November 2002

November 2002 Docket

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By Kelly Kesner

On October 23rd, students heard about Tort Reform in the Medical Malpractice field through a program sponsored by the Student Health Law, Student Trial Lawyers, and the Lesbian/ Gay Law Students Association. Attorney Marilyn Allen of MAG Mutual Insurance, Bill Clark of the Georgia Trial Lawyers Association, and David McLean of Sutherland, Asbill & Brennan shared their expertise on problems they encounter and changes being proposed to the current Georgia Legislature to handle medical malpractice issues.

What is Tort Reform? Why is it needed?

Marilyn Allen explained what tort reform means, why it is needed, and what in their opinion are measures enacted by the State Legislature to correct the non-legal system, Statutes of Limitations, and apportionment of damages in the Medical Malpractice field. Ms. Allen listed factors such as radiology and obstetrics—which normally have higher malpractice insurance premiums. Finally, the system currently encourages early retirement and discourages physicians from performing certain specialized procedures.

What is proposed?

The new proposed legislation suggests the following steps:
2) Diminution Rule to be amended. Currently, the plaintiff can dismiss the lawsuit at any time, for any reason, up to 2 years before the trial. Defendant does not have the same right.
3) Elimination of the joint / several liability holding each defendant responsible for 100% of the negligence action.
4) Mandate comparative negligence. Reduce award by patient's contribution to his injury.
5) Cap total damages (economic and noneconomic) at $1 million.
6) Limit attorney's fees based on sliding scale.

How Hospitals are Affected

David McLean of Sutherland defends hospitals throughout the state of Georgia against medical malpractice claims. He explained that the current medical malpractice crisis is twofold; it reduces availability as insurers no longer wish to write policies for hospitals and those insurers that remain to write premiums are high.

McLean argues that hospitals are made up of PEOPLE. The physicians and nurses most of the time do a fantastic job and want to improve care given to patients. Sometimes (not every year) medical errors occur, and patients suffer. Remedies are still low for hospitals, although extensive and inadequate measures are taken.

In order to gain a higher client base and build their businesses in the 90s, insurance companies lowered premiums almost 20-30%. Profits were high and payouts were low. Now, profits are not enough. Tort reform would require a higher number of claims to pay out. Problems have arisen with insurance companies trying to recoup the losses suffered in the 90s in a 2-3 year window by raising rates.

Mr. Clark argues that Tort Reform would change the method by which the victims get justice. He claims, "Every time there is a claim of negligence, and there is a question as to the standard of care, the scales tilt in favor of the profession. The jury has to presume there was due care going in, and the patient already has overcome many obstacles. Currently in 85% of the cases, the doctor wins ... if the law were to change the odds would be even further stacked in favor of the profession."

The SEARCH FOR INNOCENCE IN GEORGIA

By Erin Baird

"Sometimes the innocent victim of crime is the one who stands accused." In an effort to promote the mission to free the wrongly convicted, the Innocence Project has adopted these words as a chilling reminder of our tragically broken justice system. For Calvin Johnson, Jr., these words cannot be understated.

On October 27, after serving 16 years of his life in a Georgia State Penitentiary for crimes he did not commit, Johnson spoke to a packed room of GSU law students as a free man. One evening in 1983, upon returning home from work, Johnson was arrested and charged with 2 separate but related acts of rape that occurred in Clayton and Fulton Counties. As part of the investigation, Johnson was placed in a live lineup that was viewed by the victim. Although the victim identified another man, police relied on her earlier identification of Johnson from a black and white photograph.

Johnson was then taken to the hospital in handcuffs, where blood and hair samples were taken and tested. At trial in Clayton County, the prosecution relied on the test results as evidence of Johnson’s involvement because they identified the perpetrator as an African-American male with O-positive blood. An all-white jury then returned a guilty verdict in 45 minutes, and Johnson was sentenced to life in prison.

Johnson was exonerated and released from prison in 1999, after a 2-3 year window by raising rates.

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Bar Fitness Application

By Jerri Nims

General Application Information
On October 25, 2002, the Student Bar Association sponsored a forum on the bar fitness application process. Hulett Askew, Director of the Georgia Office of Bar Admissions, told students about the bar application process and answered questions.

The process involves 2 steps:
(1) getting a certification of fitness and
(2) applying for admission to the Bar Exam.

Therefore, law students must complete 2 applications:
(1) Bar Fitness Application: $300 fee. Call 404.656.3490 to get Bar Application Packet. Regular filing deadline is December 4, 2002. Must be typed. It is long, detailed, and intrusive. Students must fill it out completely, carefully, and candidly. Read it thoroughly as it is more straightforward than it appears at first glance.

(2) Application for the Bar Exam: $120 fee. One page application sent to student upon receipt of the Bar Fitness Application. As 1,300 – 1,400 students generally take the Bar each time it is offered, Mr. Askew strongly encouraged students to get their Fitness Applications in by the regular filing deadline.

While there is a trend to wait until the late filing deadline of March 5, 2003, this is discouraged as if an applicant has a problem with their Fitness Application, it takes a while to correct, then she cannot take the July exam.

While the application will eventually be available online, possibly by January of 2003, there is presently NO online registration.

