

June 2019

Volume 24, Number 6

GEORGIA BAR
JOURNAL

From the President:
The Benefits of Kindness
and Compassion

2019 Legislative Review

We Salute Our
Pro Bono All-Stars

2019 Fiction Competition
Winner: The Incident
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The *Georgia Bar Journal* welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia. Please send news releases and other information to: Sarah I. Coole, Director of Communications, 104 Marietta St. NW, Suite 100, Atlanta, GA 30303; 404-527-8791; sarahc@gabar.org.

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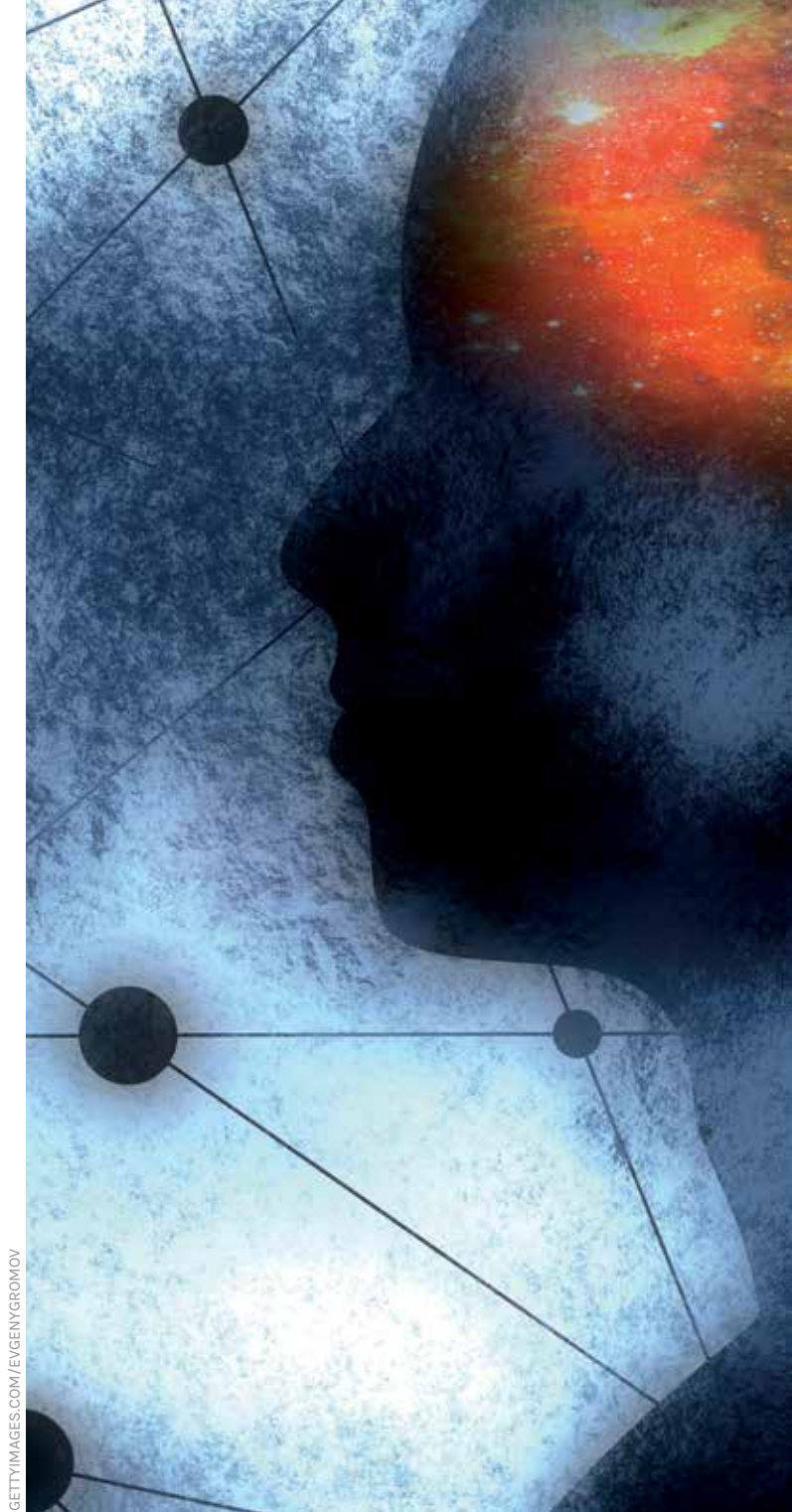


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The June Issue

Summer is here, and it's time for vacations and for some, a little down time in their practice. But the *Bar Journal* is here to provide you with a few ways to use that down time to the benefit of your law practice. Summer is the perfect time to regroup and focus on your practice, your professional goals and your personal well-being. The feature article "Professional Development is Not an Individual Sport: Six Tips from the Experts to Help You Reach Your Goals" from the Georgia Diversity Program contains myriad ways to help you advance your career goals. From developing mentors and sponsors to finding allies to help develop your practice, and finding ways to be proactive, this article will get you thinking about your career advancement in new and different ways. Natalie Kelly's "Get Out and Mingle: Marketing and Self-Care Options for Summer" will also prompt your thoughts toward networking and marketing opportunities that you can utilize to build your practice, expand your client base and get your name out into areas of the community that you might not have thought of before.

We also have many past successes to report. Our outgoing YLD president talks about the meeting the goals as the "service arm" of the State Bar, including the success of the Signature Fundraiser and the service awards to YLD Past Presidents

Sharri Edenfield and Michael Geoffroy in service to their respective communities. The article by Len Horton on the Georgia Bar Foundation awards shows that an astounding amount of money was awarded to four deserving law-related groups: Atlanta Legal Aid; Georgia Legal Services Program; the Georgia Heirs Property Law Center; and the Atlanta Volunteer Lawyers Foundation, to continue their pro bono and volunteer efforts in the community.

Our legal article, "Behavioral Economics and the Practice of Law" by Robert C. Port, provides insight into the connection between psychology, economics and law, applying these theories to the practice of law. We also hope you enjoy our annual fiction competition winner, "Incident at Gulf Shores" by Dick Donovan. I hope many of our magazines are covered in salt water and sand, because you should enjoy reading these on your vacation!

Finally, I would like to introduce our new Editor-in-Chief, Kristin Poland. After my second stint as EIC, I'm happy to hand over the reins to this most astute lawyer. She has been a devoted member of the *Georgia Bar Journal* Editorial Board and will lead the board over the course of the next year enthusiastically and with much professionalism. Congratulations to Kristin—we are looking forward to another great year with you at the helm! ●



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HON. KENNETH B. HODGES III

President
State Bar of Georgia
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The Benefits of Kindness and Compassion

The State Bar of Georgia and its members had no better friend and no greater example of competence, preparedness and civility than former Chief Justice P. Harris Hines, whom we lost, tragically, last fall only a short time after his retirement from the Supreme Court of Georgia. Personally, I never saw Justice Hines without a smile on his face, and he always greeted people warmly and with genuine affection and respect.

At a recent meeting of the Lawyers Club of Atlanta, I had the opportunity to hear Chief Justice Harold D. Melton pay homage to his predecessor. “Chief Justice Hines was warm and flattering to everyone he met,” he said. “Generally, everyone leaving his presence did so with a smile on their faces. It was sometimes surprising when talking with the Chief afterward, to find that he genuinely believed what he had said to those people that left them smiling. This told me that the Chief instinctively homed in on the good that existed in the people he came across. He believed that we all are struggling with something and that we all have something to offer each other. That was the spirit of

his engagement with others, regardless of their walk of life. He saw the value in others and wasn’t afraid of expressing his appreciation of that value.”

In memory of his friend and colleague, Chief Justice Melton challenged us all to “just be kind” and to show each other “love.” Later in the evening, another lawyer came up to me and told me how much he had enjoyed working with my late father, Buddy Hodges, who he said, like Chief Justice Hines, was always kind and friendly to all.

It was not the first time I had heard that about my father. A few years ago, I went to the Balch & Bingham bird supper and, as fate would have it, I just happened to sit by Robert Clyatt, the founder of Kids’ Chance of Georgia Inc., which is the beneficiary of the bird supper proceeds. The mission of Kids’ Chance is to provide educational scholarships to the children of Georgia workers who have been seriously or fatally injured.

I asked Clyatt, a workers’ compensation attorney from Valdosta, about the program. He looked at me incredulously and asked, “You don’t know?” I said no,

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our State Bar of Georgia officers, "What's your favorite legal-themed movie and why? It's time for summer and some relaxing evenings!"

and he proceeded to tell me that in the 1980s he was representing a family whose father had been severely injured in a work-related accident, and Clyatt was bringing a claim. My dad was defending. They were at my dad's office for depositions and having a discussion about how the family was not going to have a Christmas that year. Dad pulled out his wallet and gave Clyatt some money and told him to match it, and the kids could have a Christmas. He did, and from that encounter Clyatt developed the idea of Kids' Chance. That was my father—if he saw the opportunity to help someone, he usually would. By way of further example, I also am aware of a lawyer who was going through tough times, and Dad let him stay in his office rent-free until he got on his feet.

The idea for this article came to me when I was driving to work recently and, on the Downtown Connector in the State Capitol area, I noted the advertising message on the Corey smokestack. It read: JUST BE NICE. Three simple words that can have a major impact on others as well as ourselves. Sometimes we don't remember their importance until we think about others whose actions reflect those words.

In addition to Chief Justice Hines and my own father, we have many great Georgia lawyers and judges—past and present—to inspire in us a spirit of kindness and compassion.

Among them is our late, longtime State Bar Executive Director Cliff Brashier, whose time on this earth and his 20 years of leading this organization influenced thousands of Bar members, employees and others. After his passing in December 2013, several hundred gathered for a memorial service at the Bar Center and shared their remembrances.

From then-Bar President Buck Ruffin: "Cliff was not only a superb leader of this organization, but to so many of us he was one of our closest friends. . . . Cliff had the unique ability to impart wise counsel without you knowing he was doing it—until you realized it later. . . . For someone so vital to an organization of this size, Cliff was the most humble person you would ever meet."



KENNETH B. HODGES III
President

For inspiration, motivation and purpose, there is nothing better than "To Kill A Mockingbird." For full belly laugh entertainment and some valuable lessons in life and in the courtroom, the classic "My Cousin Vinny" is one that never gets old regardless of the number of times watched.



DARRELL L. SUTTON
President-Elect

My favorite movie is "My Cousin Vinny." And if I'm being honest, it takes all spots in the top five. Two words: "I. Dential."



DAWN M. JONES
Treasurer

My favorite legal-themed movie is "Philadelphia." It spoke to me then as a young nurse working with real-life HIV patients at a time when there was more fear than knowledge about the disease. It speaks to me now as a seasoned attorney seeking justice for my clients and their families.



ELIZABETH L. FITE
Secretary

One of my current favorites is "Inherit the Wind." The acting is superb, and it is a fascinating look at what motivates people to act as they do.



BRIAN D. "BUCK" ROGERS
Immediate Past President

"The Verdict" without a doubt. Michael Goldberg and I would have it playing in the background while we did trial prep and would constantly stop each other and say "watch this, watch this" even though we had seen it 100 times. It was inspirational and entertaining, and I think it helped us remember the hard work required and sacrifices being made by many others.

From then-Chief Justice Hugh Thompson: “Cliff was like the Bar’s support beam. When you see a beautiful building, you never see the support beam. But Cliff was never seeking the glory or attention for himself. He wanted to uphold our profession to make it the best it could be.”

From past Bar President Robin Frazer Clark: “. . . the best emails from Cliff had the subject line ‘To brighten your day,’ and these emails included some little story about friendship, the golden rule, kindness to one other or just love of your fellow man. And Cliff sent those to me on a regular basis just to brighten my day.”

There are many other examples across the state, including the late Harvey Weitz of Savannah, a great Bar leader who—among many other contributions—always organized the boat trips on the Savannah River during gatherings of the Board of Governors to bring people together and foster professional camaraderie. Retired Chief Judge Herbert Phipps of Albany has been a positive influence on me even at an early age when he and his wife Connie would visit our home when I was in high school, through the times I had the honor of appearing before him in court, and beyond. Their kindness, understanding and compassion for others are their hallmarks.

Thankfully, the kind lawyers and judges who come to mind far outweigh those who are less kind, to put it nicely. We would love to share some of your favorites in a future issue of the *Journal*. You can email them to journal@gabar.org.

A reputation for showing kindness, compassion and love for one another is something everyone should aspire to achieve. But the benefits of possessing those attributes go deeper than simply being known for them. It’s proven science. According to Jamie Gruman, Ph.D., a full professor and senior research fellow in the Department of Management at the University of Guelph in Canada, “. . . research shows that when we do things for others, we do get repaid. Not just through reciprocation, but as a result of the psychological benefits acts of benevolence produce in the giver.”

The adversarial nature of the legal profession and the unique challenges that lawyers and judges face on a daily basis can make living up to the example of kindness set by Justice Hines and others like him more difficult for us than for the average person.

Writing about “What Makes Lawyers Tick,” Dr. Larry Richard, founder and principal consultant at LawyerBrain LLC, notes, “When large samples of the general public are tested, individuals’ scores on a given (personality) trait typically form a classic bell curve, with the mean average for any given trait hovering around the 50th percentile. But lawyers are different . . . there are a number of traits on which lawyers tend to score much higher or much lower than the general public—in short, we’re outliers. The most extreme of all these outlier traits—the one on which lawyers consistently score higher (i.e., above the mean) than all the others—is Skepticism. People with a very high Skepticism score tend to look at the world through a ‘glass half empty’ lens—they focus on problems rather than on what’s working well; they tend toward the suspicious; they assume the worst, and rarely give others the ‘benefit of the doubt.’ They wonder what another person’s ‘real’ motive might be for any action that person takes. They question any assertion made by another person. And they tend to be slower to trust others.”

When you consider some of the matters we face on a daily basis, it’s fair to say that skepticism and half-empty glasses go with the territory. As this quote from Charles Dickens reminds us, “If there were no bad people, there would be no good lawyers.”

Jamie Spannhake, a partner at Berlandi Nussbaum & Reitzas LLP in New York and Connecticut, writing about “Five Great Traits of Great Lawyers” for the Attorney at Work blog, puts compassion at the top of that list. “Compassion is an emotional response whereby one perceives another’s problem and authentically, genuinely wants to help resolve the problem,” Spannhake writes. “This is

part of what lawyers do: People come to us with their problems, or to avoid future problems, and we help resolve or avoid the issues, whichever the case may be. If you practice business law, tax law or in any area that is not particularly ‘emotional,’ you may not think that compassion is important to your practice. But it is. The compassionate lawyer focuses on how others feel and is accepting of their perspective, whether or not he ultimately agrees with it.”

Fortunately, the State Bar of Georgia provides to all of its members a list of everyday ways to display professional kindness and compassion. From our Lawyer’s Creed and Aspirational Statement on Professionalism, we agree to the following:

As to opposing parties and their counsel, I will aspire:

- (a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:
 - (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
 - (2) Grant reasonable requests for extensions or scheduling changes; and,
 - (3) Consult with opposing counsel in the scheduling of appearances, meetings and depositions.
- (b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:
 - (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
 - (2) Be courteous and civil in all communications;
 - (3) Respond promptly to all requests by opposing counsel;
 - (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;

- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

The Litigation Section of the Atlanta Bar Association has a great program that I have participated in many times. The “Take Your Adversary to Lunch” program, typically scheduled near Valentine’s Day, has been successful in encouraging civility and professionalism between opposing counsel.

I also remember a case when I was on the other side of Ernest Greer of Greenberg Traurig, which was very contentious. We were both on the board of another organization that was meeting at Lake Oconee. I just called him up and said, “Hey, can you pick me up and let’s ride together?” For the next hour and a half, we were in the car together just talking about both the case and personal things. It didn’t resolve the case, but it helped.

According to an old saying in our profession: “Ethics is what we have to do. Professionalism is what we ought to do.” For members of the Bar, showing kindness and compassion better serves everyone involved in a case, especially our clients. And, to be sure, the opposite behavior has the opposite effect. Trial judges don’t like wasting time, energy and resources on meritless and petty discovery disputes, and ultimately they do your client a disservice. Also, in a trial setting, judges and jurors are watching every move the attorneys make, inside and outside the courtroom. You should behave like you’re being watched and adhere to the golden rule.

It can be as simple as greeting a stranger with a smile, holding the door for someone, allowing another driver to merge into your lane, remembering to say “please” and “thank you” or buying a meal for the person behind you in the fast food drive-through.

Or, as the Dalai Lama advises, “Be kind whenever possible. It is always possible.” ●

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A Year of Serving the Profession and the Public



HON. RIZZA P.
O'CONNOR

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As the calendar runs out on the 2018-19 Bar year, I am pleased to report that the Young Lawyers Division has once again lived up to its reputation as the “service arm” of the State Bar of Georgia.

On top of the hurdles we face in balancing the stresses of a demanding profession, I have seen my fellow young lawyers at their best these past 12 months in service to the YLD, the State Bar, the legal profession in general and the community at large. Involvement in Bar and YLD activities frequently demonstrates the warmest and most human element of our profession.

As YLD president this year, I could not be more proud of their efforts, which continue to create and foster programs that encourage and make young lawyers better. With more than 30 YLD committees, there are multiple events taking place each week. There have been CLEs, panels, networking opportunities and Lunch and Learn series taking place on a variety of topics.

The YLD also spearheads a number of major projects and events that have a significant impact not only within our profession but on the communities we serve throughout Georgia. I would like to take this opportunity, in my final *Bar Journal* article as YLD president, to brag on a few of the success stories that have highlighted this year.

Signature Fundraiser

On April 13, the YLD Signature Fundraiser took place at Terminal West in Atlanta. The event featured a “decades” theme and offered attendees the opportunity to play retro games from their childhood. The evening also included live music and dancing, food and an open bar.

The Signature Fundraiser raised \$47,000 and proceeds went to our 2019 beneficiary, Lawyers for Equal Justice (L4EJ). A unique, dual-purpose program, L4EJ is not only helping new Georgia attorneys get their law practices off the ground but also working to close the justice gap in our state. L4EJ was established as an incubator program to serve as a springboard for recent law school graduates to start innovative, socially conscious and sustainable law practices by providing affordable legal services to underserved, low- and moderate-income clients. While the State Bar’s Law Practice Management Program offers a wealth of resources for starting a law office, L4EJ provides a way for new lawyers to gain hands-on, real-life experiencing in representing clients in need of legal services.

During the event, the 2019 Signature Service Award was presented to YLD Past Presidents Sharri Edenfield of Statesboro and Michael Geoffroy of Covington. The Signature Service Award is presented an-

nually to recognize an individual who has achieved a certain level of service, as measured by his or her commitment to the YLD and other service-related organizations.

Both Sharri and Michael are well deserving of this honor. Each of them has a longstanding record of serving their communities, the profession and the YLD. Their commitment to be servant leaders has extended well beyond their time as YLD presidents.

This year through his law firm, MG Law, Michael started a program offering wills to emergency medical technicians and ambulance drivers at no cost. He has also been instrumental in the soon-to-be opening of a Boys and Girls Club in his community of Newton County. Michael's personal undertaking to help others in a variety of ways is a true testament of how lawyers can make a difference.

Sharri continues to be an inspiration as a lawyer who selflessly devotes her time to serve others. Sharri has a history of giving 110 percent to causes within the Bar, her schools and her local community. The list of her work is extensive, but she always has an attitude that she can do more. She is an inspiration and a good role model for young lawyers.

Swearing-In to the Supreme Court

Twenty-five young lawyers were sworn in to the U.S. Supreme Court on April 29, as part of the YLD Spring Meeting in Washington, D.C. The day started with a breakfast at the Court, where the young lawyers received visits from Justice Clarence Thomas and Justice Brett Kavanaugh. After enjoying time with these justices, the young lawyers took their seat in courtroom.

With Chief Justice John Roberts presiding, Justice Elena Kagan read the Court's most recent opinion on a case regarding sovereign immunity. Next, State Bar President and Court of Appeals Judge Ken Hodges moved our group into admission to the Supreme Court. After the ceremony, our group gathered together again to participate in a question-and-answer session with Justice Thomas. While Justice Thomas was speaking, our group was delightfully surprised to see Justice

OFFICERS' BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, "What's your favorite legal-themed movie and why? It's time for summer and some relaxing evenings!"



RIZZA O'CONNOR | YLD President

"Miracle on 34th Street." In this heartwarming story, the Macy's Santa Claus Kris Kringle is put on trial to determine if he is indeed the real Santa Claus. It is well worth it to watch both the 1947 and 1994 versions of this classic.



WILLIAM T. "WILL" DAVIS | YLD President-Elect

I love "A Time to Kill" (probably because I went to law school at Ole Miss). It's a great adaptation of a top-notch Grisham novel with a solid plot, action and great acting. The story of a father's vengeance vs. how that plays into evidence with a jury is engrossing from start to finish.



BERT HUMMEL | YLD Treasurer

Legal-themed movies irritate me because of their inaccuracies about the profession. However, I believe that Owen Wilson and Vince Vaughn were divorce mediators in "Wedding Crashers," so I will choose that as my "favorite" since anyone posing as an emerging maple syrup conglomerate is good with me.



ELISSA B. HAYNES | YLD Secretary

While it may sound cliché, my favorite legal-themed movie is "My Cousin Vinny." It's a true classic and has provided some of the best clips for my CLE PowerPoint presentations over the past few years.



NICOLE C. LEET | YLD Immediate Past President

"Legally Blonde." Not only is it fun and frothy, it has some solid legal foundation and a great cross examination "save." Most importantly, it reminds everyone not to underestimate the female wearing pink in the courtroom.



AUDREY B. BERGESON | YLD Newsletter Co-Editor

I enjoy "Legally Blonde." While it's not a particularly accurate representation of the law school experience, it's a fun watch and was filmed at my alma mater, USC. #FightOn



BAYLIE M. FRY | YLD Newsletter Co-Editor

"Erin Brockovich!" It shows that young, less experienced lawyers (and law clerks) can make a huge impact on a bet-the-company lawsuit (or, in my case, a large transaction).



PHOTO PROVIDED BY THE SUPREME COURT OF THE UNITED STATES

YLD members with President Ken Hodges and Justice Clarence Thomas prior to the swearing-in ceremony at the Supreme Court of the United States.



PHOTO BY DONI MORGAN PHOTOGRAPHY

YLD President Rizza O'Connor and the recipients of the Signature Service Award. (Left to right) Michael Geoffroy, O'Connor, Sharri Edenfield.



PHOTO BY STEHPANIE J. WILSON

YLD Leadership Academy Session Three in Vidalia, Georgia.

Ruth Bader Ginsburg walk into our room. She spent 20 minutes engaging in a question-and-answer session with us. We are so grateful to the justices who graciously took their time to be with us. The whole visit was an incredible experience that we will be talking about for a long time.

Wills Clinics with YLD Leadership Academy

At two YLD Leadership Academy sessions (January in Macon and March in Vidalia), young lawyers served first responders in those communities by preparing and executing basic estate planning documents through the Wills Clinic. The documents that were provided to the first responders were a Last Will and Testament, Advance Directive and Durable Financial Power of Attorney. In Vidalia, the event was extended to cancer patients and their spouses.

In Vidalia and Macon, due to the dedication of the Leadership Academy and with the help of the local young lawyers in the area, the Wills Clinic was able to help almost 25 people each day.

Community Service Committee Makes an Impact

The Community Service Committee put on two large, successful events this year.

On Nov. 4, the YLD Community Service Projects Committee volunteered at the Ronald McDonald House at Eggleston Hospital in Atlanta to serve “breakfast for dinner” to families staying at the house. Under the leadership of co-chairs Brittanie Browning and Sarah Jett, committee members purchased and prepared food for around 50 people and were able to interact with the families while providing them support in the smallest way.

They also raised enough funds to restock the Ronald McDonald House’s pantry with food. The Atlanta Ronald McDonald House serves families with ill and injured children receiving medical care nearby. The house provides families with a place to stay during the time their children receive medical care. Thanks to sponsors Oasis Financial, Global Financial and Injury Finance for making it possible to serve others in a time of need.



PHOTO BY KEVIN AMBREY, HABITAT FOR HUMANITY

YLD members participate in the second annual Build a Better Georgia Day in Savannah.

On Saturday, May 4, the YLD Community Service Projects Committee had their second annual Build a Better Georgia Day with Habitat for Humanity in each federal district in Georgia. The builds took place in Atlanta, Macon and Savannah. Young lawyers enjoyed a day of serving and took on household building projects like placing tile, installing light fixtures and painting.

Disaster Legal Assistance

Young lawyers have also made a difference in the lives of those who need it most: indigent Georgians without adequate resources and those affected by personal tragedy. Last year, YLD members devoted many hours to take on pro bono cases for those in the 11 counties devastated by Hurricane Michael.

The disastrous aftermath of Hurricane Michael left 20 Georgia counties eligible for federal disaster legal assistance. Through a partnership with the American Bar Association, the Disaster Legal Assistance Committee, chaired by Kristen Files, managed a free legal assistance hotline to help those affected in those 20 Georgia counties.

Georgia Legal Food Frenzy

The Georgia Legal Food Frenzy is the annual two-week food and fund drive competition, carried out through a partnership of the Georgia Attorney General, the State Bar and YLD, and the Georgia Food Bank Association. The competition is open to everyone in the legal community to see which law firm, legal organization and corporate/in-



PHOTO PROVIDED BY THE YLD COMMUNITY SERVICE PROJECTS COMMITTEE

YLD Community Service Committee members serving at the Ronald McDonald House.

house counsel can have the biggest impact on hunger. All food and funds raised by each organization stays local and benefits the regional food bank that serves its community.

For this year's competition, Attorney General Chris Carr adopted an idea he picked up while working at a food bank in Savannah last year: to challenge every lawyer in the state to donate the cost of one billable hour to the Legal Food Frenzy. Estimating an average billable hour in Georgia is roughly \$250 per year, Carr said anyone donating that amount to the cause would earn a spot in the "Attorney General's Billable Hour Club." With the understanding that food banks can stretch \$1 into four meals, the \$250 figure represents 1,000 meals for struggling families that rely on food banks.

