



## MUNICIPAL COURT

# Judges Bulletin

Fall 2001 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 3, No. 5

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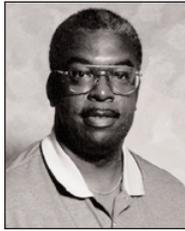
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## President's Corner



I received a call from Justice Hugh P.

Thompson asking for input from the Municipal Courts on the Supreme Court's

intention to adopt a uniform rule concerning video conferencing. In lieu of a president's letter this month I thought I would share with you my response which follows:

Dear Justice Thompson:

On behalf of the Executive Committee and over 400 members of the Council of Municipal Court Judges of Georgia, we express our profound thanks for the courtesy of your telephone call, inviting our discussion and input on the Supreme Court's consideration and promulgation of a uniform rule on video conferencing, by the year 2002. As expressed during our telephone discussion, this was especially significant to us in that we are the only level of courts not officially welcomed as a member on the Judicial Council. All other classes of Courts of our state judicial system enjoy the privilege of membership on this August body, notwithstanding the fact that our members interface with more of the citizenry on a daily basis than all other levels of courts combined.

Respectfully, we believe that the only direct contact that most of our citizens will ever have with our judiciary is with the Municipal Courts of this state.

We have been led to believe that the principal reason for our lack of membership with the Judicial Council has to do with our being appointed by political bodies as opposed to being elected to certain terms of office by the electorate. Indeed, a majority of our members are appointed by elected officials and some are elected to a four (4) years' term of office by the voting public. However, to this concern we humbly call the attention of the naysayer to the fact of the Juvenile Court Judges' appointment to office by elected officials, i.e., Superior Court Judges.

The other objection, I am told, to our membership on the Judicial Council, has to do with our classification as "part-time Judges." However, this same concern is not expressed in the part-time service of many of the Magistrate Court and State Court Judges of this State.

Moreover, it has been said that to join our ranks, it is not required that one be a member of the State Bar of Georgia. However, that concern, if true, is not made of the Magistrate

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## President's Corner *continued*

Court Judges, most of whom are not members of the Bar. Since 1995, over ninety (90%) percent of our members likewise enjoy membership with the State Bar.

A majority of the Probate Court Judges do not hold membership of the State Bar of Georgia. Nonetheless the issue of Municipal Judges being required to be members of the State Bar of Georgia is one to be addressed in each municipal charter by the respective City Councils or Commissions or through the General Assembly, of which a resolution from the Judicial Council, as the titular policy making body for the judicial system, would go a long way toward facilitating such a change by either legislative body.

We hasten to add, however, that it is not our purpose to cast reflections upon any of the other classes of courts by the foregoing observations. We merely wish to respond to the concerns that we have learned that have variously been apparently expressed during any considerations, formally and informally, given to our membership on the Judicial Council.

We are allowed membership on the ICJE Board of Trustees, and actively participate in their deliberations. We believe that our presence on that body has resulted in a positive contribution to the entire Judiciary, and the organization in particular. We are merely respectfully seeking to offer the same contribution to the Judiciary and Council in the same manner, with our collective experience of the day-

to-day intersecting with the general public in much greater numbers than either of the other levels of courts.

It is not our desire to obtain membership to push any particular agenda, nor champion any other causes. Our members feel very strongly that the time has come for us to be seated at the Council table, consistent with the Governor's theme of the State's educational system of transcending the boundaries and effecting a seamless system of "Excellence in Justice."

Thank you again for your telephone call and consideration shown in our "front line" status and how important that input is in crafting an effective system of justice and particularly in the cutting edge of video conferencing, as being considered

by the Supreme Court. I also express the proxy of our members when I say "thank you" for your augmentable efforts to our justice system, in general, and on our behalf, in particular. We humbly pledge to the Supreme Court and other courts and you our untiring efforts to continue to help make our society a better place than we inherited during our respective tenures. We also pledge our beset efforts in honoring the confidence placed in us by your telephone call and request for our experience, position and input on video conferencing, during future meetings of the Executive Committee and Council.

Very truly yours,  
Henry E. Williams, President  
Council of Municipal Court Judges

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## From the Editor...



