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What is Business, Corporate Law?

Corporate lawyers are involved in advising businesses on their numerous legal rights, responsibilities and obligations.

Many corporate lawyers work in law firms, particularly large or mid-size firms, where they counsel clients and handle business transactions. Business transactions include negotiations, drafting and review of contracts and other agreements associated with the activities of the business, such as mergers and acquisitions.

They also advise business clients on corporate governance and operations issues such as the rights and responsibilities of corporate directors and officers and the general oversight of the legal activities of the company.

New businesses are typically faced with numerous business decisions, including whether to structure the business as a corporation, a partnership, a limited liability company, a sole proprietorship or even as a joint venture. As part of determining how to structure the business, corporate attorneys also assist the start-up venture with matters such as developing a business plan and finding sources of financing.

Some corporate lawyers counsel publicly held companies. Public companies are held to strict standards with regard to disclosure of information that may have either a positive or adverse material effect on earnings and may therefore affect the price of their stock.

Other corporate lawyers are employed directly by corporations as in-house corporate counsel. Lawyers who work as corporate in-house counsel advise their companies on a wide range of legal and business issues.

Corporate lawyers enjoy the intellectual nature of their work. Some law students discover before or during law school that they're interested in corporate practice. It is beneficial to take business-related law school courses.

The following law schools offer a concentration and experiential training in business and corporate law.

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KEY: Each of the law schools offer course offerings and academic counseling that are significant enough to provide students with a solid education in the specialty.

A Certificate is an official designation on the diploma that the student can earn.

A Center is a grant-supported program with exclusive resources for the study of the subject matter.

A Clinic is a professor-directed program where students can gain hands-on legal experience.

An Externship is a school-organized opportunity to work in the field.

preLaw magazine contacted all law schools to gather info on specializations. This is not a complete list, as some schools have not responded.
What is Health Law?

Health law is the law, regulations and policies that concern and affect all aspects of an individual's physical and mental health. It covers the myriad of legal issues that arise with the payment for health care services, as well as the relationship between and among the patients, providers, regulators and payers.

Attorneys in health care law work on cases from ethical matters involving patient care to business deals involving hospital mergers and acquisitions. Health care attorneys often represent hospitals and other health care providers, such as nursing homes, psychiatric centers and acute care centers. Many work for law firms, often in large or mid-size law firms that have departments specializing in health care law.

Health care attorneys may also assist hospitals and health care organizations with many types of litigation, such as the defense of medical malpractice cases. Government agencies, including federal or state health and human services and social services agencies, also hire health care attorneys.

How do people enter the field of health law?

Because of its broad nature, lawyers come to practice health law from many disciplines and perspectives. For example, in any given week, a health lawyer could draft nurses' employment contracts, review medical records for a medical malpractice tort case, advise a client on whether to expand or purchase a facility, counsel a client on reproductive issues and provide guidance on billing practice to avoid Medicaid fraud and abuse, according to Christine Coughlin, professor of legal writing and director of the Legal Research & Writing Program at Wake Forest School of Law.

Often a lawyer's academic training, work experience before or during law school or family background will spark an interest in the health care field. Others found their way through other people or by attending seminars.

What skills are most important to health lawyers?

The skills that are most important to health lawyers include excellent analytical and research abilities, excellent writing and drafting skills and excellent communication skills. Because health law deals so intensely with the relationship between patients, and providers, lawyers who can effectively consider the broad policy considerations of any type of action, along
with the precise details involved in any type of interaction, tend to be most successful.

How should a student choose a law school with this specialty? Choose a law school based on the faculty and philosophy of the school's education, Coughlin said. First, does the school have leading faculty in health law? The student should also examine whether the faculty have a reputation not only for scholarship but also for excellence in teaching. A student interested in health law should also look at whether the school offers any interdisciplinary and multidisciplinary activities, as well as joint degrees or clinics.

Students should take at least one introductory health law class. They can gain practical experience in the health care field by working as a summer associate or law clerk. Students also should keep up with the latest developments in the health care field.

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Three Years of Hard Work. A Lifetime of Success.

Everyone at MSU Law shares a simple goal: to help make each of our students’ law school experience exceptional. From our gifted teachers who are also distinguished scholars, to our extensive programs, beautiful building, and outstanding network of alumni who span the globe—we have the resources you need to succeed as a law student.

We invite you to visit the MSU Law website, talk with admissions and financial aid representatives, and schedule a tour of the College.

For more information, or to apply, go to www.law.msu.edu.

What is Taxation Law?

Tax lawyers help both businesses and individuals deal with Federal, state and other taxes. This includes using trusts and other tax planning options to reduce tax burdens, and for small businesses, planning organization structure and determining tax consequences of financial decisions.

Tax law is as complex as our tax laws, and lawyers help their clients navigate the technical and complicated codes.

“What’s interesting about taxes is that you have the tax code, and you think that you will have all the rules to follow as you go along, but there are actually always tons of unanswered questions,” said Jennifer Felts who graduated from George Mason University School of Law in Washington, D.C., in 1999 and now works as in-house counsel for Time Warner.

Attorneys also help with financial audits, mergers and acquisitions and other transactions.

“I also work a lot on audits being done by the IRS or state agencies at Time Warner,” she said. “Larger companies are always under audit for various issues.”

With a wealth of job experience behind her, she’s found that she particularly enjoys being an in-house attorney.

“You get to understand the business itself and see the business side of decisions. Tax is one factor, but not the controlling factor in decision-making,” she said.

How do people enter the field of tax?

For those interested in jobs with companies, Felts said that getting government experience is invaluable. She worked at the IRS.
No Taxes, No Travel: Why the IRS Wants the Right to Seize Your Passport

By Jacoba Urist

Does the Tax Man have the right to prevent us from traveling, even without a formal charge of evasion or another crime? Maybe we're about to find out.

You're standing at the airport. The ticket agent clacks away on the keyboard. She looks up. "I'm sorry," she says. "We can't let you board the plane today." Why? "It's the IRS. They say you haven't paid all of your taxes."

It sounds like the opening scene of a straight-to-DVD Washington thriller. It's actually a few votes from becoming a reality. A new bill, quietly making its way through Congress, allows the federal government to stop people with unpaid taxes from leaving the country--even if they haven't been charged with tax evasion or any other formal crime.

It all started last fall, when Senator Barbara Boxer introduced the "Moving Ahead for Progress in the 21st Century Act" (or "MAP-21" as it's now called), to reauthorize funds for federal highway and transportation programs. While that doesn't sound like anything having to do with your taxes, the bill
includes a little-noticed section that allows the State Department to "deny, revoke or limit" passport rights for any taxpayers with "serious delinquencies."

Here's how it would work. If someone owed more than $50,000 in back taxes, the IRS would be able to send their name over to the passport office for suspension, provided that the IRS already either filed a public lien or a assessed a levy for the outstanding balance. The bill does provide a few exceptions though. For example, if a person has set up a payment plan (that they're paying in a timely manner), is legitimately disputing the debt, or has an emergency situation or humanitarian reason and must travel internationally, they may be able to leave for a limited time despite their unpaid taxes.

IS THAT LEGAL?

Timothy Meyer, a constitutional law professor at the University of Georgia, who's also served as a State Department lawyer, believes that, for all its creepiness, the rule is probably legal. He concludes that if the passport provisions of MAP 21 became law and were challenged, chances are, the courts would find that they satisfy Due Process concerns. Even though there's no judicial hearing before your travel rights are restricted, the bill does protect a passport holder who's challenging the alleged tax debt. And according to Professor Meyer, that's probably enough here.

"Courts have upheld statutes calling for the revocation and denial of passports to those in arrears of child support payments," he explains. "In part, because the child support payments can be contested."

As Meyer points out, MAP 21 certainly isn't the first law to limit a person's right to travel because they owe somebody money. The State Department screens passport applications every day for people who owe child support of more than $2500--a lot less than the $50,000 proposed here. And the tax system is routinely used to get Americans to make good on their outstanding liabilities. In fact, over the next few weeks, some folks won't be getting the refund check they're expecting if, for instance, they've defaulted on their student loans, owe state or local taxes, or haven't ponied up for the child support they owe. Most people don't realize it, but the IRS is in contact with federal and state agencies throughout the year, making sure you've paid your debts before they send you a chunk of change back in the mail.

Kramer Levin partner and member of the IRS Taxpayer Advocacy Panel, Russell Pinilis, is sympathetic to both sides of the issue, but thinks that overall, MAP 21 reflects the frustrating position the government faces when someone just won't pay their taxes.

"The problem," he says, "is that the government isn't a normal creditor. They're not lending you money. They can't put you in jail, and they have to be able to do something."

There's no question that the IRS has trouble collecting the revenue they're supposed to, and that those of us who pay our taxes are hurt by the people who don't. The IRS has even developed the concept of the "tax gap" as a way to gauge people's compliance (or lack there of) with their federal tax obligation. According to the most recently released data, Americans owe $450 billion more in federal taxes than they actually paid, an increase in $105 billion from the last time the IRS looked at the issue.

Professor Daniel Shaviro, a tax policy expert at New York University School of Law, recognizes that there is a legitimate policy goal at play in the proposed travel restrictions: making sure someone stays in the country and really pays the taxes they owe. After all, he says, someone who owes a huge amount in taxes might present a flight risk. He does, however, worry about the possibility that the passport
rules could be misused, say, to harass specific individuals whom government officials dislike.

**IRS + TSA = UH OH**

But is all of this a little extreme? The IRS places tax liens on assets all the time, putting other creditors on notice that you have an outstanding debt with the US government. And would someone really flee the country--leaving their home and their family behind--over a $55,000 tax bill? At this point, there's no real data either way, but Senator Boxer continues to push House Republicans to pass MAP 21 with the travel ban in place.

"Thousands of businesses are at stake," she said in a statement. "There are many people on both sides of the aisle in the Senate who want to get our bill passed into law, and I'm going to do everything I can to keep the pressure on the Republican House to do just that."

For now, at least, MAP 21 remains pending legislation. But, in the future, when traveling abroad, you may need to worry about more than just your shots and those baggage fees -- you may need permission from the IRS.

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BEST SCHOOLS for bar exam preparation

Some law schools have found ways to help students with lower LSAT scores pass the bar exam. An exclusive study shows which schools prepare students the best, regardless of their incoming LSAT score.

BY REBECCA LARSEN
After getting an undergraduate degree and an MBA from Ohio universities, Tom Siwo went to work for the federal government. But he had wanted to be a lawyer since childhood, and so he applied two years into working after college. The only problem—his LSAT score.

“It was definitely not good enough for Harvard,” he joked.

But Capital University Law School in Columbus, Ohio, was willing to give him an opportunity in 2008. Because of his low LSAT score, he was invited to attend Capital’s Academic Success Protocol Program, which helps potential students practice skills needed for law school just before they enter.

“We spent 8 a.m. to 1 p.m. in mock classes...practicing reading and writing techniques with professors who taught classes,” he said. “It really gave me a heads up on how to think and perform in law school.”

Even more valuable closer to graduation was the school’s bar prep course.

“The entire last semester, we studied what the bar is like and what techniques to use during the summer when we studied in a commercial bar exam class,” he said. “We wrote exams, for example, under conditions faced on the bar.”

All of the preparation and studying paid off. Siwo passed the Ohio bar exam on his first try this past summer and is now practicing law at Bricker & Eckler, one of Ohio’s largest firms.

Siwo’s story is not that unique. While the LSAT is primarily designed to measure success in law school, it has long been known that law school success predicts bar exam success. As such, most law schools...
have bar exam pass rates that correlate to their incoming LSAT scores.

But some schools, like Capital, buck the averages. The average percentage of first-time test takers passing the bar at Capital in the past five July exams is 90.26 percent, compared to 88.26 for all other Ohio schools. Yet Capital generally admits students with LSAT scores in the 150 to 155 range, lower than most other Ohio schools.

Capital is not alone. There has been a wave of innovations at law schools in recent years that help students with low-to-medium LSAT scores pass the bar on their first try.

To identify the schools that are outperforming what their LSAT scores predict, The National Jurist magazine did a statistical analysis using incoming LSAT scores and bar pass rate ratios. It created a polynomial model using each school’s LSAT at the 25th percentile for 2010 (to account for the students most likely to fail the bar exam), and the ratio of graduates who passed the bar exam compared to the state average for 2009 and 2010.

The result is a clear curve. It then computed the difference between the average pass rate ratio and what the curve would predict for each school and computed a probability distribution to determine the most extreme deviations. The final result is the chart on page 21, with Louisiana State University Law Center at the top, followed by Campbell University Wiggins School of Law in Raleigh, N.C., and Stanford Law School.

LSU benefits from a unique bar exam based on civil code and no MBE. This makes it easier for in-state graduates to pass the exam, allowing the school to perform better in the study.

Stanford benefits from a large number of people taking the California exam, making it easier for top schools to perform higher than the average. Six California schools place in the top 25 of the study. But which schools perform well is still surprising.

“All the literature says that [the LSAT is] not a great predictor about the bar, but if you go to Stanford or Cal and have high LSAT scores, the probability is that you will pass the bar no matter what,” said Marilyn Scheininger, assistant dean for academic achievement at California Western School of Law. “But if a school’s students don’t have high scores on the LSAT, there are things that schools can do to help, and we have done that at California Western. We really want our students to pass the bar and move on into practice.”

Campbell also benefits from a very local bar exam with a fair amount of state law. Again, this makes it easier for in-state graduates — allowing three North Carolina schools to finish in the top 10 of the study. But again, it is surprising that Campbell places higher than other schools. The University of North Carolina School of Law performs worse than Campbell on the bar exam and it has a higher LSAT score — 159 compared to 154.

Bar prep courses
While Campbell has always had a strong tradition of high success on the bar exam, it launched a free summer class in 2010 to further help graduates, said Sha Hinds-Glick, director of academic support and bar success.

“The class was based almost entirely on essay writing because 60 percent of the grade on the North Carolina exam is based on essays, and most students don’t write many essays while studying for the bar,” Hinds-Glick said. “Two afternoons a week, students would come to class to write for about an hour. Then we would grade their
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essays as bar examiners would do. In all, they wrote about 40 essays."

Some 108 Campbell grads took the class and 106 passed. Including other Campbell students who took the bar, the average passage rate was 92 percent.

Like Campbell, most schools that fare well in the National Jurist study attribute students' improvement on the bar to new classes, some taken just before or after graduation, some taken much earlier. Classes can be voluntary or mandatory. Some include intensive personal coaching. Most work in concert with — not as a substitute for — commercial bar preparation after graduation.

Most courses are non-credit, but some schools began offering credits for these classes after 2005 when the American Bar Association removed a ban on for-credit, in-house bar prep at law schools.

Capital was among the first offering a for-credit course when the bar changed its rules, said Yvonne Twiss, director of bar services. The goal is to prepare students for commercial bar prep so that they're organized and not overwhelmed.

"We eliminate the element of surprise about the volume of material on the bar exam and the manner in which it is tested," Twiss said. "We help them set the pace that they'll have to study for the exam. There is some substantive material in the class, but much of it is weekly quizzes and exam essays like those on the bar. They also have conferences with graders about their essays."

Capital's course starts in January of the third year of law school. That timing can be tricky because between January and June students are also looking for jobs, thinking about loan repayment and studying for final exams.

The pay-off? The school went from a 62 percent bar pass rate for first-timers in 2003 to being in the 90s and high 80s the past few years.
Pre-admission help

Other schools offer pre-law school programs for promising students who have low LSAT scores or weak undergraduate GPAs.

Among them is North Carolina Central University School of Law in Durham, N.C., where attorney Sidney Minter graduated in spring 2011. Minter went through the school’s two-week Performance Based Admissions program before being invited to enroll at NCCU, in part because of a low LSAT score.

“But for that program, I would not be where I am today,” Minter said, who passed the bar exam on his first try and now works at a law firm.

Nova Southeastern University Shepard Broad Law Center in Fort Lauderdale, Fla., is another school that has shown success on the bar. In July 2011, graduates surpassed the statewide average on the General Florida Bar with a passage rate of 87.5, compared with a rate of 82.2 percent for Florida law schools as a whole.

And yet, current first-year students at Nova have a median LSAT of about 150, among the lowest at Florida law schools.

The first year of law school includes mandatory bar preparation, introducing basic skills like essay writing and answering multiple choice questions, according to Linda Harrison, professor and associate dean of the Critical Skills Program.

An optional class in essay writing is held the second year. The third year features a mandatory course in advanced legal analysis for all students taking the Florida bar. After graduation, there is a free, optional non-credit course where students are tested weekly on skills needed for the bar with personal coaches to review progress. Students simultaneously take a commercial bar review course.

“We level the playing field for students with weaker LSATs,” Harrison said.

California Western in San Diego provides tutoring for students who need it. That’s because the first year features topics heavily tested on the California bar. In the second year, students start taking sample tests. According to Marilyn Scheininger, assistant dean for academic achievement at California Western, the school’s goal is to be at or above the overall pass rate for state test takers.

“For seven of the eight last bars, we’ve done that,” she said.

Student LSAT scores generally run from 152 to 157 at the school.

Tim Chinaris, associate dean for aca-
Editorial: Food carts could add much to downtown Athens

Published Monday, April 2, 2012 Updated: Monday, April 2, 2012 - 8:06pm

Judging from the crowd gathered in front of City Hall around lunchtime Saturday sampling the wares of vendors participating in Food Cart Fest, area residents of all ages, including the college students that call this town home for most of the year, are more than ready to see an expanded variety of street food in downtown Athens.

Given the popularity of Saturday's Food Cart Fest, it's encouraging to note — as was reported in this newspaper's coverage of Food Cart Fest — that there is some interest on the Athens-Clarke County Commission in expanding the areas in downtown Athens where food carts can operate.

However, current local ordinances — as noted in the newspaper's report on Saturday's event — aren't particularly conducive to meeting the demand demonstrated at Food Cart Fest.

Size limitations on food carts, a prohibition against having motorized carts vending on sidewalks, and the limited space where carts are allowed in the downtown area, all work against any expanded availability of street food, and virtually ensure that the street food that is available will be limited to hot dogs and similar fare.

There are, of course, any number of legitimate concerns for the Athens-Clarke County government with regard to allowing a proliferation of food carts.

Placing a cart on a sidewalk could impede pedestrian traffic,
Editorial: Food carts could add much to downtown Athens

making it less safe. Allowing larger trailers or trucks to park on the street could limit parking in an area where parking is regularly difficult to find.

And as far as elected officials are concerned, there are political considerations to be weighed in connection with any effort to bring more food carts and similar businesses into the downtown area. Primarily, those considerations are likely to focus on existing downtown restaurants, which would have some legitimate concerns about competing businesses setting up shop almost literally in front of their doors.

However, none of the issues noted above need necessarily to be permanent impediments to expanding food cart offerings in the downtown area, particularly when the economic and social benefits of the carts are taken into consideration.

It’s almost self-evident that the relatively limited investment required to operate a food cart makes it a widely available entrepreneurial opportunity.

Perhaps less evident, but by no means less important, is the fact that food carts could expand social interaction, bringing diverse groups of people into real contact with each other and helping to build a broader sense of community.

As a practical matter, there should be any number of places downtown where food carts could be located, and hours during which they could operate, that wouldn’t unduly interfere with pedestrian traffic, wouldn’t severely limit parking options, and wouldn’t put the food carts in specifically direct competition with existing restaurants.

According to Saturday’s Banner-Herald report on Food Cart Fest, a group of students from the University of Georgia’s School of Law and the UGA College of Environment and Design have produced a study that recommends ways of bringing more food carts to downtown Athens.

That study, combined with the existing interest in expanding food
Food carts could add much to downtown Athens. Adding new cart options, might be a good start toward bringing new, informal dining options to the downtown area. Doing so would almost certainly add to the unique charm of downtown Athens.
Here is what's going on around the Athens area today, April 3:

EVENTS

Lecture: "The Role of the World Court Today": 3:30 p.m., Hatton Lovejoy Courtroom of Hirsch Hall, North Campus, UGA; International Court of Justice Judge Joan E. Donoghue will deliver the lecture "The Role of the World Court Today" as the UGA School of Law's 108th Sibley Lecturer; Donoghue will discuss the continuing role of the World Court in light of the evolution of international law and the creation of other courts and tribunals; free and open to the public; www.law.uga.edu/news/13596.

Discussion: "Healing: Miracles, Mysteries and John of God": 7 p.m., Healing Arts Centre, 834 Prince Ave.; a 1-hour DVD viewing followed by discussion with David Kurtz, who has been to The Casa de Dom Inacio (the House of St. Ignatius Loyola), a spiritual healing centre in Abadiania, central Brazil; free and open to the public; www.friendsofthecasa.info.

PROGRAMS & CLASSES

Athens-Clarke County Library, 2025 Baxter St; (706) 613-3650 or www.clarke.public.lib.ga.us:

- Toddler Story time: 9:30 and 10:30 a.m. Tuesday and
Wednesday; for children ages 18 months to 5 years old.

- Group discussion series: 7 p.m.; a national, civic-education program that encourages participants to learn about U.S. foreign policy and global issues and discuss multiple viewpoints in a group setting; discussion group follows the Great Decisions briefing book which can be purchased at the library for $20; participants buy the book, read the articles and meet weekly to discuss issues; this year's topics include cybersecurity, energy geopolitics, promoting democracy, Middle East realignment and more; limited to 20 participants.

Athens Mothers' Center Support Group: 9:30-11:30 a.m. today and Friday, St. Gregory's Episcopal Church, 3195 Barnett Shoals Road; moms receive support from other moms through talking, activity groups and social events and gain information about community resources in a non-judgmental, non-denominational setting; dads welcome on Friday; children are welcome in all groups, but moms with toddlers and preschoolers can take advantage of on-site childcare for a nominal fee; www.athensga.motherscenter.org.

Story time: 10 and 11 a.m. today and Wednesday, Oconee County Library, 1080 Experiment Station Road, Watkinsville; for children ages 2-5; stories, songs and crafts; free and open to the public; (706) 769-3950.

Golden Sneakers Walking Club: 10 a.m., Lay Park, 297 Hoyt St.; a fitness program for senior adults to get active, stay fit, and have fun; walk and talk with other seniors; each Tuesday through April 24; registration required; $3 for Athens-Clarke County residents and $5 for non-residents; (706) 613-3596 or www.athensclarkecounty.com/lay.
Toddler Time: 10:30 a.m.-noon, Full Bloom Center, 220 N. Milledge Ave.; (706) 353-3373 or www.fullbloomparent.com.

Easter Puppet Show and Plant a Seed Craft: 2 p.m., Commerce Public Library, 1344 S. Broad St., Commerce; (706) 335-5946 or www.commercega.org.

Workshop: Ten Ways to Salvage Old T-shirts: 6-8 p.m., State Botanical Garden of Georgia, 2450 S. Milledge Ave.; learn 10 easy ways to convert T-shirts into something fun, usable or fashionable; bring T-shirts; $27 nonmembers, $24 members; (706) 542-6156 or www.botgarden.uga.edu.

SHOWS

The Four Thieves: 7 p.m., The Melting Point, 295 E. Dougherty St.; $5; (706) 254-6909 or www.meltingpointathens.com.

DJ Mahogany, Tumbleweed Stampede: 11:30 p.m., rooftop, Georgia Theatre, 215 N. Lumpkin St.; rooftop dance party; $2; www.georgiatheatre.com.
From Lawndale to Rome, Bangladesh and beyond

Ertharin Cousin, a U.S. ambassador from Chicago, prepares to lead the World Food Program

By Katherine Skiba, Chicago Tribune reporter

April 3, 2012

WASHINGTON

— Ertharin Cousin, who grew up in Chicago's Lawndale neighborhood, is a U.S. ambassador with a residence in Rome, round-the-clock bodyguards and a dog-eared passport.

Since 2009, she's been the U.S. representative to the United Nations agencies for food and agriculture, a role that has taken her to 23 countries to combat hunger and malnutrition. President Barack Obama, long an acquaintance, nominated her to the post.

But much is about to change for Cousin, 54. She'll leave a home on Via di Porta San Sebastino, lose her State Department security detail and no longer will have Obama as her boss.

On Thursday, she becomes the executive director of the U.N.'s World Food Program, one of the largest humanitarian organizations in the world.

In her new job, she will keep delivering food, and hope, to the world's poor, and she'll continue to live in the Italian capital, though in a different residence. She will report to U.N. Secretary-General Ban Ki-moon, working not just for the U.S., but "all the people of the world," as he put it to her.

A lawyer who calls herself "passionate, driven and hardworking," she cut her teeth in politics in Chicago and the Clinton White House. She's also had top jobs in the corporate world, including with the Albertsons grocery chain and Jewel-Osco stores. When Hurricane Katrina hit in 2005, she was an executive at the Chicago-based America's Second Harvest, now Feeding America, and helped bring 62 million pounds of food to the Gulf Coast.

The World Food Program has an annual budget of about $4.5 billion a year, 10,000-plus employees and operations in more than 70 countries. The U.S. contributes about 40 percent of its budget. Obama recommended Cousin for her new post, which has a five-year tenure.
It's a long way from her working-class roots on Polk Street on Chicago's West Side.

Cousin's mother was a city social worker and administrator for 38 years; her father owned property and was active in West Side politics. As a child, she was bused to La Grange Park to study at St. Louise de Marillac Catholic School. She graduated from Chicago's Lane Tech in 1975. Her undergraduate degree is from the University of Illinois at Chicago and law degree from the University of Georgia.

Though a citizen of the world, Cousin keeps a condo in Hyde Park and tries to make it home every few months. Divorced with a son, she has two grandchildren who call her "Gigi." Her mother, Annie Cousin, still lives in the home where Ertharin Cousin and her three sisters grew up.

"Ertharin" means nothing in particular, according to Annie Cousin, who said in an interview that she wanted all her daughters — the others are Tybra, Yuvette and Zina — to have "pretty, distinctive" names.

"I wanted something that I thought was strong, and something unusual, and somehow it came out 'Ertharin,' " the mother said.

Ertharin Cousin traces her start to broad-minded parents who bought the World Book encyclopedia, sent her to acting classes and took the family on long Sunday drives all over the city and suburbs.

Annie Cousin, 77, said she and her late husband weren't disciplinarians, per se. "We were a talking family — we talked about everything," she said. "We respected one another. We raised the girls to be strong, not to be followers."

She compared child-rearing to tending roses. "If you are going to have a rose bush, you can't just put it in the ground and walk away. You're going to cultivate it. You're going to see that the weeds don't grow around it. You're going to help it grow in the right way, so that it can be beautiful."

Early on, there were signs that Cousin was destined for something big. Her husband's aunt baby-sat the young girl, and when she was 2, the aunt said: "I may not live to see Ertharin grow up, but Ertharin is going to be somebody. She's so smart."

When Cousin was a child, she read a story in Life magazine about the killing of baby seals for their skins and wrote to the White House and went door-to-door with a petition to try to halt the practice, her mother said.

Talking about her own career, Annie Cousin said: "That's what she saw me do all those years: working with the underprivileged, feeding the hungry, clothing the naked. I was very passionate about what I did. Ertharin just took it to another level."

After law school, she campaigned for Chicago's first black mayor, Harold Washington. She flopped at her only try for public office, a 1988 bid for a seat on what is now the Metropolitan Water Reclamation District, but she caught the eye of other top Democrats.

After work at the city and state level, she joined the Democratic National Committee and was a White House liaison to the State Department for President Bill Clinton.

In a commencement speech last year to John Cabot University in Rome, Cousin admitted she was not the best student in college or law school. She said she had graduated not magna nor summa cum laude,
but what her mother called "Thank you, laude."

Looking back, Cousin said she also had outside pursuits. During law school she led search teams for Atlanta's missing, murdered children and put together a rally to keep the Ku Klux Klan from organizing on campus.

Her interests — and politics — meshed with Obama and his commitment to the world's poor, set out in his inaugural address, when he pledged that the U.S. would "work alongside you to make your farms flourish and let clean waters flow; to nourish starved bodies and feed hungry minds."

In mid-March she visited him in the Oval Office to thank him for naming her an ambassador and encouraging her new appointment. "There was a lot to say thank-you for," she said. "And in response to that, he said, 'You served us well and we're expecting big things of you.'"

A friend, Gwen Ifill, a senior correspondent for the "PBS NewsHour," said Cousin's energy and vibrancy are her secret weapons.

"I think she blew Ban Ki-moon away when she met him," she said. "It's one thing to know the numbers and the diplo-speak, but another to be able to show your passion for the topic."

Cousin knows the rules surrounding food-security issues and the diplomatic challenges of getting food to starving people, Ifill said, "but she can also tell you about the people, which makes the difference."

Another friend is Michele Norris, of National Public Radio. She called Cousin a friend who will be there for you when you need one but who will "also tell you when your slip is showing."

"The reason she's right for the job is she's got this wonderful combination of grace and grit," Norris said. "She knows how to push a rock up a hill and do it in such a way that you believe she's going to do it, and you put your shoulder up under the rock too."

In a sharply partisan Washington, Cousin has strong, respectful relationships on both sides of the aisle, Norris added.

Cousin's work already has taken her to impoverished stretches of Africa, Asia and Central America. Today's aid, she said, comes in many forms, including rations such as wheat, maize, sorghum and rice, high-energy biscuits, food vouchers and cash.

She wants to bolster the World Food Program's work with the private sector in transportation, logistics and manufacturing food products arising from the yields of small farmers.

Cousin, in an interview with the Tribune during a visit to Washington, observed that to a hungry person, a piece of bread is the "face of God." She said she is inspired to work harder when she sees malnourished children with bellies bloated and eyes coated with flies.

"We have meal supplements that are micronutrient-fortified," she said, "and if I get that intervention to a child, within 6 weeks that listless baby will be up and running."

Nowhere was she moved more than in Bangladesh, where she and her group distributed food to children. As thanks, the children painted a picture for her, danced and, in English, sang the civil rights anthem "We Shall Overcome."
"I just started bawling," she said. "Because these children believe. They believe as we believe. And shame on us, the global community, if we can't deliver for them."

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Page, Wagoner win Alec Little Environmental Award

By LEE SHEARER - lee.shearer@onlineathens.com

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Craig Page and Eric Wagoner, architects of the local food movement in Athens, will get this year’s Alec Little Environmental Award, an annual award for environmental responsibility.

Page is executive director of Promoting Local Agriculture and Culture Experiences, or PLACE, a group that encourages growing, selling and eating local food. Page is also a founding board member of the Athens Farmers Market and Slow Food Athens.

Page, a special project planner in the Athens-Clarke County Planning Department, is treasurer and a board member of Common Ground Athens and is one of the founding board members of the Georgia Farmers Market Association.

PLACE, which Page founded in 2007, promotes and supports the thriving Athens Farmers Market and sponsors events such as the Tour de Farm and the Athens Community Garden Network. Another event, Taste Your Place, puts local farmers in touch with local restaurants.

Wagoner is one of the founders of Athens Locally Grown, a group that now numbers more than 100 small farmers and gardeners that sell their crops, grown chemical-free, through an online ordering network of more than 3,000 members.

Buyers can get vegetables, herbs, dairy products, meats, fruits, flowers and mill products through the network.

The system may have been the first U.S. online farmers market,
but now more than 300 communities across the country have similar online markets.

Page and Wagoner will receive their awards April 20 at a ceremony in the University of Georgia ecology building.

“This year the board felt it was appropriate to recognize the local food movement because it’s such a growing and popular activity here in Athens. So many people are involved in it, we felt it was appropriate to recognize people who were the early leaders,” said Larry Dendy, the informal chairman of the group that chooses the Alec Little Award winners every year.

Since the first Alec Little Award in 1992, 30 people and 14 groups have received it, including Smith Wilson, Skipper StipeMass, Maureen O’Brien, Carl Jordan, Dorothy O’Niell, the late Ronnie Lukasiewicz, the Broad River Watershed Association, the UGA Environmental Law Association, the Creek Kids, R.E.M. and numerous others.

Winners of the award are chosen by a board composed of past individual winners and representatives of organizations that have won. The award is named for the late John A. (Alec) Little, who worked closely with many environmental groups.
On Supreme Court's Affordable Care Act case, guess who wants judicial activism

Published: Tuesday, April 03, 2012, 2:07 PM    Updated: Tuesday, April 03, 2012, 2:12 PM

Tom Moran/ The Star-Ledger

President Obama yesterday was extremely rude to conservatives again. He had the temerity to voice an opinion on the challenge to his health reform law now before the Supreme Court, a move that Republicans like Mitt Romney found repugnant.

So let's see if we have this straight: Everyone in the universe can comment about this case except the president. Romney and Rick Santorum haven't held back, and neither have Republican leaders in Congress. But when Obama treads into this same territory, he is somehow a thug who is trying to "intimidate" the court.

Criticizing Obama is a reflex among this crowd now. They seem to have gotten past the idea that he is a foreign-born Muslim. But if Obama were to throw at the first pitch at baseball's opening day, they would gripe. Throwing a strike would make him a show-off. Throwing a ball would make him a boob. This stuff has gotten so silly that it's boring, a cardinal sin in politics.

Obama went on to make an important point: That if the court overrules the health care law, it will be practicing judicial activism. Conservatives have been complaining about judicial activism since the Supreme Court struck down Jim Crow segregation laws in the South, and the heat rose considerably after Roe v. Wade.

But the truth is that conservatives are perfectly happy when the Court is activist for conservative causes. Like liberals, they want to win the issue before the court, and if that means the judges must be activist, so be it. They were perfectly happy, for example, when the Court struck down Washington D.C.'s strict gun laws, or when it overturned campaign finance laws.
In fact, the record shows that the conservative court under former Chief Justice William Rehnquist struck down more federal laws and regulations than the more liberal courts under Earl Warren or Warren Burger. You can look at the numbers in this article by Lori A. Ringhand of the University of Georgia School of Law (check out page 4).

The most vulnerable part of the Obama health reform is the requirement that individuals purchase insurance, or pay a penalty. That provision was invented by the conservative Heritage Foundation as an alternative to a single-payer system, in which the government would levy a tax that would cover the cost of insurance, much like the Medicare system does. It was seen as a lighter touch.

Now, though, conservatives have flipped flopped on all counts. They don't like their mandate anymore. And they want an activist court to put a stop to it.

Related opinion:

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Star-Ledger Opinion

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THE REHNQUIST COURT: A “BY THE NUMBERS” RETROSPECTIVE

Lori A. Ringhard *

INTRODUCTION

The late Chief Justice William Rehnquist presided over the U.S. Supreme Court for nineteen years, longer than any other Chief Justice in the 20th century.1 Despite this longevity, however, there is little consensus on just what the legacy of the Rehnquist Court is. Was the Rehnquist Court a restrained Court that embraced a limited, text-based reading of the Constitution? Or was it a much more aggressive Court, responsible for a resurgence of conservative judicial activism?2 Is it best epitomized by the “swaggering confidence” that put a President in office, or the cautious minimalism that disappointed its conservative supporters by failing to reverse—and in some cases even expanding—liberal precedents bequeathed to it by the Warren and Burger Courts?3

1 Chief Justice Rehnquist’s tenure over the Court was the fourth longest in history: John Marshall presided over the Court for thirty-four years (1801 to 1835); Roger Taney’s term lasted twenty-eight years (1836 to 1864); Melville Fuller’s term extended twenty-two years (1888 to 1910); and Rehnquist’s lasted nineteen years (1986 to 2005). Ronald D. Rotundo, Modern Constitutional Law: Cases & Notes, at xi (6th ed. 2000).


UGA celebrates Honors Week

By UGA NEWS SERVICE

Published Tuesday, April 3, 2012

The University of Georgia will recognize outstanding students, faculty, staff and alumni at various events during Honors Week, April 16-20.

Honors Week allows individuals at UGA to be acknowledged for achieving excellence in scholarship, teaching, research and public service as well as those who have made exemplary contributions to the university. The traditional campus-wide Honors Day ceremony has been updated to a luncheon format that will recognize top graduating students and will be called the Presidential Honors Day Luncheon. In addition, various other events during the week will acknowledge accomplishments in individual schools, colleges and academic units and by UGA alumni.

"Honoring the success of our students as well as our faculty, staff and alumni allows us to focus on the stellar work being done at the University of Georgia," said Jere Morehead, senior vice president for academic affairs and provost. "This is the second year that we have organized these various annual recognitions to all occur during Honors Week at UGA."

The following events are scheduled throughout the week. Unless noted, all events are by invitation only. Classes will remain in session with no cancellations for Honors Week events and activities.

April 16

Faculty Recognition Banquet – 5:45 p.m., Magnolia Ballroom of the Georgia Center for Continuing Education Conference Center and
Hotel. Sponsored by the Office of the Senior Vice President for Academic Affairs and Provost, the event will recognize the winners of this year’s awards for teaching excellence, including the Josiah Meigs Distinguished Teaching Professorships and Richard B. Russell Awards for Excellence in Undergraduate Teaching, as well as faculty and staff who will be acknowledged as outstanding advisers and mentors.

Public Service and Outreach Annual Meeting and Awards Luncheon – 8 a.m. to 2 p.m., Georgia Center. Vice President Jennifer Frum will deliver the State of Public Service and Outreach address. Awards to be presented include Staff Awards for Excellence, the Scholarship of Engagement Award, Walter Bernard Hill Awards and Fellows. Vice Admiral Robert Harward, deputy commander of the U.S. Central Command, will be the keynote speaker, and Matt Hauer, a demography specialist with the Carl Vinson Institute, will speak on the changing face of Georgia as well as past, present and future population trends. To register, see http://www.georgiacenter.uga.edu/uga-hotel/conferences-events/register/21st-annual-public-service-outreach-meeting. For a list of award winners, see http://outreach.uga.edu/index.php/news/news_releases/2012_public_service....

April 18

Terry College Honors Day – 9 a.m., the Chapel. The Terry College of Business will recognize students with high scholastic achievements and demonstrated excellence in their academic endeavors. Each year, graduate and undergraduate recipients of named scholarships are honored at this event as well as inductees into Sigma Iota Epsilon and Beta Gamma Sigma business societies. For more information, email honorsday@terry.uga.edu.

Presidential Honors Day Luncheon – noon, Grand Hall of the Tate Student Center. Sponsored by the Office of the President, the event will honor recipients of national and international scholarships, first honor graduates, the Student Government Association president and vice president and outstanding students in their final year of
study from each of the colleges and schools.

Sigma Lambda Alpha Honor Society Induction – 4 p.m., Demosthenian Hall. During the ceremony, sponsored by the College of Environment and Design, students will be inducted into the landscape architecture honor society. A reception will follow.

Honors Program Graduation Banquet – 5:30 p.m., The Classic Center. This event will celebrate the achievements of those Honors Program students who have graduated in summer or fall of 2011 or who will graduate in May 2012. In addition, the Lothar Tresp and Hatten Howard Outstanding Professor Awards will be presented as well as the Jere W. Morehead Award to an exceptional friend of the Honors Program.

April 19

College of Education Faculty Awards Celebration – 11:30 a.m. to 1:30 p.m., Magnolia Ballroom in the Georgia Center. The College of Education will recognize several outstanding faculty members, an academic adviser and an Honors student. Awards include the Aderhold Distinguished Professor, Ira Aaron Award for Teaching Excellence, Carl Glickman Faculty Fellow, Russell H. Yeany Jr. Research Award, Faculty Diversity Award, Donald O. Schneider Award for Mentoring and the D. Keith Osborn Award for Teaching Excellence.

English Department Honors Day Ceremony – 4 p.m., room 265 of Park Hall. The event will honor award-winning graduate and undergraduate students and recognize those inducted into Phi Beta Kappa. A reception on the front patio of the Park Hall annex will follow the ceremony.

UGA Research Foundation Annual Creative Research Awards Banquet – 5:30 p.m. reception, 6:30 p.m. dinner and program, Mahler Auditorium of the Georgia Center. The Research Awards Program, sponsored by the University of Georgia Research Foundation, Inc., recognizes excellence in research and scholarly creativity. Awards recipients are faculty and graduate students.
April 20

Alumni Association Awards Luncheon – noon, Grand Hall of the Tate Student Center. During the 70th annual awards program, sponsored by the UGA Alumni Association, three awards will be presented to distinguished graduates and faculty in appreciation of and admiration for their demonstrated commitment to bettering the university. The Alumni Merit Award, the Alumni Association's oldest honor, will be presented to Robert E. Argo. The Faculty Service Award, created in 1966, will be presented to William P. Flatt, the D.W. Brooks Distinguished Professor Emeritus of Foods and Nutrition. The Alumni Family of the Year Award will be presented to the Seiler family, who has been responsible for raising eight generations of Ugas, the university's mascot. Reservations may be made online at www.alumni.uga.edu/alumniawards.

Two other UGA colleges are hosting honors programs after Honors Week. They are the:

School of Social Work Awards program – April 26, noon, Trumps Ballroom. The ceremony will recognize outstanding faculty, staff, students and alumni.

Honors Day for the College of Family and Consumer Sciences – May 1, 3:30 p.m., Dawson Hall. The recognition event will honor students and faculty. Prior to Honors Week, several other ceremonies were or will be held. They are as follows.

The School of Law held a faculty awards ceremony, March 23. Recipients included Christian Turner, John C. O'Byrne Memorial Award for Significant Contributions Furthering Student-Faculty Relations; Lonnie T. Brown Jr., Student Bar Association Professionalism Award; and Erica J. Hashimoto, Professor C. Ronald Ellington Award for Excellence in Teaching.

Sigma Pi Kappa inducted students into the College of Environment and Design's historic preservation society March 30.
The H. Gordon and Francis S. Davis Student Organization Achievement and Recognition Awards will be held April 11 at 7 p.m. in the Grand Hall of the Tate Student Center. Sponsored by the Center for Student Organizations in the Office of the Dean of Students, the event recognizes the university’s student leaders, student organizations and advisers.

81st Annual Warnell School of Forestry and Natural Resources Spring Awards Banquet – April 12, 6-9 p.m. in the Georgia Center. The event acknowledges the achievements of students and faculty.

UGA Honors Week builds on a tradition initiated by UGA Chancellor S.V. Sanford when he created Honors Day in the 1930s to recognize outstanding student academic achievement. By grouping the many awards events for students, faculty and staff, the university is able to focus appropriate recognition on those who have achieved excellence in their respective areas.
Andy Koppelman has another essay, this time in the New Republic, analogizing the litigation over the ACA to the Child Labor Cases. Of course, this is a tried and true rhetorical technique: find a case that is widely despised (Dred Scott, Lochner, Plessy), and analogize current litigation to that despised case.

Just a few points:

(1) Koppelman writes, with regard to child labor, "only the federal government could address the issue, since no state would act on its own." But I pointed out in response to his last article that every single state did in fact pass laws restricting child labor. Koppelman acknowledges the point, but responds, "This, however, ignores the enormous variation in child labor policy: Some laws were weak; others were ineffectively enforced." But saying that states chose not to have as strict laws as the federal government, or enforce them as vigorously as the federal government might, is quite different from saying that they couldn't act; rather, they chose not to act as vigorously as the federal government. That's what happens when you live in a federal system—sometimes you will think that states are being derelict in their legislative responsibilities; sometimes you will praise the states as laboratories of democracy for their innovations. I think I can safely assume, for example, that Koppelman opposes the federal Defense of Marriage Act but supports states that have recognized same-sex marriage. If the Republicans take control of the White House and Senate in 2013, would he want them to set a national policy on gay marriage via the commerce power? Merely pointing out that states don't always follow one's policy preferences is hardly a strong argument against federalism.