The Food Frenzy is timed to restock food banks during the summer, when children who rely on breakfast and lunch programs at school cannot get them. This year's competition concluded May 3, and final results had not been announced by the time this edition of the *Bar Journal* went to press. But we do know that a new record for online donations was set by members of Atlanta's legal community, who raised \$294,984 online for the Atlanta Community Food Bank. Hopefully, the statewide totals will set new records as well.

National High School Mock Trial Championship

Another May event was the 2019 National High School Mock Trial Champi-

onship in Athens, hosted by the State Bar of Georgia, the Young Lawyers Division and the Georgia Mock Trial Competition. The competition, taking place in Georgia for the first time in 10 years, featured the nation's best teams competing for the championship title.

The success of the 2019 Nationals depended on the support of Georgia's legal community, through volunteer service, financial assistance or both. The YLD appreciates all Bar members who volunteered to serve on judging panels, as courtroom liaisons and as coordinators for team registration and other events. A very special thanks to Georgia's High School Mock Trial Program Director Michael Nixon for planning and hosting such an excellent competition.

Bar members' financial support was also crucial to the overall success of Athens2019, and we thank those who took advantage of the sponsorship opportunities that were available at varying financial levels.

In closing, I would like to thank my fellow YLD members for your confidence and support during the past year. What young lawyers have arguably demonstrated best is collegiality in Bar activities all over the state. The support that young lawyers provide to each other, both professionally and personally, is one of the true highlights of this year. As a result of this experience, I have made hundreds of new connections and friendships that I know will last throughout our careers. Thank you again for such a rewarding opportunity to serve. ●



JEFF DAVIS

Executive Director
State Bar of Georgia
jeffd@gabar.org

This is the sixth in a series of articles highlighting the heroic and vital contributions lawyers and judges have made to the American Civil Rights Movement.

Miles Alexander: An Inspirational Dedication to Justice

Miles J. Alexander, senior partner with Kilpatrick Townsend & Stockton LLP in Atlanta, is one of the true elder statesmen of Georgia’s legal community. Consistently ranked as one of the world’s leading trademark lawyers during his more than six decades in the profession, Alexander is equally renowned for his career-long commitment to fighting discrimination as a leader in the Anti-Defamation League (ADL).

An Army brat who moved around with his mother and stepfather, a career military man, Alexander attended four different high schools in Virginia, Japan, New York and Florida before entering Emory University at the age of 16. A member of Phi Beta Kappa and Omicron Delta Kappa, Alexander was a campus leader at Emory in a variety of organizations. As freshmen, he and Elliott Levitas—also a future lawyer and future member of Congress—advocated for the integration of Emory’s graduate schools.

During high school, Alexander scored high on aptitude tests in the academic fields leading to engineering and law. “My father shared with me an ADL report that documented the glass ceiling that existed

in the engineering field,” Alexander recalled in a 2014 interview with then-ADL Interim Regional Director Shelley Rose. “Thus, the ADL was an integral part of my lifetime love affair with the law.”

Along with two Emory classmates, Alexander entered Harvard Law School, where he joined the Air Force ROTC program and graduated with honors. After teaching at Harvard Law School and serving as an Air Force staff judge advocate, Alexander returned to Atlanta and joined Kilpatrick Townsend & Stockton LLP in 1958. “At the time,” Alexander said in interview with *Attorney at Law* magazine, “there were few Atlanta firms that would hire Jewish attorneys, and Kilpatrick was one of them.”

Protecting famous brands while opposing abuse of intellectual property rights, he has served a myriad of Fortune 500 companies, as well as clients as wide-ranging as the Blue Cross/Blue Shield Association, the estate of Martin Luther King Jr. in defending the copyright of the “I Have a Dream” speech, as well as musical groups including the Monkees and R.E.M. He has also served as lead counsel for numerous Fortune 500 companies in major litiga-

tions, intellectual property disputes and strategic planning issues for mediation.

Alexander earned the 2002 President's Award from International Trademark Association and a Lifetime Achievement Award from the Intellectual Property Section of the State Bar of Georgia. In 2012, Alexander and Levitas were honored by their alma mater with the Emory Medal, the university's highest alumni honor, and Alexander was inducted into the Gate City Bar Hall of Fame, the highest accolade bestowed by Georgia's oldest African-American bar association.

In pro bono representation and public service, Alexander has served as general counsel for the International Trademark Association and as an adviser to both Congressman Levitas and Atlanta Mayor Maynard Jackson, counseled Hands On Atlanta, challenged bigotry, obtained justice for victims of domestic violence and torture, restored public confidence in the Atlanta License Review Board and chaired the Atlanta Ethics Board for a number of years.

A strong force in the Jewish community, Alexander has chaired the Civil Rights Committee of the ADL and served on its Southeast Region Board. He also stood on the front lines of the fight to eliminate racial and gender discrimination by Atlanta legal organizations and social clubs.

In 2014, Georgia State University College of Law, where Alexander taught as an adjunct professor for many years, honored him with the Ben F. Johnson Jr. Public Service Award, which is named for the college's founding dean and is presented annually "to a Georgia attorney whose overall accomplishments reflect the high tradition of selfless public service."

In making the presentation, then-Georgia State Law Dean Steven J. Kaminshine said, "Miles Alexander is one of Atlanta's most reputable attorneys and a pioneer in intellectual property law. His approach to client counsel is commendable, but the work he's done within the community is truly admirable. From advancing social justice to mentoring generations of lawyers, Miles' dedication to serving others is inspirational."

One of Alexander's peers who nominated him for the award, Emmet J. Bon-



PHOTO PROVIDED BY KILPATRICK TOWNSEND STOCKTON

Miles J. Alexander, senior partner with Kilpatrick Townsend & Stockton LLP in Atlanta.

"Miles Alexander is one of Atlanta's most reputable attorneys and a pioneer in intellectual property law. His approach to client counsel is commendable, but the work he's done within the community is truly admirable. From advancing social justice to mentoring generations of lawyers, Miles' dedication to serving others is inspirational."

—Georgia State Law Dean Steven J. Kaminshine

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durant of Bondurant Mixon & Elmore LLP, said, “Miles is one of the most ethical and principled individuals I have been privileged to know. He has a long and distinguished record of public service and has served as a superb role model and mentor for hundreds of young lawyers.”

In 2015, Alexander and his Kilpatrick Townsend & Stockton colleague Joe Beck were honored by the State Bar of Georgia and the National Center for Civil and Human Rights along with other lawyers from across the state for their roles in the Civil Rights Movement and integration efforts in Georgia—from grassroots support of the protestors in civil rights demonstrations to trying cases to support for emerging African-American leaders and politicians.

Alexander was married in 1955 to his wife Elaine, about whom he said in an interview with *Attorney at Law* magazine, “She has had her own stellar career. In fact, I think my accomplishments pale next to hers,” which include prior service as executive director of Leadership Atlanta, leadership in several public interest groups and co-chairing the campaigns of former Atlanta Mayors Shirley Franklin and Kasim Reed.

In a 2014 interview with then-ADL Interim Regional Director Shelley Rose, Alexander recalled volunteering, at the outset of his legal career and along with other young professionals, “to attend and submit written reports tracking hate groups and to monitor the size, constituency and literature distributed. I was struck by the fact that they were not all held at locations such as Stone Mountain with burning crosses, but also with elegant buffets at the Dinkler (Ansley Hotel Downtown) with the men in suits and well-dressed spouses and children listening to the likes of the former president of the AMA spew hatred for Negroes, Jews and Catholics to young children and all who would listen.”

Asked what inspires him about ADL’s mission, Alexander responded, “The protection of the civil rights of all victims of

discrimination and group defamation. Its confrontational approach had appeal to my youthful zeal in the ‘never again’ aftermath of World War II. The giant steps that have been taken since the middle of the last century in my college years (1948-52 at Emory), where the professions no longer exclude African-Americans, women, Jews, Catholics and other minorities, confirm the ADL’s philosophy that no group is safe from discrimination and defamation until all are free from those forces that can destroy the lives of the perpetrators as well as the victims.”

As an ADL leader, Alexander said his objective was “to perpetuate the accomplishments of the fine leadership that has preceded us while continuing and expanding cutting edge programs to fight bullying and hate in schools and in our society. To that end, the participation and leadership of an active Board and a new generation sharing our message and endeavors is critical to the future of ADL.

“... Those who stand by and do nothing in the face of intolerance and discrimination will reap the poisonous crop that is sown by indifference.”

When he accepted the Ben F. Johnson Jr. Public Service Award from Georgia State College of Law, Alexander said, “I would advise young and old lawyers to choose areas of public service that are close to their hearts and to be as diligent and dedicated to those activities as they are to the practice of law. We all will be judged more by what we do for our community and the commitment to our clients than we will by our number of billable hours. Also, the reward from being dedicated to clients and causes is much deeper.” ●

Thanks to Linton Johnson, media consultant to the Bar, for his assistance in researching and drafting this article. These articles are in support of the Arc of Justice Institute and its Hidden Legal Figures project. For more information, visit onthearc.net.

SPECIAL ANNOUNCEMENT



From left to right: Don Keenan (Founder), Aileen Carpenter (Emory 3L, tied for 4th Place), Randy Williams (Emory 3L, tied for 4th Place), Christopher Lambden (Emory 3L, 3rd Place), Andrew Mueller (Emory 2L, tied for 2nd Place), Maria Gerasikova (Emory 2L, tied for 2nd Place), Hannah Supernor (Emory 3L, 1st Place)

THE KEENAN'S KIDS FOUNDATION 22ND ANNUAL LAW STUDENT CLOSING ARGUMENT WINNERS

ABOUT THE COMPETITION

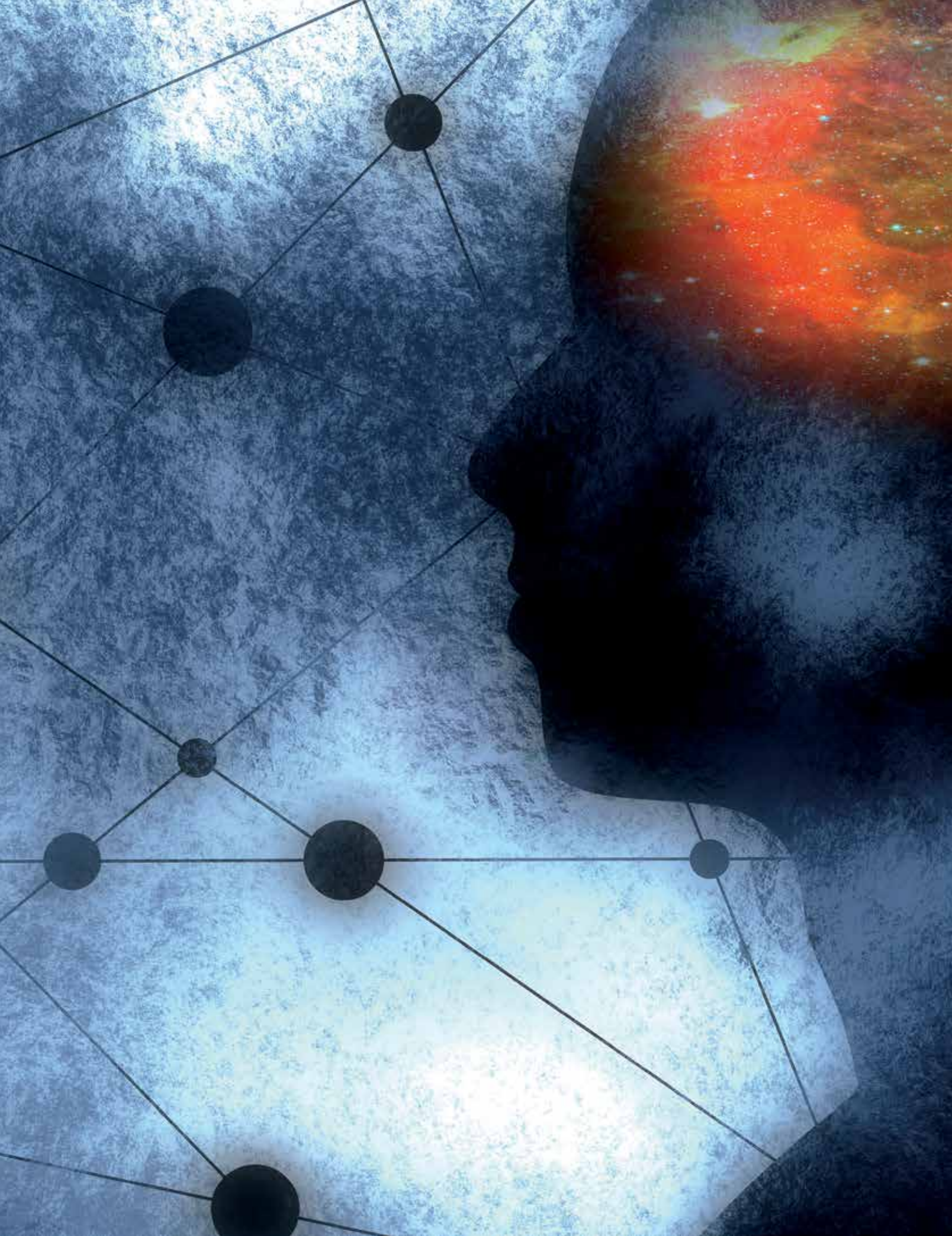
Every year, The Keenan's Kids Foundation hosts their Annual Law Student Closing Argument Competition. The competition was established in 1997 to show students the importance of children's rights and to encourage them into this most needed area of the law. The event also stands as an opportunity for students to gain courtroom experience in front of a jury.

All participants are invited to attend the whole day of competition. However, it is only necessary to be present at the pre-assigned time for the argument. In addition, all participants are invited to attend the closing reception following the conclusion of the arguments. The top four students will receive cash prizes of \$2,000 for 1st place, \$1,000 for 2nd place, \$500 for 3rd place and \$250 for 4th place. Stay tuned for our 2020 Announcement.

QUESTIONS? Please call 404.523.2200

THIS YEAR'S WINNERS

- ✔ **FIRST PLACE: HANNAH SUPERNOR
(EMORY 3L)**
- ✔ **SECOND PLACE: MARIA GERASIKOVA
(EMORY 2L)**
- ✔ **SECOND PLACE: ANDREW MUELLER
(EMORY 2L)**
- ✔ **THIRD PLACE: CHRISTOPHER LAMB DEN
(EMORY 3L)**
- ✔ **FOURTH PLACE: RANDY WILLIAMS
(EMORY 3L)**
- ✔ **FOURTH PLACE: AILEEN CARPENTER
(EMORY 3L)**



Behavioral Economics and the Practice of Law

Behavioral economics combines insights from psychology, judgment, and decision making, and economics to generate a more accurate understanding of human behavior. This article considers these insights to the practice of law.

BY ROBERT C. PORT

A (Very) Brief Overview of Behavioral Economics¹

Behavioral economics is the study of how people make decisions. In particular, behavioral economics is “a relatively new field that combines insights from psychology, judgment, and decision making, and economics to generate a more accurate understanding of human behavior.”² Although these insights have significant application to how people make decisions regarding their investments, they have application for a broad range of decision making. This article considers these insights to the practice of law.

The research demonstrates that decision-making is often not as rational and analytical as traditional economic theory would predict.³ Traditional economic theory—think Adam Smith, “The Wealth of Nations”⁴—makes two basic assumptions. First, the person making choices either knows or has assessed

all the information relevant to making a decision. Second, the person is rational, and makes decision that are logical and consistent based on an objective calculation of risk and costs compared to the expected rewards. This is often referred to as “utility theory.”⁵

The problem with utility theory is its limited application in real-world situations. It describes how people *should* make decisions rather than how they *actually* make decisions. Real-life decision-making usually employs a variety of cognitive “rules-of-thumb,” called heuristics. Heuristics are unconscious shortcuts by which our minds make decisions, sometimes instantaneously or irrationally, rather than engaging in the thoughtful, logical, analytical or rational approach that traditional economic theory suggests.⁶

“Prospect theory” is the term coined by psychologists to describe the way people actually make real-

life economic decisions between alternatives whose outcomes are uncertain.⁷ The theory suggests that people make decisions based on their intuitive perception of the risk of a loss or a gain rather than a true probabilistic analysis of the likely final outcome.

Behavioral economics challenges the notation that people make thoughtful rational decisions when faced with economic choices:

In standard economics, we think—we assume—that people are perfectly rational, which means that they always behave in the best way for them. They can compute everything, they can calculate everything and they can make, always, consistently, the right decisions. In contrast, behavioral economics doesn't assume much about people. Instead of starting from the idea that people are perfectly rational, we say we just don't know, but let's check it out. So, what we do is we put people in different situations to check how they actually make decisions. And what we find in those experiments is that people often don't behave as you would expect from a perfectly rational perspective.⁸

In sum, behavioral economics reveals that we are “predictably irrational.”⁹

“Prospect theory” is the term coined by psychologists to describe the way people actually make real-life economic decisions between alternatives whose outcomes are uncertain. The theory suggests that people make decisions based on their intuitive perception of the risk of a loss or a gain rather than a true probabilistic analysis of the likely final outcome.

Behavioral Economics and Securities Class Action Litigation

Without directly using the term “behavioral economics,” it appears that the Supreme Court has recognized its impact in evaluating the proofs and defenses presented in securities class action litigation. In *Basic Inc. v. Levinson*, the Supreme Court upheld the validity of the “fraud-on-the-market” presumption.¹⁰ That presumption provided that class action investors could satisfy the reliance requirement for proving stock fraud premised on a material misrepresentation because it was assumed that the price of the stock they had purchased or sold occurred in an “efficient market,” one which reflected all public material information, including material misrepresentations.

In its subsequent holding in *Halliburton Co. v. Erica P. John Fund, Inc.*,¹¹ the Court held that defendants can defeat the *Basic* presumption at the class certification stage by introducing evidence that the alleged misrepresentation did not affect the stock price. Of particular note is the concurrence by Justices Thomas, Alito and Scalia, which channels behavioral economic theories by stating that the *Basic* presumption is based on “a questionable understanding of disputed economic theory and flawed intuitions about investor behavior.”¹² The concurrence further observed:

Basic based the presumption of reliance on two factual assumptions. The first assumption was that, in a “well-developed market,” public statements are generally “reflected” in the market price of securities. 485 U.S., at 247, 108 S.Ct. 978. The second was that investors in such markets transact “in reliance on the integrity of that price.” *Ibid.* In other words, the Court created a presumption that a plaintiff had met the two-part, fraud-on-the-market version of the reliance requirement because, in the Court’s view, “common sense and probability” suggested that each of those parts *would* be met. *Id.*, at 246, 108 S.Ct. 978.

In reality, both of the Court’s key assumptions are highly contestable and do not provide the necessary support for *Basic*’s presumption of reli-

ance. The first assumption—that public statements are “reflected” in the market price—was grounded in an economic theory that has garnered substantial criticism since *Basic*. The second assumption—that investors categorically rely on the integrity of the market price—is simply wrong.¹³

The concurrence captures the basic premise of behavioral economics: Contrary to traditional economic theory, which presumes a clear-eyed analytical evaluation of the costs and benefits of a decision, we may not consistently understand or implement probability when making economic decisions, our assessment of the probability of future expected events may be flawed, we regularly act impulsively and with unconscious biases and we often act without complete information or ignore material information. As one district court has observed, “Because the notion of information efficiency upon which the fraud-on-the-market presumption rests is crumbling under sustained academic scrutiny, the future of securities fraud class action litigation—dependent on this presumption—may be in jeopardy.”¹⁴

Behavioral Economic Concepts in the Practice of Law

In their work describing why people are “predictably irrational,” behavioral economists have identified a number of common themes—heuristics—in decision making, many of which have application to the practice of law. Some of these are discussed below.

Anchoring

Anchoring describes the effect that exposure to a recent number or exposure to certain environments affects decision-making. Anchoring is “a behavioral bias in which the use of a psychological benchmark carries a disproportionately high weight in a market participant’s decision-making process.”¹⁵ The concept of anchoring focuses on our tendency to attach or “anchor” our thoughts to a reference point—even though that reference point may have no logical relevance to the

decision at hand. Behavioral economist Daniel Kahneman describes anchoring as “one of the most reliable and robust results of experimental psychology.”¹⁶

To illustrate this bias, in a well-known experiment, subjects are asked to write down the last few digits of their Social Security number. They are then presented with a jar of marbles, and asked to guess the number of marbles in a jar. Subjects with higher Social Security numbers almost always guess higher.¹⁷ Similarly, researchers asked participants whether Mahatma Gandhi died before or after the age of nine years or whether he died before or after the age of 140 years. The average of answers given to the two questions differed by 17 years, although these anchors seemed to be obviously irrelevant.¹⁸

As a consequence, the starting point at the beginning of the decision-making process has a very real effect on the final result. In a negotiation, anchoring efforts should occur early in the process before the other party has an opportunity to anchor based on their own decision-making processes or other experiences.

Consider the following which might be anchor points for your client:

- The first offer made in a negotiation.
- The amount of damages set forth in a complaint.
- Litigation costs already incurred.
- Media reports of similar verdicts or settlements.
- Lawyer advertising as to verdicts and settlements achieved.
- The sale of a similar property or business.
- The highest perceived prior value of a property or business.
- “Conducting a meeting in a cheap coffee shop might create mental associations that help you negotiate a lower price whereas meeting in an expensive restaurant or well decorated office might have the opposite effect.”¹⁹

Overconfidence

Human beings have a tendency to overestimate their own skills and predictions for success. We overestimate the prob-

abilities of good things happening and discount the probabilities of failure or loss unless we are always pessimistic.

Socrates is said to have observed that “True knowledge exists in knowing that you know nothing.”²⁰ Former U.S. Secretary of Defense Donald Rumsfeld observed that

[T]here are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don’t know we don’t know.²¹

Experts and highly educated people—such as attorneys—are prone to have greater overconfidence bias than laypeople because their education (and perhaps their income and position of seniority) gives them the (over)confidence to believe they are right.²² Thus, a lawyer might be too confident in their ability to convince the court that adverse case law is distinguishable.

Behavioral economists have identified a variety of cognitive biases that lead to overconfidence. One is the “illusion of control”—the tendency for people to overestimate their ability to control events.²³ Attorneys, for example, might feel that they can control outcomes for situations in which they demonstrably do not have complete control, such as a jury’s decision or whether the other party will accept the terms of a business proposal.

Another and related bias leading to overconfidence is the “hot-hand” fallacy—the belief that a person who has experienced success with a random event has a greater chance of further success in additional attempts.²⁴ A flipped coin that has landed on heads 10 times in a row still has only a 50/50 chance of landing on heads on the 11th flip. Though if it has landed heads 100 times in a row you might question the fairness of the coin. An attorney who has won their last 10 cases, or secured the last 10 zoning variances, still must recognize that their success or failure on the next case or zoning dispute is not completely assured.

One approach to counter overconfidence is to conduct a “premortem” as discussed below:

A premortem is the hypothetical opposite of a postmortem. A postmortem in a medical setting allows health professionals and the family to learn what caused a patient's death. Everyone benefits except, of course, the patient. A premortem in a business setting comes at the beginning of a project rather than the end, so that the project can be improved rather than autopsied. Unlike a typical critiquing session, in which project team members are asked what might go wrong, the premortem operates on the assumption that the "patient" has died, and so asks what did go wrong. The team members' task is to generate plausible reasons for the project's failure.²⁵

This strategy for addressing overconfidence involves "prospective hindsight . . . which helps . . . identify risks at the outset."²⁶ Using this strategy, the lawyer imagines early on in the representation that the desired goal has not been achieved—the case was lost on summary judgment or at trial, or the business deal collapsed—and then works backward from that hypothetical failure to determine what potentially could lead to that negative result. Moving forward, the attorney can then have a greater sensitivity to those risks that could derail the matter.

Planning Fallacy

The "planning fallacy" refers to the tendency for people to consistently underestimate both the time and costs for completing projects.²⁷ Because human judgment is generally overconfident and optimistic, people tend to underestimate the costs, completion times and risks of planned actions. Some examples are provided below.

- In a litigation situation, both sides will likely underestimate not only the amount of time needed to reach a conclusion, but also the cost of the litigation process. Litigators are notorious for underestimating the length of a deposition, arguments on a motion, a hearing or a trial.
- In a deal situation, parties will underestimate the time needed to negotiate

and draft the details of the relevant documents.

Behavioral economists suggest that the best way of avoiding the planning fallacy is to use a data-driven technique called "reference class forecasting." Essentially, reference class forecasting tries to eliminate the subjective prejudices of the forecaster (the "inside view") and focuses on reasonably objective data ("the outside view").²⁸ For example, when trying to predict the legal fees and expenses of a lawsuit, the analysis would be this:

First, identify a set of similar activities. When trying to predict how much a lawsuit might cost in legal fees, for example, identify a group of similar lawsuits. This group of similar prior lawsuits is your reference class.

Second, collect data on the reference class. How long did those lawsuits last from beginning to end? How much were the total legal fees? This data provides the baseline for evaluating your own situation. So, if your firm has handled 10 similar types of lawsuits in the past, and the average legal fees incurred were \$100,000, then \$100,000 is your baseline.

Third, evaluate the effect of concrete differences between your particular case and the reference class cases. For example, if your firm's hourly rates have increased year over year, then you will want to adjust the baseline estimate upward to reflect the increases in hourly rates. If some of the prior cases required more witnesses than your case will, then you might adjust your estimate downward.

Finally, the fourth, and possibly hardest, step is to actually use the estimate and ignore your inevitable desire to use your original "prediction" about the cost in place of the hard data.²⁹

Confirmation Bias

Confirmation bias is the tendency to interpret new facts and experiences in ways that reinforce our pre-existing beliefs.³⁰ Simply stated, we favor information that confirms our beliefs, while discounting facts that counter those beliefs. As a consequence, confirmation bias causes us

to give less weight to information that challenges those beliefs, and we may not even search for conflicting evidence or differing opinions.

Confirmation bias often places undue influence on information gathered early on. A person forms an initial opinion and then evaluates subsequent evidence through that filter so that it confirms the opinion. The "first impression" controls, and then the person has "blindness" on, preventing any realistic assessment of contrary information.