We all recently received a Georgia Judicial Survey that was due by November 15, 2001. I took the time to fill out the questionnaire and was disturbed by the slant the survey seemed to take against lawyers. The last portion of the survey asked for comments regarding ways to improve our justice system and the public's trust and confidence. I wrote the following: "We should remember that most of us were lawyers before becoming judges. What is routine to most of us is earth-shattering to a litigant-particularly a party in a divorce/custody

action or a DUI or a parent of a child in a juvenile proceeding or family whose breadwinner is injured while on the job. People really appreciate a judge (in any court) who takes the time to at least act concerned." I then signed my comments and listed the cities where I am proud to serve as judge. I would like for each of you to take a moment and answer that same question and e-mail your response to me (washburnlaw@bellsouth.net) or to Marla Moore (moorem@aoc.courts.state.ga.us) Phone: 404-656-6447; Fax: 404-651-6449. Thank you for your participation. Margaret Washburn.

# Statement to Georgia Bar Leaders and Members

James B. Franklin  
President, State Bar of Georgia

Words fail. The unimaginable horror of this week will forever be with each and every one of us - as lawyers and as men and women of this great nation.

On behalf of the State Bar of Georgia, I offer my most heartfelt condolences to the families and victims of this horrific and cowardly act of terror, the likes of which we have never seen. May we never know this horror again, and may we all work together to begin the healing process. As lawyers, this vile act

violates every tenant and principle of any legal system, particularly that of ours, the shining beacon in the world. Just as our government has rallied in a rare and refreshing spirit of cooperation, we must also join with our President and leaders in the effort to end terrorism.

The individuals who lost their lives in the World Trade Center on Tuesday have paid the highest of price for living in a free and democratic society. While we do not yet know the fate of thousands, we remain hopeful. The State Bar of Georgia has more than 400 members who list New York state as their

address, and nearly 250 of these members are in New York City. Please remember them and the thousands of others in your thoughts and prayers during this terrible time.

I know many members of the State Bar of Georgia and lawyers throughout the nation are volunteering to help, either through donating blood, providing financial support, and simply supporting the efforts underway. We can be proud as a profession and as a people for the tremendous showing of unity and solidarity in America and across the world.

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## 2002 Session of the General Assembly



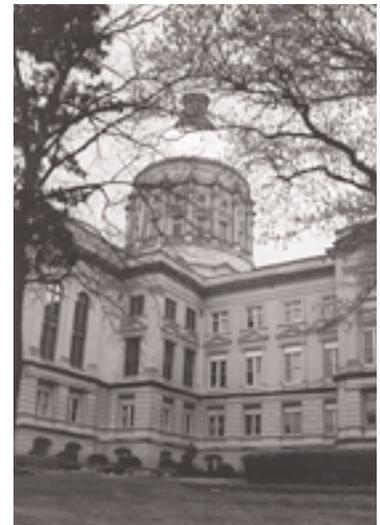
Charles L.  
Barrett, III  
City of Duluth

I am, once again, chairing the Judge of the Day committee of the Council of Municipal Court Judges of Georgia. As you may know, our committee monitors court related legislation during the course of the General Assembly Session. In the past, we have attempted to monitor pending legislation to the extent that representatives of our committee, acting as Judge of the Day, could attend House and Senate Committee hearings wherein matters of particular interest to our courts were being considered and debated.. We hope

to be able to do that again this year. This committee serves an important function for the municipal courts of the State of Georgia and, as usual, we need volunteers. If anyone is interested in serving on the Judge of the Day committee, please contact me, as soon as possible, at 770-623-6484, extension 250, facsimile 770-623-9496.

As you also may be aware, the Council of Municipal Court Judges sponsors a legislative breakfast, wherein members of the House and Senate can meet with Municipal Court Judges to discuss matters of mutual interest and concern. We are looking forward to a good turnout for the next legislative breakfast, which is scheduled for January 31, 2002, at 7:30 a.m. in the Floyd

Room, Twin Towers-State Office Building. Invitations from the Council will be sent to the legislators, but personal contacts from you inviting them will be the best way to insure they come.



# Minutes

Minutes of the Meeting of the Executive Committee of the Council of Municipal Court Judges and the Association of Municipal Court Judges  
Smarr, Georgia • October 5, 2001

The President called the meeting to order at 10: 00 a.m. The following persons were present: Judges Coolidge, Barrett, Whatley, Strickland, Merritt, Cielinski, Williams, Pierce, Ernestes, Crawford and Graves. Also in attendance were Holly Sparrow, Robbie Foote and LaShawn Murphy of the Administrative Office of the Courts.