(2) Professor Logan Sawyer of the University of Georgia Law School coincidently has an excellent piece out on SSRN about the origins of Court's holding in Hammer v. Dagenhart, the case in which the Supreme Court invalidated a federal child labor statute as beyond Congress' commerce power. The gist of the piece is that Hammer wasn't a battle between laissez-faireists and Progressive supporters of national regulation. Rather, after the Lottery Cases, which seemed to establish the federal police power, there was debate among Progressives as to whether there were any limits to this power. One side said no, while the other side insisted, for good "Progressive" reasons (in particular, that participation in local governance is a key to good citizenship), that Commerce Clause doctrine must put some limits on federal power. So there is, in fact, a parallel to 1918 today, but the parallel is not that the Supreme Court is poised to just make up some new doctrine while ignoring social conditions. Rather, the parallel is that there is sentiment among people who otherwise recognize a strong role for national government—as four of the five conservatives on the current Court surely do—that despite past precedents granting a broad commerce power, a significant role for state and local governance must be preserved.

(3) Koppelman suggests that Jonathan Adler and I think argue that child labor "isn't so bad." I won't speak for Jonathan, but I think child labor is bad, certainly if we're talking about pre-teens working in factories (which all the states banned in any event). (What I actually wrote was, "as one would expect, wealthier states, where parents were less likely to be dependent parents on the labor of their children to avoid starvation, passed earlier and stricter
legislation, exactly as it should be in a federal system." (And even federal
legislation left child labor on farms to parental discretion, in deference to
the fact that family farms often couldn't survive without the children pitching
in.) But there's always the question of "compared to what?" I don't want to go
off on a long digression about child labor, so I'll leave it at this. Child
labor laws were not motivated solely by humanitarian considerations, and
depending on context, could have significant anti-humanitarian consequences.
Just consider that child labor laws, including the federal laws that came before
the Supreme Court, were not typically accompanied by social welfare legislation
providing income support to families whose children were working because the
alternative was not having adequate food and housing. [So desperate families
could either be malnourished or send their kids off to work in the black market;
either way, many kids would be worse off, which provides an explanation of why
the poorest states had less stringent child labor laws than what the federal
government tried to impose.] Consider also that the wave of national sentiment
favoring child labor laws corresponded with a wave of sentiment favoring
legislation keeping women out of the workplace, and severely restricting
immigration. This was not a coincidence. It shouldn't really come as a surprise
that the history of these matters is rather more complicated than the morality
tales we learned in civics class.

LOAD-DATE: April 04, 2012

********** Print Completed **********

Time of Request: Thursday, April 05, 2012 06:39:41 EST

Print Number: 2826:343330959
Number of Lines: 62
Number of Pages: 1
John JOINER

Family-Placed Death Notice

JOINER, John Robert, age 69, of Snellville passed away Tuesday, April 3, 2012. He is survived by his wife of 22 years, Valerie Joiner; children, Darrow Kirkpatrick and his wife, Caroline, Rebecca K. Aldred-Pearson and her husband, Derrick, Joanna Joiner and her husband, Arlindo da Silva, Jennifer Lawson and her husband, Gilbert; sister, Mari Jo Joiner and her husband, Martin Robbins; brother-in-law, Vernon Honsinger and his wife, Mary; four grandchildren, Alexander, Ursula, Gwendolyn, and Jonas; and many cousins, nieces, and nephews. After graduating from Albany High School in 1960, Bob attended the United States Air Force Academy for two years. He graduated from the University of Georgia in 1964 and received his law degree from the UGA Law School in 1976. Mr. Joiner served as a Fulton County public defender for 18 years. Bob was an accomplished musician and an expert chess player. Of his 21 chess trophies, Bob was proudest of winning the Georgia State Chess Championship in 1969 with a perfect score of 5-0. Besides chess, his passions were his family, legal justice, and the arts. A Celebration of the Life of John Robert Joiner will be held at a later date. Those desiring may make donations to Centurion's Ministries, 221 Witherspoon St., Princeton, NJ 08542 or Children's Health Care of Atlanta, 1687 Tullie Circle NE, Atlanta, GA 30329. Condolences may be sent or viewed at www.wagesfuneralhome.com. Tom M. Wages Funeral Service, LLC, A Family Company, Snellville Chapel 770-979-3200, has been entrusted with the funeral arrangements.

Published in The Atlanta Journal-Constitution on April 5, 2012
Friday, April 06, 2012

**Judge: World Court is 'potent force' for peace**
*Many countries eventually comply with its rulings, she says*

By Mark Niesse, Daily Report

As a World Court judge from a nation that questions its authority, Judge Joan Donoghue sought this week to justify the court's existence as a "potent force" for peace despite the lack of full participation by the United States.

Donoghue, the U.S. judge on the 15-member International Court of Justice, told a crowded room of University of Georgia students on Tuesday that the court's role is to shape an often ambiguous body of international law, regardless of whether nations such as her own obey its decisions.

"It's not like we're looking through a telescope like an astronomer at distant stars. What we do shapes and defines the content of the field," Donoghue said during the John A. Sibley Lecture at the UGA School of Law.

The International Court of Justice—also known as the World Court—was established by the United Nations' charter in 1945. It rules from The Hague, Netherlands, on civil disputes between nations that consent to its oversight. (This is not the court that charged Yugoslav President Slobodan Milosevic and Liberian President Charles Taylor; their prosecutions were handled by separate international criminal tribunals, also based in The Hague.)

Judges to the World Court are elected by the United Nations General Assembly and the Security Council.

Donoghue said that about one-third of the United Nations' 193 member states accept the court's "compulsory jurisdiction" in contentious cases. The United States, she explained, only appears before the court to resolve treaties signed before 1986, when the nation began avoiding treaties that require using the court.

The U.S. withdrew from compulsory jurisdiction after the court ordered reparations to Nicaragua in its ruling that Americans breached international law by helping to arm the anti-government Contras.

That move left Donoghue and her predecessors in the awkward position as a member of a court whose decisions her home country doesn't always respect.

"When states aren't in compliance with international legal obligations, certainly as a member of the court, that's concerning to me," Donoghue said in an interview after her speech. "If I believe that the state is making a good-faith effort to come into compliance, that has a significant impact in terms of my perception of how to judge the state."
The United States also failed to obey a 2004 World Court decision in Mexico v. United States of America, in which the World Court ruled that U.S. courts should reconsider the sentences of Mexican nationals facing execution because the United States didn't fulfill its obligation under the Vienna Convention on Consular Relations to notify the condemned's consular officers for legal representation, Donoghue said.

President George W. Bush issued a memorandum requiring states to give review and reconsideration to the issue, but the state of Texas contested the president's authority to do so. The U.S. Supreme Court ruled in Medellin v. Texas in 2008 that World Court decisions aren't binding on domestic law except by acts of Congress.

"From the very beginning, there were competing views, especially in the United States, about this idea of a World Court," Donoghue said in her lecture. "Some people had the reaction that the idea of states transferring their sovereignty to a World Court was inherently problematic. Some were very doubtful that a World Court could ever be a place that could avoid wars and other problematic means of resolving disputes."

But while the court has little power to enforce its judgments unless the United Nations decides to act against defiant states, most countries eventually comply with its rulings, she said. For example, it has taken a decade for Nigeria and Cameroon to resolve a border dispute after the World Court decided against Nigeria.

"Compliance is too narrow of a question. It's better to look at the question in terms of the contribution that this particular body makes toward the peaceful resolution of disputes," Donoghue said in the interview. "A court doesn't just exist inside of the courtroom with the parties. It's a piece of a broader system."

The prospects for the United States agreeing to the World Court's jurisdiction in the future "would be something of an uphill battle," she said. "You really can't submit to a court's jurisdiction without being prepared to take that risk" of losing.

UGA international law professor Diane Marie Amann said Donoghue understands the World Court's importance in shaping a global legal framework, even without the United States' support.

"Even if the U.S. isn't before that court, it has a great interest in making sure the rules in which it does business internationally are rules that we feel comfortable with," Amann said after Donoghue's lecture.

The World Court remains relevant to international law and politics, with or without the United States' direct involvement, said Elizabeth Andersen, executive director for the Washington-based American Society of International Law.

"Over time, the court lays down important markers about the rights and responsibilities of various actors that contribute to the ultimate resolution of conflicts," Andersen said. "Whether the U.S. begins to sign more treaties where the court has jurisdiction will be a function of its assessment of its interests. That's something that is a sovereign right."

Donoghue, who is originally from the San Francisco Bay area, graduated from Boalt Hall School of Law at the University of California, Berkeley in 1981. She was elected to the International Court of Justice in 2010 after spending most of her career as a lawyer in the State Department. Her term
expires in 2015.
Promotions

College of Agricultural and Environmental Sciences
To Professor
Phillip M. BrANNen, plant pathology; Juan Carlos Diaz-Perez, horticulture; Glendon H. Harris Jr., crop and soil sciences; Robert C. Kemermat Jr., plant pathology; Romdhane Rekaya, animal and dairy science; Casey W. Ritz, poultry science; Daniel R. Suiter, entomology; Ronald R. Walcott, plant pathology; and Freddie Clifton Waltz, crop and soil sciences.

To Associate Professor
Susana Ferreira, agricultural and applied economics; Qingguo Huang, crop and soil sciences; Tracie M. Jenkins, entomology; Nadia Nicole Kellam, biological and agricultural engineering; Changying Li, biological and agricultural engineering; Michael D. Toews, entomology; and Marvin Leonard Wells, horticulture.

College of Arts and Sciences
To Professor
Richard E. Dunham III, theatre and film studies; Andrew Jay Grundstein, geography; Joseph C. Hermanowicz, sociology; Kenneth Lee Honerkamp, religion; Imi Hwangbo, art; Sujata Iyengar, English; Angela Jones-Reus, music; Jessica Kissinger, genetics; Edward M. Panetta, communication studies; Fausto O. Sarmiento, geography; Eric V. Stabb, microbiology; and William S. York, biochemistry and molecular biology.

To Associate Professor
Jeongyoun Ahn, statistics; Mark D. Anderson, Romance languages; Wayne M. Coppins, religion; Brian J. Hoffman, psychology; Renee Jagnow, philosophy; Daniel Krashen, mathematics; Yehua Li, statistics; Jason John Locklin, chemistry and biological and agricultural engineering; Wolfgang R. Lukowitz, plant biology; Neil Lvall, mathematics; Bethany Clark Lewis, child and family development; Katalin Medvecz, textiles, merchandising and interiors; and Robert B. Nielsen, housing and consumer economics.

College of Business
To Professor
Marisa Anne Pagnattaro, insurance, legal studies and real estate.

To Associate Professor
David L. Eckles, insurance, legal studies and real estate; and Scott David Graffin, management.

To Senior Lecturer
Mark J. Laplante, banking and finance.

College of Education
To Professor
Phyllis Gayle Andrews, elementary and social studies education; Melissa Cahnmann-Taylor, language and literacy education; Jonathan M. Campbell, educational psychology and instructional technology; Billy J. Hawkins, kinesiology; Gwynn M. Powell, counseling and human development services; Kathryn J. Roulston, lifelong education, administration and policy.

To Associate Professor
Catherine Brown Crowell, kinesiology; Jennifer Michelle Graff, language and literacy education; Victoria Hasko, language and literacy education; Jennifer Hauver James, elementary and social studies education; Michael P. Mueller, mathematics and science education; Amy Noelle Parks, elementary and social studies education; and Anneliese A. Singh, counseling and human development services.

To Senior Lecturer
Joanne L. Ratliff, language and literacy education.

College of Environment and Design
To Associate Professor
Eric A. MacDonald, Cecile L. Martin and Amitabh Verma.

College of Journalism and Mass Communication
To Professor
Barry A. Hollander, journalism.

To Senior Lecturer
James J. Biddle, telecommunications.

College of Pharmacy
To Clinical Professor
Beth Bryles Phillips, clinical and administrative pharmacy.

To Clinical Associate Professor
David L. DeRemer, clinical and administrative pharmacy; and Deborah Lester Elder, pharmaceutical and biomedical sciences.

College of Public Health
To Associate Professor
Monica Marie Gaughan, health policy and management.

College of Veterinary Medicine
To Professor
Simon R. Platt, small animal medicine and surgery.

To Associate Professor
Paula M. Krimer, pathology; Corey Fontaine Saba, small animal medicine and surgery; Chad Weber Schmiedt, small animal medicine and surgery; and Xiaoping Ye, physiology and pharmacology.

To Senior Lecturer
Hugh Dookwah, anatomy and radiology.

School of Ecology
To Associate Professor
Vanessa O. Ezenwa, ecology and infectious diseases.

School of Law
To Associate Professor
Hillel Y. Levin.

To Librarian IV
Suzanne R. Graham.
The University of Georgia approved tenure for 54 faculty members. Board of regents’ approval of tenure is no longer required. Those receiving tenure are:

Jeongyoun Ahn, statistics; Wesley David Allen, chemistry; Alex Kojo Anderson, foods and nutrition; Mark D. Anderson, Romance languages; Jose F. Blanco, textiles, merchandising and interiors; Harlan G. Cohen, law; Wayne M. Coppins, religion; Michael H. Crespin, political science; Cathleen Brown Crowell, kinesiology; David L. Eckles, insurance, legal studies and real estate; Vanessa O. Ezenwa, ecology and infectious diseases; Susana Ferreira, agricultural and applied economics; Angela Fertig, public administration and policy; Monica Marie Gaughan, health policy and management; and Joseph William Goetz, housing and consumer economics.

Also receiving tenure are: Jennifer Michelle Graff, language and literacy education; Scott David Graffin, management; Victoria Hasko, language and literacy education; Brian J. Hoffman, psychology; Qingguo Huang, crop and soil sciences; René Jagnow, philosophy; Jennifer Hauer James, elementary and social studies education; Tracie M. Jenkins, entomology; Michael B. Kane, forestry and natural resources; Nadia Nicole Kellam, biological and agricultural engineering; Paula M. Krimer, pathology; Jung Sun Lee, foods and nutrition; Denise Clark Lewis, child and family development; Chanying Li, biological and agricultural engineering; Yehua Li, statistics; Jason John Locklin, chemistry and biological and agricultural engineering; Wolfgang R. Lukowitz, plant biology; Neil Lyall, mathematics; Eric A. MacDonald, environment and design; James MacKillop, psychology; Cecile L. Martin, environment and design; Katalin Medvedev, textiles, merchandising and interiors; Bethany E. Moreton, history; Robert B. Nielsen, housing and consumer economics; Zhengwei Pan, biological and agricultural engineering and physics and astronomy; Amy Noelle Parks, elementary and social studies education; Christopher Teague Pisarik, Academic Enhancement; Michael Craig Robinson, music; Corey Fontaine Saba, small animal medicine and surgery; Chad Weber Schmiedt, small animal medicine and surgery; Anneliese A. Singh, counseling and human development services; Kathrin F. Stanger-Hall, plant biology; Cynthia M. Suveg, psychology; Michael D. Toews, entomology; Amitabh Verma, environment and design; Marvin Leonard Wells, horticulture; Sarah Ann Wright, philosophy; Xiaojin Ye, physiology and pharmacology; and Qun Zhao, physics and astronomy.

Source: Office of Faculty Affairs
Hull Barrett’s Davis A. Dunaway Selected as McDuffie County Attorney

Press Release

McDuffie Board of County Commissioners Designate
Davis A. Dunaway as County Attorney Effective March 20, 2012

Augusta, Georgia (PRWEB) April 09, 2012

The McDuffie Board of County Commissioners announced this month that Davis A. Dunaway has been chosen to be the new County Attorney. Mr. Dunaway was selected from several other applicants after each presented proposals to the County Commission. "Davis knows the county very well, especially the legal matters ranging from real estate, land use and human services. He is a dedicated public servant and can provide strong leadership skills and has a clear vision for the future of McDuffie County," stated Douglas D. Batchelor, Hull Barrett managing partner and Columbia County attorney.

Mr. Dunaway has been licensed to practice in Georgia since 2003 and is admitted to practice before the Eleventh Circuit Court of Appeals; Federal District Courts for the Southern and Middle Districts of Georgia and all State Courts of Georgia. His diverse and active trial practice has allowed him to represent clients in complex civil litigation matters including real estate litigation, title insurance defense, contract claims, bad faith claims, eminent domain and condemnation, construction disputes, bankruptcy matters, defending and pursuing personal injury claims, commercial litigation, landlord/tenant matters, and creditor rights and collections. He also routinely advises and assists a broad range of clients in various stages of conflict resolution, preventative measures, and offers innovative solutions to fit each of his clients' individual legal needs. Mr. Dunaway earned his B.B.A. in Finance from the University of Georgia in 2000 and his J.D. from the University of Georgia School of Law in 2003. In 2010 he was selected as one of the Augusta Metro Chamber of Commerce’s Top Young Professional to Watch and was named as a Rising Star by Georgia Super Lawyers in 2011 and 2012.

About Hull Barrett, PC

Hull Barrett, PC is a full service law firm with 27 attorneys with offices in Augusta and Evans, Georgia, and Aiken, South Carolina. The firm is engaged in a general civil practice providing a broad range of legal services with an emphasis on general litigation, trials and appeals; securities and corporate law; mergers, acquisitions and public offerings; local government law and eminent domain actions; health care; intellectual property; taxation; public finance; commercial real estate; construction law and disputes; employment law; banking law; insurance law; trusts, estate planning and probate; First Amendment and media law; medical malpractice defense and environmental matters. Hull Barrett represents a broad client base of major corporations, small businesses, professional entities, financial and lending institutions, local governments, public authorities, public...
utilities, railroad companies, insurance companies, health care institutions and individuals.

Hull Barrett is a member of the International Society of Primerus Law Firms.

For the original version on PRWeb visit: http://www.prweb.com/releases/prwebTop-Law-Firm-GA/McDuffie-County-Attorney/prweb9378178.htm
Hearing on 'Tax Reform: What It Means for State and Local Tax and Fiscal Policy', with testimony from Congressional Budget Office Assistant Director for Tax Analysis Frank Sammartino; Urban-Brookings Tax Policy Center Senior Fellow Dr Kim Rueben; University of Georgia School of Law Distinguished Professor in Taxation Law Walter Hellerstein; Tax Foundation Vice President of Legal & State Projects Joseph Henchman; and Zinman Accounting owner Sanford Zinman

Event Start Date: 2012-04-25
Event End Date: 2012-04-25
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LOAD-DATE: April 10, 2012

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Tuesday, April 10, 2012

When a judge's comments to the jury can lead to a new trial
State law allows judges to remedy some statements, but serious violations can overturn convictions
By Stephen J. Harper, Special to the Daily Report

In Georgia, separate statutes for criminal and civil trials address the trial judge's conduct during the progress of the case or in the charge.

The laws' purpose is to protect the jury from being influenced in its fact-finding role by conduct of the trial judge that violates the statutes. This article will deal with O.C.G.A. § 17-8-57 and the trial judge's conduct in criminal cases. O.C.G.A. § 9-10-7 addresses the conduct of the trial court in civil cases and will be the subject of another article.

O.C.G.A. § 17-8-57, adopted in 1981, applies to the conduct of the trial judge in criminal cases. Its legislative history dates to 1863. The text reads:

"It is error for any judge in any criminal case, during its progress or in his charge to the jury, to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused. Should any judge violate this Code section, the violation shall be held by the Supreme Court or Court of Appeals to be error and the decision in the case reversed, and a new trial granted in the court below with such directions as the Supreme Court or Court of Appeals may lawfully give."

There are two ways the trial judge can violate the statute. First, by expressing or intimating an opinion as to what has been proved and second, by expressing or intimating an opinion as to the guilt of the accused.

Expression occurs when the opinion is made known or set forth in words. Intimation occurs when there is an implication, hint or indirect sign. The conduct must address a contested issue of fact that is material to the trial and must be made in the presence of the jury. Johnson v. State, 278 Ga. 344, 602 S.E.2d 623 (2004); Linson v. State, 287 Ga. 881, 700 S.E.2d 394 (2010).

In Paul v. State, 272 Ga. 845, 537 S.E.2d 58 (2000), the Supreme Court of Georgia followed the lead of the Georgia Court of Appeals and held that the doctrine of "plain error" would be applied to all criminal cases, not just capital cases. The court stated, "We believe the plain error rule should be applied to cases of this kind. Accordingly, we will apply the plain error rule to death penalty cases, and other criminal cases in which the trial court violates O.C.G.A. § 17-8-57." The court in Paul did not reach the issue of whether by failing to object to the trial judge's conduct the issue is waived on appeal.

In Patel v. State, 282 Ga. 412, 651 S.E.2d 55 (2007), the Supreme Court of Georgia found that any violation of O.C.G.A. § 17-8-57 requires reversal and any curative instruction given by the court, no matter how thorough and legally accurate, can never result in a finding on appeal that the violation is
"harmless" error. The court went on to address the waiver issue by stating that, "It follows that no waiver of this issue occurred when defense counsel failed to renew (emphasis added) the motion for mistrial after the giving of legally-ineffective instructions." But this did not expressly answer the question of whether in the absence of any objection or motion for mistrial the issue of a violation of O.C.G.A. § 17-8-57 requires appellate review.

In State v. Gardner, 286 Ga. 633, 690 S.E.2d 164 (2010), the court clarified that a violation of O.C.G.A. § 17-8-57 always constitutes "plain error," and the failure to object at trial will not waive the issue on appeal. All but a few jurisdictions recognize the authority of an appellate court to reverse on the basis of "plain error," even though the error was not properly raised and preserved at trial. Gardner also changed the practice outlined in Berry v. State, 282 Ga. 376, 651 S.E.2d 1 (2007) and footnoted in Patel v. State, supra at 413, that any alleged violation of O.C.G.A. § 17-8-57 "must be reviewed (emphasis added) in accordance with the 'plain error' rule ..."

Under Gardner, a violation of O.C.G.A. §17-8-57 is conclusively presumed to be "plain error" that substantially affects the fairness, integrity or public perception of the trial and requires strict adherence to the provisions of the statute mandating reversal and a new trial. This has prompted one senior Georgia appellate jurist to suggest in conversation that a violation of the Georgia statute has been accorded "super plain error" status, because there is no need to review it by applying the four-part test for "plain error" outlined by Justice Antonin Scalia in Puckett v. United States, 556 U.S. 129, 129 S. Ct. 1423 (2009). Though it is the current practice in Georgia, mandatory application of the conclusive presumption requirement established in Gardner was specifically rejected in Puckett.

In Georgia, the issue on appeal is simply whether there was a violation. If so, "[i]t is well established that the statutory language is mandatory and that a violation of O.C.G.A. §17-8-57 requires a new trial," according to Chumley v. State, 282 Ga. 855, 655 S.E.2d 813 (2008). The cases of Ledford v. State, 289 Ga. 70, 709 S.E.2d 239 (2011) and Murphy v. State, 290 Ga. 459, 722 S.E.2d 51 (2012) are recent decisions of the Supreme Court of Georgia addressing and clarifying the law in this area.

Looking at a selection of Georgia cases will help clear away the Clausewitzian "fog of war" and give a sense of the permissible acts trial judges may take as they manage the trial proceedings. In order to allow appellate review of this issue, a reviewable record must be available. In addition to the record of trial, the violation of O.C.G.A. § 17-8-57 may be established by obtaining post-trial testimony from witnesses who were in the courtroom at the time. Milhouse v. State, 254 Ga. 357, 329 S.E.2d 490 (1985).

The following conduct by the trial judge has been found not to violate O.C.G.A. § 17-8-57:

• The trial judge's comment, "I think that goes to credibility." and his assertion that he was admitting the statement for purposes of impeachment did not intimate his opinion that the witness would be impeached, Beckworth v. State, 183 Ga. 871, 190 S.E. 184 (1937).


• The trial judge's clarification of what foundation the state would have to lay in order to overcome the "best evidence" objection was a colloquy regarding admissibility of evidence and his questions in an effort to clarify the witness' identification of the defendant were neutral factual inquiries, Lobdell

- The trial judge's comment to defense counsel, "For God's sake, go on, sir," was in the nature of a mild admonition to counsel, and given the immediate curative instruction emphasizing the court's neutrality did not show partiality prejudicial to the defendant, Adams v. State, 264 Ga. 71, 440 S.E.2d 639 (1994).

- Referring to allegations in the indictment as "facts" rather than "charges" and to the indictment as "evidence" was held to be inadvertent and a slip of the tongue, especially when the trial judge's subsequent instruction on how the indictment should be considered was accurate and thoroughly corrected the situation, Atkins v. State, 253 Ga. App. 169, 558 S.E.2d 755 (2002).

- The trial judge's comment that counsel did not finish with a witness was a mere direction to allow the witness to finish his answer, Patterson v. State, 259 Ga. App. 630, 577 S.E.2d 850 (2003).

- The trial judge's charge to the jury to consider each defendant "guilty" was, "[a] mere verbal inaccuracy in a charge, which results from a palpable slip of the tongue, and clearly could not have misled or confused the jury, is not reversible error." The court went on to state that the subsequent charge when taken as a whole substantially presented the issues in a manner not likely to confuse the jury, Sutton v. State, 263 Ga. App. 188, 587 S.E.2d 379 (2003).

- Telling defendant's family members that they would be removed if they continued certain behavior did not show partiality but was within the trial judge's discretion to enforce order, Cheek v. State, 265 Ga. App. 15, 593 S.E.2d 55 (2003).

- The contention that the trial court denigrated defense counsel by referring to them during the trial as "old goats" when taken in context clearly was not intended to insult defense counsel, Brown v. State, 278 Ga. 724, 609 S.E.2d 312 (2004). Brown's counsel testified at the motion for new trial hearing that the court's remark was taken in jest and was not in any way prejudicial to Brown's case. Furthermore, any error was rendered harmless when the court instructed the jury that its determination of Brown's guilt or innocence was to be made "uninfluenced by any intimation or any expression from or by the court."

- Using a modified Allen charge to encourage the jury to continue deliberations after learning that the jury was having difficulty reaching a verdict was not an intimation of opinion of the defendant's guilt and was within the court's discretion, West v. State, 270 Ga. App. 71, 606 S.E.2d 100 (2004).

- Directing defense counsel not to lead his witnesses was a mere explanation of a ruling, Lockaby v. State, 265 Ga. App. 527, 594 S.E.2d 729 (2004).

- At the request of a juror, requiring the defendant to stand to be identified was within the trial judge's discretion, Butler v. State, 277 Ga. App. 57, 625 S.E.2d 458 (2005).


- The trial judge said in the presence of the jury to the defense counsel, "We're playing a lot of games, aren't we, [counsel], and I don't like that." The defense counsel moved for a mistrial and rejected the judge's offer to give any curative instruction prepared by the defense. The judge gave a curative
instruction, sua sponte, acknowledging his mistake in rebuking counsel and stating that he was not "castigating" the defense counsel. The appellate court said that there was no violation of O.C.G.A. § 17-8-57 and that the curative instruction was adequate, Banks v. State, 279 Ga. App. 57, 630 S.E.2d 571 (2006).

• The trial judge's comment on the fact that the defendant's accomplice did not need assistance in filling out the form because he attended college did not bolster the witness's credibility, John v. State, 282 Ga. 792, 653 S.E.2d 435 (2007).

• Referring to the "victim" rather than the "alleged victim" in front of the jury did not amount to an expression or intimation of the trial judge's belief in what the evidence proved. The curative instruction together with the preliminary jury charge clearly informed the jury of the judge's neutrality, Warner v. State, 287 Ga. App. 892, 652 S.E.2d 898 (2007). The court in Warner said, "Here, even if [emphasis added] the trial judge's reference to the victim constituted a violation of that Code section, the judge's curative instruction corrected any misstatement and clearly did not intimate to the jury what the court believed the evidence to be." This dictum must not be interpreted as changing the rule announced in Patel, supra at 415, i.e., that a violation of the statute cannot be cured by any instruction.

• Allowing a special needs witness, the alleged victim of a rape, to sit by her mother and asking if she was comfortable did not bolster the witness's credibility, Kent v. State, 294 Ga. App. 134, 668 S.E.2d 442 (2008), cert. denied (Feb. 9, 2009).

• The judge's admonition to the defendant, outside the jury's presence, that she would be removed from the courtroom if she could not stay under control did not intimate an opinion but was within the judge's discretion to prevent disturbance and maintain order. The judge's later comment that, "the state may not use all of its witnesses and may think they don't need them all," and his explanation to the jury that the parties had agreed to show only part of a long videotape of witness's statement to police was limited to a clarification of procedures and did not address the credibility of witnesses or any fact at issue in the trial, Linson v. State, 287 Ga. 881, 700 S.E.2d 394 (2010).

• The trial judge's comment, "Why don't we go ahead and prove [venue]," was reviewed for plain error. The Georgia Court of Appeals in reversing the conviction found that it was plain error and violated the statute, because venue is an element that must be proved and the judge's use of the word "we" aligned him with the prosecution and indicated his opinion that it had been proved. On appeal, the Supreme Court of Georgia clarified that any violation of the statute "will always constitute "plain error," meaning that the failure to object at trial will not waive the issue on appeal. But, the Supreme Court reversed the lower court, finding that the trial judge's comment, though unwise, did not amount to an expression of his opinion because it was immediately followed by the judge's question as to whether venue had been proved, Gardner v. State, 296 Ga. App. 792, 676 S.E.2d 258 (2009), cert. granted (June 29, 2009), rev'd, 286 Ga. 633, 690 S.E.2d 164 (2010). There was strong dissent by Justices Harris Hines and Hugh Thompson.

• After the witness thanked the judge and shook his hand, the judge thanked the witness for his public service. The appellate court viewed these comments "in context" and affirmed the conviction, stating that it was an explanation to the jury of the hand shaking gesture and not an opinion on the witness' credibility, Ward v. State, 306 Ga. App. 274, 701 S.E.2d 900 (2010).

• The trial judge's statements regarding the trial and appellate court system made in the context of
juror orientation at the start of the trial when no evidence had been adduced and opening statement had not yet been held were error but, due to their abstract nature, not reversible, State v. Clements, 289 Ga. 640, 715 S.E.2d 59 (2011). It is important to note that, unlike Gibson, infra, O.C.G.A. § 17-8-57 was not at issue in this case.

- The trial judge's statement regarding a prosecution witness claimed by the defense counsel to be currying favor that, "She's supposed to tell the truth, not to help—she's not—she's just supposed to tell the truth. You want to characterize in a different way," was within the judge's discretion to manage the proceedings, White v. State, Nos. A11A2323 and A11A2324 (Ga. App. March 21, 2012).

The cases finding a violation of O.C.G.A. § 17-8-57 reflect more egregious conduct by the trial judge:

- Where the record of trial revealed numerous instances when the trial judge's behavior appeared to have been biased against the defendant's counsel and partial to the state in violation of O.C.G.A. § 17-8-57, the case was reversed. These instances included when the trial judge, speaking in a loud, harsh and condemning voice before the defense counsel could rise, said, "sit down and shut up." Further, whenever the defense counsel raised objections, the judge would often respond with undue hostility, and at another point in the proceeding the trial judge told the defense counsel not to "interrupt the [state's] cross-examination." The judge also made his own objections to questions being asked to witnesses by the defense counsel, even though the prosecutor had not objected. See Johnson v. State, 278 Ga. 344, 602 S.E.2d 623 (2004).

- The trial judge interrupted counsel and stated, "That's incorrect. That is not a defense to this case. Venue is proper in Fayette County or we wouldn't be here right now." After the defense counsel finished his opening statement, the jury was removed, counsel objected to the trial court's comments and moved for a mistrial. The judge denied the motion and gave two curative instructions addressing its perceived comments on counsel's credibility and proof of venue. This conduct was a violation of O.C.G.A. § 17-8-57, because venue requires proof and the trial judge's statement was a comment that it had been proved. Any instructions could not render the error harmless, Patel v. State, 282 Ga. 412, 414, 651 S.E.2d 55 (2007). See also State v. Anderson, 287 Ga. 159, 695 S.E.2d 26 (2010).

- After the prosecutor finished cross-examining the defendant, the trial judge asked, "Mr. Callaham, do you know why the neighbor that lives across the street would come in here and say you're the one that shot? He's not related to anybody." This comment could be interpreted as an opinion as to the neighbor's credibility. It violated the statute and mandated reversal, Callaham v. State, 305 Ga. App. 626, 700 S.E.2d 624 (2010).

- The trial judge's comments to the jury regarding the availability of appellate review, i.e., that they [the jury] "would have to try the case all over again," and that it "would be reversible error" to give the jury all the exhibits, raised the inference that the trial judge thought the defendant would be found guilty and required reversal under the provisions of O.C.G.A. § 17-8-57, Gibson v. State, 288 Ga. 617, 706 S.E.2d 412 (2011). This case demonstrates that even when the violation of the statute is present by inference based upon what the trial judge intimated reversal is required.

- The trial judge responded to the defense counsel's objection by saying, "You're asking this Detective, who is a good detective, what is in someone, somebody else's head." The judge later stated, "[T]his man has worked a lot of cases and he's got a recollection and he's got a written memorandum and hopefully between the two of those and his good efforts we're going to find the truth of the matter." The jury could have interpreted the trial judge's comments as his opinion of the detective's abilities.
which would bolster that witness' credibility and amount to a comment on the reliability of the
witness' investigative fact finding. This conduct violated O.C.G.A. § 17-8-57 and required reversal of

What conclusions can be drawn from this analysis?

It seems clear that only when the trial judge's conduct is beyond the pale will it be held to constitute a
violation of O.C.G.A. § 17-8-57. In that case reversal is mandated.

Short of that, the appellate decisions reveal a clear preference for attributing a proper exercise of
discretion to the judge's conduct and hold that there was no statutory violation.

The opinions note with approval effective curative instructions given by the trial judge. It must be
remembered, however, that a curative instruction is helpful only when the appellate court addresses
conduct of the trial judge that falls short of a "violation" of O.C.G.A. § 17-8-57.

Counsel should consider making a contemporaneous objection followed by a motion for mistrial when
she/he believes the trial judge's comment has violated the statute, even though not required to preserve
the issue on appeal.

This trial tactic probably will induce the trial judge to give a curative instruction, which in the opinion
of many experienced trial attorneys and judges should work to the benefit of the criminal defendant.
Trayvon Martin case | Georgians react to Zimmerman's arrest

By Staff reports
For the AJC

11:21 p.m. Wednesday, April 11, 2012

Marcus Coleman, president of the Atlanta chapter of the National Action Network, was with Trayvon Martin's parents in Washington, D.C., for NAN's annual convention Wednesday when they learned their son's shooter would be charged:

"They were definitely relieved," he said. "They just want to see handcuffs put on [Zimmerman]. I think we're all pretty happy to finally have some movement here. Remember this went damn near unheard of for about a month.

"It definitely started a movement across this country. I think we have a great opportunity, going forward, to keep spotlighting the injustices that take place across this country – not just in Sanford, Fla."

UGA law professor Ron Carlson:

"I think it'll be a very difficult case to prosecute. Zimmerman's story is going to be hard to dispute because the other witness to it is not around. And according to police, the two witnesses to the scuffle [with Trayvon Martin] back up Zimmerman's account.

"Zimmerman hasn't done himself any favors with his erratic behavior in recent days. One thing you don't want to have is a reputation for being flaky and unreliable, and that's the way he's looked these past few days."

John Monroe, vice president of GeorgiaCarry.Org, a pro-Second Amendment group that backs the "stand your ground" law:

"I don't think this case has anything to do with stand your ground. There's a misconception that stand your ground is something new. The concept of a duty to retreat is what's new here. I don't know all the evidence in the case, but if it appears there is probable cause to prosecute, then he should be prosecuted."

Derrick Boazman, former Atlanta city councilman and community activist, took a busload of people to Sanford, Fla., for the first major rally after the Trayvon story broke nationally:

"It's cathartic but there's a long way to go. All we've asked for is justice. We'll see if the charges reflect that. I'm looking to see the evidence that suggests what was [Zimmerman's] motivation."
“While I’m pleased to see charges brought, this wouldn’t be happening had people not gotten incensed and said, ‘No, you cannot kill a young man under these circumstances.’ Had the people not gotten up in arms nothing would’ve happened.

“We still need to try and make sense of what happened there. It’s certainly not isolated to Sanford, Fla.”

Alice Johnson, director of Georgians for Gun Safety, which opposed the expansion of the “stand your ground” provision adopted in Georgia in 2006:

“We believe it was dangerous when it passed and it remains dangerous. We think more public scrutiny, and added scrutiny by the courts, is absolutely called for.” The death of Trayvon Martin “underscores how dangerous this legislation is. This kind of blanket legislation suggests that people are not responsible for their actions. It makes it hard to get the facts of individual cases out. Public places shouldn’t be ‘patrolled’ by private citizens. This wasn’t about someone protecting their home or property.”

Find this article at:
Teens mete out justice in new Athens Peer Court

By JOE JOHNSON  -  joe.johnson@onlineathens.com

Published Wednesday, April 11, 2012 Updated: Wednesday, April 11, 2012 - 10:47pm

A jury took less than 20 minutes Tuesday evening to decide that a girl who assaulted another student at Clarke Central High School deserved 11 hours of community service as punishment.

The 15-year-old offender also had to apologize to her mother and write an essay about bullying as part of her sentence.
The student truly was judged by a jury of her peers, as part of the new Athens Peer Court program in which other teens take on the roles of judges, attorneys and jurors.

The Athens Peer Court grew out of the Whatever It Takes initiative that aims to have every child in Athens graduate from high school and go on to college or another postsecondary experience. Many of the students in the program are from lower-income families.

"It's been good so far," said Javier Camacho, a senior at Clarke Central High School. "I think it's given me a lot of confidence, where before I was a little bit nervous speaking to a group of people.

"Now I interview people, read police reports and build up a good argument about why someone did something wrong, how it affected the community and what the punishment should be," he said.

Since the Athens Peer Court began March 6, Camacho has played the roles of prosecutor and defense attorney.

The 17-year-old just learned he was accepted to Gainesville State College, where he plans to begin focusing on his goal of becoming a forensic scientist.

Savanna Scotland, 16, who also attends Clarke Central, dreams of becoming an attorney. She feels as though her participation in the Athens Peer Court is giving her a leg up.

"It's helped me a lot because I like how we've all formed close-knit relationships with each other, and I'm also building a lot of relationships with people in the community," Scotland said.

Though peer courts have been used for years in communities throughout the United States, the Athens Peer Court is only the fourth in Georgia, according to Jazmine Quintyne, a state Department of Juvenile Justice probation officer.

The DJJ jumped on the chance for a peer court in Athens when approached by the University of Georgia's Fanning Institute,
Quintyne said. The institute, also involved in Whatever It Takes, provides community and economic development services to communities throughout the state.

"Peer courts are more informal, and youth offenders usually leave court with a greater feeling of fairness," said Emily Boness, the Athens Peer Court coordinator and a public service faculty member at the Fanning Institute.

Participants have to go through 14 hours of training before they sit in judgment of a teen offender. That training is provided by members of the institute, Juvenile Court, and also the UGA School of Law’s Street Justice student organization.

"I've been surprised at how seriously the participants take it," Athens-Clarke Juvenile Court Judge Robin Shearer said. "I think the peer court has a positive impact in so many ways because the participants not only improve their public speaking skills, but they gain knowledge of how the court system works. It's a great citizenship exercise," she said.

When preparing for Tuesday's hearing, law student Colleen McCaffrey coached peer court prosecutors with lines of questioning, opening and closing statements, and the punishment they would seek.

"So, you're ready to go with everything?" she asked a pair of teen prosecutors, exchanging a high-five with 16-year-old Shambrelle Barnes of Cedar Shoals High School.

Kennedy Reid, a 15-year-old Cedar Shoals student, was a defendant's advocate on Tuesday. She summarized for the jury how her "client" initially tried to break up a fight in a school hallway but became involved as a combatant after she was punched.

The defendant also was remorseful for the fight and learned her lesson from being charged by the school resource officer and getting in trouble at home.

"Because she's never been in trouble before, that's a mitigating
factor for her,” Reid told the teen jurors.

The girl had already apologized to the other student, and said that in the future she would keep on walking and not get involved with someone else’s beef.

The Athens Peer Court is a learning experience in more than one way.

Eligible defendants must be first-time offenders, and their cases have to involve minor infractions like shoplifting, vandalism and fighting in school without weapons. They must admit their guilt to officials with the Department of Juvenile Justice, who then give them the option of having members of the peer court decide punishment.

“It’s another one of our various diversion programs that takes cases out of the normal court process,” said Shearer, who must approve the punishment determined by the teen jurors.

Teen offenders won’t have a juvenile criminal history if they complete the peer court’s recommended punishment, but they risk facing the real judge in court if they don’t.

“It’s a good idea to give children the opportunity to not to have a juvenile disposition on their record because we don’t want them not to be able to get jobs later in life,” the judge said.

Probation officers monitor the offenders to make sure they complete their punishment, according to Shearer.

The judge believes that teens might be less likely to re-offend after they go through the peer court.

“Being judged by your peers is a lot more meaningful,” she said. “In the real court setting the juvenile respondent might feel more removed from the process — and helpless, really — because they just sit there and watch as all these adults make decisions about their lives.”

- Follow Criminal Justice reporter Joe Johnson at
The University of Georgia School of Law recently captured first place at the Robert R. Merhige, Jr. National Environmental Negotiation Competition.

The annual two-day competition features teams from around the country and involves several rounds of negotiation centered on current issues in environmental law. Held at the University of Richmond School of Law, the contest was created in memory of the late U.S. District Court Judge Robert Merhige.

During the tournament, Georgia Law defeated Georgetown University Law Center in the semifinals and Lewis and Clark Law School in the finals to take home the top trophy. Representing the law school were second-year students Christopher A. Knapik and Christopher S. Smith.

"Competitions like this are a great way for our business law students to get hands-on experience in representing clients during negotiations," said Georgia Law Business Law and Ethics Program Instructor Carol Morgan. "I am so proud of their hard work and success."
Thursday, April 12, 2012

**Law school applicants decline in US and Georgia**

Shortage of legal jobs and daunting debt may be driving fall in law school applications for second straight year

By David Gialanella, New Jersey Law Journal

Perhaps as a sign of the legal economy, law school applications are down nationally for the second year in a row, as are LSAT takers. Figures provided by Georgia law schools followed the national trend.

An April report by the Law School Admission Council indicates a steep drop in applications, following numbers last month that showed a similar decline in the number of Law School Admission Tests administered.

The numbers might be attributable to skepticism about the prospects for work at the other end of a costly legal education, an LSAC official says.

At Emory University School of Law, 3,930 prospective students sought entry for the 2012 school year compared to 3,951 last year, but the school expects to eventually exceed last year's numbers as late applications continue to arrive.

The **University of Georgia School of Law** reported that 2,464 people have applied so far compared to 3,186 applicants last year.

Georgia State University College of Law showed a drop from 2,591 to 2,274 applicants.

John Marshall Law School didn't provide figures because its application season doesn't end until August, but the school said it's ahead of last year's pace. Mercer University School of Law didn't respond to a request for applicant numbers.

Nationwide, 60,693 applicants submitted 440,964 law school applications as of March 30 for the academic year starting this fall, according to the LSAC report. That's 15.6 percent fewer applicants and 13.6 percent fewer applications than about the same time last year.

The LSAC reported 72,045 applicants turning in 510,650 applications for fall 2011 and 78,342 applicants and 561,214 applications submitted for fall 2010.

The numbers were down among all regions. The greatest drop-off came in the Midwest, where 2,099 applicants represented a 20.4 percent decline from last spring.

As for applications, the Northeast showed the greatest regional fall: the 77,009 submitted so far represent a 17.3 percent decrease.

**Deadlines**
Certain variables affect the numbers. Most, but not all, schools typically provide their application data by this time of year but there is no way to tell now what proportion have yet to report, LSAC spokeswoman Wendy Margolis says.

Still, most application deadlines have passed, and it's unlikely that the figures will increase dramatically before the LSAC assembles its final numbers in the coming months.

"It's not going to change substantially," she says.

The LSAC does not make its mid-year reports public but circulates them to members, some of whom post them online, Margolis says.

The report was posted on the "LSAT Blog," a link on the National Association for Law Placement's website.

Ups and downs

A look at year-end numbers since 2002 shows the number of applicants and applications tends to fluctuate.

The roughly 536,200 total applications submitted for fall 2011 enrollment were 11 percent fewer than the 602,252 submitted for fall 2010.

