071)	(22,929)
Decrease in deferred compensation payable	(24,441)	(39,163)
(Decrease) increase in deferred income Bar Center	(801,946)	132,306
Net cash provided by operating activities	<u>3,412,657</u>	<u>3,918,421</u>
Cash flows from investing activities:		
Purchase of building improvements, furniture, fixtures, and equipment	(463,546)	(48,954)
Proceeds from sale of investments	<u>1,904,632</u>	<u>2,755,170</u>
Net cash provided by investing activities	<u>1,441,086</u>	<u>2,706,216</u>
Cash flows from financing activities – principal payments on note payable	<u>(1,201,600)</u>	<u>(1,600,800)</u>
Net increase in cash and money market funds	3,652,143	5,023,837
Cash and money market funds at beginning of year	<u>10,636,275</u>	<u>5,612,438</u>
Cash and money market funds at end of year	\$ <u>14,288,418</u>	<u>10,636,275</u>
Supplemental disclosure of cash flow information – interest paid	\$ <u>60,049</u>	<u>162,116</u>

See accompanying notes to financial statements.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(1) Summary of Significant Accounting Policies

(a) Description of Business

The State Bar of Georgia (the "State Bar") is a membership organization of attorneys in the State of Georgia which performs as a society and regulatory agency for its membership.

(b) Accrual Basis

The financial statements of the State Bar have been prepared on the accrual basis of accounting and reflect all significant receivables and payables.

(c) Basis of Presentation

The State Bar's net assets and revenues, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets of the organization and changes therein are classified and reported as unrestricted and temporarily restricted.

Unrestricted net assets include amounts that are not subject to donor-imposed stipulations which are used to account for resources available to carry out the purposes of the State Bar in accordance with its charter and bylaws. The principal sources of unrestricted funds are membership fees and dues. The State Bar's governing board has designated certain unrestricted net assets to be held for specific purposes as indicated in the statement of financial position.

Temporarily restricted net assets are those resources currently available for use, but expendable only for purposes specified by the donor or grantor and may or will be met by the action of the State Bar and/or the passage of time. Such resources originate from grants and contributions restricted for specific purposes or a specific future time frame. When a donor or grantor restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

Revenues are reported as increases in unrestricted net assets unless use of the related assets is limited by donor-imposed restrictions. Expenses are reported as decreases in unrestricted net assets. Gains and losses on investments and other assets or liabilities are reported as increases or decreases in unrestricted net assets unless their use is restricted by explicit donor stipulation or by law. Expirations of temporary restrictions on net assets (i.e., the donor-stipulated purpose has been fulfilled and/or the stipulated time period has elapsed) are reported as reclassifications between the applicable classes of net assets.

(d) Investments

Investments consisting primarily of marketable securities are recorded at fair value.

AUDITED 2001 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(e) Building, Furniture, Fixtures, and Equipment

Building, furniture, fixtures, and equipment are carried at cost. Depreciation expense is computed based on the estimated useful life of the respective assets using the straight-line method of depreciation. The estimated useful lives range from three to twenty-seven and a half years.

(f) Deferred Income

Annual license fee and Bar Center assessment notices for the fiscal years ending June 30, 2001 and 2000 were sent out in May 2001 and May 2000, respectively. The amounts collected prior to June 30 were recorded as deferred income.

(g) Functional Allocation of Expenses

The costs of providing the various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

(h) Use of Estimates by Management

Management of the State Bar has made certain estimates and assumptions relating to the reporting of accrued expenses and deferred compensation to prepare the financial statements in conformity with accounting principles generally accepted in the United States of America. Actual results could differ from those estimates.

(i) Income Taxes

The State Bar is exempt from income taxes under Section 115 of the Internal Revenue Code.

(j) Reclassifications

Certain reclassifications have been made to 2000 balances to conform with 2001 balances.

(2) Membership

Membership in the State Bar was 32,532 and 31,646 at June 30, 2001 and 2000, respectively.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(3) Investments

Investments are recorded at fair value. At June 30, 2001 and 2000, investments consist of the following:

	2001	2000
Fixed income mutual funds	\$ --	1,894,100
Annuity contract	131,487	160,707
	<u>\$ 131,487</u>	<u>2,054,807</u>

(4) Building, Furniture, Fixtures, and Equipment

Furniture, fixtures, and equipment consist of the following:

	2001	2000
Leasehold improvements	\$ 146,205	146,205
Furniture and office equipment	370,200	363,895
Telephone equipment	74,100	74,100
Computer equipment	216,168	197,957
	<u>806,673</u>	<u>782,157</u>
Less accumulated depreciation	672,909	599,527
	<u>\$ 133,764</u>	<u>182,630</u>

The Bar Center building and equipment is summarized as follows:

	2001	2000
Building and improvements	\$ 9,671,625	9,247,730
Equipment	27,415	27,415
	<u>9,699,040</u>	<u>9,275,145</u>
Less accumulated depreciation	1,431,936	1,094,282
	<u>\$ 8,267,104</u>	<u>8,180,863</u>

(5) Retirement Plan

The State Bar has a money purchase pension plan that covers substantially all employees. Contributions to this plan in 2001 and 2000 were approximately \$185,000 and \$161,000, respectively.

AUDITED 2001 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(6) Lease

During fiscal year 1999, the State Bar exercised its option to renew its lease for office facilities in Atlanta for an additional three and one-half years resulting in an expiration date of March 31, 2002. During 2001, the State Bar renewed its lease at a satellite office in Tifton, Georgia, entering into a lease agreement for office space which expires on September 30, 2001.

Future minimum rental commitments under these agreements are as follows:

<u>Year ending June 30</u>	
2002	\$ 187,326

Rental expense charged to operations amounted to approximately \$419,000 and \$420,000 for the years ended June 30, 2001 and 2000, respectively.

(7) Related Party Transactions

The State Bar was reimbursed by related organizations for their share of salary and operating expenses during 2001 and 2000 as follows:

	<u>2001</u>	<u>2000</u>
Georgia Bar Foundation, Inc.	\$ 53,307	48,542
Chief Justice's Commission on Professionalism	260,284	229,067
Commission on Continuing Lawyer Competency	515,103	504,159
Lawyers' Foundation	30,112	52,352
	<u>\$ 858,806</u>	<u>834,100</u>

Amounts due from related parties totaled \$71,607 and \$149,112 at June 30, 2001 and 2000, respectively.

The following represents a summary of amounts due from related parties at June 30:

	<u>2001</u>	<u>2000</u>
Commission on Continuing Lawyer Competency	\$ 37,816	80,788
Chief Justice's Commission on Professionalism	21,216	17,032
Georgia Bar Foundation	7,334	1,795
Lawyers' Foundation	5,241	49,497
Total	<u>\$ 71,607</u>	<u>149,112</u>

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(8) Deferred Compensation for Retired General Counsel

The State Bar has an agreement with a retired general counsel ("retiree") in which the State Bar will provide a monthly pension payment to the retiree and his wife (the "beneficiaries"). Upon the death of the retiree, which occurred in fiscal year 2001, the monthly benefit payable will be reduced by one-half. To accrue for future payments which will be required under this agreement, the State Bar has recorded an actuarially determined liability of \$405,288 and \$429,729 at June 30, 2001 and 2000, respectively. This liability will be reduced by future payments to the beneficiaries. At June 30, 2001 and 2000, the monthly payment under this agreement was \$3,809 and \$7,412, respectively.

(9) Board-Designated Net Assets

The State Bar has Board-Designated net assets available for the following purposes at June 30, 2001 and 2000:

	<u>2001</u>	<u>2000</u>
Sections	\$ 889,301	822,262
Conventions	37,137	107,728
General operations	971,441	671,441
Bar Center	<u>11,388,891</u>	<u>8,595,351</u>
	<u>\$ 13,286,770</u>	<u>10,196,782</u>

(10) Operating Transfers

During the year ended June 30, 2001, the State Bar transferred net funds totaling \$300,000 from undesignated net assets to Board-designated.

During the year ended June 30, 2000, the State Bar transferred net funds totaling \$5,455 from Board-designated to undesignated net assets to be used for enhancements to its computer systems.

AUDITED 2001 FINANCIAL STATEMENT

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

(11) Temporarily Restricted Net Assets

Net assets were released from donor restrictions in 2001 and 2000 by incurring expenses satisfying the restricted purposes or by occurrence of other events specified by donors as follows.

Purpose Restrictions Accomplished	2001	2000
High School Mock Trial	\$ 137,890	119,870
Supreme Court Grant	10,000	12,500
CLI School	—	153
Bar Media Conference	58	30,648
Legislative	189,172	181,727
Family and Courts	4,042	—
Standards of the Profession	10,611	—
Younger Lawyers	7,088	12,391
Georgia Diversity Program	77,508	69,950
	<u>\$ 436,369</u>	<u>427,239</u>

Temporarily restricted net assets at June 30, 2001 and 2000 were available for the following purposes:

	2001	2000
High School Mock Trial	\$ 13,394	27,995
CLI School	13,634	12,907
Bar Media Conference	26,361	25,012
Legislative	91,246	88,932
Family & Courts	—	4,042
Supreme Court Grants	15,000	—
Standards of the Profession	64,389	50,000
Younger Lawyers	25,644	17,732
Georgia Diversity Program	68,598	55,772
	<u>\$ 318,266</u>	<u>282,392</u>

(12) Bar Center Purchase

On April 1, 1997, the State Bar purchased an office building from the Federal Reserve Bank of Atlanta for \$9,247,730 (purchase price of \$9,004,000 plus capitalized costs of \$243,730). This building will be utilized as headquarters for the State Bar and affiliated entities following renovation in 2001. During fiscal year 2001, the State Bar incurred an additional \$423,895 of capitalized costs.

STATE BAR OF GEORGIA

Notes to Financial Statements

June 30, 2001 and 2000

To purchase the building, the State Bar entered into a note payable agreement with the Federal Reserve Bank of Atlanta for \$8,004,000. The State Bar refinanced its original note with the Federal Reserve Bank in 1999 to obtain a note requiring monthly interest payments based on a fixed interest rate of 6.59%. This note released the State Bar from all obligations from the previous note acquired through the Federal Reserve Bank. The maturity date of the note was March 31, 2001 and was fully paid off. The balance of the note payable is \$-0- and \$1,201,600 at June 30, 2001 and 2000, respectively.

To assist in the funding of annual principal payments, the State Bar charges each of its members a \$200 assessment payable in \$50 installments over four years. For the years ended June 30, 2001 and 2000, these fee assessments totaled \$1,578,774 and \$1,545,522, respectively.

(13) Commitments and Contingencies

State Bar is subject to various suits and proceedings arising in the ordinary conduct of its affairs and has been named as a defendant in several lawsuits. In the opinion of the Office of the General Counsel, all suits and actions now pending, or likely to be filed, will be resolved without material adverse effect on the financial position of the State Bar.

UNITED WE STAND AS LAWYERS

By Pete Daugherty



The horrific events of Sept. 11, 2001, have united our country in a way the terrorists could never have foreseen. A blow meant to weaken has instead stirred a sense of patriotism and produced an unwavering resolve to defend our liberty and address the injustice done to our country and our citizens. In turn, lawyers have united like never before to aid in these efforts and preserve the rule of law.

In Georgia, young lawyers conducted a statewide blood drive as the supplies ran dangerously low two weeks after the attacks. In addition, young lawyers offered pro bono legal services to military personnel who might contact their Judge

Advocate General Offices in those Georgia cities with a heavy military presence. Young lawyers across the country offered assistance to the Federal Emergency Management Agency, who utilized those services to offer free disaster legal services to the victims and families of those affected by the terrorist attacks.

Families need help obtaining death certificates, dealing with creditors, applying for insurance, drawing up trusts and questions answered about tenant/landlord disputes, unemployment benefits and other claims like Social Security.

Some cynics, who might suggest that the last thing someone needs in a disaster is a lawyer, simply do not understand the challenges faced by survivors. Families need help obtaining death certificates, dealing with creditors, applying for insurance, drawing up trusts and questions answered about tenant/landlord disputes, unemployment benefits and other claims like Social Security. Small business owners at the same

time have questions about insurance, taxes, lease obligations and possible bankruptcy court filings. Lawyers united and proudly responded to the attack to provide these and other services for free.

When New York City Mayor Rudolph Giuliani needed to develop a system for families to obtain death certificates for missing victims without the customary three-year wait, he turned to lawyers. Not only was the process cut down to two weeks, but also over 700 lawyers volunteered to become educated on the new process and, in turn, educated families of the victims.

More than 200 lawyers have united and signed up to represent for free those families of the victims who need assistance in collecting from the Victim Compensation Fund enacted by Congress. There are reports of law firms essentially adopting firehouses in the New York area to provide pro bono any conceivable legal service, which might be required by the families of firemen.

I originally titled this column "Proud To Be An American Lawyer," but outrage over the attacks, and outpourings of support, are not limited to American lawyers. Letters from the Central Bar of Iran, the Bar of Southern Russia and the Bar of Moscow have been sent to national bar associations expressing outrage over the attacks, as well as the sympathy of the lawyers in those organizations. The London Young Solicitors Group united in a fundraiser in response to the tragedy.

The unity of lawyers and their efforts to uphold justice, liberty and the rule of law since the attacks should make us all proud to be lawyers. ☐

Morningstar Technology P/U 10/01 p. 35 "software for the business of law"
BW



Bob Phillips, of **B. Phillips & Associates**, has successfully completed the certification process with the National Association of Certified Valuation Analysts to earn his designation of Accredited Valuation Analyst. Phillips practices law in Cumming, Ga., with an emphasis in the area of family law, commercial law and bankruptcy. In addition, his background includes 20 years experience as a business executive in the aviation industry, as well as the founder of an aviation firm.

At the August 2001 **National Conference of the Civil Air Patrol**, **George P. Graves**, auxiliary of the U.S. Air Force, was selected national legal officer for the Civil Air Patrol. This position also includes duties as national corporate secretary and national parliamentarian. Graves has served for many years on the Law Practice Management Committee of the State Bar of Georgia, as advisor, member and vice chair.

Alston & Bird LLP partner **Kevin E. Grady** has been elected vice chair of the American Bar Association's (ABA) section of Antitrust Law in a vote that took place in August at the annual meeting of the ABA in Chicago. Grady will serve as vice chair of the section for 2001-02. In addition, under the bylaws of the section, he will automatically become chair-elect for the 2002-03 and chair of the section for 2003-04. Grady is a partner in Alston & Bird LLP's Antitrust and Investigations group in the Atlanta office.

The **Atlanta City Council** recently honored the **Atlanta Legal Aid Society's** Home Defense Program for its work on Predatory Lending practices.

The Atlanta firm of **Jones, Day, Reavis & Pogue** was ranked by *Corporate Board Member Magazine*

as #4 on their list of Top 20 law firms. Jones Day is the only firm on the top 20 list to have a presence in Atlanta. It is also the only non-New York firm in the top six nationally-ranked firms.

Hank Kimmel's one-act play, "Mrs. Palsgraf's Dream Team," was selected as the winning play of the **Georgia Theatre Conference's One-Act Play Contest**. Kimmel, an attorney/mediator and former executive director of Georgia Lawyers for the Arts, is a founding member of Working Title Playwrights, a local theatre company dedicated to the development of new works.