The minutes from the previous meeting were approved by unanimous vote.

The President gave his report and indicated that attempts will still be made for us to obtain a seat on the Judicial Council. Attempts will be made to get on the agendas of other courts' councils in order to obtain their support for our ultimate goal.

The treasurer gave his report, a copy of which is attached as Exhibit A. The treasurer noted that the golf tournament made money. We collected \$378.00 more dollars since the last meeting. The treasurer also urged us to actually spend the money. The treasurer's report was unanimously approved.

The president announced his intentions to appoint the following committee chairs:

Advisors and Mentors Committee:  
Judge Hilliard

Benchbook Committee:  
Judge Cielinski

Bylaws Committee: Judge Still

GMA Liaison: Judge Bobbitt

Golf Tournament Committee:  
Judges Watkins and Payne

Hospitality and Entertainment Committee:  
Judge Charles Smith

Interpreters Committee:  
Judge Watkins

Legislative Committee:  
Judge Barrett

Judicial Council Liaison:  
Judge Mecklin

Judicial Survey Committee:  
Judge Ernestes

County and Municipal Probation Advisory Council Liaison:  
Judge Ward

Newsletter Committee:  
Judge Washburn

Nominating Committee:  
Judge Pierce

Official Photographer:  
Judge Cicala

Budget Committee Member:  
Judge Ward

The appointments were unanimously approved.

Judge Cielinski reported that the proofs of the Benchbook and updates were being reviewed by the ICJE and should be distributed by the end of the year.

Judge Barrett reported that the

legislative committee would soon convene to plan for legislative activities for the coming session. He reminded the Committee about the legislative breakfast on January 31, 2002.

Judge Ernestes reported the survey results were published in the last newsletter. Holly Sparrow noted that the AOC currently does salary and caseload surveys and proposed that our survey be conducted by the AOC. A consensus was reached wherein the AOC would perform the survey and do it so that the results would be available for the summer business meeting. It was also determined by consensus that no change in the information sought by this year's survey would be needed.

In the absence of Judge Washburn, an announcement was made that the deadline for the newsletter was October 30, 2001, with publication to occur approximately 30 days later.

The recent meeting of the Judicial Council was discussed. In particular, there was extended discussion about "Resolution 2", wherein each separate council would be required to send its proposed legislation to the Judicial Council prior to submitting it to a legislator for introduction. We are in receipt of a letter from the State Court Judges announcing their opposition to Resolution 2. After much discussion, it was determined that this Council would not take a

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# Minutes *continued*

position on Resolution 2 at this time, especially in light of the fact that no specific requests have been received from anyone or any organization regarding this Council's position on that particular matter.

Judge Ward reported that he had been elected Chairman of the Probation Advisory Committee and that Alan A. Adams, Director of the Probation Division of the Georgia Department of Corrections was elected Vice Chair. Judge Ward also reported that there was a recommendation to place sheriffs on the probation council, as well. He also announced that rules and regulations have been developed and disciplinary action has actually been taken against offending providers. He also indicated that private probation services, who are regulated, are concerned about the cities providing their own services, especially by contract to other cities. He indicated there might be some legislation regarding this matter.

Under new business, the membership discussed payment of travel expenses out of council funds. It was determined that our bylaws allowed such. Travel to regular meetings conducted concurrently with training seminars for officers

or other executive committee members will be paid pursuant to state regulations upon submission of a state government form to the AOC. Requests for payment of additional expenses are to be submitted to the officers for approval. This procedure was approved by unanimous vote.

Judge Whatley raised the issue of merging the funds held by the former Municipal Court Judges Association into the private funds held under the control of the Council. After much discussion, a motion was made to appoint a committee to meet with the officers of the old Association regarding facilitation of this goal. The following persons were appointed: Judge Still as Chairman, Judge Merritt and Judge Coolidge. Judge Coolidge will correspond with appropriate members of the Association.

The practice that some cities have of requiring performance evaluations for municipal court judges was discussed.