But the fall 2010 figure was a 10-year high, and represented the third consecutive annual increase in law school applications.

The three years preceding the upswing—2007, 2006 and 2005—all showed modest decreases of 2.5 percent, 2.8 percent and 1.7 percent, respectively.

Applicant numbers, too, have been up and down.

Final figures are not yet available for the academic year beginning last fall, but the 2010 and 2009 figures each represented an increase from the year prior, while the preceding four years showed decreases ranging from 6.7 percent to 1 percent.

The highest number of applicants since 2002—slightly more than 100,000—was for fall 2004 enrollment.

"It has been cyclical, so it is likely to go up at some point," Margolis says of the waning numbers. "We have no way of predicting what will happen."

Law board takers also down

Figures released last month show far fewer LSATs administered in each of the last two years.

A total of 129,958 tests were administered in 2011-12, a 16.2 percent decline from 2010-11, when 155,050 tests were given. It's the second straight decrease since 2009-10, when 171,514 tests were administered.

The falloffs might be deceiving; 2009-10 saw the highest number of tests given in a quarter century,
according to LSAC data going back to 1987-88. The 155,050 tests in 2010-11 registered the second-highest mark. Even so, the 129,958 tests in 2011-12 were the lowest number in 12 years, since the 109,030 LSATs administered in 2000-01.

Margolis says the job market and economy help explain the downtrend in law school applications.

"We don't know for sure, but obviously there's been an awful lot of media coverage of the job market for law graduates," Margolis says.

A March 29 report by the Bureau of Labor Statistics cautioned that the number of law school graduates—estimated at 45,000 per year—continues to outpace the anticipated growth in jobs.

The report said "growth in demand for lawyers will be constrained as businesses increasingly use large accounting firms and paralegals to do some of the same tasks that lawyers do."

Mark Niesse of the Daily Report contributed to this report.
Disaster recalled

By Emily Sweeney

Globe Staff / April 12, 2012

One hundred years ago, Boston Globe readers opened their newspapers and were shocked to learn that the unthinkable had happened: The mighty Titanic, the supposedly unsinkable, state-of-the-art luxury liner, had hit an iceberg and sunk to the bottom of the ocean, taking about 1,500 lives.

As readers followed the tragedy over the next few days, they read about people from Massachusetts who were aboard the doomed ship. They scanned the names, looking for anyone they recognized. Neighbors. Friends. Co-workers. Relatives.

Several passengers from Southeastern Massachusetts were aboard the Titanic on its first voyage from Southampton, England, to New York. Many of them never made it home.

On April 16, 1912, readers who turned to page 5 of the Globe would have seen the pudgy face of Jacques Futrelle, a novelist from Scituate. Wearing round eyeglasses and his hair swept neatly to the side, Futrelle looked scholarly. He was on the Titanic with his wife, Lily May, and had just celebrated his 37th birthday.

They would have read about Frank D. Millet, a Mattapoisett native who was an internationally known artist. He traveled all over, and lived in New York and Worcestershire, England. He was on his way to New York to visit his brother.

There was a black-and-white photograph of John Maguire, a salesman with the Dunbar Pattern Co. in Brockton. He was dressed smartly in a jacket and tie, with a stiff white collar. He was returning from his first trip abroad - which turned out to be his last.

Above Maguire on page 5, there was a photo of George Quincy Clifford. The 40-year-old Stoughton resident was president of the George E. Belcher Last Co., a factory that produced shoe molds. He had been traveling on business with Maguire and another local shoe industry executive.

A century has passed since the Titanic sank on April 15, 1912, yet the stories of these passengers and others on the ill-fated voyage still resonate.

That is why Stoughton historian David Allen Lambert decided to lead an effort to dedicate a plaque in his town in memory of Clifford. Many people in Stoughton don't know that the town lost one of its own in the disaster, he said.

Lambert first heard of Clifford when he was 12. He said Clifford was originally from Brockton and moved to Stoughton in 1909.

In February 1912, he left for Europe accompanied by Maguire and Walter Chamberlain Porter, the president of a shoe last company in Worcester.

Clifford "was out looking for contracts," said Lambert, vice president of the Stoughton Historical Society, who works as an online genealogist at the New England Historic Genealogical Society. "Sadly, when he was en route his mother died, and he was notified by telegram when he reached Europe."

Clifford and his companions got return tickets on the Titanic. They traveled in first class, and Clifford was assigned cabin A-14.

Clifford's body was never recovered. Lambert said that in 1912, more than 1,000 people packed Stoughton
Remembering the Titanic and its Southeastern Mass. victims, 100 year... http://www.boston.com/news/local/massachusetts/articles/20 12/04/ I...

Town Hall to attend Clifford’s memorial service.

A cenotaph - a monument that marks an empty grave - was placed beside Clifford’s father’s grave in Union Cemetery in Brockton, but there was no nothing in Stoughton to make people aware of Clifford’s loss.

As the 100th anniversary approached, Lambert decided to take action and posted an appeal on Facebook, seeking donations to create a permanent memorial to Clifford.

Lambert ended up raising $500 and used some of his own funds to buy a plaque from the International Bronze Co. of New York. It measures 18 by 14 inches, and cost $595.

The plaque reads: "In memory of George Quincy Clifford (1871-1912), Stoughton citizen who was employed here as the president of the George E. Belcher Last Co. who perished during the sinking of the R.M.S. Titanic - April 15, 1912. Presented by the citizens of Stoughton, April 15, 2012."

"It'll be something people can look at 100 years from now," said Lambert. Clifford was "someone we lost who was well-loved. He hasn't been forgotten."

"This can be a Titanic memorial," he said. "It's just one of the stories of the [estimated] 1,517 souls who died in the Titanic sinking."

More than 2,000 passengers and crew members were aboard the Titanic. The exact number of deaths is not known because of unreliable or disputed records, but it is estimated at about 1,500, scholars say.

Clifford’s shoe mold company was located in a brick building at 4 Capen St., off Route 139. The business is long gone, but the building is still there, now called the Rose Forte Apartment building. The plaque will be unveiled there on Sunday at 2 p.m. and the public is invited to attend.

A brief memorial service will be held in honor of the Titanic victims, and some of Clifford’s descendants are expected to be there to unveil the memorial.

The dedication ceremony will conclude around 2:20 p.m. - about 100 years and 12 hours to the moment the ship disappeared into the depths of the Atlantic. “The bow of the ship slipped through the waves at 2:20 a.m.,” said Lambert.

The sinking of the ship was vividly described by Lily May Futrelle, one of the estimated 705 survivors of the Titanic. A native of Georgia, she and her husband, Jacques, resided in Scituate in a home they called “Stepping Stones.”

Futrelle wrote a detailed account of the sinking a few weeks after the disaster. Her two-part series “remains one of earliest and most authoritative eyewitness accounts of the catastrophe,” according to Donald E. Wilkes Jr., a professor at the University of Georgia School of Law who has done research and written about the Futrelles.

“I think she was a fascinating person,” said Wilkes, in a recent telephone interview. She was married to an accomplished author and was a writer herself. She once hosted a radio program for aspiring writers, and her 1911 novel “Secretary of Frivolous Affairs” was later made into a movie, he said.

In her account, Futrelle described being put into a lifeboat while her husband stayed behind. She jumped out before it was lowered into the water, and found her husband. She clung to him, but he told her to remember their children back home. “For God’s sake, go! It’s your last chance, go!” he said.

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Remembering the Titanic and its Southeastern Mass. victims, 100 year... http://www.boston.com/news/local/massachusetts/articles/2012/04/1...

the world.

The society plans to unveil a new Titanic memorial at Oak Grove Cemetery, 426 Bay St., in Springfield on April 21. The ceremony is free and open to the public. For more information, visit www.titanichistoricalsociety.org.

Kathleen Burge of the Globe staff contributed to this report. Emily Sweeney can be reached at esweeney@globe.com. Follow her on Twitter @emilysweeney.

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By Tim Tucker The Atlanta Journal-Constitution

April 11—A former Georgia football player landed a key position with the NCAA on Tuesday.

Mark Lewis, a long snapper for the Bulldogs in the late 1980s and a veteran sports-business executive, was named the NCAA's executive vice president for championships and alliances. He will oversee the NCAA basketball tournament and 88 other championship events, as well as broadcast and corporate partnerships.

Lewis' highest-profile responsibility will be college basketball's Final Four, which will be played in Atlanta next year.

Lewis, 44, is the son of Bill Lewis, a former head football coach at Georgia Tech and a former defensive coordinator at UGA.

Mark Lewis lettered on the Georgia football team in 1987 and 1988. He earned accounting and law degrees from UGA.

In his new job, Lewis replaces Greg Shaheen, well-known around college basketball for running the NCAA tournament. Lewis said in a statement that he'll meet with Shaheen "over the next several days to discuss his role with the NCAA moving forward."

Lewis had been president since 2005 of Jet Set Sports, a New Jersey-based company in the Olympics hospitality and events business. Previously, he was vice president of sponsorship at NBC and president of Olympic Properties of the U.S., a joint venture between the U.S. Olympic Committee and the Salt Lake Olympic Organizing Committee.

He was considered by UGA as a candidate for its athletic-director position in 2003, when Damon Evans was hired, and 2010, when Greg McGarity was hired.

NCAA president Mark Emmert called Lewis "a remarkable executive" with "the right skill set, knowledge and experiences" for his new job.

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-0- Apr/11/2012 15:09 GMT
Executive Committee approves proposed College of Engineering

By RAISA HABERSHAM on April 12, 2012

A proposal for a College of Engineering was approved at the Executive Committee meeting Thursday.

"UGA is one of rare comprehensive programs without an engineering school," said David Shipley, law school professor and chair of the Curriculum Committee.

The University has been trying to add a college of engineering for the past ten years, Shipley said, adding the last college created was the College of Public Health.

The University first approved proposals for six engineering majors in 2003, with the first class of students admitted to the programs in 2008. Earlier this year, the Board of Regents approved graduate degrees in engineering.

Though the proposal doesn't give a dollar figure as to how much it would cost to have a College of Engineering, all funding for implementing new degree programs has been approved and budgeted. Additional funding would go toward building administrative staff.

Funding for the degree programs and staff will come from the University and the office of the Provost, while additional funding will come from student credit hours, grants and donors, the proposal states.

The proposal will be submitted to the University Council for full approval.

In addition to the College of Education, the committee approved proposals for an undergraduate certificate in Legal Studies and masters degree in Narrative Media Writing at Grady College.

Proposals for online degrees in educational psychology with an emphasis in gifted education were approved as well.

The committee also passed two separate proposals for centers on Gambling Research and Molecular Medicine.

The University Council will decide whether or not to pass each item at their Apr. 26 meeting.

Share this:  Email  Print  Like  1  Tweet  1
The University of Georgia issued the following news release:

The University of Georgia School of Law recently took home the top trophy and the Best Brief Award at the 2012 Intrastate Moot Court Competition.

The annual tournament has teams from all five of the state's law schools competing against each other. This is the seventh consecutive year UGA has won this competition and the ninth straight year it has earned the best brief title.

The championship team consisted of second-year students Tyler A. Dillard, Nicholas H. Howell and Emir Sehic.

"I am so proud of our students for building on the school's long tradition of excellence in this tournament," Director of Advocacy Kellie Casey said. "It is great to be able to go head-to-head against other law schools in our state and come out victorious."

Second-year students Amina Bakari, Kori E. Flake and Michael C. Gretchen also represented UGA in the competition and finished as semifinalists. Third-year law students Samuel H. Sabulis and Bailey A. Blair coached both teams.

On the national front, Georgia Law had strong showings in both the Dean Jerome Prince Memorial Evidence Moot Court Competition and the South Texas Mock Trial Challenge, finishing as semifinalists and quarterfinalists, respectively.

The Prince team consisted of second-year students Katie A. Croghan, Timothy F.J. Dean and Mary E. Martinez, while third-year students Andrei V. Ionescu, Samson C. Newsome, Eric L. Roden and brief writer Samuel H. Sabulis composed the Texas team.

Of the 40 teams competing in the Texas tournament, Georgia Law was awarded one of three outstanding brief awards, and Roden was named best advocate of the tournament.

Writer: Cindy Rice

***

Contact: Kellie Casey, krcasey@uga.edu

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LOAD-DATE: April 13, 2012
One hundred years ago, Boston Globe readers opened their newspapers and were shocked to learn that the unthinkable had happened: The mighty Titanic, the supposedly unsinkable, state-of-the-art luxury liner, had hit an iceberg and sunk to the bottom of the ocean, taking about 1,500 lives.

As readers followed the tragedy over the next few days, they read about people from Massachusetts who were aboard the doomed ship. They scanned the names, looking for anyone they recognized. Neighbors. Friends. Co-workers. Relatives.

Several passengers from Southeastern Massachusetts were aboard the Titanic on its first voyage from Southampton, England, to New York. Many of them never made it home.

On April 16, 1912, readers who turned to page 5 of the Globe would have seen the pudgy face of Jacques Futrelle, a novelist from Scituate. Wearing round eyeglasses and his hair swept neatly to the side, Futrelle looked scholarly. He was on the Titanic with his wife, Lily May, and had just celebrated his 37th birthday.

They would have read about Frank D. Millet, a Mattapoisett native who was an internationally known artist. He traveled all over, and lived in New York and Worcestershire, England. He was on his way to New York to visit his brother.

There was a black-and-white photograph of John Maguire, a salesman with the Dunbar Pattern Co. in Brockton. He was dressed smartly in a jacket and tie, with a stiff white collar. He was returning from his first trip abroad - which turned out to be his last.

Above Maguire on page 5, there was a photo of George Quincy Clifford. The 40-year-old Stoughton resident was president of the George E. Belcher Last Co., a factory that produced shoe molds. He had been traveling on business with Maguire and another local shoe industry executive.

A century has passed since the Titanic sank on April 15, 1912, yet the stories of these passengers and others on the ill-fated voyage still resonate.

That is why Stoughton historian David Allen Lambert decided to lead an effort to dedicate a plaque in his town in memory of Clifford. Many people in Stoughton don't know that the town lost one of its own in the disaster, he said.

Lambert first heard of Clifford when he was 12. He said Clifford was originally from Brockton and moved to Stoughton in 1909.

In February 1912, he left for Europe accompanied by Maguire and Walter Chamberlain Porter, the president of a shoe last company in Worcester.
Clifford "was out looking for contracts," said Lambert, vice president of
the Stoughton Historical Society, who works as an online genealogist at the New
England Historic Genealogical Society. "Sadly, when he was en route his mother
died, and he was notified by telegram when he reached Europe.
"

Clifford and his companions got return tickets on the Titanic. They traveled
in first class, and Clifford was assigned cabin A-14.

Clifford's body was never recovered. Lambert said that in 1912, more than
1,000 people packed Stoughton Town Hall to attend Clifford's memorial service.

A cenotaph - a monument that marks an empty grave - was placed beside
Clifford's father's grave in Union Cemetery in Brockton, but there was no
thing in Stoughton to make people aware of Clifford's loss.

As the 100th anniversary approached, Lambert decided to take action and
posted an appeal on Facebook, seeking donations to create a permanent memorial
to Clifford.

Lambert ended up raising $500 and used some of his own funds to buy a plaque
from the International Bronze Co. of New York. It measures 18 by 14 inches, and
cost $595.

The plaque reads: "In memory of George Quincy Clifford (1871-1912),
Stoughton citizen who was employed here as the president of the George E.
Belcher Last Co. who perished during the sinking of the R.M.S. Titanic - April
15, 1912. Presented by the citizens of Stoughton, April 15, 2012."

"It'll be something people can look at 100 years from now," said Lambert.
Clifford was "someone we lost who was well-loved. He hasn't been forgotten."

"This can be a Titanic memorial," he said. "It's just one of the stories
of the [estimated] 1,517 souls' who died in the Titanic sinking.

More than 2,000 passengers and crew members were aboard the Titanic. The
exact number of deaths is not known because of unreliable or disputed records,
but it is estimated at about 1,500, scholars say.

Clifford's shoe mold company was located in a brick building at 4 Capen St.,
off Route 139. The business is long gone, but the building is still there, now
called the Rose Forte Apartment building. The plaque will be unveiled there on
Sunday at 2 p.m. and the public is invited to attend.

A brief memorial service will be held in honor of the Titanic victims, and
some of Clifford's descendants are expected to be there to unveil the memorial.

The dedication ceremony will conclude around 2:20 p.m. - about 100 years and
12 hours to the moment the ship disappeared into the depths of the Atlantic.
"The bow of the ship slipped through the waves at 2:20 a.m.," said Lambert.

The sinking of the ship was vividly described by Lily May Futrelle, one of
the estimated 705 survivors of the Titanic. A native of Georgia, she and her
husband, Jacques, resided in Scituate in a home they called "Stepping Stones."

Futrelle wrote a detailed account of the sinking a few weeks after the
disaster. Her two-part series "remains one of earliest and most authoritative
eyewitness accounts of the catastrophe," according to Donald E. Wilkes Jr., a
professor at the University of Georgia School of Law who has done research and
written about the Futrelles.

"I think she was a fascinating person," said Wilkes, in a recent telephone
interview. She was married to an accomplished author and was a writer herself.
She once hosted a radio program for aspiring writers, and her 1911 novel "Secretary of Frivolous Affairs" was later made into a movie, he said.

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Kathleen Burge of the Globe staff contributed to this report. Emily Sweeney can be reached at esweeney@globe.com Follow her on Twitter @emilysweeney.
By Christian Boone The Atlanta Journal-Constitution

April 12--Marcus Coleman, president of the Atlanta chapter of the National Action Network, was with Trayvon Martin's parents in Washington, D.C., for NAN's annual convention Wednesday when they learned their son's shooter would be charged:

"They were definitely relieved," he said. "They just want to see handcuffs put on [Zimmerman]. I think we're all pretty happy to finally have some movement here. Remember this went damn near unheard of for about a month.

"It definitely started a movement across this country. I think we have a great opportunity, going forward, to keep spotlighting the injustices that take place across this country -- not just in Sanford, Fla."

UGA law professor Ron Carlson:

"I think it'll be a very difficult case to prosecute. Zimmerman's story is going to be hard to dispute because the other witness to it is not around. And according to police, the two witnesses to the scuffle [with Trayvon Martin] back up Zimmerman's account.

"Zimmerman hasn't done himself any favors with his erratic behavior in recent days. One thing you don't want to have is a reputation for being flaky and unreliable, and that's the way he's looked these past few days."

John Monroe, vice president of GeorgiaCarry.Org, a pro-Second Amendment group that backs the "stand your ground" law:

"I don't think this case has anything to do with stand your ground. There's a misconception that stand your ground is something new. The concept of a duty to retreat is what's new here. I don't know all the evidence in the case, but if it appears there is probable cause to prosecute, then he should be prosecuted."

Derrick Boazman, former Atlanta city councilman and community activist, took a busload of people to Sanford, Fla., for the first major rally after the Trayvon story broke nationally:

"It's cathartic but there's a long way to go. All we've asked for is justice. We'll see if the charges reflect that. I'm looking to see the evidence that suggests what was [Zimmerman's] motivation.

"While I'm pleased to see charges brought, this wouldn't be happening had people not gotten incensed and said, 'No, you cannot kill a young man under these circumstance.' Had the people not gotten up in arms nothing would've happened.

"We still need to try and make sense of what happened there. It's certainly not isolated to Sanford, Fla."

Alice Johnson, director of Georgians for Gun Safety, which opposed the expansion of the "stand your ground" provision adopted in Georgia in 2006:

"We believe it was dangerous when it passed and it remains dangerous. We think more public scrutiny, and added scrutiny by the courts, is absolutely called for." The death of Trayvon Martin "underscores how dangerous this legislation is. This kind of blanket legislation suggests that people are not responsible for their actions. It makes it hard to get the facts of individual cases out. Public places shouldn't be 'patrolled' by private citizens. This wasn't about someone protecting their home or property."

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-0- Apr/13/2012 15:50 GMT
Candidates already stepping up for Athens-Clarke Commission

By BLAKE AUED - blake.aued@onlineathens.com

Published Friday, April 13, 2012 Updated: Friday, April 13, 2012 - 11:48pm

Six weeks from the drop-dead date to sign up to run, at least two candidates are already lined up for three vacant Athens-Clarke Commission districts.

Stephanie Sharp, the owner of a web design firm and former Athens-Clarke Economic Development Foundation board member, said she is running for the Westside District 6 seat Ed Robinson is leaving.

David Ellison, a recent University of Georgia Law School graduate who lives in Five Points and clerks for the Piedmont Circuit Superior Court, said he is running in District 4, where incumbent Alice Kinman won't seek re-election.

Allison Wright, a medical illustrator and Clarke County Board of Education member, filed paperwork with Georgia Government Transparency and Campaign Finance Commission, formerly known as the State Ethics Commission, to raise money for the District 4 race, as well. Wright did not return a call seeking comment Friday, and candidates won't be on the ballot unless they qualify May 23-25.

Another potential District 6 candidate, Gail Wingate, said she hasn't decided for sure whether to run. She served on the Overview Commission, a group that reviews the Athens-Clarke County charter once a decade, in 2010.

The ethics commission lists five other candidates who've filed
declarations of intent to raise campaign contributions, the first formal step to seek office. They are Kinman, Robinson, Commissioner Harry Sims, Dave Hudgins and Mark Saxon, but none of them are actually running for Athens-Clarke Commission.

Hudgins said he is not running this year. He lost a race for District 5 along the Prince Avenue corridor in 2010, and that seat isn’t up again until 2014.

Saxon actually lives in Oconee County and intends to seek a commission seat there.

Like Kinman and Robinson, Sims has said he’s not seeking another term. No one has announced for Sims’ District 2 seat representing East Athens.

Complicating life for both candidates and voters, no one is sure yet what commission districts will look like. The U.S. Department of Justice is reviewing a plan to switch from eight regular districts and two superdistricts covering half the county to a map with 10 equal-sized districts.

The nonpartisan commission elections will coincide with partisan primaries July 31.
Pattillo announces DA candidacy

A DeKalb County Deputy Chief Assistant District Attorney who lives in the Southern Crescent area has announced his candidacy for the Office of District Attorney in Henry County’s Flint Judicial Circuit.

Darius Pattillo has held his current job for almost 10 years.

He prosecutes defendants charged with committing felony crimes such as murder, rape, armed robbery, and aggravated assault.

He also is head of the DeKalb County Juvenile Court division of the District Attorney’s Office, where he supervises a staff of attorneys, investigators, paralegals and various support personnel.

“I am experienced, efficient, fair, effective and dedicated to maintaining the quality of life we have in Henry County,” said Pattillo.

Qualifying for the upcoming general election is May 23 through May 25.

The Henry County resident has served as a criminal justice instructor at Westwood College in Atlanta, and Georgia Piedmont College in Decatur, for the past four years.

If elected, Pattillo said there are three major objectives he would like to accomplish.

“The first thing I would like to do is create a Domestic Violence and Crimes Against Children Unit,” said Pattillo. “A unit like this is important, because cases like these are highly specialized cases, in that they involve scientific evidence such as DNA and preparing child witnesses for trial.” Pattillo said he has experience trying such cases.

“Secondly, I would like to create a uniform pre-trial diversion program designed to give first time non-violent offenders second chances so that they will be eligible for educational and employment opportunities,” said Pattillo. He believes Henry County Judge Brian Amero’s Accountability Court is “a great program, because it holds criminal offenders responsible for their criminal acts and at the same time helps to reduce recidivism.”

He also wants to create a Community Outreach Program.
"This is a prevention program that would allow students, teachers and parents to build and maintain a relationship with the district attorney's office in an effort to decrease the number of juveniles entering the Criminal Justice system," continued Pattillo.

Pattillo graduated from the University of Georgia law school in 2002. He received his undergraduate degree in Education in 1999 from University of Georgia.

In 2010, Pattillo was named one of the Best and Brightest in the state by Georgia Trend Magazine. In 2009, Pattillo was named Assistant District Attorney of the Year in DeKalb County.

Supporters of Pattillo have started lining up.

"He has tried some of the most vicious cases in DeKalb County over the years, and won," said Bruce Holmes, Henry County District V Commissioner.

In one of his most recent notorious murder trials, Pattillo secured convictions of DeAnthony Hartsfield and Robert Jones in connection with a home invasion armed robbery that turned deadly for 18-year-old Dominique George. DeKalb County Superior Court Judge Linda Hunter sentenced Hartsfield to life plus 10 years. Jones received 30 years in prison.

Pattillo has served as a mentor with Big Brothers Big Sisters of Metro Atlanta, a motivational speaker at local schools, and as a high school mock trial coach and judge.
2 attorneys running for judge's seat

by Winston Jones/Times-Georgian
04.14.12 - 11:55 pm

The two candidates seeking a Coweta Judicial Circuit Superior Court judge's seat have both received praise for their work as trial lawyers, and both have endorsements from prominent Carroll County attorneys.

Kevin McMurry, a Newnan senior assistant district attorney, and Emory Palmer, a Newnan attorney in private practice, are campaigning for the judge's seat being vacated by Allen B. Keeble, who will retire Dec. 31.

The special nonpartisan race will appear on both the Republican and Democratic July 31 primary ballots. Qualifying for the seat will be held from 9 a.m., May 23 through noon, May 25.

Carroll County is part of the Coweta circuit.

Jason Swindle, a Carrollton criminal defense attorney, is supporting McMurry, while Carrollton attorney Tommy Greer has given his endorsement to Palmer. McMurry has the endorsement of District Attorney Pete Skandalakis.

"Kevin McMurry is one of the best prosecutors I have had the pleasure of working with," Skandalakis said in a prepared statement. "Kevin is driven by a passion for justice and victims and a fundamental belief that law should be administered fairly."

Greer called Palmer's career a "distinguished" one and said he had the qualities and experience needed for the position.

"Emory has been committed to public service since he graduated from high school and joined the Marine Corps," Greer said. "He has a distinguished career as a trial lawyer, has a servant personality and is perfectly qualified for this position in terms of demeanor, judgment, education and experience. We'd be fortunate to have him as a Superior Court judge."

McMurry and his cases have been featured on national television shows such as CNN News, "48 Hours" and "Snapped." He recently prosecuted and tried Robert Ewell for repeated acts of child molestation and Alec McNaughton for the murder of McNaughton's wife. Both cases resulted in convictions with Ewell receiving seven consecutive life sentences.

"As a criminal defense attorney, I have tried cases, resolved numerous cases and worked on countless matters with Kevin McMurry," said Swindle. "We have worked on opposite ends of the cases that we have handled. However, my vast experience in dealing with Kevin has clearly provided me with keen insight into his character. He has strong integrity, is an ethical prosecutor, has demonstrated fairness and a sense of justice, and has the courage to convey to the community..."
his faith in God. Kevin McMurry is the ideal candidate for a seat on the Superior Court."

McMurry makes regular appearances in all of Georgia’s appellate courts. Recently, he appeared before the Georgia Supreme Court to argue, on the state’s behalf, in the McNaughton case.

“I believe that a judge should strive to seek justice, love mercy and walk humbly with God,” said McMurry, who has more than a decade of trial experience in civil and criminal law.

Before joining the district attorney’s office, McMurry was a civil attorney at the litigation firm of Hollberg and Weaver, where he defended numerous state entities, such as the University of Georgia and the Georgia State Patrol, on a case-by-case basis.

McMurry earned a joint J.D./M.B.A. degree from Georgia State University and holds an undergraduate degree in business from Baylor University. McMurry serves on the board of the Freedom Firm India, an organization that works to free children from sex trafficking in South India.

More information about his candidacy is available online at www.votemcmurry.com.

Palmer enlisted in the U.S. Marine Corps after graduating from Newnan High School in 1987. He served four years and an extended tour during Desert Shield/Desert Storm. During Desert Storm, he was deployed with the Marine Corps Signals Intelligence detachment for the 13th Marine Expeditionary Unit and participated in amphibious operations in Kuwait and the Persian Gulf.

He attended West Georgia College and graduated from Georgetown University with a B.S. degree in international affairs. He earned his law degree from the University of Georgia.

Palmer was admitted to practice law in 1999 and is currently admitted in Georgia state courts, the U.S. District Court for the Northern and Middle districts in Georgia and the 11th District Court of Appeals. In addition, he has been admitted pro hac vice in numerous state and federal jurisdictions in all parts of the country.

Palmer has been a partner in the firm, Carr and Palmer, since 2003 and has tried cases all over Georgia. His practice focuses on litigation, including trials and appeals of complex commercial litigation and professional liability cases. He is a member of the State Bar of Georgia, Coweta Bar Association, Atlanta Bar Association and the Defense Research Institute.

Palmer was named a Rising Star by “Super Lawyers” in 2006 and 2009, a Legal Force “Best Lawyer in Atlanta” and is a Georgia Supreme Court Approved Mentor.
“I take my profession very seriously and feel strongly that we need a judge the people have confidence in,” Palmer said. “A judge must have respect for applying the law firmly and fairly. Everybody should leave a courtroom feeling they were treated fairly, whether they won or lost.”

Palmer’s website is www.emorypalmer.com.

The Coweta Judicial Circuit includes the counties of Carroll, Troup, Meriwether, Coweta and Heard.

Keeble has served as Superior Court judge for 26 years, first elected in 1986. Prior to his election to Superior Court, he served as state court judge of Troup County and Juvenile Court judge of Troup County.

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A matter of degrees

UGA's School of Law ranks 22nd nationally in the number of law degrees earned by African Americans. Other selected law schools from the top 50 include:

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Source: Diverse: Issues in Higher Education

The Seiler family has raised eight generations of Uga, the university's mascot.
APS hearing continued on teacher accused of coaching students

By D. Aileen Dodd
The Atlanta Journal-Constitution

7:18 p.m. Monday, April 16, 2012

Atlanta Public Schools' sweep to purge the system of educators involved in a widespread cheating scandal focused Monday on a Dobbs Elementary School teacher accused of prompting his fourth-grade students to change their answers on the state's standardized exam.

A team of attorneys for Derrick Broadwater, who is one of about 180 APS educators named in a state investigation into cheating on the Georgia Criterion-Referenced Competency Test, portrayed their client during the first day before the APS tribunal as the "victim" of a "rush to do damage control" by the school system's superintendent, Erroll Davis.

"Damage control is all about one thing -- heads are going to roll," said Harold Corlew, a lawyer for Broadwater. The attorney said that in that effort to preserve the school system's image, "some innocent people have gotten picked up in the shuffle. Derrick Broadwater never cheated on the CRCT; he never changed an answer on the answer sheet. He never improperly prompted a student."

But an attorney for APS said Broadwater admitted cheating during a special investigation of testing impropriety.

"Instead of acting with integrity ... Mr. Broadwater was dishonest," said Nina Gupta, the attorney representing APS. "He would read words for students that they couldn't read themselves. The whole point of the CRCT is to see how kids perform. His actions completely invalidated this test. As a result, his students' scores were artificially inflated. They lost out on a chance for remediation and educational opportunities they had a right to."

Davis has recommended that Broadwater, like the others named in the investigation, be terminated because the district has lost confidence in his ability to teach.

But Broadwater's attorneys questioned whether he could get a fair hearing when Davis did not comply with their subpoena to appear for questioning, and they complained that key documents they had subpoenaed were not made available.

Those documents included a copy of the GBI's interview with Broadwater in which he allegedly confessed.

Eugene Howard, a special agent with the GBI, said his original notes had been "destroyed" and the tape
recording was part of a criminal investigation and was not available at the time of his testimony.

Under a subpoena, the tape had to be produced, Corlew said. "We know that they have produced it to other people," he said. "It is the best and highest evidence of what was said."

University of Georgia law professor Ronald Carlson said the tape evidence and Davis' failure to appear after being subpoenaed could be a matter for a judge to decide if Broadwater feels they had a negative impact on his case.

Howard testified Monday that Broadwater told individual students to reread sections they may have gotten wrong. He also told his class to check their work.

"When asked during the interview would he consider what he did a testing violation, he said yes," Howard said. "However, he did say at the conclusion, at the time he didn't think it was wrong."

Gupta finished presenting her case late Monday. The defense will present its case April 25.

Legal wrangling delayed the start of the case.

Before the proceedings, Broadwater's attorneys objected to having semi-retired attorney Eugene Medori act as an administrative hearing officer over the tribunal because they believed he lacked sufficient courtroom experience in employment law and said that his scheduling was arranged by Brock Clay, the firm representing APS. A hearing officer responds to legal questions involving evidence and other matters in a tribunal.

"If they don't like the rulings you make, you don't get any more hearings," Corlew asked Medori.

"Yes," Medori responded. Medori, who served as the hearing officer of a tribunal last week, also said that his ability to oversee future hearings was at the discretion of APS.

Find this article at:
Longtime Bibb County Probate Court judge says he won't run for re-election

By AMY LEIGH WOMACK — awomack@macon.com

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Bibb County Probate Judge Bill Self will soon retire from the bench. GRANT BLANKENSHIP — gblankenship@macon.com

To many people mourning a death or facing life's hard decisions, he introduces himself as Bill Self.

Not Judge Self.

It's meant to make people who've already suffered a loss feel a little more comfortable as they enter his office at the Bibb County Courthouse.

For more than two decades, Bibb County Probate Judge William J. "Bill" Self II has held uncontested hearings in the warmth of his office because for him, the job isn't just to handle weighty court matters such...
as probating wills or deciding if warring family members should end medical life support for a loved one.

"For many people, it's the first and only time they come to court," he said. "They're nervous.

"We minister as well as handle the judicial issues."

Self, 63, announced Monday that he won't seek re-election when his term expires this at the end of 2012. Instead, he's ready for a few years of semiretirement. He looks forward to traveling to Europe, China and the Holy Lands.

He wants to have more time to act in local theater productions and to work in his yard.

"It's just the right time," he said.

Self didn't set out to become a judge.

He graduated from law school at the University of Georgia in 1974 and practiced law with his father at the Macon law firm of Self & Self.

When his father, Tilman E. Self, was elected Probate Court judge in 1980, Self continued his law practice.

But in 1989, when his father was dying of cancer, the younger Self made a promise. Knowing the end was near, his father had said he wanted to be sure "somebody good" ran for the office.

Later, not sure if his father had heard his words because he was in coma, the younger Self said, "Pop, don't worry about it."

Days later, on what would have been his father's 76th birthday, Self announced that he'd run for the judgeship. Voters selected him to be his father's successor, and they kept choosing him at the polls for the next two decades.

During his time in office, Self made strides to modernize the office, putting applications for marriage and gun licenses online to increase efficiency.

Fingerprints are now performed electronically, shortening the wait time for residents to obtain a permit to carry a concealed firearm.

Self added a fiduciary compliance officer to his staff about 20 years ago to keep tabs on money spent by guardians and conservators appointed by the court. The compliance officer also checks to see if court orders are carried out.

He has presided over hearings ranging from whether the leg of a man with gangrene should be amputated to appointing guardians for adults as young as 52 who have Alzheimer's disease.

On the bench, Self has been known as a "no nonsense" judge.

"He's prepared, and he expects you to be," attorney David Pope said.

Self doesn't allow lawyers to stall or delay. "There's no funny business," attorney Scott Spivey said.

The judge carefully considers the facts of a case, consults the law and issues a fair ruling, attorney Jenny Stansfield said.

"He's always fair," she said.

Outside the courtroom, Self has spoken his mind during County Commission meetings, defending his court's budget and taking other elected officials to task.
He has said that department heads sometimes feel "compelled to pad their budgets" so they can more readily accept cuts that commissioners make.

In 1999, having experience as a former smoker, he wrote a letter to county commissioners opposing the installation of smoking booths inside the county courthouse.

"It would be much more demeaning to me to sit -- or stand -- in an enclosed booth in the middle of the nonsmoking public as they gawk at me while I smoke. I would be just as self-conscious if you were to expect me to use a portable toilet in the halls of the courthouse," he wrote at the time.

Attorneys say the inner workings of Bibb County's Probate Court have been efficient under Self's oversight, saving clients time and money.

"You can always tell a client exactly what's going to happen," Stansfield said.

When hearings are held in Self's office, he's always got a box of Kleenex handy, and he's willing to give petitioners time to compose themselves if they're overwhelmed with emotion, Spivey said.

He offers the "genuine Southern feel of being comfortable and welcome," Spivey said.

In 2010, Self revised the handbook that all Georgia probate judges use as a reference manual, making it more user friendly.

The book is written in layman's terms and offers a shortcut to the law, said Todd Blackwell, Baldwin County's probate judge and president of the Georgia Council of Probate Judges. Being a lawyer isn't a prerequisite to being a probate judge in all Georgia counties.

Self is a past president of the Georgia Council of Probate Court Judges and serves as the 2011-2012 president of the National College of Probate Judges.

Blackwell said Self has always found time to mentor and help other judges.

"I know I'm a better probate judge because of his guidance," he said.

In 1989, Self told a Telegraph reporter that although his father's feet were small, his shoes were large.

More than two decades later, he said he feels good about the job he's done.

"Knowing I've helped people means a lot to me," he said.

Information from Telegraph archives was used in this report. To contact writer Amy Leigh Womack, call 744-4398.
Five years later, the Irish wake that Tom Murphy deserved

8:45 pm April 19, 2012, by jgalloway

From left to right, former House speaker Terry Coleman, current Speaker David Ralston, and former speakers Mark Burkhalter and Glenn Richardson. Marshall Guest/Special

CARROLLTON, Ga. — Half of Georgia's political world — by and large, the older half — turned out Thursday for the formal dedication of a recreation of the late House Speaker Tom Murphy's office on the campus of the University of West Georgia.

Earlier this week, we described the recreated office with its eclectic collection of mementoes gathered up by Murphy over his 28-year career as leader of the House.

Much of Murphy's nearby hometown of Bremen witnessed the event, as did all four House speakers who have followed him, two governors, a labor commissioner and a roomful of former lawmakers, lobbyists and staffers.

The political population gave the ceremony the air of a long-delayed, and much overdue, Irish wake. Murphy left office in 2003, and died in late 2007. A few high points:

House Speaker David Ralston was on stage as one of the speakers. The other three speakers were front and center: Terry Coleman, the last Democrat; Glenn Richardson, and Mark Burkhalter, both Republicans.

Before the proceedings began, Richardson and former Gov. Roy Barnes shared a manly, bipartisan bear-hug of greeting. They are currently on the same side of a lawsuit against Georgia Power.
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http://blogs.ajc.com/political-insider-jim-galloway/2012/04/19/five-...

Wayne Garner, the mayor of Carrollton, a former state lawmaker and currently a lobbyist, welcomed the several hundred gathered with a borrowed thought from Jack Kennedy:

“There’s never been more political acumen, political intelligence, and institutional knowledge under one roof – since Tom Murphy dined alone,” he said.

Ralston, from Blue Ridge in north Georgia, emphasized Murphy’s role as the creator and preserver of a House independent of gubernatorial control.

But current House speaker also told the tale of his one serious encounter with Murphy, when he was a Senate Republican with an item in the budget that he dearly wanted to preserve. Informed that it was in trouble, he asked what he should do. A conversation with Murphy, who hated both senators and Republicans, was required.

“I said, ‘Oh, my God, is there another option?’ Ralston remembered. Walking into Murphy’s office reminded him of the scene in “The Wizard of Oz,” as Dorothy and her three companions walked toward their first meeting with the wizard. Ralston said his knees buckled – just like Ray Bolger’s.

“But I had a good visit. We had the longest conversation we ever had. I gained a great appreciation for him, and came away knowing more about the legislative process than I’d known before then,” Ralston said. “And I didn’t get that item in the budget.”

Former Gov. Sonny Perdue revealed the first half of the surprise of the day – for anyone with an interest in Georgia political history.

Perdue declared that his introduction to the House speaker came through Murphy’s red-headed son Mike, who – like Perdue – was a football walk-on at UGA in the mid-1960s. Mike Murphy is now a Polk County superior court judge.

Perdue later became a state senator – first as a Democrat. “I believe your dad gave me a little bit of grace because of you. You must have put in a good word for me,” Perdue said.

“Frankly, [Murphy] had a healthy respect for the executive branch, the judicial branch, and, obviously, the legislative branch – except for the Senate,” Perdue quipped.

The second half of the surprise? Roy Barnes was next – and also said that Tom Murphy’s son, his buddy at UGA law school, helped arrange his first meeting with Murphy.
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Barnes has a reputation as a story-teller. If this were the 19th century, we would put him on a boat bound for the Sandwich Islands, wait for him to come back - then throw a white suit on him, and set him loose on the lecture circuit.

Barnes was first a Democratic senator, ran for governor in 1990, was defeated, and returned to the Capitol as a member of the House.

Recounted Barnes:

"I sat on the back row, next to Bob Lane, 'cause I knew his daddy. At the time, it was open back there and the press sat right behind you. Now, I am notorious for making smart-aleck remarks that come back to haunt me. I have eaten many of them."

There was a dispute in the House over whether a seeing-eye dog should be allowed on the floor of the chamber. A local talk radio host, who shall remain nameless, accused the speaker of hating the disabled.

This same speaker once regularly carried his brother James Murphy, crippled with rheumatoid arthritis, up a flight of county courthouse stairs so they could practice law together. Continued Barnes, who had already enjoyed a reputation as a successful trial attorney:

"The speaker gets on the floor, he hits that gavel and it gets deathly quiet. He told the story about James, and he literally began to weep. This is what I stupidly said: I leaned over to Bob Lane, and I said, 'I don't cry for less than $50,000.'"

"It sounded funny at the time. I'd forgotten about the press being right there. It did not sound funny the next day on the front page of the newspaper."

That next day, Barnes walked into Murphy's office - the real one:

"He was reading the paper. I walked through and pushed it down. He put it back up and didn't say a word. I went and sat down in front of him and said, 'You mad at me?' And he pulled the paper down and said, 'Hell, yes, I'm mad.' And he chewed me out. About an hour later, I was sitting on the floor of the House, and he came back by there, and he put his arm around me. He says, 'But I still love you.'"

Calvin Smyre, a Democrat from Columbus and destined to become the most influential African-American in the Capitol, recounted his first meeting with Murphy, shortly after Smyre's election in 1974.

Murphy asked Smyre to name his preference for a committee assignment. Smyre said he would dearly appreciate an appointment to the all-powerful House Appropriations Committee.

Smyre, one of the last of Murphy's circle left at the Capitol, continued:

"[Murphy] laughed, and he said, 'You know, son, we don't even allow freshmen to go into that room.'"

"I said, 'What about Ways and Means?' He said, 'There you go again. Freshmen don't go in those rooms.' He said, 'What's your third one?'

"I said Banks and Banking. He said, 'I don't appoint freshmen to Banks and Banking.' He said, 'But since that's your third choice, I'm going to give it to you.'"

"I said, 'Thank you, Mr. Speaker. I'm thinking of going into the banking industry, and that would
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serve me well to know a little bit about banking.'

"About four days later, he saw me, and said, 'You’re going to be all right in the House. I found out that Banks and Banking was your first choice. And you gave it to me as your third. You’re going to be all right."

The final speaker was Tom Murphy’s son Mike. The judge struggled to make it through his address. But he made this final, sharp point about his father:

"If he were here today, he would have reminded us to make the failures of the past our successes for the future. He would have reminded us that we must be engaged, that we must run for public office, we must participate in the political system.

"That we must not avoid our share of responsibility. He would have reminded Speaker Ralston that we should not pass laws against things that people aren’t doing."

It was a direct shot at some of the ideological legislation Republicans have insisted on since their takeover. The crowd gave a nervous chuckle, and Ralston managed a good-hearted wince. Continued the head of the Murphy clan:

"He would have reminded us that every time a law is passed, somebody’s freedom is eroded."

The ceremony ended shortly afterwards, as Ralston, using an oversized gavel, banged Murphy’s recreated office officially into existence.