In "Predictably Irrational," psychologist Daniel Ariely describes an experiment in which MIT students were asked to taste-test two types of beer. One was a regular beer, and the other was the same beer, but with balsamic vinegar added. The altered beer was "MIT Beer." As expected, when told in advance that MIT Beer contained vinegar, the students preferred the regular beer. In contrast, however, when they were not told in advance about the vinegar, the students typically preferred MIT Beer.³¹

Much of what lawyers do involves direct adversarial situations (litigation, arbitration, mediation), or quasi-adversarial situations, such as contract negotiations. Confirmation bias can cause either or both sides to have an unrealistic view of their chance of success, leading to an inability to objectively evaluate the matter, and resulting in extended litigation or negotiation deadlocks. Some examples:

- Clients often have no ability to recognize the possibility that the fact finder will not find them credible, will not find the facts as the client swears them to be, or that the fact finder might otherwise not see their case as straightforward as the client believes it to be.
- A litigation lawyer fails to adjust the "theme" of the case as identified early on even when discovery produces evidence challenging that theme or suggesting alternative theme(s).
- A lawyer might discount or wholly ignore the probable effect of negative testimony at a deposition by focusing on the parts of the deposition that support his client's position.

- A business client may be so enamored of the proposed deal that they overestimate the cost savings of a merger, the ease of regulatory approval or the ability to merge different business cultures into one.

Confirmation bias can be countered by maintaining an objective viewpoint from the start. Also, it is useful to seek input and feedback from objective third parties who have no stake in the matter. Any negative information counter to our initial analysis and impressions must be carefully and objectively analyzed, without fear that doing so might be a challenge to and reveal the bias in our own decision-making.

Loss Aversion

Loss aversion is the tendency of people to fear losses more than they desire a gain of similar value. For example, research has found that the perceived risk of a financial loss is weighed more heavily in decision-making than the possibility of a gain of equal value. This is known as “loss aversion,” and by some measures, a loss has about twice as much psychological impact as a gain of the same amount.³² A person viewing himself or herself as losing something places more value on the thing lost than someone who views the transaction as receiving the same thing, even though the economic value of the loss and the gain are the same.³³

A lawyer who understands these incentives may be able to set up the litiga-

tion or the business negotiation to increase the chance of reaching a successful result. Loss aversion suggests that rather than trying to achieve a result by threatening the adverse party with a significant loss, the lawyer who can frame the consequences for all parties as a “win-win” should do better in achieving the result desired by their client.

For example, a litigation settlement might be structured so that the payor is able to secure favorable tax treatment for the payment made, thus reducing the actual out-of-pocket cost of the settlement. The release of a lis pendens as part of a settlement, thus allowing real property to be marketed, might be viewed as a significant gain even if significant consideration is paid by the defendant to accomplish that result. As another example, “in a shipping contract, a lawyer might start with a higher base price that includes insurance and offer a discount if the customer maintains its own insurance rather than start with a lower base price and then try to get the customer to pay extra for the shipper to cover insurance. Loss aversion suggests that the customer will view the discount as a gain, and the payment of extra fees as a loss, and be more willing to forgo the discount than pay the extra fees.”³⁴

Hindsight Bias

Another common behavioral tendency is “hindsight bias.” This describes situations in which a person believes, after the fact, that what happened was predictable and completely obvious, when in fact,

the event could not have been reasonably predicted. In other words, “I knew it all along.”³⁵ The fact is that “stuff happens,” often in ways that are unpredictable and unexplainable, but it won’t appear that way after the fact.³⁶

Psychologists attribute hindsight bias to our innate need to find order in a chaotic and uncertain world. To do so, we create rationalizations that allow us to believe that unexpected or unpredictable events most certainly could have, and should have, been predicted. “People [are] driven to overstate the accuracy not only of their original predictions but also of those made by others.”³⁷

Some clients expect lawyers to have perfect foresight as to the course of negotiations, the way in which a judge or jury will decide a case, or what a government regulator might do. How many times have we heard a disappointed client say “You should have known!” as if we have the perfect foresight of a crystal ball?

To reduce the challenges of disappointment caused by a client’s hindsight bias, the lawyer should regularly remind the client of all the independent variables in the litigation/negotiation decision making process over which the attorney has little or no control:

- The strategies of the adverse party and their counsel;
- The interpretations of law by the court;
- The facts as found by the judge or jury;
- The subjective impressions that each of the players involved have of each

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other (opposing counsel, opposing party, judge, jury, mediator).

Conclusion

By understanding some of the key heuristics and unconscious tendencies lawyers and their clients use to make their decisions—decisions that are often “predictably irrational”³⁸—a lawyer can accomplish two things. First, we can better understand our own decision-making processes and improve them. Second, with that knowledge, we can help our clients make better decisions, and be reasonably confident in the process by which those decisions are reached. ●



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The author wishes to thank David E. Hultstrom, MBA, CFP, CFA, of the financial planning and wealth management firm of Financial Architects, LLC, for his thoughtful comments on this article.

Endnotes

1. Some academics and commentators use the phrase “behavioral finance” interchangeably with “behavioral economics.” See, e.g., Frederick C. Dunbar & Dana Heller, *Fraud on the Market Meets Behavioral Finance*, 31 DEL. J. CORP. L. 455, 483-97 (2006).
2. Francesca Gino, *The Rise of Behavioral Economics and Its Influence on Organizations*, HARV. BUS. REV., Oct. 10, 2017, <https://hrb.org/2017/10/the-rise-of-behavioral-economics-and-its-influence-on-organizations>.
3. See e.g., Sendhil Mullainathan & Richard H. Thaler, *Behavioral Economics, How Behavioral Economics Differs from Traditional Economics*, <https://www.econlib.org/library/Enc/BehavioralEconomics.html> (“The standard economic model of human behavior includes three unrealistic traits—unbounded rationality, unbounded willpower, and unbounded selfishness—all of which behavioral economics modifies.”).
4. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, Modern Library; Sixth Printing ed. (Jan. 25, 1994), Edwin Cannan (Ed.).
5. Utility theory “tries to depict rational or optimal choice behavior.” Psychology Dictionary, <https://psychologydictionary.org/utility-theory/>.
6. See generally, DANIEL KAHNEMAN, THINKING, FAST AND SLOW 97-103 (2013).
7. The theory originated in a 1979 paper by Daniel Kahneman and Amos Tversky, *Prospect Theory: An Analysis of Decision under Risk*, ECONOMETRICA, Vol. 47, No. 2, pp. 263-292 (Mar. 1979), <https://www.its.caltech.edu/~camerer/Ec101/ProspectTheory.pdf>. Kahneman later won the 2002 Nobel Memorial Prize in Economics for his work developing prospect theory “for having integrated insights from psychological research into economic science, especially concerning human judgment and decision-making under uncertainty.” The Nobel Prize Press release, Oct. 9, 2002, <https://www.nobelprize.org/prizes/economic-sciences/2002/press-release/>.
8. Dan Ariely Interview—A Primer on Behavioral Economics, <https://thebestschools.org/features/dan-ariely-interview-behavioral-economics/> In.
9. DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS (2008). In 2017, Professor Richard Thaler of the University of Chicago was awarded the Nobel Memorial Prize in Economic Sciences “for his pioneering work in establishing that people are predictably irrational—that they consistently behave in ways that defy economic theory.” Binyamin Appelbaum, *Nobel in Economics is Awarded to Richard Thaler*, N.Y. TIMES, Oct. 9, 2017, <https://www.nytimes.com/2017/10/09/business/nobel-economics-richard-thaler.html>.
10. *Basic Inc. v. Levinson*, 485 U.S. 224 (1988).
11. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014).
12. *Id.* at 288.
13. *Id.* at 289. As suggested examples of why it is inaccurate to assume investors rely on the market price in making their decisions, “[b]ehavioral economics researchers have . . . identified numerous types of trading activity—some rational and some not—where traders may not rely on the accuracy of the market price. These traders may range from value investors seeking stocks they believe are mispriced, to momentum traders to money managers engaging in herding behavior. The natural argument, then, is that it makes little sense to assume that all investors have relied on the market price and thus, indirectly, on any misrepresentation.” Charles R. Korsmo, *Market Efficiency and Fraud on The Market: The Danger of Halliburton*, 18 LEWIS & CLARK L. REV. 827, 866 (2014).
14. *In re PolyMedica Corp. Secs. Litig.*, 453 F. Supp. 2d, 260, 272 (D. Mass. 2006).
15. Investopedia, <https://www.investopedia.com/terms/a/anchoring.asp>. See generally, DANIEL KAHNEMAN, THINKING, FAST AND SLOW, 119-128 (2013).
16. Kahneman, *supra* note 16, at 119.
17. Warren E. Agin, *An Introduction to Behavioral Economics and Negotiations*, ABA Business Law Section, BUS. LAW TODAY, Nov. 3, 2017, <https://businesslawtoday.org/2017/11/an-introduction-to-behavioral-economics-and-negotiations/>.
18. *All you need to know on Anchoring*, The Rational Think Tank—Behavioral Insights for the Legal Profession, July 23, 2017, <https://www.rationalthinktank.com/2017/07/23/all-you-need-to-know-on-anchoring/>.
19. Agin, *supra* note 18.
20. https://www.brainyquote.com/quotes/socrates_382301. See also, “The only true wisdom is in knowing you know nothing.” (<https://www.goodreads.com/author/quotes/275648.Socrates>). There is scholarly debate as to whether Socrates actually said this exact quote. The phrase appears to be a paraphrasing from Plato’s account of Socrates’ statement, “I neither know nor think that I know.” https://en.wikipedia.org/wiki/I_know_that_I_know_nothing#cite_note-6.

21. DoD News Briefing—Secretary Rumsfeld and Gen. Myers Presenter: Secretary of Defense Donald H. Rumsfeld, Feb. 12, 2002, 11:30 AM, <http://archive.defense.gov/Transcripts/Transcript.aspx?TranscriptID=2636>.
22. See, e.g., Daniel Kahneman, *Don't Blink! The Hazards of Confidence*, N. Y. TIMES MAG., Oct. 19, 2011 (“In general, however, you should not take assertive and confident people at their own evaluation unless you have independent reason to believe that they know what they are talking about. Unfortunately, this advice is difficult to follow: overconfident professionals sincerely believe they have expertise, act as experts and look like experts.”), <https://www.nytimes.com/2011/10/23/magazine/dont-blink-the-hazards-of-confidence.html>; Rolf Dobelli, *The Overconfidence Effect—Why you systematically overestimate your knowledge and abilities*, PSY. TODAY, June 11, 2013, <https://www.psychologytoday.com/us/blog/the-art-thinking-clearly/201306/the-overconfidence-effect>, (“Experts suffer even more from the overconfidence effect than laypeople do. If asked to forecast oil prices in five years’ time, an economics professor will be as wide of the mark as a zookeeper will. However, the professor will offer his forecast with certitude.”); Nate Silver, *Herman Cain and the Hubris of Experts*, Oct 27, 2011, (“Experts have a poor understanding of uncertainty. Usually, this manifests itself in the form of overconfidence: experts underestimate the likelihood that their predictions might be wrong.”), <https://fivethirtyeight.com/features/herman-cain-and-the-hubris-of-experts/>.
23. “Illusion of control is the tendency for human beings to believe they can control or at least influence outcomes that they demonstrably have no influence over.” ScienceDaily, *Illusion of Control*, https://www.sciencedaily.com/terms/illusion_of_control.htm.
24. “The hot hand is the notion that because one has had a string of successes, an individual or entity is more likely to have continued success. For example, if one flipped a (fair) coin and guessed correctly that it would land on heads three times in a row, it might be said that they have a “hot hand.” Under such circumstances, a person believes that their odds of guessing which side the coin will land on next are greater than the 50 percent they actually are.” Investopedia, <https://www.investopedia.com/terms/h/hot-hand.asp>.
25. Gary Klein, *Performing a Project Premortem*, HARV. BUS. REV. (Sept. 2007), <https://hbr.org/2007/09/performing-a-project-premortem>.
26. *Id.*
27. The term was coined “to describe plans and forecasts that ‘are unrealistically close to best-case scenarios [and] could be improved by consulting the statistics of similar cases.’” DANIEL KAHNEMAN, THINKING, FAST AND SLOW, 250 (2013).
28. Farnam Street, *Countering the Inside View and Making Better Decisions* (May 24, 2015), <https://fsblog.com/2015/05/inside-view-michael-mauboussin> (quoting MICHAEL MAUBOUSSIN, THINK TWICE: HARNESING THE POWER OF COUNTERINTUITION (2009)).
29. Warren E. Agin, *An Introduction to Behavioral Economics and Negotiations*, ABA Business Law Section, BUS. LAW TODAY, Nov. 3, 2017, <https://businesslawtoday.org/2017/11/an-introduction-to-behavioral-economics-and-negotiations/>.
30. Confirmation bias “is a tendency to search for or interpret information in a way that confirms one’s preconceptions, leading to statistical errors.” ScienceDaily, https://www.sciencedaily.com/terms/confirmation_bias.htm.
31. DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS, 204-08 (2008); Leonard Lee, Shane Frederick, & Dan Ariely, *Try It, You’ll Like It—The Influence of Expectation, Consumption, and Revelation on Preferences for Beer*, Psychol. Sci., Vol. 17, No. 12, pp. 1054-58 (2006), <http://web.mit.edu/ariely/www/MIT/Papers/Beer.pdf>.
32. Amos Tversky & Daniel Kahneman, *Advances in Prospect Theory: Cumulative Representation of Uncertainty*, J. OF RISK AND UNCERTAINTY, 5: 297-323 (1992), http://psych.fullerton.edu/mBIRNBAUM/psych466/articles/Tversky_Kahneman_JRU_92.pdf. See also, DANIEL KAHNEMAN, THINKING, FAST AND SLOW, 284 (2013) (“The ‘loss aversion ratio’ has been estimated in several experiments and is usually in the range of 1.5 to 2.5.”)
33. A related concept is the “endowment effect,” which describes the tendency of people who have a good to value it more than someone who does not. As an example, the maximum amount of money that buyers are willing to pay to acquire something is often lower than the minimum amount of money that a seller is willing to accept for it. See, e.g., Carey K. Morewedge and Colleen E. Giblein, *Explanations of the endowment effect: an integrative review*, TRENDS IN COGNITIVE SCI., Vol. 19, No. 6, pp. 339-348 (June 2015) (“The endowment effect is the tendency for people who own a good to value it more than people who do not. Its economic impact is consequential. It creates market inefficiencies and irregularities in valuation such as differences between buyers and sellers, reluctance to trade and mere ownership effects. Traditionally, the endowment effect has been attributed to loss aversion causing sellers of a good to value it more than buyers. New theories and findings—some inconsistent with loss aversion—suggest evolutionary, strategic, and more basic cognitive origins.”).
34. Agin, *supra* note 30.
35. KAHNEMAN, *supra* note 33, at 202. See also, NASSIM NICHOLAS TALEB, FOOLED BY RANDOMNESS 55-56 (2004) (“Things are always obvious after the fact.”)
36. “Despite the common cliché, hindsight is not 20/20. Without corrective lenses, hindsight is close to legally blind. Once we learn what did happen, we look back and believe that we knew it was going to happen all along—even if we were utterly in the dark at the time.” Jason Weig, *Your Money & Your Brain* 110-11 (2008).
37. Kahneman, *supra* note 33, at 203. “Similar results have been found for other events that gripped the public attention such as the O.J. Simpson murder trial and the impeachment of Bill Clinton. The tendency to revise the history of one’s beliefs in light of what actually happened produces a robust cognitive illusion. . . . The worse the consequence, the greater the hindsight bias. In the case of a catastrophe, such as 9/11 we are especially ready to believe that the officials who failed to anticipate it were negligent or blind.” *Id.*, 202-04.
38. See generally, DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS (2008).

Georgia Bar Foundation Awards \$2.55 Million in Bank of America Settlement Funds

To date, the Georgia Bar Foundation has awarded a total of \$11,454,754 in Bank of America settlement funds. A total of \$2,550,000 remains to be awarded from those funds and will probably be awarded within the next two years.

BY LEN HORTON

The Board of Trustees of the Georgia Bar Foundation awarded \$2,550,000 to four law-related organizations at its April meeting. This was the third round of awards since the Georgia Bar Foundation began receiving Bank of America settlement funds. The amount awarded was half of what remained after making awards in rounds one and two.

“Everyone was focused on making the very best use of the money announced in the RFP,” said Georgia Bar Foundation President Kitty Cohen. “It wasn’t easy because we had nine excellent proposals. We finally decided on four that we thought were the very best.”

Atlanta Legal Aid, one of two Legal Services Corporations grantees in Georgia, received \$956,250 to continue funding its Home Defense Program, which is widely considered the leading legal aid program in the nation protecting homeowners against foreclosure. Foreclosure legal assistance was the primary purpose of the Bank of America settlement funds.

Another purpose of these Bank of America settlement funds, which was also supported in the award to Atlanta Legal Aid, is community redevelopment legal assistance. The Georgia Bar Foundation approved of Atlanta Legal Aid’s partnering with Georgia Appleseed, the Truancy Intervention Proj-

ect and the Pro Bono Partnership of Atlanta to revitalize Georgia communities hardest hit by the foreclosure crisis.

Specifically, Atlanta Legal Aid’s award will also support Georgia Appleseed’s efforts to research and advocate for local and state policy reforms to eliminate unsafe and unhealthy housing. The Truancy Intervention Project will work with Atlanta Legal Aid to keep children in school even when their families experience housing instability. Atlanta Legal Aid will also work to support nonprofit organizations that serve the disadvantaged. They will partner with Pro Bono Partnership of Atlanta, which will provide workshops, webinars and legal counsel for certain nonprofits, all focused on supporting damaged, low-income communities.

Georgia Legal Services Program, which is also a Legal Services Corporation grantee in Georgia, received \$956,250 to continue the work of its Eviction Prevention Project (EPP) and expand its reach to more of its service area, the 154 counties outside metro-Atlanta. A major focus of EPP is dealing with landlord failure to make repairs and keep housing in compliance with local housing codes.

Additional support for the Tenant Advice Line will be added with the funds along with continuity for the Equal Jus-



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tice Works' Housing Corps. Community outreach and landlord-tenant clinics will also receive support with these funds.

The Georgia Heirs Property Law Center received \$382,500 to support positions established through the Equal Justice Works partnership. The primary focus is on providing legal services to low- and moderate-income heirs property owners. The work involves title clearing, estate planning and education/asset management. This working group will also provide assistance to communities and practitioners in developing a uniform approach and systemic solutions to heirs property problems.

Heirs property problems affect not only individuals who could lose property unless title is clearly established but also entrepreneurs and developers whose deals are often complicated or blocked by heirs property problems. According to Skipper StipeMaas, executive director of the Georgia Heirs Property Law Center, approximately 10 to 25 percent of Georgia property has heirs property issues, thus affecting Georgia's economy. The total estimated appraised value of \$34 billion in "locked equity" of heirs property for all Georgia shows the importance of this problem.

The Atlanta Volunteer Lawyers Foundation (AVLF) received \$255,000 to support the Standing with Our Neighbors (SWON) staff added through the Georgia Housing Corps fellowships from Equal Justice Works. The AVLF proposal constitutes community redevelopment legal services through its SWON program. AVLF coordinates the provision of civil legal services to low-income individuals through the volunteer efforts of private attorneys. The SWON program seeks to repair damages caused by the foreclosure crisis. These funds will allow SWON to tackle more of the problems associated with housing and even start dealing with some health problems created by housing degradation worsened by the foreclosure crisis. ●



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James M. Collier Award



PHOTO BY LEN HORTON

J. Joseph Brannen receives the James M. Collier Award from Georgia Bar Foundation President Kitty Cohen.

J. Joseph Brannen, president and CEO of the Georgia Bankers Association, received the James M. Collier award at the April 17, 2019, meeting of the Georgia Bar Foundation. The award recognizes individuals who have significantly contributed to the work of the foundation.

Brannen was appointed by the Supreme Court of Georgia to the Board in 1999 and has been an integral part of just about everything the foundation has done since then. Before joining the board, he was always available to advise on banking issues and how the foundation could be fully accepted by Georgia's banking industry.

Brannen was always focused on how the Georgia Bar Foundation and IOLTA should work with banks. He introduced Foundation members to the movers and shakers of the banking industry. At his urging, many of these banking executives went on to serve on the Board of Trustees of the Georgia Bar Foundation. Jim Lientz, Gary Thompson and Dennis Burnette were industry giants who, because of Joe Brannen, decided to help us by agreeing to serve on the board.

Not merely focused on banking's top executives, he provided introductions to middle management executives who had a major say in how Georgia's IOLTA program would be set up throughout Georgia. Loyd Smith at C&S Bank became so influential in providing input on setting up IOLTA

in Georgia that he became the first full-time banking executive to win the James M. Collier Award. Brannen is the second.

In recognition of the importance of banking support for the work of the Georgia Bar Foundation, the Supreme Court of Georgia created several new positions to give banking executives and other non-lawyer executives full voting participation on the board. Brannen is one of the reasons for this. To this day, Georgia is one of the few states where bankers have full voting participation on its IOLTA board.

Brannen was elected president of the Georgia Bar Foundation in 2009 and served until 2011. He continues to serve on the Board of Trustees and is now the 16th person to win the James M. Collier award.

Named for James Collier, who served as president of the Foundation from 1995 through 1998, the James M. Collier Award recognizes extraordinary service to the Georgia Bar Foundation.

The Georgia Bar Foundation is the charitable arm of the Supreme Court of Georgia and has been named by the Court as the recipient of interest on lawyer trust account money. The foundation makes grants to law-related organizations in Georgia with the focus being on providing access to justice to needful Georgians throughout the state. More than \$100 million has been received in IOLTA revenues since 1984. ●

2019 Legislative Review

The State Bar had a successful year under the Gold Dome, effectively passing two bills this session. Without the help of our lawyer-legislators and our members who volunteered their time, none of this success would have been possible.

BY CHRISTINE BUTCHER HAYES

The 2019 session of the Georgia General Assembly was marked with change. The November 2018 election ushered in leadership changes from the top down, with a new governor and lieutenant governor sworn in on Jan. 14, and a slew of new House and Senate committee chairmen filling vacancies created by retirements and election defeats. With a number of new legislators learning the ropes and veteran legislators navigating new changes in leadership, there were fewer bills filed overall in 2019 than in recent years. Legislation to expand Georgia's Medicaid waiver, procure new voting machines and expand access to CBD oil grabbed headlines across the state. And the State Bar had a successful year under the Gold Dome, effectively passing two bills this session.

The Legislature approved a \$48.7 billion state budget for FY2020, which includes approximately \$27.5 billion in state funding and approximately \$14.2 billion in federal funds. In addition to a merit-based pay increase for state employees and a \$2,775 pay increase for public school teachers, the FY 2020 budget also includes continued funds

for grants to civil legal services providers for victims of domestic violence and continued funding of the Georgia Appellate Resource Center. The Legislature additionally approved a new \$375,000 appropriation for grants that will go to civil legal services for kinship care families.

In addition to the State Bar's legislative package, the legislative team was busy tracking a variety of issues that affect lawyers in Georgia. Be on the lookout for these recent updates in the code, along with a number of others that span across practice areas.

Enabling the Georgia Statewide Business Court

After competing House and Senate bills creating the statewide business court made their way through the legislative process this year, the final product passed on Day 40 as HB 239. Rep. Chuck Efstrotation (R-Dacula) and Sen. Jesse Stone (R-Waynesboro) worked tirelessly to craft the business court legislation and ultimately strike a compromise between the House and Senate positions. Under HB 239, the statewide business

court may be located in Atlanta or Macon. The legislation provides for three ways to bring a case before the court. A plaintiff may choose to file his or her action directly with the business court or all parties may consent to transfer a case from state or superior court to the business court. A party may also petition to transfer the case to the statewide business court, and upon review, the business court judge shall determine whether the case is within the jurisdiction of the court, with a presumption that the action remain in the court of filing.

The filing fee for the court is set at \$3,000, which is paid by the party or parties filing the action in the business court or equally allocated across all parties who consent to transfer the case. The court has concurrent jurisdiction and the powers of a court of equity over claims arising under the Uniform Commercial Code, the Georgia Uniform Securities Act and the Georgia Business Corporation Code, among others. Where damages are requested, the amount in controversy must exceed \$500,000 or \$1 million for claims involving commercial real property.



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The legislation provides for one judge who shall be appointed by Aug. 1, 2019. The court will begin accepting cases on Aug. 1, 2020.

Exemptions from eFiling Charges and Mandated Electronic Service for Attorneys

In the final hours of the legislative session, the business court legislation (HB 239) became a vehicle for other legislation of interest to the bench and the bar. The final bill “as passed” includes language from SB 38, which provides that eFiling service providers may not charge any filer for a leave of absence or a conflict notice. The attached language also amends O.C.G.A. § 9-11-5 so that attorneys may not elect to rescind electronic service of pleadings if the case was initiated electronically. The effect is that civil cases initiated in state or superior court after July 1, 2019, require electronic service of pleadings to and from all represented parties. Attorneys are deemed to have consented to service at the primary email address on record with the electronic filing service provider.

Amendments to the Statute of Frauds

SB 37, sponsored by Sen. William Ligon (R-Brunswick) amends the Statute of Frauds so that any agreement to modify, alter, cancel, revoke or rescind a contract that falls within the Statute of Frauds must be in writing. Under this new provision, however, if the party against whom enforcement of the agreement is sought admits in evidence that the agreement was made, it is enforceable if valid in all other respects. SB 37 is in response to a 2018 Court of Appeals of Georgia decision in *Crop Production Services, Inc. v. Moyer*, which found that a mutual oral agreement to rescind a written guarantee is not subject to the Statute of Frauds.

Sovereign Immunity

The third time was not a charm for sovereign immunity legislation. The General Assembly has spent many years debating sovereign immunity legislation after a series of cases from the Supreme Court of Georgia have held that sovereign immunity can only be waived by an act of the General Assembly which specifically

provides for the waiver. Gov. Deal vetoed a bill in 2016 that sought to waive sovereign immunity for similar claims. In 2017 and 2018, the Legislature attempted to negotiate a compromise addressing the governor’s concerns, but the bill failed to pass in both chambers. Legislators and stakeholders put many hours into crafting this year’s version, HB 311, sponsored by Rep. Andy Welch (R-McDonough), which ultimately passed in both the House and the Senate by the conclusion of the session. However, Gov. Kemp vetoed HB 311 on May 10, citing concerns that the bill’s waiver may create unintended pathways for legal intervention that interferes with the daily operations of the state and precludes certain claimants, like individuals in a state mental health facility, from suing the state.

