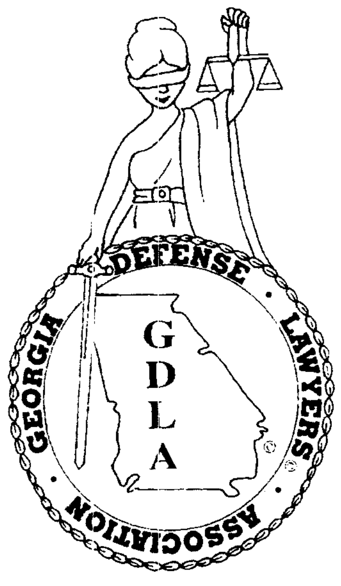
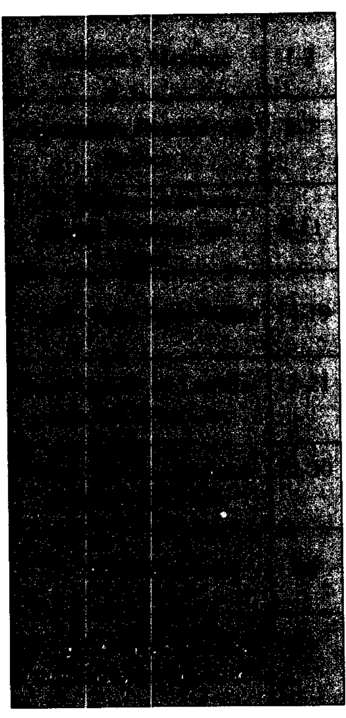
GDLA NEWSLETTER

Volume 17 Editor: John A. Foster March, 2003





THE PRESIDENT'S MESSAGE

By: Jerry A. Buchanan

Welcome to another great year as a member of the Georgia Defense Lawyers' Association. We recently returned from Ponte Vedra, where we concluded the most well attended annual meeting ever, with over sixty of our members attending. Including spouses, children and grandchildren, the number attending the banquet on Saturday night was over 200. For the first time ever, we enjoyed a live dance band after dinner, and a good time was had by all who attended. If you were there, you know how much fun we had. If you were not there, you were very much missed, and you need to make plans to attend next years annual meeting in Hilton Head. Mark your calendars now for July 24-27.

Over the past ten years, the Georgia Defense Lawyers' Association has evolved from what was primarily a social organization to more of a dual purpose group. Make no mistake about it, one of the continuing purposes of our organization is to have fun, and we do that very nicely. The annual meeting has become a great place for families to gather each summer, and more and more young lawyers are joining the association and bringing their families to the beach for our annual meeting. Activities include a golf tournament, tennis tournament, sand castle building contest, and of course, Cocktails and Kool-Aid for everyone.

In addition to having fun, however, the association has in recent years attempted to provide its members with vital tools that will help them become better lawyers, allowing them to provide better service to their clients and become more profitable as well.

We continue to sponsor the annual Trial Academy in early December. Jim Elliott is the chair for this year's Trial Academy, which will

again be held at Callaway Gardens December 4-7. The Trial Academy offers a superb opportunity for your younger lawyers to get experience "on their feet", and to make the mistakes which will inevitably be made in the friendly setting of helpful instruction, rather than in the more hostile environment of an actual trial. Those younger lawyers who have attended the trial academy in the past have had great things to say about it, and this year's academy will be no exception. Please go ahead and commit now to sending several of your younger lawyers to the Trial Academy.

Last year, Walter McClelland made a

(Continued on Page 2)

(Continued from Page 1

concerted effort to increase the membership of the association through personal solicitation of new members. His efforts resulted in an increase in our membership of al-most 20%, and we want to continue that trend this year. If you know lawyers who are engaged primarily in the defense of civil litigation, tell them about the association and ask them to join. Becoming a member is easier than ever and takes nothing more than filling out a membership application, which is available on the association's website, www. gdla.org.

I hope that you will become more actively involved in the association in the coming year. I have been a member of the GDLA for about 15 years now, and I can truly say that it has been one of the most gratifying experiences of my life. I have met wonderful friends, obtained valuable referrals, and have established a network of lawyers around the state that I can call for advice, help and camaraderie at any time. You cannot achieve those benefits, however, sitting behind your desk. You need to get involved in the association, and I urge you to do so. Give me a call at (706) 323-2848 and let me have your ideas for improving the association and getting personally involved. If you want to be involved, we will see to it that there is a place for you.

The GDLA is not now limited to "insurance defense lawyers". While we are delighted to have among our members those who do engage in defending cases on behalf of insurance companies, our membership now has much broader interests and includes lawyers who represent defendants in employment discrimination, product liability cases for manufacturers, premise liability cases for landowners, and other direct representation. We offer services that will be useful to lawyers in all aspects of defense litigation, and I hope that you will let other lawyers who are not yet members know about our broader interests.

The GDLA website and e-mail communication service continue to be popular among our members. If you have ideas for improving those services, please do not hesitate to let us know.

George Duncan, Grant Smith, Salty Forbes and I have just returned from the DRI Annual Meeting in San Francisco, where we had an opportunity to discuss the opportunities and challenges that face state and local defenses organizations such as the GDLA. We obtained some new ideas, which we will be trying to implement over the next year, but the best new idea we can possibly have is the one that comes from you. Please take the time to get involved with a substantive law committee, plan to attend the Trial Academy, Annual Meeting, and other meetings of the association. You will be well rewarded for your efforts.

Finally, a word of thanks to those who have worked hard for the association in the past and who continue to do so. As I mentioned earlier, Walter McClelland gave great service to the association as its president last year, and we are grateful to him for his efforts. Rusty Gunn has served as the Trial Academy chair for the last three years, making it one of the finest services we offer to our members. Luanne Clarke and Staten Bitting chaired last year's Winter CLE meeting, focusing on both trial tactics and Workers' Compensation issues. It was a great seminar, and we are grateful to them for their efforts. Warner Fox served as editor for this year's Law Journal, which you will be able to review in the very near future on our website.

Tremendous thanks goes to Steve Kyle for his service as the Meeting Chairman for our organization. Steve devotes countless hours to assure that our meetings run smoothly, and we are all grateful to him.

We also express our thanks to David Whitworth for his service as the GDLA DRI State Repre-sentative for the last three years. David did a great job in representing the GDLA at DRI meetings at a significant sacrifice of his personal and business time. David's term as state Rep has now come to an end and George Duncan has graciously agreed to assume that post. Please take a moment to thank both David and George for their good work on behalf of the Association.

Finally, the Association should recognize and thank Salty Forbes for his service over the last three years as the Southeast Regional Director of the Defense Research Institute. Being a DRI Director is not an easy job, and Salty has represented our organization well in that regard.

Again, please let us know if we can do anything to make your membership in the GDLA more meaningful. I look forward to seeing many of you in the coming year at the GDLA function.

Jerry A. Buchanan, President

DAYTRADERS, DRUNKS, AND BULLIES

By Stephen Berry of Swift, Currie, McGhee & Hiers, LLP (*)

GEORGIA COURTS EMPHASIZE THE FORESEEABILITY OF VIOLENCE IN RECENT PREMISES LIABILITY DECISIONS

Several recent high-profile decisions by Georgia courts have emphasized the foreseeability of violence in order to establish premises liability. These decisions provide significant clarification of the duties of landowners and property managers, which they (and their insurers) should not ignore.

The duty to keep one's premises safe for invitees is codified in O.C.G.A. § 51-3-1:

> Where an owner or occupier of land, by express or implied invitation induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.

(Emphasis added.) Georgia's appellate courts have clarified that "ordinary care" means the landowner has a duty to protect invitees only from foreseeable criminal acts. "Foreseeable" crimes are "those that the reasonably prudent person would then have foreseen as likely to happen."

Foreseeability can be shown in two ways. First, and most easily, it can be shown by citing prior "substantially similar" occurrences. Second, a plaintiff can show "foreseeability of general risk of criminal activity" that should have put a landowner on alert.

This article will discuss four recent cases that clarify these two requirements of foreseeability. Hopefully it will help future litigants predict their chances on summary judgment. Because the landowner's duties to non-invitees is substantially lower, it is not relevant to this article.

1. McDonald's Playground Bullies: *Wade v. Findlay Management, Inc.*, 2002 WL 122825 (2002).

McDonald's restaurant in Douglas, Georgia had been having trouble with older boys bullying smaller children. At 7:00 one Friday evening, the manager chased off some older children whom she found to be bothering young children, and told them she was locking the playground (although she let smaller children stay). The bullies returned to heckle the remaining children, and assaulted Wade who was escorting his young son. They knocked Wade down with a blow to the head and kicked him repeatedly. Wade sued the restaurant, claiming the incident was foreseeable because of previous incidents.

Wade is a typical case in which a plaintiff survived summary judgment by showing evidence of a prior "substantially similar" occurrence. The Court of Appeals reversed summary judgment for the McDonald's franchise because it found evidence of prior "substantially similar" activity: two months earlier at the same McDonald's restaurant, a father was assaulted after stopping two boys from teasing his son (one of the attackers brandished a gun and yelled "I'll put a cap up your ass"). *Id.* at **2.

The ***Wade*** court relied on the Georgia Supreme Court's analysis:

> In determining whether previous criminal acts are substantially similar to the occurrence causing harm, thereby establishing the foreseeability of risk, the court must inquire into the location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question. While the prior criminal activity must be substantially similar to the particular crime in question, "that does not mean identical, . . . what is required is that the prior [incident] be sufficient to attract the landlord's attention to the dangerous condition which resulted in the litigated incident."

Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 786, 482 S.E.2d 339 (1997). The court reasoned, "the prior incident need not be the same crime, and the means of inflicting injury need not be identical to be deemed substantially similar." Id. The Court continued by clarifying just how similar a prior event must be: "We consider the key to sufficient similarity to be not in the details of the crime or even in the degree of force used, but rather in the nature of the offense: was the prior incident also an offense against a person, or was it an

(Continued on Page 4)

(Continued from Page 3)
offense against property or public morals?"

Surprisingly, the Court found evidence of foreseeability even beyond the prior incident, writing "the voluntary undertaking to provide security on weekend nights could be construed by the jury to be evidence of foreseeability of criminal conduct." Citing ***Doe v. Briargate Apts.***, 227 Ga. App. 408, 410, 489 S.E.2d 170 (1997) (finding foreseeability because of prior incident to same plaintiff in same place) and ***Carlock v. Kmart Corp***, 227 Ga. App. 356, 360, 489 S.E.2d 99 (1997) (finding no foreseeability). While some cases have held landlords liable for using security guards negligently, those cases did not turn on foreseeability and involved only residential tenants attacked in their homes.

2. **The Bell Bottoms Stabbings: *Habersham Venture, Inc. v. Breedlove*, 244 Ga. App. 407 (2000).**

One summer Friday night, three men and two women went dancing at the Bell Bottoms club on Pharr Road. When returning to their car around midnight, the women received derogatory comments from another group of men standing near their car. When the gentlemen in the group spoke out in the ladies' defense, one of them was stabbed in the back of the head. Another of the gentlemen retrieved a baseball bat from his car, but he too was stabbed and the bat was then turned against him by the assailants. The injured gentlemen sued the club's management, claiming the parking lot should have had better lighting and security; the club disagreed because they had never had such an incident before.

The plaintiffs could cite no evidence of prior crimes in the Bell Bottoms lot, so attempted to satisfy the second prong of foreseeability.

First, the plaintiffs argued that Buckhead was a "dangerous" area and claimed that Bell Bottoms management was aware of police reports of crimes in similar Buckhead establishments. The court rejected this attempt, finding "it is the law in Georgia that a property owner is under no obligation to investigate police files to determine whether criminal activities have occurred on his property."

Second, the plaintiffs argued that bars and parking lots are inherently dangerous at night so present foreseeability of the "general risk" of violence. The court flatly rejected this argument also: "Plaintiffs' argument to extend the rationale applied to automatic teller machines in ***Whitmore***, supra, to bars and shopping center parking lots as a means of demonstrating a jury issue regarding foreseeability has previously been rejected." Citing ***Whitmore v. First Federal Sav. Bank of Brunswick***, 225 Ga. App. 768, 484 S.E.2d 708 (1997) (general knowledge of dangers of ATMs made danger foreseeable, but bank did not have greater awareness than customer of danger presented, and thus had no duty to protect customer from criminal acts of third parties).

3. **Baseball Battery in Decatur Apartments: *Traicoff v. Withers*, 247 Ga. App. 428 (2000).**

A resident of an apartment complex (Salery) was working on his truck one summer evening when the brakes slipped and caused the truck to roll into the driveway of a fellow tenant (Withers). When Withers came home he issued racial epithets and demanded that Salery "move the God Damn truck." This prompted Salery to return to his apartment to get a baseball bat. The manager observed the arguing tenants but could not calm them, so called the police. While on the phone she hear a loud "thump" and returned to see Withers' body slumped against the truck. The plaintiff sued the manager (Loudermilk) and owner (Traicoff), alleging the perpetrator's actions were foreseeable because they had notice Salery was "mean."

Like the ***Bell Bottoms*** plaintiffs, this plaintiff could not show evidence of prior substantially similar incidents. Rather than show that the particular place was dangerous, the plaintiff's strategy was to show the particular person was likely to commit a violent crime.

> This case does not involve a prior criminal act that would make it foreseeable to the defendants that this type of crime would occur. Indeed, there is no evidence that any prior criminal attack had ever occurred much less that Salery was involved in an attack. Nevertheless, Ms. Withers contends that the defendants had reason to believe that Salery posed a threat to the tenants and that they failed to take reasonable steps to prevent the attack on Reed Withers. In order to prevail on this theory, Ms. Withers must point to some evidence that either Loudermilk or Traicoff had superior knowledge that Salery had violent propensities.

Id. at *2. The court's requirement of superior knowledge of a particular

(Continued on Page 6)

S-E-A

PROVIDING FORENSIC ANALYSIS & FIRE ORIGIN/CAUSE SERVICES SINCE 1970

-FIRE & EXPLOSION ORIGIN / CAUSE INVESTIGATIONS
-VEHICULAR ACCIDENT RECONSTRUCTION
-STRUCTURAL FAILURE / COLLAPSE ANALYSIS
-ROOFING FAILURE ANALYSIS
-PRODUCT FAILURES / PRODUCT LIABILITY ANALYSIS
-MACHINERY & EQUIPMENT FAILURE / DESIGN ANALYSIS
-ELECTRICAL FAILURES / ELECTROCUTION ANALYSIS
-MATERIAL FAILURE ANALYSIS
-CHEMICAL ANALYSIS
-ENVIRONMENTAL / INDUSTRIAL HYGIENE ANALYSIS
-MOLD & MILDEW EVALUATIONS

ATLANTA, GEORGIA OFFICE (800) 743-7672

Atlanta, GA - Baltimore, MD / Washington DC - Chicago, IL - Cleveland, OH - Columbus, OH
Ft. Lauderdale, FL - Houston, TX - Jacksonville, FL - St. Louis, MO - Tampa, FL

CRAWFORD INVESTIGATION SERVICES

UNMATCHED EXPERTISE, GLOBAL RESPONSE

You never know when a fire, explosion, or fraud is going to strike, but Crawford Investigation Services will be there to provide you with the best service the industry can offer. Our team of experts are armed with all the facts they need to make critical decisions concerning your claims.

FIRE AND EXPLOSION CAUSATION

Our licensed and bonded investigators will be on site anywhere in the world to determine the facts. Members of this unit are trained to pinpoint where and how fires and explosions start. They are also certified HAZMAT technicians.

FORENSIC ENGINEERING

This unit offers a full range of engineering disciplines including electrical, mechanical, civil, and environmental. Their detailed failure analysis procedures produce irrefutable evidence when you are confronted with litigation.

SURVEILLANCE

This division can contain fraud costs before they cost your business. With offices in nearly every major U.S. city, we can be on the case within a matter of hours to find the answers you need.

For more information about Crawford Investigations Services, call 800-315-0383, or visit our Web site at www.crawfordinvestigations.com

An equal opportunity employer

(Continued from Page 4)
threat doomed the plaintiff's case, despite significant evidence that the perpetrator

> Ms. Withers contends that the criminal attack was foreseeable because Loudermilk knew that Salery was "mean" and that he yelled at Smoots. But the fact that a person is unpleasant and/or yells does not put others on notice that the person is prone to deadly violence. ... Moreover, "[t]he exercise of ordinary care does not impose a duty to anticipate unlikely, remote, or slightly possible events." Thus, even if Loudermilk believed that Salery could become violent, absent some evidence that Salery had previously injured another person, the defendants cannot be held liable for failing to anticipate and protect against the attack on Reed Withers.

Id.

4. The Daytrader Shootings *Wenzel v. Momentum Securities, et al.*, Fulton County, No. 99VS0158269E.

At 2:40 p.m. on July 29, 1999, Mark Barton strolled into the Securities Centre at 3499 Piedmont Road, greeting the security guards as he proceeded to the office of Momentum Securities. The managers of Momentum were expecting him because he had called to say he was bringing a $30,000 check to cover his daytrading debts. Barton smiled at the receptionist, marched into the managers' boardroom, and pulled out two guns concealed in his shorts. He shot the managers and receptionist, then turned on the customers in the trading area, and then proceeded across Piedmont Road and repeated the scene at another daytrading office. Seven wounded daytraders and the families of seven murder victims sued Jones Lang LaSalle ("LaSalle"), the manager of the Securities Centre.

LaSalle's defense prevailed by relying on lessons learned in the previous three cases.

First, the defense attacked the plaintiffs' attempt to broaden the "substantially similar" analysis cited in ***Wade***. There was none here because there had been no prior violent incidents in the Securities Centre that would have alerted LaSalle to the possibility of a Momentum customer entering the building with two concealed weapons and firing on the inhabitants. The incidents of crime that had occurred at the Securities Centre before the shooting thefts and vandalism occurring either in the parking area or inside of office suites after hours. Because all prior crimes had been nonviolent, the potential for confronting a perpetrator in the Securities Centre seemed unlikely before the shootings.

Second, the defense confronted a foreseeability argument even more far-fetched than that in ***Habersham***. The daytrading plaintiffs argued that the riskiness of daytrading made such a shooting spree foreseeable:

> In the instant case, there is substantial evidence that the Defendant LaSalle should have been aware of the material risk of a violent attack in the day trading office of Defendant Momentum. It is reasonably foreseeable that individuals who lose great sums of money may exhibit violent behavior. ... Defendant LaSalle reasonably should have been aware that its tenant, Defendant Momentum, ran a high-risk financial venture business whose clientele was comprised of individuals who would lose vast sums of money. Defendant LaSalle turned a blind eye to all this information, however, and leased the premises to Defendant Momentum without considering anything except the financial viability of the prospective tenant.... LaSalle also failed to determine whether the special security concerns raised by the high-risk, highly volatile activities conducted by Momentum and its customers on the LaSalle premises were either identified or addressed. ... Accordingly, Defendant LaSalle either appreciated, or should have appreciated the significant risk of a violent attack by a Momentum day-trader, which risk actually came to pass.

