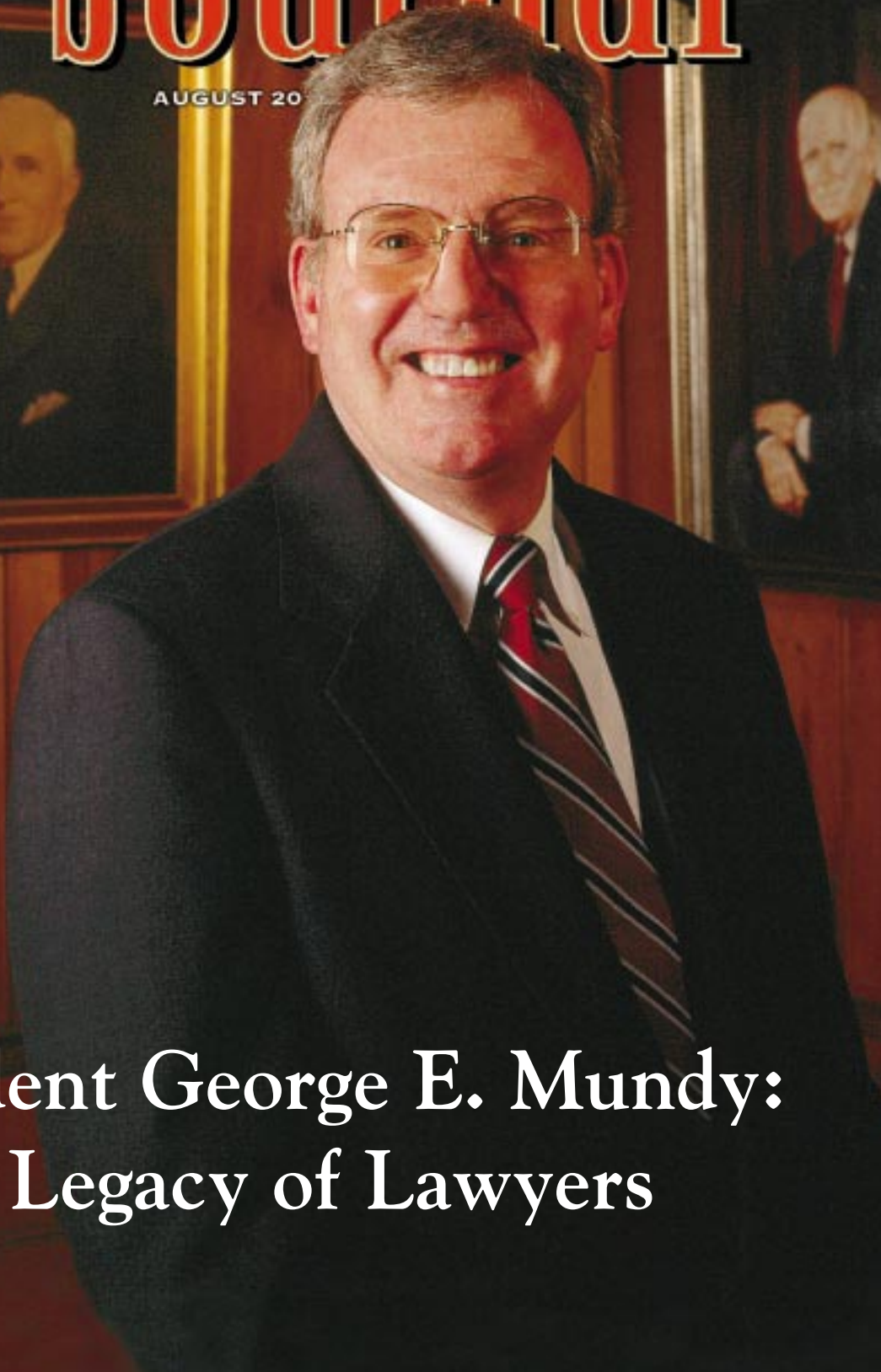


# GEORGIA BAR Journal

AUGUST 20

A color portrait of President George E. Mundy, a middle-aged man with glasses, smiling. He is wearing a dark suit, a white shirt, and a striped tie. He is standing in front of a wood-paneled wall. Two framed portraits of older men in suits are visible on the wall behind him, one on each side.

President George E. Mundy:  
A Legacy of Lawyers

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# GEORGIA BAR Journal

AUGUST 2000 • Vol. 6 No. 1

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**On the Cover:** *George E. Mundy, the 36th President of the State Bar of Georgia, continues a century long family tradition of practicing law on Main Street in Cedartown. Here he stands before portraits of his grandfather (left) and father—both lawyers. Photo by Richard T. Bryant.*

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The *Georgia Bar Journal* welcomes the submission of unsolicited legal manuscripts on topics of interest to the State Bar of Georgia or written by members of the State Bar of Georgia. Submissions should be 10 to 12 pages, double-spaced (including endnotes) and on letter-size paper. Citations should conform to A UNIFORM SYSTEM OF CITATION (16th ed. 1996). Please address unsolicited manuscripts to: D. Scott Murray, Attorney at Law, 1030 Powers Place, Alpharetta, Georgia 30004. Authors will be notified of the Editorial Board's decision following its next meeting.

The *Georgia Bar Journal* welcomes the submission of news about local and circuit bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Jennifer M. Davis, Managing Editor, 800 The Hurt Building, 50 Hurt Plaza, Atlanta, Georgia 30303; phone: (404) 527-8736.

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# GEORGIA BAR Journal

AUGUST 2000 VOL. 6 NO. 1

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# LEGAL LEGACY TEACHES LESSONS



By George E. Mundy

**M**y grandfather once represented a notorious Polk County character by the name of Leroy. On this occasion, Leroy was charged with stealing chickens. After an impassioned closing argument, the jury acquitted Leroy. As the courtroom cleared, my grandfather looked at his client and said, “Leroy, you’ve been acquitted and they cannot retry you, but I want you to tell me the truth. Did you steal those chickens or not?” To which Leroy replied, “Well, Colonel Mundy, I thought I did until I heard your closing argument; now I’m not sure.”

There has been a member of my family practicing law on Main Street in Cedartown continuously from 1870 to the present. While the office was always on Main Street, there have been numerous locations. For the first 70 or 80 years, the office was always located on the second floor—once above a bank, later a jewelry store and once above a radio station. In the 1950s, all of the lawyers in Cedartown began moving to the ground floor—I assume so clients did not have to climb so many steps.

A couple of years ago, I received a call from a lady who was renovat-

ing a Main Street building which once housed our office. She indicated she had found numerous old law books and files, which had obviously been stored and forgotten many years before. Since my grandfather’s name appeared prominently in some of the documentation, she offered the material to me.

Upon inspection, I discovered 80 volumes of leather bound law books dating from 1880 to 1925. In addition, there were a number of my grandfather’s legal files and other

---

**There has been a member of my family practicing law on Main Street in Cedartown continuously from 1870 to the present.**

documentation from the same time period.

Among the items was a 1905 application to the Martindale Directory as well as a 1905 application to the separate Hubbell Directory. I also found a stamp book dated 1918 which if completed, would entitle the holder to receive \$5.00 at the end of hostilities of the Great War.

One file involved a case where my grandfather represented a Polk County farmer who was indebted to the Bank of Nashville for \$300. A 1919 letter from my grandfather informed the bank that his client not only lost his wife in the recent flu epidemic, but also to make

matters worse, his prized pair of matched mules had been struck by lightning. The case was settled for \$30.

The most interesting item I located was a copy of a speech my grandfather delivered to the Daughters of the Confederacy in 1908 on the life of Robert E. Lee. I have imposed on the *Bar Journal* staff to reprint it and it appears on page 54.

I commend it to you not so much for its content, but as an example of articulation of a Georgia lawyer of nearly 100 years ago. My grandfather never attended college or law school. He read law in my great uncle’s law office until he passed the Bar. However, in the speech he quotes from the Bible, Shakespeare and Greek mythology, as well as commenting on current events during the administration of Teddy Roosevelt. His primary concern was that young people of his day were so immersed in commerce, they had lost sight of more traditional values such as honor. He described those afflicted as enveloped in a Lethean fog. I challenge you to look up this term, as I had to do.

My family has provided me a unique perspective on our profession. While the practice of law always afforded a comfortable living, it certainly never made us wealthy. However, the returns far outweigh any material gain, since we as lawyers recognize we are at the very fabric of what makes our profession and our nation great. Our colleagues, who fully appreciate the profession, know the practice of law is about enhancing values and resolving conflicts; the primary focus was never about making money.

Like my father, my grandfather, and other family members who practiced law, I am dedicated to enhancing progress within our profession. It is a proud family tradition and a proud profession of which I am honored to serve as President. ☐

# GET YOUR CLE ON-LINE? THAT AND MORE...

By Cliff Brashier



**G**eorgia lawyers will have significantly more choices for obtaining continuing legal education beginning January 1, 2001. The Internet and other computer-related technologies have created wonderful new opportunities for lawyers to target the CLE that is most relevant to their own law practice.

For example, the author of a new federal statute or the lawyer who successfully tried a new cause of action may be the featured speaker in a distance learning/telephone conference seminar produced by the American Bar Association in New York or by the State Bar of California in Los Angeles, or another sponsor anywhere in the world. In the past most Georgia lawyers could not even think about that CLE. In a few months it could be available in their offices or homes without any of the expense and wasted time of travel.

In addition, attorneys can more easily attend several one to three hour seminars at more convenient times rather than full day programs. They can select more specific topics and speakers that are most relevant to their CLE needs.

The two new regulations (both effective January 1, 2001) authoriz-

ing this significant change in approved CLE are:

## **Regulation 12 to Rule 8-106(B)**

**(12) CLE Delivery Formats.** In addition to traditional approved continuing legal education activities attended live and in-person by groups of attorneys, distance learning delivery formats are acceptable provided they are designed specifically as organized programs of learning and meet the other accreditation standards set out in the Rules and Regulations. These distance learning CLE activities may be attended by an individual attorney with no minimum number of attendees needed to receive approved MCLE credit, but must comply with the In-House/Self-Study CLE Regulation 5 to Rule 8-106(B). Examples of qualifying distance learning formats include: live CLE activities presented via video or audio replays of live CLE activities; on-line computer CLE activities, CD-ROM and DVD interactive CLE activities; and written correspondence CLE courses. When attended by an individual attorney, the distance learning activity constitutes Self-Study CLE. Examples of non-qualifying educational activities that are encouraged on a non-MCLE approved credit basis include: reading cases and advance sheets, legal research, internet chat groups, observations of trial and jury duty.

## **Regulation 5 to Rule 8-106(B)**

### **(5) In-House/Self-Study CLE.**

The Commission recognizes that law firms, corporate legal departments and similar entities, either alone or in conjunction with each other, will develop and present in-house continuing legal education activities to assist their member attorneys in maintaining their professional competence. The

Commission further recognizes that these In-House CLE activities often are designed to address matters most relevant to a firm's own attorneys. Also, the Commission recognizes that active member attorneys on an individual basis may participate in distance learning CLE activities, which constitutes self-study. In-House/Self-Study CLE activities may be approved for credit under these Rules and Regulations plus the following additional conditions:

- All In-House/Self-Study CLE activities shall be designed specifically as an organized program of learning.
- All In-House/Self-Study CLE activities must be open to observation by members of the CCLC and its staff;
- Experienced attorneys must substantially contribute to the development and presentation of all In-House/Self-Study CLE activities
- In-House/Self-Study CLE activities must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.
- Up to six (6) CLE hours may be earned by an attorney in a calendar year through a combination of approved In-House/Self-Study activities. Written application for CLE credit above the annual In-House/Self-Study limit may be made during the calendar year in which this credit is earned, and upon approval by the CCLC, the excess credit may be carried forward and applied to In-House/Self-Study CLE for the next calendar year only.

The Commission on Continuing Lawyer Competency hopes these changes will help Georgia lawyers enhance their continuing education through higher quality learning activities that are more relevant, more convenient, and less expensive. ☐

# The *Harper* Standard And The Alcosensor: The Road Not Traveled

By Lance J. LoRusso

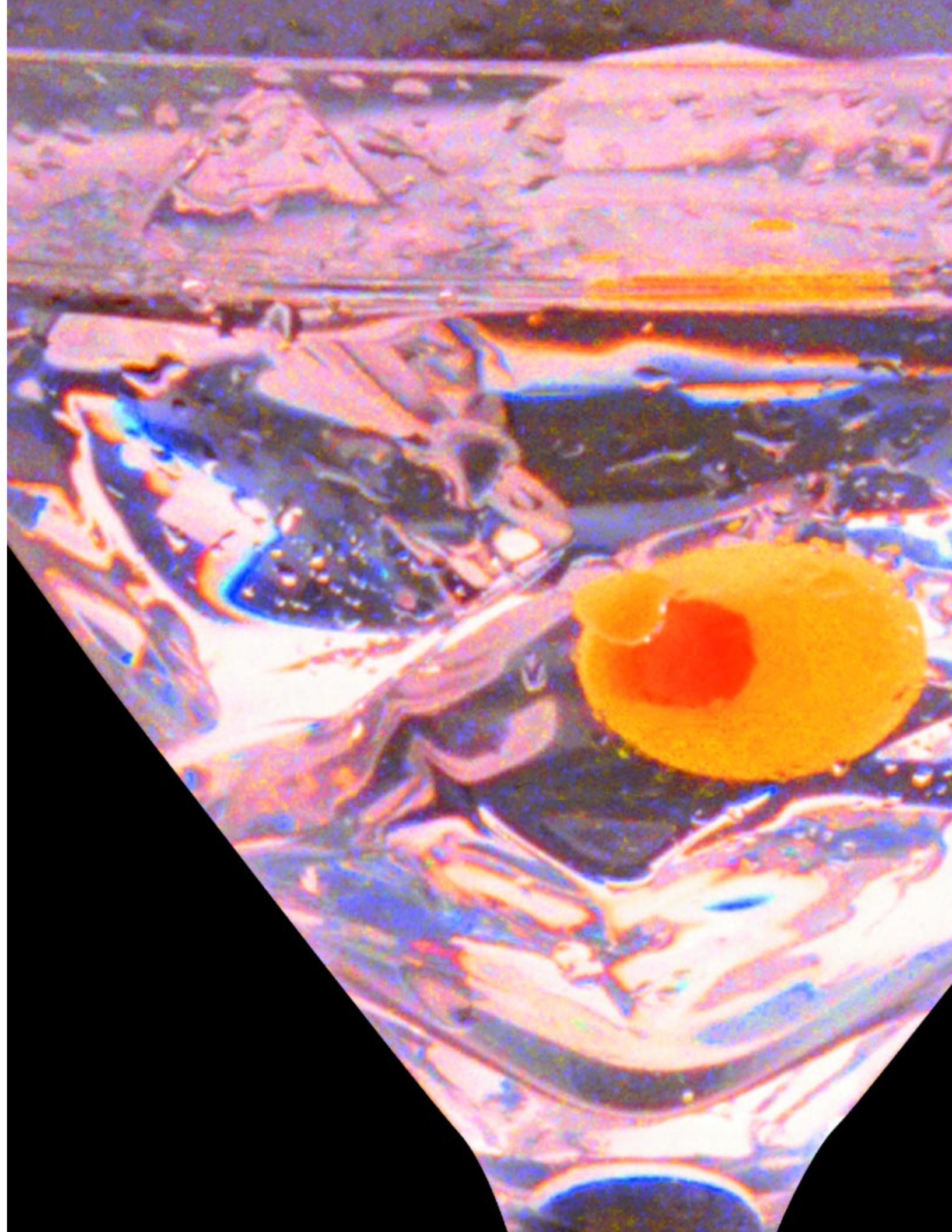
**Y**our client is stopped for speeding at midnight. He is on his way home from a holiday party where he consumed “a couple of drinks” on an empty stomach. He agrees to take all field sobriety evaluations including an alcosensor. He is arrested and charged with DUI. The officer reads the appropriate Implied Consent Warning, and the driver agrees to take a breath test. Due to traffic and a busy wrecker service, the breath test is administered at 1:30 a.m. He registers .10 grams and he requests a personal test of his blood. Due to a busy Emergency Room, his blood is drawn at 3:00 a.m. The result is .08 grams. What happens to this powerful evidence?

The State of Georgia has progressively increased punishments and sanctions for driving under the influence of alcohol (DUI) during the past three years. Following a national trend, severe limitations have been placed upon the ability of a defendant to plead *nolo contendere*, to retain driving privileges and to avoid incarceration.<sup>1</sup>

Peace officers in Georgia make approximately 72,000 DUI arrests every year,<sup>2</sup> resulting in a plethora of case law and debate over evidentiary issues. However, despite a downward trend in the number of DUI arrests, thousands of people are injured or killed in Georgia each year in alcohol-related accidents.<sup>3</sup>

Ironically, even though the stakes for a DUI conviction have increased dramatically, certain evidence of intoxication and impairment gained by officers during arrests remains inadmissible in Georgia courts. Consider the example given above. At trial, the prosecution cannot introduce the numerical results of the alcosensor to show that the suspect’s blood alcohol level was highest while he was driving. Similarly, the defense cannot show that the suspect’s blood alcohol level was rising from the time he was arrested, and therefore argue that he would have been home before he reached the legal limit of intoxication of .10 grams of alcohol present in the suspect’s





blood. This powerful evidence from the alcosensor is currently lost in a mire of regulations and case law.

The alcosensor<sup>4</sup> is a hand-held device that measures the amount of alcohol present in the suspect's breath during the roadside field sobriety evaluations. The alcosensor either gives a two or three digit numeric display showing the percentage of alcohol present in the suspect's blood, or simply reads positive or negative for alcohol in the bloodstream. The machine can be calibrated for accuracy and printers are available to create a record of the test results.<sup>5</sup>

Presently, the numeric results of the alcosensor evaluation are inadmissible in Georgia courts. Only a positive or negative reading indicating the presence of alcohol in the blood stream is admissible.<sup>6</sup> There are, however, two sound reasons for including the numeric results. First, the fuel cell technology upon which the alcosensor relies satisfies the *Harper*<sup>7</sup> standard for the admissibility of novel scientific evidence in Georgia. Second, the results are relevant, and any objections to the accuracy of the alcosensor results affect the weight, and not the admissibility, of that evidence.

## The DUI Arrest

When a police officer stops a motorist suspected of DUI, the officer will ask the driver to submit to several voluntary field evaluations to determine if the driver is capable of safely operating a motor vehicle.<sup>8</sup> During this assessment, the officer uses the alcosensor and other field sobriety evaluations to then determine if probable cause exists for placing the driver under arrest for DUI.

The officer uses the alcosensor to either determine the amount of alcohol present in the suspect's bloodstream, or to rule out alcohol as an intoxicant. If the suspect is arrested for DUI, the officer implicitly relies upon the alcosensor reading to decide whether to request a blood, urine or breath test. Thus, the officer relies on the alcosensor to give an accurate reading.

The science employed by the alcosensor is no less verifiable than the science employed by the current and former state-approved breath analyzing devices, the Intoxilyzer 5000 and the Intoximeter 3000, respectively. These large devices, referred to as the "state administered chemical test," are maintained in a jail or precinct and the results are used as substantive proof of the DUI defendant's level of intoxication under O.C.G.A. section 40-6-392(a).<sup>9</sup> However, the state administered chemical test is only administered after the driver is placed under arrest.<sup>10</sup> Even though the alcosensor and the Intoxilyzer 5000 rely on different scientific technology, both machines rely on the same correlation to determine the blood

alcohol content ("BAC") of the suspect.<sup>11</sup>

Georgia courts have admitted chemical tests that were not obtained in accordance with O.C.G.A. section 40-6-392(a) as substantive evidence of the defendant's level of intoxication. In *Dixon v. State*,<sup>12</sup> the court relied on the business record exception to allow the admission of a medical blood test as substantive proof of the defendant's level of intoxication even though the test did not comply with O.C.G.A. section 40-6-392(a).<sup>13</sup> The admission of the test was based upon the reliability of the test method and the testimony of the person who drew the blood. The sample was obtained by a registered nurse who testified at trial that she smelled a strong odor of an alcoholic beverage emanating from the defendant. The test was conducted in a medical laboratory according to methods acceptable in the industry. Therefore, it appears that the court was satisfied with the reliability of the evidence and found the rigid requirements of the statute inapplicable.

The reliability of the scientific process by which evidence of a defendant's BAC is obtained should be the proper focus of the court in a DUI case. The fact remains that evidence of the defendant's BAC in the *Dixon* case was introduced at trial and the jury was permitted to weigh that evidence. Evidence of a defendant's BAC obtained during field sobriety evaluations via an alcosensor is obtained using recognized scientific principles and established procedures. Therefore, the results should be admitted for the jury to consider.

## Admissibility of Alcosensor Results

Although police officers routinely rely upon the numeric alcosensor results, Georgia courts do not allow the numeric alcosensor results to be admitted as substantive proof of a DUI defendant's level of intoxication based upon two principles.<sup>14</sup> First, the Georgia Division of Forensic Sciences ("DFS"), a division of the Georgia Bureau of Investigation, has approved the alcosensor only for use as a screening device.<sup>15</sup> It is intended to allow the officer to determine if alcohol is the sole cause of impairment and if probable cause exists for a DUI arrest.<sup>16</sup> A negative or low reading may indicate the presence of illegal or prescription drugs.

Second, O.C.G.A. section 40-6-392 provides that the DFS *shall* designate the type of test that can be used as substantive proof of the defendant's level of intoxication in criminal and civil courts.<sup>17</sup> The DFS has not approved the alcosensor for such use and in *Turrentine v. State*,<sup>18</sup> the Georgia Court of Appeals ruled that alcosensor results are inadmissible for that purpose and the alcosensor can only be used to test for the *presence of alcohol* in the suspect's blood.<sup>19</sup> Admission of the non-numeric results, phrased as "positive" or "negative" for the presence of alcohol, are predicated upon a proper evidentiary founda-

tion which includes proof that the alcosensor used is of a type approved by the DFS. This foundation is not complex and may be established by testimony of a sufficiently trained police officer or by introduction of documentation from the DFS.<sup>20</sup>

Currently, officers are only permitted to testify that the results of the alcosensor were “positive” or “negative” regardless of the numeric reading.<sup>21</sup> Even attempts by the defendant to admit the numeric alcosensor results, or to attack the veracity of the state administered test, have failed.<sup>22</sup> Likewise, testimony that characterizes the results as “high” have been held improper and inadmissible even though testimony that the suspect “failed” the alcosensor may be admissible.<sup>23</sup> It does not appear that courts distrust the accuracy of the alcosensor or the ability of the device to determine the level of intoxication. In fact, courts have allowed the numeric alcosensor results into evidence as part of the *res gestae* and substantive proof of the level of intoxication of passengers.<sup>24</sup> Therefore, in a case where a defendant refuses to submit to a state administered chemical test, a jury could convict a defendant of DUI of alcohol, based upon driving manifestations and performance on the field sobriety evaluations, even if the only evidence that the defendant consumed alcohol is testimony of a “positive” alcosensor reading from the officer. This result is possible even if the numeric reading on the alcosensor is as low as .01 grams, well below the level of presumption of intoxication.<sup>25</sup>

Under current law, a defendant may not use the alcosensor results to exonerate himself according to the precedent in *Turrentine* and its progeny.<sup>26</sup> This inequitable result occurs even though a low alcosensor result must be divulged by the prosecution prior to trial.<sup>27</sup> Statements by the officer that the reading was “high,” that the defendant “failed the alcosensor test” or testimony about the actual numeric reading are viewed as stating a level of intoxication and can be reversible error regardless of who elicits such testimony.<sup>28</sup> The numeric reading is essentially lost in the evidentiary battle between the prosecution and the defense.

## The Harper Standard and the Alcosensor

In *Harper v. State*,<sup>29</sup> the Georgia Supreme Court set forth the standard for admitting novel scientific evidence and confirmed that the admissibility of scientific evidence is within the sound discretion of the trial judge. Under the *Harper* standard, the trial judge may allow the results if

the technology is shown to have “reached a scientific stage of verifiable certainty” or “rests upon the laws of nature.”<sup>30</sup> Any Georgia court may hold a hearing to determine the admissibility of the novel scientific evidence.<sup>31</sup> At this hearing, the court may hear testimony from experts provided by the parties or the court and consider “exhibits, treatises or the rationale of cases in other jurisdictions.”<sup>32</sup> The intent of *Harper* is to have the trial court determine the admissibility of scientific evidence “based upon the evidence available to [it].”<sup>33</sup> The danger of failing to apply *Harper* to the numeric results of an alcosensor is that the jury may be deprived of probative evidence.

The admissibility of the alcosensor results should be viewed as “resting upon the laws of nature.” The alcosensor reading is the result of a chemical reaction taking place inside the machine. An alcosensor measures

the amount of alcohol in exhaled breath with a predictable and reliable degree of scientific certainty. The alcosensor uses fuel cell technology which is based upon the laws of physics and chemistry and has been available since 1843.<sup>34</sup> The cell generates electricity when a

gas contacts the internal parts of the machine, and the amount of electricity generated is dependent upon the amount of alcohol in the sample. The breath sample provides a conduit which completes a circuit within the fuel cell.<sup>35</sup> The results are replicable and predictable leading to the conclusion that this method of testing the breath has “reached a degree of verifiable scientific certainty.”<sup>36</sup>

The analysis of a sample inside the fuel cell is similar to the principle behind both the Intoxilyzer 5000 and the Intoximeter 3000, the present and former state approved breath testing devices. Both use infrared spectroscopy to determine the concentration of alcohol in a defendant’s breath sample. During this process, the defendant’s breath sample is gathered inside a chamber and illuminated with infrared light. Analysis of the light as it passes through the sample yields the concentration of alcohol in the sample, expressed as grams BAC.<sup>37</sup> This method of capturing an air sample, then using accepted scientific methods to test that sample, is the exact “science” behind the numeric reading on an alcosensor. The only difference is the method used to test the sample.

Although there are reasons to attack the numeric results of the alcosensor, as shown in the chart below, it is difficult to imagine why the technology would not pass a

**Presently, Georgia courts do not allow the prosecution or the defense to admit the numeric results of the alcosensor.**



*Harper* analysis. In fact, as the chart below shows, most “errors” in the reading actually benefit the subject tested. An improperly administered alcosensor evaluation is more likely to give a reading below the actual BAC of the subject tested. However, the Georgia Court of Appeals in *Turrentine* did not inquire about the reliability of the alcosensor, stating it was approved only as a screening device. The court conceded, “there is no statutory scheme covering initial screening devices”<sup>38</sup> and stated the admissibility of alcosensor results was not governed by O.C.G.A.

section 40-6-392.<sup>39</sup> Therefore, the Implied Consent Warning, which officers must read before administering an Intoxilyzer or Intoximeter, did not apply. In doing so, the court acquiesced to the DFS rather than determining if the method used to screen drivers was reliable. *Turrentine* is now cited to support the contention that the numeric results of the alcosensor are not admissible.<sup>40</sup>

Presently, Georgia courts do not allow the prosecution or the defense to admit the numeric results of the alcosensor and rely on the recommendation of the DFS.

## Selected Factors Affecting the Results of the Alcosensor III

Factors	Potential Problems	Manufacturer Recommendations
Multiple high tests per hour <sup>57</sup>	Alcosensor may use 3-5% of sensitivity if more than 5 high readings (over .10) in an hour	Recalibrate after every 5 positive tests; wait between tests 15 seconds if last test was negative and 2 minutes if last test was positive
Operator error <sup>58</sup>	May not get true BAC reading VCR instructional tape	Training by state-run programs or
Calibration <sup>59</sup>	If not calibrated, may cause sensitivity to drop and low readings	Calibrate weekly at first, then monthly
Timing of Test <sup>60</sup>	If test taken too soon after a drink, may give exaggerated reading	Wait 15 minutes after last drink
Temperature <sup>61</sup>	If instrument temperature too low, may be sluggish or have decreased sensitivity	Optimal temperature is between 20°C (68°F) to 36°C (98°F); warm instrument in shirt pocket
Mouthpiece <sup>62</sup>	A loose fitting mouthpiece may introduce outside air into the reading causing a low reading, and a tight mouth-piece may create a high reading	Use mouthpieces supplied by manufacturer; may employ a check-valve mouthpiece
Timing of Sample <sup>63</sup>	Sample from first portion of breath will have low, unrepresentative alcohol content	Take sample 3-5 seconds into breath to draw sample of 1cc of deep lung or alveolar breath
Battery <sup>64</sup>	Nine-volt alkaline battery necessary to operate Alco-Sensor III	Reading of .888 indicates low battery; battery will run approximately 500 tests

In restricting the use of the alcosensor, Georgia courts are elevating the regulation of a state agency above case law by refusing to examine the alcosensor technology to determine its probative value. The numeric results of the alcosensor are likely to be ruled admissible if a *Harper* hearing were held. Thereafter, courts could accept the numeric results if appropriate testing procedures are proved much in the same way that the state administered chemical tests are admitted.<sup>41</sup> The weight afforded the alcosensor results would be left to the jury just as the weight of an independent chemical test is evaluated today.

## Relevant Evidence for the Prosecution and the Defense

Evidence is relevant if it, “relate[s] to the questions being tried by the jury and bear[s] upon them directly or indirectly.”<sup>42</sup> The alcosensor provides a measure of the amount of alcohol in the suspect’s blood. Blood alcohol concentration and physical control of a vehicle are the two central issues in a DUI trial. The fact that the alcosensor is given at the scene of the traffic stop rather than later at the jail or hospital enhances its relevancy. The BAC of a driver will change with time as alcohol is absorbed and eliminated.<sup>43</sup> However, this reading has profound effects upon the prosecution’s burden of proof at trial.<sup>44</sup> Defendants who choose not to submit to the state-administered test should be able to present evidence of a lack of alcohol in their blood or a low alcosensor reading at the time they were driving. This is critical because Georgia allows an inference to be drawn against a defendant who refuses to submit to a state administered chemical test.<sup>45</sup>

As with other issues, the weight afforded evidence should be within the province of the jury.<sup>46</sup> The jury should be allowed to decide if any variation between the state-administered test and the alcosensor results speaks for or against the defendant. Georgia law favors admissibility of evidence when the relevance of the evidence is questionable.<sup>47</sup> This commitment to admit relevant evidence, coupled with a duty to interpret the rules of evidence to present the truth to the trier of fact, mandates that a *Harper* hearing be held, especially when the defendant seeks to admit the numeric results of the alcosensor.

## Rationale of Cases in Other Jurisdictions

One factor in a *Harper* hearing is an examination of the law in other jurisdictions.<sup>48</sup> Case law in the states comprising the Eleventh Circuit of the United States Court of Appeals shows that the law regarding alcosensors is in a state of flux. However, varied acceptance does not amount to a rejection of the numeric alcosensor results within the Eleventh Circuit. This only

points to the fact that the issue is unsettled.

In Florida, for example, alcosensors results are not admissible against DUI defendants. Alcosensor results, known as “preliminary breath tests” or PBT, are only admissible against a person under 21 years of age under the “zero tolerance” law.<sup>49</sup> The specific amount of alcohol in the minor’s bloodstream is not at issue in these cases because any alcohol in the driver’s system is unlawful. In Florida and also in Alabama, there does not appear to be either statutory or case law concerning alcosensors.<sup>50</sup>

It is interesting to note that both Florida, and Alabama use the *Frye*<sup>51</sup> test formerly used in Georgia.<sup>52</sup> The *Frye* test, replaced by the *Harper* standard in Georgia, was often called “the counting of experts” because the standard was whether the test “gained general widespread acceptance in the field in which it belongs.”<sup>53</sup> Fuel cell technology is very likely to be ruled admissible under *Frye* because the technology rests upon scientific principles, it has widespread applications and has been in use for at least 150 years.<sup>54</sup>

Georgia courts, therefore, may need to look beyond the Eleventh Circuit for guidance. A national study conducted in 1997 by the American Prosecutors Research Institute showed that the numeric results of a “preliminary breath test,” or alcosensor, were inadmissible as substantive proof of a DUI defendant’s level of intoxication in 12 states. Twenty-seven states did not have a statutory scheme or case law on the issue. Seventeen states allowed the results of the “preliminary breath test” during administrative hearings, and 14 states allowed the results in probable cause hearings. It was not known whether the numeric results were permitted in the administrative hearings or probable cause hearings.<sup>55</sup>

## Ten Factors Affecting Numeric Alcosensor Results

The alcosensor currently in use by most departments in the Atlanta area is the Alcosensor III manufactured by Intoximeters, Incorporated. The manufacturer provides a manual and literature outlining the proper maintenance of the device and an explanation of the limitations of the Alcosensor III. Although seven types of alcosensors are approved for use in Georgia, no court has ever made a distinction between the devices.<sup>56</sup> The chart on page 12 shows several factors that could affect the numeric results of the Alcosensor III or any device that utilizes fuel cell technology.

