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The June Issue

The Georgia Bar Journal has been, for many years, a wonderful and high-quality publication. We have many awards to prove it. So, I was honored to be entrusted with the position as editor-in-chief two years ago. Honored, but also a little terrified. I mean, really, who am I? (Hint: the answer is “nobody.”) I know a lot of grammar rules, I suppose. That comes in handy. I presume that my high school English teacher, Mr. O’Rourke, would be pretty proud of my firm grasp on the English language. But honestly, I have never not thought that some sort of mistake had been made, and that someone would figure out that somebody better ought to be in charge of this thing. Well, that hasn’t happened, and I have now reached the end of my term. I might never quite understand how I ended up with this position, but it has been my immense pleasure to have, and I will always look back on this time of my life with great fondness for the experience.

I can’t begin to express my thanks to the people who have helped me along the way. My fellow Editorial Board members are a dedicated group of talented attorneys, who give generously of their time and energy. The past editors-in-chief, especially Don Boyle and Bridgette Eckerson, have never hesitated to offer me their support and advice. Some of you might already know this, but the Communications staff at the State Bar of Georgia is amazing. Lauren, Jennifer, Amber, Ashley and Sarah might not be on the cover every month, but they should be. They have always been there to help keep me from falling flat on my face, which is a lot. They are the real reason this publication is such a success. And I know that all of them will continue the success of this great publication. Their job might just get a little easier when our new editor-in-chief takes over.

So, for my last time, let me take a moment to highlight some of the great content we have in this edition of the Georgia Bar Journal. Our annual fiction contest winner is “Recusal” by Paul Franz, and it is a fantastic and moving story. The legal article by Erica Birg, Lucas Westby and Alex Pisciarino takes a practical look at common phrases used in pleadings, and why we should all rethink their use. On the topic of attorney wellness, Eric Ballinger shares how music has been a rewarding way to stay mentally healthy.

Lastly, I want to take the opportunity to express my appreciation for Chief Justice Harold Melton’s selfless service to the legal profession. His leadership and guidance, especially through the last 15 months, has been unparalleled. To borrow a sentence from YLD President Bert Hummel, “Chief Justice Melton embodies so much that is right about our profession.” May we all strive to be just like him in our professional lives.
When I was installed as State Bar of Georgia president last June, I had never been more concerned with the health and welfare of myself, my family, my friends and our community as I was at that time. There were so many unknowns that we were facing, with information changing almost daily. Added to that, we had front-row seats to horrific video footage played over and over, sometimes multiple times a day, of inhuman treatment against people of color, often leading to death. Protests and civil unrest brought millions of Americans together, while also serving to divide our country. Even with my critical care nursing background and experience, it was extremely stressful and difficult to cope with the two health pandemics we faced and continue to face as individuals, as a profession and as a society. Attempting to do my very best, I faced those challenges and forged ahead to lead the Bar as I had been elected to do. Now, as we close out the year, I wonder how much was actually accomplished. How successful was I in sustaining a sound Bar this year?

I will always have a nurse’s heart. Nurses are trained to identify signs and symptoms in order to determine a person’s health status at the time of examination. Signs are objective evidence of a disease or illness, often visible to others and measurable. Symptoms are subjective and determined by what a person feels or experiences. Others can identify a presenting sign, but usually only the individual can experience symptoms that are then communicated to others. Here are some examples of signs and symptoms, using common diseases familiar to many.

According to the Mayo Clinic, signs and symptoms of cancer can include fatigue, a lump or area of thickening that can be felt beneath the skin, unintentional changes in weight, skin changes, a persistent cough or trouble breathing, problems swallowing, or unexplained bleeding or bruising, among others. In comparison to cancer, high blood pressure usually does not have symptoms associated with it. According to the Cleveland Clinic, high blood pressure is often first discovered when a blood pressure reading is taken. Everyone should know what their blood pressure readings are and what they mean. The Cleveland Clinic explains it simply—“Your blood pressure reading has two numbers. The top number is the systolic, which measures the pressure on the blood vessel walls when your heart beats. The bottom number is the diastolic, which measures the pressure on your blood vessels between beats when the heart is at rest.”

This past year, we have had to deal with new and higher levels of stress than even before. According to the Centers for Disease Control and Prevention, stress can present as numerous symptoms, including feelings of fear, anger, sadness, worry, frustration, changes in appetite or desire, difficulty concentrating or sleeping, and increased use of substances like alcohol or drugs. Diabetes
also has signs and symptoms. According to the Mayo Clinic, they can vary depending on how much your blood sugar is elevated. Some of the signs and symptoms of diabetes include increased thirst, frequent urination, severe or extreme hunger, slow-healing sores or wounds, fatigue, irritability, frequent infections or blurred vision, among others.5

As your Bar president, I have closely observed what many of our members exhibited and shared as concerning signs and symptoms related to the health of the State Bar of Georgia over the course of this Bar year. With 52,000 active and inactive members of the Bar, you can imagine how difficult it is to parse the meanings of signs and symptoms and determine how much relevance can or should be given to any particular one. From my viewpoint, our Bar’s health status is in need of a checkup. It is nearly impossible, admittedly, to get 52,000 people on one page. The number and types of diverse views, backgrounds, experiences, beliefs and concerns certainly make it quite challenging to measure the state of our Bar’s health. What I do know, however, is that we as a Bar collectively have certain concerns that appear consistent over the years. Collectively, we exhibit signs of good stewardship, dedication and genuine concern for the status of our profession and the public that we serve. We also value our reputations as individual lawyers, as well as the reputation of lawyers as professionals, as held by the public. Yet the symptoms we face too often include a lack of tolerance for or willingness to understand and empathize with others who are very different from ourselves. As a Bar, we also celebrate a rigid hold on the past and what we often term “traditions.” A risk of our tight grip on the past is that it may inadvertently stifle our ability to move forward collectively, together, into a brighter future.
Most of us believe we have come such a long way; Bar members often reference the wall of past Bar presidents visible at the Bar Center in downtown Atlanta as a great example of how our Bar has evolved and progressed. Viewing the room at any Board of Governors meeting, looking at the leadership of the Executive Committee, you can see a rich mixture of race, geography and sexual orientation that reflects the diversity of our Bar. I would agree that we have come a long way. However, we have farther to travel to gain equality for all.

We are a mandatory Bar and a self-governing body. Every year the mission and goals we set for ourselves as a Bar include existing to foster among the members of the State Bar of Georgia the principles of duty and service to the public, improving the administration of justice and advancing the science of law. In order to support our mission and meet our goals, we must first communicate well. To do that, we need to establish common terms and use the same language. We must acquire the ability to identify and measure the signs we each exhibit; we need to understand each other’s symptoms and what they mean. That is how we will determine our health status as a Bar and how we will reach and maintain our collective “health.”

Communications through conversation is key to our collective health. The conversations we began last June, along with the work of the Bar through innumerable committees, sections, programs and events, and in Board of Governors meetings and Executive Committee meetings, will hopefully continue to increase our understanding and tolerance of our fellow Bar members, no matter how difficult those conversations may be. Through those conversations, we will better serve the public, improve the administration of justice and advance the science of law.

I am extremely proud of the work that we have completed together this year, in the face of unparalleled adversity, challenges and loss. I am especially proud of the work we have done together to support each other, individually and collectively as a Bar, including monthly “touch” wellness events and conversations about equality and social justice, while working remotely and facing a deadly global pandemic. In these and other ways, I am certain we have improved our health as a Bar.

As we move into the next Bar year, I pray that the hope and kindness we have learned to share with each other as human beings continue to grow. Such growth will only make us better lawyers, as we also become better citizens, with more in common than we know. It is also my hope that our future health status as a Bar illustrates that we are not only surviving, but that we are, in fact, thriving in new and different ways than ever before. Because now, having survived the past year, we have a better appreciation of what matters, what is important and what binds us together. Our health and well-being give us hope and allow us to propel our Bar forward. Let us continue to care for each other, our profession and our clients, to sustain a sound Bar well into the future.

Endnotes
The ability to accept payments online has become vital for all firms. When you need to get it right, trust LawPay's proven solution.

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In his often-quoted statement about lawyers’ duties, Thomas Jefferson said, “The study of law qualifies a man to be useful to himself, to his neighbors and to the public.” In a nation now recovering from the deadliest and economically-destructive health crisis of our lifetimes—while remaining in the grip of political, racial and social division—perhaps this is a time for those of us in the legal profession to heed the call for serving others more than ever.

“Some believe our nation has never been more complex, polarized and siloed than now,” writes Leah Teague, associate dean and professor of law at Baylor Law. “We need leaders who have vision, values, integrity and the ability to see beyond the narrow perspectives of one side. We need lawyers to step up and play more active roles in their communities.”

For many Bar members—including judges, prosecutors, public defenders, office holders, city, county and state agency attorneys, and others involved in government—public service is a daily, year-round endeavor. Some of us also devote an appreciable number of hours to pro bono legal service, which is an absolute must for low-income Georgians to receive legal presentation and have a fair shake in our justice system.

But those are by no means the only ways that lawyers can serve the public—as well as derive rewarding benefits from that service. Shayda Zaerpoor Le, writing for Law Practice Today, contends, “Even if you are engaging in community service that has absolutely nothing to do with legal representation at all, every hour that you spend out in your town or your city helps expand your relationship with the local community.”

For the past year, the Young Lawyers Division (YLD) of the State Bar of Georgia has kept our focus on doing just that. Under the social media hashtag #PurposeThroughService, our members have made the importance of public service, professionalism and leading by example a special emphasis during these trying times. I want to take this opportunity to celebrate some of our achievements over the past 12 months to better serve the state and our local communities.

**Poll Worker Program**

The YLD was able to recruit hundreds of attorneys to serve as much-needed poll workers and deputy registrars during the November 2020 general election and January 2021 Senate runoff. These Bar members risked their own health to help ensure our democratic process was able to continue during a time when COVID-19 numbers were rising to their highest levels. Each Bar member who volunteered with their county’s Board of Elections, completed poll worker training, worked at their local polling place on Election Day and donated their reimbursement check was eligible to receive six hours of CLE credit. This program has garnered praise from numerous groups, including leaders in our state and across the country. We hope to build on the success of this program in future years to continue to assist our communities.
Public Interest Internship Program (PIIP)
Poll workers were asked to donate their poll worker salary to the YLD’s Public Interest Internship Program to help continue furnishing grants to law students who complete an internship with a public interest organization. The PIIP Committee solicited applications for the summer 2021 PIIP grant from Georgia law students and recent graduates. This year, PIIP was able to award four grants, an increase over prior years due to the impact of the YLD Poll Worker Program. This will ensure that young lawyers or law students who dedicate their time to public service will earn a grant for their time and dedication.

Wills Clinics
The YLD’s Women in the Profession Committee hosted two separate month-long Wills Clinic for teachers, nurses, first responders and other frontline workers in the fight against COVID-19. The committee teamed up with Atlanta Legal Aid to prepare estate planning documents for these professionals. All YLD volunteers met virtually with their clients. Approximately 100 volunteer attorneys drafted and executed estate planning documents, each for at least one client.

Legal Food Frenzy
The 10th Annual Georgia Legal Food Frenzy, held April 19-30, was completely virtual for the second consecutive year. The competition raised more than $934,000 in online donations, setting a new fundraising record. Because food banks can turn $1 into four meals, this translates into 3.73 million meals for the 1.7 million Georgians who are food insecure. This year saw more teams compete than ever, proving once again that the

OFFICERS’ BLOCK

In this issue of the Georgia Bar Journal, we asked our YLD officers, “What is the most pressing challenge for the legal profession today?”

BERT HUMMEL | YLD President
The most pressing challenge is finding a way to safely open our courts for jury trials. However, right behind that is the continued slip of the practice of law into a business centered around the “billable hour,” which arguably keeps lawyers from holding public office and attributes to the ongoing mental health issues of attorneys.

ELISSA B. HAYNES | YLD President-Elect
I believe one of the biggest challenges facing the legal profession is attorney mental health. I do not think anyone would dispute the fact that our profession is stressful, and we need to find a better way to make sure our attorneys are both mentally and physically well.

RON DANIELS | YLD Treasurer
A waning of civility and collegiality amongst members of the profession. And those who refuse to adopt the Oxford Comma.

BRITTANIE D. BROWNING | YLD Secretary
The most pressing challenge is the need for flexibility during the pandemic. Lawyers must adapt to the technological changes while zealously representing their clients. A Zoom hearing is very different than in person, yet we are adapting to the new era to progress forward and meet client demands.

WILL DAVIS | YLD Immediate Past President
I think the public perception of the legal profession will always be a challenge. Distrust of the legal system is a huge issue among our population for varying reasons, and in today’s volatile political climate, it’s easy to misplace blame on lawyers because we are often the face of the system as litigators, judges and elected representatives.

ASHLEY AKINS | YLD Newsletter Co-Editor
Diversity in the workplace. Our profession needs to do more work to understand why diverse attorneys are most likely to leave the practice of law to pursue other opportunities, and we need implement strategies to help diverse lawyers succeed.

LAKEISHA R. RANDALL | YLD Newsletter Co-Editor
In light of repeated examples of social injustice, lawyers must lead the charge to address racial discrimination, protecting civil rights and garnering public trust in the judiciary process. The rule of law must be applied fairly and independently, above politics and personal beliefs. We must justly defend the Constitution.
Georgia legal community is committed to helping the public all across our state.

**Saturday Lawyers Program**
The YLD sponsored the Atlanta Volunteer Lawyers Foundation’s Saturday Lawyer Program. YLD members were recruited to assist low-income tenants facing eviction, poor housing conditions and other landlord-tenant issues via video or teleconference. Volunteers signed up for multiple clients during the program hours and were able to provide impactful results for a number of Georgians during their time of need.

**Record Removal Program**
The YLD Community Service Projects Committee recruited attorneys to provide low bono services at the Record Restoration Clinic. During the clinic, attorneys assisted clients with criminal records in the Chattahoochee Judicial Circuit with expunging their records. The clinic was a partnership between Access to Justice, the Georgia Justice Project, the Georgia Legal Services Program and the State Bar. The impact of this program cannot be overstated. Despite the minimal time commitment, it removes obstacles for obtaining housing, loans, employment and access to a better future.

**Landlord-Tenant Law Week**
The YLD Real Estate Law Committee observed Landlord-Tenant Law Week by hosting two virtual events. Erin Willoughby of Atlanta Legal Aid and Michael Dunham of Dunham Legal spoke about landlord-tenant law, landlord and tenant representation, and the CDC-ordered continuance of evictions in Georgia. As we navigate through the pandemic, relationships between landlords and tenants will remain strained as Georgians struggle to pay rent due to tense economic conditions. The YLD is committed to ensuring that the process is fair for both landlords and tenants as novel legal issues continue to arise in the midst and aftermath of this pandemic.

**Disaster Relief**
The YLD Disaster Relief Committee also expanded its reach to meet the needs of those potentially affected by natural disasters in 2020-21. The committee established new contacts with the Georgia Emergency Management Agency and identified regional contacts to assist in delivering legal services to the communities in the event that a disaster strikes. Perhaps more importantly, the YLD worked with the American Bar Association’s Disaster Relief Committee to update our game plan, programming and procedures to better equip our citizens with information prior to a disaster hitting Georgia. We look forward to building the relationships with the state of Georgia and the American Bar Association to bring our citizens fast-acting relief in the event of a natural disaster.

**Moot Court/Mock Trial**
The YLD also worked with law schools across Georgia and the Southeast to meet the need for virtual programming for advocacy programs such as moot court and mock trial. The YLD co-hosted the Region V National Moot Court Competition organized by the New York City Bar Association and the American College of Trial Lawyers. This nationally-recognized program brings out the best competitors in oral advocacy from law schools across the country. The YLD was able to recruit judges for every round to oversee this completely virtual competition.

**Secret Santa & Holiday Giving**
In December, the YLD held several charitable efforts to raise money and provide resources to those in our communities who were affected most by the pandemic. The YLD Community Service Committee encouraged YLD members to be a “Secret Santa” for some of the 8,000 children and youth in foster care in Georgia through the Georgia Division of Family & Children Services toy drive. Volunteers had the opportunity to give money online or purchase specific toys via a virtual shopping website. In March, the Leadership Alumni Committee hosted a virtual trivia and reunion to raise money for “No Kid Hungry Georgia” in an effort to ensure Georgia children continue to receive nutritious meals during the pandemic.

**Pandemic Experiences**
The new YLD Speakers Bureau presented “Persevering the Pandemic: Young Lawyers’ Experiences with Life During COVID-19” in March. Members of the YLD Board of Directors shared their own personal experiences encountered...
over the past year related to COVID-19, the election, social and racial injustice, and quarantine, followed by small group breakout rooms to foster further discussion. Participants in the small group setting were encouraged to share their stories and experiences, joining in on the cathartic feeling of expressing themselves and discussing their own challenges.

Judicial Bias CLE
On March 19, Dr. Ansley Booker, director of diversity and inclusion initiatives at Mercer University, conducted the “Bias in Judicial Proceedings” CLE. All YLD officers, directors, representatives and affiliate leaders were asked to attend this CLE to receive the benefits of the implicit bias training, including enhancing their consciousness of bias in judicial proceedings in an effort to better serve clients, communities and the legal profession. Several hundred young lawyers attended the session in total. After the CLE, the YLD Inclusion in the Profession Committee hosted breakout sessions that built upon the lessons from Dr. Booker’s presentation. Several leaders from the YLD led breakout rooms fostering positive and constructive conversations. The committee is also working on establishing a network of mentors for their members who can assist in their professional development.

Attorney Wellness
The YLD continues to promote wellness at each of our general sessions and committee meetings. Not only have we encouraged participation in physical activities, the YLD has also hosted speakers on wellness topics at a number of our meetings. Our programming is designed to remove the stigma associated with discussing mental health issues and to encourage participation in State Bar programs such as the #UseYourSix campaign, the Attorney Wellness Committee and other resources within the Lawyers Living Well program. Additionally, we offer monthly opportunities for wellness activities, and The YLD Review has at least one article dedicated to wellness topics.

In Closing
As 2020-21 Bar year comes to an end, and I prepare to place the president’s gavel in the capable hands of Elissa Haynes, I would like to thank our YLD officers, directors, committee chairs and all young lawyers who stepped up in #PurposeThroughService to strengthen our communities, our organization, the legal profession and the justice system. The YLD is filled with enthusiastic, capable and persevering lawyers who rose to the challenges encountered this Bar year and propelled the program to new heights.

I also appreciate all of the support the YLD received this year from the bench and bar, as lawyers and judges alike lent their expertise to the benefit of our YLD members. That encouragement and mentorship is appreciated beyond measure. I hope that mentorship will continue in the years to come. It has been my distinct honor and privilege to serve with each of you.

... I would like to thank our YLD officers, directors, committee chairs and all young lawyers who stepped up in #PurposeThroughService to strengthen our communities, our organization, the legal profession and the justice system.
Without a doubt, one of the best parts of this job is the opportunity to travel around the state and meet with judges and lawyers where they are. It remains important for me to get a sense of their work and the issues that are important to them, as well as to hear their suggestions and ideas that could potentially help their colleagues elsewhere.

On top of that, this has become a time when, as we slowly emerge from restrictions for in-person gatherings, it’s feeling really good to be back together again. This is especially important if the events are safe and if a member tells me that he or she has been vaccinated or flashes their card.

So it was at the Council of State Court Judges conference in May that the basis of this article found its genesis. Special thanks to Judge Russell McClelland of Forsyth County, Judge Alvin Wong and his wife Jeannie Lin of DeKalb County, and Judge Stacey Hydrick of DeKalb County for letting me listen to their conversation and take their advice to remind other Bar members of these things for our brave new world.

While it is encouraging to hear that Zoom or similar teleconferencing platforms will have their place going forward, you’re still in court. If you’re not in court, you are negotiating a deal for the acquisition of a large manufacturing company. Or, you may be providing advice and guidance to your county commissioners or other local elected officials. No matter what you are doing, what I heard is that it may be time to ditch the yoga pants and be aware of your surroundings as you represent the best interest of your clients, however that may be.

But that wasn’t the only lesson learned that night. We have to re-indoctrinate ourselves. Social events and other gatherings will have a mix of people who are comfortable with where we are, and some who never thought the idea of a handshake was a good idea in the first place. Regardless, we have to meet people where they are and get the job done right.

As active members of the Bar, it is incumbent on us to stay current on new and evolving legal theories and state of the law. One obvious way to do so is by fulfilling our annual continuing legal education requirements. The quality programs and seminars the Bar offers through the Institute of Continuing Legal Education are specifically intended to keep lawyers abreast of the changing landscape of state and federal laws and professional rules and regulations.

As ICLE transitions from COVID-19-era virtual programming back to in-person CLE programs over the next year, lawyers are still authorized to earn any or all of the required 12 hours for this year through self-study, in-house or distance-learning CLE activities, so long as those activities otherwise satisfy CLE regulations, through March 31, 2022. Our ICLE
department has worked hard to adapt and adjust, and will continue to evolve to support the needs of our members, sections and other stakeholders. Take advantage of them. Visit www.gabar.org/icle to keep track of the latest programming and CLE-related news.