To support this argument, the Daytrader plaintiffs cites cases finding "foreseeability of the general risk of criminal activity" without prior incident, e.g., ***Lau's Corp., Inc. v. Haskins***, 261 Ga. 491 (1991); ***Sun Trust Banks, Inc. v. Killebrew***, 266 Ga. 109 (1995). However, while these cases imposed liability without prior incident, both involved obviously dangerous parking lots. See ***Lau's Corp.*** (where the landlord's property was a "high crime area") and ***SunTrust Banks*** (ruling prior crime need not be shown "when the potential for criminal activity is apparent to everyone"). The defense argued, and the court agreed, that the potential for criminal activity in the Momentum office was clearly not "apparent to everyone." Indeed, one plaintiff who had been a daytrader and

(Continued on Page 7)

(Continued from Page 6)

friend of Barton testified:

> In an office environment, where you are basically working with other professionals, you are never into the anticipation of having someone in that room come out and start shooting at people.

Third, the defense cited ***Traicoff*** in response to the plaintiffs' argument that Momentum's knowledge of Barton's financial ruin put them on notice of potential violence. Specifically, the defense emphasized the relationship between Mark Barton and his victims, fellow day traders at Momentum. There was no superior knowledge, indeed the victims had more knowledge of his mental status and violent propensity because they had observed him every day - indeed one had witnessed a violent outburst personally.

Conclusion

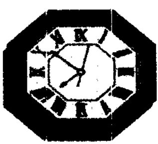
These recent cases should help future litigants predict the chances of a motion for summary judgment in cases involving premises liability for violence. Chances are slim where the plaintiff can get evidence of crimes against a person, but crimes against property will not be considered "substantially similar." If a plaintiff must attempt to show foreseeability without prior incidents, it is unlikely they will survive a motion except in particular cases of automatic teller machines and, sometimes, leased residences. Whether the allegation of foreseeability involves a place or a person, a plaintiff cannot prevail without showing the defendant's superior knowledge of the risk.

* J. Stephen Berry practices with Swift, Currie, McGhee & Hiers, LLP and specializes in insurance coverage, premises liability and professional liability. He was admitted to practice in Georgia in 2000 and is also admitted to practice law in Louisiana and the Fifth Circuit Court of Appeals. He earned a B.A. with honors at the University of Richmond in 1992 and earned a M.A. in History from the University of Virginia in 1993. He graduated from the University of Virginia School of Law in 1997. He served on the editorial boards of the Virginia Journal of International Law and the Virginia Environmental Law Journal.

NEWS WORTHY ITEMS WANTED

Are you aware of a recent important legislative enactment or a major defense victory in the Courtroom? Have you attended any events our readers would be interested in? We would like to report it in the GDLA Newsletter. Send your items to: John Foster, Post Office Box 13929, Savannah, Georgia 31416, or call him at (912) 352-1190, or e-mail him at:

jfoster@forbesbowman.com



THE GEORGIA DEFENSE LAWYERS
ASSOCIATION BOARD MEETING, SEA ISLAND, GEORGIA
November 2, 2002

CALL TO ORDER

The meeting was called to order at 9:00 a.m. by President Jerry Buchanan. In attendance were: Johnny Foster, Greg Ellington, Staten Bitting, Salty Forbes, Bruce Welch, Luanne Clarke, Art Glaser, Walter McClelland, Bob Travis, Steve Kyle, Bubba Hughes, George Duncan, Jo Jager, George Hall, Clay Ratterree, David Whitworth, Grant Smith and Charles A. Stewart from the Alabama Defense Lawyers Association, who serves as Regional Director of DRI.

TREASURER'S REPORT

Grant Smith gave the treasurer's report. The Willis J. Richardson Memorial Scholarship fund balance stands at $9,472.24 and the Board voted to pay up to $527.76 to fully fund the scholarship.

LAW JOURNAL REPORT

The Law Journal is reportedly completed and should be published on the website within the next few weeks. Luanne Clarke is the editor for the 2003 Journal and she has imposed a March 2003 deadline for articles. She has received commitments for 6 articles and plans to obtain a few more. Luanne is to investigate the cost of printing the Journal on CDROM and will report at the next Board meeting.

CLE

The Board appointed Luanne Clarke, Gary Seacrest, Salty Forbes and Jo Jager to a committee and were authorized to put on a Mold seminar. Luanne mentioned Larry Epting, M.D. as a speaker and Johnny Foster mentioned an engineer with mold experience.

The Board authorized Jo Jager and George Duncan to put on Suds and CLE seminars similar to the one George organized in Atlanta last year. Jo will organize a younger lawyers seminar and George will organize one for the general membership.

The Board authorized Luanne Clarke and Staten Bitting to put on a Workers' Compensation Academy that will take place in the spring.

YOUNGER LAWYERS DIVISION

The Board authorized Jo Jager, Walter McClelland and Greg Ellington to explore the development of creating a Younger Lawyers division of the Association. Alabama has one and it has been very successful. The committee will report back by the next Board meeting with recommendations and whether a by-law change is required. If a by-law change is required, the committee will propose one at the next Board meeting. In the meantime, the committee is authorized and directed to move forward with the establishment of the Younger Lawyers Division, and to do all things necessary to implement the YLD.

DRI MEETING

George Duncan reported on the DRI meeting in San Francisco. Jerry Buchanan, George Duncan and Grant Smith attended the meeting on behalf of the GDLA. The focus of the meeting was diversity. After a discussion about the merits of proactively contacting women and minorities to encourage membership, the Board voted in principle to adopt a policy statement that the Association does not discriminate based on gender or race, and to actively solicit a more diverse membership. Greg Ellington will propose language for the statement and submit it by email to the Board for approval.

George also reported that after numerous meeting with other defense organizations, the GDLA should consider hiring an executive director who devotes a significant amount of his or her time to the Association. Many defense organizations smaller than ours have executive directors. The consensus is that an executive director more than pays for him or herself and will allow the organization to grow. George will explore the cost and availability of executive directors, seek suitable applicants, and will report to the Board.

MEMBERSHIP DRIVE

Jerry Buchanan acknowledged the success of Walter McClelland's membership drive and outlined a plan to continue. Jerry stated that experience and feedback from the DRI meeting confirms that personal solicitation is the key to increasing membership. Each Board member committed to contact 10 people to solicit for membership. The members of the Board around the state were authorized by the Board to host lunches, cocktail parties, and similar functions to introduce the GDLA to prospective members, with reasonable costs to be reimbursed by the association. Jerry Buchanan has asked various Board members to lead the

(Continued on Page 11)

GENERAL AREAS OF EXPERTISE

- Accident Reconstruction
- Automotive Fires & Failures
- Boat Accident Reconstruction
- Chemical Engineering
- Chemistry
- Construction
- Electrical Engineering
- Electronics
- Geology
- Geotechnical Engineering
- Industrial Hygiene
- Injury Causation
- Materials Engineering
- Marine Engineering
- Mechanical Engineering
- Metallurgy
- Roofing
- Safety/OSHA
- Structural Engineeering
- Traffic Engineering

Forensic Consulting & Expert Witness Services

Since 1984

Forcon International GA. Ltd.
1534 Dunwoody Village Parkway - Suite 105
Atlanta, GA 30338
770-390-0980
FAX 770-390-0981

www.forcon.com

EXAMPLES OF SPECIALIZED EXPERTISE

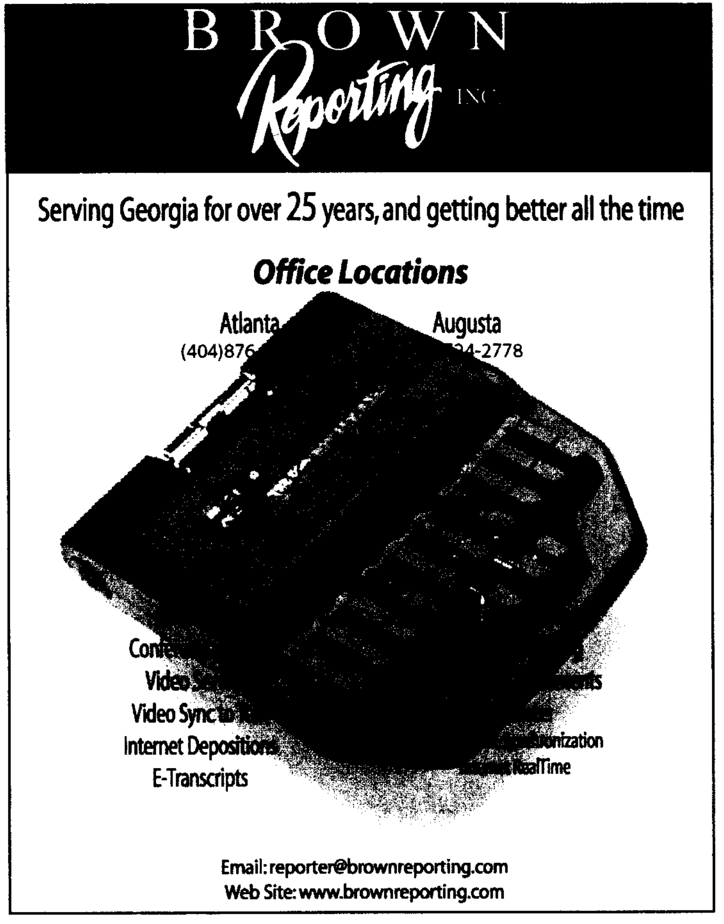
- Adhesives
- Amusement Rides
- Boilers & Furnaces
- Chemical Fires & Explosions
- Coatings
- Commercial Vehicles
- Container Handling Equipment
- Corrosion
- Cranes & Lifting Equipment
- Electrical Fires
- Fire Protection Systems
- Heating & Air Conditioning Systems
- Indoor Air Quality
- Infant Car Seats
- Marine Structures
- Railcar Dynamics & Coupling
- Refrigeration
- Welding
- Windows
- Workplace Accidents

