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In life, certainty comes in the form of death and taxes. In intellectual property law, it comes in the form of change.

The quick pace of technology and the complexities of the digital world are forcing changes in all areas of intellectual property. "IP is somewhat of a moving target," says attorney Mike Powell of Powell IP Law. "I think there is more uncertainty and really more uncertainty in acquiring and enforcing patents and trademarks, in particular, than we've seen in many years," he says.

On the horizon for the practice is a shift from litigating to mediation and arbitration. "With the economy taking its toll on the industry, we're seeing more people say, 'You know, let's take control of our dispute,' and I think they're going to do that through mediation and arbitration," Powell says.

Legal models are changing, too. "Legal departments that traditionally would hire outside counsel to handle litigation matters by the hour are now able to tap into networks of lawyers who are great litigators who are handling these cases on a contingency," he says. "We're seeing more of that than we've ever seen in the past."

To gain some insight into upcoming trends and issues in the different areas of intellectual property, the Daily Report turned to a few well known—and not so well known—names in Georgia's IP community.

Patent law

An upward trend in the number of patent filings will continue in 2014, says patent attorney Bill Needle. The America Invents Act (AIA), which changed the filing system from a "first to invent" to a "first inventor to file" system, is partially responsible for the increase, but not totally.

"While AIA has certainly helped to spur filings, perhaps more rapidly than it would have been under the old system," says Needle, "when you look back over a 10-year period you can see that there has been a tremendous trajectory upward, even under the old system of filing."

With more patents come more litigation. But an increase in patents is not the only reason for more litigation, says Needle, a partner with Ballard Spahr. "I just think that more attention is being paid to trying to preserve your position, your little niche in whatever business you're in, because of so much competition." Needle says with the increase in patent litigation, settlements may happen more often and earlier than usual in order to keep costs down.
The high-profile Apple lawsuit against Samsung, which involves numerous patent issues involving smartphones and tablet computers, has brought design patents to the forefront.

"The idea that you can get a patent for how it [a product] works as well as what it looks like has been an awakening," says Needle. "You will now see more design patent activity."

Needle says design patents will also reach into the very "sexy area" of fashion design. "Design patents are powerful," he says. "They are cheaper, they are quicker to issue from the patent office, and they can be just as effective as the old-fashioned utility patent applications."

University of Georgia law professor Joseph Miller cites the U.S. Supreme Court's ruling in spring 2013 that dealt with DNA patents as a case that will have implications in the upcoming year. The justices unanimously ruled that human genes can't be patented, but synthetically produced genetic material can.

"The lower courts are continuing to have real trouble figuring out how to apply the Supreme Court's standards for when something is too abstract to be patentable," say Miller. "I think that issue is an important one and there will continue to be significant developments."

Expect lawmakers to address lawsuits by nonpracticing entities (NPEs) or "patent trolls," investors who buy up a patent portfolio to obtain licensing fees, says Miller. "Congress is actively considering further changes to patent law that directly responds to this trolling problem," he adds. Congress has introduced several bills in recent months to rein in the troll activity.

Globalization has changed traditional territorial limits on intellectual property, and extraterritoriality patent law is going to get the Supreme Court's attention, says Emory associate dean and law professor Tim Holbrook. He says the justices "have been taking that issue up in nonpatent issues so that dynamic of U.S. law applying to activity abroad is on their radar."

Holbrook says there also will be some Supreme Court activity with software inventions. "Developing software is not nearly as cost intensive as developing a new drug, so I think just the sheer number of them is a problem."

Trademark law

Not only is there an increase in trademark litigation but also the venues for litigation are on the rise, according to trademark attorney Bill Brewster.

"California and New York represent a substantial portion of the trademark litigation, but it feels as if more cases are getting filed in different venues," Brewster says. "People are choosing different jurisdictions for a whole range of reasons, including the fact that they may be doing some forum shopping for law that they think is particularly favorable."

Brewster, a partner with Kilpatrick Townsend & Stockton, also foresees more activity in product configuration. "People are being more creative about approaches to protect what they think is an important part of the brand," he says. "They are thinking about [protection] earlier."

Historically, trademark cases have involved only injunctions, but Brewster says he is beginning to see more trademark cases that involve monetary relief and damages. "People are pushing cases harder," he explains. "People just aren't as satisfied with an injunction."

The issuance of new generic top-level domain names, or gTLDs, will be of particular interest for practitioners, says attorney Mike Hobbs, a partner at Troutman Sanders. "Right now there are 22 generic top-level domain names," he says. Common gTLD names are .com, .net and .edu.

Hobbs says the Internet Corporation for Assigned Names and Numbers (ICANN) put out a proposal for applications for entities and companies that would service new gTLDs, and it has 1,400 new gTLD names pending.

"If you think about all the domain infringements and cybersquatting and trademark infringements that go on today with 22, the concern is if you have 1,400, it's going to be crazy," says Hobbs. "If you're a brand owner, what are you going to do about all of these new domain names that are going to be coming on line?"

Hobbs says social media is an area that will continue to create challenges in trademark. "As social media expands," he says, "the trademark issues continue to expand with it."
Copyright law

The ongoing conflict between copyright and new technology will pick up steam, says Kilpatrick associate Andrew Pequignot. "Copyright law has always been strained by introductions of new distribution methods and devices that facilitate copying, but I think it's fair to say that the pace at which these changes are taking place are probably greater than ever before," he says.

Pequignot predicts there will be some changes in the law, pointing to the Register of Copyrights' pronouncement this year that it's time for the "next great copyright act."

"The Internet challenges traditional concepts of copyright, which was really developed for a physical world rather than a digital world," says Pequignot.

According to Pequignot, another issue is cyberlockers or third-party online services that provide file storing and file sharing services.

"If you've got music that you're storing in a cloud, what are the legal implications of that?" asks Pequignot. "You have companies designing what really are inefficient systems to try and fit within existing law. At some point you are going to see more of a push to tackle these issues in some way."

University of Illinois law professor Paul Heald points to another area to watch in copyright law at the Library of Congress. The Librarian of Congress reviews copyright laws every three years and has the authority to create exceptions.

Exceptions in recent years have affected technology, Heald says, including a recent exception that allows users to "jail-break" cellphones. In other words, "you're allowed to actually, if you want to, put an app on your iPhone that isn't an Apple app. ... You can put an Apple app on a Samsung phone," he says. The phones are programmed to make the change difficult, but it can be done legally.

"The librarian's ability to actually create exceptions has really significant impact and effects on this super-huge market for cellphone applications and also the ease of which people can switch cellphone companies," says Heald. Starting in January, cellphone users will need permission from their carriers to unlock their phones. With an unlocked phone, users can switch between cellphone carriers.

The U.S. Supreme Court's ruling in Kirtsaeng v. John Wiley & Sons this past March will have a significant impact on copyright law. The case involved a student, Supap Kirtsaeng, who came to the United States from Thailand to attend college. He had family members purchase textbooks in Thailand and send them to him in the United States, where he resold them on eBay at a profit. Eight of the textbooks were made by the U.S. company John Wiley & Sons, who sued Kirtsaeng. The Supreme Court ruled in favor of Kirtsaeng, using the "first sale" doctrine as its argument in support of the resales.

"What's clear right now is copyright owners can keep out counterfeit and infringing goods, but they can't keep out goods that they themselves made [legally] overseas and shipped overseas," says Heald. "It really has a huge effect on what goods can and can't be imported in the U.S."

A final trend to watch, says Heald, is a little-known provision in copyright legislation that went into effect in 1978. The law gave musicians and songwriters termination rights, allowing them to reclaim their copyrighted material 35 years after signing over their rights to record companies. "Everybody was expecting a huge onslaught of litigation, but there seems to be a lot of negotiating going on," he says.
WALLER ADDS 22 NEW ASSOCIATES

Dec 03 2013 12:31:11

Waller Adds 22 New Associates

Law Firm Expands Experience and Depth in All Practice Groups

NASHVILLE, TN -- (Marketwired) -- 12/03/13 -- Waller, Nashville's oldest and largest law firm, has added 22 new associates since to the firm's roster of approximately 200 attorneys are 2013 law school graduates who are now officially licensed to practice.

"We're extremely proud of the new associates who have joined the firm," said Waller chairman John Tishler. "To serve our clients' depth and experience with talented lateral hires who have blended seamlessly with our client teams, and our newest associates are of the class of 2013."

Since June 2013, Waller has added associates in every practice area in its Nashville, Birmingham and Austin offices.

CORPORATE

Lindsey R. Arnold is a 2007 cum laude graduate of the University of Georgia School of Law. She earned her B.B.A., magna cum laude of Georgia. Prior to joining Waller, Arnold was an associate with Burr & Forman LLP in Atlanta and Nashville.

W. Wells Beckett is a 2013 cum laude graduate of the University of Tennessee College of Law where he earned a Certificate of Co Transactions and served as Student Materials Editor of the Tennessee Law Review. He earned his B.B.A., cum laude, in 2010 from

Lindsay E. Jacques is a 2013 graduate of Vanderbilt University Law School where she earned a Law & Business Certificate and vanderbilt Law Review. She earned her B.A. in 2010 from the University of North Carolina at Chapel Hill.

Kathleen Roth is a 2009 magna cum laude graduate of the University of Baltimore School of Law. She holds an M.B.A. from the Ur School of Business and earned her B.S. in 2002 from the University of Illinois at Urbana-Champaign. Prior to joining Waller, Roth w Morris LLP in Philadelphia.

Lanta Wang is a 2011 graduate of Duke University School of Law where she also earned an LL.M. in International and Comparativ of Philosophy degree, honors with distinction, from Miami University in 2006. Prior to joining Waller, Wang was a Legal Fellow with University Health System Office of Counsel.

FINANCE & RESTRUCTURING

Eleanor G. McCulty is a 2010 graduate of the Columbia University School of Law where she served as Notes Editor for the Columb B.A., summa cum laude, in 2005 from American University. Prior to joining Waller, McCulty was an associate with Sullivan & Crom

Jade M. Preis is a 2013 graduate of Vanderbilt University Law School where she was a member of the Phi Delta Phi legal honor sc 2009 from the University of Maryland.

HEALTHCARE

Amanda Brown is a 2008 magna cum laude graduate of the University of Mississippi School of Law. She earned her B.A., magna c
from the University of Arkansas. Prior to joining Waller, he was an associate with Connolly Bove Lodge & Hutz in Wilmington, Del.

William F. Wilson is a 2012 cum laude graduate of Washington University in St. Louis School of Law where he also earned an LL.M. He earned his B.B.A. in 2006 from Belmont University. Prior to joining Waller, Wilson was a Post-Graduate Legal Fellow at the War Technology Management in St. Louis.

LABOR & EMPLOYMENT

Aron Z. Karabel is a 2005 cum laude graduate of Albany Law School. He earned his B.A., cum laude, in 2002 from Arizona State L Karabel was an associate with Thomas Drohan Waxman Petigrow & Mayle, LLP in Hopewell Junction, N.Y.

C. Hunter Kitchens is a 2011 cum laude graduate of Mississippi College School of Law. He earned his B.S. in 2007 from the University of Arkansas. Prior to joining Waller, Kitchens was an associate with King & Ballow in Nashville.

Chen G. Ni is a 2013 graduate of Vanderbilt University Law School. He earned B.S. and B.A. degrees in 2010 from Duke University where he researched and drafted memos on U.S. and Chinese corporate and labor laws.

Brian A. Pierce graduated Order of the Coif in 2011 from Vanderbilt University Law School. He earned his B.A. in 2008 from Duke University and has a degree in Technology Management in St. Louis.

REAL ESTATE

Evan L. Clark is a 2012 cum laude graduate of Samford University, Cumberland School of Law. He earned his B.B.A. in 2010 from Samford University. Prior to joining Waller, Clark served as Judicial Law Clerk to the Honorable Thomas W. Brothers, Sixth Circuit Court, Tennessee.

Casey N. Miley is a 2011 graduate of the Nashville School of Law. She earned her B.S. in 2007 from the University of Tennessee. Prior to joining Waller, Miley served as Assistant Attorney General, Office of the Tennessee Attorney General and Reporter, Real Property and Transportation C

About Waller With approximately 200 attorneys, Waller helps clients navigate a diverse range of complex transactional, regulatory, and litigation matters in a variety of industries. Founded in 1905, Waller has client relationships spanning decades because clients, time and again, come for the firm’s strength in transactional, regulatory, and litigation matters. For more information, please visit www.wallerlaw.com.

Contact: Logan Simmons 615-327-7999 lsimmons@seigenthaler.com
Waller Adds 22 New Associates

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Amanda Brown is a 2008 magna cum laude graduate of the University of Mississippi School of Law. She earned her B.A., magna cum laude, in 2004 from the University of Mississippi. Prior to joining Waller, Brown was an associate with Phelps Dunbar LLP in Tupelo, Miss.

Catherine Rolen is a 2013 graduate of the University of Tennessee College of Law where she was Executive Editor of *The Tennessee Journal of Business Law* and served as Vice President of the Health Law Society. She earned an M.A. in 2007 and a B.S. in 2003 from Middle Tennessee State University.

**TRADEMARKS & INTELLECTUAL PROPERTY**

3. Fugett, M.S. is a 2009 graduate of Vanderbilt University Law School. He holds an M.S. in Science from Cornell University and earned his B.S. in 2003 from the University of Illinois. Prior to joining Waller, he was an associate with Connolly Bove Lodge & Hutz in Washington, D.C. and served as Law Clerk to the Honorable William H. Pryor Jr., United States Court of Appeals for the Eleventh Circuit.

C. Hunter Kitchens is a 2011 cum laude graduate of Washington University in St. Louis School of Law. He also earned his LL.M. in Intellectual Property Law. He earned his B.B.A. in 2007 from the University of Mississippi. Prior to joining Waller, Kitchens was a Post-Graduate Legal Intern at the Washington University Office of Technology Management in St. Louis.

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Brian A. Pierce graduated Order of the Coif in 2011 from Vanderbilt University Law School. He earned his B.A. in 2008 from Duke University. Prior to joining Waller, Pierce was an associate with Vinson & Elkins, LLP in Houston.

P. Maxwell Smith is a 2007 magna cum laude graduate of the University of Alabama School of Law. He earned his B.A., magna cum laude, in 2001 from Washington and Lee University. Prior to joining Waller, Smith was an associate with Bradley Arant Boult Cummings LLP in Nashville.

**LITIGATION & DISPUTE RESOLUTION**

Gilbert Dickey graduated with high honors in 2012 from the University of Chicago Law School. He earned his B.A., magna cum laude, in 2009 from Samford University. Prior to joining Waller, Dickey served as Law Clerk to the Honorable William H. Pryor Jr., United States Court of Appeals for the Eleventh Circuit.

Michael A. Fant is a 2012 magna cum laude graduate of the University of Florida Levin College of Law. He earned his B.S., cum laude, in 2009 from the University of Florida.

Joseph L. Watson graduated with honors and Order of the Coif in 2011 from the University of Tennessee College of Law. He earned his B.A., with honors, in 2007 from Furman University. Prior to joining Waller, Watson served as Law Clerk to the Honorable Justice Gary Wade,
Tennessee Supreme Court.

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Jessica R. Reeves is a 2013 graduate of the University of Memphis Cecil C. Humphreys School of Law while also completing a semester at the Japan campus of Temple University School of Law. Reeves holds an M.B.A. from the Yale School of Management and earned her B.S. in 2004 from Dartmouth College.

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Heery settles with DeKalb for $7.5M

Construction management company Heery International announced Tuesday that it has settled a six-year-old lawsuit with the DeKalb County Board of Education for $7.5 million.

Heery and the school district have been embroiled in litigation over canceled school construction contracts since 2007. Heery contended the school district owed it $478,000 in unpaid invoices after the school board fired Heery for alleged mismanagement of construction projects. The school district countered, alleging breaches of contract and racketeering, and claimed it was owed as much as $100 million in damages.

Neither side admitted fault in the settlement reached Nov. 25. Previous mediation attempts between Heery and the school district failed. Heery also offered to settle at least two other times earlier this year, including a proposal in which Heery would give the district $1 million if the school district would drop its claims. The school district's legal team at King & Spalding rejected the offers, calling the $1 million offer "meaningless."

A statement released Tuesday by Heery said the company "will contribute $7.5 million to the DeKalb County School District to support the education needs of the county's school children."

Heery President Rich Driggs indicated that the decision to settle was motivated by finance.

"Today's settlement at $7.5 million is significantly less than the cost of bringing this suit to trial," Driggs said in a written statement. A spokesman for King & Spalding said the firm had no comment on the settlement.

The school district gave a statement via spokesman Quinn Hudson: "We will no longer speculate with public money," the district said. "We believe this is a reasonable settlement that will allow us to continue with the education of the students in DeKalb County."

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**2 firms take on new marketing officers**

**MEREDITH HOBBS** mhobbs@alm.com

Burr & Forman has hired Susan Longo as its new chief marketing officer, replacing Erin Meszaros, who has moved to Sutherland Asbill & Brennan as its chief business development officer.

The firm also announced the promotion of Sarah Young to partner.

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**ON THE MOVE**

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McMillian reflects, with tips, on year as appellate judge

NEWEST APPEALS COURT JUDGE advises at bar section lunch: Don't try to persuade court by disparaging its judges

**ALYSON M. PALMER** apalmer@alm.com

IT'S BEEN NEARLY a year since Carla Wong McMillian got the call.

Then a Fayette County State Court judge, McMillian had been shortlisted for an opening on the state Court of Appeals, and interviewed for the job with Gov. Nathan Deal. She had a full docket of cases to handle, however, so she pressed on with her work.

Speaking at the State Bar of Georgia on Tuesday, McMillian recalled the moment in

See McMillian, page 2

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**Thompson Hine continues hiring spree with 2 laterals**

**MEREDITH HOBBS** mhobbs@alm.com

THOMPSON HINE continues its growth push in Atlanta with the recruitment of two longtime Atlanta lawyers, Peter Coffman joined from Dow Lohnes as a partner and Aaron Watson joined from Barnes & Thornburg as senior counsel.

Coffman, a trial lawyer, was at Dow Lohnes for almost 17 years, after working for the U.S. Department of Justice's Civil Division in the early 1990s. A major Dow Lohnes client, Cox Enterprises, sparked a shake-up in the firm's Atlanta office when it announced in June that it would continue using Dow Lohnes lawyers, but See Thompson Hine, page 7
Prosecutors are more ethical than the rest of us? I had no idea

FROM WAY UP HERE in the country in northwest Georgia, I read with great interest the instructions of Spencer Lawton in his letter to the editor (Daily Report, Nov. 12, 2013). Here I am practicing law for 28 years and had no idea that prosecutors were held to a higher ethical standard than the rest of us.

I have no extraordinary opinions regarding Mr. [Graham] Thorpe’s nomination or his subsequent act of withdrawing his name from consideration as a member of the JQC. However, as a member of the profession, I do take great exception to Mr. Lawton’s characterization of the rest of the members of the JQC as “sleaze.”

Mr. Lawton must have the honor of speaking from on high, indeed, to make such venomous pronouncements against our brothers at the Bar whom he doubtless has never faced in a trial or other meaningful forum. We non-prosecutor attorneys must now live the rest of our careers with the realization that we practice in a parallel, yet sleazy, world compared to that of Mr. Lawton and his brethren.

W. Wright Gannon Jr.
Cedartown

McMillian reflects, with tips, on year as appellate judge

McMillian, from page 1
January when she learned she would become an appellate judge. As McMillian presided over a bench trial, a staff member signalled that she needed to call a recess. She took the call from the governor’s office.

Returning to the courtroom, McMillian recalled, a prosecutor asked, “Judge, is there something you need to tell us?” McMillian, having been admonished to await the formal announcement of her appointment, demurred. But her secret already was out. “He heard screaming in my chambers,” she recalled. “They got a little bit of a tip that I had been appointed.”

Now, McMillian is one of several state appellate court judges who must face the voters next year to keep their seats. She was scheduled to appear Tuesday night at a campaign fundraiser hosted at the recruiting firm, RMN Global Search, founded by a former Sutherland colleague, Raj Nichani.

She spent the lunch hour speaking to members of the bar’s appellate practice section, recalling her first year on the appeals court bench and sharing some practice tips.

She said when she first started at the court, her office was filled with piles of records and opinion drafts from other judges, and two law clerks who had stayed on after the retirement of Judge A. Harris Adams a few weeks before January when she learned she would become an appellate judge. As McMillian presided over a bench trial, a staff member signalled that she needed to call a recess. She took the call from the governor’s office.

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Mr. Abt serves a legal analyst for: HLN (“Headline News”), 11 Alive News, Fox 5 Atlanta, and Channel 2 Action News

Mr. Abt is a former attorney with Sutherland and Paul Hastings.
Co-counsel arrangements are available.
Burr & Forman, Sutherland get new marketing officers

On the Move, from page 1
Arnall Golden Gregory. She is based in the Birmingham firm’s Atlanta office. Meszaros was the chief marketing officer for Powell Goldstein before joining Burr in 2009.

Barnes & Thornburg has re-named Stuart Johnson managing partner for its Atlanta office.

The Atlanta Council of Younger Lawyers, which is part of the Atlanta Bar Association, raised $22,788 for local pro bono organizations in its 2013 associates campaign. More than 140 associates and their firms contributed this year, led by Bondurant, Mixson & Elmore ($9,270), Taylor English Duma ($2,501), and Alston & Bird ($1,380). Eight law firms provided matching funds for all or part of associates’ contributions.

Associates from 31 firms volunteered to exhort their colleagues to donate, led by campaign co-chairs Rick Bold of Bondurant and Matt Simmons of Swift, Currie, McGhee & Hiers.

The Asian American Legal Advocacy Center has received $25,000 from the Community Foundation of Atlanta’s new civic engagement fund for its work encouraging Asian-Americans, Pacific Islanders and Asian-ethnic refugees to vote and run for office. This population is the fastest-growing electorate in the country, according to Census data.

“Our Vote For Our Future campaign is designed to help new Americans be fully represented at every level and integrate them into the democratic process,” said AALAC’s executive director, Helen Ho, in a statement. Last year AALAC helped to register more than 1,400 new voters and led more than 80 voter registration drives.

Mercer University’s Walter F. George School of Law has named Anita Wallace Thomas to its board of visitors. Thomas is an alumnus of Mercer’s law school and a partner at Nelson Mullins Riley & Scarborough.

A University of Georgia moot court team won first place and the best petitioner brief award for Region 5 in the 64th annual National Moot Court Competition. Third-year students Steven Strasberg, Benjamin Thorpe and Emily Westberry defeated teams from Emory University and Stetson University and will advance to the national tier of the tournament in New York in February, where they will compete against the top 30 teams from around the country. The competition is sponsored by the American College of Trial Lawyers and the New York City Bar Association. More than 150 teams from U.S. law schools compete each year.

Labor and employment firm Fisher & Phillips won first place for its FMLA leave calculator app in the Legal Marketing Association Southeastern Chapter’s social/interactive media category of the Your Honor Awards. The app allows an employer to calculate how much leave an employee has under the Family and Medical Leave Act when calculating time-off requests. The app, developed with Satumo Design, can be found at http://www.laborlawyers.com/FMLALeaveApp.
Atlanta Legal Nurse Consultant Attended Georgia Law Review Symposium

Keynote Speaker U.S. Supreme Court Justice John Paul Stevens

Atlanta Metro – WEBWIRE – Wednesday, December 04, 2013

Atlanta, Georgia -- Atlanta legal nurse consultant Liz Buddenhagen attended the University of Georgia (UGA) School of Law on November 6, 2013 to hear Justice Stevens' address and discussion "The Future of the Press Clause: New Media in a New World."

The symposium, titled "The Press and the Constitution 50 Years after New York Times v. Sullivan," featured the importance of the Court's decision which sparked widespread debate about constitutional protections for individuals and the press in a variety of situations. "Crucial to these inquiries was the question of the meaning of the First Amendment's Press Clause" and how to define the role of the Press Clause and how to determine its relationship to the Speech Clause, per the symposium overview.

Justice Stevens:

Justice Stevens said "history is at best an inexact field of study" and "historical truth can be elusive" and discussed the fallacies of originalism.

Stevens also discussed racial and political gerrymandering. Divergent accounts of historians in the 1876 presidential election exist. In some Southern states Democrats kept Republicans voters away from the polls with intimidation and even violence as recorded by Supreme Court Justice William Rehnquist's book but not in the account by C. Vann Woodward.

Panel Discussion:

Professors Rodney A. Smolla, Duke Law, Lili Levi, University of Miami School of Law and Lyrissa Lidsky, University of Florida, Levin School of Law, comprised the panel and it was moderated by Hillel Levin, Associate Professor of UGA School of Law.

Smolla commented the "leaker is always the loser and the publisher always wins." He noted that there has never been a prosecution of the publisher in information leaking situations. He referred to the recent N.Y. Times article about the massive surveillance of the NSA, Daniel Ellsberg and Pvt. Manning.

Levi touched on press reform in Britain and referred to the recent "The Economist" article.

Lidsky talked about the "Golden Age" of press cases being the 1970s, particularly Watergate. She pointed out the special role the press plays in democracy. Lidsky concluded that democracy could not function without the press. She also said that "the court recognizes no special role of the press" and nevertheless the press is a powerful institution. Therefore, she concluded, the press is actually an unofficial branch of government and they should use their power to protect their freedoms.

Lidsky continued that the media is not particularly popular presently. She went on to say the new media actors such as bloggers and tweeters have little power individually but can mobilize public opinion. Big players like Yahoo and Google have financial resources, ability to lobby for what they want and can mobilize public opinion. One problem, she said, is that they do not have press function as part of their identity. It was also noted that many of the new media are not trained journalists.

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When you censor student speech, you’re mostly teaching kids to live ... http://www.slate.com/articles/news_and_politics/jurisprudence/2013/...
When you censor student speech, you're mostly teaching kids to live ... confined to the expression of those sentiments that are officially approved.” It was a landmark victory for student speech rights. Mary Beth and her family celebrated that event with ice cream and soda pop.

But that was then; this is now.

In the more than 40 years since its decision in Tinker v. Des Moines Independent Community School District, the Supreme Court has heard only three other student speech cases. In each of them, the court has ruled in favor of the school. While never overruling Tinker, the court has slowly chipped away at the case’s broad proclamation that students possess the fundamental right to express their views even at school. Tinker only allowed regulation of student speech if there was a specific and significant fear of disruption and cautioned that schools are not “enclaves of totalitarianism.” The court, however, has since green-lighted government censorship in numerous situations, including blatant censorship based on the viewpoint of the message and such malleable concepts as the schools’ stated interest in enforcing “the shared values of a civilized social order.”

The court is now poised to decide whether to hear the case of two other middle-school girls, Brianna Hawk and Kayla Martinez, who were suspended for wearing wristbands that read “I ♥ Boobies! (Keep a Breast)” to school. The girls claim the bracelets are a way to promote awareness of breast cancer, a disease that has affected both their families. The school claims the bracelets were lewd and indecent.

While teaching students civility and protecting them from possibly inappropriate messages are understandable goals, they come with serious costs. Punishing students for their speech robs our public debate of needed voices, and it teaches our children—who, of course, one day become adults—that censorship, even broad and sometimes arbitrary censorship, is acceptable.

Although they make up about a quarter of our population, children are not represented in our political system (cue jokes about the House of Representatives now). Children are thus in the unenviable position of being denied the vote, yet they remain the group most likely to be personally affected by government policies. More than 16 million American children, for example, live in poverty and rely on government programs for food, housing, and health care. They are the people who are most impacted by economic recessions. They are the pawns in our unending battles over public education. They experience first-hand issues like teen pregnancy, bullying, drug abuse, homophobia, racism, sexism, divorce, and domestic violence. They will inherit whatever national debt, environment, and global military crises we choose to leave for them to clean up. It’s reasonable to think, therefore, that they might have something to say about these things even if they have no vote in the policies themselves.

Barring the voices of children from our national debate comes at our peril. If we let children talk, moreover, we might actually learn something. Last month the student staff of a Pennsylvania high-school newspaper, for example, decided that the use of the nickname Redskins by the school’s sports team was “racist” and “a term of hate,” and they published an editorial explaining their decision to no longer use the term (along with an equally well-written piece by the dissenters). They were called into the principal’s office and told they must keep using the term. At about the same time, a high-school senior in Virginia turned in a column to her student newspaper decrying sexuality-based bullying or “slut-shaming.” Her principal pulled the column, saying the subject matter was “inappropriate” and objecting to its use of political
When you censor student speech, you’re mostly teaching kids to live ... 