In addition to livestream and in-person programming, ICLE maintains a library of webcasts on a multitude of topics with new content uploaded periodically for members to fulfill or go beyond CLE requirements virtually and on demand. You can find a list of available webcasts on the Bar’s website, www.gabar.org/webcasts.

Fastcase, our comprehensive, nationwide law library and legal research tool, can also help Bar members stay current on case law, statutes, regulations, court rules, constitutions and law review articles. Fastcase is a free benefit for Georgia lawyers that you can access through our website at www.gabar.org/fastcase.

The rules that govern our profession are always top of mind for us as lawyers. The Bar’s website maintains up-to-date ethics rules for Bar members, which can be found in the online handbook located at www.gabar.org/handbook.

Perhaps the best way of keeping up with what is going on in the law is the power of good, old-fashioned networking. The pandemic took away the vast majority of opportunities to meet new colleagues, share ideas and swap “war stories,” but only temporarily. In-person meetings, slowly but surely, are making a comeback.

Whether it’s a Bar committee or section meeting, circuit or specialty Bar association event, or large conference like our Annual Meeting, simply being around fellow lawyers and judges you don’t see every day in your office or the local courthouse builds a network to expand your circle of social interaction and professional knowledge.

If you’re interested in expanding your network or, better yet, laying the groundwork for leadership in the profession, the State Bar offers numerous opportunities to do so. Join a Bar committee of interest to you or the Bar section that fits your practice area. Become more involved and present at meetings of your specialty association or, if you qualify, get involved in the Young Lawyers Division. The benefits of getting to know, talking to and listening to fellow Bar members from other parts of Georgia—like my recent experience at the State Court judges’ conference—cannot be overstated.

Last but not least, our Law Practice Management Program is here to help by providing resources, references and relevant information for keeping up with changing times and growing your practice as we move past the challenging stages of the COVID-19 pandemic. Whether you are reopening your physical office or are continuing with full or partial remote working options for your staff, we’ve got you covered. You can learn more about robust offerings of the Law Practice Management Program at www.gabar.org/lpm.

The Law Practice Management Program also maintains a library of books, videos and audio resources on a wide variety of topics related to developments in law office management and technology. We also have a team of consultants who are ready, willing and able to evaluate your existing office management procedures, make recommendations and connect you with the resources that fit your firm’s needs during this period of transition.

Your Bar staff is also adjusting to a new normal at our Bar Center headquarters in Atlanta, as well as our Coastal Georgia Office in Savannah and South Georgia Office in Tifton. Thank you to the lawyers in our satellite office locations who helped us over the past few weeks, as we were able to move forward faster there. They showed us the way on coordinating appropriate social distance measures and other safe practices.

We look forward to seeing you at the Bar Center. We never stopped working, and we now have a few more faces in the building on a regular basis. Let us know how we can help.

And when you’re here, I hope you will stop by and see me. We want to be part of your network! DEE ●
No. It Does Not (Speak for Itself, That Is).

Judges have complained about the response “the document speaks for itself” for decades. Nonetheless it persists, along with its cousins, “calls for a legal conclusion” and “strict proof demanded.” This article discusses the use of these phrases, why they should be avoided, and suggests options if your adversary employs them.

BY ERIKA BIRG, LUCAS WESTBY AND ALEX PISCIARINO

“The document speaks for itself”

“[N]onsensical ...”
“[A]n amorphous nothing ...”
“[P]seudo-response[] ...”
“[A] faux-answer.”

These are just some of the pejoratives deployed by Judge William O’Kelley, then senior district court judge serving the U.S. District Court for the Northern District of Georgia, to condemn the use of the phrase “the document speaks for itself.”

Judges have complained about the response “the document speaks for itself” for decades. Nonetheless it persists, along with its cousins, “calls for a legal conclusion” and “strict proof demanded.” This article discusses the use of these phrases, why they should be avoided, and suggests options if your adversary employs them.

The Rules

Under O.G.C.A. § 9-11-8(d), if you fail to deny an allegation that requires an answer, the allegation is admitted. Of course, do not require a response: answers to amended complaints, answers to cross-claims, answers to counterclaims and replies to answers. Georgia appellate courts also do not require an answer to specific types of allegations within pleadings, particularly (i) amounts of damages (which are mentioned in the rule) and (ii) prayers for relief.

The Federal Rules of Civil Procedure (“FRCP” or “Federal Rules”) differ slightly. FRCP 8(b)(6) says, “[a]n allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, then an allegation is considered denied or avoided.” The Federal Rules do require answers to specific allegations in cross-claims, counterclaims and amended complaints.

The Document Speaks for Itself

The origin of “the document speaks for itself” is not entirely clear, but it may derive from the best-evidence rule, embodied in Federal Rules of Evidence 1001 through 1008, and Georgia’s ana-
... neither the Georgia nor the Federal Rules allow for “the document speaks for itself.” This makes using the phrase risky and chances an order requiring an amended or repleaded answer.

There are no other options.

As a result, neither the Georgia nor the Federal Rules allow for “the document speaks for itself.” This makes using the phrase risky and chances an order requiring an amended or repleaded answer.

The response is also evasive and wasteful as it potentially delays the trial process with unnecessary argument over the sufficiency of pleadings and the time needed for repleading. Recognizing this, one court ordered an attorney who repeatedly answered “the document speaks for itself” not to charge the client for the fees incurred opposing the adverse party’s motion to strike or filing an amended answer.

Worse yet for counsel and client, though, is the risk that the trial court grants a motion to strike or considers the adverse party’s allegations admitted. Courts in other jurisdictions have done so.

One Connecticut court, when confronted with this language, sought authority for the phrase “speaks for itself,” and found legitimate use of the phrase when discussing the tort concept of res ipsa loquitur, or when interpreting an arguably ambiguous statute.

Finding no precedent for employing the phrase to respond to a pleaded allegation, the court deemed each allegation to which the phrase responded admitted. Similarly, a federal court in Virginia deemed admitted characterizations of 34 emails to which defendants responded that they speak for themselves.

To be safe, if you feel you absolutely must employ “the document speaks for itself,” add a clear denial of the allegation.

Better yet, though, avoid it. If you find yourself disadvantaged by an opposing party who uses it in place of a clear admission or denial, consider moving to strike the language under FRCP 12(f) as “redundant, immaterial, [or] impertinent.”

Calls for Legal Conclusions

Evasive responses are not limited to “the document speaks for itself.” Saying that an allegation in a pleading or discovery request “states” or “calls for a legal conclu-
“States a legal conclusion” also may spring from the rule that plaintiffs must do more than state legal conclusions in a federal court complaint. Plaintiffs have long had to plead sufficient facts to give the defendant fair notice of the nature of the claim, and the heightened pleading standards established in the Supreme Court’s Bell Atl. Corp. v. Twombly and Ashcroft v. Iqbal decisions required pleading facts that plausibly show plaintiff is entitled to relief.

Yet the Georgia and Federal Rules say nothing about disregarding legal conclusions when responding to a complaint, and courts may require a response. “Legal conclusions are a perfectly proper part of a plaintiff’s allegations” and “[a]ll allegations must be responded to,” including those that state legal conclusions. Courts have enforced this requirement, including courts within the U.S. Court of Appeals for the Eleventh Circuit. Thus, know that in federal court, a response that refuses to answer an allegation because it “states a legal conclusion” is “impermissible under the plain language of Rule 8(b).”

Like with “the document speaks for itself,” courts may deem “states a legal conclusion” responses to be admissions, order repleading, or (where paired with a sufficiently clear denial) simply strike the offending language.

“Failure to outright deny allegations of jurisdiction, for example, could be critical if the defendant wants to challenge that issue, since failure to include that defense in the answer constitutes a waiver.”

References to legal conclusions are also sometimes put forward in response to requests for admission. There, requests to admit to “pure conclusions of law unrelated to facts are objectionable” under FRCP 36. A party may however properly request that any other party admit “the application of law to fact.” Thus, counsel should scrutinize the requests for admission, answering only those requests in compliance with FRCP 36.

Here again we see a circumstance in which the most prudent response is to admit, deny or “state in detail why the answering party cannot truthfully admit or deny” the allegation.

Strict Proof Demanded

Like the above, the phrase that a defendant “demand[s] strict proof” has “no place in a properly plead answer.” The phrase “strict proof” is meaningless ("whatever that is," as one judge wryly wrote). And demands for strict proof fail for the same reasons that “the document speaks for itself” does. Such a demand is, as one federal court put it, a “depart[ure] from Rule 8(b)’s plain roadmap” and is “unknown to the federal practice or to any other system of modern pleading.” Here again, courts may order repleading or grant motions to
strike the non-responsive language and deem the responses to be admissions.51

Even pairing an unequivocal denial may not save an answer if it comes with a demand for strict proof. One federal court found a demand for strict proof coupled with a denial to be “oxymoronic,” where it was used to assert that the defendant “lack[s] even enough information to form a belief as to the truth of an allegation (as Rule 8(b)(5) requires), then proceed[s] to deny it.”52 The offensive language was struck, but the litigant was granted leave to amend.53

The Supreme Court of Georgia has held firm against demands for “strict proof” in answers as far back as 1855. That year, in Miller v. Saunders, one defendant neither admitted nor denied the accuracy of a marriage contract but asked that the plaintiff “may be held to strict proof.”54 In no uncertain terms, the court held this answer was “improper,” “insufficient” and “evasive,” and directed that the defendant “should answer as interrogated, according to his knowledge, information, and belief.”55 Today, calls for strict proof are rare in Georgia pleadings. In one 1992 debt-collection lawsuit, however, one corporate debtor answered a request for admission by asserting that it was “unable to either admit or deny [that it owed the alleged sum] but demands strict proof thereof.”56 The creditor prevailed on summary judgment soon thereafter, and the debtor appealed.57 The Court of Appeals of Georgia concluded that the debtor’s appeal, where the allegation regarding the debt was not denied properly, “was so palpably without merit as to admit of no other conclusion than that it was filed for purposes of delay.”58 The appellate court ordered sanctions against the appellant-debtor under O.C.G.A. § 5-6-6.59

Unclear Affirmative Defenses
Issues of insufficient pleadings go beyond these phrases. Challenges to answers can arise as much from what they do not say as what they say. Answers often contain affirmative defenses that contain too little information to be comprehensible to the court or are not affirmative defenses at all.

The Eleventh Circuit has not yet ruled on whether the heightened pleading standards of the Supreme Court’s rulings in Twombly and Iqbal (requiring that the plaintiff plead facts that plausibly show the plaintiff is entitled to relief) apply to affirmative defenses.60 As a result, in Georgia federal courts, the pleading standard for affirmative defenses is typically less stringent than the standard applied to pleading a claim for relief.61 But like their rival football teams, Georgia and Florida are divided on this question, with several Florida federal district courts using the Twombly/Iqbal framework to review affirmative defenses.62

Even without applying a heightened pleading standard, however, affirmative defenses must “respond directly to a particular cause of action” and “provide an adequate factual basis” sufficient to give the court fair notice of the substance of the defense.63 One cannot plead a “laundry list” of every possible affirmative defense regardless of the facts of the case.64 Affirmative defenses that are mere “bare bones conclusory allegations” are vulnerable to a motion to strike.65

Additionally, an affirmative defense must be “affirmative,” meaning it is “something that, if proven, will reduce or eliminate a plaintiff’s recovery even if the plaintiff established a prima facie case.”66

Defenses that merely “negate an element of the plaintiff’s prima facie case,” do not qualify as such,67 and are sometimes called “negative defenses.”68

Since the passage of a 1948 rule amendment, FRCP 12(f) motions to strike are the primary mechanism for challenging insufficient defenses.69 Affirmative defenses that merely argue the facts are more vulnerable, such as those claiming that the defendant did not know of any fraudulent activity, and that the plaintiff pleaded a “shotgun complaint.”70 Federal courts have shown a willingness to strike such so-called defenses.71 And motions to strike may be paired with a motion for a more definite statement under FRCP 12(e). If a responsive pleading is required, and an improperly pled affirmative defense is too vague or ambiguous for a response, then a motion for a more definite statement can require the opposing party to clarify.72

But challenging affirmative defenses may not be worth the fight. Courts dislike motions to strike defenses, tagging the relief a “drastic remedy.”73 Thus, courts often will treat mislabeled “affirmative defenses” as specific denials of particular aspects of a complaint or other filing.74

Georgia state courts—with Georgia’s more lenient notice pleading standard—are more forgiving.75 The notice pleading standard requires that defendants plead affirmative defenses to “prevent surprise and to give the opposing party fair notice of what he must meet as a defense.”76 So long as the affirmative defense meets this threshold, Georgia courts typically will not strike them and instead allow an “implied amendment” of pleadings to add affirmative defenses that the adverse party had notice of through other means.77 This implied amendment can occur any time before the pretrial order.78

O.C.G.A. § 9-11-8(f) also contains language providing that “[a]ll pleadings shall be so construed as to do substantial justice.”79 This catch-all provision encourages Georgia judges to exercise leniency on pleadings, even those they acknowledge are “not a model of clarity.”80 Again however, the best practice is to plead affirmative defenses clearly.

Conclusion
Pleadings and requests for admission serve important roles. They inform the court about which matters are contested. Although giving unclear responses like “the document speaks for itself,” or “states a legal conclusion,” or “strict proof demanded” may seem convenient, these responses deny the parties and the court clarity. Moreover, these responses risk unnecessary motion practice, and their avoidance promotes judicial economy, saving both the court and clients time and expense. Thus, when responding to pleadings, usually the right answer is to answer.

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Endnotes
2. Id. at *12.
3. Id.
4. Id.
5. Id.

7. O.C.G.A. § 9-11-8(d) (2019); Universal Underwriters Ins. Co. v. Albert, 248 Ga. App. 415, 416, 546 S.E.2d 361, 362 (2001) (noting that "[a] consequence of these pleading rules" is that complaint allegations — "other than those as to the amount of damage”— are admitted if not specifically denied).
12. Drug Emporium, Inc. v. Peaks, 227 Ga. App. 121, 128, 488 S.E.2d 500, 506 (1997). Many practitioners still believe that—out of an abundance of caution—amounts of damages and prayers for relief still warrant a denial (i.e., a denial that the relief requested by the plaintiff is warranted). The authors agree this may be better practice, but responses are not technically required.
14. See Id.; 61 A. Am. Jur. 2d Pleading § 355 Westlaw (database updated October 2020) (‘A response to a cross claim, like an answer to a counterclaim, is usually required under trial rules, and the effect of failure to answer and deny is that—out of an abundance of caution—the averments of the pleading will be deemed admitted.’).
17. Id.; see, e.g., Sec. & Exch. Comm'n v. Watkins, 317 F. Supp. 3d 1244, 1251 n.2 (N.D. Ga. 2018) (rejecting defendant's objections to statements made about a document on the grounds that an actual document in evidence was the "best evidence" and "speaks for itself").
18. Erika Birg, Documents Don't Talk, 17 Pretrial Practice & Discovery 4 (Fall 2008).
which quotes an answer asserting that a pleaded paragraph "states a legal conclusion ... and requires no answer."


32. Id.


36. Ashcroft v. Igbal, 556 U.S. 662, 679 (2009) (requiring that pleadings contain sufficient facts that, when accepted as true, state a facially plausibly claim to relief); Bell Atl. Corp. v. Twombly, 550 U.S. at 545 (2007) (requiring pleadings contain "enough facts to state a claim to relief that is plausible on its face" in order to survive a 12(b)(6) motion).


In one Idaho condemnation case, the court refused to strike a defendant's answer to a portion of a complaint that plead that application of a particular statute in a condemnation case. 45.43 Acres of Land, 2009 WL 1605127, at *6 (D. Idaho June 4, 2009). The defendant asserted that the portion of the complaint "requires a legal conclusion," and the court agreed, calling it a "question for judicial review." Id. at *7.


47. See Moise, at 52, 55 ("[T]he safer path to follow would be to outright admit or deny the legal conclusions."); see also FRCP 36(a)(4) (dictating permissible responses to requests for admission).


53. Id.


55. Id.


57. Id. at 45.

58. Id. (internal quotation omitted).

59. Id.


64. *Id*.
67. In re Rawson Food Serv., Inc., 846 F.2d 1343, 1349 (11th Cir. 1988).
69. Prior to 1948, courts were divided on the question of what kind of motion was the proper test of the sufficiency of an affirmative defense, although an attack was permitted “in one way or another.” 5C *Arthur R. Miller, Mary Kay Kane, and A. Benjamin Spencer, Fed. Prac. & Proc. § 1381* (3d. ed. Oct. 2020 update).
71. *See, e.g.*, *Id*.; Tomason, 297 F.R.D. at 549 (striking a so-called “affirmative defense” that amounted to an allegation that plaintiffs violated Fed. R. Civ. P. 11 by advancing meritless claims).
72. 5C *Miller, Fed. Prac. & Proc. § 1377*.
73. Gomez, 411 F. Supp. 3d at 1335 (internal citation omitted).
78. In some cases, courts have even found that implied amendment of pleadings was allowed or should have been allowed during trial. *See, e.g.*, Hathaway, 214 Ga. App. at 320 (holding that the jury should have been instructed in the statute of frauds even though it was never formally raised as an affirmative defense where opposing counsel had been given verbal notice that the defense would be raised a week before trial.); Westmoreland v. JW, LLC, 313 Ga. App. 486, 492, 722 S.E.2d 102, 106 (2012) (holding that a defendant in a bench trial for unpaid rent had consented to the implied amendment of pleadings to include a claim for additional unpaid rent accrued after the filing of the complaint by failing to make a contemporaneous objection to the introduction of evidence of that unpaid rent).
Cobb County was carved from the enormity of Cherokee County in 1832, and Marietta was laid out as the county seat in the following year. A crude log courthouse was built, and a frame court building replaced it in 1838. In 1842, only four years after Marietta’s frame court building was completed, the first train made the journey from Terminus (Atlanta) to Marietta, and 10 years later a grand Greek Revival Cobb County Courthouse was erected at Marietta in the so-called the “peripteral style,” featuring columned porticos without pediment on all four sides.

Marietta’s 1852 temple of justice was built of brick on the north corner lot adjacent to the square, which was left an open park after the removal of the 1838 frame structure. The columns, and perhaps the outer walls of the building, were stuccoed white, and a graceful double-arched stairway ascended to the second story courtroom entrance. The building reflected not only the Southern solidarity of cotton and the attendant agrarian ideal, but in Marietta it stood for substantial growth as well.

By the time General Sherman arrived in 1864, Marietta was no stranger to fire. The town had experienced devastating fires in 1854, ’55 and ’57. But on Nov. 13, 1864, only four days after Sherman’s standing field orders restricting the destruction of private property were issued, Union troops burned not only the depot and warehouses, but more than 75 other buildings in Marietta. The courthouse was not spared. There is considerable documentation that Sherman himself, along with other Union officers, was appalled by the malicious burning at Marietta, but were unable to put a stop to it. Major Henry Hitchcock, a member of Sherman’s staff, records in his diary that originally guards were posted to prevent unauthorized burning and vandalism, but when the guards “left with the column,” much destruction followed despite active efforts by Union officers to extinguish the flames. Hitchcock’s diary relates that Kilpatrick’s aide, Major Rea, had personally attempted to save the courthouse. He “had three times put it out and tried hard to save it; but was kindled in the lathes under the plaster and ‘twas no use.”

The next morning Marietta was in ruin, and all that remained on the north corner of the square were the blackened remnants of a few once stately columns.

The charred columns of the 1853 Cobb County Courthouse would stand for eight years as solemn reminders of a South that was no more. But by 1870, Marietta had rebounded like few places in Georgia, and her population stood at around 2,500 with one of the largest flour mills in the state, a chair factory, paper mill, planing mill and tannery. The blackened columns of the old courthouse were finally torn down in 1872 to make way for a new courthouse.

The 1872 courthouse at Marietta was a charming mixture of two primary antebellum architectural forces: the brick vernacular cube, with its Federal Style underpinning, and the Greek Revival. William Hunt, who is credited with the design, was probably a local builder. Apart from the clock tower, the building is strongly reminiscent of the work of Robert Mills in South Carolina 50 years earlier: a high second story set atop a low first, with a pedimented portico supported by four columns resting on a base of powerful masonry arches. The main body of the building, however, recalls the simple lines of the two-story, brick vernacular with its hipped roof and high arched second story windows.

Having almost doubled its 1870 population by the turn of the century, Marietta had grown into a town of almost 4,500 persons. A knitting mill and a foundry
had been added to the town's list of manufacturing concerns, and a handful of new railroads had been chartered. In 1898, The Western and Atlantic built a stylish brick depot just one block off the square in Marietta, and by 1899, riding a peak of railroad euphoria while bemoaning the inadequacies of the 1872 court building, three successive grand juries had recommended a new courthouse.