Judge Pierce raised issues regarding potential conflicts with municipal court judges simultaneously serving in law enforcement capacities. He indicated that some inquiries have been made with regard to this. He also described the

system set up by the Council of Magistrate Judges for the purpose of attempting to resolve ethics issues. On this point, it is noted that Opinion No. 181 of the Judicial Qualifications Commission states the following:

Simply stated, dual service as a judge and prosecutor would inevitably lead to the erosion of public confidence demanded by this canon (Canon 2a) and essential to the proper administration of justice and thus cannot be sanctioned... This commission is of the opinion that no judge should simultaneously serve as a prosecuting attorney of any kind... in any court.

It would appear that this opinion would be applicable to law enforcement activities.

The next meeting will occur on January 31, 2002 after the legislative breakfast. The next meeting after that is tentatively scheduled for Friday, April 12, 2002. The meeting was adjourned at 11:55 a.m.

Respectfully submitted,  
William M. Coolidge, III  
Secretary

## Ideas? Comments? Responses?

Please send in any and all contributions for the newsletter to:

Margaret Washburn, editor  
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303 Scenic Highway • Lawrenceville, GA 30045



# In America, We Have Each Other

Contributed by David Clark, and originally published in the Gwinnett County Bar Association Newsletter GCBA newsletter

The ABA Journal had an interesting feature last month on the legal community in Charleston, South Carolina. It portrayed the city's lawyers and Judges as collegial, laid-back, and supportive of each other. Criminal defense attorneys and prosecutors working together to protect the community and rehabilitate offenders. Civil litigants talking about exercising good judgment and serving the local community's interests.

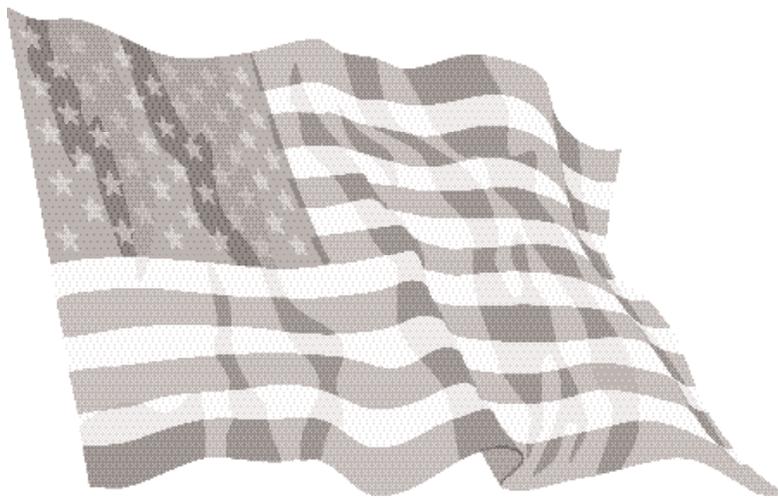
While I am sure the article was not completely accurate, it sure made Charleston sound like a great place to practice. Jessica and I have been to Charleston several times to catch the Spoleto Arts festival. It is a charming city with an amazing history. Parts of the Battery district are visually stunning. Three-fourths of the city, however, is depressed and decaying. I'm not sure that many of us would enjoy the same level of financial success we currently enjoy if we practiced in Charleston. Even so, how rewarding it would be to go to work and feel like you are on a team of bright, friendly people trying to do the right thing?

I read the article late in August, and I was envious of the sense of togetherness the author found in the

"low country" legal community. They seemed to have a sense of purpose.

Then came September 11, and the whole nation came together and found a sense of purpose. Like many of you, I was impressed.

I have always been skeptical of patriotism. My Dad is a patriot. He always says "my country, right or wrong." I have never shared that view. Vietnam, Watergate, Iran-Contra, and Monica-gate did their



part to attenuate my national pride

This time, however, I am getting a different sense of what patriotism means in America.

We went to the first Braves home game after the terrorist attacks. Everyone was given a flag, and there were patriotic ceremonies and songs all night. I was singing along to "Proud to be an American" for what seemed like the hundredth time in two weeks.

I started thinking about the flag. What is it that makes us patriotic? Americans don't really equate the flag with the Constitution. We don't

have a royal family or a national religion here to bind us together. We don't really have a common national heritage, at least not in the sense that Great Britain does or Italy does.