Along with reading and math, when schools gag their students’ speech, they are teaching them a lesson. Children who are censored grow up to become adults who censor or who tolerate censorship. In nationwide surveys of high-school students, the Knight Foundation has repeatedly found that students who receive instruction on the values of the First Amendment are more likely to agree with statements like “people should be allowed to express unpopular opinions” or “newspapers should be allowed to publish freely without government approval.” Those who are persistently told by their schools that certain speech is off-limits, however, are less certain about these basic freedoms.

The attitudes of these young people—as the future protectors of our constitutional liberties—matter. The work of Yale Law professor Jack Balkin and the school’s Information Society Project has shown that public attitudes about free-expression issues affect the direction of Supreme Court rulings. They also found, however, that people are more apt to protect the expression they produce themselves or could imagine doing themselves. Thus students who have a learning environment that is supportive of free and open political debate, journalism, art, theater, and other types of expression are more likely to demand protection for those endeavors as adults. While it might be tempting to quash children and teenagers’ natural inclinations to push back on ideas or to question authority, these very traits are the lifeblood of our constitutional and political discourse.

Children are, of course, different than adults. And schools are, of course, different than a town square. This is why the Tinker standard wisely allows the school to step in when there is substantial interference with the work of the school or an infringement on the rights of other students. But the court has also told us that speech needs breathing room to thrive. Thus, as with any speech rights, protecting the core of expression means sometimes having to protect questionable, ambiguous, or even potentially offensive speech. Part of the great wisdom of our robust free-speech rights lies in trusting the audience to sort truth from falsity and valuable speech from nonsense. As Justice John Paul Stevens wrote in his dissent in the so-called “Bong Hits 4 Jesus” case, most students “do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it.”

Mary Beth Tinker is 62 years old. She grew up to become a pediatric nurse and a youth rights advocate. She recently retired from nursing to care, she said, “for the civic health” of children. She has been touring the country telling students her story and speaking to them about their speech rights. She remains upbeat about the students she meets and the future they promise, and she is quick to remind her audiences of the Nelson Mandela observation that “[t]here can be no keener revelation of a society’s soul than the way in which it treats its children.”

Perhaps the first thing we can do is let them talk. And then maybe, just maybe, we could listen.
Ambassador Lee A. Feinstein named founding dean of IU's School of Global and International Studies

FOR IMMEDIATE RELEASE

BLOOMINGTON, Ind. -- Ambassador Lee A. Feinstein, whose experience includes more than two decades serving in high-level positions in diplomacy and foreign affairs, has been appointed founding dean of Indiana University's School of Global and International Studies.

Feinstein, the U.S. ambassador to the Republic of Poland from 2009 to 2012, has had a distinguished career in and out of government. A noted scholar-practitioner, Feinstein has served two secretaries of state and a secretary of defense and has worked at the nation’s top research institutes, including the Council on Foreign Relations and the Brookings Institution.

IU President Michael A. McRobbie praised the efforts of the search committee in helping attract a person who will bring extensive diplomatic and policymaking experience to the school. The School of Global and International Studies was approved by the IU Trustees in August 2012 and will be housed in a new state-of-the-art building that is under construction in the heart of the IU Bloomington campus.

"We have great ambitions for the school, and it was imperative that we find a dean whose experience, intellect and understanding of the complex world into which we are sending our students match our aspirations for the school," said McRobbie, who has called the school’s creation one of the most important developments in IU’s nearly 200-year history. "Ambassador Feinstein’s extensive background and indisputable success at the highest levels of diplomacy and international affairs speak for themselves and make him an ideal candidate to serve as the school’s first dean."

Feinstein was national security director to former Secretary of State Hillary Rodham Clinton during her 2008 presidential
Ambassador Lee A. Feinstein named founding dean of IU’s School of... http://news.indiana.edu/releases/2013/12/feinstein-school-of-global...

campaign and then served as a senior foreign policy advisor to President Barack Obama during the general election. Feinstein was principal deputy director of policy planning to Secretary of State Madeleine Albright and was previously senior advisor on peacekeeping policy in the Office of the Secretary of Defense.

In Poland, Feinstein was at the helm of one of the largest U.S. embassies in the European Union. During his tenure, he signed an agreement to establish a U.S. Aviation Air Force Detachment in Poland, the first permanent U.S. military presence in the country. In October 2012 in Warsaw, President Bronislaw Komorowski awarded him the Commander’s Cross with the Star of the Order of Merit “for his outstanding contributions to Polish-American relations by strengthening cooperation between the Republic of Poland and the United States.”

“I am honored to be joining this dynamic and dedicated community of scholars and students,” Feinstein said. “And I am excited to be joining President McRobbie in establishing a world-class institution that will build on Indiana’s proud tradition in international studies. At this time of global change, the world needs what this university has to offer.”

Lauren Robel, IU executive vice president and provost of the Bloomington campus, said Feinstein is the right person to lead the school’s work to create academic programs that reflect and respond to the changing socio-political and economic realities of today’s world.

“Ambassador Feinstein brings a deeply informed perspective on today’s global and international issues,” Robel said. “His extensive foreign policy experience will enable him to orient School of Global and International Studies’ programs and resources toward critical questions of global scope. Our students and scholars will benefit tremendously from the connections that he has formed throughout his distinguished career, and we are looking forward to seeing the new bridges and partnerships SGIS will form under his leadership.”

Larry Singell, executive dean of the College of Arts and Sciences, noted that Feinstein has accepted an ambitious assignment: Within five years, the university expects that the School of Global and International Studies will exceed the size and scope of nearly every international studies program in the country.

“Ambassador Feinstein’s impressive record of engagement in diplomacy and international affairs and his scholarly knowledge of foreign policy issues will enable him to work effectively on behalf of the school in academic, government and professional sectors,” Singell said. “He has both the vision and experience necessary to marshal the College’s considerable global and international resources and to launch IU’s new school into the top tier.”

Lee Hamilton, a former longtime Indiana congressman who serves as a distinguished scholar at SGIS and professor of practice in the School of Public and Environmental Affairs, worked with Feinstein when Hamilton was chair of the House Foreign Affairs Committee and Feinstein worked at the Pentagon and later at the Council on Foreign Relations.

"In my dealings with Lee, he demonstrated an ability to work effectively across partisan lines," said Hamilton, who is also director of the Center on Congress at Indiana University. "As staff director of a Council on Foreign Relations blue ribbon panel report on the United Nations, which I co-chaired, Lee was instrumental in setting a forward-looking agenda for the U.N. that called for closer cooperation among the world's democracies, an important idea that was ahead of its time. I have a high regard for Lee and look forward to working closely with him as he prepares to lead SGIS at this critical stage in its development."

Former U.S. senator and current SGIS distinguished professor and professor of practice Richard Lugar has worked with Feinstein on issues related to nuclear arms reduction and also praised his appointment.

"Ambassador Feinstein is one of the leading arms control scholar-practitioners in Washington and has worked in government and the private sector in support of agreements that have improved our national security and helped to make the world a safer place," Lugar said. "His intimate knowledge of the major global issues of the day makes him an ideal founding dean of SGIS."

For decades, IU has been a leader in international studies, teaching more foreign languages than almost any other American institution of higher education and housing 11 federally funded Title VI area studies centers, more than any other university. About 70 languages are taught at IU Bloomington regularly, which is home to federally funded Language Flagship programs in Chinese, Turkish and Swahili, and National Language Resource Centers in African and Central Asian languages.

The new interdisciplinary School of Global and International Studies brings together these strengths and will draw upon internationally focused resources in other schools and departments at IU to expand international education opportunities for all students.

In April, IU broke ground on the $53 million Global and International Studies Building on the Bloomington campus. The four-story, 165,000-square-foot structure will serve the needs of 320 core faculty members with technologically advanced
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Feinstein has written widely on foreign policy and national security. He is the author of "Means to an End: U.S. Interest and the International Criminal Court" (Brookings, 2009) with Tod Lindberg of the Hoover Institution. An international lawyer, Feinstein is an authority on "The Responsibility to Protect" and authored the Council on Foreign Relations report "Darfur and Beyond: What Is Needed to Prevent Mass Atrocities," which was featured in the Emmy Award-winning multimedia council project "Crisis Guide-Darfur." Feinstein is the author of numerous articles, book chapters and op-eds, and he is a frequent commentator for the national and international media.

Throughout Feinstein's career, his work has been characterized by an ability to find common ground on some of the most pressing and complex international issues. He was a principal author and human rights expert on the 2005 congressionally mandated Task Force Report on the United Nations that was co-chaired by Sen. George Mitchell and Rep. Newt Gingrich.

Before serving as Clinton's national security director, Feinstein spent five years as deputy director of studies and senior fellow for foreign policy and international law at the Council on Foreign Relations' Washington, D.C., office. His work at other leading research bodies included a stint at the Brookings Institution.

On returning to the United States, Feinstein was appointed the Carl E. Sanders Political Leadership Scholar at the University of Georgia Law School, where he taught international law. He has also taught at the Elliott School of International Affairs at George Washington University and the City University of New York. He is senior director at McLarty Associates, an international strategic advisory firm, and a senior transatlantic fellow at the German Marshall Fund of the United States.

Feinstein is a member of the Council on Foreign Relations. He is admitted to the bar of New York and Washington, D.C. He is a member of the Board of Trustees of The Kosciuszko Foundation in New York and a member of the National Advisory Council of the American Jewish Joint Distribution Committee.

Feinstein, a native of Valley Stream, N.Y., graduated cum laude from the Georgetown University Law Center. He earned a master's degree in political science from the Graduate School and University Center of the City University of New York and a bachelor's degree from Vassar College.

Feinstein, his wife, Elaine Monaghan, a journalist and strategic communications professional, and their children, Jack and Cara, are a transatlantic family and enjoy exploring the world together.

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- School of Global and International Studies
- Link to video of Vice President Joe Biden's remarks about SGIS
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Lee Feinstein

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On the Job with Charles Lamb

Albany attorney Charles Lamb is owner of the Lamb Law Firm PC

Want daily summaries and Breaking News alerts?

By Brad McEwen

ALBANY — When Albany attorney Charles Lamb woke up in the hospital 25 years ago, doctors told him he would never walk again. What had begun as a day of poolside leisure for the then 18-year-old college student who was home for the summer after his freshman year at the University of Georgia, suddenly turned into a day that would define the rest of his life.

Undeterred by the prognosis, Lamb not only returned to Athens to resume his studies six months later, he proved those doctors wrong and was walking again in short order. Lamb went on to finish his education and earn a law degree, eventually returning to his hometown to practice law and become a staunch advocate for the two groups of people he feels strongly connected to—those with disabilities and those without.

Lamb recently participated in a question-and-answer session with Herald reporter Brad McEwen.

Q. What was your first job?
A. I delivered the “Stars and Stripes” newspaper on an off base route in Okinawa, Japan. It was very cool. There was a little old Okinawan man and every morning he’d say good morning and I’d say, “ohayo gozaimasu (Japanese for good morning) cause that’s the only thing we could say to each other.’ He was delivering, obviously, the Japanese language newspaper. I was in Okinawa for about six months.

Q. What was the first thing you spent money on when you received your first paycheck?
A. I believe it was ice cream and firecrackers. Just what an 11-12 year old boy would want. Plus those that know me today know I’ve got a bit of a sweet tooth.

Q. What was your first job out of law school and how did that lead you to start your own firm?
A. I worked for Superior Court Judge Joe Bishop in the Pataula Judicial Circuit. That’s a seven-county circuit. It goes all the way from...
BET YOU DIDN'T KNOW: Lamb was named to Georgia Trend Magazine's 40 Under 40 in 2009, was awarded the Justice Robert Benham Award for Community Service in 2010 and was the recipient of the Dr. Martin Luther King Jr. Dream Award in 2011.

Dawson down to Donalsonville. That was a great experience. All the felony cases go through superior court and all the family law matters and all the matters involving extraordinary relief, so I got to see just about everything under the sun come through the court. It was pretty neat, he trusted me to do a lot of the research and initial drafts of orders. After that I went to the Beauchamp firm, Beauchamp and Associates it was at the time. I was an associate attorney and handled a variety of personal injury claims, you name it, whether it be auto accidents, premises liability cases, and I had some product liability cases. That was the focus of that firm. My interest in it, to some extent, was getting into private practice. Those clerkships are not meant to be a permanent type arrangement. Part of my experiences as having been a person who was injured in an accident was what drew me to that. I felt like I had a pretty good base of how the process worked. God bless the people who open their own firm right out of law school. Law school's great in terms of teaching you how to analyze things, but as far as the practical application of it, you really get that when you get into practice. I really felt that I had a good base by the time I opened my own law firm.

Q. Do you have a role model or a mentor in your career?
A. Annette Bowling has kind of been a mentor as far as how to be an effective advocate for people with disabilities. Joe Bishop, Judge Bishop, is kind of a role model as far as community services in addition to the way he conducts himself as far as the legal profession.

Q. What is one thing you really like about your job?
A. The flexibility and the autonomy that I have, and the variety of things that I see. Working for myself like I do, I don't have anybody to answer to if I decide I'm going to go off and spend a day doing stuff for Leadership Albany or Albany ARC or whoever I might be with.

Q. What do you least like about your job?
A. It's kind of tied to flexibility. I think clients expect you to be available 24-7 these days. And I am. When I'm not in the office I have call forwarding so it always goes to me wherever I am. I have taken calls early in the morning, late at night, on the weekend, on holidays. Just generally I tend to really become engaged with the cases that I handle and so sometimes leaving that at the office is hard. Sometimes those things keep running through my head about what more I could do for this or that. And sometimes it's hard to just cut that off and relax.

Q. What is one important trait or characteristic a strong business leader cannot afford to be without?
A. I've thought about that and it's weird. My mom was sitting in here when I was thinking about the questions you might ask and we said the same word at the same time — perseverance. Regardless of whatever the challenge is, just keep moving forward.

Q. What are your favorite hobbies or activities outside of work?
A. I enjoy listening to live music, going out to eat with friends. I enjoy reading. I dabble in some humorous writing from time to time too. I'd like to give some more time to that, but it seems like there's
Q. What music is getting the most play on your iPod?

A. Somehow or another I think I got stuck in the 90s and late 80s. You'd find REM for sure, Pearl Jam, Matthew Sweet, Fiona Apple. And the Law Band. I'm serious that's been in high rotation lately. I've had to explain to some people that it's not a group of lawyers that play in a band.

Q. What is the most recent book you've read?

A. "Mind Gym." I went to see Buster Posey speak one time and he had mentioned a book he read before the start of every season but never named the book. I finally asked him what it was and he told me. It's a really interesting book. It's 40 anecdotal stories from athletes about mental preparation. It's by Gary Mack and David Casstevens.

Q. Have you seen any good movies lately?

A. It varies but usually by 7:30 I'm up and going. Shaved, showered, checking emails. There's no real typical day though. That's one of the things I like about what I do, everyday is different.

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Q. Have you seen any good movies lately?

A. I'm only somewhat of a movie watcher these days. I tend to wait until they come on cable television. There was some comedy that came on recently, what was it, "Hall Pass," that was entertaining. I'm not sure what that says about me but it was funny; and the "Hot Tub Time Machine." I know I'm not a teenage girl but I actually liked some of those movies with the werewolves, "Twilight." But I have cool old things that I like too like the original "Highlander." I saw that on the big screen at the UGA Theater.

Q. You're up and going by what time each day and what are your daily routines:

A. It varies but usually by 7:30 I'm up and going. Shaved, showered, checking emails. There's no real typical day though. That's one of the things I like about what I do, everyday is different.

Q. What famous person would you like to meet and why?

A. FDR. He was a man whose actions had a major positive impact on this country and on the rest of the world despite his having had a significant physical disability, the true extent of which was not widely known or publicized during his presidency; perhaps because of the public perception at that time of the abilities of people with disabilities.

Q. Finish this thought, "on the first anniversary of my retirement, I see myself..."

A. Reading, either pool side or on the beach. And maybe doing some traveling. I'd like to go back to Italy and we've got some kinfod in Chicago and I always have a lot of fun when I visit them. I think I'd like to go to South America actually; Brazil, Argentina, Chile.

Q. What was the best vacation you've ever taken?

A. When I was in high school actually I went with a group of folks from Albany and we travelled through Europe for about a month, in the summer of 1985. We went from England to Italy to Portugal, all the little places that you could blink and miss like Liechtenstein. I had a great time. I got to see a lot of things that I'd read about in books. Having studied Latin for a number of years in high school, it was kind of cool to see Rome and all that. We went to Pompeii and that was really cool. I also loved the summer I spent out in California the summer after I finished high school before I started college. Southern California is a fun place to live and visit.

Q. What is the biggest challenges or changes you see facing Albany in the future?

A. I'd like to think that this is a place that people would like to come to; if folks could just see what we have here. I find myself talking to folks from time to time and when people say there's nothing to do in Albany, I say, 'have you done this, have you done that, did you know this was coming up?' There's just...
a lot going for the place. I was talking to somebody who's new to town the other day about the variety we have in terms of industry and education. I think back to when I was a youngster growing up here and I think back to what was going on 10 years ago and I don't know, I think it's getting better. I never thought it was bad. I was never one of those folks who thought, 'I just want to grow up and move away from Albany.' I just think there's an awful lot going for this city. I think there's a lot of potential here. You see people who are being successful here. There are talented people here. Look at Sasco or Equinox or Thrust Aircraft; I mean you can have a successful business here but I think maybe you have to be a little smaller and leaner than you used to be. I don't know if we could get something like a Kia or a Caterpillar like other places in Georgia have gotten. I think that would be great but some of those smaller, mid-sized, more nimble companies that are flexible are what we're more likely to see more of.

Q. If you could take back one decision you've made in your career, what would it be?

A. I think one thing I'd come up with is, it's not as much in business but getting ready to go into business, I considered at one point after business school getting a joint MBA/JD, but I just got the JD. I think looking back it would have been beneficial to have gone ahead and done that joint program. I had a counselor that said, 'if you don't have a specific reason for doing that then I'd suggest you not.' So I didn't.

Q. What are some of the biggest changes you've seen in your line of work in the past few years?

A. It's been about 15 years now and a lot of what I've seen are the technology changes, like the accessibility of information online. Not just legal research but everything under the sun. There's a lot of information found online, whether it be through the Secretary of State's website or the local clerk of court's office, the tax assessor's office, a lot has changed in terms of accessibility of information. I think it's really leveled the playing field between your mega-firms with 500 plus lawyers and your smaller firms. It used to be to get some of those details and some of those obscure laws and writings you'd have to have a full time librarian on staff in your law firm and there's some that had those. These days, you know I have the same access to obscure peer journals as the folks in Atlanta.

Q. What do you wish people would think of when they think of lawyers?

A. I'd like to think that it's somebody that you can trust that is dedicated to justice; somebody that puts society above themselves.

Q. What is the most fulfilling thing about your chosen profession?

A. I would say letting people know that despite an injury or a disability, they can have a very full and meaningful life.
Mitchell King, 96: D-Day vet became man of letters

The Atlanta Journal-Constitution

The events of June 6, 1944, had a profound effect on the life of Mitchell King.

Not only was he in the middle of the D-Day invasion on Normandy Beach, but his dreams of a military career were shattered after he was hit by shrapnel as he came onto the beach, his daughter said. At the time of the invasion, King was a naval reservist who'd already graduated from law school at the University of Georgia.

“He sustained fairly significant injury and his skull was fractured,” Lee Campbell King said of her father. “He was able to recover fairly fully, but he was not able to return to military service.”

King also had aspirations of diplomatic service and was well suited for the task, said Bettie Chester, a long-time family friend who lives outside Chattanooga, Tenn.

“He came along in an age of gracefulness,” she said. “His poise, his graciousness, he was the epitome of diplomacy.”

King went on to become a man of letters, earning several degrees from schools around the globe.

“He was a life-long learner and a true southern gentleman,” his daughter said.

Mitchell Campbell King Jr. of Atlanta died Tuesday in his sleep at his Sunrise of Buckhead residence. He was 96.

A memorial service is planned for 10 a.m. on Friday at the Cathedral of St. Philip, Atlanta. Cremation arrangements were handled by H.M. Patterson & Son, Spring Hill Chapel.

For his wartime sacrifice, King was awarded the Purple Heart and given an honorable discharge, said his daughter, who lives in Atlanta. Upon his return to the U.S., the Atlanta native opened a civil law practice, which he maintained until the early 1950s when he went to work in banking.

Around the same time, King married the former Anne Preston Farrior. The couple raised three daughters and were married for nearly 50 years when she died in 2001.
Mitchell King, 96: D-Day vet became man of letters | www.ajc.com

King earned several degrees in history, one from Emory University and two from international schools. In the late ‘50s, King left banking and became a special lecturer in Egyptology at what is now the Michael C. Carlos Museum on the Emory campus, his daughter said. King also shared his expertise in history with the Atlanta Historical Society in the late ‘60s and early ‘70s.

“He had a wide range of interests,” Chester said. “He was interested in everything and seemed to know a little bit about everything.”

King is also survived by daughters, Jeannette Finley Flom King of Tampa, Fla., and Kathleen Spotwood King Goodfriend of Portland, Ore., and four grandchildren.

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A Quick Look at our Newsmakers of the Past

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Our Newsmakers since 2000 have run the gamut, and while they’ve often recognized stellar lawyering, they’ve also included events such as the courthouse shooting tragedy of 2005 and in 2002 Roy Barnes’ shocking re-election loss. Here are the winners since the turn of the century.

2012: Gov. Nathan Deal

Between taking office in January 2011 and the fall of 2012, Gov. Nathan Deal made judicial appointments at a record pace, averaging more than one every three weeks. His 39 appointments, including one to the state Supreme Court and four to the Court of Appeals, placed him on track to double the number of judges appointed by Roy Barnes and Sonny Perdue over comparable periods. At this pace, he would even surpass the 127 appointments Zell Miller made over two terms.

2011: Troy Davis case

The case of convicted cop-killer Troy Davis, and his ultimate execution, captured national attention. At issue were recantations by several witnesses and questionable forensic ballistic evidence. An international campaign to save him—with advocates that included Pope Benedict XVI, former President Jimmy Carter, former deputy U.S. attorney Larry D. Thompson and former U.S. attorney and Congressman Bob Barr—focused a spotlight on Georgia’s legal system and on the death penalty in the United States.

2010: Richard Hyde

For two years Richard Hyde, the investigator for the state’s judicial disciplinary agency, was the driving force behind an unprecedented string of judicial misconduct cases that led to investigations of 23 Georgia judges, 21 of whom resigned or were removed from office. Among them were nine superior court judges (including five chief judges), six magistrates, four probate judges, three state court judges and a municipal court judge.

2009: The recession’s impact on Georgia lawyers

After several relatively fat years, the Great Recession dramatically altered lawyers’ livelihoods and expectations. Young lawyers were especially hard hit by layoffs. The law school classes of 2008 and 2009, who started law school at a time when firms bid against each other for young talent, exited into a wasteland of delayed start dates and rescinded offers. At least 14,000 people were laid off by major firms between Jan. 1, 2008, and the latter months of 2009—more than 5,500
lawyers and nearly 8,600 staff nationwide. In Georgia, 679 lawyers filed for unemployment compensation by November 2009, up 121 percent from 2008.

2008: The Brian Nichols trial

Three years after the March 11, 2005 rampage claimed the lives of Judge Rowland Barnes and three others, the trial of Fulton County courthouse shooter Brian Nichols left a legacy of shattered lives, proposed changes in death penalty jury laws and depleted indigent defense funds.

2007: B.J. Bernstein

Atlanta criminal defense lawyer B.J. Bernstein was recognized for her zealous and tireless pro bono defense of Genarlow Wilson, who at 17 was charged with raping a 17-year-old and molesting a 15-year-old. Wilson was acquitted of the rape charge, but found guilty of the latter charge, based on what the state Supreme Court's majority later would call consensual oral sex. His conviction carried a 10-year mandatory minimum prison term. Bernstein lobbied the Legislature and worked the media. In October 2007, after more than two years behind bars, Wilson was ordered released by the Georgia Supreme Court, which called the sentence "cruel and unusual" punishment.

2006: Georgia Supreme Court

Justice Carol W. Hunstein

Justice Carol Hunstein was our Newsmaker after winning a no-holds-barred re-election campaign that pitted her against the well-funded J. Michael Wiggins, a former top lawyer in the Department of Homeland Security who touted GOP support and attacked the sitting justice as a soft-on-crime liberal. Hunstein shot back with her own attack ads, revealing a messy family dispute where Wiggins had been sued by his mother.

2005: All of those connected to the Fulton courthouse shootings

Just nine months after Brian Nichols, on trial for rape, killed Superior Court Judge Rowland Barnes, court reporter Julie Ann Brandau and sheriff's deputy Hoyt Teasley, the Daily Report reviewed the tragedy and its aftermath.

2004: McCracken Poston

McCracken Poston was cited for his innovative defense of Ray Brent Marsh, the Tri-State Crematory operator who discarded more than 300 bodies. He brokered a deal that could have given Marsh as little as four years to serve in prison as families of the dead were calling for far harsher punishment, and worked a deal with an insurance company that not only allowed Marsh's family to avoid civil liability but gave them financial help as Marsh went off to prison.

2003: Indigent defense

Indigent defense was the big legal story 10 years ago, and Stephen B. Bright, director of the Southern Center for Human Rights, was one of its greatest champions, keeping the issue before decision makers for more than two decades and taking on the state's constitutionally challenged public defender system in county after county. Some pleaded the case for indigent defense at the Legislature, but Bright sued counties, forcing them to provide lawyers for the poor and placing the state on notice that if it didn't act, a judge eventually might impose a costly solution.

2002: Gov. Roy Barnes

With a war chest of nearly $20 million, Gov. Roy Barnes seemed invincible. The Marietta lawyer was a masterful operator of politics and government and his shocking re-election loss to a lesser known and underfunded Sonny Perdue was the story of the year.

2001: Sally Quillian Yates

Today, readers know Sally Quillian Yates as the U.S. attorney for the Northern District of Georgia. Twelve years ago, she was the assistant U.S. attorney who headed the prosecution of alleged corruption at Atlanta City Hall. At the time she was named Newsmaker, several aides and associates already were under indictment and charges against then-Mayor Bill Campbell seemed imminent. In 2006, Campbell would be convicted of tax evasion.

2000: Steven H. Sadow

Criminal defense lawyer Steve Sadow was the lawyer in two of Atlanta's highest-profile criminal cases at the turn of the century. He helped Gold Club owner Steven E. Kaplan beat allegations of witness-tampering and intimidation in the federal racketeering case against the strip club. In another notorious case, he secured an acquittal for a co-defendant in
Gov. Nathan Deal has named three new judges in Columbus and one in Eastman, but his picks may not quell the concerns over the Chattahoochee Circuit's lack of racial diversity.

Deal announced Tuesday that he had appointed Chattahoochee Circuit State Court Judge Maureen Gottfried and J. Ronald Mullins, a partner at Page, Scrantom, Sprouse, Tucker & Ford, to the circuit's Superior Court. The governor also appointed Muscogee County Solicitor-General Ben Richardson to replace Gottfried on the State Court bench and solo practitioner C. Michael Johnson to the Oconee Circuit Superior Court.

Both of Deal's picks for the Chattahoochee Circuit's Superior Court in Columbus are white, resulting in an all-white, seven-member bench.

Prior to his retirement in October, Judge John Allen, who was the only African-American on that bench, sent a letter to the governor and the Judicial Nominating Commission urging them to strongly consider diversity in filling his seat. African-American population in the circuit's six counties ranges from 17 percent to 58 percent. Muscogee, the largest county and home to Columbus, is 46 percent African-American.

"I am certain you are aware of the 'face of justice' created by your appointments to the bench," wrote Allen, who took senior status. "Upon my retirement, the composition of the Superior Court bench of the Chattahoochee Circuit will be five white males. If the pattern of the two most recent appointments is continued in the two impending vacancies, the Superior Court bench of this circuit will be composed of seven white males."