Disclosure
Mr. Askew stressed the importance of not trying to parse questions in an effort to avoid disclosing information. If you wonder whether or not to include something, include it. "When in doubt, disclose." If you have a question, call the Georgia Office of Bar Admissions (404.656.3490) and ask questions anonymously. The information contained in the application is completely confidential. Even though the Office has been subpoenaed for information in an application, they did not have to reveal it. The application is considered a continuing application, so if something changes, an applicant has 30 days to amend it. This applies until an applicant is sworn in as a lawyer.

Information is required regarding up to 10 years ago or starting when the applicant was 18 years old, whichever is shorter. In reference to employment history, applicants are required to supply ticket information, etc., applicants should just do their best in disclosing identifying information. For example, for speeding ticket information, if an applicant has had a GA license for over one year, (s)he does not need to provide a DMV report. If not, a DMV report is required. In reference to employment history, applicants should include a recent job still in the company. Disclose if the company no longer exists. Also, include unpaid positions such as internships.

Applicants should identify any gaps in employment or education. Further, it is wise to get a free credit report from the major credit agencies, Transunion, Experian, and Equifax.

Process
Once the Application is filed, it is reviewed for completeness by an Application Analyst. If there will either not receive a letter saying that your application is fine or that you need to supply more information. A letter requesting more information is called a start-up letter.

The Office of Admissions will send letters of inquiry to your listed references, employers, schools, etc. Therefore, make sure you provide complete and up-to-date addresses. If there is no problem with your application, then the application goes to the Fitness Board for action. If no information is needed and no issues arise, the Application should be certified within 90-100 days. Once certified, you have up to five years to take the Bar under that certification in Georgia.

If there is a problem with your application, the Fitness Board has 3 options:
(1) Certify your application anyway
(2) Send your application back to you and ask for follow-up information
(3) Consider the file complete but be cause of concerns, ask to speak with the applicant. The applicant meets with the 9 members of the Fitness Board. In a typical year, only 35 out of 1,300 applicants are called in. In a bad year, 4 of these applicants are denied certification.

Problem Areas and Solutions
Mr. Askew highlighted that some typical problem areas are unlawful conduct, academic misconduct, false statements, misconduct in employment, and neglect of financial responsibilities, evidence of emotional instability, and a drug/alcohol problem. However, he stressed that nothing necessarily invalidates certification and what matters is an applicant’s character fitness today. The Board will consider criteria at time of incident such as age, recency, reliability, and seriousness. Most important to the Board is evidence of rehabilitation as well as evidence of honesty and integrity.

The biggest problem areas they see are (1) DUI offenses, (2) bad credit history, and (3) academic misconduct. As the Board views DUIs as a serious threat, in 2001 they started a policy that if an applicant gets a DUI during his third year, he is not allowed to take the July Bar. This is because a GA statute says that if you have a DUI you have one year probation; a Bar Fitness Application cannot be completed when an applicant is on probation.

He stated that in reference to bad credit history, "debt is not a problem, being irresponsible about debt is the concern." Therefore, a bad credit history must show evidence of paying a creditor for 6 consecutive months to be certified. This is another reason that applicants should not wait until the last minute to fill out the application.

In reference to academic misconduct such as plagiarism, the Board considers rehabilitation and typically does not deny certification.

Bar Information
The Bar is the last Tuesday and Wednesday of July and February. July exam results are sent out the last week-end in October. Results are also posted online by exam number on the last Friday of October.

Violence Against Women Speaker at Emory

By Amber Mees

Dr. Sally Merry’s talk at Emory on Friday November 1, 2002 gave new meaning to the phrase, “Standing Room Only.” Those standing were packed in like sardines and, finding that I was either blocking the door or clicking paper’s off the bulletin board, I squeezed between rows of the seated audience and found a place to sit on the floor. With my limited view I never saw Dr. Merry, who is a Professor of Anthropology and Co-Director of the Peace and Justice Studies Program at Wellesley College. I quickly forgave my discomfort, however, when she began her talk entitled “Talking Culture in Human Rights Forums: The International Movement Against Violence Against Women.” The talk was sponsored by the Violence Studies Initiative, Women’s Studies, and the Department of Anthropology at Emory University.

Dr. Merry’s talk examined and challenged the transnational movement for human rights, focusing primarily upon the movement against violence against women. Within this movement, culture is often seen as an obstacle to human rights. Dr. Merry argues that a more accurate anthropological approach to culture will result in more effective change.

Culture may be viewed in one of three ways. First, culture is most commonly seen as tradition. In this view, traditional values and ideas are fixed and unchanging. Second, culture is seen as national identity. There develops an opposition between the national culture and transnational civilization. Alternatively, culture is embraced or condemned as a prohibition on change. The debates surrounding Female genital mutilation (FGM) show how the focus shifts from theact in question to the surrounding culture. Culture is used as an excuse to avoid action, or the entire culture is condemned for its violations.

Locals, however, do not view culture as an unalterable prison which must be maintained. They assume that anthropological view of culture is much more complicated. In this view, culture is seen in context: constantly changing, shaped by historical and contemporary influences, and richened, but not defined, by tradition and national identity. It is this view that will enable transnational movements to be more effective, by working with cultures, rather than against them.