- By Jim Galloway, Political Insider

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Honoring a 'giant' in Georgia history: Dedicating Tom Murphy office replica

by Winston Jones/Times-Georgian
04.19.12 - 11:55 pm

Former governors, legislators, friends and family came to University of West Georgia Thursday afternoon to share remembrances of the late Georgia Speaker of the House Tom Murphy.

The occasion was a 2 p.m. ceremony to officially dedicate a replica of Murphy’s State Capitol office, built at the UWG Irvine S. Ingram Library on the Carrollton campus.

Murphy, who served 29 years as speaker, donated his political papers and office memorabilia to UWG in 2003 when he left office. The university staff sorted through more than 1,500 items to assemble a replica office as part of a major library renovation.

Five people close to Murphy during his legislative years took the podium at Campus Center Ballroom Thursday to share their remembrances of the speaker. They included former Georgia Govs. Sonny Perdue and Roy Barnes, current House Speaker David Ralston, 38-year Rep. Calvin Smyre and Murphy’s son, Superior Court Judge Michael Murphy.

UWG President Beheruz N. Sethna, Carrollton Mayor Wayne Garner and UWG Dean of University Libraries Lorene Flanders gave welcoming remarks.

Steve Anthony, political science lecturer at Georgia State University and chief aide to Murphy from 1981-1995, introduced the speakers.

“Tom Murphy was a giant in Georgia history,” said Ralston. “His office (replica)
will remind people of the legacy of one man — a self-described Baptist and Democrat.”

Ralston said although he was a member of the party opposing Murphy, he nevertheless “learned to respect, appreciate and then love him.”

He said Murphy “breathed life into the House” and that has been great for Georgia.

“Murphy’s shadow extends all the way across Georgia and he left his mark in a way that will last forever,” Ralston said.

Perdue said he first got to know Tom Murphy through Murphy’s son, Michael, when he and the younger Murphy were walk-ons in the University of Georgia football program. Perdue said that when he was later serving in the state Senate, he got to know Tom Murphy as someone who had a deep love for the state and its people.

“He tried to put on a gruff exterior, but we knew he had a soft heart underneath,” Perdue said. “He loved this state as he helped transfer it from a fairly sleepy state to the leader of the South. I’m ever grateful to work with and witness the life of Speaker Murphy.”

Barnes said he also got to know the speaker through attending law school with Michael Murphy.

“Murphy was a man who was the product of his time,” Barnes said. “He looked to the future, not the past, and he realized the entire state had to prosper.”

Barnes concluded, “I know I’m not supposed to say it, but I loved Tom Murphy. He kept the state on an even keel for 35 years. I miss him and I still love him.”

Smyre, who was the youngest member ever elected to the house at age 26, said it was a treat to get to know Murphy over the years.

He recalled being a freshman member, going to Murphy’s office to ask for committee assignments. When Murphy asked him what committee he wanted to serve on, Smyre told him the Appropriations Committee.

He said Murphy replied, “Son, we don’t even let freshmen go into that room.”

Smyre said he told Murphy his second choice was the Ways and Means Committee and he again received a laugh from Murphy. When Murphy asked him for his third choice, Smyre said Banking and Business. Murphy said since it was the third choice, he’d give it to him.

Later, Smyre said he ran into Murphy and the speaker said, “I knew banking was your first choice to start with.”
Smyre said he was on the Ways and Means Committee four years later and the Appropriations Committee eight years later.

In summing up his evaluation of Murphy, Smyre quoted the late Dr. Benjamin E. Mays, former president of Morehouse College, “We make our living by what we get. We make our life by what we give.”

Michael Murphy began his remembrances, saying he once told his father, “If all I knew about you was what I read in the papers, I’m not sure I’d like you either.”

He said the people in Haralson County knew his father as simply “Tom Murphy.”

“He was somebody who was interested in them and tried to help them if they called for help.”

He said one reason his father lasted so long as House speaker was that he could adjust to things that happened.

“I see my father when I look in that office (replica),” Michael told the audience. “I also see every one of you. You’re the reason the office is here today.”

He said if his father were here today, he would remind people to participate in the political system and that “you can’t be neutral about America’s future.”

Sethna recalled that Murphy often called him to inquire about students whose applications had been rejected by the university. He said he often had to call Murphy back and tell him that he could do nothing about it and he said Murphy was never mad.

“It’s a mark of class of an individual, being one of the most powerful people in the state, that he never said, ‘Do you know who I am and what I could do to you?’” Sethna said.

“This will be a fitting monument to his life and his service,” said Flanders, whose staff put the replica together. “We’ve had numerous students working on the office over the years. They turned a dim area into a light-filled showplace.”

Flanders praised former UWG professor Mel Steely for starting the collection of political papers from many famous people in American politics.

Murphy was the speaker of the Georgia House from 1973 until his defeat in the general election of 2002, making him the longest serving House Speaker of any U.S. state legislature.

He was born in Bremen, where his father was the mayor as well as a telegraph operator for the railroad. Murphy graduated from Bremen High School in 1941 and enrolled in North Georgia College in Dahlonega.

During World War II, Murphy served in the Navy in the south Pacific.
leaving the Navy, he attended the University of Georgia Law School, graduating in 1949. That same year, he was elected to the Bremen Board of Education and the Georgia House of Representatives, serving in both positions simultaneously until 1965 when he left the Board of Education.

From 1967 to 1970, Murphy was the floor leader in the House under Gov. Lester Maddox. From 1970-1973, he was the House speaker pro tem. In 1973, he was elected to the position of speaker, where he remained until his defeat in 2002.

Murphy suffered a stroke in 2004, which left him incapacitated. He died at 10 p.m. on Dec. 17, 2007, in Bremen, after years of declining health.
The following information was released by Rutgers University:

As voters' rights are debated across the nation this year, the milestone court case granting women the right to vote has, for the first time, been chronicled in a full-length book, thanks to a Rutgers-Camden legal scholar.

In The Woman Who Dared to Vote: The Trial of Susan B. Anthony (University Press of Kansas), N.E.H. Hull, a distinguished professor at the Rutgers School of Law-Camden, details United States v. Susan B. Anthony, a case in which America's most prominent leader of women's rights was tried for illegally voting.

"This book had been one of those bucket list projects I'd always wanted to do," says Hull. "The woman suffrage issue was critical to the women's movement in the 19th century and Susan B. Anthony had not yet become the face of woman suffrage. She was well known, but sometimes stood in the shadows of other women. It was this trial that pushed her to the forefront of the movement."

Just as the polls opened in New York on Nov. 5, 1872, Anthony cast her ballot. Before it could be placed in the ballot box, a poll watcher objected, claiming her action violated the state constitution. Anthony was soon after arrested, charged with a federal crime, and tried in court.

"Other women voted, but Anthony was the only one prosecuted," Hull says. "The federal government decided to make an example of her by prosecuting her under a law aimed at ex-confederates."

The Federal Enforcement Act of 1870 was passed to protect the votes of former slaves in the South against being diluted by the votes of whites who, among other actions, voted without having the lawful right to vote - the grounds on which Anthony was charged.

"It became a very contemporary issue of voter suppression and voter fraud," Hull explains.

Each state controlled its own voting laws. In 1872, voting in New York was restricted to men. Although Anthony's ballot was anonymous, the casting of her vote was considered a dilution of the all-male vote.

"The suffragists at that moment argued that as citizens of the United States and of the state they lived in, they had the right to vote under the Fourteenth Amendment," Hull says. "They called on women across the country to register to vote in a mass demonstration of civil disobedience. The government decided to cut it off and make an example out of somebody. They went after Susan B. Anthony."

Hull says Anthony never thought she would be arrested. She only assumed that her vote would be denied and she would file a civil lawsuit.
"Because she was arrested, it became a rallying cry for woman suffrage," Hull says. "The arrest may have short circuited the plan for massive civil disobedience but if it was supposed to suppress the woman suffrage movement, it failed."

Supreme Court Justice Ward Hunt presided over the trial and refused to allow Anthony to testify on her behalf. He also ordered the jury to return a guilty verdict, a clear violation of the Constitutional right to trial by jury, and read an opinion he had written before the trial even started.

Anthony's sentence was a $100 fine, but not imprisonment, and she never paid. Instead, she petitioned Congress to remove the fine. The trial became a cause celebre and had important implications for the woman suffrage movement.

"The trial brought women together," Hull says. "Susan B. Anthony became the face of woman suffrage."

The book is the newest in the Landmark Law Cases and American Society series, for which Hull is co-editor. The series illuminates significant American law cases, traces their origins, brings to light their consequences, and enhances understanding of American law and society.


At the Rutgers School of Law-Camden, Hull teaches courses in American legal history, abortion rights controversy, LGBT individuals in American legal history, and the fight over woman suffrage.

She received her undergraduate degree from Ohio State University, her doctorate from Columbia University, and her juris doctor from the University of Georgia School of Law.

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April 10, 2012 Tuesday

SECTION: NEWS; Political Events; Think Tanks

LENGTH: 94 words

HEADLINE: Senate Finance Committee hearing on tax reform

BODY:

Hearing on 'Tax Reform: What It Means for State and Local Tax and Fiscal Policy', with testimony from Congressional Budget Office Assistant Director for Tax Analysis Frank Sammartino; Urban-Brookings Tax Policy Center Senior Fellow Dr Kim Rueben; University of Georgia School of Law Distinguished Professor in Taxation Law Walter Hellerstein; Tax Foundation Vice President of Legal & State Projects Joseph Henchman; and Zinman Accounting owner Sanford Zinman
Detailed law grad jobs data released
Many law schools boost employment numbers by hiring their own graduates, but not so much at Georgia schools
By Karen Sloan, National Law Journal

At the University of Virginia School of Law, 98 percent of the class of 2010 was employed nine months following graduation. That figure was 92 percent at Vanderbilt University Law School and 90 percent at Washington & Lee University School of Law.

All three schools reported those postgraduate employment rates to American Bar Association during an especially tight job market. Additionally, each reported that a relatively high 11 percent of their 2010 graduates were in jobs financed by the schools themselves.

That is just one nugget of information contained in an expansive database that the ABA has released on its website. The database contains far more detailed employment information than the organization had made public previously.

At Georgia's five law schools, graduates had to look elsewhere for jobs, and they tended to find them. An average of 88 percent of their graduates were employed after nine months, with 4 percent of graduates working in law school-funded jobs.

For the first time, the ABA provided information about the number of graduates in jobs paid for by their law schools; the number of graduates in both short-term and long-term jobs; and the number of graduates working in a variety of different-sized firms and whether those jobs were permanent or temporary.

The new data do not include any information about the number of graduates in part-time or full-time jobs, nor any salary information. Their release followed mounting public pressure by transparency advocates and congressional leaders to improve the quality and amount of law school consumer information available.

The new data are available on the ABA's website in two forms. Users can search individual schools' employment reports for the class of 2010, or they can download a spreadsheet that includes employment information for all 200 ABA-accredited law schools.

Even though the data are somewhat now out of date—information about the class of 2011 was due at the ABA in February—they nevertheless offer insights into the legal job market and how law schools are adjusting to market forces.

Law schools have never previously been required to reveal how many graduates they employ, but the new data show that the practice is fairly common:
• 27 percent of ABA-accredited law schools reported they had not hired any of their 2010 graduates.

• 48 percent of schools reported hiring between 1 percent and 5 percent of the class of 2010.

• 11 percent of schools hired between 6 percent and 10 percent of their 2010 graduates.

• 9 percent of schools hired between 11 percent and 15 percent of the class of 2010.

• Three schools hired more than 15 percent of their classes: The City University of New York School of Law hired the most, at 19 percent, followed by the University of the Pacific McGeorge School of Law at 18 percent and the University of San Francisco School of Law at 17 percent.

CUNY Dean Michelle Anderson attributed the school’s high percentage to its LaunchPad for Justice program, which hires law graduates to represent indigent New Yorkers who face eviction.

"The LaunchPad is a triple win: Housing courts gain a new set of volunteer attorneys in an area with crushing caseloads; people in need gain valuable legal assistance to save their tenancy; and recent law school graduates gain hands-on experience that makes them more prepared in a tough job market," Anderson said. "Many of those participating in LaunchPad used the skills, experience and contacts they obtained through participating to secure employment as public interest attorneys."

Georgia’s law schools didn’t follow the trend of internal graduate hiring. Georgia State University and the University of Georgia employed one student each, and Mercer University hired none. Emory University took on 20 graduates—8 percent of its 2010 class—and John Marshall Law School employed 26—7 percent.

In terms of overall employment, UGA led the pack with 93 percent of its graduates finding jobs, followed by John Marshall and Georgia State at 88 percent each. Emory’s law grads found work at an 87 percent rate, and 83 percent of Mercer’s students were hired.

University of North Carolina law professor Bernie Burk began conducting his own survey of law school-funded jobs in the weeks before the ABA released its data. His research, which he has written about on the blog The Faculty Lounge, was based on a small number of law schools that voluntarily disclosed the number of 2010 graduates they hired.

Burk became interested in the trend when law schools continued to report high employment figures when the legal job market contracted in 2009 and 2010, he said. "I started thinking, ‘What kinds of jobs are these?’ I was actually surprised at how widespread the practice is. It’s a powerful reflection of how hard it is to get a full-time legal job right now."

Burk theorizes that the law schools are motivated not by the hope of gaming the U.S. News and World Report rankings, but by the need to help struggling graduates get a foot in the door. A few might be employed by the school directly as research assistants, but most are in public interest posts where they gain real-world experience, even if the law school signs their paychecks, he said.

"I think this type of program, if administered properly, is potentially an effective way to help students transition into full-time legal jobs," Burk said.

For the most part, lower-tiered schools were not employing their graduates in large numbers,
according to the ABA data. Among the top 50 schools as ranked by U.S. News, Georgetown University Law Center employed 11 percent of the class of 2010; the University of California at Los Angeles School of Law employed 12 percent; Boston University School of Law employed 13 percent; the University of Minnesota Law School employed 14 percent; and the University of Notre Dame Law School and Fordham University School of Law employed 15 percent.

Arizona State University Sandra Day O'Connor College of Law reported an employment rate of 98 percent, with 12 percent of its class of 2010 in school-funded jobs. Those graduates were in public interest fellowships at nonprofit organizations for at least six weeks and earn a stipend from the school, said Dean Douglas Sylvester.

Some of those fellowships turn into fulltime positions, he said, stressing that the school did not start the program to manipulate its U.S. News ranking.

In fact, he noted, U.S. News Director of Data Research Bob Morse has warned that the publication may stop counting graduates as employed if they are paid by their alma maters.

"Next year, those graduates won't count as employed [by U.S. News]. See who drops those programs then," Sylvester said. "We're standing by our graduates and trying to do absolutely everything we can to think of to help them."

Of the 43,706 law graduates in 2010, 85 percent were employed after nine months, the data show, but 14 percent were in short-term jobs. Additionally:

- 34 percent of law schools reported that between 1 percent and 10 percent of their class of 2010 had short-term jobs nine months after graduating.

- 38 percent of law schools reported that between 11 percent and 20 percent of their 2010 graduates had short-term jobs.

- Nearly 13 percent reported that more than 20 percent of their class of 2010 had short term jobs.

Golden Gate University School of Law reported the highest percentage of graduates in short-term jobs, at 43 percent, followed by the University of the Pacific McGeorge School of Law at 41 percent and the University of San Francisco School of Law at 36 percent.

Fifteen schools reported employment rates of 95 percent or higher for the class of 2010. The University of Chicago Law School, Virginia and Arizona State each reported employment rates of 98 percent. Stanford Law School, New York University School of Law, Columbia Law School and Cornell Law School each reported a rate of 97 percent.

Mark Niesse of the Daily Report contributed to this report.
By Marcus K. Garner The Atlanta Journal-Constitution

April 20 -- Attorneys for a New Black Panther Party leader say he is being illegally held against his will and unfairly being denied a probable cause hearing after his arrest while trying to do the right thing.

But legal scholars and attorneys say the circumstances surrounding Hashim Nzinga's arrest for gun possession charges leave him little option but to wait to go to trial.

Nzinga, 49, was arrested March 26 after he pawned a semi-automatic handgun, authorities said. At the time, he was a convicted felon; in February, he pleaded guilty in Gwinnett County to writing a bad check for $3,000, a felony because the amount exceeded $500.

It is unlawful in Georgia for a convicted felon to have a gun.

Days earlier, the Stone Mountain father of six and chief of staff of the New Black Panther Party told the news media the organization was offering a $10,000 bounty for the "citizen's arrest" of George Zimmerman, who admitted to killing an unarmed 17-year-old Trayvon Martin in self-defense last month in Sanford, Fla.

Nzinga was arrested March 26 after he pawned a semi-automatic handgun, authorities said. At the time, he was a convicted felon; in February, he pleaded guilty in Gwinnett County to writing a bad check for $3,000, a felony because the amount exceeded $500.

Days earlier, the Stone Mountain father of six and chief of staff of the New Black Panther Party told the news media the organization was offering a $10,000 bounty for the "citizen's arrest" of George Zimmerman, who admitted to killing an unarmed 17-year-old Trayvon Martin in self-defense last month in Sanford, Fla.

"The defendant knowingly and voluntarily waived his right to a preliminary hearing," Strickland said Monday in a second brief denying Davis' request.

"When a defendant waives a preliminary hearing, that's equivalent to saying there is sufficient evidence for you to stand trial." Nzinga's supporters say he is being singled out because of statements he made to the media in the Trayvon Martin case.

"I say Hashim Nzinga is a political prisoner based on what he said and what he believes," radio personality and former Atlanta City Councilman Derrick Boazman said.

David Jenks, criminology department chair at the University of West Georgia, said
Attorneys say Nzinga was arrested by plainclothes DeKalb County Sheriff’s deputies as he went to meet his probation officer for the first time.

"It’s interesting that a person can murder someone and be provided all the loopholes of the law," Rice said of Zimmerman. "And here, a man was very clearly trying to follow the law and is in jail."

Indeed, Nzinga tried to adhere to the law, seeking to relinquish his handgun after the Gwinnett conviction, Davis said.

Georgia Department of Corrections spokeswoman Gwendolyn Hogan said a convicted felon should be served with a firearms form to sign either during sentencing or on the first visit to a probation officer, informing the court of the weapon.

It’s unclear if Nzinga received signed such documentation when he made his plea in February, but he never got a chance to do so on his initial probation visit.

Davis said his client’s actions when pawning the gun were careful and deliberate, however.

"He never touched the gun when he turned it in to the pawn shop," Davis said. "He had his [26-year-old] son place in the trunk of the car, take it to the pawn shop and take it in, where Mr. Nzinga only signed the paperwork and was fingerprinted."

University of Georgia law professor Ronald Carlson said those details could prevent a gun conviction if they are proven in court.

"He’ll have an arguable claim of defense if he’s got good witnesses -- maybe the son -- who will swear that he never touched the gun," Carlson said. "If the [pawn shop] video shows he didn’t touch it, that helps the case measurably if everything that the defense says is borne out by the visuals."

In the meantime, Davis has filed a writ of Habeas Corpus in court against DeKalb Sheriff Thomas Brown, claiming Nzinga is being unlawfully held in the DeKalb jail on a $10,000 bond.

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Law students adopt Law Hawk as mascot

By SEAN WAAD on April 20, 2012

Many have claimed her as the unofficial Law School mascot. She has been described as being “ever vigilant,” “never reckless” and “always deadly.” But to all that know her, she simply goes by “Law Hawk.”

Law Hawk has unofficially been identified as a female, broad-winged hawk that spends most of her days perched in the dogwood trees outside the Law Library window on North Campus. She has a very important meaning to many and has even gained enough recognition to receive her own Facebook page.

Elliot Engstrom, a second-year law student from North Carolina, is an avid follower of Law Hawk. Engstrom, like many others, has witnessed first-hand Law Hawk in all her splendor.

“IT is known for scaring people by attacking the window and making a really loud noise when it does so. It’s not like it’s just accidentally flying into the window — it goes into attack mode with the talons and everything. It’s a pretty cool sight to see, really,” Engstrom wrote in an email interview.

Law Hawk has become synonymous with the hard-hitting hammer of the law, and for good reason. An account by Engstrom evidences her acclaimed ferocious antics.

“One day last year, Law Hawk swooped down and caught a little squirrel in front of the packed Law Library. It then proceeded to sit in front of the window and rip the little animal apart,” he said.

Law Hawk is more than just a barbaric slayer of cute animals, though. Katie Ball, a first-year law student from Kentucky, is puzzled by her motivation. For her, Law Hawk is shrouded in a cloud of mystery.

“The hawk immensely enjoys taunting the law student body by sitting in close proximity to the ever-toiling students in the Law Library and making it obvious how much she is enjoying the sun, or better yet, a squirrel,” she wrote in an email interview. “I can’t decide if she’s trying to remind us that there’s life outside the Law Library, or simply asserting that, no matter how much we study, Law Hawk will always be superior.”

To some, she is simply a pleasant bird with an easy disposition.
"Most of the time, she literally seems to be just hanging out," said Jen Wolf, a staff member at the law library who has become a regular observer of Law Hawk.

"Not too long ago when I was at the President’s Garden I saw her preening herself about four feet away from me," Wolf said. "I could have reached out and touched her. She was just sitting there as if to say, 'Hey, what's happening?'"

The life of a University law student is often one of high stress, filled with hours of studying and reading, most of which takes place in the Law Library, according to students. Although this is the case, students can take solace in knowing that their beloved Law Hawk will be nearby.

Contact with Law Hawk was attempted through her Facebook page, but she could not be reached for comment.

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Featured, News, featured, Law Hawk, law school, News, Sean Ward
Senate-Passed Bill Would Mandate Black Boxes in Cars, Plus More

Written by Raven Clabough

Friday, 20 April 2012 09:27

The U.S. Senate has passed a bill that would make it mandatory for all new cars in the United States to include black box data recorders from the year 2015, and would (among many other provisions) permit the IRS to confiscate one's passport on the suspicion of owing taxes. SB 1813, called the Moving Ahead for Progress in the 21st Century Act (MAP 21), passed in the Senate quite easily after heavy promotion from Harry Reid (D-Nev.) and Barbara Boxer (D-Calif., left). The bill is scheduled for a vote in the House, where Republicans are hoping to add a Keystone XL Pipeline provision before passage.

Section 31406 of the measure calls for "mandatory event data recorders" to be installed in new vehicles not later than 180 days after the bill's enactment, and mandates penalties on individuals who fail to comply.

There has been a push to install black box devices in vehicles for over a decade. In 2006, the National Highway Traffic Safety Administration encouraged automobile makers to install the systems. But NHTSA Administrator David Strickland said that when millions of Toyota vehicles began to be recalled, government officials considered making the technology mandatory.

Earlier this year, the New York Times reported that the black boxes were soon to be mandatory, after the idea was endorsed by the U.S. National Research Council, which had investigated the response of the NHTSA following the reports of sudden acceleration problems in Toyotas.

When the NHTSA was unable to find an electronic cause for the Toyota problem, it was advised by the NRC to close its investigation, but warned that the organization must familiarize itself with today's more sophisticated vehicles.

"Failures associated with electronics systems — including those related to software programming, dual and intermittent electronics hardware faults, and electromagnetic disturbances — may not leave physical evidence to aid investigations into observed or reported unsafe vehicle behaviors," said the NRC. "Similarly, many errors by drivers using or responding to new electronics systems may not leave a physical trace."

The NRC determined that it would be best to install event data recorders in all vehicles to assist in safety investigations, and recommended that "NHTSA [strive] to make electronic event data recorders commonplace in all vehicles."

Enter the Moving Ahead for Progress in the 21st Century Act.

While the bill also indicates that the data would remain the property of the vehicle's owner, the government does have the power to gain access to the black box under a variety of circumstances, including by court order, if the owner consents to make it available.

Approximately 85 percent of vehicles already come equipped with black boxes, notes the NHTSA, whose own guidelines for vehicles include the devices, even though they are not currently mandatory. According to those guidelines, the boxes must measure such things as speed, position of the gas pedal, whether or not the brakes were pressed, seat belt usage, and the amount of time it took for airbags to deploy.

In fact, it was a black box that landed Massachusetts Lt. Governor Timothy Murray with a hefty fine following the 2011 accident that totaled his vehicle, because the device recorded that he was speeding and was not wearing a seat belt prior to the accident.
However, critics contend that the data box is part of the slippery slope to total surveillance of the transportation habits and whereabouts of Americans.

The National Motorists Association asserts:

There is no rational or scientific need nor justification to equip tens of millions of vehicles on a perpetual basis with black boxes.

While denials abound there is good reason to believe that the promotion of universal black box installation in new vehicles has more to do with regulatory, enforcement, judicial, and corporate economic interests; all at the expense of vehicle owners who are forced to pay for and retain this form of self-surveillance.

The NMA does not object to safety research that involves the use of black boxes, as long as the participants are informed and willing and they are allowed to opt out of research project without negative consequences. As noted, such research can be reliably conducted with thousands of willing participants, versus millions of uninformed conscripts.

In addition to the black box provisions, MAP 21 would permit the IRS to revoke the passport of any citizen accused of owing $50,000 or more in taxes. There are several exceptions, however. If the person has set up a payment plan and is paying on time; or is legitimately disputing the debt; or is involved in an emergency situation; or has a humanitarian reason and must travel internationally, he or she may be excepted from the rule for a limited amount of time.

Surprisingly, according to Timothy Meyer, a constitutional law professor at the University of Georgia who has served as a State Department lawyer, the provision is actually legal. The Atlantic explains Meyer's stance:

He concludes that if the passport provisions of MAP 21 became law and were challenged, chances are, the courts would find that they satisfy Due Process concerns. Even though there's no judicial hearing before your travel rights are restricted, the bill does protect a passport holder who's challenging the alleged tax debt. And according to Professor Meyer, that's probably enough here.

Because there are already laws in place that limit a person's right to travel, Meyer contends that the bill is legal. The State Department screens passport applications for those who owe child support of more than $2500. And the IRS will be holding some Americans' tax refund checks if they have defaulted on their student loans, owe state or local taxes, or have unpaid child support.

"Courts have upheld statutes calling for the revocation and denial of passports to those in arrears of child support payments," he explains. "In part, because the child support payments can be contested."

Some contend, however, that such a provision is entirely un-American.

In an Investors.com editorial, the writer notes, "It is hard to imagine any law more reminiscent of the Soviet Union that America toppled, or its Eastern Bloc slave satellites."

The bill also includes a provision to develop technology to "detect drug-impaired" drivers and the development of testing for similar devices that measure alcohol concentration in the body while in the vehicle.

Senator Boxer asserted:

There are many people on both sides of the aisle in the Senate who want to get our bill passed into law, and I'm going to do everything I can to keep the pressure on the Republican House to do just that.

Recognizing that they are now in a powerful position, House Republicans are hoping to force Senators to attach a provision for
Senate-Passed Bill Would Mandate Black Boxes in Cars, Plus More

approval of the Keystone XL pipeline to the bill. Such a move would place Senators in a difficult position. And it may compel the President to veto the bill if it did pass both chambers.

"Because this bill circumvents a longstanding and proven process for determining whether cross-border pipelines are in the national interest by mandating the permitting of the Keystone XL pipeline before a new route has been submitted and assessed, the President's senior advisers would recommend that he veto this legislation," the White House said in a formal "statement of administration policy" Tuesday afternoon.

Related article: IRS Would Revoke Passports for Alleged Tax Debt Under Bill
Zimmerman 'sorry' for Trayvon Martin's death

By HLNtv.com Staff
updated 4:21 PM EDT. Fri April 20, 2012

NEED TO KNOW
- George Zimmerman apologized to Trayvon Martin's family in his bond hearing Friday morning
- He spoke directly to Martin's parents, who were in court
- The apology came after Zimmerman's request to meet with Martin's family in private was denied

Zimmerman: 'I am sorry'

During his bond hearing on Friday, George Zimmerman apologized to Trayvon Martin's family, saying "I wanted to say I am sorry for the loss of your son."

"I did not know how old he was. I thought he was a little bit younger than I am. And I did not know that he was armed or not," Zimmerman said, addressing Trayvon's mother and father directly.

The apology comes after Martin's family denied Zimmerman's request for a private meeting with them. Martin family attorney Ben Crump told news outlets earlier this week that Trayvon's parents thought Zimmerman's request was self-serving and questioned its timing.

"He never apologized on his website, or on the voicemail that he left for his friend [Frank Taaffe.] He never apologized when the police talked to him. So the public will have to evaluate his motives," Crump said.

Ronald Carlson, the Fuller E. Callaway Professor Emeritus at the University of Georgia law school, told HLN Friday the Zimmerman apology "was very unusual at
a bond hearing, but not totally unexpected. George Zimmerman earlier tried to reach out to the Martin parents, so when they rebuffed his efforts, the best way to communicate with them was to do so in court. He expressed his regret."

Carlson said Zimmerman was waging not only a legal battle but a public one. "It was a creative approach that will likely serve him well in the court of public opinion. No fair-minded person ever holds it against a party for expressing remorse or being appropriately contrite."

Crump, the Martin family attorney, said that instead of meeting with Zimmerman in private, his clients would rather hear Zimmerman's recount the events of the fateful night of February 26, with full disclosure and transparency.
Around Town: Clay said to be eyeing race for county commission chairman

by Otis Brumby, Bill Kinney and Joe Kirby
Around Town Columnists
04.21.12 - 12:00 am

ONE OF COBB’S most seasoned political leaders might be the newest name to plunge into the pool of candidates to be the next chairman of the Cobb Board of Commissioners.

Marietta attorney Chuck Clay, whose resume includes a brief stint as a Western District Cobb Commissioner in the late 1980s and long service in the state Senate, is said by confidants to be strongly considering a last-minute entry into the July 31 GOP primary battle.

“He keeps getting calls from people telling him he needs to run,” a close associate of the possible candidate told Around Town.

Those calls reflect the oft-expressed dissatisfaction heard in recent months about the field as it stands at present.

Chairman Tim Lee has gotten off to a rocky start in his roughly two years in the job. Those years unfortunately coincided with a terrible economy and his response to falling tax revenues was to raise property taxes, rather than bite the bullet and make deep spending cuts. That decision didn’t play well with many of his fellow Republicans.

Lee also is perceived as fused at the hip with the Cobb Chamber of Commerce and the county’s two Community Improvement Districts, and with their adamant backing of the upcoming July 31 TSPLOST referendum. That vote could well result in the spending of the bulk of Cobb’s revenues from the tax to build a light-rail line between the Midtown MARTA station and Cumberland Mall, a possibility that has come under heavy fire from many residents.

Lee’s main challenger at the moment is seen as former Commission Chairman Bill Byrne, ill-remembered by many due to his shoot-from-the-hip style during his former stint as chairman in the 1990s. Many politicos sense that Byrne isn’t building much momentum this time around.

Also running are retired Marine Col. Mike Boyce and retired business executive Larry Savage, both of east Cobb. Neither is well known or overly financed.

All four are Republicans, as is Clay. Whoever wins the county’s Republican Primary July 31 will most likely be the next chairman, considering the county’s
demographics and the fact that no Democrat has expressed plans to run.

With two candidates who are little known and with two other candidates who are lugging plenty of baggage, more than one person has been overheard lamenting that the county has not been able to produce a more stellar field from which to choose.

The result has been a steady stream of names surfacing and trial balloons being floated. The list includes: former East Cobb Commissioner Thea Powell, who took herself out of consideration after taking a new job in Atlanta; popular West Cobb Commissioner Helen Goreham, who has clashed with Lee in the past but has generally supported him in the past year or so and who said again this week she is not running; Marietta Mayor Steve "Thunder" Tumlin, who confirmed in September that he was interested in the job but now seems to have lost interest; and Acworth Mayor Tommy Allegood, who instead took a job as head of the Cobb Community Foundation.

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A PHI BETA KAPPA graduate of the University of North Carolina and the University of Georgia School of Law, Clay is a name partner in the Marietta firm Brock & Clay. He is married and the father of five children.

Clay would bring considerable assets to the race. He's highly articulate, is a "known quantity" and still has myriad connections at both the local and state levels. He served six terms in the state Senate, where he was minority leader; and chaired the Georgia Republican Party during George W. Bush's 2000 campaign for president. He left the Senate in 2004 to run unsuccessfully for the 6th District Congressional seat representing east Cobb (a race won by Tom Price) and prior to that ran unsuccessfully for lieutenant governor.

It is believed Clay would have little trouble quickly raising enough campaign cash to mount a competitive race — especially since seasoned politicos have noted that none of the four candidates already in the running are setting the woods on fire when it comes to fund-raising. Lee took in $48,000 in the first quarter of the year; Byrne took in $15,000; Boyce $11,000 and Savage $260.

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BUT A CANDIDATE CLAY would have some hurdles to clear. For starters, his opponents would make an albatross of the Brock Clay firm — which has been a lightning rod for criticism during its many years representing the Cobb school system. Truth be told, Clay is said to spend most of his time at Brock Clay working as a lobbyist on behalf of a long client list, including the Cobb School District. But while he does lobby, Clay does not handle any of the legal work for the school district.

Meanwhile, some wonder why Clay has occasionally had such a hard time through the years connecting with voters, such as during his runs for Congress and lieutenant governor. One seasoned Marietta politico on Friday likened him to Mitt Romney — a candidate with a long resume and much to offer who
inexplicably seems unable to fire up voters.

***

SO LIKE THOSE already in the race, Clay's candidacy would be a mixed bag of assets and liabilities. Then there's the timing: Could Clay connect with enough Cobb voters to capture the contest while playing catch-up with less than four months to go?

Stay tuned.

IS THIS THE DAY that the nearly five-year long shareholder revolt against the Cobb EMC management finally ends? Could be, as the utility holds its first-ever runoff elections. Members meet this morning to decide who will occupy the final two unfilled seats on the publicly owned utility's board of directors. Voting will be open from 8 a.m. to 3 p.m.

Running in Area 4 are Jim Hudson and David McClellan. Running in Area 5 are Charles Sevier and Tripper Sharp.

Sevier and McClellan have the backing of the Cobb EMC Owners Association as well as plaintiffs Butch Thompson and Bo Pounds, while Hudson and Sharp have been endorsed by the rest of the plaintiffs who brought suit in 2007 against the EMC.

Voting will take place at Piedmont Church at 570 Piedmont Road in east Cobb.

***

THE COBB BAR ASSOCIATION has awarded a total of $19,000 in Alexis Grubbs Scholarships this year to recipients Kenya Donelson, Tianna Quiller, Morgan Raines, Alex Christensen, Alexandra Kinstle and Natasha Walker to help further their efforts toward careers in the law or law enforcement. The awards, named in honor of the late Alexis Grubbs, daughter of Cobb Superior Court Judge Adele Grubbs, will be presented at the Cobb Bar's Law Day Luncheon April 26.

... Joyce Schumacher will host a meet-and-greet for Mike Boyce at her 2520 Cajun Drive home in Marietta from 2 to 4 p.m. on Sunday.

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WEDDING BELLS: Smyrna Mayor Max Bacon and his former Campbell High School classmate Ellen Claire Rose of Atlanta were married on Friday April 13. The couple exchanged vows in a private ceremony in Arlington, Va.

"We just decided to elope and that was it," the mayor, a.k.a. "The Baconator," told Around Town. "I'm too busy for a honeymoon right now. She did go with me to the grand opening of the new RaceTrac on Thursday, but I don't think that will do for a honeymoon." ... Meanwhile, retired Lockheed exec John Strother, 98, and businesswoman Katherine Hamilton, 83, tied the knot at their home March 30 with the Rev. David Hayes officiating. It was the third marriage for Strother and second for Hamilton, who have three grandchildren and eight great-grandchildren between them. Strother, who teaches Sunday school at First United Methodist Church of Marietta, and Hamilton enjoyed a one-day honeymoon at
the Woodbridge Inn in Jasper.

THE METRO ATLANTA LINK delegation trip to Washington, D.C., to examine transit systems there ahead of the upcoming TSPLOST vote here got off to an unusual start on Wednesday when Cobb Chamber of Commerce President David Connell was arrested by security at Hartsfield-Jackson International Airport for having a pistol and ammunition in his luggage. It was an embarrassing moment for him and for the Chamber.

But Connell was quick to own up to the gaffe and was warmly welcomed by others on the trip when he finally joined them the next day after a seven-hour layover in the Clayton County jail. In brief remarks to the group he apologized for his mistake and praised the security officials involved.

Everyone makes mistakes, but they don’t all wind up as fodder for the evening news as his unfortunately did. That said, former Georgia Power exec Connell has been an enthusiastic and energetic booster for both the Chamber and Cobb County, and that — not this week’s momentary lapse — is what will define his career here.

Keep your chin up, David!

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Superior Court judge McElyea seeks re-election

by From staff reports
04.22.12 - 12:00 am
CANTON — Cherokee County Superior Court Judge Ellen McElyea is seeking re-election.

McElyea will seek another term to the nonpartisan Blue Ridge Judicial Circuit seat she's held since 2007.

"I have been honored to serve the citizens of this county as a judge for 12 years, and it will be my privilege to continue my work for this community," she said in a statement.

McElyea was first appointed by former Gov. Sonny Perdue in 2007 to the post. She won her first full term in 2008.

McElyea said in her statement she plans to continue working to implement a Drug Accountability Court, which she said would "make Cherokee County safer by providing effective intervention and accountability for substance abusers under the Court's supervision."

She said she attended a stakeholders meeting at a national implementation conference earlier in the spring and a steering committee has been established to get the court in place.

"This will definitely be a team effort," she said, adding the court will begin accepting its first participants in the fall. "Garry Moss, the district attorney, has been instrumental as our coordinator, and we have had great support from the sheriff's office, the local bar association, our local probation office and from my colleagues on the Superior Court bench."

Judge McElyea also has sat as a judicial adviser to the State Board of the Department of Juvenile Justice, an appointment made by Perdue.

She served on legislative study commissions regarding the Georgia Child Support Guidelines and state's Juvenile Code.

She has been a presenter and trainer on many occasions, giving presentations to groups including the State Bar's Family Law Institute, the Georgia Mediators Association, the Cobb County Bar Association, the Georgia CASA state conference, the Annual Child Placement Conference and local foster parents.

She's also been elected as treasurer of the Georgia Council of Juvenile Court Judges.

McElyea is a graduate of Leadership Cherokee and is a member of the Cherokee County Chamber of Commerce.

This year, she was chosen to be a member of Reinhardt University's Board of Trustees, and she was the first chairwoman of the Cherokee Families of Cherokee United in Service (FOCUS) collaborative for children.

She was a member of the United Way of Cherokee County's Advisory Board.
Superior Court judge McElyea seeks re-election

between 2008 and 2001 and has been a member of CASA for Children Inc. since 2008.

She was awarded the “Respect for Law”

recognition by the South Cherokee Optimist Club in 2011.

A past president of the Cherokee County Bar Association, Judge McElyea was elected by the local bar to be its representative in the Board of Governors of the State Bar of Georgia.

She is a member of the Lawyers Foundation of Georgia, and has served on the State Bar’s committee on Children and the Courts.

She serves on a number of committees for the Council of Superior Court Judges and is the current chair of the public outreach committee.

A native of Rome, Judge McElyea graduated magna cum laude with a bachelor of arts degree from Furman University in Greenville, S.C., where she was inducted into Phi Beta Kappa.

She graduated from the University of Georgia School of Law in 1985 and practiced law in Canton for 15 years before becoming a full-time juvenile court judge in January 2000.

Judge McElyea is married to Canton attorney Bobby Dyer. They have two sons and the family attends Canton First United Methodist Church.

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Public memorial to be held April 27 at Chapel for late journalism professor

The Grady College of Journalism and Mass Communication will hold a public memorial service for the late Conrad Fink, a professor of journalism for more than three decades, April 27 at 2 p.m. in the Chapel.

Students, former students, colleagues and friends, including Provost Jere Morehead and W.H. “Dink” NeSmith, vice chairman of the University System of Georgia Board of Regents, will share remembrances.

The staff of The Red & Black newspaper will host a reception at 540 Baxter St. after the service.

At his death in January, Fink held the William S. Morris Chair in Newspaper Strategy and Management at the Grady College and directed the James M. Cox Jr. Institute for Newspaper Management Studies.

Before his retirement from professional journalism in 1977, Fink rose from reporter to foreign correspondent to vice president and secretary of the Associated Press.

Law students win negotiation competition

School of Law students recently captured first place at the Robert R. Merhige Jr. National Environmental Negotiation Competition.

The annual two-day competition features teams from across the country and involves several rounds of negotiation centered on current issues in environmental law. Held at the University of Richmond School of Law, the contest was created in memory of the late Robert Merhige, a former U.S. District Court judge.

During the tournament, Georgia Law defeated Georgetown University Law Center in the semifinals and Lewis and Clark Law School in the finals. Representing UGA were second-year students Christopher A. Knapik and Christopher S. Smith.

“Competitions like this are a great way for our business law students to get hands-on experience in representing clients during negotiations,” said Carol Morgan, business law and ethics program instructor. “I am so proud of their hard work and success.”
Florida-Georgia moot court returns this year

by Joe Wilhelm Jr., Staff Writer

A fall legal community tradition returns this year.

Smith Hulsey & Busey has teamed up with Smith, Gambrell & Russell to bring back the Florida-Georgia Moot Court Competition with a slightly different name.

When approached about the 2011 competition, both the University of Florida and University of Georgia reported that budgetary reductions would not allow the teams to visit Jacksonville for the competition, said Lanny Russell, a Smith Hulsey & Busey shareholder who assisted in organizing the event.

Russell was unable to find another sponsor for the 2011 event to help cover the cost of bringing the teams to Jacksonville, estimated at $12,000 per team.

That problem was solved this year when Smith, Gambrell & Russell agreed to be an annual co-sponsor of the event, now called the Hulsey-Gambrell Florida-Georgia Moot Court Competition. It was formerly named the Hulsey-Kimbrell Moot Court Competition.

"Our firms have agreed to split the expense of the event and the universities have agreed to reinstate it. It's on their calendar, we are preparing the written briefing materials for the panel of judges," said Russell.

Georgia has 19 victories in the 30-year history of the event, including the competition in 2010. That competition returned to the trend of the school that won the moot court losing the football game.

Russell and Dana Bradford, managing partner and head of the litigation practice for the Jacksonville office of Smith, Gambrell & Russell, will continue the Florida-Georgia Moot Court Competition in October after a one-year hiatus.

The event will start at 9:30 a.m., Oct. 26, the Friday before the annual football game between the two universities. It will be held at the Bryan Simpson U.S. Courthouse in the courtroom of the Eleventh Circuit Court of Appeals.

The panel of judges includes Eleventh Circuit Court of Appeals Judge Gerald Tjoflat, Senior U.S. District Judge Paul Huck of the Southern District of Florida, and U.S. District Judge Lisa Godbey Wood and Senior U.S. District Judge Avant Edenfield, both of the Southern District of Georgia.

Russell and Dana Bradford, managing partner of the Jacksonville office of Smith, Gambrell, are searching for a fifth judge to complete the panel.

"I think everyone enjoys the arguments, and the problems that have been created for appellate discussion have been very good problems over the years. It's a delightful thing," said Tjoflat.

"We are happy to come in and share the responsibility of hosting this competition with Smith Hulsey & Busey," said Bradford.

One of the reasons Smith, Gambrell decided to become involved was because one of its namesakes, E. Smythe Gambrell, was a well-known and respected attorney in Georgia.

He founded the Legal Aid Society in Atlanta, where he practiced law from 1922 until his death in 1986.

The competition was founded by Mark Hulsey, a 1948 graduate of the University of Florida Levin College of Law, and Charles Kimbrell, a 1947 graduate of the University of Georgia School of Law more than 30 years ago to give law school students some real world experience.

Hulsey was the lone remaining founder until his death last July 22. This will mark the first competition that Hulsey has not attended.

"He will be smiling down from somewhere upon high," said Tjoflat about Hulsey, a friend.

Though the name will change for the event, Russell expressed the firm's appreciation for the Kimbrell family's involvement in the event.