Allen was referring to the 2010 appointment of William Rumer by Gov. Sonny Perdue and the 2011 appointment of Art Smith by Deal.

In response to Allen, the JNC extended its nomination deadline by two weeks in hopes of attracting more minority nominees. In early November, the JNC interviewed 22 applicants, of which at least eight were African-American, for the two vacancies. The second vacancy was created by legislation approved last session.

The JNC delivered a short list of five names to Deal, two of which were African-American. Deal conducted interviews earlier this month and made his appointments on Monday. The governor's office did not respond to a request for comment on the issue of diversity.

Deal, who likes to elevate current judges, thereby creating new vacancies, added some diversity to the Chattahoochee
Allen declined comment when reached Tuesday. A report published Monday night on the Columbus Ledger-Inquirer's website said Allen praised all three Chattahoochee appointments. However, his statement stopped short of saying that all three were "imminently qualified."

"Judge Gottfried is imminently qualified to be a Superior Court judge, and the gender diversity is a much-needed addition," Allen told the paper. "Ben Richardson is imminently qualified to be Superior Court judge and State Court judge. Ron Mullins is a highly experienced lawyer with impeccable character and excellent temperament."

The other two names on the JNC's short list were Chattahoochee Circuit District Attorney Julia Slater and Assistant District Attorney Alonza Whitaker.

Whitaker, who was a short-listed Superior Court candidate in 2011 along with Mullins, said he believes all five candidates were equally qualified but that race shouldn't be the only factor considered when appointing a judge.

"Would a minority on the Superior Court bench have looked good or been more reflective of the [circuit's] population? I think certainly it would have," Whitaker said. "But I don't think the quality of justice will be affected [by an all-white bench]. The character and the quality of the candidates he chose are good."

I don't think the quality of justice will be affected [by an all-white bench]. The character and the quality of the candidates he [Gov. Deal] chose are good.

—Alonza Whitaker, Chattahoochee Circuit ADA
As a child, I spent hours dressed in a pink leotard and tutu, turning circles in front of my mirror. I dreamed of my destiny as a prima ballerina. Or the Queen of England.

As I grew up, it became increasingly apparent that I was not destined for either. I lacked the skill and physique of truly gifted dancers, and I lacked the pedigree and connections to ascend to the throne. So I went to law school instead.

Though 25 years had passed since I donned that first pair of tiny pink slippers, the love of ballet had never really dissipated. One afternoon, I decided to take a break from my six-minute increment existence and began searching for adult ballet classes in the Atlanta area.

Since age and gravity were already working against me, I knew I didn't want to share a barre with a 16-year-old, junior company member whose 32 fouettes would make me feel even more self-conscious than I already did.

That’s when I happened upon Dance 101, an adults-only dance studio that catered to beginners as well as seasoned dancers. I screwed up my courage, bought a new pair of ballet shoes (and tights and a leotard and a skirt and legwarmers, because why not?) and headed into the Discover Ballet class one Tuesday evening. An hour later, sweaty, humbled and ecstatic, I walked out of the class, signed up for a membership and have been dancing (again) ever since.

I am not a talented dancer. Despite the herculean efforts of teachers Melody Smith and Lauren Banks, I still have bad feet, poor technique, and almost no rhythm. But for one hour (or two or three or 10) each week, I can be that little girl again, turning circles in front of a mirror.

It doesn’t matter if the judge just ruled against me from the bench or if yesterday's deposition of my client tanked our case or if I have an appellate brief due in two days. When the music (everything from Ray Charles to Outkast) is playing, I can't think about all those things. I can only concentrate on the movement, the rhythm, the desire to not trip over my own feet and drag my barre-mate down with me.

I have attended the same Discover Ballet class for almost five years (despite the teacher’s insistence that it’s time for me to move up to the next level) and the days I dance are the days I’m a better lawyer. I even put a ballet barre in my office, shut the door for a few minutes each morning and afternoon, and just stretch.

I may never dance en pointe again, but that doesn’t mean I have to stop dancing.
Erica Parsons is of counsel at Carlock, Copeland & Stair. She practices in the areas of general liability defense, insurance coverage and bad faith.

Why I ... the Daily Report’s new reader-contributed essay series, explores what motivates, inspires and compels us to do what we do. Tell us why you ... For more information or to pitch your "Why I ..." contact Mary Smith Judd, special projects editor, at 404-419-2841 or mjudd@alm.com.
One year after the Sandy Hook massacre, Fox News reports, "the White House has little to show for its aggressive campaign to pass new gun control legislation" and is instead "shifting its focus to mental health as a way to prevent future shooting sprees." Politically, that seems like a pretty smart move. According to the latest Reason-Rupe Public Opinion Survey, 63 percent of Americans think "tighter restrictions on buying and owning guns would not be effective in preventing criminals from obtaining guns." And of various "factors that some say might have helped prevent last year's mass shooting at Sandy Hook Elementary School," a plurality of 27 percent favored "better mental health treatment," an option that was especially popular among independents and Republicans. Leading defenders of Second Amendment rights have been trying to change the subject from gun control to mental health since shortly after the massacre, and it looks like they have succeeded pretty well. The problem is that controlling crazy people makes no more sense than controlling guns as a response to Sandy Hook.

What would "better mental health treatment" have meant for Adam Lanza, and how might it have stopped him from murdering 20 children and seven adults (including his mother)? According to the official report issued last month by State's Attorney Stephen Sedensky, Lanza "had significant mental health issues that affected his ability to live a normal life and to interact with others," but it is not clear whether those problems "contributed in any way" to his crime. His mother attributed his shyness, isolation, and rigidness to Asperger syndrome, a condition that has never been associated with an elevated risk of violence. And while it is never hard to find details in the lives of mass killers that in retrospect look like red flags (such as an interest in morbid topics, firearms, or violent video games), almost no one who displays these purported warning signs becomes a violent criminal, let alone commits mass murder.

"Those mental health professionals who saw [Lanza] did not see anything that would have predicted his future behavior," Sedensky's report says. "Investigators...have not discovered any evidence that the shooter voiced or gave any indication to others that he intended to commit such a crime." In high school, Lanza "was not known to be a violent kid at all and never spoke of violence....Despite a fascination with mass shootings and firearms, he displayed no aggressive or threatening tendencies."

The idea that mental health professionals can accurately predict which seemingly harmless people will turn violent has no basis in fact. "Over thirty years of commentary, judicial opinion, and scientific review argue that predictions of danger lack scientific rigor," notes University of Georgia law professor Alexander Scherr in a 2003 Hastings Law Journal article. "The sharpest critique finds that mental health professionals perform no better than chance at predicting violence, and perhaps perform even worse."

If everyone who behaves like Lanza did prior to his horrifying crime is to be stripped of his Second Amendment rights and/or forced to undergo psychiatric treatment, a lot of innocent people who pose no threat to others will lose their freedom. Should everyone diagnosed with Asperger syndrome (or, to use the newer terminology, everyone placed on the "autism spectrum") be deemed a threat to public safety, based on this sample of one? A year ago,
Why 'Better Mental Health Treatment' Won't Prevent Future Sandy H...

National Rifle Association Executive Vice President Wayne LaPierre demanded "an active national database of the mentally ill," which taken literally would include information on something like half the population. Even then, future mass murderers would not necessarily be on LaPierre's list, since they typically do not receive psychiatric diagnoses until after they commit their crimes.

The reasoning behind "better mental health treatment" as a way to prevent mass shootings starts with the tautological premise that only crazy people commit such crimes and proceeds to the conclusion that letting them go untreated is reckless. But people prone to mass murder are not likely to welcome treatment, which means they must be forced. And so must many other people who will never hurt anyone, since we cannot identify mass murderers ahead of time. Such massive coercion can be rationalized as "help," but that is not the way its targets will perceive it.
New hires and promotions

Arts

Michael Smith has been named executive director of the Charleston Symphony Orchestra, effective Dec. 1. Previously, he has worked with the symphony as principal trumpet and as operations manager. He has a bachelor's degree in music from the Manhattan School of Music.

Banking

Rick Arthur has joined BNC Bank as chief sales strategy officer. He is based in Charleston. Previously, he was in an executive leadership role with First Federal Bank.

Consulting

Jordan Marhoefer has joined SIB Development & Consulting as company chef. Previously he was chef de cuisine at The Golf Club at Briars Creek. He has an associate degree in culinary arts from the New England Culinary Institute.

Education

Joseph Garcia has joined The Citadel as vice president for finance and chief financial officer. He retired from the Air Force in 2004 as a lieutenant colonel after 28 years. Most recently, he was CFO for the U.S. Department of Agriculture's Food Safety and Inspection Service in Washington, D.C. He has a master's degree in business administration from the University of Central Oklahoma and an executive master's degree in leadership from Georgetown University.

Home care

Kristin Akins and Kerri Moore have joined Already HomeCare's new Charleston office. Akins is area director. Moore is geriatric care manager.

Insurance
Carrie Creel has joined State Farm Agent Tony Pope as an insurance account representative in the Summerville office. Creel has more 15 years of experience in the insurance industry, including 10 years with State Farm.

Law

Victoria L. Anderson, Jocelyn M. Steele and J. Camden Hodge have joined Young Clement Rivers, LLP as associate attorneys in the firm's Charleston office.

Anderson practices in the trucking and transportation and commercial litigation groups. She has a bachelor's degree in history from Brigham Young University and a law degree from BYU's J. Reuben Clark Law School. Previously she was assistant public defender with the Charleston County Public Defender's Office.

Steele practices in the workers compensation group. She has a bachelor's degree in journalism with a concentration in broadcast news from the University of Georgia and a law degree from the University of Georgia School of Law.

Hodge practices in the professional liability group. He has a bachelor's degree in English from Sewanee: The University of the South and a law degree from the University of South Carolina School of Law. Previously, he was a law clerk to Judge Perry M. Buckner of South Carolina's 14th Judicial Circuit.

Museum

Carl P. Borick has been promoted to director of the Charleston Museum, succeeding John R. Brumgardt. Previously, Borick was assistant director since 2001, and he has been with the museum since 1996. He is a certified public accountant. He has a master's degree in history.

Politics
Hope Walker has joined the South Carolina Republican Party as state director for South Carolina. She has a bachelor's degree in political science with minors in history and Spanish from Newberry College.

Real estate

Sarah Dantzler has joined the Crowfield Boulevard office of Carolina One Real Estate in Goose Creek as an agent.

Melissa Autrey Brownell has joined Newmark Grubb Wilson Kibler as an associate in the firm's transaction services group in Charleston. She concentrates on retail leasing and sales. Previously, she was with Ziff Properties Inc. She has a bachelor's degree in business administration with a concentration in marketing from Auburn University.

Wedding

Blake Bush has joined Pure Luxe Bride as an associate planner and event manager. She has a bachelor's degree from the College of Charleston.
Hall's Willis named state 'Assistant Circuit Defender of the Year'

GAINESVILLE - Brett Willis, an attorney with the Hall County Public Defender's Office since its creation in 2004, was named "Assistant Circuit Defender of the Year" for the state of Georgia at the Georgia Circuit Defender Association's annual meeting at Tybee Island on December 14.

It is the second time in three years an attorney from the Northeastern Judicial Circuit has been named "Assistant Circuit Defender of the Year" by the group. Travis A. Williams, a senior assistant in the Hall County Office, received the award in 2011.

Willis was awarded a Juris Doctor degree from the University of Georgia School of Law in 2003 and received his Master of Laws degree from New York University in 2004. He has worked in the Hall County Public Defender's Office since completing law school.

Known as a tireless advocate for indigent clients who is meticulous in his trial preparation, Willis has become a resource and mentor for younger lawyers in the office. He has served as a training seminar instructor for the Georgia Public Defender Standards Council, the National Criminal Defense College and the Bill Daniels Trial Practice Institute.

Willis was honored earlier in 2013 by the Southern Public Defender Training Center, also known as "Gideon's Promise" with its "Foot Soldier Award." In 2008, the Daily Report, an Atlanta-based legal publication, named Willis one of that year's "10 to Watch," a list of up-and-coming lawyers under the age of 40.

Willis, 37, lives in Gainesville with his wife Johanna and their three daughters.

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Sen. Franken Announces Witness List for Tomorrow's Hearing Examining Americans' Dwindling Right to Their Day in Court, Including a Minnesotan

Hearing Will Discuss Senator's Bill to Prevent Big Corporations from Taking Away Consumers' Right to Justice

Monday, December 16, 2013

Today, U.S. Sen. Al Franken (D-Minn.) announced witnesses that will testify during the Senate Judiciary Committee hearing he will chair tomorrow on how recent U.S. Supreme Court decisions, forcing consumers into mandatory arbitration, have eroded the ability of Americans to challenge unfair practices by corporations.

Witnesses include Vildan A. Teske, a Minnesota lawyer who represents Minnesota service members who have faced unfair practices by lenders, and Alan Carlson, a small business owner and plaintiff in the Supreme Court Case American Express v. Italian Colors. You can read more about Ms. Teske here (http://www.senate.gov/cgi-bin/exitmsg?url=http://crowderteske.com/people/teske.php).

A full witness list is included below.

The hearing will also examine Sen. Franken's Arbitration Fairness Act (AFA), his legislation to restore Americans' right to justice by prohibiting mandatory, pre-dispute arbitration in consumer, employment, civil rights, and antitrust cases.

"I've heard from Minnesotans that recent decisions by the Supreme Court have given big corporations the unbridled ability to deny small businesses and consumers their day in court, and something has to be done to stop it," said Sen. Franken. "This hearing will shed light on the need to restore justice and pass my legislation to make sure that military service members, consumers, and workers maintain their right to fight back when they aren't treated fairly."

In American Express v. Italian Colors, the Supreme Court ruled that an arbitration agreement must be enforced even if it is so bad that it prevents a plaintiff from enforcing his federal rights. Italian Colors built upon the Supreme Court's 2010 decision in AT&T v. Concepcion, in which the Supreme Court upheld the use of class action waivers in arbitration agreements, thus making it nearly impossible for individuals to band together to redress wrongs committed by corporations.

Witnesses that will testify tomorrow before the Senate Judiciary Committee include:

- Vildan Teske, Partner, Crowder, Teske, Katz, & Micko, PLLP, Minneapolis, MN
- Alan Carlson, Owner of Italian Colors Restaurant and plaintiff in the U.S. Supreme Court Case American Express v. Italian Colors, Oakland, CA
- Leslie Overton, Deputy Assistant Attorney General for Civil Enforcement, Antitrust Division, U.S. Department of Justice, Washington, DC
- Myriam Gilles, Professor of Law, Benjamin N. Cardozo School of Law, New York, NY
- Archis A. Parasharami, Partner & Co-Chair, Consumer Litigation & Class Actions practice Mayer Brown LLP, Washington, DC
- Peter Bowman Rutledge, Associate Dean for Faculty Development & Herman E. Talmadge Chair of Law, University of Georgia School of Law, Athens, GA

WHO: Sen. Franken and members of the Senate Judiciary Committee
WHAT: Hearing on Restoring Americans' Right to Their Day in Court
WHEN: Tuesday, December 17 at 2:30 p.m. EST
WHERE: Dirksen Senate Office Building, Room 226
In 1925, Congress passed the Federal Arbitration Act to facilitate the use of arbitration as a fair and efficient alternative to litigation in appropriate cases, typically those involving competing corporations of equal bargaining power.

In the hands of today's Supreme Court, however, the Federal Arbitration Act has been reshaped into something quite different. It has become a virtual grant of immunity for large corporations, which now can opt out of the civil justice system.

I think that Alan Carlson, a small business owner who is with us today, puts it really well when he says in his written testimony, “In America, I thought we all had the right to pursue justice in court, but it turns out that big business gets to write its own rules.”

This, in my view, has potentially disastrous consequences for workers, consumers, small businesses, and for middle-class Americans. And that is the focus of today's hearing. For me, this is all about making sure that there is access to justice when everyday people are cheated by giant corporations.

In 2011, I chaired a hearing on mandatory pre-dispute arbitration. What we learned in that hearing is that corporations make consumers and workers sign contracts with mandatory arbitration clauses as a condition to getting a product or a service or a job.

The corporation can write the rules for the arbitration. The arbitrator often comes from the same industry as the corporate defendant. Everything is done in secret. There are no public rulings and precedents like there are in courts. Discovery is limited, if there is any at all. So the plaintiff can't always get the evidence that he or she needs to prove his case. And there's no meaningful judicial review, so there's not much an individual can do if the arbitrator just gets it all wrong.

But that's not all. My 2011 hearing followed on the heels of AT&T v. Concepcion, in which the Supreme Court said that corporations can use their arbitration clauses to prohibit class actions, even if applicable state law says that these class-action waivers are unconscionable.

So under Concepcion, not only can a corporation force an individual into arbitration, with all of its shortcomings, but the corporation can force the individual to go it alone. Just the prospect of a class action gives corporations a real incentive to follow the law. They know that there will be real consequences if they don't.

Concepcion removed that important check on corporate power.

Not surprisingly, corporations are taking advantage of this new rule. Preliminary results from the Consumer Financial Protection Bureau's arbitration study indicate that nearly 100 percent of outstanding credit-card loans and insured deposits now are subject to class-action bans.

As Mr. Parasharami, one of today's witnesses, who is testifying in favor of mandatory pre-dispute arbitration, has written, quote, "In light of Concepcion and subsequent developments in law, consumer and employment arbitration agreements are now more attractive to businesses than ever," end quote. Mr. Parasharami and I probably don't agree on much when it comes to arbitration law, but I do agree with him on that.

And just when you thought it couldn't get any worse, it did when the Supreme Court decided American Express v. Italian Colors during its last term.

Since at least the Mitsubishi Motors case in 1985, we've had something called the effective vindication rule, which says that an arbitration clause is invalid if it is so bad that it prevents an individual from enforcing his or her federal rights; in other words, the effective vindication rule prevented a corporation from drafting its arbitration clause in a way that implicitly forced consumers, workers and small businesses to waive their federal rights.

But in the recent Italian Colors case, the court did away with that rule. And the court wasn't really shy about it either. Justice Scalia wrote that, quote, "The FAA's command to enforce arbitration agreements trumps any interest in ensuring the prosecution of low-value claims," end quote. In other words, in his opinion,
The arbitration fairness act would amend the Federal Arbitration Act to prohibit the use of mandatory pre-dispute arbitration clauses in civil rights, employment, consumer and antitrust cases, cases in which one party has superior bargaining power and where adhesion contracts are common.

I want to be clear. The bill does not prohibit arbitration. If a consumer or a worker or a small business owner wants to take his claim into arbitration, then by all means he or she is free to do so, provided the corporation itself is willing to do so. But if the consumer or worker or small business wants to go to court, he or she will have that option available again.

This isn't a radical proposal. The bill just restores the Federal Arbitration Act to its original purpose and scope. Simply put, this is about reopening the courthouse doors to workers, consumers and small businesses, because the courthouse doors never should have been closed in the first place.

I'd like to thank Chairman Leahy for inviting me to hold this hearing. I know that this issue is important to him. And I understand that he has a statement which I will submit for the record.

Ranking Member Grassley, it's a pleasure to serve in this capacity with you. And would you like to --

SENATOR CHARLES GRASSLEY (R-IA) Yeah.

SEN. FRANKEN: -- give any opening remarks?

SEN. GRASSLEY: I'm just going to refer to a small part of my statement, put the whole statement in the record. I look forward to hearing from our witnesses today. Particularly I look forward to testimony explaining what we can expect following the Supreme Court decision in the American Express case.

Absent class-action provisions, will consumers really lack the ability to have their dispute adjudicated? And also what direction will we see arbitration clauses move going forward as a result of that decision in the wake of American Express and AT&T Mobility cases. I hope the witnesses can separate myth from reality and give us a clear picture of what's next.

I'll put the rest of my statement in the record.

SENATOR ORRIN HATCH (R-UT): Mr. Chairman? Mr. Chairman?

SEN. FRANKEN: Senator Hatch.

SEN. HATCH: I'd like to make a short statement--

SEN. FRANKEN: Without objection.

SEN. HATCH: These questions emphasize that litigation is the alternative to arbitration. The bill before us would not only prohibit arbitration, but actually terminate arbitration agreements that parties have already entered into.

Before taking a dramatic step like that, we must consider whether the alternative of litigation would be even worse in various respects than what critics say about arbitration. Is the case against arbitration so complete and the alternative of litigation so much better that we should prohibit arbitration clauses altogether? I'm very skeptical about the answer.

But we want to explore that with the witnesses through the written questions I will submit. And I appreciate answers as quickly as you can.

But thank you, Mr. Chairman. I appreciate your willingness--

SEN. FRANKEN: You're welcome, Senator Hatch. I have tremendous respect for you. I just want to just make it clear to everyone that there's no intention here to remove all arbitration clauses, just mandatory pre-dispute arbitration clauses, which are, I feel, in so many cases--

SEN. HATCH: I understand.

SEN. FRANKEN: -- clauses of adhesion. And that's what today's hearing is about. There is no attempt here to ban arbitration at all and as I said in my opening.

Anybody else want to make an opening statement? Well, then we'll go to our first witness. I'd ask that Deputy Assistant Attorney General Leslie Overton, who is here with us sitting at the witness table, that she stand and take the oath after I introduce her. So stay where you are, because I'm going to introduce you properly.

I'm pleased that the deputy assistant attorney general is here to see us today, Ms. Overton. She has served in her current position since the summer of 2011, following stints as counsel to the assistant attorney general and a partner in Jones Day's Washington, D.C. office. Deputy Assistant Attorney General Overton has received several awards in recognition of her outstanding legal talents. She is one of several signatories to the federal government's amicus brief in the Italian Colors case, which we'll be discussing today. And I have invited her here to discuss that brief with the committee.

As is customary at the Senate Judiciary Committee, I will begin by administering the oath, so would you mind standing?

(The oath is administered.)

SEN. FRANKEN: Thank you. Please be seated.

Deputy Assistant Attorney General Overton, welcome, and thank you for being here. I appreciate your -- taking the time out from your very busy schedule. Please go ahead with your -- with your opening statement.

LESLIE OVERTON: Thank you -- thank you, Chairman. Chairman Franken and distinguished members of the committee, I appreciate this
opportunity to share the United States position in its amicus brief in the Supreme Court in American Express v Italian Colors Restaurant.

The United States brief reflects its concern that the effect of the mandatory arbitration agreement in the facts of that case would prevent the respondents, the merchants, from being able to effectively vindicate their rights under the antitrust laws. My written testimony discusses the brief in detail, so I will now provide background and summarize the points the United States made.

In Italian Colors, the named plaintiffs in the consolidated set of putative class actions were merchants who accept American Express cards. The merchants alleged that AmEx violated Section 1 of the Sherman Act by engaging in an unlawful tying arrangement using its market power in corporate and personal charge cards to compel the merchants to accept AmEx's credit and debit cards at elevated merchant fee rate.

AmEx's standard form contract for merchants governed the relationship. This card agreement required all disputes between the parties to be resolved by arbitration, precluded any right or authority for any claims to be arbitrated on a class-action basis, barred multiple merchants claims from being joined in one arbitration proceeding, did not permit the prevailing party to shift its cost to the other party and prohibited disclosure of information obtained in arbitration.

The class action complaints were consolidated, and AmEx moved to compel arbitration. The federal district court held that the parties' dispute fell within the scope of the card agreement's mandatory arbitration clause, granted AmEx's motion and dismissed the suits.

The court of appeals reversed and remanded. The merchants presented expert evidence demonstrating that they would bear expert fees and expenses of at least several hundred thousand dollars and possibly more than 1 million dollars. However, the estimated damages for the merchant with the largest volume of AmEx transactions amounted to $12,850, the largest recovery only $38,549 when trebled as provided under the antitrust laws.

The court of appeals accordingly concluded that, "The class action waiver in the card acceptance agreement cannot be enforced in this case because to do so would grant American Express de facto immunity from antitrust liability by removing the merchants' only reasonable -- "reasonably feasible means of recovery," end quote.

The United States brief observed that under the Supreme Court's precedents, agreements to arbitrate federal statutory claims are enforceable if but only if, quote "the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum," end quote.

With the federal -- while the Federal Arbitration Act establishes a generally applicable federal policy favoring the creation and enforcement of agreements to arbitrate, the effective vindication rule reconciles this policy with the policies of a wide range of federal statutes that confer substantive rights and authorize private suits by aggrieved persons. The rule allows contracting parties to agree that their disputes will be resolved by an alternative adjudicator while denying enforcement of an arbitration agreement in circumstances where its function would be, in practical effect, a prospective waiver of substantive rights.

The brief explained that the arbitration agreement in Italian Colors effectively precluded the merchants from asserting their antitrust claims by making it prohibitively expensive for them to do so. No rational actor would attempt to bring a claim when a negative recovery is a certainty. Under these circumstances, an order compelling arbitration would preclude the merchants from effectively vindicating their federal claims.

The brief lays out the United States' concern that companies could use a combination of class action and joinder prohibitions, confidentiality requirements and other procedural restrictions to increase the likelihood that a plaintiff's cost of arbitration would exceed the projected recovery. Companies could then require acceptance of such unwieldy procedures as a condition of doing business, getting hired or purchasing products. That would deprive a range of federal statutes of their intended deterrent and compensatory affect.

This concludes my discussion of the United States brief. I'm happy to answer questions.

SEN. FRANKEN: Thank you, Deputy Assistant Attorney General, and thanks again for being here today. The members will now have seven minutes to ask their questions, and I'll start.

Deputy Assistant Attorney General Overton, why did the Justice Department decide to get involved in the Italian Colors case lawsuit in the first place? What was the public's interest here?

MS. OVERTON: Thank you for your question. Private antitrust actions are a vital supplement to the government's civil enforcement efforts under the federal competition laws as well as our criminal enforcement. They're also an important component of a range of other statutory schemes. And the United States filed its brief because of our concern that the effect of the mandatory arbitration agreement in the facts of this case would prevent the respondents from being able to effectively vindicate their rights under the antitrust laws.

And our brief also identifies the United States' substantial interest in ensuring that arbitration agreements are not used in a way to prevent private parties from obtaining relief --

SEN. FRANKEN: Well, can you just --

MS. OVERTON: Yes.

SEN. FRANKEN: -- talk about how Italian -- the Italian Colors decision undermines enforcement of our nation's antitrust law -- of the antitrust laws?

MS. OVERTON: The concern we expressed in our brief was that the incentives of companies are -- could be impacted, that the effective vindication rule creates incentives for companies to craft arbitration agreements in a manner that allows realistically for small claims to be brought under the federal laws.

However, we expressed concern in our brief that absent that

SEN. FRANKEN: By making it -- by making it so hard to recover, by making it so costly to arbitrate, by having to operate alone, that it just is -- that you can't effectively vindicate yourself. You can't have effective vindication. And that's what this is all about. This is overturning -- that's what Italian Colors is about, overturning the precedent in Mitsubishi about effective vindication, right?

MS. OVERTON: We were -- we cited in our brief that the effective vindication rule had been recognized in Mitsubishi almost 30 years ago in 1985 and had been
reaffirmed by the court since.

SEN. FRANKEN: So, Justice Kagan made the same argument in her dissent when she wrote that arbitration could be used to, quote, “block vindication of meritorious federal claims and insulate wrongdoers from liability,” end quote.

Can you explain how the Italian Colors decision gives -- really just gives corporations license to use arbitration clauses to get consumers and workers and businesses to essentially waive their rights?

MS. OVERTON: Well, we -- the brief lays out our concerns that companies could use a combination of class action, enjoinder prohibitions, confidentiality requirements and other procedural restrictions to increase the likelihood that a plaintiff's cost of arbitration would exceed its projected recovery and would function as a prospective waiver, and prospective waivers are generally presumed to be invalid. So we were concerned about the incentives that could be created, and we noted that the effective vindication rule has created incentives for companies to have plaintiff -- to have arbitration procedures that allow plaintiff --

SEN. FRANKEN: The private, civil lawsuit.

MS. OVERTON: Exactly -- to bring --

SEN. FRANKEN: Now -- which -- the people on the other side of this will argue, well, you know, the government can always step in to enforce the law. I think that argument is made by some of the witnesses here. But in its brief, the government wrote -- you wrote, quote, “Private actions are a vital supplement to government enforcement not only under the antitrust laws but also under a wide range of other federal statutes.” Can you just elaborate on this and explain the role that private enforcement plays in this?

