

CALENDAR CALL

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

Vol. VII

Fall 2002

No. 1



Tradition of Excellence Awards



S. Lester Tate, III, Chairman of the General Practice and Trial Section presents the "Tradition of Excellence Award" to (L-R) James E. Butler, Jr., Griffin B. Bell, Justice Robert Benham and Jerry Blackstock

CALENDAR CALL

"Georgia's Largest Law Firm"

GENERAL PRACTICE AND TRIAL SECTION STATE BAR OF GEORGIA

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The Tradition of Excellence Recipients for 2002 were presented their award at the General Practice and Trial Section Breakfast June 14, 2002 in Amelia Island, Florida from left to right S. Lester Tate, III, Chairman, James E. Butler, Jr. Columbus, Griffin B. Bell, Atlanta, Justice Robert Benham, Atlanta, Jerry B. Blackstock, Atlanta

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, Suite #900, The Corporate Center, Columbus, Georgia 31902. **Published by Appleby & Associates, Austell, Georgia**



I remember feeling that it was very early as I sat down with my first cup of coffee to listen to the presentations of the 2002 Traditions of Excellence Awards. The cobwebs of the early morning, however, were quickly replaced with awe and inspiration as the honorees, former Chief Justice Robert Benham, Jim Butler, Jerry Blackstock, and former U.S. Attorney General Griffin Bell, and their introducers, Lester Tate, Joel Wooten, Cary Ichter, and Frank Jones, all spoke with spell-binding eloquence and energy. In 18 years of law practice I have never witnessed as many solid and stirring presentations as these and commend the articles which follow in this issue of the Calendar Call for you to ponder and enjoy.

Succeeding to the position of Chair

of the General Practice and Trial Section as I did at the afternoon reception for the honorees was profoundly humbling. How could I possibly follow on the heels of these fine examples of excellence and in the footsteps my immediate predecessors, Sally Akins and Lester Tate? Slowly, is what I concluded. I would start slowly and hope that their momentum would keep us all moving in the right direction.

Probably the most important challenge we as a Section face this year is the continuation of the discussion we started last year about the core mission and goals of our Section and how we can best serve our constituency. What does it mean to be a general practitioner? How do we bring together and help improve a group of lawyers from all over the State who practice an array of domestic relations, criminal defense, and tort law? How can we help solo practitioners and members of small firms deal with the issues they face by virtue of such practice settings? These are some of the questions and issues the Executive Committee will be facing this year and I invite all members of the General Practice and Trial Section to participate in this collective soul searching. To encourage this process I plan to continue the practice of conducting meetings all over the State. We need your input as we try to decide what services our Section should be providing for our members.

It is also my goal to continue to build upon the General Practice and Trial Institute which was started last spring at Wild Dunes. You will be hearing more about the Institute as it gets closer. In the meantime, if you have thoughts about it, please do not hesitate to let me know.

As I close this column, I want to express special thanks to Susan Howick for her tireless efforts for the past five years as editor of the Calendar Call. Her contributions to our Section have been immeasurable and mostly unrecognized. Susan, thank you on behalf of all members of the General Practice and Trial Section.

It is also with a world of thanks that I welcome our new editor of the Calendar Call, Cal Callier from Columbus. Cal's background as an active trial lawyer for 15 years and his service as Georgia Survey Editor for the Mercer Law Review will serve us well as he carries on Susan's fine tradition. Thank you Cal for taking on this responsibility.

Please enjoy this issue of the Calendar Call with its profile of our outstanding honorees of the 2002 Tradition of Excellence Awards, an introduction to the new voting equipment which we will all use for the first time in November, and the fine articles by Robert E. Cartwright, Jr., and Gerri R. Colton.

Justice Robert Benham

Introduced by
S. Lester Tate, III



Branch Richey was the man who integrated major league baseball by signing Jackie Robinson to a professional baseball contract. He was also a lawyer and he once said: "It is not the honor that you take with you, but the heritage you leave behind."

I have come here today to tell you about the heritage my neighbor and fellow Cartersvillian, Robert Benham, has left in his wake. You know him as a Justice and former Chief Justice of our Supreme Court. I know him, not only as those things, but as the man who lives a mile and a half from my house at the corner of Etowah Drive and Old Mill Road.

It is a tribute to Justice Benham that he could have chosen virtually any member of the bar to introduce him today ... a former Bar President, a fellow member of the Supreme Court, Governor Roy Barnes. Instead of choosing any of these more eminent people, however, he asked me to do it because I not only know him as a lawyer and justice, but as a member of his community. How many of us I wonder, would

want someone who knows about every area of our life to speak about us? So let me tell you all about Robert Benham.

First, there is Robert Benham the lawyer and Justice.

He received his B.S. in political science from Tuskegee University in 1967 and is a 1970 graduate of UGA Law School. He received his LLM at the University of Virginia in 1989. He served as a judge on the Georgia Court of Appeals from 1984-1989, when he was appointed to the Supreme Court, where in 1995 he became its 26th Chief Justice. He is the first African American to win statewide election since reconstruction and the first African American to serve on the Georgia Supreme Court.

We know him as the Chief Justice who told a law school commencement:

"We could talk about the nuances of the law. We could talk about emerging issues in constitutional law. But I want to talk to you about something

I think is a little more important today ... I want to talk to you about community service, sacrifice, the role of the law and the relationship with your own family."

Second, I want to tell you about the Robert Benham people in Cartersville know. A man who, as they would say in the pulpits of Cartersville, doesn't just "talk the talk," but also "walks the walk."

In Cartersville, we know him as the first African American to practice law there after his admission to the bar in 1970. Cartersville is a town with many old law firms. My own firm is probably the oldest in Georgia, having been founded by my partner's great grandfather, Warren Akin, in 1836. On the fence that runs along the railroad tracks across from my office is a plaque commemorating Warren Akin; but there's also a plaque there for Robert Benham, because we're just as proud of what Robert Benham did in 1970 as we are of what Warren Akin did in 1836.

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We, in Cartersville, know Robert Benham as the husband of Nell Dotson, the father of Corey Brenard Benham and Austin Tyler Benham – the father who does wood-working with his sons; the father who, several years ago drove from the State Bar Convention in Hilton Head, South Carolina back to Cartersville, Georgia to see his son pitch baseball, then returned to Hilton Head to give the State of the Judiciary address for the Board of Governors the next morning.

Finally, I want to tell you about the Robert Benham that few, other than the closest observers, might know.

If you have been to Montgomery, Alabama, you know that their Supreme Court Building is a marvelous edifice that sits at the foot of capitol hill. Several years ago I was there and got a tour of the building by one of the justices. He remarked that our own Georgia

Supreme Court was coming for a visit the next day . When I saw Justice Benham in town the next week, we discussed our separate trips to the same place.

Justice Benham told me that as a student of Tuskegee University in the 1960's, he participated in a civil rights march that passed right in front of the site of the court building. He told me he would never forget what happened as he marched by that site.