Despite her considerable success, Marietta’s dreams of railroads, industry and growth were not so wild that they warranted a completely new courthouse, but they were sufficient to radically enhance the town’s self-image and to create enthusiasm enough to completely rebuild the old building. In truth, the renovation was so extensive, especially regarding the exterior styling, that it was a remodeling in name only. J. W. Golucke’s design called for a completely new Romanesque facade, a grand clock tower and a large addition to the rear of the building. This, along with a Richardsonian “facelift” on the sides, resulted in an old structure effectively encased in a new one.

Here at Marietta, we find Golucke’s most purely Richardsonian effort in Georgia. This was the Atlanta architect’s fourth Romanesque effort, and it owes much to H. H. Richardson’s celebrated Allegheny County Courthouse in Pittsburgh, arguably the dominant Romanesque, American court building of the era. Richardson’s influence on Golucke’s design at Marietta is unmistakable. The thin verticality of the tower with its soft tourelles and its slot-like linteled windows; the window groupings offset by the large arched openings pointing to the major interior spaces; the polychrome accomplished here by white marble architraves and other marble details against a ubiquitous background of red brick are all distinctly Richardsonian elements, as are the pedimented dormers in the French Renaissance Style and the columnettes supporting the triple arched entrance.

Alas this was Marietta, not Pittsburgh, and J. W. Golucke, remarkable as he may have been, was no Henry Hobson Richardson. Part of the appeal of Richardson’s buildings comes from a sense of mass and power born of function. The ornament, although rich, rarely calls attention to itself, and only existed in careful and correct support of the whole. In this regard, Golucke sadly missed the mark in Marietta. The flat walls pressed the decoration upon the beholder, and the contrast of white marble against ordinary brick lacked the rich subtlety of Richardson’s favored textured, rough-hewn, rosy granite and rich, dark stone. Richardson’s buildings appear to be single-minded expressions of a complete thought. Golucke’s Cobb County Courthouse appeared complicated. The master’s vocabulary was here, but the building babbled in a language not fully understood. Nonetheless, the 1899 remodeling of the Cobb County Courthouse spoke well for Marietta at the turn of the century, and all of Georgia is the poorer for its destruction in 1959.

I remember very little of Macon, Georgia, the city where I was born and spent my first nine years. I do remember our house was a modest two-story home with a screened-in porch overlooking a small front yard with a large white oak tree. In the summertime, my mother would sit in a chair on the porch, waiting for my father to return from work, and I would sit in the shade of the oak, whit- tling twigs down to nothing with a small folding pocket knife that I still carry.

I also remember the Ocmulgee River and skipping rocks across its lazy surface. Five, six, seven skips, the distances between splashes growing shorter after each skip until, finally, the river claimed my rock. I listened to the cicadas as I watched the expanding wavelets from the splashes disappear. The sounds of the cicadas, the splashes and the voices of friends forgotten counting the skips were all a symphony to the young boy I once was. I have never been back to the banks of the Ocmulgee River, but I carry that little piece of shoreline and water with me. Any place that touches you enough to gain a memory stays with you.

My father was also born in Macon. He left Macon twice: the first time to go to college and then to law school, and the second time to move to North Dakota. He returned from law school to work as a prosecutor, a position he held for five years before opening his own practice as a defense attorney in the early ’60s. He never returned to Macon after we moved to North Dakota in 1969, nor did he ever return to the South or practice law again.

My father never discussed his work with me; I knew he was a lawyer and that he had trials, during which he would not return home until late in the evening and would be gone by the time I came downstairs for breakfast the following morning. He usually appeared to be very happy for a time immediately after each one concluded. Sometimes, after a trial, he would come home late in the evening smelling of cigar smoke and alcohol, and he would regale my mother by retelling certain examinations of witnesses that he or one of his partners conducted. That man in Macon I remember as not just my father but as some confident giant, his presence amplified by frenetic gestures as
A few days after my father’s strange display of diffidence and frailty, I noticed something quite unusual in the study. The distinctive red picture frame sat on his desk. I walked into his study and lifted the frame for a closer look.

He recapitulated in his deep, earthy voice the cross-examination of some witness.

Several months before we moved north, I came into the dining room to find my father sitting at the table, leaning forward, his forehead resting on his clasped hands. On the table was an open box with a red picture frame and an envelope. A sheet of green paper marked by neat cursive writing extended from the envelope. The picture frame lay face down on the table. My mother sat beside my father, her hand resting on his back and moving slowly in a circle.

“Oh, Samuel,” she said. Her voice was soft and flowing, and even though her words were not meant for me to hear, they still touched me like a warm, gentle wind. My father was a tall, broad man, but as he sat there, hunched over, receiving her caress, he seemed so much smaller than my mother.

She looked to me as I stood in the doorway, and she slowly shook her head “no.” She was asking me to leave the room. There was a softness in her eyes that one might perceive as sadness, but that would have been a mistake. It was kindness, the type of kindness that one offers not for comfort but to bear another’s burden.

I went outside. It was a hot June day, as was normal in Macon that time of year, but nothing seemed in place. My father had always been confident and self-assured, and the only time my mother used such a consoling voice was during my own childhood moments of despair. Confused, I walked down to the river and skipped rocks.

When I returned home, my parents were sitting close together on the porch. I took my usual spot beneath the white oak and found a freshly fallen twig to whittle. The air was still, and the cicadas were quiet that evening. My parents spoke in muted voices, my father occasionally punctuating their collective murmurings with sudden intonations evocative of both grief and doubt in a voice that no longer rolled like some faint thunder but instead seemed timid and reedy in half-whispers. Looking back on it now, it was as though my father was revealing to my mother vulnerabilities and insecurities he’d kept hidden for some time.

My father had a small study in the house. In it was an office desk and several bookshelves that held books of little interest to a 9-year-old boy—legal texts and a few novels. He would often sit at his desk with an open legal text and a pencil, methodically marking some brief or memo. His office was otherwise spartan; no pictures hung from the wall, and no knick-knacks or paperweights littered his desk or bookshelves. It was a place to read or write without distraction.

A few days after my father’s strange display of diffidence and frailty, I noticed something quite unusual in the study. The distinctive red picture frame sat on his desk. I walked into his study and lifted the frame for a closer look.

In the frame was a black and white portrait photo of a very young black man. He was wearing a suit with a white shirt and thin tie. It was the kind of photo one might find in a high school yearbook. The lighting cast a slight shadow beneath the man’s chin. He was thin and his hair was neatly cropped short, as was the style of that time. His eyes seemed alert, almost accusatory, but in a friendly way. His lips were slightly parted, as
though when the camera shutter closed, he was just starting to form the first of many words. There was an easy confidence in this young man’s expression that impressed me.

I stared at the photo for a minute or so and then carefully placed the frame back down into the same position on my father’s desk. Why did my father choose to have this man’s photo in his study, in favor of a photo of his wife or son? My thoughts were fueled not by jealousy but by curiosity. I thought of asking my parents about the photograph, but then I recalled its dubious provenance. The image of my father resting his head against his clasped hands and my mother showing him a tenderness that I had never imagined a man such as my father could ever want to receive or need, instilled within me a reticence that overcame my curiosity.

A few months later, my parents called me into the kitchen. They were both sitting at the table, and they asked me to sit down. I sensed that no matter what my parents were about to tell me, I was not going to like it. Their announcement, however, was beyond even the boundaries of a young boy’s imagination.

“We’re moving to North Dakota,” my father said. He spoke slowly, his voice flat. His eyes were slightly bloodshot. He explained that he had decided to become an English teacher, and he had a position in a small town near the Canadian border.

“North Dakota?” I asked.

He looked at me for some time, silent. My mother sat beside him at the table. Her right hand rested on his forearm and her thumb slowly and gently moved across his skin.

“I don’t expect you to understand,” he said, finally. “We just decided it was best if I had a new job.”

In his eyes, I could see the desperation. I was only nine, but I knew that this man needed me to agree and to forgive him. It was the first time I thought of my father as weak, and for making me think of him that way, I became angry.

“This is stupid!” I yelled. “I don’t want to go!”

“We ... I need a new start. I’m sorry,” my father said. Then his voice changed, and he spoke with finality. “We’re moving in two weeks. Take that time to say goodbye to your friends.”

He stood up and walked out of the kitchen, leaving me with my mother. “It needs to be this way,” she said.

My parents purchased a small hobby farm several miles outside of the small town of Rolla, North Dakota, where my father would begin teaching English in the fall. Moving from the Macon, Georgia area to a farmstead with a barn and Quonset was not as traumatic as I feared. The farmstead was mostly wooded, unlike the endless wheat fields that covered most of the northern part of the state, and there were plenty of places for a young boy to explore. A local farmer grew durum wheat in the massive fields surrounding the small farm.

It was the elasticity of youth and my Southern accent that spared me of loneliness and despair. Despite my new hometown having a population of fewer than 1,500 people and my fourth-grade class having only 29 students, I made many friends. My fellow students found my accent fascinating. I missed my friends in Macon, but soon, their names evoked my memory only faces faded into muted apparitions.

Even though I did not want for friends, I still felt as though I were in a foreign land. I imagined myself a traveler of sorts. At night in the summers, the temperature would fall to the 50s, which I was accustomed to occurring only in late fall or early spring in Macon. There were no cicadas—mostly just mosquitoes, wood ticks and strange, flat insects called box elder bugs. The winds blew constantly.

By late August, the farmers were preparing for harvest. Rows of amber wheat swayed in the breeze. The stalks glided against each other, creating susurrations of faint whispers that rose from the fields. The heads of the swaying stalks formed shifting runes, both indecipherable and evanescent. When the harvest started, the combines ran day and night, massive teams of beasts with diesel engines that shook the earth and drone with a low rumble that could be heard miles out. At night, beneath a brilliant starscape, lights from the combines cast rays of dust-tinted beams.

By the end of September, the harvest was complete, and the days grew suddenly cold. This would be my first winter in North Dakota. I imagined the upcoming season as some great, primeval beast that slumbered deep beneath the fields and would soon awaken and devour all the warmth and light that the sun could give. I began to wonder if I would be introduced to a secret ritual known only in these parts, where people spoke in a strange tongue and offered a sacrifice to endure the long winter. But the only ritual that materialized was a shopping binge for winter clothes—parkas, thermal underwear, snow pants, winter boots, ski masks, ear muffs and mittens.

By December, the fields were white with snow. As darkness fell in the late afternoon, the temperature would fall below zero. Featureless snowfields surrounded our farm. I would don my winter clothing and go for long walks. Deep tracks marked my path as I walked through the snow. Eventually, my cheeks would start to numb and my nose would run, signaling it was time for me to head back home. I followed my tracks for my return, pretending at times to relive my experiences in reverse or imagining myself off in the distance at an earlier time, walking toward me through some portal. I would come face to face with my past self, and we would stare at each other, each person different, one of the past and one of the present. One would always speak. Sometimes it was the person of the past, and he would ask me, “Have I changed?” Other times it was me, the person of the present, and I would ask, “Who were you?”

My walks in the snowy fields blossomed my introspection. It was then that I developed the habit of asking these questions under my breath or in my inner monologue when retracing my steps during the day. A mental tic, a simple habit still with me today, silly questions uttered when unlocking my car door after a day at the office.

The most stirring memory I have of that first winter is from a bitterly cold January night in 1970. The moon was
waning but still bright. My bedroom faced a field on the edge of our farm, and after midnight the moonlight reflecting off the snowfields illuminated the landscape so that the field seemed like some distant, unreachable land. Looking out, I began to wonder how our souls left this world for that other place. Surely they could not just leave at the time of death, I thought; when we pass, we all must have unfulfilled responsibilities that keep us here.

As soon as that thought came into being, the wind picked up, blowing the snow across the field, and I saw a great number of glimmers on the horizon, at the very line where the darkness, snow and moonlight came together as one. I had made a profound discovery, I was sure. That line of the horizon, where the observable, frozen world ends, is the gate where the heavens are opened by moonlit snow and through which ascend angels that have fulfilled their final undertakings.

For my 13th birthday, my father bought me a .22 rifle. It was a bolt-action Remington. I was thrilled. Guns were part of the culture in rural North Dakota, and most of my childhood friends had .22 rifles. I had never asked my parents for a rifle, so I was quite surprised when my father handed the gift to me.

“You don’t shoot that until your father teaches you how to do it safely,” my mother said. Her voice was stern but with only a hint of concern.

“Yes ma’am,” I said. I immediately turned to my father. “Can you teach me now?” I asked.

He smiled and then laughed, something he did not often do after leaving Macon. “Let’s go,” he said.

He spent the next two hours teaching me the basic rules of gun safety and how to use and clean the gun. During this time, he was smiling almost constantly, and his eyes seemed unburdened by the faint melancholy I had grown accustomed to seeing. When I looked at him, I could not help but smile as well. It is the only time I remember the happiness between us being contagious.

After we finished cleaning the gun, however, he became more serious. “Let’s

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Now Read (or Listen to) This: Summer Reading and Podcast Suggestions

Over the last year, many of us have been working from home and have been whittling down our TBR (to-be-read) piles or learning about the world of podcasts. So this year, we asked you to pass along your summer reading suggestions or podcast recommendations.

**Small Great Things**
*by Jodi Picoult*
*Submitted by Sharon Williams*

This #1 *New York Times* bestseller offers a candid, introspective view of race and prejudice. Ruth Jefferson is an experienced labor and delivery nurse who performs a routine check-up on a newborn. The parents are white supremacists who do not want Ruth, an African American, to touch their baby. When the baby goes into cardiac arrest, Ruth is the only nurse available to assist. She hesitates to help and, in turn, is charged with a serious crime. This must-read book tackles race, privilege, prejudice, justice and compassion—and doesn’t offer easy answers.

**The Murder of Sara Barton**
*by Lance McMillian*
*Submitted by Justice Carla Wong McMillian*

I am biased, but I have enjoyed reading “The Murder of Sara Barton” by my husband, Lance McMillian, whose day job is professor at Atlanta’s John Marshall Law School. “The Murder of Sara Barton” is a fast-paced courtroom drama set in Atlanta. His next book in the series was published in March 2021: “Death to the Chief,” involves the murder of the chief justice of the Supreme Court of Georgia. *Note: it is not based on real people or events.*

**The Last Trial**
*by Scott Turow*
*Submitted by Jeff Cohen*

A well-known legal thriller veteran continues to show off his knowledge of evidence law and trial strategy. Defense attorney Sandy Stern appears again in what he admits will be his last case. Lawyers will especially appreciate this book.
To fully appreciate just how fragile our form of government is and the wisdom (and foibles) of the people who created it, read “First Principles” by Thomas E. Ricks. You learn how our first four presidents, Washington, Jefferson, Adams and Madison, and many others, modeled themselves—and our government—on the Greeks, the Romans and their practical, real-life experiences.

This is a real eye-opener as to how well-intentioned legislation of the 1960s has led to generational poverty which, I believe, has exacerbated pre-existing racial problems over the years. What is really frightening is that this book was written 40 years ago. The problems described in the book have only gotten exponentially worse since then. Anyone interested in racial injustice should read this book.

Memorial Drive: A Daughter’s Memoir
by Natasha Trethewey
Submitted by Rhani Lott Choi

Coudn’t have said it better than this: “Natasha Trethewey was 19 when her mother was murdered by her stepfather in 1985. For decades, she hid the event, and memories of her mother, in the recesses of her mind while she went on to win a Pulitzer Prize and become the Poet Laureate of the United States. Now, decades later, she opens herself up to her past to produce a harrowing yet beautiful memorial.”—Mike Hare, Northshire Saratoga, Saratoga Springs, New York

Great bio about a distinguished statesman and lawyer from a long line of Texas lawyers. Fascinating recount of statecraft in the 1980s.

Losing Ground
by Charles A. Murray
Submitted by Larry Nix

The Man Who Ran Washington: The Life and Times of James A. Baker III
by Peter Baker and Susan Glasser
Submitted by Joe Powell

First Principles
by Thomas E. Ricks
Submitted by Tony Cochran

American Elections: Wicked Game
Podcast
Submitted by Tony Cochran

For those who think the challenges to the recent presidential election were unprecedented, listen to the podcast American Elections: Wicked Game, the episode titled “1876, Tilden v. Hayes: Faustian Bargain.”

Memorial Drive: A Daughter’s Memoir
by Natasha Trethewey
Submitted by Rhani Lott Choi

Humble Jurist
Podcast
Submitted by Miranda Sherrill

I love this podcast for lawyers who seek to be more civil, charitable and humble.

Grateful Badass
Podcast
Submitted by Stacey M. Cameron

I am the show’s host and producer. The show, based on the premise of #GrowinginGratitude, consists of topics in a monthly series, which change monthly while presenting innovative guests. Recent series have focused on “Celebrating the Holidays During a Pandemic,” Women’s History Month, independent authors and small business owners.

American Elections: Wicked Game
Podcast
Submitted by Tony Cochran

Judge John Hodgman
Podcast
Submitted by Megan Hodgkiss

Judge John Hodgman is a comedic podcast set within a fictional, virtual courtroom setting. This court show has been bringing the laughs since 2010. Every week, humorist “Judge” John Hodgman and his co-host “Bailiff” Jesse Thorn adjudicate real-life and often hilariously awkward disputes. Case highlights include: Is a hotdog a sandwich? Does a family have to wear matching shirts on vacation? Can Dad Jokes be curtailed? There are also special Clearing the Docket episodes in which Hodgman and Thorn rule on cases not selected for full hearings. Episodes may feature other famed entertainers as expert witnesses. Give it a listen!
go into my study," he said. "I have a few other ground rules to discuss."
"Yessir," I said, and I followed him into his study.
My father had claimed a room in our current home as a study. But unlike his former study in Macon, which seemed to be only an extension of his law office, this one was different. Pictures of my mother and me hung from a wall, and there was a loveseat below the pictures. His legal texts and treatises were gone from the bookshelves, replaced by countless works of fiction and non-fiction. An hourglass and a marble paperweight sat on his desk, as did the same red picture frame and photograph that mysteriously appeared shortly before we left Macon.
He sat down behind his desk and motioned for me to sit on the loveseat. I sat down, and he stared at me for a long time before speaking.
"I want you to promise me something," he said.
"Yessir," I said.
"I want you to promise me that you will not use that gun to shoot any animals. Ever."
"What happens if I break the promise?"
The hardness in his face melted away. He looked at the picture of the young man in the red picture frame. "Maybe nothing," he said. "Maybe I'll take the gun away for a while. Or maybe I won't do anything."
"I don't understand," I said.
He continued to stare at the picture of the young man. "This is a promise that I'm relying on you to keep. I won't be there watching you. Your mother won't be there watching you. You'll be on your own. You can break the rule and never tell me. Chances are, I won't know. It's up to you to keep it."
Then he turned to look at me. "But don't you think that if you can keep this promise, and if you can abide by it, you will be a better person for doing so?" he said. His voice was almost a whisper, and the way he was looking at me made me wonder if he was asking for more than just my assent.
I thought of my walks in the snow and then chose my words carefully. "I don't know if keeping the promise will make me a better person," I said. "But all else
being the same, I guess keeping the promise will make me a better person than one who breaks the promise.”

He thought about this for a much longer time than I expected. “That’s right,” he said. “So, you promise?”

“I promise.”

Three years later, I broke that promise. One day in August, I was walking back to our house from target shooting when I saw a flock of goldfinches in an elm tree. The tiny finches crowded the tree, each singing their distinctive song, together forming a chorus of faint, high-pitched notes, their small bodies vibrating in time with their gentle suspirations. The elm was hardy and thick, with branches and leaves forming myriad interstices through which I could see only fractures of blue sky and sun. For a moment, I was mesmerized; it was as if the birds and the tree suddenly had transformed into some strange yet beautiful gestalt of plant and animal.

Then I focused on a single finch; it was sitting high up in the tree on a branch so barren that it was profiled against the blue sky. Its head moved from side to side as it sang its gentle song. I lined the bird up in the sight of my rifle. Within the black ring, I centered the bird against the blue sky, the bead of the front sight aligned with the tiny creature’s black-topped head.

I fired.

The birds exploded into flight, radiating outward from the elm tree in random directions. I did not know if I hit my target; I ran to the bole of the elm and searched the ground. Nothing.

I had missed, of that I was certain. Then relief, not frustration, set over me; I remembered my promise to my father. I missed my target, so I had not betrayed him.

I went home and put the gun away and forgot about the finch. I was reading a book when my mother came into my room an hour later. “Bartholomew,” she said.

I looked up from my book. “Yes?”

“Bartholomew,” she said again, this time her voice softer, as if she had meant to say my name only to herself.

“What? What is it?” I asked.

She sighed, and then took a deep breath. “You need to go outside and talk to your father,” she said. “He wants to see you outside right now. By the barn.”

She turned and left my room. I immediately left the house and started walking quickly to the barn. I saw my father standing in front of the barn, holding something in his hands. When I saw the tiny finch, I stopped. I was perhaps 15 yards away from him.

“How’s your doing?” my father asked.