"We appreciate the contributions of the Kimbrell family, but circumstance necessitated finding an additional sponsor and changing the name," said Russell.
WASHINGTON, D.C. (APRIL 25, 2012)  
BY MICHAEL COHN, ACCOUNTING TODAY

The Senate Finance Committee held a hearing Monday on tax reform and its impact on state and local tax and fiscal policy.

Among the topics covered were sales taxes on Internet purchases and downloads, and the interplay between federal, state and local taxes, including property taxes and tax-exempt bonds.

"We need to make sure our federal, state and local tax systems are working together," said Senate Finance Committee Chairman Max Baucus, D-Mont. "As part of tax reform, we should ask how we can help states collect taxes owed and how we can encourage standard rules to protect taxpayers from multiple taxes and needless complexity."

The hearing was the latest in a series held by the committee examining various aspects of tax reform. "As we reform the Tax Code to encourage growth and make our country more competitive, we need to ask whether the current exemptions and deductions make sense," said Baucus. "State and local taxes could potentially be allowed as above-the-line deductions, allowing all taxpayers to benefit."

Accountant Sanford Zinman, the owner of Zinman Accounting in White Plains, N.Y., was among the tax experts testifying. He is the national tax chair of the National Conference of CPA Practitioners and president of nCPA's Westchester/Rockland New York Chapter.

He noted that in his area, taxpayers are paying high levels of state and local income taxes and real estate taxes, and many of them are not receiving the federal deduction for those payments because of the alternative minimum tax. "This is troubling to many people," he said.

Zinman also noted that many people who maintain residences in different states, such as New York and Florida, get taxed by New York on their full-year's earnings and then it's up to their accountant to determine how much of the wages is taxable. "Whether you're a full-year resident or a part-time resident, you have to report your full-year revenue and the tax preparer has to break it out," he said.

He noted that many New York residents have moved out west or to low-tax states like Florida because of estate tax issues.

"People move to states that are tax friendly, especially with estate tax issues, one because of the quality of life and, two, so they can leave more of their assets to their children," Zinman noted. "But if you don't do it right, the previous state where you resided will try and grab some of your assets anyway."

He noted a recent Tax Court case in which a couple were audited by the IRS and needed to pay deficiencies, penalties and interest because of the way their interest income was allocated.

Senator Orrin Hatch, R-Utah, the ranking Republican member of the committee, quipped, "The more I listen to you, I'm glad I'm just a humble lawyer instead of a CPA."

In his opening statement, Hatch noted, "The rush for new tax dollars that too often characterizes the federal legislative process, oftentimes leaves issues involving federal-state tax coordination by the wayside. But we cannot forget that the policies being discussed
today touch-on fundamental constitutional principles of federalism and separation of powers."

He cited the testimony of another witness at the hearing, Walter Hellerstein, a professor of taxation law at the University of Georgia’s School of Law, in which Hellerstein invoked the Hippocratic oath of do no harm. "Too often, Congress forgets this sensible advice," said Hatch.

**Taxing Digital Downloads**

Hellerstein cited that rule during questioning by Sen. John Thune, R-S.D., who asked about legislation he had introduced last year with Sen. Ron Wyden, D-Ore., the Digital Goods and Services Tax Fairness Act, which would tax digital downloads such as apps and music. "As the digital economy grows, we have to make sure we set some digital rules of the road," said Thune. He noted that the bill would not take any taxing authority away from the states.

Hellerstein countered that such legislation would provide a "field day for lawyers" who would seek to exempt certain goods from taxation, and urged the committee to be careful in crafting the provisions, some of which he did not regard as ideal.

Thune argued that the legislation did not dictate which digital goods should be taxed. "Wouldn't all stakeholders be better served to have some framework to provide some certainty in the taxes collected for digital commerce?" he asked. "I guess the question is how do we do it? We have a proposal out there. We refine that and make it more effective. With all the advances we're seeing in technology and the way people are purchasing things these days, that's an issue we will have to deal with."

**Taxing Internet Purchases**

Sen. Benjamin Cardin, D-Md., asked about another piece of legislation aimed at collecting taxes on Internet purchases, the Marketplace Fairness Act, which the governor of Maryland said would have allowed the state to balance its budget. One of the witnesses, Kim Rueben, a senior fellow at the Urban-Brookings Tax Policy Center in Washington, D.C., approved of the legislation. "Congressional action to coordinate this would be a no-brainer," she said.

Zinman pointed out that New York State has a line on its tax return asking taxpayers to include the value of their Internet purchases, but Florida does not. "Many people ignore the taxes they have to pay," he noted.

Joseph Henchman, vice president of legal and state projects at the Tax Foundation, in Washington, D.C., noted that retailers would have to keep track of 9,600 different state and local sales rates. Cardin asked why they couldn't use software to compute the different tax rates.

"I'm not saying there isn't software," Henchman responded. "It's not a question of a computer program. It's a question of tracking changes in state laws. I work with the Tax Foundation and we track changes in state and local tax laws, and it's hard for us."

**Taxes on Wireless Services**

Wyden asked about a different piece of legislation, the Wireless Tax Fairness Act, which he and Sen. Olympia Snowe, R-Maine, introduced last year. The bill would restrict any state or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers or property.

"We have smart phones on the market and dumb tax policies," said Wyden. "What Senator Snowe and I want to do is to make sure these smart phones are not subject to multiple and discriminatory taxes on these smart phones."

He noted that the taxes in some cases could total over 20 percent on wireless service. "The bill would be prospective, laying out the rules of the road for the digital future," said Wyden.

According to the Congressional Budget Office, there would be no additional net cost to the federal government or to state, local and tribal governments, he pointed out. Frank Sammartino, assistant director for tax policy at the CBO, who was one of the witnesses at the hearing, concurred.

Wyden asked Henchman of the Tax Foundation about how to come to grips with handling the taxation of new, emerging technologies. "Isn't the heart of it trying to have the federal government do no harm?" he asked. "You have multiple, discriminatory policies that come about from these [state and local tax] laws I looked at. One would treat a chocolate bar one way and a cookie another way." Henchman
agreed that the goal should be tax simplification.

**Tax Extenders and Tax Reform**

Snowe said that Congress needs to move beyond the debate over tax reform and make it a concrete goal rather than a theoretical goal. "This is the worst post-recession recovery in the history of our country," she said. "We need to provide certainty to businesses and state and local governments. Think about the issues that keep state and local governments in turmoil. We have an uncertainty with respect to the Tax Code and the changes from state to state. If Congress could deal with it, how should it happen? If we start piecemealing our approach, it would pre-empt the necessity of overhauling the Tax Code."

Henchman suggested that the 1986 tax reforms should be the template to follow. He pointed out that with a piecemeal approach, industries lobby to be exempted from tax increases until the only group that is taxed is the one that didn't lobby lawmakers, and then it lobbies to have the tax increase eliminated.

Baucus agreed with Snowe that Congress has to find a way to handle all the various tax extender items. "We need to deal with these provisions, either make them permanent or repeal them," he said. "I agree with you, Senator, the uncertainty is one of the greatest impediments to growth in this country. If we have certainty, we'll have to make some tough choices. Interest groups will have to subsume their interests and come up with alternatives for the greater good. With all the special interest politics, it will be difficult to reach the goal. We have to come up with constructive alternatives."

Hatch asked about the complexities of taxing professional athletes and umpires who spend much of their time on the road, and how different states receive the revenue on their taxes. Hellerstein noted that Zinman would probably have some colorful examples among his clients.

Sammartino presented a report from the CBO on federal support for state and local governments through the Tax Code. He noted that if the federal government eliminated the deductibility of state and local taxes, along with the alternative minimum tax, there would still be a net revenue increase to the federal government, but that would eliminate some of the subsidies to state and local governments.

Hatch asked about the Obama administration's proposal to limit charitable deductions and for high-income taxpayers and tax breaks on tax-exempt bonds, and wondered if that would hurt the subsidies on bonds to state and local governments.

Sammartino contended that the President's proposal to limit the tax breaks for high-income taxpayers to 28 percent would not have a big effect on most taxpayers, although he acknowledged it might prompt some taxpayers to shift their investments portfolios a bit.

**Tax-Exempt Bonds**

Sen. Maria Cantwell, D-Wash., asked about tax-exempt bond issues and how they are used to finance public power projects for capital investments, and what impact that would have on utility rates if Congress got rid of the tax-exempt bond status.

"Part of it is going to depend on how the transition is done," responded Rueben. There would need to be a transition period before eliminating tax-exempt debt. Lowering the tax-exempt status would need to depend upon factors such as whether it's newly issued debt or existing debt, and who is holding the debt right now.

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WASHINGTON - A taxpayer with a marginal income tax rate of 7.5% would have been indifferent to purchasing high-rated tax-exempt or taxable corporate bonds last year because there was only a .35% spread between these bonds, a joint Congressional committee concluded in a report issued Monday.

The Aaa-rated corporate bond rate averaged 4.64% while the rate for high-grade munis averaged 4.29%, according to the report. Those with higher income rates would have benefited more from buying tax-exempt bonds and those with lower rates should have bought corporate bonds, the 52-page report by the Joint Committee on Taxation suggests.

The 7.5% implied tax rate of the marginal investor for 2011 - that is, the rate at which there would be the about the same benefit for an investor purchasing a high-grade muni or high grade corporate bond - is much lower than the 15.8% implied tax rate for 2010 and 12.6% rate for 2009, according to the JCT.

The lower rate is due to the fact that the issuance of new muni bonds dropped in 2011 to its lowest level in 10 years, the JCT said. In addition, the committee said, reports projecting high default rates of state and local governments and some instances of high-profile defaults by certain issuers increased investors concerns about risks and led them to demand higher rates.

The report also said state and local governments issued an average of $384 billion in tax-exempt bonds annually over the period of 2002 through 2011.

The JCT wrote the report for a hearing the Senate Finance Committee plans to hold on Wednesday on tax reform and what it means for state and local tax and fiscal policy.

The report contains detailed descriptions of tax-exempt bonds, as well as taxable tax credit and direct-pay bonds. It summarizes the tax law requirements for these bonds. It also contains information about state and local tax
Five witnesses are scheduled to testify at the hearing, which is to begin at 10:00 am, but none of them represent state and local governmental issuers.

The witnesses are: Frank Sammartino, the Congressional Budget Office's assistant secretary for tax analysis; Kim Rueben, a senior fellow at Urban-Brookings Tax Policy Center; Walter Hellerstein, the Francis Shackelford Distinguished professor of taxation law at the University of Georgia School of Law; Joseph Henchman, vice president of legal and state projects at the Tax Foundation; and Sanford Zinman, owner of Zinman Accounting in White Plains, N.Y.
WASHINGTON, April 25 -- The Senate Finance Committee issued the following hearing schedule:

MEMBER STATEMENTS

Max Baucus
(D-MT)

Orrin G. Hatch
(R-UT)

WITNESS TESTIMONY

Mr. Frank Sammartino, Assistant Director For Tax Analysis, Congressional Budget Office, Washington, DC

Dr. Kim Rueben, Senior Fellow, Urban-Brookings Tax Policy Center, Washington, DC

Mr. Walter Hellerstein, Francis Shackelford Distinguished Professor of Taxation Law, University of Georgia School of Law, Athens, GA

Mr. Joseph Henchman, Vice President of Legal & State Projects, Tax Foundation, Washington, DC

Mr. Sanford Zinman, Owner, Zinman Accounting, White Plains, NY

LOAD-DATE: April 25, 2012
Senate Finance Committee Chairman Max Baucus (D-MT) will preside over the hearing Tax Reform: What It Means for State and Local Tax and Fiscal Policy. The hearing will take place on Wednesday, April 25th at 10:00am in room 215 of the Dirksen Senate Office Building.

Henchmans testimony will cover sales taxes, interstates commerce, and the limits of state taxing authority, among other topics. These issues are part of the work of the Tax Foundations Center for State Fiscal Policy, which produces data, research, and analysis on taxation and public finance at the state and local level.

Other witnesses at Wednesdays hearing will include Frank Sammartino of the Congressional Budget Office, Kim Rueben of the Tax Policy Center, Walter Hellerstein of the University of Georgia School of Law, and Sanford Zinman of Zinman Accounting.

The Tax Foundation is a nonpartisan research organization that has monitored fiscal policy at the federal, state and local levels since 1937. To schedule an interview, please contact Richard Morrison, the Tax Foundations Manager of Communications, at 202-464-5102 or morrison@taxfoundation.org
Senate Holds Hearing Today on What Tax Reform Means for State and Local Tax and Fiscal Policy

The Senate Finance Committee holds a hearing today on Tax Reform: What It Means for State and Local Tax and Fiscal Policy:

- Walter Hellerstein (University of Georgia School of Law)
- Joseph Henchman (Tax Foundation)
- Kim Rueben (Urban-Brookings Tax Policy Center)
- Frank Sammartino (Congressional Budget Office)
- Sanford Zinman (Zinman Accounting, White Plains, NY)

In connection with the hearing, the Joint Committee on Taxation has released Present Law and Background Information Related to State and Local Government Finance (JCX-36-12):

This document ... summarizes tax-exempt and tax-credit bond provisions, the provisions allowing a deduction for certain State and local taxes, and provides select background data relating to State and local bonds and revenues.

April 25, 2012 in Congressional News, Tax | Permalink
I. INTRODUCTION

I am Walter Hellerstein, the Francis Shackelford Professor of Taxation and Distinguished Research Professor at the University of Georgia School of Law. I have devoted most of my professional life to the study and practice of state taxation and, in particular, to federal constitutional and statutory restraints on state taxation of interstate commerce.

I am honored by the Chairman's invitation to testify today. I welcome the opportunity to share with the Committee my views on the implications of federal tax reform for state taxation and, in particular, the role of Congress in authorizing or limiting state taxation of interstate commerce. I do not appear here on behalf of any client, public or private, and the views I am expressing here today reflect my independent professional judgment.

My testimony provides an overview of federal-state tax coordination in an effort to assist this Committee in determining the appropriate role of Congress with regard to matters of state taxation. n1 By federal-state tax coordination, I mean both vertical tax coordination (coordination between concurrent federal and state tax regimes) and horizontal tax coordination (coordination among state tax regimes). If my testimony has an overriding theme, it may be best captured by Justice Holmes's wise observation that "a page of history is worth a volume of logic." n2 The historical record of federal-state tax coordination provides important lessons regarding the risks and rewards of such coordination and, consequently, guidance for evaluating current and future initiatives for such coordination.

Part II of this testimony considers our experience with vertical federal-state tax coordination in connection with concurrent federal and state taxation of wealth transfers and of income. Part III considers our experience with horizontal federal-state tax coordination in connection with federal efforts to harmonize or restrain state income, excise, and property taxes. Part IV examines pending congressional proposals for federal-state tax coordination. Part V concludes.

II. VERTICAL FEDERAL-STATE TAX COORDINATION: CONCURRENT TAX BASES

Historically, the federal government and the states have exercised their taxing powers concurrently over two tax bases: income (through both individual and corporate income taxes) and wealth transfers (through estate and gift taxes). Federal-state tax coordination (or the lack thereof) in both contexts illustrates both the promise and pitfalls of such tax coordination.

A. Wealth Transfer Taxes

1. Historical Background

Perhaps the most illuminating chapter in the history of federal-state tax
coordination - and one that is still being written - involves the coordination of federal and state estate and inheritance taxes ("death taxes"). Death taxation has a long history in the United States at both the federal and state levels. The federal government levied death taxes of various types at brief intervals beginning in the late eighteenth century (including the periods 1798-1802, 1861-70, and 1898-1902). Death taxes were likewise among the earliest levies employed by the states, beginning with Pennsylvania's inheritance tax in 1826, followed by similar taxes in Louisiana (1828), Virginia (1844), and Maryland, North Carolina, and Alabama shortly thereafter.

By 1916, 43 of the (then) 48 states had adopted some form of inheritance tax and state spokesmen regarded the taxation of bequests as their "special preserve."

2. The Federal Estate Tax of 1916 and the Adoption of the Credit for State Death Taxes

In 1916, Congress enacted an estate tax that laid the foundation for federal and state death taxation for the next century. The primary motivating factor for the tax was the need to raise revenue in connection with World War I. The U.S. Supreme Court sustained the levy as an "indirect" tax on the transfer of property at death over the objection that it was a "direct" tax on property and therefore unconstitutional because it was not apportioned among the states by population.

The enactment of the federal estate tax gave rise to intensified controversy over federal-state tax relations in the realm of death taxation, which had been the focus of attention for some time. A decade earlier, representatives of state interests vigorously opposed President Theodore Roosevelt's proposal for a federal inheritance tax. They contended that death taxes should be considered as lying exclusively within the states' domain, particularly in light of the states' long and consistent reliance on this source of revenue as contrasted with the federal government's sporadic reliance on such levies.

Following World War I, state spokesmen demanded that the federal estate tax be repealed, reiterating their position that death taxes should be the exclusive province of the states. When Congress failed to respond immediately to these demands, a levy that was initially regarded as a temporary wartime measure became a lightning rod for debate over the proper role of federal and state governments in the field of estate and inheritance taxation, particularly in light of pressures on state legislatures to raise revenues. By 1922, every state but two (Florida and Alabama) had a death tax and controversy increased over the propriety of continuing the federal estate tax as a permanent part of the nation's tax structure.

As a short-term solution to this problem, Congress provided a 25 percent credit for state death taxes paid against the amount due under the federal estate tax, thereby effectively ceding one-quarter of the death tax base to the states. Pressure nevertheless continued for a complete withdrawal of the federal government from the death tax field and the continuing opposition to the federal estate tax culminated in two conferences in 1925 held under the auspices of the National Tax Association. These conferences resolved that the federal government should, in fact, withdraw from the death tax field within a six-year period and in the interim should increase the 25 percent credit to 80 percent.

There was, however, an additional issue - one of interstate tax competition - that played a role in the ultimate resolution of the issue of the federal-state tax coordination controversy, which illustrates how questions of horizontal tax coordination can affect the resolution of questions of vertical tax coordination. One of the objections of those who opposed repeal of the federal estate tax was that its elimination would lead to a "race to the bottom" among states in their competition to attract wealthy residents - a competition that would undermine the role of death taxes altogether as a significant source of state revenue. These fears were exacerbated by Florida's amendment of its constitution in 1924 to prohibit inheritance taxation in an effort to lure...
residents from other states to locate (or at least retire) in Florida. n10 Those who were concerned about such interstate tax competition therefore urged the continuation of the federal estate tax, but with a credit for state death taxes to address the tax assignment issue.

The compromise that emerged from this controversy was the recognition, on the one hand, that the federal estate tax would be a permanent feature of the nation's tax structure, and, on the other hand, that the states had a legitimate claim to death tax revenues. The compromise was embodied in legislation in 1926 increasing the 25 percent credit for state death taxes paid (adopted two years earlier) to 80 percent of the amount due under the federal estate tax. n11 The legislation was generally viewed as serving two objectives. First, it represented a willingness of Congress to cede 80 percent of the death tax base to the states on a permanent basis and to reduce the aggregate federal-state tax burden on estates and inheritances. Second, the credit served the function of effectively providing a minimum state death tax regime that would deter interstate tax competition, because states would presumably be unable to resist the opportunity of enacting death taxes (at no tax cost to the their resident decedents or estate beneficiaries), because the state death tax would add no net tax burden as long as it did not exceed 80 percent of the federal tax burden.


The provision of the federal credit for state death taxes had a profound impact on federal-state tax coordination as 80 percent of the death tax base was allocated to the states and the states accommodated their death taxes to absorb the full amount of the credit that a taxpayer could claim under federal law. Indeed, for the balance of the twentieth century, the evolution of state death tax regimes reflected the states' increasing tendency to modify their statutes to adopt so-called "pickup" or "sponge" taxes designed to absorb the maximum federal estate tax credit and to eliminate estate or inheritance taxes independent of the pickup tax. n12

During this period, Congress abandoned the 80/20 "tax base sharing" formula. In 1932, when Congress increased federal estate tax rates, it nevertheless froze the available credit for state death taxes that was available under the lower 1926 rates. Congress continued this pattern with future changes in the federal estate tax rates, so that the available credit continued to reflect the 80 percent limitation based on 1926 rates and exemptions. Despite the modification of the original tax base allocation between federal and state governments, the basic pattern remained the same with the state statutes largely designed to absorb the maximum available federal tax credit.

In 2001, every one of 50 states had an estate tax that, in one form or another, was linked to the federal estate tax credit. Thirty-seven states and the District of Columbia imposed an estate tax that equaled the amount of the federal credit for state death taxes, and they imposed no other estate or inheritance tax independent of the levy designed to absorb federal estate tax credit. n13 The remaining 13 states imposed their own "independent" inheritance or estate taxes in conjunction with a residual pickup tax. n14 In these states, state laws specified that if the amount of the "independent" state death tax is less than the credit allowed against the federal estate tax, the state tax is increased to the full amount of the available credit. Three of these thirteen states were phasing out their separate taxes and were scheduled to rely exclusively on the pickup tax in the future. n15 In 2001, $6.4 billion (or 27 percent of the net federal estate tax revenue of $23.7 billion) was allocated to the states by virtue of the state death tax credit. n16

4. The Phase-Out of the Federal Estate Tax and the End of Federal-State Death Tax Coordination

In 2001, as part of the tax cutting program of President George W. Bush, Congress repealed the federal estate tax (over a ten-year period), and, at the
same time, eliminated the credit for state death taxes (over a four-year period). n17 Under the "sunset provisions" of the 2001 legislation, the estate tax was scheduled to reemerge, phoenix-like, in its pre-2002 form (including the credit for state death taxes). n18 In fact, in late 2010, Congress temporarily reinstated the federal estate tax through 2012. n19 The temporarily resurrected tax, however, was an emaciated rendition of the once robust levy. Whereas the pre-2002 version of the tax applied to estates in excess of $675,000 and at rates up 55 percent, the post-2010 version of the tax exempted all estates below $5 million with rates capped at 35 percent. n20

The reduced profile of the revived federal estate tax was hardly surprising in light of existing anti-tax sentiment in the United States and particular animosity towards the federal "death tax." n21 More importantly for present purposes, however, Congress did not reinstate the credit for state death taxes in the 2010 legislation. Furthermore, it appears unlikely, given current federal revenue concerns, that the credit for state death taxes will be resuscitated in the future. It is therefore useful to discuss what is probably the final chapter in federal-state tax cooperation in the death tax field.

The reduction of the federal estate tax, and the repeal of the federal credit for state death taxes, had dramatic implications for federal-state tax coordination in the domain of death taxation. The actions at the federal level effectively eliminated the state pickup tax base in many instances. Unless states responded to these changes by severing the relationship between their death tax and the existence of the federal estate tax and the availability of a federal estate tax credit, they confronted a shrinking and, ultimately, disappearing death tax.

Of the 50 states that had some form of federally based death tax in 2001, 28 had no death tax at all by 2012, because their levies were inextricably linked to the existence of a federal levy and the federal death tax credit, n22 and they had taken no action to enact an "independent" death tax. Of the remaining 22 states with some form of death tax, many of these states' tax regimes were mere shadows of their former selves, because their residual pickup taxes had disappeared and they were left only with their relatively modest "independent" inheritance or estate taxes. n23 Consequently, as one observer noted, "[i]n an odd twist of fate," state death taxes "historically regarded as most appropriately a state-level tax, are quickly becoming an artifact of the past at the state level." n24 In short, if one is looking for a cautionary tale in the history of federal-state tax coordination in the United States, there is no better place to look than the death tax regime, n25 as it has variously embodied both the best and the worst of federal-state tax coordination at various junctures in our history.

B. Income Taxes

1. Federal-State Tax Base Conformity

As the U.S. Supreme Court has observed, "[c]oncurrent federal and state taxation of income ... is a well-established norm," n26 and, "[a]bsent some explicit directive from Congress, we cannot infer that treatment of ... income at the federal level mandates identical treatment by the States." n27 In point of fact, there has never been any such "mandate," despite Congress's recognized power to require national and subnational uniformity. n28 Moreover, while Congress at one point offered to have the federal government administer state personal income taxes if the states would closely conform their taxes to the federal model, not a single state accepted the offer. n29 The law embodying the offer was ultimately repealed for lack of use. n30 This episode in the saga of federal-state tax coordination is a testament to deeply held beliefs about state sovereignty - and perhaps to the power of deeply entrenched state tax bureaucracies - that can impede intergovernmental tax coordination.

Despite the lack of any congressional mandate for state conformity to the
federal income tax model, state personal and corporate income taxes in fact closely conform to the federal income tax. The pressure for conformity comes from "market" forces, namely, pressure from taxpayers for easing compliance and auditing burdens. At one time, some states adopted the most extreme form of federal conformity, under which the state tax was simply a percentage of the federal tax. Although no state embraces that method today, the overwhelming majority of states with broad-based income taxes employ federal adjusted gross income (personal income before personal exemptions or deductions) or federal taxable income as the computational starting point for determining state taxable income.

One of the consequences of having de facto conformity in federal and state income tax bases is that base-broadening or base-narrowing at the federal level tends to generate a response at the state level, because failure to respond ordinarily increases or decreases state tax revenues in the absence of a state rate adjustment. The Federal Tax Reform Act of 1986, for example, broadened the federal personal income tax while lowering its rates. Some deductions were eliminated, others were substantially limited, and the treatment of a variety of specific items was altered - all in the name of simplification in a revenue-neutral fashion (because federal rates were lowered). For the overwhelming majority of states whose tax bases were tied to the federal base but whose tax rates were independent of the federal rate structure, base-broadening at the federal level offered the prospect of substantial increases in tax revenues if the states did not lower their own rates as the federal government had done. In fact, 27 of the 40 states with broad-based personal income taxes enacted reforms during late 1986 and 1987, with most of the states returning at least a portion of the so-called revenue "windfall" to state taxpayers. n31 eased by the 1976 Tax Reform Act to provide that the FSTCA would be effective on the first January 1 that was more than one year after at least one state entered into such an agreement. Id. The 1976 Tax Reform Act also made it clear that the federal collection plan was to be administered without added costs to the states - a provision that was adopted in response to suggestions that the states would or might be charged for the services provided by the federal government. Stoltz, Otto G., and George A., Purdy, "Federal Collection of State Individual Income Taxes," 1977 Duke Law Journal 1 (1977), pp. 59-141, at p. 92.

By contrast, when Congress narrows the federal tax base in order to stimulate the economy, it creates the opposite dilemma for the states. For example, Congress's post- September 11, 2001, economic stimulus package gave rise to conformity issues for the states. In the Job Creation and Worker Assistance Act of 2002, Congress provided for an additional first-year depreciation allowance to encourage investment. The impact of this so-called "bonus depreciation" on state revenues - assuming they took no action to decouple their tax regimes from the federal model - was substantial. Facing severe budget shortfalls even without the revenue impact of bonus depreciation, many states reacted by decoupling their tax regimes from the federal tax regime insofar as bonus depreciation was concerned. Some states enacted legislation completely decoupling from the bonus depreciation provisions, other states partially decoupled, and yet other states conformed to the federal rules. Needless to say, such lack of conformity between state and federal tax bases can create havoc for taxpayers and revenue administrations. n33

2. Tax "Concessions"

There are several federal income tax provisions that reflect a sensitivity to the existence of concurrent taxation, and the concerns of federal-state tax coordination, even if they may more properly be characterized as unilateral tax "concessions" by the Congress rather than "coordination" of concurrent tax regimes. Among these are the deduction from the federal tax base for state income and property taxes and the exclusion from the federal income tax base of interest from state and local government bonds.
a. Deductibility of State and Local Taxes from the Federal Income Tax Base

State and local taxes have always been deductible, in whole or in part, from the federal income tax base, at least for those who itemized their deductions. The deduction has been available whether or not such taxes were associated with the production of income, in which case the deduction would be appropriate as a matter of principle in arriving at the proper definition of taxable income. For this reason, such deductions (when not associated with the production of income) have generally been regarded as "tax expenditures" or subsidies that the federal government provides to the states. Accordingly, they may be regarded as form of revenue sharing. For fiscal year 2012, for example, the estimated fiscal significance of the deductions from federal income taxes for "nonbusiness" state and local government income taxes, sales taxes, and personal property taxes, which the tax expenditure budget characterizes as "general purpose fiscal assistance," amounted to $51 billion. The fiscal significance of the deduction for taxes on real property amounted to another $26.5 billion.

Historically, virtually all state and local taxes were deductible from the federal income tax base. Over the past half-century, however, the scope of the deduction has narrowed. In 1964, Congress altered the nature of the deduction from one generally permissible unless explicitly denied to one that was permitted only for taxes explicitly mentioned. It thereby eliminated the deduction for so-called "sin" taxes (excise taxes on alcohol and tobacco). In 1978, in the midst of an energy crisis, Congress eliminated the deduction for state gasoline taxes. The most significant change occurred as part of the Tax Reform Act of 1986, which eliminated the deduction for state and local sales taxes, as part of the general policy to broaden and simplify the federal tax base in a revenue neutral manner. In 2004, however, Congress reinstated the deduction for residents of states without income taxes. Currently, the most significant deductions are for state income and local real property taxes. There is an ongoing policy debate about whether the deduction for state income taxes should be eliminated.

b. Exclusion for Interest from State and Local Government Bonds

The other significant tax concession - with a "cost" to the federal government estimated at value of $23.1 billion for fiscal year 2012 - is the exclusion from federal income tax of interest from state and local government bonds. Although for many years the immunity of state and local bond interest from federal taxation was thought to be constitutionally required, with the narrowing of the scope of the intergovernmental tax immunity doctrine, this view was ultimately abandoned. In 1985, the U.S. Supreme Court explicitly overruled an earlier case holding that interest from state bonds was constitutionally immune from tax and declared that "a nondiscriminatory federal tax on the interest earned on state bonds does not violate the intergovernmental tax immunity doctrine." The exclusion of such interest from federal income taxation nevertheless survives as a matter of congressional legislation, which has embedded that principle in the Internal Revenue Code.

III. HORIZONTAL FEDERAL-STATE TAX COORDINATION

A. Overview

Although there have occasionally been proposals for broad-based federal legislation providing for horizontal state tax coordination, such as congressional bills providing for a uniform state corporate income tax apportionment formula, no federal law providing for wide-ranging horizontal state tax coordination has ever been enacted. Instead, virtually the entire body of federal law addressed to horizontal state tax coordination has focused on narrow, industry-linked issues, often by limiting the states' power to tax in precisely defined contexts. Indeed, much of this legislation may more properly be characterized as prohibiting the exercise of state tax power, whether wisely or not, rather than "coordinating" it. For example, federal legislation
* forbids the states from taxing railroad, motor carrier, and air carrier property more heavily than other commercial and industrial property; n43
* imposes limitations on the states' power to levy stock transfer taxes; n44
* prohibits the states from imposing user charges in connection with the carriage of persons in air commerce; n45
* supersedes any and all State taxes insofar as they now or hereafter relate to any employee benefit plan instituted pursuant to the Employee Retirement Income Security Act (ERISA); n46
* prohibits the states from imposing electrical energy taxes discriminating against out-of-state purchasers; n47
* prohibits state and local governments from taxing flights of commercial aircraft or any activity or service aboard such aircraft unless the aircraft takes off or lands in the taxing jurisdiction; n48
* prohibits localities from taxing providers of direct-to-home satellite services; n49
* limits state and local franchise fees on cable operators; n50
* prohibits a state, other than the state of the employee's residence, from taxing the employee's compensation from an interstate rail carrier, motor carrier, or merchant mariner; n51
* limits the states' authority to require withholding of income taxes from certain employees of water carriers; n52
* prohibits states from taxing interstate passenger transportation by motor carriers; n53 it imposes specified restraints on state taxation of transactions over the Internet; n54
* authorizes, under specified conditions, state taxation of charges for mobile telecommunications services; n55
* bars state taxes whose "purpose" is to provide "compensation for claims for any costs of response or damages or claims which may be compensated under [the "Superfund" Act]"; n56 and
* prevents states from imposing income taxes on the "retirement income" of nonresidents. n57

Even what is arguably the broadest piece of legislation that provides for federal-state tax coordination - the provision of a uniform jurisdictional threshold for taxation of income from interstate commerce - is limited to income from sales of tangible personal property, and thus excludes the increasingly important part of the economy that derives income from services and intangibles. n58

If there is a leitmotif running through the federal legislation addressed to horizontal tax coordination (broadly conceived to include tax prohibitions), it is probably that the legislation typically constitutes a targeted response to a specific problem. For example, a number of the federal provisions were direct responses to U.S. Supreme Court decisions:

* The jurisdictional restraint on state taxation of income from interstate commerce derived from the sale of tangible personal property n59 was designed to confine the impact of Northwestern States Portland Cement Co. v. Minnesota, n60 which sustained the states' power to impose a fairly apportioned,
nondiscriminatory tax on net income derived from interstate commerce.

* The prohibition on state taxation of interstate passenger transportation by motor carriers n61 was designed to overrule Oklahoma Tax Commission v. Jefferson Lines, Inc., n62 which sustained an unapportioned tax on the sale of bus tickets for interstate transportation.

* The bar against states' imposition of user charges in connection with the carriage of persons in air commerce n63 was designed to overrule Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc., n64 which sustained the states' power to impose charges to recoup the costs of airport construction and maintenance.

In addition to legislation responding to specific court decisions, some of the legislation was addressed to specific abuses (or perceived abuses), such as the assessment of railroad and other transportation property at a higher percentage of fair market value than that applied to other commercial and industrial property. n65 Other provisions were designed to protect identifiable federal interests, such as federally authorized employee benefit plans n66 or the Outer Continental Shelf. n67 Still other provisions were intended to foster the development of particular economic activity, such as the use of the Internet. n68

Whatever one's views may be as to the wisdom of such legislation, n69 the explanation for the existing universe of horizontal federal-state tax coordination lies largely in "history" rather than "logic," as suggested at the outset. n70

B. A Review of the Record of Horizontal Federal-State Tax Coordination from a Policy and Practical Perspective

While the existing landscape of horizontal federal-state tax coordination may owe its features to history rather than logic, it is instructive to examine the results of these congressional forays into state taxation as an aid to determining "best practices" in this context. Although my examples are selective, I believe they illustrate what works and what does not work from a policy and practical perspective in the context of horizontal federal-state tax coordination.

1. What Works Well: The Mobile Telecommunications Sourcing Act

The Mobile Telecommunications Sourcing Act (MTSA) n71 enacted by Congress in 2000 is a poster child for horizontal federal-state tax coordination at its best. To understand why, one must first appreciate the constitutional rules governing state taxation of interstate telecommunications. Under jurisdictional standards that the U.S. Supreme Court articulated in Goldberg v. Sweet n72 under the dormant Commerce Clause, the "only" states with "a nexus substantial enough to tax a consumer's purchase of an interstate telephone call" are (1) "a State ... which taxes the origination or termination of an interstate telephone call charged to a service address within that State" and (2) "a State which taxes the origination or termination of an interstate telephone call billed or paid within that State."73 The implications of these standards for taxation of the wireless telecommunications industry are troublesome to say the least. Consider a business traveler who lives in State A, where she receives her monthly phone bill, and, while in State B on business, makes a call to State C. Under Goldberg, none of these states can tax the charges for the call, because none of them can claim that the call either originates or terminates in the state and is charged to a service address in the state or is billed or paid within the state.

The issues become even more complex if the customer is billed not on a transaction-by-transaction basis, but instead pays, say, $50 per month for 500 minutes of calls regardless of where the calls originate or terminate. Indeed, if the customer were billed at a flat rate, the Goldberg-mandated inquiry would
be virtually impossible, since there would be no breakdown of the charges for the calls on a transaction-by-transaction basis. A typical wireless phone bill simply shows the calls made and the minutes consumed with no itemized price allocation if one does not exceed the number of flat rate minutes. Indeed, the "charge" shown for such individual calls is "$00.00."

The difficulties involved in taxing mobile telecommunications under the regime the Court established in Goldberg led Congress, with the joint support of the telecommunications industry and the states, to enact the MTSA, which permits the states to tax all mobile telecommunications charges (for services provided by the customer's "home service provider") at the customer's "place of primary use." n74 The key operative language of the MTSA, which both expands and contracts state power to tax charges for mobile telecommunications, provides:

All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider ... are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services. n75 The expansion of state power is provided by the grant of authority to the state of the customer's home service provider to tax the charge for wireless services regardless of whether that state possesses power to tax the call under the preexisting standards of Goldberg v. Sweet.

The contraction of state power is contained in the final clause that prevents any state other than the state of the customer's home service provider from taxing such charges, even if that state possessed power under Goldberg v. Sweet to tax the charge.

The MTSA is a model for federal-state horizontal tax coordination. It judiciously employs Congress's power to both expand and restrain state tax power in a manner that allows taxes to be collected in a sensible manner and at the same time protects taxpayers from multiple taxation. It is thus a win-win solution for all concerned and constitutes a marked improvement over the state of play prior to the enactment of the legislation. n76

The complexity of the system induced a few states to coordinate their fuel tax collection. In 1983, three states initiated ITFA. Shortly thereafter, a National Governors Association working group, funded by Congress, proposed a "Model Base State Fuel Use Tax Reporting Agreement," which incorporated the earlier ITFA concepts. By 1990, sixteen states had joined ITFA. A year later, Congress took a critical step - essentially making the states an "offer they could not refuse" - by requiring that "after September 20, 1996, no State shall establish, maintain, or enforce any law or regulation which has its fuel use tax reporting requirements ... which are not in conformity with the International Fuel Tax Agreement." Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, [Sec.] 4008(g), 105 Stat. 2154 (Dec. 18, 1991), codified at 49 U.S.C. [Sec.] 31705 (2006). States were further told that they "could not ... enforce any law or regulation which provides for the payment of a fuel use tax unless such law or regulation is in conformity with the International Fuel Tax Agreement." Id. On the other hand, states that conformed to IFTA were effectively empowered to administer and enforce motor fuel taxes through a regime that would have been virtually impossible to replicate without congressional authorization.

To make a long story short, today the 48 contiguous states and 10 Canadian provinces are signatories of ITFA. See www.itfach.org. Under IFTA, carriers designate a base reporting state to which they report all their fuel tax liabilities both in the base state and in any other state in which they operate. The carrier files its quarterly fuel use tax reports to the base state, reporting its operations in all member states. Depending on whether the carrier overpaid or underpaid its taxes at the pump, determined by the difference
between the taxes paid at the pump and the taxes owed based on where its
operations occurred, the carrier pays its base state the net taxes due or
receives a credit for the net taxes overpaid. See Pitcher, Robert C., "The
International Fuel Tax Agreement: Are There Lessons Here for Sales and Use Tax
to the other states what the carrier owes them, or accepts on its behalf credits
from the other member states. Id. The carrier's base state audits the carrier on
behalf of all the other IFTA members. Id.

In short, like the MTSA, IFTA reflects the judicious exercise of Congress's
deliberation to both expand and restrain state tax power in a manner that allows taxes
to be collected in a sensible and uniform manner and at the same time protects
taxpayers from burdensome taxation based on inconsistent rules in different
states. It thus another example of a win-win solution for both states and
taxpayers that would not have been possible without congressional intervention.

2. What Works Poorly: The Internet Tax Freedom Act

The Internet Tax Freedom Act (ITFA) n77 enacted by Congress in 1998 is a
poster child for horizontal federal-state tax coordination at its worst. ITFA is
normatively flawed, logically incoherent, and technically complex if not
incomprehensible. Although I can touch only briefly on each of these problems here,
it should suffice to support the conclusion, and I have provided more detailed
proof elsewhere. n78

ITFA imposed a three-year moratorium (subsequently extended through 2014 n79) on
three types of taxes: (1) taxes on Internet access; (2) discriminatory taxes on
electronic commerce; and (3) multiple taxes on electronic commerce.

a. Normative Concerns

While a normative case can surely be made for barring "discriminatory" or
"multiple" taxes on electronic commerce, ITFA's definition of these terms
(considered below n80) sweeps so much more broadly than their common
understanding that ITFA's bar on such taxes basically raises the question as to
whether electronic commerce should be taxed at all. In this respect, it raises
the same question as that raised by the blanket prohibition of taxes on Internet
access. As Charles McLure and I concluded after a detailed normative analysis of
ITFA, n81 the case for congressional intervention was mixed:

The case for exempting Internet access by households is weak, no matter how
Internet access is defined (narrowly, as embracing only connection to the
Internet or more broadly to include telecommunications and/or digital content).
Even an exemption for only basic Internet access is an extremely inefficient way
to achieve the posited objectives. On the other hand, all business purchases of
Internet access, telecommunications, and digital content should be tax-exempt.
n82

b. Logical Concerns

Even if one were undisturbed by the normative concerns raised by ITFA, the
legislation suffers from serious logical defects. For example, ITFA bars
multiple taxation of electronic commerce and, for this purpose, defines a
multiple tax as any tax that is imposed by one State...on the same or
essentially the same electronic commerce that is also subject to another tax
imposed by another State...(whether or not at the same rate or on the same
basis), without a credit (for example, a resale exemption certificate) for taxes
paid in other jurisdictions. n83 Congress excluded from this definition sales or
use taxes imposed concurrently by a state and its political subdivisions on the
same electronic commerce and "a tax on persons engaged in electronic commerce
which may also have been subject to a sales or use tax thereon." n84

Although one can discern Congress's objective in enacting this provision
Moreover, Congress apparently believed that two states can tax "the same" or "essentially the same" electronic commerce, even if the two levies are not imposed "on the same basis." Does this mean, for example, that Texas may not impose a sales or use tax on computer software transmitted via the Internet from a Washington State software producer, because "essentially the same electronic commerce" was subject to Washington's Business and Occupation Tax? Or is this the situation to which the "savings clause" was directed (i.e., "a tax on persons engaged in electronic commerce"), which is not regarded as a "multiple tax" even if the same electronic commerce is subject to sales or use tax? If it is, however, the savings clause may defeat Congress's objective, because many state sales taxes are legally imposed on the vendor for the privilege of engaging in selling activities n85 (including, one would think, activities in electronic commerce). Hence, one could argue that duplicative sales or use taxation of electronic commerce is permissible as long as the legal incidence of one state's sales tax falls on the seller.

c. Technical Concerns

Beyond the normative concerns and concerns with the internal logic of the legislation, ITFA is hideously complex and is permeated with technical flaws. Merely describing the prohibition on taxation of Internet access and the struggles of state courts and administrative tribunals with its meaning makes the point. ITFA was originally enacted in October 1998 as a three-year moratorium barring states from taxing charges for "a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet." n86 However, a grandfather provision excluded from ITFA's scope a tax on Internet access that was "generally imposed and actually enforced prior to October 1, 1998," n87 and it also excluded the term "telecommunications services" from the definition of Internet access. n88 In November 2001, Congress retroactively extended ITFA for two years through October 2003. n89

In late 2004, Congress again retroactively extended the act, this time through November 2007. n90 The 2004 extension of the moratorium added language making it clear that all forms of Internet access were covered by the moratorium, including high-speed wireline (DSL) and wireless service (i.e., telecommunications services "purchased, used, or sold by a provider of Internet access to provide Internet access"). n91 At the same time, the 2004 ITFA extension provided that the prohibition did not apply to any tax on a voice or similar service using Internet Protocol (voice over Internet Protocol, or VOIP), except to the extent that the services were incidental to the Internet access (e.g., voice-capable email or instant messaging). n92

In 2007, Congress yet again extended the act for an additional seven years through November 1, 2014. n93 The 2007 ITFA amendments expanded the definition of "Internet access" to include "a home page, electronic mail, and instant messaging (including voice-and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity," n94 whether packaged with Internet access or provided independently. n95

Notes 1 (2005), p. 28. In an en banc decision rejecting the taxpayer's exception to the panel decision, Concentric Network Corp. v. Pennsylvania, 897 A.2d 6 (Pa. Commw. 2006) (en banc), aff'd per curiam, 922 A.2d 883 (Pa. 2007), the court rejected the taxpayer's claim that the levy violated ITFA's bar against taxes on Internet access, on the ground that the Pennsylvania tax fell
within the "grandfather" clause preserving any tax that "was generally imposed and actually enforced prior to October 1, 1998." The en banc court also reaffirmed the panel's decision that the tax did not violate the prohibition against establishing a higher tax rate on Internet service providers than the rate generally applied to providers of similar information services delivered through other means, because "the Tax Code does not classify information service providers, nor does it establish different tax rates on information services providers." Concentric, 897 A.2d at 15. The court further observed:

Moreover, Taxpayer pays sales and use tax because it uses other companies' wirelines to provide its services. Taxpayer is not prohibited by the Tax Code from installing its own wirelines or from using some other technology to provide its services. If it chooses an alternate solution, it will not pay sales and use tax on purchases of telecommunications services. In short, the tax at issue here results not from a discriminatory tax on electronic commerce but from Taxpayer's business decisions.

