

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

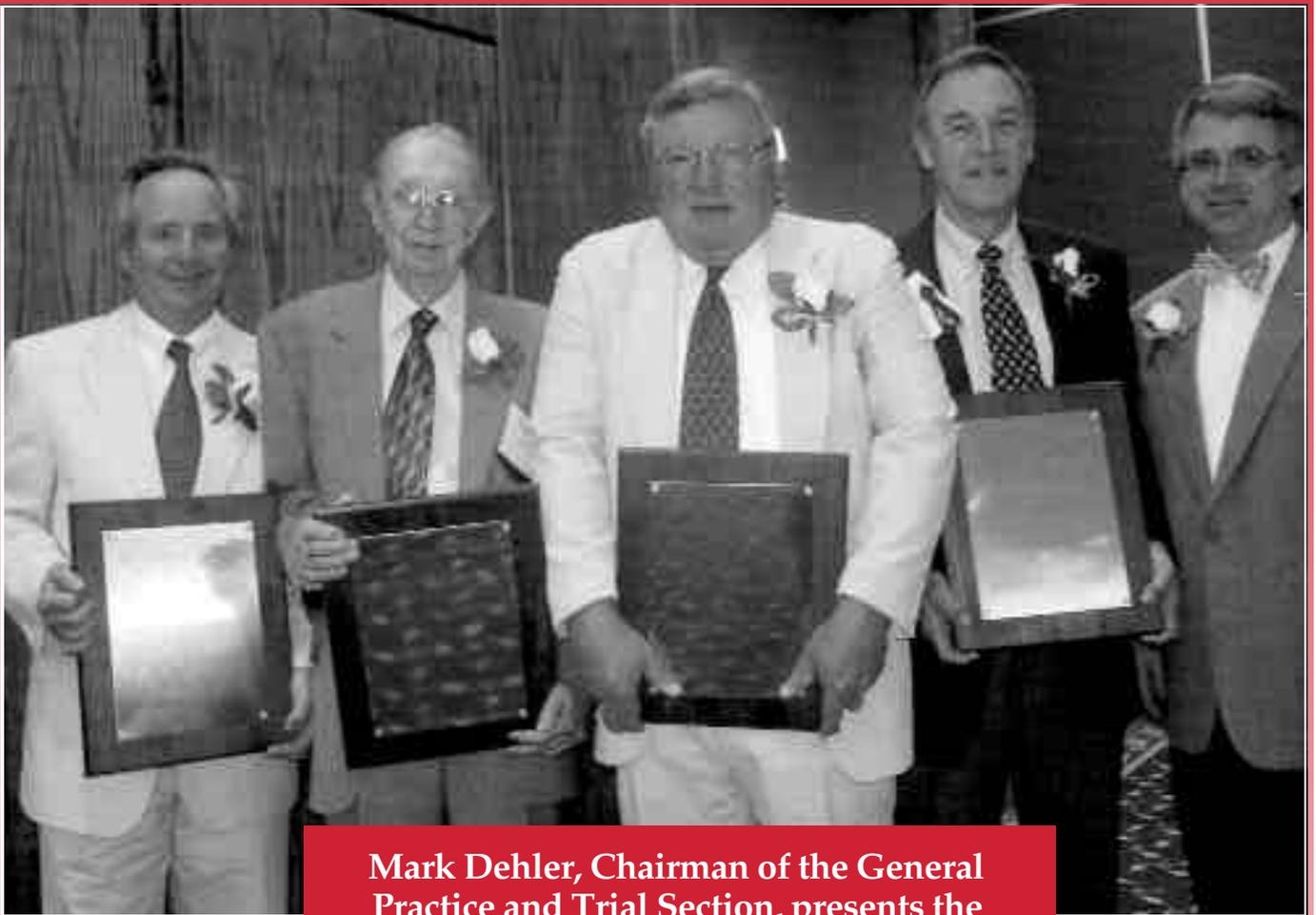
Vol. VII

Summer 2003

No. 3



Tradition of Excellence Awards



Mark Dehler, Chairman of the General Practice and Trial Section, presents the 2003 "Tradition of Excellence" awards to (r-l) Judge H. Arthur McLane, Hugh B. McNatt, T. Hoyt Davis, Jr. and Billy Ned Jones.

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GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

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The Tradition of Excellence Recipients for 2003 were presented their award at the General Practice and Trial Section Breakfast June 12, 2003 in Amelia Island, Florida from left to right, Billy Ned Jones, T. Hoyt Davis, Jr., Hugh B. McNatt, Judge H. Arthur McLane and Mark Dehler, Chairman of the General Practice and Trial Section.

Calendar Call is the official publication of the General Practice and Trial Section of the State Bar of Georgia. Statements and opinions expressed in the editorials and articles are not necessarily those of the Section of the Bar. Calendar Call welcomes the submission of articles on topics of interest to the Section. Submissions should be doublespaced, typewritten on letter-size paper, with the article on disk together with a bio and picture of the author and forwarded to Cal Callier, Taylor, Harp & Callier, P.O. Box 2645, The Corporate Center, Columbus, Georgia 31902. **Published by Appleby & Associates, Austell, Georgia**



There have been relatively few occasions during my adult life when tears have been shed, not because of physical pain or the death or illness of a loved one, but because of pride in my profession and those who practice it. I, along with most all others I later questioned, did indeed become emotional during certain parts of the Tradition of Excellence Awards Breakfast held at the Amelia Island Plantation during the June 2003 Annual Meeting. Heartfelt congratulations to the recipients of the 2003 Tradition of Excellence Award: Hugh B. McNatt of Vidalia, Georgia, Defense counsel; Honorable H. Arthur McLane of Valdosta, Georgia, the recipient from the

Bench; Billy Ned Jones of Hinesville, Georgia, as the honored Plaintiff's attorney and T. Hoyt Davis of Vienna, Georgia, as recipient of the General Practitioner Award.

To paint a better picture of why I became emotional, it is important to understand first of all that I am the son of an old country trial lawyer who recently began his fifty-third year as a member of the Bar. I was raised in my small town of Cedartown at a time when some of the older folks called lawyers "Colonel" and an especially appreciative client might drop off some fresh pork sausage from one of his hogs. Along with recollections such as that came certain advice on how I should practice law. One of the most memorable has always been when my father told me that, "Son, take care of your client's business and don't worry about the money. The money will take care of itself."

Well, when Hardy Gregory took the podium, all those in attendance were treated with the most concise and eloquent description of what a general practitioner should strive to be that was ever delivered, at least in my presence.

"...and the little town was better for it." That is the refrain of Mr. Gregory's introduction with the remaining prose colorfully highlighting the service to his fellow citizens bestowed by Mr. Davis in his over fifty years of practice in a small

town in south Georgia. By all accounts a town much the better for Mr. Davis' presence.

I hope that you all will read Mr. Davis' introduction and actually wish that it had been videotaped. Thankfully, it, along with the other fine introductions were transcribed thanks to Brown Reporting.

After reading the transcript, we can draw an accurate picture of what the general practitioner should strive to accomplish during his or her lifetime. As a general practitioner and member of the Bar, we should strive to involve ourselves in civic leadership and give our time to volunteer causes. All of us, I am sure, strive to practice law at the highest level of competence attainable and thereby bring credit upon the Bar and effective service to our clients. All four recipients of the 2003 Tradition of Excellence Awards have been successful in reaching these goals and are to be held out for all of us as examples of what should and can be done.

In beginning my year as Chair, I wish to thank past Chair Mark Dehler. Mark performed his duties wonderfully in a time when Section membership has dropped drastically. Many of you may not realize but all Sections of the Bar dropped substantially in membership rolls following the terrorist attacks of September 11, 2001. Mark, along with the help of ever-able Betty

Simms, made great strides last year in attempting to recapture some of the Sections prior membership. I pledge to do the same in the future.

In closing, I hope that the transcribed introductions of our recipients evoke in you some of the passion and pride for the legal profession as it did in me. With your assistance and support, let this

Section do its part in encouraging discussion of some of the recent legislative agenda dealing with such issues as "tort reform" and the threatened revamping of the criminal sentencing laws as well as provide the services to our members as we have in the past. As most of you probably know by now, Betty Simms, our executive director has

always, and continues to do wonders with the budget and time allotted. Hopefully, we can make some inroads to expanding these services in accordance with membership increases.