On the hill above him stood what some might call a counter-demonstrator, but I would call a bigot. And as Justice Benham, then only a student, walked by, the man looked down and spat on him.

I wonder how many of us, in the face of such adversity and anger could have risen up to do all that this man has done. I wonder how many of us could have overcome adversity like this and returned to our own

state to become Chief Justice.

I am proud to be from the same community as Robert Benham and of the same profession.

My most favorite movie scene is in "To Kill a Mockingbird" when Atticus Finch, having lost his case, walks out of the courtroom. In the balcony where African Americans must sit, Rev. Sykes tells Atticus' daughter, as every person in the balcony rises: "Jeanne Louise, stand up. Your father is passing."

I am here today to tell you that when Robert Benham passes in Cartersville, we all stand up to honor him; not just African Americans, but people of all races, people of all occupations, and people of all economic and social standing.

Justice Benham, it is my honor to present you with the Tradition of Excellence Award because of the rich and lasting heritage you have left behind.

Jerry B. Blackstock

Introduced by
Cary Ichter



When I was asked to come and introduce Jerry here this morning, I thought, “Surely, Jerry does not know they are asking me to do this.” I thought that, perhaps, this was nature’s way of restoring balance: Jerry gets the Tradition of Excellence Award, but I will get to talk about him before a captive audience of his peers in the Bar.

I immediately started working on my remarks, and I must say that they had even me blushing more than a schoolboy at a Swedish film festival. After long hours of toil, I received a call from Jerry’s “people.”

They reminded me that “This is an introduction, not a roast.” They warned me, “Jerry’s family will be there—we thought you would like to know that,” they said with a verbal nudge and a wink. So I started all over again, some of my best work wasted.

To get started again, I called down to Jerry looking for “appropriate” material, knowing that my seven page single spaced nominating letter had merely scratched the surface of

the man I know as Jerry Blackstock.

Jerry said that he didn’t have anything readily available, but he would scramble to put something together. Two hours later a courier arrived in our reception area with a package containing this two volume set: JERRY B. BLACKSTOCK-THE EARLY YEARS and a note: “Additional Volumes to Follow.”

In all seriousness, I am more honored than I can express to be here today to introduce Jerry Blackstock as a Tradition of Excellence Award winner for 2002. I know, without reservation or question, that Jerry richly deserves this high honor.

I cannot, in the short time that I am given, even begin to chronicle all of Jerry’s good works, his contributions to the Bar, to our profession, to his community, to his family and to his friends.

Jerry is a Georgia native. He was born in Monticello, Jasper County, and was raised in Rome and later Dallas, Paulding County. Jerry attended the University of Georgia School of Law and has been

practicing in Atlanta continuously since 1969. Jerry was a partner and chair of the litigation department of Powell, Goldstein, Frazer & Murphy until January 15, 2002. Since that time he has been a partner at Hunton & Williams in Atlanta and chair of that firm’s litigation team.

This year marks the thirty-third year of Jerry’s practice as a trial lawyer in Georgia. The first twenty years of that career were spent as a defense lawyer trying cases all over the state and southeast. In the last thirteen years, Jerry has tried primarily commercial cases for both plaintiffs and defendants.

Jerry has been recognized and listed among “The Best Lawyers in America” in both business litigation and personal injury litigation. The National Law Journal featured Jerry as one of the thirty “Top Players in High Tech Intellectual Property” in the United States. He has tried patent cases throughout the country and has been successful in obtaining multi-million dollar verdicts in those

Continued on next page

cases.

He is an elected Fellow of the International Academy of Trial Lawyers and the American College of Trial Lawyers. He is a Diplomate of the American Board of Trial Advocates. The Diplomate recognition is limited to those lawyers who have tried in excess of one hundred jury trials to verdict. In fact, over the last thirty-three years, Jerry has tried in excess of two hundred cases.

Jerry's contribution to Bar activities has been significant. He served on the Georgia Judicial Qualifications Commission (JQC) from 1994 until 2001 and was elected chairman of that commission in 1999, 2000 and again in 2001. The JQC is the constitutional commission that hears all complaints against judges in the State of Georgia. The Board of Governors of the State Bar elected Jerry to the JQC.

Jerry was also an elected member of the Board of Governors representing the Atlanta Judicial Circuit continuously from 1982 to 1998. He was an elected member of the Executive Committee from 1990 through 1995.

He served on the Advisory Board of the Atlanta Legal Aid Society from 1979 to 1986. He has also served as a member of the Board of Directors of the Federal Defender Program, Inc. for the Northern District of Georgia, elected by the District Court Judges in the Northern District of Georgia, from 1993 to 2000.

Jerry's record of community service is equally impressive. He is the Chair of the Board of Directors of the Pastoral Counseling Service of Atlanta. He is a past President of the Davidson College Atlanta Alumni Association, serves on the Board of

Trustees at Riverside Military Academy in Gainesville, Georgia, is a past President of the Parents Council of Trinity School, Inc., a past President of the Woodward Academy Lower School Parents Association, and a past Treasurer, Vice President and President for two terms of the Woodward Academy Upper School Parents Association.

As a result of his community service, Jerry was selected to participate in Leadership Georgia in the Class of 1980 and again in Leadership Atlanta, Class of 1990. He also served on the Executive Committee after he graduated from the Leadership Atlanta program. He was appointed by Speaker of the House Tom Murphy and served on the Georgia Athlete Agent Regulatory Commission since its inception in 1988 until 2001. He was its first chair in 1988 and 1989. He served again as the chair of the commission from 1995 to 1998.

Finally, he serves on the Board of Visitors of the University of Georgia School of Law.

Jerry has been married for thirty-five years to his college sweetheart, Margaret, and they have three sons, Towner, age 29 who is married and living in Charlotte, Michael, age 27, who lives in Ft. Lauderdale, and Kendrick, age 26, who is married and lives in Atlanta.

This introduction is an abbreviated version of my nominating letter, and in writing this, I had to delete more than I included. What I have described here is the Cliff Notes version of the Jerry Blackstock story.

It is a story I relish telling because it gives me a chance after 10 years practicing in a firm I helped to found to say something I have wanted to

say in exactly this kind of forum. Today is my day to say "Thank You" to Jerry.

The most important legacy of Jerry's career is the many lives and careers he has influenced. One of those lives and one of those careers is mine. As much as he publicly and vehemently denies it, Jerry was my mentor. He has been a mentor to dozens of other lawyers in Atlanta and in this state.

In my career, I have never met a lawyer who was more unselfish in sharing experience, responsibility and the limelight. Jerry was always generous with his praise, and patient and kindly with his criticism. Whenever we experienced a loss, whenever there was a mistake made, regardless of whose fault it was, Jerry always took the bullet for his team. But when there was a big win, when it came time to announce the big victory, Jerry always announced it as the associate's victory or the team's triumph.