Id. See also Priv. Ltr. Rul. 5715, Mo. Dep't of Revenue, June 16, 2009, available at www.checkpoint.thomsonreuters.com (otherwise applicable sales tax on provision of T1 transport lines and dial modem ports to Internet service providers for carrying Internet traffic is preempted by ITFA, as amended in 2007, because it includes telecommunications used by an Internet service provider to provide Internet services). Priv. Ltr. Rul. 5594, Mo. Dep't of Revenue, Apr. 20, 2009, available at www.checkpoint.thomsonreuters.com (otherwise applicable sales tax on lease of broadband capacity to Internet service provider is preempted by ITFA, as amended in 2007, because it includes telecommunications used by an Internet service provider to provide Internet services) .

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold--

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging amendments further excluded from the definition of "tax on Internet access" taxes that Michigan, Ohio, and Texas impose on gross receipts or gross income from business activity (in lieu of the typical state-level corporate income tax). The 2007 ITFA amendment also extended through 2014 the original act's grandfather clause covering preexisting state taxes on Internet that were "generally imposed and actually enforced prior to October 1, 1998." n96 In addition, however, the 2007 ITFA amendment adopted a more limited grandfathering provision for states that were taxing the telecommunications services that were covered by the moratorium for the first time (i.e., telecommunications services purchased, used, or sold to provide Internet access), which were grandfathered only through June 30, 2008. n97

In short, ITFA is exactly what legislation designed to effectuate horizontal federal-state coordination should not be - normatively problematic, logically questionable, and a technical nightmare.

3. What Works Passably but Defectively: Public Law 86-272

Most existing federal legislation designed to effectuate horizontal
federal-state tax coordination probably falls within the "passable but
defective" category, namely, legislation that generally achieves its typically
narrow objective, but with some collateral damage along the way. Public Law
86-272, n98 to which I have already alluded, n99 illustrates the point. As noted
above (albeit without identifying the statute by its popular appellation),
Public Law 86-272 was enacted in 1959 in direct and immediate response to the
U.S. Supreme Court's decision Northwestern States Portland Cement Co. v.
Minnesota, n100 which sustained the states' power to impose a fairly
apportioned, nondiscriminatory tax on net income derived from interstate
commerce. The statute prevents the states from taxing net income derived from
interstate

(D) does not include voice, audio or video programming, or other products and
services (except services described in subparagraph (A), (B), (C), or (E)) that
utilize Internet protocol or any successor protocol and for which there is a
charge, regardless of whether such charge is separately stated or aggregated
with the charge for services described in subparagraph (A), (B), (C), or (E);
and

(E) includes a homepage, electronic mail and instant messaging (including
voice-and video-capable electronic mail and instant messaging), video clips, and
personal electronic storage capacity, that are provided independently or not
packaged with Internet access. commerce when the taxpayer's activities in the
state are limited to the "solicitation" of orders for sales of tangible personal
property that are fulfilled by shipments from outside the state. n101

Somewhat ironically, Public Law 86-272's prohibition was designed merely as a
temporary measure - a cease fire in place, as it were - while Congress
considered broad-based legislation for horizontal tax coordination. Title II of
Public Law 86-272 assigned to the House Judiciary Committee and the Senate
Finance Committee the task of making "full and complete studies of all matters
pertaining to the taxation by the States of income derived within the States
from the conduct of business activities which are exclusively in furtherance of
interstate commerce or which are a part of interstate commerce, for the purpose
of recommending to the Congress proposed legislation providing uniform standards
to be observed by the States in imposing income taxes on income so derived."
n102 Despite a committee's production of an extensive and invaluable four-volume
study (the Willis Committee Report) that recommended broad-based legislation
providing for horizontal tax coordination, n103 Congress's failure to act on
these recommendations is, as they say, history.

What we have instead is the legacy of more than half a century of efforts to
determine the metes and bounds of a stopgap "minimum nexus" measure designed to
protect the national common market without unduly restraining the states' power
to tax. n104 Without prolonging this discussion any further, and indeed,
providing an appropriate segue into the next part of this testimony, n105 it
suffices to say that Public Law 86-272, while providing the core of tax immunity
that Congress intended, at the same time has given rise to (a) considerable
controversy over the scope of such immunity, n106 attributable in part, perhaps,
to the narrow focus of the legislation and haste with which it was enacted; (b)
an immunity based on a mid-twentieth century view of economic activity that may
no longer reflect contemporary economic reality; (c) different jurisdictional
standards depending on whether a taxpayer's income derives from the sale of
tangible personal property, on the one hand, or from services or intangibles, on
the other; and (d) extensive state tax planning to take advantage of the federal
protection.

IV. CURRENT PROPOSALS FOR FEDERAL-STATE TAX COORDINATION

In light of the checkered history of legislation addressed to federal-state
tax coordination, perhaps the first thing to say about the current spate of
legislative proposals aimed at federal-state tax coordination is that "hope
springs eternal in the human breast." n107 Among the legislative proposals
recently introduced in Congress include bills that would:

* authorize the states to require remote vendors to collect sales and use taxes on sales to in-state purchasers, regardless of their physical-presence in the state (otherwise constitutionally required under Quill n108) under specified conditions generally requiring harmonization and simplification of their sales and use tax regimes; n109

* extend the protection of Public Law 86-272 n110 beyond income from interstate commerce derived from the sale of tangible personal property to such income derived from all forms of economic activity and making other adjustments in the statute; n111

* limit and define the circumstances under which states may impose income taxes on nonresidents temporarily employed in the state; n112

* prohibit states from imposing "multiple or discriminatory" taxes on the sale or use of digital goods and services; n113

* prohibit states from imposing a "discriminatory tax" on any means of providing multichannel programming; n114

* impose a five-year moratorium on the imposition of by states or localities of any "new discriminatory tax" on mobile services, mobile service providers, or mobile service property; n115

* prohibit a state from imposing a discriminatory tax on the rental of motor vehicles, the business of renting motor vehicles, or motor vehicle rental property; n116

* prohibit a state from imposing a new unfair or inequitable E911 fee, tax, or surcharge with respect to prepaid mobile services, prepaid mobile service providers, or prepaid mobile customers; n117

* prohibit a state from imposing a tax on a nonresident individual with respect to any time the individual is present in another state; n118 and

* make permanent the moratorium on Internet access taxes and the prohibition on multiple and discriminatory taxes on electronic commerce. n119 It is plainly beyond the scope of the present endeavor to undertake a detailed analysis of any of these proposals, let alone all of them. Instead the more modest goal of this part of my testimony is briefly to examine these proposals in light of whatever lessons one might draw from the historical overview of federal-state tax coordination set forth in the preceding discussion.

A. The Main Street Fairness, Marketplace Fairness, and Marketplace Equity Acts

The Main Street Fairness Act, n120 the Marketplace Fairness Act, n121 and the Marketplace Equity Act of 2011 n122 are all designed to authorize the states, under specified conditions generally requiring harmonization and simplification of their sales and use tax regimes, to require collection of sales and use taxes with respect to sales by remote sellers, notwithstanding their lack of physical presence in the state (otherwise constitutionally required by Quill n123). Although the bills differ in their detail, such as the extent to which states must conform to the provisions of the Streamlined Sales and Use Tax Agreement ("SSUTA"), n124 the level of the exemption of "small" sellers from the tax collection requirement, and the precise extent of required harmonization, they share in common the concept of a "deal" authorizing collection of taxation from remote sellers in return for removal of existing burdens on such sellers through simplification and harmonization.

After undertaking a detailed analysis of an earlier (but essentially similar)
version of the most demanding of these bills - the Main Street Fairness Act that applies only to states that have conformed to SSUTA - and evaluating it in light of the normative principles that ought to govern congressional intervention in state tax matters, n125 Charles McLure and I concluded that legislation along the lines outlined above was "fundamentally a move in the right direction - the prescription of simplification and greater uniformity in conjunction with the removal of nexus rules that create undesirable economic consequences." n126 We observed, among other things, that "under the prescribed conditions of simplification and uniformity, nexus rules would no longer be needed to reduce complexity and thus could no longer be justified." n127 In reaching our conclusion, we also identified the requirements of (1) reasonable vendor compensation and (2) the existence of "ntical" state and local tax bases within any state as essential elements of the proposal we were endorsing. Finally, we noted that the proposed legislation struck "the proper balance between the interests of state sovereignty and those of national economic unity." n128 It respected the states' ability to establish their own tax rates, and, indeed, even went so far (perhaps further than we would have gone) as to allow the states freedom to define their own tax bases, although states were required to employ uniform definitions in determining what was and what was not taxable. At the same time, the proposed legislation imposed significant requirements on the states to harmonize and simplify their systems and thereby to provide the proper foundation for requiring collection by remote sellers without subjecting them to unreasonable administrative burdens. n129

Although I cannot speak for McLure, it is less clear to me that the other versions of the sales and use tax collection authorization legislation, at least insofar as they would authorize collection by remote vendors by states not conforming to SSUTA, would satisfy the normative criteria we identified in our earlier article. To be sure, the alternatives to the SSUTA-conformity bills do require, with respect to remote sellers, identical state and local tax bases, a single sales and use tax return, a single state-level administrative agency, the provision of adequate software to ease compliance burdens, and "hold harmless" provisions that comply with such software. n130 On the other hand, there is no provision for compensation of remote sellers, nor is there any requirement that the states harmonize the definitions in their tax bases, a key feature of the SSUTA legislation.

Despite my reservations about the merits of some of the proposals for congressional legislation addressed to state sales and use tax collection and simplification, the legislation in principle constitutes the type of federal-state tax coordination that we should applaud and encourage. Like the "poster child" identified above for such legislation, n131 the proposed legislation combines the congressional relaxation of a judicially created rule restraining state tax power along with the imposition of congressionally imposed conditions. In both cases the judicially created rule is objectionable (although for different reasons) and in both cases the congressionally imposed conditions are desirable. Accordingly, in my judgment at least, legislation of this kind is template for future federal-state tax coordination.

B. The Business Activity Tax Simplification Tax Act of 2011

The Business Activity Tax Simplification Act of 2011 n132 ("BAT Act") amends Public Law 86-272 n133 to extend its protection beyond taxes on net income from interstate commerce attributable to the sale of tangible personal property to such income attributable to any form of business activity (including the sale of services and intangibles) and to "business activity taxes" other than net income taxes, namely, gross receipts taxes. The proposed BAT Act also establishes a general nexus requirement of "physical presence" (employees, agents performing services, or property in the state), along with de minimis "safe harbor" exceptions (e.g., presence in the state for less than 15 days). Earlier in this testimony, I characterized the original version of Public Law 86-272 as legislation that "works passably but defectively"134 In my view, the 2011 version is even worse and should be characterized as legislation that "works
poorly." n135

From a normative perspective, the BAT Act is deeply flawed. As in the case of the proposed sales tax collection/simplification legislation discussed above, Charles McLure and I undertook a detailed analysis of an earlier (but essentially similar) version of the BAT Act from a normative perspective, n136 and we concluded that it was "clearly inconsistent with the normative considerations" there identified. n137 Among other things, we observed that it would "expand the scope for the creation of 'nowhere income,'" n138 i.e., attribution of income to states where the taxpayer was not taxable, and thus aggravate the opportunities for tax planning and the revenue loss created by Public Law 86-272. We also addressed arguments in support of the legislation that we considered to be unsound, in particular, the suggestion by representatives of the business community that businesses that are not physically present in a state receive no benefits from the state and therefore should not be required to pay taxes to such state. n139 As we pointed out, this "line of reasoning is indefensible, whether the benefits corporations receive are defined broadly, to mean the ability to earn income, or defined more narrowly to mean specific benefits of public spending, one of which is the intangible but important ability to enforce contracts, without which commerce would be impossible." n140

Moreover, it seems odd, to say the least, that Congress, under the guise of federal-state tax coordination, should be enshrining as a touchstone of taxability a standard first promulgated over half-century ago as a stop-gap measure n141 and one more appropriate for the economy of the nineteenth century than of the twenty-first. If certainty and administrability are the objectives - and these clearly are legitimate objectives that would justify congressional legislation prescribing state nexus rules - there are alternatives for certain and administrable nexus rules that make much more practical and economic sense than physical presence. Among these would be nexus rules based on sales or apportionment factors in the state. n142

C. Mobile Workforce State Income Tax Simplification Act of 2011

The Mobile Workforce State Income Tax Simplification Act of 2011 n143 prohibits the states from imposing income taxes (and requiring withholding of such taxes) on the wages or other remuneration earned by nonresident employees in the state unless they perform duties there for more than 30 days during the year. In my view, this is another example of what "works well" in federal-state tax coordination. To be sure, there is a clear intrusion into state sovereignty, because the states generally enjoy the power to tax the income that nonresidents earn within the state. n144 On the other hand, the burden on nonresidents from complying with tax reporting obligations arising out of temporary employment in the state and - perhaps even more importantly from the standpoint of our national economic market - the burden on employers of complying with withholding obligations with respect to such employees can be extremely onerous. Moreover, it is worth keeping in mind that we are talking largely about which state gets to tax the income in question, not whether the income gets taxed at all, because most states impose personal income taxes on all of the income earned by their residents, subject to a credit for taxes paid to other states. n145

As I testified before a congressional committee considering an earlier (but similar) version of the legislation:

In my opinion, enactment of the Mobile Workforce State Income Tax Fairness and Simplification Act of 2007 would constitute an appropriate exercise of congressional power. In expressing this opinion, I wish to make it clear that I believe the states have a legitimate interest in assuring that workers who earn income in the state pay their fair share of the state tax burden for the benefits and protections that the state provides to them. The states' legitimate interest, however, must be balanced against the burdens that are imposed on multistate enterprises, and on the conduct of interstate commerce, by uncertain,
inconsistent, and unreasonable withholding obligations imposed by the states. Indeed, it is telling that a number of states themselves have implicitly recognized these burdens by adopting reciprocal provisions exempting income, or certain classes of income, earned by nonresidents in their state if the nonresident's home state grants a similar exemption to residents of the exemption-granting state. n146

D. Prohibitions on "Discriminatory" Taxation of Specified Activities

A number of bills have been introduced into Congress to prohibit "discrimination" against specified activities. These include

* the Digital Goods and Services Tax Fairness Act of 2011 to prevent states from imposing "multiple or discriminatory" taxes on the sale or use of digital goods and services; n147

* the State Video Tax Fairness Act of 2011 to prohibit states from imposing a "discriminatory tax" on any means of providing multichannel programming; n148

* the Wireless Tax Fairness Act of 2011 to provide a five-year moratorium on the imposition by states or localities of any "new discriminatory tax" on mobile services, mobile service providers, or mobile service property; n149

* the End Discriminatory State Taxes for Automobile Renters Act of 2011 to prohibit states from imposing discriminatory taxes on the rental of motor vehicles, the business of renting motor vehicles, or motor vehicle rental property; n150 and

* the E911 Surcharge Fairness Act of 2011 to prohibit states from imposing new unfair or inequitable E911 fees, taxes, or surcharges with respect to prepaid mobile services, prepaid mobile service providers, or prepaid mobile customers. n151

These proposals resemble the targeted proposals typical of the limited federal-state tax coordination we have witnessed over the years including legislation forbidding states from taxing railroad, motor carrier, and air carrier property more heavily than other commercial and industrial property; n152 legislation forbidding the states from imposing electrical energy taxes discriminating against out-of-state purchasers; n153 and legislation imposing "discriminatory" taxes on electronic commerce. n154 As the preceding discussion suggests, in my judgment these narrow legislative initiatives have a mixed track record as to whether they work well, work poorly, or work passably but defectively. Because the category into which each of the proposals described above falls obviously depends on one's perspective. I would only suggest, at a minimum, that anyone who takes the time to read the efforts to define "discrimination" and related terms in these bills would have a hard time concluding that they would rank above "works passably but defectively." Indeed, the language of some of the proposals is so badly crafted that, at least in their present form, it is hard to imagine how they would not work "poorly." Perhaps one can hope for that happy day when every industry and every form of economic activity is protected by a federal statute prohibiting "discriminatory" taxation, a term that will be defined to require a uniform tax on household purchases (thus requiring a "sale for resale" exemption for all business purchases), so we would actually end up with an ideal retail sales tax in the United States. n155

E. The Telecommuter Tax Fairness Act of 2011

The Telecommuter Tax Fairness Act of 2011 would prohibit states from imposing a tax on a nonresident individual with respect to any time the individual is present in another state. n156 This legislation is designed essentially to bar New York's "convenience of the employer" doctrine for determining the taxability of nonresidents' income associated with New York-based employment. Although I
agree with this legislation as a matter of principle, the case for congressional intervention into the controversy over New York's taxation of nonresidents pales by comparison to the significant issues that ought to be on Congress's federal-state tax coordination agenda.

V. CONCLUSION

If there is any overarching conclusion that one can draw from this overview of federal-state tax coordination, it may simply be that Congress should keep in mind the admonition of the Hippocratic Oath - "first, do no harm" - in considering proposals for federal legislation that affect state taxation. Although Congress possesses power to provide for federal-state tax coordination that unquestionably advances the interests of all stakeholders, and it has sometimes exercised its power to achieve that end, it has also exercised its power in ways that unquestionably fail to meet that standard. Accordingly, in returning to the point with which this


Inheritance taxes are taxes imposed on the right or privilege of receiving property measured by the share of the decedent's property transferred to the beneficiary. The tax rate often varies by reference to the closeness of the beneficiary's relationship to the decedent. Estate taxes, on the other hand, are taxes on the right or privilege of transferring property at death, measured by the value of the estate. The estate tax rate generally takes no account of the relationship of the recipient to the decedent. Indeed, the estate tax attaches before, and is independent of, the receipt of property by the legatee or distributee. See Hellerstein, Hellerstein, and Swain, supra note 1, at [Para.] 21.02.


U.S. Advisory Commission on Intergovernmental Relations, supra note 4, at p. 27.


Lowndes, Charles L.B., Robert Kramer, and John H. McCord, Federal Estate

n10 Although Florida ultimately repealed this amendment in light of the developments discussed immediately below, it continues to attract residents from other states as a result of its constitutional prohibition on personal income taxation.

n11 See IRC [Sec.] 2011.

n12 See Conway, Karen S., and Jonathan C. Rork, "Recent Developments in State 'Death' Taxes," 23 State Tax Notes 12 (2002), pp. 1041-45. The state death tax statutes designed to absorb the federal estate tax credit took various forms. Those states with preexisting death taxes typically imposed additional pickup taxes measured by the difference, if any, between the preexisting death tax liability and the maximum allowable federal estate tax credit. Such provisions accounted for the existence of two death taxes in a number of states. Other states adopted a single pickup tax measured by the federal estate tax credit and repealed preexisting state death taxes, if any.


n14 Id.

n15 Id. at 677.


n18 Id. [Sec.] 901, 115 Stat. at 150.


n20 Id. [Sec.] 302.


n23 See id. and supra note 14 and accompanying text. Moreover, in March 2012, Indiana adopted legislation phasing out its inheritance tax over nine years beginning in 2013 and ending on December 31, 2021. SB 293 (signed by Governor Daniels on March 20, 2012).

n25 Indeed, wholly apart from federal-state tax coordination, the uncertainty created at the federal level in light of Congress's peripatetic approach to the estate and gift tax is a cautionary tale worthy of study on its own. See Kaufman, Beth S., "The Federal Estate and Gift Tax: A Case Study in Uncertainty," 64 National Tax Journal 4 (2011), pp. 943-948.


n27 Id.

n28 Thus the U.S. Supreme Court has declared that "[i]t is clear that the legislative power granted to Congress by the Commerce Clause of the Constitution would amply justify the enactment of legislation requiring all States to adhere to uniform rules for the division of income." Moorman Manufacturing Co. v. Bair, 437 U.S. 267, 280 (1978).

n29 Prior to its repeal, the Federal-State Tax Collection Act of 1972 (the FSTCA), 26 U.S.C. [Subsec.] 6361-65 (prior law), provided that a state with a "qualified State individual income tax" (i.e., a tax closely conforming to the federal model) could enter into an agreement with the United States to have its individual income taxes collected and administered by the federal government. Among other requirements, the qualifying state income tax had to adopt the federal income tax regulations "as in effect from time to time" under the Internal Revenue Code. Id. [Sec.] 6362. As originally enacted, the FSTCA provided that it would not be effective until at least two states with collectively more than 5 percent of the federal tax returns had entered into an agreement under the statute. That requirement was

n30 The statute was repealed in 1990, eighteen years after its enactment.


n32 Hellerstein, Hellerstein, and Swain, supra note 1, at [Para.] 20.02.


n36 Id. at 39.

school and municipal taxes ... not including those assessed against local benefits." Id. see also Oliver, Philip D., Tax Policy (New York: Foundation Press, 2nd ed., 2004), p. 839.


n39 IRC [Sec.] 103.

n40 See Hellerstein, Tax Aspects of Fiscal Federalism, supra note 1, at 35-37.


n42 See Hellerstein, Hellerstein, and Swain, supra note 1, at [Para.] 8.06 and sources there cited.


n57 4 U.S.C. [Sec.] 114 (2006). "Retirement income" is defined as income from qualified plans under the Internal Revenue Code as well as certain nonqualified plans that mirror qualified plans. Id. [Sec.] 114(b)(1).


n60 358 U.S. 450 (1959).


n64 405 U.S. 707 (1972).


n69 Charles McLure and I have elsewhere set forth at some length our views as to the normative criteria that ought to govern the question of federal intervention in state taxation in the context of three proposals designed to achieve horizontal tax coordination McLure and Hellerstein, supra note 1. Some of these views are set forth in the ensuing discussion.

n70 See supra note 2 and accompanying text (quoting New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921) (Holmes, J.)).


n73 Id. at 263.

n74 4 U.S.C. [Sec.] 116 et seq.

n75 Id. [Sec.] 117(a).

n76 An analogous model for federal-state tax coordination is reflected in Congress's endorsement of the International Fuel Tax Agreement (IFTA). IFTA had its origins in the difficulties that the states confronted in implementing their motor fuel taxes, which generally are viewed as user fees with revenues dedicated for transportation purposes. See generally Denison, Dwight, and Rex L. Facer, "Interstate Tax Coordination: Lessons from the International Fuel Tax Agreement," 58 National Tax Journal 3 (2005), pp. 591-603, on which much of the discussion of IFTA is based. For practical purposes, states have always allowed individual motorists to pay fuel taxes at the pump without attempting to determine the miles driven in a particular jurisdiction. However, states have traditionally attempted to enforce fuel taxes on large commercial motor carriers based on an apportionment of miles driven in a state. The trucking industry had generally been willing to cooperate in this effort because of the importance of highways (and highway funding) to the industry. Nevertheless, the complexities of system prior IFTA were daunting. For example, "prior to IFTA a single route from Denver to Los Angeles would require the carrier to file tax forms in five different states or to obtain permits from those five states." Id. 592.


n78 See Hellerstein, supra note 77; McLure and Hellerstein, supra note 1.

n79 See infra notes 89-97 and accompanying text.
n80 See infra notes 83-85 and accompanying text.

n81 McLure and Hellerstein, supra note 1, at 725-30.

n82 Id. at 730.


n84 Id. [Sec.] 1104(6)(B).


n87 Id.

n88 Id. [Sec.] 1104(5).


n91 Id. [Sec.] 2(c). The effect of this amendment was apparently to reverse decisions in cases like America Online, Inc. v. Pennsylvania, 932 A.2d 332 (Pa. Commw. 2007), aff'd, 942 A.2d 236 (Pa. Commw. 2008) (en banc), which held that the pre-2004 version of ITFA did not bar a Pennsylvania tax on port modem management services that, among other things, converted information transmitted over the Internet from digital to analog format for transmission to customers, and Concentric Network Corp. v. Pennsylvania, 877 A.2d 542 (Pa. Commw. 2005), which held that the pre-2004 version of ITFA did not bar a Pennsylvania tax on an Internet service provider's purchase of data transport services used to provide Internet access. Indeed, it is not even clear that the decision in Concentric was properly decided under the pre-2004 version of ITFA. The Pennsylvania tax did not apply to data-transport services purchased by cable companies and telecommunications carriers. The court held that the distinction did not violate the prohibition against "establish[ing] a classification of Internet access service providers...for purposes of establishing a higher tax rate on such providers than the tax rate generally applied to providers of similar information services delivered through other means." Pub. L. No. 105-277, [Sec.] 1104(2)(A)(iv) (1998). The court reasoned that the exclusion was permissible because "[i]t is only in their capacity as public utilities or broadcasters that the telecommunications carriers or cable operators are permitted an exclusion." Concentric, 877 A.2d at 549. As Joseph Bright has observed in commenting on this opinion, however, "[i]f the federal statutes prohibit discrimination, it does not seem to be a sufficient justification that the discrimination is created by a second state statute." Bright, Joseph, "Court's Refund Denial on Internet Data Lines May Err on Federal Statue," 37 State Tax


n94 Id. [Sec.] 4.

n95 The definition of "Internet access," as revised by the 2007 ITFA amendments, provides that "Internet access" (including voice-and video-capable electronic mail and instant messaging), video clips, and personal electronic
storage capacity; Id.

n96 See supra note 87 and accompanying text.


n99 See supra notes 59-60 and accompanying text.

n100 358 U.S. 450 (1959).


n104 This legacy is reflected in the extensive body of case law and state administrative guidance spawned by Public Law 86-272, all of which is treated in detail in Hellerstein, Hellerstein and Swain, supra note 1, at [Para.] 6.16-6.28.

n105 One of the principal current proposals pending before Congress is a broadening of Public Law 86-272.

n106 See id.


n108 Quill Corp. v. North Dakota, 504 U.S. 298 (1992); see generally Hellerstein, Hellerstein, and Swain, supra note 1, at [para.] 19.02[3].


n110 See supra notes 98-106 and accompanying text.


n123 See supra note 108

n124 SSUTA (as amended through December 19, 2011) is reproduced at www.streamlinedsaletax.org. SSUTA is a voluntary agreement among the states designed to "simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance." SSUTA [Sec.] 102. See generally Hellerstein, Hellerstein, and Swain, supra note 1, ch. 19A for a detailed consideration of SSUTA. As of early 2012, there were 20 "full member" states under SSUTA with most of the other states with sales taxes either "associate members" (in principle moving to "full member" status) or "advisory member" (nonconforming) states. See www.streamlinedsaletax.org.

n125 McLure and Hellerstein, supra note 1.

n126 Id. at 731.

n127 Id.

n128 Id.

n129 Notwithstanding our general agreement with the thrust of the SSUTA and the SSUTA-conformity legislation, we noted that there were many aspects of such legislation about which we were less than enthusiastic. Among other things, we expressed concern over the question whether SSUTA's simplification requirements would be "more than empty promises," id. at 732; we questioned whether the "small remote seller" thresholds established by SSUTA (which seem to change with every meeting of the Governing Board) made any sense, id. (they currently are a level of $5 million of "gross national remote sales," SSUTA [Sec.] 609, with various qualifications); and we noted that our support of the legislation, despite some misgivings, was based in part on our belief that we were" at a critical juncture where Congress has a unique opportunity to act" and that the SSUTA legislation may be "our 'last best chance' (at least during our lifetimes) of achieving significant, if less than perfect, reform and improvement of the state sales and use tax system." Id. The last statement is even truer today than the day we made it, as our life expectancies shrink.


n131 See supra notes 71-76 and accompanying text.


n133 See supra notes 98-106 and accompanying text.

n134 See supra Part III(B)(3).
n135 See supra Part III(B)(2).

n136 McLure and Hellerstein, supra note 1.

n137 Id. at 734.

n138 Id.


n140 Id.

n141 See supra notes 100-102 and accompanying text.


n144 Hellerstein, Hellerstein, and Swain, supra note 1, at [Para.] 20.05[1].

n145 Id. at [Para.] 20.04[2], 20.10.

n146 Hearing on H.R. 3359: Mobile Workforce State Income Tax Fairness and Simplification Act of 2007, Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 110th Cong., 1st Sess. (2007), p. 82 (testimony of Walter Hellerstein). The following states have entered into reciprocal agreements exempting compensation paid in their states to residents of other states:

STATE AGREEMENT WITH

District of Columbia MD, VA
Illinois IA, KY, MI, WI
Indiana KY, MI, OH, PA, WI
Iowa IL
Kentucky IL, IN, MI, OH, VA, WV, WI
Maryland DC, PA, VA, WV
Michigan IL, IN, KY, MN, OH, WI
Minnesota MI, ND
Montana ND
New Jersey PA
North Dakota MN, MT
Ohio IN, KY, MI, PA, WV
Pennsylvania IN, MD, NJ, OH, VA, WV
Virginia DC, KY, MD, PA, WV
West Virginia KY, MD, OH, PA, VA
Wisconsin IL, IN, KY, MI

See RIA State and Local Taxes for individual states, available at www.checkpoint.thomsonsonreuters.com ([Para.] 55,205, 55,325, and 55,875 for individual states).


n158 At least as popularly understood, whether historically accurate or not. See Wikipedia, http://en.wikipedia.org/wiki/Primum_non_nocere. testimony began - Justice Holmes's observation that "a page of history is worth a volume of logic" n159 - perhaps we should aspire to add a few more pages of "logic" to the "volume" of our history in this domain.


Read this original document at: http://finance.senate.gov/imo/media/doc/Testimony%20of%20Hellerstein.pdf
Walter Hellerstein  
Francis Shackelford Distinguished Professor in Taxation Law  
University of Georgia School of Law  
216 Rusk Hall  
Athens, GA 30602

Dear Mr. Hellerstein:

I invite you to present testimony before the Senate Committee on Finance on a hearing titled "Tax Reform: What It Means for State and Local Tax and Fiscal Policy." The hearing is scheduled for Wednesday, April 25th, and will begin at 10 AM (EST), in Room 215, Dirksen Senate Office Building. Please limit your oral testimony to five minutes to ensure sufficient time for questions. Your full written testimony will be included in the hearing record.

Please e-mail your written testimony and a short biography to sean.morrison@finance.senate.gov as soon as you are able to do so, but no later than 4 PM (EST) on Wednesday, April 18th. Please note that electronic testimony will be posted on the Finance Committee's website when the hearing begins.

I look forward to hearing your testimony.

Sincerely,

Max Baucus  
Chairman
April 24, 2012

Tax Foundation Expert to Testify on State Tax Policy

Senate Finance Committee Hearing Wednesday Morning

Washington, D.C., April 24, 2012—Tax Foundation Vice President of State and Legal Projects Joseph Henchman will testify this Wednesday before the Senate Finance Committee on how tax reform at the federal level could affect fiscal policy at the state and local level.

Senate Finance Committee Chairman Max Baucus (D-MT) will preside over the hearing “Tax Reform: What It Means for State and Local Tax and Fiscal Policy.” The hearing will take place on Wednesday, April 25th at 10:00am in room 215 of the Dirksen Senate Office Building.

Henchman’s testimony will cover sales taxes, interstates commerce, and the limits of state taxing authority, among other topics. These issues are part of the work of the Tax Foundation’s Center for State Fiscal Policy, which produces data, research, and analysis on taxation and public finance at the state and local level.

Other witnesses at Wednesday’s hearing will include Frank Sammartino of the Congressional Budget Office, Kim Rueben of the Tax Policy Center, Walter Hellerstein of the University of Georgia School of Law, and Sanford Zinman of Zinman Accounting.

The Tax Foundation is a nonpartisan research organization that has monitored fiscal policy at the federal, state and local levels since 1937. To schedule an interview, please contact Richard Morrison, the Tax Foundation’s Manager of Communications, at 202-464-5102 or morrison@taxfoundation.org.
Statement of Walter Hellerstein Distinguished Professor of Taxation Law
University of Georgia Law School

Committee on Senate Finance
April 25, 2012

I. INTRODUCTION

I am Walter Hellerstein, the Francis Shackelford Professor of Taxation and
Distinguished Research Professor at the University of Georgia School of Law. I
have devoted most of my professional life to the study and practice of state
taxation and, in particular, to federal constitutional and statutory restraints
on state taxation of interstate commerce.

I am honored by the Chairman's invitation to testify today. I welcome the
opportunity to share with the Committee my views on the implications of federal
tax reform for state taxation and, in particular, the role of Congress in
authorizing or limiting state taxation of interstate commerce. I do not appear
here on behalf of any client, public or private, and the views I am expressing
here today reflect my independent professional judgment.

My testimony provides an overview of federal-state tax coordination in an
effort to assist this Committee in determining the appropriate role of Congress
with regard to matters of state taxation. By federal-state tax coordination, I
mean both vertical tax coordination (coordination between concurrent federal and
state tax regimes) and horizontal tax coordination (coordination among state tax
regimes). If my testimony has an overriding theme, it may be best captured by
Justice Holmes's wise observation that "a page of history is worth a volume of
logic." The historical record of federal-state tax coordination provides
important lessons regarding the risks and rewards of such coordination and,
consequently, guidance for evaluating current and future initiatives for such
coordination.

Part II of this testimony considers our experience with vertical
federal-state tax coordination in connection with concurrent federal and state
taxation of wealth transfers and of income. Part III considers our experience
with horizontal federal-state tax coordination in connection with federal
efforts to harmonize or restrain state income, excise, and property taxes. Part
IV examines pending congressional proposals for federal-state tax coordination.
Part V concludes.

II. VERTICAL FEDERAL-STATE TAX COORDINATION: CONCURRENT TAX BASES
Historically, the federal government and the states have exercised their taxing powers concurrently over two tax bases: income (through both individual and corporate income taxes) and wealth transfers (through estate and gift taxes). Federal-state tax coordination (or the lack thereof) in both contexts illustrates both the promise and pitfalls of such tax coordination.

A. Wealth Transfer Taxes

1. Historical Background

Perhaps the most illuminating chapter in the history of federal-state tax coordination - and one that is still being written - involves the coordination of federal and state estate and inheritance taxes ("death taxes").

Death taxation has a long history in the United States at both the federal and state levels. The federal government levied death taxes of various types at brief intervals beginning in the late eighteenth century (including the periods 1798-1802, 1861-70, and 1898-1902). Death taxes were likewise among the earliest levies employed by the states, beginning with Pennsylvania's inheritance tax in 1826, followed by similar taxes in Louisiana (1828), Virginia (1844), and Maryland, North Carolina, and Alabama shortly thereafter.

By 1916, 43 of the (then) 48 states had adopted some form of inheritance tax and state spokesmen regarded the taxation of bequests as their 'special preserve.'

2. The Federal Estate Tax of 1916 and the Adoption of the Credit for State Death Taxes

In 1916, Congress enacted an estate tax that laid the foundation for federal and state death taxation for the next century. The primary motivating factor for the tax was the need to raise revenue in connection with World War I. The U.S. Supreme Court sustained the levy as an "indirect" tax on the transfer of property at death over the objection that it was a "direct" tax on property and therefore unconstitutional because it was not apportioned among the states by population.

The enactment of the federal estate tax gave rise to intensified controversy over federal-state tax relations in the realm of death taxation, which had been the focus of attention for some time. A decade earlier, representatives of state interests vigorously opposed President Theodore Roosevelt's proposal for a federal inheritance tax. They contended that death taxes should be considered as lying exclusively within the states' domain, particularly in light of the states' long and consistent reliance on this source of revenue as contrasted with the federal government's sporadic reliance on such levies.

Following World War I, state spokesmen demanded that the federal estate tax be repealed, reiterating their position that death taxes should be the exclusive province of the states. When Congress failed to respond immediately to these demands, a levy that was initially regarded as a temporary wartime measure became a lightning rod for debate over the proper role of federal and state governments in the field of estate and inheritance taxation, particularly in light of pressures on state legislatures to raise revenues. By 1922, every state but two (Florida and Alabama) had a death tax and controversy increased over the propriety of continuing the federal estate tax as a permanent part of the nation's tax structure.

As a short-term solution to this problem, Congress provided a 25 percent credit for state death taxes paid against the amount due under the federal estate tax, thereby effectively ceding one-quarter of the death tax base to the states. Pressure nevertheless continued for a complete withdrawal of the federal government from the death tax field and the continuing opposition to the federal estate tax culminated in two conferences in 1925 held under the auspices of the National Tax Association. These conferences resolved that the federal government should, in fact, withdraw from the death tax field within a six-year period and
in the interim should increase the 25 percent credit to 80 percent.

There was, however, an additional issue - one of interstate tax competition - that played a role in the ultimate resolution of the issue of the federal-state tax coordination controversy, which illustrates how questions of horizontal tax coordination can affect the resolution of questions of vertical tax coordination. One of the objections of those who opposed repeal of the federal estate tax was that its elimination would lead to a "race to the bottom" among states in their competition to attract wealthy residents - a competition that would undermine the role of death taxes altogether as a significant source of state revenue.

These fears were exacerbated by Florida's amendment of its constitution in 1924 to prohibit inheritance taxation in an effort to lure residents from other states to locate (or at least retire) in Florida. Those who were concerned about such interstate tax competition therefore urged the continuation of the federal estate tax, but with a credit for state death taxes to address the tax assignment issue.

The compromise that emerged from this controversy was the recognition, on the one hand, that the federal estate tax would be a permanent feature of the nation's tax structure, and, on the other hand, that the states had a legitimate claim to death tax revenues.

The compromise was embodied in legislation in 1926 increasing the 25 percent credit for state death taxes paid (adopted two years earlier) to 80 percent of the amount due under the federal estate tax. The legislation was generally viewed as serving two objectives. First, it represented a willingness of Congress to cede 80 percent of the death tax base to the states on a permanent basis and to reduce the aggregate federal-state tax burden on estates and inheritances.

Second, the credit served the function of effectively providing a minimum state death tax regime that would deter interstate tax competition, because states would presumably be unable to resist the opportunity of enacting death taxes (at no tax cost to the their resident decedents or estate beneficiaries), because the state death tax would add no net tax burden as long as it did not exceed 80 percent of the federal tax burden.


The provision of the federal credit for state death taxes had a profound impact on federal-state tax coordination as 80 percent of the death tax base was allocated to the states and the states accommodated their death taxes to absorb the full amount of the credit that a taxpayer could claim under federal law. Indeed, for the balance of the twentieth century, the evolution of state death tax regimes reflected the states' increasing tendency to modify their statutes to adopt so-called "pickup" or "sponge" taxes designed to absorb the maximum federal estate tax credit and to eliminate estate or inheritance taxes independent of the pickup tax.

During this period, Congress abandoned the 80/20 "tax base sharing" formula. In 1932, when Congress increased federal estate tax rates, it nevertheless froze the available credit for state death taxes that was available under the lower 1926 rates. Congress continued this pattern with future changes in the federal estate tax rates, so that the available credit continued to reflect the 80 percent limitation based on 1926 rates and exemptions. Despite the modification of the original tax base allocation between federal and state governments, the basic pattern remained the same with the state statutes largely designed to absorb the maximum available federal tax credit.

In 2001, every one of 50 states had an estate tax that, in one form or another, was linked to the federal estate tax credit. Thirty-seven states and
the District of Columbia imposed an estate tax that equaled the amount of the federal credit for state death taxes, and they imposed no other estate or inheritance tax independent of the levy designed to absorb federal estate tax credit.13 The remaining 13 states imposed their own "independent" inheritance or estate taxes in conjunction with a residual pickup tax.14 In these states, state laws specified that if the amount of the "independent" state death tax is less than the credit allowed against the federal estate tax, the state tax is increased to the full amount of the available credit.

Three of these thirteen states were phasing out their separate taxes and were scheduled to rely exclusively on the pickup tax in the future.15 In 2001, $6.4 billion (or 27 percent of the net federal estate tax revenue of $23.7 billion) was allocated to the states by virtue of the state death tax credit.16

4. The Phase-Out of the Federal Estate Tax and the End of Federal-State Death Tax Coordination

In 2001, as part of the tax cutting program of President George W. Bush, Congress repealed the federal estate tax (over a ten-year period), and, at the same time, eliminated the credit for state death taxes (over a four-year period).17 Under the "sunset provisions" of the 2001 legislation, the estate tax was scheduled to reemerge, phoenix-like, in its pre-2002 form (including the credit for state death taxes).18 In fact, in late 2010, Congress temporarily reinstated the federal estate tax through 2012.19 The temporarily resurrected tax, however, was an emaciated rendition of the once robust levy. Whereas the pre-2002 version of the tax applied to estates in excess of $675,000 and at rates up 55 percent, the post-2010 version of the tax exempted all estates below $5 million with rates capped at 35 percent.20

The reduced profile of the revived federal estate tax was hardly surprising in light of existing anti-tax sentiment in the United States and particular animosity towards the federal "death tax."21 More importantly for present purposes, however, Congress did not reinstate the credit for state death taxes in the 2010 legislation. Furthermore, it appears unlikely, given current federal revenue concerns, that the credit for state death taxes will be resuscitated in the future. It is therefore useful to discuss what is probably the final chapter in federal-state tax cooperation in the death tax field.

The reduction of the federal estate tax, and the repeal of the federal credit for state death taxes, had dramatic implications for federal-state tax coordination in the domain of death taxation. The actions at the federal level effectively eliminated the state pickup tax base in many instances. Unless states responded to these changes by severing the relationship between their death tax and the existence of the federal estate tax and the availability of a federal estate tax credit, they confronted a shrinking and, ultimately, disappearing death tax.

Of the 50 states that had some form of federally based death tax in 2001, 28 had no death tax at all by 2012, because their levies were inextricably linked to the existence of a federal levy and the federal death tax credit,22 and they had taken no action to enact an "independent" death tax. Of the remaining 22 states with some form of death tax, many of these states' tax regimes were mere shadows of their former selves, because their residual pickup taxes had disappeared and they were left only with their relatively modest "independent" inheritance or estate taxes.23 Consequently, as one observer noted, "[i]n an odd twist of fate," state death taxes "historically regarded as most appropriately a state-level tax, are quickly becoming an artifact of the past at the state level."24 In short, if one is looking for a cautionary tale in the history of federal-state tax coordination in the United States, there is no better place to look than the death tax regime,25 as it has variously embodied both the best and the worst of federal-state tax coordination at various junctures in our history.

B. Income Taxes
1. Federal-State Tax Base Conformity

As the U.S. Supreme Court has observed, "[c]oncurrent federal and state taxation of income ... is a well-established norm,"26 and, "[a]bsent some explicit directive from Congress, we cannot infer that treatment of ... income at the federal level mandates identical treatment by the States."27 In point of fact, there has never been any such "mandate," despite Congress's recognized power to require national and subnational uniformity.28 Moreover, while Congress at one point offered to have the federal government administer state personal income taxes if the states would closely conform their taxes to the federal model, not a single state accepted the offer.29 The law embodying the offer was ultimately repealed for lack of use.30 This episode in the saga of federal-state tax coordination is a testament to deeply held beliefs about state sovereignty - and perhaps to the power of deeply entrenched state tax bureaucracies - that can impede intergovernmental tax coordination.