Fiduciary Legislation

HB 70, sponsored by Rep. Chuck Efstraction (R-Dacula), integrates citations to provisions in Title 29 Chapter 11 in order to provide clarity for attorneys practicing in this area and to prevent litigation based on ambiguities between these chap-

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ters. The bill also clarifies the standards establishing who bears the responsibility for paying costs in guardianship and conservatorship proceedings, including medical evaluation and attorney fees.

Real Property and Landlord-Tenant Legislation

In the wake of front-page news coverage highlighting the dangerous living conditions in a number of multi-family rental properties, the Legislature passed HB 346, sponsored by Rep. Sharon Cooper (R-Marietta). The bill strengthens tenant protections so that a tenant can bring a defense of retaliation against a landlord in a dispossessory action where the dispossessory was filed because of a tenant complaint. The legislation also permits a tenant to recover a civil penalty of one month's rent plus \$500, court costs and reasonable attorney's fees where the landlord's retaliatory conduct is willful, wanton or malicious.

Other notable real property bills that passed include HB 288 (revising the fees that a clerk of the superior courts can charge for filing real property documents) and HB 492 (requiring that an application for a writ of possession to be made within 30 days of issuance unless its accompanied by an affidavit showing good cause for the delay).

Domestic and Child Welfare Legislation

A number of bills that affect children and families saw final passage and have been signed by the governor. Those bills include SB 190 (striking language that requires a complaint for modification of custody to be filed as a separate action in the county of residence of the legal custodian of the child); HB 543 (providing procedures for a court to adjudicate an individual to be an equitable caregiver of a child, including standing so a court may establish parental rights and responsibilities); HB 472 (requiring the court to consider whether there are reasonable alternatives to the removal and placement of a child in foster care like a relative or fictive kin); HB 381 (revising the child

support guidelines to bring them in line with federal law); and SB 225 (conforming Georgia law with the federal Social Security Act and the Family First Prevention Services Act).

Vetos, Odds and Ends

Gov. Kemp issued 14 vetos at the conclusion of his first session in office. In addition to HB 311, the sovereign immunity legislation, the governor vetoed a number of bills like HB 83 (mandating recess for K through 5 students) and SB 15 ("Keeping Georgia's Schools Safe Act") that encroach on local government authority.

2019 is the first year of a two-year legislative cycle. As a result, bills that did not pass this year carry over to the 2020 legislative session. Expect to see the debate over bills like the "seatbelt bill" (SB 148 and HB 457) as well as the proposed state takeover of Hartsfield-Jackson International Airport to rear up again next year.

Our 2019 successes are attributable to leadership of the sections, who are the brain trust of the Bar during the legislative session. The objective input by members of the Family Law Section, Real Property Law Section and Fiduciary Law Section proved once again to be invaluable to the lawmaking process in Georgia. Without the help of our lawyer-legislators and our members who volunteered their time to propose these bills, none of this success would have been possible.

Finally, I would like to thank the other members of the State Bar's legislative team—Rusty Sewell, Mark Middleton and Roy Robinson—whose sage advice and zealous advocacy are indispensable to the State Bar during the legislative session. The Advisory Committee on Legislation will meet to discuss the State Bar's 2020 legislative package in September and December 2019. We look forward to working with you during the 2019-20 Bar year! ●



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Professional Development is Not an Individual Sport: Six Tips From the Experts to Help You Reach Your Goals

The 2019 Business Development Symposium was held on April 24 and the focus of this year's program was the value of allies. Here are six tips from the experts that we can all include immediately in our respective practices and lives.

BY REBECCA CHRISTIAN SMITH



One of the goals of the Georgia Diversity Program's (GDP) mission is advocacy for the advancement of all members of the Bar. Every year, GDP provides programming specifically aimed at advancing the careers of lawyers through its Business Development Symposium. This year's theme: "The Value of Allies: How Allies Can Help You Develop Business and Further Your Professional and Personal Goals," provided participants with action-oriented takeaways, access to experts, networking opportunities and CLE credit. Viewed through a broad lens, the CLE focused on the necessity of allies and the role allies play in our professional and personal development. Here are six tips from the experts that we can all include immediately in our respective practices and lives.

(Left to right) Rebecca Christian Smith, executive director, Georgia Diversity Program; Charles Lester, partner (ret.), Eversheds Sutherland; and Kristy Weathers, professional development partner, Eversheds Sutherland.

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1 Allies and knowing the difference between a mentor and a sponsor.

An ally is generally defined as someone helping another. However, allyship is an intentional process of building relationships. Ally relationships consist of trust, consistency and accountability. An ally relationship may call for one or both parties in the relationship to move outside of their comfort zones. It is important to define who can be your ally as broadly as possible. Allies can be internal or external to your organization. An ally can be a peer who refers matters to you or a client willing to use his or her power to influence who works on client matters. An ally can also be someone willing to speak up on your behalf and use his or her voice to positively talk about you and your work with someone who has influence and power in your organization.

Mentors, sponsors and champions can all be allies. Understanding the difference between mentors and sponsors is important. It may seem basic to say this, but clarifying each is worth noting and necessary as you advance in your career.

Generally, mentors give advice and support. A mentor does not have to be someone within your practice group or firm. Anyone with experience in a specific area can serve as a mentor. Mentors help you build your skills, offer feedback, act as a sounding board and are a good source of networking support.

Sponsors are actively involved in your professional development. Sponsors put their social and political capital on the line to help promote and advance your career. Sponsors ensure that you are considered for significant matters. They advocate for you behind the scenes and introduce you to clients and to others who can influence your career. Depending on your organization, sponsors become important later in your career. The sponsor relationship



(Left to right) Georgia Diversity Program Steering Committee members Christopher L. Cotrell, Rhonda Sadler-Collins, Kathleen O. Currey, Michelle Reid and Rebecca Christian Smith with J. Noble, director of Alliance@work.

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(Left to right) GDP Steering Committee Members Kathleen O. Currey and Michelle Reid, with J. Noble, director of Alliance@work.



(Left to right) CLE participants Tiffany Thompson, Elizabeth Kitchens, Deyvid Madzharov and Ricardo Lopez network at the post-CLE happy hour.

grows more organically. As a result, it is vital that you do great work and a lot of it. Take on challenging work and do it well. Make the partner you work for look good. Enhance his or her reputation and positively impact the firm's bottom line. It is equally important that you identify the people with influence. Identify and get to know the people that make project assignments as well as salary and promotion decisions.

2 Build a team.

Formal mentoring programs are common but do not always produce the results one might expect. Never rely on one person to meet all of your needs and help you advance your career. The key is to build a diverse team that consists of lawyers from similar and different practice areas and non-lawyers. Consider mentors, sponsors, colleagues and peers who are both internal and external to your organization. Also consider trusted friends when building your team. Professional organizations, bar associations or committees, nonprofit boards and clubs

are sources to help you develop your team. Keep in mind that building a team takes thought and time. Your team will change as your professional and personal goals evolve. Be flexible and build the team that is right for you.

3 Never sit and wait. Be proactive.

Mentors and sponsors do not simply appear. You must be proactive in pursuing and maintaining relationships. Approaching potential mentors and sponsors can be intimidating. You may feel uncertain. However, careful planning on your part will ease the process. When you decide to approach a mentor, sketch out your goals and expectations for the relationship. A good approach is to ask a mentor to either review and provide feedback about your career plan or help you develop a career plan. Provide a meeting schedule and discussion topics to your mentor. Always be prepared and be on time for mentor meetings. A sponsorship relationship grows more organically. However, once the relationship begins,

regular check-ins with your sponsor are a must. Being proactive also means building your brand. Take on non-billable work, community service work and nonprofit board service. Participate in panel discussions and write and speak on both legal topics and passion topics. Finally, make sure the partners, sponsors, mentors and influencers know about the work you do and your successes outside of your law practice.

4 Create a written career plan.

Creating a written career plan including overall goals, specific goals and action items will help you clarify what you want and creates a path to obtaining the results you desire. Include action items to provide built-in accountability. As previously mentioned, mentors (and your team) can provide feedback or help you develop your plan. Routinely visit and revise your plan as your career develops. Also set aside time to reflect on your plan and consider whether it is in alignment with your brand and who you are.



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Panelists discuss the intersection of business development and allyship. (Left to right) Louisa L. Johnson, partner, Seyfarth Shaw, LLP; Natosha Reid Rice, associate general counsel, Habitat for Humanity International; Joyce Gist Lewis, litigation partner, Kremlin Horst; and George Shingler, The Shingler Law Firm, LLC.

5Your allies do not have to look like you. We are all human, so look for commonalities.

Initiating, growing and nurturing your relationships takes thought, patience and consistency. Our natural tendency is to create relationships with people who look and/or think like us. In order to build and develop your career you need people with power and influence. Often times the ally you need will not look like you. The ally you want may come from a background that is completely different than your background. Get comfortable with that. It is ok. How do you engage that person? First, you must be willing to open up and step outside your own comfort zone. Find something in common with the individual you want to engage. Figure out how to speak that person's language. For example, if the individual you want to engage is a mystery novel fan and you are a genuine mystery novel fan, strike up a conversation about the latest and greatest mystery novel. Engage your inner nerd. Show genuine interest in a legal issue and the applicable law. Start a conversation with

a partner about the latest case and the outcome of the law on a case you are working on. Discuss the law beyond the specific assignment or case. The point is to find ways to communicate with your allies about subjects of mutual genuine interest. This is relationship building. Be willing to open up and show that you are more than a lawyer. Show that you are human.

6Be an ally to someone else.

At some point in your career you will be in a position to be an ally. Be a mentor to someone else. Be a sponsor and a champion. Use your capital for the benefit of someone coming up the ranks behind you. One of the best ways to acknowledge and express appreciation for your successes is to help someone else.

Thank You

I'd like to thank everyone who contributed to the success of this year's Business Development Symposium: Kristy

Weathers, professional development partner, Eversheds Sutherland; Christopher L. Cotrell, division lead counsel and lead real estate counsel, Aaron's; Louisa J. Johnson, partner, Sayfarth Shaw, LLP; Joyce Gist Lewis, litigation partner, Krevolin Horst; George Shingler, The Shingler Law Firm, LLC; Natosha Reid Rice, associate general counsel, Habitat for Humanity International; and J. Noble, director, Alliance@work.

I'd also like to thank Kathleen O. Currey, partner, Parker Hudson Rainer & Dobbs, LLP, for contributing to this article. ●



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2018 Georgia Corporation and Business Organization Case Law Developments

This article presents an overview from a survey of Georgia corporate and business organization case law developments in 2018. It is not intended as legal advice for any specific person or circumstance, but rather a general treatment of the topics discussed. The views and opinions expressed in this article are those of the author only and not Bryan Cave Leighton Paisner LLP.

BY MICHAEL P. CAREY

This article catalogs decisions handed down in 2018 by Georgia state and federal courts addressing questions of Georgia corporate and business organization law. It includes both decisions with significant precedential value and others dealing with more mundane questions of law as to which there is little settled authority in Georgia. Even those cases in which the courts applied well-settled principles serve as a useful indication of trends in corporate and business organization disputes.

The year 2018 saw a number of interesting disputes among shareholders and between shareholders and management, in which the courts addressed the distinctions between direct and derivative claims and the corporation's right to dismiss a derivative action. Several cases addressed the impact of corporate dissolution on the dissolved entity and parties dealing with



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it. The courts also addressed vicarious liability in the specific contexts of Georgia RICO and defamation. Finally, as in past years, there were decisions applying the relatively new Georgia Evidence Code and recent changes to the Civil Practice Act's provisions for service of process on a corporation.

The decisions are organized first by entity type—those specific to business corporations, limited liability companies and partnerships. The remaining sections of the survey deal with (1) transactional issues potentially applicable to all forms of business organizations, and (2) litigation issues that are common to all business forms, including secondary liability, jurisdiction and venue, evidence questions and insurance issues.

Executive Summary

Duties and Liabilities of Corporate Directors, Officers and Employees

There were several interesting decisions in lawsuits brought by shareholders alleging that corporate directors and officers breached their fiduciary duties. In *Rollins v. LOR, Inc.*, 345 Ga. App. 832 (2018), the latest installment of the Rollins estate litigation, the Court of Appeals held that a minority shareholder of a corporation managed by the defendants was precluded from bringing a direct action against the defendants, because the claims (for mismanagement and corporate waste) were derivative in nature. Notably, the court rejected an argument that a derivative suit was unnecessary because the non-party shareholders had allegedly acquiesced in the alleged misconduct in exchange for benefits not received by the plaintiff. Reviewing the record, the court found that a monetary judgment in favor of the plaintiff could prejudice other shareholders, and concluded that it could not rule out the possibility of additional suits by other shareholders. In the same order, the Court of Appeals affirmed the trial court's decision that the statute of limitations precluded numerous other claims, holding that the plaintiff was placed on notice of potential claims in various documents they signed over a course of 15 years, and

yet failed to exercise any diligence to discover their claims during that time. A petition for certiorari to the Supreme Court of Georgia was denied.

The same panel of the Court of Appeals addressed the direct vs. derivative distinction later in the year in *Patel v. 2602 Deerfield, LLC*, 347 Ga. App. 880 (2018), reaching the same result it did in *Rollins*. The plaintiff in *Patel* alleged that the defendants, a group of fellow shareholders, misled them about the value of a property held by the corporation which the corporation later sold. The court reasoned that any injury suffered by the plaintiff as a result of selling the property at a distressed price was the same as the injury suffered by the other shareholders and the corporation itself. As was the case in *Rollins*, the record showed that at least one non-party shareholder could be affected by the action and could not rule out bringing a separate lawsuit, a factor weighing heavily in favor of requiring a derivative suit.

The Northern District of Georgia also addressed the direct vs. derivative question in *Deal v. Tugalo Gas Company*, 2018 WL 4255857 (N.D. Ga. Sept. 6, 2018), finding that a shareholder's breach of fiduciary duty and misappropriation of corporate assets claims were derivative. The plaintiff alleged that the company's president abused his position by causing the company to pay his personal expenses and other benefits to him and his family. The court found that the plaintiff's claimed injury was not separate and distinct from that suffered by other shareholders and the corporation itself. In the same case, the corporation formed a special litigation committee, which investigated the claims and determined that pursuing litigation would not be in the best interests of the corporation. The court granted the corporation's motion to dismiss on the basis of the SLC's recommendation, finding that the corporation demonstrated that the SLC members were independent and conducted their investigation in good faith. In a separate case, the Middle District of Georgia also granted a corporation's motion to dismiss based on a similar recommendation by a special committee, undertaking the same analysis as that tak-

en in *Tugalo Gas*. See *Conroy v. Amos*, 338 F. Supp. 3d 1309 (M.D. Ga. 2018). The *Conroy* decision has been appealed to the Eleventh Circuit.

In *Myers v. United States*, 307 F. Supp. 3d 1349 (N.D. Ga. 2018), the Northern District of Georgia held that a chief financial officer for two companies was personally responsible for the payment of payroll taxes that the companies failed to remit to the IRS during a period in which they had been placed in receivership. The court rejected the officer's argument that he was following instructions from the receiver to prioritize paying vendors to keep the business running, noting that the officer remained in charge of day to day operations and continued to oversee its accounting staff, including with respect to tax matters. It also reaffirmed prior authority, holding that for purposes of personal liability for taxes, a company can have more than one "responsible person," and the government need not show that the defendant was the only or even the most responsible person for the payment of taxes. The decision was recently affirmed by the Eleventh Circuit. *Myers v. United States*, ___ F.3d ___, 2019 WL 1986616 (11th Cir. May 6, 2019).

Other Cases Involving Corporate Stock And Transactions

One of the more interesting corporate disputes in 2018 was *Wallace v. Wallace*, 345 Ga. App. 764 (2018), in which the Court of Appeals of Georgia held that a shareholder breached a buy-sell provision in his shareholder agreement by failing to sell his shares after his employment terminated, but that the breach did not occur until after the corporation (which had a duty to purchase the stock under the same provision) first attempted to buy the stock and the shareholder affirmatively refused, which happened nine years later. The court also held that the value of the selling shareholders stock should not be subject to a minority interest discount, finding that the situation (involving a small family-owned company) was comparable to appraisal proceedings to determine the fair value of dissenting shareholders' stock, in which minority and marketability discounts are not permitted. A peti-

tion for certiorari to the Supreme Court of Georgia was denied.

In *Regal Nissan, Inc. v. Scott*, 348 Ga. App. 91 (2018), the Court of Appeals of Georgia held that a deceased shareholder's right to inspect a corporation's books and records under O.C.G.A. § 14-2-1602 passed by operation of law to the administrator of his estate, who was entitled to enforce the decedent's right to inspection. The court also held that the administrator was not required to arbitrate the dispute pursuant to an arbitration clause in the corporation's shareholder agreement, because that clause applied only to disputes arising in connection with the agreement, while the right to inspect books and records arises from statute. And in *In re Wisner*, 2018 WL 4808380 (Bankr. N.D. Ga. Oct. 2, 2018), the Bankruptcy Court for the Northern District of Georgia held that the record before it was insufficient to determine whether a bank was entitled to retain proceeds of an execution and sale of the debtors stock in a corporation through a pre-petition lawsuit. The court held that Georgia law does permit corporate stock and other choses in action to be seized and sold under execution, but found that the record before it was insufficient to determine whether the bank had utilized a statutorily authorized procedure to levying the shares.

Limited Liability Company Developments

Two cases addressed an LLC manager's apparent authority to bind an LLC and a third party's right to rely on such apparent authority when dealing with the LLC. In *Guarantee Company of North America v. Garys Grading & Pipeline Co., Inc.*, 746 Fed. Appx. 831 (11th Cir. 2018), the Eleventh Circuit affirmed a Middle District of Georgia decision holding that an LLC co-manager's signature on a surety agreement was sufficient to bind the LLC, despite language in the LLC's operating agreement seeming to require the consent of the other managers, because the co-owner had apparent authority to bind the LLC as defined in O.C.G.A. § 14-11-301(b)(2). The court further held that the surety contracting with the LLC was not required to investigate whether

the co-manager had authority, noting that the language of § 14-11-301(b)(2) does not purport to impose any due diligence requirement on parties dealing with LLC managers. In *In re Rohrig Investments, LP*, 584 B.R. 382 (Bankr. N.D. Ga. 2018), the Bankruptcy Court for the Northern District of Georgia held that an LLC was not bound by a settlement agreement entered into by affiliated companies and their agents, including a family member of the LLCs sole owner and manager. Though the agreement contemplated the conveyance of property owned by the LLC, the LLC itself was not made a party or signatory to it, and the plaintiff failed to establish that the related companies and their agents were authorized to bind the LLC under either O.C.G.A. § 14-11-301 or common law agency principles.

In *In re White*, 2018 WL 2246579 (Bankr. N.D. Ga. May 15, 2018), the Bankruptcy Court for the Northern District of Georgia held that for purposes of a fraudulent transfer claim, the transfer of an LLC ownership interest occurs at the time the holder of that interest first conveys it to another, either orally or in writing, and the recipient begins to receive the economic benefits of the interest. In this case, the transfer was finalized by way of an amendment to the LLC's operating agreement, but testimony showed that an economic interest was conveyed several months earlier (and outside of the relevant limitations period for a fraudulent transfer claim). The court also held that the plaintiff failed to meet its evidentiary burden to show that the LLC interest had any monetary value. In *Baja Properties, LLC v. Materra*, 345 Ga. App. 101 (2018), the Court of Appeals of Georgia held that a construction firm's owner and manager were entitled to summary judgment as to negligence claims brought against them personally by a customer, finding that the customer presented no evidence that the defendants specifically directed or personally participated in any of the work alleged to have been negligent.

Finally, a number of federal court decisions reaffirmed that LLCs cannot maintain a federal diversity action unless there is complete diversity of citizenship, which presents unique problems in the

LLC context because an LLC is a citizen of every state in which one of its members (and their members, and so forth) is a citizen. See *Cade v. Angel Oak Prime Bridge, LLC*, 2018 WL 2056570 (N.D. Ga. Feb. 6, 2018) (denying motion for TRO and ordering plaintiff to file amended complaint alleging citizenship of LLC members); *Chevalier v. INA Trucking, LLC*, 2018 WL 1411730 (N.D. Ga. Mar. 21, 2018) (ordering that removing defendant amend its notice of removal to allege citizenship of LLC members); *Klinger's Trading, Inc. v. Harleysville Ins. Co.*, 2018 WL 1869820 (N.D. Ga. Mar. 6, 2018) (ordering plaintiff to file notice alleging citizenship of LLC members).

Partnerships

There were two noteworthy decisions involving partnership questions. In *In re A&B Associates, L.P.*, 593 B.R. 27 (Bankr. S.D. Ga. 2018), the Bankruptcy Court for the Southern District of Georgia held that a limited partnership was not terminated by the administrative dissolution of its general partner. The court interpreted the governing partnership agreement as contemplating the continuation of the partnership upon withdrawal of the general partner, and noted that the limited partners continued the general business of the partnership for years after the general partner was dissolved. In *Potts v. Rueda*, 345 Ga. App. 389 (2018), the Court of Appeals of Georgia held that the defendant's affidavit testimony regarding the existence of an oral partnership agreement was sufficient to create an issue of fact precluding summary judgment on that issue.

Nonprofit Corporations

In *Georgia Appreciation Property, Inc. v. Enclave at Riverwalk Townhome Association, Inc.*, 345 Ga. App. 413 (2018), the Court of Appeals of Georgia held that a homeowner's declaratory judgment claim challenging an amendment to its bylaws to tighten leasing restrictions was derivative and therefore could not be brought without following the derivative suit procedures set forth in the Georgia Nonprofit

Corporation Code. Although the plaintiff showed evidence that it was the only association member whose financial interests were adversely affected by the amendment itself, the court found this to be irrelevant to the inquiry. Instead, in the court's opinion, the plaintiff's lawsuit alleged an injury to the association because it was based on allegations of improper election procedures that if proven would injure the entire association, and any unique injury alleged by the plaintiff was due to its own circumstances rather than the nature of the leasing restrictions themselves. A petition for certiorari to the Supreme Court of Georgia was denied.

In *Amberfield Homeowners Association, Inc. v. Young*, 346 Ga. App. 29 (2018), the Court of Appeals of Georgia held that a homeowners' association board was authorized by the HOA's declarations to accept an easement on behalf of the association's members, which required the members to join and pay dues to a private swim and tennis club nearby. The court found that the HOA's declarations broadly authorized the board to "acquire, lease, hold and dispose" of property and that its decision to do so here served a reasonable purpose (specifically, to preserve its members' access to the club).

Litigation Issues

Standing and Capacity to Sue

In *In re Unlimited Homes, Inc.*, 2018 WL 1054095 (Bankr. N.D. Ga. Feb. 23, 2018), the Bankruptcy Court for the Northern District of Georgia held that a corporate debtor was not entitled to seek punitive damages or other monetary relief for a creditor's violation of the automatic stay under Section 362(k) of the Bankruptcy Code because such relief is expressly limited to debtors who are natural persons, but the corporation nonetheless could recover its actual expenses under the court's contempt powers granted to it by Bankruptcy Code Section 105. In *First Meliorite Church of Curaçao v. JP Morgan Chase Bank NA*, 2018 WL 1937381 (N.D. Ga. Mar. 20, 2018), the Northern District of Georgia dismissed claims brought by a church on the grounds that it filed its claims *pro se*.

The court held that the rule requiring a corporation to be represented by counsel in court proceedings extends to all artificial entities, including churches.

Corporate Dissolution

Three decisions addressed a business organization's status and capacity to undertake actions following its dissolution. In *In re A&B Associates*, which we discussed earlier in the partnership section, the Bankruptcy Court for the Southern District of Georgia court held that a dissolved corporation acting as general partner could, consistent with O.C.G.A. § 14-2-1421, execute an amendment to the partnership agreement and transfer its interest as general partner to a newly incorporated entity formed to serve as a new general partner. The court reasoned that under the circumstances, these actions could be seen as "necessary" to wind up the affairs of the dissolved entity.

In *Medical Center of Central Georgia, Inc. v. Macon Health Center, Inc.*, 345 Ga. App. 879 (2018), a nonprofit corporation which operated a fitness center was administratively dissolved, and later on, a second corporation using the same name was formed and carried on the same business as the former corporation. The new corporation sought to exercise a lease option that the prior corporation had negotiated with the building owner, but which had never been assigned to the new corporation. The Court of Appeals of Georgia held that the new corporation could not exercise the option, rejecting an argument that it could step into the prior corporation's shoes for purposes of enforcing the contract.

Finally, in *Principal Lien Services, LLC v. NAH Corporation*, 346 Ga. App. 277 (2018), the Court of Appeals of Georgia addressed the situation in which a corporation dissolves and its registered agent resigns, but the agent is later served with process in litigation against the corporation. The court held that a default judgment against the corporation should not have been set aside, noting that a corporation's administrative dissolution does not terminate the authority of its registered agent, and that the Secretary of State's records continued to list the agent's name



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In recent years, a number of cases have addressed the limits of a corporation's statutory right to remove a case filed in a Georgia state court to the county where it maintains its principal place of business.

and address even after his supposed resignation. In the court's view, the corporation's failure to appoint a new agent and/or update the Secretary of State's records constituted negligence precluding an order setting aside the default judgment.

Secondary Liability

In *Duvall v. Cronic*, 347 Ga. App. 763 (2018), the Court of Appeals of Georgia addressed a corporation's liability under the Georgia RICO statute based on allegations that one of the company's agents was using her position to steal vehicles by deception. The court denied the corporation's motion for summary judgment, holding that under the Georgia RICO statute, an officer of a corporation may be in conspiracy with the corporation itself, and the RICO enterprise can consist of a corporation and its employees. The court found that there was sufficient evidence to present a jury question as to whether the corporation participated in or tolerated the employee's allegedly unlawful conduct.

There were two decisions addressing whether a corporation can be vicariously liable for slanderous statements made by one of its officers or agents. In *Murray v. Community Health Systems Professional Corporation*, 345 Ga. App. 279 (2018), the Court of Appeals of Georgia held that a professional corporation could not be vicariously liable for allegedly slanderous statements made by its agent, finding that the plaintiff failed to present evidence that the corporation directed the agent to make the statements. But in *Dougherty v. Harvey*, 317 F. Supp. 3d 1287 (N.D. Ga.