For example, Dr. Merry focused on the Mbutubulu system in Fiji. Mbutubulu is a system for resolving conflicts through a localized movement to empower a localized movement. In Fiji, a localized movement is much more effective,

neglect of financial responsibilities, evidence of emotional instability, and a drug/alcohol problem. However, he stressed that nothing necessarily invalidates certification and what matters is an applicant’s character fitness today. The Board will consider criteria at time of incident such as age, recency, reliability, and seriousness. Most important to the Board is evidence of rehabilitation as well as evidence of honesty and integrity.

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America's Pledge of Allegiance was written by Francis Bellamy, a Baptist minister, in 1892 and printed in the pages of a Boston children's magazine. Its original form was: "I pledge allegiance to my Flag and to the Republic for which it stands: one Nation indivisible, with Liberty and Justice for all." For over thirty years, thousands of immigrants, "my flag" became "the flag of the United States of America." The altered version was formally recognized on June 22, 1942 when the 77th Congress attempted to codify the already existing custom. The words "under God" were added by Dwight Eisenhower in 1954 after a resolute crusade by the Knights of Columbus. When Eisenhower signed the bill into law, he said, "From this day forward, themillions of our schoolchildren will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our nation and our people to the Almighty."

**Point: "Under God" Belongs in the Pledge**

By Ashley Davis

In 2002 the Ninth Circuit Court, in Newdow v. United States Congress, ruled 2-1 that the Pledge's "under God" phrase is a government endorsement of religion violating the Establishment Clause. Judge Alfred T. Goodwin wrote for the three-judge panel and stated, "A profession that we are a nation 'under God' is identical, for Establishment Clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus,' or a nation 'under no god,' because none of these professions can be neutral with respect to religion.

"Under God" ruling is in direct opposition to what the Framers of the Constitution wished to happen. The court moved from conventional understanding of the Establishment Clause to reading it as an anti-religion clause. Goodwin was incorrect when he said that "under God" is identical to "under no god" for Establishment Clause purposes. Because religion is being driven into the ground by religious fundamentalists, our Pledge might as well have the words "under God" in it. Religious freedom has become freedom from religion in stead of freedom for religion. As discussed by William E. Simon, Jr. in "Why America Needs Religion," public life has become a "religion-free" zone so that religion is considered inviolably private and public life as invariably secular.

This prohibition of religion in a radical departure because for the greater part of our history, America adhered closely to the Framers' understanding of the First Amendment. The Framers sought to diffuse religious strife by prohibiting the establishment of any one religion by the federal government. However, the Framers had no hostility to the collaboration between the church and state. Great leaders such as Teddy Roosevelt, Dwight Eisenhower, and Ronald Reagan reminded us that faith and religion are not just important to the character of our people and nation, but also "indispensable" to the preservation of our democratic institutions according to George Washington.

God has had a long, established place in our government and our law as revealed by John Cyejanovitch in "The Pledge: Give Me an Amen, Brother". The Declaration of Independence says: "We hold these truths to be self-evident, that all men are...endowed by their Creator with certain inalienable rights...pursuant to the Supreme Being of the world...with a firm reliance on the protection of divine Providence, (we) mutually pledge to each other..." Our money says "In God We Trust." The Liberty Bell is inscribed with Leviticus 25:10. Federal courts from the Supreme Court to the District Courts open with "God save the United States and this Honorable Court."

The Establishment Clause of the First Amendment provides: "Congress shall make no law respecting an establishment of religion." In Committee for Public Education v. Nyquist (1974) the Supreme Court held that governmental action must have a "primary effect that neither advances nor inhibits religion." Clearly removing "under God" from the Pledge has a primary effect that inhibits religion.

It is argued that it is not fair to ask that children either stay silent or leave the classroom during the Pledge. However, the law does not condition one's behavior on how it will affect others. In Cohen v. California the Supreme Court found the phrase "I solemnly pledge allegiance to the Flag of the United States of America," on the back of a war protestor's jacket to be constitutionally protected speech. The rights of offended viewers did not outweigh the rights of speakers. The Court explained that viewers could avert their eyes and turn their heads to avoid contact with the speech.

We have gone from a country which safeguards religion to one which attempts to sabotage and undermine religion. Radical secularism seeks to systemically exclude religion from public life, but leave intact its own secular belief system and its influence on the law. It is the will of the Framers and the true meaning of the Establishment Clause, the phrase "under God" should be left intact in the Pledge of Allegiance.

Join us on Wednesday, November 20th in Room 170 for the Docket Debate on "Under God" in the Pledge introduced by Prof. T. Timmons. Lunch will be provided.

**Counterpoint: "Under God" Violates the Constitution**

By Erin Baird

In 1954 our government held a silent burial for our First Amendment, Blinded by the terror of the Cold War, Congress side-stepped the Bill of Rights and sought to "deny the atheistic and communist influence The public school endorsement of religion violating the Establishment Clause.

The 9th Circuit relied on the Supreme Court's 1962 decision in Epperson v. Arkansas, a case challenging the constitutionality of the Arkansas Code's prohibition on teaching evolution. The Ninth Circuit court moved from conventional understanding of the Establishment Clause, it is that no constitutional provision for the three-judge panel and stated, "A profession that we are a nation 'under God' is identical, for Establishment Clause purposes, to a profession that we are a nation 'under Jesus,' a nation 'under Vishnu,' a nation 'under Zeus,' or a nation 'under no god,' because none of these professions can be neutral with respect to religion.