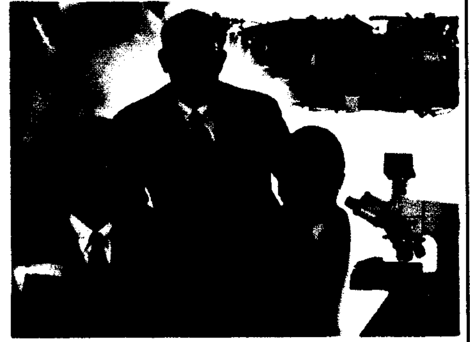
SOUTH GEORGIA ADR SERVICE, LLC

Specializing in the MEDIATION and ARBITRATION of personal injury, wrongful death, commercial, real estate and other complex litigation cases, South Georgia ADR Service offers a panel of distinguished and experienced Middle and South Georgia trial lawyers, serving exclusively with SGADR as independent contractors, from which to select a neutral.

JERRY A BUCHANAN of Columbus
JOHN A . DRAUGHON of Macon
JAMES L. ELLIOTT of Valdosta
BENJAMIN M. GARLAND of Macon
ROBERT R. GUNN, II of Macon
JAMES V. HILBURN of Dublin
JANE M. JORDAN of Macon
JEROME L. KAPLAN of Macon
STANLEY KARSMAN of Savannah
WALTER E. (BERT) KING, III of Gray
MICHAEL S. MEYER VON BREMEN of Albany
PHILIP R. TAYLOR of St. Simon's Island
T. BRADFORD WILSON, JR. of Macon

ROBERT R. GUNN, II, MANAGING PARTNER
Rachel D. McDaniel, Scheduling Coordinator
240 THIRD STREET, MACON, GEORGIA 31201
(800) 863-9873 or (478) 746-4524
FAX (478) 743-4204
www.southgeorgiaADR.com





Vista Engineering Litigation Services

Vista Engineering is an engineering firm specializing in materials and product design, research and testing.

Vista Engineering puts science first in the analysis of products and materials. We can take the hypothetical guesswork from your product analysis cases and give you scientific related answers that discover the core of product and manufacture failure. We desire to create lasting relationships with our clients and provide the best quality analysis for each case.

Please keep our services in mind as you battle product related cases. When the analysis requires expert experience and opinion, contact Vista Engineering, Inc. for answers and results.

2800 Milan Court, Suite 227 • Birmingham, Alabama 35211
p. 205 943-6720 • Vista@VistaEng.com • www.VistaEng.com

(Continued from Page 8)

effort in cities around the state, and they are authorized and directed to move forward in the membership solicitation drive.

Salty Forbes agreed to explore membership incentives and report to the Board.

The Board authorized attendees of the GDLA Trial Academy and the GDLA Workers' Compensation Academy to join the organization without initiation fee or dues for the first year. The Board also authorized persons assisting in the organization of or speaking at a GDLA CLE program to join without paying initiation fees. Such persons would be required to pay dues.

NEWSLETTER

Johnny Foster reported that the Newsletter is on track and ready to be published. Johnny agreed to withhold publication until the Board could approve the diversity statement and publish it in the Newsletter.

Salty Forbes agreed to investigate the design and cost of a brochure to advertise the GDLA to new members.

SPONSORSHIPS

Johnny Foster reported that we have eight sponsors. Steve Kyle reported that sponsor ISI has agreed to completely underwrite the kids program at next year's annual meeting. ISI will provide babysitters and sleeping bags so members can attend the dinner and dance to follow on Saturday evening.

GDLA HISTORY PROJECT

Salty Forbes agreed to prepare a written history of the organization. He will report to the Board as the project progresses.

TRIAL ACADEMY

Jerry Buchanan reported that Jim Elliott will chair the 2002 Trial Academy on December 5, 6 and 7 at Callaway Gardens. There are nine faculty members and the academy is ready to go.

MEMBERSHIP

Salty Forbes presented six candidates who were unanimously approved by the Board for membership: Jeffrey Brown, Allison Bloom, Joan Catalano, Kelly A. Lee, James Looper and Kenneth Thompson.

FUTURE MEETING LOCATIONS.

After discussion, the Board recommended Charleston, New Orleans, Biloxi and Williamsburg as possible locations for the Spring Board Meeting. Steve agreed to investigate these sites and select an appropriate site. Steve will report his decision to the Board.

The Winter Board meeting will be in Savannah and Steve will report the hotel after investigation. The Fall 2003 Board Meeting will be in Port Armor, Georgia.

The 2003 Annual Meeting will be at the Hilton Head Marriott on July 24 through 27.

The 2004 Annual Meeting will be at Sandestin.

ADJOURNNMENT

Jerry Buchanan adjourned the meeting at 11:35 a.m.

Reward

At its Fall 2000 meeting, the GDLA Board of Directors approved a recruitment incentive. Here's how it works: Henceforth, any member who recruits a new lawyer for membership in our organization will receive a certificate redeemable for a fifty dollar discount on the registration of any GDLA event - annual meeting, Winter CLE, and trial academy. Please take advantage of this incentive and help GDLA increase its membership.

UPDATE ON 2002 LEGISLATION AND CASE LAW

LEGISLATION

Senate Bill 346 amends O.C.G.A. §§9-11-4 and 9-11-16.

The amendment to O.C.G.A. §9-11-4 is designed to conform Georgia procedure with federal procedure regarding service of process in other countries. This Bill creates a new paragraph 3, which provides for service of process in foreign countries by: (a) internationally agreed means that are reasonably calculated to give notice (e.g., the Haig Convention), or (b) if there are no internationally agreed means or if the international agreement allows other means, so long as the means are reasonably calculated to give notice, service may be perfected through: (1) the procedures used in foreign country, (2) letters of request (also known as letters rogatory), or (3) unless prohibited by the law of the foreign country: (a) personal service, (b) certified mail sent by the clerk of court, or (c) other means directed by the forum court and not prohibited by international agreement.

The amendment of O.C.G.A. §9-11-16 adds the following sentence: "After entry of the pretrial order, it shall be within the discretion of the court to permit or disallow the presentation of testimony from any expert witness whose name is not contained in the pretrial order; provided, however, that if the additional expert witness is permitted to testify, any opposing party shall be permitted reasonable time to take the deposition of the additional expert witness." It appears that the purpose of the amendment is to give the trial judge discretion to exclude the testimony of late named expert witnesses so as to establish the integrity of the finality of the pretrial order.

House Bill 1128 will waive sovereign immunity for local government entities in automobile cases in certain circumstances and within certain limitations beginning in 2005. This bill adds new code sections designated as O.C.G.A. §§36-92-1 through 5. It covers motor vehicles owned or leased by the local government entity. It waives sovereign immunity within the following limits: Incidents occurring after January 1, 2005, $100,000 per person, $300,000 per occurrence. Incidents occurring after January 1, 2007, $250,000 per person, $450,000 per occurrence. Incidents occurring after January 1, 2008, $500,000 per person, $700,000 per occurrence. It is applicable only to cases pending in a court located in the State of Georgia and only with respect to actions filed "in the courts of this state." It does not apply where the tortfeasor was outside the scope of their official duties. Prejudgment interest may be recovered to the extent it does not cause the aggregate recovery to exceed the limits. The local government entity must be named as a defendant and the individual tortfeasor may not be named as a defendant. However, the individual tortfeasor can be called as a witness for purposes of cross-examination as part of the plaintiff's case. Punitive damages are not allowed. The existence or amount of the waiver may not be disclosed or suggested to the jury. Finally, where there is self-insurance or other reserve, the local government entity cannot be required to pay in one fiscal year more than the amount of the self-insurance or the reserve. However, the excess must be paid within the first six months of the next fiscal year.

Currently cities and counties decide individually how to handle motor vehicle damage and injury claims. For example, Atlanta accepts claims up to $2,000 per case. The Georgia Municipal Association newsletter warned that one version of this Bill could increase the City of Atlanta's insurance costs by 3.5 million a year.

Senate Bill 451 amended O.C.G.A. §§44-14-474 and 44-14-471 regarding hospital liens. The amendments provide that hospital liens are liens only against the cause of action and shall not be a lien against the injured person or any other property or assets of the injured person, and shall not be evidence of the injured person's failure to pay a debt. The procedure for perfecting hospital liens is changed as well. Within 30 days after discharge, the hospital provides written notice to the patient, persons liable and their insurers a statement that the lien is not against the patient, the patient's other property, and is not evidence of the patients failure to pay a debt. The notice must be sent by first class and certified mail or statutory overnight delivery. Then, no sooner than 15 days "after the date of the written notice," the hospital files with the clerk of Superior Court in the county in which the hospital is located and in the county in which the patient

(Continued on Page 13)

(Continued from Page 12)

resides a verified statement setting forth the lien. Failure to perfect such lien in accordance with this code section shall invalidate the lien.