Ten years ago three guys by the name of Meadows, Ichter and Trigg started down a long lonely road together. We were young and scared, but we were prepared and prepared by the best. Jerry's years of teaching us how to be lawyers lighted our path and guided our way.

I have no doubt that my firm would not exist and the partners at this firm would not enjoy the success we have achieved had it not been for Jerry Blackstock.

I was honored to nominate Jerry for the Tradition of Excellence Award, and I am today deeply honored and truly grateful to be here to introduce him to you this morning.

Griffin B. Bell

Introduced by
Frank C. Jones



It is my pleasure, and indeed my honor, to introduce my longtime friend and law partner, Griffin Bell, so that he may receive the Tradition of Excellence Award. He receives the award in the category of "General Practice," about which I will say more later.

He is so well known to this audience that it is not necessary for me to discuss his career in any detail. Let me say just a few words, as follows:

After graduating from the Mercer Law School in 1948, Griffin practiced for a while both in Savannah and in Rome before joining the firm of King & Spalding in Atlanta in 1953. They still tell the story at our firm that Griffin refused to accept King & Spalding's invitation until he had "looked at the books" to be sure that the firm was making enough money to pay the rent and other expenses. He became Managing Partner a few years later, and he served again in this capacity in the 1980's.

He left the firm in 1961 when he was appointed to the United States

Court of Appeals for the Fifth Circuit; returned for about a year in 1976 before becoming Attorney General of the United States; and once again returned to the firm in August 1979 following his tenure in Washington. Griffin has occasionally commented that his career indicates that "he has trouble keeping a job." He continues as an active senior partner at the firm today. In the words of the 92nd Psalm, at age 83, he is still producing fruit and is always green and full of sap.

Griffin has a wonderful sense of humor and doesn't take himself too seriously. When someone asked him if he believed in the merit system for judicial appointments, he answered, "Yes." He noted that he was a close friend of Senator Russell, a close friend of Senator Talmadge, and the campaign chairman in Georgia for President Kennedy in 1960, and that he was appointed to the Fifth Circuit "on merit" in 1961. As everyone knows, he was a really fine appellate judge.

I once asked him what was the best

example of a lawyer "thinking effectively on his feet during oral argument." He recalled a case in which the lawyer for the appellant was very critical of the rulings of the district court. Judge Gewin, who was serving on the panel with Griffin, asked the lawyer, "Don't you think you are being very hard on the district judge?" to which the lawyer replied, "Not really, Your Honor. He is a fine person and he will be an outstanding judge but the bad rulings I've talked about are explainable by the fact that he has been a federal judge only 10 months." Judge Gewin responded, "Do you realize that Judge Bell and I have only been on the Fifth Circuit for 11 months?" Unperturbed and smiling, the advocate responded, "Your Honor, it's amazing how much a judge can learn in one month!"

Griffin was a superb example of integrity and sound judgment as Attorney General. When he left that office, then Chief Justice Warren

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Berger said:

“No finer man has ever occupied the great office of Attorney General of the United States or discharged his duties with greater distinction.”

President Jimmy Carter fully agreed. In the course of lauding Griffin’s great public service as Attorney General, President Carter remarked:

“The only criticism I had of Griffin in Washington is that he never really understood that I was supposed to preside at Cabinet meetings.”

His career demonstrates that Griffin could have qualified for this award in any one of the four categories. His law practice over the years has been truly eclectic, including the representation of both plaintiffs and defendants in a wide variety of cases, some of national importance, and he was an outstanding federal judge for almost 15 years. But I think the really appropriate category for him is General Practice because, like a good general practitioner, he has literally done everything.

As I’ve gotten older and have come in contact with more and more specialists — many highly skillful ones — my respect for general practitioners has steadily increased. They are the lawyers with whom most members of the general public come in contact. Griffin considers that it is the job of a lawyer to be “a problem solver” and that is what general practitioners do so effectively. In his biography written a few years ago, Reg Murphy described Griffin as being possessed of “uncommon sense” — a very accurate description.

He has been a great citizen. Time doesn’t permit me to list all of the notable contributions he has made to the public and to the profession. Let me mention only one. He served as unpaid Chief of Staff to Governor Ernest Vandiver in the late 1950’s. During his campaign, Governor Vandiver had represented to the public that there would never be any school desegregation in Georgia. In 1959 the federal courts ordered the desegregation of the Atlanta schools and this created a tremendous problem for the Governor, a problem about which he sought Griffin’s advice. At his home, Griffin wrote in longhand a plan to solve this problem. He recommended that the state form a commission to conduct hearings all over the state and to listen to Georgians about their feelings on the importance of public education. Governor Vandiver agreed, and he and Griffin recruited John Sibley to chair the commission. The rest, as they say, is history. The report of the Sibley Commission helped save public education in our state.

Griffin served as President of the American College of Trial Lawyers in the mid 1980’s and during his career he has headed up many other local, state, and national organizations and commissions.

Griffin has never believed in “all work and no play.” His favorite two hobbies are golf and quail hunting.

Last year he shot a 39 on the front side of the Ocean Forest Golf Club at Sea Island, a very difficult course. King & Spalding’s in-house bulletin showed a picture of him with the

statement that he “brought the golf course to its knees.” Someone asked Judge Bell afterwards what his score was on the back side; he replied, “If I had wanted you to know that, I would have told you.”

If he loves any sport more than golf, it is quail hunting. One of his longtime hunting friends said that when Griffin is hunting he is “as eager as a boy.” I’m told that on a hunt last year he stumbled as the covey arose but that as he fell to the ground he still got his bird.

As I said, he is a true problem solver. Griffin and I were delegated by our firm to seek to recruit Senator Sam Nunn as a partner. Other firms were also interested. We met with Sam a number of times and did our best to convince him that he should join King & Spalding but he reserved making any commitment. Finally, one day, Griffin looked him in the eye and said, “Sam, if you don’t come to King & Spalding it will be very embarrassing for Frank and I personally.” Senator Nunn yielded at that point.

One final comment. Griffin is a very unselfish person. Although his contributions to the law firm have been enormous, he has consistently declined to accept the larger payments of income that all of his partners would be happy for him to receive, thereby setting a fine example for other senior lawyers.

I have never known a better lawyer, a more honorable individual, or a truer friend. He is a great credit to our profession. He is indeed a worthy recipient of the Tradition of Excellence Award.

James E. Butler, Jr.

Introduced by
Joel O. Wooten, Jr.



It is a pleasure and a privilege to introduce the trial lawyer who has won a State Bar of Georgia General Practice and Trial Section's 2002 Tradition of Excellence Award. While he truly is an outstanding lawyer, he also is a good citizen of Columbus and the State of Georgia, and an outstanding example for all of us.

Jim Butler is a native Georgian, having been born in Atlanta in 1951. He lived in Decatur and grew up and went to high school in Cumming, where he was a fierce competitor on the football field. Jim then went to the University of Georgia where I first met him in 1969.