## The Impact of Foundational Requirements and Cross-Examination

Once a court allows a *Harper* hearing on the numeric results of the alcosensor, a foundation for the admissibility of the numeric results could be developed. The admissibility of



the results would be conditioned upon the satisfaction of that evidentiary foundation. If a prosecutor or defense attorney is unable to lay the proper foundation for the admission of the numeric results of the alcosensor, the court could exclude the reading based not upon the regulation of a state agency, but upon sound evidentiary grounds while recognizing the validity of fuel cell technology and the alcosensor. An analogous example is the use of Doppler traffic radar results. Georgia courts accept the Doppler principle as a valid means of detecting the speed of traffic, but only after the prosecution satisfies a foundation requirement which covers the device, the training of the operator and the conditions surrounding the speed at issue.<sup>65</sup> If an officer is allowed to testify to the numeric readings of the alcosensor, opposing counsel will have the opportunity to cross-examine the officer about the factors listed in the chart above and the methods used to evaluate the defendant. The jury can then weigh the numeric results of the alcosensor along with testimony concerning driving manifestations, demeanor, and performance on other field sobriety evaluations.

## Conclusion

The numeric results of an alcosensor should be admissible in Georgia courts. Until a court holds a *Harper* hearing to examine the numeric alcosensor results, courts will continue to exclude relevant evidence in a DUI trial. The reliability and accuracy of the alcosensor and fuel cell technology can be demonstrated to an acceptable evidentiary level. Since 1982, Georgia courts have used the *Harper* test to accept fiber analysis, child abuse accommodation syndrome, the field sobriety evaluations, horizontal gaze nystagmus evaluation, and many other types of evidence.<sup>66</sup> The numeric results of an alcosensor should be subjected to the same analysis to ensure that all relevant facts are presented in DUI trials. Until this occurs, both the state and defendants are prohibited from advancing powerful, reliable evidence central to the issue of guilt or innocence. ☐



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## Endnotes

1. O.C.G.A. § 40-6-391 (1999).
2. GEORGIA CRIME INFORMATION CENTER, 1990-1997 DUI REPORT FOR GEORGIA (Dec. 5, 1997).
3. Statistics for 1987-1996 show 119,403 DUI related accidents resulted in 98,580 injuries and 5112 fatalities. PUBLIC INFORMATION OFFICE, GEORGIA DEPARTMENT OF PUBLIC SAFETY, REPORT (1997).
4. The alcosensor is also known as the "alco-sensor", "alkosensor" and "alko-sensor." "Alcosensor" will be used throughout this paper for consistency.
5. INTOXIMETERS, INC., ALCO-SENSOR III MANUAL 3 (Feb. 1996). Some models have available printers.
6. *Turrentine v. State*, 176 Ga. App. 145, 147, 335 S.E.2d 630, 633 (1985).
7. *Harper v. State*, 249 Ga. 519, 292 S.E.2d 389 (1982).
8. The alcosensor is one of several field sobriety tests used by officers to determine if probable cause exists for a DUI arrest. For officers, the detection of a DUI driver is divided into three phases: vehicle in motion, personal contact and pre-arrest screening. Field sobriety tests are administered during the third phase. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TRAINING STUDENT MANUAL (Oct. 1995) (hereinafter, "DWI DETECTION MANUAL").
9. O.C.G.A. § 40-6-392(a)(1)(A) (1999); GA. COMP. R. & REGS. § 92-3-.06 (1997) (formerly DEPARTMENT OF PUBLIC SAFETY REGULATION 570-9.06).
10. O.C.G.A. § 40-5-55 (1999).
11. The samples obtained from a blood and breath test can be equated to yield the BAC of the suspect. The same amount of alcohol in 2100 milliliters of deep lung air (also known as alveolar air) is found in 1 gram of blood. DWI DETECTION MANUAL, *supra* note 8, at II-8, ALCO-SENSOR III MANUAL, *supra* note 5, at 8; DIVISION OF FORENSIC SCIENCES, THEORY AND OPERATION OF THE INTOXIMETER 3000, at 24 (Nov. 1994).
12. *Dixon v. State*, 227 Ga. App. 533, 536-37, 489 S.E.2d 532, 536 (1997).
13. *Id.* at 536-37, 489 S.E.2d at 536; *accord* *Jackson v. State*, 196 Ga. App. 724, 726, 397 S.E.2d 13, 15 (1990); *see also* O.C.G.A. § 24-3-14 (1999).
14. *Keenan v. State*, 263 Ga. 569, 436 S.E.2d 475 (1993); *Turrentine v. State*, 176 Ga. App. 145, 147, 335 S.E.2d 630, 633 (1985); *State v. Holler*, 224 Ga. App. 66, 68-69, 479 S.E.2d 780, 782 (1996) (holding alcosensor results inadmissible in pre-trial proceedings); *see also* *Price v. State*, 222 Ga. App. 655, 475 S.E.2d 692 (1996) (conviction when defense opened door to numerical results on cross-examination, then failed to object to numerical results given on re-direct).
15. GA. COMP. R. & REGS. 92-3-.06 (1997).
16. DWI DETECTION MANUAL, *supra* note 8, at VII-7.
17. O.C.G.A. § 40-6-392(a)(1)(A) (1999).
18. *Turrentine*, 176 Ga. App. at 147, 335 S.E.2d at 633.
19. *Id.*
20. *Guinn v. State*, 224 Ga. App. 881, 884, 482 S.E.2d 480, 483 (1997); *Channell v. State*, 172 Ga. App. 156, 157, 322 S.E.2d 356, 357 (1997); *Gray v. State*, 222 Ga. App. 626, 629-30, 476 S.E.2d 12, 15 (1996); *Turrentine*, 176 Ga. App. at 146, 335 S.E.2d at 632.
21. *Mendoza v. State*, 196 Ga. App. 627, 629, 396 S.E.2d 576, 578 (1990); *Ronkowsky v. State*, 190 Ga. App. 147, 378

- S.E.2d 185 (1989); *see also* Hunter v. State, 143 Ga. App. 541, 543-44, 239 S.E.2d 212, 214 (1977) (predecessor to alcosensor admissible as screening device).
22. Porche v. State, 217 Ga. App. 325, 325-26, 457 S.E.2d 578, 578 (1995).
  23. Sturdy v. State, 192 Ga. App. 71, 72, 383 S.E.2d 632, 634 (1989); *see* State v. Holler, 224 Ga. App. 66, 69, 479 S.E.2d 780, 782 (1996) (failure admissible); *Gray*, 222 Ga. App. at 630, 476 S.E.2d at 16 (1996) (upholding conviction because officer did not testify about failure).
  24. Ayers v. City of Atlanta, 221 Ga. App. 381, 471 S.E.2d 381 (1996) (affirming admittance of BAC of passenger tested via alcosensor as part of *res gestae* when same alcosensor was used to test defendant a short time earlier).
  25. O.C.G.A. § 40-6-392(b)(1) (1999).
  26. *See, e.g.,* Heller v. State, 234 Ga. App. 630, 507 S.E.2d 518 (1998).
  27. Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963).
  28. Channell v. State, 172 Ga. App. 156, 157, 322 S.E.2d 356, 357 (1984) (reversing conviction when officer testified suspect failed to pass "alko-sensor" without laying proper foundation concerning device). *Contra* Simms v. State, 223 Ga. App. 330, 333, 477 S.E.2d 628, 631 (1996) (upholding conviction when curative instruction followed testimony of trooper as to numeric results); *Sturdy*, 192 Ga. App. at 71, 383 S.E.2d at 633 (1989) (upholding conviction when testimony of "high" reading followed by curative instruction); *Whiteley*, 188 Ga. App. 129, 372 S.E.2d 296 (1988) (curative instruction sufficient); *State v. Holler*, 224 Ga. App. 66, 69, 479 S.E.2d 780, 782 (1996) (failure admissible); *but see* Price v. State, 222 Ga. App. 655, 475 S.E.2d 692 (1996) (upholding conviction when defense initiated questioning of results but failed to object to numerical results given during re-direct examination); *Gray*, 222 Ga. App. at 630, 476 S.E.2d at 16 (1996) (upholding conviction because officer did not testify about failure).
  29. Harper v. State, 249 Ga. 519, 292 S.E.2d 389 (1982).
  30. *Id.* at 525, 292 S.E.2d at 395.
  31. Kathryn Johnson, Note, *Exiting the Twilight Zone: Changes In The Standard For The Admissibility Of Scientific Evidence In Georgia*, 10 GA. ST. U. L. REV. 401, 403 (1994).
  32. *Harper*, 249 Ga. at 525, 292 S.E.2d at 395.
  33. *Id.* at 526, 292 S.E.2d at 396; Prickett v. State, 220 Ga. App. 244, 469 S.E.2d 371 (1996).
  34. ALCO-SENSOR III MANUAL, *supra* note 5, at 7; *see also* J. R. PARTINGTON, HISTORY OF CHEMISTRY IV 686 (1964).
  35. ALCO-SENSOR III MANUAL, *supra* note 5, at 7, 13.
  36. *Harper*, 249 Ga. at 525, 292 S.E.2d at 395.
  37. THEORY AND OPERATION OF THE INTOXIMETER 3000, *supra* note 11, at 7, 20.
  38. Turrentine v. State, 176 Ga. App. 145, 146, 335 S.E.2d 630, 632 (1985).
  39. *Id.*
  40. *See, e.g.,* Heller v. State, 234 Ga. App. 630, 507 S.E.2d 518 (1998).
  41. *See, e.g.* Brannan v. State, 261 Ga. 128, 401 S.E.2d 269 (1991).
  42. O.C.G.A. § 24-2-1 (1999).
  43. THEORY AND OPERATION OF THE INTOXIMETER 3000, *supra* note 11, at 26-28.
  44. O.C.G.A. § 40-6-392(b) (1999).
  45. *Id.* § 40-6-392(d); Hassell v. State, 212 Ga. App. 432, 435, 442 S.E.2d 261, 264 (1994); *see also* Keenan v. State, 263 Ga. App. 569, 436 S.E.2d 475 (1993) (allowing a presumption for refusal to submit to alcosensor evaluation).
  46. Norman v. State, 197 Ga. App. 333, 335, 398 S.E.2d 395, 398 (1990).
  47. *Id.*
  48. *Harper*, 249 Ga. at 525, 292 S.E.2d at 395 (1982).
  49. Fla. Stat. Ann. § 322.2616 (1998); *see* NATIONAL TRAFFIC LAW CENTER, AMERICAN PROSECUTORS RESEARCH INSTITUTE, PBT LAWS SUMMARY 1-2 (Aug. 14, 1997).
  50. The American Prosecutors Research Institute National Traffic Law Center was unable to determine the status of the law regarding alcosensors in Alabama. PBT LAWS SUMMARY, *supra* note 49, at 3-6. A study by the National Traffic Law Center lists Alabama with 18 other states that do not have a statutory scheme or case law governing alcosensors. *See id.*
  51. Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923).
  52. Hadden v. State, 690 So. 2d 573 (Fla. 1997); *Ex parte* Alabama, 746 So. 2d 355 (Ala. 1998).
  53. *Harper*, 249 Ga. at 525, 292 S.E.2d at 395 (1982).
  54. J. R. PARTINGTON, *supra* note 34, at 686.
  55. PBT LAWS SUMMARY, *supra* note 49, at 3-6.
  56. Memorandum from J. Byron Dawson, Ph.D., Director, Division of Forensic Services on Approved Breath-Testing Devices (May 30, 1995) (on file with DFS).
  57. ALCO-SENSOR III MANUAL, *supra* note 5, at 2, 5.
  58. *Id.* at 3.
  59. *Id.* at 3, 10.
  60. *Id.* at 4.
  61. *Id.*
  62. *Id.* at 8.
  63. *Id.*
  64. *Id.* at 1, 7, 9.
  65. O.C.G.A. §§ 40-14-4 to -16. (1999); Brooker v. State, 206 Ga. App. 563, 426 S.E.2d 39 (1992); Taylor v. State, 205 Ga. App. 84, 421 S.E.2d 104 (1992); Johnson v. State, 189 Ga. App. 192, 375 S.E.2d 290 (1988).
  66. Williams v. State, 251 Ga. 749, 312 S.E.2d 40 (1983); Manley v. State, 206 Ga. App. 281, 424 S.E.2d 818 (1992); Rolader v. State, 202 Ga. App. 134 (1991).

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# Sexual Harassment Claims Under Georgia Law

By Catherine F. Duclos

**T**he Georgia Court of Appeals has clearly spoken: sexual harassment will not be tolerated in Georgia workplaces. Many employers, particularly small businesses, are unaware of the Court's pronouncements and have failed to take the appropriate steps to rid their workplaces of such conduct. These employers leave themselves vulnerable to potentially large damage awards and expensive litigation.

Consider the following scenario: Jane worked for ABC Company, a company with ten employees. Jane's supervisor, Bill, began making sexual advances and comments about her body. Bill gave Jane a poor performance review and cut her pay rate in half after she rebuffed his advances. Jane complained to ABC's Presi-

dent, Bob Smith, who told Jane that he knew Bill "had a problem" with women, but Bill was his best salesman. Jane subsequently quit. Bob was not concerned because he had been to a seminar on "personnel law" and he knew that federal discrimination laws apply only to companies with 15 or more employees. Bob was stunned when he received a summons and complaint from a Georgia court where Jane had sued ABC for negligently failing to maintain a workplace free of sexual harassment. He was even more stunned when his attorney told him ABC might be liable.

Sexual harassment claimants are turning to Georgia law more frequently. The courts have responded favorably, giving rise to considerable debate among employ-



ment lawyers whether the courts have created a cause of action for “sexual harassment.” Like so many legal questions, the answer is yes and no. The Georgia Court of Appeals has recognized a legal theory under which workplace sexual harassment may be addressed. The Court has not, however, created a new cause of action. Instead, the Court has used established common law, and has recognized a negligence cause of action against an employer who allows sexual harassment to occur in its workplace.<sup>1</sup>

A sexual harassment plaintiff bringing a negligence claim under Georgia law has several advantages over a federal plaintiff bringing a claim under Title VII of the Civil Rights Act of 1964.<sup>2</sup> The Georgia plaintiff may: (1) by-pass the administrative procedures of the Equal Employment Opportunity Commission; (2) take up to two years (instead of 180 days) to file a claim;<sup>3</sup> (3) file a claim against an employer with fewer than 15 employees; and (4) avoid Title VII’s statutory caps on compensatory and punitive damages. The major disadvantage is that, absent a physical injury, punitive damages may not be available.<sup>4</sup>

## The *Respondeat Superior* Roadblock

Prior to 1983, attempts to hold employers liable under Georgia law for the harassing conduct of their employees had failed. They failed because the very nature of sexual harassment makes it impossible to establish an employer’s liability under the doctrine of *respondeat superior*.<sup>5</sup> As the Court of Appeals has repeatedly explained, sexual harassment is a uniquely “personal” action – one that will never (one would hope) fall within the scope of an alleged harasser’s employment.<sup>6</sup>

## The Detour: *Cox v. Brazo*

In *Cox v. Brazo*,<sup>7</sup> the Georgia Court of Appeals directed sexual harassment claimants to a more appropriate legal theory. In *Cox*, the plaintiff brought suit against her former supervisor and former employer for assault. She contended that she was injured by the supervisor’s sexual harassment in the workplace and that the employer should be held vicariously liable for the supervisor’s conduct. The Court rejected the plaintiff’s *respondeat superior* argument, holding that the supervisor’s actions were not in furtherance of the employer’s business; yet, the Court reversed the lower court’s grant of summary judgment to the employer. The Court explained:

the theory of recovery against the employer here sounds in common law tort, i.e., [the employer’s] neg-

ligence in allowing [the supervisor] to remain in a supervisory position with notice of his proclivity to engage in sexually offensive conduct directed against female employees. Whether a master was negligent in employing an undependable and careless servant is a separate issue from whether an agent is acting within the scope of the master’s business. A cause of action for negligence may be stated if the employer, in the exercise of reasonable care, should have known of an employee’s reputation for sexual harassment and that it was foreseeable that the employee would engage in sexual harassment of a fellow employee but he was continued in his employment.<sup>8</sup>

## A Georgia “Sexual Harassment” Claim

The Court of Appeals has addressed the issue of workplace sexual harassment on several occasions since *Cox*. A review of the Court’s decisions reveals that the plaintiff must establish the following elements in order to state a claim: (1) that he/she was subjected to sexual harassment;<sup>9</sup> (2) that the employer, in the exercise of reasonable care, knew or had reason to know of the employee’s proclivity or reputation for sexual harassment;<sup>10</sup> (3) that it was foreseeable the employee would engage in sexual harassment of a fellow employee but he was continued in his employment;<sup>11</sup> and (4) that the plaintiff was injured by the employer’s negligence.<sup>12</sup>

### A. The Court Has Not Defined “Sexual Harassment.”

Unlike the parties in a federal discrimination action, the parties in a Georgia sexual harassment case have no established definition of the term “sexual harassment” upon which to rely. Moreover, the Court of Appeals has indicated that it will not entertain arguments based on federal case law.<sup>13</sup> The Court appears, therefore, to have taken the “we know it when we see it” approach. Examples of conduct which the Court of Appeals has found sufficient to state a claim include patterns of sexual conversation and comments, sexual jokes, stares and funny looks,<sup>14</sup> sexual demands and unwanted touching,<sup>15</sup> repeated requests for dates, and graphic comments about sex and about the harasser’s sexual relations with other women.<sup>16</sup>

The only other guidance the Court has provided is that the underlying conduct by the harasser must independently rise to the level of tortious conduct - such as assault,<sup>17</sup> battery,<sup>18</sup> intentional infliction of emotional distress,<sup>19</sup> or invasion of privacy.<sup>20</sup> In other words, an employer can only be held liable for the tortious conduct of its employee if the employee commits a tort. As the Court explained in *Coleman v. Housing Authority of*



*Americus*,<sup>21</sup> one must first consider the plaintiff's intentional tort claim against the alleged harasser.<sup>22</sup> The "essentially derivative" claims against the other defendants will fall if the plaintiff fails to provide sufficient evidence of tortious conduct by the harasser.<sup>23</sup>

The underlying tort claim in most sexual harassment cases is intentional infliction of emotional distress. Thus, before the plaintiff can reach the employer in these cases, she must show: (1) intentional or reckless conduct; (2) which was extreme and outrageous; and (3) which caused the plaintiff's emotional distress.<sup>24</sup> Liability arises only when the emotional distress is severe.<sup>25</sup> Generally, the actions of the alleged harasser must involve a *pattern* of sexually harassing conduct to be sufficiently outrageous to state a claim.<sup>26</sup> Incidents which, standing alone, would not be sufficient to state a claim may be found to have had a cumulative effect through repetition, giving rise to a cause of action.<sup>27</sup> On the other hand, tasteless and rude social conduct that does not involve a pattern of sexual advances and comments is insufficient.<sup>28</sup> As the Court of Appeals has noted, "[t]he rough edges of our society are still in need of . . . filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind."<sup>29</sup> Thus, liability does not extend to "mere insults, indignities, threats, annoyances, petty oppressions or other trivialities."<sup>30</sup>

The Court of Appeals has taken notice that "special" circumstances exist in the workplace which can produce a character of outrageousness that otherwise might not exist.<sup>31</sup> Specifically, the cumulative effect of repeated, unwanted sexual conduct can be "particularly acute" in the employer-employee relationship because it presents a situation in which one person has control over another.<sup>32</sup> In an often-quoted explanation of its reasoning, the Court of Appeals stated:

[t]he workplace is not a free zone in which the duty not to engage in wilfully and wantonly causing emotional distress through the use of abusive or obscene language does not exist. Actually, by its very nature, it provides an environment more prone to such occurrences because it provides a captive victim who may fear reprisal for complaining, so that the injury is exacerbated by repetition, and it presents a hierarchy of structured relationships which cannot easily be avoided. The opportunity for commission of the tort is more frequently presented in the workplace than in casual circumstances involving temporary relationships.<sup>33</sup>

Obviously, one of the reasons sexual harassment is so difficult to define is its fact-sensitive nature. Conduct that may be outrageous under some circumstances may be merely boorish in others. As a result every case must stand or fall on its own facts.

## **B. Employers Who Fail To Address Sexual Harassment May Be Liable.**

An employer can be liable for tortious "sexual harassment" by its employee if it knew or had reason to know of the harassing conduct or the employee's propensity for such conduct, and it was foreseeable that the employee would engage in further sexual harassment.<sup>34</sup> In making this determination, the fact-finder must necessarily look at the information available to the employer. An employer may be liable if, in the exercise of ordinary care, it could have reasonably discovered that its employee was inflicting emotional distress upon (or engaging in other tortious conduct toward) the plaintiff.<sup>35</sup>

An employer may know, or in the exercise of due care have reason to know, of an employee's reputation for sexual harassment even in the absence of formal complaints. "The issue in cases of this kind is knowledge or reason to know, not complaints."<sup>36</sup> Moreover, the fact that a complaining employee does not specifically mention "sexual harassment" will not absolve the employer.<sup>37</sup> Employers may not assert lack of knowledge "when the slightest investigation or merely permitting the employee to explain would have provided them with the knowledge they deny."<sup>38</sup> On the other hand, there must be some actual notice to an employer before it will be obligated to act. An employer is not required to root out harassers or submit employees to general psychological testing or interviews to reveal propensities for such conduct.<sup>39</sup>

An employer's express policy of discouraging sexual harassment is one factor the courts will consider in determining liability.<sup>40</sup> An employer that fails to provide a vehicle for employees to complain about sexual harassment may not be permitted to assert that it had no reason to know of harassment in its workplace.<sup>41</sup> The mere existence of such a policy, however, will not shield the employer. The employer may still be liable if it could have reasonably discovered that its employee was acting in a sexually harassing manner.<sup>42</sup>

Evidence the Court of Appeals has found sufficient to support employer liability includes testimony that sexual harassment happened frequently and that employees, including supervisors, were aware of it,<sup>43</sup> efforts by the employee to bring the matter to the attention of management,<sup>44</sup> management's knowledge that the alleged harasser "had problems with women,"<sup>45</sup> complaints by the employee to supervisors and co-workers,<sup>46</sup> and complaints from other employees about the alleged harasser.<sup>47</sup>

## The Employer's Defenses

Georgia law provides several defenses to workplace tort and negligence claims. Most of these defenses, however, have been unsuccessful in sexual harassment actions brought under Georgia tort law.

### A. The Georgia Workers' Compensation Act Does Not Bar A Sexual Harassment Claim.

The Georgia Workers' Compensation Act<sup>48</sup> ("the Act") does not provide employers with a preemptive shield against sexual harassment claims. The Court of Appeals has repeatedly held that sexual harassment is a personal action by the harasser that does not arise out of the plaintiff's employment.<sup>49</sup> Sexual harassment claims are, therefore, neither covered nor barred by the Act.<sup>50</sup>

### B. The Fellow-Servant Doctrine Does Not Shield The Employer.

Under the "fellow-servant doctrine," an employer is not liable to one employee for injuries arising from the negligence or misconduct of other employees.<sup>51</sup> The doctrine does not, however, protect an employer from being charged with direct liability for its own negligence in hiring or retaining an employee that it knows or should know poses a danger to co-employees.<sup>52</sup>

### C. The Doctrine of Avoidance May Provide A Defense.

Federal discrimination law is clear that an employee who behaves in a manner that "welcomes" sexual advances, comments and jokes may not later claim that such advances, jokes and comments constitute sexual harassment.<sup>53</sup> Although Georgia courts have not specifically addressed the issue, it is likely that a court will consider "welcomeness" when presented with an appropriate case. In their effort to rely on Georgia common law rather than the federal body of discrimination law, however, state courts may turn to the doctrine of "avoidance."

The Georgia Supreme Court has applied the doctrine of avoidance to negligent hiring and retention claims in other types of cases.<sup>54</sup> According to the Court, if the plaintiff by ordinary care could have avoided the consequences to herself caused by the defendant's negligence, she is not entitled to recover.<sup>55</sup> The Court of Appeals has noted, however, that the exercise of "ordinary care" in workplace harassment cases does not require the plaintiff to quit her job in order to avoid working with the harasser.<sup>56</sup> Thus, while the issue of "welcomeness" or "avoidance" will likely surface in these cases, it will probably apply only to affirmative actions by the plaintiff that arguably led to, or facilitated, the sexual advances or comments.

## Conclusion

The Georgia Court of Appeals has recognized a cause of action to address workplace sexual harassment. In fact, in many ways, the Georgia courts have provided a more favorable forum for these claims than the federal courts. Attorneys representing both plaintiffs and employers must be prepared to spend more time arguing Georgia legal principles and litigating in Georgia's courts.

Attorneys representing employers of all sizes would be wise to advise their clients to take steps to rid their workplaces of harassing conduct. At a minimum, all employers should adopt strong policies discouraging workplace harassment and provide employees with specific, easy-to-follow procedures for raising complaints. Prompt and thorough investigations of complaints, followed by appropriate corrective action, are an employer's best defense. ☐

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*Catherine F. Duclos is labor and employment counsel for RCA-parent Thomson Consumer Electronics in Indianapolis, Indiana. Prior to joining Thomson, Duclos practiced employment law in Atlanta for eleven years. She received her law degree from Indiana University in 1987.*

## Endnotes

1. See *Cox v. Brazo*, 165 Ga. App. 888, 889, 303 S.E.2d 71, 73 (1983).
2. 42 U.S.C. §§ 2000e – 2000e-17 (West 1994 and West Supp. 1998).
3. See *Adams v. Emory Univ. Clinic*, 179 Ga. App. 620, 621-22, 347 S.E.2d 670, 672 (1986).
4. See O.C.G.A. § 51-12-6 (Supp. 1997) ("[i]n a tort action in which the entire injury is to the peace, happiness, or feelings of the plaintiff, no measure of damages can be prescribed except the enlightened consciences of impartial jurors. In such an action, punitive damages under Code Section 51-12-5 or Code Section 51-12-5.1 shall not be awarded.").
5. Under the doctrine of *respondeat superior*, "[e]very person shall be liable for torts committed by his . . . servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily." O.C.G.A. §51-2-2 (1982).
6. See, e.g., *B.C.B. Co., Inc. v. Troutman*, 200 Ga. App. 671, 409 S.E.2d 218 (1991); *Favors v. Alco Mfg Co., Inc.*, 186 Ga. App. 480, 482, 367 S. E. 2d 328, 331 (1988); *Cox*, 165 Ga. App. at 889, 303 S.E.2d at 73; *Southern Bell Tel. & Tel. Co. v. Sharara*, 167 Ga. App. 665, 667, 307 S.E.2d 129, 131 (1983).
7. 165 Ga. App. 888, 303 S.E.2d 71 (1983).
8. *Cox*, 165 Ga. App. at 889, 303 S.E.2d at 73.
9. *Coleman v. Housing Auth. of Americus*, 191 Ga. App. 166, 168, 381 S.E.2d 303, 304 (1989).
10. *Cox*, 165 Ga. App. at 889, 303 S.E.2d at 73; *Favors*, 186 Ga. App. at 483, 367 S.E.2d at 331.
11. *Cox*, 165 Ga. App. at 889, 303 S.E.2d at 73.
12. *Cotton States Mut. Ins. Co v. Crosby*, 244 Ga. 456, 457, 260 S.E.2d 860, 861(1979) ("[i]n order for a tort action to lie,

- there must be injury to the plaintiff”).
13. The Court of Appeals has stated that it will not entertain arguments based on federal case law. *See Favors*, 186 Ga. App. at 482, 367 S.E.2d at 331 (“our analysis will proceed along traditional, common law lines and we will not entertain arguments based upon Title VII cases and rationales”); *Coleman*, 191 Ga. App. at 167, 381 S.E.2d at 305 (same).
  14. *See* Southeastern Sec. Ins. Co. v. Hotle, 222 Ga. App. 161, 162, 473 S.E.2d 256, 260 (1996); *Coleman*, 191 Ga. App. at 168, 381 S.E.2d at 305; *Newsome v. Cooper-Wiss, Inc.*, 179 Ga. App. 670, 671, 347 S.E.2d 619, 619 (1986).
  15. *See Favors*, 186 Ga. App. at 480, 367 S.E.2d at 329; *Cox*, 165 Ga. App. at 888, 303 S.E.2d at 72; *Trimble*, 220 Ga. App. at 498-99, 469 S.E.2d at 777; *B.C.B. Co., Inc.*, 200 Ga. App. at 671, 409 S.E.2d at 219; *Newsome*, 179 Ga. App. at 671, 347 S.E.2d at 621.
  16. *See* Harvey v. McLaughlin, 198 Ga. App. 105, 106, 400 S.E.2d 635, 636 (1990).
  17. *See Cox*, 165 Ga. App. at 888, 303 S.E.2d at 71.
  18. *See, e.g., Newsome*, 179 Ga. App. at 672, 347 S.E.2d at 621.
  19. *See, e.g., Coleman*, 191 Ga. App. at 167, 381 S.E.2d at 304-05.
  20. *See* Yarbray v. Southern Bell Tel. & Tel. Co., 261 Ga. 703, 705, 409 S.E.2d 835, 837 (1991) (“[h]ighly personal questions or demands by a person in authority may be regarded as an intrusion on psychological solitude or integrity and hence an invasion of privacy”).
  21. 191 Ga. App. 166, 381 S.E.2d 303 (1989).
  22. *Coleman*, 191 Ga. App. at 167, 381 S.E.2d at 304.
  23. *Id. See also* Phinazee v. Interstate Nationallease, Inc., 237 Ga. App. 39, 42, 514 S.E.2d 843 (1999); *Harvey Freeman & Sons, Inc. v. Stanley*, 259 Ga. 233, 233, 378 S.E.2d 857, 858 (1989) (underlying conduct by employee was the “tortious act”).
  24. *Yarbray*, 261 Ga. at 706, 409 S.E.2d at 837; *Trimble v. Circuit City Stores, Inc.* 220 Ga. App. 498, 499, 469 S.E.2d 776, 778 (1996); *Bridges v. Winn Dixie Atlanta, Inc.*, 176 Ga. App. 227, 229, 335 S.E.2d 445, 447 (1985).
  25. *See also* Odem v. Pace Academy, 235 Ga. App. 648, 656, 510 S.E.2d 326 (1998) (“[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.”); *Bridges*, 176 Ga. App. at 230, 335 S.E.2d at 448 (same).
  26. *Hendrix v. Phillips*, 207 Ga. App. 394, 395, 428 S.E.2d 91, 93 (1993).
  27. *Coleman*, 191 Ga. App. at 169, 381 S.E.2d at 306.
  28. *Hendrix*, 207 Ga. App. at 395, 428 S.E.2d at 93.
  29. *Moses v. Prudential Ins. Co. of Am.*, 187 Ga. App. 222, 225, 369 S.E.2d 541, 544 (1988).
  30. *Id. See also* Odem, 235 Ga. App. at 655-56, 510 S.E.2d at 326.
  31. *Coleman*, 191 Ga. App. at 169, 381 S.E.2d at 306.
  32. *Id.*
  33. *Id.*
  34. *Favors*, 186 Ga. App. at 483, 367 S.E.2d at 331; *Cox*, 165 Ga. App. at 889, 303 S.E.2d at 73.
  35. *Coleman*, 191 Ga. App. at 170, 381 S.E.2d at 307.
  36. *Favors*, 186 Ga. App. at 483, 367 S.E.2d at 331.
  37. *Coleman*, 191 Ga. App. at 170, 381 S.E.2d at 307.
  38. *Id.* at 171, 381 S.E.2d at 307.
  39. *Southern Bell Tel. & Tel.*, 167 Ga. App. at 666-67, 307 S.E.2d at 131.
  40. *Coleman*, 191 Ga. App. at 170-71, 381 S.E.2d at 307.
  41. *See Harvey*, 198 Ga. App. at 108, 400 S.E.2d at 637 (denying summary judgment for the employer, the court was “persuaded both by the conflicting evidence and the fact, that although Fox-Morris did not know of McLaughlin’s conduct, the record shows no formal grievance procedure existed through which an employee could air complaints of sexual harassment.”).
  42. *B.C.B. Co., Inc.*, 200 Ga. App. at 673, 409 S.E.2d at 220; *Coleman*, 191 Ga. App. at 170-71, 381 S.E.2d at 307.
  43. *See Favors*, 186 Ga. App. at 483, 367 S.E.2d at 331.
  44. *See Coleman*, 191 Ga. App. at 171, 381 S.E.2d at 307.
  45. *See Id.*
  46. *See* Simon v. Morehouse Sch. of Med., 908 F. Supp. 959, 974 (N.D. Ga. 1995).
  47. *See B.C.B. Co., Inc.*, 200 Ga. App. at 672-73, 409 S.E.2d at 220; *Newsome*, 179 Ga. App. at 673, 347 S.E.2d at 622.
  48. O.C.G.A. §§ 34-9-1 to 34-9-421(1982 and Supp. 1997).
  49. *See supra* n. 10.
  50. *Murphy*, 164 Ga. App. at 863, 298 S.E.2d at 531-32.
  51. O.C.G.A. § 34-7-21 (1982).
  52. *Hardee’s Food Sys., Inc. v. Evans*, 197 Ga. App. 5, 6, 397 S.E.2d 474, 475 (1990).
  53. *See* Meritor Savs. Bank, F.S.B. v. Vinson, 477 U.S. 57, 68-69, 106 S.Ct. 2399, 2406, 91 L.Ed.2d 49, 60-61 (1986) (“[t]he gravamen of any sexual harassment claim is that the alleged sexual advances were ‘unwelcome.’”).
  54. *Harvey Freeman & Sons, Inc. v. Stanley*, 259 Ga. 233, 234-35, 378 S.E.2d 857, 859 (1989).
  55. O.C.G.A. § 51-11-7 (Supp. 1997).
  56. *Wiley v. Georgia Power Co.*, 134 Ga. App. 187, 192, 213 S.E.2d 550, 554 (1975), *rev’d on other grounds*, *Georgia Power Co. v. Busbin*, 242 Ga. 615, 250 S.E.2d 442 (1978).