I walked to him, staring at the finch in his hands. The sight of the tiny bird drew me uncomfortably close to him. The finch sat very still, as if occupying some familiar perch. Its beak was missing, and each exhalation erupted with tiny bubbles of blood. Black eyes strobed open and shut beneath fragile, tiny lids, betraying no emotion, as if the small creature had simply cast away its beak by autotomy and now waited patiently for another to regenerate.

“Is this your doing?” my father asked.

I did not hesitate. “Yessir,” I said.

“With the rifle I gave you?”

“Yessir.” I wanted to tell him I was sorry, but I sensed that no words, no aver- sion, would be adequate.

“Go to my study,” he said. “I’ll be in shortly. I have to end its suffering.”

I went to the study and waited for him. I sat on the loveseat and looked at the photograph of the mysterious young man that neither my father nor my mother had ever discussed.

When my father came into the house, he went to the powder room and washed his hands. Then he came into the study and sat down next to me on the loveseat. He stared at the photo and began to speak.

“Why did you break the promise that you made to me?” he asked.

I sat in thought and tried to find the words that would explain my betrayal of his trust. When I finally had a reason, I felt a wave of shame. “I saw it sitting atop the tree. I was about 30 yards away. It was a difficult shot. I just wanted to make the shot. I didn’t think at all about the prom- ise in that moment.”

“What would have made you act differently?” he asked. “Assume that I would have never found the bird. What would it have taken for you not to shoot it?”

My father frequently asked me questions that I found bewildering. This was one such question. I was staring at the picture of the young man when I said, “I thought I missed. And when I thought that, I felt good about it because I thought our promise wasn’t broken.”

Tears formed in my eyes. “I’m sorry. Had I thought of the promise first, I wouldn’t have done it. I needed to think of the promise first. I want you to be able to trust me.”

“Now,” my father said, “there’s something more important about trust. You need to be able to trust yourself. And you need to know that you can be trusted. Because if you can’t trust me, and you know you can’t be trusted, you will do it again.”

I nodded, but didn’t quite understand.

“Remember that,” my father said.

“Yessir.”

My father suddenly looked very weary. His cheeks slackened, and his shoulder rolled slightly inward. He was still staring at the photograph when he said, “Do what you want with your gun. It’s yours. I’m not going to punish you. You decide what’s best.”

Much later in the evening, after I had gone to bed, I heard the faint sound of sobbing. I crept from my bed and quietly opened the door. My bedroom was on the second floor of the house, and the door overlooked the entrance to my father’s study. The loveseat was partially hidden from my view, but I could see my parents’ legs extending from the loveseat; they were sitting very close to each other. My father’s legs were shaking, and I saw the picture frame in his lap. He was running a finger over the young man’s photograph, as though he were caressing the head of a young child.

“Oh God,” my father said. His words were shaky and uneven. “Oh, God. I’m sorry, honey. I’m so sorry.”

My mother took his hand away from the photograph and held it. “Oh, Samuel.” She spoke in that same way she spoke to him in Macon many years ago, in that soft and flowing voice.

“I didn’t shoot my rifle very often after my ill-fated attempt to kill the finch. My
reluctance had little to do with the rifle; I just felt unworthy of using it again. When I graduated from high school, the rifle had been tucked away in my closet for months.

I enrolled at the University of Minnesota and studied electrical engineering. My father enthusiastically approved of my career choice. I did very well in college, but I knew going into my senior year that I would be going to law school instead of starting a job.

When I was accepted into law school, I called my parents to surprise them with the good news. They had been inquiring about job placement, and as my senior year neared completion, our conversations turned more and more to my job prospects. “Why a lawyer?” my father asked. His words were clipped and urgent. “You can make a fine living as an engineer. And lawyers nowadays—there’s so many of them. And law school debt. And what kind of law do you want to practice?”

“One thing at a time, Dad. You were a lawyer—”

“And now I’m an English teacher,” he said. “I hated practicing law.”

I laughed. “You did not! I remember you coming home after trials. You would act like you were trying to sweep Mom off her feet the way you’d tell those trial stories. And I also remember how you and your buddies had a few drinks to celebrate.”

“And I quit,” he said. “Bartholomew, I just didn’t like practicing law. Yes, there were some good times. But there were bad times, too. I represented some people who were some good times. But there were bad times, too. I represented some people that you would not be proud of.”

“Look, Dad, I’m not going to be a trial lawyer. That stuff doesn’t interest me. I’m going to practice intellectual property. Patents, trademarks. Prosecution, not litigation. I’ll get to use my engineering degree as a lawyer.”

After a pause, my father said, “You’re sure about this?”

“Yes.”

He hung up the phone without saying goodbye.

He was never fully accepting of my decision. He did not attend my law school graduation. My mother, however, made the drive to Minneapolis. The day after my graduation ceremony, she stopped by my apartment. I was moving to Atlanta and packing up my belongings. Through a series of friendships and circumstances, I managed to land an offer from an Atlanta-based firm, and the prospect of returning to the South proved irresistible.

My mother was teaching me various colloquialisms long unused by her but that she was sure I would find useful when I arrived in Atlanta. I was desperate to change the subject.

“Hey, Mom, you know that picture on dad’s desk?” I asked.

She looked at me but did not respond. She placed some plates into a moving box and sat down.

“Who is that in the picture?” I asked. She moved her hand over a box to seal it.

“Why do you want to know?” she asked.

“Come on,” I said. “He’s had the picture on his desk for 15 years. I’ve seen him holding it and crying. I’d like to know.”

She let out a breath. “James Dearborn.”

I sat down next to her. “Well, that doesn’t tell me a lot. How did Dad know him?”

She rubbed her forehead with her fingers. “Your father didn’t know him. Never met him. He was murdered on a roadside. Beaten to death with a tire iron.”

The words came slowly at first, but soon she was speaking quickly, as if grateful to finally be relieved of some secret she longed to share. “The man that murdered him claimed that he was defending his wife. Her car got a flat tire, and while she was changing it, Dearborn happened upon her and allegedly tried to rape her. The man was out looking for his wife, and he arrived just as Dearborn was assaulting her. He grabbed the tire iron and struck him once on the head. Died of a brain hemorrhage the next day.”

“So … how did dad know about this James Dearborn?”

“Your dad represented the husband in his murder trial. It was a 3-day trial, and the man was acquitted after 40 minute’s deliberation.”

“When was this trial?” I asked, knowing the answer. It was Dad’s last trial.

“That spring, right before we moved.”

“I don’t understand,” I said. “Is that why Dad wouldn’t come to my graduation? Is that why he quit practicing law? Because he defended a man accused of murder who was actually defending his wife? That makes no sense.”

My mother let loose a sad chuckle and placed her hand on my cheek. “My Bartholomew,” she said with a tender kind of pity. “It’s not what it seems. And your father—you won’t remember. He was different back then. He loved trials. He loved winning. He was not like he is now. He loved it, all of it. But the man he is now, well, I love him more than I ever could love the man he was.”

“And I’ve said enough. But promise me, promise that you will not ask your father about this. It’s too much for him.”

“Okay,” I said. “But I still don’t get it.”

“Promise me,” she said again.

“I promise.”

“And one more thing,” she said. “James Dearborn. Don’t ever disparage that name.”

She left for home soon after our conversation. There was soft tension between us after she told me about Dearborn and the trial, not from hostility or mistrust, but from what comes between a parent and a child when the parent unexpectedly burdens both of them. She had tried to help me understand my father, but in doing so, she had perhaps betrayed confidences that should have stayed between lovers—and had made my father more of a mystery to me than he was before.

I started as an associate in Atlanta in 1986. I spoke with my parents often. During these many conversations, however, my father never asked me about practicing law. When I would bring up the subject, he would listen patiently and then quickly change the subject.

Each time we spoke, I invited them to come visit. They always declined, but I knew it was my father who refused to travel. He had many excuses for staying away, none of them particularly convincing. Both of their parents had passed away, none of them particularly convincing. Both of their parents had passed and neither had any siblings. As for my father, he had no interest in seeing old friends from Macon.

It was perplexing to me. I felt emboldened to press my mother on a few occasions, but I did so only when I confirmed
that my father was not in the house. My last conversation with her was the day before she died.

"Is Dad around?" I asked.

"No," she said. "He's still at the school."

"Mom, why doesn't he want to come down here? Is it that Dearborn thing, whatever it might be?"

I heard her take a deep breath. "Look, honey, it's too much for him. You don't understand. And ... you don't need to. So, it would be better if you don't press him on visiting anymore. Or me. Will you do that? For me?"

I said I would.

The next day, I received a call from Ray Hansen. Ray farmed the wheat fields surrounding my parents' home, and he and his wife were good friends of my parents. He told me my father had lost control of his car on a patch of ice and collided head-on with a grain truck. Both of my parents were killed instantly.

The next morning, I flew to Fargo and rented a car for the 250-mile drive to my childhood home. The winter had been very mild that year, and I had forgotten how ugly spring could be up north. What snow that persisted in the fields lay covered in dirt and gravel in small uneven piles, streaked black and brown in intricate vermiculate patterns, surrounded by water atop which each morning formed a parchment-thin sheet of ice. The brown and muddied earth pockmarked by the filthy snow looked like a landscape that had been without seasons for time interminable. This land is so foreign from Georgia, I thought. Why did my father ever move here?

After the funeral, I was sorting through my parents' belongings. Ray was at the house with me. We spoke of my parents in the way that people speak of loved ones recently passed, reminiscing of only happiness and laughter and by doing so attesting to shared grief and pain.

I was donating almost all of my parent's belongings. Ray agreed to help me sell my parent's hobby farm so that I could return to Atlanta. Before he left, he placed his hand on my shoulder.

He said, "Your mother was a kind woman. Your father, don't take this the wrong way, but he leaned on her, you know? He needed her."

"I know," I said. I thought of that day in Macon when I first saw the picture frame. I also recalled that evening after I shot the goldfinch, and the perpetual sadness in his eyes.

"He was the most honest man I knew," Ray said. "And they were good together."

Going through my parents' belonging revealed no secrets. Not surprisingly, there were no documents to shed light on my father's brief legal career. No old filings, newspaper clippings, reports. Nothing. It was as if that part of his life had disappeared from time and memory.

Of all their possessions, I only kept enough to fill two banker's boxes that I would check on the plane. On my way out of the house for the last time, I noticed the red picture frame on my father's desk. I picked it up, glanced at the photo, and then opened my suitcase and packed it between my clothes. I thought of what my mother told me when I learned of Dearborn—it's not what it seems. I resigned myself to never truly knowing my father.

Many years passed. I married, had two daughters, and my profession rewarded me. Like my father, I have my own study in my house, and like my father, the framed photograph of James Dearborn sits on my desk. Next to it is a photograph of my father.

In the fall of 2013, I was at my desk one Saturday afternoon. I thought about having been practicing law for more than 25 years, and I looked at the photograph of my father. My mother had taken it just before I left for college; my father is smiling. I love that picture because my father did not smile often. Both of those photographs remind me of the man I never truly knew, and sometimes I long for them to speak with me.

I noticed that the photograph of Dearborn had shifted so that it was slightly crooked in the frame. I picked up the picture and unfastened the mounting board so that I could right the photograph. The green writing paper that I saw all those years ago in Macon fell out of the frame, along with a newspaper clipping. They dropped onto my desk, and for a time, I would not touch them. For more than 20 years, the photographs of my father and James Dearborn had stared back at me, and I had wondered for countless hours what series of events linked these two men together.

But in that time, I had grown comfortable in my ignorance, convincing myself that the answer was not worth knowing. So much so, that I had not bothered to investigate the court filings when I easily could have, or even used the now-ubiquitous online search engines at my fingertips. Perhaps truth itself decided it was time I knew.

The clipping was from a Macon newspaper. It was a brief story, a single column, with a simple, but arresting, title: Murder-Suicide in Macon. It was dated April 17, 1969, and read:

Macon police discovered the bodies of Mr. William Broyles and Mrs. Nancy Broyles at their home after receiving calls reporting gunshots at the residence. Police arrived to find Mrs. Broyles dead in her driveway of an apparent self-inflicted gunshot to the head. Inside the house, police found Mr. Broyles in the couple's bed with a fatal gunshot wound to the head. It was only two weeks ago that a jury acquitted Mr. Broyles of the murder of Mr. James Dearborn. Mr. Broyles was accused of bludgeoning Mr. Dearborn to death with a tire iron. Mrs. Broyles was a critical witness in the trial, testifying that her car had a flat tire, and while attempting to change the tire, she encountered Mr. Dearborn, who assaulted her. She testified that Mr. Broyles, who was driving in search of his wife because she had not returned home, arrived at the scene when the assault began, and Mr. Dearborn attacked Mr. Broyles. Mr. Broyles then struck Mr. Dearborn with the tire iron, killing him.

Mr. Broyles was represented by Mr. Samuel Fuller of Macon. Mr. Fuller had no comment regarding the apparent suicide of Mrs. Broyles.

Without pausing, I began to read the writing on the green paper. Fluid lines of cursive formed small, almost sad words that revealed more about my father than my mother ever told me:
Mr. Fuller,

By the time you read this, you will know what happened. Living with Bill was bad enough before the trial, but I can’t bear to think of living with him for the rest of my life now. And I can’t bear going on, knowing what he did to that poor man, or what I did to him after, in the court after swearing before God.

I wanted to leave Bill, but you tied me to him for the rest of my life. “Sober up,” you told him, “and treat her nice before the trial. She has to testify for you.” You said it as if I couldn’t hear you, and I was sitting right there in your office with him. Like I was his pet.

How could you not know Bill told me to say all that? I didn’t have a flat. I was just sitting there, on the road, I couldn’t drive anymore because I was crying so much, and that’s when James found me. He was just walking by, and he asked me if I was all right, and I said no. And then he said he would stay there until I was all right to drive again. He didn’t say much else; he just wanted to make sure I was going to be all right.

Then Bill found me. I was trying to leave, but I didn’t know where to go. He pulled me from the car and hit me, and then James tried to help me. He punched Bill and laid him out. That’s when Bill got the tire iron from his car—not the one I was driving, just like the prosecutor said—and hit James with it.

I tried to tell you. You went over my testimony so many times, and I could tell you were getting frustrated when I couldn’t keep Bill’s story straight. I was trying to tell you. How could you not know?

James’ mother gave me this picture. She pushed it into my hands after the trial. She looked at me and said her son deserved to be remembered properly. I didn’t know what to say. She didn’t believe what I said in court, and I hope she never does. I don’t want her to remember her son that way.

God help my soul. And yours, too.

Nancy Broyles

I placed the papers between the mounting board and the photograph of James Dearborn and put the frame back together. I did not need to read them again.

I sat in silence, overwhelmed by the caesura between only knowing my father as a mystery and finally knowing him to be the broken man that had left Georgia. But surely, I thought, he had not suborned perjury. Not this man. He had always been honest, and he had always told me to be honest. Nancy Broyles was mistaken. How was my father to know she had lied?

I was unsettled during the months that followed. I could not believe that my father would allow a witness to perjure herself during a murder trial. Not my father. What kind of man would be such a lawyer? There was much I did not know about my father, but I was sure that he was not a crooked attorney. He was the man who taught me about promises, who taught me about trusting myself so others could trust me. It was those lessons that I relied upon when I needed to tell my clients what they did not want to hear and when I needed to tell them about the mistakes either I or my colleagues had made. Sometimes the conversations could be uncomfortable and distressing, but being there was no other alternative. My duty to my clients, to the Bar, to my family and to myself was paramount. An honest man taught me this, not some cheating attorney.

At the end of January the following year, a massive snowstorm hit the Atlanta area. “Snowmaggedon,” they called it. Having grown up where such storms were sometimes a monthly occurrence, I was amused by how the city came to a standstill. Regardless, I was stuck at home and made the best of the temporary isolation. The night after the storm, I thought of my long walks in the snowfields as a child, and nostalgia overcame me. I decided to go for a walk in the snow. The deep snow on the sidewalks in our neighborhood had not been disturbed, and for a time, it was as if I was back in some virgin snowfield, fresh tracks marking my path.

When I turned around and began walking home, I thought of the younger version of myself walking toward me through that imaginary portal. Would he ask me, “Have I changed?” or would I ask him, “Who were you?”

It was at that moment that I was certain my father knew Nancy Broyles lied on the stand. I thought of the way my mother described the story to me—“allegedly tried to rape her,” “the man that murdered him.” She knew about my father’s failure. And my father never returned to Georgia or the practice of law because he would need to face the man that he had been. The only way he could put those transgressions behind him was to never look back. Time and
distance, however, did not shield him from the haunting that burdened him until his death.

I walked slowly, traversing footsteps made by a man who minutes earlier never fully understood his father but who now finally did. When I got home, I poured a glass of whiskey with some ice, and I went into my darkened study. I sipped the whiskey slowly. Soon, my eyes became heavy, and I welcomed sleep.

I awoke well into the night. My eyes opened slowly. The ice in the whiskey glass had melted. The faces of James Dearborn and my father stared at me. My father was not a stranger or a mystery to me now. At least not the one that gave up the practice of law to teach English and raised me in a world far away from where he sinned.

The law is not a profession that is to be taken lightly. His failure destroyed and damaged lives, including the life of my mother. And yet she forgave him when he had to run, and I know why. She loved the man he became more than she loved the man he was, and she could see who he could become before he could.

I looked out the window at the snow-covered yards and streets. Outside, the clouds had cleared, and a crescent moon faintly illuminated a suddenly familiar winterscape of softened white and stillness. And far away on the horizon, between the snow and moonlight, the angels that had for so long watched over me departed for their eternal rest.

Paul E. Franz is a principal in the Atlanta office of Fish & Richardson P.C. and has been practicing patent law for 21 years. He is a 1990 graduate of North Dakota State University. He worked as an electrical engineer for eight years prior to earning his law degree from Seattle University in 1999. He can be reached at franz@fr.com.
A Conversation with Hon. Marc Treadwell, Tina Hunt and Peter Leary

In this installment of the “Georgia Lawyer Spotlight,” Editorial Board Member Jacob E. Daly interviews Hon. Marc Treadwell, chief judge, U.S. District Court, Middle District of Georgia; Tina Hunt, executive director, Federal Defenders of the Middle District of Georgia; and Peter Leary, acting U.S. attorney, Middle District of Georgia, about their desire to work together to deter crime through the Armed With Knowledge Program.

BY JACOB E. DALY

Each of you is influential in the Middle Georgia community by virtue of the role that you play in the criminal justice system, so let’s start with a brief introduction to our readers who may not know you.

TREADWELL: I’m Marc Treadwell. I am chief judge in the Middle District of Georgia and have been on this court since 2010.

HUNT: I’m Tina Hunt. I’m the executive director for the Federal Defenders of the Middle District of Georgia. We are a nonprofit organization that handles the representation of indigent clients charged in federal court in the Middle District of Georgia.

LEARY: My name is Peter Leary, and I’m the acting U.S. attorney for the Middle District of Georgia. I joined the Justice Department in 2007, and I became the acting U.S. attorney in December 2020.

Why do you have a passion for the particular job that you have?

TREADWELL: I will answer that as it relates to “Armed With Knowledge.” Part of my job is sending people to prison. When the law calls for a long sentence, I impose a long sentence. And I firmly believe firm punishment deters crime. But as I have handed down more and more long sentences for crimes involving, sometimes only tangentially, illegal guns, I realized many defendants simply didn’t know the consequences of possessing an illegal gun. Of course that’s not an excuse. But wouldn’t we all be better if we could reach people before they picked up that gun and let them know what they would face if they got caught with that gun? So I’m passionate about deterring crime; and what better way to do that than by preventing the crime?

LEARY: I’m very grateful that I’ve been able to spend my professional legal career seeking justice, and I’ve been fortunate to do that with Main Justice in Washington, D.C., and then at the U.S. Attorney’s Office. Also, my wife and I are raising our four children here in Middle Georgia, and working at the U.S. Attorney’s Office allows me to help make this a safer community for them and for everyone’s children.

HUNT: I have been committed to criminal defense since the very beginning of
my career in 1985. I truly feel like my job is not a job but a calling, and I have a huge responsibility to be able to give a voice to those who don’t have a voice. Once you get to know the people that you represent, you see that a lot of times people are placed in situations they wouldn’t have chosen to be in. I have seen the systemic injustice that the system is capable of, and anything that I can do to help prevent people from making poor choices, our office wants to be a part of that.

According to the U.S. Department of Justice National Crime Victimization Survey, 481,950 people across the country were victims of a crime involving the use of a firearm during 2019. To give us an introduction to the Armed With Knowledge Program, tell us about the consequences of using a firearm during the commission of a crime.