Senate Bill 476 adds a new division (b)(8)(A)(iv) to O.C.G.A. §33-6-4, which provides that insurance companies may not in issuing, continuing, or rating coverage, discriminate on the basis of race, color, or national or ethnic origin. The amendment also provides for a civil cause of action for violation in which recoverable damages are damages recoverable for breach of the insuring agreements, bad faith, attorney's fees, costs of litigation, and if the violation is intentional, punitive damages.

House Bill 24 amends O.C.G.A. §33-7-11.1 by requiring motor vehicle liability insurers, upon acceptance of liability, to pay to the third-party, reasonable benefits for towing and storage costs. However, the third-party is not relieved of their obligation to mitigate their losses and the insurance company is not required to pay any amount greater than the actual loss suffered.

House Bill 1157 adds O.C.G.A. §33-34-9, which provides that in first-party motor vehicle property damage coverage, benefits where the vehicle is a total loss shall be paid first to the senior lienholder, then to the subsequent lienholders in order of priority, and finally to the insured.

House Bill 1066 creates a new O.C.G.A. §51-1-20.2, which provides tort immunity for "child passenger safety technicians" for acts and omissions that occur solely in the inspection, installation, or adjustment of child safety seats, or in the providing of education regarding child safety seats provided they are not charging a fee and they act in good faith. The immunity does not apply to willful and wonton misconduct, or gross negligence. The amendment also defines child passenger safety technicians and excludes from that definition any employee or agent of a manufacturer of child safety seats.

House Bill 1256 amends O.C.G.A. §45-17-8.2 by requiring that notaries who advertise and who are not licensed to practice law must state in their advertisement that they are not attorneys licensed to practice law and that they may not give legal advice or accept fees for legal advice.

House Bill 1575 raises the minimum amount in controversy for twelve person juries in State Court from $10,000 to $25,000.

Georgia Supreme Court Rule 42 has been amended to give parties 20 days rather than 10 in which to respond to petitions for certiorari. This is necessary due to the fact that petitions filed by certified mail are back dated from the date of receipt to the date of mailing, which shortens the respondent's time. The Supreme Court may also be allowing trial transcripts to be filed with the court on compact discs and stored on a central server.

Senate Bill 383 did not pass, but would have provided that any person or entity who is named on a police report, or their attorney is entitled to a complete copy of the report without redaction.

Senate Bill 393 did not pass, but would have clarified appellate procedure with respect to which judgments are directly appealable, which are not subject to direct appeal and which require application for appeal. An amendment which would have allowed direct appeal in child custody cases stirred up controversy resulting in this Bill's failure.

House Bill 1238 did not pass, but would have included optometrists among those whose written reports are admissible pursuant to O.C.G.A. §24-3-18 and would have changed the term "medical doctor" as used in that code section to "physician."

Senate Bill 600 did not pass, but would have provided for an amendment to the Georgia Constitution, which would have allowed the Supreme Court to entertain certified questions from federal district courts as well as from appellate courts.

CASE LAW

One issue the courts focused on was juror rehabilitation. In ***Cannon v. State***, No. A01A0862 Court of Appeals, Georgia, July 27, 2001, a rape case, a prospective juror had worked in the defendant's school lunch cafeteria, had discussed the crime with the victim, and said she couldn't say if the relationship would effect her ability to be fair and said it might effect her emotionally. The trial judge erred in not striking the juror for cause even after she answered the judge's second rehabilitation question ("After you hear the evidence and my charge on the law, and considering the oath you take as a juror, can you set aside your preconceptions and decide this case solely on the evidence and the law?") in the affirmative.

Kim v. Walls, SO1C1569, Supreme Court, Georgia, May 13, 2002, was a medical malpractice case. A

(Continued on Page 20)

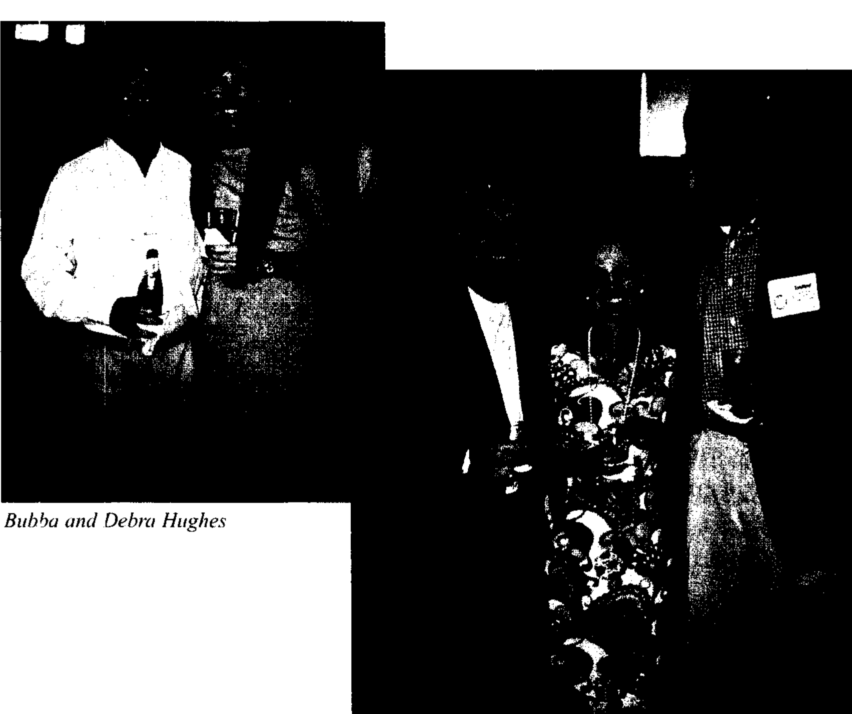
SCENES FROM PONTE VEDRA

Bobbie and Andrew Foster & Bruce Welch

Jack and Johnny Foster

Henry Morrissette, Grant Smith and Steve Kyle

Betty Hanks and Elizabeth



Bubba and Debra Hughes

Bill and Susan Vereecke and Jimmy Singer

Kathy Mclelland and Walter III

Larry Hogan, Judy Mabry, Becky Hogan, MaryEllen Hogan and Kathleen Hogan

Jo Jager and Kimberly Houston

Michael Boutot, Cam and Catherine Bowman

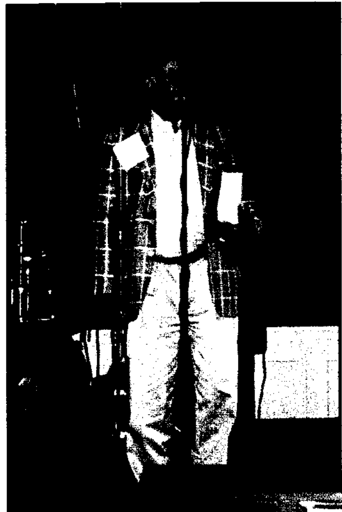
Betty, Elizabeth and David Hanks and Joe Chambless

Rick Rominger and Jane Clemens

Marsha Welch, Clay Porter, Salty Forbes, Rita Porter, Henry and Beth Morrissette, Lee Forbes and Bruce Welch

Jackson Dodsworth, Salty Forbes and Pam Ridgway

Jason and Denna Ray Wilcox



Frank Love

George and Margaret Hall, Bob and Linda Mulholland

Walter McClelland, Speer Mabry, Wilbur Brooks, and Salty Forbes

Peggy Chambless, Catherine Bowman, Lee Forbes

Libby, Staten and Cindy Bitting

Warner and Pat Fox

Bruce and Marsha Welch, Mike and Jan Hostetter

Bob and Sheron Barnaby and David Whitworth

Sand castle building contest

Salty and Lee Forbes

Questions answered regarding why meetings Chairman Steve Kyle fought so hard to get the job

GDLA's Solid Gold Dancers

Bill Bass announces ISI's exciting plans for children's entertainment at 2003's Annual Banquet

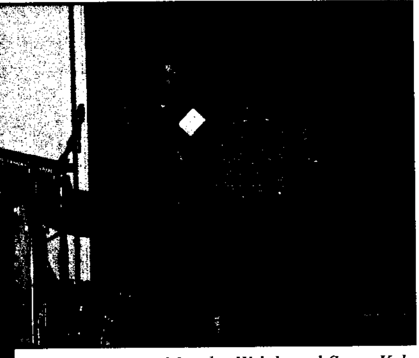
Sarah Bowman and Melissa Joyce

Gary Seacrest, Kathy McClelland, Connie Seacrest and Walter McClelland

Carolyn Buchanan, Ted Freeman, Jerry Buchanan and Sandy Freeman

Grant Smith announces the Golf Tournament results

Wilbur Brooks recites "Gunga Din"



Marsha Welch and Steve Kyle
"Watch your step, Marsha!"

Past Presidents: Bruce Welch, David Whitworth, Wilbur Brooks, Rick Marchetti, Frank Love, Salty Forbes, Clay Porter, Steve Kyle, David Hanks, Joe Chambless and Walter McClelland

Kathy McClelland and Walter III

STEVE ON STAGE!

(Continued from Page 13)

prospective juror was a nurse who had worked with the doctor/defendant and who had said that she "probably would have wanted the doctor to win." The trial judge erred in refusing to strike her for cause. However, according to the opinion, this case does not establish a per se rule automatically barring co-workers of litigants, or other classes of people from serving on juries.