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# Millenium Annual Meeting Draws a Record Crowd

By Jennifer M. Davis

## THE 36TH ANNUAL MEETING OF THE STATE

Bar of Georgia proffered a different view of the Hostess City, as the convention unfolded across the Savannah River on the banks of Hutchinson Island. And Georgia lawyers responded to the change in venue by making this year's event the largest crowd ever to assemble for an Annual Meeting outside of Atlanta. The convention was held at the newly opened Westin Savannah Harbor Resort and the Savannah International Trade and Convention Center, June 14-18, 2000.

## Grand Beginnings

The Annual Meeting kicked off Wednesday evening with a fabulous opening reception, sponsored by 21 sections of the Bar, featuring an array of culinary delights and a live band. The Lawyers Foundation of Georgia sponsored its first silent auction, which prompted spirited bidding that resulted in over \$3,300 in donations. Earlier that day, an exposition of legal vendors opened its doors to offer lawyers insight into a variety of products and services to enhance their practices.

## Improving the Bench and Bar

Thursday began early as a number of sections held their traditional breakfast meetings. Also that morning, a "standing room only" crowd gathered for the two-part bench and bar CLE seminar. Part one featured a panel of lawyers and judges discussing how to improve the performance of each group by sharing personal experiences and pet peeves. Former U.S. Attorney General Griffin Bell led the panel, which also included: Chief Judge Robert E.

Flournoy Jr., Judge Hugh Lawson, Judge Thomas Day Wilcox Jr., Judge R. Rucker Smith, William D. Barwick, Terrance C. Sullivan, and Hugh McNatt.

Bell's musings ranged from lamenting the onslaught of casual day to ascertaining that "discovery rules the day," adding that lawyers are more interested in avoiding litigation today, to assessing that the "system is broken [with respect to] criminal law because you can't plea bargain anymore . . . sentencing guidelines are the worst thing to happen."

Following the panel discussion, the second part of the program featured the official unveiling of the Judicial District Professionalism Program (JDPP). The program was developed by the State Bar's Bench and Bar Committee under the leadership of co-chairs Judge Robert L. Allgood and Robert D. Ingram. JDPP seeks to address issues of incivility and unprofessional behavior among lawyers and judges at the local level through the use of peer influence. The program, which was sanctioned by Supreme Court order on February 24, 2000, is explained in more depth on page 48.

Lunch ensued after the morning CLEs with various sections hosting luncheon meetings. Thursday afternoon rounded out with more CLE offerings and the traditional Young Lawyers Division's "Meet the Candidates" pool party, while two boatloads of families set sail for a dolphin watching cruise.

## Lawyers Foundation of Georgia

Thursday finished with an array of receptions hosted by individual Bar sections for their respective members, and alumni gatherings for Emory, the University of Georgia, and Mercer law school graduates.

The Lawyers Foundation of Georgia Inc. also held its black-tie Fellows dinner that evening featuring an

entertaining presentation by Bill Barwick, State Bar Secretary. Over 200 guests enjoyed the event, which was sponsored in part by the *Fulton County Daily Report*.

The Foundation held its annual meeting earlier in the day and elected the following to its Board of Trustees: Frank Love, William E. Cannon Jr., Teresa Roseborough, William Jenkins, and Rudolph Patterson. Those continuing as ex-officio members are: George E. Mundy, State Bar President; David H. Gambrell, Past President representative; and Cliff Brashier, State Bar Executive Director. The new ex-officio members of the Board of Trustees are: S. Kendall Butterworth, Young Lawyers Division President and James B. Franklin, President-elect. The officers of the Foundation are: Robert W. Chasteen Jr., Chair; Harold T. Daniel Jr., Vice-chair; Linda A. Klein, Secretary; and Ben F. Easterlin IV, Treasurer.

The Foundation is the charitable arm of the State Bar of Georgia. In addition to the silent auction held at the opening reception, they also sponsored the Saturday morning YLD 5K Fun Run.

Friday started bright and early with alumni breakfasts for Emory, Georgia State, Mercer and the University of Georgia graduates. Meanwhile, spouses and guests were pampered at the famous Greenbrier Day Spa, and children headed to Tybee Island for a day of fun in the sun.

## Attorney General Reports

After breakfast, State Bar members attended the plenary session, which included the presentation of various awards (see page 34) and the annual members meeting.

Members heard reports from various state officers, like Attorney General Thurbert Baker, who provided the State of the Law Department address. He gave insight into representing the \$14 billion business that is the state of Georgia. He explained the need for additional staff since the Law Department has only 100 lawyers and 75 staff handling 11-12,000 open matters at any given time.

Baker then discussed some specific areas his office is targeting. The U.S. Department of Health and Human Services awarded the Medicaid Fraud unit as the best one in the country. Since its inception in 1995, there have been 83 convictions resulting in a recovery of \$10 million. Baker said, "We're sending a strong message that we won't sit back and allow unscrupulous characters to rip off Georgians."

Baker then relayed information about the Financial Identity Fraud unit, which was established in 1998 when the General Assembly passed a bill to allow prosecution. Georgia is only the third state to allow prosecution at the state level. Baker explained that the theft of Social Security and drivers license numbers and maiden names has a "devastating effect on both the business and con-

sumer, costing the U.S. upwards of \$2 billion every year."

Next, Baker discussed the Open Records Act, which he described as the "hallmark of any good government" and the "best disinfectant," which "lets the sun shine in to be sure elected officials are doing right." He has asked the Legislature for the ability to prosecute cases at the local level.

Baker on the subject of violent crimes, said, "We need to discuss the elimination of parole for violent crimes . . . and be sure the penalty sentenced by the judge is time served." He then addressed the proliferation of domestic violence saying: "No longer is it a fuss and fight on Saturday night, then makeup Sunday morning. Now people kill." He described the 1999 Crimes Against Family Members Act that lets judges enhance the penalty for such transgressions — especially when the act is performed in front of children which, can have the effect of prolonging the cycle of abuse.

## The Federal Judiciary

Judge Stanley S. Birch Jr. of the 11<sup>th</sup> Circuit Court of Appeals delivered the State of the Federal Judiciary on behalf of Chief Judge R. Lanier Anderson III. He described the 11<sup>th</sup> Circuit appellate court's strenuous workload with 12 active judges tackling about 7,000 new filings each year. Each judge handles about 700 cases, compared with 400-500 in other jurisdictions.

Birch called for Congress to extend funding because the district courts are just too busy. "If it weren't for our senior judges, we'd be in a crisis situation." He added that many of these retired volunteer judges are handling almost full caseloads. "We'd need \$88 million per year if all the senior judges stopped working tomorrow."

Judge Birch went on to discuss indigent defense. "The Attorney General's office does a superb job; but Georgia, I regret to say, does not do nearly enough for people convicted in death penalty cases. The State Legislature won't appropriate money because it's political."

He then explained there are only five lawyers in the Multi-county Public Defenders office handling death penalty matters. "It's an embarrassment to the bar in Georgia when lawyers from Florida come to our state" to handle these cases. "If we are going to have the death penalty, we need to have more volunteers. This is evidenced by the fact that the Supreme Court reversed two death penalty cases for ineffective assistance of counsel."

Judge Birch closed by reminding all that "the reputation of lawyers is dependent on adequate representation."





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## Millenium Meeting Moments

1. George Young reviews items at the silent auction. 2. Court of Appeals Judge Jack Ruffin visits with retired Chief Judge Bob Flournoy, of Cobb Superior Court, at Friday's reception. 3. Enjoying the Lawyers Foundation Fellows dinner are Tom Chambers (center), Ben and Carol Garland. 4. George Floyd and his wife, Carole, won the tennis tournament. 5. Justice Norman Fletcher and his wife, Dot, spent the opening reception with their granddaughters, Libby and Katherine. 6. (l-r) Past President Ben Easterlin visits with his law partner and hometown friend, Hon. Griffen Bell. 7. President George Mundy celebrates with his daughter, Joanna. 8. Lee Wallace set sail on the dolphin cruise with her son, Matthew, and husband, George. 9. U.S. District Court Judge Willis Hunt and his wife, Ursula, chuckle at the entertainment's song satiring lifetime appointments for federal judges. 10. President-elect Jimmy Franklin

pauses for a moment with his wife, Fay Foy, and daughter, Rebecca. 11. (l-r) Court of Appeals Judges Gary Andrews, Marion Pope and John Ellington catch up at the UGA alumni reception. 12. Newly-sworn President George E. Mundy is congratulated by his wife, Martiti (left), and Past President Linda Klein. 13. Stephanie Thornton of Albany enjoyed surfing the Bar's Web site at the exhibit hall. 14. Mark Dehler and President Rudolph Patterson took an ice cream break in the exhibit hall. 15. At the Lawyers Foundation Fellows dinner, Judge Stan Birch talks with Past President Paul Kilpatrick. 16. (l-r) Andrew Walsh, Ken Shigley and Judge Al Wong browse the legal expo. 17. (l-r) Enjoying the opening reception are Chief Justice Robert Benham, Judge Divida Gude and Lisa Reid. 18. The past presidents of the State Bar and Georgia Bar Association met to discuss the new Bar Center.



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## The State Judiciary

Chief Justice Robert Benham began his State of the Judiciary address saying, "Our citizens should not be forced to go to the federal courts for justice." He added, "I applaud you as lawyers for your innovative approaches to solving problems with some of the lowest bar dues in the country."

Chief Justice Benham reported on an American Bar Association survey of public confidence in the legal system. He revealed that lawyers were rated as competent, the judiciary as somewhat independent, and judges were not seen as corrupt. He pointed out, however, that the "administration of justice costs too much, lasts too long, the rich are treated better, minorities the worst. . . . If we expect the public to have trust and confidence in the profession, then there is no place for elitism, racism or chauvinism in the legal system. We must continue to work to rid the system of these evils."

He then turned his focus to domestic violence, explaining that 10 circuits have programs which specifically address this societal plague. However, he added, "We must insist that every circuit have a program to deal with it . . . then we'll cut the homicide rate by a third." He called for judges "to give out the time and the fine. We must provide prevention and intervention."

The Chief Justice went on to report that, for the first time ever, we now have state funding for juvenile courts, which will hopefully have an impact on our courts system with full-time judges dedicated to this problem.

Next, he expressed concern over the "erosion of discretionary powers of judges. I plead for your support, since we have some of the best and brightest judges."

Chief Justice Benham then discussed progress in the area of substance abuse, which he cited as an underlying factor in over half of the lawyer disciplinary cases. He also explained that the state has five drug abuse courts and is awaiting funding for five more.

## Lawyer Discipline and UPL

The Chief Justice then revealed that the Court had just adopted new rules to govern the unauthorized practice of law (UPL), under the direction of a special Supreme Court commission led by Justice Carol Hunstein. The recommended rules, which will combat a serious statewide problem, will be published for comment at a later date. Watch the Bar's home page at [www.gabar.org](http://www.gabar.org) for upcoming information.

The plenary session concluded with the final address of 1999-2000 President Rudolph N. Patterson, who reviewed the highlights and accomplishments of

## ANNUAL MEETING SPONSORS

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his tenure (see page 38). Patterson enjoyed many successes during his year including the passage of new disciplinary rules, the issuance of new membership ID cards, moving the Bar's Web site in-house, and producing a CD-ROM for new members.

After the plenary session, lawyers and their families were free to enjoy a variety of activities, including golf and tennis tournaments. The Lookout Mountain Circuit Bar defended their title, winning the annual Voluntary Bar Golf Tournament with teammates Judge Gary B. Andrews, Judge Charles D. Peppers Sr., W. David Cunningham and Larry B. Hill. In separate contests, Derrick White had the longest drive and Jonathan Pope was closest to the pin. The husband-and-wife team of George and Carole Floyd proved formidable opponents on the tennis court, taking home the prizes for best male and female performance.

## Passing the Gavel

On Friday evening, the justices of the Supreme Court of Georgia were honored at the reception preceding the Presidential Inaugural Dinner. Following dinner, outgoing President Patterson was presented with a bronze sculpture entitled "The End of the Trail." The famous statue, which depicts an Indian at the end of the Trail of Tears, was first shown to President Patterson by his mother when he was a child. She cut the photo out of a *Reader's Digest*, put it in a Woolworth's frame and gave it to her son as a motivational tool to teach perseverance — "Study this," she instructed him. Receiving the bronze sculpture was a touching tribute to Patterson's success not only as a lawyer, but also as a leader of his profession. His mother, who passed away several years ago, would no doubt be proud of her son's accomplishments.

After a standing ovation, retiring President Patterson presented the gavel to incoming President George E. Mundy of Cedartown. Then Chief Justice Robert Benham administered the oath of office.

Following the changing of the guard, the crowd was treated to a musical parody of the legal profession by the Bar & Grill Singers. This comedy troupe hails from Texas and is made up of practicing lawyers who sing a host of songs, that roast both lawyers and judges. They

even had federal judges Willis Hunt and Hugh Lawson laughing as the group poked fun at lifetime appointments. Following the Inaugural Gala, the Tallapoosa Circuit Bar Association hosted a chocolates and cordials reception in honor of their fellow member, George Mundy.

## The New Board of Governors

The first Board of Governors meeting of the 2000-2001 term on Saturday morning marked the official close of the Annual Meeting and the beginning of a new year. President George E. Mundy reported on his goals and plans for the coming term (see his address on page 28). He will serve along with the officers and Executive Committee (shown at right), including N. Harvey Weitz of Savannah, who was elected to a two-year term as an at-large member. Weitz joins George Robert Reinhardt of Tifton and Phyllis J. Holmen of Atlanta, who were re-elected to the Executive Committee.

Also of note, Elections Committee chair Joe David Jackson discussed a change in the current elections structure to allow for on-line voting in addition to traditional paper ballots. This ultimate goal of this program which will be tested during the 2000-2001 elections, is a completely paperless voting process in the near future. Obviously, on-line voting would represent a significant cost savings to the Bar and, hopefully, convenience to our members. The elections schedule for the coming year and notice of expiring Board members' terms appears on page 85.

The Elections Committee is also studying a new rule to prevent State Bar offices from being "bought" — that is to stipulate the amount of money that can be spent on contested statewide elections. The Committee is researching how other states regulate this important process and will present a recommendation to the Board of Governors.

Other highlights of the Board meeting were:

- Past President Linda A. Klein, who chairs the Multidisciplinary Practice Committee, discussed her group's work. They have met with accounting firm representatives, and others who have a perceived interest in MDP. The committee continues to watch the ABA's deliberations and that of other bars like the New York State Bar Association, which has taken a position opposing MDP — available on their Web site at [www.nysba.org](http://www.nysba.org). (Note: After the date of our Annual Meeting, the ABA took the following position accord-

## EXECUTIVE COMMITTEE

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

President	George E. Mundy, Cedartown
President-elect	James B. Franklin, Statesboro
Secretary	William D. Barwick, Atlanta
Treasurer	James B. Durham, Brunswick
Immediate Past President	Rudolph N. Patterson, Macon
President Young Lawyers Division	S. Kendall Butterworth, Atlanta
President-elect Young Lawyers Division	Peter J. Daughtery, Columbus
Immediate Past President Young Lawyers Division	Joseph W. Dent, Albany

### *Executive Committee at Large Members*

Bryan M. Cavan, Atlanta  
Phyllis J. Holmen, Atlanta  
Robert D. Ingram, Marietta  
David S. Lipscomb, Duluth  
George Robert Reinhardt Jr., Tifton  
N. Harvey Weitz, Savannah

ing to a press release dated July 11: "The ABA voted today to maintain its position that lawyers not be permitted to share fees with nonlawyers, and that nonlawyers not be permitted to own or control entities that practice law, effectively rejecting the concept of multidisciplinary practice.")

- The new co-chairs of the Board of Governors Representation Committee, Jeffrey O. Bramlett and Lamar W. Sizemore Jr., reported that their group will continue studying apportionment and will make recommended changes to the Board.

- After a presentation by Laurie Webb Daniel, the Board approved the creation of a new Appellate Law Section.

- Executive Director Cliff Brashier was reelected for a one-year term. He was also honored for 20 years of service as an employee of the Bar.

- Phillip Jackson was reappointed to the Chief Justice's Commission on Professionalism.

- Harold T. Daniel Jr., James A. Clark and Carol M. Wood were reappointed to the Georgia Legal Service Board for two-year terms. Also, Joel Wooten was newly appointed for a two-year term. ☐

# Ensuring a Unified Bar to Meet Future Challenges

*The following is a speech delivered by incoming President George E. Mundy to the Board of Governors on June 17 at the Annual Meeting. In it he outlines some of his plans for the upcoming year.*

## A VERY WISE AND OUTSTANDING BAR

leader, and former president of this organization, once advised me that you cannot go too far afield in bar leadership if you approach each issue from the perspective of what's in the best interest of our unified, mandatory bar. I intend to closely follow her advice in the coming year because, despite significant progress in our continuing quest for excellence, our profession and unified bar can still be subjected to undue criticism and even potential attack on the very existence of our mandatory bar. We must consider what we can do today to ensure that our unified bar is prepared to meet any future challenge. If our bar fails in the long run to meet its responsibilities to all aspects of our membership, we can anticipate a future without the necessary strength and foundation.

We cannot afford to simply acknowledge that there are portions of our membership who feel disenfranchised and other portions who are totally indifferent to what the bar association does and represents. We cannot ignore that portion of our membership who feels that the bar association is irrelevant to their concerns or needs. The future foundation of our profession, and our unified bar to some extent, will depend on how we address in a meaningful way long-range concerns that could eventually affect the level of our grassroots support.

From my perspective, these continuing concerns include but are not limited to diversity, especially as it relates to our Board of Governors and the under representation of Atlanta, coupled with the dwindling participation in the bar association from the large firms both in Atlanta and throughout the

state. In addressing any issue that confronts our profession, our greatest tool is this very body, the Board of Governors. A specific goal for this year will be to maximize the networking and communication potential of this Board for the benefit of our membership and the public.

## Diversity

In terms of diversity, we must not be comfortable with a bar association that has a leadership and representation dominated by white males, in a time when the demographics of our bar and society are rapidly changing. We have an excellent Diversity Program, a diligent and hardworking Women and Minorities Committee, and progress is being made. However, we must continue to ensure that the welcome message of inclusion is communicated repeatedly to every segment of our membership. I have consulted with Charlie Lester, Diversity Chair, and Karlise Grier, Women and Minorities Chair and have requested that they organize and sponsor a minority bar association workshop to be held at bar headquarters in the spring of 2001. The leadership of every minority bar association would be encouraged to participate in an atmosphere where the benefits and rewards of our unified bar will be readily apparent. The vision is that these efforts will lead to a level of diversity among our ranks, so we remain connected to the society and communities we serve.

## Board of Governors Representation

Continuing an initiative begun by Rudolph Patterson and others before him, we will again address the question of Board of Governors representation. We had a year of information gathering and debate and I believe it is time we finally consider a single proposal or concept that addresses





**George E. Mundy is sworn-in as the 36<sup>th</sup> President of the State Bar of Georgia by Chief Justice Robert Benham.**

this issue. I have consulted with former chairs Gerald Edenfield and John Chandler and requested that they remain with the committee as advisors. I have appointed Lamar Sizemore and Jeff Bramlett as co-chairpersons and requested that an informational program be presented at our Fall Meeting, designed to identify all aspects of the problem with present bar representation or whether, in fact, there is a problem at all. A large Board has its advantages, but a Board that haphazardly grows without addressing representation inequities could, in fact, be a problem and a red flag inviting criticism, if not outright attack, on the unified bar. We will attempt to carefully consider this issue, possibly as early as the Midyear Meeting, in an attempt to balance the need for geographic representation with the concerns of appropriate Board size and fair representation.

## **Cooperation with Local Bars**

It concerns me that, although we work continuously on similar issues, there is insufficient interaction between the leadership of local bar associations and the unified bar. For example, the Atlanta Bar Association conducts extensive programs that could complement

State Bar programs. I have talked with Atlanta Bar leaders Paula Frederick and Jeff Bramlett in an effort to explore any initiatives in the coming year that could lead to a joint sponsorship or joint interaction of the leadership of both bars, and I hope to explore similar joint efforts with other local bar associations. While each bar association represents different constituencies, we have much in common, and the leadership of all can benefit from greater interaction.

## **Participation from all Firms and Solo Practitioners**

The unified bar needs to have input from members in solo practice as well as small, medium and large firms with practices that cover many areas of the law. We continue to enjoy excellent participation and contact with our solo practitioners and the small and medium-sized firms but, surprisingly, we have seen a decrease in participation from the larger firms.

Early on in the daunting process of formulating bar committees for the coming year, I contacted an old college friend who is now a partner with Kilpatrick Stockton. My

interest in his possible participation on a bar committee quickly turned into his offering to e-mail every lawyer at Kilpatrick Stockton to determine their interest in specific bar committee work. I faxed him a copy of our standing and special committees and, within a week, I received a letter in which 28 Kilpatrick Stockton lawyers had volunteered for specific committees. Every person has been placed on the committee of his or her choice. This year, I plan to meet with as many managing partners as will have me to propose a similar, simple method of increasing committee participation from these larger firms. The goal is for President-elect Jimmy Franklin to have a pool of potential committee volunteers from every corner of the profession including firms of every size.

## Election Reform

When I became President-elect, I suddenly discovered that I was a member of the Southern Conference of Bar Presidents. This organization meets on a regular basis to compare issues and procedures of common interest. Quite by accident, I found out many bar associations have restrictions and limitations on how their elections are conducted, such as spending caps and restrictions on multiple mailings. At the present time, we have absolutely no limitation on what can be spent or on how many methods of communication, high-tech or otherwise, may be utilized by any particular candidate. I do not believe that any member of our organization should feel precluded from bar leadership due to a perceived lack of resources. I anticipate some future scenario where a contested election could get completely out of hand in terms of the resources expended. I have requested that Joe David Jackson and his Elections Committee review the procedures of every Southern Conference bar association and propose recommendations in this regard no later than the Spring Meeting.

## Budget Concerns and UPL

Through the excellent work and information provided by Treasurer Jim Durham and Budget Committee Chair Rob Rheinhardt, we were recently able to carefully consider and adopt a dues increase. Our planning for the last several years has involved no increase in staff and the adoption of no new program. I inform you today that, coming at us from our Supreme Court like a meteor, or more likely a kamikaze, will be the adoption of the new unauthorized practice of law rules and procedures. This is good in that an effective way to combat the unauthorized practice of law is something our members want, and I understand that the new proposal, when submitted, will in fact work. However, this is a new and significant program

with additional staff requirements that will be implemented by the State Bar. We may have to consider again raising dues or drastically cutting other programs, which is a difficult process. In this regard, I have instructed our Finance and Programs Committees to carefully plan and prepare to explore sources of any additional non-dues revenue, and to thoroughly continue the evaluation of existing programs including Fee Arbitration and Law Practice Management.

## Corporate Sponsorship Plan

The corporate sponsorship plan established by our Meetings Director, Eddie Potter, has proved to be highly successful. We have the potential and will continue to explore raising additional sponsorship revenue to ensure that our future meetings will be thoroughly enjoyable at extremely reasonable cost. It is my belief that Board of Governors membership should include unique opportunities for enjoyment intermingled with the hard work we do on behalf of our profession.

## Law School Job Fair

Patricia Bass of Mercer Law School has proposed the formation of an annual law school job fair to connect practicing lawyers and law firms with new graduates for placement opportunities. I have informed her that I cannot think of a better service for new graduates and our members. We will explore a cooperative effort with all of Georgia's law schools and possible State Bar sponsorship as part of the implementation of an annual law school job fair during this year.

## Group Medical Insurance Task Force

In my travels throughout the state, the question I am most often asked is why can't the State Bar offer an affordable and quality group health care plan? Despite the significant efforts of our Membership Services Committee, we have found that in the highly competitive and ever-changing health insurance market, it has proven much easier to state our wishes rather than find any insurance company willing to meet them. At the suggestion of Jimmy Franklin, we have formed a group medical insurance task force to be headed by Ross Adams. This task force will explore every possibility so that we can hopefully recommend a product that benefits our membership. In addition, I have appointed Kenneth Shigley as chair of the Membership Services Committee and requested that this committee explore and recommend additional services to our membership without having to expend considerable time on the group medical insurance issue.

## Ongoing Initiatives

We will continue to monitor the progress on our existing initiatives including the excellent work of John Marshall and his committee on Standards of the Profession; the equally impressive work of Judge Robert Allgood and Robert Ingram on the Bench and Bar Committee with the implementation of the Judicial District Professionalism Program (see article on page 48); the diligent efforts of Linda Klein and her committee regarding Multidisciplinary Practice; and the incredibly fine work of Frank Jones and Hal Daniel as we ready ourselves to occupy our new Bar Center.

Every effort will be made to open the Bar Center on schedule in the spring of 2002, because many of us believe this is the only guarantee for Jimmy Franklin to look good at least one time during his year! Jim Hawkins will chair our legislative initiative, which should prove to be another successful campaign. A goal of this year will be to fully implement our legislative grassroots program, utilizing the Board of Governors as the networking and communications vehicle. In addition, Jim Hawkins will chair and Rudolph Patterson will vice-chair the General Counsel Overview Committee, which should result in continuing improvement and efficiency of our discipline system.

## Board of Governors Handbook

Whatever we may do regarding Board of Governors representation, I believe we will always consider a large Board. There are advantages to a large Board in that our membership reaches into every circuit of the State. The membership of this very body has the potential to effectively communicate the issues and concerns of our bar to our membership and the public. However, despite the incredible and dedicated commitment of each Board member, I do not believe this full potential has ever been reached. I intend to utilize the considerable talents of Bill Cannon to partially expand his wonderful Foundations of Freedom Program to produce, at a very modest cost, a Board of Governors handbook, which will provide each of you with a readily available and easy-to-use reference source that will quickly identify each of our responsibilities to our own membership and to the public. It is certainly an honor and privilege to serve on this Board, but many serve for years before they fully appreciate the responsibilities that go with this position. Orientations are difficult to organize and poorly attended. I believe this initiative will accelerate this process to fully transform this body into the networking and communications tool it can be on behalf of our profession and our bar.

## Conclusion

The strong foundation of our bar association is built on blocks that bear the names of some of our greatest bar leaders: Holcombe Perry, Omer Franklin, Jack Adams, Cubbedge Snow, Harold Clarke and Gus Cleveland, just to name a few. Some of these blocks came from rural Georgia; others came from downtown Atlanta. Linda Klein has demonstrated the leadership and strength we can expect from our women lawyers. Our bar association will remain strong if we continue to regularly reinforce our foundation from these sources as well as with the future strength we will gain from minority and women members.

Rudolph, I commend you for your incredible commitment and fine leadership. Jimmy, I look forward to your contributions and leadership as you prepare for your year. I now invite all of you to contribute to another successful year in which we progress in our quest for excellence. Let's continue to protect the public and, in so doing, accomplish the things that are in the best interest of our unified, mandatory bar. ☒

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# Kirk M. McAlpin Receives State Bar's Highest Honor

By Nikki Hettinger

The **Distinguished Service Award**, the most notable award granted by the State Bar of Georgia, was presented this year to **Kirk M. McAlpin**, whose accomplishments within the legal profession and beyond are too numerous to allow for a comprehensive list in this article; here, therefore, are just some of the highlights of his illustrious career:

- Worked as assistant solicitor general in Savannah; as solo practitioner in Savannah and Atlanta; as associate and partner of the Savannah firm of Bouhan, Lawrence, Williams, Levy & McAlpin; and as senior partner of King & Spalding in Atlanta

- Served as an American Bar Association (ABA) delegate from 1959 to 1990

- Awarded the General Practice and Trial Sections Award of Excellence and the University of Georgia Law School Association's Distinguished Service Scroll

- Past President of the Atlanta Legal Aid Society, the State Bar of Georgia and the State Bar's Younger Lawyers Division; former Vice President of the Atlanta and Savannah Bar Associations

- Served on the Executive Committee of the National Conference of Bar Presidents and on the State Bar of Georgia Board of Governors (for 10 years)

- Served as member and/or chair of the ICLE, the Judicial Council, the American Bar Foundation (Fellow), the American Law Institute, the American College

of Trial Lawyers, the Georgia Defense Lawyers Association, the Georgia Trial Lawyers Association, the American Trial Lawyers Association, the Federal Bar Association, the American Judicature Society, and the Association of Railroad Trial Counsel

- Has held leadership positions in the Georgia Heart Association, the Georgia Ophthalmology Foundation, the state and national Societies for the Prevention of Blindness, and his church

- Listed in the *Who's Who in American Law*, *Who's Who in America* and *The Best Lawyers in America*

- Currently serves as a Trustee of the Eleventh Circuit Historical Society and the Georgia Legal History Foundation



**Kirk McAlpin and his wife, Sarah, are congratulated by Margaret and President Rudolph Patterson.**

And the list goes on and on. One might ask what inspires an individual to reach such professional and personal heights. McAlpin's own words say it best, "If you learn to say today is a great

day, there is no limit to what you can do—that is the spirit of great lawyers."