The basis of our patriotism is an honest fondness for each other.

While we certainly admire the many civilian and military heroes in our midst, and especially those who have fallen, we also like the 250 pound lady in the Old Navy tee

shirt. We like the fourteen year-old girl with skinny legs and too much eye makeup. We like the guy playing the beat up drum-set on the street for spare change.

We like people who work in uniform shirts with their names sewn on. We like kids with loud car stereos. We like people who work in convenience stores. Underneath it all,

at the end of the day, we're nobody special, but we have each other.

I realize now that this is what my Dad meant when he said "my country, right or wrong." The American flag is the banner of a decent people; not perfect, but likable.

We should follow the lead of Charleston's lawyers. Our community needs us to be leaders and people of good judgment. We're nobody special, either, but like all Americans, we have each other.

# America: The Good Neighbor

Widespread but only partial news coverage was given recently to a remarkable editorial broadcast from Toronto by Gordon Sinclair, a Canadian television commentator. What follows is the full text of his trenchant remarks as printed in the Congressional Record:

This Canadian thinks it is time to speak up for the Americans as the most generous and possibly the least appreciated people on all the earth.

Germany, Japan and, to a lesser extent, Britain and Italy were lifted out of the debris of war by the Americans who poured in billions of dollars and forgave other billions in debts. None of these countries is today paying even the interest on its remaining debts to the United States.

When France was in danger of collapsing in 1956, it was the Americans who propped it up, and their reward was to be insulted and swindled on the streets of Paris. I was there. I saw it.

When earthquakes hit distant cities, it is the United States that hurries in to help. This spring, 59 American communities were flattened by tornadoes. Nobody helped.

The Marshall Plan and the

Truman Policy pumped billions of dollars into discouraged countries. Now newspapers in those countries are writing about the decadent, war-mongering Americans.

I'd like to see just one of those countries that is gloating over the erosion of the United States dollar build its own airplane. Does any other country in the world have a plane to equal the Boeing Jumbo Jet, the Lockheed Tri-Star, or the Douglas DC10? If so, why don't they fly them? Why do all the International Lines except Russia fly American planes?

Why does not another land on earth even consider putting a man or woman on the moon? You talk about Japanese Technocracy, and you get radios. You talk about German Technocracy, and you get automobiles. You talk about American Technocracy, and you find men on the moon - not once, but several times and safely home again.

You talk about scandals, and the Americans put theirs right in the store window for everybody to look at. Even their draft-dodgers are not pursued and hounded. They are here on our streets, and most of them, unless they are breaking

Canadian laws, are getting American dollars from ma and pa at home to spend here.

When the railways of France, Germany and India were breaking down through age, it was the Americans who rebuilt them. When the Pennsylvania Railroad and the New York Central went broke, nobody loaned them an old caboose. Both are still broke.

I can name you 5000 times when the Americans raced to the help of other people in trouble. Can you name me even one time when someone else raced to the Americans in trouble? I don't think there was outside help even during the San Francisco earthquake.

Our neighbors have faced it alone, and I'm one Canadian who is damned tired of hearing them get kicked around. They will come out of this thing with their flag high. And when they do, they are entitled to thumb their nose at the lands that are gloating over their present troubles. I hope Canada is not one of those.

Stand proud, America!



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# Case Law Update 8/6/01

By: Judge Mickey Roberts

## ARTICULABLE SUSPICION/ARREST

Arkansas v. Sullivan  
US Supreme Ct 00-262 (5/29/01)  
Basically reaffirms Whren(517 US 806) and Atwater v. Lago Vista(532 US..) by holding that “subjective intentions play no role in ordinary, probable cause, 4th amendment analysis.”

Duvall v. State A01A1175 (6/13/01)  
The mere odor of alcohol gives officer cause to arrest and commence the implied consent testing procedure.

State v. Hammang  
A01A0149 (5/14/01)  
Hammang stopped because she did not have headlights on approximately 30 minutes prior to sunset. The question to be decided is whether officer’s motives and actions at time and under all the circumstances, including the nature of officer’s mistake, if any, were reasonable and not arbitrary or harassing.

Duke v. State A00A2377 (1/9/01)  
A stop based solely on the lookout broadcast by undercover officers at an apartment complex, without more, is not grounds for stop.