Please read and enjoy this edition of Calendar Call and let us know how we can better serve you in the future. n

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Judge H. Arthur McLane



Introduced by
Wayne Ellerbee

TRADITION OF EXCELLENCE AWARD

Good morning, Ladies and Gentlemen, and all of those specifically and especially all of those who Mark named. It is a distinct privilege and honor to be here to introduce the Chief Judge of the Superior Court of the Southern Judicial Circuit as the recipient of this year's Tradition of Excellence Award in the judicial branch.

And I really felt honored and amazed that I was chosen, and I felt humbled by it. And this was really brought home when two days after I received the notice that I would be allowed — that I was asked to introduce Mack, I got a bill for \$24 for the breakfast here today. And so, you know, I really didn't know how to take it. I am a little ambivalent about it, but I did have a chance to talk to Miss Betty a few days later whom I found out runs this section, and I sort of brought it up, and she said, Well, Wayne, you know, I talked to Mark and Mark knows you and he knows all the people that are going to be here and he was afraid that once they find out you are going to introduce somebody, they won't show up and

we need the money, so that's the reason we charged you. But she did clear that up, that was just a mistake, they didn't charge me.

Mac and I go back a long way. We started off in law school together, and you may wonder why I look 10 years older than he does, is because he never had the opportunity to sleep outdoors as much as I did. He behaves himself and didn't have to do that. But, Mac is a truly wonderful person and when you hear what I have to say about him that many people don't know, you'll understand that going forward in life was truly an ability of his that led him toward this Tradition of Excellence.

It didn't just start off, and it just didn't arise because he's an attorney, and it just didn't come about because he's a judge. It came about because of every part of his life has been a Tradition of Excellence.

It began at an early age when he did something that many of us think we are going to do or want to do or going to try to do, and that is become an Eagle Scout, which is something that Mac did and

something that set the tone for the type of person that Mac is and the life that he's led, both professionally and personally.

He was subsequently active in the Scouts and has continued to be active to the point that he received the Distinguished Citizen Award of the Alapaha Council of the Boy Scouts of America in the year 2002. Now, how many of us have had the opportunity to be that involved with scouting during our lifetime and have taken it? That's just one of the things that marks this person as a worthy recipient of the Tradition of Excellence.

Mac was born and raised in Valdosta and continues to live there. He spent his whole life dedicated to the community and to the profession right there in south Georgia. He graduated from Emory, Emory University, and went on to law school at the University of Georgia, which is where I met him. He was a year ahead of me and he distinguished himself at the University of Georgia as being among other things the Executive Editor of the Student Editorial Board for the Georgia Bar Journal and he published approximately four articles while he was in law school.

He was a Blue Key National Honor Fraternity member, Phi Kappa Phi, and you know in South Georgia if you are not going to be a KA, you must be an SAE. That's what he is, he was an SAE in college. After law school is when Mac began his life that led him toward this honor today. We'll talk first about his professional life as an attorney.

He began shortly after leaving law school and being admitted to the bar. He was selected as the county attorney for Lowndes County in the capacity that he served for several years. He subsequently went on to be the part-time state court judge in Lowndes County, and was in that capacity as a practicing attorney and as a state court judge from 1974 or

'75 until 1983.

Now, as an attorney, Mac distinguished himself in many areas. One of the areas was in the criminal law area. I don't know if any of y'all remember but back when he and I started practicing law, indigent defense was the youngest lawyers that got out of law school that got appointed to all the criminal cases. And the judge that called you up about two days before trial, which would be about one day after the indictment was entered, and he would say, either to Mac or to me or to Wade Copeland or Converse Bright or whoever it might be, that was the bar, that was the indigent defense group because we were the four that got out of law school the same year. So we got all the appointed cases in Lowndes County.

Well, one year Mac got appointed to defend an escape case. Well, we had a superior court judge and back then a solicitor general that traveled the circuit as a team. And by that, I mean they went around convicting everybody they brought to trial. It was just a part of the judicial process. And I've heard the judge tell the solicitor on many occasions, "Now, you get your strongest cases and we are going to convict them." Well, they did. Both of them.

And so that was what we as the criminal defense lawyers were faced with. Well, on one occasion, Mac got appointed to defend this escape case. And we'd been practicing law three or four years and he went to trial and he won the case and immediately got off the criminal appointed list. But now — but, now, just to show you what the case — and I mean the judge fully expected him to be convicted and so did the solicitor, and of course, all of the other people that counted, such as the chief deputy, the clerk, and everybody else, they all knew he was going to get convicted because he was charged with escape.

But it just so happened that Mac used, as he says, pure logic to defend the case. The man was stopped by the city police in a convict uniform, picked up, and he said why aren't you — you know, where are you supposed to be? He said, "Well, I'm in the county prison out here," so they charged him with escape. They forgot to ask him why he was standing on the side of the road.

And it turned out that he was employed to work on the motor grader for the county, and so he was riding on the back of the motor grader and fell off. And he was trying to get somebody to get him back to the motor grader so he could get back on it. And he told Mac, said, "Well, if I wanted to escape, it would have been real easy because the motor grader operator took the motor grader home for lunch every day and I had to sit on the motor grader for two hours while he ate and took a nap. He said, "You know I wasn't going to escape if I had had that time."

"Well, that ended Mac's career as an appointed criminal attorney when he won that first case. Not only were the judge and solicitor mad but so was the warden at the county camp because he figured now everybody was going to use that as an excuse when they got caught trying to escape.

But that was just one of the many cases that Mac distinguished himself in as a practicing attorney. And as he got on the bench, he really excelled in his ability to listen to the cases, to be able to keep the lawyers in line as they should be. And during that period of time as the state court judge, he developed several friends. Of course, most of them were the criminals that came in front of the judge charged with something.

But one of them was a case where he had had a fellow that came to

Continued on next page

H. Arthur McLane

Continued from page 5

court just about as often as Judge McLane did. He was there just about every single court. And it was always a criminal case. It was always some petty criminal charge. And so, on one occasion the lawyer and the client came in with a new defense. The client pled that he was — he had an insanity plea, and told the judge that he wasn't competent to go to trial to answer those charges and his lawyer agreed.

So the judge did a little inquiring and said, well, you know, he pointed to the chief deputy, and he said, "Well, who is this? He said, "Well, that must be the governor." This is what the criminal defendant said, and Mac asked him about the clerk, and he said, "Well, she must be the Governor's wife," and it went around. I mean he just was not responding to the questions like he should trying to establish his plea of insanity.

And so finally Mac says, "Well, who am I?" And the man looked at him and he says, "Why you are the supreme ruler of the universe." Judge McLane says, "I will declare that you are sane." And the lawyer stood up and said, "I agree." And they went to trial. So those were some of the people that Mac had to deal with.

And of course, one of his favorites was a young lady named Tiny Edwards. Now, Tiny doesn't mean she was small. Tiny was, oh, three, three-fifty, somewhere along in there. One of the few people that weighs more than I do. But Tiny came into court and she was bad about if you made her mad she would just start disrobing in court or start doing something bizarre to get out of whatever she was faced with. But she took a liking to Judge McLane because he treated her fairly and he treated her nicely.

And on one occasion he had suspended her sentence or given her

some light sentence and she left the court and she turned around and said, "Judge, you know, you sure are pretty and I bet you make pretty babies." So he developed him a real friend there.

But putting all of the little war stories aside, let me tell you a little bit about what Mac has achieved in his professional and civic and paternal life. Of course, in college he was a member of the Gridiron, he is listed in Who's Who in the south and southeast, he was a partner in a small law firm for several years and he got to be judged, as they used to say at Smith Barney, the old fashioned way, he earned it. He worked hard as an attorney, he worked hard as a civic leader, he worked hard as the state court judge and he was unanimously selected by the Bar to support him in his initial attempt to be a superior court judge, and he's never had any opposition since he was elected in 1983.

Now, since then, or during this period of time as an attorney and judge, he has been President of our Valdosta Bar Association; he has been on the Board of Directors of the Boys Club, he was President in 1971, he has been on the Chamber of Commerce since the 1980s, he was President in 1986.