The award was presented by outgoing State Bar President Rudolph N. Patterson during the Annual Meeting's Inaugural Gala. In his speech, Patterson said, "This award is given to an individual who has exemplified, through a life of service, outstanding characteristics . . . leadership, service, dedication and sacrifice for the benefit of those around him or her. The recipient this year has demonstrated these characteristics for many years." ■

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# Lawyers and Legal Groups Honored With Awards

Judges and lawyers, voluntary bars and even a state senator were among those recognized for their outstanding service and accomplishments in the legal field at the 2000 State Bar of Georgia Annual Meeting. All but one of the awards were presented during the Plenary Session on Friday, June 16; the Distinguished Service Award was bestowed at the Inaugural Gala on Friday evening.

## Distinguished Service

This, the State Bar's highest accolade, was presented to **Kirk M. McAlpin** in recognition of "conspicuous service to the cause of jurisprudence and to the advancement of the legal profession in the state of Georgia." (See article on page 32).

## Voluntary Bars

This year's **Excellence in Bar Leadership Award** recipient was **Charles "Chuck" J. Driebe** of the Clayton County Bar Association. The award honors an individual for a lifetime commitment to the legal profession and the justice system in Georgia through dedicated service to a voluntary bar, practice bar, specialty bar, or area of practice section.

The **Award of Merit** is presented to voluntary bar associations for their dedication to improving relations among local lawyers and devoting endless hours to serving their communities. This year's winners were:

- 100 members or less: **Tifton Bar Association**
- 251-1000 members: **Gwinnett County Bar Association**
- 1001 members or more: **Atlanta Bar Association**
- Statewide voluntary bar: **Georgia Association for Women Lawyers**

The **Law Day Award of Achievement** applauds the outstanding efforts of voluntary bars in commemoration of this important annual celebration. Honored were:

- 100 members or less: **Blue Ridge Bar Association**
- 101-250 members: **Dougherty Circuit Bar Association**
- 251-1000 members: **Cobb County Bar Association**

This year's **Best Newsletter Award** went to:

- 100 members or less: **Douglas County Bar Association**
- 251-1000 members: **Cobb County Bar Association**
- 1001 members or more: **Atlanta Bar Association**



1. Chuck Driebe won the prestigious Excellence in Bar Leadership Award for more than 20 years of service to the Clayton County Bar. 2. Award of Merit awards were received by: Rob Reinhardt, Tifton Bar; Kim Warden, Georgia Association for Women Lawyers; and Jeff Bramlett, Atlanta Bar.



2



The **Best New Entry Award**, which recognizes the excellent efforts of those voluntary bar associations that have entered the Law Day or Award of Merit competition for the first time in four years, was presented to the **Tifton Bar Association** and the **Macon Bar Association**.

The **President's Cup** is presented annually to the voluntary bar with the best overall program. This year's winner was the **Atlanta Bar Association**.

## Legislative Service

**Senator Mike Egan** was honored this year, upon the occasion of his retirement from the political arena, for his exemplary service as a State Senator since 1989. He was presented with the **Legislative Service Award** in appreciation of his numerous efforts during his tenure in the Georgia House of Representatives and as Chairman of the Senate Special Judiciary Committee.

## Chief Justice Community Service

The **Chief Justice Robert Benham Community Service Awards** celebrate lawyers and judges who have combined a professional career with outstanding service and dedication to their communities through voluntary participation in community organizations, government-sponsored activities or humanitarian work. This year, we lifted our hats to:

- Lifetime Achievement: **James C. Brim, Jr.**, Camilla
- Judicial District 1: **Lisa L. White**, Savannah
- Judicial District 3: **S. Phillip Brown**, Macon (Judge, Bibb County Superior Court)
- Judicial District 4: **Gloria L. Johnson**, Decatur
- Judicial District 5: **Jesus A. Nerio**, **Gregory N. Studdard**, **Donald Philip Edwards**, and **Jeff Drey Woodward**, all of Atlanta
- Judicial District 6: **William H. Ison**, Jonesboro (Judge, Clayton County Superior Court)
- Judicial District 9: **Rodney S. Harris**, Lawrenceville
- Judicial District 10: **Edward D. Tolley**, Athens

## Section Awards

The Section Awards, which are presented to outstanding sections for their dedication and service to their areas of practice, were:

**Section of the Year: Computer Law Section,**  
Jeffrey R. Kuester, Chair

### Section Awards of Achievement

- **Administrative Law Section:** Frances Cullen Seville, Chair
- **Aviation Law Section:** E. Alan Armstrong, Chair
- **Products Liability Law Section:** Stephanie E. Parker, Chair
- **Real Property Law Section:** Carol V. Clark, Chair

### General Practice & Trial Section Tradition of Excellence Awards

- Judicial Category:  
**Judge Faye Sanders Martin**, Statesboro



3. **Jeff Bramlett**, President of the Atlanta Bar, received the President's Cup honoring his group as the best voluntary bar association. 4. Senator Mike Egan was honored with the Legislative Service Award for his many contributions to the Bar during his tenure in the General Assembly. 5. **Jim Brim** (center) received the Chief Justice Robert Benham Lifetime Achievement Award for Community Service. He's pictured with his wife, Ann, and Henry Walker who served on the award selection committee.



- Defense Category: **Cubbedge Snow, Jr.**, Macon
- Plaintiff Category: **Joel O. Wooten, Jr.**, Columbus
- General Practice Category:  
**Denmark Groover, Jr.**, Macon

## Pro Bono Awards

The **H. Sol Clark Award** is presented by the Access to Justice Committee of the State Bar of Georgia and the Pro Bono Project to an individual lawyer who demonstrates commitment to the provision of legal services to the poor either through significant pro bono activity or involvement in the development of service programs. **Robert K. Woo** of King & Spalding received the 2000 H. Sol Clark Award for his legislative advocacy on behalf of immigrants on welfare reform issues.

The **William B. Spann, Jr. Award** recognizes a program that addresses previously unmet legal needs of the poor through innovative means and which demonstrates collaboration among lawyers, law firms, the community, and bar associations. The recipient of the 2000 Spann Award was the **Fellowship Program of Alston & Bird, LLP**. The Fellowship Program places new law firm associates in the offices of the Atlanta Legal Aid Society to handle legal aid cases.

The **Dan Bradley Award** recognizes a commitment to the delivery of quality legal services of a lawyer of Georgia Legal Services Program or the Atlanta Legal Aid Society, and this year's honor went to **Donald M. Coleman** of the Decatur office of the Atlanta Legal Aid Society.

The **ABC Pro Bono Award** is presented by the A Business Commitment Committee of the State Bar to a lawyer, law firm or corporate counsel program that demonstrates a commitment to the development and delivery of legal services to the poor in a business context through pro bono business law service to emerging or existing nonprofits or microenterprise efforts in the low-income community. The 2000 ABC Award recipient was **Leonard C. Presberg** of Fayetteville, for his pro bono service to the Henry County Residential Housing Authority.

Congratulations to all 2000 award recipients!



6. Pro Bono award winners were: 1) William B. Spann Award: Fellowship Program of Alston & Bird, received by Kip Kirkpatrick; 2) ABC Pro Bono Award: Leonard Pressberg accepted by Vickie Stevenson; 3) H. Sol Clark Award: Robert K. Woo; 4) Dan Bradley Award: Donald Coleman. 7. Winners of the Chief Robert Benham Awards for Community Service were: (l-r) Rodney Harris, Judge Phillip Brown, Lisa White, Donald Edwards, Gloria Johnson, Jesus Nerio, and Ed Tolley (far right) who is pictured with the principal of the school where he tutored. 8. Law Day awards were received by: David Darden, Cobb County Bar; Jeff Rusbridge, Blue Ridge Bar; and Judge Gordon Zeese, Dougherty Circuit Bar.



# Related Legal Groups Present Awards

## Georgia Indigent Defense Council Presents Four Awards

**Harold G. Clarke Equal Justice Award:** The recipients, **Ed and Mary Ruth Weir**, operate the Possum Trot Ministries Inc.'s New Hope House based in Griffin, Ga. The New Hope House assists defendants, their family and friends in death penalty cases. New Hope House maintains a guesthouse for family and friends of people on Georgia's Death Row at the Georgia Diagnostic and Classification Prison in Jackson, Ga. New Hope House also provides court assistance during death penalty trials and related hearings.

The award, which is named after former Chief Justice of the Supreme Court of Georgia, Harold G. Clarke, recognizes an individual's long-term commitment and dedication to the cause of ensuring equal justice for all of Georgia's citizens. The first recipient was its namesake, Harold G. Clarke, who consistently provided forceful and committed leadership to the cause of justice and in support of an effective indigent defense system. He worked to assure that every person is treated fairly by this state's judicial system and championed indigent defense in Georgia.

**Gideon's Trumpet Award:** This award was presented to **Rep. Jim Martin**, Chair of the House Judiciary Committee, who has been a long-standing champion of the rights of all persons called before the courts of Georgia. The recipient of many accolades including numerous "Legislator of the Year" awards, Rep. Martin is a frequent spokesperson for a fair criminal justice system and a strong mental health structure. He has been an integral part in the updating of Georgia's criminal and juvenile laws. Speaker Thomas Murphy recently selected Rep. Martin to co-chair a committee that will conduct the first comprehensive review of Georgia's indigent defense system in many years.

The Gideon's Trumpet Award is given to one or more individuals, programs or groups who have worked to improve indigent defense in Georgia, and whose work has made a significant difference in bringing to life the dream of *Gideon v. Wainwright* that every citizen be assured the representation of counsel no matter what their economic circumstances.

**Commitment to Excellence Award:** This award was presented to **John Cole-Vodicka and the Jail and Prison Project**. Cole-Vodicka, the Director of the Prison and Jail Project based in Americus, Ga., has organized a grassroots campaign to speak out on behalf of prisoners and their families. As a human rights organization, the Prison and Jail

Project also monitors prisons and prison conditions, reports civil rights abuses of prisoners, observes capital trials, assists attorneys, and visits prisoners throughout the Southeast. The Project has revealed substandard conditions in several county jails, spearheaded efforts to ensure humane treatment of prisoners by law enforcement authorities, and sponsors the annual "Freedomwalk" to heighten public awareness of human rights abuses in the criminal justice system.

The Commitment to Excellence Award recognizes an indigent defense program and/or individual that demonstrates outstanding excellence in providing indigent defense services. The award acknowledges innovative approaches in ensuring that Georgia's poorest citizens are provided with effective representation in criminal and juvenile cases.

**Spotlight on Indigent Defense Award:** This new award was presented for the first time to reporter **Bill Rankin of the Atlanta Journal-Constitution**. Rankin frequently authors articles on the courts and the criminal justice system. In 1998, he wrote a series of articles in a special report entitled "Unequal Justice" detailing the widely varying quality of indigent defense attorneys, and the great disparity of sentences handed down across the state. In 2000, he covered the so-called "Ray Lewis/Buckhead murder" trial to its conclusion of not guilty verdicts. Other high profile cases include the Jamil Abdullah Al-Amin case and the Gold Club federal racketeering case. All of his work displays a balance of coverage and unending commitment to equal justice for all.

This award is presented to a member of the media who has demonstrated an outstanding commitment in spotlighting the need for quality indigent defense services in Georgia. The award recognizes that efforts to publicize the plight of, and to advance the cause of, indigent defendants are complemented and enhanced by accurate and informative media participation and coverage.

## Georgia Association of Criminal Defense Lawyers Presents 2000 Indigent Defense Award

This award recognizes an individual who has made an outstanding contribution in the area of indigent defense. This year's winner was **Linda A. Pace** of Decatur. Pace has represented juveniles in DeKalb County since 1980. Between 1994 and 1996, in addition to managing the Public Defender Office in Juvenile Court, she handled all DeKalb County cases in which state law mandated minors be tried as adults.

# Reflections on a Year of Service

*The Bylaws of the State Bar of Georgia specify the duties of the President. One of those responsibilities is to "deliver a report at the Annual Meeting of the members of the activities of the State Bar during his or her term of office and furnish a copy of the report to the Supreme Court of Georgia." Following is 1999-2000 President Rudolph N. Patterson's report delivered on June 16 to the Board of Governors.*

**SERVING AS YOUR PRESIDENT HAS BEEN A** true labor of love for me. It has left me with an enormous sense of pride in the legal profession in Georgia.

I am proud of our Board of Governors. Your participation, preparation, thoughtful debate, sound decisions, and encouragement (through personal contact, letters and phone calls) meant more to me than you could ever know. As you know, I asked more of you this year by adding a fifth meeting. You responded with a record attendance all year including the annual meeting.

I am proud of our Executive Committee. You met monthly. Your agendas were long and the issues were difficult. Your commitment and support were constant no matter how difficult the matter we faced. You have "fleshed out" all of the pros and cons of each issue. Your open minds to new ideas were impressive and among our greatest assets in deciding issues.

I am proud of the Justices of our Supreme Court. I thank you for your support and for your judicial action on all the bar's business during this year. All discipline, rule changes, and formal advisory opinions have been enacted, including a complete overhaul of the disciplinary process through the Model Rules of Professional Conduct we submitted to you. Your doors were always open to me. Your candid discussions during the Supreme Court/Executive Committee retreat were very much appreciated, and we always shared the same goal: to provide Georgians with the best system of justice we can possibly offer.

I am perhaps most proud of every lawyer and judge in Georgia. No other profession is even close to ours

when it comes to pro bono, community service, leadership, professionalism, and the preservation of individual freedoms. As I traveled approximately 25,000 miles around the state of Georgia this past year and visited with many of you, I was overwhelmed by the worthwhile activities being accomplished. Thanks to all of you for doing so much for your clients, your communities and your profession.

After years of participation in State Bar committees and activities, I thought there would be no surprises in store for me as President. I was wrong. With over 31,000 lawyers, 70 employees, 40 standing committees, 22 special committees, 32 sections, a Young Lawyers Division with 31 committees, a \$5.4 million budget, and thousands of volunteers, the volume of daily activity of the State Bar was truly amazing. I learned that the president can guide major policy decisions, but he/she also must deal every day with the smallest details that seem to never end. In countless unique situations, there is no written guideline. Many times, you have to just do what you think is right and hope for the best.

As for the activities and accomplishments of the 1999-2000 bar year, I do not have enough time or space to even begin to list them all. The accomplishments by the sections and committees have been unbelievable. Therefore, I can only offer the following brief summary to give you a sample of the work of the State Bar of Georgia.

## Consumer Assistance

The Consumer Assistance Program (CAP) is a public service of the State Bar that has dealt with approximately 85,000 inquiries (calls, letters, or walk-ins) since it began in 1995. When someone calls or writes the bar to complain about a lawyer, CAP helps identify the problem and finds appropriate ways to solve it. Most inquiries are handled by calling the attorney to express the client's concern or by providing appropriate information or a referral. When serious

misconduct is alleged, the caller is referred to the Office of General Counsel. Two out of three CAP cases are resolved informally without a grievance being filed. In a survey of lawyers contacted by CAP, 97 percent of those who responded were satisfied with the way CAP handled the inquiry and want this sort of intervention to continue.

The American Bar Association has asked to use our CAP policies, procedures, and forms in an upcoming publication about model practices in central intake/consumer assistance. Bar leaders and staff from other states regularly visit and look to our program as a model for theirs. In 1998 and 1999, CAP staff addressed the National Organization of Bar Counsel. CAP is now also responsible for the intake of the Judicial District Professionalism Program (JDPP), of which the inquiries from lawyers and judges about unprofessional conduct will be referred to members of the Board of Governors in each judicial district for resolution.

## Lawyer Discipline

The new Model Rules of Professional Conduct have been approved by the Supreme Court and will become effective January 1, 2001. We will utilize the next six months to familiarize the bar and bench with these new rules.

The Investigative Panel (IP), Review Panel (RP), Formal Advisory Opinion Board (FAOB) and Office of the General Counsel (OGC) have continued to enhance their performance of this core function of the State Bar. While protecting the rights of the client and the lawyer, we continue to shorten the processing time in all respects. In the past 12 months:

- 3,405 grievance forms were mailed (2,860 in the previous year).
- 2,076 grievance forms were filed (2,093 in the previous year).
- 1,520 grievances were dismissed for lack of jurisdiction.
- Average length of time to review and dismiss a grievance was reduced from 57 days to 43 days.
- 479 grievances were referred to the IP members for investigation (619 in the previous year).
- Each IP member averaged 28 cases.
- 327 grievances were dismissed after IP investigation (70 of those included a letter of instruction).

- 42 cases were placed on inactive status because of disbarment in a different case.
- 177 cases met probable cause (198 in the previous year).
- 200 cases are pending before the IP (208 in the previous year).
- 30 interim suspensions were issued for failure to respond.
- Lawyer Helpline averaged 18 informal ethics opinions per day.
- OGC lawyers made 60 CLE ethics presentations.



**Outgoing President Rudolph Patterson is presented with a bronze Indian sculpture entitled "End of the Trail."**

### **Confidential discipline was ordered in 25 cases as follows:**

- 13 IP reprimands
- 12 letters of formal instruction

### **Public discipline was ordered in 69 cases as follows:**

- 27 disbarments
- 22 suspensions
- 5 public reprimands
- 15 review panel reprimands

### **The Formal Advisory Opinion Board's activity included:**

- 5 new requests for Formal Advisory Opinions.
- 5 requests for opinions pending before the FAOB.
- 3 proposed opinions pending before the Supreme Court.
- 3 opinions issued by the Supreme Court.



**The overdraft notification program's results are as follows:**

- 383 received (20 in error).
- 149 dismissed after investigation.
- 11 referred to Law Practice Management.
- 12 forwarded to the Investigative Panel.

## **Clients' Security Fund**

The Clients' Security Fund fulfills, in part, the legal profession's honored tradition of keeping faith with the public and serves to maintain the profession's collective reputation for honesty and trustworthiness. A Board of Trustees considers claims using the following criteria:

- Loss must be caused by the dishonest conduct of the lawyer.
- Loss must arise out of an attorney/client or fiduciary relationship.
- Successful disciplinary action must be taken resulting in the disbarment or indefinite suspension of the lawyer.
- Applicant must exhaust alternative remedies to the extent practical and possible.
- The most typical losses are theft of funds and unearned retainers. Malpractice losses are not reimbursable losses, since they are more speculative and can arguably be recovered through the civil process.
- The fund received 38 new claims, granted 25 claims totaling \$237,550 (\$193,305 in the previous year), denied 13 claims, and has 32 active claims pending.
- The fund's balance is \$2,514,040.

## **Law Practice Management Program**

The Law Practice Management Program has been in existence since January of 1995 to provide law office management consulting services and materials to the members of the bar, thereby facilitating and improving the delivery of legal services to the public. It prevents discipline, malpractice, and unprofessional conduct mistakes through education. The department has conducted over 350 onsite consultations around the state and boasts a resource library of over 500 reference and checkout items. The program also travels around the state to make educational presentations to local and specialty bar associations and to present the Law Staff seminar series.

## **Lawyer Assistance Program**

The Lawyer Assistance Program provides confidential assistance to bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment. The Resource Center provides staff support to greatly enhance the program's clinical expertise and user confidentiality. More and more state bars are looking at the innovative way this program is being conducted by our bar.

## **Judicial District Professionalism Program**

Approved this year, the Judicial District Professionalism Program (JDPP) is expected to become a premier service of the State Bar, helping individual lawyers and judges to correct unprofessional conduct without the necessity of a formal complaint to either the bar or the Judicial Qualifications Commission. Its goal is to promote professionalism within the legal profession through increased communication, education and the informal use of peer influence. The JDPP is comprised of committees of local Board of Governors members from each of Georgia's judicial districts, referred to as the Judicial District Professionalism Committees (JDPC), and judicial advisors. No judge or lawyer is required to cooperate or counsel with the JDPC or any of its representatives. If the party against whom the inquiry is addressed refuses to cooperate by voluntarily meeting with JDPC representatives, the JDPC shall take no further action regarding the inquiry. The program is overseen by the Bench and Bar Committee and staffed by the Consumer Assistance Program.

## **Unauthorized Practice of Law (UPL)**

The Commission appointed by the Supreme Court to study UPL has concluded its work and prepared a working document to deal with the problem. It is expected that this document will be submitted to the bar for comment prior to enactment.

The volunteers serving on the UPL Committee, our one staff counsel, and two staff investigators have done an excellent job of successfully handling a high number of UPL cases with good results in most situations. The 1999-2000 statistics are as follows:

• <b>Number of new UPL complaints received</b>	<b>219</b>
• <b>Nature of complaint</b>	
Regular UPL	136
Document Preparation Service	26
Disbarred/Suspended Lawyer	22
Out-of-State Lawyer	17
Paralegal	8
Title Insurance	7
Collection Agency	3
• <b>Source of Complaint</b>	
Lawyer	78
Public (individual)	49
Judge	31
Public (corporation)	19
State Agency	19
Office of the General Counsel	19
Anonymous	3
Federal Agency	1
• <b>Area of State</b>	
Metropolitan Atlanta	143
Southwest Georgia	23
Southeast Georgia	20
North Georgia	18
Middle Georgia	2
Out-of-State Bar of Georgia	13
• <b>Disposition</b>	
Subject agreed to comply	70
Subject warned of investigation	29
Subject referred to prosecutor	27
Complainant to contact prosecutor	27
Action unnecessary	21
Subject not found	9
Referred to Office of Bar Admissions	<u>1</u>
• <b>Total Cases resolved</b>	<b>184</b>
• <b>Number of UPL Investigations pending</b>	<b>35</b>

## Multidisciplinary Practice

Hand-in-hand with UPL is the issue of multidisciplinary practice (MDP), which arguably could have the most far-reaching impact on the delivery of legal services that we have seen in our lifetime. A special committee, chaired by Linda A. Klein, will continue its work through the coming year. They have hired a reporter, Professor Chris Wells of Mercer, to record their findings and make a final recommendation to the Board of Governors. Their meetings thus far have featured a number of national authorities on this important issue. This is a question that has been brought to the forefront by the American Bar Association and is to be voted on at one of their future meetings. As we deliberate about MDP, I urge lawyers to remember who we are and where we came from.

## Standards of the Profession Committee

This Committee is in the process of conducting a transition-into-practice pilot project to test the feasibility of a program of professional guidance for beginning lawyers. The mentoring program, which provides continuing legal education credits, links new lawyers with experienced lawyers during the first two years after admission. The pilot project is the result of a year-long study by the Standards of the Profession Committee of the bar, with John Marshall as its outstanding chair. The timeline of the project is as follows, with the first three years now completed:

- Year one (1998-1999): Securing funding; educating the bar and judiciary; clarifying impact of project on law school curricula
- Year Two (1999-2000): Resolving issues of liability of mentors for acts of beginning lawyers; identifying and recruiting mentors and beginning lawyers; developing procedures for mentorships, orientation for mentors, first-year curriculum, and evaluation instruments
- Year Three (2000-2001): Implementation of mentorships and first-year curriculum; evaluations
- Year Four (2001-2002): Second year of mentorships and second-year curriculum; evaluations
- January 2002: The pilot project's two-year mentorship and curriculum will conclude
- June 2002: Final report and recommendations presented to the Board of Governors

## Fee Arbitration Program

The Fee Arbitration Program is a service provided to both the general public and lawyers of Georgia. The actual arbitration is a hearing usually conducted by two experienced attorneys and one non-lawyer. The program provides a convenient mechanism for the resolution of disputes between lawyers and clients over fees. The program also arbitrates disputes between lawyers in connection with the withdrawal of a lawyer from a partnership, the dissolution or separation of a partnership, or disputes concerning the entitlement to portions of fees earned from joint services. Like in past years, this program began the current year with over 700 cases reported in progress and approximately 800 new cases expected to be filed. The result was an overburdened, too slow process. With the hands-on work of the Fee Arbitration Committee, bar staff and Executive Committee, the actual caseload is now approximately 450 cases. Thus, much progress has been made. However, continued evaluation of the effec-

tiveness of this service is needed in the coming bar year. A review of the post arbitration statistics indicate that litigation to establish judgments based on fee arbitration awards may be neither in the best interest of the public nor the best utilization of our staff attorneys. Other options including magistrate court with its new \$15,000 jurisdiction, voluntary mediation/arbitration through the bar's ADR Section or the Consumer Assistance Program may produce higher user satisfaction than the current system.

## Communications

### *Georgia Bar Journal*

The *Georgia Bar Journal* is published bi-monthly by the Communications Department. The department works in conjunction with volunteer lawyers who serve on the Editorial Board, which solicits, selects and edits two to three articles for the "legal articles" portion of the magazine. The remainder of the publication is assembled by the Communications Department. Advertising revenue was up this year with strong efforts underway to continue that progress. It is recommended that we continue to orient the *Journal* to the practicing lawyer.

### New Members CD

For the first time ever, lawyers who pass the bar exam will receive their mandatory State Bar of Georgia enrollment materials on a CD-ROM. The disc was designed and produced by the Communications Department, with input from the Membership Department. In addition to the usual paperwork that was traditionally mailed to every new admittee, the disc provided the opportunity to thoroughly introduce these new members to *their* State Bar and other pertinent legal resources. The disc includes the following headings and information: About Your State Bar (history, governing bodies, map to offices); Bar Services (all programs and departments); Ethics & Discipline (Parts III and IV of Rules and Regulations, disciplinary flow chart, ethics hotline information, UPL information); Georgia Courts (superior, state, appellate courts, judicial councils, district map); Lawyer's Creed (including a video); MCLE (annual requirements, Q&A, trial experiences, and ICLE); Young Lawyers Division (governing body, upcoming meetings, committees/sign-up form, and high school mock trial). We hope the CD will be a useful practice tool as our new members begin their careers.

### Foundations of Freedom

Past President Bill Cannon continues to do excellent work with this program, which focuses on improving the image of the profession. The Foundations of Freedom program is coordinated through the Communi-

cations Department and the South Georgia Office and includes the following components:

**A. Camera-Ready Ads** - This series of camera-ready, black-and-white print advertisements is available at no cost to lawyers, law firms and voluntary bar associations. They can be placed in local newspapers, theater playbills, high school football programs or any other outlet. Professional printers will be able to add lawyers' personalized information to the camera-ready art.

**B. Radio Public Service Announcements** - The Communications Department worked with our advertising agency to develop six radio spots, which are based on the same language used in the camera-ready ads. Immediate Past President Bill Cannon was instrumental in connecting the State Bar with an independent radio station producer in Thomaston who agreed to run the 30-second spots over the next two years on stations in Columbus, Macon, Albany, Augusta, Savannah, and Statesboro.

**C. Client Care Kit** - To assist attorneys in communicating with their clients, this kit contains a booklet that explains the lawyer-client relationship; a brochure that dispels lawyer myths; and several forms for your client to use — About Your Fees; Who's Who in Your Lawyer's Office; Documents You Need; Schedule of Important Events; and a Client Survey. The kit may be personalized to meet law firms' specific needs.

**D. Speakers Bureau** - This consists of Georgia lawyers who volunteer to visit civic organizations, schools, business groups, etc. throughout the state in an effort to educate the public and communicate a positive message about the legal profession.

**E. Video** - A seven-minute video titled "Honoring Your Trust, Earning Your Confidence" is available to accompany the various lectures and educational efforts of the bar's Speakers Bureau.

### State Bar Web Site

The State Bar's Web site was redesigned and moved in-house on June 8, 2000. This relocation will allow the Internet Coordinator, Caroline Sirmon, to expand the site's offerings and accelerate the updating process. She created the site's new format after carefully reviewing numerous suggestions from members, staff, and consumers. The State Bar of Georgia's Web site is located at [www.gabar.org](http://www.gabar.org). Lawyers and the public can peruse the entire *Handbook* and search the membership *Directory*, find up-to-date information about Committees, Sections and other Bar programs/departments, as well as link to valuable legal research resources and issues of the *Georgia Bar Journal*. The Site Map and Search functions are available at the top of each page. The Web site receives an average of 68,355 hits each month. In May 2000, the site broke all of its former records

with a total of 114, 832 hits. On the busiest single day in May 2000, the site received 7,819. I believe that the Web site will continue to expand and provide a valuable resource for our members, court personnel, and consumers.

### Media Relations

The Communications Department handles all media inquiries and dispatches them to the appropriate party for comment. They also maintain a catalog of clippings from the press that mention the bar.

### Awards/Voluntary Bars

The Communications Department maintains a listing of voluntary bars and their officers and coordinates the following awards that honor voluntary bars at the Annual Meeting: Award of Merit, Law Day, Best Newsletter, Best New Entry, President's Cup, and Excellence in Bar Leadership. They also coordinate the annual Silver Gavel awards program, which honors the media for excellence in legal reporting.

### Directory/Pamphlets/Membership Certificates

The Communications Department publishes the *Directory & Handbook* each year, and a consumer pamphlet series, which is available to both lawyers and the public on a variety of general legal topics. The publication of the *Directory & Handbook* is a huge project each year due to the volume and need for correctness. We are proud of Jennifer Davis, her staff and Gayle Baker and her membership staff for getting the *Directory & Handbook* published in record time this year.

## Georgia Legal Services

The State Bar and Georgia Legal Services Program (GLSP) have worked together since their inception to help provide legal services to everyone regardless of socioeconomic status. The bar has strongly supported the work of GLSP and appoints a number of its board members. This year, GLSP and related organizations received \$253,622 through the State Bar's fund-raising program and \$1,266,000 from the Georgia Bar Foundation.

## Georgia Diversity Program

The Georgia Diversity Program represents a commitment to increasing networking opportunities for ethnic minority attorneys, majority attorneys, and corporate counsel. Open to all members, the program represents an inclusive effort by the State Bar to encourage active participation by all lawyers in our honored profession. I am particularly proud of the expanded vision and work being

done by this program. I believe they will continue and become a statewide asset in our efforts to achieve diversity in the bar.

## High School Mock Trial Program

The High School Mock Trial program took over 1,600 Georgia high school students to court in 2000. Working with approximately 350 attorney coaches, the students tried a mock trial case involving a school shooting. The Georgia Mock Trial Competition is active in 115 schools, and the 477-member YLD High School Mock Trial Committee coordinates the competition and its related programs: Law Academy and Court Artist Contest. New in 2000 will be the production of a documentary on the competition.

## Sections

The State Bar currently has 32 sections, representing a variety of areas of practice. From Administrative Law to Workers' Compensation, section volunteers strive to benefit their members by planning cutting-edge seminars, newsletters, and social functions. Influencing legislation and participating in community projects, meeting colleagues and experts in the respective areas of practice are goals of the sections. Annual fees vary from \$30 or less. Currently 21 section newsletters are being produced. The bar maintains 23,750 section memberships consisting of 13,419 individual attorneys. I wish to thank the section leaders who helped our record keeping by changing their fiscal years to match the July-June year of the State Bar. The change was difficult for some, but they got it done. It is hoped that those remaining three sections (Health Law, Environmental and Local Government) will be able to make the change during the coming year.

## South Georgia Office

The South Georgia Office officially opened in January of 1995 and is located in Tifton, directly across the street from the Tift County Courthouse. State Bar members may use the office for depositions, mediations or any law-related activity such as committee meetings and CLE programs. The statewide Speakers Bureau is coordinated by the South Georgia Office. Attorney volunteers are matched with civic clubs and schools in their area who request speakers. The Bureau, which was created as part of the Foundations of Freedom Program, currently averages three requests a day statewide. The South Georgia Office also offers assistance to consumers, supports voluntary bar

associations with program ideas, and facilitates CLE seminars throughout the state. Grant requests are pending to connect the Tifton and Atlanta offices via teleconferencing to increase participation by lawyers throughout the State in committee and other Bar activities.

## Pro Bono Project

The Pro Bono Project, created by the State Bar in 1982 in conjunction with Georgia Legal Services Program, assists local bar associations, individual private attorneys and communities in developing private attorney/bar involvement programs in their areas for the delivery of civil legal services to the poor. The Pro Bono Project guides volunteers to civil legal services and pro bono programs; hosts a volunteer business lawyers program called A Business Commitment that serves community-based organizations; and administers the statewide Pro Bono Court Reporters and Pro Bono Nurse Consultants programs. The Project is available to offer advice and technical assistance to lawyers, law firms and corporate counsel programs on creating civil pro bono programs. The Pro Bono Project also works with State Bar leadership on ways to increase pro bono participation.