At Georgia, Jim was a journalism major. Many of you may not believe it, but journalism was his first love. He worked at newspapers during college and, after graduation, turned down an offer to go to work for the Atlanta Journal Constitution as a reporter.

Instead, Jim decided to start his own construction company and build houses in north Atlanta and

Cumming. Jim was a successful builder, at first. He constructed 40 or 50 houses in 2 years but, then, he got caught in the spiraling upward interest rates of 1973-74 and found out that the life of a contractor was not meant to be.

Fortunately for the legal profession, Jim decided to return to school and get a law degree. Jim was accepted at Georgia and at Harvard but he decided to come back to UGA as a Woodruff scholar. This was the fall of 1974 and, as they say, the rest is history. Jim graduated from law school with honors in 1977 having won the first year and the second year moot court competitions; he was a member of the National Moot Court team and was the best oralist at the Southern Moot Court competition. He was also a member of the Law Review.

In 1977, Jim came to Columbus because the dean at Georgia told him that Columbus had a great trial bar and that, in Columbus, you actually got to try cases. He turned down a job with a big firm in Atlanta so he

could represent real people and make a difference in their lives. He still represents real people and he does make a difference.

It was in the late 70's and early 80's that Jim routinely spent 10 and 12-hour days studying and preparing his cases for trial. I know how hard he worked and how good he was because I was a young trial lawyer doing insurance defense work in Columbus at the same time and we often were on opposite sides.

To fast forward, Jim's trial skills representing real people are legendary. In 1982, five years out of law school, he tried his first med mal case. It was a \$4.7 million verdict that was, at the time, by far the largest in Georgia history.

In 1988, he got the state record for the largest truck or automobile verdict in the Ocilla case.

In 1993, Jim won the Moseley v GM case – yet another record — and in 1998, he beat his record again with the verdict in the Six Flags case.

All of this did not happen by luck

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or good fortune. Jim is the hardest working lawyer I know, and he loves what he does.

I mentioned earlier, when he first came to Columbus, his routine 12-hour days. He prepared and tried dozens of cases of all types to jury verdict as a young lawyer. That same work ethic still continues today when he is getting ready for serious depositions or trial.

Some of you may have seen the movie *Jeremiah Johnson* several years ago. It starred Robert Redford as a trapper out west in the 1800's. You will recall that, in the movie, it was said that Indians measure a man by the strength of his adversaries. Well, measuring Jim by the strength of his adversaries, he is indeed a great warrior.

Jim has a saying around the office: "Attention to detail and a sense of urgency." That sums up pretty well his attitude about preparing cases for trial. He is tenacious, and he is always prepared. Jim has tried close to 200 cases and it isn't luck with Jim; it's preparation.

But I don't want to just talk about Jim Butler the trial lawyer. I want to talk about the Jim Butler that most of you do not know. Jim had the good fortune to meet and marry Susan Chappell after he came to Columbus. Jim and Susan have 3 wonderful children: Jeb, a student at Vanderbilt, and Emily and Catherine, who are in high school and who really know how to make their daddy smile.

Jim loves to spend time with his family, and he and Susan frequently

are off on trips with the children. Those of you who know Jim know that he truly enjoys hunting, fishing, politics and reading. He reads anything and everything.

The side of Jim that most of you probably do not know as well is that of community citizen. One example is that Jim and Susan are long-time supporters of the Anne Elizabeth Shepherd Home in Columbus that cares for abused children. Susan has been actively involved and an officer there for many years, and Jim is a member of the Board of Trustees of Twin Cedars Youth Services Foundation that serves at-risk youth in Columbus and LaGrange. Jim and Susan both serve on many boards and have been active and generous supporters of numerous community organizations and charities.

In 1998, Jim was appointed by Governor Zell Miller to serve on the Georgia Board of Natural Resources. This was a natural fit for Jim who loves the outdoors. Jim has served as chair of the Wildlife Resources Committee and chair of the Environmental Protection Committee of that board. He also serves as a member of the board of the Chattahoochee Land Trust, which is working to preserve land and green space in the West Georgia area.

His legal practice reflects this love of the outdoors and the environment. He represented homeowners years ago in Columbus with their nuisance cases over indiscriminate, unplanned growth that caused flooding of their

homes.

In 1988, he committed, pro bono, to represent a group of Taylor County citizens who opposed the location of a hazardous waste site in Taylor County. After litigating this intensely for over a year, Jim was successful in getting the trial judge to enjoin the local county commissioners and the State of Georgia from building this hazardous waste facility.

Several years later, in an estate case, Jim, pro bono, helped defend a will that left millions of dollars to 2 worthy charities in a will contest. Again, Jim was successful.

In addition to being a great trial lawyer, Jim has also served his profession. He was an outstanding President of the Georgia Trial Lawyer's Association, he's served as a member of the State Bar's Disciplinary Board, he's spoken over a hundred times at seminars, and he has mentored dozens of young trial lawyers.

I have known Jim for almost 33 years. He is successful, intense, tenacious, generous, thoughtful, visionary and incredibly talented. He also is deserving — deserving of the honor that the State Bar and that this Section has bestowed upon him by recognizing his tradition of excellence as an attorney, a family man, a citizen, and a truly outstanding member of the bar of this state. I can think of no one more deserving of this award than my friend and my law partner, Jim Butler.

GEORGIA COUNTS

TOUCH THE FUTURE OF VOTING

A Message from Secretary of State Cathy Cox: Electronic Voting: Coming November 5th!

Georgia leads the nation in replacing antiquated voting machines with new systems that are accurate, accessible and user friendly. When Georgians go to the polls to vote in the Nov. 5th General Election they will cast their ballot on a new, easy to use touch screen system. The Diebold Accuvote TS units are:

- **Easy to Use:** If you've ever used an ATM, paid for gas at the pump, or even operated a microwave or a vending machine, you've used the same simple touch screen technology Georgia's new voting machines employ. Whether you're computer savvy or have never even turned on a PC, you'll find electronic voting simple and easy to understand.
- **Secure:** Your vote will be recorded in three separate locations on the voting unit, insuring that your choices can never be lost. Units have been thoroughly tested, and battery back-up insures voting won't be interrupted even if there is a power failure.
- **Accurate:** The touch screen system gives you a clear indication of what choices you have made and provides a "summary screen" to let you review and, if necessary, modify your ballot choices. And the units won't permit you to cast an accidental duplicate vote, or "overvote."
- **Accessible:** For the first time, visually impaired Georgians may cast votes independently. Every Georgia precinct will have audio ballots that assure visually impaired voters have an equal opportunity to make their voices heard.



Step 1: Sign In At the polls you will go through the same sign-in procedure as before. But instead of receiving a ballot you will receive a voter access card.