MS. OVERTON: Yes. Thank you, Chairman.

Private enforcement under the antitrust laws as well as under a number of other statutes is a vital supplement to our government enforcement efforts, and the federal antitrust laws are -- as you're aware, they are enforced by the Department of Justice Antitrust Division as well as the Federal Trade Commission. But private antitrust suits add to the deterrent value and provide compensation for aggrieved persons.

And we noted in our brief that there's a range of other statutes that have a -- where private enforcement is such a vital supplement to government enforcement, and we've provided examples such as the Service Members' Civil Relief Act, Title 7 of the Civil Rights Act of 1964, and the Fair Labor Standards Act, among others.

And we noted in our brief that while claims under such statutes may generate small damages for any particular plaintiff, these statutes offer important protections against practices that are broadly harmful.

And we also noted in our brief that such statutes reflect congressional judgment that such private enforcement is an important part of the statutory scheme.

SEN. FRANKEN: Well, that brings me to sort of the activism of this court. This is another five-four decision. And this was -- can you, you know -- can you give the committee an overview of the precedents that established the effective vindication rule?

MS. OVERTON: We noted -- we noted in our brief that the effective vindication rule was set out in the Mitsubishi case in 1985 and has been reaffirmed a number of times since.

SEN. FRANKEN: It seems to me that in this case the Roberts court once again went out of its way to overturn precedent in a way that actually benefits large corporations over consumers and small business and employers, because I'm talking about Italian Colors here.

I don't want you to comment on that. I just want to note that that's been a concern of mine since I came to the Senate.

I'd like to thank you for -- again for your service and for testifying today. I know you've had a busy schedule.

I'd like to turn it over to the ranking member.

SEN. GRASSLEY: Thank you, Ms. Overtone, for your testimony.

The Department of Justice brief in the American Express noted at least one positive result from the AT&T Mobility decision -- specifically, companies have modified their agreements which contain class-action waivers in order to encourage consumers to bring low-value claims into arbitration. Such modifications include cost and fee shifting. Page 29 of that department's brief noted that this leaves, quote, “consumers better off under their arbitration agreement,” end of quote, than they would -- no, continue the quote -- “than they would have been in class litigation,” end of quote.

Question: Can arbitration be an effective way for individuals to have low-value claims adjudicated?

MS. OVERTON: Thank you for your question, Senator Grassley.

Our brief made the point that the effective vindication rule could reconcile the policies in a number of federal statutes that confer substantive rights and authorize private suits, and we noted that the effective vindication rule does create incentives for companies to craft arbitration agreements in a manner that allows for low-value claims to be brought for those -- for persons to pursue those rights -- those federal rights.

We expressed concern in our brief that when an arbitration agreement forecloses a plaintiff from seeking redress for those violations that the effect of the agreement would not result in arbitration pursuant to those procedures but would instead cause the plaintiff to abandon the claim.

SEN. GRASSLEY: The department's brief in American Express argued that the mandatory arbitration agreement prevented the plaintiffs from being able to effectively vindicate their rights under the antitrust laws. The brief argued that the restrictions contained in the arbitration agreement foreclose an alternative mechanism such as cost-sharing. As you know, the court disagreed factually whether the American Express agreement prohibited alternative mechanisms like cost-sharing.

Two questions, then: Does the department agree with the point both the majority and the dissent made in the American Express case, specifically that a class action isn't the only way to vindicate claims? In other words, alternatives such as cost-sharing can be effective?
MS. OVERTON: Senator, in our brief we identified a number of mechanisms that in the context of that case might have been used by the plaintiffs to pursue their small claims, but those -- our brief notes that those options were foreclosed to the plaintiffs. But we identified a number of options. And the card agreement in that case prohibited class action, arbitration, cost-sharing; it had confidentiality agreements.

SEN. GRASSLEY: Is it fair to say that at a minimum arbitration clauses prohibiting class actions must contain some mechanism for sharing or shifting costs? And if that's the case then the department would agree that a claim can be effectively vindicated.

MS. OVERTON: Senator Grassley, we took the position in addressing the specific facts that were before us in the case of Italian Colors, and in that situation our concern was that the merchants did not yet have any opportunity before them. They did not have a realistic ability -- given the arbitration -- the mandatory arbitration agreement and the procedural restrictions in place, they did not have reasonable ability to pursue their statutory rights because the cost of arbitration would far exceed any recovery they could hope to obtain.

SEN. GRASSLEY: I'll yield back my time.

SEN. FRANKEN: Thank you. And just for -- in case there's any confusion, Italian Colors and American Express are the same case.

It was American Express v. Italian Colors, or vice versa. And we'll be hearing from the proprietor or the chef and owner of Italian Colors in the next panel.

Senator Whitehouse.

SENATOR SHELDON WHITEHOUSE (D-RI): Thank you very much, Chairman Franken, for holding this hearing. I have a statement. I'd like to ask unanimous consent to put the whole statement in the record.

SEN. FRANKEN: Absolutely.

SEN. WHITEHOUSE: Thank you.

The point that it makes is a -- is a fairly basic one, and it begins with, I think, an uncontroversial proposition that the civil jury as an institution was vitally important to the Founding Fathers. It was a core casus belli that led to the revolution, when the English tried to limit rights to a jury, when the crown tried to limit rights to a jury.

And I think it's also noncontroversial that, dating back to William Blackstone, one of the functions of the jury, the reason that the Founding Fathers put the jury into our system of government as an -- government institution just like executive branch, judicial branch and legislative branch separation, was that it stood as a protection for the individual -- not just against the government, but also against wealthy and powerful citizens. Indeed, Blackstone described the civil jury as specifically that, a way for people to be protected from the encroachments of wealthy and powerful citizens.

So now in America the most wealthy and powerful citizens are corporations, big corporations. And if you're a big corporation, you want no part of a jury. You want to go talk to the governor whose campaign you supported, and surrounded by his lobbyists and friends. You want to go to Congress, where your lobbyists prowl the hallways, your super PACs influence policy. The idea of standing as a big corporation on equal terms with a regular person in front of a civil jury? It's offensive to them. They don't like it. They fight back very hard, and there's an entire campaign by corporate America to degrade and deprecate the civil jury. And it would astound the Founding Fathers, for whom this was such an important institution and such an important value.

And I think it's important that we keep these arbitration agreements in mind, in light of that corporate impulse. They would like very much to not ever have to answer to what in the old days would be called 12 good men and true, and now are more like six-to-12 good men and women and true. And the desire to kind of shunt as much as they can into arbitration avoids them having to meet the civil jury, dodges that institution of government, and in some cases -- when I was attorney general, the attorney generals went after one of the main arbitration organizations because -- filed an action against it because it was so one-sided, so fundamentally crooked that it simply wasn't giving consumers a fair shake.

And there are all sorts of problems baked into arbitration in terms of tending to be one-sided, tending to have people from the corporate world who come in every time and who -- it was so bad, I think in -- I'm saying this from memory, so don't hold me to it -- but I think it was so bad that the arbitrators would be stricken under the old rule, if the -- if somebody objected to them.

Well, who's going to object to an arbitrator? Not somebody who's there once. The person who's going to object is the credit card company that's there day after day after day after day after day. So by selectively striking arbitrators, they were able to cook up a panel that, I think by the time the dust settled, 90 percent of the decisions when their way -- again, I'm making up that number.

But I'm really glad, for all of these reasons, that Chairman Franken has brought this issue to light. And my point is there's more here than just an injustice to consumer; there is a real blow to the Constitution and to the constitutional structure that our forefathers fought, bled and died for. And we need to keep that in mind.

So thank you very much, Chairman Franken.

SEN. FRANKEN: Thank you, Senator Whitehouse.

Senator Lee.

SENATOR MICHAEL LEE (R-UT): Thank you, Mr. Chairman.

And thank you, Ms. Overtone, for joining us today.

You said in your written testimony today that the basis for the department's position in its amicus brief was that the arbitration agreements at issue in the AMEX case violated the effective vindication rule, due to the absence of some mechanism for sharing or shifting costs.

What do you think such a mechanism might look like, if we were to put something like that in place?

MS. OVERTON: Thank you, Senator.

I'm not in a position -- with all due respect, I'm not in a position to comment on policy that is the purview of Congress. But I would -- I would respectfully clarify that in our brief we noted a variety of restrictions. And so the contract agreement between American Express and its merchants required all the disputes to be resolved by arbitration. It precluded any class action adjudication. It barred joinder. It didn't allow cost shifting. It didn't allow sharing of information in an arbitration hearing.
We identified several that might have provided an opportunity for the merchants to reasonably, feasibly vindicate their federal claims, had they not been foreclosed. We were concerned about the effects of the mandatory arbitration agreement on — in the facts of that case with all of those things.

SEN. LEE: So is it safe to say that the concerns expressed by the department in the AMEX case could perhaps be vindicated by a remedy short of just a wholesale invalidation of these kinds of agreements? It's theoretically possible, at least, that you could satisfy them by some means other than the wholesale invalidation of all such agreements?

MS. OVERTON: Again — thank you, Senator. Again, I'm not in a position to comment on any policy. I can only note again what we — what we identified in the brief and, in the context of that case, our concerns.

SEN. LEE: OK. To your knowledge, has the U.S. Department of Justice in this administration advocated for the validation of pre-dispute arbitration agreements generally?

MS. OVERTON: I'm not aware. I — the administration's not taken a position on — I'm not — I'm not aware.

SEN. LEE: On what — on what kind of reform might be necessary.

MS. OVERTON: I'm not aware of a position. Again, I'm here testifying about our brief in the context of the anti-trust laws and its impact and the concerns we expressed. But of course we remain happy to work with the Congress on issues.

SEN. LEE: OK. To your knowledge, the Department of Justice has not endorsed any currently pending legislation that would limit the effect of these kinds of agreements?

MS. OVERTON: I'm not aware of such a — I'm not aware of such a position, no.

SEN. LEE: OK. Thank you very much.

And thank you. Mr. Chairman.

SEN. FRANKEN: I again want to thank you, Ms. Overton, and I know you have —

SEN. MAZIE HIRONO (D-HI): Thank you very much, Mr. Chairman.

Sen. HIRONO: Thank you, Senator. Thank you, Mr. Chairman.

The general proposition in our country is that people should have the right to access our courts, to seek redress and justice. So it is not the norm that all of these matters should be handled through arbitration clauses that basically head off consumers, head off small businesses, head off shareholders and any other individuals or groups from seeking such redress in the courts.

And I think the American Express case basically — the way I see this case, because it really goes far in saying these kinds of arbitration clauses are OK, even so far as to in effect pre-empt federal — in this case, federal anti-trust law. Isn't that what the court said? A private entity, American Express, can pre-empt federal law and the provisions in the federal law that allowed this small-business person to seek redress.

MS. OVERTON: Thank you. Thank you. Senator.

The concerns that we express in our brief were that, under the circumstances of that case, the merchants could not advocate — they could not pursue their rights under the federal anti-trust laws because the cost of doing so, given the mandatory arbitration agreement and other restrictions, would have been prohibitively expensive. It would have far exceeded the recovery that they could hope for.

SEN. HIRONO: So —

MS. OVERTON: So the Supreme Court —

SEN. HIRONO: So, in effect —

MS. OVERTON: — did not adopt our position.

SEN. HIRONO: So, in effect, with this kind of a ruling, private entities can trump federal law. And you mentioned some other federal laws where there's a private cause of action, alternatives that an individual or aggrieved parties could pursue.

So you mentioned several examples of how other kinds of clauses could be put into arbitration, clauses that would make it pretty tough for anyone to seek redress in our courts, which is the general proposition in our country, but for decisions like this, which, by the way, interpreted federal law. So since there is no constitutional right to arbitration, it behooves our committee and the Congress to look at what's going on and making sure that there's a balance here.

I'm not against arbitration clauses per se. But when they go this far, basically to trump federal law, I think that we need to address the situation.

That wasn't a question. (Laughs.)

Thank you, Mr. Chairman.

SEN. FRANKEN: Thank you, Senator Hirono. And that's exactly why we're here today. And what we're talking about today in American Express v. Italian Colors, basically what I believe we saw was the court overturn precedent of effective vindication, which is that in these mandatory arbitration clauses, when a plaintiff was absolutely, by definition of the circumstances, unable to recoup anywhere near their expenses because they are prohibited from joining with other plaintiffs or they were prevented from class action, where the expenses — they proved the expenses were going to be so much more than anything they recouped, so it'd become irrational to actually go in — to go in arbitration, that there was no effective recourse, no effective vindication. And that's what this was. It was an overturning of a precedent. And we as Congress can do something about that. And that's what our discussion is about here today.
I want to thank for your testimony, and you're now -- the witness is now dismissed. Thank you.

MS. OVERTON: Thank you.

SEN. FRANKEN: All right. I would -- and again, I apologize, Senator Hirono. I really do.

I'd like to invite the witnesses on our second panel to come forward and stay. I guess, standing, because we're going to administer the oath, as is customary.

OK. Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth, and nothing but the truth?

WITNESSES: I do.

SEN. FRANKEN: Thank you. You may be seated.

Welcome to each of you. I'll introduce the witnesses, all of them, and then Mr. Carlson will begin his testimony.

Our first witness is Alan Carlson, the owner of Italian Colors Restaurant in Oakland, California. Mr. Carlson has been in the restaurant business since he was a teenager, when he washed dishes at a diner. He graduated from the Culinary Institute of America in 1979 and then traveled across the country working with chefs. Today Mr. Carlson is not only an outstanding chef, he's also a successful businessman operating several restaurants in the Bay area.

Our next witness is Professor Myriam Gilles from Cardozo Law School. Before joining the faculty at Cardozo, Professor Gilles taught at Princeton and at the University of Virginia. Professor Gilles has written and spoken extensively on the Federal Arbitration Act and access to justice.

Our next witness is Vidita Teske. Ms. Teske is a partner at Crowder, Teske, Katz and Mico, LLP, a Minneapolis-based law firm, where she represents consumers and service members. In addition to her duties at the firm, Ms. Teske also serves on the steering committee of the National Association of Consumer Advocates Military Consumer Justice Project. Earlier this year Ms. Teske received the Federal Bar Association's Robin J. Spalter outstanding achievement award in recognition of her tireless and effective advocacy for consumers.

Our next witness is Archis Parasharami, the head of the consumer litigation and class actions practice at Mayer Brown. Mr. Parasharami is the co-editor of Class Defense, a blog about key issues affecting class-action law and policy. He represented AT&T in the Concepcion case. And he has received numerous awards for his work.

Our final witness is Professor Peter Rutledge, an associate dean and the Herman E. Talmadge professor at the University of Georgia. Professor Rutledge has authored several books and academic articles on arbitration, and he has testified before Congress on arbitration issues before. He also was selected to participate in the American Arbitration Association's delegation to the United Nations working group on arbitration.

I'd like to ask each of you to give five minutes of testimony, to make your opening statements. Your complete written testimony will be included in the record.

Mr. Carlson (sic), we will -- Carlson -- we'll start with you.

ALAN CARLSON: Thank you, Chairman Franken, distinguished committee members.

My name is Alan Carlson. I'm the chef-owner of Italian Colors Restaurant, a small business located in Oakland, California. I was born in the suburban region of Detroit and have been working in the restaurant business, one way or another, since I was 14 years old.

Twenty years ago, I opened Italian Colors Restaurant with my wife, Diane Cohen Carlson, and business partner Steven Montgomery. I'm incredibly proud to say that, two decades later, we are still open, serving our community, and employing more than 30 people.

Like most restaurants, our profit margins are razor thin. We survive by fostering client loyalty, keeping prices low, cooking quality food, giving great service. We also operate in a credit card-driven world and could not survive without accepting credit cards as payment.

To customers, one form of payment is as good as another. But for small businesses, that is far from reality. A significant percentage of our earnings come from customers who use American Express cards. American Express imposes special rules on small businesses, who must accept their card as payment. For example, in order to accept any American Express card, my restaurant must accept all types of American Express cards, even cards that carry rates and fees that are higher than other forms of payment.

American Express also does not allow me to offer cash discounts or to encourage customers to pay with a form of payment that actually works better for my business. I cannot encourage my customers to pay in cash or offer discounts or other incentives.

If I could offer discounts to my customers or be able to say which cards make sense for me to accept without being forced to accept all cards, I would increase my earnings and be able to hire more employees. Being forced to make a decision that is bad for my business just isn't right.

After describing my situation to my friend and long-time customer and attorney, Edward Zuzman, I learned that American Express may be violating our country's antitrust laws. When I started with American Express in the early '90s, my first agreement did not have an arbitration clause. To this day, I have not actually seen an arbitration agreement. But I've been told by my attorney, Edward, that one was included in their contracts in the late '90s.

Edward explained that forced arbitration means that American Express cannot be held accountable in court and that I will not be able to join with other small business owners to help defray the cost of enforcing our rights. Instead, if I want to hold American Express accountable, I'd have to do it in individual private arbitration designed by American Express.

Needless to say, I was shocked. And even if I knew the clause was in the fine print of the contract, the American Express contract is offered on a take-it-or-leave-it basis. As we figured out how to move forward, we discovered that the cost of individual forced arbitration was so high that even if the small business won, it would lose. An expert economist explained that it would be (most ?) -- not to be cost-effective for any small business owner in the same situation to pursue an individual arbitration claim against American Express. In fact, it would cost more to bring their claim than they could recover.

In short, if I cannot be part of a class action to enforce my rights against American Express, I have no way of enforcing those rights. I don't have the money to take on American Express by myself.

So you can imagine my disappointment and shock when the U.S. Supreme Court issued its decision in favor of American Express and forced arbitration. Essentially the court said it didn't matter that a small businessman couldn't pursue important rights against a big business.
Coming here today to testify before the committee was difficult, because I just opened a new restaurant six weeks ago. And reflecting on it, I realized how important it was for me to be here to speak on behalf of all small business owners who are struggling to stay in business and live the American dream.

This does not have to be the end of the story. Congress can act to help protect small business across America, ensure we have the same access to the justice system as large corporations. Senator Franken's Arbitration Fairness Act would restore the rights of small businesses like mine to enforce our rights.

Small businesses are the backbone of America, and we play an essential role in creating good jobs. Small businesses, our customers and really our neighborhoods and communities are the ones who lose when large corporations get to push us around. Everyone in D.C. says that small businesses are important, and here's the real opportunity for Congress to actually do something to protect us.

Thank you for taking the time to listen to me today, and I look forward to answering any questions.

SEN. FRANKEN: Thank you, Mr. Carlson. Thank you for making the trip all the way from Oakland. And good luck on the new restaurant.

Professor Gilles, please.

MYRIAM GILLES: Chairman Franken, other distinguished members of the Senate, thank you so much for inviting me here today to talk about this issue that I've spent a lot of time over the past eight years thinking and writing about: forced arbitration clauses, which mandate one-on-one arbitration of all legal disputes and ban multiple claimants from pooling their claims. That's what we're talking about today.

These arbitration clauses, which we can now find in just about every kind of a contract you can imagine, prevent consumers, workers and small businesses from vindicating their rights that are guaranteed to them by the common law and by federal and state law. And they immunize companies from accountability for widely dispersed small-dollar injuries that they can inflict on people who have no choice, no voice, no bargaining power in the market.

For a long time, state and federal judges, Democrats and Republicans, in courts all around the country regularly struck down these arbitration clauses as unfair, finding them against public policy where they prevented people from actually vindicating their rights legislatures have given them. But all that changed in 2011 with the AT&T decision that we've already talked about. And it's only gotten worse this past term with American Express v. Italian Colors, because the court there just broadly upheld the use of a remedy-stripping arbitration clause, rendering it really beyond legal challenge. It simply doesn't matter, as Justice Scalia wrote for the majority in Italian Colors -- I'm sorry, in Concepcion -- that countless cases will fly through the legal system. It doesn't matter. All that matters for this very slim majority of the Supreme Court is that a 1925 statute is followed, that arbitration clauses are enforced exactly as companies have written them up.

As Justice Kagan wrote in her blistering dissent in the American Express case, the majority's response to the public policy implications of enforcing these remedy-stripping arbitration clauses, the reality that no rational individual, small business owner, consumer, employee will ever seek to arbitrate one-on-one claims against massive and well-funded corporations, the majority's response to that real -- that real-world implication is simply: too darn bad, too darn bad.

So Congress enacted a remedial statute that gives you rights, but you can't vindicate those rights. Too darn bad. That's basically the majority's response -- sorry. Now, "too darn" -- "too darn bad" might be a perfectly fine response for the Supreme Court when it's applying legal rules, but this body is doing policy. And so "too darn bad" just can't be this body's response to this decision.

And I think this body, this Congress, has already recognized the public policy implications of this debate. Congress has tried to outlaw mandatory arbitration clauses in payday loan and consumer credit contracts with military families and in residential mortgage agreements. If these groups deserve protection from mandatory forced arbitration, so do all consumers and employees.

And I think the Supreme Court's decision has pretty much squarely put this issue here before you, before this body. The court has repeatedly made clear they will rigorously enforce these remedy-stripping terms that companies insert into their arbitration clauses, never mind the consequences, unless the FAA is overridden by you, by Congress.

So the time is now. And honestly I can't think of a better time, because these arbitration causes are proliferating far beyond what any of us could have imagined just a few years ago. The CFPB arbitration study, which was just released last Wednesday, makes clear that these clauses have become standard. And credit card company contracts, checking account contracts, payday lenders use them.

And those are just the groups that the CFPB studied. I mean, we're seeing these contracts in all sorts of other agreements with insurance companies, airlines, landlords, gyms, rental car companies, parking facilities, schools, camps, shippers. Even HMOs and nursing homes regularly use these contracts. In fact, the nursing home industry is very straightforward about the fact they all use mandatory forced arbitration in their contracts, basically making it -- making it impossible for individuals to bring individual claims in court or to band together to hold them responsible for systemic harms.

I think these remedy-stripping clauses are affecting everyone. All of us in this room are bound by one or more arbitration clauses that we may or may not know anything about. I want to tell you about one case. It's in my written testimony. But I wanted to just highlight it for you.

There's a young Florida man named Kevin Ferguson, who enrolled in a medical assistant program in Miami, Florida, just trying to make his life better, trying to increase his opportunities for getting a job. And he takes this -- he enrolls in this course. It's offered by one of these for-profit educational groups, promising him the sun and moon and stars but of course misrepresented just about everything about the educational program, everything from their graduates' employment statistics to the ability to get financial aid to the actual quality of the program.

Kevin enrolls. He does really, really well. He graduates with great grades but finds himself unable to get a job. And he does some more investigation, and he talks to more graduates, and he realizes lots of people feel that they've been duped by this for-profit educational organization and they've engaged in some pretty fraudulent recruitment practices over the years.

Kevin brings a claim, but get this. Kevin isn't just suing for damages. Kevin is bringing what we call a true private attorney general claim. He wants to bring a claim to have a court, a public court, declare that this educational group has been lying, they've been falsely advertising graduation statistics, they've been defrauding the public. He wants an injunction, and he wants some order stopping this group from continuing to engage in this horrible practice.

But Kevin's enrollment contract had an arbitration clause in it. So the district court, faced with the defendant's inevitable motion to compel arbitration to drag Kevin's
Kevin can't arbitrate this claim, right; this claim belongs in the public court -- denied the motion to compel arbitration.

But then Concepcion and American Express were decided. And on appeal, the Ninth Circuit felt its hands were tied, and it reversed the district court. So now, you know, Kevin can't get justice, but Kevin also can't prevent injustice to others. And so I think this is a really serious problem --

SEN. FRANKEN: Professor, you're going to have to wrap up.

MS. GILES: Wrap up --

SEN. FRANKEN: Yeah.

MS. GILES: I am. I had one paragraph left.

SEN. FRANKEN: OK.

MS. GILES: So that's just one of many examples. Forced arbitration is literally foreclosing millions of Americans from vindicating their rights. And as the remedial statutes enacted by this body and by the legislatures of the 50 states are thwarted, I think "too darn bad" is just not going to cut it. So I urge this body and this Congress to enact the Arbitration Fairness Act.

Thank you.

SEN. FRANKEN: Thank you, Professor. And I noticed you used air quotes on "for-profit." The air quotes don't belong around the "for-profit."

MS. GILES: "Educational."

SEN. FRANKEN: Yeah. (Laughter.)

MS. GILES: You're right, sorry.

SEN. FRANKEN: They are definitely for-profit.

Ms. Teske.

VILDAN TESKE: Good afternoon, Chairman Franken, distinguished members of the committee. Thank you for allowing me to testify today.

I will share with you my perspective as an advocate representing consumers and service members in individual and class-action cases. As a result of the recent Supreme Court decisions in Concepcion and Italian Colors, many of my clients are no longer able to bring their claims in a court of law using our country's judicial system because of forced arbitration.

In my practice, I have had the privilege of representing our brave military men and women in matters dealing with consumer financial issues. Congress provided important, very strong protections for our service members and their families through a federal law known as the Servicemembers Civil Relief Act, or SCRA. The explicit purpose of the law was to enable our service members, quote, "to devote their entire energy to the defense needs of the nation," end quote.

With the large number of deployments over the past decade, the financial crisis our country has experienced in the last six years and the reckless business practices violating service member rights, unfortunately SCRA claims have been more common than in previous years. My colleagues and I have brought several SCRA cases as class actions on behalf of a number of service members. These service members' rights were violated by the same creditor in the same way.

In the past we were able to recover millions of dollars for thousands of service members who were able to join together to hold corporations accountable for violating their rights.

Many of the hundreds of military class members that we have spoken with didn't know their rights. The few that knew that their creditor was likely breaking the law didn't have the time to pursue the claim or the resources to hire an attorney to take the case on.

Unfortunately, such cases on behalf of classes of service members are now almost impossible to bring due to the Supreme Court's decision because of a number of underlying contracts out there that have forced arbitration clauses.

Consider my recent case representing a service member whose mortgage lender foreclosed on his home while he was on active duty serving our country. The lender held a sheriff's sale and sold our client's home in Minnesota while he was being deployed to Iraq, in violation of the FCRA requirements. Some months later he learned he lost his home, but at the time he didn't know he was protected by federal law from this unlawful foreclosure.

While investigating the facts of his case we found a report that said that a review of a sample of foreclosures conducted by this same national lender revealed a number of other service members that were subject to the protections of the FCRA.

So our clients made the decision to file his case as a class action and as a representative of all the other service members to get justice for himself and the others. Much to our clients' surprise, the lender brought a motion to take the case out of our judicial system and force him to arbitrate. It turned out that in the thick stack of documents at the time of his closing years before, there was a forced arbitration clause with a class action ban.

Based on the Supreme Court's rulings on arbitration clauses, he lost his right to his day in court, the ability to represent the military brothers and sisters, and his Constitutionally guaranteed right to present the facts to a jury. One cannot escape the irony that while he was serving our country and protecting our freedoms, he had lost his freedoms and rights under our Constitution.

It's not sound public policy to require our armed forces members to submit to individual arbitrations that take away from their service to our country and from their families in order to vindicate their rights. Yet this is exactly what has to happen when there is a class action ban in a consumer contract. Or, more likely what would happen is that the service member has to forego vindicating his rights all together, and the wrongdoer is not brought to justice. In fact, a 2006 Department of Defense report to Congress came to the same conclusion.

In my practice I have seen time and again how forced arbitration harms the lives of American families and our nation's service members.

Another example is a case in California against a national lender that reposessed active duty service members' vehicles without court order in direct violation of...
the STRA. The National Guard sergeant was deployed to Iraq, and when his -- excuse me, he was in Iraq when his car was repossessed. Even after the military legal assistance office sent a letter to this lender to ask them to return the car, the lender refused, so he brought a class action on his behalf and on behalf of all the other service members that this had happened to.

But one can guess what happens next. There was a forced arbitration clause and there could be no class action. This of course meant that hundreds if not thousands of other service members had their rights violated potentially, but they were left unprotected and the company got away with breaking the law.

Unfortunately, with the proliferation of forced arbitration clauses, these scenarios will continue to play out, for service members as well as all other consumers.

Our service members deserve better. Our American consumers deserve better. So do the employees, the investors, the small businesses and seniors -- deserve better. They need access to justice in our public court system.

Thank you for having me testify today, and I look forward to your questions.

SEN. FRANKEN: Thank you, Ms. Teske.