## Legislation

Funded by voluntary contributions from about one-third of our members, this important service assists with the administration of justice through the development of statutory law both at the state and federal levels. It is administered by the Advisory Committee on Legislation and ranks second only to the Governor in the number of laws passed each year. Boller, Sewell, & Segars provides legislative and government affairs consulting services for the bar. Key elements of the program include monitoring legislative and political issues, coordinating bar involvement in the legislative process, and communicating bar policy positions on legislative issues to government decision-makers. This past year, we received the utmost cooperation and support from the leaders in the House and the Senate. Governor Barnes and Lt. Governor Mark Taylor also supported all of our legislation.

## Meetings

The Meetings Department is responsible for event planning and management of the larger bar meetings. Specifically, the following are under its auspices: Annual Meeting, Midyear Meeting, Board of Governors Meetings, Executive Committee/Supreme Court

Retreat, and the Executive Committee Retreat.

During the 1999-2000 fiscal year, the Meetings Department achieved great success in terms of attendance at the meetings. Our Midyear Meeting totaled over 1,200 attendees; Board of Governors meetings averaged over 150 attendees each; a fifth Board meeting was added; and this Annual Meeting is one of the largest in our history. Virtually every meeting set a record in participation. This is the first year the bar has had a full-time meetings director, and that staff member, Eddie Potter, has truly done a superior job of orchestrating the meetings described above. I would recommend that, ultimately, all meetings should be coordinated by our meetings director. This will aid the bar in getting better meeting space and prices so as to better serve the members.

## Corporate Sponsorship Program

A new, uniform program was implemented to increase sponsorship of meetings, thereby reducing the costs to the corporate attending members. Over \$75,000 has been raised and a new sponsorship committee is being appointed to supplement that good beginning. This is one part of the plan to enhance non-dues revenue.

## Membership

The Membership Department creates and keeps up-to-date, computerized and hard copy records for all 31,500+ bar members. It prepares the annual dues notice, furnishes labels and demographics regarding members and sections, supplies the geographical portion of the bar directory, provides letters of good standing, furnishes enrollment packets to all new attorneys, sends out notices of judicial vacancies for the Judicial Nominating Commission, provides photo membership identification cards when requested, and coordinates the annual election of officers and Board members. With e-mail and other address changes averaging in excess of 15,000 per year, the difficult task of maintaining an accurate membership database is essential to the accomplishment of the State Bar's mission.

For the first time in over 10 years, each member of the Bar received a new membership card. The mailing to over 31,000 members included not only the laminated card featuring an architectural rendering of the new Bar Center, but also a quick-dial reference Rolodex card.

Our oldest member in good standing is "Miz Elsie" H. Griner. She was born in 1896 and has lived in three centuries – the 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup>. I talked to her granddaughter, Galen A. Mirate, a lawyer in Valdosta, who



said Miz Elsie has only one regret — that she can't do the one thing she really loved, practicing law. She is 103-years-old. Our oldest active members are Samuel A. Miller, age 94, and Judge Sol Clark, age 93. We have 61 members in good standing over 90 years of age. Our youngest lawyer (not including the newest bar passing list) is Stephanie Lynn Friese, who is 24-years-old.

For your information, in 1965, four women passed the bar, representing 3.7 %. Three decades later in 1999, 425 women passed the bar, representing almost half of those who took the exam. The total number of female lawyers at this time is 9,167 (29.1%).

We currently have a ratio of attorneys to citizens in Georgia of 1 to 322.

## Young Lawyers Division

Membership to the Young Lawyers Division (YLD) is automatic for Georgia attorneys who are under the age of 36 or who have been admitted to their first bar for three years or less. The YLD is comprised of over 8,200 "young lawyers" statewide. The YLD meets five times per year and publishes a newsletter. Outreach to both the profession and the public is accomplished through the 32 YLD Committees, which are divided into three categories: service to the public; service to the profession; and membership services. Other interesting statistics show:

- 27% of bar is under age 36
- 55% of young lawyers reside in metro Atlanta
- Savannah has second-highest concentration of young lawyers (160), followed by Macon (152)
- 1,850 out-of-state YLD members

## American Bar Association

The control and administration of the ABA is vested in its House of Delegates, the policy-making body of the association. Each state is afforded State Bar Association Delegates based on its attorney population. The State Bar of Georgia has the maximum number of seven delegate posts, which are elected by our membership to staggered two-year terms. As of October 12, 1999, the House of Delegates consisted of 531 members, of which 212 were State Bar Delegates.

This year, we worked to increase the State Bar of Georgia's influence (1) by including in our delegation the immediate past presidents of the State Bar and YLD, and (2) permitting substitute delegates to attend and vote when a regular delegate cannot be present.

## BASICS

Bar Association Support to Improve Correctional Services (BASICS) is a successful and effective program that provides a 30-hour course of instruction for soon-to-be released prison inmates. The curriculum emphasizes employability while teaching life-coping skills. The program also provides post-release employability guidance and workshops. It is entirely funded with grant money from the Georgia Bar Foundation and state funding through the Administrative Office of the Courts. This public service of the State Bar evidences the commitment of Georgia lawyers to the effective administration of the criminal justice system for the ultimate benefit of every citizen of our state.

## Commission on Continuing Lawyer Competency

The Commission on Continuing Lawyer Competency administers our CLE program and assists attorneys in keeping track of their CLE hours throughout the year. This year, the Commission approved a major change to the mandatory CLE rules, which will allow all attorneys to obtain half (six hours) of their CLE requirements by self-study of organized programs of learning delivered in non-traditional (non-seminar) formats. These include audiotape, videotape, telephone conference, CD-ROM, and the Internet. The effective date for this rules change is January 1, 2001. Through continuing education in

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ethics, professionalism, trial practice, procedure, and substantive law, this program helps lawyers to maintain their competency and avoid mistakes that could lead to disciplinary and malpractice claims.

## Malpractice Insurance

Through its recommendation of the American National Lawyers Insurance Reciprocal (ANLIR), the State Bar promotes the availability of quality malpractice insurance at reasonable rates for Georgia attorneys. Representing our lawyers is a committee that consults with ANLIR on rates, policy terms, underwriting, and claims. Three percent of all premiums are returned by ANLIR to Georgia for loss prevention. In addition, the State Bar of Georgia holds a seat on ANLIR's Board of Directors.

## Professionalism Committee

The annual orientations on professionalism for new law school students and the upper level law school professionalism programs continue to receive national recognition for innovation in achieving in our bar the highest level of professionalism. Taught by hundreds of volunteer practicing lawyers and judges, participation proves to be inspiring and rewarding for both the students and the teachers. I would recommend that this terrific program be expanded to include second- and third-year classes, since there is a great need for continual ethics training at the beginning of the legal career.

## Bar Center

The Federal Reserve Bank did not exercise its option to extend its lease term. Thus, the State Bar expects to receive possession on October 1, 2001, then perform renovations (primarily to the parking deck and conference floor) for approximately six months, move in during March 2002, and formally dedicate the new home of Georgia lawyers in April 2002.

The Board of Governors adopted a Bar Center Strategic Plan that recognizes the interest in and use of this gathering place for our profession by every Georgia lawyer. Since we will have 139,000 sq. ft. of leasable space, the Bar Center Committee is currently presenting the extra space to bar/judicial/lawyer entities, legal vendors and other prospective tenants.

## Supreme Court Retreat

The Executive Committee expresses its appreciation to the Supreme Court of Georgia for continuing the very

helpful annual retreat. There appears to be an increasing attack on the justice system as we know it, and these retreats are very beneficial to the Court, the bar and the lawyers of our state in dealing with those problems. This year's discussions were candid, informative, and directional, thus assisting the leadership of the State Bar in the mission assigned by the Supreme Court.

## Family Law Study Committee

After several meetings with various judges and lawyers, I went to see Jim Martin, Chair of the House Judiciary, about the multiple locations of the statute dealing with family laws. He suggested we might need to appoint a committee to study the feasibility of consolidating the family laws into one section of the code. We had a meeting, and the group agreed this matter should be undertaken.

A Committee comprised of many lawyers and judges knowledgeable in family law has begun an extensive review of all Georgia statutes relating to the family. One anticipated result will be the recodification of these laws into a single title of the Code to aid in the consideration of all the many relevant statutes that may control a single fact situation. A \$25,000 grant request is pending with the Georgia Bar Foundation to employ a reporter and print the final report of the committee.

## Conclusion

Over the past few years, I have been fortunate in having the opportunity to visit many other state bars and discuss the practice of law and the responsibility of the state bars. I am proud to say that Georgia is not a follower in any sense of the word. We are, and have been, a leader in all aspects. The achievements have come because of past leadership, an outstanding staff led by Cliff Brashier and Bill Smith, tremendous judicial support, hundreds of volunteers (including lay persons), and a bar membership that demands and expects nothing but the best government from their bar.

Our bar is not perfect, but it is perfect in its attempt to do what it can to service the legal profession and the public. As former bar President Will Ed Smith said: "The fields which have not been plowed at all are fertile and awaiting laborers in the vineyard . . . I am certain that the State Bar of Georgia will have the full support of all the lawyers in Georgia." We may not have the full support of every lawyer, Will Ed, but by far we have the majority.

I thank each of you for your advice and support. The pleasure of working with you has created a treasure of memories. The support from the Supreme Court has been

unbelievable. Justice Fletcher has been a terrific bar liaison. I thank each one of the justices for the extra time and advice they have given me. I also thank every judge who was kind enough to postpone my cases when they conflicted with bar activities.

The leadership of the Superior, State, Probate, and Magistrate Courts has played a part in my administration. The innovative thinking in the offices of the judges and clerks is almost beyond comprehension. Our judicial system in Georgia is on the threshold of total computerization. We are much closer to that goal than most people realize. Once there is unity as to a universal platform, then everything else will fall into place.

I also want to thank the members of my law firm, Westmoreland, Patterson & Moseley. I am very appreciative of the sacrifices they have made to allow me to serve as President of the bar.

Finally, I want to express my sincere appreciation to my family. My wife, Margaret, and I have had the privilege of representing you all over Georgia, as well as in many other states. She has been a real trouper and I could not have served without her support. She went with me when I know she had other things to do, but she went anyway. If you made a visit to the hospitality room at any time this year, you got the chance to sample her cheese straws, which are the best you have ever tasted.

The officers, Executive Committee, Board of Governors, and staff of the bar could not have been more supportive. I salute each and every one of them.

Many times, a past president disappears from the scene, but this year I have been fortunate to have Immediate Past President Bill Cannon carry the Foundations of Freedom program to new heights, and Past President Linda Klein accept the monumental task of chairing the Multidisciplinary Practice Committee. They have both done an outstanding job for all of us.

Serving as the President of the State Bar of Georgia has exceeded anything I could have believed would happen to me in my professional life. As most of you know, I have tried to carry Bill Cannon's message to the level of positive thinking. I have been rewarded by positive feedback at virtually every place I have appeared on your behalf this year. I can promise you one thing — the public may joke about lawyers, but they honestly respect us and believe we are necessary to the preservation of life, liberty and happiness in this country.

I thank you very much for the honor of serving as the President of the State Bar of Georgia.

## Take Note . . .



## . . . of the State Bar of Georgia 2001 Meeting Schedule!

### FALL BOARD OF GOVERNORS MEETING

*October 27-29, 2000*

King & Prince Resort, St. Simons Island, GA

### MIDYEAR MEETING

*January 11-13, 2001*

Swissôtel Atlanta, Atlanta, GA

### SPRING BOARD OF GOVERNORS MEETING

*March 9-11, 2001*

Pinehurst Resort, Village of Pinehurst, NC

### 2001 ANNUAL MEETING

*June 13-17, 2001*

Kiawah Island Resort, Kiawah Island, SC



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## JUDICIAL DISTRICT PROFESSIONALISM PROGRAM:

# Restoring Professionalism And Reining In Rambo

By Robert D. Ingram and  
Judge Robert L. Allgood

The charge of the Bench and Bar Committee of the State Bar is to identify and facilitate solutions to issues of mutual interest between State judges and Georgia lawyers for the benefit of the bench, bar, and public. Over the past several years members of the bench and bar have decried the fact that many of the professional traditions of the bar are becoming lost or ignored.

Certainly, the majority of bench and bar members conduct themselves in a way that reflects adherence to fundamental values and respect for their colleagues and our system of justice. However, there is a small minority of lawyers and judges who conduct themselves in a manner which shows little regard for colleagues, clients, or the courts.

In 1996, the Bench and Bar Committee of the State Bar of Georgia began meeting with judges and lawyers to identify problems existing between the bench and bar so that solutions could be developed.

In the fall of 1997, the Bench and

Bar Committee held a meeting at Brasstown Valley in conjunction with the Fall Board of Governors Meeting where lawyers and judges from across the state, including members of the State Bar Executive Committee and the Council of Superior Court Judges, met and brainstormed on issues of concern to both.

One of the primary concerns which came out of this conference was the decline of professionalism and civility. Lawyers and judges at the conference were tired of fighting the civility battle and wanted help. Following this conference, the Bench and Bar Committee resolved to attempt to foster within the legal community a climate of responsibility, appropriate conduct and respect for others.

## Professionalism Concerns: Dealing with Rambo Lawyers and Judges

The practice of law is a profession, not merely a trade. Former Chief Justice Harold Clarke taught

us that “the distinction between a profession and a commercial enterprise is that a profession demands adherence to the public interest.”

As lawyers and judges, we take an oath to uphold the Georgia Constitution, which directs that the judicial system provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions. Polls consistently show that this is what the public expects from the legal system. Accordingly, for the lawyers and judges who are under oath to serve that system, civility, fair dealing, and professionalism are not merely aspirational goals, but should be self-imposed minimum standards of conduct.

For a variety of reasons—business demands, increased competition, financial demands, the pressure to move cases—professional responsibility has become a forgotten notion for a few so-called “Rambo” lawyers and judges.

As noted in a *USA Today* article entitled “Disorder on the Rise in the Nation’s Courts: Judges, Lawyers seeing Greater Lack of Civility,”

some lawyers believe that by engaging in abrasive and overly aggressive behavior, they endear themselves to their clients and grow their practice by developing the “Rambo” reputation. Unfortunately, some of their clients fail to realize that their style of lawyering is not effective with judges or juries, and that their tactics dramatically increase legal expenses for all parties and generally lead to a less favorable result for the client.

In a profession, there is no place for “win at all costs tactics” where the bottom line displaces the professionalism values of civility, competence, ethics, service to client and public good. The “Rambo” lawyer and judge have come to represent all that is unprofessional in conduct and attitude. “Rambo” lawyers create discovery problems, misrepresent facts, and impair the legal system by misuse of their powers as advocates and counselors.

“Rambo” judges forget what it was like to practice law and hinder the administration of justice through misuse of the powers entrusted to them to decide matters impartially and diligently.

The Bench and Bar Committee determined that since attorneys and judges with the greatest need for instruction in professionalism seem to be the least likely to realize it, the “shotgun” approach—which has been helping to address the problem through mandatory CLE, mentoring programs, and professionalism emphasis by the state and local bars—needs to be supplemented with a more focused program.

Some would argue that a “rifle” approach should be used to address these concerns through the use of formal complaints and disciplinary

proceedings by the State Bar General Counsel’s office or by the Judicial Qualifications Commission.

This approach is problematic in that many times the offending conduct does not violate specific provisions of the Code of Professional Responsibility or of the Code of Judicial Conduct. Moreover, since all complaints filed against attorneys with the State Bar General Counsel’s Office and all complaints filed against judges with the Judicial Qualifications Commission must be in writing and signed by the complainant, some legitimate complaints are not asserted out of a concern by the complainant not to become embroiled in controversy. Furthermore,

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**In 1996, the Bench and Bar Committee of the State Bar of Georgia began meeting with judges and lawyers to identify problems existing between the bench and bar so that solutions could be developed.**

if the complainant’s desire is merely to eliminate future misconduct and not to seek formal disciplinary action for past conduct, the filing of a formal complaint is not a viable option.

Over the years at town hall meetings, professionalism CLE programs, and anywhere else lawyers and judges gather throughout the state, we have heard a consistent message: “We need some less formal procedure to deal with judges and lawyers whose conduct does not cross the line into a violation of their codes of conduct, but comes very close.” A response to a bench and bar survey published in the *Georgia Bar Journal* captures it more concisely: “A standing body to deal with lawyer/judge issues—with no risk of retaliation.”

## **New Approach: Judicial District Professionalism Program**

In response to the concerns, the Bench and Bar Committee developed a program which focuses on the individual by informally influencing our colleagues to curb unprofessional conduct and to restore public confidence in the bar and the judiciary.

This new program, called the Judicial District Professionalism Program (JDPP), uses peer influence or pressure rather than the threat of formal disciplinary action in an effort to encourage professional behavior. JDPP

is an informal, private, and voluntary program developed by the Bench and Bar Committee of the State Bar to improve the profession and bolster public confidence in the judicial system. The goal of the JDPP is

to promote professionalism through increased communication, education, and the informal use of local peer intervention to alter unprofessional conduct.

## **How is JDPP Authorized?**

In seeking to develop the JDPP, the Bench and Bar Committee solicited input from members of the Chief Justice’s Commission on Professionalism, the Council of State Court Judges, the Council of Superior Court Judges, the Court of Appeals, the Supreme Court, the State Bar Executive Committee and the State Bar Board of Governors.

Since its inception, the Chief Justice’s Commission on Professionalism has taken action to support and guide efforts by the judiciary and bar



to raise the professionalism aspirations of the lawyers of Georgia through educating, building the community of the bar, and encouraging the development of projects and programs to improve professionalism—in essence, the profession reaching out to the profession.

The Commission has always recognized that the professionalism effort, to be effective, must be a statewide, grass-roots movement. This is the beauty of the Judicial District Professionalism Committees—they operate at the local level. Created as it was to educate, encourage and bring sustained attention to professionalism with no authority to impose sanctions of any kind on any member of the State Bar, the Professionalism Commission cannot intervene in lawyer-lawyer or lawyer-judge disputes.

An avenue for resolution of these kinds of issues at the State Bar level opened through the creation of the Consumer Assistance Program (CAP). CAP was created to respond to inquiries from the *public* regarding State Bar members and to assist the public through informal methods including the resolution of inquiries which involve minor violations of the disciplinary standards—where the sanction for the violation of the standard would not be a restriction on the practice of law. However, CAP is receiving an increasing number of calls from lawyers about lawyers and from judges about lawyers, and even a few from lawyers about judges. Nevertheless, for many of the issues contemplated by the JDPP program, an informal resolution at the local level where personalities and the local landscape are known could serve a more educational and constructive purpose than intervention from the State Bar.

The Bench and Bar Committee's work on JDPP received the support of State Bar Presidents Easterlin, Klein, Cannon, Patterson and Mundy. The Program was submitted to and approved by the State Bar Executive

Committee, the State Bar Board of Governors and, ultimately, by the Georgia Supreme Court by Order dated February 24, 2000. The Supreme Court adopted Rules governing the operation of the Program which are found at Part XIII of the Rules and Regulations for the Organization and Government of the State Bar of Georgia.

At the same time, the Supreme Court approved Internal Operating Procedures for the administration of the Program and granted the Bench and Bar Committee of the State Bar the authority to adopt additional Operating Procedures not inconsistent with the Rules.

## **What is the JDPP Structure?**

The JDPP is comprised of committees of Board of Governors members from each of Georgia's 10 judicial districts. Each Judicial District Professionalism Committee (JDPC) consists of the current members of the Board of Governors of the State Bar of Georgia from a particular judicial district. The JDPC members for each of the judicial districts select one or more judicial advisors within each district. The longest serving member on the Board of Governors serves as the chair for that district.

Each JDPC is authorized to organize itself as it deems appropriate. Larger districts have created subcommittees for each circuit. Please see the list of Board of Governors members by Judicial Districts on page 53.

## **What do JDPCs do?**

The JDPCs seek to promote traditions of civility and professionalism through increased communication, education, and the informal use of local peer influence to open channels of communication on a

voluntary basis. A JDPC may choose to serve the following functions:

- Mentoring in the sense of providing guidance in “best practices” when approached by lawyers and judges.

- Mechanism for privately receiving and attempting to resolve inquiries and requests for assistance from lawyers and judges. In this regard, JDPP addresses disputes between lawyers and lawyers and disputes between lawyers and judges.

- Initiator of other creative programs developed and implemented by each committee for their particular Judicial District, such as: (1) CLE Programs; (2) annual professionalism award for the member in the local Judicial District who demonstrates the professionalism others should strive to emulate; or (3) memorial tributes to local lawyers and judges.

## **How Does JDPP relate to the Office of General Counsel or the Judicial Qualifications Commission?**

The Program operates independently from the disciplinary systems presently in place with the Office of General Counsel and the Judicial Qualifications Commission. The JDPP is informal, private and voluntary, rather than formal and mandatory; and it does not address the violations of disciplinary rules or violations of the Code of Judicial Conduct.

## **What kinds of Issues does JDPP Handle?**

Inquiries from only lawyers or judges are referred to JDPP. The JDPP committees may address the following conduct:

### **Unprofessional Judicial Conduct:**

1. Incivility, bias or conduct unbecoming a judge;
2. Lack of appropriate respect or deference;
3. Failure to adhere to Uniform Rules;
4. Excessive delay;
5. Consistent lack of preparation; or
6. Other conduct deemed professionally inappropriate by each JDPP with the advice of the Judicial Advisors

### **Unprofessional Lawyer Conduct:**

1. Lack of appropriate respect or deference;
2. Abusive discovery practices;
3. Incivility, bias or conduct unbecoming a lawyer;
4. Consistent lack of preparation;
5. Communication problems;
6. Deficient practice skills; or
7. Other conduct deemed professionally inappropriate by each Judicial District Professionalism Committee.

Inquiries or requests for assistance relating to conduct in pending litigation or ongoing transactional matters are generally better left to the judicial process or the negotiations of the parties. Consequently, any JDPP response to such requests should generally be delayed to the conclusion of the matter.

## **What does JDPP not Handle?**

1. Lawyer/client disputes. Inquiries by clients or other members of the public are handled by the Consumer Assistance Program or other appropriate State Bar programs.
2. Fee disputes. These can be handled by the Fee Arbitration Program of the State Bar.
3. Employment matters. Example: Managing attorney sexually harasses associates and support staff.

4. Lawyer/vendor disputes.
5. Disciplinary matters. Example: Lawyer gets a trust account check from opposing counsel that bounces.

## **What is considered “an inquiry” for purposes of the JDPP?**

For purposes of the JDPP, it means any inquiry concerning unprofessional conduct as defined in the Rules or Internal Operating Procedures adopted by the Bench and Bar Committee; but it does not include any disciplinary charge, ethics violation, criminal conduct, or any other matter which falls under the provisions of Part IV (Discipline) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia or the Code of Judicial Conduct.

## **What is the Procedure for a JDPC Inquiry?**

**Step 1:** Concern or inquiry is reported to one of the following: State Bar Executive Director, Cliff Brashier; any member of the Board of Governors; or the State Bar Consumer Assistance Program Intake Staff.

**Step 2:** Person receiving inquiry and information:

- Should route inquiry to CAP for preparation of JDPP Inquiry Data Form.
- May call Board of Governors representative or JDPC Chair of the area where the judge/lawyer about whom the inquiry or concern is expressed practices law to discuss inquiry.

**Step 3:** CAP intake staff will:

- Assign JDPP inquiry number.
- Gather Inquiry Data Form information. Note: In the interest of privacy, this form does not

contain the name of any person about whom an inquiry or concern has been expressed.

- Place phone call to JDPC Chair to provide name of attorney/judge about whom an inquiry or concern has been expressed.
- Forward JDPP Inquiry Data Form to JDPC Chair.

**Step 4:** JDPC Chair will either:

- Refer inquiry to local sub-committee for handling.
- Call a meeting to discuss appropriate action based upon nature of inquiry.

**Step 5:** JDPC or sub-committee of JDPC will determine whether:

- Inquiry merits investigation or intervention.
- Judicial advisor may be consulted depending upon nature of the inquiry.

**Step 6:** If JDPC sub-committee determines further investigation or intervention warranted, meeting with the involved lawyer/judge will be scheduled or sub-committee members and/or Judicial Advisors will be designated to handle.

**Step 7:** If JDPC sub-committee determines no investigation or intervention is warranted, inquiry will not be pursued further.

**Step 8:** After resolution of inquiry, JDPP Inquiry Data Form will be completed showing how inquiry handled and returned to CAP. This form does not contain the name of any person about whom an inquiry or concern has been expressed.

## **What about Confidentiality and Records?**

All inquiries and proceedings of each JDPC are private. The JDPC and bar staff shall not disclose inquiries and proceedings in the absence of an agreement by the participating parties.

JDPC records are kept for statistical purposes only and do not contain the

names of any persons about whom inquiries or concerns have been expressed. Only file numbers and raw statistical data are maintained. Each JDPC maintains and reports data about the types of matters and inquiries it receives and resolves to the bar staff operating the Consumer Assistance Program who will in turn provide statistical reports to the Executive Director of the State Bar, the President of the Council of Superior Court Judges, and Bench and Bar Committee. The purpose for maintaining such records is to identify problems that can be subjects of continuing legal education or continuing judicial education programming and other preventive programs. Information on the results of the JDPC's efforts will also help determine the program's effectiveness.

## Conclusion

The Judicial District Professionalism Program sends the message that unprofessional tactics are not acceptable and do not work. JDPP exerts peer pressure to reinforce the message over and over again. Judges can make it clear what the expectations of acceptable conduct are from the outset of a case.

Judges set the tone in the courtroom; lawyers set the tone with clients and other lawyers. Professional conduct is contagious—we do not have to let the lowest common denominator prevail. The existence of local JDPP Committees will hopefully get the attention of lawyers in the area and can serve to sustain professionalism as the coin of the realm—the currency used to transact the business of the legal system, for the benefit of not only the profession, but also the public as well by bolstering public confidence in the administration of justice.

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*Robert D. Ingram is an attorney with Moore, Ingram, Johnson and Steele in Marietta. Hon. Robert L. Allgood is a judge of the Augusta Judicial Circuit Superior Court. They co-chair the Bench & Bar Committee.*

# JDPP Contacts

## For more information contact:

### **Co-Chairs, Bench and Bar Committee, State Bar of Georgia**

Hon. Robert L. Allgood (706) 821-2835

Robert D. Ingram (770) 429-1499

### **Executive Director, State Bar of Georgia**

Cliff Brashier (404) 527-8755

### **Director, Chief Justice's Commission of Professionalism**

Sally Winkler (404) 527-8793

### **Special Assistant for Grants, Partnerships and Outreach Administrative Office of the Courts of Georgia**

Cynthia Clanton (404) 656-6692

\* See next page for the Judicial District Professionalism Committee Members in your area

Insurance Specialists pickup pg 66 from june

# 2000-01 Judicial District Professionalism Committees

## Judicial District 1

### **Atlantic**

\*Thomas J. Ratcliffe, Jr. 2002  
Joseph D. McGovern 2001

### **Brunswick**

J. Alvin Leaphart 2001  
James D. Benefield, III 2002

### **Eastern**

Walter C. Hartridge 2002  
William K. Broker 2001  
J. Daniel Falligant 2002  
N. Harvey Weitz 2001

### **Ogeechee**

Sam L. Brannen 2002  
Gerald M. Edenfield 2001

### **Waycross**

Joseph J. Hennesy, Jr. 2002  
Huey W. Spearman 2001

## Judicial District 2

### **Alapaha**

\*Judge C. Dane Perkins 2001  
Thomas C. Chambers, III 2002

### **Dougherty**

Gregory L. Fullerton 2002  
Judge Gordon R. Zeese 2001

### **Pataula**

C. Truitt Martin 2001

### **South Georgia**

George C. Floyd 2002  
\*James C. Brim, Jr. 2001

### **Southern**

James E. Hardy 2002  
William C. McCalley 2001  
William E. Moore, Jr. 2002

### **Tifton**

G. Robert Reinhardt, Jr. 2002

## Judicial District 3

### **Chattahoochee**

Joseph L. Waldrep 2002  
William C. Rumer 2001  
Richard A. Childs 2002  
Earle F. Lasseter 2001

### **Houston**

Carl A. Veline, Jr. 2002

## **Macon**

\*Lamar W. Sizemore, Jr. 2001  
Hubert C. Lovein, Jr. 2002  
Robert R. Gunn, II 2001

## **Southwestern**

Judge R. Rucker Smith 2001

## Judicial District 4

## **Stone Mountain**

John J. Tarleton 2002  
Johnny W. Mason, Jr. 2001  
Lynne Y. Borsuk 2002  
\*M.T. Simmons, Jr. 2001  
William Lee Skinner 2002  
Bryan M. Cavan 2001  
Judge Anne Workman 2002  
Michael M. Sheffield 2001  
Edward E. Carriere 2002

## **Rockdale**

John A. Nix 2002

## Judicial District 5

## **Atlanta**

Dow N. Kirkpatrick, II 2001  
\*Matthew H. Patton 2002  
H. Fielder Martin 2001  
Patrise Perkins-Hooker 2002  
Thomas G. Sampson 2001  
Dwight L. Thomas 2002  
Aasia Mustakeem 2001  
J. Robert Persons 2002  
James W. Hawkins 2001  
Myles E. Eastwood 2002  
Dwight J. Davis 2001  
Wilson DuBose 2002  
(Vacant) 2001  
Jeffrey O. Bramlett 2002  
Rachel K. Iverson 2001  
William N. Withrow, Jr. 2002  
Kenneth M. Shigley 2001  
Foy R. Devine 2002  
Robert L. Shannon, Jr. 2001  
William V. Custer, IV 2002  
John A. Chandler 2001  
Frank B. Strickland 2002  
Donna G. Barwick 2001  
Joseph Roseborough 2002  
Phyllis J. Holmen 2001  
Anthony B. Askew 2002  
A.L. Mullins, Jr. 2001  
J. Henry Walker 2002  
Tina Shadix Roddenbery 2001

## Judicial District 6

## **Clayton**

H. Emily George 2001  
Larry M. Melnick 2002  
Charles J. Driebe 2001

## **Coweta**

Gerald P. Word 2002  
Delia T. Crouch 2001

## **Flint**

Gregory A. Futch 2001  
A.J. Welch, Jr. 2002

## **Griffin**

\*Andrew J. Whalen, III 2002  
Roy B. Huff, Jr. 2001

## **Towaliga**

Hugh D. Sosebee 2001

## Judicial District 7

## **Cherokee**

S. Lester Tate, III 2002  
J. Lane Bearden 2001

## **Cobb**

Dennis C. O'Brien 2002  
Judge Adele L. Grubbs 2001  
David P. Darden 2002  
Robert D. Ingram 2001  
Stephen Schuster 2002

## **Conasauga**

James Michael Brown 2002  
Henry C. Tharpe, Jr. 2001

## **Douglas**

Barry R. Price 2002

## **Lookout Mountain**

William D. Cunningham 2002  
\*Chris A. Townley 2001  
Lawrence Alan Staggs 2002

## **Rome**

Paul T. Carroll, III 2001  
S. David Smith, Jr. 2002

## **Tallapoosa**

Jeffrey B. Talley 2001  
Richard C. Sutton 2002

## Judicial District 8

## **Cordele**

John C. Pridgen 2001

## **Dublin**

Francis Marion Lewis 2001

## **Middle**

J. Franklin Edenfield 2002  
William Steven Askew 2001

## **Ocmulgee**

Wayne R. Bradley 2002  
Joseph A. Boone 2001  
\*Donald W. Huskins 2002

## **Oconee**

James L. Wiggins 2001  
John P. Harrington 2002

## Judicial District 9

## **Appalachian**

Edwin Marger 2001

## **Bell-Forsyth**

Philip C. Smith 2002

## **Blue Ridge**

Ellen McElyea 2002  
William Alan Jordan 2001

## **Enotah**

B. Lawrence Fowler 2002

## **Gwinnett**

David S. Lipscomb 2001  
\*Barbara B. Bishop 2002  
Robert V. Rodatus, IV 2001

## **Mountain**

James Irvin 2001

## **Northeastern**

Bonnie Chessher Oliver 2002  
Joseph D. Cooley, III 2001

## Judicial District 10

## **Alcovy**

Steven A. Hathorn 2001  
Michael R. Jones, Sr. 2002

## **Augusta**

J. Benjamin Kay 2001  
Leland M. Malchow 2002  
Thomas R. Burnside, Jr. 2001  
William R. McCracken 2002

## **Northern**

C. Patrick Milford 2001  
\*R. Chris Phelps 2002

## **Piedmont**

John Stell 2001

## **Toombs**

Dennis C. Sanders 2001

## **Western**

Ernest De Pascale 2001  
Edward D. Tolley 2002

\*Denotes chair of Judicial District Professionalism Committee

# Let's "Cultivate Our Virtues"

*Editor's Note: This speech was given by attorney William W. Mundy to the Daughters Of The Confederacy in Cedartown, Georgia on January 19, 1908. His grandson, President George E. Mundy, asked the Journal to run this article as an example of articulation of a Georgia lawyer of nearly 100 years ago.*

**L**adies and Gentlemen: Bidden by the Daughters of the Confederacy to make an address on this occasion on the life of General Robert E. Lee, and I deeply appreciate this honor, circumstances compel me to be brief.