Atlanta law firm **Arnall Golden Gregory** (AGG) is the best place in the nation for law students to work during the summer, according to **The American Lawyer's 2001 Associates Survey**. AGG beat out 185 firms from across the nation to finish atop the legal publication's annual survey. The survey asked law students from across the country to rate their summertime employers on how they were treated, if they expected job offers and what type of training they received. AGG ranked as the top Atlanta firm for summer associates from 1997 to 1999, but this was the first year the firm finished No. 1 nationally. AGG was the only Atlanta firm to finish in the top 10 in this year's ranking.

Arnall Golden Gregory attorney **William H. Kitchens** has been named to the Metro Atlanta

Chamber of Commerce's newly formed biotech task force. The task force includes 35 leaders from the business community, academia, public health organizations and research. Kitchens is co-chairman of Arnall Golden Gregory's Food and Drug Law Practice Group and an adjunct professor at Emory University Law School, where he has taught a course in food and drug law since 1979.

David H. Williams, a partner with **Hunton & Williams**, has become a member of the Board of Directors of Art Papers Inc., the publisher of *ART PAPERS* magazine, a leading publication in the field of contemporary art and culture. Art Papers is a 25-year-old non-profit located in Atlanta.

Smith, Gambrell & Russell, LLP, partner **Ira Genberg** has received the BTI Client Service All Star designation. Genberg was identified in a recent national survey as one of only 78 attorneys nationwide (four from Georgia) who delivered outstanding client service. Genberg is a senior partner and head of the Construction Law Department with the firm. ■

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Effective Disciplinary Proceedings

FEW LAWYERS CAN AVOID the occasional client grievance. Statistics compiled by the American Bar

Association's Standing Committee on Professional Discipline document a steady increase in the number of

grievances investigated by disciplinary authorities.¹ For the mythical "average" jurisdiction of some 22,493 lawyers, disciplinary agencies receive a whopping 2,338 grievances per year!²

Are the odds really one-in-ten that a lawyer will receive a grievance each year? Probably not, unless the lawyer practices in one of the high-emotion, high-stakes areas which generate the most grievances. In Georgia, those areas include criminal defense, domestic relations and plaintiff's personal injury work.

We have all heard the common-sense steps which lawyers should take to avoid problems with the Bar — how important it is to return client calls promptly, handle the business aspects of the law practice responsibly, have a clear (preferably written) understanding with the client about fees, properly train and supervise support staff and to understand the requirements of the ethics rules —

but what steps can a lawyer who is the subject of a disciplinary grievance take to increase the

Of course a client's decision to drop a grievance must be made of the client's own free will, without

any pressure from the lawyer. If it appears that the client has been "bought off" or paid to drop a grievance that alleges serious

misconduct, the OGC may continue the investigation despite a lack of cooperation from the client.

Of the 2,316 grievances received by the OGC last year, 1,829 (82 percent) were dismissed after an informal investigation.

likelihood of the grievance being dismissed or to mitigate any penalty which may be imposed?

Tip #1: Try to Make it Right!

Many lawyers erroneously believe that they are prohibited from further communication with a client once that client has filed a grievance. To the contrary, the Office of the General Counsel (OGC) encourages lawyers to try to resolve client grievances informally when possible. Take a look at the grievance and figure out what the client is really upset about. If the client believes you have taken too long to finalize a case, put it at the top of your priority list. Consider voluntarily refunding a portion of the client's fee or submitting to fee arbitration if the grievance involves a fee dispute. Offer to do better by the client in the future if you have ignored telephone calls.

Tip #2: Participate in the Process and Cooperate!

Surprising as it may seem, approximately one-quarter of lawyers who have grievances filed against them do not respond to the OGC during the initial investigation of the grievance. Lawyers tend to be great at procrastination, but the fact is that 85 percent of grievances are dismissed during the informal investigation conducted by the OGC. Sadly, the disciplinary board issues several reprimands each year to lawyers who have not committed any misconduct except for their failure to respond during the investigation of a grievance.

Tip #3: Think About Retaining Counsel!

A “grieved” lawyer understandably is angry to be the target of a disciplinary investigation, and honestly may have had no idea of the extent of the client’s dissatisfaction. Self-representation is a mistake if the lawyer can’t put aside anger or a sense of indignation at receiving the grievance in the first place.

Retained counsel can help the accused lawyer take an objective look at the questioned conduct, and can help prevent a common mistake which pro se lawyers make in responding to grievances — attacking the accuser. Although the rules allow a lawyer under investigation to reveal what would otherwise be confidential information, attacks on the client’s intelligence, unrealistic expectations, motives or mental health will just aggravate the situation. If the client has a hidden agenda it likely will become apparent to the OGC during the investigative process.

Tip #4: Take it Seriously!

Research and prepare your response to a disciplinary investigation as carefully as you would any other legal matter. Review the grievance, disciplinary rules and relevant client file. If you are uncertain about how to respond, ask for help from people who know — lawyers who represent respondents in disciplinary cases,

former members of the disciplinary board or local law professors who teach ethics.

Most disciplinary investigations are not very complicated; the focus is on the facts rather than on legal research. In responding to an investigation, focus on the facts that are relevant to possible misconduct and ignore the rest. The OGC grievance counsel appreciates an informal response, which is as brief as it can be rather than a

Self-representation is a mistake if the lawyer can’t put aside anger or a sense of indignation at receiving the grievance in the first place.

formal pleading with attached stacks of documents, the unsorted client file and transcripts from the trial of the underlying case. Many lawyers keep the response brief, but offer to provide any additional information or copies of referenced documents if needed. The offer is an effective way to demonstrate the lawyer’s cooperation with the process, and the brevity of the response is something all lawyers can appreciate.

Tip #5: Take Responsibility For Your Own Conduct!

If the allegations of the grievance are true and you have screwed up, get a lawyer and talk about filing a voluntary petition for discipline — the sooner in the process you do so, the better. Volunteer to attend ethics educa-

tion classes, practice management programs or fee arbitration programs, which will help prevent future problems. The Bar’s Lawyer Impairment Program can provide help to lawyers suffering from drug and alcohol addiction.³ The fact that a lawyer has sought help for any impairment is a mitigating factor in a disciplinary proceeding.

Lawyers are often reluctant to admit to any wrongdoing, possibly from a legitimate fear of a mal-

practice claim, but remorse is another mitigating factor in determining what level of discipline is appropriate for a lawyer.⁴ Many clients just want to

hear the lawyer say, “I’m sorry for what happened in your case.”

It may be impossible to prevent a client from filing a grievance. How the lawyer responds has as much to do with what happens in the subsequent investigation as the allegations of the grievance itself. ■

Endnotes

1. ABA Center for Professional Responsibility, Standing Committee on Professional Discipline, “Survey on Lawyer Discipline Systems,” 1989, 1993-’94, 1995, and 1998-’99.
2. ABA Center for Professional Responsibility, Standing Committee on Professional Discipline, “Survey on Lawyer Discipline Systems,” 1998-’99.
3. The Lawyer Impairment Program is free. It provides confidential assistance to Bar members whose personal problems may interfere with their ability to practice law. Call 1-800-327-9631 for more information.
4. ABA Center for Professional Responsibility, “Standards for Imposing Lawyer Sanctions,” Rule 9.32(e)(1991).

Creditor's Rights Section

THE CREDITOR'S RIGHTS

Section recently held a well-attended luncheon at Maggiano's in Atlanta. The luncheon speaker was Morris W. Macey, of Macey Wilensky Cohen Wittner & Kessler. The topic was "The Uniform Fraudulent Transfer Act."

During the luncheon, the section presented its first "Morris W. Macey Lifetime Achievement Award" to none other than Morris Macey. The purpose of the award is to recognize a member of the Bar who has consistently represented and served his or her clients within the commercial community with excellence, integrity and devotion. Macey has practiced law for almost 55 years and is legendary among his peers.

Frank Wilensky, Macey's partner, and chair-elect of the section, presented the award at the luncheon meeting. In his remarks, Wilensky noted that Macey has served as Georgia's Commissioner on Uniform State Laws since 1972, and has been continually reappointed by every governor since Jimmy Carter. He has actively participated in the revisions of the Uniform Fraudulent Transfer Laws, the Uniform Limited Partnership Act and the Uniform Consumer Credit Act.

Macey served as the national president of the Commercial Law League of American in 1966, the vice-chairman of the National Conference of Lawyers and Collection Agencies, a member of the National Bankruptcy Conference since 1965 and as the founding chairman of the Southeast

Bankruptcy Law Institute. Macey serves on the boards of the Consumer Credit Counseling Service, the Associated Credit Union and the National Center of Paralegal Training. He has written and published over a dozen scholarly articles and has lectured all over the country on commercial law and bankruptcy topics.

At the conclusion of the luncheon, Section Co-Chair Janis L. Rosser encouraged members to visit the section's Web page, list their e-mail on the State Bar's database and attend the upcoming meeting of the section to be held during the Bar's Midyear Meeting in January 2002 at the Swissôtel in Atlanta. The section also plans a holiday party in December 2001.

CONTINUED ON PAGE 59



1: Janis L. Rosser, co-chair of the Creditor's Rights Section, addresses those in attendance during the October luncheon meeting. The section is also co-chaired by Harriet Isenberg. 2: Morris W. Macey (left) is presented the lifetime achievement award by his law partner Frank B. Wilensky.

State Bar Adds New Section



Charles Ruffin,
Eminent Domain
Section chairman

A NEW SECTION HAS BEEN added to the State Bar of Georgia's lineup — the Eminent Domain Section. If you just

asked, "What is eminent domain?," you may stop reading now and move on.

Eminent domain is the name given to the power of government to take private property for a public purpose by paying just compensation to the property's owner. Such power is wielded primarily by federal and state governments, but has also been bestowed by the state upon local governments and public utility companies.

The practice of law in this area encompasses a broad spectrum of both federal and state law including constitutional, statutory, administrative and zoning laws. The practice of eminent domain law is intellectually challenging, trying at times, rewarding and absolutely necessary to the progress of communities as a whole and to the protection of the rights of private property owners.

For many years, the State Bar of Georgia has done a superb job of providing continuing legal education and support to the eminent domain practitioners in Georgia. However, as times change and the state highway and

public utility systems continue to grow at an unprecedented rate in order to keep up with the demands of a thriving population, the practice of eminent domain law has also grown. This growth has led to a need for the creation of a new section devoted to analysis of the ever changing landscape of eminent domain law and to the service of the attorneys who practice it on both the condemnor and condemnee sides.

At the 2001 Annual Meeting, the Board of Governors of the State Bar of Georgia approved the formation of the Eminent Domain Section. While letters of invitation to join the section have been sent to known eminent domain practitioners, membership is open to anyone with an interest in this area of law. The purpose of the section is to disseminate educational materials and information pertaining to significant issues in this field and to foster meaningful debate among attorneys from both sides of the condemnation arena in order to shape new and balanced laws for the benefit of both public and private concerns.

Charles Ruffin, of Macon, was selected by State Bar President Jimmy

Franklin to serve as the first chairman of the section. Thirty days following the appearance of this article, Ruffin will appoint a nominating committee to fill the remaining section leader positions. Formal elections will be held at the Midyear Meeting of the State Bar in January.

Anyone interested in joining the section may do so by contacting Section Liaison Lesley Smith at (404) 527-8700 or via e-mail at lesley@gabar.org. The section membership fee is \$35.00 and should be forwarded to Membership Director Gayle Baker, State Bar of Georgia, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, GA 30303. Please complete the following form and return it to the aforementioned address when remitting payment for section membership.

Questions or suggestions concerning the section should be directed to Charles Ruffin at P.O. Box 5047, Macon, GA 31208; phone number (478) 750-0777; e-mail clrlaw@bellsouth.net. ☒

Yes, I want to join Eminent Domain Section

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Firm Name: _____

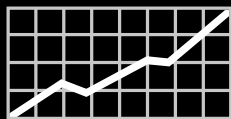
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Show Me the Money!

By Natalie R. Thornwell

CHASING DOWN CLIENTS TO get paid is one of the most aggravating things for hard-working lawyers. When you deliver quality legal services, you expect payment. The client, like any consumer, however, may not have the same sentiments that you do about the quality of your work. Or, the client may be what we call a “deadbeat” client. Regardless of the reason for non-payment, do you think you should not be paid for the work you have done? Absolutely not! Minimize the likelihood of not being paid by following these 10 steps.

Get as Much of Your Fee up Front as Possible

If there were a single golden rule of billing, this first step may actually

be it. While this practice may seem a little forward for lawyers, it is important and it works. Ask any criminal defense attorney how they are paid and you will get step #1 as the answer. Whether by the use of a retainer or a flat fee, you will recover more of your fee if you ask for payment up front.

Use a Written Fee Agreement—No Exceptions

It doesn't matter who you are, what type of practice you have or how large or small the matter — you should **always** use a written fee agreement. This agreement should be clear and describe exactly what work will be performed, and exactly how much and how you expect to be paid. Both you and your clients should sign the agreement.

Talk to Your Clients About Your Fees

Explain your fees to your clients in the initial interview or other early stage of representation. Even for cases where you are not certain of the possible cost to the client, be sure that you discuss the financials with your clients. As with any service, the customer expects to know what they are getting for their money, and exactly how much of their money it is going to take to get the service. Don't get off to a bad start by not disclosing how much your work will cost. Also, if you don't know, then tell the client you don't know. Then try to give a reasonable estimate, as well as why you think the estimate is reasonable. At this step, try to communicate as clearly as possible. Remember, no surprises for the client in terms of fees can mean no surprises for you in terms of payments.

Set Reasonable Fees

While you are professionally required to set reasonable fees, be sure to understand what is considered “reasonable” in your geographical and practice areas. Don't expect all fees to be equal. In fact, armed with the correct firm financial information, you can easily decide to set fees that maximize your firm's profitability. Use definitive terms for setting your fees and contact your colleagues for existing ranges for particular types of work.



Allow Flexible Billing Options

When feasible, let clients pay you in a manner that is comfortable for them. While I generally discourage payment plans, I do think lawyers can benefit from accepting credit cards and other flexible and acceptable forms of payment. Be sure to document all receipts properly. Also, don't overlook the advantages of task-based billing versus the traditional hourly billing models in your practice.

Bill Regularly

Bill monthly (regularly) for all clients. Regular bills are more likely to be paid due to their constant visibility with the client. Make sure that you use clear, uncomplicated bill formats that can be easily understood by your clients or changed to meet certain criteria.

Let Technology Help by Automating Your Time, Billing and Accounting Procedures

Don't track time by hand after you have completed the work. Instead, track the time automatically via technology designed for that purpose. With today's systems, you can enter your own time directly into the systems and with a few mouse-clicks generate and print a comprehensive client bill. Some legal-specific programs to try are Timeslips, PCLaw, TABS, and Time and Profit. PCLaw, TABS and Time and Profit integrate general ledger accounting functionality into the standard time tracking systems and can provide more bang for your technology buck.