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By Ashley Davis

In 1954 our government held a silent burial for our First Amendment, Blinded by the terror of the Cold War, Congress side-stepped the Bill of Rights and sought to "deny the atheistic and materialistic concepts of communism" with the simple addition of the words "under God" to our Pledge of Allegiance. Soon after President Eisenhower signed the new Pledge into law, "In God We Trust" was imprinted on all currency and established as our National Motto. But 50 years later, the 9th Circuit has unearthed a buried treasure.

This year, in Newdow v. The National Pledge of Allegiance is held unconstitutional, the Court determined that the statement that the United States is a nation "under God" is an endorsement of religion, namely, a belief in a nation 'under Jesus,' a nation 'under Vishnu,' or a nation 'under no god,' because none of these professions can be neutral with respect to religion.

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The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion." According to the Supreme Court, the Fourteenth Amendment extends this requirement to the States and their school districts. To pass Establishment Clause scrutiny, a governmental action must have a "primary effect that neither advances nor inhibits religion."

In Walz v. Commissioner (1970) the Supreme Court stated that the Establishment Clause reaches not only the actual establishment of religion, but also "the sponsorship, financial support, and active involvement of the sovereign in religious activity." The Court found that if government is "utilizing the prestige, power, and influence of a public education system to promote a religious message according to the actual establishment of religion, but does not endorse religious activity.

However, the law does not condition one's behavior on how it will affect others. In Cohen v. California the Supreme Court found the phrase "I solemnly pledge allegiance to the Flag of the United States of America," on the back of a war protestor's jacket to be constitutionally protected speech. The rights of offended viewers did not outweigh the rights of speakers. The Court explained that viewers could avert their eyes and turn their heads to avoid contact with the speech.

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What GSU Must Do To Be 1st Tier

Family Court Organization and Judicial Quality

By Eileen K. Stewart

Court organization represents one of the greatest opportunities for judicial reform, especially in family courts. Based on its study of the unmet legal needs of children and their families, the American Bar Association has recommended the establishment of unified family courts in all jurisdictions. As noted by Barbara A. Babh in the Family Law Quarterly’s review of the Symposium on Unified Family Courts, a unified family court is a single court system with comprehensive jurisdiction over all cases involving children and the family. In this new system, one specially trained and interested judge addresses the legal issues affecting each family. The result, according to the one-judge system, is a more efficient and more compassionate court for families in crisis.

This recognized need for specialized family courts first arose in 1959 when several law schools collaborated to produce the Standard Family Court Act. The Act described the family court as a unit under the direction of one or more specially qualified judges. The major purpose of the Act presumed that qualified judges with expertise in all child and family legal matters would hear these cases and provide competent application of the law to the family’s case.

In almost every profession, the need to master a body of knowledge and to gain experience with that body of knowledge is critical to adequate performance. While many states have established unified family court systems, the judges who rule in these courts are often rotated in and out of the family courts. These case assignments correspond to traditional calendar assignments with little regard to the judge’s background, legal training, or expertise in particular cases.

This fragmented family court system is costly to litigants, inefficient to the family, and results in lack of consistency. It makes it impossible to develop expertise in child and family legal matters. In the Unified Family Court system, one specially trained judge would be assigned to each family case. The judge becomes a “professional in the area of law” and the trial attorneys become his “tutors.” By default, the attorney becomes the conduit of information for a judge who fundamentally requires this information to understand and perform his basic decision-making function. This judge is then able to deal with complex family legal matters. Therefore, it becomes advantageous to provide families and society to coordinate an approach to family cases by not only having family courts, but ensuring the judges that rule in these courts have the proper experience to make competent decisions.

Judges learn about litigation through their own first-hand experiences as lawyers and judges. For example, suppose a career criminal attorney becomes a trial judge in a Commonwealth court and is required to rotate courts every 18 months. He may be an expert in criminal cases, but his rotation requires 18 months in Family Court. This judge clearly lacks any background, legal training or recent knowledge in the complex area of family law (except for a required family law course taken twenty years earlier in the second semester). Here, the judge becomes a “professional in that area of law” and the trial attorneys become his “tutors.”

The Docket 2002 - 2003 Writing Competition

The Docket is sponsoring its first annual Writing Competition. Students may write 500-700 words on a legal topic of their choosing. Topics may be based on personal interests, class discussions, current events, politics, international policy, or anything else that affects the legal system.

Articles exceeding 700 words will not be considered. Submissions are due in February and will be anonymously judged by a panel of three professors. Winning entries will be published in the March Edition and winners will receive a cash prize. See the next edition for the due date, submission process, and cash prize amounts. Please direct questions to Jerri Nims at thedocket_gsu@yahoo.com.

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This recognized need for specialized family courts first arose in 1959 when several law schools collaborated to produce the Standard Family Court Act. The Act described the family court as a unit under the direction of one or more specially qualified judges. The major purpose of the Act presumed that qualified judges with expertise in child and family legal matters would hear these cases and provide competent application of the law to the family’s case.

In almost every profession, the need to master a body of knowledge and to gain experience with that body of knowledge is critical to adequate performance. While many states have established unified family court systems, the judges who rule in these courts are often rotated in and out of the family courts. These case assignments correspond to traditional calendar assignments with little regard to the judge’s background, legal training, or expertise in particular cases.