2018), the Northern District of Georgia denied an LLC's summary judgment motion in a case where the LLC's co-founder and self-described "second in command" made allegedly defamatory statements at an industry conference hosted by the LLC. The court acknowledged that there was no evidence that the LLC specifically directed or authorized the statements, but allowed the claim to proceed to trial on the theory that the speaker served as the LLC's alter ego.

Finally, two decisions addressed attempts to pierce the corporate veil. In *SEC v. Torchia*, 729 Fed. Appx. 772 (11th Cir. 2018), the Eleventh Circuit held that the trial court correctly disallowed a creditor's claim to assets of an LLC owned by the perpetrator of a Ponzi scheme. The creditor's claim was based on a payment it made to a different entity owned by the perpetrator of the scheme. The creditor could not show that the LLC from whom it sought relief ever received the funds it paid, and the Eleventh Circuit rejected the creditor's attempt to reach the LLC's assets through reverse veil piercing, which Georgia law does not allow. The Northern District of Georgia addressed a traditional veil-piercing argument in *Baker's Bay at Great Guana, LLC v. Discovery Baker's Bay*, 2018 WL 3093960 (N.D. Ga. Feb. 16, 2018), holding that the plaintiff's complaint sufficiently alleged an alter ego theory against an investment firm who formed the entity that contracted with the plaintiff. The plaintiff alleged that the firm created the contracting entity as a shell company with no assets of its own, and that all of its dealings and correspon-

dence relating to the contract were actually with the investment firm.

Jurisdiction, Venue and Service of Process

There was one notable case addressing a challenge to personal jurisdiction under the Georgia Long Arm Statute. In *Factory Direct Wholesale, LLC v. Giant ex, Inc.*, 2018 WL 732570 (N.D. Ga. Feb. 5, 2018), the Northern District of Georgia held that a corporation, its CEO and a subsidiary, all of whom resided in California, were subject to personal jurisdiction in Georgia in a trademark infringement action. Though none of the defendants had any physical presence or assets in Georgia, it was shown that they sold and shipped the allegedly infringing product to Georgia residents multiple times through Amazon.

In recent years, a number of cases have addressed the limits of a corporation's statutory right to remove a case filed in a Georgia state court to the county where it maintains its principal place of business. In *Blakemore v. Dirt Movers, Inc.*, 344 Ga. App. 238 (2018), the Court of Appeals of Georgia found a significant limitation on the removal right, holding that it does not apply when the plaintiff is relying on a special venue statute rather than the general corporate venue statute, O.C.G.A. § 14-2-510. The court relied on language in section 14-2-510(b)(4) limiting its application to cases in which "venue is based solely on this paragraph" in holding that special venue statutes must prevail over the Corporate Code's removal right. Here, it meant that the corporate defendant could not remove a case brought under the Georgia Motor

Carrier Act, which contains a special venue provision that does not provide a right to remove. A petition for certiorari to the Supreme Court of Georgia was denied.

As usual, there were a number of cases addressing garden variety service of process issues such as failure to serve the correct corporate entity or an authorized agent. The courts continue to require close adherence to O.C.G.A. § 9-11-4 and, as applicable, Federal Rule 4. For instance, in *Delta Aliraq, Inc. v. Arcturus International, LLC*, 345 Ga. App. 778 (2018), the Court of Appeals of Georgia affirmed a trial court order setting aside a default judgment on the grounds that it lacked personal jurisdiction over the defendant due to deficient service of process. The plaintiff served a copy of the summons and complaint on a company purported to be the defendant's registered agent, but the entry of service form was facially defective. It identified the person served as an individual defendant, and it gave no indication of his relationship to either the defendant or its registered agent, such that it could be determined that he was authorized to accept service.

In *Matter of Dobbs*, 2018 WL 1363450 (Bankr. N.D. Ga. Mar. 15, 2018), the Bankruptcy Court for the Northern District of Georgia held that the debtor's stated inability to determine the respondent's registered agent, without more, did not entitle the debtor to effect service on the Secretary of State. Notably, the plaintiff stated that its counsel conducted a diligent search of Secretary of State records, but the court indicated that this by itself did not satisfy O.C.G.A. § 9-11-4.

Indemnification and Insurance.

In *Gemini Insurance Company v. Castro*, 723 Fed. App'x 797 (11th Cir. 2018), the Eleventh Circuit affirmed a declaratory judgment holding that an LLC was not covered by an umbrella policy for a vehicle used by an employee of the LLC, holding that the policy's insured persons definition (which would otherwise have made the employer an insured person) was limited by language later in the same section stating that no person is an insured with respect to the conduct of any LLC. The Eleventh Circuit also affirmed judgment in the insurer's favor as to the LLC's employee, finding that to extend coverage to the employee of the excluded LLC would vitiate the LLC limitation. The court's analysis was particularly interesting in that it placed heavy emphasis on the policy's use of indentation as evidence of the parties' intent. Because the limitation was flush to the left, the court reasoned that it applied to the entire section.

Evidentiary Issues

In *Chrysler Group, LLC v. Walden*, 303 Ga. 358 (2018), the Supreme Court of Georgia held that under Georgia's Evidence Code, evidence of the amount of a corporate officer's annual salary and compensation package is subject to a Rule 403 analysis and may be admitted if the evidence's probative value outweighs its potential for prejudice. The justices unanimously found that the Evidence Code abrogated the common law rule barring parties from presenting evidence of a party's wealth, while noting that even if the party wealth rule had re-

tained any vitality, it would not apply to the case before it, because the officer was not a party and the evidence of his compensation package was not being used to show any party's wealth.

Professional Liability

In *Sumrall v. Smith*, 2018 WL 2107189 (M.D. Ga. May 7, 2018), the Middle District of Georgia denied a motion to dismiss fraud and negligence claims against a dental practice broker and consultant who allegedly overvalued the interest of a selling 50 percent partner while brokering the firm's buyout of that interest. Notably, the court held that the plaintiff could maintain an action for unauthorized practice of law against the broker based on its preparation of legal documents for the transaction. Though Georgia law does not recognize a private right of action for unauthorized practice of law, the court held that the plaintiff could proceed under O.C.G.A. § 51-1-6, which may provide a cause of action to enforce a legal duty imposed by another statute that does not authorize such an action itself. ●



Michael P. Carey practices corporate, securities and other complex litigation at Bryan Cave Leighton Paisner LLP, with a focus on director and officer liability issues. Carey is co-author of a chapter on director and officer liability in a book published annually by the *Daily Report*, "Georgia Business Litigation" (*Daily Report* 2013). He can be reached at michael.carey@bcplaw.com.

Incident at Gulf Shores

The Editorial Board of the *Georgia Bar Journal* is proud to present “Incident at Gulf Shores,” by Dick Donovan of Dallas, as the winner of the *Journal’s* 28th Annual Fiction Writing Competition.

BY DICK DONOVAN

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

Leonard Holloway

Leonard Holloway was a bad kid even very early on. He might well have been a psychopath, had anyone ever been given the opportunity to examine him at length, but by the time he fetched up in a Georgia prison with a death sentence, no one had the time or the interest in psychoanalyzing him.

The first person Lenny Holloway killed was his own father. Lenny stepped from behind a dumpster and cracked the old man behind the ear with a two-by-four and he was dead before he hit the ground. Lenny had discovered that his father was



sleeping with Lenny's 14-year-old sister, and that, so far as Lenny was concerned, was simply poaching. Lenny had been having sex with his sister since she was 12 and had been molesting her since she was six and Lenny was 10. His father, ir-resolute old drunk that he was, just happened to be the father of a really bad kid, and he paid the price for that and his own ugly predilections.

When his sister began dating a kid at school who was a football player and considerably bigger than Lenny, Lenny let her go and found a more age-appropriate girlfriend, whom he soon began abusing regularly. His sister got pregnant and moved away and left Lenny on his own, and he didn't work often enough and at any sort of employment that would bring him any reasonable money, so he moved out of the rented house he had shared with his miserable family in Coal Mountain, Georgia—his mother having left them all years ago—and took to the streets, burgling a convenience store here and there and moving along the state highways and county roads, dodging one police department or sheriff's office after another, getting roused a few times for petty theft and once for burglary.

He did a five-to-two term at the state prison that specialized in younger offenders, then went right back to the road and his thieving ways. As he grew older and more withdrawn, he grew more aggressive when challenged, and he found willing girls or women harder to find; at least twice he might have been arrested for rape if he hadn't been faster than the local law.

In 1985, he decided to seek better climes and opportunities in Florida and set out from north Georgia, hitchhiking at first, and then, drifting west and south,

Leonard Holloway was a bad kid even very early on. He might well have been a psychopath, had anyone ever been given the opportunity to examine him at length, but by the time he fetched up in a Georgia prison with a death sentence, no one had the time or the interest in psychoanalyzing him.

in the middle-west Georgia town of Hogansville, he stole a van that he found idling outside a gas station. He drove till he ran out of gas near Lumpkin, Georgia, not too many more miles from the state line, in the hardscrabble-poor part of the state. Walking and hitching then on backwoods roads, always making south and maybe a little west, avoiding I-75 and the busier towns and bigger police departments, he looked for any opportunity to relieve his need for money, sex and drink. But he rarely went to sleep satisfied.

He knew he was near Florida by the Spanish moss hanging from the oaks along the roads. The two children he saw playing in a field were curious about the gaunt figure that approached them. Lenny gave no quarter, and knocked down the boy, about five years old, with a single blow. The girl, about six, he raped and then strangled. Thinking better of leaving the boy alive, he broke his neck and dragged his body along with the girl's to a copse of trees near the fence-line dividing two pastures, and left walking again along the dirt road, again steadily south and west. He was arrested within two hours,



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and, frankly tired of the life he was living and terrified of the sheriff who sat glaring at him from the corner of the interrogation room while he was interviewed by a country-boy deputy about his own age, Lenny confessed, laughing and telling them everything. It was, in a way, a relief.

His trial in the Grady County Superior Court in 1986 took two days, since there was virtually no defense, other than the fact that the sheriff who had stared him down from the corner of the interrogation room was the grandfather of the two dead children. Trial counsel at least made an attempt to exclude it, but Lenny's confession was admitted over his attorney's frankly feeble objection. The conviction was appealed, and upheld repeatedly by the Georgia appellate courts with little or no comment for the first few times, and then, with some more attention given to the incongruity of the victims' grandfather being the sheriff, more was said in the appellate decisions upholding the verdict and the sentence of death. While the sheriff was, in fact, the grandfather of both children, who were brother and sister, he had not participated in the interrogation or interview, and since there was no photographic or video record of the statement—just a tape recording—and no evidence of any physical intimidation, Leonard Holloway's sentence to die by lethal injection was ultimately upheld, and he was sent to Georgia's death row at Jackson State Prison in Butts County. A proper Death Warrant was signed and the date set. Shortly thereafter, a Petition for Writ of Habeas Corpus was filed in the U.S. District Court for the Northern District of Georgia in Atlanta.

In 2008, the U.S. District Court for the Northern District of Georgia heard his appeal anew on the habeas petition, which was based on the involvement of the victims' grandfather, Grady County Sheriff R. D. Baker, who had since retired after more than 30 years as sheriff. The federal judge, a 40-year-old woman in her third year on the bench, expressed concern about the intimidating presence of the sheriff while the interrogation was conducted. She issued an immediate stay of execution, late in the afternoon of the date set for the execution.

Lenny's attorney Carla Browning sat in the lawyer's visitation room with her client. "The federal judge has issued a stay of execution," said Carla.

Lenny was expressionless, but said, "That's good, but I'll miss that special-ordered last meal."

"But there's a problem, Lenny. I've been told that the governor will instruct the warden here to go ahead with the execution."

"But, he can't do that, can he?"

"Well, Lenny, it's like 'You can't arrest me—I didn't do anything!' but you get arrested anyway. Or, 'You can't convict me—I'm innocent!'—but, you know, Lenny—the jails are full of innocent people. What he can do and what he can do legally are two different things."

Governor's Office, Atlanta

Governor Reuben Haynes pushed a button on his desk set. Georgia's attorney general, John Wood, answered on the second ring. "Yes, Governor?"

"John, would you please come to my private office right away? Actually, John, I am asking you as a personal favor to me to come to my office and to remain in my office. I'm going to ask that you not leave my office, whether I am there or not, unless and until you hear from me personally. It would be very supportive right now, and I'd really appreciate it. Will you do that for me?"

"Yes, governor, I'll be more than happy to be of any help I can. I'll be there in about five minutes."

"Make it two minutes. I'm about to hold a press conference and won't be here in five minutes."

The press room was full, the reporters having received a surprise call for a press conference by Georgia's governor, the first black man ever elected to that position in Georgia. Everything he did, of course, was news, and reporters would hurry to any event where this governor was speaking. Reuben Haynes, in the third year of what he hoped would be his first term, walked slowly into the room and to the bank of microphones, where WSB, WAGA, WXIA, FOX and the CNN and CNBC reporters as well as a few print

reporters were waiting patiently. They all stood as he entered and approached the podium.

"Thank you all for coming. Please take your seats." The governor was calm but seemed pensive. "I have a short prepared statement, which I will read—I have chosen to come out and read it to you rather than give it to my press secretary or simply hand out a written copy to each of you, the reasons for which may be obvious after I finish, and when I've finished, I probably won't take any questions."

The print reporters poised their pens and pencils, the electronic representatives held their microphones forward, ready.

The governor slipped on a pair of reading glasses and glanced down at the sheet he was holding, and then, taking a deep breath, began.

"Earlier this afternoon, the U.S. District Court for the Northern District of Georgia issued a stay of execution for Leonard Holloway, a prisoner on death row in Georgia for the murder of two little children in South Georgia more than 20 years ago. He is scheduled to be executed this evening at the Georgia Diagnostic Center in Jackson, Georgia. I have carefully reviewed the pleadings and read a copy of the stay as issued by the district court judge. The judge's decision was apparently based in large part on the fact that the sheriff of Grady County," and here the governor looked down at the notes in his hand, "Sheriff R. D. Baker, had observed the confession made by Holloway. After my careful, not to say intensive review, I have concluded that the judge of the U.S. District Court was in error in her decision to issue a stay of execution."

"For that reason, I have sent word to Warden Jeffcoat at Jackson State Prison that the execution is to proceed as ordered by our Georgia Courts and affirmed by our Supreme Court. The original stay has not been delivered to the warden and the stay has not been served upon our state's attorney general. There is a concept in law known as *res judicata*, which means simply that 'the thing has come to rest.' This case is 22 years old, and it is time that it should come to rest. This man, Leonard Holloway, owes a debt to society. It is an important concept of our law and our

society as well that we all should pay our proper and lawful debts, whether legally enforceable or not. This is the time for an old debt to be paid. For your benefit, I should tell you that I have ordered the capitol building locked down, starting in 10 minutes. Anyone inside the building then will not be allowed to leave until such time as I order the lockdown ended. It is now 5:35 p.m. At 5:45 the doors will be locked. I'll have a further statement if the situation warrants another one after the execution has been completed."

With that, three things happened all at once: the governor stepped away from the podium and started for his office door, about half of the reporters shouted his name, and the other half broke for the exit doors. The last cameraman for CNN made it out just as the capitol police officer walked to the exterior door with his keys.

CNN Studio, Atlanta

"This is Chuck Roberts at CNN Headline News in Atlanta. As you have just heard if you've been watching CNN Headline News, Georgia's governor, Reuben Haynes, has just announced that he will not stop the execution of Leonard Holloway, the death row inmate convicted of killing two small children in South Georgia more than 20 years ago, in direct contravention of the stay of execution issued earlier today by the U.S. District Court here in Atlanta.

"Governor Haynes told reporters that it is time for Holloway to pay his debt to society and took no questions from reporters before locking down the capitol building. He has instructed the warden at Jackson to proceed with the execution as set out in the death warrant delivered to him earlier this week. Our news team is on its way to the prison at Jackson, and we have reporters now setting up at the White House in Washington to give us first word on any action by the federal government. Stay tuned for further information on this breaking story."

The White House, Washington, D.C.

The president's chief of staff—who was called "Chief of Staff" by the president,

Jack Hooker, who had done a stint in the Navy after college, and who still used some of the military phrases he had learned there—walked into the Oval Office carrying a pink flimsy, meaning the document was of immediate import. “I assume you heard the Georgia governor’s news conference?” He nodded toward the bank of nine television monitors lining the walls, one of which was tuned to CNN Headline News; each of the screens had either a talking head or a snippet of the Georgia governor’s statement to the press, except for one set which was, inexplicably, showing an episode of “Pinky and the Brain.” The president stood at the windows behind his desk, looking out over the Washington twilight.

“Yes, I did see it,” the president said. “Of course I did. There’s nothing else on. Why do you ask?”

The chief of staff looked at the flimsy in his hand. “The attorney general has sent word to you that he has a complement of U.S. Marshals ready to lift off from Andrews to fly to Georgia, and is waiting only for confirmation from the Atlanta office that the stay of execution can’t be delivered to the state’s attorney general or the warden, and that the plans for the execution are still going forward.”

The president of the United States turned slowly in place, and, his hands stuffed in his pants pockets, suit-coat buttoned, dropped his head a little and looked over his glasses at his top aide. “Chief of Staff, please call the attorney general and tell him to stand down his complement of marshals. No such action is warranted and no such action has been authorized by the president. Tell the attorney general that if a stay of execution has been placed in the hands of the U.S. Marshal Service, it is to be delivered to him for review and to me for review as chief executive before being served. If he has any questions or comments about this direct order, please remind the attorney general the name and title of the man who appointed him attorney general.”

“Sir?” The chief of staff seemed nonplussed. “I’m sorry, but—do I understand that you don’t want marshals deployed to Georgia? Who or what are you going to

send? And if not now, when? It’s almost 6 p.m. The execution is scheduled for 7.”

“When I decide whom or what to send, you’ll be the first to know, Chief of Staff. Until then, call the attorney general and convey my wishes.”

“This is a federal court order, sir.”

“Yes, and I’m the chief executive of that federal government, for whom the marshals work, is that right?”

“Yes, sir.”

Jack Hooker turned to the window and looked out again across the lawn behind the Oval Office. He glanced over his shoulder to see his chief of staff still standing in the same spot, as though rooted there, with the pink flimsy in his hand

“Chief of Staff, you don’t need to be reminded for whom you work, do you?”

“No, sir. I do not, sir.” The chief of staff left by the same door through which he had entered.

Governor’s Office, Atlanta

Governor Haynes walked into his office, sat down, and swiveled in his chair to touch one of the buttons on the telephone console on his desk. Without delay there was a response, the button being a straight line to the desk of the head of the Department of Public Safety. “Yes, Governor?”

“Colonel, I need about 50 state troopers deployed here in Atlanta at the capitol building immediately. I want this building locked down. Ring the building. No one is to come in, no one is to go out.”

“Yes, Governor.”

“And Colonel?”

“Yes, Governor?”

“I want a similar setup at the State Prison at Jackson, as soon as you can get the troopers there. No one goes in or out of the prison, no one goes in or out of this capitol building.”

“Yes, sir.”

CNN, Atlanta

“This is Chuck Roberts in Atlanta with breaking news: the story from the governor’s office in Atlanta is becoming more unusual. More than a dozen Georgia State Patrol cars have arrived at the capitol building, and troopers numbering

probably more than 40 have taken up positions surrounding the capitol building. The attorneys for Leonard Holloway have been denied access to the building and to the governor, as well as Georgia’s attorney general, and no one will speak to reporters. We expect to have a live remote from Jackson, Georgia, in a few minutes. Stay tuned.”

Governor’s Office, Atlanta

Reuben Haynes moved to a large Brumby Rocker in the corner of the office, left by a predecessor governor, and rocked slowly, staring at but not seeing a bookcase on the opposite wall, apparently deep in thought. A door at the side of the private office opened, and Andretta Haynes came across the room to stand in front of the rocking chair.

Andretta Clark Haynes, Georgia’s first lady and first black first lady, had married Reuben Haynes when they were both too young, but she had worked alongside him through college and then law school, and both had been admitted to the practice of law in the same year. He went into politics after starting as a trial lawyer in the local district attorney’s office, and she went to work for Georgia Legal Services Program, providing representation for disadvantaged people who needed lawyers in civil cases, for which the law made no provision as it did in criminal cases. She was matronly now, a loving grandmother and vocal spokeswoman for most women’s issues, but if she decided to, she could still have taken any divorce case or criminal case and made the opposition sorry if they made the mistake of underestimating her.

“Reuben, may I speak to you?”

“That was very formal. I don’t remember when you’ve used that tone with me, my dear. Of course you may speak to me, Andretta.”

“There’s something about you this evening that makes me want to be a little more formal, Reuben.” She stopped and collected her thoughts. “Reuben, I’ve been with you a long time, and I think I can say I know you better than anyone except maybe your mama, God rest her Christian soul. But I just frankly have to ask: have you any idea what you are doing?”

“Did you hear my statement?”

“Of course I heard your statement. That’s why I’m here. Reuben, you were elected on a law-and-order platform, and no one can say you haven’t lived up to that pledge. You’ve been tough but fair, and even-handed, just as you were when you were a prosecutor. But there have been two other men whose executions were stayed—and you did nothing but issue a statement saying the courts had done what was necessary to uphold the criminal justice system. Why in the world is this man Holloway any different?”

He looked up at her now. “Annie, in those other cases, there was a real question about the evidence, and because of that question, a real doubt about the guilt of those men. This man Holloway confessed, he admitted what he did, and he was giddy, Andretta. I’ve read his statements.”

“Read his statements? Was there no video of his confession?”

“In Cairo, Georgia, in 1986?” He smiled and almost laughed out loud. “No, there was just a cassette tape of the interview. Even it’s gone now. But the transcript is pretty revealing, and I’ve read it through.”

“Reuben, this man is white. You know how this is going to be portrayed by your opposition when you run for reelection next year. I’m asking again—for your sake and mine and the people who love you and your family and the people who had faith in you and elected you—is this what you think you have to do?”

The governor stood up. “Andretta, the judge who issued that stay this afternoon was in high school when those two children were murdered. She got lucky and got appointed to the federal bench after she’d been out in private practice a few years, probably because her daddy knew somebody who knew somebody or contributed to the right campaign. She never had to run to be elected and she’ll never have to run to be reelected. She answers to no one, basically. And she’s reading a 20-year-old transcript, and then second-guessing an experienced superior court trial judge who heard the case when this federal judge was still learning world history and taking high school French, and long before she ever heard of criminal procedure and evi-

dence. Her substituting her judgment at this point is imprudent.”

The first lady stood a little straighter. As she had grown older, she more and more resembled the governor’s old Siloam Baptist Church Sunday School teacher, Mrs. Robinette, a woman he dearly loved and for whom he had enormous respect—and possibly some little fear. He had that same boundless respect for his wife—and perhaps a little of that fear.

“Reuben, my question remains: is this what you think you have to do?”

“No, Andretta, honestly: this isn’t what I think I have to do—this is what I know I have to do. I don’t think it; I know it. My answer is ‘yes’ now—and it will be the same whenever I’m asked again. It has absolutely nothing to do with my race or Holloway’s race—or the race of the children he brutally and callously murdered. This is the right thing to do and, yes, it is exactly what I have to do. It’s time this long-overdue debt was paid.”

“Reuben, I have always trusted you, so I’ll accept what you say. I only pray that you’re right and that you really know what you’re doing.”

“Thank you, Annie. That means a lot to me.”

The door from the reception area of the governor’s office opened and his press secretary, Daphne Edgens, stepped just through the door and stopped. “Excuse me, Governor,” she said.

“Yes?”

“I’ve just had a call—on my cell—from a friend who tells me that the federal judge has told CNN—a very unusual thing, by the way, Governor—that if you refuse to have the attorney general comply with her order she intends to hold you both in contempt. I thought you’d want to know.”

The governor exchanged glances with his wife. “You were a journalism major, weren’t you, Daphne?”

“Yes, sir. Grady School at Georgia. Bulldog all the way.”

“And you never studied law?”

“No, sir.”

“Do you know what it means, if the judge holds me in contempt?”

“Well, it means . . . um . . . it means . . . actually, no, I don’t.”

“If I’m held in contempt, I’ll have to be given some opportunity to purge myself of the contempt. I’m not sure what the judge might have in mind, but I’m not bothered by her threats. You should ignore them, too.” He looked from the press secretary to his wife. “Both of you.”

CNN, Atlanta

“Ladies and gentlemen, we will be going now to a live remote from Jackson State Prison, in Jackson, Georgia, where our reporter Rudy Schafer is standing by. Rudy?”

“Chuck, we’ve just seen about 20 state patrol cars and troopers take up positions surrounding the prison facility here in Jackson. The main gate guardhouse has been locked and no one has responded to our requests for information, and apparently no one is being allowed in or out of the prison.

“Two men who identified themselves to us as U.S. Marshals arrived about 30 minutes ago and approached the main gate guardhouse but were refused admittance. The guard on duty just waved them away.”

“Rudy, where are the two marshals now?”

“They’re sitting in their car, parked almost against the main gate.”

“Thank you, Rudy. Let us know if there is any change.”

“Back to you then, Chuck.”

The White House, Washington, D.C.

President Jack Hooker turned away from the bank of television screens and pressed a button on his desk set. The chief of staff stepped in through the door into the Oval Office. “Yes, sir?”

“Chief of Staff, please call the attorney general of the United States and tell him to get word to those two marshals at Jackson State Prison, down in Georgia, that they have a direct order from the president of the United States, as follows: if either of them gets out of that car they’re sitting in before they leave that prison, they’re both fired. I hope they brought a Coke can to pee in, ‘cause if they get out again, Chief of Staff, no matter what for, they’re done. Is that clear?”



“Yes, Mr. President. Very clear, sir. Is that all?” There was hesitancy in the chief of staff’s voice.

The president held the chief of staff’s gaze for maybe a five-count. “Chief of Staff, how long have you been with me?”

“Since the Legislature in Ohio, sir. You know that.”

“Bob, do you trust me?” the president asked. The chief of staff was a little taken aback. He could not remember the last time the president had used his Christian name.

He was a little surprised that the president even remembered it. “Of course I do, Mr. President. You know I do.”

“Do you remember that scene in ‘The Godfather’ when Vito Corleone asks Clemenza and Tessio if he has their loyalty?”