And Mr. Parasharami?

ARCHIS PARASHARAMI: Thank you, Mr. Chairman, distinguished members of the committee.

Good afternoon. My name is Archis Parasharami and I’m a partner in Mayer Brown LLP, where I am co-chair of the Consumer Litigation and Class Actions practice.

I want to thank the committee for giving me the opportunity to testify today, and I thank the chairman for making my written — more extensive written statement part of the record.

My legal practice involves defending businesses against class action lawsuits in courts around the country, and in addition I counsel businesses on adopting fair arbitration programs, and I represent them in litigating over the enforceability of those arbitration programs. So I have firsthand experience with how arbitration agreement work and also how class actions function in reality.

Based on that experience, my view is that arbitration provides consumers and employees with a fair and accessible way of resolving their disputes, and it does so more effectively than litigation in court. Those benefits of arbitration in my view are the primary reason why the arbitration fairness act should not be adopted.

Despite its title, the bill would effectively eliminate any realistic access to arbitration for consumers and employees with modest-sized claims, and for the ordinary consumer or employee the elimination of arbitration will do more harm than good.

What does the evidence show? Empirical studies have repeatedly demonstrated that arbitration is at least as likely, if not more, to bring — than litigation in court — to bring benefits and more positive outcomes for consumers and employees. It’s also more user-friendly than litigating in court. Access to this fair, inexpensive and simple system of dispute resolution is a significant benefit for consumers and employees.

Now, perhaps the most common objection to arbitration — and I think we’ve heard it from some of my colleagues today — is that arbitration typically takes place on an individual basis instead of through class actions. But these objections to arbitration rest on inaccurate theoretical assumptions about how this alternative of class actions actually function, and in reality the bulk of class actions do not provide benefits for the vast majority of consumers and employees.

My firm recently conducted an empirical study of 148 class actions involving employee class actions and consumer class actions filed in federal court, and that’s attached to my written testimony as exhibit A.

Here’s what we learned from that study. Most of these class actions were dismissed either by the court or voluntarily by the named claimant who had sought to represent the class. Of the remainder, the relatively few cases that did settle, the available evidence about the distribution of benefits from those class actions showed that usually class actions resulted in little to no benefit to employee and consumer class members.

In other words, class actions are not particularly effective at delivering relief. And I think that most people who have received a class action notice or a $2 check in the mail have had that experience, that they simply have not gotten a lot of the class action of which they were a member.

By contrast, arbitration does afford consumers and employees an opportunity to pursue their claims effectively on an individual basis. We were lucky enough to have the assistant attorney general testify before, and I think that her testimony about the government’s brief was illuminating. And Justice Kagan’s dissent in the American Express vs. Italian Colors case really tracks the government’s arguments.

And what the — what Justice Kagan concluded while disagreeing with the majority was that still non-class options abound for pursuing claims in arbitration, pursuing federal antitrust claims in arbitration. In addition, arbitration agreements are increasingly becoming more favorable to individual consumers and employees. More and more companies are paying either all or most of the costs of arbitration. Often a consumer or employee pays nothing to arbitrate.

Companies routinely select the nonprofit American Arbitration Association to serve as the arbitration administrator, and the AAA has set up due process mechanisms to ensure that impartial, unbiased arbitrators serve as the arbitrators and the neutral decision-makers, and that arbitration procedures are simple and easy to use. We’re now seeing increasing numbers of consumers that were — and employees that are making use of arbitration.

The chairman was kind enough to mention an article that I wrote at the start of the hearing, and one thing that I’d like to mention is that that article urges companies, in order to have enforceable arbitration agreements, to adopt arbitration agreements that are consumer-friendly, to adopt arbitration agreements that follow the model of the arbitration agreement considered in Concepcion, which the court described as leaving consumers arguably better off than they would be in class actions.

Now, especially given these developments, in my view the elimination of arbitration would be bad for individual consumers and employees as well as businesses. Consumers and employees would be far worse off from losing the ability to pursue claims that would have that are small and individualized, claims that couldn’t be pursued in class action and can’t practically be pursued in court because lawyers simply won’t take those cases.
The primary beneficiaries of eliminating arbitration would be lawyers – lawyers on the plaintiffs' side, but also defense lawyers like me who receive large legal fees for defending companies in class actions. In short, the only clear winners of an increase in class-action litigation and the elimination of arbitration are the lawyers.

Thank you again for the opportunity to testify before the committee, and I look forward to answering your questions.

Professor Rutledge

PETER RUTLEDGE: Chairman Franken, Senator Hirono, Senator Lee and members of the committee, thank you for the opportunity to testify today. And thank you, Chairman Franken, for making my entire written statement part of the record.

In an abundance of caution, just to repeat one statement from that written remark, the views here expressed today are my own. One of my co-authors is a consultant to the Consumer Financial Protection Bureau, and it's important to me that everything that I say today be imputed only to me and not directly to him or indirectly to the CFPB.

With my written statement part of the record, let me make two brief points in the time that you've given me. First, I wish to thank you and your fellow lawmakers for shifting the terms of the debate over arbitration away from legislation-by-anecdote and toward policymaking grounded in sound, empirical evidence. Earlier iterations of this debate risked reacting to particular cases, irrespective of whether those cases were representative of the system as a whole, and irrespective of whether the reforms truly benefited those whom they were designed to protect. Now the debate is firmly anchored in empirical research and should remain so.

Just as an example, Chairman Franken, as you know from the 2011 hearing, one important contribution to that debate was the Cyril (ph)

Study, with which you're quite familiar, that found, among other

things, that the consumer win rate in arbitration was over 50 percent, but the disposition time from filing to conclusion of the arbitration was six months — a fraction of what it would be in our system of civil litigation — and that prevailing consumers who sought attorneys' fees received them over 60 percent of the time.

And to Senator Lee's question earlier, I would draw your attention to an initiative the State Department's been involved in with the Organization for (sic) American States, which is looking at the question of how to resolve cross-border disputes between consumers and businesses. And one of the proposals that's being considered by OAS, at the suggestion of the United States, is consumer arbitration. So the record is there. It's certainly not complete.

My second point, consistent with my first observation, is to approach with caution claims that in — a flight to arbitration will follow a particular Supreme Court decision. Empirical research that I and others have undertaken does not validate those predictions. To elaborate, in working with your staffs, Chairman Franken and others, they asked me to speak, and I've appended to my testimony a recent article that I co-authored with Professor Drahozal entitled "Sticky Arbitration Clauses," where we tracked in the franchise industry the extent to which there was a flight to arbitration after the Concepcion decision.

And what we found was that there was not. Depending on the relevant metric, the use of arbitration clauses shifted from approximately 40 percent to 45 percent or from 62 percent to 63 percent. And the recent preliminary results by the CFPB echo our findings. You've heard them already, Chairman Franken, and that is 17 percent of institutions issuing credit cards are using arbitration clauses, and 3 percent of credit unions are doing so.

Now, I acknowledge what we're about to talk about, Chairman Franken, is that part of the reason why that figure is currently low is because there was a period of time where a certain number of issuers refrained in using those arbitration clauses as pursuant to terms of settlement. That is about to expire. And I would recognize too that if that settlement were to go away, the number of issuers would go up; however, credit unions would continue not to use them.

Now, it's important, of course, to have an apples-to-apples discussion, because in addition, we can't simply look at these arbitration clauses with respect to issuers. We can also look to it with respect to the amount of credit card debt, and perhaps we can elaborate on that in the hearing.

The last point I wish to make, Chairman Franken, is this: In my view, the flight to arbitration often predicted in connection with the Supreme Court decisions, including Concepcion, has not come to pass. While it is simply too early to predict the effect of the Italian Colors case, given the recency of the decision, the historical disconnect between the rhetoric and the reality that Senator Grassley referred to earlier counsels caution.

Thank you for the opportunity to testify, Chairman Franken. I'd be happy to answer your and other committee members' questions.

SEN. FRANKEN: Thank you all.

Mr. Carlson, thanks for being here and for sharing your story with the committee. I just want to be clear about something you mentioned in your opening statement. Did you have a choice to opt out of the arbitration clause that American Express had you sign?

MR. CARLSON: No, I did not. I've never signed anything with American Express.

SEN. FRANKEN: And did you have any say when it came to the rules of the arbitration?

MR. CARLSON: No, I did not.

SEN. FRANKEN: And then the Supreme Court concluded that you had no right to go to court, that you had no choice but to abide by the arbitration agreement, no say over the arbitration procedures and no right to go to court, correct?

MR. CARLSON: Yes.

SEN. FRANKEN: So what did you do when the Supreme Court ruled against you?

MR. CARLSON: Business as normal, but yeah, I was saddened by it. But there was nothing I could do.

SEN. FRANKEN: You (went through ?) with the case?

MR. CARLSON: Oh, I (went through ?) with the case, correct.

SEN. FRANKEN: All right. And when you say you never — I notice in your testimony you never saw — you had been working with American Express, and they put
MR. CARLSON: Correct.

SEN. FRANKEN: And did they tell you they were doing that?

MR. CARLSON: No. They never told me anything.

SEN. FRANKEN: OK. Well, that's what this is all about. Is just having access to justice. And basically, in this, Justice Scalia said that it didn't matter that you weren't able to vindicate your claims, that just -- but the most you would have gotten is about triple the damage done to you, which would have been 30,000 (dollars), but you had to individually arbitrate, which would -- you proved would have cost you hundreds of thousands or maybe even a million dollars, right?

MR. CARLSON: Correct.

SEN. FRANKEN: OK. Well, my bill been law, you could have chosen to go to court, where you could have joined forces with other small businesses and your case could have been heard, and maybe this would be different.

Ms. Teske, one of the things that I found remarkable in your written testimony you talked about a little here was the comparison you made between the way things used to be and the way things are now. Years ago, you were able to recover millions of dollars for service members whose rights had been violated. Today, it seems like it's nearly impossible to bring cases to enforce laws that protect our men and women in uniform.

Can you comment on this?

MS. TESKE: Absolutely. The majority of the consumer financial contracts that the service members have entered into in the last few years -- and I assume that will continue the next few years -- have these forced arbitration clauses. We have heard already about the credit card contracts and the variety of other types of contracts, like cellphone services or car loan contracts.

Whereas before, we might have been able to get relief for the class members for violations of the Service Members Civil Relief Act as a class action, in those situations, we are no longer able to. Each service member would have to file his own individual arbitration. They would, first of all, have to know the intricacies of the Service members Civil Relief Act and know that there was a violation, then file his own individual arbitration, take the time and effort to do that, and they would not be able to bring a representative case to represent the hundreds, if not thousands, of other service members that had the same thing happen to them.

So it's right and wrong, compared to before forced arbitration clauses and now.

SEN. FRANKEN: OK. You told one story in your testimony that really illustrates the problem. I went back and looked at some of the court documents for that case, and frankly, I just think it shocks the conscience.

The Service Members Civil Relief Act says, among other things, that banks can't foreclose on service members who are on active duty, without first getting permission from a judge. The idea is that we can't expect our troops to fight the enemy abroad while fighting off bank foreclosures or an eviction notice at home.

I think we can all agree that that's a good law. Literally, we can all agree. This law passed by unanimous consent.

You testified about a soldier from Minnesota, from my state who earned several honors during the course of his service, including the Army Commendation Medal. On the same day that this soldier was ordered to report for active duty, his lender initiated foreclosure proceedings against him.

So the soldier goes off to Iraq to serve his country. And meanwhile, the bank is trying to take his house away from him without first going to a judge for permission. That's a blatant violation of the law. And it gets worse.

The lender falsified an affidavit swearing under oath that the bank knew that this man was not in military service, which was completely untrue. Using that false affidavit, the lender got the sheriff to put the soldier's house up for sale, and the house was sold while the owner of the house was in Iraq, in Balad at Camp Anaconda, right? I've been to Camp Anaconda four times; it was called "Mortaritaville" because they got mortared so much.

Guess who ended up buying that house? The lender, the bank that foreclosed. And they got a heck of a deal. It paid between one-quarter and one-third of the value of the house for the house that it foreclosed on illegally. Great deal for the bank, not a good deal for our soldier in Balad.

Now, my understanding, Ms. Teske, is that the soldier wanted to file a Service Members Civil Relief Act case to seek justice, and not just for himself, but also for other soldiers who have been foreclosed upon by the same bank. And it was really important for him to know that other soldiers knew that they had legal rights and that those rights might have been violated.

You mentioned in your testimony that there was some indication that your client wasn't alone, that there might have been other victims out there. So the soldier filed a case for himself and for other soldiers who had been foreclosed upon by this bank. What happened next?

MS. TESKE: He didn't get his day in court. Because of the forced arbitration clause, the judge went ahead and ordered arbitration and we ended up settling the case and he wasn't able to represent the other service members. So rather than having a class action that could go forward where others and he could get relief in our public court system in the public eye, none of those things happened.

SEN. FRANKEN: OK. I'm out of my time. I will come back. We're going to have a second round for anyone that wants to stick around.

But that, to me, is just an outrage. That's an outrage.

We will go to Senator Lee.

SENATOR MIKE LEE (R-UT): Thank you, Mr. Chairman.
And thanks to all of you for joining us today.

Mr. Parasharami, I'd like to ask you a couple of questions. The CFPB in its preliminary findings notes that it intends to, quote, "assess the possible impact of arbitration clauses on the price of consumer financial products," close quote. I believe you indicated in your written testimony that consumers and employees might well benefit through the systematic reduction of litigation-related transaction costs, which leads to lower prices and higher wages.

Can you explain for us sort of what you mean by that and where that comes from, how you get there?

MR. PARASHARAMI: Sure, Senator. So class actions and litigation in court aren't free. They come with a cost that is massive costs. The costs of litigation are high. The costs of paying plaintiffs' lawyers if the case settles are high, the costs of paying me and my colleagues and other law firms on the defense side to litigate the case, that happens in any case. So there are extraordinary legal costs associated with class actions and litigation in court.

Arbitration is a lot cheaper and quicker and more efficient. So the costs are lower.

Now, where do these costs go? You know, they don't just kind of vanish into the ether. A company that experiences these litigation costs in a competitive market will pass them along to consumers or reduce wages for employees or otherwise not hire more workers. These costs are passed along in some form or another. And typically in a consumer context, it's passed along in the form of if you save those costs they're passed along in the form of lower prices; if you can experience those cost savings, they're passed along by lowering prices.

So the point is that -- and let me just say that scholars who have looked at this have said that it's simply a matter of basic economics, that cost savings that come from the use of arbitration are passed along in competitive markets to consumers.

SEN. LEE: OK. OK. Another thing that you said in your written testimony was that businesses are unlikely to offer post-dispute arbitration, meaning once the dispute arises and is not likely to raise that as a possibility. Why is that the case? Why is it that parties are rarely going to be entering into that kind of arrangement?

MR. PARASHARAMI: So in the -- (inaudible) -- context -- (inaudible) -- arbitration agreements, the ones that would be affected by this proposal, both sides, the consumer or employee and the business, are committing in advance to use arbitration. And so when a company implements an arbitration program, it commits to taking on a ton of incremental costs that it wouldn't bear in court.

Under most arbitration agreements, such as the ones that are governed by the American Arbitration Association's consumer rules, a business will have to cover filing fees. These amount in consumer cases to $1,500. And they also agree to pay the arbitrator's compensation in full. And arbitration agreements, like the ones that I advise companies to adopt, often agree that they will pay even more substantial costs; sometimes they'll pay the full costs of arbitration.

That businesses agree to take on these high incremental costs because overall they experience the cost savings from reducing the litigation costs associated with class-action litigation and litigation in court, the costs we just talked about.

And because they save primarily on e-discovery costs and lawyer fees, the lawyers like me and the lawyers like my colleagues on the other side, it benefits them to pay all of these incremental costs for an arbitration program.

But if you were in a regime where only post-dispute arbitration agreements were permitted where either side could choose only after the dispute arises, then companies really wouldn't want to have that two-track system because they would have to both pay the costs of maintaining an arbitration program as well as all the costs of maintaining the litigation system in court.

And so they simply won't want to pay twice. It won't be realistic.

If companies are only allowed to have post-dispute arbitration and are required to defend claims in court, they simply won't allow for arbitration. And this would actually be very detrimental to consumers and employees who wouldn't have realistic claims to bring in court, because if they can't hire a lawyer because they have a small individualized claim that won't lead to a class action, they're just out of luck.

MR. RUTLEDGE: Thank you for the question, Senator. I would identify two. The first would be the lack of a proper apples-to-apples comparison. So for example, oftentimes arbitration is criticized and then the response becomes, compared to what? So for example, one of the frequent dynamics in the debate is that we should not have arbitration and in lieu of it should be class actions.

And as I indicate in my testimony, a number of individuals have written, including my colleague at the University of Georgia Jaime Dodge that it's not clear that in the aggregate that the class-action apple is superior to the arbitration apple. For example, the settlement that the class action may generate may have a relatively low take rate which is simply the rate at which the members who are brought into the class actually redeem the benefit. And at the same time, if they don't redeem the benefit and yet they are bound by the decision in the class, they are effectively precluded from bringing their own claim at that point. So that would be the first concern.

The second concern would be that there may be instances in which the regulation goes on to harm the very individuals whom it's designed to protect.

So as you may be aware, one of the early iterations of incremental legislation that sought to invalidate pre-dispute arbitration agreements concerned contracts between automobile dealers and manufacturers. And many of the arguments that you hear today were raised in that debate. It turned out that there was one reported instance after that legislation was enacted where the dealer wanted to arbitrate and yet the legislation precluded the dealer from doing so.

And so these are the two risks that I would draw to your attention in the time that I have. Thank you.

SEN. LEE: You seem to not believe that it's certain that we're going to have a flood of arbitral class waivers, we're not necessarily going to see a mass migration to arbitral class waivers. Help us understand what factors influence that thinking.

MR. PARASHARAMI (?): Sure. And I think it's important for me to clarify something in my testimony, because this is a complex issue. What my testimony is suggesting and what I think the CFPB preliminary report indicates at Page 19, for example -- actually -- excuse me -- Page 21 -- is that simply because the Supreme Court hands down a decision that seems to approve of a particular type of contracting practice in a given industry, that firms in that industry won't necessarily flock to that practice.
In my paper that's attached to the testimony, that's the point we make about franchise contracts, and I think in the CFPB report, again, taking into account the settlement that Senator Franken and I were sort of exchanging over a little while ago, at least at present, for the credit card industry.

Now, I want to differentiate that from a different situation that I talk about in my testimony, which is the use of class waivers among those entities that do employ arbitration clauses. And here I wish to acknowledge that where the empirics lead us is that both in the franchise context and in the credit card context, for those companies that do use those clauses, that there is an increased incidence in the use of the class waiver.

My point is simply this, that the debate often occurs on sort of homogeneous terms, that industries can be sort of compared and that practices of firms within industries can be compared. And what I think the — what the empirical research reveals is that's not necessarily true. There are certain industries to the extent we have access to the data where this is used more frequently than others. And there are certain firms within given industries where we have access to the data where the use appears more or less likely.

And my point simply to you and your colleagues is to understand the dynamics that are driving those decisions before generalizing from a particular case or particular firm's activity as to how an industry or how a particular set of firms is behaving.

Thank you.

SEN. LEE: Thank you.

SEN. FRANKEN: Thank you, Senator Lee.

I think part of the exchange that we had, which was me smiling at something you said, was the — talking about apples to apples. And I thought that when you were talking about some of the CFPB results, you were not comparing apples to apples, you were talking — when you said 17 percent, only 17 percent of — we'll — I'll get to that in some questioning, but I think that when we talk about sound empirical research, we should — the word "sound" is very important.

We'll go to Senator Whitehouse.

SEN. WHITEHOUSE: Thank you very much.

First of all, Mr. Carlson, I — I'm sorry for your experience, but I thank you for coming here to testify and to share your experience with us.

It strikes me that if the ability of individual consumers to aggregate their claims is eliminated and whether that's done by Congress deciding that we're just not going to allow small claims to go forward or whether that's done by the corporate malefactor sneaking something into a contract, a consumer contract, that prevents them from exercising what would otherwise be their legal rights, it strikes me that that creates a zone where fraud is encouraged, where it is basically given a free pass.

We had — it's interesting that we should be here today, because this very morning we had the hearing on the patent troll legislation. In that case, in that hearing, the issue was the so-called "patent trolls," who engage in frivolous litigation and threaten companies. And the argument there is that the cost of litigating with the patent troll makes it irrational to fight back and so people concede to settlements. And there was — the room was filled. Everybody was excited about that notion.

And here we have legitimate victims of what has — somebody has found to be wrongful or fraudulent behavior, who tried to engage in legitimate litigation to vindicate their rights against a fraudster, and here the cost of litigating would make it irrational to fight back. And it's almost the flip side.

What is — let me ask Professor Gilles, what is your observation about what message corporate America would take from the ability to have no redress for low-dollar but large-scale frauds that they commit? Let's say that the telephone company figures out a way to put a bogus $1 charge on every single bill that you make. By the time you figure it out — you know, maybe for a year they did it, so you're owed 12 bucks. They cheat millions of people, so they earn millions of dollars. Who's going to stand up for them when the only possibility of return is 12 bucks back?

MS. GILLES: Thank you for the question, Senator Whitehouse. No one's going to stand up for them, and —

SEN. WHITEHOUSE: Stand up against them. I (mean ?).

MS. GILLES: — stand up against them —

SEN. WHITEHOUSE: Yeah.

MS. GILLES: — and that no one — no one can be the voice of the consumer who is — who is subject to a hidden cost, a fee that they don't even notice, you know, whether it's one month in or 12 months in, they don't even notice it or — and when they do, it's such a small value, such a small amount, that it's not worth it to them to arbitrate these claims. So —

SEN. WHITEHOUSE: So if we allow the corporations themselves to —

MS. GILLES: It's just — it's just a — yeah.

SEN. WHITEHOUSE: — put these tricks and traps into their consumer contracts, we're basically giving them open season for low-dollar, high-volume fraud on consumers?

MS. GILLES: We are. That's exactly what we're doing. It's a mandate to violate the law. And —

SEN. WHITEHOUSE: It's not a mandate, a permission.

MS. GILLES: A permission, right. The Supreme Court's decisions, I think, are certainly a mandate.

And I do want to respond a little bit to what my colleagues at the end of the table said just a little bit ago. Mr. Parasharami noted that — in response to Senator Lee that these — the class actions have no value. Class actions, right — let's remember, everyone, that class actions desegregated schools. They made workplaces fair and equal. They've prohibited problematic police practices. They have — they have uncovered and detected all sorts of consumer frauds. Class actions have done a tremendous amount of good.

And I think that Mr. Parasharami's memo — I wouldn't call it an empirical study, because it's just 148 cherry-picked class actions that Mayor Brown thinks were — didn't provide enough value to consumers. I think that's not a real study. The real study we have is the CFPB report, which really takes a very good look at the
number of arbitration clauses that we're seeing in these—these agreements.

And just again on Professor Rutledge's testimony, it's not—first of all, I think that 43 (percent) and 63 percent are quite high numbers to find in franchise agreements, but setting that aside, the CFPB finds that we are looking at nine out of 10 contracts in the consumer finance area with these forced arbitration clauses, which means that consumers can't bring these claims, because these claims are inherently collective claims, right.

So when Alan has a problem with—because he thinks that AmEx is charging him too high a rate and he'd like to get together and pool resources with other restaurateurs and small businesses, independent book stores, hardware stores to bring a claim in—under the Sherman Act against American Express, the only way he can do that is the only way he can afford a million-dollar expert report on antitrust impact and injury is if he's able to bring it as a class.

So AmEx, by putting this class action ban in their card acceptance agreement is basically ensuring that they will never be held accountable under the Sherman Act. And this is really interesting for AmEx, of course, because just last Friday Judge Gleeson of the southern district approved a settlement in a claim against Visa and MasterCard, a class action, for exactly the same behavior.

So Visa and MasterCard are paying $7 billion. So that's worthwhile class relief—$7 billion, record settlement. AmEx is getting away without anything because they happened to put some magic words in their arbitration agreement. I think that's very unfair.

SEN. WHITEHOUSE: As somebody who's now spent a term of six years in the Senate and begun to observe some of the behavior around here, I wonder what the response would be like if corporations in consumer contracts, down in the fine print, in tricks and traps, instead of taking away consumer rights, particularly consumer rights protected by the Seventh Amendment, were, say, taking away gun rights protected by the Second Amendment. I think you'd have a completely different story. And that suggests to me—

MS. GILLES: I think the room would look—(inaudible)—this morning, right? If it be full. (Laughs.)

SEN. WHITEHOUSE: It would look very different, and you might actually see different positions taken by the different sides. I think a lot depends on whose ox is being gored here. And right now it's the consumer.

MS. GILLES: But the truth is that really there is nothing to keep a corporation from inserting all sorts of remedy-stripping terms in its arbitration provisions. The Supreme Court's language—

SEN. WHITEHOUSE: The Supreme Court has announced no limit on—

MS. GILLES: No limit. The FAA—

SEN. WHITEHOUSE: what corporations can do.

MS. GILLES: protects everything. It's sacrosanct. So if I'm a corporation, I'm going to put—

SEN. WHITEHOUSE: Go for it.

MS. GILLES: a lot of stuff in there.

SEN. WHITEHOUSE: Yeah. Why not?

MS. GILLES: I'm going to violate Title VII. I'm going to violate the EPA.

SEN. WHITEHOUSE: Mr. Chairman, my time is—

MS. GILLES: Sorry.

SEN. WHITEHOUSE: concluded. So thank you very much.

SEN. FRANKEN: You're doing so well.

Senator Hirono.

SEN. HIRONO: Thank you, Mr. Chairman.

My series of questions really related to the extent of these arbitration clauses, because they are, I think, becoming more and more prevalent. And it seems to me that if you are a corporate lawyer or an in-house counsel, that it would be practically malpractice not to advise your clients, your corporate clients, to have these kinds of remedy-stripping clauses in their contracts. Would you agree, Ms. Gilles?

MS. GILLES: Absolutely. And obviously Mr. Parasharami can speak to this more than I can, but I think he—

SEN. HIRONO: I think I heard him say he advises his clients—

MS. GILLES: Yes, he probably does. And though he tells us that—in his testimony that he advises his clients, which are all, you know, Fortune 500 companies, to put fair consumer-friendly arbitration clauses in their contracts, let's be clear. A class-action ban is inherently not consumer-friendly, because a consumer cannot bring a collective claim when there's a class-action waiver.

So really it doesn't matter how many cost-shifting provisions, how many promises to pay a bounty or premium are put in these arbitration provisions. The truth is Alan's not going to go arbitrate one on one against AmEx. It would just be too expensive, no matter what the—what AmEx puts—what the company puts in the agreement.

So, yes, I think at this point the next interesting case to watch is the malpractice claim that's brought against the transactional attorney for failure to put one of these in a clause.

SEN. HIRONO: Mr. Carlson, thank you very much for being here, because you've been through a lot in pursuing your claims. So we did hear testimony that arbitration clauses are good because they save money, and these savings are passed on to consumers. But in your case, you wanted to pass on some discounts, et cetera, to your customers at your restaurant, but because of this tying arrangement, which is basically practically a per se antitrust violation, you didn't have that freedom to do that. So your consumer—your customers suffered for that.
Yes. (Laughs.)

MR. CARLSON: Was that a question there?

SEN. HIRONO: I guess that may have been a rhetorical question.

I have another question for Professor Gilles. This bill that we're considering, basically the language says that there is -- no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute, a consumer dispute, antitrust dispute, or civil rights dispute.

Now, what about shareholder disputes? Do you think that this language covers those kinds of disputes?

MS. GILLES: I do. I think that investors are consumers. And I think that there's a lot of support out there for providing investors with the opportunity to go to court, as opposed to going to arbitration. So I think so.

SEN. HIRONO: Well, I wouldn't be so sure that consumers could be deemed -- that investors could be deemed consumers. Perhaps we need to make sure --

MS. GILLES: Mmm hmm.

SEN. HIRONO: -- because I am holding letters from over 200 major domestic and foreign institutional investors, who are very concerned that the SEC has not promulgated a rule that would not -- that would disallow forced-arbitration clauses in shareholder disputes.

MS. GILLES: Mmm hmm.