This fragmented family court system is costly to litigants, inefficient to the family, and results in lack of consistency. It makes it impossible to develop expertise in child and family legal matters. In the Unified Family Court system, one specially trained judge would be assigned to each family case. The judge becomes a “professional in the area of law” and the trial attorneys become his “tutors.” By default, the attorney becomes the conduit of information for a judge who fundamentally requires this information to understand and perform his basic decision-making function. This judge is then able to deal with complex family legal matters. Therefore, it becomes advantageous to provide families and society to coordinate an approach to family cases by not only having family courts, but ensuring the judges that rule in these courts have the proper experience to make competent decisions.

Judges learn about litigation through their own first-hand experiences as lawyers and judges. For example, suppose a career criminal attorney becomes a trial judge in a Commonwealth court and is required to rotate courts every 18 months. He may be an expert in criminal cases, but his rotation requires 18 months in Family Court. This judge clearly lacks any background, legal training or recent knowledge in the complex area of family law (except for a required family law course taken twenty years earlier in the second semester). Here, the judge becomes a “professional in that area of law” and the trial attorneys become his “tutors.” By default, the attorney becomes the conduit of information for a judge who fundamentally requires this information to understand and perform his basic decision-making function. This judge is then able to deal with complex family legal matters. Therefore, it becomes advantageous to provide families and society to coordinate an approach to family cases by not only having family courts, but ensuring the judges that rule in these courts have the proper experience to make competent decisions.

States and other jurisdictions have recognized the need for specialized family courts. The Unified Family Court Act was first introduced in 1959 and has since been adopted in several states. These courts have been shown to be more efficient and more effective in resolving family disputes. The one-judge system has been particularly successful, as it allows a judge to become an expert in family law and to make informed decisions.

One of the key benefits of the Unified Family Court Act is that it allows for specialization in family law. Judges who are well-versed in family law can provide more competent decisions, as they have the knowledge and experience to handle the complex issues that arise in family court cases. This is particularly important in cases involving children, where the stakes are high and the consequences of a bad decision can be severe.

Another benefit of the Unified Family Court Act is that it promotes efficiency. In traditional family courts, judges may be rotated in and out of family cases on a regular basis. This can be confusing for litigants, and it can lead to inconsistent decisions. The Unified Family Court Act eliminates this problem by allowing judges to specialize in family law and to develop expertise in this area.

The Unified Family Court Act also promotes accessibility. In many states, family court cases can be very expensive for litigants. The Unified Family Court Act allows for the appointment of pro bono counsel to represent indigent litigants, ensuring that all families have access to competent legal representation.

In summary, the Unified Family Court Act is a model for how family courts should be organized. It promotes specialization, efficiency, and accessibility, and it allows judges to provide competent and informed decisions. As such, it represents a significant improvement over traditional family court systems.
The Environmental Law Society has had a busy year so far. We have had 3 international speakers, a white-water rafting trip, and on November 4th Anne Hicks, the chair of the environmental law section of the Georgia Bar Association, took time to speak to us.

Our first international speaker was Ellen Basse from Finland. She is a well-known attorney, educator, and prolific writer. The guest speaker was Ray Young from Canada. He is an extraordinary individual who has utilized his talents in the field of environmental and environmental law for over 40 years as an attorney, educator, director, and member of numerous national and international scientific and policy-making groups.

The Student Trial Lawyers Association has become the premier mock trial team in Georgia. They were extremely talented and the practice has officially commenced. STLA is participating in two competitions this fall. The National Trial Advocacy Mock Trial Competition was held in Detroit, Michigan on November 9-12th. One team comprised of four members diligently practiced for the stiff national competition. The other fall competition is the William Daniel Mock Trial Invitational held here in Atlanta on November 22nd - 23rd. Six team members are preparing to dominate against the other participating teams. There are currently 20 different law schools from across the nation signed up to compete in the William Daniel Invitational.

The STLA Rising Twenty Year Celebration on September 12, 2002.

Additionally this school year, STLA had the most successful try-outs in its history. Thirty-five 2Ls and twenty 3Ls competed for a total of only thirty-one spots. The candidates were extremely talented and the competition was fierce. Tom Haliburton, the Head Coach and STLA Director, had the daunting task of selecting the team based on the high number of capable students. Law enforcement agents were more careful to observe the "technicalities" (also known as the Bill of Rights). Lesson learned.

Finding’s lunchtime speech at the Georgia State College of Law was timely. He addressed the student gathering on October 24th, the morning after the police investigation was sloppy, the evidence mishandled, the state could not make its case, therefore, the verdict was incorrect. Although the state clearly dropped the ball, it took O.J.’s defense attorneys, F.G. Bailey, Johnny Cochran, Barry Scheck, Alan Dershowitz, and others to point that point home. If the police do a lousy job, if a defendant’s constitutional rights are violated or a search is conducted illegally, a good defense lawyer will make it known and the defendant will be found not guilty. The next time law enforcement agents will be more careful to observe the "technicalities" (also known as the Bill of Rights). Lesson learned.


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Let’s start with the O.J. Simpson verdict. Many people saw O.J.’s acquittal as a miscarriage of justice. That’s just not so, says Drew Findling, prominent defense attorney, author, forensic evidence expert, teacher, media legal commentator, and member of the National Association of Criminal Defense Lawyers board of directors.