He's been a member of the Valdosta Rotary Club since 1971, and he was President of the Valdosta Rotary Club in 1984, he's been on the Executive Board of the Georgia Sheriff's Boys Ranch, and he was Chairman in 1982 and 1983, and for four years he was on Leadership Georgia, he was the vice-president one year. He was Chairman of Leadership Lowndes. He's been on the visiting committee of the Schools of Arts of the Valdosta State College, now Valdosta State University. He's been on the Symphony Board.

He's been with the Valdosta/Lowndes County 2000 Partnership Executive Committee for eight

years. He's, of course, been on the Council of Superior Court Judges and he was the President in 1995 and 1996. And he was on the executive committee from 1998 to 2002, and he's been the Administrative Judge of the Second District on two separate occasions.

Now, like most, if not all jurists, you know, you are required to be more than just excellent in your profession, you look to support, and Mac's support has been in the church as with many leaders. And he is an active member at the Park Avenue Methodist Church. He was a lay leader from 2001 to 2003, Secretary of the Official Board. He's been on the Board of Trustees. He was chairman of the Trustees for one year. He's been a District Steward and Sunday School teacher for many, many years.

He's a delegate to the annual conference. He's on the pastor/parish relations committee, and, you know, I can't think of a job much worse than that when you try to keep the preacher and the congregation together and going in the same direction. He was chairman on two separate occasions of that. He's been Chairman of the Administrative Board and he's been on the committee on the Episcopacy of the South Georgia Conference 2000 until present. He's been on the Committee on Resolutions, a delegate to the Jurisdictional Conference, and he's been a lay leader in the Valdosta District and on the Committee of Superintendents. Now, to me, that's a Tradition of Excellence. When you can look back and you can say that this is the type of life that I have led and this is what I stand for.

And during this period of time, at his side has been his wife, Jane. I first met Jane at law school, also. She and Mac were married and they were the proctors. I don't know how many of you went to Georgia, I don't know how many remember

the days of contract/no contracts, or let's talk about the Flint River a-re-a, as Judge D. Lee Fielder would say, but we were all back there then and Mac and his wife were the proctors

at the law school and graduate school dorm, which was right across the street from the law school. And they ran that for three years while he was in law school. She's been with

him every step of the way. They have two lovely children and two grandchildren, and I submit that that's a Tradition of Excellence. n

Remarks by Judge H. Arthur McLane

Thank you, Wayne, for that good introduction. You know, from an introduction that nice, you would never be able to guess that he's got three discretionary motions pending in my court.

I do appreciate what he said about me though. We have been friends for a long time and I've treasured his friendship and have appreciated all that he's done to make things much better in the Juvenile Court in Lowndes County and in the legal profession as a whole.

I've been very blessed. Oh, I want to go back and say one other thing. Wayne sat sometime on the PPR committee at the Baptist Church, it's your duty to keep the congregation and the preacher together. Actually, for any of the rest of you who may have served in that position, sometimes you know it is bigger job trying to keep them separated. But that happens, too.

I have been very blessed in my life. I've been blessed by a good God. I have been blessed by having a good and loving wife, and good parents. I have been blessed by having mostly decent relatives, with the exception of those few who right after I got appointed to the bench suddenly developed a very strong and familial bond with me. They recognized immediately how much they had really treasured and trusted me

throughout the years.

I have been blessed by having two wonderful children, two wonderful grandchildren. I have been blessed by having good friends, support staff, and in the legal profession I have been very richly blessed by having a number of mentors and role models who shaped and molded my professional career for the good, the bad things I messed up all by myself.

But some of those mentors never knew they were mentors, and have not known that. Some of the role models have not known they were role models. And a good many of them are people who are past recipients of this award that is being presented here today. This is something that I appreciate very much. I'm deeply humbled, I'm deeply honored by the award that you have given me today.

When you are honored by your colleagues I think it is always a very special and a very treasured thing to have happen to you because, at least in part, when your colleagues do something like this for you it is in spite of who you are as well as because of who you are.

I am grateful, I am honored, and I thank you for one of the most outstanding highlights of my professional career. Thank you. n



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Billy Ned Jones



Introduced by
Noel Osteen

TRADITION OF EXCELLENCE AWARD

Good morning. It is my pleasure and distinct privilege to introduce my long time friend and law partner, Billy Jones, the recipient of this year's Tradition of Excellence award to a plaintiff's attorney.

Having served as past president of the Georgia Trial Lawyers Association and successfully litigated hundreds of cases on behalf of his clients, Billy has rightfully distinguished himself as one of our state's preeminent plaintiff's lawyers. And though I know that Billy is proud to be a plaintiff's lawyer, it is not his achievement in the courtroom alone which we recognize today, rather as with this morning's other honorees, it is Billy's untiring efforts to enrich the lives of those in his community, his state, and his profession we can in large measure commend.

These efforts have been notable and have had a great influence on my life and countless others, many of you who are in attendance here today. Billy, or as we say below the gnat line, Billy Ned, was born and reared in Reidsville County, Georgia. His father, Ned Jones, was a long distance truck driver and on

many occasions Billy and his younger brother, Bobby, would jump on board that 18-wheeler and they would take off to New York, Philadelphia, Chicago, wherever.

These experiences had a great influence on Billy's life, as they gave him a chance to see people from various backgrounds and to observe these people. And these experiences coupled with his southern hick rural heritage has made Billy a people person. And I tried to think of a better word than people person but I really can't think of a better word than a people person.

And one cannot really be an effective plaintiff's lawyer without caring for people, and Billy cares. Billy still loves to travel, and don't tell him let's take a trip unless you are deadly serious about it. You better have your bags packed and ready to go because Billy keeps a change of clothes and a set of golf clubs in each of his vehicles.

In 1972, Billy graduated from Mercer University and he returned to south Georgia to practice law, where initially he was in the DA's office. He was an assistant DA for a

short period of time, for about a year, and then he joined the firm which is now Jones, Osteen & Jones, and we have been practicing law together for 30 years.

One of the other honorees here today, Hugh McNatt, and Billy were classmates in law school. And I know y'all all would agree with me that that's an interesting twosome. In fact, if you will notice, they are both dressed identically, even wearing the same flower. Now, what's the odds of that just happening? There was some planning going on.

It is in Liberty County where Billy still resides with his lovely wife of 27 years, Mary Ann, who is seated here with Billy, together they have raised two sons, Jason, who is 25, who graduated from the University of Georgia, and Graham is 20, and he will be a senior at the University of Georgia this year.

As with most trial lawyers, Billy began his career by representing a variety of clients in matters of all sorts before later concentrating on wrongful death, product liability, and other significant personal injury cases. It is in this arena that Billy has gained the esteem and respect of his colleagues, clients and the judges before whom he has practiced.

In fact, a significant portion of Billy's practice comes from lawyers associating him on their cases. And I can't think of a higher honor than another lawyer asking you to help him or her with a case.

Among his many professional accomplishments, Billy is a fellow of the American College of Trial Lawyers, a member of the International Society of Barristers, and a member of the American Board of Trial Advocates, serving in 1996 as president of the Georgia Chapter. As I mentioned earlier, Billy also served as President of the Georgia Trial Lawyers Association in 2000, and I can tell you that is one of Billy's personal highlights. That's a year that I think Billy has enjoyed

more than any other time in his life to be associated with people.

I don't know a lot of you as well as Billy does. I met a lot of you last night. I've seen you today, and I can understand why Billy is so proud of that year leading Georgia Trial Lawyers Association. And from '79 to '85 he served as a member of the Board of Governors for the State Bar. Importantly Billy's efforts are not limited to our profession but extend to his neighbors and state.

While time does not permit me to chronicle all of Billy's contributions to the public, his involvement in the community has been and continues to be exemplary. He served as president of the Liberty County YMCA for five years, President of the Liberty County United Way for five years, and as campaign chairman for the organization in 2000. President of the Hinesville Rotary Club and a member of the Board of Directors of the Liberty/Hinesville Chamber of Commerce as well as a member of the Coastal Empire Boy Scout and the Coastal Empire Girl Scout Council.

While president of the Liberty County YMCA, Billy successfully led a drive to raise sufficient funds to build a state of the art YMCA facility that would be the envy of any community in Georgia. And that YMCA facility has probably meant more to Hinesville and Liberty County than almost any single thing that I can really think of. It is really utilized by the community, complete with swimming pool, gymnasium, and it is really a wonderful addition to our community.