Obtain and Properly Maintain a Trust Account

If you keep any funds on behalf of a client or third party, or if you keep a fee that you have yet to earn, then you are required to have a lawyer's trust account. Make sure you follow Rule 1.15 of the Georgia Rules of Professional Conduct when setting up and maintaining your trust account(s). A good rule of thumb here is to always be able to get a list of the individual balances of all your clients on any given day. To learn what's needed to do this, contact our program or refer to the Bar's Web site, www.gabar.org, for trust accounting information.


Observe Standard Billing and Accounting Reports Regularly for Changes

If you don't have a report for the account receivable balances for all clients with unpaid balances, or a listing of the chart of accounts your firm uses for accounting, then you have some more work to do on this step. At the very least, you should have access to aged accounts receivable reports (who owes you how much and

how long they have owed the amounts), productivity reports (how much fee income was produced by the firm's timekeepers) and profitability reports (how much fee income was actually collected by for billed items).

Don't Personally Call Your Clients for Payment

While you obviously have a very keen interest in why you might not be getting paid, do not waste valuable billable time on the phone tracking down payments. Have your bookkeeper or other staff respond via phone call or letter to all accounts becoming or over 30 days past due. Don't wait until a great deal of time has elapsed before you check to see why the client has not paid or when you expect payment.

The aforementioned steps can enhance your chances of getting paid for the valuable work you have done. For additional information on effective billing, collections or other practice management techniques, contact the Law Practice Management Program at (404) 527-8770. 

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



In Atlanta

McGuireWoods LLP has hired three new associates in the firm's Atlanta office. **Andrew J. Pulliam** has joined the Commercial Litigation Department, **Brooke L. Williams** is a member of the Labor & Employment Department and **Milo S. Cogan** joined the Corporate Services Department. The firm is located at 1170 Peachtree St., NE, Suite 2100, Atlanta, GA 30300-7649; (404) 443-5500; Fax (404) 443-5599.

Emily S. Bair, **Eileen Thomas** and **Lauren G. Alexander** an-

nounce the opening of new offices devoted to the exclusive practice of Family Law and Alternative Dispute Resolution, **Emily S. Bair & Associates, P.C.** and **The Collaborative Law Offices of Lauren G. Alexander**. They are located at 6100 Lake Forest Drive, Suite 370, Atlanta, GA 30328; (404) 806-7330; Fax (404) 806-7332.

H. Gray Skelton Jr. and **John H. Skelton** of **Skelton & Skelton Attorneys** announce the relocation of their offices to 301 Washington Ave., Marietta, GA 30060. The telephone number will remain

(678) 290-8088 and the fax line will remain (678) 290-8099.

Beryl Farris announced the new location of her office. She continues to practice immigration law. The firm is now located at 1986 Montreal Rd., Atlanta, GA 31145-1129; (678) 937-0713; Fax (678) 937-0714.

Sutherland, Asbill & Brennan LLP announced the addition of **Gregory S. Smith**, formerly associate counsel to the president of the United States and former president of the Atlanta Bar Association, to their

Washington office as a counsel in the Litigation Group. Smith's practice will concentrate on general civil litigation and white-collar criminal defense. He also previously worked for both the law firm of King & Spalding and the Federal Defender Program Inc., in Atlanta. The firm's office is located at 1275 Pennsylvania Ave., NW, Washington, DC 20004-2415; (202) 383-0100; Fax (202) 637-3593.

Michael A. Alcorta joined the Atlanta office of **Fragomen, Del Rey, Bernsen & Loewy** as an associate attorney specializing in business immigration law. The firm's office is located at 1175 Peachtree St., NE, 100 Colony Square, Suite 700, Atlanta, GA 30361; (404) 249-9300; Fax (404) 249-9291.

Michael G. Regas II and **Darren W. Penn** have joined **William L. Ballard** and **Edward R. Still** to form **Ballard, Still, Penn & Regas, LLP**. The firm is located at 400 Colony Square, Suite 1018, 1201 Peachtree St., NE, Atlanta, GA 30361; (404) 873-1220; Fax (404) 876-0760.

Allen L. Greenberg has joined **Needle & Rosenberg, P.C.**, as a partner in the Atlanta-based firm, which specializes in patent, trademark and copyright law. Greenberg was in the legal department of the Coca-Cola Company for over 20 years, serving most recently as assistant general counsel. He was also a partner in the law firm of King & Spalding. **Needle & Rosenberg, P.C.**, is located at Suite 1200, The Candler Building, 127 Peachtree Street, NE, Atlanta, GA



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30303-1811; (404) 688-0770; Fax (404) 688-9880.

Andrew H. Prussack has joined as a partner of **Holt Ney Zatcoff & Wasserman, LLP**. Prussack will continue his practice of business and healthcare law. Holt Ney Zatcoff & Wasserman, LLP, is located at 100 Galleria Parkway, Suite 600, Atlanta, GA 30339; (770) 956-9600; Fax (770) 956-1490.

Paul G. Justice has joined **PROMINA Health System** as vice president of legal services and general counsel for the PROMINA board of trustees. Prior to joining PROMINA, Justice served as general counsel for the Georgia Department of Community Health. The office is located at 2000 South Park Place, Atlanta, GA 30339; (770) 956-6483.

Hunton & Williams has bolstered its Atlanta office ranks with 13 new associates. The new additions bring the metro office count to 108 attorneys. **David R. Emch, S. Wade Sheek, John Trent Dixon** and **Melissa F. Danits** have been added to the Corporate and Finance team. **J. Willcox Dunn III, Daniel G. Ashburn, Joel Keith Gerber** and **Brooke Franklin Voelzke** are additions to the Litigation, Labor and Antitrust team. **Rebecca Gunn McCabe, Lisa A. Kabula, Rebekah K. Herman, Angela Slate Rawls** and **Kalin M. Light** have been added to the Labor and Employment team. The firm, which is celebrating its Centennial this year, opened the Atlanta office 13 years ago. Hunton & Williams is one of the world's 50 largest law firms with 15 offices worldwide. The firm is located at Bank of America Plaza, 600 Peachtree St., NE, Atlanta, GA 30308; (404) 888-4000; Fax (404) 888-4190.

In Macon

Hall, Bloch, Garland & Meyer, LLP, announced that **Jay C. Traynham**, formerly a partner with Martin, Snow, Grant & Napier, has joined the firm as a partner where he will continue his law practice focusing on litigation, insurance defense and general trial practice. The firm is located at 577 Mulberry St., Suite 1500, Macon, GA 31208-5088; (478) 745-1625.

In Conyers

Talley & Sharp, P.C., announced that **Laura French** has become a partner of the firm and that the firm will hereafter be known as **Talley, Sharp & French, P.C.** The firm is located at 1892 Ga. Highway 138, SE, Conyers, GA 30013; (770) 483-1431; Fax (770) 483-4912.

In Columbus

The firm of **Hatcher, Stubbs, Land, Hollis & Rothschild** announced that **Edward P. Hudson**, formerly of Campbell, Hudson & Brannon, LLC, Atlanta, has become a partner of the firm. Hudson focuses his practice in real estate at the firm's real estate office located at 6310-A Bradley Park Drive, Columbus, GA 31904. The firm's main office is located at 233 12th St., Suite 500 Corporate Center, Columbus, GA 31901. (706) 324-0201.

In Valdosta

Sam D. Dennis announced the opening of his new office, **Sam D. Dennis, P.C.** Dennis practices in the areas of personal injury, medical malpractice, wrongful death, product liability, worker's compensation, criminal defense and

domestic relations. The office is located at 1107 North Patterson St., P.O. Box 1865, Valdosta, GA 31603-1865; (229) 244-4428.

In Grand Rapids, Mich.

Attorney **Donald J. Wallace** has joined the intellectual property firm of **Rader, Fishman, Grauer & McGarry** as an associate. Wallace will be practicing in the field of mechanical patent prosecution and product clearance. The firm is located at 171 Monroe Ave., NW, Suite 600, Grand Rapids, MI 49503; (616) 742-3500; Fax (616) 742-1010. ☐

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Gate City Bar: A Tradition of Excellence

By Karen D. Fultz
and Charles Johnson

IN 1948, THE GATE CITY BAR Association was established by 10 African-American lawyers as a professional association. The organization's purpose was best stated in a Georgia House of Representatives 1999 Resolution, wherein it summarized the vision of the originators and stated that Gate City was established to "create in the community a practical appreciation for the legal profession; to encourage persons of outstanding promise to attend first rate law schools and to return to the communities which statistics demonstrated needed their services most; to be alert to oppose arbitrary and capricious laws in our state with all the force and fiber of which we are capable as an organization; to uphold and extend the principles of justice in every phase of American life to the end that no one shall be discriminated against because of his [or her] color, race, religious beliefs or national origin."

Today, Gate City continues to cultivate the vision. The current leadership and members of Gate City strive to uphold the traditions of its founders, while at the same time make the necessary transitions with the change in times and generations. Within the next administration, which will be led by Ceasar Mitchell, the Gate City Bar is

planning to commit to more involvement with legislators by appointing members as liaisons to the General Assembly. These individuals will work closely with the Georgia House of Representatives and Senate to provide opinions and viewpoints on the issues that will affect the community, such as predatory lending.

Salzano, Esquire, Franzen & Salzano, P.C.; and Senator Vincent Fort. The panelists suggested ways to detect predatory lending in its initial stages (before the execution of the contract), how to assist the legislators with combating the predators and how to provide the information and education to the community to eliminate the

2001-2002 Gate City Bar Association Officers and Executives

President:	Robert Shannon Jr.
President-Elect:	Ceasar Mitchell
Vice President:	Will Adams
Secretary:	Karen D. Fultz
Assistant Secretary:	Violet Ricks
Immediate Past President:	David Hooker
Historian:	Charles Johnson, III
Member-at-Large:	Timothy Williams
Member-at-Large:	Frank Biggins
Member-at-Large:	Gloria Johnson
Member-at-Large:	Hon. Henry Newkirk
Member-at-Large:	Charis Johnson

In August 2001, Gate City sponsored a panelist discussion on predatory lending. The panelists included Rachel Allen, of the Department of Housing and Urban Development; Michael Julian Bond, Atlanta City Council; Bill Brennan, Esquire, Atlanta Legal Aid; Steve Holland, A-House Program Alliance; Loretta

existence of the prey. Gate City will continue to sponsor these types of programs to educate its members and others to prepare them to provide additional legal assistance to the community where needed.

In 2002, Gate City will sponsor a legislative breakfast to give its members, as well as other attorneys,

the opportunity to speak with the legislators and to hear first-hand the agenda for the new session.

Gate City's Hall of Fame

In 1997, the Gate City Bar Association initiated a Hall of Fame, designed to recognize individuals who have epitomized the association's values of integrity, commitment and community service. Although the Hall of Fame's early inductees were all lawyers and judges, the Association determined that the inductees for the year 2000 would be "Community Partners" — non-lawyers who have worked with lawyers to bring about social change in Georgia. The association appointed a committee, who then sought and received the names of several Georgia residents who had demonstrated a sustained commitment to the empowerment, growth and development of underrepresented populations.

The task of selecting the association's first Community Partners was assigned to a committee which included the Hon. Robert Benham, Hon. Herbert Phipps, Hon. Thelma Wyatt Cummings Moore, Hon. Emma Darnell, Hon. Marvin Arrington, Felker Ward Jr., Teresa Wynn Roseborough, Thomas G. Sampson and Charles S. Johnson. Having considered a number of deserving candidates, the committee identified five individuals, who were honored at a ceremony in April at the headquarters of Atlanta Life Insurance Company.

The individuals who were recognized as Community Partners include:

Ella Mae Brayboy, former director of community affairs for the King Center, one of Atlanta's first African-American deputy registrars and a leader in the efforts to decentralize the elections system to make it more accessible; **Xernona Clayton**, former SCLC staff member, catalyst in the desegregation of Atlanta's hospitals, creator and executive producer of Turner Broadcasting's Trumpet Awards and

Southwest Atlanta Youth Business Organization and director of the State Bar of Georgia's BASICS Program.

In presentations by Hon. John Ruffin, Thomas Sampson, Jeff Tompkins, Caesar Mitchell and Donald Edwards, the association expressed its appreciation for the many contributions of these honorees. It was noted that, without resources, assistance and guidance from indi-

viduals such as these honorees, much of the progress that has taken place over the last several years, might not have occurred.

The Hall of Fame is a continuing program of the Gate City Bar Association, and it is anticipated that additional members will be inducted in the years to come. Additionally, the funds from this reception are donated to the Gate City Scholarship fund, which is presented to outstanding African-American law students from Georgia law schools.

Fifty years later, as it moves forward to its next administration in 2002, Gate City

continues the vision of its founders through its commitment to the education and legal assistance of African-American communities. ☒

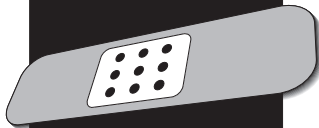
Karen D. Fultz is an associate with Lackland & Associates, LLC, in Atlanta, and currently serves on the Gate City Bar Association's board of directors as secretary.

Charles Johnson III is a partner with Holland & Knight LLP, in Atlanta, and is a past president of the Gate City Bar Association. Johnson currently serves on the association's board of directors as historian.



Gate City Bar Hall of Fame award recipients pose with members of the association during the April 2001 awards ceremony. The event was held at the headquarters of the Atlanta Life Insurance Company.

one of the first African-American women in Atlanta to host a regularly-scheduled television talk show; **W.W. Law**, who served for 25 years as president of the Savannah Branch of the NAACP, who served as president of the Georgia State Conference of Branches of the NAACP and who is the spiritual force behind Savannah's Ralph Mark Gilbert Civil Rights Museum; **Sandra McDonald**, founder and director of Outreach Inc. and advocate of increased AIDS awareness in the African-American community; and **Edward Meniffee**, founder of the



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

Albany Courtroom Bears Judge's Name

A COURTROOM DEDICATION

was held in October in Albany, Ga., in memory of Judge Asa D. Kelley Jr. Judge Kelley, who passed away in 1997, served as a Superior Court judge since 1968. He was also a former Georgia senator and mayor of Albany.

Chief Judge Loring A. Gray, a longtime friend of Judge Kelley, presided over the ceremony. During the event, Walter and Asa Kelley, sons of Judge Kelley, shared memories of their father with the many guests in attendance. In addition, Judge Stephen Goss presented the sons with a flag from their father's courtroom.

Following the dedication, the Dougherty County Bar Association hosted a reception. ☒



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1: (l to r): Judge Willie E. Lockette, Judge Loring Gray, Walter Kelley, Judge Stephen Goss and Asa Kelley watch the unveiling of the courtroom in Judge Kelley's honor. 2: Members of Judge Kelley's family were in attendance at the dedication ceremony. 3: Many judicial guests were on hand during the courtroom dedication.

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.