Despite the lack of any congressional mandate for state conformity to the federal income tax model, state personal and corporate income taxes in fact closely conform to the federal income tax. The pressure for conformity comes from "market" forces, namely, pressure from taxpayers for easing compliance and auditing burdens. At one time, some states adopted the most extreme form of federal conformity, under which the state tax was simply a percentage of the federal tax. Although no state embraces that method today, the overwhelming majority of states with broad-based income taxes employ federal adjusted gross income (personal income before personal exemptions or deductions) or federal taxable income as the computational starting point for determining state taxable income.

One of the consequences of having de facto conformity in federal and state income tax bases is that base-broadening or base-narrowing at the federal level tends to generate a response at the state level, because failure to respond ordinarily increases or decreases state tax revenues in the absence of a state rate adjustment. The Federal Tax Reform Act of 1986, for example, broadened the federal personal income tax while lowering its rates. Some deductions were eliminated, others were substantially limited, and the treatment of a variety of specific items was altered - all in the name of simplification in a revenue-neutral fashion (because federal rates were lowered). For the overwhelming majority of states whose tax bases were tied to the federal base but whose tax rates were independent of the federal rate structure, base-broadening at the federal level offered the prospect of substantial increases in tax revenues if the states did not lower their own rates as the federal government had done.

In fact, 27 of the 40 states with broad-based personal income taxes enacted reforms during late 1986 and 1987,31 with most of the states returning at least a portion of the so-called revenue "windfall" to state taxpayers.32

By contrast, when Congress narrows the federal tax base in order to stimulate the economy, it creates the opposite dilemma for the states. For example, Congress's post-September 11, 2001, economic stimulus package gave rise to conformity issues for the states. In the Job Creation and Worker Assistance Act of 2002, Congress provided for an additional first-year depreciation allowance to encourage investment. The impact of this so-called "bonus depreciation" on state revenues - assuming they took no action to decouple their tax regimes from the federal model - was substantial. Facing severe budget shortfalls even without the revenue impact of bonus depreciation, many states reacted by decoupling their tax regimes from the federal tax regime insofar as bonus depreciation was concerned. Some states enacted legislation completely decoupling from the bonus depreciation provisions, other states partially decoupled, and yet other states conformed to the federal rules. Needless to say, such lack of conformity between state and federal tax bases can create havoc for taxpayers and revenue administrations.33
2. Tax "Concessions"

There are several federal income tax provisions that reflect a sensitivity to the existence of concurrent taxation, and the concerns of federal-state tax coordination, even if they may more properly be characterized as unilateral tax "concessions" by the Congress rather than "coordination" of concurrent tax regimes. Among these are the deduction from the federal tax base for state income and property taxes and the exclusion from the federal income tax base of interest from state and local government bonds.

a. Deductibility of State and Local Taxes from the Federal Income Tax Base

State and local taxes have always been deductible, in whole or in part, from the federal income tax base, at least for those who itemized their deductions. The deduction has been available whether or not such taxes were associated with the production of income, in which case the deduction would be appropriate as a matter of principle in arriving at the proper definition of taxable income. For this reason, such deductions (when not associated with the production of income) have generally been regarded as "tax expenditures" or subsidies that the federal government provides to the states. Accordingly, they may be regarded as form of revenue sharing. For fiscal year 2012, for example, the estimated fiscal significance of the deductions from federal income taxes for "nonbusiness" state and local government income taxes, sales taxes, and personal property taxes, which the tax expenditure budget characterizes as "general purpose fiscal assistance," amounted to $51 billion. The fiscal significance of the deduction for taxes on real property amounted to another $26.5 billion.

Historically, virtually all state and local taxes were deductible from the federal income tax base. Over the past half-century, however, the scope of the deduction has narrowed. In 1964, Congress altered the nature of the deduction from one generally permissible unless explicitly denied to one that was permitted only for taxes explicitly mentioned. It thereby eliminated the deduction for so-called "sin" taxes (excise taxes on alcohol and tobacco).

In 1978, in the midst of an energy crisis, Congress eliminated the deduction for state gasoline taxes. The most significant change occurred as part of the Tax Reform Act of 1986, which eliminated the deduction for state and local sales taxes, as part of the general policy to broaden and simplify the federal tax base in a revenue neutral manner. In 2004, however, Congress reinstated the deduction for residents of states without income taxes. Currently, the most significant deductions are for state income and local real property taxes. There is an ongoing policy debate about whether the deduction for state income taxes should be eliminated.

b. Exclusion for Interest from State and Local Government Bonds

The other significant tax concession - with a "cost" to the federal government estimated at value of $23.1 billion for fiscal year 2012 - is the exclusion from federal income tax of interest from state and local government bonds. Although for many years the immunity of state and local bond interest from federal taxation was thought to be constitutionally required, with the narrowing of the scope of the intergovernmental tax immunity doctrine, this view was ultimately abandoned. In 1985, the U.S. Supreme Court explicitly overruled an earlier case holding that interest from state bonds was constitutionally immune from tax and declared that "a nondiscriminatory federal tax on the interest earned on state bonds does not violate the intergovernmental tax immunity doctrine." The exclusion of such interest from federal income taxation nevertheless survives as a matter of congressional legislation, which has embedded that principle in the Internal Revenue Code.

III. HORIZONTAL FEDERAL-STATE TAX COORDINATION

A. Overview
Although there have occasionally been proposals for broad-based federal legislation providing for horizontal state tax coordination, such as congressional bills providing for a uniform state corporate income tax apportionment formula, no federal law providing for wide-ranging horizontal state tax coordination has ever been enacted. Instead, virtually the entire body of federal law addressed to horizontal state tax coordination has focused on narrow, industry-linked issues, often by limiting the states' power to tax in precisely defined contexts. Indeed, much of this legislation may more properly be characterized as prohibiting the exercise of state tax power, whether wisely or not, rather than "coordinating" it.

For example, federal legislation

-- forbids the states from taxing railroad, motor carrier, and air carrier property more heavily than other commercial and industrial property;  
-- imposes limitations on the states' power to levy stock transfer taxes;  
-- prohibits the states from imposing user charges in connection with the carriage of persons in air commerce;  
-- "supersede[s] any and all State taxes insofar as they now or hereafter relate to any employee benefit plan" instituted pursuant to the Employee Retirement Income Security Act (ERISA);  
-- prohibits the states from imposing electrical energy taxes discriminating against out-of-state purchasers;  
-- prohibits state and local governments from taxing flights of commercial aircraft or any activity or service aboard such aircraft unless the aircraft takes off or lands in the taxing jurisdiction;  
-- prohibits localities from taxing providers of direct-to-home satellite services;  
-- limits state and local franchise fees on cable operators;  
-- prohibits a state, other than the state of the employee's residence, from taxing the employee's compensation from an interstate rail carrier, motor carrier, or merchant mariner;  
-- limits the states' authority to require withholding of income taxes from certain employees of water carriers;  
-- prohibits states from taxing interstate passenger transportation by motor carriers; it imposes specified restraints on state taxation of transactions over the Internet;  
-- authorizes, under specified conditions, state taxation of charges for mobile telecommunications services;  
-- bars state taxes whose "purpose" is to provide "compensation for claims for any costs of response or damages or claims which may be compensated under [the "Superfund" Act].";  
-- prevents states from imposing income taxes on the "retirement income" of nonresidents.

Even what is arguably the broadest piece of legislation that provides for federal-state tax coordination - the provision of a uniform jurisdictional threshold for taxation of income from interstate commerce - is limited to income from sales of tangible personal property, and thus excludes the increasingly
important part of the economy that derives income from services and intangibles.

If there is a leitmotif running through the federal legislation addressed to horizontal tax coordination (broadly conceived to include tax prohibitions), it is probably that the legislation typically constitutes a targeted response to a specific problem. For example, a number of the federal provisions were direct responses to U.S. Supreme Court decisions:

-- The jurisdictional restraint on state taxation of income from interstate commerce derived from the sale of tangible personal property was designed to confine the impact of Northwestern States Portland Cement Co. v. Minnesota, which sustained the states' power to impose a fairly apportioned, nondiscriminatory tax on net income derived from interstate commerce.

-- The prohibition on state taxation of interstate passenger transportation by motor carriers was designed to overrule Oklahoma Tax Commission v. Jefferson Lines, Inc., which sustained an unapportioned tax on the sale of bus tickets for interstate transportation.

-- The bar against states' imposition of user charges in connection with the carriage of persons in air commerce was designed to overrule Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc., which sustained the states' power to impose charges to recoup the costs of airport construction and maintenance.

In addition to legislation responding to specific court decisions, some of the legislation was addressed to specific abuses (or perceived abuses), such as the assessment of railroad and other transportation property at a higher percentage of fair market value than that applied to other commercial and industrial property. Other provisions were designed to protect identifiable federal interests, such as federally authorized employee benefit plans or the Outer Continental Shelf. Still other provisions were intended to foster the development of particular economic activity, such as the use of the Internet.

Whatever one's views may be as to the wisdom of such legislation, the explanation for the existing universe of horizontal federal-state tax coordination lies largely in "history" rather than "logic," as suggested at the outset.

B. A Review of the Record of Horizontal Federal-State Tax Coordination from a Policy and Practical Perspective While the existing landscape of horizontal federal-state tax coordination may owe its features to history rather than logic, it is instructive to examine the results of these congressional forays into state taxation as an aid to determining "best practices" in this context. Although my examples are selective, I believe they illustrate what works and what does not work from a policy and practical perspective in the context of horizontal federal-state tax coordination.

1. What Works Well: The Mobile Telecommunications Sourcing Act

The Mobile Telecommunications Sourcing Act (MTSA) enacted by Congress in 2000 is a poster child for horizontal federal-state tax coordination at its best. To understand why, one must first appreciate the constitutional rules governing state taxation of interstate telecommunications. Under jurisdictional standards that the U.S. Supreme Court articulated in Goldberg v. Sweet under the dormant Commerce Clause, the "only" states with "a nexus substantial enough to tax a consumer's purchase of an interstate telephone call" are (1) "a State which taxes the origination or termination of an interstate telephone call charged to a service address within that State" and (2) "a State which taxes the origination or termination of an interstate telephone call billed or paid within that State." The implications of these standards for taxation of the wireless telecommunications industry are troublesome to say the least.
Consider a business traveler who lives in State A, where she receives her monthly phone bill, and, while in State B on business, makes a call to State C. Under Goldberg, none of these states can tax the charges for the call, because none of them can claim that the call either originates or terminates in the state and is charged to a service address in the state or is billed or paid within the state.

The issues become even more complex if the customer is billed not on a transaction-by-transaction basis, but instead pays, say, $50 per month for 500 minutes of calls regardless of where the calls originate or terminate. Indeed, if the customer were billed at a flat rate, the Goldberg-mandated inquiry would be virtually impossible, since there would be no breakdown of the charges for the calls on a transaction-by-transaction basis. A typical wireless phone bill simply shows the calls made and the minutes consumed with no itemized price allocation if one does not exceed the number of flat rate minutes. Indeed, the "charge" shown for such individual calls is "$00.00."

The difficulties involved in taxing mobile telecommunications under the regime the Court established in Goldberg led Congress, with the joint support of the telecommunications industry and the states, to enact the MTSA, which permits the states to tax all mobile telecommunications charges (for services provided by the customer's "home service provider") at the customer's "place of primary use." The key operative language of the MTSA, which both expands and contracts state power to tax charges for mobile telecommunications, provides:

All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

The expansion of state power is provided by the grant of authority to the state of the customer's home service provider to tax the charge for wireless services regardless of whether that state possesses power to tax the call under the preexisting standards of Goldberg v. Sweet.

The contraction of state power is contained in the final clause that prevents any state other than the state of the customer's home service provider from taxing such charges, even if that state possessed power under Goldberg v. Sweet to tax the charge.

The MTSA is a model for federal-state horizontal tax coordination. It judiciously employs Congress's power to both expand and restrain state tax power in a manner that allows taxes to be collected in a sensible manner and at the same time protects taxpayers from multiple taxation. It is thus a win-win solution for all concerned and constitutes a marked improvement over the state of play prior to the enactment of the legislation.

2. What Works Poorly: The Internet Tax Freedom Act

The Internet Tax Freedom Act (ITFA) enacted by Congress in 1998 is a poster child for horizontal federal-state tax coordination at its worst. ITFA is normatively flawed, logically incoherent, and technically complex if not incomprehensible. Although I can touch only briefly on each of these problems here, it should suffice to support the conclusion, and I have provided more detailed proof elsewhere. ITFA imposed a three-year moratorium (subsequently extended through 201479 ) on three types of taxes: (1) taxes on Internet access; (2) discriminatory taxes on electronic commerce; and (3) multiple taxes on electronic commerce. a. Normative Concerns

While a normative case can surely be made for barring "discriminatory" or
"multiple" taxes on electronic commerce, ITFA's definition of these terms (considered below) sweeps so much more broadly than their common understanding that ITFA's bar on such taxes basically raises the question as to whether electronic commerce should be taxed at all. In this respect, it raises the same question as that raised by the blanket prohibition of taxes on Internet access.

As Charles McLure and I concluded after a detailed normative analysis of ITFA,81 the case for congressional intervention was mixed: The case for exempting Internet access by households is weak, no matter how Internet access is defined (narrowly, as embracing only connection to the Internet or more broadly to include telecommunications and/or digital content). Even an exemption for only basic Internet access is an extremely inefficient way to achieve the posited objectives. On the other hand, all business purchases of Internet access, telecommunications, and digital content should be tax-exempt.82

b. Logical Concerns

Even if one were undisturbed by the normative concerns raised by ITFA, the legislation suffers from serious logical defects. For example, ITFA bars multiple taxation of electronic commerce and, for this purpose, defines a multiple tax as any tax that is imposed by one State. on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State. (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions. 83

Congress excluded from this definition sales or use taxes imposed concurrently by a state and its political subdivisions on the same electronic commerce and "a tax on persons engaged in electronic commerce which may also have been subject to a sales or use tax thereon."84

Although one can discern Congress's objective in enacting this provision (i.e., to prevent the same electronic commerce from being subject to tax by more than one state), the language that Congress chose to accomplish that goal is opaque at best. While preventing more than one state from taxing "the same electronic commerce" might leave some room for debate, the prevention of states from taxing "essentially the same electronic commerce" is almost an invitation for controversy. Indeed, it reads more like cocktail party conversation than a carefully thought out restraint on state taxing power.

Moreover, Congress apparently believed that two states can tax "the same" or "essentially the same" electronic commerce, even if the two levies are not imposed "on the same basis." Does this mean, for example, that Texas may not impose a sales or use tax on computer software transmitted via the Internet from a Washington State software producer, because "essentially the same electronic commerce" was subject to Washington's Business and Occupation Tax? Or is this the situation to which the "savings clause" was directed (i.e., "a tax on persons engaged in electronic commerce"), which is not regarded as a "multiple tax" even if the same electronic commerce is subject to sales or use tax? If it is, however, the savings clause may defeat Congress's objective, because many state sales taxes are legally imposed on the vendor for the privilege of engaging in selling activities 85 (including, one would think, activities in electronic commerce). Hence, one could argue that duplicative sales or use taxation of electronic commerce is permissible as long as the legal incidence of one state's sales tax falls on the seller.

c. Technical Concerns

Beyond the normative concerns and concerns with the internal logic of the legislation, ITFA is hideously complex and is permeated with technical flaws. Merely describing the prohibition on taxation of Internet access and the struggles of state courts and administrative tribunals with its meaning makes the point. ITFA was originally enacted in October 1998 as a three-year
moratorium barring states from taxing charges for "a service that enables users
to connect to the Internet to access content, information, or other services
offered over the Internet."

However, a grandfather provision excluded from ITFA's scope a tax on Internet
access that was "generally imposed and actually enforced prior to October 1,
1998." 87 and it also excluded the term "telecommunications services" from the
definition of Internet access.88

In November 2001, Congress retroactively extended ITFA for two years through
October 2003.89 In late 2004, Congress again retroactively extended the act,
this time through November 2007.90 The 2004 extension of the moratorium added
language making it clear that all forms of Internet access were covered by the
moratorium, including high-speed wireline (DSL) and wireless service (i.e.,
telecommunications services "purchased, used, or sold by a provider of Internet
access to provide Internet access").91 At the same time, the 2004 ITFA extension
provided that the prohibition did not apply to any tax on a voice or similar
service using Internet Protocol (voice over Internet Protocol, or VOIP), except
to the extent that the services were incidental to the Internet access (e.g.,
voice-capable email or instant messaging).92

In 2007, Congress yet again extended the act for an additional seven years
through November 1, 2014.93 The 2007 ITFA amendments expanded the definition of
"Internet access" to include "a home page, electronic mail, and instant
messaging (including voice- and videocapable electronic mail and instant
messaging), video clips, and personal electronic storage capacity." 94 whether
packaged with Internet access or provided independently.95 The 2007 amendments
further excluded from the definition of "tax on Internet access" taxes that
Michigan, Ohio, and Texas impose on gross receipts or gross income from business
activity (in lieu of the typical state-level corporate income tax). The 2007
ITFA amendment also extended through 2014 the original act's grandfather clause
covering preexisting state taxes on Internet that were "generally imposed and
actually enforced prior to October 1, 1998."96 In addition, however, the 2007
ITFA amendment adopted a more limited grandfathering provision for states that
were taxing the telecommunications services that were covered by the moratorium
for the first time (i.e., telecommunications services purchased, used, or sold
to provide Internet access), which were grandfathered only through June 30,
2008.97

In short, ITFA is exactly what legislation designed to effectuate horizontal
federal-state coordination should not be - normatively problematic, logically
questionable, and a technical nightmare.

3. What Works Passably but Defectively: Public Law 86-272

Most existing federal legislation designed to effectuate horizontal
federal-state tax coordination probably falls within the "passable but
defective" category, namely, legislation that generally achieves its typically
narrow objective, but with some collateral damage along the way. Public Law
86-272,98 to which I have already alluded, 99 illustrates the point. As noted
above (albeit without identifying the statute by its popular appellation),
Public Law 86-272 was enacted in 1959 in direct and immediate response to the
U.S. Supreme Court's decision Northwestern States Portland Cement Co. v.
Minnesota,100 which sustained the states' power to impose a fairly apportioned,
nondiscriminatory tax on net income derived from interstate commerce.

The statute prevents the states from taxing net income derived from
interstate commerce when the taxpayer's activities in the state are limited to
the "solicitation" of orders for sales of tangible personal property that are
fulfilled by shipments from outside the state.101 Somewhat ironically, Public
Law 86-272's prohibition was designed merely as a temporary measure - a cease
fire in place, as it were - while Congress considered broad-based legislation
for horizontal tax coordination. Title II of Public Law 86-272 assigned to the
House Judiciary Committee and the Senate Finance Committee the task of making "full and complete studies of all matters pertaining to the taxation by the States of income derived within the States from the conduct of business activities which are exclusively in furtherance of interstate commerce or which are a part of interstate commerce, for the purpose of recommending to the Congress proposed legislation providing uniform standards to be observed by the States in imposing income taxes on income so derived." Despite a committee's production of an extensive and invaluable four-volume study (the Willis Committee Report) that recommended broad-based legislation providing for horizontal tax coordination, Congress's failure to act on these recommendations is, as they say, history.

What we have instead is the legacy of more than half a century of efforts to determine the metes and bounds of a stopgap "minimum nexus" measure designed to protect the national common market without unduly restraining the states' power to tax. Without prolonging this discussion any further, and indeed, providing an appropriate segue into the next part of this testimony, it suffices to say that Public Law 86-272, while providing the core of tax immunity that Congress intended, at the same time has given rise to (a) considerable controversy over the scope of such immunity, attributable in part, perhaps, to the narrow focus of the legislation and haste with which it was enacted; (b) an immunity based on a midtwentieth century view of economic activity that may no longer reflect contemporary economic reality; (c) different jurisdictional standards depending on whether a taxpayer's income derives from the sale of tangible personal property, on the one hand, or from services or intangibles, on the other; and (d) extensive state tax planning to take advantage of the federal protection.

IV. CURRENT PROPOSALS FOR FEDERAL-STATE TAX COORDINATION

In light of the checkered history of legislation addressed to federal-state tax coordination, perhaps the first thing to say about the current spate of legislative proposals aimed at federal-state tax coordination is that "hope springs eternal in the human breast." Among the legislative proposals recently introduced in Congress include bills that would:

- authorize the states to require remote vendors to collect sales and use taxes on sales to in-state purchasers, regardless of their physical-presence in the state (otherwise constitutionally required under Quill) under specified conditions generally requiring harmonization and simplification of their sales and use tax regimes;

- extend the protection of Public Law 86-272 beyond income from interstate commerce derived from the sale of tangible personal property to such income derived from all forms of economic activity and making other adjustments in the statute;

- limit and define the circumstances under which states may impose income taxes on nonresidents temporarily employed in the state;

- prohibit states from imposing "multiple or discriminatory" taxes on the sale or use of digital goods and services;

- prohibit states from imposing a "discriminatory tax" on any means of providing multichannel programming;

- impose a five-year moratorium on the imposition of by states or localities of any "new discriminatory tax" on mobile services, mobile service providers, or mobile service property;

- prohibit a state from imposing a discriminatory tax on the rental of motor
vehicles, the business of renting motor vehicles, or motor vehicle rental property; 116

-- prohibit a state from imposing a new unfair or inequitable E911 fee, tax, or surcharge with respect to prepaid mobile services, prepaid mobile service providers, or prepaid mobile customers; 117

-- prohibit a state from imposing a tax on a nonresident individual with respect to any time the individual is present in another state; 118 and

-- make permanent the moratorium on Internet access taxes and the prohibition on multiple and discriminatory taxes on electronic commerce. 119

It is plainly beyond the scope of the present endeavor to undertake a detailed analysis of any of these proposals, let alone all of them. Instead the more modest goal of this part of my testimony is briefly to examine these proposals in light of whatever lessons one might draw from the historical overview of federal-state tax coordination set forth in the preceding discussion.

A. The Main Street Fairness, Marketplace Fairness, and Marketplace Equity Acts

The Main Street Fairness Act, 120 the Marketplace Fairness Act, 121 and the Marketplace Equity Act of 2011 122 are all designed to authorize the states, under specified conditions generally requiring harmonization and simplification of their sales and use tax regimes, to require collection of sales and use taxes with respect to sales by remote sellers, notwithstanding their lack of physical presence in the state (otherwise constitutionally required by Quill 123) . Although the bills differ in their detail, such as the extent to which states must conform to the provisions of the Streamlined Sales and Use Tax Agreement ("SSUTA"), 124 the level of the exemption of "small" sellers from the tax collection requirement, and the precise extent of required harmonization, they share in common the concept of a "deal" authorizing collection of taxation from remote sellers in return for removal of existing burdens on such sellers through simplification and harmonization.

After undertaking a detailed analysis of an earlier (but essentially similar) version of the most demanding of these bills - the Main Street Fairness Act that applies only to states that have conformed to SSUTA - and evaluating it in light of the normative principles that ought to govern congressional intervention in state tax matters, 125 Charles McLure and I concluded that legislation along the lines outlined above was "fundamentally a move in the right direction - the prescription of simplification and greater uniformity in conjunction with the removal of nexus rules that create undesirable economic consequences." 126 We observed, among other things, that "under the prescribed conditions of simplification and uniformity, nexus rules would no longer be needed to reduce complexity and thus could no longer be justified."

In reaching our conclusion, we also identified the requirements of (1) reasonable vendor compensation and (2) the existence of "identical" state and local tax bases within any state as essential elements of the proposal we were endorsing. Finally, we noted that the proposed legislation struck "the proper balance between the interests of state sovereignty and those of national economic unity." 128 It respected the states' ability to establish their own tax rates, and, indeed, even went so far (perhaps further than we would have gone) as to allow the states freedom to define their own tax bases, although states were required to employ uniform definitions in determining what was and what was not taxable. At the same time, the proposed legislation imposed significant requirements on the states to harmonize and simplify their systems and thereby to provide the proper foundation for requiring collection by remote sellers without subjecting them to unreasonable administrative burdens. 129
Although I cannot speak for McLure, it is less clear to me that the other versions of the sales and use tax collection authorization legislation, at least insofar as they would authorize collection by remote vendors by states not conforming to SSUTA, would satisfy the normative criteria we identified in our earlier article. To be sure, the alternatives to the SSUTA-conformity bills do require, with respect to remote sellers, identical state and local tax bases, a single sales and use tax return, a single state-level administrative agency, the provision of adequate software to ease compliance burdens, and "hold harmless" provisions that comply with such software. On the other hand, there is no provision for compensation of remote sellers, nor is there any requirement that the states harmonize the definitions in their tax bases, a key feature of the SSUTA legislation.

Despite my reservations about the merits of some of the proposals for congressional legislation addressed to state sales and use tax collection and simplification, the legislation in principle constitutes the type of federal-state tax coordination that we should applaud and encourage. Like the "poster child" identified above for such legislation, the proposed legislation combines the congressional relaxation of a judicially created rule restraining state tax power along with the imposition of congressionally imposed conditions. In both cases the judicially created rule is objectionable (although for different reasons) and in both cases the congressionally imposed conditions are desirable. Accordingly, in my judgment at least, legislation of this kind is template for future federal-state tax coordination.

B. The Business Activity Tax Simplification Tax Act of 2011

The Business Activity Tax Simplification Act of 2011 amends Public Law 86-272 to extend its protection beyond taxes on net income from interstate commerce attributable to the sale of tangible personal property to such income attributable to any form of business activity (including the sale of services and intangibles) and to "business activity taxes" other than net income taxes, namely, gross receipts taxes. The proposed BAT Act also establishes a general nexus requirement of "physical presence" (employees, agents performing services, or property in the state), along with de minimis "safe harbor" exceptions (e.g., presence in the state for less than 15 days). Earlier in this testimony, I characterized the original version of Public Law 86-272 as legislation that "works passably but defectively" In my view, the 2011 version is even worse and should be characterized as legislation that "works poorly."

From a normative perspective, the BAT Act is deeply flawed. As in the case of the proposed sales tax collection/simplification legislation discussed above, Charles McLure and I undertook a detailed analysis of an earlier (but essentially similar) version of the BAT Act from a normative perspective and we concluded that it was "clearly inconsistent with the normative considerations" there identified. Among other things, we observed that it would "expand the scope for the creation of 'nowhere income,'" i.e., attribution of income to states where the taxpayer was not taxable, and thus aggravate the opportunities for tax planning and the revenue loss created by Public Law 86-272. We also addressed arguments in support of the legislation that we considered to be unsound, in particular, the suggestion by representatives of the business community that businesses that are not physically present in a state receive no benefits from the state and therefore should not be required to pay taxes to such state. As we pointed out, this "line of reasoning is indefensible, whether the benefits corporations receive are defined broadly, to mean the ability to earn income, or defined more narrowly to mean specific benefits of public spending, one of which is the intangible but important ability to enforce contracts, without which commerce would be impossible."

Moreover, it seems odd, to say the least, that Congress, under the guise of federal-state tax coordination, should be enshrining as a touchstone of
taxability a standard first promulgated over half-century ago as a stop-gap measure and one more appropriate for the economy of the nineteenth century than of the twenty-first. If certainty and administrability are the objectives - and these clearly are legitimate objectives that would justify congressional legislation prescribing state nexus rules - there are alternatives for certain and administrable nexus rules that make much more practical and economic sense than physical presence.

Among these would be nexus rules based on sales or apportionment factors in the state. The Mobile Workforce State Income Tax Simplification Act of 2011 prohibits the states from imposing income taxes (and requiring withholding of such taxes) on the wages or other remuneration earned by nonresident employees in the state unless they perform duties there for more than 30 days during the year. In my view, this is another example of what "works well" in federal-state tax coordination. To be sure, there is a clear intrusion into state sovereignty, because the states generally enjoy the power to tax the income that nonresidents earn within the state.

On the other hand, the burden on nonresidents from complying with tax reporting obligations arising out of temporary employment in the state and - perhaps even more importantly from the standpoint of our national economic market - the burden on employers of complying with withholding obligations with respect to such employees can be extremely onerous. Moreover, it is worth keeping in mind that we are talking largely about which state gets to tax the income in question, not whether the income gets taxed at all, because most states impose personal income taxes on all of the income earned by their residents, subject to a credit for taxes paid to other states.

As I testified before a congressional committee considering an earlier (but similar) version of the legislation:

In my opinion, enactment of the Mobile Workforce State Income Tax Fairness and Simplification Act of 2007 would constitute an appropriate exercise of congressional power. In expressing this opinion, I wish to make it clear that I believe the states have a legitimate interest in assuring that workers who earn income in the state pay their fair share of the state tax burden for the benefits and protections that the state provides to them. The states' legitimate interest, however, must be balanced against the burdens that are imposed on multistate enterprises, and on the conduct of interstate commerce, by uncertain, inconsistent, and unreasonable withholding obligations imposed by the states. Indeed, it is telling that a number of states themselves have implicitly recognized these burdens by adopting reciprocal provisions exempting income, or certain classes of income, earned by nonresidents in their state if the nonresident's home state grants a similar exemption to residents of the exemption-granting state.

D. Prohibitions on "Discriminatory" Taxation of Specified Activities

A number of bills have been introduced into Congress to prohibit "discrimination" against specified activities. These include

-- the Digital Goods and Services Tax Fairness Act of 2011 to prevent states from imposing "multiple or discriminatory" taxes on the sale or use of digital goods and services;

-- the State Video Tax Fairness Act of 2011 to prohibit states from imposing a "discriminatory tax" on any means of providing multichannel programming;

-- the Wireless Tax Fairness Act of 2011 to provide a five-year moratorium on the imposition by states or localities of any "new discriminatory tax" on mobile services, mobile service providers, or mobile service property;
the End Discriminatory State Taxes for Automobile Renters Act of 2011 to prohibit states from imposing discriminatory taxes on the rental of motor vehicles, the business of renting motor vehicles, or motor vehicle rental property;150 and

-- the E911 Surcharge Fairness Act of 2011 to prohibit states from imposing new unfair or inequitable E911 fees, taxes, or surcharges with respect to prepaid mobile services, prepaid mobile service providers, or prepaid mobile customers.151

These proposals resemble the targeted proposals typical of the limited federal-state tax coordination we have witnessed over the years including legislation forbidding states from taxing railroad, motor carrier, and air carrier property more heavily than other commercial and industrial property;152 legislation forbidding the states from imposing electrical energy taxes discriminating against out-of-state purchasers;153 and legislation imposing "discriminatory" taxes on electronic commerce.154 As the preceding discussion suggests, in my judgment these narrow legislative initiatives have a mixed track record as to whether they work well, work poorly, or work passably but defectively. Because the category into which each of the proposals described above falls obviously depends on one's perspective. I would only suggest, at a minimum, that anyone who takes the time to read the efforts to define "discrimination" and related terms in these bills would have a hard time concluding that they would rank above "works passably but defectively."

Indeed, the language of some of the proposals is so badly crafted that, at least in their present form, it is hard to imagine how they would not work "poorly." Perhaps one can hope for that happy day when every industry and every form of economic activity is protected by a federal statute prohibiting "discriminatory" taxation, a term that will be defined to require a uniform tax on household purchases (thus requiring a "sale for resale" exemption for all business purchases), so we would actually end up with an ideal retail sales tax in the United States.155

E. The Telecommuter Tax Fairness Act of 2011

The Telecommuter Tax Fairness Act of 2011 would prohibit states from imposing a tax on a nonresident individual with respect to any time the individual is present in another state.156 This legislation is designed essentially to bar New York's "convenience of the employer" doctrine for determining the taxability of nonresidents' income associated with New York-based employment. Although I agree with this legislation as a matter of principle,157 the case for congressional intervention into the controversy over New York's taxation of nonresidents pales by comparison to the significant issues that ought to be on Congress's federal-state tax coordination agenda.

V. CONCLUSION

If there is any overarching conclusion that one can draw from this overview of federal-state tax coordination, it may simply be that Congress should keep in mind the admonition of the Hippocratic Oath - "first, do no harm" - in considering proposals for federal legislation that affect state taxation. Although Congress possesses power to provide for federal-state tax coordination that unquestionably advances the interests of all stakeholders, and it has sometimes exercised its power to achieve that end, it has also exercised its power in ways that unquestionably fail to meet that standard. Accordingly, in returning to the point with which this testimony began - Justice Holmes's observation that "a page of history is worth a volume of logic" - perhaps we should aspire to add a few more pages of "logic" to the "volume" of our history in this domain.
SECTION: WASHINGTON'S SCHEDULE

HEADLINE: Today's Events In Washington

BODY:

White House:

PRESIDENT OBAMA - Departs Aurora, Colorado en route Cedar Rapids, Iowa, Buckley Air Force Base, open press; arrives Cedar Rapids, Iowa, Eastern Iowa Airport, open press; participates in a roundtable with students, University of Iowa, travel pool; delivers remarks as part of a concerted effort to get Congress to prevent interest rates on student loans from doubling in July, University of Iowa, open press; departs Cedar Rapids, Iowa en route Washington, DC, Eastern Iowa Airport, open press; arrives Joint Base Andrews, travel pool; arrives the White House, South Lawn, open press; attends a campaign event, The Jefferson Hotel, Washington, DC, closed press. VICE PRESIDENT BIDEN - Attends and delivers remarks at a memorial service in honor of Representative Donald Payne, United States Capitol; meets with senior advisors, closed press. DR. JILL BIDEN -- Joins Joint Chiefs of Staff Vice Chairman Adm. James A. Winnefeld Jr.

for a Joining Forces anniversary event to highlight the importance of understanding the needs of military-connected children in schools, Lee Hall Elementary School, Newport News, Va., open press. US Senate: 10 a.m. - 12 p.m. SCIENCE, SPACE, & TECHNOLOGY/SMALL BUSINESS - Subcommittee on Investigations & Oversight and Committee on Small Business, Subcommittee on Healthcare & Technology Joint Hearing on "How the Report on Carcinogens Uses Science to Meet its Statutory Obligations, and its Impact on Small Business Jobs." Witnesses: Panel I: Dr. Linda S. Birnbaum, Director, National Institute of Environmental Health Sciences & National Toxicology Program, US Department of Health and Human Services; Charles A. Maresca, Director of Interagency Affairs, Office of Advocacy, US Small Business Administration. Panel II: Dr. James S. Bus, Director of External Technology, Toxicology and Environmental Research and Consulting, The Dow Chemical Company; Dr. L. Faye Grimsley, Associate Professor, Tulane School of Public Health and Tropical Medicine, Department of Global Environmental Health Sciences; Bonnie Webster, Vice President, Monroe Industries, Inc.; Ally LaTourelle, Esq., Vice President, Government Affairs, Bioamber, Inc; John E. Barker, Corporate Manager, Environmental Affairs, Safety and Loss Prevention, Strongwell Corporation; Dr. Richard B. Belzer, President, Regulatory Checkbook. Location: 2318 Rayburn.

9:30 a.m. - 10:45 a.m. EXPANDED LEARNING TIME - Bipartisan briefing, "Expanded Learning Time as a School Improvement Strategy." Welcome and Introduction: Senator Jeff Bingaman. Panel Presentations: David Goldberg, Director of Federal Policy and National Partnerships, National Center on Time & Learning (moderator); Jason Snyder, Director of the Office of School Turnaround within the Office of Elementary and Secondary Education, US Department of Education; Claire Kaplan, Vice President of Knowledge Management, National Center on Time & Learning; Principal Andrew Bott, Orchard Gardens K-8 Pilot School; Lucy Friedman, President, The After-School Corporation; Superintendent Mary Ronan, Cincinnati Public Schools. Location: 562 Dirksen.
9 a.m. AGRICULTURE, NUTRITION AND FORESTRY - Business meeting to consider the 2012 Farm Bill. Location: 328A Russell.


9:30 a.m. RULES AND ADMINISTRATION - Hearings to examine S.219, to require Senate candidates to file designations, statements, and reports in electronic form. Location: 301 Russell.

9:30 a.m. VETERAN'S AFFAIRS - Hearings to examine Veterans' Affairs mental health care, focusing on evaluating access and assessing care. Location: 138 Dirksen.

10 a.m. BANKING, HOUSING, AND URBAN AFFAIRS - Subcommittee on Housing, Transportation, and Community Development Hearing, "Helping Responsible Homeowners Save Money Through Refinancing." Witnesses: Panel 1: Christopher Mayer, Paul Milstein Professor of Real Estate, Finance, and Economics, Columbia Business School; Debra Still, Chairman-Elect, Mortgage Bankers Association; Laurie F. Goodman, Senior Managing Director, Amherst Securities; Dr. Anthony B. Sanders, Professor of Finance, George Mason University School of Management; Michael D. Calhoun, President, Center For Responsible Lending. Location: 538 Dirksen.

10 a.m. FINANCE - Full committee hearing to discuss what federal tax reform could mean for state and local fiscal and tax policy. With Frank Sammartino, Assistant Director For Tax Analysis, Congressional Budget Office; Kim Rueben, Senior Fellow, Urban-Brookings Tax Policy Center; Walter Hellerstein, Professor of Taxation Law, University of Georgia School of Law, Athens; Joseph Henchman, Vice President of Legal & State Projects, Tax Foundation; and Sanford Zinman, owner, Zinman Accounting. Location: 215 Dirksen.

10 a.m. HEALTH, EDUCATION, LABOR, AND PENSIONS - Business meeting to consider an original bill entitled "Food and Drug Administration Safety and Innovation Act", and any pending nominations. Location: 106 Dirksen.

10:30 a.m. APPROPRIATIONS - Defense Subcommittee CLOSED hearing on The Fiscal Year 2013 National and Military Intelligence Programs and Budget. Witnesses: James R. Clapper, Jr., Director of National Intelligence; Dr. Michael G. Vickers, Undersecretary of Defense for Intelligence. Location: SVC-217.

2 p.m. ARMED SERVICES - Subcommittee on Personnel hearing to receive testimony on the Active, Guard, Reserve, and civilian personnel programs in review of the Defense Authorization Request for Fiscal Year 2013 and the Future Years Defense Program. Witnesses: Thomas R. Lamont, Assistant Secretary of the Army for Manpower and Reserve Affairs; Juan M. Garcia III, Assistant Secretary of the Navy for Manpower and Reserve Affairs; Daniel B. Ginsberg, Assistant Secretary of the Air Force for Manpower and Reserve Affairs; Lieutenant General
2 p.m. ARMED SERVICES - Subcommittee on Personnel To resume hearings to examine the Active, Guard, Reserve, and civilian personnel programs in review of the Defense Authorization request for fiscal year 2013 and the Future Years Defense Program. Witnesses: Thomas R. Lamont, Assistant Secretary of the Army for Manpower and Reserve Affairs; Juan M. Garcia III, Assistant Secretary of the Navy for Manpower and Reserve Affairs; Daniel B. Ginsberg, Assistant Secretary of the Air Force for Manpower and Reserve Affairs; Lieutenant General Thomas P. Bostick, USA, Deputy Chief of Staff G-1, United States Army; Vice Admiral Scott R. Van Buskirk, USN, Chief of Naval Personnel, United States Navy; Sheryl E. Murray, Assistant Deputy Commandant for Manpower and Reserve Affairs, United States Marine Corps; Lieutenant General Darrell D. Jones, USAF, Deputy Chief of Staff for Manpower, Personnel and Services, United States Air Force. Location: 232A Russell.

2:30 p.m. ARMED SERVICES - Subcommittee on Readiness and Management Support meeting to receive testimony on the current readiness of US forces in review of the Defense Authorization Request for Fiscal Year 2013 and the Future Years Defense Program. Witnesses: General Lloyd J. Austin III, USA Vice Chief of Staff, United States Army; Admiral Mark E. Ferguson III, USN, Vice Chief of Naval Operations, United States Navy; General Joseph F. Dunford, Jr., USMC, Assistant Commandant, United States Marine Corps; General Philip M. Breedlove, USAF, Vice Chief of Staff, United States Air Force. Location: 106 Dirksen.


200f25

4/27/2012
8:47 AM
10 a.m. LARSON, BECERRA, COURTNEY - Reps. John B. Larson (CT), Chairman, House Democratic Caucus, Xavier Becerra (CA), Vice Chairman, House Democratic Caucus and Joe Courtney (CT) hold media Availability on jobs, the economy, the budget, and student loans following weekly Democratic Caucus meeting. Location: HVC-210 alcove stakeout location.

10 a.m. REPUBLICAN LEADERSHIP STAKEOUT - With Speaker John Boehner (R-OH), Majority Leader Eric Cantor (R-VA), Majority Whip Kevin McCarthy (R-CA), Conference Vice Chair Cathy McMorris Rodgers (R-WA), Congressman Mac Thornberry (R-TX), Congresswoman Martha Roby (R-AL). Location: Center Steps (Outside HC-5).

11 a.m. PAYNE MEMORIAL SERVICE - PELOSI - Democratic Leader Nancy Pelosi will deliver remarks at a Congressional Memorial Service in honor of the late Congressman Donald M. Payne, who passed away after a battle with colon cancer in March. Congressman Payne was first elected to Congress in 1989 and served the people of the tenth District of New Jersey for nearly 24 years. Location: Statuary Hall, The Capitol.

3 p.m. 'GOLDEN GOOSE AWARD' - Reps. Jim Cooper (D-TN), Brian Bilbray (R-CA), and Charlie Dent (R-PA) will join several business, university, scientific and public policy organizations at a Capitol Hill press conference as the organizations announce the creation of the Golden Goose Award, which will "highlight the unexpected nature of basic scientific research and the fact that some of the most important scientific discoveries come from federally funded research that may once have been viewed as unusual, odd or obscure." Location: Gold Room, 2168 Rayburn.

FLOOR SCHEDULE 10 a.m. - The House will meet for Morning Hour debate and then at 12:00 p.m. for legislative business.

9 a.m. TRANSPORTATION AND INFRASTRUCTURE - Subcommittee on Aviation Hearing, "A Review of Aviation Safety in the United States." Witnesses: Panel 1: Margaret Gilligan, Associate Administrator for Aviation Safety, Federal Aviation Administration; David Grizzle, Chief Operating Officer, Air Traffic Organization, Federal Aviation Administration; Jeffrey B Guizetti; Dr. Gerald L Dillingham. Panel 2: Tom Hendricks; Scott Foose; Captain Sean Cassidy; Gary M Fortner. Location: 2167 Rayburn.

9:30 a.m. FOREIGN AFFAIRS - Full committee hearing on LRA, Boko Haram, al-Shabaab, AQIM and Other Sources of Instability in Africa. Witnesses: Donald Y. Yamamoto Principal Deputy Assistant Secretary, Bureau of African Affairs, US Department of State; Daniel Benjamin, Ambassador-at-Large, Coordinator for Counterterrorism, Bureau of Counterterrorism, US Department of State; Amanda J. Dory (Invited), Deputy Assistant Secretary for African Affairs, Office of the Secretary of Defense, US Department of Defense. Location: 2172 Rayburn.

9:30 a.m. OVERSIGHT & GOVERNMENT REFORM - The Subcommittee on Health Care, District of Columbia, Census and the National Archives and the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending hold a joint hearing to review major problems that currently exist in the Medicaid program and whether the government is doing an adequate job of directing limited resources to individuals who deserve public assistance while protecting against waste, fraud and abuse. Witnesses: Panel I: Charles E. Grassley, United States Senator from the State of Iowa. Panel I: Michele Bachmann, United States Representative from the State of Minnesota. Panel II: Gabriel Feldman, M.D, Local Medicaid Director for the Personal Care Services Program, New York County Health Services Review Organization. Panel II: Christine Ellis, D.D.S, Orthodontist, University of Texas Southwestern Medical Center. Panel II: David Feinwachs, J.D., Ph. D, Former Counsel, Minnesota Hospital Association. Panel III: Cindy Mann, J.D, Director, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services. Panel III: Lucinda Jesson, J.D, Commissioner, Minnesota Department of Human Services. Panel III: Carolyn L.
Yocom, Director, Health Care, Government Accountability Office. Location: 2154 Rayburn.