In 2002, Billy was appointed by Governor Barnes to the State Ethics Commission, and he also serves as a member of the Board of Directors of the Coastal Bank of Savannah. There's a song that all of you that know me know that I am a country music fan. And you don't say that you are a country music enthusiast

because if you are a country music enthusiast, you are really not a country music fan. Fan's the word.

There's a song by George Jones that talks about country music greats, and some of the lyrics go like this, and I'm sure a lot of you've heard it: "You know the heart of country music still beats in Luke the drifter, you can tell it when he sang I saw the light, ole Marty, Hank, and Lefty, why I can see them right here with me on this Silver Eagle rolling through the night," and here's the point I want to talk to you about, "Who's going to fill their shoes, who's going to stand that tall, who's going to play the opry and the Wabash Cannon Ball? Who's going to give their heart and soul to get to me and you, Lord, I wonder who's gonna fill their shoes, yes, I wonder who's going to fill their shoes."

The State Bar has always been blessed with lawyers of excellence who are concerned about our state and our communities. I'm sure that in the past when these awards were presented, some may have wondered, who's going to fill their shoes. In this case, Billy and the other recipients who are being honored today, have stepped forward to fill those shoes. And the good news is that in the future, other great Georgians will continue this Tradition of Excellence.

Billy Jones is a worthy recipient of the Tradition of Excellence Award. I congratulate you, Billy, for this recognition by your fellow members of the Bar. Thank you. n

Remarks by
Billy Ned Jones

Thank you very much, Noel, and thank you for pointing out that Hugh McNatt and I are dressed exactly alike. That is sort of funny. Noel is just a great guy to practice law with. It is great to have a law partner that works twice as hard as you do, that is at least two or three times smarter than you are, and never wants to make a draw. It is great to have that partner.

I really am deeply honored and deeply humbled to be awarded the Tradition of Excellence Award, and I want to take just a second to thank some of the really, really important people in my life, including Noel, but certainly the most important person in my life and the one that has meant most to me over the years has been my wife, Mary Anne.

She in her own right exemplifies the Tradition of Excellence. She has been a wonderful wife to me and wonderful supporter. She is one of the only ladies I know who has won two state championships in two different disciplines. She has won a state championship in tennis and a state championship in horseback riding and operates a successful training stable and horseback riding stable and just a wonderful lady and has been certainly the backbone and the light of my life.

Together, we've raised two fine sons. I'm sorry they couldn't be here today. One is on the plane headed for London for his first trip to Europe this summer and the other one is at work, couldn't get off from work today but I wish they could be here.

I also want to quickly thank the judges of my circuit, and I do that out of a sense of respect for them and honor for them because they really are the ones that have helped me over the years and helped me get where I am today beginning with two guys who are deceased, Judge Paul Caswell, who I first practiced under quite a good bit and had a great deal of respect for; and then my dear friend, Max Chaney, who I went to work with when he was district attorney. I worked under him for a while then he became a superior court judge and died prematurely, and if you ever have somebody that you are that close to and really love, admire and respect and lose them, you never forget them. He was a great guy and a great leader.

We also have great superior court judges in my circuit, I want to recognize them, mention them, Judge Cavender, Judge Russell, and Judge Vaughn, and last but certainly not least, is Judge Rose who is here today and I appreciate Judge Rose coming. I have noticed, however, since Judge Rose went on the bench his golf

game has improved dramatically.

Just this week, he had an eagle on a par 5. I played with him. He knocked the second shot stiff about two feet from the pin, easily knocked it in for an eagle. Then Tuesday afternoon, he says after four but nobody can find any record of him being in court that day, that he had a hole in one. That's a pretty good week.

There's also another judge here who has had great influence in my life, and he probably didn't know it, and didn't realize it, he's had a great influence and a great impact on many young lawyers throughout this state, and that's Judge Alaimo. Judge Alaimo, I have the highest and deepest respect for you and what you have done for the Bench and for the Bar.

And it is guys like this that I have always emulated. As Noel said, I was born in south Georgia, I had a very earthy upbringing as Noel would describe it. But I did do this: I had to work alongside and next to a lot of people, people from all races and all creeds and all beliefs and all backgrounds and everything else. And I really did learn to love people and I learned to respect people for their own uniqueness and their own specialness and what attributes God gives each of us and what everybody brings to the table. And I learned to realize that each of us have that special importance and special uniqueness in his or her own way.

And I really learned that it's the working man or woman of America who has made this country such a great country. I think I really became a lawyer because of my Sunday school teacher there in Reidsville, who was a wonderful gentleman named John Rayborn who practiced law for many years in Reidsville. And I sort of began to emulate him without knowing what emulating meant. I wanted to live the kind of life that I saw him lead. I saw him in the community as an active and respected man. He was involved in the community, in every aspect of the community, and what little success I may have attained, I attained by emulating people like him that I respected.

All of you in this room share this award from those of us who are receiving it today because each and everyone of you have exemplified the ideals of what this award stands for. I salute more than I accept this award on behalf of myself. I've sort of followed and emulated guys like Edgar Neely, Bobby Lee Cook, and Judge Alaimo, Kirk McAlpine, Frank Jones, and Charlie Jones and Judge Gregory, who I've followed over the years and tried to follow this Tradition of Excellence.

That's continued for the lawyers and friends of mine who are here today and some of whom are not here who have greatly influenced my life, Albert Rickert, Bob Brinson, Joel Wooten, Jay Cook, Jim Butler, Dennis Cathey, Paul Painter, and Judge Pope, all who have been people who have had a great influence on my life. They are lawyers who stood for something, they're lawyers who are involved in their communities, they're lawyers who tried to serve the community and better the community.

And I cling to a few of those tattered old virtues like believing that you don't get something for nothing, that you have to work for it and have to dedicate yourself to the community and be involved in the community.

On a briefly two second, two minute, serious note, I want to alert all of you of what I see as a coming cloud and a coming problem that we will have to deal with as lawyers, and I think we have a special responsibility as lawyers to maintain and improve the administration of justice.

As advocates in an adversarial process, I think all of us have come to realize how important it is and how crucial it is to have impartial justice, you must have impartial judges. As a lawyer, I believe we all have a special responsibility for the quality of justice. I have become recently and deeply concerned over attempts by many in our society to encroach on the necessary and appropriate independence of our judges and the judicial system.

I believe all of us must be constantly aware of efforts to make the judicial elections more partisan. If we allow that to happen, the public's perception that judges are impartial will be eroded.

I think we have been extraordinarily fortunate in Georgia so far in that our state and our judicial system has largely escaped those attempts to control our courts either through the election process or through media criticism.

The two recent comments in speeches by Justice Kennedy and Justice Breyer has strongly warned that substantial campaign contributions are corrosive of judicial independence. Justice Kennedy has observed that the law commands allegiance only if it commands respect, and it commands respect only if the public thinks that judges are neutral. Justice Cardozo's view of the Bench and Bar all engaged in the common task, great and sacred task, the administration of justice is appropriate. I call on all of you in this room to become involved in the selection and appropriate retention and election of judges in this state.

There are approximately 25,000 federal and state court judges throughout this country. They range from Justices of the Supreme Court and from justices

of the highest court of each of the 50 states to those who daily preside over trials of the criminal, civil, and family law matters.

As you know, some of those sit in majestic courtrooms surrounded by portraits of other judges who have gone before them. Others must preside over cases involving an individual freedom and property in shabby surroundings in aging cities. Some of them conduct trials in county courthouses where they are well known and enjoy the respect of local citizens. Many of these judges are overworked. Whatever the courtroom setting, the judge is a highly visible symbol of government under the rule of law.

Most of our judges are dedicated to work administering justice, mostly for inadequate compensation and frequently with inadequate support and surroundings. It is important. There is scarce support among the citizens or the legislators to remedy these inadequacies and a remarkable lack of understanding as to the significance of the judicial role.

Alexander Hamilton observed that the ordinary administration of justice being the immediate and visible guardian of life and property contributes more than any other circumstance to impressing upon the minds of the people, affection, esteem, and reverence for government. In the words of Chief Justice Marshall, the role of the judiciary comes home in its effects to every man's fireside. It passes on his property, his reputation, his life, and his all.