Another issue addressed by the courts in the past twelve months was punitive damages. The U. S. Supreme Court remanded the ***Time Warner*** case to the Georgia Court of Appeals for consideration in light of ***Cooper Industries v. Leatherman Tool Group***, 532 US ____ (2001), which held that appellate courts should apply a de novo standard when reviewing district court determinations of the constitutionality of punitive damages awards. Subsequently, the Georgia Supreme Court directed the Georgia Court of Appeals to reconsider its affirmation of a punitive damages award and it did so in ***Kent v. A. O. White, Jr. Consulting Engineers, PC***, No. A01A0756, Court of Appeals, Georgia, January 29, 2002. The Court of Appeals panel called the Supreme Court's directive "Delphic Instructions," reviewed and reduced the award under the de novo standard while pointing out that there was no constitutional issue and saying that "apparently sub silentio the Supreme Court of Georgia has adopted the standard of de novo review in all excess punitive damages cases." However, the Court of Appeals quickly reversed this position when the ***Time Warner*** verdict was reviewed on remand. ***Time Warner Entertainment Company, LP v. Six Flags Over Georgia, LLC***, Case No. A00A0120, Court of Appeals, Georgia, March 29, 2002, in which the Court of Appeals held that the de novo standard applied only to issues regarding the constitutionality of the punitive damages award and that the abuse of discretion standard applied to all other issues regarding the amount of a punitive damages award. The Court of Appeals affirmed the award under the abuse of discretion standard and went on to affirm it under the de novo standard as well in the event of reversal by the Supreme Court.

Brightman v. Cotton States, Case No. A02A0147, Court of Appeals, Georgia, June 10, 2002, held among other things that there was a jury question as to whether an insurance company had negligently failed to attempt to negotiate a conditional settlement demand in the underlying personal injury case where the condition was outside the insurance company's control and could not be met. There was also a jury question as to whether that failure proximately resulted in the excess jury verdict in the underlying case. (cert. pending).

Brock v. Weidencamp, Case No. A01A1730 and A01A1731, Court of Appeals, Georgia, January 15, 2002, was a wrongful death case in which the Court of Appeals held that the decedent's four unwanted pregnancies within a five year period (two abortions and two given up for adoption) were inadmissible even if plaintiff opened the door by implying that the decedent "was a good mother or a good person or liked or wanted to work with children" or that plaintiff had what it took to, and would have, become a registered nurse. Additionally, medical testimony that, all other things being equal, persons who have unprotected sex with multiple partners can expect shorter life spans than those who don't was not admissible because what would be required would be testimony to a reasonable degree of medical certainty that this decedent engaged in specific conduct that would have shortened this decedent's life.

Henry v. Swift, Currie, Case No. A01A2304 and A02A0450, Court of Appeals, Georgia, March 28, 2002, held that a client can, over his former lawyer's objection, compel his former lawyer to disclose the content of a candid chat with opposing counsel.

Georgia Baptist v. Hanafi, Case No. A01A2028, Court of Appeals, Georgia, January 31, 2002, held that a lawyer who has previously represented one party in connection with a piece of litigation can subsequently represent the opposing party even while the litigation is still pending provided the conflict is "managed and ameliorated through screening and other propolactic measures to protect client confidences." In other words, the Chinese Wall is okay.

Johnson v. Riverdale Anesthesia, Case No. SO1G1138, Supreme Court of Georgia, May 13, 2002, was a med malpractice case in which the allegation was that the defendant anesthesiologist negligently chose not to preoxiginate the patient. The defense expert testified that nothing could have made it any safer for the patient to have the anesthetic and that the accepted medical standard of care did not require that the patient be preoxiginated. In this case, the majority held that the trial judge should not have excluded the portion of the plaintiff's cross-examination of the defense expert (taken outside the presence of the jury) in which plaintiff asked the defense expert whether he would have preoxiginated the patient and he said he would have.

Jones v. NordicTrack, Case No.

(Continued on Page 21)

(Continued from Page 20)

SO1Q0568, Supreme Court of Georgia, July 16, 2001, held that in a products liability case, the injury does not have to result from the use of the product. The plaintiff fell and the place where she landed just happened to be on the NordicTrack machine. She can sue for defective design.

State Farm v. Maybry, Case No. SO1A0982, Supreme Court of Georgia, November 28, 2001, held that when paying first party collision coverage claims where the vehicle is not a total loss, the insurance company has to compensate the insured for diminution in the vehicle's value in addition to repair costs.

Color Match v. Hickey, Case No. SO1G1036, SO1G1063, Supreme Court of Georgia, June 10, 2002, was a stucco case dealing with the statute of limitations issue specifically with respect to spec houses. The statute of limitations against the builder does not begin to run until the builder sells the house. However, the statute of limitations against parties other than builder (e.g. manufacturers) begins to run as of the date of substantial completion, which is when the structure can first be occupied for its intended use. The date the certificate of occupancy is issued is irrelevant. However, the court reserved this issue: What if the suit is filed more than four years after the synthetic stucco is applied, but less than four years from substantial completion; has the statute run as to the plaintiff's claim against the manufacturer?

Brown v. State, Case No. A02A0471, Court of Appeals, Georgia, June 10, 2002, deals with ***Batson***. The defendant was black. On voir dire, a black juror said that he did not believe the legal system was fair to blacks. The prosecution struck that juror and the Court of Appeals rejected the prosecution's argument that a distrust of the legal system provides a race neutral reason for striking a juror.

Thompson v. Zwirren, Case No. A01A1931, Court of Appeals, Georgia, March 13, 2002, was a med malpractice case, which holds that the phrase "within a reasonable degree of medical certainty" is the incorrect phrase. The phrase should be "within a reasonable degree of medical probability."

Singer Asset Finance Co. v. GU Life Insurance Co., Case No. SO1G1611, Supreme Court of Georgia, June 10, 2002, held that where a structured settlement agreement prohibits the plaintiff from selling or assigning their future payments, they are prohibited from selling or assigning their future payments. In other words, the provision is enforceable.

Matheson v. Stilkenboom, Case No. A01A1472, Court of Appeals, October 3, 2001, held that when the jury asks a trial judge to recharge them on the definition of negligence, he must do so. In this case, the trial judge offered to re-read the entire charge and the jury - no surprise - declined.

Williams v. Butler Lexus, Case No. A01A2402, Court of Appeals, December 19, 2001, was a slip and fall case in which the plaintiff contended that she had tripped over a ridge, but was unable to identify the ridge. Summary judgment was affirmed.

PREPARING THE CORPORATE WITNESS TO TESTIFY

By: Mark A. deTurck, Ph.D.*

1. Introduction

Testifying in a deposition or at trial can be a daunting experience even for a seasoned expert. For the uninitiated corporate representative, testifying can be a terrifying ordeal. There are three very useful steps that attorneys can follow for preparing corporate witnesses to testify so as to maximize a witness' contribution to the overall case.

A. Step 1: Adopting Jurors' Orientation

All too often, attorneys preparing a case for trial start with deciding on these three questions:

* Who will compose the trial team?
* Who are our witnesses?
* What are the key themes?

Unfortunately, by focusing on building a case around the source(s) and message of a case, the trial team neglects the most important factor in the persuasive equation, the jurors - the people who will evaluate the case. Advertisers learned decades ago that the most effective strategy for persuading consumers is to tailor their persuasive messages to the idiosyncrasies of how consumers process information rather than selecting a "message off the rack" and hope it fits. Pretrial research by consultants can provide extremely valuable information on how jurors are orienting to a case so as to develop a storyline and themes that are tailored to the unique characteristics of jurors likely to be seated on the panel.

1. Jurors are Cognitive Misers

Attorneys often assume that they can win a case by overwhelming jurors with a wealth of evidence that will persuade jurors. However, jurors are cognitive misers; they are unmotivated to process a plethora of testimony and evidence, particularly if the trial lasts a relatively long period of time. Rather than devote the cognitive energy necessary to process meticulous, protracted testimony, jurors employ heuristics, or cognitive shortcuts, for evaluating testimony.

2. Witness Credibility

The credibility heuristic is arguably the most significant decision-making tool jurors rely on when evaluating a witness' testimony. In other words, rather than attend to all of the convoluted intricacies in a witness' testimony, jurors are likely to invoke the credibility heuristic: "The witness is credible, therefore I will believe him/her." Jurors' perceptions of a witness' credibility encompass five dimensions:

* Competence - expertise
* Character - trustworthiness
* Composure - nervousness
* Sociability - likeability
* Extroversion - outgoingness

Unlike expert witnesses, corporate witnesses often lack impressive academic credentials to rely on as a basis for creating an impression of competence among jurors. As a result, the other four dimensions of credibility often play a larger role in jurors' perceptions of a corporate witness' credibility. It should be noted that these five dimensions are not mutually exclusive-how jurors evaluate a witness with respect to one dimension often affects their assessment of a witness on other dimensions. For example, although a witness has the academic breeding and credentials to appear competent, jurors may not trust (character) the witness because he/she appears very nervous (composure).

Because a witness may lack the necessary foundation to foster an impression of the witness as extremely competent, it is essential to work with witnesses to enhance jurors' perceptions of the witness' character, likeability and composure. This can be achieved with witnesses through experiential learning.

II. Step II: Experiential Learning

Attorneys often forget that the vast majority of people are extremely panic-stricken by the prospect of having to communicate in a public context. Indeed, most individuals

(Continued on Page 25)

Relief is Here... For GDLA Members

INSURANCE SPECIALISTS, INC.®

EST. 1959

*As the Exclusive Georgia Administrator for Westport Insurance Corporation, a GE Commercial Insurance Company, we can rapidly answer your Professional Liability needs with **officially sponsored GDLA coverage you can count on** through this*

SOLIDLY RATED CARRIER.