John H. Boman Jr. Admitted 1933
Atlanta, Ga. Died September 2001

Robert Keith Broome Admitted 1949
Hartwell, Ga. Died August 2001

Horace L. Cheek Jr. Admitted 1963
Rincon, Ga. Died June 2001

Leland G. Cook Admitted 1979
Atlanta, Ga. Died July 2001

Ahmed Yussuf Dabarran Admitted 1998
Atlanta, Ga. Died May 2001

Raymond Walker Dew Jr. Admitted 1949
Raleigh, N.C. Died October 2001

Jules Goldstein Admitted 1988
Marietta, Ga. Died September 2001

James Carr Grizzard Admitted 1936
Atlanta, Ga. Died August 2001

Stephen H. Goodloe Admitted 1986
Atlanta, Ga. Died August 2001

Robert Ray Harlin Admitted 1957
Atlanta, Ga. Died May 2001

Rexford L. Hawkins Admitted 1965
Birmingham, Ala. Died August 2001

George Henry Henderson Admitted 1994
El Paso, Texas Died September 2001

William Agnew Howland Jr. Admitted 1950
Alexandria, Va. Died April 2001

Samuel H. Kirbo Admitted 1974
Jonesboro, Ga. Died September 2001

Robert L. Littlefield Jr. Admitted 1975
Decatur, Ga. Died August 2001

Eugene J. Murphy Admitted 1967
Sierra Vista, Ariz. Died April 2001

Georgine Skogberg Pindar Admitted 1987
Atlanta, Ga. Died August 2001

Walter M. Rodgers Admitted 1953
Atlanta, Ga. Died September 2001

Christopher Matthew Roshong Admitted 1993
Roswell, N.M. Died July 2001

Dewey Smith Admitted 1949
Carrollton, Ga. Died September 2001

Edward D. Smith Admitted 1935
Atlanta, Ga. Died May 2001

Thomas Winston Starlin Admitted 1937
Columbus, Ga. Died May 2001

H. Dale Thompson Admitted 1949
Dublin, Ga. Died July 2001

Lynn L. Wagner Admitted 1983
Spartanburg, S.C. Died June 2001

Slade Charles Young Admitted 1952
Atlanta, Ga. Died August 2001

Luhr G. C. Beckmann Jr., 78, of Savannah, died Aug. 17, 2001. Born March 13, 1923, in Savannah, he graduated from the Citadel and received his law degree from the University of Georgia in 1949. He was admitted to the State Bar of Georgia in 1949, and practiced law with Beckmann & Pinson from 1952. Later, he became of counsel with Savage, Turner & Pinson. He was a member of the Savannah Bar Association, where he was president in 1975. He was also a member of the American Bar Association, the Georgia Defense Lawyer's Association, Georgia Trial lawyers Association and a fellow with the American College of Trial Lawyers. He was honored as one of the "Best Lawyers in America 1997-98." He served in the U.S. Army during World War II in the 8th Armored Division, where he received the Purple Heart for service as a forward observer in Germany. He is survived by his wife, Doris Beckmann, his daughters, Brenda Beckmann Sheehan and Barbara Beckmann Bentley, and his son, Luhr George Christian Beckmann III, as well as five grandchildren.

Jason Derek Long, 30, of Macon, died Aug. 25, 2001. Born Feb. 8, 1971, he graduated from the University of Georgia and Southeastern Baptist Theological Seminary, and received his law degree from Mercer University Walter F. George School of Law. He was admitted to the State Bar of Georgia in 1998, and practiced law with Bullard, Moody, Long & Garcia in Macon. He was a member of the American Bar Association. He is survived by his brother, Dr. J. Michael Long, and his parents, Jim and Mary Long.

John Stanley Warchak, 87, of Macon, died July 18, 2001. Born April 6, 1914, in Aliquippa, Penn., he received his law degree from Mercer University Walter F. George School of Law. He was admitted to the State Bar of Georgia in 1950. He was a member of the Macon Bar Association, as well as the National Rifle Association, the Macon Rifle and Pistol Club, and the Marion Road Gun Club. He served in the U.S. Army during World War II. He is survived by his wife, Aliene Y. Warchak, daughters, Josie Warchak, Judy Benton and Glenda McLendon, and son, Ted Charlie Warchak, as well as five grandchildren.

Lawyers Foundation of Georgia

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

A meaningful way to honor a loved one or to commemorate a special occasion is through a tribute and memorial gift to the Lawyers Foundation of

Georgia. An expression of sympathy or a celebration of a family event that takes the form of a gift to the Lawyers Foundation of Georgia provides a lasting remembrance. Once a gift is received, a

written acknowledgement is sent to the contributor, the surviving spouse or other family member, and the *Georgia Bar Journal*.

Information

For information 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 (August 16, 2001 - October 17, 2001)

DISBARMENTS AND VOLUNTARY SURRENDER OF LICENSE

Allen E. Bates
Riverdale, Ga.

Allen E. Bates (State Bar No. 041760) 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 Sept. 17, 2001. On April 17, 2001, Bates was found guilty of one count of conspiracy to commit mail fraud, five counts of mail fraud and six counts of money laundering.

Paul A. Bradley
Atlanta, Ga.

Paul A. Bradley (State Bar No. 075132) has been disbarred from the practice of law in Georgia by Supreme Court order dated Sept. 17, 2001. Although personally served, Bradley failed to respond to the Notice of Discipline. In 1995, Bradley agreed to represent a building company in a legal matter against the Housing Authority of the City of Augusta, and filed suit on the company's behalf. In August 1999, the client discussed the case with Bradley, but from November 1999 through May 2000 Bradley failed to respond to any of the client's messages. Finally, the client sent Bradley a certified letter terminating his services and requesting his file. The letter was returned as undeliverable and the private investigator the client hired could not locate Bradley. The client had to hire new counsel.

Laura J. Burton
Ellijay, Ga.

Laura J. Burton (State Bar No. 097889) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 1, 2001. Burton was the subject of three State Bar disciplinary proceedings, and was disbarred for her conduct in two of those cases.

In State Disciplinary Board Docket No. 3796, the Supreme Court found that Burton engaged in dishonest conduct and commingled client funds. Burton received a check from a client payable to the Fulton County Superior Court in the amount of \$3,600. Burton subsequently told her

client that the court would not accept the check, and indicated that she was destroying the check. Instead of destroying the check, Burton changed the payee designation to "L.J. Burton" and deposited the check into her personal account.

In Docket No. 4022, the Supreme Court found that Burton abandoned the appeal of a client's termination of parental rights case, and misappropriated the same client's personal injury settlement funds.

In Docket No. 3795, the Supreme Court found that both Burton and the complaining witness lacked the requisite credibility upon which to base findings of fact sufficient to prove the disciplinary charges. Accordingly, Burton's disbarment was based on the findings in Docket No. 3796.

Jeffrey Ross Bowie
Atlanta, Ga.

Jeffrey Ross Bowie (State Bar No. 071753) has been disbarred from the practice of law in Georgia by Supreme Court order dated Oct. 5, 2001. Bowie was hired to represent a corporation in a breach of contract claim. After repeated inquiries, Bowie sent the corporate representative a copy of the complaint he purportedly filed on behalf of the corporation and a copy of the answer purportedly filed by the defendant. In fact, the defendant had not been served and had not filed an answer. When the client directed Bowie to withdraw from the case and return the file, Bowie produced an incomplete file, did not respond to the continued requests for the complete file, did not return the funds entrusted to him and used those funds for his own benefit.

Another client retained Bowie to represent her in a legal matter arising from an automobile collision. Bowie provided her with the case file number, which the client later learned was an invalid number. Bowie refused to communicate with her about the case.

SUSPENSIONS

Richard O. Ward
Augusta, Ga.

By order dated Oct. 1, 2001, the Supreme Court accepted Richard O. Ward's (State Bar No. 737315) Petition for Voluntary Discipline and suspended him from

the practice of law in the State of Georgia indefinitely. Ward must comply with several conditions prior to reinstatement, including a certification from the Lawyer Assistance Program that he is mentally fit to return to the practice of law. Ward represented clients in a personal injury suit, but did not file or serve on their behalf a response to a motion for summary judgment filed by the adverse party. As a result, the trial court dismissed the clients' suit with prejudice.

**Melvin Leon Dansby
East Point, Ga.**

By order of the Supreme Court dated Oct. 1, 2001, Melvin Leon Dansby (State Bar No. 204970) was suspended from the practice of law in the State of Georgia for a period of three years with the conditions that he submit to assessment by Law Practice Management within six months of reinstatement and attend ethics

school. Dansby made certain admissions during the hearing of a fee arbitration dispute with a client. Dansby admitted that he settled the client's claim, but did not place the proceeds in an attorney trust account because he had previously closed the account. He commingled the client's funds with his own and, on one or more occasions, paid the client portions of the settlement proceeds from his general operating account.

INTERIM SUSPENSIONS

Under State Bar Disciplinary Rule 4-204.3(d), a lawyer who receives a Notice of Investigation and fails to file an adequate response with the Investigative Panel may be suspended from the practice of law until an adequate response is filed. Since Aug. 16, 2001, two lawyers have been suspended for violating this Rule. ☐

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Technology Law Section

The Computer Law Section is now known as the Technology Law Section. The name change recognizes that the section's focus and the practice of many of its members have expanded beyond hardware and software to networks, systems and other technologies. The section is headed by James "Jim" E. Meadows of Alston & Bird LLP, Atlanta.

Appellate Practice Law Section

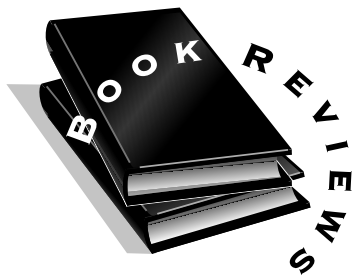
The Appellate Practice Section has been hard at work. Their most recent endeavor was the September luncheon at Sutherland, Asbill & Brennan. The section was treated to a luncheon CLE with guest speaker Judge John J. Ellington of the Georgia Court of Appeals. Judge Ellington spoke on the challenge of making difficult or unpopular decisions on appeal, and on how the appellate bar can help. The section is headed by Chris McFadden, Decatur.

Section Leaders Meeting at Bar Headquarters

On Aug. 29, 2001, representatives from most of the Bar's 34 sections met for a second time this Bar year. Leaders shared ideas and an orientation was held for incoming officers. Section leaders will meet again during the State Bar's Midyear Meeting to be held January 2002 at the Swissôtel in Atlanta. Twenty-two sections will hold functions during the Midyear Meeting — and that's a record!

Directories

Local Government and Taxation Section members should look for a member directory due out soon. ☐



A ROADMAP FOR TRIAL LAW

***Proving Federal Crimes*, David Marshall Nissman, Corpus Juris Publishing Co., Conyers, Ga., 2001, \$125.00, www.corpusjurispublishing.com.**

Reviewed By Denise Hinds

PERHAPS THE MOST TROUBLESOME ASPECT to litigation is knowing that for every authority supporting your position there are others that can be used with equal force and effect to support your opponent's position. If only there were a single authority that created a consensus on legal positions as well as agency positions, we'd all have a more solid foundation upon which to resolve those issues and cases capable of resolution. To that end, federal prosecutor and Emory graduate David Nissman has created a trial companion whose value far exceeds its price, in his book, *Proving Federal Crimes*.

Originally published by the United States Department of Justice (DOJ), it went through seven editions between 1954 and 1981, but time and changes in the law had rendered it passe — a dust collector on the library shelf, a silent reminder of the way things used to be done. Fortunately, that has changed. Nissman has done a tremendous service by revising and updating this venerable publication for the commercial market. Nissman borrows from his quarter-century as a state and federal prosecutor to provide an up-to-date, practical and easy-to-use reference guide, which should be required reading for every lawyer and agent working in the federal system. *Proving Federal Crimes* is a must have for every serious trial lawyer — federal or local.

Essentially operating as a road map for conducting a criminal prosecution, *Proving Federal Crimes* roughly mirrors the chronology of a federal criminal proceeding. It clearly and concisely deals with topics ranging from the criminal investigation to pretrial proceedings, from grand jury practice to trial practice, from sentencing to post-trial proceedings. Regardless of your level of experience, this

book is almost like having a seasoned prosecutor at your side, as it handily works an effective blend of substantive law, practical tips and ethical advice. If you are a defense attorney, I would think it would be invaluable to know what the prosecutor is going to do at each stage of the proceedings. But, it is more than one side's playbook; it is all you need to know about the anatomy of a criminal case from investigation to post-trial proceedings. Federal District Judge Harry Leinenweber, in a review published by the American Bar Association's (ABA) *Criminal Justice*, said that almost every question that can come up during a criminal case appears to be answered in a succinct manner complete with case citations. The Eleventh Circuit Court of Appeals has multiple copies of *Proving Federal Crimes* and it is always nice to know what the judges are looking at before they issue a ruling.

What is even more intriguing is Nissman's use of public domain materials originally produced by the DOJ, the Federal Bureau of Investigation (FBI), the Secret Service, the Federal Judicial Center and the Federal Defenders. The information age has produced unique opportunities to tap in to and to blend the

Nissman has done a tremendous service by revising and updating this venerable publication for the commercial market.

work of many talented writers in a way that is comprehensive, historical and timely — all in a format both trial lawyers and agents in the field will find easy to use. Doubtless this book will be the first place to go for concise, up-to-date answers to specific questions about any number of issues related to criminal law.

For example, the book contains numerous references to the *United States Attorney's Manual* and the *Criminal Resource Manual*, both of which set forth DOJ policies that govern the handling of federal criminal cases. These references are useful to prosecutors in guiding their decision-making. They also are useful to defense attorneys, because knowledge of those policies can aid a defense attorney in negotiating an appropriate disposition of a particular case. Similarly, references to the new DOJ informant guidelines,

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Duly Noted

By John M. Gross

***O'Connor's Federal Rules: Civil Trials 2001*, updated for 2001 by Michael C. Smith and Gregory S. Coleman (Jones McClure Publishing, 2001).**

O'Connor's Civil Trials 2000 is one volume of a series that the publisher offers as a user-friendly alternative to West's compendia of rules and statutes.

The book is divided into two parts. The latter half collects the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Federal Appellate Rules, sections of 28 U.S.C. and the Advisory Committee Notes on the Federal Rules in the standard numerical order. The first half — and this is what sets this series apart from West's — is called "Commentaries," and is intended as a guide to the phrases of a federal civil case. There are sections entitled "Rules for Filing Documents," "Rules for Serving Documents," "Plaintiff's Lawsuit," "Jury Selection" and so on. These commentaries briefly summarize the applicable principles, cite the relevant rules and statutes, and offer practice tips. They are far less extensive than, say, Wright & Miller, and are a bit basic for experienced practitioners. But, new attorneys, or experienced attorneys doing things they do not do every day, will find them useful. In short, this is a helpful volume, worth considering as an addition to a law library.

***Justice*, Dominick Dunne (Crowne Publishing Group, 2001).**

For nearly two decades, Dominick Dunne has covered highly publicized murder trials for popular magazines. The book is a collection of his contributions to *Vanity Fair*, covering the Menendez brothers, O.J. Simpson and other notorious or famous trials of the notorious or famous.