All of us must recall our own roles as lawyers and as public citizens having the special responsibility for the quality of justice and we should affirmatively and continuously seek to defend the independence and good reputation of our judiciary. We must all work together to ensure for our children and our grandchildren that we continue this Tradition of Excellence that we have enjoyed in this great state for so many years.

I call on all of you to engage with me and join with me in accepting the responsibility. Thank you. n

T. Hoyt Davis, Jr.



Introduced by
Honorable
Hardy Gregory, Jr.

TRADITION OF EXCELLENCE AWARD

Franklin Delano Roosevelt told the country there was nothing to fear but fear itself. The smoke from the war was settling and our honoree began the practice of law on the corner of Second and Union, and the little town was the better for it. The fifties saw a touch of prosperity for a few anyway. He helped them with their farm loans, their land deeds, and on occasion their divorces.

He worked for the prosperous, he worked for the poor, and he measured defeat accordingly and the little town was the better for it. While John F. Kennedy invaded Cuba, sent humans to the moon, and called the bluff of Nikita Krushchev, he applied his profession there on the corner. He advised caution in financial matters, fairness in the distribution of estates, and compliance with the law of the land, and the little town was the better for it.

Children were murdered in Birmingham, a whole race was fed up with it, and we got to know about Selma and Montgomery and Atlanta and Charlotte. Some raised

their ire and rattled their sabers, but he advised tolerance, acceptance, and equality. If ever there was a classic Greek in the 20th Century, believing in nothing to excess, and reasonableness in all things, it was our honoree, and the little town was the better for it, a cut above some of the others.

So for 63 years as a lawyer in the mold of Atticus Finch, he set the tone for business and life in the community. He even has a granddaughter named Scout. One who makes the world a little better, our honoree has enhanced the status of our profession and has given back more than he got, and the little town and the whole world is better for it.

The little town is Vienna, about a third of the way from Valdosta to Atlanta, the man, T. Hoyt Davis, Jr.

Remarks by
T. Hoyt Davis, Jr.

I appreciate very much the introduction by Hardy Gregory, the fine things he said about me. I would rather hear them from him than most anyone else in the world because I know they come from the heart of a truly good friend.

This is indeed an honor to have been chosen by this section as one of this year's recipients of this fine award. I humbly accept it knowing that there are many fine lawyers in my state that are more deserving of it than I.

I am especially pleased to

receive it at this stage of my practice. I'm very grateful that I have had the privilege to practice as a member of our honorable profession for so many years and I thank you very much for the award. **n**



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Hugh B. McNatt



Introduced by
U.S. District Judge
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TRADITION OF EXCELLENCE AWARD

But anyhow, I note that I am last and I'm enjoined to be brief, and I will be brief, even though if I tried to match the physical size of the honoree, we would be here all morning.

Well, I say good morning to you and can't help but note that Friday, the 13th, seems to be a propitious time for this kind of an event. But, no matter, because it is my own nonjudicial lot to perform a very pleasant task to present to you the honoree, Mr. Hugh McNatt.

Hugh Brown McNatt to be correct about it, otherwise known as the sage of the Altamaha or the county attorney of Uvalda. And I really commend you for making him a recipient of this Tradition of Excellence Award. It is almost, in a sense, I've thought oxymoronic, to say that I can introduce him to you because he really needs no introduction, and I can add that particularly after reading one of the issues last week of the *Fulton Daily Report* outlining and describing his legal performance up there in that rather heady atmosphere known as Fulton County.

In preparation for this event — by

the way, I'm more than 25 years older than Hugh so that I don't have the war stories that many of you have had and have been able to relate this morning — and as a matter of fact, I think I left the practice about the time he came in or shortly after the time he came in, so that I can't tell you many of the things that I'm sure most of you know, but I had some difficulty with preparing for this morning in getting anybody to talk about him, believe it or not, and I couldn't understand the reason why.

But, nevertheless, I assume it was because they had so many good things to say about you, Hugh. Again, in preparation for this event, I asked for and received a curriculum vitae on him, and as a result of it, I must warn you never, never to ask for a CV from an associate because he or she will try to impress the boss by listing every possible accolade, however small.

For instance, here we learn that Hugh won a spelling bee when he was in the sixth grade. And, too, when he was 14 he received a merit badge from the Boy Scouts for honesty.

But, seriously, as witness that he is deserving of this award, let me recite some of his significant accomplishments. One, of course, he married a very fine lady that you've all met this morning, and actually fathered a nice young lady who is also a lawyer started out in Brunswick and ended up in Washington.

He graduated from Mercer University with a bachelor of arts degree in 1969 and three years later he received a jurist doctorate degree from Walter George School of Law at Mercer. And as a matter of fact, he was articles editor of the Mercer Law Review — I don't know who corrected his English — and he was admitted to the Bar in 1972.

He is, of course, a member of the Georgia Bar Association, the American Bar Association, the Federal Bar Association, and he is a fellow of the American College of Trial Lawyers. He's a fellow of the International Society of Barristers. He's an Advocate of the American Board of Trial Advocates and was its president in 2000 to 2003, and he's a member of the Defense Research Institute, and the Georgia Defense Lawyers Association.

He's a member of the uniform rules committee of the State Bar, he's been a contributor and lecturer for the Institute of Continuing Legal Education. He's a member of the Georgia Code Commission, and

served as its secretary and now a vice chair. He's a past member of the Governor's Workers' Compensation Commission, and he has participated — and this is what is really significant about him as being one of the great trial lawyers in this state — he's participated in over 300 jury trials. How many more? He will tell you in a moment.

And in another vein and as an insight to his personality, he has a full cardboard, lifesize cutout of John Wayne in his office so that anybody going in, they can predict what to expect from him. The only time that he was known to be speechless was when he appeared with other counsel at a pretrial before a visiting judge that he did not know, and who apparently did not know him, and when he stood up to say something the judge asked if he was a lawyer.

And knowing he has one of the most penetrating whispers known to man, I'm told that during a trial when the defense counsel table was next to the jury box, and an opposing witness was testifying against his client, he turned to an associate and cupping his mouth said, "He's a lying son-of-a-bitch."

And he can pout. You can rule against him, he can really pout like all getout. Chief Judge Walter McMillan wrote in the Middle Judicial District about Hugh, and this is what he said: "Hugh can be the

13th juror by his persuasive presentation, he can charm a trial judge with a simplistic approach, and when necessary he can be a Democrat, a Republican, or a Liberterian, and be either one with real conviction."

"He charms Yankees with his southern demeanor. He has city folk at his feet with his country charm and Lord knows I've often been the victim of these simple country lawyers. He is the ultimate country boy with his local friends and he walks with kings and loses not the common touch as Kiplinger said. And has remade the rules of golf by requiring his opponents to play the game by the Uvalda rules, whatever they are."

He has tried some seven or eight cases before me, receiving favorable verdicts in each one of them, and he's the only one that has done that in my 30 years on the bench. And I must say that obviously that the catastrophe of success has not corrupted him, to his credit. And I find him to be a person of impeccable integrity, which in my book is the lodestar of any professional because we must continually remind ourselves that at the end of the race, there is a fragile prize and that prize is called reputation.

And so I commend this organization again for selecting him for this award. All right, Hugh, come up and defend yourself.

Remarks by Hugh B. McNatt

Back in the early seventies, I believe it was, I had the pleasure of loading up my good friend, Lamar (Boolebar) in Uvalda. I had just begun to practice law. We went up to Dublin to a fish fry for Senator Herman Eugene Talmadge. And Lamar had scraped up a little money. He had fives and tens and twenties, and he had them in a little paper

sack. All wrinkled up and it was \$500.

And we went through the receiving line and Lamar handed to Senator Talmadge that little paper sack and Senator Talmadge took it out and counted through it, he said, "LeMar, Son, I'm overwhelmed." And I could just hear y'all, I'm

Continued on next page

Remarks *Continued from page 15*

overwhelmed with this.

And I had the pleasure over the last few years of introducing Judge Marion T. Pope when he received what my good friend, Judge Arthur Mac McLane has received this morning, and Paul Painter when he received what I have been bestowed. And I thought if I invite Painter to say something about me, it would make Pope mad, and if I invite Pope it will make Painter mad, and I'll just get Judge Alaimo to do it.