SEN. HIRONO: So perhaps we need to make that clear, because these 200 major entities include just about every state's retirement and pension funds. That's a lot of people. We're talking about some collectively managing assets that exceed $4.9 trillion. And they are concerned that there are these forced-arbitration clauses in their contracts with their brokers or whoever, and they can't go to court.

MS. GILLES: Well, you know, I think you could certainly clarify the language. You know, I think of investors as consumers, because when you're talking about these sort of public pension funds, you're talking about firefighters and teachers and other ordinary folks who look just like a lot of the other consumers that we're talking about today.

But I applaud the committee's effort here. And if you want to go further and be clear that you're also covering investors. I think that would probably save a future lot of time.

SEN. HIRONO: That would certainly make me feel a lot better knowing that there are so many different ways that these arbitration clauses can be written to head people off at the pass.

Thank you, Mr. Chairman.

SEN. FRANKEN: Thank you, Senator.

Senator Blumenthal.

SENATOR RICHARD BLUMENTHAL (D-CT): Thank you, Mr. Chairman.

As you may have gathered, I think the majority of members of this panel who are here today agree that arbitration sometimes violates basic fairness, and sometimes even constitutional rights. But the members of the panel who are not here might not be part of that consensus. And likewise, members of the Senate may not be in agreement that we need to change the law to restrict arbitration, although I have been a long-time advocate of making sure that consumers are protected from arbitration clauses that may not be clear or conspicuous, hidden in the fine print, as one of you observed.

So I think we have political obstacles to overcome here, and not the least of them are the interests of corporations that are loath to go to court, to be subjected to claims based on liability for violations of law relating to financial practices or product defects or a range of violations of consumer rights.

But I think there is one area where there ought to be total and complete consensus, and that is that our servicemen and women should be protected, not only in name and rhetoric, but also in reality, which, Ms. Teske, your testimony, I think, powerfully supports.

And, in fact, regrettably, going back to reports from the Department of Defense and others since then, many servicemen and women have been victims of violations of rights, whether it's in foreclosure of their homes, repossession of vehicles or other personal property, protections against judgments where they may not even have appeared, evictions. The whole idea is that when they are on active duty, they often can't focus on these areas of life, not to mention appear in court or in proceedings preliminary to court proceedings or arbitration proceedings.

So I guess my question is whether there is a way to deal very specifically, in a focused and targeted way, with these violations of basic fairness that you outline in your testimony, a targeted way through the Servicemembers Civil Relief Act or through some other mechanisms to make sure that we're protecting our men and women in uniform.

MS. TESKE: Thank you for that question. There is -- I mean, certainly there is precedent for that in the Military Lending Act. There is a provision that, for a narrow set of contracts, you can't have forced-arbitration clauses. We could do the same through amendment of the Servicemembers Civil Relief Act to make clear that they can't be forced into arbitration and that they do have the right
to bring class actions in a court of law. And I think that would be a great step forward, at least for the service members.

But one thing that I do want to point out, in addition to that, is that our service members are also consumers, and they have a whole host of rights under scores of consumer-protection statutes. By amending the Servicemembers Civil Relief Act, although that's a major step forward, we are still leaving them open to forced arbitration for all the other consumer-protection violations that they are victims of.

So I would applaud any effort to provide protections -- further

protections for service members under the Service Members' Civil Relief Act, but I think we also cannot forget that the 2 million men and women that serve in our military are also consumers, and their families are consumers, and employees.
SEN. BLUMENTHAL: I accept and I applaud that comment, and I agree completely with that they ought to be viewed as consumers in those other contexts as well. I'm thinking about what is achievable strictly in raw political terms. Because I've been here as long as Senator Franken or Senator Whitehouse, but I do know that often we are frustrated in trying to achieve these kinds of reforms.

Mr. Parasharami, I wonder if I could ask you whether you would have the same objections that you've outlined in your testimony to that kind of focused and targeted bar on arbitration for our servicemen and women who may literally physically not have the ability to make use of these arbitration clauses.

MR. PARASHARAMI: I suppose that I don't think that it's a good idea, and you know, I should say, absolutely I respect our service members. You know, it's -- what they do is so important and I would not want to take anything away from them.

If the question is how can they realistically achieve resolution of most of the claims that they have, most people have consumer disputes that are small and individualized. Class actions just necessarily can't help them because if a claim is individualized it can't be brought on a class basis.

And so then the question is, well, which is better, going to court or going to arbitration? And it turns out that arbitration is cheaper in many instances because companies pay all of the costs of arbitration, and it's more flexible. You don't have to take a day off work, and when you're a service member, a day off work is impossible. You can do it remotely, you can do it by telephone, you can do it by mail, and in many cases now email is the preferred form of communication with arbitration organizations.

So I think it's actually more realistic to resolve claims on an individual basis through arbitration than through court.

SEN. BLUMENTHAL: What would you say to that, Ms. Teske?

MS. TESKE: Thank you. I've been listening and just kind of shaking my head.

The -- it's not reality. It's just not reality to say that service members are going to have a better chance going into arbitrating their claims.

We have seen time and again that a very, very small number of consumers, and probably a much smaller number of service members are going to go and take their claims to arbitration.

What's happening really here is claims suppression. The majority of service members, A, are not going to know their rights under the Service members' Civil Relief Act, and B, they are not going to have the time or the effort or the energy to be able to bring any of these into class.

So, yes, in some cases it is appropriate for an individual court action, and if they want to voluntarily to take it to arbitration, I think that's great. But it has to be voluntary.

But in many cases the corporation that is breaking the law, the Service members' Civil Relief Act, it's doing it on a widespread basis. It's a corporate practice, or they have not put into place procedures to comply with the SCRA protections. And so in those situations a class action is the best vehicle to go forward, and we've seen that in cases already.

So to say that no, we shouldn't have the ability to bring class actions for our service members and that they should be forced into arbitration because that's a better avenue for them I think is disingenuous.

SEN. BLUMENTHAL: Thank you. My time has expired. I welcome and appreciate all of your testimony. It's been very, very helpful and important, and thank you for being here today. Thank you.

Thank you, Mr. Chairman.

SEN. FRANKEN: Thank you, Senator Blumenthal.

I have some more questions I would like to ask the panel, and so we'll have a second round.

Professor Gilles, in his written testimony Professor Rutledge argues that we haven't seen an explosion of arbitration clauses and class action waivers in franchise agreements. Then on page 11 of his written testimony, Professor Rutledge says, quote, "last week's CFPB report of preliminary results told a similar story in several sectors of the consumer financial services industry," end quote.

My reading of the CFPB report was nearly the opposite. I think this gets to apples and oranges, because he was talking about 17 percent of -- you know, of the -- I guess the companies using -- or, that do this, using these contracts. But an enormous percentage of the contracts are -- have the clauses, I mean, in actually.

So, can you speak to -- I mean, what's your take on this? My reading was that the report indicates that arbitration agreements and class action bans are extremely prevalent among outstanding credit card loans, insured deposits and prepaid cards. Is this a -- when someone is saying we've got to compare apples to apples, isn't it incumbent upon you to do that? And what's your -- just what's your take on this?

MR. GILLES: Well, I read the report the way you do, and I say that not just because you're chairing this hearing. I read the report -- the CFPB report and it reality is the best empirical work we have out there. I read it as saying that basically nine out of 10 companies are using these forced arbitration clauses, that we're seeing almost 100 percent penetration of class action waivers, class action bans inserted in arbitration clauses.

And I don't think that Professor Rutledge is -- I don't think his testimony is accurate on that point. Now, he did try to clarify in his answer to -- or in his opening statement that he does agree that we're seeing many more class action bans, and so maybe we're all on the same page on that and that saves this testimony.

Look, I think it would be crazy for companies not to insert a class ban in its arbitration clauses. I'm sure Mr. Parasharami tells every client to do so because to do so is to ensure, unlike what Mr. Parasharami has testified to, that they will actually not have to be held accountable for any violations of law because very few consumers, employees, small businesses will ever bring an arbitration. And certainly there will never be any arbitrations that near the numbers and the significance of a class action.

And furthermore, the thing about arbitration -- let's just be clear about what we're talking about -- arbitrations are private, they're sequestered, they're individual. You can only bring a claim for yourself. So maybe you do bring a claim. Maybe Alan does decide to bring a claim. So he gets some money back from AmEx. But you know what? Alan will have no power to actually change AmEx's policy vis-a-vis every other card acceptance contract. That's what -- that's what class actions do.
SEN. FRANKEN: Let's talk about just how this affects people's daily lives. Here we have a restaurant guy who went to culinary school, moves out west, opens a number of restaurants -- has a few in Oakland. I want to -- if I get out to Oakland I'm going to try Italian Colors -- (laughter) -- because it's been successful a long time and I know the food's good there.

OK. That's how he is affected by this is that he can't pass on savings to his customers. He's not allowed to tell them that I'll give you a little bit off if you use this card as opposed to this kind of American Express card. You can still use an American Express card -- just don't use this one that they make us do 5 (percent) or 6 percent on.

But let's just talk about everyday people. You in your testimony talked about a cable company -- I think it was Time Warner -- that added a modem or -- not -- didn't add a modem. The modem was there, and suddenly, boom, $4. $3.95 is charged to every customer without any -- just -- they just add it. It's like a hidden fee.

So, that's what we -- you know, a hidden fee. We were talking about how this is going to save money.

MR. GILLES: I think the only way -- the thing that saves money for corporations is liability avoidance, which is what these clauses really result in -- complete and utter avoidance of liability.

So, yeah -- Time Warner, Comcast, Cox Cable -- they can put in all sorts of hidden fees and the consumer can't do anything about it because the amount that they're being overcharged -- it's just so small that it's hardly worth, you know, staying on hold with customer service for a half an hour, much less going into an individual arbitration to prove a claim that actually would be expensive to prove. So the only way these sorts of cases would ever get brought is in a class forum.

But to be honest, what I think your bill would do is it would actually return to the status quo where corporations don't feel that they can engage in these widely dispersed, small-dollar harms because the class-action threat, the deterrent threat is out there. I think that's what your bill would do.

SEN. FRANKEN: And let's say there is actually a lot at stake in something. In 2011, I held a hearing on mandatory pre-dispute arbitration, and that's what we're talking about here. We're not talking about getting rid of arbitration. And I heard a testimony from a doctor, you know, gender discrimination claim against her employer, a hospital. And the doctor showed -- the doctor was forced into arbitration. And she told -- she testified about how she showed up at the arbiter's office for the proceedings and saw shelves upon shelves of binders -- she was a plaintiff -- with the defendant's name on it, clearly indicating that her arbiter or arbitrator and the hospital had an ongoing business relationship.

She lost the arbitration and she left the proceeding feeling like she wasn't even really heard. She believed that the arbitrator was biased and didn't give her a fair shake. This whole thing really undermined her trust in the system of justice.

Now, Professor Rutledge, in 2004 before you started working for the Chamber of Commerce, you actually wrote a fairly compelling argument about this sort of thing. You wrote, quote, "Just as competition in the marketplace may provide some arbitrators' independence, it may provide other arbitrators incentives to be beholden to particular parties or industries likely to nominate them," end quote.

You wrote -- you went on to say that arbitrators may, quote, "develop reputations with particular types of parties. For example, an arbitrator may be perceived as industry friendly," and you continued, quote, "Through these activities designed to enhance their reputations, arbitrators generate business in the form of fees and, hopefully, future appointments," end quote.

So here's my -- I'm curious. What would you say to that woman whose gender discrimination, a forced case, was forced into arbitration and she came out believing that the fix was in?

MR. RUTLEDGE: Senator, thank you for your question. Let me first begin by saying I don't know the details of the case that you're describing so I'm going to give the best answer that I can based on your description.

SEN. FRANKEN: Sure. What would you say to her? I have related to you her testimony. What would you say to her?

MR. RUTLEDGE: I understand.

SEN. FRANKEN: That's the question. What would you say to her?

MR. RUTLEDGE: I understand. And Senator, I think what I would say is that if you believed you were wronged and we can generate the evidence to demonstrate that you were wronged, we're going to find a way to get you relief. There are various ways in which that relief can be obtained. It can be obtained through litigation.

SEN. FRANKEN: No, no. If you have a mandatory pre-dispute arbitration clause in it, no, they can't. In fact, that's what this whole hearing is about. You just summed up the entire hearing. She can't go to court.

MR. RUTLEDGE: I understand, Senator.

SEN. FRANKEN: What would you say to the woman?

MR. RUTLEDGE: We may go to litigation, that there are ways under current law whereby that arbitration clause can be challenged and we will attempt to see whether that clause can be challenged. If it can't be challenged, then we'll go to the arbitration. And there are upsides to arbitration, some which Mr. Parasharami has referred to.

And so therefore, what I'm trying to say, Senator, and what I tried to say to Senator Lee as well, is that, back to the point that you've made, and I agree with you, the apples-to-apples comparison is to try to discern which of these two systems is going to yield the better result for the aggrieved individual.

Can I make one other point just to --
SEN. FRANKEN: After I respond a little bit.

MR. RUTLEDGE: Sure, Senator.

SEN. FRANKEN: I asked you what to say to a woman who brought a gender-discrimination suit to an arbitrator. She went in, the arbitrator had the name of the hospital -- she was a doctor. No woman had been promoted in that practice, and she felt there was gender discrimination. She goes in, the guy in his office has folder after folder with the name of the hospital. She felt that the guy didn't hear her.

I asked you what you would say to her. The first thing you said to her, well, I'd go to court. You can go to court? Well, no, you can't go to court.

The next thing you said, well, then we go to arbitration if we can't go to court. I told you she went to arbitration and she felt that this guy that the fix was in. And you yourself said -- you yourself said in 2004 -- that arbitrators do this to get business. They've developed reputations as friendly to industry. You've said it. This is you. I read you back your own quote.

What would you tell her? The fix is in, lady, ma'am, the fix is in. And that's not our system of justice.

Go ahead.

MR. RUTLEDGE: Sure, Senator. There are two points that I'm trying to make. One pertains to your question and one pertains to the apples-to-apples point from a moment ago.

What I'm trying to say as to this individual -- and I apologize, Senator, if I misunderstood your question before. I had understood your question to be what I would say to her at the front end of the dispute. And I take it your question now concerns --

SEN. FRANKEN: I asked you, what would you say to this woman who testified here? That's what I asked you.

MR. RUTLEDGE: I understand. I understand, Senator. And I can understand that, from her perspective, that that result would be disappointing. And what I'm saying, Senator, is that there are instances in which the civil litigation system leaves people disappointed to.

The second point that I just wish to make, Senator, because I'm very much with you on the apples-to-apples comparison point, and I don't know if you have a copy of the CFPB report with you or can see it.

SEN. FRANKEN: Well --

MR. RUTLEDGE: To be very clear, Senator, what -- if I could direct your attention to page 21 of the CFPB report.

SEN. FRANKEN: I'm there.

MR. RUTLEDGE: This is the pie chart that you see.

SEN. FRANKEN: Uh-huh.

MR. RUTLEDGE: And what you see here in the sentence immediately below the pie chart, "Of the 393 credit card issuers, 67 issuers or 17 percent included arbitration clauses in their credit card contracts while 326 issuers or 83 percent did not." That was the point that I was making about the low incidence of the use of arbitration clauses.

SEN. FRANKEN: And my question about apples-to-apples and oranges-to-oranges --

MR. RUTLEDGE: Right.

SEN. FRANKEN: -- was, what percent do those 17 percent have of the market?

MR. RUTLEDGE: Absolutely. And to that, Senator, they have a large portion of the market. That's the point --

SEN. FRANKEN: What percent would you say? Wouldn't you think that's relevant?

MR. RUTLEDGE: I understand, Senator.

SEN. FRANKEN: Ms. Gilles, Professor Gilles, what percent of the market do they represent?

MR. RUTLEDGE: Senator, the answer is approximately 94 (percent)

to 98 percent. That is in a --

SEN. FRANKEN: Ninety-four (percent) to 98 percent.

MR. RUTLEDGE: That is in a 2011 article that I published -- that cited my testimony.

SEN. FRANKEN: And you've made the point -- yeah. So you made the point in your testimony that we need to compare apples-to-apples and oranges-to-oranges.

And then you say that the CFPB report proves the point you've been trying to make today and uses your evidence that only 17 percent of credit card companies use these mandatory arbitration agreements, without having the honesty really to say that apples-to-apples, oranges-to-oranges, 94 (percent) to 98 percent of the market is that way.

Now, some credit union credit card company is not going to, you know, make -- have any power over Mr. Carlson. That's the whole point of this. That's the whole point of this.

And when you -- talk about empirical evidence. And sound empirical evidence has to be done by objective people. That has to be done by objective people. That's what sound empirical evidence -- by the way, you write in your testimony, you can't -- (pause).
I think I've said my piece on this. I just think that it is apples to -- I want to give Mr. Carlson the last word on this.

You felt that it was important enough to come here today, across the country. This is a big deal. Why is this issue so important to you?

MR. CARLSON: I think that's a terrific question. I wasn't doing this for money. I'm trying to do it just to level the playing field for all small business consumers so that they can make a fairer living. You know, I got into this business not -- I didn't get into the restaurant business to get rich; that's not the industry I think you throw yourself into to try to, oh, wow, I'm going to work my ass off and make a fortune. You do put in a lot of long hours, but the -- for me, the love and the passion comes from each guest that is satisfied, that you put a smile on their face.

That's why I do it, and that's why I came here. I'm just fighting for everybody else to have the same opportunity that I've been blessed with, that I have my own place. And it's not easy to do, to try to find money to start a business and to grow. As a human, you know, you want to challenge yourself, and it's nice when people give you a hand out and help a little bit. And that's all I'm trying to achieve here. Thank you very much.

SEN. FRANKEN: Thank you. Thank you. I would really like to thank all the witnesses for their testimony. I'd also like to submit letters and statements for the record from more than a dozen professors, advocates and interests organizations. I was especially pleased to receive written testimony from Mike Rothman, Minnesota's commerce commissioner, who is working hard to enforce the law in my state. And I'd like to thank -- I'd like to thank him for his service to Minnesota.

I think that the case for the Arbitration Fairness Act is pretty clear. I think we saw that, when you come down to what this is, we can't go to court. With Concepcion and Italian Colors on the books, the Federal Arbitration Act has become a tool that the big corporations can use to avoid their obligations under the laws. Mr. Carlton (sic) put it, we're basically at a point where big corporations can write their own rules. And we've heard today this has had a profound impact on -- has had a profound impact on consumers, workers and small businesses. And simply put, this is -- it's not fair.

It's not fair that powerful corporations can cheat consumers out of their hard-earned money, or that they can withhold wages or turn a blind eye to workplace -- workplace discrimination, and that they can overcharge small businesses, that they can falsify affidavits and foreclose on active-duty servicemembers who are overseas. That they can do all this, knowing all along that there's little or nothing that the consumer, worker or small business or soldier can do to make it right for those who've been harmed.

When I went to Walter Reed the first time, and they ask you -- I do a lot of USO tours, and they ask you to go to Walter Reed, and you think, how am I going to cheer up somebody who's lost the legs? First guy I met was from Anaconda. He lost two legs to a mortar.

The Arbitration Fairness Act will restore access to justice for millions of Americans. I'd urge my colleagues to join me in that effort. We will hold the record open for one week for submission of questions for the witnesses and other materials. The hearing is adjourned.

(Sounds gave!)

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Michael M. Raeber Named Executive Director of Legal Affairs at UGA

Athens, Ga. - Michael M. Raeber, a partner in the Business Litigation Group at King & Spalding in Atlanta, has been named Executive Director of Legal Affairs at the University of Georgia by President Jere W. Morehead. The appointment is effective February 1, 2014.

"I am very pleased that we have hired an exceptionally gifted lawyer to lead the Office of Legal Affairs," said Morehead. "Mike Raeber is recognized as one of the most outstanding lawyers in this state, and he will be a key advisor in my administration."

Raeber joined the King & Spalding law firm in 1994 and became a partner in 2002. A specialist in complex corporate litigation, he has served as lead counsel in cases involving real estate, insurance coverage, employment, accounting, and contractual interpretation. Before joining King & Spalding, he clerked for Justice George T. Smith of the Georgia Supreme Court and Judge Stanley F. Birch, Jr. of the United States Court of Appeals for the Eleventh Circuit.

Raeber's multifaceted legal career has included the representation of Fortune 500 companies; appeals before the U.S. Court of Appeals for the Fifth, Sixth, Seventh and Eleventh Circuits; serving as trial counsel to a major manufacturing company which achieved one of the largest insurance arbitration awards in U.S. history; serving as trial counsel for a Big Four accounting firm, and serving as a pro bono habeas corpus counsel to a wrongly convicted prisoner, which ultimately resulted in the release of the client.

"I've worked with Mike Raeber on several complex and sensitive legal matters," said Larry Thompson, Sibley Professor in Corporate and Business Law at the University of Georgia School of Law, who is presently on leave while serving as executive vice president of government affairs, general counsel and corporate secretary of PepsiCo, Inc. "Mike is a superb lawyer. He's very strategic and practical. Mike knows how to solve legal problems as well as prevent them. UGA is very fortunate to have a lawyer of Mike's caliber looking out for its legal interests."

Raeber is a 1993 cum laude graduate of the UGA School of Law, where he served as editor-in-chief of the Georgia Law Review, and holds an undergraduate degree in political science from Sewanee: The University of the South. While at Sewanee, he served as chair of the Student Disciplinary Committee, was afforded membership in the Order of Gownsmen, an academic honor society, and was a member of the varsity basketball team, serving as captain his senior year.

Raeber was named to Georgia Trend magazine's 2013 Legal Elite and consistently has been recognized as one of Georgia's top business litigators by Thomson-Reuters' "Georgia Super Lawyers" magazine. He is a fellow of the Lawyers Foundation of Georgia and is a member of the Lawyers Club of Atlanta.

Since 2009, Raeber has served on the board of KIPP Metro Atlanta, which operates seven charter schools in Atlanta as part of the Knowledge is Power Program (KIPP), a non-profit national network of high-performing public charter schools serving low-income students in underserved neighborhoods.

Raeber was selected after a national search conducted by an eight-member university committee chaired by Peter B. "Bo" Rutledge, the associate dean for faculty development and Herman E. Talmadge Chair in the UGA School of Law. The position has been filled on an interim basis by S. Elizabeth Bailey, associate director of legal affairs, since July 1, 2013.

"I am deeply honored and excited about the opportunity to return to Athens to serve an institution that has played such an important role in my life," said Raeber. "I'm grateful for the confidence President Morehead and the administration have placed in me, and I look forward to working with them to help protect and enhance the reputation and interests of the University."

He and his wife, Carrie Dieterle Raeber (ABJ 1991), have three young children.
Badges and Bar: Hall attorney named state ‘Assistant Defender of Year’

Emma Witman
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770-718-3427
December 18, 2013

Brett Willis, an attorney with the Hall County Public Defender’s Office, was honored Saturday as “Assistant Circuit Defender of the Year” by the Georgia Association of Circuit Public Defenders at its annual meeting on Tybee Island.

It is the second time in three years an attorney from the Northeastern Judicial Circuit has been named Assistant Circuit Defender of the Year. Travis A. Williams, a senior assistant in the Hall office, received the award in 2011.

One recipient is chosen among hundreds of nominees each year, Circuit Public Defender Brad Morris said, adding it was a “high honor” and “well deserved” for Willis.

Willis is a senior attorney who has been with the office since its creation in 2004, fresh out of law school. He is a graduate of the University of Georgia School of Law, with a Master of Laws from New York University.

“Known as a tireless advocate for indigent clients who is meticulous in his trial preparation, Willis has become a resource and mentor for younger lawyers in the office,” the office said in a news release.

Willis was honored earlier in 2013 by the Southern Public Defender Training Center, also known as “Gideon’s Promise” with its “Foot Soldier Award.”

In 2008, the Daily Report, an Atlanta-based legal publication, named Willis one of that year’s “10 to Watch,” a list of up-and-coming lawyers under the age of 40.

Willis, 37, lives in Gainesville with his wife, Johanna, and their three daughters.

Clermont armed robbery suspect enters not guilty plea

Michael Allen Hoitink of Clermont was arraigned Dec. 3 on charges of armed robbery and aggravated assault in Hall County Superior Court, where he entered a plea of not guilty.

Hoitink, 25, was arrested in June after evading law enforcement for 19 days. He was wanted in connection with the May 31 attempted robbery of the Country Grocery and Deli, 6531 Dahlonega Highway, Clermont.

A tip to law enforcement led to Hoitink’s arrest a few days after the Hall County Sheriff's Office released surveillance footage with a clear view of the suspect and his car.

In the footage, cashier Manoj Patel boldly swatted at the robber with a large flashlight, prompting him to flee. Hoitink is scheduled for Judge Jason Deal’s trial calendar that begins on Jan. 13.

Arraignment set for teen charged with rape, child molestation

An arraignment date has been set for a 13-year-old boy indicted on rape and molestation charges in November by a Hall County grand jury.

Rosendo Mojica, of Gainesville, is set to appear before Superior Court Judge Andrew Fuller on March 14.

Mojica was charged with one count of rape and two counts of aggravated child molestation in the alleged July 4 sexual assault of a girl under the age of 10, according to the indictment.

In the state of Georgia, teens between the ages of 13 and 16 can be charged as adults in Superior Court for felony offenses called the “seven deadly sins,” including murder, armed robbery and aggravated sexual battery.

Emma Witman covers public safety issues for The Times. Share your thoughts, news tips and questions with her:

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US District Court judge tapped for appeals court

Published 5:10 pm, Thursday, December 19, 2013

ATLANTA (AP) — President Barack Obama has nominated a federal judge from Atlanta to serve in the 11th Circuit Court of Appeals.

White House officials said in a statement Thursday that U.S. District Court Judge for the Northern District of Georgia, Julie E. Carnes, has been nominated to serve in the court of appeals.

Officials say Carnes has served as a federal judge in Georgia since 1992, and has been the District Court's chief judge since 2009.

Officials say Carnes was born and raised in Atlanta, graduated from the University of Georgia School of Law in 1975, and served on the editorial board of the Georgia Law Review.

White House officials say Carnes began her legal career as a clerk for a U.S. Court of Appeals judge in 1975.
Retroactive immunity for the consul? Frankel: Thomson Reuters Business.
Retroactive immunity for the consul? Frankel: Thomson Reuters Busi...

A State Department representative indicated in a press briefing Wednesday that it would be up to the U.S. to decide Khobragade’s diplomatic status. Deputy spokeswoman Marie Harf said it was premature to discuss any change in the consulate official’s immunity because the U.S. government has not been notified of her new appointment. She also said that the State Department would have to sign off. “It is not an automatic thing by any means,” she said.

But let’s assume that the State Department, which has clearly been rattled by India’s rage at Khobragade’s treatment, agrees to credential her as a full diplomat. Does her immunity reach back to shield her against actions predating her new appointment? It can, according to Peter Rutledge, associate dean of the University of Georgia School of Law and an expert on international dispute resolution. Retroactive diplomatic immunity, Rutledge said, is quite rare – but it’s not unprecedented.

The best-known example dates back to 1982, when Miami-Dade police officers attempted to search the home of Prince Turki Bin Abdulaziz of Saudi Arabia, who was suspected of holding an Egyptian woman against her will. At the time of the raid, in March 1982, Abdulaziz had no diplomatic credentials. He did have a burly security staff, which scuffled with police and fended off execution of the search warrant on the prince’s home. Abdulaziz and his family sued Dade County for violating their civil rights. County officials countersued, claiming they were injured in the scuffle with the prince’s staff.

KOWTOWING TO ROYALS?

In April 1982, about three weeks after the failed search, the State Department granted Abdulaziz and his family full diplomatic immunity. The prince withdrew his suit against Dade County and moved to dismiss the county’s counterclaims, arguing that his diplomatic status shielded him from the suit.

Despite arguments by Dade County that Abdulaziz hadn’t been a credentialed diplomat when his guards blocked police from entering his house, the 11th Circuit Court of Appeals upheld dismissal of the counterclaims, holding that the prince had been eligible for diplomatic status at the time of the botched raid, even if he hadn’t yet received it in effect, the ruling endorsed the concept of retroactive immunity.