Justice is absorbing, sophisticated and intelligent. Although Dunne is not a lawyer, he does his homework and gets the legal details right. The book is well written and well worth reading, but has its flaws. Dunne is perhaps too critical of defense lawyers and too forgiving of prosecutors. The book's genesis in *Vanity Fair* articles shows, and at times it is a bit too gossipy, and too concerned with what famous people

Dunne knows ever so well. The first article — an account of the peculiar trial of the man who murdered Dunne's own daughter — is a cut above the rest, and alone makes the book worthwhile. It should remind all of us who make our livings in the courts of what it can feel like to be caught up in this most imperfect of systems when it is at its most imperfect.

***Moonlight: Abraham Lincoln and the Almanac Trial*, John Evangelist Walsh (St. Martin's Press, 2000).**

A famous trial lawyer's war story involves Abraham Lincoln's cross-examination of an eyewitness to a murder allegedly committed by Lincoln's client. As the story goes, the witness claimed to have seen the murder by moonlight. In a brilliant exposition of a "gotcha" cross, Lincoln made the witness dig in as far as he possibly could, and then confronted him with an almanac showing that the moon was not, in fact, shining at the time.

Freelance author John Evangelist Walsh had the worthwhile thought that this story might make a good book, and it does. As with so many war stories, it turns out that the cross-examination was a little less dramatic than the popular telling. More intriguingly, Walsh finds that Lincoln had deep personal ties to his client, and that these ties, in this instance, may have led this most ethical of lawyers and presidents to behavior that most of us would regard as not reflecting the highest standards of the profession.

Moonlight would be of interest to lawyers and Lincoln buffs alike. Although he is not always the most felicitous of writers, Walsh tells an interesting story in readable, professional prose. At times, though, the author confuses reasonable speculation with justified conclusion, and reads too much into the historical evidence. But, the evidence is laid out and the reader may, as this reader did, reject some of the conclusions, while enjoying this worthwhile contribution to our legal and political history. ■

John M. Gross is a partner in the Atlanta firm Powell, Goldstein, Frazer & Murphy LLP.

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the FBI's rules on use of physical and deadly force, and the Federal Benchbook for U.S. District Judges guide to judicial procedures, all provide valuable insights for practitioners.

One of the most controversial components of criminal practice is the use of informants. No fan of informant witnesses, Nissman takes an interesting point-counter-point approach in his chapter on informants. The law enforcement community has adopted new informant guidelines and the chapter begins with a summary of the new guidelines. From there he presents two public domain articles, one by a prosecutor and one by a federal public defender. Each area from pretrial to final argument is examined by diametrically opposed interests.

There are also interesting Georgia connections to this book. The publisher, Corpus Juris Publishing Co. is located in Conyers and run by Georgia residents Robert and Linda Burch. Robert Burch is a retired federal agent who saw both a need and an opportunity

in publishing law books for lawyers and federal agents. He is clearly excited about this handbook.

I was a federal agent for 30 years. If only a book like this was available when I was making cases, my job would have been easier and I would have been more effective. Nissman has done agents and lawyers a great public service with this book.

Tired of the pocket part update avalanche that has historically plagued the legal profession? Corpus Juris Publishing Co. has a unique corporate philosophy. Instead of pocket part updates, buyers are sent replacement books at the same cost as pocket parts. What's more, the returned books are donated to high schools for use in their mock trial programs. Overall, *Proving Federal Crimes* will help to even out the playing field in an increasingly complex area of the law. *Proving Federal Crimes* has become my trial and office companion. ☒

Denise Hinds is an assistant United States attorney in the District of the Virgin Islands. She is a graduate of Duquesne University School of Law, Pittsburgh, Pa., and is licensed in Georgia.

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not have prosecuted the mother had there been no consequence of her conduct, (i.e. had there been no injury to her child in her absence).¹⁶ The conduct itself must be criminal, not the consequence of the conduct. The Court therefore defined the political dilemma of the Georgia General Assembly in trying to craft a meaningful statute to protect children and avoid prosecution based upon consequences rather than conduct.

In *Reyes v. State*,¹⁷ the Supreme Court of Georgia distinguished *Hall* and affirmed the jury's conviction of reckless conduct for Stacy Louise Reyes when she allowed her three-year-old daughter to wander away from home unsupervised. Tenya Reyes was missing for over an hour before Reyes began looking for her, and when the child was found, she was unconscious and soaked with rainwater and blood in a neighbor's yard after being attacked by an animal. The Court stated there was sufficient evidence for the jury to find that Reyes was guilty of reckless conduct since the risks of allowing a three-year-old to wander on a public road were both substantial and unjustifiable. Further, the Court stated, "the facts in this case are not similar to the facts in *Hall*. . . Reyes's lack of supervision over her child is not an action that placed Tenya at risk only in hindsight."¹⁸

In *Hill v. State*,¹⁹ the Georgia Court of Appeals was not troubled by the intent or mens rea of the parent who delayed getting medical care for his four-year-old son who had been scalded in hot water. The defendant father was convicted under Georgia's cruelty to children (O.C.G.A. 16-5-70) and reckless conduct (O.C.G.A. 16-5-60(b)) statutes. He appealed only the cruelty to children conviction. Section 16-5-70(b) provides: "any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel and excessive physical and mental pain." The father in *Hill* argued there was no evidence that he maliciously caused pain to his child by not providing prompt medical treatment. The examining pediatrician testified that the child suffered second-degree burns and that the injuries occurred more than 24 hours before the child came to the hospital.²⁰

The Court held that malice "imports the absence of all elements of justification or excuse and the presence of an actual intent to cause the particular harm produced, or the wanton and wilful [sic] doing of an act with an awareness of a plain and strong likelihood that such harm may result."²¹ Further, the Court stated that "[i]ntent is a question of fact to be

determined upon consideration of words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted.”²² While this defendant’s conviction was

upheld, generally the state has a difficult burden in proving malice. Proponents of a child endangerment statute argue this burden would likely prevent the prosecution of an adult who acts in grossly negligent ways, for instance leaving a child in a car in extreme heat because they “forgot” about the child, or because they did not actually know that cars overheat and threaten the life of a child locked inside.²³ Similarly, leaving a small child unsupervised at a swimming pool knowing the child cannot swim may not constitute malice, even if

the lack of attention to the child was a result of alcohol or drug abuse.

*Brady v. State*²⁴ exemplifies the problems of the malice standard. A foster care worker and sheriff deputies attempted to execute an emergency order to take custody of Terry Wayne Brady’s two-month-old daughter. Brady was found drinking vodka with family members and other under-aged companions. “For 30 minutes, Brady eluded the deputies, wading across a hip-deep creek and ran through briars, holding his infant daughter like a football, while shouting obscenities at his pursuers.”²⁵ When deputies finally recovered the infant, “she was shaking and vomiting from the chase and had scratches and bruises on her head, torso and leg.”²⁶

The jury did not convict on the offense of child cruelty, but found Brady guilty on the lesser-included

misdemeanor offense of reckless conduct. Proponents of a specific child endangerment statute argue that the jury should have been given an opportunity to convict Brady of a felony child endangerment offense that did

not require the proof of malice that the cruelty to children offense currently requires.

Both the reckless conduct and cruelty to children statutes in Georgia create possible barriers to prosecution of conduct that is grossly or criminally negligent in relation to the care and supervision of children. The challenge for the Georgia General Assembly is to draft legislation that will specifically define the crime of endangering a child and not require affirmative intent, and follow the statutory examples of other states.²⁷



In *State v. Riggs*,²⁸ the Missouri Court of Appeals helped define the mens rea required in a child endangerment statute in reviewing a conviction for both involuntary manslaughter and endangering the welfare of a child. Upon moving into her trailer, the landlord had specifically told Karen Riggs that children were not allowed past a certain trailer and area in the park because there was an unfenced duck pond located on the property. Riggs’ two children, Jason, age four, and Ben, age two, went outside to play for about 45 minutes. During the 45 minutes the children were outside their trailer they went to the duck pond and Ben drowned.²⁹

The Court found that “Riggs’ conduct included nothing intentional. She did not commit overt acts that would blatantly harm a child.”³⁰ The Court

explained that Riggs' "omission to watch her children on the steps of her home for forty-five minutes did not make it substantially certain that her two year old son would wander to this death."³¹ The Missouri Court of Appeals held that Riggs' omission was not reckless conduct that rose to the level required for homicide liability, and the involuntary manslaughter conviction was reversed.³²

The conviction under Missouri's child endangerment statute, however, was affirmed. Under Missouri law, a person commits the offense of endangering the welfare of a child if he or she "knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than 17 years old."³³ In response to Riggs' argument that she did not act "knowingly," the Court stated that Riggs' conduct knowingly created a risk to the child, and the state was not required to prove that she knew the risk could result in injury or death.³⁴ Riggs could have been convicted of child endangerment even if Ben had been rescued, or simply found playing on the pond's edge.

Arguably, all four defendants in the above cases acted or failed to act in such a way that they created a risk of harm to their children. Nonetheless, the law yielded inconsistent results for the defendants. The Georgia General Assembly can examine the parental conduct of Riggs, Reyes, Hall and Brady, and decide its public policy based on its analysis of what responsibility a parent or person caring for a child should have to prevent not only injury, but also risk of danger.

Drafting Issues for General Assembly Consideration

1. Who may be charged?

a. Individual having custody and control.

Most criminal child endangerment statutes provide that criminal liability may be applied only to

persons having custody and control of a child, specifically a parent or guardian, or someone with conferred authority. In order to convict for an omission of supervisory conduct, the prosecutor must first identify a duty to the child, and this duty can be found in the special relationship between a parent and child.³⁵

"Historically, the common law did not afford children adequate protection from abusive parents," and this lack of protection was compounded by the general principle that no duty exists to protect others from harm.³⁶ "A moral duty to act is not enough."³⁷ An exception to the "no duty to act" rule can be based on the special relationship that exists between parties,

and the common law imposes a duty on a parent or legal guardian to support his or her own child.³⁸ A parent and child have a special relationship based on the child's dependence on the parent for food, clothing, shelter and other necessities.³⁹

A duty can be created or expanded by statute, and Georgia created a duty to provide "necessary sustenance" in Penal Code, Sec.708, which

declared "whoever shall torture, torment, deprive of necessary sustenance, mutilate, cruelly, unreasonable and maliciously beat and ill-treat any child shall be guilty of a misdemeanor."⁴⁰ Although this early statute had provided some protection for children,⁴¹ in *Justice v. State*⁴² the Georgia Supreme Court refused to convict a father who refused to permit medicine to be administered to his sick child. According to the Court, "there is a very great difference between depriving a child of sustenance, and refusing to permit medicine to be administered to him."⁴³

"Necessary sustenance" has been more recently defined by the Georgia Supreme Court as "that which supports life; food; victuals; provisions. . . . Our statute, in the use of the word 'sustenance,' means that necessary food and drinks which is [sic] sufficient to support life and maintain health."⁴⁴ Thus, in *Howell v. State*,⁴⁵ the Georgia Court of Appeals distinguished a charge based on the denial of "sustenance" under section 16-5-70(a) from one based on a

In *Howell*, the Court followed *Justice* and reversed the conviction of the Howell parents who gave their infant, Alan, regular formula instead of a high-calorie formula although a high-calorie formula had been prescribed by a physician.⁴⁶ The Court held that the infant had not been denied necessary sustenance.

denial of medical care that causes “cruel or excessive physical or mental pain” under O.C.G.A. § 16-5-70(b).

In *Howell*, the Court followed *Justice* and reversed the conviction of the Howell parents who gave their infant, Alan, regular formula instead of a high-calorie formula although a high-calorie formula had been prescribed by a physician.⁴⁶ The Court held that the infant had not been denied necessary sustenance. Therefore, the Georgia appellate courts have defined the duty to provide sustenance specifically to exclude the withholding of medical care unless the state specifically charges and proves that such withholding maliciously causes the child cruel or excessive pain.

Child endangerment statutes also can expand the definition of the duty owed a child by a parent or person in custody and control of a child.

Missouri’s child endangerment statute holds guardians culpable of a Class A misdemeanor for failure “to exercise reasonable diligence” while caring for a child, obviously an expansively defined duty.⁴⁷ A statutory duty may be worded to focus on specific responsibilities, including liability for the caretaker who fails to provide a child with a proper education, or who leaves firearms within easy reach of a child.⁴⁸

The Iowa Supreme Court discussed the issue of control as used in an endangerment statute in *Anspach v. State of Iowa*.⁴⁹ Edward Anspach was stopped by the police for speeding at a rate of 53 miles per hour in a 35 miles-per-hour zone. In addition to two adult passengers in the open bed of his truck, the truck cab contained four children, ages one, two, two, and three, who were sitting or lying on the seat. No child was protected by a car seat, and the three-year-old was completely unrestrained. The two two-year-olds were fastened together with the same belt. None of the children had a legal or custodial relationship with Anspach. The two adults in the bed of the truck, who were the mother and babysitter of the four children, were not charged.⁵⁰ When the police signaled by flashing lights for Anspach to stop, he sped up rather than slowed down, made two sharp turns onto a side

street and then into an alley before coming to an abrupt stop. In addition to various moving violations, Anspach was cited with four counts of child endangerment under Iowa Code section 726.6(1)(a)(3) and was convicted.⁵¹

On appeal, Anspach argued that there was insufficient evidence of control to convict. The Court stated:

Anspach certainly had control over how he drove the car and whether he sped. He made the decision to accelerate or swerve to get away from the police. As the owner of the vehicle, it was Anspach’s sole right to dic-

tate who he allowed to be present in this truck...Anspach was in a position to dictate how the children would be secured in his truck.⁵²

The Iowa Court ruled that the statute does not limit its reach to only those with custody, (i.e., the parents or guardians), but was written to

include adults having control over a child as well, and the term control has a broader meaning than custody. ‘Control’ refers to the state of having restricting or governing power over someone, while ‘custody’ implies not only a power of oversight but also a responsibility for the care of the individual.”⁵³ The statute therefore properly applies to a person who has the ability to control the risk, and “does not limit the applicability of the control element to only those times when a guardian or someone with custody is not present.”⁵⁴ This broad definition of control offers one example of the kind of issues the General Assembly may need to consider in deciding how to limit or expand liability under a child endangerment statute.

b. May child protective services caseworkers be criminally liable for endangering a child?

Child protective services caseworkers have questioned whether they could be held criminally liable for failure to act to protect a child. Most reviewers of criminal liability of child protective service workers state that the reasonable exercise of

The Iowa Court ruled that the statute does not limit its reach to only those with custody, (i.e., the parents or guardians), but was written to include adults having control over a child as well, and the term control has a broader meaning than custody.

professional judgment cannot create criminal liability. For example, in *People v. Dossinger*,⁵⁵ indictments charging three social workers with various counts of official misconduct and endangering the welfare of a child were dismissed. In dismissing the indictments, a New York Supreme Court ruled that the:

evidence presented before the Grand Jury served as nothing more than the substitution of the People's witnesses' judgment as to how they would have exercised their discretion in several isolated cases concerning alleged neglected children as opposed to the manner in which the defendants elected to act. This Court views the testimony of the People's witnesses as merely a difference of opinion concerning the exercise of a discretionary function.⁵⁶

The Court emphasized that the social worker had authority to act but not an obligation to remove a child, and that the discretionary nature of such job functions are defined throughout regulatory materials. Therefore,

an affirmative duty to control could not be implied from a duty to make a discretionary judgment.⁵⁷

In addition, the General Assembly could specifically exclude discretionary professional judgments. This exemption may not be absolute. For example, some level of liability may remain for the caseworker that intentionally falsifies a case record by stating he or she physically visited a child in the home and in fact had not made such a visit. Obviously, the imposition of criminal liability is distinct from civil liability, and this discussion does not include an analysis of civil liability for child protective services workers' professional misjudgments, which is a difficult and controversial area of the law.

c. Should the partner of the abuser, who is also a victim of abuse, be criminally liable for failure to protect?