TREADWELL: The problems and the consequences of illegal gun possession are far more than gun violence. Illegal guns are tools in almost all of our drug trafficking crimes. The demand for illegal guns has spawned an industry akin to drug trafficking. So, yes, the gun violence we see because of illegal guns is bad enough, but that’s just a part of the tremendous problems caused by illegal guns. And one of the most common consequences, but probably the least known, is that simply possessing an illegal gun can result in enhanced criminal penalties. That’s the reason the three of us—even though we serve different interests in our judicial system—can come together in this effort to get to the root of the problem. We want to stop young people from succumbing to that initial temptation to possess that illegal gun so they can avoid all the consequences that can result from possessing an illegal gun, including the enhanced criminal penalties they can face if they commit a crime while illegally possessing a gun.— Hon. Marc Treadwell

HUNT: There are enhanced penalties for almost anything you do that involves a firearm. So, for example, if you possess a firearm in furtherance of a drug trafficking offense, in federal court you’re subject to a five-year mandatory minimum sentence that is to run consecutive to any other sentence you may receive. If you brandish it, you get a seven-year mandatory minimum, and if you actually use it, you get a 10-year mandatory minimum.

LEARY: First, for the charge [Tina’s] discussing, it doesn’t matter if you’re a convicted felon prior to committing the crime involving a firearm. You might be legally in possession of the firearm, but if you use it, possess it or brandish it in furtherance of a drug trafficking offense or a crime of violence, you’re subject to those mandatory minimum sentences. Second, the possession, brandishing or use of a firearm during a drug trafficking offense or crime of violence has a maximum sentence of life in prison. So, not only are you facing a mandatory minimum consecutive to any other conviction that you may have in that case, but you’re risking the possibility of life in prison on what could be your first conviction in federal court.
You all obviously share a commitment to reducing this type of crime. To that end, each of you is involved in a public service campaign that has a goal of educating young people about the consequences of illegal gun possession. This campaign is sponsored by the Peyton Anderson Foundation (the Foundation) in partnership with the U.S. Attorney's Office for the Middle District of Georgia and the Federal Defenders for the Middle District of Georgia. Judge Treadwell, you are a trustee of the Peyton Anderson Foundation, so please tell us about Peyton Anderson and the work that his namesake foundation does.

TREADWELL: Peyton Anderson was the owner and publisher of the Macon Telegraph and News. When he died in the 1988, he left the bulk of his estate to the Foundation. The Peyton Anderson Foundation is committed to a broad range of programs, but we are especially committed to helping young people. Illegal gun possession is a problem that Tina, Peter and I see every day, and we recognized that reaching out to young people and conveying this message could be of some help. The Foundation immediately signed on and financed the production of the Armed With Knowledge video.

Mr. Anderson was fond of saying, "Reward good doers, not do-gooders." What does that distinction mean to you?

TREADWELL: Mr. Anderson wanted people in the trenches. He wanted people getting their hands dirty and trying to make the world a better place.

TINA AND PETER, why did your organizations want to partner with the Foundation on this campaign?

HUNT: Gun cases are some of the most frequently prosecuted cases in federal court. For us, it seems that prevention is the key versus waiting until they get to my office. I was very interested in this project because I have a strong background in social justice, and I believe that through education we can prevent a lot of people from facing such severe consequences.

LEARY: We’ve seen a real epidemic of violent crime in Middle Georgia recently. Last year in Macon, we had the highest number of homicides in our recorded history. As we’ve looked into some of those numbers, we’ve discovered that a disturbing number of the gun crimes and homicides are being committed by youth who are 18 years or younger. Those are the people who we really want to prevent picking up a gun and ruining the lives of their victims and also ruining their own lives. While prosecution is a key element to eliminating or significantly reducing gun violence and violent crime, it is not the only solution. It can’t be the only solution. We can’t simply prosecute our way out of this problem. There have to be multiple components, and Armed With Knowledge was a wonderful idea from Judge Treadwell to reach younger folks and discourage them from picking up a gun in the first place.

The first project in this campaign was the production of the video we’ve been referring to that’s titled Armed With Knowledge. Judge Treadwell, tell us about this video and how it is being used to achieve these goals.

TREADWELL: Great credit goes to Tabitha Walker, who is the head of Big Hair Productions. They did a fantastic job. One of the most compelling moments in the video is when Noah [the main character who is faced with a decision of whether to get involved with guns] is listening to Tonoro Jones tell her story about how she lost a child to gun violence. Ms. Jones was not an actor. She is a victim herself, and her story is what drives the message home as much as anything else in the video.

We are partnering with a broad range of groups and people, including law enforcement agencies, youth groups, educational groups, and church groups to get this message out. We are reaching out to teens and pre-teens. We want to address the problem at that stage rather than in my courtroom.

HUNT: Or in my office.

LEARY: Not only is there the Armed With Knowledge video, but the website www.armedwithknowledge.org has a facilitator guide which includes questions for teachers, ministers and others who are showing the video to a group of youth to help spark a dialogue. It also has information about federal gun laws and some of the consequences of illegal gun possession. As good as the video is, what we really want is to spark a dialogue among youth and ask questions such as: Is illegal gun possession something in your life? Have you been offered a gun? Have you picked up a gun? What did you say? Do you know who to talk to about this?

How do you define success for this campaign since the statistics by themselves may not tell the complete story about what is happening?

TREADWELL: Fundamentally, Armed With Knowledge is a grassroots effort with two main goals. The first goal is to stop somebody like Noah from making a decision that is going to affect the rest of his life. Just as important, we do not want anybody to be in Ms. Jones’ situation. But we are working with professionals to ensure that the message is getting to those who need to hear it.

LEARY: To me, there are two clear measures of success that we need to track. Number one is how many people have seen this video, and that is not something that’s confined to the state of Georgia. This is a turnkey program that allows folks around the country to watch the video, use the facilitator guide and have conversations with the youth in their communities. The second measure of success is the impact we are having here in Middle Georgia. It is going to be hard to quantify a direct relationship between the video and hopefully a decrease in crime. But at the same time, all the efforts being made by so many people involved in this project are going to have an impact in the Middle Georgia community. That’s why it’s so important that Judge Treadwell and the Peyton Anderson Foundation brought this idea to the U.S. Attorney’s Office and the Federal Defenders so that we could all partner and really try to make a tangible impact in our community.
What else do you plan to do with this campaign going forward?

HUNT: We’d like to concentrate our efforts first on reaching the youth in this area. There are a number of things we can take advantage of to get this message out there, such as social media, schools and youth programs. I believe what we really need to think about is who our target audience is. I believe our target audience is kids who are right on the cusp of making bad decisions. How do we reach those kids? They are not the ones who are going to church and watching this. They are not the ones who are going to pay attention to it at school. Many are not even attending school. We have to reach the families. We have to reach the community of people who want these young people to make the right choices, and we have to invite them to events they are interested in so we can get the message out. We also want people to know that my office is a resource; if they make a bad decision and want to reverse it without criminal consequences, they can contact us.

TREADWELL: Apart from all the help we’re getting from various organizations, we really want to get the message out on an individual basis. We want people to watch the video, and if they like the message, we hope they will share, retweet and forward. If kids, and we are unfortunately talking about kids and teenagers, know about the consequences of having an illegal gun, we think it more likely they will make the same decision Noah made. They will realize it’s just not worth having an illegal gun.

Jacob E. Daly is of counsel with Freeman Mathis & Gary, LLP, in Atlanta and a member of the Georgia Bar Journal Editorial Board. He represents private companies, government entities and their employees in personal injury litigation with a focus on defending property owners, management companies and security companies in premises liability lawsuits.

The State Bar of Georgia’s 52 sections provide newsletters, programs and the chance to exchange ideas with other practitioners. Section dues are very affordable, from $10-35. Join one (or more) today by visiting www.gabar.org > Our Programs > Sections. Questions? Contact Sections Director Mary Jo Sullivan at maryjos@gabar.org.
Kudos

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced the selection of Janelle E. Alleyne to participate in the 2021 Leadership Council on Legal Diversity (LCLD) Pathfinders Program, a program designed by the LCLD to train high-performing, early-career attorneys in critical career development strategies, including leadership and the building of professional networks.

Lance McMillian, a law professor at Atlanta’s John Marshall Law School, announced the debut of his new novel, “Death to the Chief,” about the murder of the chief justice of the Supreme Court of Georgia. “Death to the Chief” is the follow-up to his 2020 novel, “The Murder of Sara Barton.”

The Boy Scouts of America (BSA) announced that Austin Franklin “Frank” Harper of Slepian, Schwartz & Landgaard was recognized with the Silver Antelope Award. Established in 1942, the Silver Antelope Award is the regional-level distinguished service award of the BSA and recognizes outstanding service to young people within one of the four regions of the BSA. Conferred by Scouting’s National Court of Honor, the Silver Antelope Award is the highest award volunteers can receive at the regional level.

Merchant & Gould P.C. announced its sponsorship of a scholarship for Atlanta’s John Marshall Law School and Georgia State University College of Law students seeking a career in intellectual property (IP) law and coming from diverse backgrounds. In addition to providing financial support, the firm wants to create opportunities and experiences for the next generation of Georgia IP attorneys. A cash gift of $5,000 merit aid will be awarded for the law schools’ student(s) selection per year.

Michael Mears, an associate professor of law at Atlanta’s John Marshall Law School, announced his participation in a transnational legal education project with the National Law University in New Delhi, India. Collaborating with Dr. Bharti Yadav, assistant professor of law at the National Law University, Delhi, the project will include lectures on several selected themes, including the American legal system’s adversarial system, the right against self-incrimination and the advancement of forensic evidence in the American judicial system.

Harris Lowry Manton LLP unveiled a commissioned portrait of the late U.S. Congressman and Civil Rights leader John Lewis, which hangs in the firm’s Brookhaven office in honor of Lewis’ landmark pursuit of equality and commitment to justice. At a special unveiling ceremony in April, founding partners Jeff Harris, Steve Lowry and Jed Manton also presented a $5,000 donation to the John and Lillian Miles Lewis Foundation, a nonprofit organization created to continue the legacy of Congressman Lewis and his wife Lillian Miles Lewis.

The firm also announced that they launched the nonprofit Banded Together to encourage COVID-19 vaccination in Georgia and to offer scholarships to support children across the state who have lost parents due to the pandemic. The Banded Together campaign is currently accepting corporate and personal donations, with 100% of donations going to fund scholarships for children across Georgia and to provide vaccination wristbands free of charge to the public. Donations can be made online at www.banded-together.org.

Kilpatrick Townsend & Stockton LLP announced its new podcast, Sidebars by Kilpatrick Townsend, co-founded by Atlanta partner Kimberley Davis. This limited podcast series showcases leading women in the patent bar. Each episode is a candid conversation between groundbreaking women legal practitioners about their career paths, the obstacles they overcame in reaching success and the steps the profession must take to close the gender gap in intellectual property law and the patent bar.

Marple Rubin Family Law, LLC, announced that founding partner Kevin J. Rubin was admitted as a Fellow in the American Academy of Matrimonial Lawyers, a national organization of leading family law practitioners across the United States. The Academy Fellows are highly-skilled negotiators and litigators who represent individuals in all facets of family law. These areas include divorce, annulment, prenuptial agreements, postnuptial agreements, marital settlement agreements, child custody and visitation, business valuations, property valuations and division, alimony, child support and other family law issues.
The University of Florida Student Government announced the creation of the Brian Burgoon Outstanding Mentorship Award in honor of attorney Brian Burgoon of The Burgoon Law Firm, LLC, in Atlanta. The award will be given each year to a student, faculty member or alumnus who has dedicated time, knowledge and energy for the purposes of guiding, nurturing and supporting University of Florida students. In addition to being honored as the namesake of the award, Brian Burgoon also was the inaugural recipient.

Fortson, Bentley & Griffin, P.A., announced the establishment of a $75,000 fund with the Athens Area Community Foundation, an organization that builds the community by encouraging strategic, long-term giving through funds created by local benefactors. Its mission is to help passionate donors leave permanent legacies, foster strategic philanthropy and shape effective responses to community needs through collaboration. Fortson, Bentley & Griffin’s gift will give the firm the opportunity to impact the communities where their team members live, work and serve.

Georgia Legal Services Program (GLSP) welcomed back Alexandra Eichenbaum as its new director of Pro Bono Innovation. Eichenbaum previously worked in GLSP’s central office as a family violence staff attorney. During her time away from GLSP, Eichenbaum served as the senior litigation associate at Shaul Law, PC, managing its litigation practice with a focus on family law, health care law and employment law. Eichenbaum also served as a federal law clerk for Hon. Loren A. Smith on the U.S. Court of Federal Claims in Washington, D.C.

HunterMacLean announced that Gov. Brian Kemp appointed attorney T. Mills Fleming to serve on the Bona Fide Coin Operated Amusement Machine Operator Advisory Board, which provides regulatory oversight to coin-operated amusement machines businesses and prevents unauthorized cash payout. The board’s oversight helps protect the state’s fiscal stability, supports educating Georgia’s children through the HOPE scholarship program and pre-kindergarten funding, and improves public welfare.

Adams and Reese LLP announced the addition of William “Bill” Atkinson as special counsel, and Angela Grate and Caitlin H. Smith as associates. Atkinson’s practice focuses on the intersection of business and government. Grate focuses her practice on corporate transactions, education law, data privacy, cybersecurity, labor and employment, and data management. Smith’s practice focuses on intellectual property litigation and counseling clients on matters involving trademarks, patents, copyrights and rights of publicity. The firm is located at 3424 Peachtree Road NE, Suite 1600, Atlanta, GA 30326; 470-427-3700; www.adamsandreese.com.

Polsinelli PC announced the addition of Anne Mellen, Angelo Spinola and William Vail as shareholders. Mellen’s practice focuses on labor and employment, including wage and hours actions under the Fair Labor Standards Acts and other state laws. Spinola focuses his practice on employment litigation with a specialty in the home health, home care and hospice industry. Vail’s practice focuses on counseling home health, home care and hospice providers on a variety of employment issues. The firm is located at 1201 W. Peachtree St. NW, Suite 1100, Atlanta, GA 30309; 404-253-6000; www.polsinelli.com.

Hoffman & Associates Attorneys-at-Law, LLC, announced the addition of Alaina Davalos as a partner and the promotion of Todd Sehhat to senior associate. Davalos focuses her practice in the areas of wills, trusts, estate administration and probate. Sehhat’s practice focuses on helping small and closely-held business owners establish and grow their entities. The firm is located at 6100 Lake Forrest Drive, Suite 300, Atlanta, GA 30328; 404-255-7400; www.hoffmanestatelaw.com.

Kilpatrick Townsend & Stockton LLP announced the addition of Justin Heineman as a partner and Danielle “Dahni” Barav-Johnson as counsel. Heineman’s practice focuses on mergers and acquisitions, capital markets, external reporting, corporate governance and general corporate matters. Barav-Johnson focuses her practice on representing corporate and municipal debtors in chapter 11 and chapter 9 proceedings, and complex bankruptcy litigation. The firm is located...
Miller & Martin PLLC announced the addition of Jason S. McCarter as a member and Chuqin Anderson and Destiney Randolph as associates. McCarter’s practice focuses on representing automotive, technology and other business enterprises in complex commercial disputes and regulatory investigations, and advocating for clients facing contract, business tort, secured lending, creditors’ rights and licensing issues. Anderson focuses her practice on various aspects of complex commercial real estate transactions, including acquisition of retail, industrial, medical and office properties, secured and unsecured lending, and leasing of retail and office properties. Randolph’s practice focuses on business litigation, labor and employment, construction, real estate and alternative dispute resolution. The firm is located at 1180 W. Peachtree St. NW, Atlanta, GA 30309; 404-962-6100; Fax 404-962-6300; www.millermartin.com.

McGrew Miller Bomar & Bagley, LLC, announced the addition of Samson C. Newsome II as an associate. Newsome’s practice focuses on general liability. The firm is located at 50 Hurt Plaza SE, Suite 1200, Atlanta, GA 30303; 404-410-8410; Fax 404-465-3355; www.mmbblaw.com.

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, announced the election of Alexander F. Koskey III and Michael P. Williams to partner. Koskey’s practice focuses on representing financial institutions and organizations on a wide range of data privacy, regulatory and compliance, and litigation matters, and advises clients on regulatory and compliance issues impacting the financial services industry, including licensing issues in the automobile finance industry and federal consumer protection issues. Williams focuses his practice on representing private companies and individuals in general corporate matters, securities offerings, mergers and acquisitions, contract negotiation and preparation, and compliance. The firm is located at 3414 Peachtree Road NE, Suite 1500, Atlanta, GA 30326; 404-577-6000; Fax 404-221-6501; www.bakerdonelson.com.

Richardson Bloom & Lines LLC announced the appointment of Kyla S. Lines to managing member and the promotion of William A. Alexander to member. Lines’ practice focuses on family law. Alexander focuses his practice on domestic relations law. The firm is located at 75 14th St. NE, Suite 2840, Atlanta, GA 30309; 404-888-3730; www.rblfamilylaw.com.

Kanner Baker, LLC, announced the addition of Lauren M. Carey and A. Kimbrough Davis as partners. Carey’s practice focuses on trust and estate planning, estate administration and family business succession planning. Davis focuses his practice on trust and estate planning, estate administration and family business succession planning. The firm is located at 2002 Summit Blvd. NE, Suite 300, Atlanta, GA 30319; 404-566-4763; www.kannerbaker.com.

MendenFreiman LLP announced the addition of Christopher A. Steele as a partner. Steele’s practice focuses on estate planning, tax, estate administration and business law. The firm is located at 5565 Glenridge Connector NE, Suite 850, Atlanta, GA 30342; 770-379-1450; Fax 770-379-1455; www.mendenfreiman.com.

Swilling Family Law Firm, LLC, announced the addition of O. Brooke Durden as an associate attorney. Durden’s practice focuses on all aspects of family law. The firm is located at 11175 Cicero Drive, Suite 172, Alpharetta, GA 30022; 678-646-6755; Fax 470-408-3412; www.swillingfamilylaw.com.

Powell & Edwards, Attorneys at Law, P.C., announced the election of Wesley Charles Ross and Christopher Patrick Day as shareholders and the addition of Robert L. Poston as an associate. Ross’ practice focuses on complex litigation as well as municipal representation, zoning and land-use actions, and government investigations. Day focuses his practice on corporate planning and entity formation, and advises clients on defining rights and obligations of individuals, members and stockholders associated with their respective entities. Poston’s practice focuses on personal injury, estate litigation and
other civil litigations. The firm is located at 10 Lumpkin St., Lawrenceville, GA 30046; 770-962-0100; Fax 770-963-3424; www.powelledwards.com.

IN MARIETTA
Attorneys J. Lynn Rainey and John D. Vaughan III announced the formation of Rainey & Vaughan, LLC. The father-son team focuses their practice on business law, contract negotiation, ethics, government law and representation of Community Improvement Districts in Georgia. The firm is located at 358 Roswell St., Suite 1130, Marietta, GA 30060; 770-421-6040; Fax 770-421-6041; www.raineyandvaughan.com.

IN SAVANNAH
Dulaney Industries, Inc., announced the addition of Ed King as general counsel. King focuses his practice on contracts, acquisitions, tax planning and corporate strategy. The company is located at 118 E. 35th St., Savannah, GA 31401; 912-944-3740; www.dulaneyind.com.

IN WARNER ROBINS
Williams Law Group LLC announced the addition of Erikka B. Williams as an associate. Williams focuses her practice on criminal defense and juvenile dependency. The firm is located at 1200 Green St., Warner Robins, GA 31093; 478-922-9110; www.williamslawgroup.net.

Weiner, Shearhouse, Weitz, Greenberg & Shawe, LLP, announced the election of Christopher R. Lane to partner. Lane’s practice focuses on acquisition, financing and disposition matters of both residential and commercial estate. The firm is located at 14 E. State St., Savannah, GA 31401; 912-233-2251; Fax 912-235-5464; www.wswgs.com.

Meyer and Sayers, LLP, announced the election of Kevin M. Crouch to partner. Crouch’s practice focuses on estate planning, business succession planning and estate administration, specializing in the representation of physicians and physician groups. The firm is located at 500 Stephenson Ave., Savannah, GA 31405; 912-598-5151; Fax 912-598-5152; www.meyersayers.com.

Announcement Submissions

The Georgia Bar Journal welcomes the submission of news about local and voluntary bar association happenings, Bar members, law firms and topics of interest to attorneys in Georgia.

Notices are printed at no cost, must be submitted in writing and are subject to editing. Some restrictions apply, and items are printed as space is available. News releases regarding lawyers who are not members in good standing of the State Bar of Georgia will not be printed. Learn more at www.gabar.org/newsandpublications.

For more information or to submit an announcement, please contact Ashley G. Stollar, ashleys@gabar.org or 404-527-8792.

When life doesn’t make sense.

The SOLACE program is designed to assist any member of the legal community (lawyers, judges, law office and court staff, law students and their families) in Georgia who suffer serious loss due to a sudden catastrophic event, injury or illness. Visit www.gabar.org for more information on SOLACE, or email solace@gabar.org.
“She Never Even Hired Me”: Duties to Prospective Clients

BY PAULA FREDERICK

“I caught him red-handed,” your potential client says. “When I turned on the lights I saw him trying to stuff those pictures into…”

With a sinking heart, you realize that you have heard this story before—from the other side.