It would be presumptuous on my part to assume that I could add anything to the eloquent and magnificent addresses you have heard on similar occasions, delivered by our own learned fellow citizens, chief among whom is that brave and loyal veteran, that genial and versatile gentleman, "that hero in gray with a heart of gold" —Major Joseph A. Blance.<sup>1</sup>

I take courage in coming before you to speak briefly of the life of General Robert E. Lee, hoping that I may be able to speak profitable words to some, feeling assured that those of you who have treasured up in your memories and engraved upon the tablets of your hearts the noble deeds and the splendid examples of courage, bravery, fortitude and endurance (which the soldier in gray can never forget) of General Lee—I say that I feel assured that you will throw about my feeble effort, the broad mantle of charity, for one of the greatest virtues of this Princely American was his brotherly love and his charity.

There was an aged preacher once who told some boys of the Bible lesson he was going to read in the morning. The boys, finding the place, glued together the connecting pages. The next morning, he read on the bottom of one page, "When Noah was one hundred and twenty years old, he took unto himself a wife, who was"—then turning the page—"one hundred and forty cubits long, forty cubits wide, built of gopher wood, and covered with pitch inside and out." He was naturally puzzled at this. He read it again, verified it, and the said, "My friends, this is the first time I ever met this in the Bible, but I accept this as

evidence of the assertion that we are fearfully and wonderfully made."

If I can get your attention and get you to hold such faith today, this anniversary of our fallen Chieftain will not be without good results.

Georgia's gifted son, Benjamin H. Hill, said years ago, "There was a South of slavery and secession. Today, that South is dead. There is a South of union and freedom — That South, thank God, is living, breathing, growing every hour." Our lamented Henry W. Grady said in 1889, in a speech made in the North to the North,

We understood that when Lincoln signed the Emancipation Proclamation, your victory was assured, for he then committed you to the cause of human liberty, against which the arms of men cannot prevail, while those of our statesmen who trusted to make slavery the cornerstone of the Confederacy, doomed us to defeat as far as they could, committing us to a cause that reason could not defend or the sword maintain in the light of advancing civilization.

We knew precisely what was put to the issue of the sword and what was settled thereby. The right of the State to leave this Union was denied, and the denial was made good forever, but the sovereignty of the State in the Union was never involved, and the Republic that survived the storm was, in the words of the Supreme Court, "An indissoluble Union of indestructible States."

Justice Harlan of the United States Supreme Court has recently said, "A national Government for national affairs, and State Governments for State affairs, is the foundation rock upon which our institutions rest. Any serious departure from that principle would bring disaster upon the American people and upon the American system of free government."

The South with her beloved Lee believed honestly, fought bravely and surrendered frankly, and while the South yielded to the arbitrament of the sword, secession and slavery, they were yielded for equal reunion. The result was not the obliteration of one or other of the two

forces but the readjustment of what was true and enduring in both forces; the birth of a new era of larger sympathies and of a broader movement of life.

After Shakespeare had written "Hamlet," "Othello," "Macbeth," "King Lear"—those great tragedies in which the plummet is dropped into the depths of human experience, he wrote "Cimbeline," "The Winter's Tale," "The Tempest"—those beautiful romances of reconciliation in which compassion, sympathy, self sacrifice and the divine insight of love bridge the chasm that hate had opened and heal the wounds of war. To the great tragedy of civil war has succeeded the great dream of reconciliation and reunion. The victories cease to be triumphs of sections, and the American people today realize the matchless splendor and power of the American Union and the American Government. My friends, it is with pardonable pride that we claim that the American system of government has no parallel in history. I say to you that it is best, the wisest and the grandest system of government the world ever saw. There is nothing in history like it. Solons of Greece had as little comprehension of this American system of form government as the soldier with his javelin at Marathon had of our Modern Columbiads; or the sailor, with his galley at Salamis, had of our modern fleet now cruising in the Pacific holding the attention of the civilized world. The Catos and Ciceros of Rome had as little comprehension of the grandeur and wisdom and beauty of our American system as the dweller upon the banks of the sluggish Tiber had of the length, depth and power of the Mississippi River.

And the secret of it all is, this government is made up

of and supported by the individual "of the people for the people and by the people." The strength and character of the individual is the test of the government's power. The individual is the unit without which there could be no army, no nation and no government. This government so constructed, carries with it the hopes of the human race—

blot out the beacon that lights the portals of this Republic, and the world is adrift again.

One hundred and one years ago today, at Stratford, Virginia gave to the world a son whose life has enriched history and made history glorious—with a character, in private and public life, so pure and princely that today it challenges the admiration of the world. I refer to General Robert E. Lee, who graduated with honor from the United States Military Academy in 1829; served faithfully in the Mexican war, was superintendent of the Military Academy at West Point from 1852 to 1855 and from 1855 to 1861 he served in Texas. When the war, formerly alluded to by those north of the Mason and Dixon line as the war of the Rebellion, but now known by the American people as the Civil War—I say when this war was precipitated, his loyalty and love for his native State and her people, forced him to resign his commission in the Union Army. He was immediately placed in command of the Virginia State troops. Later, he was in command of the army of Northern Virginia, and he conducted the Confederate

campaigns in that district "till the close of the war, where in defense of Richmond and Virginia and the South, he and the Confederate soldier made for South a matchless name, a name that will endure forever." At the close of this conflict, which had been waged for four years in



**William W. Mundy, Sr. (1871-1955) practiced law in Polk County from 1894 until his death in 1955. During that period, he served as Chairman of the Board of Education of Cedartown Public Schools for 40 years, in the General Assembly of Georgia for 24 years, and as Judge of the Superior Court of the Tallapoosa Circuit for 16 years. The above picture hung in the hall of the Cedartown High School until the building was demolished. Mundy was one of the founders (in 1919) of the Cedartown Library Association, Inc. (Hawkes Children's Library).**



fierce and angry battle, he sheathed his sword and accepted the presidency of the Washington and Lee University, where he spent the last days of his life, and until his death, October 18, 1870.

As the years roll by and the stirring past becomes more and more a memory; as the men who followed Lee in the tempestuous days of sacrifice and strife one by one answer the call to which their leader long ago responded; as the younger generation turns more and more to thoughts of commercial empire and appears to bury sentiment beneath material progress, and as the lines between sections become more and more obliterated in the tendency toward one great national brotherhood, it would seem that our heroes of the sixties too, would become enveloped in a Lethean fog, gradually thickening to the point of obliteration.

Not so with Robert E. Lee. The years have but burnished memory already bright, with honor, until in its brilliant glow is reflected the commending homage, no longer of a section, but of a nation. The very obliteration of sectional lines, the spread of commercial empire, the passage of time itself—all have served to bring more strongly into the brighter light of the living present, not Robert E. Lee the soldier, the scholar and the statesmen, but Robert E. Lee the hero and the man.

Circumstances brought him prominently before his people, without which he might only have been one of the many good men whose characters and works have left an impress upon the history of their time, but these circumstances found in General Lee metal from which to mould a living monument for his people, against which the ravages of time and the forgetfulness of strife are important. Most other leaders are great because of fortunate results, and heroes because of success, but General Lee, because of qualities in himself, is great in the face of fortune and a hero in spite of defeat.

He is a living Lee today, more potent for good, indeed, than in the days when his men would have followed him into the cannon's mouth and died with a smile upon their lips, knowing that he led. He lives today in every mart and market, in every home and hamlet, from the Potomac to the Rio Grande. It is a life against which the hand of death is powerless, for it is a life of example that has been and is a guiding star to many a youthful footstep and a living, breathing inspiration to his surviving comrades.

Today, as the memory of the South's beloved hero is everywhere celebrated with a loyalty grown more ardent with the years, let us ponder longest upon the life of Lee, the man. Therein, perhaps, we may gather something of profit from the traits of character without which he could never have achieved that greatness which was his in all fields which he entered, but with which he became a living force and influence to which death and the hand of time have but added power to control men's minds and hearts.

Recently President Roosevelt said:

I join with you in honoring the life and career of that great soldier and high-minded citizen, whose fame is now a matter of pride to all of our countrymen. General Lee has left with us the memory, not merely of his extraordinary skill as a general, his dauntless courage and his leadership in campaign and in battle, but also of the serene greatness of soul characteristic of those who most readily recognize the obligation of civic duty. After the surrender the circumstances were such that most men, even of his high character, felt bitter and vindictive or depressed or spiritless, but General Lee's heroic temper was not warped nor his great soul cast down and after the surrender he said, "Let's go home and cultivate our virtues."

From the close of the war to the time of his death, all his great powers were devoted to two objects—to the reconciliation of all his countrymen with one another and to fitting the youth of the South for the duties of a lofty and broad minded citizenship.

Let us say with that peerless Georgian,

When the future historian shall come to survey the character of Lee, he will find it rising like a huge mountain above the undulating plain of humanity, and he must lift his eyes high toward Heaven to catch its summit. He possessed every virtue of other great commanders without their vices; he was a foe without hate; a friend without treachery; a soldier without cruelty; a victor without oppression and a victim without murmuring. He was a public officer without vices, a private citizen without wrong, a neighbor without reproach, a Christian without hypocrisy and a man without guile. He was Caesar without his ambition; Frederick without his tyranny; Napoleon without his selfishness and Washington without his reward. He was obedient to authority as a servant and royal in authority as a true king. He was gentle as a woman in life; modest and pure as a virgin in thought; watchful as a Roman vestal in duty; submissive to law as Socrates and grand in battle as Achilles.

Then, fold the standards o'er a cause that died, and history with her tragic pen shall prove, how well the South's ideal hero claims a Nation's homage and a Nation's love. ❏

<sup>1</sup> Major Blance was a Confederate veteran seated in the audience.

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# A PERSONAL INVITATION



By S. Kendall Butterworth

**F**ive years ago, I attended my first YLD meeting (actually, back then, the YLD was known as the Younger Lawyers Section, so it was technically a “YLS” meeting).

I remember wondering exactly what I was doing there, as I had come to the meeting knowing no one other than the YLS President-elect, Henry Walker, who was a partner in the law firm where I worked at the time. A few months earlier, Henry had stopped by my office and told me that I should consider becoming involved in the YLD. I vaguely remembered having heard about the YLD at the Bridge-the-Gap seminar I had attended earlier that year; but I wasn't sure that I wanted to get involved, or that I even had the time to get involved, being a first-year associate. I told him I would think about it.

A few weeks later, Henry returned to my office and told me that he had nominated me to run for a position on the YLD's Executive Council and that I needed to attend the Annual Meeting in Savannah to be present for the elections. I was speechless, but I attended the meeting. I soon met many other young lawyers who were active in the division. I even was elected to the Executive Council! I had a fabulous time, and I came back to the next meeting . . . and

the meeting after that . . . and the past five years, as they say, is history.

In retrospect, I am very thankful that I received personal encouragement to get involved with the YLD. Otherwise, I am not sure if I would have reached that decision on my own, and I would have missed out on the wonderful friends I have made and the incredible opportunities I have had to grow as a person and to serve my profession.

Many of you may never receive that same sort of personal encouragement from someone in your law firm or community, and that is why I am issuing a personal invitation to you to participate in the YLD. Whether you choose to join a committee or attend

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participate.**

the Executive Council meetings, there are numerous avenues through which you can participate in the division.

The YLD has 29 active committees that cover a broad range of subject matter from the Aspiring Youth Committee—the members of which tutor at-risk middle school children after school—to the Criminal Law Committee—which presents substantive CLE programs each year.

These committees are a great way to ease into the YLD, and I encourage you to watch your mail for the YLD committee brochure and return your form to sign-up for a committee.

Additionally, the YLD has Executive Council meetings throughout the year that are open to all YLD members. This year's remaining meetings will be in St. Simons, Atlanta and Asheville. You will want to mark your calendars for the Spring Meeting, which is a joint meeting of young lawyers from Georgia, North and South Carolina and Virginia. This meeting will be an excellent opportunity to meet other young lawyers from the Southeast and learn about the successful bar programs they have implemented in their states.

The YLD is waiting. It is your choice to participate, and I hope you will accept my invitation. ☐

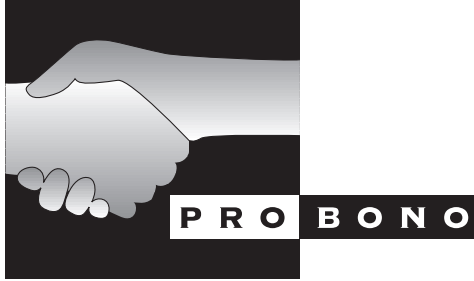
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6/00 p68**

# Local Bars Have a Swinging Good Time

**ON FRIDAY, MAY 12<sup>TH</sup>, MEMBERS** of the Alapaha, Cordele, Dougherty, Southern, South Georgia and Tifton Circuit Bars gathered for golf, tennis and a tasty barbecue dinner. The get-together was held at the Spring Hill Country Club and ABAC Tennis Complex in Tifton. If you would like assistance coordinating a social or tournament for the local bar association in your area, you may call the State Bar Satellite Office at (800) 330-0446. Below are some highlights:



**1. (l-r):** Greg Sowell of Tifton, John VanSant of Albany, Bill Cannon of Albany, and Tommy Pittman of Tifton. **2. (l-r):** Tournament winners Harvey Davis of Ocilla, Sandy Sims of Tifton, Brad Pierce of Albany, and Claude McCranie of Ocilla. **3. (l-r):** Brent Hyde of Tifton, Al Corriere of Albany, and Dan Williams of Cairo. **4. (l-r):** Janice and Art Shelfer of Thomasville and Al Corriere of Albany.



# Atlanta Legal Aid Fellowship Offers Experience and Teaches Lessons

By Karen Steanson

## IN 1995, ALSTON & BIRD

committed to send a second- or third-year associate to work full-time for four months at the Atlanta Legal Aid Society as a Fellow. This program of pro bono service addressed one of the Society's most pressing needs—assisting indigent citizens with cases requiring immediate and continuing attention.

Terry Walsh, partner at Alston & Bird and a member of the Society's Board of Directors, used Alston & Bird's experience to persuade other firms to send Fellows as well. Since then, three major Atlanta law firms—Ford & Harrison, Holland & Knight, and Troutman Sanders—have followed Alston & Bird's lead and sent eight of their best young associates to help Atlanta Legal Aid meet the needs of its clients. A fourth firm—Sutherland, Asbill & Brennan—has established an annual Fellowship at the Society in honor of Randolph W. Thrower's 60 years of service. Beginning this year, Sutherland's Fellowship will be awarded after a competition among its associates. All five firms know that the Fellowship Program is one form of pro bono service that rewards the donor as well as the recipient.

The benefits of the Fellowship Program for the Atlanta Legal Aid Society are significant. The program expands the Society's capacity to meet the needs of Legal Aid clients in the most desperate situations—those requiring immediate, continuous attention and

special expertise in some aspect of poverty law. For example, in the Downtown Legal Aid office, clients need protection from either eviction or domestic violence. These cases require both immediate court action and a working knowledge of either regulations for government-assisted housing or domestic relations law. Although Fellows work at Legal Aid a fairly short time, they can be effectively trained on these specific issues. With backup, they can handle these issues in court. Since Fellows work full-time at Legal Aid, they can also be expected to handle emergency matters.

The experience of Kristen Carpenter, Alston & Bird's second Fellow, illustrates how the theory has worked in practice. Kristen worked for the general intake unit of the Downtown office and was trained to handle emergency dispossessory matters. Since Kristen was not expected to handle a wide variety of cases, she quickly became knowledgeable about her specific area of practice. Working as a full-time Legal Aid staff member, she was able to respond quickly to emergency dispossessory cases, filing answers within a few days and then trying cases a week to 10 days after the answer was filed.

By becoming competent in one or two areas of law where client needs are most urgent—such as housing or personal safety—Fellows are able to increase the number of clients that Legal Aid can help. This increased capacity can be crucial for individual clients. Due to limited resources, Legal

Aid is not able to take on many cases—even though these potential cases are often in priority areas and may deal with critically important issues.

Staff attorneys at Legal Aid appreciate the help they receive from the Fellows in meeting the overwhelming need for services. Anne Bunton, managing attorney of the general intake unit at the Downtown office, says, "Having a Fellow allows us to accept clients that we would otherwise have to turn down because we simply cannot take all the cases that come in."

During their fellowships, these associates are paid full salary and enjoy all firm benefits, while they work at one of Legal Aid's offices in Atlanta, Decatur, or Marietta. There, the Fellow has a new boss, new colleagues, new cases, new crises and, most importantly, valuable opportunities for court time and responsibilities that only come much later at a large firm.

Professional growth comes in many forms. Mary Jo Schrade, a Fellow from Holland & Knight, says:

The biggest benefit I received from being a Legal Aid fellowship participant was the experience I was able to get in "thinking on my feet." We did not have the long spans of time commonly available in general litigation in order to contemplate our strategy, to conduct discovery, and the rest. Instead, we took dispossessory

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# What a Fellow Learns at Atlanta Legal Aid

By Jennifer Tourial

## A Lot about Dealing with Clients

- meeting them for the first time;
- convincing a client who is much older and who knows much more about life than I am able to handle his case and do a good job;
- determining whether to represent him based on his version of the case, which I learned isn't always the only version or even the most truthful version;
- explaining to her what will happen during the course of her case;
- determining how and when to let him go if we can no longer represent him, and making sure he is prepared to handle his case alone;
- handling clients with mental disabilities;
- preparing my client for mediation or trial;
- putting my client on the stand and covering up my surprise at what came out of her mouth; and
- really listening to a client even if her problems seem unrelated to the case I am helping her with because maybe someone else in the office can help her with her other issues.

## A Lot about Dealing with Lawyers

- trying to feel out whether they trust their client as little or as much as I trust mine;
- negotiating a settlement, either with or without the help of a mediator;
- actually settling a case and doing all of the paperwork and accounting that accompanies settlement; and
- just interacting with attorneys who have more experience and look a lot older than I do.

## A Lot about Handling Myself in Court

- how to respond to a client or witness who answers a question in an unexpected manner (notice how I avoided saying "lying"!); and how to recover when she does;
- how to answer the judge's tough questions;
- how to persuade a judge that my client's position

is not only legally valid but also the better position to take;

- how to navigate the courthouses in Fulton and Clayton Counties;
- how not to interject my own ideas into a cross examination since I am not the one under oath;
- how to move for directed verdict, or judgment as a matter of law—and get it; and
- how to persuade a judge that the reason my client had to pay so much for repairs was that he isn't a plumber, and that he called Sears, which was a reasonable thing to do, and that if his landlord had just made the repairs then he wouldn't have had to spend so much.

Of course, everything about the Legal Aid clients is just a little bit different. At Holland & Knight, we meet our clients at the Braves games and buy them beer and peanuts. At Legal Aid, I met a client at the game several times. She worked at Turner Field, and it was a good place for me to discuss her case with her because she didn't have a phone.

Some things I have learned have helped me as a person, in addition to as a lawyer. I have gained confidence and invaluable experience. I have been able to visit the homes of some of my clients, and I am now more able to appreciate what I have. And I have learned a lot about Atlanta, which has been my home my entire life.

## The Bottom Line

So, I have helped Legal Aid. The Family Law unit was able to whittle down its three-month waiting list and the Housing unit was able to go home before dark every once in a while.

And I really have helped my firm. Not only has Holland & Knight done a terrific thing for the community, but it has also gotten a lot of free training for me. I am leaving here better equipped to work with clients and lawyers and judges, and I am a more mature attorney and person.

So, the question isn't whether I could have learned everything I have learned here at the firm.

The question is whether the experience is important. And the answer is yes. ☐

cases from intake to hearing in about three weeks. The dispossession hearings were usually full of surprises from an evidentiary standpoint. Getting that kind of experience as a junior associate was invaluable to me.

Fellows frequently speak of both professional and personal enrichment as a result of their service at Atlanta Legal Aid. Prompted by his experience as a volunteer in 1964, which he remembers as “good legal training and good life training,” C. Lash Harrison of Ford & Harrison sent one of his firm’s young attorneys, Kevin Mencke, as a Fellow in 1998. Kevin recalls some of his cases and their impact on him:

The clients that I served during my work in the Cobb office stay in my memory:

The eighteen-year-old woman, disabled and living on Social Security, who was threatened with termination of her Section 8 housing because her parents had damaged the building and moved away. Unless she paid for repairs, she faced homelessness.

Tenants in an apartment complex who discovered that the property had been sold and were ordered by the unscrupulous new owner to get out for five days so that “renovations” could be done. Their clothes and furniture were severely damaged as the “five days” became a month, and more.

The woman, repeatedly and brutally beaten by her husband in front of her children, who could see no way out because she was desperate and trapped by her ignorance of the law.

For these people—and many like them—during my four months’ work with the Atlanta Legal Aid Society, my

counsel made a material difference. The power of the law to help them and the weight of my responsibility to represent them well were sobering reinforcements to truths I already knew. I’m back at my law firm now, but the experience of Atlanta Legal Aid stays with me. I’m a better lawyer and, maybe, a better human being than I was.

A third-year associate at Troutman Sanders, Damien S. Turner returned to his firm feeling:

fortunate that Troutman Sanders and my section chief, Jack Dalton, as part of their support for Atlanta Legal Aid and pro bono work, are committed to the Fellowship Program. . . . It allowed me to try numerous cases and appear before over twenty-five judges. Rarely do associates at my level get to try a lot of cases. I recently tried and won my first jury trial on behalf of Troutman, and I am certain that I was more comfortable in the courtroom because of my experience at Atlanta Legal Aid.

On a personal level, Damien speaks with gratitude of the “opportunity to help so many indigent individuals that were in dire need of legal representation. Just knowing that my assistance made a difference for so many is truly rewarding.” Berryl Anderson, who supervised his work in the DeKalb office, remembers a thank-you call from one of Damien’s clients who was suffering from domestic violence. Despite being ordered to do so as part of a temporary protective order, the adverse party had refused to allow the client to get her furniture and personal belongings from a storage facility. At the contempt hearing, Damien convinced the judge to order that the client have immediate access to the

facility. After the parties left the courtroom, Damien accompanied his client to the storage facility, took off his coat and tie, and climbed over boxes to help her retrieve the furniture and personal items that she needed for her new life. Only when the waiting U-Haul van was fully packed did he consider the case closed. Berryl Anderson reflected, “He certainly went the second mile and showed that combination of good advocacy and compassion that helps our clients know that they are more than ‘cases.’ It was an honor and a privilege to supervise him.”

A tangential benefit to Atlanta Legal Aid is the continuing commitment to pro bono work that the Fellowship Program engenders. Kevin C. Wilson of Alston & Bird remembers the collegial relationships that formed so easily there:

What was so wonderful was developing relationships with all of the attorneys and staff. It was very easy to become a part of the Legal Aid family because people were so open to having me there. I didn’t feel like an outsider; I felt like I was an integral part of everything that was going on at Legal Aid. I learned a lot from all of the attorneys and could talk to anyone in my unit. I was given a lot of independence but always had a support group if I had some particular question or a new aspect of the law to get my arms around.

Mary Jo Schrade of Holland & Knight says, “I got a newfound appreciation for what the lawyers at Atlanta Legal Aid do, and on a limited budget. I was very impressed with the excellent work they were able to do for their clients with relatively outdated equipment and with significantly less support

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**CONTINUED ON PAGE 69**



## In Atlanta

**Ben F. Easterlin IV** has joined the firm of **King & Spalding** as a partner in their business litigation practice. Easterlin, who practices primarily in commercial litigation, has held several positions with the State Bar of Georgia including President (1996-97), Treasurer (1992-95) and member of the Bar's Board of Governors since 1987. He will work in the firm's Atlanta office, located at 191 Peachtree Street, Atlanta, GA 30303-1763; (404) 572-4600.

**Carl H. Triesmann** has joined **Schnader Harrison Segal & Lewis LLP** as counsel in the firm's Atlanta office. Triesmann earned his J.D. with honors from Tulane University School of Law and is admitted to practice in both Georgia and Illinois. Schnader Harrison is a 300-lawyer firm with a national and international practice. Visit the firm's Web site at [www.schnader.com](http://www.schnader.com).

**Special Counsel** has named **Lou Beltrami** Executive Director of their Atlanta office. Special Counsel provides quality, cost-effective, temporary and direct-hire placement of legal personnel, as well as trial, document management and consulting services. The company is a subsidiary of Modis Professional Services Inc. The Atlanta office is located at 100 Colony Square, Suite 840, Atlanta, GA 30361; (404) 872-6672.

**G. Brian Raley** has formed **The Raley Law Firm**, practicing commercial and business litigation. The office is located at 15 Piedmont Center, 3575 Piedmont Road, NE, Suite 1070, Atlanta, GA 30305; (404) 841-9000.

The Atlanta-based law firm of **Powell, Goldstein, Frazer & Murphy LLP** announces that **Gavin S. Appleby** has rejoined the firm's Atlanta office as head of their growing labor and employment group. Appleby previously left the firm to become chief litigation counsel for Kimberly-Clark Corporation, a Powell Goldstein client. Visit the firm's Web site at [www.pgfm.com](http://www.pgfm.com).

Corporate and securities attorney **Gerald (Jerry) L. Baxter** has joined the Atlanta office of **Greenberg Traurig LLP** as of counsel. Baxter is a member of the American Bar Association's Section of Business Law and the American Association of Corporate Secretaries. Greenberg Traurig LLP is a full-service international law firm with more than 600 attorneys practicing in 18 cities. The firm's Web site at: [www.gtlaw.com](http://www.gtlaw.com),

**Troutman Sanders LLP** has expanded its intellectual property and technology practice group with the addition of seven attorneys and one patent agent. The attorneys are: **Todd Deveau, Harold L. Marquis, Charles L. Warner, Ryan A. Schneider, Caroline T. Coker, Alexandrina H. Douglass** and **Terance Madden. Jacqueline Haley** is the new patent agent for the firm, located at Bank of America Plaza, Suite 5200, 600 Peachtree Street, NE, Atlanta, GA 30308-2216; (404) 885-3000.

## In Augusta

**Hull, Towill, Norman, Barrett & Salley PC** announces that **Timothy E. Moses** and **N. Shannon Gentry Lanier** have become members of the firm. Also, the following have become associated with the firm: **James M. Holly**, former chief of staff of the South Carolina State Treasurer's Office; **Darren G. Meadows**, formerly with the Georgia Environmental Protection Division; and **James S. V. Weston**, former law clerk to the judges of the Superior Courts of the Augusta Judicial Circuit. The firm is located at 801 Broad Street, Suite 700, Augusta, GA 30901; (706) 722-4481.

## In Cartersville

**Jenkins & Nelson PC** welcomes member **Peter R. Olson** and associates **Jeffrey M. Hood** and **John R. Weech** to the firm, located at 15 S. Public Square, Cartersville, GA 30120; (770) 387-1373.

## In Norcross

The law firm of **Thompson, O'Brien, Kemp & Nasuti PC** announces that **Ron C. Bingham II, Daniel E. Tranen**, and **John M. Duffoo** have become associated with the firm, which is located at 4845 Jimmy Carter Boulevard, Norcross, GA 30093; (770) 925-0111. ☐

# Sections Host Annual Meeting Events

Annual meeting fun began with the Opening Reception, co-sponsored by 17 State Bar Sections. This first-ever sponsorship resulted in a huge reception offering a host of food and beverage stations. The band, The Fabulous Expressions, played on as attendees danced. A variety of door prizes were handed out, and the Lawyers Foundation conducted a silent auction, where bidding was spirited.

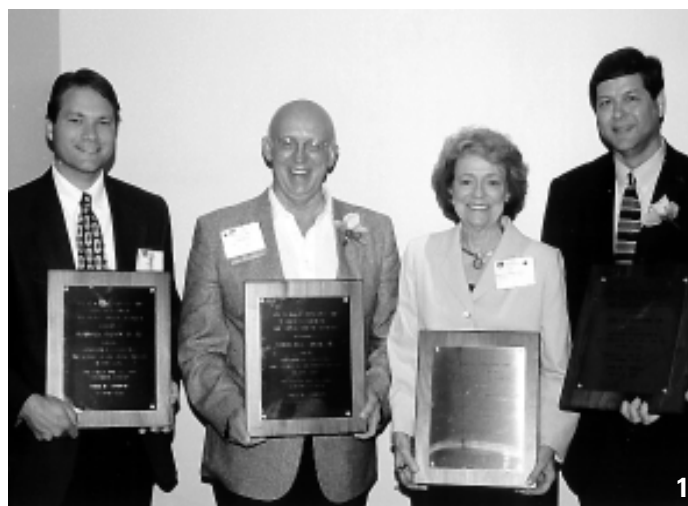
## Section of the Year

The Computer Law Section, led by Chair, Jeffrey R. Kuester (photo 3), took home this prestigious award. Jeff was not able to attend the awards ceremony, as his son Sims Davenport Kuester was born on Father's Day! See photo 2 and caption for Achievement Award winners.

## Wild and Crazy Section Booths

Two booths represented the General Practice & Trial Section and the other 32 Sections during the 2000 Annual Meeting. If there had been a prize for the most colorful and entertaining booths, our Sections would have won! Booth prizes and other goodies were handed out to meeting attendees. ☒

—Lesley T. Smith, Sections Liaison

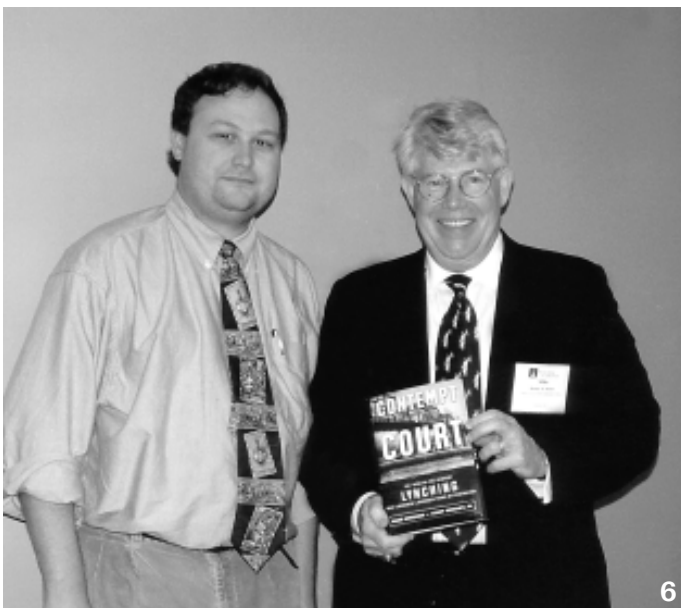


**1. The General Practice & Trial Section's Tradition of Excellence Awards** were presented at their annual breakfast. The winners were: (l-r) General Practice Category-Denmark Groover Jr. (his son, Duke, is pictured accepting on his behalf); Defense category-Cubbedge Snow Jr.; Judicial Category-Judge Faye Sanders Martin; Plaintiff Category-Joel O. Wooten Jr.