Skeptics later accused the State Department of kowtowing to the Saudi royal family, but that hardly mattered to Abdulaziz, who faced neither criminal nor civil consequences from allegedly detaining a woman against her will and blocking a police investigation. The Khobragade case has some clear distinctions, especially because the State Department has been involved with her investigation since at least early September, when, according to spokeswoman Harf, U.S. officials first alerted Indian authorities of allegations against their deputy consul general.

It was also diplomatic security officers who arrested Khobragade, not local cops without foreign policy sensitivity. For all we know, the State Department intended to send a message to the international diplomatic corps, which is often accused of cloaking itself in diplomatic immunity to avoid claims of mistreating domestic staff.

On the other hand, retroactive immunity would quell Indian outrage and permit the State Department to save face.

I exchanged texts with Khobragade’s lawyer, Arshack, but wasn’t able to speak with him.

(The opinions expressed here are those of Alison Frankel, a columnist for Reuters.)

(Eventing by Alison Frankel; Editing by Ted Botha)

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Retroactive immunity for the consul? Frankel: Thomson Reuters Busi...
That’s helpful language for Arshack and Khobragade, but from conversations with a couple of experts and a review of precedent on retroactive diplomatic immunity, I think the issue is more complicated than one sentence in a State Department guide.

There are really two questions wrapped up in the Khobragade case: Is she entitled to full diplomatic immunity by dint of her appointment - by India - to a post at the UN? And if she is entitled to broad protection, is the immunity retroactive?

Under the Vienna Conventions and the US law implementing them, the Diplomatic Relations Act of 1978, diplomatic status is conferred on foreign officials by the State Department, not by the countries sponsoring the officials. It is up to the United States, in other words, to decide whether to credential Khobragade as a full diplomat entitled to broad immunity.

THE ABDULAZIZ CASE

By itself, India’s designation is not sufficient. There’s federal precedent on this point: In 1997, Gambia asserted that a special advisor to one of its missions in the US was immune as a diplomat from criminal bribery charges.

Federal prosecutors said he hadn’t been designated a diplomat by the State Department. US District Judge Michael Moore ruled that the Gambian official wasn’t entitled to full immunity because he wasn’t credentialed by the State Department. (The official pleaded guilty and there’s no record of an appeal by Gambia.)

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At the time of the raid, in March 1982, Abdulaziz had no diplomatic credentials. He did have a burly security staff, which scuffled with police and fended off execution of the search warrant on the prince’s home. Abdulaziz and his family sued Dade County for violating their civil rights. County officials countersued, claiming they were injured in the scuffle with the prince’s staff.

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Retroactive immunity for the consul? — Alison Frankel | Opinion | T... http://www.themalaymailonline.com/print/opinion/retroactive-immun... 

It was also diplomatic security officers who arrested Khobragade, not local cops without foreign policy sensitivity. For all we know, the State Department intended to send a message to the international diplomatic corps, which is often accused of cloaking itself in diplomatic immunity to avoid claims of mistreating domestic staff.

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* This is the personal opinion of the columnist.

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American media, public say Devyani Khobragade is wrong

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New Delhi: Devyani Khobragade is not a top news story for the American media. However influential US dailies like Washington Post, New York Times, Chicago Tribune and LA Times have been covering the developments related to the Khobragade incident. The American media is shocked by India's rage. These newspapers have been analyzing the whole incident from both US and Indian perspectives. According to the US media, what Devyani Khobragade has allegedly done is a clear violation of the US laws and she should be punished for it. They feel that Indians are siding with the wrong woman (Devyani Khobragade) and not with the wronged woman (Sangeeta Richards).

A glance at the US media shows that there is no sympathy for Devyani Khobragade among the US media and public. Clearly the US media and public are sympathizing with the maid Sangeeta Richards.

ALSO SEE Devyani Khobragade's arrest in the US: Animated spoof that went viral

In a lead article 'Washington Post' describes India's reaction as disappointing. It mentions the victory of anti-corruption AAP's victory in Delhi and wonders how Indian media and government can back a diplomat, accused of a crime.

According to the US media, what Devyani has allegedly done is a clear violation of the US laws and she should be punished for it.

Washington Post says 'India's reaction is disappointing. The anti-corruption party in India is gaining incredible momentum - the party even unseated the ruling Congress party in the country's capital, which was a huge victory. So why are Indians rallying for a privileged treatment of a diplomat? Why shouldn't she be
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2 of 5
erican media, public say Devyani Khobragade is wrong

http://ibnlive.in.com/news/american-media-pub Iic-say-devyan i-khobr...

ALSO SEE Devyani Khobragade case third instance of maids accusing Indian diplomats

It also laments that the India media and government are not giving any attention to the house maid Sangeeta Richard and her family, who are also fellow Indians.

It says, "Little attention has been given to the housekeeper, Sangeeta Richard. India is siding with a woman who was in the wrong - who lied, paid her help poorly and now is brazen enough to claim that she should not be treated like a criminal. What's "deplorable", to use the prime minister's words, is not Khobragade's treatment, which was standard, but the fact that many in India aren't speaking out against the treatment of the nanny."

Washington Post also makes a scathing attack on India's response in following sentences.

"After the global outrage and mass protests in India due to the Delhi gang rape that happened a little over a year ago, there was hope that unfair treatment toward women and opposition to immunity would skyrocket. Instead, many Indians are siding with the wrong woman in this battle. Like we saw with India's anti-gay ruling last week, the country is in the wrong once again."

Los Angeles Times (LA Times) also feels that the Indian response is unjustified. In an article it says "By contrast, a US law enforcement official called on US authorities not to back off in the face of Indian criticism. Jon Adler, president of the Federal Law Enforcement Officers Association, said those arrested by the agency 'are treated fairly and equally, and the Marshals Service doesn't exempt anyone due to their gender, national origin or good looks. Perhaps Indian officials should direct their outrage towards Ms. Khobragade for her alleged visa fraud and the alleged servant wages she paid her housekeeper.' Adler said.

Another influential newspaper Chicago Tribune, in an article on Devyani getting retroactive immunity says "But let's assume that the State Department, which has clearly been rattled by India's rage at Khobragade's treatment, agrees to credential her as a full diplomat. Does her immunity reach back to shield her against actions predating her new appointment? It can, according to Peter Rutledge, associate dean of the University Of Georgia School Of Law and an expert on international dispute resolution. Retroactive diplomatic immunity, Rutledge said, is quite rare - but it's not unprecedented."

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US media and public are unanimous in their opinion that Indian government and media have overreacted to the issue. They feel that it has dented India's image as a country governed by the laws.
Dec. 20--Georgia's ethics commission took the unprecedented step Thursday of hiring an outsider to oversee the agency roiled by bitter infighting and an intensifying federal investigation amid claims it's too cozy with Gov. Nathan Deal.

The five-member board voted unanimously to tap Robert Constantine, a one-time lobbyist and former administrative law judge with the worker's compensation system, to assist the organization charged with holding the state's elected officials accountable. It was tantamount to a vote of no confidence in the leadership of the troubled agency, which one commissioner says is mired in "a legal morass."

Commission Chairman Kevin Abernethy said Constantine would be paid $4,000 a month to work between January and May and ensure "the agency is operating at a high level" ahead of a busy campaign season. He said the funds come from the existing budget and he's confident that there are no conflicts of interest that would complicate the decision.

"It's plain to everybody that the agency has had a number of challenges the past six to nine months, and the receiver will be in place to carry out the duties they need to," Abernethy said.

Speaking about Constantine, Abernethy said, "He is truly an outside person who has expressed a desire to help us."

Yet it was clear that Constantine was unknown to some of the board's members, including Commissioner Hillary Stringfellow, who said she hadn't even seen his resume. A description of his duties has also not yet been drafted, though Abernethy said he would report directly to the commission and serve as a consultant, an intermediary and even a referee in the agency's matters.

It's the latest turn in a saga that has implications far beyond the ethics agency. The commission oversees the dozens of campaign finance and lobbying issues that arise each election year, and staffers are seen as a state-sanctioned watchdog to spotlight abuses.

The commission's decision comes a week after The Atlanta Journal-Constitution reported that the two top staff members on the commission have received federal subpoenas demanding documents related to a probe into Deal's 2010 campaign. Three former staff members have also been subpoenaed for documents to produce records for a grand jury.

The scope of the investigation is unknown, but it comes after a former computer specialist for the commission told the AJC that he was ordered to destroy documents related to the Deal investigation by Holly LaBerge, the commission's executive director.

The AJC also reported that staff attorney Elisabeth Murray-Obertein said in sworn testimony that LaBerge bragged that the governor "owed" her after the commission dismissed the most serious charges against Deal. LaBerge has denied both claims, and the governor said he and his staff have not improperly interfered with the inquiry.

"This is a good step in the right direction to make sure an adult is monitoring the playground," said William Perry, who heads Common Cause of Georgia, the transparency advocacy group. But he added that he was concerned the commissioners seemed to know so little about Constantine, who did not return calls from the AJC on Thursday seeking comment.

LaBerge was insistent that the move wouldn't change her role, as she would still report directly to the board. She added, though: "I did not ask for any of this."

Constantine, 66, is a University of Georgia law school graduate who served as chief deputy insurance commissioner in the 1970s under longtime Insurance Commissioner Johnnie Caldwell.

Constantine worked as a lawyer for insurance companies and was a well-known lobbyist at the statehouse when Deal, then a Democrat, served in the Legislature. Constantine represented health care and insurance clients. In 2008, the state Department of Revenue filed a $3,600 income tax lien against Constantine. He settled the lien in January 2009.

A few months after Deal took office in 2011, Constantine was hired as an administrative law judge with the Georgia State Board of Workers' Compensation. Governors appoint the leaders of the workers' compensation board and, historically, have also influenced the hiring of some administrative law judges. Constantine left the job this past August. Records show he was paid $100,000 last year.

The appointment of Constantine comes weeks before the start of the legislative session, when lawmakers are expected to debate legislation that could bolster the agency's funding and make other changes to its structure. Commissioner Heath Garrett characterized legislative fixes as crucial.

"This legal morass is a symptom of the bigger structural flaws in the law," he said, adding: "We are doing everything within our legal and financial authority to try to bring independence. But we need to engage with the Legislature to get structural reforms."
Embattled ethics agency hires attorney to help run day-to-day operations

By Greg Bluestein and Shannon McCaffrey

Georgia's state ethics commission took the unprecedented move on Thursday to hire an Atlanta lawyer to help the embattled agency carry out its day-to-day functions as it faces federal scrutiny.

The five-member board voted unanimously to tap Robert Constantine, a former administrative law judge with the worker's compensation board, to help run the organization.

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Two top ethics employees last week were served with federal subpoenas seeking documents related to a probe of campaign finance allegations against Gov. Nathan Deal. Three other former staffers also received the subpoenas, The Atlanta Journal-Constitution reported.

It was clear that Constantine is an unknown to some of the board's members. Commissioner Hillary Stringfellow said she hadn't even seen his resume. But Abernethy said he was confident Constantine could serve as a consultant, an intermediary and even a referee in disputes involving the commission.

"He has done a number of things both in and out of government, but he is presently completely independent from any of the agency business," said Abernethy. "He is truly an outside person who has expressed a desire to help us."
US District Court judge tapped for appeals court

The Associated Press

ATLANTA — President Barack Obama has nominated a federal judge from Atlanta to serve in the 11th Circuit Court of Appeals.

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Officials say Carnes was born and raised in Atlanta, graduated from the University of Georgia School of Law in 1975, and served on the editorial board of the Georgia Law Review.

White House officials say Carnes began her legal career as a clerk for a U.S. Court of Appeals judge in 1975.

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President Obama Nominates Two to Serve on the United States Courts of Appeals

WASHINGTON, DC - Today, President Obama nominated Judge Julie E. Carnes and Judge Gregg Jeffrey Costa to serve on the United States Courts of Appeals.

"Judges Carnes and Costa have displayed exceptional dedication to public service throughout their careers," President Obama said. "I am honored to nominate them today to serve the American people on the United States Courts of Appeals. I am confident that they will be judicious and esteemed additions to the Eleventh and the Fifth Circuits."

Judge Julie E. Carnes: Nominee for the United States Court of Appeals for the Eleventh Circuit

Judge Julie E. Carnes has served as a United States District Judge in the Northern District of Georgia since 1992 and has served as Chief Judge of the court since 2009. Judge Carnes was born and raised in Atlanta, Georgia and received her J.D. magna cum laude in 1975 from the University of Georgia School of Law, where she served on the editorial board of the Georgia Law Review, and her B.A. summa cum laude in 1972 from the University of Georgia. She began her legal career as a law clerk for Judge Lewis R. Morgan of the United States Court of Appeals for the Fifth Circuit from 1975 to 1977. From 1978 to 1980, she was an Assistant United States Attorney in the Northern District of Georgia, serving as the Appellate Chief of the Criminal Division during most of her tenure. From 1990 to 1996, Judge Carnes served as a Commissioner on the United States Sentencing Commission. In addition to serving as Chief Judge of the Northern District of Georgia, Judge Carnes served on, and then chaired, the Criminal Law Committee of the Judicial Conference of the United States from 2005 to 2010. A present member of the Eleventh Circuit Judicial Council, she also has served on the Eleventh Circuit Pattern Jury Instruction Committee and chaired the 2007 Planning Committee for the Eleventh Circuit Judicial Conference.

Judge Gregg Jeffrey Costa: Nominee for the United States Court of Appeals for the Fifth Circuit

Judge Gregg Jeffrey Costa is a United States District Judge in the Southern District of Texas. Judge Costa was raised in Richardson, Texas and received his B.A. in 1994 from Dartmouth College. After graduating from college, Judge Costa taught elementary school from 1994 to 1996 in Sunflower, Mississippi through the Teach for America program. He received his J.D. with highest honors in 1999 from the University of Texas School of Law, where he served as Editor in Chief of the Texas Law Review. From 1999 to 2000, Judge Costa served as a law clerk for Judge A. Raymond Randolph of the United States Court of Appeals for the D.C. Circuit. The following year, he was a Bristow Fellow at the Office of the Solicitor General in the United States Department of Justice. From 2001 to 2002, he served as a law clerk for Chief Justice William H. Rehnquist of the United States Supreme Court. After his clerkships, Judge Costa returned to Texas and worked as an associate at the law firm of Weil, Gotshal & Manges LLP from 2002 to 2005. He then joined the United States Attorney’s Office in the Southern District of Texas, where he focused on investigating and prosecuting fraud cases. Judge Costa was one of the lead prosecutors of R. Allen Stanford, who was convicted of committing the second-largest Ponzi scheme in United States history. Judge Costa remained at the United States Attorney’s Office until he was appointed to the United States Court for the Southern District of Texas in April 2012.
President Obama Nominates Eight to Serve on the United States District Courts

WASHINGTON, DC - Today, President Obama nominated Judge Michael P. Boggs, Tanya S. Chutkan, Mark Howard Cohen, Judge M. Hannah Lauck, Leigh Martin May, Judge Eleanor Ross, Judge Leo T. Sorokin, and Judge James Alan Soto to serve on the United States District Courts.

“I am honored to put forward these highly qualified candidates for the federal bench,” President Obama said. “They will be distinguished public servants and valuable additions to the United States District Courts.”

Judge Michael P. Boggs: Nominee for the United States District Court for the Northern District of Georgia

Judge Michael P. Boggs has been a judge on the Court of Appeals of Georgia since January 2012. Previously, Judge Boggs served as a Superior Court Judge in the Waycross Judicial Circuit of the First Judicial Administrative District of Georgia from 2004 to 2012. While serving as a Superior Court Judge, he established and presided over the court's felony drug court program. Prior to joining the bench, Judge Boggs was a sole practitioner from 1998 to 2005 and worked in private practice in various law firms from 1990 to 1998. In 2000, he was elected to serve as a Democratic State Representative to Georgia's General Assembly, a position he held until 2004. Judge Boggs received his J.D. in 1990 from Mercer University's Walter F. George School of Law and his B.A. in 1985 from Georgia Southern College.

Tanya S. Chutkan: Nominee for the United States District Court for the District of Columbia

Tanya S. Chutkan is currently a partner at Boies, Schiller & Flexner LLP, where her practice focuses on complex civil litigation and specifically antitrust class action cases. Prior to joining the firm in 2002, Chutkan was a trial attorney and supervisor at the Public Defender Service for the District of Columbia from 1991 to 2002. From 1990 to 1991, she worked at the law firm of Donovan, Leisure, Rogovin, Hue & Schiller, and from 1987 to 1990, she worked at Hogan & Hartson LLP (now Hogan Lovells). Chutkan received her J.D. in 1987 from the University of Pennsylvania Law School and her B.A. in 1983 from George Washington University.

Mark Howard Cohen: Nominee for the United States District Court for the Northern District of Georgia

Mark Howard Cohen is a litigation partner at the Atlanta law firm of Troutman Sanders LLP, where he has worked since 1999 and has been a partner since 2001. Cohen previously worked for Governor Zell Miller, serving as Executive Secretary from 1998 to 1999 and as Executive Counsel from 1995 to 1998. In 1995, he was appointed Chief State Administrative Law Judge and managed the newly-created Office of State Administrative Hearings in Georgia. From 1981 to 1994, Cohen worked in the Georgia Attorney General's Office, where he represented state agencies in federal and state litigation. He began his legal career as a law clerk to Magistrate Judge Joel M. Feldman of the United States District Court for the Northern District of Georgia. Cohen received his J.D. in 1979 from Emory University School of Law and his B.A. magna cum laude in 1976 from Emory University.

Judge M. Hannah Lauck: Nominee for the United States District Court for the Eastern District of Virginia


Leigh Martin May: Nominee for the United States District Court for the Northern District of Georgia


Judge Eleanor Ross: Nominee for the United States District Court for the Southern District of Georgia

Judge Eleanor Ross is a judge on the United States Court of Appeals for the Eleventh Circuit since 2010. Previously, she served as a United States District Judge in the Southern District of Georgia since 2000. Judge Ross received her J.D. in 1990 from Mercer University's Walter F. George School of Law and her B.A. magna cum laude in 1986 from Wellesley College.
President Obama Nominates Eight to Serve on the United States District Court

Leigh Martin May is a partner at the Atlanta office of Butler, Wooten & Fryhofer LLP, where she has worked since joining the firm in 2000. Her legal practice focuses on complex civil litigation in both state and federal courts. From 1996 to 2000, May served as a law clerk to Judge Dudley H. Bowen, Jr. of the United States District Court for the Southern District of Georgia. She received her J.D. magna cum laude in 1996 from the University of Georgia School of Law and her B.S. with honors in 1993 from the Georgia Institute of Technology. May is currently the Vice Chair of the Litigation Section of the Atlanta Bar Association.

Judge Eleanor Louise Ross: Nominee for the United States District Court for the Northern District of Georgia

Judge Eleanor Louise Ross has served on the DeKalb County State Court in Georgia since 2011. Previously, she spent fifteen years as a prosecutor at both the federal and state levels. From 2007 to 2011, she was Executive Assistant District Attorney in the Fulton County District Attorney’s Office; from 2002 to 2005, she was an Assistant United States Attorney in the Northern District of Georgia; and from 1998 to 2002, she was Senior Assistant District Attorney in the Fulton County District Attorney’s Office. Judge Ross served as an Assistant Solicitor General in the Office of the DeKalb County Solicitor-General from 1997 to 1998 and began her legal career as an Assistant District Attorney in Tarrant County from 1995 to 1998. She received her J.D. in 1994 from the University of Houston Law Center and her B.A. in 1989 from American University.

Judge Leo T. Sorokin: Nominee for the United States District Court for the District of Massachusetts


 Judge James Alan Soto: Nominee for the United States District Court for the District of Arizona

Judge James Alan Soto currently serves as the Presiding Superior Court Judge in Santa Cruz County, Arizona—a court on which he has served since 2001. From 1992 to 2001, Judge Soto was president and a shareholder of Soto, Martin and Coogan, P.C.; from 1976 to 1992, he was in private practice in various law partnerships; from 1976 to 1979, he was a sole practitioner; and from 1975 to 1976, he worked in the Law Offices of Nasib Karam. Additionally, Judge Soto worked as a part-time Town Attorney in Patagonia, Arizona from 1975 until approximately 1992; as a part-time Deputy City Attorney in the Office of the Nogales City Attorney from 1975 until approximately 1983; and as a part-time Deputy County Attorney for the Santa Cruz County Attorney’s Office in 1970. He received his J.D. in 1975 from Arizona State University College of Law and his B.S. in 1971 from Arizona State University.
US District Court judge tapped for appeals court
11alive.com

8:29 PM, Dec 19, 2013

ATLANTA (AP) - President Barack Obama has nominated a federal judge from Atlanta to serve in the 11th Circuit Court of Appeals.

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Officials say Carnes was born and raised in Atlanta, graduated from the University of Georgia School of Law in 1975, and served on the editorial board of the Georgia Law Review.

White House officials say Carnes began her legal career as a clerk for a U.S. Court of Appeals judge in 1975.
US District Court Judge Tapped for Appeals Court

The Associated Press

2013-12-20 00:00:00.0

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Michael M. Raeber To Head UGA Legal Affairs Office

The appointment is effective February 1.

By Chuck Toney

Michael M. Raeber, a partner in the Business Litigation Group at King & Spalding in Atlanta, has been named Executive Director of Legal Affairs at the University of Georgia by President Jere W. Morehead. The appointment is effective February 1, 2014.

"I am very pleased that we have hired an exceptionally gifted lawyer to lead the Office of Legal Affairs," said Morehead. "Mike Raeber is recognized as one of the most outstanding lawyers in this state, and he will be a key advisor in my administration."

Raeber joined the King & Spalding law firm in 1994 and became a partner in 2002. A specialist in complex corporate litigation, he has served as lead counsel in cases involving real estate.

Raeber's multifaceted legal career has included the representation of Fortune 500 companies; appeals before the U.S. Court of Appeals for the Fifth, Sixth, Seventh and Eleventh Circuits; serving as trial counsel to a major manufacturing company which achieved one of the largest insurance arbitration awards in U.S. history; serving as trial counsel for a Big Four accounting firm; and serving as a pro bono habeas corpus counsel to a wrongly convicted prisoner, which ultimately resulted in the release of the client.

"I've worked with Mike Raeber on several complex and sensitive legal matters," said Larry Thompson, Sibley Professor in Corporate and Business Law at the University of Georgia School of Law, who is presently on leave while serving as executive vice president of government affairs, general counsel and corporate secretary of PepsiCo, Inc. "Mike is a superb lawyer. He's very strategic and practical. Mike knows how to solve legal problems as well as prevent them. UGA is very fortunate to have a lawyer of Mike's caliber looking out for its legal interests."

Raeber is a 1993 cum laude graduate of the UGA School of Law, where he served as editor-in-chief of the Georgia Law Review, and holds an undergraduate degree in political science from Sewanee: The University of the South. While at Sewanee, he served as chair of the Student Disciplinary Committee; was afforded membership in the Order of Gownsmen, an academic honor society; and was a member of the varsity basketball team, serving as captain his senior year.

Raeber was named to Georgia Trend magazine's 2013 Legal Elite and consistently has been recognized as one of Georgia's top business litigators by Thomson-Reuters' "Georgia Super Lawyers" magazine. He is a fellow of the Lawyers Foundation of Georgia and is a member of the Lawyers Club of Atlanta.

Raeber was selected after a national search conducted by an eight-member university committee chaired by Peter B. "Bo" Rutledge, the associate dean for faculty development and Herman E. Talmadge Chair in the UGA School of Law. The position has been filled on an interim basis by S. Elizabeth Bailey, associate director of legal affairs, since July 1, 2013.

"I am deeply honored and excited about the opportunity to return to Athens and serve an institution that has played such an important role in my life," said Raeber. "I'm grateful for the confidence President Morehead and the administration have placed in me, and I look forward to working with them to help protect and enhance the reputation and interests of the University."

He and his wife, Carrie Dieterle Raeber (ABJ 1991), have three young children.

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Friday, December 20, 2013

Julie Carnes nominated to the 11th Circuit

Posted by David Markus

From the AP:

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White House officials say Carnes began her legal career as a clerk for a U.S. Court of Appeals judge in 1975.

Some additional facts: She was an AUSA before becoming a judge. She was nominated by President Bush to the district court. She clerked on the 5th Circuit (Lewis Morgan) and also served on the Sentencing Commission.

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1 comment:

Anonymous said...
David - I think you posted a picture of Judge Hull.
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When Anne-Marie Slaughter, contributing editor at The Atlantic magazine and a professor at Princeton University, wrote an article in 2012 about working mothers, it created a stir among women. Titled "Why Women Still Can't Have It All," the article questioned the notion that working women can balance high-powered careers and raising children.

Atlanta attorney Christy Hull Eikhoff, mother of Evie, 9, and Grey, 7, says she knew her friends who were working moms had read the article and had opinions about it, but none of them had found the time to actually talk about it.

To make the time, Eikhoff decided to hold a "discussion party" to get the thoughts and insights of working moms across the professional spectrum. "The night ended up being so unexpectedly inspiring in terms of the camaraderie," says Eikhoff, "that it was pretty much the consensus that we've got to do this again." Thus came the invitation-only discussion group Wine, Working and Womanhood, or "W3" for short.

The group decided to keep future meetings to a biannual event, acknowledging anything more frequent was not realistic.

Eikhoff, a partner with Alston & Bird, chatted with the Daily Report about her idea that blossomed into an unexpected resource and support for working moms of all kinds.

How many people usually come to Wine, Working and Womanhood?

We usually have between 25 and 40 people. But what I did for the first, initial event was I just sat down—and I remember it was the middle of the night—energized with this idea of getting all these working moms together to talk about this article, and I came up with a list of my personal friends who were working moms. I came up with 30 names.

Then, I wanted to make sure that it was a good, diversified group and a group that people would be comfortable in, so I invited each invitee to bring a friend who they thought would be interested in or could benefit from the discussion.

That has been one of the most rewarding aspects of this concept is that it's expanding our network of friends and colleagues. It's just diversifying the discussion. If I were a discussion with people who are just my friends, and only my friends, it would be a narrow spectrum.

Do you facilitate the discussion? How does it work?

It's a guided discussion that is always at my house. It's very informal. We don't have a caterer or a bartender. It's bring a bottle of wine or an hors d'oeuvre or dessert, and I'd say 90 percent of the people have picked up something on the way.

After visiting with each other and catching up, we break up into groups of about five people and then every small group walks through the prepared discussion questions. Then we all get back together as a big group to talk about what are the high points of our small group discussion and what are our takeaways.

What professions are represented in your group?

Oh, my gosh! It's so cool! We have attorneys—in-house, law firms, plaintiff side, defense side. We have doctors, teachers, businesswomen, entrepreneurs, a pastor, women in finance, designers, advertising and P.R. professionals. The composition of the group is fluid, but the spirit of the group is always the same.

Do most women have children the same age or different ages?

All ages of children... I always have lots of leftover wine at the end of the night because if everyone brings a bottle, we don't all drink a bottle! (Laughs). So we always give it away. We give a bottle of wine to the mom with the youngest child and the mom with the oldest child.

How do you pick the topic for each discussion?

Usually it's an article or something to read, but it is never a book. There's no way I would ask anyone to read a book to prepare for anything. The last book I read was "Lean In" (by Sheryl Sandberg) because I felt like I had to read it because it was part of our discussion.

When we did our meeting in August, the discussion topic was "Lean In," but I didn't want anyone to feel like they had to read the book. What we used for the launching point for discussion was the 15-minute TED Talks that Sheryl Sandberg did, which is basically the outline for "Lean In," so we circulated the link to that.

It's always going to be some topical article that is short enough to digest, but thought provoking enough that it will make for good discussion.

What is your main takeaway from this group?

The biggest takeaway for me, every time we've done it, is this overwhelming sense that we're all in this together. You're not alone. We may be in different professions and our kids may be different ages, but there are more of us than you think and there are more of us than you see because we don't all get in the same room very often.

What I think makes it so rewarding to me personally is just looking around the room full of these accomplished working mothers. We all probably feel like we're hanging on by a thread, but we all look to each other like we're rock stars. You look out and you're like "Wow, look at these amazing women. They're so impressive"—and you're one of those women.

No matter how hard it may seem, sometimes bringing everyone together is just so inspiring and validating. Validating that I can do this.
Michael M. Raeber named executive director of legal affairs at UGA

By UGA Communications | Posted: Saturday, December 21, 2013 10:00 am

Michael M. Raeber, a partner in the Business Litigation Group at King & Spalding in Atlanta, has been named Executive Director of Legal Affairs at the University of Georgia by President Jere W. Morehead. The appointment is effective February 1, 2014.