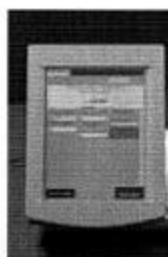
Step 2: Start Insert the voter access card into slot at right of screen. Place card face up with arrow pointing towards the slot. Push card firmly until it clicks.



Step 3: Read Instructions The first screen you will see is **Instructions to Voters**. Read these carefully, then touch **START** to begin voting.



Step 4: Select Candidates & Questions Make your selection by touching the box next to candidates or questions. To change your choice touch the box a second time, then make a new selection. Touch **NEXT** to advance through the ballot, touch **PREVIOUS** to go back.



Step 5: Review Your Choices At the end of the ballot you will see the Summary Page. To view the entire Summary Page touch the ▼ or ▲ located on the right. Offices that have not been voted are displayed in RED. To make a change, touch the specific box or touch **REVIEW BALLOT** to move back through the previous screens.



Step 6: Cast Ballot Make sure you are satisfied with all of your selections. When you have no further changes touch **Cast Ballot**. This completes the voting process. Once **Cast Ballot** is selected you may not vote again. After you cast your ballot the machine will automatically eject the card. Please return it to a poll official.

For more information or an online demonstration, visit www.georgiacounts.com or call 404-463-3438 to schedule a public demonstration in your area.

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Grace and Sam Tate pose with their father, S. Lester Tate, III after receiving his chairman's plaque.



Board members Rudolph Patterson and Wright Gammon enjoy the "Tradition of Excellence" reception.



Justice P. Harris Hines and board member Laura Austin of Marietta.



Secretary of State, Cathy Cox swears in new officers Mark Dehler, Chairman, Catherine Helms, Secretary/Treasurer and Wright Gammon, Chairman Elect.



Bob Brinson, Jerry Blackstock and Bill Stone.



Jim and Susan Butler enjoy a conversation with Justice Benham and his wife Nell.



Board members Kellie Casey, Sally Akins and Jim Goodman.

Successful Handling of Wrongful Death Cases- Wrongful Death of a Child

By Robert E. Cartwright, Jr.



Robert E. Cartwright, Jr., is President of The Cartwright Law Firm in San Francisco, California. He is currently President of the Consumer Attorneys of California. Mr. Cartwright is a frequent lecturer and author for numerous legal groups around the United States.

Children are our hope, our future, our joy. Our own children are most precious to us. They are the figurative, as well as the physical embodiment of our future hopes and dreams. For many, their future health, happiness and success is as important, if not more so, than our own.

For some of us, we go through life, and we love our parents dearly. We perhaps love a pet. We ultimately meet and fall in love with our life partner, and we think we have experienced the fullest measure of love. But when we have our first child, our eyes are opened, and we experience the deepest, most full and boundless, unconditional love, so much so that we did not believe ourselves previously capable of it. A parent's heart at times seems so full, that it is about to burst.

The loss of a child is therefore, for most, the greatest loss that one can sustain, for the void left, at first seems larger than the universe itself. Where the heart once ached from fullness, only an almost intolerable emptiness remains.

INTRODUCTION

Historically, the loss of a child has been under-compensated in the tort system. Given that it is one of the largest losses that one can sustain in one's life, this is somewhat perplexing. The reason for this can perhaps best be explained by the fact that the loss of a child rarely involves

economic loss. Large verdicts are more easily obtainable when we have significant economic losses. The loss of a child involves intangible loss that is not easily converted into dollars and cents.

Recently, however, there have been a few notable exceptions, and this proves that it is certainly possible to obtain very significant verdicts for the loss of a child, and that we should look at these cases differently now and in the future.

As lawyers, we often evaluate the loss of a finger, an arm, a leg and so on. We calculate the economic loss, the loss of earnings, and also the pain and suffering and loss to be suffered throughout the future life expectancy of the victim. What parent would not trade an arm or leg for the life of their child? Does not the parent suffer for the remainder of his or her life expectancy? The phantom child, like the phantom leg, remains forever.

The BAR jury instructions define loss of life in terms of the value of a relationship. It speaks of loss of love, society, consortium, comfort and care.

In modern times, we trace compensation for wrongful death to Lord Campbell's Act in England of 1846. The courts that have addressed this have spoken eloquently, such as the court in *Wycko v. Gnodke* (1960) 361 Mich. 331, 105 N.W.2d 118:

"The pecuniary value of the human life is a compound of elements ... an individual member of

a family has a value to others as part of a functioning social and economic unit. This value is the value of mutual society and protection, in a word, companionship. The human companionship thus afforded has a definite, substantial, and an ascertainable value and its loss forms a part of the value of the life we seek to ascertain ... It is true, of course, that there will be uncertainties in all of these truths, due to the nature of the case, but we are constrained to observe that it is not the privilege of him whose wrongful act caused the loss to hide behind the uncertainties inherent in the very situation his wrong has created ...”

The Wycko court highlights the problem we have in almost all personal injury cases, the problem of intangible loss which necessarily involves some level of uncertainty in regard to precise measurement or quantification.

The notion of compensation for wrongful death can perhaps be traced back even further, to the time even before Christ, to Exodus 21. Perhaps the reader will recall the story of the owner of an ox. Exodus 21 provides that if an owner of an ox shall permit the ox to become loose and the ox gores someone, then the ox shall be placed into a pit and stoned to death. However, if the owner knows that the ox has a propensity or habit of escaping and the ox escapes and gores someone to death, then both the ox and the owner shall be placed in a pit and stoned to death, or the owner may appear before the judges who shall determine just compensation to be paid.

In other words, the notion of compensation for wrongful death is thousands of years old. Paying compensation definitely beats being stoned to death in a pit.

I. TRIAL STRATEGY

Persuading today’s cynical jurors to fully compensate for the loss of a child takes place throughout the trial

from voir dire to final argument.

A. Voir Dire

Voir dire can be a time to both learn about the venireman, as well as to begin persuasion. You generally would like to ask some open ended questions, in addition to making certain statements phrased in the form of questions. One of the main themes that will emerge is the perception among certain jurors that to bring an action for wrongful death, especially for a child, is somehow crass, or profit seeking, in connection with a terrible loss that is incalculable in dollars and cents. This issue must be carefully explored. Some people feel that a parent just should not sue for the death of their child, and others feel that it is okay.

You may wish to reference the O.J. Simpson case, where the heirs brought a wrongful death case against him. You might ask how they feel about someone such as him being held accountable and how they feel about the family pursuing it. You might also phrase certain statements in the form of questions, particularly around the themes of accountability and protection from future harm. It is also important to distinguish whether they believe these are real losses, and not frivolous types of losses, and one or two of them may in fact mention the McDonald’s case.

You may also wish to distinguish the difference between sympathy, which is not permitted, and empathy, or understanding of the loss, which is.