Hameen v. State A00A1296 (11/1/00) OCGA § 40-8- 73.1(b), tint law, does not apply to nonresidents and therefore cannot be grounds for stop.

Johnson v. State  
A00A1887 (3/21/01)  
Defendant stopped for failure to use turn signal while changing lanes. Court found articulable suspicion, because there were 3 or 4 cars on the road, and the lane changes were made abruptly, and officer testified lane changes were not made with reasonable safety.

Berry v. State A00A1912 (3/30/01)  
No articulable suspicion based on stop of car with drive out tag, where officer testified he stopped car because it may have been stolen.

## PROBATION REVOCATION

Cheatwood v. State  
A01A0103 (3/14/01)  
On track testing is now scientifically reliable.

## CHEMICAL TESTING

Muir v. State A00A2261 (2/14/01)  
The determination of whether evidence should be admitted per OCGA §40-6-392(a)(1)(A) is never a jury question.

Brunson v. State  
A00A1554 (01/18/01)  
Failure to continuously watch suspect for 20 minutes prior to test does not require exclusion of test results. Also states that the question of admissibility is never a question for jury. The only relevant issue for the jury was the appropriate weight and effect to give the evidence.

Bagwell v. State 547 se2d 377 (3/28/01)  
State “substantially complies” with the 20 minute rule when defendant is in a controlled environment for 20 minutes and there is no evidence of regurgitation. “The failure to continuously watch defendant for 20 consecutive minutes prior to the breath test does not require exclusion of the test result.”

NOTE: The Court mentions that “controlled environment” in this case meant Bagwell was handcuffed in back of car for 10 minutes, and an additional 10 minutes en route to jail.

Also, see Klink 272 Ga App 605, Which states that “state complied with 20 minute rule by showing defendant was in custody for over 20 minutes before being tested.”

Ishola v. State A01A1131 (8/1/01)  
The failure to continuously watch defendant for 20 consecutive minutes prior to breath test does not require exclusion of test results.

State v. Bowen S00G1875 (6/4/01)  
GBI/DFS is exempted under OCGA §35-3-155 from the publishing requirements of the APA.

CONSTITUTIONAL QUESTIONS  
Ferguson v. Charleston 2001 US Lexis 2460 Public hospitals may not test pregnant women for drug use and then give results to police w/o

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## Case Law Update 8/6/01 continued

patient's informed consent.

Keenum v. St A00A1982 (2/20/01)  
Love does not apply to cocaine cases.

Spears v. State A00A2111 (1/22/01)  
A defendant on trial for any offense for which imprisonment is a penalty has a constitutional right to counsel, which can only be waived by a voluntary and knowing action.

Poole v. State A01A0522 (4/27/01)  
DUI a-3: the presence of a specific chemical was not an essential element of the crime.

### FIELD SOBRIETY

Bravo v. State A01A0157 (4/30/01)  
Evidence that accused, who was not in custody at the time, refused to take FSTs is admissible at trial.

### DISCOVERY

Sillman v. State A00A2528 (1/24/01)  
Defendant was provided with a copy of the breath test results at time of arrest, therefore cannot complain that State failed to comply with discovery.

### EVIDENCE

Priebe v. State A01A0247: Video showing passenger replying that he had been drinking, but not as much as driver, should have been redacted for jury.

### HEARSAY

Brown v. State S00G1809 (7/2/01):  
Narrative portion of police report, can be affected by bias, judgment, and memory, and therefore to allow

officer to read narrative would be hearsay and not admissible under business records; also, officer could not testify that the arrest came about as the result of an anonymous tip to explain officer's conduct; Court found that, as in most cases, officer's conduct was not the real issue, and therefore it was error to allow testimony concerning the tip!

### IMPLIED CONSENT

Smith v. State A01A0052 (7/16/01)  
Police failed to reasonably accommodate Defendant's request for a blood test; Conviction for both per se and less safe DUI must be reversed

Avant v. State A01A1294 (8/9/01):  
Police reasonably accommodated Avant's request for an independent test; the fact that officer told him he would have to pay for the test at whatever facility he chose does not constitute a denial of defendant's right to obtain the test

Swain v. State A01A1018 (7/20/01):  
An ALJ's decision has no preclusive effect on a defendant's criminal trial. Therefore, even though an ALJ rules defendant did not refuse test, that does not preclude such refusal at the criminal trial.