You started offering free consultations as a way of getting clients in the door of your new solo practice. It has really paid off, even though very few of the consultations result in paying clients.

But every now and then after you turn away a potential client with a weak case, their adversary—the one with the better case—also calls for a consultation. You would love to take them on, and but for the one-hour conversation with someone who never paid you a dime, you could!

What duties do you owe to someone who consults, but does not hire you?

The answer is clearer now that Georgia has adopted Rule 1.18, Duties to Prospective Client.

Even without a specific rule, lawyers have always understood that they cannot reveal confidential information obtained from a client during a consultation—the system just wouldn’t work if it were otherwise. But under what circumstances can a lawyer decline representation, then later agree to represent the other side?

The new rule prohibits the subsequent representation if the lawyer received “disqualifying information” during the consultation—that is, information that could be significantly harmful to the potential client in the matter.

The comments acknowledge that since the relationship between a lawyer and a prospective client is limited, prospective clients “should receive some, but not all of the protection afforded clients.” Other comments help lawyers understand how to limit the information obtained in a consultation in order to avoid disqualification. Comment 5 even allows the lawyer to get an advance waiver (with the informed consent of the prospective client), allowing the lawyer to represent a different client in the matter and warning the prospective client not to disclose confidential information during the consultation.

Many Georgia lawyers will find the language at Comment 2 useful for times when they receive an unsolicited email full of confidential information from a person who claims they are seeking representation. The comment provides that since there is no reasonable expectation that the lawyer is willing to discuss the possibility of representation, the sender is not a prospective client.

The new rule can be found at www.gabar.org/Rule_118.

Paula Frederick
General Counsel
State Bar of Georgia
paulaf@gabar.org
Disbarments
Evelyn A. Miller
12112 Vale Road
Oakton, VA 22124
Admitted to the Bar 2002

On March 1, 2021, the Supreme Court of Georgia accepted the petition for voluntary surrender of license for attorney Evelyn A. Miller (State Bar No. 506579). On Oct. 2, 2020, the Virginia State Bar Disciplinary Board entered an order accepting Miller's consent to the revocation of her license to practice law in Virginia. Miller notified the State Bar of Georgia of the action taken against her license in Virginia as required by the Georgia Rules of Professional Conduct 9.4 (b) and acknowledged that she was subject to the imposition of substantially similar discipline in Georgia per Rule 9.4 (b) (3).

With regard to the wrongdoing that resulted in the discipline imposed in Virginia, Miller explained that from 2015 to September 2018, she was employed by Monarch Title Agency and that her primary role there was conducting or managing live settlements. Also, during the same time frame, Miller had her own law firm, for which she maintained two checking accounts. She admitted that in 2017, she was the settlement agent and/or supervisor of junior settlement agents for six settlements in which funds were required to be held in escrow for an extended period post-settlement. The total amount of escrowed funds across the six transactions was more than $250,000. In each such settlement, the affected customer directed Monarch to forward the funds for long-term escrowing. Instead of holding these funds in a designated escrow account, these funds were wired directly from Monarch to the checking account associated with Miller's law firm. Miller stated that for four of the six transactions, some or all of the funds that were supposed to be held in an escrow account were spent. She asserted, however, that all the funds identified by the Virginia State Bar that should have been held in escrow, but were instead transferred to her law firm checking account, have now been repaid. She further stated that she terminated her signature authority of the co-signer on her law firm's bank accounts.
The Bar asserted that her admitted conduct would violate Georgia Rules of Professional Conduct 1.15 (I) (a) and 1.15 (I) (b) and that it would be in the best interest of the public and profession for the Court to accept Miller's petition for voluntary discipline and allow her to surrender her license.

George Michael Plumides
5639 Western Hills Drive
Norcross, GA 30071
Admitted to the Bar 1990

On March 1, 2021, the Supreme Court of Georgia disbarred attorney George Michael Plumides (State Bar No. 582274) from the practice of law in Georgia. A Notice of Discipline was filed that alleged serious misconduct related to five different disciplinary matters. Plumides was personally served but failed to timely file a Notice of Rejection, therefore, was in default and waived his right to an evidentiary hearing. Plumides has twice received confidential disciplinary sanctions—a Formal Letter of Admonition in 2002 and a Confidential Reprimand in August 2019.

The facts, as deemed admitted by Plumides’ default, show that he exhibited a pattern of misconduct for several years. He settled personal injury suits for two clients but failed to appropriately account for the settlement proceeds; failed to disburse the proceeds to one client; failed to maintain client funds in an IOLTA bank account; failed to appear at calendar calls for two clients in criminal matters, and then failed to appear on a contempt notice in one of those matters, resulting in his arrest and jailing for five weeks; failed to appear at a calendar call in a traffic court matter, which led to the suspension of the client’s license and registration; attempted to pay filing fees for a client in a civil matter with a check drawn on an account with insufficient funds; failed to respond to his clients’ requests for information about their cases; failed to timely respond to grievances filed with respect to all five disciplinary matters; and failed to respond to Notices of Discipline filed in four of the matters. The one response to a Notice of Investigation that Plumides did file was untimely and nonresponsive to the allegations against him. The Court agreed with the State Disciplinary Board that by this conduct Mr. Plumides violated Rules 1.1, 1.2 (a), 1.3, 1.15 (I)-(III), 8.4 (a) (4) and 9.3. The maximum sanction for a violation of Rules 1.1, 1.2 (a), 1.3, 1.15 (I)-(III) or 8.4 (a) (4) is disbarment, and the maximum sanction for a violation of Rule 9.3 is a public reprimand.

The Court found the following aggravating factors: prior disciplinary offenses, dishonest and selfish motives, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongfulness of conduct, vulnerability of the victim, substantial experience in the practice of law and indifference to making restitution. No mitigating factors were found.

Joseph Harold Turner Jr.
4964B LaVista Road
Tucker, GA 30084
Admitted to the Bar 1997

On April 5, 2021, the Supreme Court of Georgia disbarred attorney Joseph Harold Turner Jr. (State Bar No. 719482) from the practice of law in Georgia. The disciplinary matters came before the Court on two Notices of Discipline which sought the disbarment of Turner. After service by mail and in person were unsuccessful, the State Bar served Turner by publication. He failed to file a Notice of Rejection, therefore was in default and waived his right to an evidentiary hearing.

In Case No. S20Y0947, the facts show that after settling a civil matter for a client, Turner deposited the settlement check but failed to disburse the funds to the client or respond to her or the State Bar’s requests for information. The Bar concluded that Turner violated Rules 1.3, 1.4 (a), 1.15 (I) (c), 8.4 (a) (4) and 9.3. The maximum sanction for a violation of Rules 1.3, 1.15 (I) (c) and 8.4 (a) (4) is
disbarment, and the maximum sanction for a violation of Rules 1.4 and 9.3 is a public reprimand.

In Case No. S20Y0948, the facts show that the State Bar received notice from Wells Fargo Bank regarding a withdrawal that caused Turner’s trust account to overdraw. Turner failed to respond to inquiries from the Overdraft Notification Coordinator or to the Bar’s Notice of Investigation. The Bar concluded that Turner violated Rules 1.15 (I) (a), 1.15 (II) (b), 1.15 (III) (b) (1), 1.15 (III) (e) and 9.3. The maximum sanction for a violation of Rule 9.3 is a public reprimand and for a violation of the other rules is disbarment.

Turner’s dishonest or selfish motive as well as his considerable experience in the practice of law were noted in aggravation, and no factors were cited in mitigation.

**Earnest Redwine**
1355 Peachtree St. NE, Suite 1801
Atlanta, GA 30309
Admitted to the Bar 1992

On April 5, 2021, the Supreme Court of Georgia accepted the petition for voluntary surrender of license for attorney Earnest Redwine (State Bar No. 597610). In July 2020, the State Bar filed a Formal Complaint alleging that Redwine had violated several provisions of the Georgia Rules of Professional Conduct in connection with his neglect of a client in a personal injury matter that resulted in the client’s lawsuit being dismissed with prejudice. Redwine did not file an answer to the Formal Complaint; instead, in November 2020, he filed a petition for voluntary surrender, admitting the essential allegations of the Formal Complaint. The Special Master recommended that the Court accept Redwine’s petition. The facts, as found by the Special Master and as admitted by Redwine, show that in December 2016, Redwine was retained to represent a client in pursuing a personal injury claim. Redwine falsely told his client that he was performing work on the matter, and although he filed an action the day before the statute of limitations was to expire, he failed to serve the defendant. After Redwine failed to appear at a calendar call, the defendant filed a motion to dismiss for lack of service. The trial court granted the defendant’s motion and dismissed the action with prejudice. Redwine failed to inform his client about the dismissal, and when she learned about it, she filed a grievance. Redwine did not respond to the grievance or to the ensuing Notice of Investigation.

The Special Master determined that by this conduct, Redwine violated Rules 1.2 (a), 1.3, 1.4 (a), 3.2, 8.4 (a) (4) and 9.3 of the Georgia Rules of Professional Conduct. The maximum sanction for a violation of Rules 1.2 (a), 1.3 and 8.4 (a) (4) is disbarment, and the maximum sanction for a violation of Rules 1.4 (a), 3.2 and 9.3 is a public reprimand. The Special Master found, and the Court agreed, that the following aggravating circumstances were present: dishonest motive and substantial experience in the practice of law. The only mitigating factor found was the lack of prior disciplinary history, although the Court noted that Redwine was currently under administrative suspension.

**Review Board Reprimand**
**Daveniya Fisher**
P.O. Box 274
Pooler, GA 31322
Admitted to the Bar 2009

On March 1, 2021, the Supreme Court of Georgia accepted the petition for voluntary discipline of Daveniya Fisher (State Bar No. 553414) and directed that Fisher received a Review Board reprimand in accordance with Bar Rules 4-102 (b) (4) and 4-220 (b) for her admitted violations of Rules 1.3, 1.4 (a) (3) and 9.3 of the Georgia Rules of Professional Conduct.

After reviewing the petition and the Bar’s response, the Special Master found that Fisher was hired to represent a client in a criminal case who was charged with possession with intent to distribute marijuana and conspiracy based upon a March 2015 arrest. In April 2015, the district attorney filed a civil forfeiture action against the client’s property, and Fisher agreed to handle the forfeiture matter for no additional fee. In June 2017, a jury convicted the client of two felony charges. Fisher was paid a separate fee to represent the client on appeal, but after she filed a Notice of Emergency Leave of Absence after a family member passed away, Fisher received a letter from the client indicating that she was terminating Fisher’s services. Although Fisher said she interpreted the letter to apply to the forfeiture matter and the appeal and provided the client’s new attorney with the files, she never formally withdrew from representation and continued to receive notices from court regarding the appeal and forfeiture.

The forfeiture matter began appearing on calendars in February 2018 and was rescheduled multiple times at the request of the state or Fisher, but beginning in September 2018, Fisher failed to appear at multiple scheduled hearings. Ultimately, the matter was set for a hearing on Feb. 11, 2019, Fisher failed to appear and the trial court ordered the complete forfeiture of the client’s property to the state. When Fisher learned of this, she did not immediately alert the client and failed to file a formal motion to set aside or appeal the order. Finally, Fisher failed to respond either to the client’s grievance or to the subsequent Notice of Investigation.

The Special Master found that Fisher violated her duty of diligence and that her violations likely arose from her negligence, which would indicate that a reprimand generally would be appropriate. In mitigation of punishment, he noted that Fisher had no prior discipline, that she lacked a dishonest or selfish motive; that she was dealing with significant personal problems related to a loved one’s medical issues at the time; that she ultimately had a cooperative attitude toward the disciplinary proceedings; that she seemed to accept responsibility for her actions; and
that she presented evidence of good character and a good reputation. The Special Master agreed with the Bar that in aggravation, Fisher had substantial experience in the practice of law. In terms of evaluating the harm or potential harm suffered by the client, the Special Master noted that it was highly unlikely that Fisher’s actions caused actual harm to the client. He also found it relevant that Fisher had taken steps to minimize any potential future violations of the ethics rules.

Public Reprimand
Edward Shuff Cook
Suite 202
970 Peachtree Industrial Boulevard
Suwanee, GA 30024
Admitted to the Bar 1993

On April 5, 2021, the Supreme Court ordered that attorney Edward Shuff Cook (Bar No. 183741) receive a public reprimand in accordance with Bar Rules 4-102 (b) (3) and 4-220 (c) as punishment for his violations of Rules 1.15 (I) (a) and 1.15 (II) (a) and (b) of the Georgia Rules of Professional Conduct. The matter arose from a grievance filed by one or both of Cook’s former law partners in the midst of the dissolution of their partnership. After an investigation, the State Bar filed a formal complaint charging Cook with a variety of Rules violations, but it later amended its formal complaint to leave only the allegations that Cook’s handling of the firm’s trust account and his responses to the disciplinary matter violated Rules 1.15 (I) (a), 1.15 (II) (a) and (b) and 8.4 (a) (4). Ultimately, Cook stipulated that he violated Rules 1.15 (I) (a) and (II) (a) and (b), but he denied that he had done so knowingly or that he violated Rule 8.4 (a) (4). After extensive hearings, the Special Master made factual findings, concluded that Cook violated Rules 1.15 (I) (a) and (II) (a) and (b), but not 8.4 (a) (4), and found that in light of a number of mitigating factors, a one-year suspension was the appropriate punishment.

After considering exceptions filed by both parties, the Review Board disagreed with some of the Special Master’s findings underlying the conclusion that Cook had not violated Rule 8.4 (a) (4). The Review Board substituted its own different factual findings on that point and concluded that Mr. Cook had also violated Rule 8.4 (a) (4) in addition to his stipulated violations and concluded he should face a two-year suspension.

The Court noted it generally deferred to the factual findings made below when they are supported by the record but noted in this case it was presented with conflicting sets of factual findings. Upon a review of applicable rules and case law, the Court determined it should defer to the Special Master’s findings should there be a conflict. The Special Master found that Cook was a member and managing partner of a firm, Cook, Hall & Lampros, LLP, which was formed in early 2004 and dissolved in August 2012. Cook was the partner primarily responsible for managing the firm’s cash flow and bank account. He admitted he did not keep up with the amounts held in trust and that the firm did not keep ledgers of any specific client’s trust account activity so as to reflect the exact balance held for each client.

In 2012, the partners became aware that significant discrepancies existed in the trust account and that it held less than the minimum required balance. The trust account was made whole through contributions from Cook and the other partners without any client losing money. The partners then became embroiled in a lawsuit against each other, and the two other partners filed a grievance against Cook. A subsequent investigation showed that on dozens of occasions in the years leading to August 2012, checks were negotiated early, such that funds were prematurely transferred from the trust account to the firm’s operating account before the client’s settlement proceeds had been received. A further review of the bank balance for the trust account showed that during that time frame there were numerous instances where the trust account balance was less than the minimum required balance, often much less and sometimes for weeks at a time. The Special Master found, and Cook stipulated, that this conduct constituted multiple violations of Rules 1.15 (I) (a) and 1.15 (II) (a) and (b), the maximum penalty for which is disbarment. The Special Master did find that some of Cook’s answers were evasive or inconsistent with other evidence but concluded that the evidence did not clearly and convincingly show dishonesty or deceive and did not find a violation of Rule 8.4 (a) (4).

In mitigation, the Special Master noted that Cook had no prior discipline; he presented testimony of good character; he suffered from serious personal issues during the first seven months of 2012; he made a good faith effort at making restitution by contributing substantially to restoring the trust account before any client suffered losses or harm; and he expressed remorse. The Special Master also found that Cook’s discipline should be mitigated somewhat because Hall and Lampros, the other lawyers and partners in the firm, wholly abdicated their responsibility in that regard during the relevant time and had not been pursued by the State Bar for their failures. In aggravation, the Special Master noted a pattern of misconduct, multiple offenses and substantial experience in the practice of law, and recommended a one-year suspension.

The Court accepted the Special Master’s conclusions that Cook did not act with an intention to deceive and that the record did not contain clear and convincing evidence that Cook violated Rule 8.4 (a) (4). With regard to discipline for violations of Rule 1.15 (I) (a) and 1.15 (II) (a) and (b), the Court noted that there was precedential support for both a reprimand and for a suspension. It concluded, based on the facts and the mitigating factors, that the appropriate punishment was a public reprimand.

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Wherever you are, stay updated at gabar.org.

Visit gabar.org for the most up-to-date information on committees, members, courts and rules.

State Bar of Georgia
Legal Tech Tips

BY MIKE MONAHAN

1 Handwrytten
www.handwrytten.com
While it might seem old-fashioned, some still appreciate the personal touch of a hand-penned greeting or thank-you card and the meaning it carries. If writing a stack of cards by hand takes time you don’t have, consider using Handwrytten, a monthly subscription service that provides the cards, handwriting and postage. Pay only for what you need (10, 25 or 50 cards, or bulk quantities), type your message, choose your card design and allow robots holding real pens to write your cards for you.

2 Buffer
www.buffer.com
Working remotely has caused many businesses and firms to up their social media game. For easy scheduling, analytics and engagement tools, try Buffer (the program the State Bar uses to post to its own social channels!). The basic “Pro” tier allows you to connect eight social channels and schedule 100 posts per channel for $15/month. Buffer’s Pro analytics provides an in-depth look at your social presence, plus strategy recommendations and unlimited reports for $35 per month. The cherry on top: Buffer offers a 14-day trial before you commit.

3 JustWatch
www.justwatch.com
If you subscribe to multiple video streaming services, you are familiar with the frustration that comes when you are trying to locate a specific show or movie and have to open each app individually, search and repeat until you happen upon what you want. Instead, use JustWatch, the free streaming guide for movies and shows that you didn’t even know you needed. By setting up a basic account and populating it with the streaming services you utilize, you can search across all platforms at once. Plus, it will list whether the show is available to stream for free, or if it’s available for purchase. Speed up your search and get back to watching what you want, when you want.

4 Go Outdoors GA
This summer, get outside! The official app of the Georgia Department of Natural Resources’ Wildlife Resources Division, Go Outdoors GA, is free and offers essential information for sportsmen and those looking to adventure. The app features the ability to purchase and store fishing and hunting licenses, access to rules and regulations, geo-locating tools and more. Available on Apple’s App Store and Google Play.

5 Georgia Wildflowers
As you venture outdoors this summer and soak in the natural life around you, you might wonder about some of the plants you’re seeing. Use the Georgia Wildflowers app to identify these wild beauties. Input the plant’s information, like location, flower color and time of year, and the app will give you possible matches. Featuring more than 3,000 species of plants found in Georgia, take a moment to educate yourself on the green world around you. Available on Apple’s App Store and Google Play.

6 Outlook’s “Send Later”
If you want to use email before or after hours to avoid disturbing the recipient, or if you want your email to land at a better time to make sure it gets attention, use the “Send Later” option in Outlook (or Gmail) or “Delay Delivery.” Depending on your version of Outlook, where you find the setting may vary.
Google’s Jamboard
jamboard.google.com
Who doesn’t like “free”? Google’s Jamboard is a free virtual whiteboarding tool that comes packaged with Google Workspace (formerly G Suite) for nonprofits. It’s a great tool for group planning or brainstorming. Add text, sticky notes, drawings and pictures.

Free Stock Photos
www.nappy.co/NappyStock/collection/264; www.unsplash.com
Your website and marketing plan—and your circle of friends—will thank you for using the “All Hands Collection” from Nappy’s stock photo collection. “All Hands” is a free photo collection of hi-res product mockups that feature diverse skin tones, ages and body types. Unsplash also provides users with free and diverse images. All photos posted are licensed under the Creative Commons Zero license, meaning you may use them even for commercial purposes.

Hidden Subscriptions
We’ve mentioned Truebill (www.truebill.com) before as a means to scan your checking account for monthly or periodic online subscriptions. You may not realize just how many online automatic subscriptions you have. They add up! Now, check your Apple and Android Store accounts in the Subscription area of apps, as well as your PayPal account settings, to see what’s being automatically charged to you. Check your firm’s corporate account as well for automatic online payments. You’ll likely be surprised.

Disaster Plan Tips
www.clio.com/blog/law-firm-disaster-recovery-plan/
We’ve talked about disaster readiness before, but if you haven’t developed a disaster plan for your practice, Clio offers some great tips via their blog post above. And if you say you have a plan, when did you last review and update it?
Compassionate Lawyering at a Time of Uncertainty

The need is great, and the work at times emotionally challenging, but by infusing compassion into the provision of legal services, we inch closer to our lawyer’s creed and the common humanity that binds us.

BY ALPA AMIN

As the daughter of Indian immigrants, I grew up in a home with a revolving door. From visitors dropping in for a cup of chai, to families staying for weeks (or months) until they found footing on foreign land, our home became the home of many.

Since 2005, the Georgia Asylum and Immigration Network (GAIN) has been doing much of the same. For survivors of human trafficking and domestic abuse, and for families fleeing war-torn countries and political oppression, our agency has been a place of refuge—a place where the trust of our clients is earned and their
struggles are greeted with warmth, empathy and compassion in abundance.