Obtaining a commitment from the jurors to follow the law regarding liability and damages is an important distinction. If a juror is unable to place a number on the loss of a loved one, they can be removed for cause. Some people will state that no amount of money can be awarded, as no amount of money can compensate for such a loss. It is also important to explore whether there is any

particular limit or amount beyond which they simply could not award damages, regardless of the evidence. Ask yourself whether this particular juror is one that can vote his or her conscience. Can this same juror understand intangible losses without requiring every “i” to be dotted and every “t” to be crossed.

Also try to establish during voir dire who identifies with the plaintiff and with the defendant. Determine what your own fears and worries are and deal with them. “I’m afraid that . . . “

B. Opening Statement

In the beginning, tell a story. Speak first in the present tense, what’s happening “here and now.” Use sensory language to describe what happened. Speak visually in describing, for example, the sky and the trees, and using sensory language as to what one might feel, hear and touch. Establish the emotional connection, for example, horrible words that a parent might hear, that we all dread and can relate to, “I’m sorry I have to tell you this.”

The story should have a beginning, a middle and an ending. Avoid legalese. Say e.g. “the truck killed him.” Let the jury say to themselves, “it is a tragedy.” You just tell the story.

Take the opportunity to humanize the decedent. Discuss the child’s personality, his activities, his interests, generosity and relationship with the parents. Help the jury to get to know the child as a person. Use demonstrative aids, if possible, showing photographs of the decedent, particularly activities such as sports, family outings and holidays. This will help the jury to understand the magnitude of this loss to the family and to the world.

Discuss how the parents’ lives have changed, and their own hopes and dreams for the child, for example, school, college, marriage and grandchildren.

Continued on next page

Wrongful Death Continued from previous page

While you may not be permitted to discuss the law at this point, or to argue, you can in general tell them that you will be seeking damages, and in fact, a “substantial” amount of money for this loss so it is not a surprise in closing argument.

C. Witnesses - Direct and Cross Examination

In general, regarding direct examination, first accredit the witness, get to the point, and use demonstrative aids. In cross exam, in general, focus on “building blocks” for your case. Bring out favorable facts and stop on a high point. With regard to witnesses, bring people in who knew the child as well as those who knew and observed the relationship with the parents. Perhaps bring in a teacher or others who worked with the child. Even if a particular child was not very good in school, you might bring in school personnel who will say what a good personality the child had, or perhaps how the child tried very hard, or that the child was good in art or had some other talent.

Friends, neighbors and people from the community will have credibility with the jurors as opposed to only bringing in family members. A few carefully selected stories about the child can help serve to humanize. The time that the child made something special for mom as a surprise, the time the child scored the winning goal at soccer, the time the child used his own allowance savings to give to someone else in need. These stories show the jury what the child was like and makes them real and brings them to life. It also demonstrates that the witness cared enough to remember a story and that they cherished the memories as do the parents. It is difficult to have the parents speak about all of these things, and I would prefer to limit the amount of time that the parent is on the stand, and instead utilize others to tell these stories.

It is also important to bring out the

plans of the child. What did the child think about in terms of a career. What were the child’s dreams? These demonstrate, in general, the potential loss to society as a whole. If the child played on a team, bring in photographs and perhaps the coach or teammates. Did the child stay over at other persons’ houses, or go camping or on a vacation with someone else? Have those persons come in and talk about how delightful the child was. Generally, you need to paint a picture of the life of action, health and happiness.

With the adult child, it is particularly important to humanize the decedent. For smaller children, simple illustrations of birthday parties, Halloween costumes and fingerpainting can show the joy the child brought to everyone.

Did the parents plan and hope for a long time of the arrival of the children? Did they prepare a special room or nursery for the child? Did they have trouble getting pregnant? Did they plan their activities around their new family after the arrival of the child and include the child? Did both parents participate, particularly the father? Did both parents attend nursery school graduation or school open house, the piano recital, the soccer or “tee” ball games?

Papers written at school, such as regarding a family vacation or talking about parents or grandparents often are telling. Did the mom or dad help with the homework? All of these things show the loving relationship between parent and child and demonstrate the hope for what the child would become.

With the parents, less is more. Let the story regarding the relationship come out through others. Have the parents identify exhibits and photographs that only they can identify and only discuss some of the activities they did with the child, as well as the preparations for the

child’s birth.

D. Exhibits

As with all demonstrative evidence, keep it simple and use it to highlight a point, retain the juror’s attention, educate and to persuade. In other words, carefully select exhibits with the most impact, including photographs, art work, writings and the like. Have a few key exhibits enlarged and/or otherwise prepared for maximum impact to the entire panel. Key video tape clips should be carefully edited. Again, illustrating the life of happiness and action is key.

E. Economic Loss

It is generally thought that special damage items, such as property damage and funeral bills should be avoided. Jurors know that these bills were incurred. Placing these bills into evidence and before the jury demeans the loss and may make the parents appear mercenary. It is better to focus on the enormous personal loss, rather than on the miniscule, pecuniary loss.

F. Final Argument

At this point in the case, you need to have already persuaded the jury regarding the issues of liability and causation. The final argument can then be used to lock in their decision on those issues, clarify the task for the jurors, and persuade the jurors to render compensation that reflects the true magnitude of life’s most devastating form of loss, the loss of a child.

Referring them to Exodus 21 can root them in history and remind them that monetary compensation for these intangible losses is not a new concept. They should be informed that “monetary justice” is how a civilized society approaches these tasks and that compensation for one’s bills is not the measure in a wrongful death case, but rather the value of the human loss.

It is important to highlight how

important children are to our society, and how much value we place on our children. You can use examples like the special protection we as a society give to children, including special laws and other protections for their safety. You can point out how safety conscious parents are, including childproofing of the home, bicycle helmets, car seats and the like to protect our children and discuss how each child represents not only our individual future hopes and dreams, but the hopes and dreams of society in general, and that children are our most valuable, natural resource.

Refer the jury to how society values life in general. How much do we spend to save life if a person is lost at sea, drifting in the ocean? How much do we spend on the mere chance that we could find them, and rescue them? Sometimes, we will spend millions of dollars sending ships and airplanes out for days, or perhaps weeks, to find someone because as a society we value life. We spend money to save life. For example, on airplanes, it does not cost that much to design and build an aircraft that will take off and fly. Building them safely, and building triple redundancy into the control systems, costs an extraordinary amount of money in order to make them safe, because we value life as a society.

Comparing the loss with other losses, such as the losses of a finger, an arm or a leg can be enlightening. This is as terrible a loss as anyone can experience and the verdict must reflect the "full value" of the loss. That is what justice is, and you can discuss how lawyers evaluate the loss of fingers and arms and legs all the time.

Being careful to avoid the golden rule, you can ask the jury what parent would not trade an arm or a leg for the life of their children?