Several states have codified another limitation on who may be charged by providing certain affirmative defenses to prosecution for "failure to protect."⁵⁸ In particular, some of these statutes provide for an

affirmative defense to prosecution if at the time of the endangerment there was a "reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation."⁵⁹ Oklahoma defines the affirmative defense as available to a person who had a "reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child."⁶⁰

An issue related to this affirmative defense is the creation of liability for the abuser based on the emotional harm that impacts a child who witnesses violence. There is extensive research and evidence that exposure to violence in the family setting has long-term damaging effects to children, and legal scholars have argued that this research requires that emotional harm from witnessing violence must be included in definitions of child endangerment.⁶¹

Expressly including "emotional harm" in the definition of child endangerment will allow prosecution of a person who commits violence in the presence of a child. In fact, in *Hall v. State*,⁶² one of the

counts with which the defendant was charged under the cruelty to children offense was "maliciously

There is extensive research and evidence that exposure to violence in the family setting has long-term damaging effects to children...

causing . . . cruel and excessive mental pain." Hall's two daughters watched when he shot their 10-year-old brother.⁶³ Similarly, in *Sims v. State*,⁶⁴ the defendant was convicted of two counts of cruelty to children arising out of his attempt to kill the children's mother in the presence of the children.

In *People v. Johnson*,⁶⁵ the New York Court of Appeals upheld a conviction of child endangerment against Theodore Johnson for his violent attack against his ex-girlfriend as she walked home from the supermarket with her three daughters. The evidence before the Court included the children crying during the attack and being trapped in their bedroom for 10 hours during Johnson's "reign of terror." The Court interpreted the evidence to be legally sufficient to support a conviction even though Johnson's actions were not specifically directed at the children. The Court found that the "statute is broadly written and imposes a criminal sanction for the mere 'likelihood' of harm."⁶⁶ The

statute required that the defendant “simply be aware that the conduct may likely result in harm to a child, whether directed at the child or not.”⁶⁷

Further, inclusion of “emotional harm” in a child endangerment statute for Georgia, specifically relating to children witnessing domestic violence, should be considered in the context of the 1999 amendment to the current Cruelty to Children offense,⁶⁸ which reads as follows:

(c)Any person commits the offence of cruelty to children in the second degree when: (1) such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or (2) such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

By including these amendments in the 1999 Cruelty to Children offense, the Georgia General Assembly codified the cases cited above to declare that subjecting a child to the emotional harm of witnessing family violence shall be an intentional criminal offense. For the 2002 General Assembly, the determination to include emotional harm will relate to fact situations other than domestic violence.

To accomplish the end of prosecuting abusers for domestic violence, commentators argue there must be statutory protections for the victim-parent, most commonly the mother of the children.⁶⁹ Some states, however, have prosecuted mothers who failed to protect their children from witnessing violence, or failed to protect their children in some other way.⁷⁰ Advocates for victims of domestic violence may ask the General Assembly to provide an affirmative defense where there is a “reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation.”⁷¹ Child advocates, normally aligned with advocates of victims of domestic violence in the Georgia General Assembly, may argue against such a statutory protection.

2. Should religious activities be exempted from the definition of child endangerment?

Another difficult decision the General Assembly may have to make is whether to include in any enact-

ment of a child endangerment statute an exemption from prosecution for religious activities. Religious or spiritual exemption laws did not exist in most states prior to the enactment of the Child Abuse and Protective Treatment Act⁷² (CAPTA) in 1974.⁷³ Initially, CAPTA was “interpreted to require states to amend their child abuse and neglect statutes to include an exemption for spiritual healing” to be eligible to receive federal funds.⁷⁴

In 1983, the Department of Health and Human Services issued new regulations regarding religious exemptions providing that “nothing in the federal rule should be construed as requiring or prohibiting a finding of neglect when a parent practicing his or her religious beliefs does not, on that basis alone, provide medical treatment for his or her child.”⁷⁵ So the exemption was then thought to be optional, and the 1983 regulations also revised the definition of negligent treatment to include failure to provide adequate medical care.⁷⁶

The Georgia code includes exemptions for spiritual healing in the definition of deprivation in the Juvenile Court Code. Specifically, O.C.G.A. § 15-11-2(8) states:

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a deprived child.

Further, the Georgia code has included the exact language of O.C.G.A. § 15-11-2(8) in the exemption for spiritual healing under the definition of child abuse set forth in O.C.G.A. § 49-5-180(5). A proposed committee substitute to House Bill 453, the legislation filed in the 2001 Georgia General Assembly and currently pending for possible enactment in the 2002 General Assembly Session to create the criminal offense of child endangerment, included a spiritual exemption clause.⁷⁷

In Florida, a similar spiritual healing exemption to the criminal definition of child abuse has been declared unconstitutionally vague in *Hermanson v. State*.⁷⁸ Florida’s criminal child abuse statute at the time provided:

Whoever, willfully or by culpable negligence, deprives a child of, or allows a child to be deprived of, necessary food, clothing,

shelter, or medical treatment, or who, knowingly or by culpable negligence, permits physical or mental injury to a child, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to such child, shall be guilty of a felony of the third degree...⁷⁹

The third degree murder provision of section 782.04(4)⁸⁰ provided that the killing of a human being while engaged in the commission of child abuse constitutes murder in the third degree and is a felony of the second degree, but section 415.503 stated at paragraph (7)(f) that, “however, a parent or other person responsible for the child’s welfare legitimately practicing his religious beliefs, who by reason thereof does not provide specified medical treatment for a child, may not be considered abusive or neglectful for that reason alone.”⁸¹

In *Hermanson*, the Florida Supreme Court found that the above cited criminal child abuse statute and the spiritual treatment accommodation provision, when considered together, were ambiguous and denied due

process to parents convicted of child abuse for failing to provide their daughter with conventional medical treatment for juvenile diabetes, resulting in the child’s death. The statutes “fail to give parents notice of the point at which their reliance on spiritual treatment loses statutory approval and becomes culpably negligent.”⁸² A “person of ordinary intelligence cannot be expected to understand the extent to which reliance on spiritual healing is permitted and the point at which this reliance constitutes a criminal offense.”⁸³ Ultimately, the Court concluded that:

the legislature has failed to clearly delineate the point at which a parent’s reliance on his or her religious beliefs in the treatment of his or her children becomes criminal conduct. If the legislature desires to provide for religious accommodation while protecting the children of the state, the legislature must clearly indicate when a parent’s conduct becomes criminal.⁸⁴

In contrast, the Pennsylvania Superior Court affirmed a conviction of child endangerment where the parents’ conduct in not providing medical care to their son led to his near death from a liver tumor, even though Child Protective Services Law exempted spiritual healing from being called child abuse.⁸⁵ The Court found that:

[Child Protective Services Law] and the involuntary manslaughter statutes are not in conflict in their plain meaning, as well as under a constitutional analysis. A plain reading of the statutes shows that an act which does not qualify as child abuse may still be done in a manner which causes death and thus qualifies as involuntary manslaughter.⁸⁶

The Superior Court held that Pennsylvania law imposes an affirmative duty on parents to seek medical help when the life of a child is threatened regardless of and, in fact, despite their religious beliefs.⁸⁷

In *State v. McKown*,⁸⁸ Christian Science parents were indicted for second-degree manslaughter when their child died from untreated diabetes. Similar to Florida, Minnesota had a statutory scheme granting an exception for spiritual treatment in conjunction with a manslaughter statute that was based on culpable negligence resulting in death. The Minnesota Court of Appeals also found a violation of due pro-

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cess, concluding there was a “lack of clarity in the relationship between the two statutes.”⁸⁹

Many states that enacted some form of spiritual healing exceptions in the mid-1970s have repealed them in more recent years.⁹⁰ This trend of repeal of spiritual exemptions will likely continue.

Conclusion

Georgia stands alone in failing to enact a child endangerment statute, although prosecution of conduct against children is aggressive and increasing. Creation of prosecutorial units within district attorney’s offices relating to crimes against children, and the growing public awareness of the real and immediate dangers in many children’s lives, have sharpened attention to legal issues for children placed at substantial risk of harm by adults. Passage of a child endangerment statute in the 2002 General Assembly Session is both likely and timely. ☐



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Contributions to this article were made by Melissa Dorris, legal intern with the Supreme Court of Georgia, and students of the Barton Child Law and Policy Clinic, particularly Jennifer Hall, Jamie Rubin, Laura Haskins and Katherine Parsons.

1. H.B. 453, 147th Gen. Assem., Reg. Sess. (Ga. 2001). The text of H.B. 453 consist of the following:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 5 of Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to cruelty to children, is amended by adding at the end thereof a new Code Section 16-5-73 to read as follows:

16-5-73.

(a) A person commits the offense of misdemeanor child endangerment when such person acts or fails to act in conscious disregard of a substantial and foreseeable risk that the act or omission could endanger the health or safety of a child under the age of 16 years and when the act or omission constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

(b) A person commits the offense of felony child endangerment when such person acts or fails to act in conscious disregard of a substantial and foreseeable risk that the act or omission could endanger the health or safety of a child under the age of 16 years and when the act or omission constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation and such child suffers a serious bodily injury or death as a result of such act or omission.

(c) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in Code Section 17-10-3. Any person who violates subsection (b) of this Code section shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

(d) Each violation of this Code section shall constitute a separate offense.

(e) This Code section shall not be construed to amend or repeal any of the following provisions:

- (1) Subsection (b) of Code Section 16-5-60, relating to reckless conduct;
- (2) Code Section 16-5-70, relating to cruelty to children;
- (3) Code Section 16-5-72, relating to reckless abandonment of a child;
- (4) Code Section 16-5-80, relating to feticide;
- (5) Code Section 16-12-1, relating to contributing to the delinquency, unruliness, or deprivation of a minor; or
- (6) Subsection (l) of Code Section 40-6-391, relating to endangering a child by driving under the influence of alcohol or drugs.

SECTION 2.

This Act shall become effective on July 1, 2001.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

2. See ALA. CODE § 13A-13-6 (1975); ALASKA STAT. §§ 11.51.100-11.51.110 (2000); ARK. CODE ANN. § 5-27-203 to -204 (2001); CAL. PENAL CODE § 273a (2001); CONN. GEN. STAT. § 53-21 (2001); DEL. CODE ANN. tit. 11, § 1102 (2001); HAW. REV. STAT. §§ 709-903.5 to -904 (2000); IDAHO CODE § 18-1501 (2001); 720 ILL. COMP. STAT. 5/12-21.6 (2001); IND. CODE § 35-46-1-4 (2001); IOWA CODE § 726.6 (2001); KAN. STAT. ANN. § 21-3608 (2000); KY. REV. STAT. ANN. § 530.060 (2001); ME. REV. STAT. ANN. tit. 17-A § 554 (2001); MINN. STAT. § 609.378 (2000); MO. REV. STAT. §§ 568.045 - 568.050 (1989); MONT. CODE ANN. § 45-5-622 (2000); NEB. REV. STAT. ANN. § 28-707 (2001); NEV. REV. STAT. ANN. 200.508 (2001); N.H. REV. STAT. ANN. § 639:3 (2000); N.J. REV. STAT. § 2C:24-4 (2001); N.M. STAT. ANN. § 30-6-1 (2001); N.Y. PENAL LAW §§ 260.10-260.15 (2001); N.C. GEN. STAT. § 14-318.2 (2000); OHIO REV. CODE ANN. § 2919.22(A) (2001); OKLA. STAT. tit. 21, §§ 852 - 852.1 (2000); OR. REV. STAT. §§ 163.205 and 163.575-163.577 (1999); 18 PA. CONS. STAT. § 4304 (2001); S.C. CODE ANN. § 20-7-50(A)(1)

- (2001); VA. CODE ANN. § 18.2-371 (2001); WASH. REV. CODE § 9A.42.035(1)(a) (2001); W. VA. CODE §§ 61-8D-1 to 61-8D-4(a) (2001); WIS. STAT. § 948.03 (2000); WYO. STAT. ANN. § 6-4-403 (2001).
3. *See* ALA. CODE § 26-15-3 (1975); ARIZ. REV. STAT. § 13-3623 (2001); COLO. REV. STAT. § 18-6-401 (2000); FLA. STAT. ANN. § 827.03 (2001); HAW. REV. STAT. §§ 707-750 to -751 (2000); 720 ILL. COMP. STAT. 150/1 (2001); KAN. STAT. ANN. § 21-3609 (2000); KY. STAT. ANN. §§ 508.100-508.110 (2001); LA. REV. STAT. ANN. § 14:93, 14:93.2.3 (2001); ME. REV. STAT. ANN. tit. 17-A § 207 (2000); MD. ANN. CODE art. 27 § 35C (2001); MASS. GEN. LAWS ANN. Ch. 256 §§ 13B, 13H, 13J (2001); MICH. COMP. LAWS ANN. §§ 750.135, 750.136b (2001); MISS. CODE ANN. § 97-5-39 (2001); MO. REV. STAT. § 568.060 (2001); N.H. REV. STAT. ANN. §§ 631:1 - 631:2 (2000); N.J. REV. STAT. §§ 9:6-1 to 9:6-3 (2001); N.Y. PENAL LAW §§ 120.05-120.12 (2001); N.C. GEN. STAT. § 14-318.4 (2000); N.D. CENT. CODE § 14-09-22 (2001); OHIO REV. CODE ANN. § 2919.22(B) (2001); OKLA. STAT. tit. 10 § 7115 (2000); OR. REV. STAT. §§ 163.205 and 163.575-163.577 (1999); R.I. GEN. LAWS § 11-9-5 (2001); S.C. CODE ANN. § 20-7-50(A)(2) (2001); S.D. CODIFIED LAWS § 26-10-1 (2001); TENN. CODE ANN. §§ 39-15-401 to 39-15-402 (2001); TEX. PENAL CODE ANN. § 22.04 (2000); UTAH CODE ANN. § 76-5-109 (2001); VT. STAT. ANN. tit. 13, § 1304 (2001); VA. CODE ANN. §§ 18.2-371 to 18.2-371.1 (2001); WASH. REV. CODE §§ 9A.36.120 to 9A.36.140 and 9A.42.035(1)(b) (2001); W. VA. CODE §§ 61-8D-1 to 61-8D-4(a) (2001); WIS. STAT. § 948.03 (2000); WYO. STAT. ANN. § 6-2-503 (2001).
4. *Compare* ALA. CODE § 13A-13-6 (1975), *with* ALA. CODE § 26-15-3 (1975); HAW. REV. STAT. §§ 709-903.5 to -904 (2000), *with* HAW. REV. STAT. §§ 707-750 to -751 (2000); KAN. STAT. ANN. § 21-3608 (2000), *with* KAN. STAT. ANN. § 21-3609 (2000); KY. REV. STAT. ANN. § 530.060 (2001), *with* KY. STAT. ANN. §§ 508.100-508.110 (2001); ME. REV. STAT. ANN. tit. 17-A § 554 (2001), *with* ME. REV. STAT. ANN. tit. 17-A § 207 (2000); MO. REV. STAT. §§ 568.045 - 568.050 (1989), *with* MO. REV. STAT. § 568.060 (2001); N.H. REV. STAT. ANN. § 639:3 (2000), *with* N.H. REV. STAT. ANN. §§ 631:1-631:2 (2000); N.J. REV. STAT. § 2C:24-4 (2001), *with* N.J. REV. STAT. §§ 9:6-1 to 9:6-3 (2001); N.Y. PENAL LAW §§ 260.10-260.15 (2001), *with* N.Y. PENAL LAW §§ 120.05-120.12 (2001); N.C. GEN. STAT. § 14-318.2 (2000), *with* N.C. GEN. STAT. § 14-318.4 (2000); OKLA. STAT. tit. 21, §§ 852-852.1 (2000), *with* OKLA. STAT. tit. 10 § 7115 (2000); WYO. STAT. ANN. § 6-4-