Lutz v. State S01A0375 (6/11/01)  
IC warnings are not required to inform defendant that test results might be used against him in criminal proceeding for DUI. Further, IC warning does not violate equal protection by imposing disparate treatment on persons arrested for DUI

alcohol, as opposed to DUI drugs.

Rocha v. State A01A0492 (6/26/01)  
A drivers license is itself the highest and best evidence under OCGA § 24-5-4 to prove age.

Yates v. State A00A2245 (2/12/01)  
Failure to adequately warn motorist of rights under OCGA § 40-6-392(a) will render test result inadmissible; and under 24-9-103, an additional obligation is imposed when motorist is hearing impaired. In such cases the agency is required to immediately request a qualified interpreter from DHR.

Aggarwal v. State A01A0288 (2/28/01)  
The "under 21" IC notice informs suspect that the purpose of the test is to determine whether he was driving "under the influence" of alcohol. Accordingly, and when read with OCGA § 40-5-55, the under 21 IC notice does not mislead drivers as to their IC rights.

Crawford v. State A00A1086 (10/12/00)  
IC warnings given prior to arrest OK if given reasonably close to time of arrest

Chamberlin v. State A00A1622 (10/17/00)  
If suspect gives one adequate sample, then fails to give another, that is not a refusal, and if suspect requests an independent test thereafter, and is not given such test, State is precluded from introducing its results.

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## Case Law Update 8/6/01 continued

Carthon v. State

A00A2237 (3/23/01)

IC not read at time of arrest, but later after she was taken to hospital. Warning not given in timely manner, test results excluded.

### JURY SELECTION

Walls v. Kim A01A0034 (6/4/01)

Trial judge should not try to rehabilitate jurors who express bias, such juror should be excused.

### OPINION TESTIMONY

Wrigley v. State A00A2363 (3/2/01)

An officer may give opinion testimony as to the state of sobriety of a DUI suspect and whether appellant was under the influence.

### ROADBLOCKS

Baker v. State A01A1090 (8/3/01)

Hearsay evidence by arresting officer as to purpose of roadblock allowed, apparently because Officer was not asked "how" he knew the purpose of the roadblock.

Wrigley v. State A00A2363 (3/2/01)

If officer has been through academy, that is sufficient to meet that requirement under LaFontaine. A roadblock for the purpose of "general crime control" does not violate Edmunds.

State v. Dymond

A00A2325 (2/28/01)

Issue of propriety in roadblock is not whether an employee handbook was followed, but whether the roadblock was conducted in a manner

reasonable under 4th amendment.

### SEARCH AND SEIZURE

State v. Gibbons

A00A1885 (3/30/01)

Officer request for search of vehicle exceeded scope of seatbelt violation stop

Elom v. State A00A2147 (2/26/01)

Warrant affidavit was not proper in that (1) it failed to mention that it was based on hearsay; (2) failed to disclose that informant had a criminal background and was being paid for the information; (3) had no information regarding reliability of a 2nd informant; (4) attesting officer had no personal knowledge of the reliability of either informant.

State v. Sims A00A2240 (2/26/01)

Officer exceeds scope of permissible investigation if officer continues to detain one for a traffic stop after the conclusion of the stop and interrogates him or seeks consent to search w/o reasonable suspicion of criminal activity. This is so "because a search which is reasonable at its inception may violate the 4th amendment by virtue of its intolerable intensity and scope."

### SIMILAR TRANSACTIONS

Miller v. State A01A1030 (6/13/01)

Similar in DUI cases are admissible to show identity, intent, course of conduct, and bent of mind. Evidence of a DUI, either less safe or per se, is evidence of similar nature.

Schoolfield v. St

A01A1706 (8/1/01)

Evidence of a prior DUI offense, regardless of the circumstances surrounding its commission, is logically connected with a pending DUI as it is relevant to establish defendant has a bent of mind to get behind the wheel of a vehicle when it is less safe for him to do so. Citing Smith v. State Ga App. 548, Green v. State 244 App. 565

### SPEEDING

Van Nort v. State

A01A0097 (6/7/01)

Under OCGA § 40-14-7, laser has reached a stage of scientific reliability.