Some arguments that have been used successfully to evaluate the loss include comparing the child to other physical objects with intangible value,

such as a fine Picasso or Rembrandt. As a society, we place monetary value on intangibles all the time, i.e. things that are rare, gems, art work and the like. We place values on talent, on performers, and on athletes, way out of proportion to any economic measurement. Point out that each human being is totally unique and special, and that there will never be another child or human being like this one in the history of the world. This loss is permanent and forever.

If a Picasso painting were in a car that was hit by a truck (you can simply substitute the method in which the child died), how would we value it? Suppose it were a valuable animal, such as a horse, like Secretariat that was damaged or destroyed. Would we say to the owner of the painting or of the horse, don't worry I can get you a fine reproduction? Would we have to pay the full value of that particular painting, even if it was millions of dollars? Would we say to the owner of Secretariat, don't worry, I will find you the finest replacement horse that I can find, in fact, I'll go to Bob's Quality Horse Sales, just down the road and purchase you the finest horse that they have for \$100,000? Or would we have to compensate for the full value of that unique horse, even if it was millions of dollars.

Who would not value their child more highly than any painting or any other possession?

Imagine you were in the Louvre in Paris and a fire broke out, and in trying to exit the building through the smoke, you passed the Mona Lisa. Laying at the foot of the painting, overcome by smoke, there is a child of like age and sex of the decedent. You can only save one, the painting or the child. Which would it be?

The Mona Lisa is unique. The child is unique. There will never be another painting exactly like the Mona Lisa. There will never be another human exactly like this child. The Mona Lisa was painted by

a great master. The child was created by the greatest of all masters. The Mona Lisa is worth millions of dollars. The child is worth . . . ?

As lawyers we evaluate losses of hands, arms and legs regularly. We can place these losses in a range of what they might bring. If we draw a line on the black board from left to right, we can place on the left side the smaller losses and on the right side, the larger losses. Down here at the far left, we can place the minor loss of something like a finger, and we can say that generally, these losses might be worth one hundred to two hundred thousand dollars, depending on what finger it is, how much of the finger was lost, and whether it was the thumb. This also depends on the age of the person who has lost it. How many more years will they have to suffer the loss of this finger. Will they go 35 more years without this finger? And the same is true with the loss of an arm. We might place this out here at maybe four or five hundred thousand dollars. How many more years will this person suffer the loss of his arm. (You make a mark on the line on the continuum, still somewhat to the left of the middle). Over here to the right of the center, we might place another mark for the loss of a leg and we might say that this loss is worth somewhere between seven hundred and eight hundred thousand dollars, or perhaps further to the right over here we might talk about more serious injuries, such as being paralyzed or having both legs paralyzed. Perhaps this would be one and a half to two and a half million dollars? 35 more years without the use of both legs? How do we evaluate the loss of a child, where does it fit in on this continuum? Is it more like the loss of a finger, an arm, one leg, two legs or is it out here, even further to the right and you make a mark, way over to the right (you make a mark way over to the right).

In general, persuasion on the value of the loss must come before the

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actual number. After you have discussed some of these numbers, some lawyers will get up and challenge the defense counsel to stand up and tell the jury that this life was not worth this much money to this parent.

The plaintiff is here with his huge loss, and I can assure you that he would give back any award if we could make it so that his son could walk through those doors and sit down beside him, which he cannot do. So we have imperfect justice. If his son could come in and be there for five minutes and only five minutes so that the parents here would have those five minutes to tell him how much they love him and to say goodbye. What would those five minutes be worth? Five thousand,

ten thousand, a hundred thousand dollars? What are the next 35 years worth for that empty chair.

G. Rebuttal

If one of the most fortuitous things that can happen to you, if it does, is the defense attorney will get up and attempt to demean the value of life or place a very low monetary value on this child. This provides you the perfect opportunity to express some righteous indignation. Remind the jury that the child was these parents' treasure, that justice requires full compensation and that each parent should be considered separately, since each has suffered a very profound loss. Try to have previously prepared a final five minutes that recapitulates the case in its

entirety in a compelling and persuasive way. Send them to the jury feeling empowered to render an appropriate award.

II. CONCLUSION

The law recognizes that each human being is unique and special in the eyes of the law. Utilizing witnesses and demonstrative evidence to help the jury visualize how fun and vital this child was, laughing and playing, living life, persuade the jury that the monetary award must be symbolic of the magnitude of the loss and the value of this child.

Back to the Basics: How to Find the Expert(s) for Your Client's Case

By Gerri R. Colton

Do you need expert testimony to strengthen the presentation of your case to a jury? If the answer is yes, the next question is: How, as a trial attorney, do you go about finding the expert or experts who will best present your client's case? Finding the correct expert can be a long, tedious, daunting, time-consuming and expensive undertaking. However, most successful trial lawyers know that the testimony of experts can be a crucial determining factor in the jurors' minds.

Go back to the basics in order to find the expert or experts upon whom you will rely in the trial of your client's case. Here are suggestions that will make the process easier, more cost-effective and, hopefully, more successful.

Know Your Case

Before you can find an expert, you need to know your case. Study and understand the factual and legal issues in the case. If you are not sure of your understanding of the issues, talk to other attorneys who have litigated similar cases. Talk to any qualified person about the subject matter - be it automobile accident reconstruction, biomechanics of injury, medical causation, construction site accidents, electrical, plumbing, entomology,

epidemiology, coefficient of friction, floor coverings, golf ball behavior, dog breed behavior, or any of the thousands of fact patterns which you might see. Your own education is the starting place for speaking to others about the case - be they witnesses, judges, jurors, or consultants or experts.

Strenuously evaluate your case. Decide exactly what issues you need an expert's opinion testimony to help explain your case to the jury as distinct from the testimony of percipient witnesses. Chart out the elements needed to present a prima facie case at trial. Map out the evidence you have from the witnesses and evidence you need, from presently unidentified witnesses, to establish those elements. If it is a type of case you are unfamiliar with, hit the books in a law library to help you define the elements of the case and for insight into the evidence you will need to carry your burden of proof.

If you decide you need an expert's trial opinion testimony, determine whether you can have one expert address a cluster of issues or if you need multiple experts. Depending on what you want to prove, whether it be causation, liability, or damages, you might find that you need a different expert for each area.

Start Early

Many attorneys feel that the early retention of an expert is a tremendous help. The expert should be able to point out the weaknesses of the case that you might not have recognized or realized, as well as help educate you about the procedure or product at issue. Additionally, the expert can provide you with the most recent articles and journals, and the most current update regarding changes within the area of expertise. This knowledge will not only help keep you abreast of on-going changes, but can save you both money and time in additional research.

Unfortunately, many attorneys wait until right before expert disclosure to start locating their experts. There are numerous pitfalls to waiting this late in the process of the case to begin your search. By delaying your search for an expert you might find that the top experts in the field do not have time to review the case in a short time frame, may not be available for your trial date due to prior commitments, or may have been retained by the defense. Additionally, in highly specialized fields where there are only a few qualified experts, there is a strong

Continued on next page

possibility that they will know each other, therefore causing you to broaden your search.