**2. Achievement Award Winners :** (l-r) Products Liability Law Section, Stephanie E. Parker, Chair (Aasia Mustakeem pictured accepting); Aviation Law Section, E. Alan Armstrong, Chair (Carlton Joyce pictured accepting); and Administrative Law Section, Frances Cullen Seville, Chair; Real Property Law Section, Carol V. Clark, Chair (not pictured).

**3. The Computer Law Section, led by Chair and proud father Jeffrey R. Kuester** was named Section of the Year.





**1. Pictured at the Individual Rights Law Section Breakfast:** (Standing) Mike Monahan and Lisa Krisher. (Front row) Chair Susan Garrett, Ayres Gardner, Robert Brown and Phyllis Holmen. **2. The Senior Lawyers Section drew a crowd:** (l-r) Former Chief Justice Harold G. Clarke, David Gambrell, Chair John Comer, Morris Macey, Paul Cadenhead, Carl Westmoreland. **3. Pictured at the Family Law Section breakfast:** (Standing) Incoming Chair Robert Boyd. (Seated, left to right) former Chair Carl Pedigo and Elizabeth Lindsey, Vice Chair. **4. Taxation Law Section :** (l-r) Aaron Hawthorne, Outgoing Chair Richard Morgan, Richard Litwin and former Chair Lyonnnette Davis. **5. School & College Law Section members visit at breakfast:** (l-r) John Comer, Pat McKee, Al Evans and Brian Kintisch. **6. The Criminal Law Section hosted Mark Curriden** (left) of the *Dallas Morning News*, who spoke about his new book, *Contempt of Court*, the content of which has been described as "the turn-of-the century lynching that launched a hundred years of federalism." Curriden is pictured with Section Chair Mike Mears. **7. Workers Compensation breakfast:** Outgoing Chair Lisa Wade turns over the Section reins to Tom Holder of Atlanta. The Section presented its first Distinguished Service Awards at its luncheon, and chief Justice Robert Benham addressed the attendees. Honored were the late William V. George and Charles L. Drew. **8. Betty Simms, Executive Director of the General Practice & Trial Section, hosted their festive booth.**





# THE NATURE OF JUSTICE: SELECTED LITERARY CLASSICS

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By Marisa Anne Pagnattaro

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## NEARLY A HUNDRED YEARS HAVE PASSED

since John H. Wigmore, a former dean, professor, and expert on evidence at Northwestern University, first published his list of 100 legal novels. Believing that a novel is a “catalogue of life’s characters” and that the problems lawyers must solve “call for a perfect understanding of human character and a skillful use of this knowledge,” Dean Wigmore was an early advocate for the literary education of lawyers as a way of learning about human nature. In the early seventies, James Boyd White continued this tradition by formally reintroducing law students to literature with *The Legal Imagination*. Rooted in the idea that “a legal education can be a liberal education,” White is an enduring voice for the importance of understanding the complexity of the law through other cultural forms such as art and literature.

During the last two decades, a number of scholars continued to probe the relationship between law and literature. Early on, the prolific Richard Posner explored the “commonalities and intersections” between the law and literature. In his 1998 revised and expanded edition of *Law and Literature*, however, he continues to maintain—to the consternation of many—that the “differences [between the two disciplines] are just as important,” noting that “Law is a system of social control . . . illuminated by the social sciences and judged by ethical criteria” whereas “Literature is an art” best interpreted and evaluated by aesthetic methods. Despite his assertion, a number of legal scholars see meaningful interdisciplinary connections.

The philosophical debate may rage on in academic circles, yet there can be no dispute about the power of literature to stimulate thinking on the nature of justice. Literature is a powerful tool to explore jurisprudential issues, consider the social context of laws and to look critically at legal systems. With this in mind, the following list of books

is intended to inspire thinking about the law, which transcends the daily demands of legal practice.

**Plato *Crito*** (c.399 B.C.) In this brief dialogue, Crito tries to convince Socrates, who has been condemned to death, to escape from prison. Refusing to break the law of Athens, Socrates implores, “Do you imagine that a city can continue to exist and not be turned upside down, if the legal judgments which are pronounced in it have no force but are nullified and destroyed by private persons?”

**Aeschylus *The Eumenides*** (performed 458 B.C.) The third play in the *Oresteia*, Aeschylus’ trilogy of tragic dramas, Orestes stands trial for matricide. The Furies are his accusers and Apollo is his advocate. When the jury is evenly divided, Athena casts the tie-breaking vote in Orestes’ favor. The Furies thus unleash their anger on the city until Athena restores the state to order by persuading the raging Furies to reside there as protective goddesses.

**William Shakespeare *Merchant of Venice*** (performed 1596-97, printed 1600) Antonio borrows money from Shylock on the condition that if the loan cannot be repaid in time, Antonio will forfeit a pound of flesh. Disguised as a man, Portia defends Antonio in court, delivering her famous quality of mercy speech, thereby prompting readers to consider whether mercy should “season justice.”

**Catharine Maria Sedgwick *Hope Leslie*** (1827) In this historical novel about 17<sup>th</sup> century New England, Sedgwick confronts readers with the effects of the Pequot War, laying bare the subjugation and displacement of Native Americans. During the memorable trial of Magawisca, a Pequot woman accused of subversive activity, the accused contends, “I am your prisoner, and ye may slay me, but I deny your right to judge me. My people have never passed under your yoke—not one of my race has ever acknowledged your authority.”

**Nathaniel Hawthorne *The Scarlet Letter*** (1850) Little needs to be said about the plot of this well-known

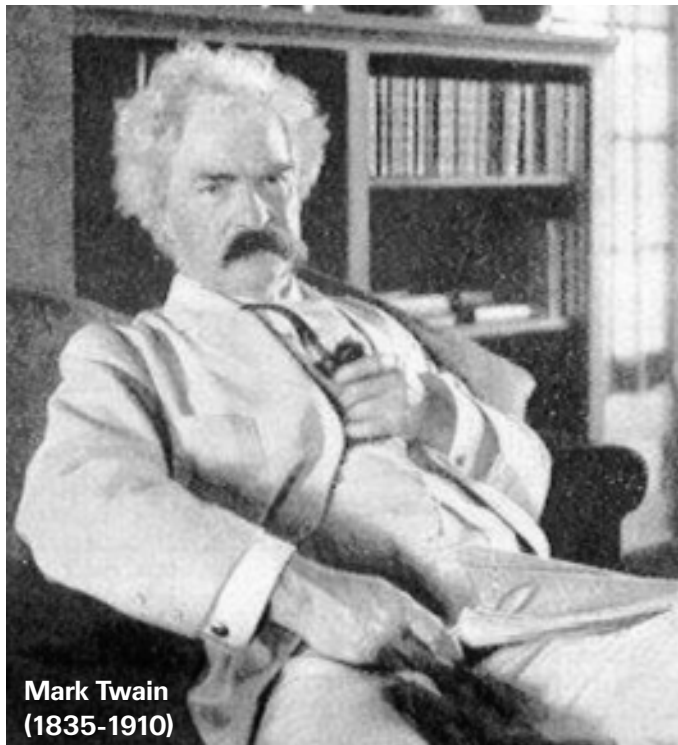
text; however, it is interesting to note that the sexual double standard seen throughout time holds Hester Prynne fully accountable, whereas little action is taken to reveal the identity of her partner, Arthur Dimmesdale, leaving him without public censure.

**Victor Hugo *Les Misérables*** (1862) Jean Valjean, a peasant trying to feed his sister's starving family, is imprisoned for five years for stealing a loaf of bread. When he unsuccessfully tries to escape, he is given a 19-year term in the galleys. Thereafter, he becomes a hardened criminal who, amazingly enough, reforms becoming a successful industrialist and mayor. Undaunted by Valjean's re-entry into society, police inspector Javert relentlessly pursues the former criminal, forcing Valjean to eventually give himself up. Just what does it mean to "pay for one's crime"?

**Fyodor Dostoevsky *Crime and Punishment*** (1866) Raskolnikov, a student of the theory that humanitarian ends justify evil means, is lead to murder an old woman money lender and her sister. The narrative follows Raskolnikov's descent into hellish guilt as he struggles with his conscience, realizing that even though he has committed the "perfect crime" his justifications for the killings are false. This is a powerful psychological meditation on guilt, retribution and humanity.

**Herman Melville *Billy Budd, Sailor*** (written 1891, published posthumously 1924) Beautiful, innocent sailor, Billy Budd, is provoked to murder by the villainous master-at-arms, Claggert. Captain Vere's decision to hang Billy for the crime represents the triumph of law; Melville prompts readers to consider the question: At what point does the law become civilized corruption?

**Mark Twain *Tragedy of Pudd'nhead Wilson*** (1894) In this story about miscegenation, Twain presents grim reflections about slavery and responsibility. Roxana, a light-skinned slave, attempts to spare her son from slavery by switching her baby with her master's son. The deception is discovered twenty years later; the differences in the two men starkly reflect the discrepancy in their upbringing, suggesting that the traits of slaves are learned, not innate.



Mark Twain  
(1835-1910)

**Charles Chesnutt *The Marrow of Tradition*** (1901)

Chesnutt based this novel on the Wilmington, North Carolina Massacre of 1898, a "race riot" orchestrated by white Democrats who resented the growing political power of black Republicans. The story, told using two intertwining prominent families, depicts the human effect of *Plessy v. Ferguson* and the post-Reconstruction dilemma of assimilation versus protest.

**Franz Kafka "In The Penal Colony"** (written 1914, published 1919) This story is narrated by a traveling anthropologist who visits a penal colony where he learns about a horrifying torture apparatus used for execution. A bizarre

allegorical fantasy about law and punishment, the story details the work of the officer who is fanatically devoted to the operation of the machinery of death.

**Susan Glaspell *Trifles*** (produced 1916) "**A Jury of Her Peers**" (1917) First produced as the play *Trifles* then reworked as the short story "A Jury of Her Peers," Glaspell uses the murder of a farmer and the ensuing investigation of his wife to expose the different ways that men and women view the world. In their narrow search for clues, the men conducting the investigation fail to uncover the key evidence that has been discovered by the women who accompany them.

Instead of turning over the evidence, the women use empathy to acquit the suspect in a defacto trial of her peers. The story raises questions about juror nullification and the female system of ethics that displaces the patriarchal system of justice.

**Theodore Dreiser *An American Tragedy*** (1925)

Loosely based on an actual murder, Dreiser portrays the dark side of the American Dream and the extent to which one will go in his quest for wealth. In Clyde Griffith's attempt to rise from poverty and fantasy that he might marry a wealthy socialite, he plots to drown his pregnant factory-worker girlfriend. Even though Clyde cannot go through with the deed, the woman ironically dies when the boat accidentally overturns. The ensuing prosecution and conviction also point to the uneasy connection between the operation of justice and the political ambition of the district attorney.

**William Faulkner *Sanctuary*** (1931) Much less complex

than many of Faulkner's other novels, *Sanctuary* is the story of the brutal kidnapping of a Mississippi debutante and her witness of the murder of a man. Human venality and vigilante justice largely prevail over the legal system.

**Richard Wright *Native Son*** (1940) James Baldwin assailed Wright for the publication of this book, yet its power to make readers think about the social forces that underlie some crimes is undeniable. The book chronicles the demise of Bigger Thomas, a young African American who is tried for two murders. The defendant is a controversial and haunting reminder of the effects of poverty and racial discrimination.

**Albert Camus *The Stranger*** (1942) True to Camus' reputation, Meursault, the title character, is emotionally detached from a seemingly absurd world. In the hot Algerian sun, he shoots an Arab in what appears to be almost an involuntary act. Yet because this arguably defensible act is followed by the deliberate firing of four more shots into the inert body, Meursault's defense is severely undercut. What ensues is an existential reflection about life in which Meursault ultimately transcends his sense of futility and lays his "heart open to the benign indifference of the universe."

**Arthur Miller *The Crucible*** (1953) This play about the witchcraft trials in 17<sup>th</sup> century Massachusetts dramatizes the hysteria that swept through Salem. The obvious parallels with Senator Joseph McCarthy's allegations of communist conspiracies were not lost on contemporary audiences. The drama, however, thematically transcends the politics of the time in its consideration of the importance of internal fortitude, self-knowledge and humane values in the face of fear, false morality and self-preservation.

**Harper Lee *To Kill a Mockingbird*** (1960) "First of all," [Atticus] said, "if you can learn a simple trick Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it." This classic should be required reading for the Bar Exam. If more lawyers were like Atticus Finch, the profession might be restored to its once venerable status.

**Norman Mailer *The Executioner's Song*** (1979) This is an absorbing fictionalized account of the twisted life of Gary Gilmore, a convicted murderer who was executed in 1977. Using recorded testimonies of many who knew Gilmore, including his lover, friends, victims, psychiatrists, police officers and others associated with the judicial process, Mailer recreates the senseless killings in the context of Gilmore's tormented world.

**Tom Wolfe *The Bonfire of the Vanities*** (1987) The deal making and social climbing of the self-absorbed 1980s are embodied in Sherman McCoy, the aristocratic-chinned Wall Street bond trader who takes a wrong turn in the Bronx. Out of his Park Avenue element, the hapless McCoy's

demise in the criminal justice system is aided by a host of memorable satirical and unsavory characters.

**Tim O'Brien *In the Lake of the Woods*** (1994) After spending years building a successful political career, John Wade's future is derailed during a bid for the U.S. Senate by revelations about his involvement in a My Lai-like massacre. Losing the election by a landslide, Wade and his wife, Kathy, seek seclusion in a small cabin on the shores of a Minnesota lake. Kathy mysteriously disappears. The chapters in this novel alternate between what appears to be the facts of the story, hypotheses about what happened, and lists of evidence — including "interviews" with friends and family members.

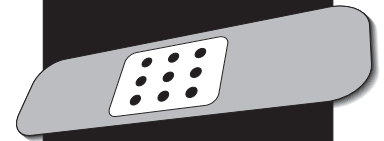
**William Gaddis *A Frolic of His Own*** (1994) This winner of the National Book Award is a rich satire of our litigious society. At the center of the novel is Oscar Crease, the grandson of a Confederate soldier who cleverly avoided a battle by invoking a legal clause that allowed him to hire a substitute. Crease writes a play about his grandfather who later became a Supreme Court judge. The play is never produced, yet it appears to be the basis of a big-budget Hollywood film. Lots of litigation ensues: Crease's cause of action is the catalyst for nearly 20 other lawsuits of varying degrees of frivolousness.

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Insurance Specialists pickup pg 61 from june





## 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 .....	Henry Troutman .....	(770) 980-0690
Atlanta .....	Brad Marsh .....	(404) 876-2700
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
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

## Continued from page 62

staff than most law firms have.”

Clearly, the Fellowship Program has been of mutual value to Atlanta Legal Aid and to the firms who have sent their young associates to learn, in a vivid way, why the canons of ethics direct lawyers to provide legal services to the poor. As Neil Williams, who was managing partner of Alston & Bird when that firm launched the Fellowship Program, said recently, “I remain convinced that this is one of our best initiatives. In some ways, it means more to all concerned to give direct service than it does to give money. We have learned a lot, and I think we have done some good.” ☒

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*Karen Steanson has been Director of Development of the Atlanta Legal Aid Society since August 1998. Her responsibilities include management of the recent campaign for the Society's Endowment Fund (raising over \$1 million in outright gifts and deferred commitments from individuals) and the Annual Bar Campaign, communications, foundation proposals, and special events — such as the celebration of the Society's 75<sup>th</sup> Anniversary throughout 1999. She has a Ph.D. in English literature and an MBA from Yale University.*

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## DISCIPLINE NOTICES (April 27-June 12, 2000)

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### Disbarred

#### **Eric Stanley Ogrey Lovejoy, Georgia**

Eric Stanley Ogrey (State Bar No. 001655) voluntarily surrendered his license to practice law in the State of Georgia. The Supreme Court accepted Ogrey's surrender by order dated May 1, 2000. Ogrey pled guilty to methamphetamine possession in January 2000 in Henry County.

#### **Scott Michael Bremus Suwanee, Georgia**

Scott Michael Bremus (State Bar No. 079368) voluntarily surrendered his license. The Supreme Court accepted Bremus' surrender by order dated May 1, 2000. While employed by a law firm Bremus fabricated certain documents and made false statements regarding the filing of motions and creation of documents.

#### **Ike Emmanuel Duru Atlanta, Georgia**

Ike Emmanuel Duru (State Bar No. 235880) petitioned the Supreme Court for voluntary surrender of license. On May 30, 2000, the Court accepted Duru's petition. Duru pled guilty to three counts of false tax returns and two counts of structuring currency transactions.

### Suspensions

#### **James Joseph Gormley III Atlanta, Georgia**

On May 1, 2000, the Supreme Court accepted the petition of James Joseph Gormley, III (State Bar No. 302682) to suspend him from the practice of law pending the termination of the appeal of his felony conviction.

Gormley was convicted of conspiracy, money laundering, aiding and abetting, and false declaration before the court.

#### **Adam Edwin Aronin Atlanta, Georgia**

Adam Edwin Aronin (State Bar No. 023710) petitioned the Supreme Court for voluntary discipline. On May 1, 2000, the Court accepted Aronin's petition and suspended him from the practice of law for eighteen months. Aronin was suspended for continuing to practice law after receiving notice that he was suspended for failure to complete his CLE, and for failure to pay his dues.

#### **Richard O. Ward Augusta, Georgia**

Richard O. Ward (State Bar No. 737315) petitioned the Supreme Court for voluntary discipline. On May 1, 2000, the Court accepted his petition and suspended him indefinitely from the practice of law. Ward abandoned a client's case and made a false statement regarding the documents he filed on the client's behalf. Ward must obtain certifica-

tion of mental fitness from the Lawyer Assistance Program, and must meet other conditions prior to being reinstated.

#### **Lynn J. Barrett Ft. Lauderdale, Florida**

Lynn J. Barrett (State Bar No. 039700) petitioned the Supreme Court for voluntary discipline. On March 11, 1999, the Supreme Court of Florida suspended Barrett from the practice of law in Florida for a period of three years for numerous disciplinary violations.

Suspension in one state is a ground for suspension in another. On May 1, 2000, the Supreme Court of Georgia suspended Barrett from the practice of law in Georgia for as long as she remains suspended in Florida. The Court also placed several conditions on Barrett's reinstatement.

#### **David Lee Judah Atlanta, Georgia**

David Lee Judah (State Bar No. 405605) petitioned the Supreme Court for voluntary discipline. On May 2, 2000, the Court suspended him from the practice of law for three years with conditions on Judah's reinstatement. After filing bankruptcy petitions for several clients, Judah did not communicate with them, took no action on their behalf, and failed to return fees. He also failed to respond to the State Bar disciplinary authorities. Further, he misrepresented to counsel for the bankruptcy trustee the nature of the undisclosed and unex-

plained fee payment made to him by his client. On four occasions, he failed to account for client funds he held on behalf of the client.

**Dewey N. Hayes, Jr.  
Douglas, Georgia**

On May 2, 2000, the Supreme Court suspended Dewey N. Hayes, Jr. (State Bar No. 339906) for eighteen months with certain conditions to be met prior to reinstatement. Hayes misused client trust funds at various times during an eight-month period. In defense of his conduct Hayes acknowledged that he suffered from major depressive disorder and certain physical ailments.

**Eric Vann Ross  
Atlanta, Georgia**

Eric Vann Ross (State Bar No. 615128) petitioned the Supreme Court for voluntary discipline. On May 30, 2000, the Court accepted Ross' petition and ordered a twelve month suspension with conditions for reinstatement. In May 1997, Ross received \$169,609.60 on behalf of an estate. Although Ross placed the funds in his escrow account and subsequently disbursed \$120,710 to the heirs, he commingled the remaining funds with his own to cover office expenses.

In August 1998, his client retained another lawyer, who asked Ross to deliver documents and the remaining funds to him. Ross did not respond until May 1999, when he delivered a check in the amount of \$40,000 to the client's new attorney.

**Herbert Alan Zoota  
Duluth, Georgia**

On June 12, 2000, the Supreme Court suspended Herbert Alan Zoota (State Bar No. 786098) for one year. Zoota agreed to represent a client in regard to the client's efforts to domesticate and collect a Florida judgment. Although the client paid Zoota in advance, he failed to pursue

collection. Zoota also failed to return his client's calls.

After an attorney with the Consumer Assistance Program requested that he call his client, Zoota informed the attorney that the statutory time had passed after domestication of the judgment. Zoota said he would call the client later after he had obtained certified copies from the clerk.

Zoota did not provide certified copies and continued to fail to reply to telephone calls. The client finally requested his paperwork and court documents. Zoota failed to participate in the disciplinary process.

**Harry L. Trauffer  
Marietta, Georgia**

Harry L. Trauffer (State Bar No. 715750) petitioned the Supreme Court for voluntary discipline. On June 12, 2000, the Court suspended Trauffer's license for six months and ordered him to receive a Public Reprimand. Trauffer directed members of his non-lawyer staff to solicit professional employment for him through direct personal contact by telephone with non-lawyers who had not sought his advice regarding employment of a lawyer. Trauffer also split fees with his non-lawyer staff, and improp-

erly withdrew from representing a client in a criminal case.

## Public Reprimands

**John L. Creson  
Augusta, Georgia**

On April 28, 2000, the Supreme Court ordered John L. Creson (State Bar No. 195950) to receive a Public Reprimand. Creson practiced law while he was under an interim suspension.

## Impairment

**Wallace Anthony Kitchen  
Columbus, Georgia**

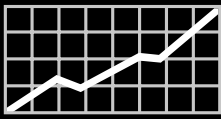
Wallace Anthony Kitchen (State Bar No. 424350) petitioned the Supreme Court for voluntary discipline. On May 26, 2000, the Court accepted the petition and ordered Kitchen to 1) continue treatment for alcohol abuse, 2) direct his counselors to file monthly reports with the Office of the General Counsel for 18 months, and 3) have sole responsibility for ensuring that the reports are filed by the tenth day of each month, beginning with the month after the entry of this order. Kitchen acknowledged that he is an alcoholic, and admitted that he must remain sober in order to retain his license.

## Book Reviews continued from page 68

**Alfredo Vea *Gods Go Begging*** (1999) Vea, a criminal defense attorney whose masterful prose invokes that of Gabriel García Márquez, begins his story with a brutal double execution of two women on the edge of a San Francisco ghetto. Jesse Pasadoble, a former infantry soldier with tortured memories of Vietnam, undertakes the defense. The novel moves between the past and present, weaving Pasadoble's nightmares of a deadly battle on the Laotian border with his defense of the 12-year-old boy who is accused of the murder. *Gods Go Begging* is quite appropriately promoted as a "profound meditation on war, race, history, and desire." ☞

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*Marisa Anne Pagnattaro is a Terry Teaching Fellow at the University of Georgia Terry College of Business. She received a J.D. cum laude from New York Law School and a Ph.D. in English from the University of Georgia. She was a litigation attorney with Kilpatrick & Cody (now Kilpatrick Stockton LLP) in Atlanta for five years before deciding to go to graduate school. She is the author of numerous literary articles and the forthcoming book From Anne Hutchinson to Toni Morrison: Women and Justice in American Literature. She has been a member of the Georgia Bar Journal editorial board since 1995.*



# Properly Communicating With Your Clients

By Natalie R. Thornwell

## AS A NEW GEORGIA BAR

*Journal* writer, I decided to provide some practical tips on communicating with clients. After all, not returning client phone calls is one of the main complaints against attorneys. The Law Practice Management Program hopes to assist you in enhancing the way you communicate with your clients and improving the delivery of legal services.

Well, how can you better communicate with clients? The practice management answer is with systems and procedures. By closely evaluating your communication systems and procedures and making some appropriate adjustments, you can tackle the problem of not returning calls and other client relations problems. Don't be surprised if these solutions improve interoffice communication and relations, too.

First, look at all the ways attorneys "communicate" with clients:

- Over the telephone
- Via voice mail
- Via facsimile
- In person
- Via mail
- Via e-mail
- Via billing statements
- Via client newsletters, firm brochures, Web sites and other marketing materials

Then, examine your systems and procedures in each of these areas to make your communication with clients more effective. Ask if the system is adequate and up-to-date? Is this the most effective system for

your firm's needs? Are your firm's written policies and procedures efficient when implemented? Do you need to change your systems and procedures?

## Today's Telephones

*Telephone systems.* Is your system antiquated? Begin to monitor call volume and quality. Check the need for additional lines and advanced features. Do you have a good support contract in place to handle problems quickly? Also, most of today's case management software programs include a means of tracking telephone traffic and integrating this information with contact, file, calendar, and timesheet information.

Don't forget to check your mobile systems, too. Cellular phones are standard tools for many attorneys. Check cellular service plans for efficiency and cost savings. Log onto [www.point.com](http://www.point.com) or the new [wireless.cnet.com](http://wireless.cnet.com) to evaluate and compare cellular telephones, service plans, and other wireless accessories. Contact our LPM program for more detailed information on choosing an appropriate telephone system and related services for your firm.

*Telephone Procedures.* Do you know how to use your telephone system's features? Can you place conference calls? Redirect or transfer calls? Try to have all staff trained on proper use of all equipment. Utilize a phone call policy. If possible, return calls at a certain time of the day as a general rule. Have your assistant or secretary handle calls for you on status reports and the like, but

remind clients that your assistant will not give any legal advice. Don't give out your cellular phone or pager number. Try to route all calls through your office instead. Minimizing interruptions will allow for more time to do legal work. For a sample phone call policy (and other policies and procedures), visit our program's Web site at [www.gabar.org/lpm.htm](http://www.gabar.org/lpm.htm).

## Effective Voice Mail

*Voice Mail Systems.* Call on us also for assistance in evaluating your voice mail system needs. How difficult is it to access details about a message on your system? Does it allow for several voice mailboxes and a directory listing? Is it simple for you to set up your voice mail system and for callers to navigate through it? Are you able to forward, save, and delete messages easily? These are just some of the questions that will help you determine the usefulness of your voice mail program.

*Voice Mail Procedures.* Be sure you have recorded an appropriate voice mail message for callers. Record a message giving notice of when you next expect to be available and how to get more assistance when needed. Directions to the firm, firm hours, the firm's fax number, and notice of holidays are often left on voice mail systems. Don't forget to check your voice mail regularly.

CONTINUED ON PAGE 76

**Judge Charles B. Mikell Jr.** was sworn-in as the newest member of Georgia's Court of Appeals on May 31, 200 by Gov. Roy E. Barnes. The former Chatham Superior Court judge replaces Presiding Judge William L. McMurray Jr. who retired earlier this year.

**St. Thomas More Society Georgia**, an Atlanta-based guild of Catholic lawyers, has elected the following officers for its 2000-2001 term: President **George P. Graves**, Decatur; President-elect **James R. Sacca**, Atlanta; Treasurer **The Hon. Richard J. McCully**, Atlanta; and Executive Secretary **Diane Graves**, Decatur.

The **American Law Institute-American Bar Association** presented the **Harrison Tweed Award** for Special Merit in CLE to **Professor Ronald L. Carlson** of the University of Georgia School of Law at a July 9<sup>th</sup> reception held at the Hilton New York Hotel, in conjunction with the Annual Meeting of the American Bar Association. Carlson has been a prodigious, innovative teacher and coach to practicing lawyers for nearly 30 years. By addressing issues of civility from a very practical standpoint, he has inspired countless lawyers to raise their standards of professionalism.



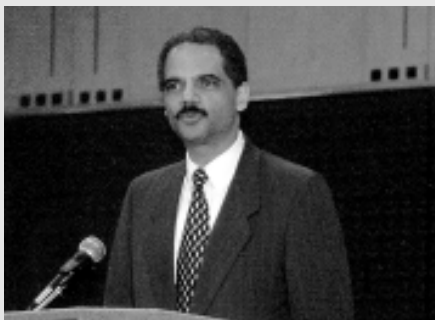
Volunteers are pictured in front of the mural they painted: (kneeling) Chelle Rivers; (l-r) Sonia Macias, Joe Bruckner, Sallie Purris, Randy Cadenhead, Mary Kewer (in front), Harry Lightely, Sandy Evans, Burt Hogeman and Amy Keith.

## Service Juris Day

On June 3, 2000, the Atlanta legal community came together with Hands On Atlanta and Office Depot for a day of service. Teams from Atlanta law firms, courts, law schools and bar associations labored from 9:00 a.m. to early afternoon in the Dixie Hill community at the Anderson Park Elementary School. Court of Appeals Chief Judge Edward Johnson opened the day with an inspiring speech about the importance of giving to the community.

When I first sat down at lunch with a friend from Hands On Atlanta and talked about my desire to have a joint effort between the Lawyers Foundation of Georgia and a community wide organization, I had no idea that more than a year later, nearly 400 attorneys would gather together in the June heat to work so hard and sweat so much for the cause. One of the reasons I loved the idea of a service day was that it gave summer associates a chance to work side by side with each other and their summer law firms on a project for the community. When the actual day came to pass, it was inspiring to see so many lawyers working together to improve the lives and education of the children of Anderson Park, as well as the faculty and staff. The Atlanta legal community can be proud of its work on that hot June day!

Plans are already afoot for the 2001 Service Juris. Please call Mara Menachem at Hands On Atlanta, (404) 872-2252, or Lauren Barrett at Lawyers Foundation of Georgia, (404) 526-8617 to learn how you can be part of it. -Lauren Barrett



**Deputy Attorney General Eric Holder** was the featured speaker at the Law Day luncheon sponsored by the State Bar of Georgia Diversity Program, the Atlanta Bar Association and the *Daily Report*. Holder is the highest-ranking black person in law enforcement in the history of the United States. He spoke to a packed audience about the importance of diversity and specifically discussed President Clinton's Lawyers for One America initiative, which is "a unique collaboration to change the landscape for racial justice in America through increased pro bono services and diversity with the legal community." For more information, go to [www.lawyersforoneamerica.com](http://www.lawyersforoneamerica.com)

Anestos, Harry P. Rockville, MD	Admitted 1946 Died July 1999
Anthony, Joseph J. Franklin	Admitted 1969 Died September 1999
Bailey II, Wesley G. Jonesboro	Admitted 1950 Died March 2000
Barrow, James Athens	Admitted 1939 Died May 2000
Boulogne Jr., Pierre M. Marietta and Iquitos, Peru	Admitted 1964 Died May 2000
Camp, Charles E. Smyrna	Admitted 1964 Died December 1999
Champion Jr., Forrest L. Columbus	Admitted 1945 Died May 2000
Cullens, J. R. Cartersville	Admitted 1951 Died May 2000
Day, William K. Decatur	Admitted 1988 Died April 2000
Godwin, James B. Atlanta	Admitted 1960 Died May 2000
Guest, Pamela G. Tucker	Admitted 1979 Died May 2000
Hardin, John Randolph Smyrna	Admitted 1961 Died October 1999
Hatch, Gary W. Walnut Grove	Admitted 1963 Died April 2000
Henderson, James B. Cartersville	Admitted 1967 Died May 1999
Herman, Robert L. Atlanta	Admitted 1967 Died 2000

Horne Jr., O. Wendell Cordele	Admitted 1936 Died 1997
Kanes, John P. Atlanta	Admitted 1951 Died July 1999
LeSueur Jr., Robert Lawton Americus	Admitted 1955 April 2000
Lewis Jr., Bass H. Columbus	Admitted 1953 February 2000
Moncrief, William A. Atlanta	Admitted 1950 Died February 2000
Nichols, H. E. Rome	Admitted 1936 Died June 2000
Oliver Jr., Howard Thompson Gainesville	Admitted 1939 Died March 2000
Prowell, M. A. Fairburn	Admitted 1947 Died December 1999
Rencher, Dan M. Atlanta	Admitted 1950 Died September 1990
Rideout Jr., Merle C. Portland, ME	Admitted 1947 Died May 1998
Riley, J. L. Ponte Vedra Beach, FL	Admitted 1933 Died April 2000
Roeser, Robert F. Roswell	Admitted 1950 Died May 2000
Stewart, Winburn E. Macon	Admitted 1968 Died October 1999
Sullivan, John J. Marietta	Admitted 1965 Died 2000
Varnell, John D. Leesburg	Admitted 1966 Died August 1999

**Roy Benton Allen, Jr.**, 59, of Lenox, Georgia, died February 21, 2000. Born in Cook County, he earned a B.S. from Auburn University and his J.D. and L.L.B. from the University of Georgia. He was admitted to the State Bar of Georgia in 1971, and he practiced in Albany, Lakeland, Adel and Tifton. He was a member of the Tifton Bar Association. Mr. Allen was known as a "Crossroads Country Lawyer." He is survived by his wife, of 31 years, Virginia "Ginny" Allen, daughter Rachel Allen Thompson and son Roy Benton Allen, III. He had one grandson, Alex Thompson.