If you have volunteered with us, you know the struggles of our clients well and understand that their fears and anxiety are often well-placed. To this day, Georgia remains the home to one of the toughest immigration courts in the country, and because there is no right to appointed counsel in immigration matters, the likelihood of succeeding on the merits of a case is inextricably intertwined with one’s ability to secure affordable or pro bono legal representation.

The hard truth is that immigrant survivors are facing a broken immigration system—and battling layers of complex trauma, abuse, prejudice, violence and isolation in the United States—all while carrying the heavy burden of their tattered hopes for a better life.

In 2020, the challenges of securing immigration relief took a backseat to the day-to-day struggles families faced during the pandemic. From the loss of employment to the loss of loved ones, our clients faced sudden, and at times, devastating hardships. Non-citizen immigrants were already more likely to live in poverty than U.S. citizens,1 but in the last 15 months, we saw a shocking escalation in the number of clients struggling to make ends meet.

During this time of uncertainty, GAIN made a conscious decision to address the holistic needs of our clients and to reimagine our work to address all the barriers that make safety and stability so difficult for our clients to attain. We responded by connecting our clients in crisis with more than $200,000 in emergency relief through rent and utility payments, groceries and other emergency support, and we drove more than 200 miles across the state of Georgia to deliver donated lap-tops to children who lacked the essentials for remote learning.

By transitioning to a virtual model of service, we were also able to address our clients’ language, tech and cultural barriers, and expand access to our services in rural areas across the state. Despite the pandemic’s effects last year, our staff of 10 served 573 men, women and children across 40 counties through intakes, advice and counsel sessions, and full legal representation.

From our founding to now, GAIN has always served as a catalyst for work in the community—introducing pro bono immigration service to volunteer attorneys, and now, leading efforts to create a tectonic shift in legal service provision, focusing on compassion and the holistic legal and non-legal needs of our clients.

In the days ahead, we will engage in work to empower our clients, advance our goals to provide trauma-informed care, and prevent or reduce risks such as housing and income insecurity for our clients. By centering those most closely impacted by our work, we hope to go beyond basic needs to address the mental health of our clients, and to create survivor leadership opportunities for stability, economic mobility and peer-to-peer support.

The need is great, and the work at times emotionally challenging, but by infusing compassion into the provision of legal services, we inch closer to our lawyer’s creed and the common humanity that binds us.

I welcome you to join us on this path.

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Alpa Amin is the executive director of Georgia Asylum and Immigration Network. chair of the Georgia

GAIN Facts

Since the onset of the pandemic, GAIN has connected its clients with more than $200,000 in emergency relief:

- Providing $186,000 in rent/mortgage assistance.
- Distributing $15,000 in grocery store gift cards to families facing food insecurity.
- Making more than $12,300 in utility payments.
- Delivering 37 donated laptops to enable children’s online learning.

*Data represents relief provided from 5-1-2020 to 5-1-2021

Endnote

Fastcase and More

Free online research is available to all Bar members. Learn how to effectively use and navigate Fastcase. In-person sessions are currently not offered, but you may still sign up for a webinar hosted by Fastcase at www.fastcase.com/webinars.

BY SHEILA BALDWIN

Legal research can be costly and time consuming. Fastcase, one of the most utilized member benefits, is the primary research tool for Bar members. Supplementing your searches with other free or economical sources from educational, public and governmental websites will assist in your efforts to achieve your research goals. In this article, we will cover just a few of the many legal research databases that are available and how to find the best resources to use depending on what type of information you need.

Fastcase is most likely your “go to” for case law, statutes and regulations and is accessible through your member login. The scope of coverage includes:

- Federal cases, statutes, regulations and more.
- State courts: all 50 states | 1950 to current (unless otherwise indicated).
- Specialty courts.
- State statutes; administrative regulations, codes and orders; and court rules and instructions.
- State attorney general opinions.
- State constitutions for all 50 states.
Law school library websites offer research support through legal information directories and research assistance. The live chat option has been especially useful during the pandemic.

Law Street Media (www.lawstreetmedia.com) is another free resource offered by Fastcase. Simply subscribe to the publication and choose trending topics on health, agriculture, technology and insights.

Court Listener (www.courtlistener.com) is a website created by the Free Law Project and features millions of legal opinions from federal and state courts. Search Court Listener by case name, topic or citation—the data is all free to access and updated daily. Their Supreme Court Network Visualizations are helpful when analyzing lines of precedent in Supreme Court cases (see fig. 1). This site hosts RECAP, an online archive and free extension for Firefox and Chrome that improves the experience of using PACER.

Justia (www.justia.com) is a free site that contains legal guides, legal research and law practice, as well as U.S. law, case law, codes, statutes and regulations. It’s a popular free court document repository with federal and state dockets and pleadings. It also includes a news section that covers noteworthy cases. Many of the materials can be downloaded at no cost.

Google Scholar (scholar.google.com) allows you to search for scholarly materials, including court and governmental information, in one location. It contains an extensive database of state and federal cases such as:

- U.S. Supreme Court opinions—1791 to present.
- U.S. federal district, appellate, tax and bankruptcy court opinions—1923 to present.
- U.S. state appellate and Supreme Court opinions—1950 to present.
- U.S. patents—790 to present; European Patent Office and World Intellectual Property Organization patents—1978 to present.

Google Scholar organizes cases by “how cited,” “cited by” and “related articles,” making it easy to pinpoint the most relevant cases and highlight the important paragraphs. It also suggests articles that may shed light on your legal issue. Google Scholar even organizes the list of cases by topic (see fig. 2). Like many free sites, the results are not comprehensive and should not be your primary or singular method of gathering data.

The Guide to Law Online (www.loc.gov/law/help/guide.php) is an annotated guide to sources of information related to the law made available by the Library of Congress. The guide is not meant to be an exhaustive list of resources, but it covers all relevant research areas for each jurisdiction (see fig. 3). Register for the Orientation to Legal Research Series or the Orientation to Law Library Collections Webinars, found under the Education and Research Opportunity tab, taught by legal reference librarians, all at no cost (see fig. 3).

Law school library websites offer research support through legal information directories and research assistance. The live chat option has been especially useful during the pandemic. Legal Information Institute, an independently-funded project of Cornell Law School (www.law.cornell.edu) is one such resource available to you. If you are looking for something closer to home, check out Georgia State University Law Library online at lawlibrary.gsu.edu. You’ll find a robust site complete with access to knowledgeable reference librarians.

The Georgia Public Library provides access to GALILEO, Georgia’s statewide electronic research portal; Newsbank; HeritageQuest; and the Digital Library with business resources such as Gale LegalForms and Data Axel (formerly ReferenceUSA).

The Georgia Archives (www.georgiaarchives.org) maintain records that protect legal and property rights along with other state and county government records, including the Acts of the General Assembly, the original and official copies of the state’s laws. Their archival service makes historic records of permanent research value available to the public.

This highlights just a few sources of free, law-related content. I recommend you take a few minutes and explore these and other helpful websites. As always, feel free to contact me at sheilab@gabar.org or 404-526-8618 for assistance.

Sheila Baldwin
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Playing Music, the Brain and the Intellectual Dimension of Lawyer Well-Being

“Music has healing power. It has the ability to take people out of themselves for a few hours.” —Sir Elton John

BY ERIC BALLINGER

In the wake of the COVID-19 pandemic and the resulting quarantines, lawyer well-being has become a popular topic. As many lawyers have had to deal with isolation, working from home and reduced income, reduced revenues or even losing a job, the topic is on the mind of many members of the Bar these days. However, lawyer well-being has been a developing subject for some time now, with both the American Bar Association and the State Bar of Georgia devoting a great deal of time and effort to the matter.

Lawyers have begun searching for work-life balance in the pursuit of mental, physical and social wellness in their personal lives. The goal was to combat the
problems created by the stress and fatigue brought on by the practice of law. This attempt to balance one’s career and personal life has proven to be impossible.\(^1\) In 2017, the National Task Force on Lawyer Well-Being (now the Institute for Well-Being in Law) released a report entitled “The Path to Lawyer Well Being: Practical Recommendations for Positive Change.”\(^2\) In the report, the task force defined lawyer well-being as “a continuous process in which lawyers strive for thriving in each dimension of their lives,” and identified these six dimensions as emotional, occupational, intellectual, spiritual, physical and social well-being. Here, we'll take a look at ways a lawyer can thrive intellectually.

While there are many ways that lawyers and non-lawyers develop the intellectual dimension of their lives, I’ve found that one of the most rewarding is learning to play a musical instrument. In her article for the *Federal Practitioner* entitled “A Prescription for Music Lessons,”\(^3\) Debra Shipman, Ph.D., R.N., said, “Learning to play a musical instrument provides a peaceful retreat from the pressures of daily life. Therapeutic outcomes of playing music include better communication skills, improved emotional release, and decreased anxiety and agitation.”

In her article, Dr. Shipman discussed the effects that learning to play a musical instrument have in dealing with depression, mental stimulation and dexterity. Musical training provides a multisensory integration of the senses with specific motor responses that can reorganize the brain’s neural pathways. As we all age, there is a progressive loss of auditory function, cognition, memory and motor control; however, some evidence supports the idea that learning to play a musical instrument that involves sensorimotor practices can slow this degradation as we get older. The evidence also supports that learning to play an instrument can reduce the likelihood of cognitive impairments in advanced age, such as dementia.

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Eric Ballinger picked up the guitar about 16 years ago, playing every night after his son was asleep, and soon built up the calluses to prove his consistency. After a couple years, he made the leap and signed up for guitar lessons at a local music shop.

“If anyone has an interest in learning to play a musical instrument, no matter what their age or level of skill, I recommend giving it a try.”

—Eric Ballinger
Practical Application: Why Wait to Find Your Instrument?
By Tara Rice Simkins

Based on Eric Ballinger’s article, here are a few questions to ponder for yourself or over a meal with friends and family.

Do you have a favorite memory of playing an instrument when you were younger? What made that moment so memorable?

If you could play any musical instrument, what would you play, and why?

If you already play an instrument, and you could do something to take it to the next level, what would you do? (E.g., would you play at an open mic night; call a friend who plays and ask if you could play with them; or organize a pick-up group?)

What would stop you from getting started now?

If your answer to the last question is time, take a moment to check in with yourself. Are you overcommitted at work or in some other area of your life? Waiting to get started is enough of a wake-up call for us to make a change to incorporate new wellness practices, like playing a new instrument. But if you need additional help to unwind your predisposition to being overcommitted, welcome to the club! Don’t hesitate to seek out tools from a professional who can help you regain your commitment balance beyond learning a new instrument. Remember that every Georgia lawyer receives six pre-paid sessions with a licensed counselor per calendar year—this application is a great way to #UseYour6!

Not only did I decide to start playing the fiddle the year I turned 50 because it was something that I always wanted to do, I also decided 10 years earlier to learn the necessary tools to address the core mindset issues that were driving my consistent overcommitment in all areas of my life. That required that I stop waiting and find a different kind of instrument: a professional therapist and life coach. If I had not done the necessary work of addressing my overcommitment issue, I doubt I ever would have had the time to start learning a new musical instrument, and I would have missed what was waiting for me.

Stop waiting, get started and, as Eric says, open a whole new world to #UseYour6!

Dr. Shipman also highlighted the documented mental health benefits of learning to play a musical instrument. The article pointed to documented studies that demonstrate how playing an instrument improved the quality of life in older adults, including improved self-esteem, greater independence and a reduced sense of isolation. Additionally, the daily escape of playing an instrument leads to a decrease in psychological distress, depression and fatigue. For lawyers who are living in the current environment of working from home and experiencing isolation from friends, family and even co-workers, this is especially good news.

I started playing guitar about 16 years ago, much like the opening lines of Bryan Adams’ song, “The Summer of ’69.” I ordered my first electric guitar online, and I played it every night after my son would go to sleep, to the point I could no longer use the touch screen on my iPhone with my left hand due to the calluses I had developed. After a couple of years of noodling at the guitar and learning from books and videos online, I decided to start taking lessons. I signed up at a local music shop to take a weekly half-hour lesson every Monday night.

When I got to the shop for my first lesson, I noticed that all the other students were kids. My teacher came out of the back room and asked me, “Are you Eric’s dad?” I soon figured out he was half my age, and I was his only middle-aged student. I even knew some of the other parents who brought their children to the music store for lessons. We worked together for about five years as I learned fretboard theory. Since then, I have worked with other instructors from time to time but mostly work independently and with other musicians.

Over the years, I have accumulated a collection of electric and acoustic guitars that are scattered about the house and at my office. I also learned how to use the effects pedals, set up the amplifiers and configure my own “rig.” As a fan of technology, I also learned how to use simulated amps and effects on my computer.

Endnotes

and tablet to record my practice sessions and learn from my own mistakes.

While most guitarists have, on some level, a delusion of grandeur of becoming a rock star, I have no such notion of quitting my day job as an attorney. However, I know several Bar members who have previously enjoyed careers as professional musicians and have even continued that career on the weekends. I mostly play for myself and my family, and give the occasional performance at an open-mic night, talent show or even a State Bar event. I play both electric and acoustic guitar, and my musical tastes run toward the blues and rock ‘n’ roll.

I integrate playing guitar at various times throughout the day. I like to pick it up for a few minutes to start the day to divert some of the anxiety of an upcoming busy schedule, and again at night to soothe some of the angst from a rough day in court or at the office. Playing when family is around tends to bring everybody together—and seems to be a good way to avoid taboo subjects like religion and politics. A few times a week, I will seize the opportunity to have a jam session by myself just for a little solace.

As I mentioned earlier, I keep guitars at the office as well and will often play a bit at lunchtime or between meetings to relax a little during the day. Plus, I have noticed it’s a wonderful conversation piece for those coming to the office who also share an interest in music. As a part-time magistrate, I share an office at the county jail where (prior to the pandemic) I would work nights on call to sign warrants and bonds. I keep a guitar and an amp there and play between the calls.6

Playing guitar has become an enjoyable pastime over the past 16 years. It has allowed me to keep my mind active learning new things and my hands busy moving, and I’ve improved my own rhythm and connected with other people. If anyone has an interest in learning to play a musical instrument, no matter what their age or level of skill, I recommend giving it a try. There are so many options to learn at your own pace and level of comfort; in fact, most music stores are offering their lessons virtually in the interest of social distancing. So, why wait? Find your instrument, get started and open a whole new world.

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**Eric Ballinger** is a main street lawyer in Canton, Georgia, where he has practiced for the past 27 years. Prior to attending law school, he served as an Infantry officer in the U.S. Army reserve, serving on active duty during Operation Desert Storm. He currently serves on the Board of Governors of the State Bar of Georgia and has done so for the past 13 years. He is a charter member and past chairman of the Military Legal Assistance Program, and he serves as a part-time magistrate in Cherokee County, where he has been known to keep a guitar in chambers for those late nights on duty.

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**Endnotes**

4. “Summer of ’69,” Reckless, Bryan Adams, A&M Records. Released June 17, 1985. The first stanza reads, “Got my first real six string; Bought it at the five and dime; Played it ‘til my fingers bled; Was the Summer of ’69.”
5. “Rig” is an expression guitarists use for their set-up—their guitar, strap, cables, effects pedals and amplifier—which they have created to produce their signature sound.
6. The Magistrate office at the Cherokee County Adult Detention Center has been effectively closed since March 14, 2020 due to COVID-19; however, at the time of writing, it was anticipated to reopen on May 3, 2021.
The Art of Briefs and Motions

Content is critical. But presentation matters. The words on the page form a picture. As you approach your next brief or motion, consider what picture you are creating with your text.

BY DAVID HRICIK AND KAREN J. SNEDDON

This installment of “Writing Matters” focuses not on the substance of writing, but on the look of briefs and motions. We’ll explore how the visual presentation of text matters. We’re not suggesting that your latest motion will be something the Louvre would want to hang. Nonetheless, it should be eye-catching, not an eye sore. We’ll start from the smallest details and move to the bigger picture to help you use visual presentation to further the purpose of the document.

Fonts, Type Size and Two Spaces Between Sentences

Of course, many court rules require briefs or motions be in a specific font and type size, and those rules need to be followed. Where you have choice, however, it is important to understand the impact of font selection on readability. For the following reasons, you may not want to use the default font selected by your word processing program.

Fonts have various characteristics. One key characteristic is whether they are monospaced or proportionally spaced. The space refers to the horizontal space each letter occupies: each letter in a monospaced font has the same horizontal width, and so “width” in the monospace font Courier New looks like this: “width.” Research shows many reasons to prefer proportional fonts.

Compared to proportional fonts, monospaced fonts are harder to read. And because they take up more horizontal space, you’ll always get fewer words per page. There are no good reasons to use monospaced fonts. Courier and Courier New are monospaced fonts. American Typewriter is another. These monospaced fonts cause a reading delay of almost 5%. That equals a significant delay of almost 15 words per minute.

There are many acceptable proportional fonts, but even they have been studied and ranked for readability and utility. Pick among them.

In addition to considering the space of each character, consider the space between sentences. Two spaces between sentences or one space, that is the question. The answer is: one space between sentences will do with proportional fonts.

Avoid Multiple Forms of Typographical Emphasis and Emphasize Only When Needed

Some words need emphasis. **Bolding**, *italicizing* and *underlining* are forms of typographical emphasis. Just as you can choose which font to use, you can choose how to emphasize words. Just keep in mind the following.

First, notice what is missing as an option: ALL CAPS. Avoid all caps—even for headings—unless absolutely necessary.

Text in all caps is hard to read and is often perceived as "yelling." In addition, and while it is not as distracting as all caps, you should also avoid using underlining.

Interestingly, “[u]nderlining was a typewriter convention used to compensate for the unavailability of bold or italic fonts.” Unless you’re using a Smith Corona typewriter, avoid underlining. In addition, bold words stand out on the page and can be distracting from the text. When you need to emphasize, consider using italics as the sole means to do so.

Second, if you are going to use more than one means to emphasize text, be consistent. Using different forms of emphasis—bold here, italics there, underlining somewhere else—can be confusing: is a word in bold more important, or less, than one in italics? A text that has underlining, bold and italics, is visually cluttered and busy looking, and a reader can become distracted by puzzling over the different emphases instead of focusing on the meaning of the text.

Third, avoid using more than one form of typographical emphasis for the same word or phrase. For example, don’t bold and italicize a word. It is possible to have too much of a good thing. As an example of the power (and dangers!) of using different typographical emphases, consider this paragraph, which violates all of our suggestions:

The district court erred as a matter of law when it admitted the highly prejudicial evidence, over appellant’s objection, that violated SETTLED PRINCIPLES OF GEORGIA LAW. Worse yet, the appellee gave no basis to distinguish CONTROLLING GEORGIA LAW!
While Jackson Pollock might appreciate the look of that text, most judges won’t. Annoying or distracting the reader with formatting does not advance the purposes of a text.

Beyond considering the options to emphasize words, consider what you need to emphasize. Emphasizing too frequently can dull the impact of the emphasis: if everything is important, why emphasize anything? Consider what message you are conveying to your reader.

Headings
Headings should serve as navigational signposts with the text. Readers should easily and quickly read and understand the headings. For that reason, headings should be both descriptive and concise. Headings also should be short, not a full paragraph summary of the argument.

All caps should be avoided, even in headings. Consider using headings that, at most, capitalize the first letter of each word and are in bold. “In the table of contents, even that emphasis can be dispensed with; the result is a table that is easy to read.”

Paragraph Shape and Size
Look at a few pages of your latest filing. Do you see squares of text, each about the same size? Or, worse, do you see perhaps a big rectangle on each page, preceded or followed by the end or beginning of another big rectangle? Are there numerous block indented quotes?

Although they may remind you of Rothko, as a page in a brief, they do not paint a pretty picture. If you see monotonously similar-length square paragraphs, look to see if some can and should be broken up more narrowly by topic. If you see a rectangle filling half the page—or several of them—definitely examine those for more careful parsing. Likewise, while a block indented quote can be helpful, studies show that readers often glaze over them.

Moreover, consider the function of paragraphs. Paragraphs should be complete, cohesive and unified. Paragraphing helps the reader bundle together information. They also segment the text into visually manageable units of information. Write to be read.

Conclusion
Content is critical. But presentation matters. The words on the page form a picture. As you approach your next brief or motion, consider what picture you are creating with your text.

David Hricik is a professor of law at Mercer University School of Law who has written several books and more than a dozen articles. The Legal Writing Program at Mercer continues to be recognized as one of the nation’s top legal writing programs.