When the O.J. verdict came down, Findling was part of the Technical Working Group assembled by Attorney General Janet Reno to develop the Department of Justice’s training document, “Crime Scene Investigation: A Guide for Law Enforcement.” He recounts that the remarkably respected law enforcement agents with whom he was working all had the same reaction to the verdict: "We had a guilty conscience. We had evidence that was not properly handled, and the verdict was incorrect. We had to find a way to detail and proper procedure that law enforcement followed in conducting the investigation and making the arrest. He pointed out that this time law enforcement agents carefully gathered and processed evidence, obtained search warrants even where they may not have been needed, and followed every procedural aspect of the law on the detail in the letter of the law. His enforcement did not intend to suffer another public relations disaster. He addressed the student gathering on October 24th, the morning after the alleged D.C. sniper(s) John Allen Muhammad and John Lee Malvo were arrested. Remarkably, he was by the media coverage of the take-down, Findling makes it clear that law enforcement did not intend to suffer another public relations disaster. He addressed the student gathering on October 24th, the morning after the alleged D.C. sniper(s) John Allen Muhammad and John Lee Malvo were arrested. Remarkably, he was by the media coverage of the take-down, Findling makes it clear that law enforcement did not intend to suffer another public relations disaster. He addressed the student gathering on October 24th, the morning after the alleged D.C. sniper(s) John Allen Muhammad and John Lee Malvo were arrested. Remarkably, he was by the media coverage of the take-down, Findling makes it clear that law enforcement did not intend to suffer another public relations disaster. 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Student Bar Association

Success of Breast Cancer Walk

By Erin Baird

Last month, Georgia State College of Law joined forces with the American Cancer Society to battle breast cancer in the annual Making Strides Against Breast Cancer Walk. The GSU COL team had 77 registered members who together raised over $7,000 for breast cancer research. At the walk, over 25 participants came out bright and early to Stone Mountain Park to represent GSU COL and raise awareness about breast cancer.

This year’s Walk was particularly successful due to the recent impact that cancer has had on our faculty. After Professor Emanuel’s and Professor Scott’s personal struggles with breast cancer and the tragic loss of Professor Morgan to brain cancer, the GSU community came together to honor these amazing women and express their support.

As a result of these tremendous fundraising efforts, GSU COL will be recognized by the American Cancer Society as one of the top 3 teams in Atlanta and will be awarded a personally embroidered woven wall tapestry that will be displayed in memory of Professor Morgan.

GSU Law Hosts ABA Fall Roundtable

On October 18th and 19th, GSU College of Law hosted the Fall Roundtable for the American Bar Association Law Student Division. Over 75 law student leaders from across the country came to Atlanta to network, exchange ideas and learn how to better serve their schools. The 5th Circuit ABA LSD Governor, Kelly McCabe, organized a weekend packed with speakers, activities, and social events. After an enthusiastic welcome from Dean Griffin and ABA President, Erin Baird, on Friday evening, the group separated into ABA Circuits to make plans for the spring semester. The 5th Circuit participated in leadership challenges and brainstorming exercises to share community service project ideas for ABA Work-a-Days. Circuit meetings were followed by a catered reception held in the first floor lobby. Then, GSU students welcomed our ABA guests at the Leopard Lounge for a social mixer.

After breakfast on Saturday, the law students assembled Halloween treat bags to deliver to Hughes-Spaulding Children’s Hospital downtown. Michael Grant and Garrett Pendleton then spoke to the group about the benefits of ABA membership and how to encourage law student participation in ABA activities. Next, an Atlanta-area attorney couple, Andi and Felton Parrish, compared their experiences working in both large and small firms and answered questions about managing a relationship when both spouses are practicing law. During lunch, David Keating, past President of the Young Lawyers Division of the Atlanta Bar and attorney with Alston and Bird, spoke about the opportunities available through membership in local bar chapters. Several members of the Diversity Committee of the ABA LSD then presented an action plan for recognizing and celebrating diversity in our law schools. Sam Houston, a D.C. education attorney, followed with a controversial discussion on litigation resulting from conflicts between learning-disabled children and deficient school districts. The Roundtable concluded with a banquet dinner at the Sheraton.

The SBA would like to extend a special thanks to all the students who helped make this conference a success.

ABA Fall Roundtable
Social at The Leopard Lounge

Halloween Party
Adapted by Ben Walden

**CSO Assistant Director:**

**By Ben Walden**

Anyone that uses the Careers Services Office knows how busy and hectic it can be while looking for that perfect job. Lately, it has been even more difficult to set up appointments with the Career Services Staff because of the departure of Leah Fisher, but not anymore.

David Smith is now the Assis-

tant Director/Public Service Advisor and can help students create their own personal job search plan and the job search process. So, if anyone wants to talk about a career search plan and process, David can help. Here is some information about David to make it easier when you go in to meet with him so that you know a little bit about him and his background in career services and job placement.

- **Experience:**
  > Spent 15 years in the military, which included working as a non-commissioned officer. This included initiating legal matters and working with JAG.
  > While in the military, David also worked in three different Career Centers finding jobs for people leaving the military and spouses of people in the military.
  > Associate Director of the MBA Career Management at the Wharton School Of Business at the University of Pennsylvania.
  > Director of the BBA Career Management at Goizueta School of Business at Emory University.
  > Associate Director/Public Service Advisor Georgia State College of Law Career Services Office.
  > Worked with the Small Business Administration.