“Yes, sir. They owed him many favors and they said they did, and he asked them to trust him.”

“Do I have your loyalty, Bob?”

“Yes, sir, you do.”

“And do you trust me?”

“Yes, sir. Of course I do.”

“Then remember that, too, when you’re delivering these messages.”

“Yes, sir.” The chief of staff started to the door to get the attorney general on the line, and he heard the president speak again. He stopped and turned back to the president. “And after you talk to the attorney general, I’d like for you to discretely contact your opposite number in Atlanta—the Georgia governor’s chief of staff—and make sure it is communicated to the governor—without any direct contact from me to him, mind you—that the president of the United States heard his statement on the news, and that the president understands his position in this case, and especially on his position that it’s time to pay the debt that’s owed, and that I agree with him completely.”

“Yes, sir.

“Chief of Staff, I’ll call you if I need you.”

CNN, Live from Jackson State Prison, Jackson, Georgia

“This is Rudy Schafer, live from Jackson State Prison in Jackson, Georgia. The main gate guardhouse has been unlocked, and we have just been given word that Leonard Holloway was executed by lethal injection and pronounced dead at 7:44 p.m. Chuck, back to you.”

CNN, Atlanta

“Thank you, Rudy. In Atlanta, state troopers are leaving the capitol and state employees are leaving the building. We’ve spoken to several, all of whom said that they were simply told that they would not be allowed to leave unless there was a family emergency, and they were also told that no one would be allowed to come into the building after it was locked down earlier this afternoon. Governor Reuben Haynes has not appeared for further comment. In Washington, our attempts to get a state-



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ment from the White House on the inaction by the federal government have met with no response.”

Governor’s Office, Atlanta

The governor was walking with his top aide from the press room next to the governor’s ceremonial office, where he had spoken to the assembled reporters, when his secretary caught up with him. “I’m sorry, Governor, but there’s a call for you, and I thought you might want to take it. The caller is very insistent.”

“Who is it?”

“It’s a Mr. Baker, from Cairo.”

The governor stopped and looked at his aide. “You go on, Stuart. I’ve got to take this call,” and so saying he stepped into the small side office where he had a desk and did most of the actual work his position required.

He picked up the handset and pressed the small button next to the flashing light on the desk unit. “This is Governor Haynes.”

“Governor, this is Roy Don Baker.”

“Good evening, Sheriff. It’s been a very long time. It must be 40 years, or more. How are you? And your family?”

“I’m fine, Governor. Thank you for asking. I just wanted to call and say thank you. It seemed more appropriate to say so in person. Your statement this afternoon was a surprise.”

“I appreciate that it may have been. But when I read the court’s order, I had to weigh what I know against the judge’s express concerns, Sheriff.”

“It’s funny to still be called sheriff, after being retired for five years.”

“It’s a title of respect, and you earned it with your years of service. I’ve followed your career. And I know that you did nothing that was inappropriate during Holloway’s interrogation. You’re an honorable man, Sheriff—I know that because I know what kind of person you are. You couldn’t dishonor your oath of office any more than you could swear in church.”

“To know you’ve followed my career is a little surprising, for a man in your position, Governor. I’m flattered. But I don’t want to take up your time. I called because I wanted to make sure you know that so far as I am concerned, to the extent that you ever thought you owed me anything at all, you need to know we’re more than even now.”

The governor took a deep breath. “No, Roy Don, we’re not. We’re not even close to even. If you ever—and I mean ever—need anything, you call me. I’ll be the one to decide when we’re even.”

“Thank you, Governor. I can’t tell you how much my family and I appreciate this.”

“Sheriff, it was simply a matter of principle.”


“Thank you again, Governor. Oh, and Governor? When you get the chance, would you tell the president I said thanks, as well.”

“The president and I are of different political parties, of course, and we don’t see one another often, Sheriff. But I’ll be

4 ROUNDS
46 TEAMS
478 STUDENTS
368 VOLUNTEER ROLES
1 NATIONAL CHAMPION

Thank you to all of the State Bar of Georgia members who dedicated their time and energy to volunteer with the National High School Mock Trial Championship in Athens, Georgia, on May 17-18, 2019.

Your support for this championship made it a great success!



Michael Nixon
Director, High School Mock Trial Competition
Host Director, Athens2019 NHSMTC



sure that he gets your message. You take care, Roy Don. Good-bye.”

“Good-bye, Governor.”

Gulf Shores, Alabama, 1964

The young man slowed to a stop at the curb near the parking lot, just a few yards from the beach. He was driving an eight-year-old pickup, red, with a Georgia Bulldog sticker in the window. Dressed in jeans and a sweatshirt with sleeves cut off, he got out and walked to the front of the truck and unlatched and raised the hood. The V-8 engine was a beautiful sight, but there was something amiss. His problem was that he was a long way from home and he was no mechanic. He thought the engine’s running hot might be remedied with just water and save him the expense of coolant. His father had not given him enough for anything but gas from Cairo, Georgia, to Gulf Shores, Alabama.

His father had owed a man in Gulf Shores \$600, and since he distrusted banks and did all his personal business in cash, he had given his son gas money and a single \$500 dollar bill and one \$100 dollar bill along with the address of his creditor in Alabama. The money had been delivered less than an hour ago, a receipt obtained, and the young man was now headed back toward the state line. He had made a slight detour by the beach area just to see the Gulf, and to see how many of the Alabama and South Georgia boys and girls who would rather avoid the more prestigious and expensive places like Ft. Lauderdale and Panama City for their spring break were enjoying the warmth of the day. Before hitting the lonely highway back home, he took this opportunity to check the engine. As he glanced around, he noticed something

a little out of the ordinary—at least for Alabama or South Georgia—at a picnic table not many yards away.

Two young men, probably in their early 20s, one black and one white, were sitting on the top of a picnic table, their feet resting on the table bench, smiling, laughing and talking to two girls, both white, who were standing on the sandy ground near the beach. The young men were dressed casually in slacks and Madras shirts, and the girls wore the latest style of bikini popular that year. There was an occasional burst of louder laughter and the mood seemed light. The young black man was the only black person visible in any direction.

The beach area was a little crowded, young people from all over the area having come to Gulf Shores for a spring break weekend, some college students and some high-schoolers. Girls and boys and young men and women milled about, some eating snacks or a quick lunch, some in bathing suits and some in shorts and t-shirts. The young man in the pickup, heavy-set with his red sleeveless sweatshirt and a blue ball cap was looking under the hood of the ’56 pickup. He could still hear the laughter from the four at the picnic table, but then it changed.

The conversation between the two young men and the girls dropped off suddenly. The young man at the pickup truck stepped back and turned from under the hood to see three young white men, one in khakis, one in cutoffs and one in jeans, and all in white t-shirts, walk up to the table. He wiped his hands on a shop rag that he took from his back pocket and tried to hear what was said. The four young people turned their attention to the three white boys.

“So whatta we got here?” Jeans asked his two friends. He looked back at the two

young men sitting on the table. “Where you guys from, anyway?”

The young white man looked at his companion and turned to Jeans. “We’re down here on spring break. Why do you want to know where we’re from?”

“Down here? So, you boys from up north somewhere?” asked Cutoffs.

The black youth looked from one to the other, and then said, “No, I’m from Atlanta. My friend here is from Ohio. I’m sorry I can’t properly introduce these pretty young ladies; they haven’t favored us with their names yet.”

Jeans and Khakis exchanged a look and turned a harsher stare to the young black man. “Maybe they’re just teasing with you boys, and maybe that’s ‘cause we get kinda funny about Yankee boys and colored boys talking to our white women down here.” The black young man stirred uneasily and the white young man rubbed his hands together. He was trying to keep the conversation light, but he was losing ground. “We weren’t aware that there was some law—or local custom, for that matter—that would make it wrong for us to talk to other people.”

“Well, we’re particular, boy, about a lot of things. Maybe you wouldn’t know that ‘cause you’re a Yankee—or,” and he looked to the young black man, “because you ain’t a white man. You two some of them Freedom Riders we hear about?”

Jeans reached out and fingered the Madras material of the young black man’s shirt. “Fancy duds, especially for a colored boy.” The young black man drew back and Jeans took hold of his arm.

The young man closed the hood of the truck and walked to the driver’s-side door, opened it, stuffed the red shop-rag under the seat and slid something into his back jeans pocket. He walked over to the table where the young white man and

The black young man stepped up and stuck out his hand. "I'm Reuben Haynes," the black youth said. "And this is my friend Jack Hooker. We're not Freedom Riders, just college boys. I'm gonna say again, we owe you, and I mean we really owe you. I wish there were some way we could repay you."

young black man were sitting and stopped about 10 feet from the little group.

Jeans and Khakis looked at the beefy, pleasant-faced young man. "Something you need here, friend?"

"No, I just wondered why you gentlemen want to hassle these two strangers. Don't they teach you to be nice to strangers in Sunday school over here in Alabama?"

"Over here in Alabama? And just where are you from, Plowboy?" asked Khakis.

"I'm not sure you need to know that. I just think maybe you've got the wrong idea about how to treat visitors. I heard these boys say they're not from here. I was taught to treat company polite-like, using good manners and all."

"Listen, Plowboy, you're just hornin' in here where you don't need to be. I see now your truck's got a Georgia tag, and maybe we don't care what you learned or what you were taught. Maybe you're from Atlanta, too. We got a pretty good idea about Yankees and colored boys and white boys from Atlanta."

The young man smiled. "My daddy taught me that we oughta treat everybody like human beings and try not to act like trash." Khakis and Cutoffs and Jeans all bristled at the word "trash."

"Who the hell you callin' trash, Plowboy?" demanded Jeans. "If your daddy taught you that, why didn't he teach you some better manners, Plowboy? And why didn't he teach you to mind your own damn business?"

Cutoffs stepped toward the young man. The girls sidled away. "Yo' daddy teach you anything else, Plowboy?"

The young man reached behind him. "Yeah, he did. He took me out in the woods when I was about nine," he said, "and he taught me to use this here Colt

Model 1911A .45 automatic that he got from a good buddy of his that died in his arms at Anzio. That's in Italy, for you uneducated-types. Did you want a demonstration of what he taught me about using this?" He held the pistol casually.

The three t-shirts looked at him, and at each other, and then at the black youth and his friend.

Plowboy motioned off-handedly with the .45. "Now you clowns get on back to whatever hole you crawled out of and leave these people be. I wouldn't want to have to go over anything else my daddy taught me about how to deal with vermin."

Cutoffs and Khakis turned to walk away. Jeans hesitated, then followed, mumbling epithets under his breath.

The black young man looked at the Georgia boy. He let out a long breath. "Did your daddy really teach you that? I thought you said you were from South Georgia."

"Fellas, my daddy was a Klansman, and a lot of what I learned from him I'm still trying to forget. What I learned about how to treat people came from my grandmother—my mama's mother—and I can still remember her laughing at my daddy when he put those robes on. I have great respect for my grandmother. My daddy's a good man, but he's a man who grew up in South Georgia in the '30s. He's got his ways, but I learned early on who my example should be."

"Listen," the white young man stepped off the picnic table and walked toward the young man from Georgia. "I think we owe you. I think we owe you big time. I think we might have been in a lot of trouble here."

"Oh, you were in a world of hurt there, no mistake about it. You might have easily wound up wrapped in a hundred feet of trace-chain, face-down in a creek some-

where out in the woods." He slipped the .45 back into his hip pocket.

"I don't remember ever seeing a colored man talking to a white woman who wasn't his employer." He smiled at the young black man. "I think those crackers are more talk than action, but I read the papers and I know bad things have happened to colored people and Yankees that got caught out of place. I just don't like the idea that it might have happened and I didn't do anything to stop it."

The black young man stepped up and stuck out his hand. "I'm Reuben Haynes," the black youth said. "And this is my friend Jack Hooker. We're not Freedom Riders, just college boys. I'm gonna say again, we owe you, and I mean we really owe you. I wish there were some way we could repay you."

"My name's Roy Don Baker. I'm from Cairo. And you don't really owe me—I haven't done anything I'd need to be paid back for."

"Cairo? Cairo, like in Egypt?" asked Hooker.

"No," Haynes laughed. He looked at Hooker. "You damn Yankee! Cairo, like in Georgia. South Georgia."

"What do you do? Are you a college student, too?" asked Hooker.

"No, I'm just a working-class slob. I wasn't going to farm, like my daddy, but my granddaddy was sheriff in Grady County, over in Cairo, and now my uncle is the sheriff. I'm going to start working for him. I'm married and got a little three-year-old girl, and one on the way, so I got to have a steady income. My daddy doesn't want it, so my uncle says if I can hang in, then maybe I'll be sheriff one day. He's only got about six deputies, and none of them really want the job. It's 'way too political.'"

Reuben laughed. “Jack and I have talked about it, and we might get political one day, when we finish law school. If you can give us any pointers, we’d appreciate it.”

“Let me give you a real important pointer right now: if you’re smart, you guys’ll get in your car and high-tail it out of here before those crackers go round up somebody with a thirty-ought-six in his pickup and they come back here and out-gun me. I’ve got to hit the road for Cairo.” He turned to go. “That’s Georgia, not Egypt,” he said, smiling.

“Thank you, Mr. Baker,” said Reuben Haynes, extending his hand. “Thanks for saving our lives.” Jack Hooker extended his hand as well, and each shook hands with the Georgia man.

“Think nothing of it, fellas. I try to do like my grandmother said—just do right. If you ever need anything in South Georgia, let me know.” ●



Dick Donovan, a native of Atlanta, is a former police officer. Donovan was elected district attorney for the Paulding Judicial Circuit in 2010, and took office Jan. 1, 2011. He majored in Journalism at the Henry W. Grady School of Journalism at the University of Georgia, and began his formal study of the law in Atlanta at Woodrow Wilson College of Law, receiving his Juris Doctor degree June 16, 1979, cum laude. He was admitted to the State Bar of Georgia on June 14, 1979, and to the Supreme Court of Georgia and the Court of Appeals of Georgia, the U.S. Court for the Northern District of Georgia and the U.S. Court of Appeals for the Fifth Circuit on Oct. 4, 1979, and later to the U.S. Court of Appeals for the Eleventh and Eighth Circuits, appearing in federal courts in Georgia, Florida, Alabama and Minnesota, as well as city, county, state and superior courts in nearly 50 Georgia counties. He has lived and practiced law in Paulding County since 1981. Donovan has served on the State Bar of Georgia’s Committee on Professionalism and on the Legislative and Training Committees of the District Attorneys Association of Georgia.

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Kudos



Stephen B. Bright, professor of practice at Georgia State College of Law, received the American College of Trial Lawyers' Griffin Bell Award for Courageous Advocacy. The award, created in 1964 and renamed in 2008 for Griffin Bell, is given to a trial lawyer who has demonstrated outstanding courage in unpopular or difficult cases.



Little Mendelson announced that associate Detrachian M.N. André was selected as an academy fellow by the National Employment Law Council, an organization committed to enriching the minority bar among management-side employment lawyers.



Litchfield Cavo LLP announced that partner Steven Ginsburg was a presenter at the Mortgage Bankers Association National Mortgage Servicing Conference and Expo in Orlando, Florida, in February.



Adams and Reese announced the appointment of special counsel Roy Hadley to the Atlanta Chief Information Officer Advisory Board. The board's mission is to help influence the city of Atlanta's innovation agenda and city-wide adoption of technology development and implementation.



FordHarrison LLP announced that associate Kristina Griffin received a "Rising Star" award from the Pro Bono Partnership of Atlanta. PBPA connects volunteer attorneys with Georgia non-profits in need of free business legal services.



The Bowen Law Group announced that Charles "Bo" Bowen was recognized by the Georgia State Senate for his services to the state's film industry and by Secretary of State Brad Raffensperger as an "Outstanding Georgia Citizen."



Augusta University announced that Laverne Lewis Gaskins, senior legal advisor, traveled to Geneva, Switzerland, where she served as an American Bar Association representative to the United Nations' Forum on business and human rights in November.



The Law Offices of D. Villanueva, LLC, announced that principal Derick C. Villanueva has deployed to serve as military advisor with NATO's Operation Resolute Support. Villanueva focuses his practice on automobile accidents, motorcycle accidents, trucking accidents, pedestrian accidents, premises liability, dog bites, slip and fall, consumer and business bankruptcy, simple wills/estate planning and general civil matters.

On the Move IN ATLANTA



Squire Patton Boggs announced the addition of Alison LaBruyere as of counsel. LaBruyere focuses her practice on financial services, mergers, acquisitions and joint ventures, capital markets and fintech. The firm is located at 1230 Peachtree St. NE, Suite 1700, Atlanta, GA 30309; 678-272-3200; www.squirepattonboggs.com.



Adams and Reese LLP announced that David F. Katz has joined as a partner. Katz focuses his practice on cybersecurity and privacy and data protection. The firm is located at Monarch Tower, 3424 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 470-427-3700; www.adamsandreese.com.

McGuireWoods announced the addition of Kenneth M. Neighbors as partner. Neighbors focuses his practice on public finance, real estate development and real estate finance. The firm is located at Promenade, 1230 Peachtree St. NE, Suite 2100, Atlanta, GA 30309; 404-443-5500; Fax 404-443-5599; www.mcguirewoods.com.



Neel, Robinson & Stafford, LLC, announced the elevation of Pierce Lowrey to partner. Lowrey focuses his practice on commercial real estate and real estate development. The firm is located at Glenridge Highlands, Building 1, 5555 Glenridge Connector, Suite 400, Atlanta, GA 30342; 404-459-9600; Fax 404-459-0704; www.neelandrobinson.com.



OPTIZ



STEELE

Chamberlain Hrdlicka announced the elevation of Erica Optiz and Chris Steele to shareholder and the addition of Nicholas Kemper as an associate. Optiz focuses her practice on corporate and securities and finance. Steele focuses his practice on trusts and estates, where he handles estate and asset protection planning as well as the administration of complex trusts and estates. Kemper focuses his practice on corporate, securities and finance, and real estate. The firm is located at 191 Peachtree St. NE, 46th Floor, Atlanta, GA 30303; 404-659-1410; www.chamberlainlaw.com.



KEMPER



BERGER



GOHEEN

FisherBroyles announced the addition of Gordon M. Berger and Barry Goheen as partners. Berger focuses his practice on labor and employment, outsourcing, general corporate, commercial transactions, and litigation—civil pretrial and trial services. Goheen focuses his practice on commercial litigation, cyber-risk, privacy and data security, litigation—civil pretrial and trial services, and TCPA practice group. The firm is located at 945 E. Paces Ferry Road NE, Suite 2000, Atlanta, GA 30326; 866-211-5914; www.fisherbroyles.com.



Coleman Talley LLP announced the addition of Anamaria Hazard as an associate. Hazard focuses her practice area on municipal law, commercial real estate, and zoning, planning and land use matters. The firm is located at 3475 Lenox Road NE, Suite 400, Atlanta, GA 30326; 770-698-9556; Fax 770-698-9729; www.colemantalley.com.



BAUGH



KEENAN

Barnes & Thornburg announced the addition of Christina Baugh and Mark Keenan as partners. Baugh focuses her practice on litigation. Keenan focuses his practice on construction and labor and employment. The firm is located at 3475 Piedmont Road NE, Suite 1700, Atlanta, GA 30305; 404-846-1693; Fax 404-264-4033; www.btlaw.com.



INSLEY



STRICKLAND



TYSON



PERSONS



LAMIKANRA



PFANZELT



YARBROUGH

Taylor English Duma LLC announced the addition of Brynda Rodriguez Insley, Frank B. Strickland and Bryan P. Tyson as partners; Oscar N. Persons as senior counsel; and Adebola Lamikanra, Jenifer Fallon Pfanzelt and Walter Yarbrough as associates. Insley focuses her practice on environmental and energy, health care, insurance, and litigation and dispute resolution. Strickland focuses his practice on higher education and litigation and dispute resolution. Tyson focuses his practice on litigation and dispute resolution. Persons focuses his practice on litigation and dispute resolution. Lamikanra focuses her practice on employment and labor relations, insurance, and litigation and dispute resolution. Pfanzelt focuses her practice on insurance and litigation and dispute resolution. Yarbrough focuses his practice on litigation and dispute resolution. The firm is located at 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339; 770-434-6868; Fax 770-434-7376; www.taylorenglish.com.



Kilpatrick Townsend & Stockton announced the addition of Caitlin Smith as an associate. Smith focuses her practice on brand licensing and related transactions, clearance and portfolio management, intellectual property, online and digital enforcement, trademark litigation, trademark, and copyright and advertising. The firm is located at 1100 Peachtree St. NE, Suite 2800, Atlanta, GA 30309; 404-815-6500; Fax 404-815-6555; www.kilpatricktownsend.com.



HILTON



BROWNING

Hall Booth Smith, P.C., announced the addition of H. Eric Hilton as partner and Brittanie Browning, Anthony Petrozza, Michael V. Profit and John G. Winkenwerder as associates. Hilton focuses his practice on aging services, construction, general liability, government affairs, labor and employment, and outside general counsel. Browning's practice focuses on education and governmental liability. Petrozza focuses his practice on general liability and transportation. Profit's practice focuses on appellate, general liability and medical malpractice. Winkenwerder focuses his practice on aging services, medical malpractice and products liability. The firm is located at 191 Peachtree St. NE, Suite 2900, Atlanta, GA 30303; 404-954-5000; Fax 404-954-5020; hallboothsmith.com.



PETROZZA



PROFIT



WINKENWERDER



Miles Mediation & Arbitration announced the addition of Rex D. Smith as a mediator, arbitrator and special master. Smith specializes in complex business/commercial, personal injury, construction, products liability, wrongful death, professional negligence, medical malpractice, aviation, contract disputes, insurance, nursing home litigation and premises liability. The firm is located at 6 Concourse Parkway, Suite 1950, Atlanta, GA 30328; 678-320-9118; www.milesmediation.com.



EDWARDS



HAWKINS

Attorneys Donald P. Edwards and Cameron D. Hawkins announced the formation of Edwards & Hawkins, LLC, and the addition of Brandyn L. Randall as an associate. Edwards focuses his practice on auto and truck collision, medical negligence, wrongful death and personal injury claims. Hawkins focuses his practice on civil litigation, criminal defense and immigration. Randall focuses her practice on civil litigation and criminal defense. The firm is located at 50 Hurt Plaza SE, Suite 910, Atlanta, GA 30303; 404-526-8866; Fax 404-526-8855; www.ehllaw.net.



RANDALL



Stites & Harbinson, PLLC, announced the elevation of Hal Gill Jr. as office executive member for its Atlanta office. Gill focuses his practice on commercial finance, real estate, real estate development and finance, and real estate general practice. The firm is located at 303 Peachtree St. NE, Suite 2800, Atlanta, GA 30308; 404-739-8800; Fax 404-739-8870; www.stites.com.



BakerHostetler announced that Douglas Eingurt has joined the firm as partner. Eingurt focuses his practice on mergers and acquisitions and private equity and venture capital. The firm is located at 1170 Peachtree St., Suite 2400, Atlanta, GA 30309; 404-459-0050; Fax 404-459-5734; www.bakerlaw.com.

IN BRUNSWICK



Hall Booth Smith, P.C., announced the addition of R. Wells Littlefield as associate. Littlefield focuses his practice on dental, health care and insurance coverage. The firm is located at 3528 Darien Highway, Suite 300, Brunswick, GA 31525; 912-554-0093; Fax 912-554-1973; hallboothsmith.com.

IN COLUMBUS



HADDEN



SCHONDELMAYER

Page, Scrantom, Sprouse, Tucker & Ford, P.C., announced that J. Wayne Hadden, Carter P. Schondelmayer and Alex M. Shalishali joined the firm as shareholders. Hadden focuses his practice on business and corporate law, estate



SHALISHALI

planning, exempt organizations, mergers, and acquisitions and dispositions. Schondelmayer focuses her practice on labor and employment, and litigation. Shalishali focuses his practice on litigation. The firm is located at Synovus Centre, 1111 Bay Ave., 3rd Floor, Columbus, GA 31901; 706-324-0251; www.psstf.com.



Hall Booth Smith, P.C., announced the addition of Teresa Tomlinson as partner. Tomlinson focuses her practice on business litigation. The firm is located at 1301 1st Ave., Suite 100, Columbus, GA 31901; 706-494-3818; Fax 706-494-3828; hallboothsmith.com.

IN MACON



James-Bates-Brannan-Groover-LLP announced the addition of Christopher Gordon as counsel. Gordon focuses his practice on litigation, commercial litigation, general litigation and insurance. The firm is located at 231 Riverside Drive, Macon, GA 31201; 478-742-4280; jamesbatesllp.com.

IN SAVANNAH



CLARKSON



DOVE

HunterMaclean announced the election of Rebecca F. Clarkson as partner and the addition of Taylor Dove as associate. Clarkson's practice focuses on commercial finance, real estate, corporate, mergers and acquisitions, business transactions

and business succession planning. Dove's practice focuses on litigation, business litigation, bankruptcy and creditors' rights, and insurance coverage and defense. The firm is located at 200 E. Saint Julian St., Savannah, GA 31412; 912-236-0261; Fax 912-236-4936; www.huntermaclean.com.

IN WOODSTOCK



The Law Offices of S. Judson Waites announced it has relocated. The firm specializes in personal injury and wrongful death, business, contract and employment disputes, and criminal defense. The office is now located at 103 Springfield Drive, Suite 206, Woodstock, GA 30188; 770-420-6566;

Fax 678-514-3644; www.waites-law.com.

IN BIRMINGHAM, ALABAMA



Littler Mendleson P.C. announced the addition of Janell Ahnert as shareholder. Ahnert focuses her practice on litigation and trials, and labor management relations. The firm is located at 420 20th St. N, Suite 2300, Birmingham, AL 35203; 205-421-4700; Fax 205-421-4699; www.littler.com.

IN JACKSON, MISSISSIPPI



Southern Farm Bureau Life Insurance Company announced the elevation of Jeffery A. Styres to vice president of the legal department, and assistant secretary of the firm. The firm is located at 1401 Livingston Lane, Jackson, MS 39205; 601-981-5332; www.sfbli.com.