I'll tell you, to be able to share this with my classmate and my friend of some almost a lifetime, Billy Ned Jones, and my friend, Judge Mac McLane, both quail hunting buddies from time to time. And Billy's daddy and my mama literally grew up about three miles apart as the crow flies down on the Toombs/Appling county line. And we have known each other it seems all our lives. Obviously, I think a lot more of him than his brother does because his brother didn't even come to the ceremony.

Bobby and I were together a few weeks ago and he said, "I'm not going to come see you or Billy either one." I said, "Well, if you come to see one of us, you got to see both of us." He said, "I'm going on vacation." So it didn't look good. It speaks volumes about brotherly love. As Judge Alaimo said, whatever you get in life you attribute to a lot of good luck, a little bit of hard luck — I mean a little bit of hard work, and some hard luck to go along with it. But you also, you look around and you thank the people who have made your life. And I thank you, my wife, Lynn McNatt, and my daughter, Helen B. McNatt, and most of you in this room whom I have known and worked with now for a little over 30 years. And with that, with the kind of friendships that are represented in this room, we can never go wrong.

I don't have any message for you that most of you have not heard me preach in the past. It is a simple message, it is a message of professionalism, it is a message of civility. And one of my favorite lines in all the books that I've ever read and all the movies I've ever seen is one that I remember Woodrow Comb in Lonesome Dove, when the Yankee soldier had beaten his little illegitimate son, and Woodrow came up, played by Tommy Lee Jones, came up on his horse, picked up a branding

iron and beat that Yankee soldier almost to death, until Gus McRae lassoed him and pulled him off. And Woodrow got up, brushed himself off, and very simply said, "I cannot abide rudeness in any man."

I'll tell you, when it's all over, my client will think that I've either — that Judge Alaimo has either made me pay too much money or Billy's client will think that Judge Alaimo made him not get enough money. The jury will be mad with us, the witnesses will be mad with us. We have taken them away from their businesses, we've made them sit and listen to our endless drone for hours at a time, we called too many expert witnesses, which I believe he says I pout, he says I pout about him not letting me call enough expert witnesses, but when it is all over with, we ain't got anybody but each other.

We are all that is left. And if we don't learn to be adversaries without being contrary, then we will lose what we have, and that is the collegiality of the Bar. And I agree with Billy, you don't need to buy it. You can have relationships, but you don't buy justice.

It matters not whether you represent Fortune 500 companies or whether you are president of the GTLA, raising hundreds of thousands of dollars, do you realize that some races and some judicial races in this country today costs millions of dollars. That is totally obscene.

The independence of the judiciary, the integrity of the judiciary, needs to have those of us, whether we sit at the table closest to the jury or furthest from the jury, we need to come together in order — not to protect ourselves — but our profession, the individuals that we represent, and the business community that we represent. And if we don't do that, if we don't do that, we will destroy this profession. Maybe not in this generation, maybe not in the next generation, but there's a time coming when we've got to answer for rudeness, for incivility, and for greediness. We need to ensure that there is a level playing field for us all and those whom we represent.

I cannot thank you enough, the members of this section, for what you have bestowed upon me today. And I, like Billy, it's an accumulation of what all of you have done for me in my life and I am eternally grateful. Thank you. n

CONGRATULATIONS

∞ HUGH McNATT ∞

HUGH B. McNATT, OF COUNSEL, BALCH & BINGHAM LLP.
2003 TRADITION OF EXCELLENCE AWARD, STATE BAR OF GEORGIA.

Congratulations to Hugh McNatt, who received the 2003 Tradition of Excellence Award of the State Bar of Georgia during its recent Annual Meeting. The award goes to Georgia's top defense lawyers, plaintiff lawyers, general practitioner and judge.

There were many deserving candidates this year. But we cannot think of a more appropriate recipient for this prestigious award. We are honored Hugh McNatt is a part of our team.



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Chair Mark Dehler presents the award to Judge H. Arthur McLane.



Rudolph Patterson past recipient of the "Tradition of Excellence Award", Cathy Cox, Secretary of State and Tom Chambers enjoy a conversation after the breakfast.



Chair Mark Dehler presents the award to Billy Ned Jones.



Chair Mark Dehler presents the award to Hugh B. McNatt.



New chairman Wright Gammon presents Mark Dehler with the Chairman's plaque in appreciation of his service as chair of the section.



Chair Mark Dehler presents the award to T. Hoyt Davis, Jr..



Outgoing Chair Mark Dehler and his wife Cathy Cox, Secretary of State, share a light moment at the reception with new section chair, Wright Gammon and Chair-elect Cathy Helms.



New Chair Wright Gammon presents Mark Dehler the traditional bottle of champagne at the reception.



Judge Arthur McLane and his wife enjoy the reception with Bill Goodman, past award recipient, his wife and friends.



Joel Wooten and Dennis Cathey past recipients of the "Tradition of Excellence Award" enjoy a conversation after the breakfast.



(R-L) Judge Bonnie Oliver and her husband Andy and Wright Gammon with his wife Alicia enjoy the reception.

The Death of Juror Rehabilitation: Jury Selection After *Kim v. Walls*

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Adam Malone is a trial lawyer practicing in Atlanta, Georgia at Thomas W. Malone, P.C. Adam's practice is limited to severe personal injury, medical negligence and wrongful death litigation.

Adam is a Summa Cum Laude graduate of John Marshall Law School where he graduated as valedictorian. Prior to joining Thomas W. Malone, P.C., Adam clerked for the Honorable G. Alan Blackburn, Chief Judge of the Georgia Court of Appeals and prosecuted with the Clayton County District Attorney's Office.

Q: What is a trial by a rehabilitated jury?

A: Justice - subject to a relapse.

Like the alcoholic who vows never to drink again is the biased juror who vows to be fair – both are subject to relapse. In the landmark case of *Kim v. Walls*,¹ the Supreme Court affirmed the Court of Appeals' decision² to put to an end to the commonplace practice of rehabilitating biased jurors with talismanic questions from the court. Prior to *Walls*, biased jurors who affirmatively answered some form of the following question were permitted to serve on the jury as a matter of course:

After all the facts are in and you have the law as given you in charge, can you set aside your personal feelings and make a decision in this case which speaks the truth based upon the evidence that you've heard, setting aside your preconceived notions, and deciding this case solely upon the evidence and the law as given you in charge?

Implicit in the condemnation of juror rehabilitation is the recognition that biased jurors are not stripped of their lifetime experiences by virtue of an extracted answer to a single "magic" question. *Walls* instructs us all that biased jurors should be excused, not rehabilitated. Some may doubt that any jury can be impaneled if all biased jurors are readily excused without some attempt to recondition their biased belief system. While it is true that all prospective jurors arrive with a belief system formed by virtue of

their own lifetime experiences, *voir dire* should be used as a tool to determine which jurors have a belief system so closely related to the issues in the case that they would be better jurors for another kind of case. The question is not whether a prospective juror can set aside his or her lifetime preconceptions, but whether those preconceptions overlap with the issues in the case so that a party would be justified in having a reasonable apprehension about their ability to be fair.³ This article demonstrates the tried and true method employed by our office in our experience since *Walls* whereby biased jurors have been readily excused resulting in the expeditious impaneling a fair jury.

Request Additional Jurors for Voir Dire

The *Walls* decisions direct trial courts to excuse biased jurors, not rehabilitate them. When this mandate is applied to an often unappreciated statutory concept that each party is entitled to a full panel of **competent and impartial** jurors before being required to exercise the first peremptory strike⁴, for all practical purposes, *voir dire* must be conducted with a sufficient number of prospective jurors to allow the court remove rather than rehabilitate biased jurors.

Since the courts are no longer in the business of rehabilitation, conducting *voir dire* with some

Continued on next page

reasonable number greater than 24 when seeking a 12 person jury can produce a full panel of 24 **competent and impartial** jurors expeditiously. Potential jurors who express any bias can be removed for cause without threatening to diminish the panel to less than the statutorily guaranteed number. Otherwise, when the panel is reduced to a number less than statutorily guaranteed, any party has the right to request the trial court fill the panel with additional jurors and the process must begin anew.⁵ This is a waste of time and may prompt bias where none existed before from the original remaining panel who have to sit through another *voir dire*. The only practical solution is to begin with a sufficient number to make it unlikely the panel will be reduced to less than the required number.