Doing It Yourself

Once you have established that you need an expert in a specific field, there are numerous ways for you to go about searching for and locating the right expert.

Begin your search for the appropriate expert by contacting universities, corporations, or institutions that have departments in the area of expertise you require. Frequently, you will be given faculty recommendations - those who have expertise in the area in question.

The Internet has become a tremendous resource in locating potential experts. Use keywords for the products or the procedures you are trying to research. This should take you to various sites that will provide you with names of people involved in the area. Frequently there will be an e-mail address for you to send an inquiry to the individual expert.

Textbooks that pertain to the subject matter you seek are another source for locating potential experts. Contact the authors of articles that have been written about the product or procedure in question. Should the author not be interested in participating as an expert, ask for recommendations of colleagues in the field that the expert deems equally competent on the subject in question.

Professional associations are excellent sources for potential experts. These associations will probably be able to recommend members who would be specialists in the field of expertise that you seek.

Legal publications, such as jury verdict reporters, can provide you with the names of experts who have testified in similar cases and will give you the names of attorneys who have used them. This will give you

the opportunity to check references with regard to the capabilities of the expert.

Getting Help in Locating Experts

Expert witness services are a resource from which you can receive assistance in locating experts in all areas of specialty. These services often have access to experts that you may not be able to locate or retain on your own.

When working with an expert service determine at the outset if the service is receiving a fee from the expert as his representative. It is important to determine if the service is receiving a percentage of the expert's hourly billing. If it is, it may very well drive up the cost of that particular expert. These scenarios may be damaging to your case because the other side may point out that if the expert is so well regarded why do they need to pay someone a percentage of the fee to represent him. The best situation is where the service allows you direct access to the expert. In this arrangement, the expert's billing goes directly to you at the rate that you and the expert negotiate and agree. This type of service may be the best for you and your client because it saves you time and allows you to control your costs.

Check Out Your Expert

As in every new situation, you should not necessarily hire the first expert you speak to. By interviewing several experts, you will easily determine which expert has the best understanding of the issues regarding your case. Another important consideration is whether you and the expert can work comfortably together. Remember, the expert is an integral part of your team.

Once you feel you have located a potential expert, but before you actually retain that expert's services, do a thorough check of both the

expert's background and credentials. Ask for references from attorneys with whom the expert has worked previously or by whom the expert is currently retained. Ask those attorneys about the strengths and weaknesses of the expert. The last thing you need, at either disposition or trial, is to find out that your expert has skeletons in the closet. This could be damaging not only to the expert's credibility and yours, but to the outcome of your client's case as well.

Things to Ask the Potential Expert For

Have your experts provide you with the information about books and papers they have authored. Be thorough in reading their writings to determine that they have not published anything that would be contradictory to what they will be saying with regard to your particular case.

Make sure that your expert is not only well read and well versed in the general field, but also with the procedure or product that will be discussed. For example, if you are using a medical doctor, clarify in advance that your expert has actually performed the procedure that will be discussed. Additionally, verify that the expert was performing the procedure during the same time period your client's incident occurred.

In interviewing potential experts determine approximately how much of their professional career is dedicated to expert witness work and about what type of revenue they receive from their expert services. This is much more critical when it is a medical expert. It has actually happened in a case that the physician who was being examined replied that he earned approximately \$250,000 doing expert reviews. Fortunately, the question had been disclosed and the attorney was able to find another expert.

Controlling Costs

When you retain an expert you must set parameters as to how much time and money you will be required to spend on their portion of the case. Make sure that there are no surprises later on. Be very clear regarding their fees for record review, telephone conferences, deposition, testimony, and travel time in advance. Determine if the expert requires an initial retainer, what expenses it will be applied to, and if the retainer is refundable should the entire amount not be applied to charges.

Controlling the Existence of Statements Detrimental to Your Expert's Opinion in Your Case

Be very specific about how and when you would like the expert to communicate with you. Be clear in your direction to the expert that you do not want any opinion expressed in a writing without your prior consent. This does not mean that the expert should not make notes regarding the examination of the

matters upon which the opinion will be based. However, the expert's working opinions or the final opinions on the issues for which you have hired the expert should not be put into writing until you ask for that report.

Maintain a Consulting Relationship with All Experts You Have Hired, Even Those You Later Decide Not to Call at Trial

Your first relationship with the potential expert should be a "consulting" relationship. Have the expert work up the case and formulate the working opinions as your consultant. If you decide that this expert is not the right person or does not support your client's interests in the case, thank the expert for the work and keep looking. Maintain your relationship by telling the consultant that you may ask them to revisit the case or some portion of the case at a later time. If the case is sufficiently large you may want another person to talk to about the

issues and the opinions of the other parties' experts. No matter what, the continuing relationship will keep that expert out of the clutches of the adverse parties in the case.

Conclusion

These are just some basic and general pointers in locating and retaining experts. Many attorneys never learn these steps; others forget them as they progress in their careers. Locating great experts can be made very easy if you start your search by going back to the basics!

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Gerri R. Colton is the Director of Technical & Medical Advisors in Newport Beach. The firm specializes in locating experts in all fields. She is an Ex Officio Board Member of CAOC.



<http://www.gabar.org/gptlaw.htm>

Athens Attorney Gene Mac Winburn to head the International Society of Barristers



Athens attorney, Gene Mac Winburn of Winburn, Lewis, Barrow and Stolz, has been named President of the International Society of Barristers. An organization dedicated to the quest for justice, fair play and excellence in advocacy. Membership is limited to 600 outstanding trial lawyers from the United States and

Commonwealth countries, chosen by their peers who recognize the “true professional.” He has been a member of the Society since 1989 and served as a member of the Board of Governors; Secretary/Treasurer; Second Vice-President; First Vice-President and President Elect.

Mr. Winburn has had a rich history of commitment to the legal profession as a member of the State Bar of Georgia; the International Society of Barristers; the International Academy of Trial Lawyers; the American Board of Trial Advocates; Southern Conference of Bar Presidents; the Association of Trial Lawyers of America and the American Bar Association. He has served as President of the State Bar of Georgia from 1989-90; President of the Georgia Trial Lawyers Association from 1987-88 and President of the Western Circuit Bar Association in 1974. He has been active as a board

member and chairman of many committees associated with these organizations; as well as Chairperson and Trustee of the Institute of Continuing Legal Education; Fellow and Trustee of the Georgia Bar Foundation; Member of the State Disciplinary Board and the Judicial Nominating Commission for Georgia.

He has shared his legal knowledge and skills as a writer and speaker for well over 30 years. He has been a mentor to law students, lawyers just starting out, and seasoned veterans needing help with a case. He is a recipient of the prestigious “Tradition of Excellence Award” presented by the General Practice and Trial Section of the State Bar of Georgia and the “Distinguished Service Award” presented by the Georgia Trial Lawyers Association.

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