- **Education:**
  > Georgia State University, 6th year of PhD Higher Education.
  > Emory Riddle University, MBA.
  > Regents College of New York.
  > Georgia Military College of Georgia, Associate Degree.
  > Gason State of Alabama, Associate Degree.

- **Tips and Philosophies:**
  > CV analysis (go by and see David to find out more).
  > Students need to be prepared to network and win the offer.
  > Students have to know the job search process and execute their job search plan.
  > Networking is the glue that holds the process together, without it, the process falls apart.
  > "If you do something, be the best you can, no matter what."

- **Interests and Hobbies:**
  > Miami Dolphins and Alabama football fan.
  > Fan of Don Shula because of his excellence (offly coach to have a perfect season in NFL history).
  > Avid reader and writer on numerous topics including business, history (dissertation is the history of Georgia State University), and plans to write a book about the Georgia University System.
  > Owns his own business - 'Always and Forever Hair Salon' which his wife runs.

**David Smith**

- **Expectations:**
  > Expects students to be challenged and to challenge the Career Services Office.
  > David's goals are to inspire and motivate students, which includes many questions and lots of homework, all of which are necessary to be successful in the job search process.
  > David expects students to challenge the Career Services Office by making suggestions of programs and such for the students.

- **Other Information:**
  > David is extremely happy to be at Georgia State University, and wants to make sure that students are prepared for opportunities to come. He plans to help by teaching students to network and interview successfully. Also, David did much of his education as a part-time student, which means he understands exactly what part-time students go through.
  > Remember, David has worked in the military, business, government agencies, and education, so he understands what each of these types of employers are looking for. Make sure to go by the Career Services Office to welcome David or set up an appointment, but make sure you are ready to work if you want his help, because he is.

**Protocols for offer and acceptance**

**General:**

- Offers to law students should remain open for at least two weeks.
- Students should reaffirm offers within 30 days of the offer letters or the employer can, no matter what.
- Offers to law students should stay open until at least December 1.
- If the Employer is making the offer before September 15 for a second summer clerkship to a student, it should stay open until at least November 1 or until December 1 if the student requests it.

**Summer Employment Provisions for 2Ls and 3Ls:**

- First year students should not be offered placement services until November 1, except a part-time student who may get help in seeking positions during the school term.
- First year students and employers should not initiate contact with one another or interview before December 1.
- All offers to first year students should remain open for at least two weeks

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**Student Achievements**

Congratulations to the 2003-2004 Moot Court Candidates!

- Jacob Best
- Tamara Brooks
- Dan Castro
- Terry Davis
- Chris Dillon
- Mariana Durham
- Erica Evans
- Seth Friedman
- Heather Froy
- Petrina Hall

- Wendy Hart
- Anne-Marie Hill
- Beth Howard
- Robert Laney
- Matt Lee
- Franklin Lemond
- Scott Marty
- Amy McMorrow
- Frank Pennington

- Jamie Russek
- Brenda Rothman
- Steve Sherwaker
- Leslie Spormberger
- Dee Sternlieb
- Leslie Torn
- Victoria Watkins
- Ashley Webber
- Anna Wiliard

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**THE DOCKET**

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The views and opinions contained herein do not necessarily reflect those of the faculty and student body of the College of Law, the SBA Board or the editorial staff of The Docket. Direct questions and comments to: thedocket_gsulaw@yahoo.com.
By Mike O'Hagan

In a classroom, sometime in May 1996... "You need to start preparing courtroom testimony for an incident while you are on the way to the call. When you arrive, get all the information you need and write a detailed report. Document everything. If you don't and you need and write a detailed report. May 1996... You testify to something that's not in the report, some defense attorney will manipulate what you testify to oppose what is in your report. He will lie or do anything to get his client off."

In a classroom, sometime in May 2002... "When representing your clients, you need to do a thorough investigation. The police will lie to convict an innocent man and the prosecutors will let them testify to false information."

"How could he be exposed to two diametrically opposed viewpoints regarding guilt or innocence and what length one will go to ensure that guilt or innocence? By being trained for a career in police work, and then being trained for a career in law. Since I first began law school, I have been outraged and often angry at the positions that many law professors and students take regarding the prosecution of criminals in the justice system."

In criminal procedure, I heard all about police lying to put an innocent man away and prosecutorial misconduct to secure convictions... yeah right. Check the sentences most people get out of the Fulton or DeKalb Superior Court System... Probation. Probation for anything from Possession of Cocaine, to Possession of a Firearm During the Commission of a Crime, to Aggravated Assault."

"I have an ex-co-worker who was forced to shoot an 18-year-old, rather than have a productive life, the young man decided to sell crack in a housing project amongst innocent children. Police inter- vened, the man ran, pulled out a handgun, and turned and took an aggressive stance, forcing the officer to fire upon him. The defendant faced numerous charges from obstruction to possession of cocaine with intent to distribute to aggravated assault on a police officer."

"The law at the time set the minimum time at 17 years and the maximum time at 76 years. What horrible sentence did the police and the prosecutors impose on this young soul? Does he currently have a new best friend named "Big Earl"? No, he was walking the streets as soon as he posted bond, sentenced to 7 years probation."