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

Endnotes
1. For a deeper look into the characteristics of fonts, see Cameron Chapman, Understanding the Nuances of Typeface Classification (available at https://www.toptal.com/designers/typography/typeface-classification) (last visited April 19, 2021).
2. See id.
4. The “best” proportional fonts include “Baskerville, Bell MT, Book Antiqua, Calisto MT, Century Schoolbook, Garamond, Goudy Old Style, Helvetica, and Palatino.” The second-tier fonts include “Bodoni, Calibri, Century, Futura, and Perpetua.” Perhaps surprisingly, on the third tier is Times New Roman as well as Courier, Courier New, Baskerville Old Face, Century Gothic, Cooper Black, and Copperplate. To be avoided at all are: Arial, Bookman Old Style, Bauhaus, Colonna MT, Freestyle Script, and “goofy fonts,” such as Stencil. See Suzanne Suarez Hurley, Advancing the Legal Profession with Typography, 86 Fla. B.J. 53, 55 (November 2012) (discussing BUTTERICK, TYPOGRAPHY FOR LAWYERS (2010)).
7. Suzanne Suarez Hurley, Advancing the Legal Profession with Typography, 86 Fla. B.J. 53, 55 (Nov. 2012) (“If you believe that something needs to be underlined, try using bold or italic instead”).
9. ___ BRIEFS, 2020 TXCLE-ACAP 15-II, 2020 WL 5607209 (“Occasional emphasis is acceptable, but only when used very sparingly. Too many briefwriters overemphasize, which is distracting & annoying”).
Space and Grace: Continue the Conversation on Unparalleled Unity

The Commission encourages lawyers to continue this conversation or start one of their own, beginning with getting to know someone who might think differently than they do.

BY KARLISE Y. GRIER

On March 19, the Chief Justice’s Commission on Professionalism convened a CLE of approximately 1,600 lawyers and judges to discuss whether lawyers can lead efforts, using the tools of professionalism, to bridge the political, racial and social divisions in America. In advance of the CLE, a diverse panel of lawyers and judges submitted written responses to a series of questions, which served as the framework for discussion. Each panelist was asked to introduce themselves in the context of a Commission “Calling to Task,” which is part of the Commission’s mission statement, and also discussed what “unparalleled unity” meant to each of them, sharing their responses to the questions submitted to them in advance.

As she shared her answer about the meaning of “unparalleled unity,” Justice Carla Wong McMillian spoke about the values and goals that lawyers and judges share, many of which are set forth in A Lawyers Creed and the Aspirational Statement on Professionalism. Hon. Nina Markette Baker discussed the importance of lawyers using an elevated level of civility. She shared that, during one of her first cases as a new lawyer, she had a cup of coffee with an older colleague who taught her that being a lawyer isn’t about fighting—it is about trying to find some common ground. Baker went on to highlight the work of the State Bar of Georgia’s Seeking Equal Justice and Addressing Racism & Racial Bias Committee, which has instituted a series of “Courageous Conversations” under the leadership of State Bar President Dawn M. Jones.

On the subject of conversations, Ashley Bell discussed his thoughts on having a constructive conversation with others when they ascribe to different “factual records.” “History matters,” said Bell. “If you don’t understand how we get to certain points, people from different backgrounds are automatically dealing with a different set of facts. … I keep books near me. If someone comes to me and says, ‘I don’t understand something,’ I give them a book. Once I have given someone infor-
“As leaders, lawyers have the opportunity and ability to speak up for others who may not be able to speak up for themselves. Lawyers need to do so.”—Justice Carla Wong McMillian
A Thank You to Chief Justice Harold D. Melton

From Commission members, advisors and staff, we thank Chief Justice Melton for his leadership in professionalism.

“I have had the privilege of knowing Chief Justice Melton since 1986. He was a section leader in the Georgia Attorney General’s Office under Michael J. Bowers when I began work there after graduation from law school. I have considered him a career mentor since that time. He epitomizes everything there is regarding grace, class, leadership and professionalism. His service to the state of Georgia is to be highly praised.” —Hon. Shondeana Morris

“A Lawyer’s Creed states, ‘As to my colleagues in the practice of law, I will aspire to respect the needs of others, especially the need to develop as a whole person.’ Chief Justice Melton has demonstrated an exemplary commitment to promote overall lawyer wellness. Working with him the last five years on the SOLACE, Attorney Wellness, and Suicide Awareness & Prevention committees of the State Bar of Georgia, and more recently on the Chief Justice’s Commission on Professionalism, I witnessed Chief Justice Melton’s compassion and kindness towards all members of the Bar.” —Hon. Shondeana Morris

“I have long admired Chief Justice Melton’s respect for those of us non-lawyers who are part of the Commission. He embodies professionalism by regarding lay members with equal respect, viewing us as peers rather than insignificant voices. He has always been welcoming, inclusive and appreciative, regularly seeking our input on issues that impact the justice system—even beyond the Commission’s work. As in the Aspirational Statement on Professionalism, Chief Justice Melton clearly strives to make ‘the law, the legal system and other dispute resolution processes available to all.’” —Jennifer Davis Ward

“A principle that animates the legal profession is it is one of service, as A Lawyer’s Creed reminds us. Chief Justice Melton is the absolute embodiment of this principle. He has dedicated his time and many talents—and, indeed, his entire legal career—to serving the public and our system of justice. When he leaves the bench, we will miss his presence, but his service to the people of Georgia will be a legacy that we will not forget.” —Justice Sarah Hawkins Warren

“Justice Melton epitomizes A Lawyer’s Creed and those characteristics recognized therein: honesty, civility, candor and courtesy. Not only that, but he truly has dedicated his life to the service of the public, the profession and the legal system. He is an example to us all and the embodiment of professionalism.” —President-Elect Elizabeth L. Fite

“Early in the pandemic, my 11-year-old son heard Chief Justice Melton speaking at one of our Commission meetings. He asked who he was, and I explained that he was the chief justice of the Supreme Court of Georgia. Throughout the meeting, my son sat at my door and watched, in awe of how Justice Melton spoke. He inspired a middle-schooler that day, not just because of his title or the color of his skin, but because of the content of his character. He is a formidable inspiration to me, my son and countless others; for that, I am grateful.” —Adwoa Gharley-Tagoe Seymour

During his closing remarks, Chief Justice Harold D. Melton expressed that he was heartened by the discussion. “We as lawyers have the skillset to do what we are talking about doing, even though it is a huge challenge. … [Seeking] unparalleled unity doesn’t mean we agree, but it does mean we can disagree and yet understand that we can still be brothers and sisters.” He added, “I hope we all look at the role we play and not look at having the difficult conversations as something for somebody else to do.”

The Commission encourages lawyers to continue this conversation or start one of their own, beginning with getting to know someone who might think differently than they do. López and McMillian both emphasized the importance of getting to know people on a human level first before you begin having the hard conversations. McMillian noted, “It is hard to cancel someone out if you know their heart.”

If your bar association or legal organization wants to hold a conversation on a group level, you are invited to use the Commission’s questions to get you started; simply contact the Commission to let us know that you are using the materials. To view the “Unparalleled Unity” CLE and all its written materials, visit the Commission’s website at cjcpga.org/unity-cle.
"I first met Chief Justice Melton when I began serving on the Chief Justice's Commission on Professionalism, and I've gotten to know him through many conversations. I love and appreciate his humor, his humanness and the way in which he has led the Supreme Court of Georgia, working closely with not just the Commission, but also with the Executive Committee of the State Bar, the Georgia Association of Criminal Defense Lawyers, and undoubtedly all of the individuals and groups he touches."—Nicki Vaughan

"Chief Justice Melton is the epitome of professionalism in thought, word and deed. His grace and dignity inspire attorneys across this state, as does the diplomacy he demonstrates in his interactions with everyone. Over the course of this most difficult year and in the midst of a tragic pandemic, it is difficult to imagine a finer leader to have been our guide. I am honored to call him Chief, but more importantly, I am honored to call him my friend."—Justice Shawn Ellen LaGrua

"Chief Justice Harold D. Melton: honorable, compassionate, egalitarian and inscrutable. He is, for me, the 'Justice of Cool.'"—Monica Willis-Parker, MD

"Chief Justice Melton once told me, ‘Our most effective tool as a lawyer is who we are as a person, and we must bring this tool into everything we do.’ His tool box is filled with integrity, faithfulness and fairness, but I believe humility is the glue that holds it all together. Justice Melton—or simply ‘Harold’—treats people with dignity, courtesy and respect. To me, that encompasses the true meaning of professionalism."—Maria Mackay

"Our Lawyer’s Creed provides, ‘To the public and our systems of justice, I offer service.’ Chief Justice Melton embodies so much that is right about our profession: he offers trusted ethical and professional guidance; he is collaborative and thoughtful in his decision-making; he has always been gracious with his time and offered to lend advice to young attorneys; and he has been intentional in shaping our profession for the better, especially during the pandemic. It has been an honor to work with him, and I am thankful for his years of service to the Bar, our profession and Georgia."—YLD President Bert Hummel

"Part of the Aspirational Statement on Professionalism reads, ‘I will aspire ... [to] assist my colleagues become better people in the practice of law.’ Chief Justice Melton has taught me that part of being a good leader is striving to find a pathway to get to ‘yes,’ even though it might be easier to say ‘no.’ He demonstrates joy, peace, forbearance, kindness, goodness, faithfulness, gentleness and self-control. I thank him for his inspired and courageous leadership."

—Karlise Y. Grier

Whatever form it takes, continue the conversation with space and grace.

Karlise Y. Grier
Executive Director
Chief Justice’s Commission on Professionalism
kgyrier@cjcpga.org

Endnotes
1. Carla Wong McMillian, justice, Supreme Court of Georgia; Hon. Nina Markette Baker, judge, Superior Court, Coweta Judicial Circuit; Ashley Bell, partner, Dentons US LLP; Jake Evans, partner, Holland & Knight LLP; Hon. Dax E. López, judge, State Court of DeKalb County; and Patrise M. Perkins-Hooker, past president, State Bar of Georgia, and administrative partner, Johnson & Freeman, LLC. Prof. Tanya M. Washington (Georgia State University College of Law, Center for Access to Justice) served as the panel moderator.

2. The “Calling to Tasks” are part of the Commission’s mission statement found at cjcpga.org/mission.


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

JOSEPH H. AMOS
Decatur, Georgia
Woodrow Wilson College of Law (1968)
Admitted 1969
Died April 2021

E. KONTZ BENNETT JR.
Waycross, Georgia
University of Georgia School of Law (1966)
Admitted 1965
Died September 2020

S. PHILLIP BROWN
Macon, Georgia
Mercer University Walter F. George School of Law (1967)
Admitted 1967
Died January 2021

R. PHILIP CARY
Statesboro, Georgia
University of Tennessee College of Law (1982)
Admitted 1988
Died November 2020

LEONARD W. CHILDS JR.
Metter, Georgia
University of Georgia School of Law (1974)
Admitted 1974
Died May 2021

BARBARA T. DEAN
Atlanta, Georgia
John Marshall Law School (1973)
Admitted 1973
Died April 2021

MICHAEL MCCAHAN DOWNES
Martinez, Georgia
University of Georgia School of Law (1959)
Admitted 1962
Died May 2021

RICHARD VAN DUNN
Palm Bay, Florida
Atlanta Law School (1988)
Admitted 1994
Died May 2021

LEIGH A. DUPRE
Atlanta, Georgia
University of Georgia School of Law (1989)
Admitted 1989
Died April 2021

MARGARET N. DYAL
Lavonia, Georgia
University of Georgia School of Law (1978)
Admitted 1978
Died May 2021

SONIA FISHKIN
Atlanta, Georgia
University of Pennsylvania Law School (1986)
Admitted 1986
Died March 2021

RICHARD CRAWFORD FOSTER
Atlanta, Georgia
Mercer University Walter F. George School of Law (1995)
Admitted 1995
Died April 2021

DAVID H. GAMBRELL
Atlanta, Georgia
Harvard Law School (1951)
Admitted 1951
Died May 2021

PATRICK F. GOMES
Covington, Georgia
University of Alabama School of Law (1997)
Admitted 1998
Died April 2021

ELBERT J. HENRY
Birmingham, Alabama
Woodrow Wilson College of Law (1978)
Admitted 1979
Died November 2020

NANCY MERRILL HUNT
Atlanta, Georgia
Mercer University Walter F. George School of Law (1963)
Admitted 1966
Died March 2021

LAWRENCE W. KELLY
Atlanta, Georgia
Arizona State University Sandra Day O’Connor College of Law (1980)
Admitted 2004
Died February 2021

SID M. KRESSES
Atlanta, Georgia
Emory University School of Law (1958)
Admitted 1958
Died March 2021

DON A. LANGHAM
Atlanta, Georgia
Wayne State University Law School (1959)
Admitted 1969
Died May 2021

BILLY R. MATTHEWS
Woodstock, Georgia
Woodrow Wilson College of Law (1962)
Admitted 1963
Died May 2021

JARROD SEAN MENDEL
Atlanta, Georgia
University of Georgia School of Law (2005)
Admitted 2006
Died May 2021

JAMES B. MIDDLETON
Rio Rancho, New Mexico
Woodrow Wilson College of Law (1972)
Admitted 1972
Died March 2021

HARLAN STUART MILLER III
Macon, Georgia
Emory University School of Law (1989)
Admitted 1989
Died January 2021

ROSE H. NATHAN
Atlanta, Georgia
Admitted 1983
Died April 2021

ROBERT R. PAGNIELLO
Lilburn, Georgia
Columbia University Law School (1965)
Admitted 1969
Died May 2021

CHARLES M. SHAFFER JR.
Atlanta, Georgia
University of North Carolina School of Law (1967)
Admitted 1968
Died March 2021

MATTHEW JEFFERY SIMMONS
Atlanta, Georgia
University of Miami School of Law (2007)
Admitted 2007
Died May 2021

ROBERT J. THOMAS
Lilburn, Georgia
Columbia University Law School (1965)
Admitted 1969
Died May 2021
OBITUARIES

Richard Crawford “Richie” Foster, 55, passed away in April. He was a leader known for his wisdom, creativity and knack for forming real relationships with everyone he met. He was a true trial lawyer with strong feelings about how to practice law, try a case and relate to those on a jury. He willingly shared his knowledge and was a great mentor to many.

Foster graduated from Georgia College in 1988 before attending Mercer University Walter F. George School of Law, where he earned his law degree in 1995. After more than 16 years with his first firm, Hicks, Casey & Foster PC, he joined Carlock, Copeland & Stair LLP as a partner. In 2018, Foster joined Swift, Currie, McGhee & Hiers, LLP, along with former colleagues at the renamed Hicks, Casey & Morton.

Foster was a Georgia native who earned a national reputation as a leader in motor carrier liability, commercial insurance coverage and general commercial insurance defense throughout a law career spanning more than 25 years. He was a committed advocate for his clients, which included some of the nation’s largest trucking companies and their insurance carriers, as well as leading local and regional businesses in the transportation and insurance sectors.

An innovator in his practice, Foster created a 24-hour emergency response team to make sure he was there for his clients when they needed him. He was highly active with many professional organizations, including serving on the Trucking Law Committee for the Defense Research Institute and as a member of the Georgia Defense Lawyers Association, Southeast Wood Producers Association, State Bar of Georgia, Transportation Law Association and the Trucking Industry Defense Association. He was also a member of the exclusive Federation of Defense & Corporate Counsel.

A devoted father, husband, brother, son and friend, Foster was loved and admired by all who knew him. He was a true outdoorsman, who enjoyed hunting, fly-fishing, kayaking, camping and running marathons, and could often be found offshore fishing in Destin, Florida, or walking his favorite golden retriever, Stella. Foster also loved coaching baseball and cheering on the Atlanta Braves and University of Georgia football.

Memorial Gifts

Memorial Gifts are a meaningful way to honor a loved one. The Georgia Bar Foundation furnishes the Georgia Bar Journal with memorials to honor deceased members of the State Bar of Georgia. Memorial contributions may be sent to the Georgia Bar Foundation, 104 Marietta St. NW, Suite 610, Atlanta, GA 30303, stating in whose memory they are made.

The Foundation will notify the family of the deceased of the gift and the name of the donor. Contributions are tax deductible. Unless otherwise directed by the donor, In Memoriam contributions will be used for Fellows programs of the Georgia Bar Foundation.
Nancy Merrill Hunt, 81, passed away in March. Hunt was born on May 8, 1939, and was one of three daughters born to Ruth Porter and Leon “Bus” Merrill from Centralhatchee, Georgia. Hunt earned her associates degree from Young Harris College in Young Harris, and a bachelor’s degree from Mercer University in Macon.

Hunt’s dream was to become an attorney, so upon graduation from Mercer University in 1961, she entered the Mercer University Walter F. George School of Law. Because the pursuit of a law degree by a woman in the 1960s was extremely unusual, Hunt was the only woman attending the law school during her time there, and only the second woman to graduate from the program. She earned her law degree in 1963, passed the Georgia bar exam and was admitted to the then-named Georgia State Bar Association in 1966. Hunt was also one of the first women lawyers in the state of Georgia; she joined the Georgia Association of Women Lawyers and remained a member for her entire career.

David H. Gambrell, senior counsel with Baker Donelson in Atlanta, former U.S. senator and 1967-68 president of the State Bar of Georgia, died May 7, 2021, at the age of 91.

Gambrell was a graduate of Davidson College and Harvard Law School and was admitted to the Georgia Bar in 1951. He began his legal career with King & Spalding in Atlanta and in 1963 co-founded formed the firm that would become Gambrell & Stolz. In 2007, Gambrell & Stolz merged with what is now Baker Donelson. Gambrell continued to serve as senior counsel, with practice experience in civil and business litigation, computer and intellectual property law, corporate, securities, real estate, international transactions, and trusts and estates.

After the death of U.S. Sen. Richard B. Russell in 1971, then-Gov. Jimmy Carter appointed Gambrell, who was serving at the time as chair of the Democratic Party of Georgia. During his time in the Senate, Gambrell served on the Banking Committee, Aeronautics & Space Committee, and the Select Committee on Small Business.

Before his election as the fifth president of the State Bar of Georgia, Gambrell was president of the Atlanta Bar Association in 1965-66. He also served in the House of Delegates of the American Bar Association, on the Board of Editors of the ABA Journal and as a director of the National Legal Aid and Defender Association. He was also a founding member of the ABA’s Litigation Section.

Gambrell received the State Bar of Georgia’s Distinguished Service Award in 2002, the Atlanta Bar Association’s Leadership Award in 2007 and the American Bar Foundation’s Outstanding Service Award in 2012.

He was twice married, first to the late Luck Flanders Gambrell for 62 years, and second to Jeanne Martin Gambrell. He is also survived by his children Luck Davidson, Henry Gambrell, Alice Gambrell and her husband David Rollo, and Mary G. Rolinson and her husband Frank and five grandchildren.

A family funeral service was held May 12 at H.M. Patterson & Son-Oglethorpe Hill Chapel, and burial was in The Early Settler’s Cemetery in Swainsboro. Memorial contributions may be made to Atlanta Mission, Potter’s House, P.O. Box 20017, Atlanta, GA 30325 or AtlantaMission.org.

Hunt began working for the John Wyatt Law firm in LaGrange. Later, when she and her husband moved to East Point, she joined Lawyer’s Title in Atlanta where she worked for many years. After leaving Lawyer’s Title, Hunt and Dock Davis of Heard County collaborated for a few years and remained lifelong friends, even after their professional association ended.

Hunt opened her own firm in College Park, where she collaborated with lawyers such as Dick Bean, Mike Schaaf and Bill McFee. During her time as an independent lawyer in property law, Hunt worked on many issues, including the Airport Noise Abatement project in College Park. Finally, her expertise in property law took her to Shuping, Morse and Ross of Atlanta, where she worked until retirement in 2006.

Hunt was married to Ponder Almon Hunt for more than 50 years and had a son, Alan. She was also an avid reader who read newspapers daily from front to back to keep track of all current affairs. Hunt maintained a politically savvy outlook and was always glad to join in a spirited debate.
Below is a list of webcasts that correspond with programs ICLE typically administers in spring and summer. You can view these titles online now, along with all available webcasts at www.gabar.org/webcasts.

- Administrative Law and State Government Law for Attorneys
- ADR in the Workers’ Compensation Arena
- ADR Institute and 2019 Neutrals’ Conference
- Adoption Law
- Basic Fiduciary Law 101
- Basic Fiduciary Law 201
- Building Winning Appeal Issues into Social Security Disability Cases
- Civil Prosecutions of DUI & Dram Shop in Georgia
- Commercial Real Estate
- Construction Law for the General Practitioner
- Defense of a Personal Injury Case
- Drum Majors for Justice
- Family Law Seminar
- Georgia Auto Insurance Claims Law
- Georgia DUI Update
- Handling Big Cases
- Jury Trials in Divorce
- Not Your Everyday Custody Case
- Nuts and Bolts of Family Law
- Personal Injury Law Clinics
- Professionalism, Ethics and Malpractice
- Real Property Foreclosure
- Real Property Law Institute
- Recent Developments
- Residential Real Estate
- School and College Law Update
- Secrets to a Successful Plaintiff’s Personal Injury Practice
- Social Security Law Institute
- Solo & Small Firm Boot Camp
- Title Standards
- Trial and Error
- The Trial of Leo Frank
- Toxic and Mass Torts
- VA Accreditation
- War Stories

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CONTACT
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