Black Prosecutors in Georgia Make National Footprint

BY KENYA M. JOHNSON

Georgia is home to the highest number of elected minority prosecutors in the country, with nine district attorneys and solicitors-general. In 2018, two Atlanta prosecutors were elected to serve on the board of the National Black Prosecutors Association (NBPA). Fulton County Deputy District Attorney Keith Lamar Jr. will lead the organization as its president and Fulton County Chief Deputy Solicitor Kenya M. Johnson will serve as the organization's southeast regional director, serving Georgia, Alabama, Florida and Mississippi.

Speaking to NBPA's local impact, Lamar states: "With NBPA's president and southeast regional director both in Fulton County, and the local chapter in nearby DeKalb County, our vision of 'progressive prosecution' in urban communities serves as a national example for prosecution and criminal justice reform."

"Criminal justice reform, youth programs and crime prevention are our focus and we are proud to serve on the forefront to encourage, empower and engage other prosecutors," said Johnson. "It is because we are together, that we are strong."

The National Black Prosecutors Association is the only professional membership organization dedicated to the advancement of blacks as prosecutors. Founded in 1983, NBPA's membership is comprised of both chief and line prosecutors nationwide. In addition to prosecutors, the association's membership includes law students, former prosecutors and law enforcement personnel. Award-winning programming, such as "Real Talk About the Law," a youth crime prevention program duplicated by prosecution offices nationwide, began in Atlanta through NBPA's local chapter, the Greater Atlanta Black Prosecutors Association. National initiatives, including "Pipeline to Prosecution," connect prosecutors with law students to increase interest in prosecution as a legal career in the face of precarious and volatile times. ●

Texting While Lawyering

BY PAULA FREDERICK

OMG!

"I can't believe Ms. Johnson filed a grievance against me," your partner grumbles as she wanders into your office. "She claims she didn't approve the settlement!"

"I predicted she would come down with a bad case of buyer's remorse, remember?" you remind her. I warned you to get her acceptance of that offer in writing."

"I did! Well, kind of . . . It depends on what you mean by 'in writing,' your partner replies. "She sent me a text to say she was fine taking \$10,000 for her case. Now I just have to figure out where old texts go to die . . .," your partner says, frantically scrolling through screens on her smartphone.

Just when you've given up hope, she finds what she's been looking for. "Aha! Here it is," she says as she sticks the phone under your nose.

\$10k ok? lmk

ldk, wfm I guess

"That's it? What does that even mean? This is why I hate texting!" you shout to the heavens.

What's wrong with communicating with clients by text?

Nothing, if you're asking the client to give you a call to discuss a settlement offer, or sending the address of the courthouse to be sure a client gets to her hearing on time. But it's inadequate for discussing anything that is remotely complicated—like a legal matter.

There's also the fact that many lawyers don't have a system in place to maintain their text communication with clients, assuming they can retrieve a text from their phone or from the cloud if necessary. Of course the better practice is to create some record—electronic or even an old-fashioned printout of the text—and link it to the client file.

I've given up on recommending that lawyers refuse to communicate with their clients by text message, mainly because clients insist on it! Just remember that Bar Rule 1.4 requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Try doing that with abbreviations and emojis! •



Paula Frederick

General Counsel
State Bar of Georgia
paulaf@gabar.org



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Attorney Discipline Summaries

March 11, 2019 through May 10, 2019

BY JESSICA OGLESBY

Disbarment

Neil Larson

P.O. Box 1277
Lithia Springs, GA 30122

On March 11, 2019, the Supreme Court of Georgia disbarred attorney Neil Larson (State Bar No. 438468) from the practice of law. Larson was personally served with four disciplinary formal complaints, but failed to file responses as required by Bar rules. As a result of his default, the facts alleged and violations charged in the formal complaints were deemed admitted.

In three separate cases, Larson agreed to represent clients in criminal matters. The clients paid Larson in advance for the representation, but he failed to consult with them concerning the scope of the representation; failed to communicate with them or to respond to inquiries; failed to appear at scheduled hearings; failed to pursue the cases diligently; and ultimately failed to refund unearned fees. Larson also waived one client's rights without authorization, and in another he made misrepresentations to the client's family about the status of the matter.

In the fourth case, Larson agreed to represent a client in a case in state court.

He failed to appear at hearings; he failed to communicate with his client; and he failed to respond to inquiries or notices from the court. In all four of the cases, Larson abandoned his clients' cases to their detriment. Larson violated Rules 1.2, 1.3, 1.4, 1.16 (d), 3.2, 8.4 (a) (4), and 9.3 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2 (a), 1.3, and 8.4 (a) (4) is disbarment, and the maximum sanction for a violation of Rules 1.4, 1.16, 3.2, and 9.3 is a public reprimand.

In aggravation, Larson acted dishonestly in collecting a fee and abandoning his clients' cases and violated multiple rules of professional conduct. Larson had prior disciplinary history and multiple disciplinary actions pending at the time he defaulted in these matters, which shows a pattern of neglect.

Suspension

Don Smart

P.O. Box 10206
Savannah, GA 31412

On April 29, 2019, the Supreme Court of Georgia accepted a petition for voluntary suspension for attorney Don Smart (State Bar No. 653525). On Dec. 27,

*"He who is his own lawyer
has a fool for a client."*

Warren R. Hinds, P.C.

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 State Bar
of Georgia

2018, Smart was charged with a felony count of theft by conversion. Smart was ordered to be suspended from the practice of law during the pendency of the criminal charges against him and until further order of the Court.

Public Reprimand Melody Yvonne Cherry

531 Boulevard SE
Atlanta, GA 30312

On April 15, 2019, the Supreme Court of Georgia accepted a renewed petition for voluntary discipline and imposed a public reprimand on attorney Melody Yvonne Cherry (State Bar No. 123395).

In her amended second petition, Cherry admitted to violations of Rules 1.15 (I) (b), 4.1, and 8.4 (a) (4) of the Georgia Rules of Professional Conduct in two matters.

With regard to State Disciplinary Board (SDB) Docket No. 7135, Cherry was retained by a client to represent him in a personal injury claim arising from an incident occurring on May 24, 2015. Because several people were injured in the accident, the limits of insurance coverage under the policy were insufficient to settle all of the claims, and the client was not able to receive what he believed was full compensation for his injuries and special damages. Cherry filed suit on the client's behalf, and after some discovery the claim was settled in September 2016 for a gross amount of \$16,300. Cherry knew at that time that a lien had been asserted against the claim by a hospital and therefore made only a limited disbursement to her client. In February 2017, however, after the hospital notified Cherry that its lien had been released, Cherry prepared a settlement statement reflecting the client's wishes that the remaining funds, after reduction for attorney fees, costs and repayment of a litigation loan, be paid directly to him to the exclusion of certain health-care providers, including a doctor who Cherry knew had provided chiropractic care to her client. By signing the settlement statement, the client agreed that he

would be "responsible for all outstanding medical expenses and [that he would] pay the same." Thereafter, Cherry paid the balance of the net proceeds of the settlement to her client.

Cherry admits, however, that in June 2015, she had sent a letter to the doctor who provided chiropractic care advising him that "any medical expenses incurred on behalf of [her client] shall be protected at the time of settlement of this case" and that "[s]aid funds shall be forwarded to your office upon conclusion of this matter." The recitation of facts by the Bar indicates that the doctor provided medical treatment to the client in reliance on Cherry's written assurance. The Bar's response indicates the doctor submitted a bill to the client in the amount of \$2,444 for services. Cherry admitted that by following her client's directive at the time of the disbursement in disregard of the interests of the doctor she had promised to honor, she violated Rule 1.15 (I) (b).

With regard to SDB Docket No. 7136, Cherry admitted that on April 19, 2017, a woman contacted her by phone concerning possible representation regarding an April 18, 2017, automobile accident, providing the woman's address, the name of the at-fault driver, the at-fault driver's insurance company and the assigned claim number. That same day, though the woman had not hired her, Cherry sent a letter of representation to the insurance company, referring to the woman who had called her as "my client" and requesting information about potentially applicable liability insurance coverage. The letter purported to include the woman's signature, notarized by Cherry's employee, but the woman did not actually sign the letter and the employee notarized the signature at Cherry's direction. Cherry admits she is responsible for the false signature and that she intended for the insurance company to rely on the notarized signature in providing the requested information, which Cherry intended to use to help the woman promptly resolve

any personal injury claim. An early email from the woman may have given Cherry a basis for believing that the woman would soon be officially hiring her, but in mid-May an attorney called Cherry on the woman's behalf, advising that the woman had never hired her or authorized her to communicate with the liability insurer. Cherry immediately notified the insurance company that she no longer represented the woman, but she admits that by preparing and sending the April 19 letter, she violated Rules 4.1 and 8.4 (a) (4) of the Georgia Rules of Professional Conduct.

In mitigation, Cherry lacked prior disciplinary history; did not have a selfish or dishonest motive; made a timely good faith effort to rectify the consequence of her misconduct; had a cooperative attitude toward the disciplinary proceedings; and otherwise had good character and a positive reputation in the community. Each of the three Rules that Cherry admits to violating has a maximum penalty of disbarment, but in light of her payment in full of her client's doctor's bill and the mitigating circumstances noted, the Court decided that a public reprimand would be consistent with prior decisions.

Lakeisha Tennille Gantt

1406 Enclave Trail
Stockbridge, GA 30281

On April 29, 2019, the Supreme Court of Georgia accepted a petition for voluntary discipline and imposed a public reprimand on attorney Lakeisha Tennille Gantt (State Bar No. 142126).

In her petition, Gantt admitted that in 2014, a client hired her for representation in an adoption matter and paid her more than \$3,700. Gantt acknowledged that she initially informed the client that she would complete the adoption paperwork prior to April 2015, but that her failure to promptly complete the necessary work led to the adoption not being completed until March 2018. Gantt points to numerous separate instances in the intervening period in which she failed to respond to the client's communications in a timely and appropriate manner, failed to respond to the client at all, or failed to complete and submit paperwork related to interim steps in completing the adoption, such as failing to complete the work necessary for a home visit to be completed.

Gantt acknowledged she failed to timely perform the necessary work on the adoption, causing a significant delay in the

proceedings, and failed to adequately communicate with the client. Gantt admitted to violations of Rules 1.2, 1.3, 1.4 and 1.5. The maximum sanction for a violation of Rules 1.2 or 1.3 is disbarment, while the maximum sanction for a violation of Rules 1.4 or 1.5 is a public reprimand.

In mitigation, Gantt asserted that she lacked a dishonest or selfish motive, and has in fact repeatedly apologized to the client and offered to refund her fee; that she was, during the relevant period, suffering from personal and emotional difficulties that required treatment and counseling; and that she has made a full and free disclosure, demonstrating a cooperative attitude toward the disciplinary proceedings.

In aggravation, the State Bar notes Gantt's substantial experience in the practice of law and her receipt of prior discipline (In the Matter of Gantt, 302 Ga. 3 (804 SE2d 336) (2017)). ●



Jessica Oglesby

Clerk, State Disciplinary Board
State Bar of Georgia

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Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the *Georgia Bar Journal* with memorials to honor deceased members of the State Bar of Georgia. Memorial Contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta,

GA 30303, stating in whose memory they are made. The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam Contributions will be used for Fellows programs of the Georgia Bar Foundation.

Legal Tech TIPS

BY NATALIE R. KELLY
AND MIKE MONAHAN



1 Hitting the Road This Summer?

www.google.com/maps

If you are going on the road for a vacation this summer and you'll be driving through rural areas with limited internet, use the "Offline Maps" feature of the Google Maps app (iOS, Android) before you leave. You can download and store on your phone maps of areas with questionable internet access. Open the Google Maps app and click the menu on the top left. Scroll to the bottom and click on the offline maps item. Then click "Select Your Map"—pan and zoom appropriately—and hit "Download." You can find your saved offline maps on your profile page.

2 Oh No! I Lost My Phone!

Do you use "Lock Screen" and worry about getting your phone back after losing it? If your Android phone is locked, you can make it easy for someone to return it to you. In the settings area, choose "Lock Screen and Security." Then choose "Clock and Face Widgets" where you will scroll down to "Contact Information." Type in something like, "If found, call _____." (Insert another contact number for you or a friend). Then choose in the dropdown

where to show it—just at the lock screen or always on. Then click "done." There. Now you can (hopefully!) get your locked phone back. (Apple has a "Lost Mode" feature. You can read more about it at support.apple.com/kb/ph2700.)

3 Pause with Fitness Before You Reply

www.lawyerslivingwell.org

Here's a #wellness hack for you. Prior to logging into Facebook or other social media apps, clear your thoughts by doing 15 incline pushups leaning on your desk or table. Push yourself to stand up and stretch before responding to any political post on social media. Spend the time thinking it over.

4 Become a Microsoft Insider

insider.office.com/en-us

An Office Insider that is. If you are an Office 365 user and you're an Office Insider, you'd be privy to the new features being rolled out in Office applications before everyone else, and you'd be able to suggest new features easily, too. For instance, Insiders have prompted Microsoft to add more than 350 icons

to its popular Insert/Icon menu options in Office 365 apps. Go to the link above for information on how to become an Office Insider.

5 Make Presentations via iPad

www.apple.com

You can use your iPad to give presentations. With the better version of PowerPoint now available on the iPad (see the October 2018 tip on Microsoft and iOS apps playing nice), it makes sense to present directly from the iPad. Just make sure to invest in the flash to VGA (older projectors) and flash to HDMI connectors to connect your iPad to today's presentation projectors. The Lightning Digital AV Adapter costs \$49 from Apple's Accessories store.

6 The 2019 Solo and Small Firm Legal Technology Guide


www.americanbar.org/products/inventory/book/355399637

This annual guidebook from Sharon Nelson, John Simek and Michael Maschke is a great starting point for law firms looking to automate or take the next steps with their technology. The

Catchafire



Testimonial



Alpa Amin
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A World of Expertise
Lawyers in public interest law organizations—or even those lawyers with ties to the nonprofit community—take note. With instant access to web designers, photographers and data analysts, Catchafire gives small nonprofits access to a world of expertise and possibilities.

book covers all the bases in small office tech and is available for checkout from the Law Practice Management Program’s Resource Library. (Remember, we told you about tech books in the library last April.) It’s also available for purchase at a discount from the ABA. Contact the Law Practice Management Program for the discount code (lpm@gabar.org). Retail cost is \$89.95 for non-ABA members. If you are in a small firm, don’t make your next technology decision without looking here first.

7 Fuse Chicken Wireless Charger

www.fusechicken.com

Wireless charging for devices is on its way back. If you travel, check out the Universal traveling charger by Fuse Chicken. It costs just over \$80, but boasts fast wireless charging for either the iPhone or Samsung Galaxy devices. The Swiss Army approach is used with the unit as it also has USB and adaptable travel connections and a power bank onboard. And, yes, there are some car charger versions, too!

8 Get Tech Assessed with Procertas’ LTA

www.procertas.com

Think you know what you’re doing, or just want to know if others know what they are doing, in Word, Excel or Adobe Acrobat? Check your knowledge of sorting data in Excel, tracking changes in Word, annotating PDFs and more with Procertas’ Legal Technology Assessment tool. Contact the State Bar’s Law Practice Management Program for an assessment discount and arrange for a consultation (lpm@gabar.org).

9 Google History

myactivity.google.com

You know you’ve searched for things using Google and then want to go back and look. Google can help you find it again. And once you see all the things you’ve used Google to search for, like YouTube videos, images, goofy memes and more, consider deleting it! Do you really want all that info to follow you around? Go check out your history and select which parts to delete.

10 Finding Skilled Professional Volunteers

www.catchafire.org

Catchafire, a community of individuals seeking to support and strengthen the social good sector, matches skilled professional volunteers with nonprofits to help them increase their capacity and achieve their missions. Catchafire provides transformational volunteer experiences by enabling individuals to use their talents in service of our shared humanity. Their vision? A more empathetic, inclusive and loving world.



Get Out and Mingle: Marketing and Self-Care Options for Summer

Take time for yourself this summer, both personally and professionally.

BY NATALIE R. KELLY

The summer is upon us, and here in Georgia that means warm weather and beautiful days, which translates into even more opportunities to be outdoors. But if spending additional time outside during this time of year isn't high up on your to-do list, you can still take advantage of the benefits of longer days coupled with a slightly slower pace of life; get out of your office for some good, old-fashioned networking, take a breather or up your daily steps total while taking better care of yourself.



Consider the following suggestions for things you can do or events you can attend that will help up your networking game, opening up marketing opportunities as well as give you the chance to focus more on self-care. Regardless of which activity you may take on, don't forget ethics rules pertaining to in-person solicitation and advertising. If you need assistance, please contact the Office of the General Counsel's Ethics Hotline at 404-527-8741.

Local Bar Involvement

Georgia has more than 80 local and specialty bar associations. Are you a member of the one nearest you? Membership is voluntary, and you aren't limited to just one. Being a member of your local/specialty bar puts you in touch with lawyers and judges in your area—those you work with on a daily basis or may only know in passing—automatically increasing your professional network. Community involvement is a strong focus of these local organizations, and with the programming and service projects offered, you are out in front of the public filling an immediate need now, and putting yourself in line for potential clients in the future. Despite the large number of people who look for lawyers online, word of mouth marketing is still going strong, and most lawyers still get most of their business from other lawyers.

Open Houses or Receptions

If you've relocated your offices or expanded your services, you may want to consider hosting an open house, bringing in local area contacts as well as current and potential clients, to introduce yourself and the services you offer. Offering a light

lunch or hors d'oeuvres for an hour during the weekday or a few hours on the weekend is a great way to increase your exposure (and to show off your space.) An evening reception could be geared toward area attorneys and professionals to build up your referral network. If you are not good at event planning, reach out to a professional for assistance to leave the best impression.

Community Service Events

If you don't find your place on a committee or working with a bar group on a community service project, you can plan for your office to host one. Get buy-in from your staff and consider partnering with other law firms or lawyers. Doing group-based activities can help boost your local profile and perhaps give everyone in your office an opportunity to give back in ways they find beneficial.

Local Meetups and Civic Group Meetings

Join local meetup groups or attend meetings of local civic groups. For instance, the Atlanta Legal Tech Meetup group comes together regularly to focus on projects and learning sessions for legal tech innovation and ideas in the Atlanta area. If your area doesn't have such a group, create one. Don't forget you may also find a home in a local civic group chapter, too. Many lawyers are members of Chambers of Commerce and other civic entities.

Personal Interest Group Gatherings

Getting outside your office need not be about your practice. Maybe you love the

company and camaraderie of others while talking about a book, or you'd welcome a support partner for your next biking excursion or 10K run. If you are asked about your work, even better!

Walking Meetings

While you may not conduct in-person solicitation, you can always see whether your client or potential client is up to a walking meeting. You must be wary of revealing confidential information as you pass others, but this does not differ from what you must be concerned with if you were in other settings where other people are around. Take a quick stroll to just get in some fresh air and new ideas about the problem you are solving for your client or to share how you feel your firm can help the new prospective client.

Go Live Online

And if you just can't resist, reward yourself for your mingling efforts by giving your participation some marketing legs. Show off your good work on social media channels. Develop online content and present live via an online meeting platform to share your firm's activities outside of the office.

For assistance with other acceptable ways to market your practice, we encourage you to contact the State Bar's Law Practice Management Program. ●



Natalie R. Kelly

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State Bar of Georgia

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We Salute Our Pro Bono All-Stars

The Pro Bono Resource Center of the State Bar of Georgia salutes the following attorneys who demonstrated their commitment to equal access to justice by volunteering their time to represent low-income Georgians in civil pro bono programs during 2018.

*denotes attorneys who have accepted three or more cases

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Enhanced Interactive Timeline & Forecite in Fastcase 7

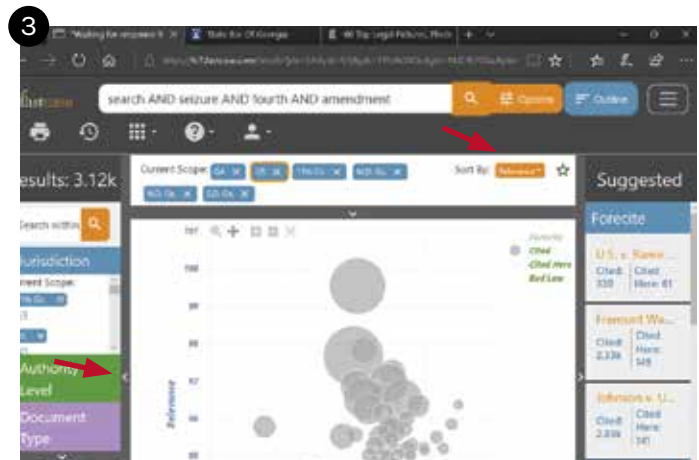
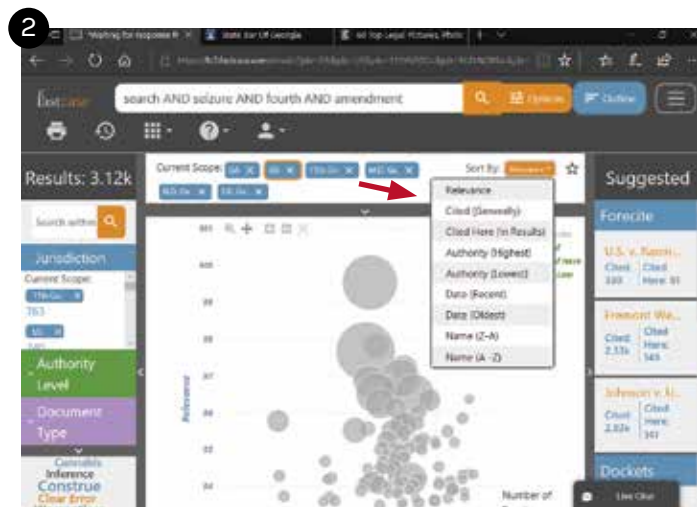
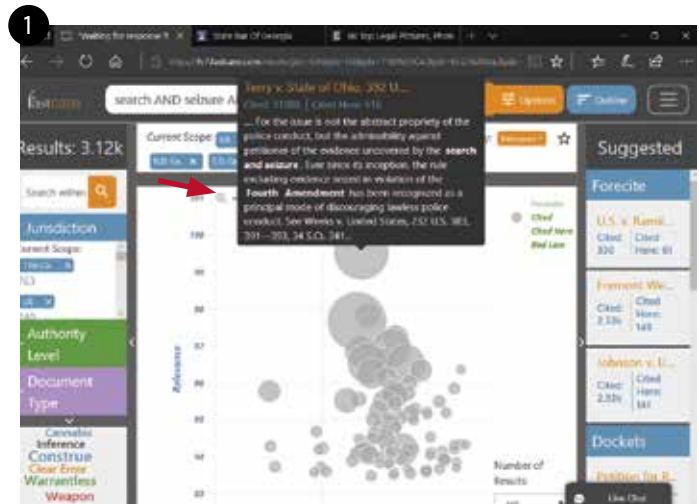
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BY SHEILA BALDWIN

Since Jan. 1, 2011, members of the State Bar of Georgia have had access to Fastcase free legal research as a member benefit. Although the full scope of coverage includes more than case law and statutes, most users spend the bulk of their time searching cases and checking to see if they are still good law. Two features that assist the user in conducting case law searches is the Interactive Timeline and Forecite. This article covers the Interactive Timeline and Forecite and how they function in Fastcase 7.

What is the Interactive Timeline?

The Interactive Timeline graphs cases that are selected in response to your search query, represents them as bubbles and references them as “your results.” The bubbles are various sizes, the larger bubbles indicating the cases that are



cited most often and thus being easily recognized. The X-axis is static, always displaying results by date decided. If you hover over a bubble with your cursor, you will see a summary of your case with the most relevant paragraph viewable and a breakdown of how the case is cited (see fig.1). Ingenious algorithms allow you to view your case by decision date, relevance, number of times cited overall and number of times cited within search results.

If you are still using Fastcase 6, you can find the Timeline by selecting the tab at the top of the results screen to the right of the tab labeled “Search.” But in Fastcase 7 (FC7), the Timeline is impossible to miss. It shows up on the results page just underneath the list view of your results. The goal of FC7 was to gain speed, expand the search, increase intuitive functionality and create a more readable interface. One way in which this was accomplished was in unifying the results by putting them all on one page. Think of your home screen as a window with individual panes; each pane in the home screen contains information that would previously have displayed on a separate page or screen. When you run a search in FC7, you will see the traditional results page with the cases in a list format and sort options. Directly below this is the Timeline with all the cases set out on a grid. In Fastcase 6, you had to switch to a separate tab to view the Timeline, meaning you could not see the list view of the results and the Timeline together. Having them integrated makes it easier to get a big picture view of the results.

What’s New in the Fastcase 7 Timeline?

New features in the Timeline include expanded criteria sort options and color coded bubbles. From the upper right side under “Sort By,” choose one of nine preferences across the Y-axis of the graph

including Relevance, Cited (generally), Cited (in results), Authority (highest), Authority (lowest), Date (recent), Date (oldest), Name (a-z), Name (z-a) (see fig. 2). The X-axis sorts by Authority or Relevance, which can be found on the lower right side of the Timeline. This tool allows a multiple set of factors to sort cases into an impressive list almost instantly. At first glance it may seem mystifying, but it’s definitely worth further examination to get the full effect. Of course, the results will only be as good as the search query so take time to think through the legal issues, identifying concepts and terms, and then building a good Boolean search.

The legend on the top right of the Timeline explains how the bubbles (cases) are color coded. As mentioned earlier, each case is represented as a gray bubble, the size of which expands in correlation to the number of times it’s been cited. Citing cases that also appear in the search results are coded blue within the bubble. Citing cases that indicate negative treatment (labeled Bad Law Bot) are coded red. Forecite cases are indicated by an orange bubble. It’s possible to focus on certain cases by selecting or deselecting them with a click on the legend (see fig. 3). I have found that depending on how many cases appear in your results and what filters you have chosen, the bubbles (cases) are sometimes so small it’s hard to see the color coding. There are options to zoom in and out, pan and autoscale to assist in viewing a set of cases. Don’t forget that you can remove sections of the screen to expand the Timeline by using the arrows that lie along the borders of screens (see fig. 3).

What is Forecite?