### SPEEDY TRIAL

Jones v. State A01A0576 (7/16/01)

A defendant may waive his speedy trial demand under OCGA § 17-7-170 by any affirmative action on his or his attorney's part which results in a continuance of the case outside the term; however, Court specifically states that "we do not hold any leave of absence request waives the speedy trial demand."

### VENUE

Page v. State A01A1407(7/30/01)

Venue in DeKalb correct, even though arrest was made in Fulton. Evidence of Page's intoxication, although gathered in Fulton, was sufficient to support inference that Page had been intoxicated moments earlier while observed driving in DeKalb.

# And You Thought Your City Had Strange Ordinances...

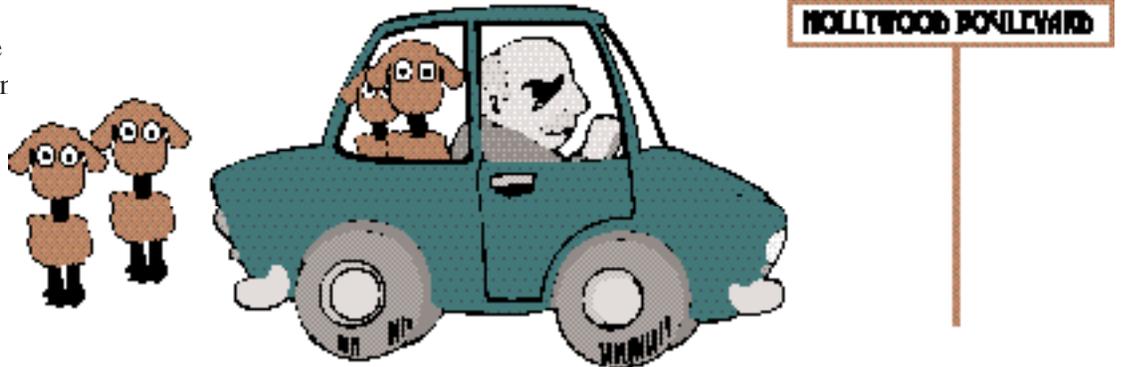
Cities in California have the following ordinances:

In Baldwin Park, nobody is allowed to ride a bicycle in a swimming pool.

In Blythe, you are not permitted to wear cowboy boots unless you already own at least two cows.

In Chico, detonating a nuclear device within the city limits results in a \$500 fine.

It is illegal to drive more than two thousand sheep down Hollywood Boulevard at one time.



San Francisco prohibits elephants from strolling down Market Street unless they are on a leash and persons classified as "ugly" may not walk down any street.

In Los Angeles, it is illegal to cry on the witness stand and toads may not be licked.

## *July 1, 2001 - June 30, 2002 Dues* **COUNCIL OF MUNICIPAL COURT JUDGES**

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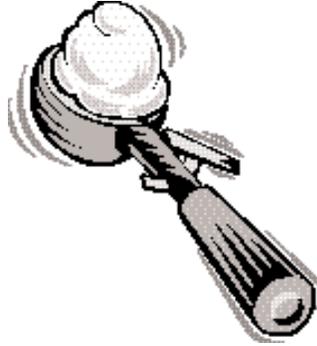
# The Scoop, the Whole Scoop & Nothing But the Scoop



by: Mark Lewis, Magistrate,  
Gwinnett County

During jury selection, a troubled juror brought some information to the Court's attention. The troubled juror told the Court that another juror had been talking in the jury assembly room and had basically shared his belief that the only reason why the case was being tried was because the Defendant, although guilty, was insisting on having a trial because he refused to plead guilty. In private voir dire, the juror tacitly admitted to the remarks he made about the

Defendant's guilt during the jury selection process. The Court was concerned about whether or not these



remarks tainted other jurors, and whether or not this taint would be curable. Lawrenceville Defense Attorney Darel Mitchell commented,

“Your honor, its like you giving me a bowl of ice cream with a big scoop of manure in it and then handing me a spoon and asking me to eat around it. I just can't do that and think the Court has no choice but to grant a mistrial.” The Court granted the mistrial. After the mistrial, Darel explained that some northerner had come up with the legal expression of “fruit from the poisonous tree” and that his ice cream & manure analogy was just a southern lawyer's version of that northern expression.

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