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- 403 (2001), *with* WYO. STAT. ANN. § 6-2-503 (2001).
5. *See, e.g.*, OHIO REV. CODE ANN. § 2919.22 (2001); S.C. CODE ANN. § 20-7-50(A) (2001); W. VA. CODE §§ 61-8D-1 to 61-8D-4(a) (2001).
6. *See, e.g.*, NEV. REV. STAT. ANN. 200.508 (2001); N.M. STAT. ANN. § 30-6-1 (2001).
7. *See* V. Pualani Enos, Recent Development, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 HARV. WOMEN'S L.J. 229, 236 (1996).
8. *Id.*
9. *See* Judith Inglis Scheiderer, Note, *When Children Die As a Result of Religious Practices*, 51 OHIO ST. L.J. 1429, 1434 (1990).
10. *See* Enos, *supra* note 7 (noting that only the state of Washington does not have a criminal child abuse statute). *But see* WASH. REV. CODE § 9A.42.035(1)(a)-(1)(b) (2001).
11. *Hall v. State*, 268 Ga. 89, 485 S.E.2d 755 (1997).
12. *Id.* at 95.
13. *Id.* at 89.
14. *Id.* 268 Ga. at 92-93, 485 S.E.2d at 758.
15. *Id.* 268 Ga. at 93, 485 S.E.2d at 758.
16. *See id.* 268 Ga. at 94-95, 485 S.E.2d at 759.
17. *Reyes v. State*, 242 Ga. 170, 529 S.E.2d 192 (2000).
18. *Id.* at 195 (emphasis added).
19. *Hill v. State*, 243 Ga. App. 614, 533 S.E.2d 779 (2000).
20. *Id.* 243 Ga. App. at 615, 533 S.E.2d at 779-80.
21. *Id.* 243 Ga. App. at 616, 533 S.E.2d at 780.
22. *Id.*
23. In *State v. Deborah Welch*, DeKalb Superior Court Indictment No. 00CR3856, a grandmother of a toddler left her grandchild in the car in August while she went to work resulting in the child's death. She claimed as a defense that she forgot to take the child to daycare. She was indicted for reckless conduct and involuntary manslaughter in DeKalb County, but was acquitted by a jury in December 2000. District Attorney J. Tom Morgan stated, "the case involving Ms. Welch illustrates the need for a child endangerment statute. Because we had no statute addressing negligent conduct toward children which leads to injury, we were forced to utilize homicide charges not tailored to the situation. The jury expressed its frustration with the lack of appropriate charges as well."
24. *Brady v. State*, 246 Ga. App. 412, 541 S.E.2d 396 (2000).
25. *Id.* 246 Ga. App. at 412, 541 S.E.2d at 397.
26. *Id.*
27. *See supra* text accompanying notes 2-9.
28. *State v. Riggs*, 2 S.W.3d 867 (Mo. App. 1999).
29. *Id.* at 868.
30. *Id.* at 872.
31. *Id.*
32. *Id.*
33. MO. REV. STAT. § 568.045.1 (2000).
34. *Riggs*, 2 S.W.3d at 873.
35. Arthur Leavens, *A Causation Approach to Criminal Omissions*, 76 CALIF. L. REV. 547, 557 (1988).
36. Jean Peters-Baker, Note, *Punishing the Passive Parent: Ending A Cycle of Violence*, 65 UMKC L. REV. 1003, 1009 (1997) (citing CYNTHIA CROSSON TOWER, UNDERSTANDING CHILD ABUSE AND NEGLECT 1-6 (Karen Hanson, ed. 1989)).
37. *Id.* at 1009.
38. Leavens, *supra* note 35.
39. Peters-Baker, *supra* note 36, at 1010.
40. Penal Code § 708, Acts 1878-1879.
41. The original enactment of a cruelty to children statute

was codified in Article 5, in Acts 1878-1879, titled "Putting Children to Dangerous or Improper Vocations," as follows:

Sec. 708-(4612h.) Cruelty to Children. Whoever shall torture, torment, deprive of necessary sustenance, mutilate, cruelly unreasonably and maliciously beat or ill-treat any child or cause any of said acts to be done, shall be guilty of a misdemeanor.

This original enactment has undergone a number of changes over time. Acts 1968, pp. 1249, 1322, codified in O.C.G.A. § 26-2801, in Chapter 26-28, entitled "Malicious Mischief Offenses," set forth the following:

Sec. 26-2801 Cruelty to Children - A parent, guardian or other person supervising the welfare of or having immediate charge or custody for a child under the age of 18 commits cruelty to children when he wilfully deprives the child of necessary sustenance or maliciously causes the child cruel and excessive physical or mental pain. A person convicted of cruelty to children shall be punished by imprisonment for not less than one nor more than five years.

The committee notes relative to the Chapter 26-28, Malicious Offenses, and specifically section 26-2801 stated:

26-2801. Cruelty to Children. - Former Ga. Code Ann., Sec. 26-8001, made it a misdemeanor for anyone to "torture, torment, deprive of necessary sustenance, mutilate, cruelly, unreasonably, and maliciously beat or ill treat any child." It is felt that the acts covered by this former section would generally be punishable under the criminal law relating to causing bodily harm. At the same time, a special provision may be advisable to punish a parent or one standing in the place of a parent who might seek to defend against outrageous acts towards a child by taking refuge in the concept of necessary corrective discipline.

Interestingly, the original codification of the current Cruelty to Children statute used a descriptive title of "Putting Children to Dangerous or Improper Vocations" and created a duty to provide "sustenance." Although the Georgia

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Supreme Court in Justice v. State, supra note 40, stated that “sustenance” did not include medicine, arguably, the first codification of the cruelty to children offense approximated a modern child endangerment statute. The current Cruelty to Children offense reads as follows:

16-5-70. Cruelty to Children.

(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children in the first degree when such person willfully deprives the child of necessary sustenance to the extent that the child=s health or well-being is jeopardized.

(b) Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

(c) Any person commits the offense of cruelty to children in the second degree when: (1) Such person, who is the primary aggressor, intentionally allows a child under the age of 18 to witness the commission of a forcible felony, battery, or family violence battery; or (2) Such person, who is the primary aggressor, having knowledge that a child under the age of 18 is present and sees or hears the act, commits a forcible felony, battery, or family violence battery.

42. *Justice v. State*, 116 Ga. 605, 42 S.E. 1013, 1014 (1902).

43. *Id.*

44. *Caby v. State*, 249 Ga. 32, 33, 287 S.E.2d 200, 201 (1982). See also *State v. Lawrence*, 262 Ga. 714, 715, 425 S.E.2d 280, 280-81 (1993) (defining “necessary sus-

tenance” and reaffirming *Justice v. State*, supra note 40).

45. *Howell v. State*, 180 Ga. App. 749, 752-53, 350 S.E.2d 473, 476 (1986).

46. *Id.* 180 Ga. App. at 754, 350 S.E.2d at 477.

47. MO. REV. STAT. §§ 568.045-568.050 (1979).

48. N.J. REV. STAT. § 2C:24-4 (2001); MINN. STAT. § 609.378 (2000).

49. *Anspach v. State of Iowa*, 627 N.W.2d 227 (2001).

50. *Id.* at 230.

51. *Id.*

52. *Id.* at 234.

53. *Id.* at 234-35.

54. *Id.*

55. *People v. Dossinger*, 472 N.Y.S.2d 808 (N.Y. 1983).

56. *Id.* at 857.

57. *Id.* at 858.

58. See FLA. STAT. ANN. § 39.205(2) (2001) (child abuse reporting statute); IOWA CODE § 726.6(1)(e) (2000); MINN. STAT. ANN. § 609.378 (2000); OKLA. STAT. tit. 21 § 852.1 (2000); TEX. PENAL CODE ANN. § 22.04(k)(2) (2000). See also Enos, supra note 7, at n.42.

59. MINN. STAT. ANN. § 609.378 (2000).

60. OKLA. STAT. tit. 21 § 852.1 (2000).

61. See, e.g., Patricia K. Susi, *The Forgotten Victims of Domestic Violence*, 54 J. Mo. B. 231 (1998); Audrey E. Stone & Rebecca Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN’S L.J. 205, (1997).

62. *Hall v. State*, 261 Ga. 778, 415 S.E.2d 158 (1991).

63. *Id.*; See Stone and Fialk, supra note 61. (citing Hall as an

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- example of a broad interpretation of emotional harm in the definition of cruelty to children).
64. *Sims v. State*, 234 Ga. 678, 507 S.E.2d 845 (1998).
 65. *People v. Johnson*, 718 N.Y.S.2d 1 (2000).
 66. *Id.* at 2.
 67. *Id.*
 68. O.C.G.A. § 16-5-70(c).
 69. See *Stone and Fialk*, *supra* note 61.
 70. In *State v. Phelps*, 439 So.2d 727, 734 (Ala. Crim. App. 1983), an Alabama court convicted a mother of failing to protect her son from her husband, reasoning that she failed to move away and separate herself from the batterer "knowing well Phelps' propensities." In *Commonwealth v. Cardwell*, 357 Pa. Super. 38, 46, 515 A.2d 311, 315 (1986), a Pennsylvania court based its decision on a mother's failure to remove her daughter from the house in which her abusive husband resided. The court found that her failure to find a new home "knowingly endangered the welfare of the child." *Id.* Civil terminations of parental rights cases have also focused on a mother's inability to protect her children from a husband or partner's violence. See *In re C.D.C.* 455 N.W.2d 801 (Neb. 1990) (discussing inability to provide child with violence free

environment), *In re Dalton*, 424 N.E.2d 1226 (Ill. App. Ct. 1981) (finding mother neglectful and removing children even though mother's attempt to leave had been frustrated by husband's threats to kill the children), and *In re Glenn G.*, 587 N.Y.S.2d 464 (N.Y. Fam. Ct. 1992) (finding battered woman guilty of neglect under strict liability statute despite unsuccessful attempt to remove children from abusive environment).

71. MINN. STAT. ANN. § 609.378 (2000).
72. 42 U.S.C. § 5101 (1974).
73. Jennifer Stanfield, Recent Development, *Faith Healing and Religious Treatment Exemptions to Child-Endangerment Laws: Should Parents Be Allowed to Refuse Necessary Medical Treatment for Their Children Based on Their Religious Beliefs?*, 22 HAMLINE J. PUB. L. & POL'Y 45, 57 (2000).
74. *Id.* at 58.
75. *Id.* at 59.
76. See *id.*
77. The committee substitute was tabled on March 07, 2001.
78. *Hermanson v. State*, 604 So.2d 775 (Fla. 1992).
79. FLA. STAT. ANN. § 827.04(1)-(2) (1985) (amended 1996).
80. FLA. STAT. ANN. § 782.04(4) (1985) (amended 2001).



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Proposed Amendment to Uniform Superior Court Rule 39.10; Maintenance of Evidence

The Clerk of Court or Court Reporter, who has possession of documentary or other evidence in a case, shall maintain a log or inventory of all evidence with the case number, party names, description of item, custodian, and storage location. Thirty days after the conclusion of a case, the court reporter shall transfer the evidence with the evidence log to the appropriate clerk of court. All evidence received from the parties by the court reporter or clerk shall be identified or tagged with the case number and, if appropriate, the exhibit number. The Clerk of Court shall update the log to show the current custodian and location of the evidence. Dangerous or contraband items should be transferred to the sheriff or appropriate law enforcement office, also with a log. The clerk and law enforcement office shall maintain the log of evidence. The court reporter shall have the right of access to the evidence necessary to complete the transcript of a case.

Evidence in the possession of the Clerk of Court or the Court Reporter shall be maintained in accordance with records retention schedules as approved by the State Records Committee with the assent of the Administrative Office of the Courts. The custodian is responsible for noting on the evidence log the party, date, and the type of action taken for release of evidence and/or destruction and the number of the appropriate retention schedule. Any party, clerk, court reporter, prosecutor, sheriff who is custodian of the case evidence may petition the court to substitute a photograph in lieu of the original evidence. If an order is granted for substitution, the order shall be entered on the evidence log.

Comments will be received by the Council of Superior Court Judges until Dec. 31, 2001, by contacting Committee Attorney Brian Wilcox, 18 Capitol Square, #108, Atlanta, GA 30334; 404-657-5951. ☐

81. FLA. STAT. ANN. § 415.503 (1998) (repealed 1998).

82. Hermanson, 604 So.2d at 776.

83. *Id.*

84. *Id.* at 782 (citations omitted).

85. Commonwealth v. Foster, 764 A.2d 1076, 1081 (2000).

86. *Id.* at 1081.

87. *Id.*

88. State v. McKown, 461 N.W.2d 720 (Minn. Ct. App.

1990), *aff'd*, 475 N.W.2d 63 (Minn. 1991), and *cert. denied*, 502 U.S.1036 (1992).

89. *Id.* at 723.

90. See H.R. 1286, 63rd Gen. Assem., Reg. Sess. (Colo. 2001) (enacted) (amending COLO. REV. STAT. § 18-6-401 (2000)); 1992 Haw. Sess. Laws 200 (repealing HAW. REV. STAT. § 350-4 (1992)); 1994 Md. Laws 728 (amending MD. CODE. ANN., FAM. LAW §§5-701(b)(2), 5-701(o)(2) (1994)); 1993 Mass. Adv. Legis. Serv. 340 (repealing MASS. GEN. LAWS ch. 273 § 1 (1993)); 1999 Or. Laws 954 (amending OR. REV. STAT. § 419B.005(1)(f) (1999)); 1990 S.D. Adv. Code Serv. 1314 (amending S.D. CODIFIED LAWS §§ 27B-8-22,

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If it's not here, it's not legal!