To receive a full Quick Quote please complete, detach, and return this request to:
INSURANCE SPECIALISTS, INC.
Professional Liability Dept. • P.O. Box 2827 • Norcross, GA 30091-2827 • Fax 404-814-9014
or contact ISI SALES DIRECT at 1-888-ISI-1959 or 404-814-0232, ext. 833

SIMPLIFIED QUICK QUOTE FOR LAWYERS PROFESSIONAL LIABILITY

GE Commercial Insurance

ISI EST. 1959 INSURANCE SPECIALISTS, INC.®

Firm Name: ______________________ Contact Person: ______________________
Address: ______________________
City: ______________ State: **Georgia** Zip: __________ County: ______________
Phone: ( ) ______________ Fax: ( ) ______________ E-mail: ______________

FIRM SURVEY:

1. Number of Attorneys in the Firm: ______
2. Number of Support Staff: ______
3. Number of Claims/Incidents filed against the Firm during the past 5 years:
   Filed: ________ Pending: ________ Total Paid: ________ Total Reserved: ________
4. Firm knowledge of any circumstance(s) or act(s) which may give rise to a claim? ❑ Yes ❑ No
5. Number of CLE hours averaged by each Attorney during the past 12 months: ________
6. Number of Docket Control Systems: ________ Are they Computerized? ❑ Yes ❑ No
7. Has any Attorney with the Firm ever been disciplined or denied the right to practice: ❑ Yes ❑ No

CURRENT COVERAGE:

Current Carrier: ______________ Policy Expiration Date: ______________
Retroactive or Prior Acts Date: ______________ Annual Premium: ______________
Current Limits: ______________ Current Deductible: ______________
Desired Limits: ______________ Desired Deductible: ______________

ATTORNEY SURVEY:

Relation to Firm Codes: (OC) Of Counsel (P) Partner (S) Solo (E) Employed Attorney (IC) Independent Contractor

List Attorneys By Name (Attach Separate Sheet If Necessary)	Year Admitted To Bar	Year Joined This Firm	Relation To Firm (Use codes above)	% Time Working For Firm (OC Only)

THIS FORM IS FOR ESTIMATE PURPOSES ONLY. Please attach a Copy of Firm Letterhead and a Copy of Policy Declarations Page (if available). Coverage May Be Bound Only Upon Submission And Acceptance of a Full Westport Application.

BEC Benedict Engineering Company, Inc.

CONSULTING ENGINEERING
ACCIDENT RECONSTRUCTION

Graphics & Animation
Seat Belt Failure
Biomechanics
Slip, Trip & Fall
Motorcycle
Automotive

www.beceng.com

850- 576-1176

(Continued from Page 22)

are scared-to-death of having to get up in front of others and speak. Witnesses' all too natural reticence to testify in front of others is exacerbated by a number of additional factors:

* Witnesses are intimidated by the formality of the courtroom.
* Witnesses are unfamiliar with courtroom procedures and jargon.
* Witnesses are intimidated by the stress and pressure applied by attorneys.
* Witnesses are scared they might not know or remember all the "correct answers."
* Witnesses know that the stakes are extremely high.

All these factors serve to ratchet-up witnesses' anxiety to a point at which they "crack" under the tension. Below are some simple strategies for enhancing witnesses' level of comfort with their experience when testifying.

A. Explain Legal Dynamics

Explain the legal dynamics of a deposition or trial to uninitiated witnesses. It is important to remember that most witnesses have little if any idea of the internal workings of a deposition or trial other than what they have observed in movies or television programs. Familiarize witnesses with jargon and terms-of-art so that they do not feel so alienated or intimidated. For example, explain to a witness what an objection to "form" means.

Explain to witnesses that if a deposition is not being videotaped they should not feel rushed to answer. The normal tendency for witnesses is to feel as though they have to respond as quickly as possible to a question. Witnesses are generally unaware that they should take some time to ponder a question and develop their best answer. Moreover, if a witness rushes to respond, his/her answer appears to be too well rehearsed. Research by the first author (deTurck & Miller, 1985; deTurck, Feeley & Roman, 1997) shows that specific patterns of verbal and nonverbal behavior are associated with jurors' evaluations of a witness' veracity.

Witnesses also have a tendency to talk too much in a deposition. Witnesses need to learn that they should answer a closed-ended question with a closed-ended answer - a single word. Attorneys are very adept at looking at witnesses after they respond to a "yes-no" question with a one-word answer in such a way so as to lure them into expanding on their answer. It is a natural human tendency to keep talking when someone looks at us as if they do not understand, or disagreed with our answer.

However, in court, jurors are looking for explanations, a rationale for the corporate conduct. The most effective strategy for responding to attorneys' queries during trial is to answer the "what" part of a question first followed by the "why."

Witnesses' tendency is to jump to the "why" or explanation part of their answer first. As a result, jurors are likely to be confused and struggle to try and figure out the answer for themselves. What jurors settle on for the answer may not be the same one as the witness had in mind. For example,

<u>Correct</u>

Q. What was your policy for selecting colors for the airbag warning?

A. (What)
Our policy was to follow the guidelines established by NHTSA.

(Why)
We were aware that there was a difference between the two sets of standards, but ANSI's standards are only advisory, whereas NHTSA's standards are obligatory.

<u>Incorrect</u>

Q: What was your policy for selecting colors for the airbag warning?

A. (Why)
We were confused by the discrepancies in standards. NHTSA's standards said one thing and ANIS's standards said something else. We didn't know which one to use.

(What)
So we decided to settle on one set of recommendations.

B. Do Not Prescribe Testimony

Attorneys often fall into the trap of spoon-feeding

(Continued on Page 26)

(Continued from Page 25)

testimony to witnesses in an attempt to get them to memorize their answers. This strategy is not effective because it is impossible to develop a script to cover all contingencies in a deposition or at trial. As soon as plaintiff's counsel alters the anticipated prescribed script during a deposition, witnesses panic because they cannot "remember their lines."

Although direct examination is typically a scripted exchange between counsel and the witness, the ebb and flow of a deposition or trial may prompt the opposing counsel to chart a new course and navigate an alternative line of questioning. It is essential to map out the most likely routes of questioning the opposing counsel will follow during cross-examination, including sample questions from each of the anticipated domains of queries. When preparing witnesses for cross-examination, it is best to expose them to a variety of questions pursuing the same issue.

Witnesses are often unaware that attorneys pursue the same information using different question formats. Witnesses have a tendency to provide different answers to what is essentially the same question, thereby causing a problem due to witness' inconsistent testimony. Once a witness is comfortable with the story he/she is to tell, it is extremely important that the witness practices "sticking to his/her guns." Even expert witnesses benefit a great deal from preparing for cross-examination.

Provide witnesses with any background information they may need and allow them to develop their own story. This accomplishes two goals:

* Witnesses are much more likely to remember self generated answers.
* Witnesses will be more comfortable with their own answers and, as a result, appear more sincere and composed.

C. Videotape the Practice Sessions

The advent of video technology has provided millions of people with an opportunity to see themselves "on TV." However, the vast majority of people have never seen themselves under fire in a highly ritualized and adversarial format. Witnesses benefit a great deal by having an opportunity to view themselves during direct and cross-examination, when the heat is really applied. It is during the stress of cross-examination that witnesses' unique nonverbal (e.g., lack of eye contact, playing with a pen, digging a finger in an ear, wringing hands, jiggling legs, rocking/swiveling in a chair) and verbal (e.g., answering before question is completed, using equivocal language; using a preponderance of verbal pauses - ahs, ers, and ums; talking with too much or too little emotion) idiosyncrasies/quirks are most likely to emerge and serve to distract jurors, and in some cases, cause jurors to doubt the veracity of the witness (deTurck & Miller, 1985).

Another benefit of memorializing witnesses' mock testimony on videotape is that a witness does not need to worry about taking notes during a prep session when issues are discussed or suggestions are made. Moreover, the witness can view the videotape in between prep sessions and practice the substantive portion of his/her testimony. In addition, a witness will have an opportunity to incorporate suggestions for behavioral displays (e.g., increasing eye contact, using fewer verbal pauses, not touching him/herself as much) into his/her daily communication routine so as to make them a natural part of his/her communication style.

III. Step III: Understand How Jurors Perceive Witnesses

A. Because CEOs may not be trusted by jurors, jurors may be motivated to evaluate the veracity of the CEO when testifying using a variety of strategies. First, jurors may analyze specific verbal and nonverbal behavioral cues CEO's as a basis for evaluating the CEO's veracity. Toward this end, some jurors will use behavioral samples (e.g., eye movement/contact, voice stress) from when the CEO is presumed to be telling the truth as a baseline for future comparison to behavioral samples from answers that may reflect prevarications.

Jurors' suspicions are aroused when they observe noticeable deviations in verbal and/or nonverbal displays during a witness' answers. Unfortunately, the behavioral cues that witnesses perceive to be useful cues for detecting others' deception are not reliable behavioral indices for distinguishing truthful from deceptive communication (deTurck & Miller, 1985). Results obtained by deTurck (deTurck & Miller, 1990; deTurck, Feeley & Roman, 1997) indicate that training people to use a specific subset of verbal and nonverbal cues significantly enhances their ability to accurately evaluate the veracity of other communications.