HOW IT WORKS

In our experience, a panel of 40 prospective jurors is usually sufficient and is ultimately more expeditious than conducting *voir dire* with a smaller and potentially insufficient panel. The reason for this is because the parties are not taking unnecessary time going back and forth with rehabilitation questions and argument to the court. Those prospective jurors who do not pass the "smell test" are immediately excused. For example, when seeking a jury of 12 it becomes apparent from *voir dire* that the first 24 jurors remaining are not subject to a challenge for cause, the rest of the panel can be excused and the parties may commence exercising peremptory strikes. In this way, a trial by a fair jury is not subject to a relapse of prior partiality. In the end, justice is the result and even the chance of appeal is reduced because the parties recognize the unlikelihood of getting a better jury next time.

Beginning Voir Dire with Additional Jurors Makes the Best Practical Sense

1. An Impartial Jury Is Obtained When The Trial Court Is Given Broad Latitude To Strike Prospective Jurors For Cause

In affirming the decision of the Court of Appeals' in *Walls v. Kim*, the Supreme Court held:

A trial judge should err on the side of caution by dismissing, rather than trying to rehabilitate, biased jurors because, in reality, the judge is the only person in a courtroom whose primary concern, indeed primary duty, is to ensure the selection of a fair and impartial jury. . . . The trial judge, in seeking to balance the parties' competing interests, must be guided not only by the need for an impartial jury, but also by the principle that no party to any case has a right to have any particular person on their jury.⁶

Indeed, in our justice system, the only purpose for *voir dire* is to assure that jurors are impartial and able to consider the case solely on the merits without any bias or prior inclination⁷.

Prior to *Walls*, the practice of juror rehabilitation was commonplace by the court and counsel. The *Walls* decisions have illustrated that the practice of juror rehabilitation does not achieve the goal of impartiality. When faced with the opportunity to sanction the commonplace practice of rehabilitation because it was "common", both appellate courts announced by their decisions that "common" practice does not equal the correct or just practice. Instead of sanctioning the practice of rehabilitating biased jurors, our appellate courts placed fairness over a commonplace fiction by sounding a trumpet call for all officers of the court to excuse those who are biased and retain only those who are "so free from either prejudice or bias as to guarantee the inviolability of an impartial trial."⁸

2. Counsel Should Refrain From Engaging In Rehabilitation⁹

The very attempt of rehabilitation by counsel, much less the court, is an acknowledgment that the prospective juror is in fact biased. Otherwise, why undertake to rehabilitate?

In the recent case of *Ivey v. State*,¹¹

the Court of Appeals applied the *Walls* mandate in reversing a criminal conviction because of excessive rehabilitation by the prosecutor, not just the court. After describing the prospective juror's repeated assertions that she did not think she could be fair and comparing them with the extracted assertions of impartiality from rehabilitation by the prosecutor, the Court held:

Where a prospective juror, who has been asked whether he or she can be fair and impartial in the case, answers under oath a plain, "No," and provides an explanation for the inability to be fair and impartial, the court should limit further questions to clarification of the answer. Neither the court nor the parties should incessantly interrogate a juror in a manner calculated only to elicit a response contrary to the one originally given. Interrogation for that purpose is nothing more than an effort to justify finding a biased juror qualified. [] A trial court may not rely solely on a prospective juror's extracted statement of impartiality[.]¹¹

3. Proper Method Of Examining Jurors For Bias

Ivey offers a very simple instruction to counsel and the court on the proper method to examine prospective jurors for bias. First, once a prospective juror answers that she cannot be fair and offers an explanation, the trial court must limit any follow-up questions to a clarification of that answer. Second, the proper method for clarifying the answer is to ask non-leading questions. To follow-up with leading questions is tantamount to an interrogation "in a manner calculated only to elicit a response contrary to the one originally given." Any answer to such a question would amount to an "extracted statement of impartiality" to which, the trial court can give no weight according to *Ivey*. Simply

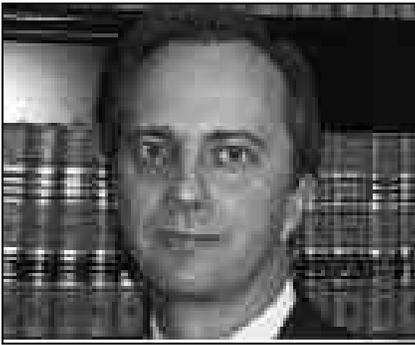
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The Trial Court's Role as the Safeguard in Reviewing Verdicts

by

D. Gary Lovell, Jr.

Carlock, Copeland, Semler & Stair LLP



Gary Lovell is a partner with Carlock, Copeland, Semler, and Stair in Atlanta, Georgia. He is a 1987 graduate of Mercer Law School and is admitted to practice in Georgia, Florida, and South Carolina. He is a member of the American Board of Trial Advocates. His practice is devoted substantially to the defense of medical malpractice and trucking cases.

Trial courts in Georgia are provided with several statutorily authorized opportunities to review and modify verdicts and judgments rendered as the result of jury trials. This paper will outline some of those statutory devices available to trial courts.

I. REVIEW BEFORE ENTRY OF JUDGMENT

Trial judges can reject and refuse to enter judgment on a jury verdict as a matter of necessity where the verdict is inherently inconsistent, ambiguous, uncertain, and illegal. A verdict is void as a matter of law and necessity where it is subject to conflicting interpretations and the result inexplicable on the face of the verdict. O.C.G.A. §9-12-4, *Bunch v. Mathieson*, 220 Ga. App. 855 (1996). When a verdict is inexplicable, speculation by the court as to the jury's intent does not change the fact that the verdict is inexplicable and does not change the law that abhors ambiguous, uncertain verdicts. Judgment should not be entered on that verdict by the court. *Lynas v. Williams*, 216 Ga. App. 695 (1995), *Zurich American v. Bruce*, 193 Ga. App. 804 (1989). Thus, it is possible to have a trial judge refuse to enter judgment on a verdict, and remedy the erroneous verdict with a grant of a new trial prior to entry of judgment.

II. POSTJUDGMENT REVIEW

A. Entry of Judgment Notwithstanding the Verdict

Judgments notwithstanding a jury verdict are proper where there is no conflict in the evidence as to any material issue and the evidence

introduced, with all reasonable deductions therefrom, demands a certain verdict. Thus, a judgment non obstante verdicto (n.o.v.) may be granted when, without weighing the credibility of the evidence, there can be but one reasonable conclusion as to the proper judgment. *Ogletree v. Navistar International Transportation Corporation*, 245 Ga. App. 1, 3 (2000). However, under this standard of review the trial court is not permitted to weigh the credibility of the witnesses and evidence presented at trial, but simply must find that there was no evidence to support the verdict. This is perhaps the weakest post verdict review standard in most jury trials.

B. Granting of New Trial

The trial judge has broad discretion in deciding whether to grant a new trial. *Garrett v. Garrett*, 128 Ga. App. 594 (1973). A motion for new trial on the general grounds set forth in O.C.G.A. § 5-5-20 or § 5-5-21 addresses the sound legal discretion of trial judge and the law imposes upon him the duty of exercising this discretion. *Kendrick v. Kendrick*, 218 Ga. 460 (1962); *Ricketts v. Williams*, 240 Ga. 148 (1977), vacated on other grounds, 438 U.S. 902, 98 S. Ct. 3119, 57 L. Ed. 2d 1145 (1978). Furthermore, as seen in *Perryman v. Rosenbaum*, 205 Ga. App. 784 (1992), under O.C.G.A. § 5-5-50 the Court of Appeals will not disturb the presiding judge's first grant of a new trial absent a showing of an abuse of discretion. In that case, the trial court granted a new trial in the face of a jury verdict of \$500,000 compensatory damages.

The Court of Appeals held that they would not disturb the trial court's exercise of discretion since the verdict was not *required or demanded* by the evidence.

1.

NEW TRIAL BECAUSE THE VERDICT IS CONTRARY TO THE EVIDENCE AND JUSTICE AND EQUITY.

O.C.G.A. § 5-5-20 authorizes the court to grant a new trial if the jury verdict is contrary to the evidence and/or where the verdict is contrary to justice and equity:

In any case when the verdict of a jury is found contrary to evidence and the principles of justice and equity, the judge presiding may grant a new trial before another jury. O.C.G.A. § 5-5-20.