Georgia Legal Services Pays Special Thanks to Don Holland for Solutions to GLSP's Technology Woes

What do you? You're the only non-profit law firm in your State serving 154 counties. An estimated one million people are eligible for your services. And, you're facing the new millennium with technology woes - even Internet access is virtually non-existent?

The Georgia Legal Services Program (GLSP) was definitely not on the cutting edge of technology. Each staff member in 13 regional offices had a desktop computer, but 60% of these computers were still operating on DOS (Disc Operating System) and the others on Windows 3.1 and little access to the Internet.

GLSP's internal assessment revealed the need for a technology upgrade that would cost up to \$1M.

GLSP sought the services of technology consultant Don Holland. Holland's computer consulting business, Holland Shipes Vann, P.C., CPA's, specializes in technology consulting for law firms and corporate legal departments and has worked with more than 1,500 law firms.

Holland's services opened doors. Holland assisted GLSP in contract negotiations with vendors and service providers and secured discounts that were helpful in curtailing project costs.

Holland and his consulting group mapped out a one-year, start-up plan. The recommendations made for equipment, operating systems, and software packages were just what GLSP needed. Holland brought in Data Trends Technology to perform the physical installation of hardware and operating systems, and initial training of staff.

GLSP's board of directors was interested in learning how to secure funding for the upgrade. Holland provided information on potential funding sources and solicitation strategies. A fundraising plan was developed which resulted in GLSP raising close to \$1M.

By February 2000, GLSP eased into the 21st century on the cutting edge. Every computer was replaced, every network was upgraded, the website at www.glsp.org was developed, and staff were provided desktop Internet access. Every staff member received training on new Windows-based software for word processing, telecommunications, automated timekeeping, and other essential functions. Legal workers were equipped with access to Internet legal research and the ability to communicate with advocates around the state and around the country.

Don Holland performed all of the work free-of-charge. Thanks Don for giving GLSP a technology boost!



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**DECEMBER
2001**

3

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New Developments Securitization
Various Locations
13.3/1.0/0.0/0.0

4

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Keys to Success in a Real Estate Transaction in Georgia
Atlanta, Ga.
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CHATTANOOGA BAR ASSOCIATION
Quality of Life in the Practice of Law
Chattanooga, Tenn.
3.0/3.0/0.0/0.0

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Health Care Fraud
Chattanooga, Tenn.
4.0/0.0/0.0/0.00

5

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Tax Issues for High-Tech Companies
Atlanta, Ga.
6.7/0.0/0.0/0.0

6

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Statewide Satellite Rebroadcast
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Atlanta, Ga.
12.5/1.0/1.0/6.0

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ADR for Technology
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Rocky Mountain Deposition
Denver, Colo.
18.0/2.0/0.0/0.0

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All About Auto Cases and
Accident Investigations
Nashville, Tenn.
14.5/1.0/0.0/0.0

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Technology Litigation
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Federal Taxation of Partnership
Atlanta, Ga.
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7

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Trial Tactics from the Masters
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4.0/1.0/1.0/3.0

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Georgia Tort Law
Atlanta, Ga.
6.0/1.0/1.0/3.0

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Conshohocken, Pa.
6.0/0.0/0.0/0.0

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Washington, DC Deposition
Washington, DC
27.8/1.3/0.0/0.0

ROCKY MOUNTAIN MINERAL LAW FOUNDATION
Natural Gas Transportation and
Marketing
Houston, Texas
11.0/0.0/0.0/0.0

SAVANNAH BAR ASSOCIATION

Truancy Intervention Project CLE Seminar
Savannah, Ga.
4.0/1.0/1.0/1.0

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Georgia Land Use: Current Issues in
Subdivision Annexation and Zoning
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6.0/0.0/0.0/0.0

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Georgia Construction Issues
Savannah, Ga.
6.5/0.0/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Judgement Enforcement in Georgia
Atlanta, Ga.
6.0/0.0/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Litigation Skills for Legal Staff Seminar
Jacksonville, Fla.
6.0/0.0/0.0/6.0

10

PRACTISING LAW INSTITUTE
Effective Legal Writing
Various Dates & Locations
5.3/0.0/0.0/0.0

PRACTISING LAW INSTITUTE
Annual Institute on Securities
Regulation in Europe
London, UK
12.0/0.0/0.0/0.0

PRACITSING LAW INSTITUTE
19TH Annual Institute on Telecommuni-
cations Policy & Regulation
Washington, DC
9.0/0.0/0.0/0.0

11

ALI-ABA
Breakthrough Negotiations:
Techniques for Lawyers
Philadelphia, Pa.
6.0/1.0/0.0/0.0

11-13

ICLE
Selected Video Replays
Atlanta and Savannah
(Two seminars each day)

12

PRACTISING LAW INSTITUTE
Drafting Corporate Agreements
Various Dates & Locations
6.5/0.8/0.0/0.0

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Federal Tax Issues in Workers Compensation
Atlanta, Ga.
6.7/0.0/0.0/0.0

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Return to Work Issues in
Workers Compensation
Jacksonville, Fla.
6.0/0.0/0.0/0.0

13
ICLE
Landlord and Tenant Law
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6.0/0.0/0.0/0.0

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6.0/0.0/0.0/0.0

PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program C
San Francisco, Calif.
16.0/8.0/0.0/0.0

PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program D
San Francisco, Calif.
8.0/4.0/0.0/0.0

PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program A
San Francisco, Calif.
6.0/4.0/0.0/0.0

PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program B
San Francisco, Calif.
8.0/4.0/0.0/0.0

PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program A
San Francisco, Calif.
6.0/4.0/0.0/0.0

NEW YORK UNIVERSITY SCHOOL OF LAW
Institute on State and Local Taxation
New York, N.Y.
10.5/1.0/0.0/0.0

GEORGE WASHINGTON UNIVERSITY
SCHOOL OF LAW
14th Annual Institute on Current Issues
in International Taxation
Washington, DC
11.8/0.0/0.0/0.0

CHATTANOOGA BAR ASSOCIATION
Employment Law & EEO Basics Part I
Chattanooga, Tenn.
4.0/0.0/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Litigation Skills for Legal Staff in Florida
Jacksonville, Fla.
6.0/0.0/0.0/6.0

13-14
ICLE
Corporate Counsel Institute
Atlanta, Ga.
13.0/1.0/1.0/0.0

14
ICLE
Trial Advocacy
Statewide Satellite Broadcast
6.0/1.0/1.0/6.0

ICLE
Recent Developments in Georgia Law
Atlanta, Ga.
6.0/1.0/1.0/3.0

LORMAN BUSINESS CENTER, INC.
Florida Construction Claims
Jacksonville, Fla.
6.7/0.0/0.0/0.0

17
ALI-ABA
Persuasion Workshop:
The Elements of Advocacy
Philadelphia, Pa.
7.0/1.0/0.0/0.0

NATIONAL BUSINESS INSTITUTE
Nursing Home Malpractice in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

18
NATIONAL BUSINESS INSTITUTE
Uninsured and Underinsured Motorist
Law in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

19
NATIONAL BUSINESS INSTITUTE
Corporate Compliance in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Conducting An Effective Cross
Jacksonville, Fla.
6.0/1.0/0.0/5.0

20
NATIONAL BUSINESS INSTITUTE
Handling a Social Security Disability
Case in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

ICLE
National Speaker Series-A Day in Trial
Atlanta, Ga.
6.0/1.0/0.0/6.0

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Employment Law & EEO Basics Part II
Chattanooga, Tenn.
4.0/0.0/0.0/0.0

21
ICLE
Labor and Employment Law
Atlanta, Ga.
6.0/0.0/0.0/0.0

ICLE
Matrimonial Law Trial Practice Workshop
Atlanta, Ga.
6.0/1.0/1.0/3.0

JANUARY 2002

2
NATIONAL INSTITUTE OF TRIAL ADVOCACY
Gulf Coast Regional
New Orleans, La.
61.3/2.0/0.0/0.0

7
UNIVERSITY OF MIAMI SCHOOL OF LAW
36th Annual Phillip E. Heckerling
Institute on Estate Planning
Miami, Fla.
29.5/6.0/0.0/0.0

10
PRACTISING LAW INSTITUTE
California MCLE Marathon 2002-Program D
Various Dates & Locations
8.0/4.0/0.0/0.0

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California MCLE Marathon 2002-Program A
Various Dates & Locations
6.0/4.0/0.0/0.0

NATIONAL BUSINESS INSTITUTE
How to Protect Assets During Life and
Avoid Estate Tax at Death
Atlanta, Ga.
6.0/0.5/0.0/0.0

13
NATIONAL LAW FOUNDATION
2002 Mid-Winter Estate Planning
Conference
St. Croix, Virgin Islands
15.0/0.0/0.0/0.0

15
NATIONAL BUSINESS INSTITUTE
Section 1031 Exchanges of Investment
Properties in Georgia
Atlanta, Ga.
6.7/0.5/0.0/0.0

16
THE AMERICAN BAR
Ethical Issues Every Lawyer and Employer
Should Know About Sexual Harassment
Multi-Sites
1.0/1.0/0.0/0.0

17
ICLE
White Collar Crime
Atlanta, Ga.
6 hours

ICLE
Time Management
Atlanta, Ga.
3 hours

NATIONAL BUSINESS INSTITUTE
The Impact of Bankruptcy on Dissolution
of Marriage in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

21
PROFESSIONAL EDUCATION SYSTEMS, INC.
All About Auto Cases and Accident
Investigations
Various Dates & Locations
14.5/1.0/0.0/0.0

22
CHATTANOOGA BAR ASSOCIATION
New Medical Privacy Regulations
Chattanooga, Tenn.
4.0/0.0/0.0/0.0

23
NATIONAL BUSINESS INSTITUTE
Personal Injury Settlement in Georgia:
Practical Methods for Perfection
Atlanta, Ga.
6.0/0.5/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Taking and Defending Effective
Depositions in Georgia
Atlanta, Ga.
6.0/0.0/0.0/6.0

24
ICLE
Eminent Domain Trial Practice
Atlanta, Ga.
6 hours

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California MCLE Marathon 2002-Program B
Various Dates & Locations
8.0/4.0/0.0/0.0

LORMAN BUSINESS CENTER, INC.
Wage and Hour Law Update in Georgia
Atlanta, Ga.
6.7/0.0/0.0/0.0

25
ICLE
Art of Effective Speaking
Atlanta, Ga.
6.0/0.0/1.0/3.0

ICLE
Alliances, Joint Ventures and Partnerships
Atlanta, Ga.
4 hours

31
ICLE
Cross-Examination of Experts
Atlanta, Ga.
6/0/1/6

ICLE
Employment Law
Atlanta, Ga.
6 hours

NATIONAL BUSINESS INSTITUTE
Skip Tracing in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

FEBRUARY 2002

1
ICLE
Jury Selection
Atlanta, Ga.
4 hours

7
UNIVERSITY OF MIAMI SCHOOL OF LAW
Sixth Institute on Mergers
and Acquisitions
Miami Beach, Fla.
13.3/0.8/0.0/0.0

8
ICLE
Georgia Auto Insurance Law
Atlanta, Ga.
6/1/0/3

ICLE
Real Estate Practice and Procedure
Atlanta, Ga.
6 hours

10
HARVARD SCHOOL OF LAW
Intellectual Property in Cyberspace
Various Dates & Locations
6.0/0.0/0.0/0.0

15
ICLE
Georgia Auto Insurance Law
Savannah, Ga.
6/1/0/3

15-16
ICLE
Estate Planning Institute
Athens, Ga.
9 hours

19
NATIONAL BUSINESS INSTITUTE
The National Environmental Policy
Act in Georgia
Atlanta, Ga.
6.0/0.5/0.0/0.0

CHATTANOOGA BAR ASSOCIATION
Employee Benefits update
Chattanooga, Tenn.
4.0/0.0/0.0/0.0

20
THE AMERICAN BAR ASSOCIATION
Life Management for Lawyers
Multi-Sites
1.0/1.0/0.0/0.0

NATIONAL BUSINESS INSTITUTE
Keys to Success Mediation in Georgia
Atlanta, Ga.
3.0/0.0/0.0/0.0

22
ICLE
Elder Law
Atlanta, Ga.
6 hours

28
ICLE
Advanced Criminal Practice
Kennesaw, Ga.
6 hours

Feb. 28 – March 1
ICLE
Trial Evidence
Atlanta, Ga.
12 hours

MARCH 2002

8
ICLE
Soft Tissue Injury Cases
Atlanta, Ga.
6 hours

12
NATIONAL BUSINESS INSTITUTE
Sophisticated Estate Planning Strategies
for the Advanced Practitioner
Atlanta, Ga.
6.7/0.5/0.0/0.0

14
ICLE
Meet the Judges
Atlanta, Ga.
4 hours

15
ICLE
Effective Closings
Atlanta, Ga.
6 hours

21-23
ICLE
General Practice and Trial Section
Institute
Charleston, S.C.
12 hours

29
ICLE
Handling Brain Injury Cases
Atlanta, Ga.
6 hours

Postponed Until September 2002

State Bar of Georgia Delegation to China

Invitation to all Georgia Lawyers and Judges People to People Ambassador Program

Become a part of the State Bar of Georgia delegation to China coordinated by the People to People Ambassador Program. **The trip is now scheduled for Sept. 5-17, 2002.**

The program is designed to promote international good will through professional, educational, and technical exchange. It provides an opportunity to meet and discuss common issues with legal professionals in China, and offers rare and unique social and cultural opportunities, including a trip to the Great Wall and Tieneman Square. The delegation will be led by State Bar Immediate Past President George E. Mundy.

This program offers an entire year of CLE credit, including professionalism and ethics. In addition, expenses for the trip may qualify for an income tax deduction. The cost is estimated at \$4,500, including first class transportation, accommodations and meals.

The State Bar of Georgia legal delegation is open to all members in good standing. It is anticipated the delegation will consist of 25 to 40 members.

For further information regarding this unique opportunity, contact Gayle Baker, Membership Director, State Bar of Georgia, 404-527-8785 or gayle@gabar.org.



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LEGAL MALPRACTICE EVALUATIONS/TESTIMONY:

Experienced in case review and expert witness testimony. Complex business, transactional, tax issues. LLM in taxation. Twenty-two years practicing attorney (licensed in Alabama only). Attorney references available. Mark E. Hoffman, Esquire, 1300 20th Street South, Suite 302, Birmingham, Alabama 35205. (205) 933-1117. e-mail: hofflaw@bellsouth.net.

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TRAINING

THINKING OF MEDIATION TRAINING? Bob Berlin, J.D., president of Decision Management Associates, Inc. (DMA), is offering Civil and Domestic Mediation training courses throughout 2002 in Atlanta and Macon. Civil Mediation is scheduled for early January and Domestic Mediation in mid-February. Both mediation courses are approved for registration by the Georgia Office of Dispute Resolution and provide an excess of required CLEs, including Trial, Professionalism and Ethics. In addition to Mediation Training, DMA offers classes in Arbitration, Facilitation and a seminar: *Law for Non-Lawyer Mediators*. Call 770-458-7808 or 800-274-8150 For the dates and details. The email address is dma-adr@mindspring.com.

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Great American Insurance P/U October P.37 Full Page B/W

Back cover

West Group New
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