Forecite uses an algorithm that identifies important cases that were not included in your search results and alerts you to them. A notice in Fastcase describes this set of cases thusly: “The following decisions do not contain one or more of the

search terms you entered. However, they are frequently cited by the other decisions in your search results and therefore, may be highly relevant to the topic you are researching.” These cases may not be included in your results because they are out of your jurisdiction or date range, or they may not contain your search terms. They tend to be high level court decisions that speak to a point of law that is common to the cases in your search results. It’s recommended that you quickly skim to see if they speak to the issues in your case. In FC7, this list is on the right sidebar.

What’s New About Forecite?

Interactive Timeline and Forecite are not new, but recently the developers merged two unique features and made it even easier for you to spot seminal and important cases. Until recently, you would not see the Forecite cases in your Timeline. In FC7, these features are combined, streamlining your research by removing an extra step of reviewing them separately.

Next time you are doing research in Fastcase, take a few minutes to explore this great feature. If you find it difficult to navigate the Timeline, don’t hesitate to contact me at sheilab@gabar.org or 404-526-8618, or the resource attorneys at Fastcase, 800-773-2782. And remember, we offer two ways to find CLE-approved Fastcase training: check the calendar on the State Bar website or view the Fastcase Webinar schedule at www.fastcase.com/webinars. ●



Sheila Baldwin

Member Benefits Coordinator
State Bar of Georgia

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Organization Matters

Our job when writing is to convey, accurately and efficiently, the information and advice that the reader needs to receive. We hope these strategies will help you in that quest.

BY DAVID HRICIK AND KAREN J. SNEDDON

Deciding what content to include in any legal document is critical. But how to organize that content may be just as critical. This installment of “Writing Matters” focuses on organization. After a refresher about why organization matters, we will share five strategies to help organize your legal writings.



Why Organization Matters

We write legal documents for an audience of specific readers. No matter who the audience is—a client, opposing counsel, beneficiaries of a will or a court—that audience will have expectations about the document because the writer is reading the document for a particular purpose. The reader may need to understand the subject matter, as in a written objective memorandum. The reader may need to read the document to know whether to do something or refrain from doing something. The purpose of the document is important to structure, but so too is the identity of the reader. A structure proper for a letter to sophisticated opposing counsel may be radically different than one to a client with her first legal problem.

Although the audience and purpose affects organization, well-organized text has identifiable components structured to meet the goals of the communication. Writers aim to present well-developed accessible text. Confusing readers with rambling arguments, tangled paragraphs, and convoluted sentences ensures missing that mark.

The need for organization is clear. Of course, budgets and time pressures may prevent the writer from devoting as much time to a project as the writer would like. But other things cause weak organization. A writer can be in a writing rut, over-using organizational patterns without sufficient adaptation to the current document. Further, if the text presents many ideas, arguments or possibilities, it can quickly become meandering, circuitous and tortuous.

While those obstacles to organization are known, what is often not as widely-recognized is that weak organization happens because a writer does not realize just

how dense a document has become. That often happens because as writers become expert in a subject, writers forget the audience is not. The writer may have a lot of knowledge, but the reader may not be familiar with all the rules, terms, authorities or options that the writer knows and has expressed in a dense thicket of jargon, phrases and terms of art.

Strategies to Improve Your Approach to Organization

The following five strategies should help you craft well-organized documents.

1 Leverage the value of prewriting.

Prewriting is the first stage in the writing process. Prewriting is where writers gather thoughts, evaluate arguments and begin to order the information that will be included in the text.

Our first strategy to better organization is to recognize that although the prewriting stage often becomes abbreviated, the prewriting stage is useful for all writers. The first time you wrote an office memorandum in law school, you spent a lot of time in the prewriting stage. You likely created prewriting materials such as case briefs, charts, webs and outlines. You probably don't do that anymore. But prewriting still offers expert writers benefits.

Of course, the prewriting stage for practical reasons cannot be as exhaustive as first year legal writing, but it need not be extensive to be beneficial. Even if you have written dozens of trial briefs, create a bullet-point outline to help you stay organized as the arguments develop. When you are writing a one-page letter to give options to a client, make a list of options

to include in the order that you expect to discuss them to make sure that you present all of them and in a logical order. Devoting just 10 minutes to prewriting can help you evaluate the different approaches to better organize the content.

2 Avoid starting in the middle of a conversation.

The genre of legal writing is formal with proscribed titles, formalities, headings and captions. With so much structure in the appearance of a document, writers can sometimes forget that we still need to include the three basic components: (a) an introduction, (b) a body and (c) a conclusion.

Our second suggested strategy is to be sure you have an introduction. The introduction helps the reader understand the nature of the document to be reviewed. Whether a client letter, a contract or a complaint, each document should begin with introductory material or remarks to put the rest of the text in context for the reader. The introduction may be the one sentence following greeting of a letter:

This letter responds to your question about how to divide your assets among your children and outlines three options to consider.

In this regard, the heading of a brief or letter cannot replace that. Headings may be ignored, and if so the text may begin with what strikes the reader as the middle of an argument or explanation. Omitting an introduction can disorient the reader and be inefficient or ineffective in conveying meaning. Headings do not replace the need for beginning with an introduc-

The most common approach to large scale organization of legal writing is the paradigm commonly referred to as IRAC: issue, rule(s), analysis of the rule(s) and application of the rule(s) to a new set of facts and conclusion.

tion that provides the context for the argument, analysis or options.

3 Legal writers use IRAC for a reason.

The most common approach to large scale organization of legal writing is the paradigm commonly referred to as IRAC: issue, rule(s), analysis of the rule(s) and application of the rule(s) to a new set of facts, and conclusion. IRAC is prevalent because its four components align with the purpose of many different legal documents. The issue is where the writer defines the problem (or issue) to be addressed. The rule (or rules) summarizes the applicable legal authorities. The analysis applies those legal authorities to the pertinent facts. The conclusion predicts the outcome or provides alternatives.

Our third strategy is to recognize that IRAC can be used for many legal documents, not just a formal office memorandum. The basic components of IRAC can be used to structure a response to a client question in an email. For instance, a responsive email may begin by describing the question asked by the client as an issue to be resolved before summarizing “the law” and how it applies to the client’s facts. The conclusion can identify options to pursue. IRAC is not just for legal memoranda.

4 Don’t be afraid to deviate from IRAC.

We know this strategy seems to contradict our third suggestion. But our fourth strategy is to recognize that strictly adhering

to IRAC—even in a formal office memorandum—can lead to bad organization, or block consideration of a better one.

For example, the IRAC paradigm may prevent the writer from sufficiently discussing policy considerations or advocating for a new interpretation of settled law. The particular purpose of the document or the particular audience of a document may require the writer to deviate from IRAC.

5 Well-constructed paragraphs are key.

IRAC is an example of large-scale organization, providing the foundation for the document. Yet small-scale organization, such as paragraphing and sentence constructions, may actually be more important than large-scale organization. A good foundation is important, but so too are the shingles for the roof. Indeed, the leaking roof may be far more noticeable than a slight tilt to one wall.

Our final strategy is to remind you of (or introduce to you to) an acronym often used in primary school to help remember the four key components of many paragraphs that aim to inform or persuade the reader. That acronym is PEEL.

PEEL stands for (a) point/purpose, (b) evidence/examples, (c) explanation and (d) link. A paragraph begins with a thesis sentence that shows the point, or purpose, of the paragraph. After that topic sentence, the paragraph includes evidence or examples to support the thesis. It then explains the relevance or significance of those evidence or examples. The paragraph then concludes by linking the purpose of the

paragraph to the purpose of the next paragraph. This acronym not only helps writers remember what content to include in a well-constructed paragraph but also reminds the writer that paragraphs should fit together in a logical sequence.

Finally, like IRAC, PEEL serves a purpose, but rigid adherence to PEEL can interfere with communication. For example, a paragraph does not need to be a particular length. It is okay to have more than five sentences in a paragraph. And a well-constructed paragraph may have one sentence! Rigidly adhering to PEEL may block use of paragraph structures that are better suited for the particular document, its purpose and its reader.

Conclusion

Our job when writing is to convey, accurately and efficiently, the information and advice that the reader needs to receive. We hope these strategies will help you in that quest. After all, organization matters! ●



David Hricik is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles.

The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.



Karen J. Sneddon is a professor of law at Mercer University School of Law.

Honoring Georgia's Lawyers

I sincerely hope the Commission on Professionalism's work will honor Georgia's lawyers for what they do each day and will help each lawyer to become consummate professionals while they do the tireless and often thankless work of representing clients.

BY KARLISE Y. GRIER

In June of 2018, I was shaken to the core when I learned of the death of attorney Antonio Mari. I did not personally know Mari, a family law attorney who was murdered by a client's ex-husband. I had, however, as a former family law attorney of almost 18 years, personally experienced the dynamics that caused his death: enmity, anger, retribution and a myriad of other vitriolic emotions directed at you as a lawyer (by opposing parties or clients) because you are striving to do your job to the best of your ability. I wanted to take a moment in this article to pay tribute to Mari and to honor the thousands of other Georgia lawyers who are just like him, men and women who toil in the trenches every day—putting their clients interests above their own personal well-being—as they strive to provide exemplary service and excellent representation. I also wanted to commend the wonderful professionalism example set by the Bartow County Bar Association, which stepped up in the midst of this horrible tragedy to divide up and take Mari's cases and to help close down his law practice.¹



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According to the *Daily Report*, Mari was afraid of the pro se opposing party who ultimately killed him.² Nevertheless, Mari fulfilled his legal obligations to his client and obtained a final divorce decree for the client less than two hours before his client's ex-husband shot him to death. This balance of client interests versus personal interests is not always played out as dramatically as in Mari's case, but it is always there. Do you go to your child's soccer practice or do you first finish the brief that is due tomorrow? Do you take time to go for a walk or a run or do you take that early morning meeting with a client who can't take time off from their work as an hourly employee? Do you tell the pro bono client you are meeting with they have to leave your office and reschedule (knowing they most likely won't) because they reek of cigarette smoke and you have asthma? Do you file a motion to withdraw well in advance of trial or do you take the chance the client will pay you "in installments" as promised, knowing the client really needs a lawyer in this custody battle?

Each day, Georgia lawyers are called upon to make choices, large and small, that force them to balance their personal well-being against the interests of their clients. Striking the "correct" balance is at the heart of what we call "professionalism."³ One of the first quotes I came across when I started as executive director of the Chief Justice's Commission on Professionalism was from Karl N. Llewellyn, a jurisprudential scholar who taught at Yale, Columbia and the University of Chicago Law Schools. Prof. Llewellyn cautioned his students:

The lawyer is a [person] of many conflicts. More than anyone else in our society, he [or she] must contend with competing claims on his [or her] time

and loyalty. You must represent your client to the best of your ability, and yet never lose sight of the fact that you are an officer of the court with a special responsibility for the integrity of the legal system. You will often find, brethren and sistern, that those professional duties do not sit easily with one another. You will discover, too, that they get in the way of your other obligations—to your conscience, your God, your family, your partners, your country and all the other perfectly good claims on your energies and hearts. You will be pulled and tugged in a dozen directions at once. You must learn to handle those conflicts.⁴

I hope that, under my stewardship, the Chief Justice's Commission on Professionalism will honor Georgia's lawyers by ensuring CLE providers offer outstanding programming regarding professionalism concepts that give lawyers the opportunity to discuss the challenges (and sometimes joys) of practicing law. I look forward to continuing to recognize the amazing community service work of lawyers and judges at the Justice Robert Benham Awards for Community Service. I hope that the Commission's convocations, such as the 2018 Convocation on Professionalism and the Global Community, will continue to explore cutting-edge issues in the legal profession. I hope the Commission's work will help to embolden lawyers to stand courageously for the rule of law in our country and to provide guidance to lawyers on how to do so thoughtfully and with integrity. I look forward to the Commission's continued partnership with the State Bar of Georgia Committee on Professionalism and with Georgia's law schools as we strive to introduce law students to professionalism concepts during the Law School Orientations on Professionalism.

Too often, I think our profession focuses on the "bad" things for which lawyers may be known. I truly believe most lawyers are good, hard working men and women who want to do the best job they can for their clients in return for fair payment for their work. During my stewardship as executive director of the Commission, it is my goal to focus on and cultivate the good and the goodness in our profession that often happens without notice or comment. I am eager to help us all (myself included) grow to be the best professionals we can be. I sincerely hope the Commission's work will honor Georgia's lawyers for what they do each day and will help each lawyer to become consummate professionals while they do the tireless and often thankless work of representing clients. ●



Karlise Y. Grier

Executive Director
Chief Justice's Commission
on Professionalism
kygrier@cjcpga.org

Endnotes

1. See R. Robin McDonald, *Cartersville Attorney Gunned Down by Client's Ex-Husband*, *Daily Report*, June 22, 2018, at 1, <https://www.law.com/dailyreportonline/2018/06/21/cartersville-attorney-gunned-down-by-clients-ex-husband/> (last visited June 22, 2018).
2. See *Id.*
3. To learn more about how Georgia defines professionalism, see *A Lawyer's Creed* and the *Aspirational Statement on Professionalism* at: <http://cjcpga.org/lawyers-creed/> (last visited August 10, 2018).
4. Mary Ann Glendon, *A Nation Under Lawyers* 17 (1994).

In Memoriam honors those members of the State Bar of Georgia who have passed away. As we reflect upon the memory of these members, we are mindful of the contributions they made to the Bar. Each generation of lawyers is indebted to the one that precedes it. Each of us is the recipient of the benefits of the learning, dedication, zeal and standard of professional responsibility that those who have gone before us have contributed to the practice of law. We are saddened that they are no longer in our midst, but privileged to have known them and to have shared their friendship over the years.

JOHN F. BEASLEY SR.

Fair Play, South Carolina
Emory University School
of Law (1963)
Admitted 1963
Died April 2019

STEPHEN MANN BROOKS

Atlanta, Georgia
University of Georgia
School of Law (1993)
Admitted 1993
Died March 2019

JOHN MICHAEL BROWN

Augusta, Georgia
University of Georgia
School of Law (1976)
Admitted 1976
Died March 2019

GEORGE WARD BRYAN

Fort Collins, Colorado
Emory University School
of Law (1966)
Admitted 1965
Died March 2019

WILLIAM M. FLEMING JR.

Augusta, Georgia
University of Georgia
School of Law (1950)
Admitted 1950
Died March 2019

ROBERT W. GROUT

Atlanta, Georgia
University of Virginia
School of Law (1969)
Admitted 1969
Died April 2019

WILLIAM H. KITCHENS SR.

Valdosta, Georgia
University of Georgia
School of Law (1962)
Admitted 1961
Died February 2019

DAVID H. LANNER

Decatur, Georgia
Emory University School
of Law (1976)
Admitted 1976
Died March 2019

ANNE WARE LEWIS

Atlanta, Georgia
Georgia State University
College of Law (1989)
Admitted 1989
Died April 2019

WALTER G. MOELING IV

Atlanta, Georgia
Duke University School
of Law (1968)
Admitted 1968
Died March 2019

**JANET BRADFORD
MORGAN**

Fort Lauderdale, Florida
University of Georgia
School of Law (1984)
Admitted 1984
Died March 2019

G. CAREY NELSON III

Cartersville, Georgia
Stetson University
College of Law (1977)
Admitted 1977
Died March 2019

CHESTER G. ROSENBERG

Atlanta, Georgia
Emory University School
of Law (1974)
Admitted 1974
Died November 2018

JOEL HERBERT SIEGEL

Marietta, Georgia
Georgia State University
College of Law (1986)
Admitted 1987
Died February 2019

J. DOUGLAS STEWART

Gainesville, Georgia
Emory University School
of Law (1962)
Admitted 1962
Died May 2019

JOHN M. VANSANT JR.

Albany, Georgia
Emory University School
of Law (1964)
Admitted 1964
Died March 2019

JOHNNIE C. WAGES

Lawrenceville, Georgia
Atlanta Law School (1977)
Admitted 1977
Died November 2018

GARY O. WALKER

Marietta, Georgia
Atlanta Law School (1976)
Admitted 1976
Died April 2019

OBITUARIES



Anne Ware Lewis, 56, of Tucker, passed away in April. Born in Savannah, Georgia, she was the daughter of Michael Edward and Elizabeth Powers Ware. Lewis received her A.B.J. (Journalism) from the University of Georgia in 1985 and her J.D., *cum laude*, from Georgia State University College of Law in 1989, where she was the managing editor of the *Georgia State University Law Review*.

Lewis was a partner in the Atlanta law firm of Strickland Brockington Lewis LLP. Her practice involved election-related litigation, including redistricting, Voting Rights Act cases, election contests and candidate qualifying challenges. She also represented counties and municipalities in various types of litigation. Lewis represented candidates and elected officials before the Georgia Campaign Finance Commission and the State Election Board and served as counsel to public utilities appearing before the Georgia Public Service Commission.

Lewis served as general counsel of the Georgia Republican Party from May 2009 to April 2019. At various points in her career, she was a member of the Georgia Republican Party's executive committee and state committee, a member of the executive committee of the DeKalb Republican Party and served for seven years as assistant general counsel of the Georgia Republican Party. Additionally, Lewis was a member of the State Bar of Georgia's Indigent Defense Committee and the Post-Conviction Relief Committee.

In 2011, then-Secretary of State Brian Kemp named Lewis to the Elections Advisory Council. In 2011, she received the Justice Robert Benham Award for Community Service from the State Bar of Georgia. *Law and Politics Magazine* named Lewis one of the 10 most influential Georgia Republicans in 2010. In 2009, *Georgia Trend* added Lewis to its list of Legal Elite, and in 2007, *Atlanta Women Magazine* recognized Lewis as one of 20 Legal Eagles in Georgia.

In addition to her parents, Lewis is survived by her husband, Bradley J. Lewis; sons, Kevin Bradley Lewis and Kyle Patrick Lewis; brother, Michael Ware; and sisters, Mary Jacobs and Megan Coomer. ●



Jon Douglas Stewart of Gainesville, who served as the 19th president of the State Bar of Georgia in 1981-82, died May 10, 2019, after an extended illness. He was 80.

Born in Chicopee, Georgia, Stewart attended Gainesville High School and received a B.A. degree from Emory University in 1960. He earned his law degree from Emory School of Law and was admitted to the State Bar of Georgia in 1962. He was a member of the Chi Phi Fraternity. He was an active partner in the Gainesville law firm of Stewart Melvin & Frost LLP for 50 years. He practiced throughout Georgia in the state and federal trial and appellate courts.

In addition to his service as president of the State Bar of Georgia, Stewart was a member of the Board of Trustees of the Georgia Bar Foundation from 1983 to 1993, also serving as both president and vice president. He was honored by his colleagues with two of the State Bar of Georgia's highest honors, the Distinguished Service Award in 1992 and the Thomas O. Marshall Professionalism Award in 2018.

Stewart served in the House of Delegates of the American Bar Association for many years, as well as having served a three-year term representing the Sixth District on the ABA's Board of Governors. He is Life Fellow of the American Bar Foundation.

As a member of the Gainesville Kiwanis Club, he was awarded the Workhorse Award for his service and leadership in the community. He participated in local theater and musical productions and was actively involved in the First United Methodist Church of Gainesville, teaching various Sunday school classes, singing in the choir and serving as chairman of the Administrative Board and as a member of the Building Committee. He is credited as a driving force behind the success of the Georgia Court-Appointed Special Advocate program both at the local and statewide levels.

Survivors include his wife of 55 years, Helen Helms Stewart; two sons, Jon Douglas Stewart Jr. and his wife Brennan and William Andrew Stewart and his wife Ellen; three grandchildren; Jon Douglas "Jack" Stewart III, Elizabeth Stewart and Emily Stewart; two brothers, Chip Stewart and Tim Stewart, both of Tucker; and a number of nieces and nephews. ●

GEORGIA LAWYERS HELPING LAWYERS



Georgia Lawyers Helping Lawyers (LHL) is a new confidential peer-to-peer program that will provide colleagues who are suffering from stress, depression, addiction or other personal issues in their lives, with a fellow Bar member to be there, listen and help.



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For more information, visit:

www.GeorgiaLHL.org

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Notice of Motion to Amend the Rules and Regulations of the State Bar of Georgia

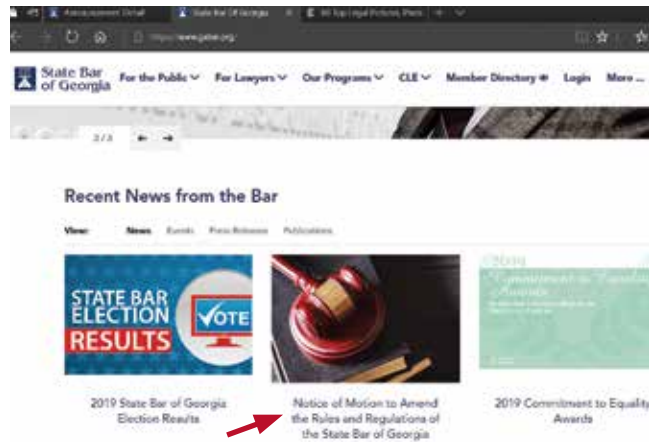
No earlier than 30 days after the publication of this Notice, the State Bar of Georgia will file Motion to Amend the Rules and Regulations for the Organization and Government of the State Bar of Georgia (Motion 2019-1) pursuant to the order of the Supreme Court of Georgia dated December 6, 1963 (219 Ga. 873) and amended by subsequent orders, and published in the State Bar of Georgia Handbook (www.gabar.org/barrules/).

The exact text of Motion to Amend 2019-1, including the text of the proposed amendments, can be found on the State Bar of Georgia's website at www.gabar.org/motiontoamend. Any member of the State Bar of Georgia who wishes to obtain a printed copy of these proposed amendments may do so by sending such request to the following address:

Betty Derrickson
Office of the General Counsel
State Bar of Georgia
104 Marietta St. NW, Suite 100
Atlanta, Georgia 30303

I hereby certify that the following is the verbatim text of the proposed amendments as approved by the Board of Governors of the State Bar of Georgia. Any member in good standing of the State Bar of Georgia who desires to object to part or all of these proposed amendments to the Rules is reminded that he or she may only do so in the manner provided by Rule 5-102 (www.gabar.org/barrules/). This statement and the verbatim text of the proposed amendments are intended to comply with the notice requirements of Rule 5-101 (www.gabar.org/barrules/).

Jeffrey R. Davis
Executive Director
State Bar of Georgia



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motivated to do great lawyering for your clients, aren't afraid to pay your dues and want excellent professional development and earnings potential, then send detailed cover letter (explaining your desire to represent the injured and your willingness to pay your dues) along with resume AND references to nina@youthurtwefight.com. Compensation commensurate with experience. If you are not serious about your legal career and willing to pay your dues, then do not apply.

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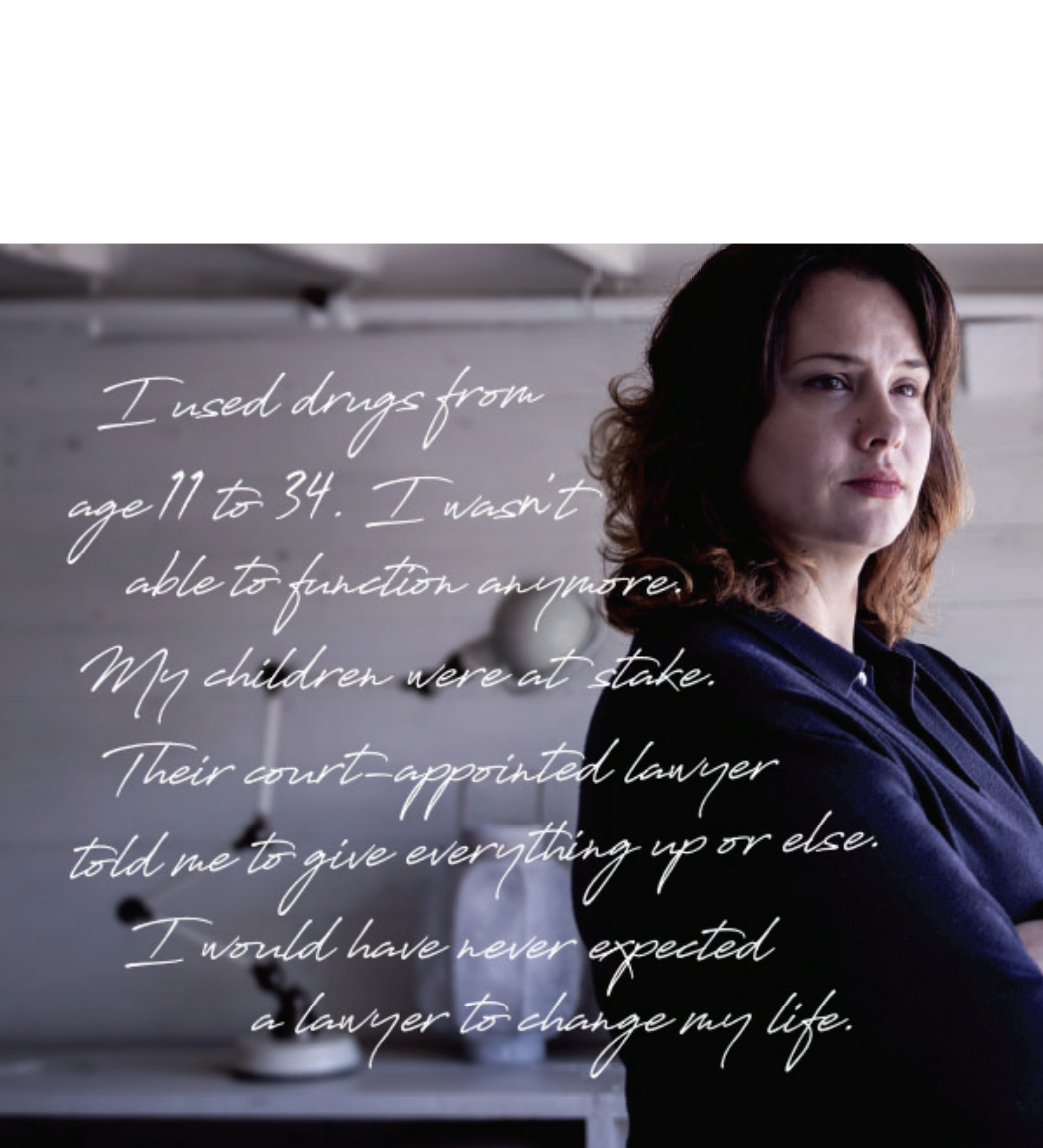
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