10 a.m. ENERGY AND COMMERCE - Reconvenes markup of Committee Prints: Proposed Matters for Inclusion in Reconciliation Recommendations; Discussion Draft of H.R. ___ , the Gasoline Regulations Act of 2012; Discussion Draft of H.R. ___ , the Strategic Energy Production Act of 2012. Location: 2123 Rayburn.


10 a.m. JUDICIARY - Subcommittee on Crime, Terrorism and Homeland Security Hearing on H.R. 3361, the Utilizing DNA Technology to Solve Cold Cases Act of 2011. Location: 2141 Rayburn.

10 a.m. NATURAL RESOURCES - Full Committee Markup of 13 bills: H.R. 460, Bonneville Unit Clean Hydropower Facilitation Act; H.R. 919, Mohave Valley Land Conveyance Act of 2011; H.R. 1237, To provide for a land exchange with the Trinity Public Utilities District of Trinity County, California, involving the transfer of land to the Bureau of Land Management and the Six Rivers National Forest in exchange for National Forest System land in the Shasta-Trinity National Forest; H.R. 1272, Minnesota Chippewa Tribe Judgment Fund Distribution Act of 2011; H.R. 1818, Mt. Andrea Lawrence Designation Act of 2011; H.R. 2467, Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2011; H.R. 2489, American Battlefield Protection Program Amendments Act of 2011; H.R. 2621, Chimney Rock National Monument Establishment Act; H.R. 3874, Black Hills Cemetery Act; H.R. 4027, To clarify authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for other purposes; H.R. 4222, To provide for the conveyance of certain land inholdings owned by the United States to the Tucson Unified School District and to the Pascua Yaqui Tribe of Arizona; S. 363, A bill to authorize the Secretary of Commerce to convey property of the National Oceanic and Atmospheric Administration to the City of Pascagoula, Mississippi, and for other purposes; S. 925, Mt. Andrea Lawrence Designation Act of 2011. Location: 1324 Longworth.

10 a.m. SMALL BUSINESS - Subcommittee on Healthcare and Technology will conduct a joint hearing with the Committee on Science, Space, and Technology Subcommittee on Investigations & Oversight titled How the Report on Carcinogens Uses Science to Meet its Statutory Obligations, and its Impact on Small Business Jobs. BACKGROUND: The Report on Carcinogens (RoC) is a congressionally mandated, science-based, public health report that identifies substances that may cause cancer and pose a risk to people in the United States. The US Department of Health and Human Services (HHS) National Toxicology Program (NTP), an interagency program administered by the National Institute of Environmental Health Sciences, produces the Report on Carcinogens. The NTP published the 12th RoC last year and is embarking on preparations for the 13th RoC. Witnesses will discuss the history of the RoC, the process and science that NTP uses to meet its statutory obligations, and the RoCs impact on small businesses. Witnesses: Linda S. Birnbaum, Ph.D., Director of the National Institute of Environmental Health Sciences & National Toxicology Program at the US Department of Health and Human Services in Research Triangle Park, NC; Charles A. Maresca, Director of Interagency Affairs at the US Small Business Administrations Office of Advocacy, in Washington, DC; James S. Bus, Ph.D., Director of External Technology, Toxicology and Environmental Research and Consulting at the Dow Chemical Company in Midland, MI; L. Faye Grimsley, Ph.D., Associate Professor at the Tulane
School of Public Health and Tropical Medicines Department of Global Environmental Health Sciences in New Orleans, LA; Bonnie Webster, Vice President of Monroe Industries, Inc. in Avon, NY; Ally LaTourelle, Esq., Vice President of Government Affairs at Bioamber, Inc. in Plymouth, MN; John E. Barker, Corporate Manager of Environmental Affairs, Safety and Loss Prevention at Strongwell Corporation in Bristol, VA; Richard B. Belzer, Ph.D., President of Regulatory Checkbook in Mount Vernon, VA Location: 2318 Rayburn.

10 a.m. WAYS AND MEANS - Subcommittee on Human Resources holds hearing to review the implementation of the reforms to the unemployment insurance system contained in Public Law 112-96, The Middle Class Tax Relief and Job Creation Act of 2012. Location: 1100 Longworth.

12 p.m. JUDICIARY - Subcommittee on Courts, Commercial and Administrative Law Hearing on H.R. 4377, the Responsibly And Professionally Invigorating Development Act of 2012. Witnesses: William L. Kovacs, Senior Vice President, Environment, Technology & Regulatory Affairs, US Chamber of Commerce; Gus B. Bauman, Esq., Beveridge & Diamond, P.C.; Thomas Margro, CEO, Transportation Corridor Agencies; Dinah Bear, Esq., Former General Counsel, Council on Environmental Quality. Location: 2141 Rayburn.

1 p.m. APPROPRIATIONS - Full Committee Mark Up - FY 2013 Energy and Water Appropriations Bill. Location: 2359 Rayburn.

1:30 p.m. FOREIGN AFFAIRS - Subcommittee on the Middle East and South Asia hearing on Confronting Damascus: US Policy Toward the Evolving Situation in Syria, Part II. Witnesses: Andrew Tabler, Next Generation Fellow, Washington Institute for Near East Policy; Mara E. Karlin, Instructor in Strategic Studies, School of Advanced International Studies, Johns Hopkins University; Marc Lynch, Ph.D., Professor of Political Science, Director of Institute for Middle East Studies, Elliott School of International Affairs, George Washington University. Location: 2360 Rayburn.

1:30 p.m. JUDICIARY - Full Committee Markup of H.R. 365, the "National Blue Alert Act of 2011." Continued: Committee Print of Material to be Transmitted to the Committee on the Budget Pursuant to Section 201 of H. Con. Res. 112. Location: 2141 Rayburn.

2 p.m. FINANCIAL SERVICES - The Financial Institutions and Consumer Credit Subcommittee will hold a "Future of Money" hearing focused on mobile payment services. Location: TBD.

2 p.m. FOREIGN AFFAIRS - Subcommittee on the Western Hemisphere hearing on Western Hemisphere Budget Review 2013: What Are US Priorities? Witnesses: Roberta S. Jacobson, Assistant Secretary of State, Bureau of Western Hemisphere Affairs, US Department of State. Location: 2172 Rayburn.

2:30 p.m. AGRICULTURE - Subcommittee on Rural Development, Research, Biotechnology, and Foreign Agriculture Hearing on "Formulation of the 2012 Farm Bill: Rural Development Programs." Location: 1300 Longworth.

2:30 p.m. FOREIGN AFFAIRS - Subcommittee on Asia and the Pacific Oversight hearing of US Policy Toward Burma. Witnesses: Panel I: Kurt Campbell, Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State; Nisha Biswal, Assistant Administrator for Asia, United States Agency for International Development (USAID). Panel II: Aung Din, Executive Director and Co-Founder, US Campaign for Burma; Tom Andrews, President and CEO, United to End Genocide, (Former Member of Congress, D-ME). Location: 2200 Rayburn.

2:30 p.m. WAYS AND MEANS - Subcommittee on Oversight will hold a hearing on limitations on the purchase of over-the-counter medication with tax-advantaged accounts such as health care Flexible Spending Arrangements, Health Savings Accounts and Health Reimbursement Accounts, Location: 1100 Longworth.
3 p.m. RULES - Meets on H.R. 3523, the Cyber Intelligence Sharing and Protection Act. Location: H-313. Other: HEALTH AFFAIRS - HEALTH INFO TECHNOLOGY - Health Affairs will hold a briefing on the subjects of recent trends in health information technology adoption among US health care providers; eligibility for federal incentives to support that adoption; and demonstration of meaningful use. With David Muntz, Principal Deputy National Coordinator, Office of the National Coordinator for Health IT; Mike W. Painter, Senior Program Officer, Robert Wood Johnson Foundation; Catherine M. DesRoches, Senior Researcher, Mathematica Policy Research; Sandra L. Decker, Senior Service Fellow, National Center for Health Statistics-Division of Health Care Statistics, Centers for Disease Control and Prevention; Chun-Ju Hsiao, Service Fellow, National Center for Health Statistics-Division of Health Care Statistics, Centers for Disease Control and Prevention; Ashish K. Jha, Associate Professor, Harvard School of Public Health. Location: National Press Club (Holeman Lounge), 529 14th Street NW.

PRESCRIPTION DRUG ABUSE - 10 a.m. Gil Kerlikowske, Director of National Drug Control Policy (ONDCP) will host a pen and pad media briefing to release a new data analysis revealing the source of abused prescription drugs in America and urge Americans to take advantage of the Drug Enforcement Administration's upcoming National Take Back Day on Saturday, April 28. Location: Office of National Drug Control Policy, 750 17th Street NW, 8th Floor Conference Room.


LOAD-DATE: April 25, 2012

3 of 3 DOCUMENTS

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FNS DAYBOOK
April 21, 2012
FUTURE EVENTS

SECTION: UNITED STATES SENATE - FUTURES

LENGTH: 90 words

TITLE: EVENT: SENATE FINANCE COMMITTEE;
LOCATION: 215 Dirksen Senate Office Building -- April 25, 2012 10:00 am

BODY:


PARTICIPANTS: Frank Sammartino, assistant director for tax analysis at the Congressional Budget Office; Kim Rueben, senior fellow in the Urban-Brookings Tax Policy Center; Walter Hellerstein, distinguished professor in taxation law at the University of Georgia School of Law; Joseph Henchman, vice president of legal and state projects at the Tax Foundation; and Sanford Zinman, owner of Zinman Accounting, testify

Case against APS teacher continued until tape confession is produced

By D. Aileen Dodd
The Atlanta Journal-Constitution

6:41 p.m. Wednesday, April 25, 2012

A 12-year-old surprise defense witness Wednesday vehemently denied accusations his former Atlanta Public Schools teacher coached kids to change answers on a 2009 state exam.

The student testified fourth grade teacher Derrick Broadwater was a good teacher who deserves to keep his job.

"He read the directions and started walking around," the student said of testing days in 2009. "He didn't say nothing to the students."

The boy was the first student to testify in the district's termination proceedings against educators suspected of cheating. The Atlanta Journal-Constitution is not using his name because of his age.

In addition to the former Dobbs Elementary School student, the tribunal also heard testimony from a lawyer who said he witnessed Broadwater's interview with state investigators. The lawyer maintained the educator never confessed to cheating.

"He admitted no falsehoods; he admitted no crime; he admitted no cheating whatsoever in the conversation," attorney John C. Jones told the panel. "It is just false."

A charge letter that referred Broadwater for termination said that according to the special investigative report on the 2009 state exam the teacher "admitted" to violating testing rules and prompting students to recheck their work if he saw wrong answers.

Broadwater is one of nearly 180 APS teachers suspected of cheating on the state exam. He has been charged with willful neglect of duties, immorality and violating ethics policies.

APS attorney Nina Gupta called attorney Roslyn S. Mowatt, who was part of the investigative team appointed to probe allegations of widespread cheating on the 2009 Criterion-Referenced Competency Tests. She said she, too, witnessed Broadwater's interview with the state.

"Mr. Broadwater admitted to walking around monitoring the students and when he noticed that certain students had marked the wrong answer, he would say, 'Make sure you go back and check your answers.'" Mowatt said.
Last week, Eugene Howard, a special agent with the GBI, testified the notes he took during the Broadwater interview had been destroyed and said the tape recording was part of a criminal investigation and was not available at the time of his testimony.

However, Broadwater's defense team subpoenaed the tape.

The tribunal hearing was continued until a copy of the alleged taped confession can be produced. It is unknown when the case against Broadwater will resume.

Tribunal chairwoman Delories Horton said she wanted to be sure the panel gave a fair assessment to the evidence. She said it was necessary for the three-hour tape to be played so the tribunal could hear the interview for themselves.

University of Georgia law professor Ronald Carlson has said the tape evidence could be a matter for a judge to decide.

In presenting the case against Broadwater, Gupta said he had been trained to administer the state exam and was aware of the rules against prompting students to change answers and veering from the test script, but he did it anyway, resulting in inflated test scores.

"In 2009, virtually all of your students met or exceeded all standards except for a few that were having problems in reading," Gupta said. Fifth-grade teachers who had the students the next year wondered why their class performance didn't match their state exam scores, she said.

The teacher's team of attorneys called five witnesses to testify on his behalf, including a test proctor who was in his room, as well as Broadwater himself.

Broadwater, who came to Dobbs Elementary in 2006, said he is at risk of losing the job he loves.

"I have a letter that is basically controlling what I love to do," he said. "To this day I don't understand.... What I got my four degrees for was to teach students. It's been my passion since the second grade."

Find this article at:
The Washington Daybook
April 25, 2012

ORGANIZATION: Senate Finance Committee

COMMITTEE: Senate Finance Committee


TIME: 10 a.m.

LOCATION: 215 Dirksen Senate Office Building


PARTICIPANTS: Frank Sammartino, assistant director for tax analysis at the Congressional Budget Office; Kim Rueben, senior fellow in the Urban-Brookings Tax Policy Center; Walter Hellerstein, distinguished professor in taxation law at the University of Georgia School of Law; Joseph Henchman, vice president of legal and state projects at the Tax Foundation; and Sanford Zinman, owner of Zinman Accounting, testify

TYPE: Hearing

SUBJECT: Federal Tax Reform and State-Local Tax/Fiscal Policy;
PUBLIC POLICY (90%);
TAXES & TAXATION (90%);
TAX LAW (87%);
TAX REFORM (86%);

LOAD-DATE: April 6, 2012

The following information was released by the University of Georgia:

Writer:
Cindy Rice

The University of Georgia School of Law recently captured first place at the Robert R. Merhige, Jr. National Environmental Negotiation Competition.

The annual two-day competition features teams from around the country and involves several rounds of negotiation centered on current issues in environmental law. Held at the University of Richmond School of Law, the contest was created in memory of the late U.S. District Court Judge Robert Merhige.
During the tournament, Georgia Law defeated Georgetown University Law Center in the semifinals and Lewis and Clark Law School in the finals to take home the top trophy. Representing the law school were second-year students Christopher A. Knapik and Christopher S. Smith.

"Competitions like this are a great way for our business law students to get hands-on experience in representing clients during negotiations," said Georgia Law Business Law and Ethics Program Instructor Carol Morgan. "I am so proud of their hard work and success."

LOAD-DATE: April 11, 2012
ATHENS, Ga., April 10 -- The University of Georgia issued the following news release:

The University of Georgia School of Law recently captured first place at the Robert R. Merhige, Jr. National Environmental Negotiation Competition.

The annual two-day competition features teams from around the country and involves several rounds of negotiation centered on current issues in environmental law. Held at the University of Richmond School of Law, the contest was created in memory of the late U.S. District Court Judge Robert Merhige.

During the tournament, Georgia Law defeated Georgetown University Law Center in the semifinals and Lewis and Clark Law School in the finals to take home the top trophy. Representing the law school were second-year students Christopher A. Knapik and Christopher S. Smith.

"Competitions like this are a great way for our business law students to get hands-on experience in representing clients during negotiations," said Georgia Law Business Law and Ethics Program Instructor Carol Morgan. "I am so proud of their hard work and success."
WASHINGTON - A taxpayer with a marginal income tax rate of 7.5% would have been indifferent to purchasing high-rated tax-exempt or taxable corporate bonds last year because there was only a .35% spread between these bonds, a joint Congressional committee concluded in a report issued Monday. The Aaa-rated corporate bond rate averaged 4.64% while the rate for high-grade munis averaged 4.29%, according to the report. Those with higher income rates would have benefited more from buying tax-exempt bonds and those with lower rates should have bought corporate bonds, the 52-page report by the Joint Committee on Taxation suggests.

The 7.5% implied tax rate of the marginal investor for 2011 - that is, the rate at which there would be the about the same benefit for an investor purchasing a high-grade muni or high grade corporate bond - is much lower than the 15.8% implied tax rate for 2010 and 12.6% rate for 2009, according to the JCT.

The lower rate is due to the fact that the issuance of new muni bonds dropped in 2011 to its lowest level in 10 years, the JCT said. In addition, the committee said, reports projecting high default rates of state and local governments and some instances of high-profile defaults by certain issuers increased investors concerns about risks and led them to demand higher rates.

The report also said state and local governments issued an average of $384 billion in tax-exempt bonds annually over the period of 2002 through 2011.

The JCT wrote the report for a hearing the Senate Finance Committee plans to hold on Wednesday on tax reform and what it means for state and local tax and fiscal policy.

The report contains detailed descriptions of tax-exempt bonds, as well as taxable tax credit and direct-pay bonds. It summarizes the tax law requirements for these bonds. It also contains information about state and local tax revenues.

Five witnesses are scheduled to testify at the hearing, which is to begin at 10:00 am, but none of them represent state and local governmental issuers.

The witnesses are: Frank Sammartino, the Congressional Budget Office's assistant secretary for tax analysis; Kim Rueben, a senior fellow at Urban-Brookings Tax Policy Center; Walter Hellerstein, the Francis Shackelford Distinguished professor of taxation law at the University of Georgia School of Law; Joseph Henchman, vice president of legal and state projects at the Tax Foundation; and Sanford Zinman, owner of Zinman Accounting in White Plains, N.Y.

URL: http://www.bondbuyer.com
WASHINGTON, April 25 -- The Senate Finance Committee issued the following hearing schedule:

MEMBER STATEMENTS

Max Baucus
(D-MT)

Orrin G. Hatch
(R-UT)

WITNESS TESTIMONY

Mr. Frank Sammartino, Assistant Director For Tax Analysis, Congressional Budget Office, Washington, DC

Dr. Kim Rueben, Senior Fellow, Urban-Brookings Tax Policy Center, Washington, DC

Mr. Walter Hellerstein, Francis Shackelford Distinguished Professor of Taxation Law, University of Georgia School of Law, Athens, GA

Mr. Joseph Henchman, Vice President of Legal & State Projects, Tax Foundation, Washington, DC

Mr. Sanford Zinman, Owner, Zinman Accounting, White Plains, NY

For any query with respect to this article or any other content requirement, please contact Editor at htsyndication@hindustantimes.com
LENGTH: 292 words

HEADLINE: GEORGIA LAW ADVOCACY TEAMS FINISH IN TOP FOUR NATIONALLY, TOP 10 INTERNATIONALLY

BYLINE: States News Service

DATELINE: Athens, GA

BODY:

The following information was released by the University of Georgia:

Writer:
Cindy Rice

The University of Georgia School of Law recently finished as one of the top four teams in the country at the American Bar Association National Appellate Advocacy Competition and placed as one of the top 10 teams in the world at the Willem C. Vis International Commercial Arbitration Moot.

The national round of the ABA tournament was recently held in Chicago, Ill., and featured more than 200 teams from law schools across the nation. Representing Georgia Law and earning the title of semifinalists were second-year law students Emily A. Cook, Nneka A. Egwuatu and Rory A. Weeks. The trio was undefeated during the regional rounds of the competition and advanced to the national tier. Third-year law students Lennon B. Haas and Rachael D. Ivey coached the Georgia Law team.

Finishing ninth in the world at this year's Vis moot competition were third-year law students Melissa L. Bailey, Jennifer L. Case and Hillary L. Chinigo. They competed against a field of more than 280 teams from almost 70 countries in this international tournament and recorded one of the highest finishes out of the 52 teams from the U.S., coming in second to Harvard University. Serving as coach for the team was Georgia Law Professor Peter B. "Bo" Rutledge.

"Placing this well at both the national and international level is not an easy feat," Georgia Law Director of Advocacy Kellie Casey said. "I am so proud of our students for the hours of preparation and hard work they put into each competition, and I am thankful for the amazing support system the Georgia Law community has given each of these teams as they prepared to compete. What a great way to finish an amazing advocacy season."

LOAD-DATE: April 28, 2012
The University of Georgia issued the following news release:

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Writer: Cindy Rice

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Contact: Kellie Casey, krcasey@uga.edu

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LOAD-DATE: April 28, 2012
First Drug Court commencement announced for Barrow County

The Piedmont Judicial Circuit will hold its first Drug Court commencement ceremony on May 2 at Barrow County Courthouse at 6 p.m. The Honorable Jason J. Deal, Judge of Superior Court, Northeastern Circuit, will be the keynote speaker. The commencement is open to the public. The Barrow County Courthouse is located at 652 Barrow Park Drive, Winder.

In a recent press release, Piedmont Judicial Circuit specialty courts director Taylor Jones writes: Judge Deal has served as a Superior Court Judge for the Northeastern Judicial Circuit since June 2005. He is the presiding judge of the Hall County Drug Court and the Dawson County Treatment Court. Previously Deal served as the District Attorney for the Northeastern Judicial Circuit, Magistrate Judge of the Hall County Magistrate Court, Assistant District Attorney for the Northeastern Judicial Circuit, County Attorney for Dawson County, and as an associate with the law firm of Thompson, Fox, Chandler, Homans, Hicks & McKennon. Deal received his law degree from the University of Georgia School of Law and his Bachelors of Science degree from Furman University. He is a veteran of the U.S. Army. Deal was raised in Hall County and graduated from North Hall High School.

Judge Deal is the former chairman of the Edmonson Telford Center for Children. He is also active with the Council of Superior Court Judges serving on several committees. Deal is married to Denise Fallin Deal and they have three children. They live in northern Hall County and attend First Baptist Church, Gainesville.

The Drug Court is designed to assist individuals facing drug-related charges in Barrow, Banks and Jackson counties while specifically addressing substance abuse and addiction driven crimes. Drug Court provides a sentencing alternative to traditional incarceration and address the relapse rates of nonviolent offenders. The program commenced in spring 2010 and requires a voluntary commitment of at least eighteen months from participants. This comprehensive program strives to inform the community about ways in which supportive and rehabilitative services may be accessed in order to combat this issue and participants will agree to undergo intensive and supervised treatment. They have also been ordered to successfully complete group, individual, and family counseling; urine testing; educational and vocational training; and health and community activities.

Superior Court Judge Currie Mingledorff presides over the drug court for the multi-county circuit. Judge Mingledorff holds participants accountable for their recovery, sanctions noncompliance and ensures timely fulfillment with obligations to maintain sobriety, sustain employment, obtain stable housing, pay child support and court fees and meet familial obligations.

The Drug Court is currently collaborating with various community organizations, including the Public Defender’s Office, District Attorney’s Office, Police Department, Sheriff’s Office, Department of Corrections, Advantage Behavioral Health Services, Department of Labor, Project ADAM and a host of other agencies in order to institute positive change within the three-county circuit.

Other efforts to promote the specialty court extend beyond the county line as the Georgia Criminal Justice Coordinating Council has provided the program with a three-year grant totaling over $342,000. This grant is part of the funding made available to the State under the American Recovery and Reinvestment Act (ARRA) as part of the federal government’s stimulus efforts.

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Trackbacks
The Impact of Tax Reform on State and Local Policy

April 27, 2012
by Karen M. Kroll (author/karen-m-kroll-0130)

Even as the economy inches forward, a majority of the 50 states continue to feel the impact of the recession. For the fiscal year beginning this July 1, 30 states have projected or addressed budget shortfalls that total $49 billion (http://www.cbpp.org/cms/index.cfm?fa=view&id=711), the Center on Budget and Policy Priorities reports.

The still precarious state of the states’ finances, along with the growing complexity of both the federal and many state and local tax codes, prompts the question: What sort of impact might various tax reforms be likely to have on state and local municipalities’ tax policy? That was the subject of recent hearings of the Senate Finance Committee (http://finance.senate.gov/hearings/hearing/?id=2fceb5af-6066-a05d-97b6-ab804f63f66d). As committee chair Senator Max Baucus (D-Mont) noted in his opening remarks, "We need to make sure our federal, state and local tax systems are working together. As part of tax reform, we should ask how we can help states collect taxes owed and how we can encourage standard rules to protect taxpayers from multiple taxes and needless complexity."

Clearly, “needless complexity” permeates the tax code in the U.S. A case in point: The U.S. currently is home to 9,600-plus sales tax jurisdictions, according to testimony from Joseph Henchman, vice president of legal and state projects with the Tax Foundation (http://taxfoundation.org/news/show/28165.html). In addition, as more sales take place online, a growing number of states are expanding their definitions of just what constitutes nexus, and thus provides the states with the ability to tax a transaction. Whether or not you agree with the argument that online transactions should be subject to the same sorts of taxes as those that take place in brick-and-mortar outlets, it’s clear that the proliferation of even more sales tax regulations and jurisdictions creates greater confusion and work for the businesses that try to comply with them.

Similarly, employment taxes also often vary greatly from state to state, says Sanford Zinman, CPA, national tax chair of the National Conference of CPA Practitioners, and president of the Westchester / Rockland New York Chapter. "[T]here is no uniform definition of which types of workers are employees and which are independent contractors," Zinman observes. "Even within states, there are different definitions of who is an employee for withholding tax, unemployment insurance, worker’s compensation insurance and other employment-related taxes."

Another concern is the uncertainty of many federal tax provisions currently in place, and the trickle-down impact this ambiguity has on state tax policy. This was highlighted by Kim Reuben, senior fellow with the Urban-Brookings Tax Policy Center. "Temporary extensions of credits, deductions and tax rates complicate state forecasting, particularly for state tax systems that piggyback on the federal code. Policy changes and uncertainty can lead taxpayers to change their behavior in ways that can indirectly affect state and local revenues and make projecting state revenue more difficult."

Frank Sammartino, assistant director for tax analysis with the Congressional Budget Office, talked about the ways in which the tax code essentially transfers funds from the federal government to state and local entities through the use of tax-preferred bonds. The most common is a type of bond on which the interest income is exempt from federal taxes. In addition, some state or local bonds offer a federal tax credit that can eliminate some or all of the taxes that otherwise would be paid on the interest earned on the bond.

While such mechanisms are one way that the federal government can help support state and local entities, there's a problem, Sammartino says. "With tax-exempt bonds, the federal government forgoes more in tax revenues than state and local governments receive. Estimates suggest that the difference is about $6 billion per year," Sammartino states. In a nutshell, these transfers are an inefficient way for the federal government to support the states, he adds.

While the speakers didn't offer specific policy recommendations, they did outline the principles they thought ought to be kept in mind as Congress considers changes to federal tax policy. Simplicity, consistency and certainty were key themes.

As Walter Hellerstein, professor of taxation at the University of Georgia Law School, notes, "If there is any overarching conclusion that one can draw from the overview of federal-state tax coordination, it may be simply that Congress should keep in mind the admonition of the Hippocratic Oath -- "First, do no harm" -- in considering proposals for federal legislation that affect state taxation."

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how to make money online (http://businessfinancemag.com/article/impact-tax-reform-state-and-local-policy-0427#comment-26563)

On April 28th, 2012 shahanur (not verified) said:
This is a great tool for links. We sell custom business cards and we are in the process of building links to our sites. This is the time consuming part of our work. online money making (http://www.thesixfiguretrainingsystem.com)
you have to see this response to the article? (/article/impact-tax-reform-state-and-local-policy-0427#comment-26645)

In light of U.S. current tax reform discussions and state and local budget deficits, the committee discussed the need for proper coordination between federal and state governments to create rules that will help states balance their budgets and that will protect taxpayers from multiple taxes and needless complexity.

Mr. Hellerstein gave testimony on the implications of federal tax reform for state taxation, particularly addressing the role of Congress in authorizing or limiting state taxation of interstate commerce. Mr. Hellerstein provided a detailed history of federal-state tax coordination with: Vertical coordination (between concurrent federal and state tax regimes) of wealth transfers and of income Horizontal coordination (among state tax regimes) with federal efforts to harmonize or restrain state income, excise, and property taxes.

He also addressed pending congressional proposals for federal-state tax coordination based on past mixed results.

"The historical record of federal-state tax coordination provides important lessons regarding the risks and rewards of such coordination and, consequently, guidance for evaluating pending and future initiatives for such coordination," said Mr. Hellerstein. "If there is any overarching conclusion that one can draw from this overview of federal-state tax coordination, it may simply be that Congress should keep in mind the admonition of the Hippocratic Oath -- "first do no harm" -- in considering proposals for federal legislation that affect state taxation."

Mr. Hellerstein is the Francis Shackelford Professor of Taxation and Distinguished Research Professor at the University of Georgia School of Law. He is also a consultant to the Organization for Economic Cooperation and Development (OECD). Mr. Hellerstein has been involved in numerous state tax cases before the United States Supreme Court and has also been involved in issues relating to state taxation of electronic commerce. He was a member of the Steering Committee of the National Tax Association's Telecommunications and Electronic Commerce Tax Project and has served as a consultant to the United Nations on e-commerce tax issues.

Mr. Hellerstein is the co-author of Thomson Reuters WG&L treatise "State Taxation." State Taxation offers analysis on tax compliance and planning issues that face state tax practitioners. The treatise covers all of the leading-edge topics in the expanding field of state taxation.
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Joe DeGaetano Should Be Elected Judge

Sunday, April 29, 2012

Joe DeGaetano is the right choice for Sessions Court judge for Hamilton County. Joe has a thoughtful temperament and an eye for fairness, which is exactly what Chattanooga needs. Our city has been besieged by the type of crime that could prevent the happiness and prosperity we deserve. Joe’s steady judiciousness, experience and knowledge would help guide us through the perils of modern life.

Chattanooga needs someone who knows the city personally as our problems and lifestyle are somewhat unique.

Joe grew up in Chattanooga before pursuing some of the best education available in the South while studying economics at Vanderbilt before excelling in the University of Georgia School of Law.

Joe is intelligent, a dedicated family man, and a direct product of our fine city. There is no better candidate for serving in the judicial system. That is why he has my support for Sessions Judge.

Edward A. Peterson

Gary Starnes for General Sessions Court Judge

Integrity and fairness we can count on. Exicted Courtroom Lawyer. Served as Special Judge in Sessions and City Courts. Paid for by the Committee for Gary Starnes Sessions Judge.

April 30, 2012

Legal Drinking Age Is A Dumb Law

April 30, 2012

Great Care From Local Hospitals

April 30, 2012

Roy Exum: It’s Now ‘Family Promise’
Law expert: Outside judge might bring order to Hood case

By JOE JOHNSON - joe.johnson@onlineathens.com
Published Sunday, April 29, 2012

Judges in Clarke County might consider bringing in a judge from a different judicial circuit to preside over the case of a man accused of murdering two people — one an Athens-Clarke police officer — according to a University of Georgia law professor.

Jamie Hood first asked the trial judge to remove himself from the death penalty case, then told another judge who was appointed to decide that matter that he also should step down.

Hood claims that Judge Lawton Stephens can’t be impartial because he is “too close” to the officer who survived the double-cop shooting in 2011. And last week, he told Judge David Sweat he was not fit to decide if Stephens remains as the trial judge, but did not fully explain why.

“To cut off complaints about prior judicial contacts or friendships with victims, sometimes a visiting judge comes in,” UGA law professor Ron Carlson said.

That’s what happened in the case of Brian Nichols, who in 2005 went on a shooting spree at the Fulton County Courthouse, killing a judge, a court reporter, a sheriff’s deputy and, later, a federal agent.

The initial judge stepped down because, like Stephens in Hood’s case, he knew victims shot by Nichols.
Cobb County Superior Court Judge James Bodiford stepped in to preside over the trial that led to Nichols' conviction.

"Judge Bodiford would be a terrific choice in the event our local judges decide to take this step," Carlson said.

Stephens has presided over Hood's case since August, when Hood was indicted for the murder of Senior Police Officer Elmer "Buddy" Christian III, the attempted murder of SPO Tony Howard — both on March 22, 2011 — and the murder or Kenneth Omari Wray in December 2010.

Stephens disclosed early on that he's known Howard and his family for years, and that he attended Christian's funeral, but said, "I don't think any of that would prevent me or impair me from presiding in this case."

Hood's attorneys filed dozens of pretrial motions after their client was indicted, but none asking Stephens to recuse himself from the case.

It wasn't until two months ago that Hood himself told Stephens he was "too close" to Howard to be impartial, and his attorneys later filed an official motion asking the judge to step down.

Subsequently, Stephens issued an order that asked for another judge to decide the matter, which was assigned to Sweat.

Prior to last Wednesday's hearing to decide whether Stephens remained on the case, Sweat filed a disclosure of his own in which he stated he never had any contact with Christian, though he attended the officer's funeral along with other officials and offered condolences to Christian's wife.

Although Howard may have testified as a witness once or twice in court cases that Sweat presided over, the judge has "no recollection of any other past contact with Tony Howard in any personal, professional, or other capacity," he wrote in his disclosure.

But the hearing on whether Stephens would remain the trial judge
Law expert: Outside judge might bring order to Hood case

The testy exchanges and accusations against both judges suggest that a judge from outside the Western Judicial Circuit, covering Clarke and Oconee counties, should step in, according to Carlson.

"An outside judge cuts off the flyspecking done by a defendant over local judges' connections with victims," the law professor said.

"None of this is to suggest there is a whiff of bias or prejudice on the part of judges Stephens or Sweat," Carlson said. "In the case of Judge Sweat, for example, the attendance at the funeral and the Howard church service do not appear to be disqualifying.

"However, these good judges are exercising extra caution because the death penalty is involved," Carlson continued. "The trial will be expensive, and nobody wants to see a future verdict thrown out because prudent measures were not employed. If the option of an outside judge is not exercised, I am confident the care used by the local judges will carry the case to a proper verdict."

• Follow Criminal Justice reporter Joe Johnson at www.twitter.com/JoeJohnsonABH or www.facebook.com/JoeJohnsonABH.
Family-Placed Death Notice

LITTLEFIELD, Richard, Jr. Richard Wells "Bill" Littlefield, Jr. September 17, 1948 - April 27, 2012 Richard Wells "Bill" Littlefield passed away on April 27, 2012 at the age of 63, due to complications of congestive heart failure. A native of Jesup, Bill was the son of the late Hazel Harper and Richard Wells "Snookie" Littlefield, Sr. Bill was educated in the public schools of Jesup and Wayne County. He received his undergraduate degree from Emory University (1970) and his Juris Doctor degree from the University of Georgia (1973). Bill's leadership abilities emerged early when he pledged the Sigma Alpha Epsilon fraternity at Emory, where he served as entertainment chairman for the chapter and later when he was elected vice-president of his first year law school class. He continued as a well-respected member of the Georgia Bar throughout his career in the practice of law in both the public and private sectors. Bill began his legal career with the support and guidance of the late Ronald Adams and Glenn Thomas, Jr. Bill served as assistant District Attorney for the six-county Brunswick Judicial Circuit. He resided with his family on St. Simons Island and he practiced law in Brunswick from 1973 to 1983. During this time, Bill was elected to represent State Senate district 6, where he served three terms. During his devoted service in the Georgia Senate, Bill was Vice Chairman of the Judiciary Committee and Secretary of the Insurance Committee. He served on the Governor's Select Committee on Juvenile Justice, the Governor's Select Committee on Constitutional Revision (1979-1982), and on the Georgia Code Revision Commission (1981-1987). After his first year in office, Bill garnered the highest ranking among his fellow Senators by the Southern Center for Studies in Public Policy. Bill received the "Friend of Children" award from the Georgia Council on Children; an outstanding service award from the Georgia Municipal Association; a leadership award from the Wayne County Young Farmers; and a legislative leadership award from the Georgia State Crime Commission, among many other distinctions. Clark College Atlanta recognized him for his advocacy on behalf of children, the elderly, and working people of Georgia. After three terms in the Senate, Bill relocated permanently to the Atlanta area, where he practiced law in the corporate sector for nearly 30 years. He was the regional managing attorney for Zurich Insurance Group for 10 years, overseeing 10 legal offices across the country. In 1999, Bill had the opportunity to return to the legislature to assist the late Senator René Kemp as legal advisor to the Senate Judiciary Committee. He went on to serve as Executive Counsel to Lieutenant Governor Mark Taylor and, later, serving as the Director of the joint Senate Information and Research Offices, where he mentored many young people who aspired to careers in public service and public policy. He was currently serving in a house counsel capacity, providing legal representation for the Travelers Insurance Company, Workers Compensation section. Bill enjoyed a good round of golf, a glass of good wine, music of all kinds, from classical to country, and he was a gifted gardener. He enjoyed travel and was most happy when he and his wife, Beverly, could relax at their favorite Beach Bar at the Island Beachcomber on St. Thomas, U.S.V.I., where they had been meeting cherished friends each year for the last 20 years. Of his many achievements, he was most proud of the accomplished adults his children have become. Bill is survived by his wife of 15 years, Beverly Rheney Littlefield; daughter, Stephanie Anne (fiancé Cameron Zettel), Seattle, Washington; son, Major R. Wells Littlefield, III, US Air Force, currently serving in Afghanistan, and permanently stationed in Las Vegas, Nevada; daughter, Lindsey L. Lieber (Phillip), Charlotte, North Carolina; sister, Mary Catherine L. Amerine (Gary), North Augusta, South Carolina; granddaughter, Ava Grace Lieber, Charlotte, NC; and Harper, Hopkins, and Littlefield cousins. He also is survived by Lorraine Boudreau, Stephanie and Wells' mother, and her husband, Al, of Townsend, Georgia. Bill will forever be remembered as a devoted father and husband, statesman, mentor, and a true and caring friend to all those blessed to have had the fortune of knowing him. He will be missed, too, by his beloved kittens, Kaycee, Spanky, Renny and Misty, and by too many friends to count. The family is deeply appreciative of the support and care provided by Dr. Hector Malave, Dr. Thomas Seay, and Dr. Norman Gitlin and their staffs, the staff of St. Joseph's Hospital, and the staff of Hospice Atlanta. A memorial service and celebration of the life of Bill Littlefield will be held at H.M. Patterson and Son, Spring Hill, at 3 o'clock on Friday, May 4, 2012. Casual attire is suggested and the wearing of tropical shirts is encouraged, in honor of Bill's fondness for the USVI in particular and the Caribbean in general. In lieu of floral remembrances, memorial contributions may be made to the charity of one's choice, to Furkids animal rescue, www.furkids.org, or to the University of Georgia Law School Fund in Memory of Richard W. Littlefield, Jr. (JD, '73), https://www.externalaffairs.uga.edu/os/makegift. H. M. Patterson and Son, Spring Hill, 1020 Spring St., Atlanta, GA 30309.

Published in The Atlanta Journal-Constitution on April 29, 2012
Yarbrough: Getting a lesson in the majesty of the law

By DICK YARBROUGH

Published Monday, April 30, 2012 Updated: Monday, April 30, 2012 - 8:35pm

While May 1 is designated Law Day in the United States, Judge Lisa Godbey Wood, chief judge of the U.S. Southern District of Georgia, says we Americans should remember that every day is a day of law in this country. There would be anarchy without it.

I had the privilege of following Judge Wood on a program in Savannah a couple of weeks ago and I have never heard anyone explain our system of law better or with more passion than she did. When it was my turn to speak, I felt like Tiny Tim and his ukulele following Leonard Bernstein and the New York Philharmonic.

Judge Wood was appointed to the federal court by President George W. Bush and approved by the U.S. Senate in 2007. In 2010, she was named chief judge. Prior to that, she had been a U.S. attorney and, previously, a magistrate judge in Brunswick and in private practice there.

I stopped by her office to tell her how impressed I was with her speech and to assure her I don’t do lawyer jokes. Never. (Well, OK, there is the one story about the lawyer who ... .)

What I got out of the visit was a marvelous tutorial on the role of our legal system within the framework of our democracy from a remarkable individual who shatters the stereotypes you may have of imperious judges who seem out-of-touch with reality. Judge
Wood immediately puts you at ease, laughs a lot (but not at lawyer jokes) and talks enthusiastically about her family. She is married to a retired FBI agent and has 10-year-old twins.

But don’t let her laid-back manner and easygoing persona fool you. For one thing, she is brighter than a new penny, having graduated summa cum laude from both the University of Georgia and from the UGA School of Law.

“I’m a Double Dawg,” she declares proudly.

Observers say she runs a tight but polite courtroom. She doesn’t deliver speeches to those on trial or to the juries.

“I just talk to them,” she says, “If I am sentencing someone, I want to look the person straight in the eye and tell them what the sentence is and why. I want to make sure they understand the rights they are giving up.”

She rarely, if ever, excuses potential jurors from service.

“I want every case to have a jury of one’s peers, not just a group of people who had nothing better to do that day,” the judge declares. She notes that the U.S. Constitution specifically mentions the jury system and she says it is the most fundamental part of democracy.

“The jury system is the ultimate check on the executive and legislative branches of government,” she explained. “The jury gets the last say-so. Twelve people voting their collective view and they always seem to get it right.”

I had to ask her about her disapproval of lawyer jokes.

“We may have earned the jokes through the behavior of a minority of folks, but when lawyers go bad and hurt our citizens, this strikes our system of law a mighty blow, and that’s not funny.”

Judge Wood is at her most eloquent when she talks about “the majesty of the law,” which she says is evident in the “plain old everyday cases,” not necessarily the high-profile ones that come
along every few years and dominate the headlines for weeks.

Of course, we don't always agree with or understand some of the decisions coming out of courts, but until someone comes up with a better system than the framers of the U.S. Constitution — and I suspect no one ever will — Judge Wood thinks our legal system serves us well.

"The courtroom is where people can potentially lose their freedom, their money and sometimes even their lives. To come into court and see people speaking for other people; witnesses swearing to tell the truth and doing it; citizens taking time away from what they might otherwise be engaged in to sit as a group and carefully determine the fate of their fellow citizens; to see the principles of the Constitution applied every day in neighborhoods and towns all over America to resolve disputes without violence. That is the majesty of the law."

I am glad I went to see Judge Lisa Godbey Wood. That was a good Law Day lecture from someone who knows what she is talking about and given to someone who badly needed to hear it. And that's no joke.

• Georgia columnist Dick Yarbrough can be reached by email at yarb2400@bellsouth.net, or by mail at P.O. Box 725373, Atlanta, GA 31139.
Jim Perry, Jim Perry, age 58, of Lilburn, passed away Friday, April 27, 2012. He is survived by his wife, Lee, his daughters Lynn and Alexandra and stepdaughter Carey Drake Holbrook. He was preceded by his mother Anne Taliaferro Perry and is survived by his father William P. Perry and his wife Nancy, and his siblings Robert G. Perry (Cheryl) and Catherine P. Maddux (Tom). Jim was born in Cleveland, OH March 17, 1954. His early years were spent in New Orleans, moving to Atlanta in 1961. There he attended Lovett School, then Tulane University, graduating from Emory, before attending the University of Georgia School of Law. After several years in private practice, he managed the law office serving the clients of The Cincinnati Financial Company. Jim will be remembered as a genuinely kind and loving father and husband. A funny and brilliant man, who loved to read and spend time with family. He will be forever missed by all who have been blessed to know and love him. A Memorial Service to Celebrate the Life of Jim Perry will be held Thursday, May 3, 2012 at 2PM at Tom M. Wages Snellville Chapel. The family will receive friends Thursday beginning at 1:30PM at the funeral home. Condolences may be sent or viewed at www.wagesfuneralhome.com. Tom M. Wages Funeral Service, LLC, "A Family Company," Snellville Chapel 770-979-3200, has been entrusted with the funeral arrangements.
Richard W. Story, U.S. District Court judge for the Northern District of Georgia, will deliver the keynote address at the School of Law's Commencement May 19. The processional will begin at 10 a.m. on the quadrangle in front of the law school on North Campus. In the event of rain, the ceremony will be moved to Stegeman Coliseum.

A federal judge for the past 14 years, Story previously served as a Superior Court judge for the Northeastern Judicial Circuit of Georgia from 1986 to 1998, where he was chief judge for the latter five years. He also has served as a juvenile court judge in Hall County, as a special assistant attorney general representing the state of Georgia in child support and custody cases and as a partner in the Gainesville law firm of Hulsey, Oliver and Mahar.

He earned his bachelor's degree from LaGrange College in 1975 and his juris doctor from Georgia Law in 1978.

At this year's Commencement, approximately 230 students will be honored for the completion of all requirements for a juris doctor. Additionally, 10 master of laws candidates, who have completed one year of graduate legal study, will be recognized.