Georgia case law also establishes that a trial court may grant a Motion for New Trial even if the court denies a Motion for J.N.O.V.:

Additionally, the standards for granting motions for directed verdict and j.n.o.v. are different from the standard for granting a new trial. . . a trial judge can grant a motion for new trial if the verdict is contrary to the evidence or strongly against the weight of the evidence.

O.C.G.A. § 5-5-20, *Beasley et al v. Paul*, 233 Ga. App. 706, 478 S.E.2d 899 (1996).

By virtue of the difference in these standards, it is not inconceivable that in some cases, evidence would support a particular position, thereby precluding the grant of a directed verdict or j.n.o.v., yet a new trial would still be permitted because the verdict ultimately returned is contrary to or against the weight of the evidence when viewed as a whole.

Beasley v. Paul, 223 Ga. App. 706 (1996). Thus, even if the court denies a motion for J.N.O.V., it can exercise its discretion and grant a new trial under these less stringent grounds based on consideration of the facts of the case. That includes the court

acting as the "thirteen juror" in reviewing liability facts and damage awards. If the judge, had he been upon the jury, could not conscientiously acquiesce in the verdict rendered, he is not required to approve it and the appellate courts will not control him in refusing to do so. On the other hand, if he can conscientiously acquiesce in the verdict, though it may not exactly accord with his best judgment, or though some other finding might seem somewhat more satisfactory to his mind, and if his sense of justice is reasonably satisfied, he should, in the absence of some material error of law affecting the trial, approve it. *Holland v. Williams*, 3 Ga. App. 636, 638, (1907). *Hospital Authority of Gwinnett v. Jones*, 259 Ga. 759 (1989). (See also Ga.L.1987, p. 915, which reveals an even stronger state policy authorizing trial judges to reduce or reject excessive verdicts not in accordance with the preponderance of the evidence.)

2.

NEW TRIAL BECAUSE THE VERDICT IS DECIDEDLY AND STRONGLY AGAINST THE WEIGHT OF THE EVIDENCE.

The presiding judge may exercise a sound discretion in granting or refusing new trials in cases where the verdict may be decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the finding. O.C.G.A. § 5-5-21.

3.

NEW TRIAL BECAUSE OF ERRONEOUS JURY CHARGE

O.C.G.A. § 5-5-24 permits a trial court to grant a new trial where a legally appropriate request to charge is not given or where an incomplete or erroneous charge of law is given by the trial court. It is the duty of the court to instruct the jury as to law applicable to issues made by pleading and evidence, and failure to do so when injurious and harmful to losing party is reversible error. *Rutland v. Jordan*, 111 Ga. App. 106 (1965). O.C.G.A. §§ 5-5-24 and 5-5-25. "If a confusing or unclear charge is given to the jury, causing harm to a party, the remedy is a new trial. *Perryman v.*

Rosenbaum, 205 Ga. App. 784 (1992). In that case, the Court of Appeals upheld the trial court's grant of a new trial in a case where the verdict and instructions of the court were in opposition. The court held "there was error in the lack of clarity, from the jury's perspective, in the court's instructions, which carried through to the written recordation of the verdict and so into the judgment which reflected the court's misconstruction of the true verdict. There was not error in the court's rectification of the same by the grant of a new trial on the issue of compensatory damages, the court apparently having concluded that the change would have been one of substance and not of form so that the verdict could not be amended under the authority of O.C.G.A. § 9-12-7." *Perryman*, at 794.

C. Reduction or Increase of Jury Verdict

If a trial court does not grant a Motion for Judgment Notwithstanding the Verdict or Motion for New Trial, it still has the authority to grant additur or remittitur, grant a new trial, or to condition the grant of a new trial on damages and liability upon the parties' refusal to accept an amount determined by the court.

O.C.G.A. § 51-12-12 provides in pertinent part that:

(a) A question of damages is ordinarily one for the jury; and the court should not interfere with the jury's verdict unless the damages awarded by the jury are clearly so inadequate or so excessive as to be inconsistent with the preponderance of the evidence of the case.

(b) If the jury's award of damages is clearly so inadequate or so excessive as to any party as to be inconsistent with the preponderance of the evidence, the trial court may order a new trial as to damages only, as to any or all parties, or may condition the grant of such a new trial upon any parties' refusal to accept an amount determined by the

Continued on next page

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trial court.

O.C.G.A. § 51-12-12(a)(b).

The question of damages is ordinarily one for the jury; and the court should not interfere with the jury's verdict unless the damages awarded by the jury are clearly so inadequate or so excessive as to be inconsistent with the preponderance of the evidence in the case but, if the jury's award of damages is clearly so inadequate or so excessive as to any party as to be inconsistent with the preponderance of the evidence, the trial court may order a new trial as to damages only, as to any or all parties, or may condition the grant of such a new trial upon any party's refusal to accept an amount determined by the trial court. *Lisle v. Willis*, 265 Ga. 861, 862 (1995). In *Moody v. Dykes*, the Georgia Supreme Court clarified the provisions of O.C.G.A. § 51-12-12(b), stating:

[a]n excessive or inadequate verdict is a mistake of fact rather than of law and addresses itself to the discretion of the trial judge who, like the jury, saw the witnesses and heard the testimony.

Moody v. Dykes, 269 Ga. 221-222 (1998). And, in *Smith v. Crump*, 223 Ga. App. 52, 56-57 (1996), the court further analyzed the trial judge's role in implementing O.C.G.A. § 51-12-12, as follows:

O.C.G.A. § 51-12-12 empowers the trial judge to decrease an award, or have the trial judge to seek the parties to accept an additur or remittitur upon the threat of a new trial and allows the judge to order a new trial on the issue of damages only; refusal by either party to accept leaves the judge with the power only to grant or to deny a new trial and to

decide what issues will be retried. Therefore, the criteria under either a motion for remittitur rests upon the sound exercise of discretion in granting or denying such motions, as the case law provides.

Thus, as a final resort the trial court can reduce or increase a judgment from the amount of a jury verdict as it deems appropriate.

CONCLUSION

The rendition of a jury verdict is not the final decision available at the trial court level. Many times it is advantageous to attack a verdict at the trial court and seek to have the trial judge exercise their discretion in remedying a verdict that is perceived as unjust. In cases of "clean trial," with no error for appeal, this judicial discretion may be the last hope for post verdict relief.

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stated, the proper method for clarifying a statement of partiality is to follow-up with open-ended questions, not leading questions designed to suggest the desired answer.

Remember that No Court Has Ever Been Reversed for Excusing a Juror for Cause

Since no party is entitled to any particular juror, it is never reversible

error to excuse a juror for cause.¹² On the other hand, as the *Walls* case demonstrates, a trial court can be reversed for failing to excuse a juror even for discretionary challenges for cause.¹³ If *voir dire* is conducted with a sufficient panel to permit biased jurors to be readily excused and no weight is given to any attempt to rehabilitate on the part of counsel, then the opportunity for error in jury selection is virtually non-

existent, the parties are given an entire panel of qualified jurors from which to peremptorily strike, and in the end, the parties receive the benefit of a trial by the fairest jury possible. In this way, absent any error on the part of the court during trial, a trial by jury produces pure, unadulterated Justice – not justice subject to a relapse of injustice.

Footnotes

¹ 275 Ga. 177 (2002)

² *Walls v. Kim*, 250 Ga. App. 259 (2001)

³ *Temples v. Central of Ga. R.R. Co.*, 15 Ga. App. 115 (1914); *Mitchell v. State*, 69 Ga. App. 771 (1943)

⁴ O.C.G.A. §§ 15-12-122, 15-12-133.

⁵ See O.C.G.A. §§ 15-12-122, 15-12-123, 15-12-133.

⁶ *Kim v. Walls*, 275 Ga. at 260.

⁷ *Id.*

⁸ *Id.*

⁹ The only practical way for counsel to refrain from engaging in rehabilitation is for the trial court to give no weight to a prospective juror's response to rehabilitation questions.

¹⁰ 258 Ga. App. 587 (2002) (whole court

decision)

¹¹ *Id.* at 592

¹² See *Hill v. Hospital Auth. of Clarke County*, 137 Ga. App. 633 (1976).

¹³ See also *Ivey v. State*, 258 Ga. App. 587 (2002); *Powell v. Amin*, 256 Ga. App. 757 (2002); *Cannon v. State*, 250 Ga. App. 777 (2001).



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