"Dangerous predators are routinely given probation because there is no jail space. Even if they are given time (state time that is, not federal), they are paroled quickly due to the number of other violent predators coming in the gates. But worse to the defendant than the "shopping list" of the "deceitful processors" are their attorneys."

"It is the defendant's own attorney who does more harm to him than anyone else. Anyone who has had Prof. Singletohn has been told - Don't be a Ben or Dorothy or a Joe Cannon... Were Ben, Dorothy, or Joe Cannon lying, evidence- planting police officers? Were they processors who failed to disclose exculpatory information in a Brady request? No, they were defense attorneys."

"Just check out the Public Defenders at the City of Atlanta Municipal Court try to vigorously defend their clients, only to get more jail time for him than if they had gone along with the program."

"Take a suspect charged with a minor felony. The victim and the di- girator both feel the interest of justice would be reduced to a city charge and give the guy 15 days in jail. The police officer testimonies and solicitors are ready to go - swear in, lay the foundation, and let him narrate. The judge is ready to go, he has a tee-time later that day."

"But with the idea of vigorously defending their client, in the interests of wanting to fight, the public defender wants more time to talk to the client, get a copy of the police report, and work up a magical Johnny Cochran style defense. So she asks for a three week recess to prepare her vigorous cross examination and defense."

"If the suspect pled he would be in city jail for a maximum of 15 days, but probably closer to 7. The public defender wants her client to sit in jail for at least 21 more days before having a hearing. At that point, after the defendant is convicted (and he will be convicted), he will do time in addition to the time he has spent waiting."

"Professors and proponents of defense work tell horror stories of defend- ants who waited for great lengths of time before getting their pretrial. But for all those poor souls who had to wait for 48 hours for their pretrial, take a look to see where the problem was. The solicitor and officer were probably ready to go, the defendant's lawyer delayed the matter."

"So after this ranting, will you see me working in a D.A.'s office when I graduate? Imposing deserved sentences on perps or waiting for a perfect case to get a death penalty verdict, go to Jackson, and see the predator die? Tempting, but I'm going into civil work. Ya'll can have criminal."

**Student Voice**

**Law From Two Perspectives**

By Stewart Bratcher

While John Ashcroft and various state attorneys fight over who gets to kill the suspects in the D.C. sniper case, and we watch candidates for of- fice in the elections compete to prove they are "tough on crime," it is appropri- ate to discuss innocence. The Geor- gia Innocence Project recently got off the ground. In a time where a nation re- gards proof of guilt as a "technicality" between arrest and punishment, there's a group working hard even after a guilty verdict. But in Georgia, there are those who are sympathetic to their cause.

The first issue involves exten- sive resources available to Georgia law enforcement through the DNA databank. This resource is cited as the most impressive tool of its kind. The idea is DNA is collected from those charged with a crime, it is compared to unsolved crimes from the past, and then stored for future comparisons. In the meantime, we remain one of the several states that has no law providing for DNA testing of inmates where such a test could est- ablish innocence.

The second issue details the preservation of evidence for later DNA testing. Calvin Johnson was prosecuted by a district attorney who observed evi- dence from his trial being thrown away.

Fortunately, this attorney took the mate- rials out of the trash, which later estab- lished the innocence of Johnson. The third issue involves those who are exonerated by DNA evidence, and must serve a life for themselves af- ter years in prison for a crime they did not commit. Calvin Johnson, the first man exonerated through DNA evi- dence in Georgia, spent over 15 years in prison for a rape he did not commit. When the system fails and steals years of your life, who can you sue? In Johnson's case - no one. Absent a sufficient cause of action to pursue a §1983 claim in federal court (most wrongly convicted do), Georgia has no provision that would guarantee Johnson any compensation for the wrongly convicted. Instead, the individual can go before the legislature and plead for compensation. Johnson did exactly that, and the house recommended a figure of $300,000 as compensation for the 15+ years of his life. If this seems unjust, note also that the Senate slashed the amount to $100,000. Ultimately the full $500,000 was awarded after the groups studied similar cases from other states.

Should the innocence project exonerate a substantial number of people, there would need to be a law giving a right to recovery.

"Arguably the greatest opponent to the claim of innocence is the denial that there is any problem with the system."

Here, the two individuals should be re- tried, or the prosecutor should apologize, or even refuse to comment.

The prosecuting attorney in the Johnson case was upstanding enough to apologize for the outcome. However, he stated that he did not believe that the system failed because the technology that now exists was sufficient to free Johnson. This does not wash. An innocent man, prosecuted by the state and spending over 15 years in jail before he, on his own, found a group willing to help him get out of prison using new evidence is evidence of a failed system.

Recently the Innocence Protec- tion Act was introduced in the U.S. Con- gress. This legislation sets standards re- garding preservation of evidence and the availability of testing inmates for the federal system. In addition, the Act would withhold certain federal money from states that did not adopt the stan- dards. Prof. O'Hagan has criticized the legislation as an infringe- ment on states' rights. This is difficult to understand considering no state is re- quired to adopt the standards. The po- tential result of the Innocence Protec- tion Act aside, perhaps state candidates should hold off on new "get tough" mea- sures long enough to make sure that they are getting tough on the right people.

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**Georgia Innocence Project:**

**Good Cause with Powerful Opposition**

By Stewart Bratcher

"Arguably the greatest opponent to the claim of innocence is the denial that there is any problem with the system."