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 the one at left. 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, 30303.



**nextel full  
page bw  
new art**

**Continued from page 72**

## **Fax Machine Savvy**

*Fax Systems.* As with telephone equipment, make sure you have an up-to-date fax system. Multifunctional machines provide many benefits by having one piece of equipment that can do more than one important thing well. If you are looking to purchase a new fax or multifunctional machine, give us a call for suggestions.

*Fax Procedures.* Know how to use your fax, too. Can you send broadcast faxes – one fax to many

people? Has your fax been programmed to record your firm name and fax number on outgoing faxes? Are you able to cancel transmissions, reload paper and toner? I applaud the Bar's internal procedure of using light colored paper for incoming faxes so that they stand out from other correspondence. You may want to incorporate this into your procedures as well.

Improving your telephone, voice mail, and fax systems and procedures is only a start in enhancing your delivery of legal services and better communicating with clients. In the next Law Practice Management article, we will explore the other areas of client communications as

identified above, and the appropriate systems and procedures for them. ☒

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*Natalie R. Thornwell is the Resource Coordinator for the Bar's Law Practice Management Program. You may contact the Law Practice Management Program at [www.gabar.org/lpm.htm](http://www.gabar.org/lpm.htm) or (404) 527-8773 for any of your law office management issues.*

West 1/2 “building blocks 4C  
pickup 6/00 p69





# Professionalism in the Classroom and Beyond

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By Karen M. Raby

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**I AM SURE IT COMES AS NO SURPRISE TO** the readers of this magazine that lawyers, often deservedly so, have an increasing reputation of being difficult to deal with and unprofessional. Legal periodicals and the mainstream media are replete with sensational stories about attorneys being sanctioned for doing unspeakably unprofessional and unethical acts. Closer to home, it seems that common courtesy and civility in practice are on the decline as technology replaces face-to-face encounters between opposing counsel. On more than one occasion, I have heard seasoned attorneys complain that it is the younger lawyers who are responsible for the perceived decline in professionalism. Therefore, it seems logical to start at the source to instill the values and promote the concepts of professionalism and ethics.

Do you remember law school orientation? Do you remember what it felt like to be called a 1L, and to hear the words “jurisprudence” and “torts,” maybe for the first time? Several years ago, the State Bar of Georgia and Georgia’s Chief Justice’s Commission on Professionalism decided to direct some of that first-year excitement and willingness to learn toward ethics and professionalism. I want to encourage each of you to take some time to volunteer at your alma mater or at any law school close to home to assist in the professionalism programs presented to law students. You will be glad you did.

Lawyers in Georgia have a lot to be proud of. The program started in this state is being used as a model for law schools and state bar organizations across the country. Law schools in other states (including Alabama, Colorado, Delaware, Florida, Kentucky, Louisiana, Minnesota, Mississippi, New Jersey, New Mexico, North Carolina, Oregon, and Texas) have similar programs in place. In addition, state bars and/or individual schools in other states, such as California, Maryland, Missouri,

Ohio, Pennsylvania and Utah, are apparently considering similar programs.

For the last eight years, the State Bar of Georgia and the Chief Justice’s Commission on Professionalism have teamed up to offer a program related to professionalism during orientation week in Georgia law schools. After a brief “keynote” address by either an appellate judge or a state bar officer, the first-year students are split into breakout groups to discuss various hypotheticals related to professionalism and ethics dilemmas that arise during the practice of law and, sometimes, even in law school.

Each breakout group is directed by volunteer attorney facilitators, who each receive two CLE credits for participating in the program. These attorneys are prosecutors, insurance defense attorneys, bankruptcy lawyers, and from about any other practice area that you can imagine. Each has a different perspective to share with the students. At Emory, law school faculty are also encouraged to take part in the sessions. The attorney-facilitators guide the students through a discussion of the issues presented in the hypotheticals, which range from handling suspected drug use by opposing counsel, to appropriate billing practices, to dealing with requests for additional time. Although the participants are given guidance as to the applicable model or disciplinary rules that may come into play, the hypotheticals are drafted in such a way that there is usually no “clear-cut” answer. The resulting discussion and debate by the students is intermixed with observations and real-life experiences added by the practitioners. This assures that the discussion is never the same from group to group or year to year. I have participated in the program for several years, and each time I have marveled at the variety and level of participation of the students and facilitators. The program usually closes with an “optional” social, which is well attended by students and facilitators, who continue to discuss the issues raised during the program and talk about the practice of law as a whole.

Emory University School of Law has recently taken the program to another level. This is the third year that Emory has expanded the professionalism program, which consists of three separate sessions held throughout the first year. The first-year program has met with so much approval from the students, practitioners and faculty that a pilot program for upper-level students is now underway. To stress the importance of professionalism, each first-year student at Emory's Law School now has to take and sign a professionalism oath.

It is not just the students that benefit from the program. The faculty and attorney facilitators are re-energized about their practice by sharing their experiences with the students. The students often put a fresh spin on the problems presented, and more than one attorney participant has remarked that they felt that they learned more than they instructed.

These programs are ingenious in their simplicity. The students are given a leg-up on understanding the real-world dilemmas they may face in law school and later in practice. The practitioners are given the chance to update and hone their professionalism skills as well as the opportunity to tell a war story or two to an eager audience — and gain CLE credit to boot! In addition, the legal profession wins, because the students who come through the program are the attorneys of tomorrow. They move on to their second and third year and incorporate what they learn about professionalism into their course work and later into their practice. The hope is that these students (the future attorneys that we will be practicing with and against) will recognize the professionalism and ethical dilemmas in practice and take the high road when the time comes.

I encourage and challenge you to contact the State Bar to volunteer your time to promote legal professionalism in the law school setting and beyond.

For further information about these programs, please call the Chief Justice's Commission on Professionalism at (404) 527-8793 or 1-800-334-6865. ☒

## UNSATISFIED JUDGMENTS?

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call: (800) 537-6900**

Professional Asset Locators,  
Etc.

*Karen M. Raby is associated with the Atlanta firm of Alembik, Fine & Callner, P.A. She is the current Chair of the State Bar of Georgia's Committee on Professionalism.*

## Official Opinions

No official opinions were issued in the month of March.

**Banks and Banking. Gramm-Leach-Bliley Act.** The Gramm-Leach-Bliley Act preempts the provisions of O.C.G.A. § 33-3-23 restricting lending institutions, bank holding companies, and their subsidiaries and affiliates from selling insurance in municipalities with populations exceeding 5,000. (4/26/00 No. 2000-4)

**Reading Challenge Program. Schools, Private—Sectarian.** The Georgia Constitution prohibits grants to sectarian institutions for the purpose of the Reading Challenge Program. (5/18/00 No. 2000-5)



**Attorney General  
Thurbert Baker**

## Unofficial Opinions

**Counties, Ordinances, Jurisdiction of Magistrate Court over Violations of. Peace Officer and Prosecutor Training Fund Act of 1983.** County criminal and traffic

ordinance violations are covered by the Peace Officer and Prosecutor Training Fund Act of 1983, O.C.G.A. § 15-21-70 *et seq.* (3/8/00 No. U2000-5)

**Officers and Employees, Public.** A candidate for the position of local director of emergency management who has been convicted of a felony and fully pardoned is not eligible to hold that position under O.C.G.A. § 38-3-27(a)(2)(B). (4/17/00 No. U2000-6)

No unofficial opinions were issued in the month of May.

**Dan turner**  
**Builders pickup**  
**6/00 p41**

# Supreme Court Adopts New Disciplinary Rules

On June 16, 2000, during the State Bar's Annual Meeting, Chief Justice Benham announced the Supreme Court's adoption of new Model Rules of Professional Conduct in Georgia. This complete overhaul of the lawyer discipline system was a two-year effort led by the Bar's Disciplinary Rules Committee under the chairmanship of Judge Edward E. Carriere Jr. The new rules were unanimously passed by the State Bar's Board of Governors and recommended to the Supreme Court. The proposed rules were published in the April 1999 *Journal* and posted on the Internet for member comment. The Court even held public hearings to gain feedback from as

many parties as possible before amending the rules for final adoption. Presiding Justice Norman S. Fletcher, who serves as liaison to the Bar, led that effort. The newly adopted rules appear on the Bar's Web site at [www.gabar.org/modrul.htm](http://www.gabar.org/modrul.htm).

The new Georgia Rules of Professional Conduct will become effective on January 1, 2001. Until such time, the present Part III and Part IV of the rules remain in full force. Prior to the effective date, the State Bar of Georgia will be conducting training seminars throughout the state regarding these new rules. We strongly encourage all members to attend. ☒

Morningstar pickup 4/00 pg 42 bw

# First Publication of Proposed Formal Advisory Opinion

## First Publication of Proposed Formal Advisory Opinion No. 00-R3

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

Office of General Counsel  
State Bar of Georgia  
800 The Hurt Building  
50 Hurt Plaza  
Atlanta, Georgia 30303  
Attention: John J. Shiptenko

An original and eighteen copies of any comment to the proposed opinion must be filed with the Office of General Counsel by September 18, 2000, in order for the comment to be considered by the Formal Advisory Opinion Board. Any comment to a proposed opinion should make reference to the request number of the proposed opinion. After consideration of comments, the Formal Advisory Opinion Board will make a final determination of whether the opinion should be issued. If the Formal Advisory Opinion Board determines that an opinion should be issued, final drafts of the opinion will be published, and the opinion will be filed with the Supreme Court of Georgia for formal approval.

## Proposed Formal Advisory Opinion Request No. 00-R3

### QUESTION PRESENTED:

Is it ethically permissible for an attorney, with or without notice to a client, to charge for a standard time unit without regard to how much time is actually expended?

### SUMMARY ANSWER:

A lawyer may charge for standard time units so long as this does not result in a fee that is clearly excessive, and so long as the lawyer has fully and accurately disclosed to the client the method of billing the lawyer is using.

### OPINION:

Given the proper resources, equipment and effort, time can be measured with infinitesimal precision. As a practical matter, however, clients routinely require only sufficient precision in attorney billings to determine reasonableness and fairness, and this would not normally necessitate a level of precision in recording the time expended by an attorney that would require hair-splitting accuracy. It is the practice of many attorneys to bill on a time expended basis, and to bill for time expended by rounding to standard units of from 6 to 15 minutes. This gives rise to the possibility that a lawyer could spend one minute on a client matter, and bill the client for 15 minutes. While "rounding up" is permissible, *see, e.g.,*

ABA Formal Opinion 93-379 (December 6, 1993), consistently rounding up from one minute to fifteen minutes is questionable at best and would raise substantial issues as to whether the fee was excessive under Standard 31. See Rule 1.5(a) ABA Model Rules of Professional Conduct. A lawyer could avoid a challenge to rounded up fees as excessive by using a smaller minimum unit (a six minute unit is preferable), and only rounding up if more than half that time was actually expended. See Ross, *The Honest Hour: The Ethics of Time-Based Billing by Attorneys* (Carolina Academic Press: 1996), p.169.

It must be noted that even this practice, billing in six minute units but only billing a unit if more than three minutes was expended, results in the attorney billing for time not actually expended on the client matter. Therefore the lawyer must take care to clarify to the client the basis for the billing, in order to comply with Standard 5. To simply inform a client that the lawyer would bill on a time expended basis, without explaining any standard unit billing practice, would be to make a "misleading communication about the lawyer or the lawyer's services", and would violate Standard 5. To insure a clear understanding between the attorney and the client, the attorney should provide the client with an explanation in writing of the basis for the fee. See Rule 1.5(b) ABA Model Rules of Professional Conduct.

# Supreme Court Issues Formal Advisory Opinion

During the month of February, 2000, the Supreme Court of Georgia issued a formal advisory opinion that was proposed by the Formal Advisory Opinion Board. Following is the full text of the opinion issued by the court.

**STATE BAR OF GEORGIA  
ISSUED BY THE SUPREME COURT OF  
GEORGIA ON FEBRUARY 11, 2000  
FORMAL ADVISORY OPINION NO. 00-2  
(PROPOSED FORMAL ADVISORY  
OPINION NO. 97-R6)**

**QUESTION PRESENTED:**

Is a lawyer aiding a nonlawyer in the unauthorized practice of law when the lawyer allows a nonlawyer member of his or her staff to prepare and sign correspondence which threatens legal action or provides legal advice or both?

**SUMMARY ANSWER:**

Yes, a lawyer is aiding a nonlawyer<sup>1</sup> in the unauthorized practice of law when the lawyer allows a nonlawyer member of his or her staff to prepare and sign correspondence which threatens legal action or provides legal advice or both. Generally, a lawyer is aiding a nonlawyer in the unauthorized practice of law whenever the lawyer effectively substitutes the legal knowledge and judgment of the nonlawyer for his or her own. Regardless of the task in question, a lawyer should never place a nonlawyer in situations in which he or she is called upon to exercise what would amount to independent professional judgment for the lawyer's client. Nothing in this limitation precludes paralegal representation of clients with legal problems whenever such is expressly authorized by law.<sup>2</sup>

In order to enforce this limitation in the public interest, it is necessary to find a violation of the provisions prohibiting aiding a nonlawyer in the unauthorized practice of law whenever a lawyer creates the reasonable appearance to others that he or she has effectively substituted the legal knowledge and judgment of the nonlawyer

for his or her own in the representation of the lawyer's client.

As applied to the specific questions presented, a lawyer permitting a nonlawyer to give legal advice to the lawyer's client based on the legal knowledge and judgment of the nonlawyer rather than the lawyer, would be in clear violation of Standards of Conduct 24, 4, and 5. A lawyer permitting a nonlawyer to prepare and sign threatening correspondence to opposing counsel or unrepresented persons would be in violation of these Standards of Conduct because doing so creates the reasonable appearance to others that the nonlawyer is exercising his or her legal knowledge and professional judgment in the matter.

**OPINION:**

This request for a Formal Advisory Opinion was submitted by the Investigative Panel of the State Disciplinary Board along with examples of numerous grievances regarding this issue recently considered by the Panel. Essentially, the request prompts the Formal Advisory Opinion Board to return to previously issued advisory opinions on the subject of the use of nonlawyers to see if the guidance of those previous opinions remains valid for current practice.<sup>3</sup>

The primary disciplinary standard involved in answering the question presented is: Standard 24, ("A lawyer shall not aid a nonlawyer in the unauthorized practice of law.") As will become clear in this Opinion, however, Standard 4 ("A lawyer shall not engage in professional conduct involving dishonesty, fraud, deceit or willful misrepresentation.") and Standard 5 ("A lawyer shall not make any false, fraudulent, deceptive, or misleading communications about the lawyer or the lawyer's services.") are also involved.

In interpreting these disciplinary standards as applied to the question presented, we are guided by Canon 3 of the Code of Professional Responsibility, "A Lawyer Should Assist in Preventing the Unauthorized Practice of Law," and, more specifically, the following Ethical Considerations: Ethical Consideration 3-2, Ethical

Consideration 3-5, and Ethical Consideration 3-6.

In Advisory Opinion No. 19, an Opinion issued before the creation of the Formal Advisory Opinion Board and the issuance of advisory opinions by the Supreme Court, the State Disciplinary Board addressed the propriety of Georgia lawyers permitting nonlawyer employees to correspond concerning “legal matters” on the law firm’s letterhead under the nonlawyer’s signature. The Board said that in determining the propriety of this conduct it must first define the practice of law in Georgia. In doing so, it relied upon the very broad language of a then recent Georgia Supreme Court opinion, *Huber v. State*, 234 Ga. 458 (1975), which included within the definition of the practice “any action taken for others in any matter connected with the law,” to conclude that the conduct in question, regardless of whether a law suit was pending, constituted the practice of law.<sup>4</sup> Any lawyer permitting a nonlawyer to engage in this conduct would be assisting in the unauthorized practice of law in violation of Standard 24, the Board said. The Board specifically limited this prohibition, however, to letters addressed to adverse or potentially adverse parties that, in essence, threatened or implied a threat of litigation. Furthermore, the Board noted that there was a broad range of activities, including investigating, taking statements from clients and other witnesses, conducting legal research, preparing legal documents (under “direct supervision of the member”), and performing administrative, secretarial, or clerical duties that were appropriate for nonlawyers. In the course of performing these activities, nonlawyers could correspond on the firm’s letterhead under their own signature. This was permitted as long as the nonlawyer clearly identified his or her status as a nonlawyer in a manner that would avoid misleading the recipient into thinking that the nonlawyer was authorized to practice law.

Whatever the merits of the answer to the particular question presented, this Opinion’s general approach to the issue, *i.e.*, does the conduct of the nonlawyer, considered outside of the context of supervision by a licensed lawyer, appear to fit the broad legal definition of the practice of law, would have severely limited the role of lawyer-supervised nonlawyers to what might be described as in-house and investigatory functions. This Opinion was followed two years later, however, by Advisory Opinion No. 21, an Opinion in which the State Disciplinary Board adopted a different approach.

The specific question presented in Advisory Opinion No. 21 was: “What are the ethical responsibilities of attorneys who employ legal assistants or paraprofessionals and permit them to deal with other lawyers, clients, and the public?” After noting the very broad legal definition of the practice of law in Georgia, the Board said that the issue was instead one of “strict adherence to a program of supervision and direction of a nonlawyer.”

This insight, an insight we reaffirm in this Opinion, was that the legal issue of what constitutes the practice of law should be separated from the issue of when does the practice of law by an attorney become the practice of law by a nonlawyer because of a lack of involvement by the lawyer in the representation. Under this analysis, it is clear that while most activities conducted by nonlawyers for lawyers are within the legal definition of the practice of law, in that these activities are “action[s] taken for others in . . . matter[s] connected with the law,” lawyers are assisting in the unauthorized practice of law only when they inappropriately delegate tasks to a nonlawyer or inadequately supervise appropriately delegated tasks.

Implicitly suggesting that whether or not a particular task should be delegated to a nonlawyer was too contextual a matter both for effective discipline and for guidance, the Disciplinary Board provided a list of specific tasks that could be safely delegated to nonlawyers “provided that proper and effective supervision and control by the attorney exists.” The Board also provided a list of tasks that should not be delegated, apparently without regard to the potential for supervision and control that existed.

Were we to determine that the lists of delegable and non-delegable tasks in Advisory Opinion No. 21 fully governed the question presented here, it would be clear that a lawyer would be aiding the unauthorized practice if the lawyer permitted the nonlawyer to prepare and sign correspondence to clients providing legal advice (because it would be “contact with clients . . . requiring the rendering of legal advice) or permitted the nonlawyer to prepare and sign correspondence to opposing counsel or unrepresented persons threatening legal action (because it would be “contacting an opposite party or his counsel in a situation in which legal rights of the firm’s clients will be asserted or negotiated”). It is our opinion, however, that applying the lists of tasks in Advisory Opinion No. 21 in a categorical manner runs risks of both over regulation and under regulation of the use of nonlawyers and, thereby, risks both the loss of the efficiency nonlawyers can provide and the loss of adequate protection of the public from unauthorized practice. Rather than being applied categorically, these lists should instead be considered good general guidance for the more particular determination of whether the representation of the client has been turned over, effectively, to the nonlawyer by the lawyer permitting a substitution of the nonlawyer’s legal knowledge and judgment for that of his or her own. If such substitution has occurred then the lawyer is aiding the nonlawyer in the unauthorized practice of law whether or not the conduct is proscribed by any list.

The question of whether the lawyer has permitted a substitution of the nonlawyer’s legal knowledge and judgment for that of his or her own is adequate, we believe, for guidance to attorneys in determining what can

and cannot be delegated to nonlawyers. Our task, here, however, is broader than just giving guidance. We must also be concerned in issuing this opinion with the protection of the public interest in avoiding unauthorized practice, and we must be aware of the use of this opinion by various bar organizations, such as the Investigative Panel of the State Disciplinary Board, for determining when there has been a violation of a Standard of Conduct.

For the purposes of enforcement, as opposed to guidance, it is not adequate to say that substitution of the nonlawyer's legal knowledge and judgment for that of his or her own constitutes a violation of the applicable Standards. The information for determining what supervision was given to the nonlawyer, that is, what was and was not a substitution of legal knowledge and judgment, will always be within the control of the attorney alleged to have violated the applicable Standards. To render this guidance enforceable, therefore, it is necessary to find a violation of the Standards prohibiting aiding a nonlawyer in the unauthorized practice of law whenever a lawyer creates the reasonable appearance to others that he or she has effectively substituted the legal knowledge and judgment of the nonlawyer for his or her own.

*Thus, a lawyer is aiding a nonlawyer in the unauthorized practice of law whenever the lawyer creates a reasonable appearance to others that the lawyer has effectively substituted the legal knowledge and judgment of the nonlawyer for his or her own.* Regardless of the task in question, lawyers should never place nonlawyers in situations in which the nonlawyer is called upon to exercise what would amount to independent professional judgment for the lawyer's client. Nor should a nonlawyer be placed in situations in which decisions must be made for the lawyer's client or advice given to the lawyer's client based on the nonlawyer's legal knowledge, rather than that of the lawyer. Finally, nonlawyers should not be placed in situations in which the nonlawyer, rather than the lawyer, is called upon to argue the client's position. Nothing in these limitations precludes paralegal representation of clients with legal problems whenever such is expressly authorized by law.<sup>5</sup>

In addition to assisting in the unauthorized practice of law by creating the reasonable appearance to others that the lawyer was substituting a nonlawyer's legal knowledge and judgment for his or her own, a lawyer permitting this would also be misrepresenting the nature of the services provided and the nature of the representation in violation of Standards of Conduct 4 and 5. In those circumstances where nonlawyer representation is specifically authorized by regulation, statute or rule of an adjudicatory body, it must be made clear to the client that they will be receiving nonlawyer representation and not representation by a lawyer.

Applying this analysis to the question presented, if by "prepare and sign" it is meant that the legal advice to be given

to the client is advice based upon the legal knowledge and judgment of the nonlawyer, it is clear that the representation would effectively be representation by a nonlawyer rather than by the retained lawyer. A lawyer permitting a nonlawyer to do this would be in violation of Standards of Conduct 24, 4, and 5. A lawyer permitting a nonlawyer to prepare and sign threatening correspondence to opposing counsel or unrepresented persons would also be in violation of these Standards of Conduct because by doing so he or she creates the reasonable appearance to others that the nonlawyer is exercising his or her legal knowledge and professional judgment in the matter.

For public policy reasons it is important that the legal profession restrict its use of nonlawyers to those uses that would improve the quality, including the efficiency and cost-efficiency, of legal representation rather than using nonlawyers as substitutes for legal representation. Lawyers, as professionals, are ultimately responsible for maintaining the quality of the legal conversation in both the prevention and the resolution of disputes. This professional responsibility cannot be delegated to others without jeopardizing the good work that lawyers have done throughout history in meeting this responsibility.

## Endnotes

1. The term "nonlawyer" includes paralegals.
2. See footnote 5 *infra*.
3. In addition to those opinions discussed in this opinion, there are two other Advisory Opinions concerning the prohibition on assisting the unauthorized practice of law. In Advisory Opinion No. 23, the State Disciplinary Board was asked if an out-of-state law firm could open and maintain an office in the State of Georgia under the direction of a full-time associate of that firm who was a member of the State Bar of Georgia. In determining that it could, the Board warned about the possibility that the local attorney would be assisting the nonlicensed lawyers in the unauthorized practice of law in Georgia. In Formal Advisory Opinion No. 86-5, an Opinion issued by the Supreme Court, the Board was asked if it would be improper for lawyers to permit nonlawyers to close real estate transactions. The Board determined that it would be if the responsibility for "closing" was delegated to the nonlawyer without participation by the attorney. We view the holding of Formal Advisory Opinion No. 86-5 as consistent with the Opinion issued here.
4. The language relied upon from *Huber v. State* was later codified in O.C.G.A. §15-19-50.
5. For example, it is perfectly permissible for a nonlawyer, employed as a paralegal by a law firm or by a non-profit corporation, such as the Georgia Legal Service Program, doing business as a law firm, to represent his or her own clients whenever paralegal representation is permitted by law, as it would be if the representation were on a food stamp problem at an administrative hearing, or before the Social Security Administration, or in other circumstances where a statute or the authorized rules of the adjudicatory body specifically allow for and regulate representation or counsel by persons other than a lawyer. It must be made clear to the clients, of course, that what they will be receiving is paralegal representation and not representation by a lawyer. Nothing in this opinion is intended to conflict with regulation, by statute or rule of an adjudicatory body, of use of nonlawyers in such authorized roles.



# Supreme Court Issues Formal Advisory Opinion

During the month of February, 2000, the Supreme Court of Georgia issued a formal advisory opinion that was proposed by the Formal Advisory Opinion Board. Following is the full text of the opinion issued by the court.

**STATE BAR OF GEORGIA  
ISSUED BY THE SUPREME  
COURT OF GEORGIA  
ON FEBRUARY 11, 2000**

## **FORMAL ADVISORY OPINION NO. 00-3 (Proposed Formal Advisory Opinion No. 99-R3)**

### **QUESTION PRESENTED:**

Ethical propriety of lawyers telephonically participating in real estate closings from remote sites.

### **SUMMARY ANSWER:**

Formal Advisory Opinion No. 86-5 explains that a lawyer cannot delegate to a nonlawyer the responsibility to "close" the real estate transaction without the participation of an attorney. Formal Advisory Opinion No. 86-5 also provides that "Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law." The lawyer's physical presence at a closing will assure that there is supervision of the work of the paralegal which is direct and constant.

### **OPINION:**

Formal Advisory Opinion No. 86-

5 (86-R9) issued by the Supreme Court states that the closing of real estate transactions constitutes the practice of law as defined by O.C.G.A. §15-19-50. Therefore, it is ethically improper for lawyers to permit nonlawyers to close real estate transactions. Correspondent inquires whether it is ethically permissible to allow a paralegal to be physically present at a remote site for the purpose of witnessing signatures and assuring that documents are signed properly. The paralegal announces to the borrower that they are there to assist the attorney in the closing process. The lawyer is contacted by telephone by the paralegal during the closing to discuss the legal aspects of the closing.

The critical issue in this inquiry is what constitutes the participation of the attorney in the closing transaction. The lawyer must be in control of the closing process from beginning to end. The supervision of the paralegal must be direct and constant.

Formal Advisory Opinion No. 86-5 states that "If the 'closing' is defined as the entire series of events through which title to the land is conveyed from one party to another party, it would be ethically improper for a nonlawyer to 'close' a real estate transaction." Under the circumstances described by the correspondent, the participation of the lawyer is less than meaningful. The lawyer is not in control of the actual closing processing from beginning to end. The lawyer is

brought into the closing process after it has already begun. Even though the paralegal may state that they are not a lawyer and is not there for the purpose of giving legal advice, circumstances may arise where one involved in this process as a purchaser, seller or lender would look to the paralegal for advice and/or explanations normally provided by a lawyer. This is not permissible.

Formal Advisory Opinion No. 86-5 provides that "Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law." By allowing a paralegal to appear at closings at remote sites at which lawyers are present only by telephone conference will obviously increase the likelihood that the paralegal may be placed in circumstances where the paralegal is actually providing legal advice or explanations, or exercising independent judgement as to whether legal advice or explanation is required.

Standard 24 is not met by the lawyer being called on the telephone during the course of the closing process for the purpose of responding to questions or reviewing documents. The lawyer's physical presence at a closing will assure that there is supervision of the work of the paralegal which is direct and constant.

# Notice of Expiring Board of Governors' Terms

Listed below are the members of the State Bar of Georgia Board of Governors whose terms will expire in June 2001. They will be candidates for the 2000-2001 State Bar elections. Please refer to the elections schedule at right for important dates.

<b>Circuit</b>	<b>Member</b>
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Alcovy Post 1	Steven A. Hathorn, Covington
Appalachian	Edwin Marger, Jasper
Atlanta Post 1	Dow N. Kirkpatrick II, Atlanta
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Atlanta Post 25	Phyllis J. Holmen, Atlanta
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Atlanta Post 30*	*New Post created this year
Atlantic Post 2	Joseph D. McGovern, Glennville
Augusta Post 1	J. Benjamin Kay III, Augusta
Augusta Post 3	Thomas R. Burnside Jr., Augusta
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Chattahoochee Post 2	William C. Rumer, Columbus
Chattahoochee Post 4	Earle F. Lasseter, Columbus
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Clayton Post 3	Charles J. Driebe, Jonesboro
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Coweta Post 2	Delia T. Crouch, Newnan

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Eastern Post 4	N. Harvey Weitz, Savannah
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Towaliga	Hon. Hugh D. Sosebee, Forsyth
Waycross Post 2	Huey W. Spearman, Waycross
Western Post 1	Ernest De Pascale Jr., Athens
Out-of-State	Michael V. Elsberry, Orlando, FL

## 2000-2001 Election Schedule

August	Official election notice, <i>Georgia Bar Journal</i>
Sept. 12	Nominating petition package mailed to Board of Governors (BOG) incumbents (petitions for other candidates supplied upon request to membership department)
Oct. 16	Deadline for receipt of nominating petitions for incumbent BOG Bylaw Article VII, Section 2
Oct. 26-29	Nomination of officers, Fall BOG Meeting
Nov. 15 5:00 p.m.	Deadline for receipt of nominating petitions by <i>new</i> BOG Candidates ( <i>i.e.</i> , non-incumbents) Bylaw Article VII, Section 2
Dec. 1	Deadline for write-in candidates for officer to file written statement (Not less than 10 days prior to mailing of ballots-Bylaw Article VII, Section 1 (c))
Dec. 15	Ballots mailed; Bylaw Article VII, Section 7 (c)
<b>2001</b>	
Jan. 4-7	Midyear Meeting - Swissôtel, Atlanta
January 15	Ballots must be received to be valid
January 19	Election results available

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NATIONAL BUSINESS INSTITUTE  
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 6.0/0.5/0.0/0.0

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 12.5/0.0/0.0/12.5

8

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 6.0/1.0/1.0/2.0

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 6.0/0.0/0.0/0.0

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 Atlanta, GA  
 6.0/0.5/0.0/0.0

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 6.7/0.0/0.0/0.0

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SOUTHERN FEDERAL TAX INSTITUTE  
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 Atlanta, GA  
 35.0/1.0/1.0/0.0

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NATIONAL BUSINESS INSTITUTE  
 Fundamentals of Water Law in Georgia: Protecting Water Rights,  
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 6.0/0.5/0.0/0.020

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 11.3/2.0/0.0/0.0

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 6.7/0.0/0.0/0.0

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 Hot Issues in Employment Law Litigation  
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 4.0/0.0/0.0/0.0

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 6.5/0.0/0.0/0.0

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 International Taxation  
 Atlanta, GA  
 6.7/0.0/0.0/0.0

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 Annual Meeting & Delivering Strategic Solutions  
 Washington, DC  
 11.5/7.0/0.0/0.0

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 4.0/0.0/0.0/0.0

3

CHATTANOOGA BAR ASSOCIATION  
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 3.3/0.0/0.0/0.0

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 4.0/0.0/0.0/0.0

6

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 3.0/0.0/0.0/0.0

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 Chattanooga, TN  
 4.0/0.0/0.0/0.0

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 4.0/0.0/0.0/0.0

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(Basic)  
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ERISA Basics II  
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NATIONAL BUSINESS INSTITUTE  
Corporate Trade Secret & Employee  
Raiding In Georgia  
Atlanta, GA  
6.0/0.5/0.0/0.0

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Chattanooga, TN  
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Representing the Small Business  
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