(Continued on Page 27)

(Continued from Page 26)

Second, some jurors may prefer to base their evaluations of witnesses' testimony on more global heuristic cues, such as nervousness, plausibility, nonverbal conspicuousness (Feeley, deTurck & Young, 1997). These cues represent jurors' evaluations of witnesses' testimony based on a cluster of behavioral performance, or an overall appearance. Whether a juror uses specific behavioral information or more global impressions for evaluating witnesses' veracity, the key to accurately detecting witnesses' deception is to have a baseline of presumed truthful communication (e.g., direct testimony) to be used as a comparison against other questionable testimony (e.g. cross-examination).

B. We have developed a typology of jurors' perceptions of corporate witnesses based upon our research with hundreds of thousands of jurors from post-trial interviews, focus groups and mock trials. A consistent trend emerged that indicated jurors develop very specific impressions of the corporate witness. Figure 1 depicts the typology that evolved from our research.

It is apparent from jurors' characterizations of various witnesses in the typology that the goal of witness preparation is to strive to develop a Communicator/Listener. This is often easier said than done. Due to a witness' personal communication style, the pressures inherent during a deposition and trial, witnesses may require multiple sessions to develop the confidence to tell their story in a compelling manner.

This typology has proven to be invaluable in light of recent developments in plaintiffs' counsel's approach to persuading jurors. Over the past five years, research indicates that plaintiffs' counsel has shifted its emotional focus from playing on jurors' sympathy to evoking their anger toward the corporate entity. Because anger is a more powerful emotion than sympathy, this tactical development has yielded substantial benefits in terms of damages awarded to plaintiffs. Plaintiffs' counsel has begun to inoculate jurors with anger toward corporate entities in their opening statements and, as a result, made it more difficult

(Continued on Page 29)

	NON-DISCLOSING	INFORMATIVE	OVER-DISCLOSING
Aggressive	**Evasive/Angry** "Wiseguy"/"Villian" Hostile demeanor And won't tell anything	**Heavy-Handed** Like "Bad Medicine" Has good things to say, but hard to take	**Careless Bully** "Know-it-all" who wants to win every point and prove self
Assertive	**Unprepared** Has no doubt but lacks facts	**Communicator/Good Listener** "Newscaster," tells story well; does not over personalize	**Bamboozler** "Sloppy Joe/Chatty Cathy," strays off the reservation
Passive	**Empty Chair** "Wallflower," Does little, Says little, Shows no passion	**Bore** "Drones," infomrative but dull delivery, no commitment	**Victim** Plays "Kick-me," Afraid, volunteers harmful information, overly cooperative

Figure 1. Typology of Jurors' Perceptions of Corporate Witnesses

GDLA BOARD ADOPTS DIVERSITY STATEMENT

Following its Fall meeting, the GDLA Board of Directors adopted the following diversity statement. "The Georgia Defense Lawyer's Association (GDLA) is an association for all lawyers who practice law principally in the area of civil litigation representing defendants. The GDLA has always maintained an open membership policy and has welcomed into its membership defense lawyers of all backgrounds, regardless of gender, ethnicity, race or national origin. In order to reinforce its open membership policy, GDLA wishes to express its strong commitment to the goal of diversity in its membership. The Association recognizes that the promotion and retention of a diverse membership is vital to the success of the organization as a whole. Diversity provides for a broader and richer environment by drawing on a wealth of varied perspectives and experiences and fosters creative thinking and solutions beneficial to all of its members. GDLA embraces and encourages diversity in all aspects of its activities, and is committed to creating a climate that supports and promotes diversity in its organization and membership."

Mark your Calendars!

2003

February 27, 2003
4:30 pm - 7:30 pm
Skits, Suds & C.L.E.
Manuel's Tavern,
602 Highland Ave., Atlanta

July 24-27, 2003
GDLA Annual Meeting
Hilton Head, SC

See you there!

HENNING

Clifford Altekruse, Esq.
Hon. Dorothy Beasley
Michael J. Bowers, Esq.
Hon. G. Grant Brantley
William Brown, Esq.
Dennis Caniglia
Croft, Esq.
Carol Levine, Esq.
Ronald Arthur Lowry, Esq.
Thomas Magill, Esq.
James E. Mahar, Esq.
Kent T. Stair, Esq.
James G. Stewart. Esq.
Tobin, Esq.

We Want To Assist You In Any Type Of ADR Case.

☎ (800) 843-6050
Tel: (770) 955-2252 • Fax: (770) 955-2494
Riverwood Building • 3350 Riverwood Parkway • Lobby - Suite 75
Atlanta, Georgia 30339 • www.henningmediation.com

Experienced professionals providing effective, affordable dispute resolution
Our service negotiated over $1 billion settlement dollars

(Continued from Page 27)

for defense to overcome the powerful effects of the anger aroused among jurors early in the trial process. Plaintiff counsel has used corporate witnesses to vilify the corporate entity. Plaintiffs' attorneys are launching preemptive first strikes at corporate witnesses so as to yoke their level of aggression in an attempt to justify jurors' anger toward the corporate entity. When the corporate witness retaliates against plaintiff's counsel with an aggressive barrage, jurors' feelings of anger toward the corporate entity are confirmed. An aggressive corporate witness serves only to play into plaintiff's strategy to arouse jurors' anger toward the corporate entity.

An essential ingredient of the experiential learning during witness preparation is to be able to overcome the anger plaintiff's counsel arouses in a witness during a deposition or cross-examination during trial. When plaintiff's counsel is successful in arousing a witness' anger, he/she accomplishes two goals:

* Witnesses are likely to forget key testimony and/or give inaccurate testimony.
* Jurors will NOT perceive the witness as a good communicator/listener.

CEOs are people who are accustomed to giving orders - telling others what to do. To be sure, most CEOs have a competitive if not aggressive edge to their personality. It is that edge that propelled them to the top of their industry. However, a key to preparing witnesses who tend to be aggressive is to work with them, NOT to take plaintiff's counsel's attacks personally. Aggressive witnesses are motivated to defend themselves and the corporate entity at all costs. They are unwilling to allow plaintiff's counsel to "score any points." They want to "shutout" plaintiff's counsel and, toward this end, they tend to match aggression with aggression.

Witnesses who are passive bring a different set of problems to the deposition or trial. They are easily manipulated by plaintiff's counsel; they either talk too little or too much. As a result, they appear to be withholding information or they volunteer too much information. Preparation sessions with reticent witnesses should focus on getting them to feel comfortable answering questions in a formal exchange in the presence of others. This can be accomplished over several sessions by slowing building up to a session in which a number of people (e.g., counsel and paralegals) are present and they are able to provide brief, but useful answers.

Preparing the loquacious witness for a deposition or trial presents a different set of problems. These witnesses tend to ramble on; they want to give more information than is requested. "Chatty" witnesses may feel that they are being less than forthcoming if they do not volunteer information. These types of witnesses fall prey to a common plaintiff strategy to stare at the witness after they respond "yes or no" to a closed ended question in anticipation of more testimony. It is a natural communication phenomenon for people to talk more when others pause waiting for them. Preparation for overly talkative witnesses should focus on getting them to answer with brief, yet forthcoming answers. Several preparation sessions may be required for them to internalize this style of responding.

IV. Summary

Three simple steps were advanced to prepare witnesses for a deposition or trial:

* Adopt jurors' orientation
* Experiential learning
* Understand how jurors perceive witnesses

By working with a trial consultant in preparing witnesses, defense counsel is able to load his/her persuasive gun with powerful ammunition that will prove to be an effective weapon in the courtroom battlefield.

References:

deTurck, M.A., Feeley, T.H., & Roman, L.A. (1997). Vocal and visual cue training in behavioral deception detection. Communication Research Reports, 14, 249-259.

deTurck, M.A., & Miller, G.R. (1985). Deception and arousal: Isolating the behavioral correlates of deception. Human Communication Research, 12, 181-201.

(Continued on Page 30)

(Continued from Page 29)

deTurck, M.A., & Miller, G.R. (1990). Training observers to detect deception: Effects of self-monitoring and rehearsal. Human Communication Research, 16, 603-620.

* Dr. Mark A. deTurck is a Director at the DecisionQuest-Atlanta office and a former professor at Cornell University. Paper presented at the South Texas College of Law, Labor and Employment Seminar, Houston, Texas, July 2000. Reprinted here with permission of Decision Quest

DecisionQuest
200 Windward Pointe
5900 Windward Parkway
Suite 475
Alpharetta, Georgia 30005
(404) 876-4080
Mdeturck@decisionquest.com

YOU ARE INVITED

If you or someone you know is not already a member of Georgia Defense Lawyers Association we invite you to apply for membership. If interested, please contact Morton G. Forbes at the following:

MORTON G. FORBES
Forbes & Bowman
P.O. Box 13929
Savannah, Georgia 31416-0929
(912) 352-1190
FAX: (912) 352-1471

E-MAIL:
salty@forbesbowman.com

BOARD ANNOUNCES NEW MEMBERSHIP INCENTIVE

Under Jerry Buchanan's administration, increasing the Georgia Defense Lawyers Association's membership continues to be a priority. At its Fall meeting, the Board approved an additional membership incentive.

Here is how it works: Attendees at the GDLA Trial Academy and the GDLA Workers' Compensation Academy will be offered an opportunity to join the organization not only without having to pay an initiation fee, but their first year dues will be waived as well. In addition, anyone providing substantial assistance in the organization or execution of GDLA's Continuing Legal Education programs will be offered an opportunity to join the organization without having to pay the initiation fee.