"I am very pleased that we have hired an exceptionally gifted lawyer to lead the Office of Legal Affairs," said Morehead. "Mike Raeber is recognized as one of the most outstanding lawyers in this state, and he will be a key advisor in my administration."

Raeber joined the King & Spalding law firm in 1994 and became a partner in 2002. A specialist in complex corporate litigation, he has served as lead counsel in cases involving real estate, insurance coverage, employment, accounting, and contractual interpretation. Before joining King & Spalding, he clerked for Justice George T. Smith of the Georgia Supreme Court and Judge Stanley F. Birch, Jr. of the United States Court of Appeals for the Eleventh Circuit.

Raeber's multifaceted legal career has included the representation of Fortune 500 companies; appeals before the U.S. Court of Appeals for the Fifth, Sixth, Seventh and Eleventh Circuits; serving as trial counsel to a major manufacturing company which achieved one of the largest insurance arbitration awards in U.S. history; serving as trial counsel for a Big Four accounting firm; and serving as a pro bono habeas corpus counsel to a wrongly convicted prisoner, which ultimately resulted in the release of the client.

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Raeber was named to Georgia Trend magazine's 2013 Legal Elite and consistently has been recognized as one of Georgia's top business litigators by Thomson-Reuters' "Georgia Super Lawyers" magazine. He is a fellow of the Lawyers Foundation of Georgia and is a member of the Lawyers Club of Atlanta.

Since 2009, Raeber has served on the board of KIPP Metro Atlanta, which operates seven charter schools in Atlanta as part of the Knowledge is Power Program (KIPP), a non-profit national network of high-performing public charter schools serving low-income students in underserved neighborhoods.

Raeber was selected after a national search conducted by an eight-member university committee chaired by Peter B. "Bo" Rutledge, the associate dean for faculty development and Herman E. Talmadge Chair in the UGA School of Law. The position has been filled on an interim basis by S. Elizabeth Bailey, associate director of legal affairs, since July 1, 2013.

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He and his wife, Carrie Dieterle Raeber (ABJ 1991), have three young children.
President Barack Obama's six federal judicial nominees in Georgia appear poised for Senate consideration after years of delay in filling seats on the U.S. Court of Appeals for the Eleventh Circuit and U.S. District Court for the Northern District of Georgia.

The White House announced late Thursday that Obama had selected Northern District Chief Judge Julie Carnes for the Eleventh Circuit. The president also tapped four lawyers and judges to fill spaces on the Northern District, including one to replace Carnes, a 1992 appointee of President George H.W. Bush.

Those five nominees join Jill Pryor, a partner at Bondurant, Mixson & Elmore who was nominated by Obama for the Eleventh Circuit nearly two years ago. She was blocked by Georgia Sens. Saxby Chambliss and Johnny Isakson, but they appear to back all six nominees now.

The district court nominees are Judge Michael Boggs of the Georgia Court of Appeals, Mark Cohen of Troutman Sanders, Leigh Martin May of Butler, Wooten & Fryhofer, and Judge Eleanor Ross, a DeKalb County State Court judge.

Boggs was appointed by Gov. Nathan Deal in 2012 to the appeals court. Prior to that he was a Superior Court judge in Waycross, where he presided over the circuit's first felony drug court program. Boggs, who has a reputation as a conservative, also served in the state House of Representatives as a Democrat from 2000 to 2004.

Cohen, a litigation partner at Troutman Sanders, was executive counsel to Gov. Zell Miller in the late 1990s and has since been a special assistant attorney general representing various state agencies, particularly defending the state of Georgia in voting rights cases.

May, who has a complex civil litigation practice at Butler Wooten, was on a 2009 list of potential nominees submitted to the White House by a committee appointed by members of the state's Democratic congressional delegation.

Ross, a former Fulton County assistant district attorney, also was picked by Deal to be a judge. She is the only African-American among the six current nominees for federal judgeships.

Ross and Pryor declined to comment Friday on their nominations. Attempts to reach Boggs, Carnes, Cohen and May were unsuccessful.

Rep. Hank Johnson, who has been critical about the lack of racial diversity among Georgia's federal judges, released a statement Thursday expressing disappointment.

"There is no question that Georgia needs more diversity in the federal courts," Johnson said. "More than 30 percent of Georgia residents are African American. Yet, of 18 district court seats, only two are held by African Americans, one of whom is preparing to retire. Surely Georgia can do better."

Johnson added that Georgians should be "hearing reports of a slate of candidates that includes not just one, but two or three or four nominees" who will bolster diversity.

"In 2013, achieving a representative judiciary should be commonplace, not something to fight over or restrict," he said.

Last month, Johnson and Holland & Knight partner Charles Johnson (no relation), a former president of the Gate City Bar Association, criticized the prospect of nominations for Cohen and Boggs. Cohen defended Georgia's voter photo ID law as a special assistant attorney general under then-AG Thurbert Baker, while Boggs voted against changing the state flag to remove a Confederate symbol while he was a state lawmaker in 2001.

Emmet Bondurant, a partner at the same firm as Pryor, wouldn't comment on the nominees or how the uncertainty of Pryor's nomination has affected her practice. Obama first nominated Pryor to the 11th Circuit in February 2012, but the nomination languished due to lack of support from Chambliss and Isakson. The president renominated her in January of this year.

A joint statement released Thursday by the senators indicated they will support the nominees at confirmation hearings before the Senate Judiciary Committee.

"As senators, we take our constitutional duty to advise and consent very seriously. We are pleased to see the process of filing federal judicial nominations
in Georgia move forward," the senators said. "The White House has been diligent and cooperative throughout the process, and this is a well-qualified group of nominees. We look forward to working with our colleagues in the Senate as we go through the confirmation process."

Bondurant cautioned that, while the state’s two senators are no longer poised to block Pryor’s nomination from going forward after delicate negotiations with the Obama administration, the nominations shouldn’t be considered a done deal. Despite Senate Majority Leader Harry Reid's parliamentary maneuvers that changed the chamber’s 95-year-old filibuster rule so that closing debate may be done by simple majority rather than a 60-member vote, there are still ways in which dissenters can obstruct the process, he said.

"If a single senator objects, 30 hours of debate time on the floor of the Senate must expire before a vote for cloture can actually be taken," Bondurant said. "If they did that with every nomination, and the Senate did nothing else, it would probably be 2025 before they got around to voting [on judicial nominees]."

Bondurant is representing Common Cause in a lawsuit aimed at ending the filibuster rule altogether. The case is set for a hearing in the U.S. Court of Appeals for the District of Columbia Circuit on Jan. 21.

The Eleventh Circuit has eight active judges and eight senior judges, with four openings. Judge Rosemary Barkett resigned in September to become a judge on the Iran-U.S. claims tribunal; Obama nominated U.S. District Court Judge Robin Rosenbaum of Fort Lauderdale to replace her. The fourth vacancy occurred recently with Judge Joel Dubina taking senior status; his replacement is expected to come from Alabama.

The Northern District has nine active judges, including Carnes, and seven senior judges.
Georgia Law Schools Buck Falling Enrollment Trend

Meredith Hobbs

Total enrollment at Georgia's five accredited law schools increased this year even though law school enrollment continues to decline nationally.

Overall, the size of the 2013 entering class dropped 11 percent, according to statistics released last week by the American Bar Association. Two-thirds of the country's 202 ABA-approved law schools reported declines in first-year enrollment from last year. This fall, 39,675 full-time and part-time students started law school in the United States. That is a decrease of 4,802 students from last fall—and a 24 percent decrease from fall 2010, which registered an all-time high of 52,488 1s.

Each of Georgia's five ABA-accredited law schools reported fewer applicants for the 2013 class, for an overall decrease in applications of 10.4 percent, but even so, total enrollment increased 10.1 percent.

There was a total of 10,562 applications to Georgia's five law schools, down from 11,786 in 2012. Total enrollment was 1,043 for this fall's first-year class, up from 947 in 2012.

Three Georgia law schools increased enrollment: Mercer University, Atlanta's John Marshall Law School and the University of Georgia.

The first-year class size decreased slightly at Georgia State University and by a larger percentage at Emory University.

Mercer reported the highest increase in enrollment, 43.8 percent. The law school's first-year class this fall increased by 57 students to 187, even as applications declined 21.5 percent to 1,030.

Mercer's director of admissions and financial aid, Leah Aiken, said the law school's first-year class size is unusually large this year because last year's enrollment of 130 law students was smaller than expected. Typically, she said, the first-year class size is around 145.

Aiken said the school revised its marketing and scholarship strategy in response to last year's lower enrollment. Mercer offered more scholarships and targeted them more carefully to applicants it thought most likely to enroll, which resulted in a larger yield of acceptances, she said, adding that the law school plans for next year's class to be back around 140 to 145 students.

John Marshall increased its entering law school class by 29.8 percent, from 181 to 235, even though applications shrank 18.8 percent to 1,383.

Part of the increase is because John Marshall added another campus, the Savannah Law School, which enrolled its first entering class in 2012. The Savannah branch enrolled 49 students this fall. (The Savannah Law School is not separately accredited by the ABA but treated as a branch campus of John Marshall.)

The University of Georgia increased its first-year enrollment by 5.8 percent, to 201 students. Total applications shrank 10.9 percent.

At Georgia State's College of Law, first-year enrollment decreased by only four students (1.2 percent), to 189 first-year students, even though applications dropped 12 percent.

Emory reported the smallest drop in applications—only 1.7 percent. Even so, the first-year class size shrank by 8.7 percent to 231.

Tuition could be a factor. Emory is the most expensive of the five Georgia law schools. Tuition and fees at the private law school this year come to $48,174.

GSU is a bargain by contrast. In-state students at the public law school will pay $16,042 in tuition and fees this year—making it the least expensive of the five Georgia law schools. (Out-of-state students pay $35,642.)

The state's other public law school, UGA, charges $18,740 in tuition and fees for in-state students. (For out-of-state students tuition and fees come to $36,410.)

Mercer and John Marshall, both private, charge about the same—$37,260 at Mercer and $37,834 at John Marshall.
By McClatchy News Service

Patrick Millsaps, shown in this 2011 photo, has brought some of his small-town lawyer sensibility from Camilla to Tinsel Town, where he is representing actress Stacey Dash. (Special Photo: Todd Stone)

Camilla lawyer making his mark in Tinsel Town

Want daily summaries and Breaking News alerts?

Aaron Gould Sheinin

The Atlanta Journal-Constitution

ATLANTA (MCT) — It has all the makings of a Hollywood comedy: Country lawyer from Georgia finds himself in Tinsel Town, becomes starlet’s manager and rubs elbows with entertainment honchos all while imparting small-town wisdom.

In this case, however, it is a true story.

Patrick Millsaps, a lawyer from Camilla, has become something of a Hollywood broker. He has become the manager for actress Stacey Dash, best known for the role of Dionne in the movie “Clueless,” and now pitches shows to studios, reads scripts and hangs out with A-list celebrities.

“I’m still a bumpkin,” Millsaps said.

But this is no “bumpkin gets discovered, becomes star” story. And Millsaps is not really a bumpkin, either.

A lawyer at Hall Booth Smith & Slover, Millsaps is the former chairman of the state ethics commission and served as chief of staff to Newt Gingrich’s 2012 bid for president. In fact, it was politics that brought Millsaps and Dash together.

Dash, a rare conservative in liberal Hollywood, publicly endorsed Mitt Romney for president in the 2012 general election. Dash was bashed by Democrats and fellow African-Americans and promptly ignored by Romney’s team.

Millsaps watched it happen.

“I realized that it was a very bold thing for her to do,” Millsaps said. “And I was looking for
the (Romney) campaign to pick up on her. Here you have this beautiful actress who’s come out of nowhere in support of your candidate.”

Instead, other than a photo with vice presidential nominee Paul Ryan, “nobody did anything with her,” Millsaps said.

After the election and Romney’s loss, Millsaps wrote Dash a letter. He found her agent’s name online and put pen to paper, explaining that he’d had a unique experience as Gingrich’s chief of staff and said if she ever wanted to get more involved in politics to let him know.

He never expected a response. But Dash emailed Millsaps and said thanks. Not long after, Millsaps was headed to Los Angeles for a Republican National Committee meeting, emailed Dash and asked to go to lunch and offered to take her to the RNC meeting.

At lunch, not at the Chateau or the Ivy or some other famous celebrity spot, the two met at a nondescript Italian restaurant and talked for hours.

They kept in touch. Finally, Dash wanted to fire her agent but didn’t want to do it herself. She asked Millsaps to do it. In L.A. for business, he agreed.

Soon, he was helping Dash meet other conservative actors, such as Jon Voight, Gary Sinise and Nick Searcy. Dash, meanwhile, introduced Millsaps and his wife, Elizabeth, to other celebrities, such as hip-hop magnate Russell Simmons.

Millsaps then had his most surreal Hollywood moment: He and his wife with Dash at Simmons’ birthday party, in his home, where the original iconic Obama “Hope” campaign poster hangs.

“I’m sitting there going, ‘I’m not in Camilla anymore,'” Millsaps said.

Dash shortly thereafter called Millsaps and informed him he was now her manager.

“I said, ‘Oh, you want me to run your campaign,’ ” he said. “I’m running the Stacey Dash campaign.”

Dash said Millsaps has been brilliant.

“I was just taken by him,” she told The Atlanta Journal-Constitution in a telephone interview. “He’s a man of his word, which is rare. And he’s very charming and charismatic. And in Hollywood, virtually every meeting we go to they want him back. Heads of studios, executives, directors, producers.”

Millsaps, whom Dash calls “Patty,” is a “true person,” she said. “In Hollywood, that’s so rare. He gives people permission to be real and suddenly feel safe.”
Millsaps said he has no plans to model Jed Clampett and haul his family west like the Beverly Hillbillies. But there are many similarities between the entertainment industry and politics, and he said he sees business opportunities in the golden hills of Hollywood.

"Hollywood is one of the last pure examples of capitalism we have," he said. "If you have a good idea, out there they will try it. It's pure capitalism."

Millsaps said he was recently asked about his politics by the head of a studio.

"I said you and I have the same politics," Millsaps said he told the liberal executive. "I said: 'Partner, you like making money. I like making money. That makes us both capitalists.' He looked at me with this kind of grin."

Instead of moving to Hollywood, Millsaps wants to help move more of Hollywood to Georgia. Already a $3 billion industry in the state, Millsaps said he will work to make sure the state tax credits that have helped lure dozens of films and television shows to Georgia continue, and that the state keeps pace with competitors for the business.

Millsaps is hardly the first Georgian to find new opportunities or careers compliments of the film industry, but he might be the most unusual, said Stefanie Paupeck, a spokeswoman for the Georgia Department of Economic Development.

"There are probably 1 million examples," she said. "People in the housing industry now building movie sets, people who were unemployed have started catering companies. People in the economic downturn were able to find new careers."

Millsaps might not branch out into set construction, but he'll continue to represent Dash and said he has projects in the works with other actors, such as "Grey's Anatomy" star Patrick Dempsey and Shannon Elizabeth from "American Pie."

Dash said it's no surprise Millsaps has blossomed in the California sun.

"He's good at looking at a person and knowing how they should be presented and showing them how to do that in an authentic way," she said. "Everyone I've introduced him to says: ‘Will you help me? Will you be in my life? Will you please take care of me, too?’"
Law school enrollment down in U.S., but not at UGA

By LEE SHEARER  
updated Wednesday, December 25, 2013 - 9:16pm

The number of would-be barristers entering the nation's law schools declined by 11 percent this fall, but the University of Georgia School of Law actually recorded an uptick in enrollment.

But a modest nine-student increase in first-year law students can hardly be called an upward trend, said Paul Rollins, the law school's associate dean for administration.

First year enrollment this fall was 198, up from 189 the year before. But that's well within the range of normal year-to-year variation, Rollins said, and still well below 2011's first-year class of 225 students.

Until the last couple of years, first-year classes were usually in the range of about 225 to 240 students, he said.

Nationwide, 39,675 students began law school studies in fall, 2013, the American Bar Association announced last week. The number is 4,806 fewer than 2012 and 24 percent less than the record high first-year national class of 52,488 in 2010, according to the bar association.

About two-thirds of the 135 ABA-approved law schools recorded enrollment declines, according to the ABA statistics.

UGA has not lowered its admission standards to maintain enrollment, Rollins said. In fact, this year's first-year class had the law school's highest median GPA ever, and the school's median LSAT scores rank in the top 10 percent of the country, he said.

"We have decreased on purpose," he said.

UGA accepts about 30 percent of applicants. Reflecting another national trend, the number of applicants has declined at UGA along with the number of students who enroll.

"We've done fairly well in terms of enrolling a quality class," he said.

UGA's reputation has helped keep enrollment up more than anything.

"We're one of the best values in legal education in the nation," he said. "That's helped us weather the storm better than some."

The National Jurist magazine this year ranked the UGA School of Law No.
law school enrollment down in U.S., but not at UGA | Online Athens

The magazine calculates tuition, cost of living, bar pass rates and debt against employment success of a law school's graduates.

Seven other Southeastern Conference universities also made the magazine's top 20, topped by the University of Alabama, which ranked No. 1. The universities of Arkansas, Kentucky, Mississippi, Missouri and South Carolina also made the top 20, along with Louisiana State University. Georgia State University, which is not in the SEC, ranked No. 8.

UGA's annual tuition of about $18,000 for in-state students is a bargain compared to the $45,000 they might pay at a private law school, Rollins said.

Universities are also reporting declines in graduate enrollment.

UGA enrolled 6,631 graduate students for this fall semester, according to University System of Georgia statistics. That's about 6.3 percent fewer than 2010, when 7,077 graduate students signed on for classes.

• Follow education reporter Lee Shearer at www.facebook.com/LeeShearerABH or https://twitter.com/LeeShearer.
University of Georgia president Jere Morehead recently moved a step closer to completing his administrative team, naming Atlanta lawyer Michael Raeber to head the university's Office of Legal Affairs.

Raeber will begin work on Feb. 1, the same day new Provost and Senior Vice President for Academic Affairs Pamela Whitten is scheduled to take office.

"Mike Raeber is recognized as one of the most outstanding lawyers in this state," Morehead said in a press release.

Like Morehead, Raeber is a graduate of the UGA School of Law. A year after graduating cum laude from the law school in 1993, Raeber joined one of Atlanta's best-known law firms, King and Spalding, and in 2002 became a partner.

Raeber will take over from Beth Bailey, who has been interim Director of Legal Affairs since July 1. Bailey replaced Steve Shewmaker, a longtime friend of former UGA president Michael Adams who became director in 1999 after losing a re-election bid for a circuit court judgeship in Kentucky.

Raeber is the third top administrative appointment Morehead has announced in recent months.

In July, Morehead named former UGA administrator Victor K. Wilson as UGA's next vice president for student affairs effective Aug. 1. Since leaving UGA, Wilson had been executive vice president for student affairs at the College of Charleston.

Last month, Whitten, a dean at Michigan State University, accepted Morehead's offer to become UGA provost and vice president for academic affairs, which is the job Morehead left to become UGA president.

Morehead still has three high-ranking administrative slots to fill.

A search committee for a new vice president for finance and administration expects to give Morehead the names of finalists by late February or early
GA's Morehead closer to filling administrative team | Online Athens

march, said the chairman of that search committee, Tim Chester, vice president for information technology and chief information officer.

"We have a very strong pool of candidates," Chester said.

The deadline for applications was Dec. 15.

Tim Burgess, who had been UGA's senior vice president for finance and administration for eight years, retired June 30 as former UGA president Michael Adams left office. UGA budget director Ryan Nesbit is the interim vice president.

Another committee will soon begin sifting through applications from people who want to become UGA's vice president for development and alumni relations.

The deadline to apply for that job is Jan. 31, said UGA vice president for government relations, chairman of the 19-person committee.

Current vice president for development and alumni relations Tom Landrum will retire June 30.

The new vice president for development and alumni relations would begin the job July 1. A new vice president for finance and administration could begin earlier, said UGA spokesman Tom Jackson.

The university also has one deanship that remains officially unfilled.

Shortly before Morehead took office July 1, UGA called off a search for a new dean to lead UGA's Terry College of Business after three finalists were named. Former UGA president Charles Knapp is the business school's interim dean.

Morehead said this week he expects to name finalists for the business school deanship by the end of January.

- Follow education reporter Lee Shearer at www.facebook.com/LeeShearerABH or https://twitter.com/LeeShearer.
Clair Drew

Mrs. Clair Riley Drew age 71 of Commerce died Tuesday, December 24, 2013 at Athens Regional Medical Center. Mrs. Drew was born in Americus, GA to the late, Sam and Thelma Richards Riley. Mrs. Drew was a legal secretary for the UGA Law School and a member of Mt. Olive Baptist Church.

Mrs. Drew is survived by her husband, Donnie Drew of Commerce; daughters, Kimberly Drew Standridge of Lavonia and Kerri Drew Lord of Commerce; grandchildren, Kaelan Standridge of Lavonia, Cayden Lord, Riley Lord, and Camryn Lord all of Commerce; sisters, Darlene Weathers of LaGrange and Era Bell of Titusville, FL.

Funeral service will be held Friday, Dec. 27 at 11 AM from Mt. Olive Baptist Church with Rev. Verlin Reece and Rev. Blake Carter officiating with entombment following at a later date in Grey Hill Cemetery. The family will receive friends at the funeral home Thursday from 2-4 and 6-8 PM.

In lieu of flowers donations may be made to the Mt. Olive Baptist Church Youth Group.

Little-Ward Funeral Home Commerce is in charge of arrangements.

Published in Athens Banner-Herald on Dec. 26, 2013
Law school enrollment down in U.S., up slightly at UGA

Carla Caldwell, Morning Edition Editor

The number of students entering the nation’s law schools declined by 11 percent this fall, but the University of Georgia School of Law actually recorded a slight uptick in enrollment, reports the Athens Banner-Herald.

But the modest nine-student increase in first-year law students can hardly be called an upward trend, said Paul Rollins, the law school’s associate dean for administration.

First year enrollment this fall was 198, up from 189 the year before. The number is well below 2011’s first-year class of 225 students, Rollins told the paper.

First-year classes, until the last couple of years, typically had 225 to 240 students, Rollins said.
Why I ... Sit on the Board of the Oldest Historically African-American Presbyterian Seminary

Henry M. Quillian III

The time came in April 2011 for a Buckhead native to join with his brothers and sisters in Christ, at Johnson C. Smith Theological Seminary, founded in Charlotte, N.C., in 1867. Upon striking up a friendship with its president/dean—my exact contemporary Paul Roberts when he substitute preached at my home church, Northwest Presbyterian—I quickly learned that Smith Seminary was comprised of special people dedicated to making the world a better place.

It provides rigorous Presbyterian USA theological education, but with a twist. Crafted by freedmen immediately after the Civil War to help make known the unique aspects of Presbyterian theology and polity, Johnson C. Smith has a rich tradition of educating African-American seminarians. It is, however, interracial, international and intercultural. In fact, the seminary recently was awarded a $100,000 grant for the recruitment of Kenyan scholars.

The Seminary not only reveals liberation theology, but also builds pioneering leaders for Christ and equips them for inner-city pastoring. What’s more, the homiletics (preaching style) and service elements, such as music, taught at Smith Seminary belie any semblance of “The Frozen Chosen” tag line often given to Presbyterians.

"Called to Create What’s Next" is its inspirational slogan.

Smith Seminary collaborates with five other reformed Christian theology seminaries at the Interdenominational Theological Center at the Clark-Atlanta University Complex, having moved to its campus from Charlotte in 1969. Professors and resources are shared among students from multiple denominations, thus providing a broad-based education to its students. Students and professors visit board meetings and they are quite impressive.

Smith Seminary seeks to maintain a diverse board consisting of a balance of pastors, laypeople, men, women, black and white, from all over the U.S. The call to me came from a need to broaden its connection with more people who grew up and live on the Northside of Atlanta, who I have found generally are ignorant of Smith Seminary’s presence in Downtown and of its role in Presbyterian education. My impression and hope is that the body of Christians is becoming color blind and that my long connections with Atlanta’s people will inure to Smith Seminary’s benefit financially and in terms of student recruitment and post-graduation placement.

For a Buckhead native who grew up in integrated schools, but has lived in an area that historically had been almost exclusively white, this has given altered perspective of how parts of the Bible are interpreted based on the heritage of a people. I endeavor to understand and appreciate the myriad of ways the Bible and Christ’s teachings can be understood.
Also, I have tried to share my developing knowledge of Smith Seminary, its history and its wealth of resources with others.

Henry M. Quillian III is member at Taylor English Duma. His arbitration and litigation practice is focused on commercial disputes in the construction, real estate, insurance, technology and general business.
Community Foundation welcomes three new board members

Posted: Sunday, December 29, 2013 4:51 pm

The Community Foundation of Washington County MD Inc. has elected three new members to its board of trustees, according to a foundation news release.

The new trustees elected during a recent board meeting are Howard “Blackie” Bowen, Andy Bruns and Ann Marie Rotz.

Bowen previously served on the board for nine years before briefly departing in 2011. He is the president of Ewing Oil Company Inc.

Bruns is the publisher of both The Herald-Mail and the Daily American, based in Somerset, Pa. Bruns has a degree in journalism from Southern Illinois University, and worked at newspapers in Illinois, Wisconsin and California, starting out in advertising and sales before advancing into management.

Rotz practices at the law firm of Myers, Young & Grove P.A. in the areas of estate planning and administration, corporate work, contracts, guardianships and adoptions. She assists clients in Maryland and Pennsylvania.

Rotz graduated from George Washington University and the University of Georgia School of Law. She studied at Oxford University and interned at a law firm specializing in taxation while in London.

Leaving the board this year are David Beachley, Brian Kane and Spence Perry.

“I look forward to working with our new board members, and appreciate the time and dedication of everyone who serves the community foundation,” Executive Director Brad Sell said in the release.
UGA Names King & Spalding Partner to Direct Legal Affairs

Meredith Hobbs
Daily Report
2013-12-31 00:00:11.0

After a national search, the University of Georgia has chosen King & Spalding partner Michael Raeber as its executive director of legal affairs, effective Feb. 1. Raeber is a 1993 graduate of the UGA School of Law, where he was editor-in-chief of the Georgia Law Review. He joined King & Spalding in 1994 after clerking for Justice George Smith of the Georgia Supreme Court and Judge Stanley Birch of the U.S. Court of Appeals for the Eleventh Circuit.

A business litigator, Raeber was able to free James "Country" Parkerson from Dooly State Prison in 2010, where the Hawkinsville man had been serving a life sentence for a murder he said he did not commit. Raeber's mother, Carol Raeber, had become Parkerson's penpal and told her son about the case, according to a report in The Atlanta Journal-Constitution. Parkerson admitted being on the scene but said it was his roommate, Chip Thorpe, who stabbed a guest, Ira Morris, 51 times with a small-blade knife in 1993. Thorpe became a witness for the prosecution and testified that Parkerson killed Morris.

Raeber was able to win a new trial for Parkerson, arguing that his client received ineffective counsel at his first trial, then negotiated a plea with the Albany district attorney, Joe Mulholland, for voluntary manslaughter. Parkerson was released on time served.

Raeber is on the board of directors of KIPP Metro Atlanta, which is part of a national network of charter schools for low-income students and volunteers for the Truancy Intervention Project Georgia.

A former staffer to Gov. Nathan Deal, Blake Ashbee, will join McKenna Long & Aldridge's state government affairs team on Jan. 6. Ashbee is the executive director of the Governor's Office of Workforce Development, after serving as the organization's general counsel. He was deputy chief operating officer and deputy executive counsel to Deal from 2011 to 2012, after receiving a law degree from the University of Alabama in 2011. Ashbee will join McKenna as counsel.

Isabelle Dinerman has joined Kilpatrick Townsend & Stockton as an associate from Baker & McKenzie's New York office. Dinerman handles corporate and securities matters.

Walter Booth Jr. has joined Stites & Harbison as an attorney in the business litigation, construction and bankruptcy practices. He earned a J.D. from Mercer University in 2013. Before law school Booth was a loan officer and investment
Baker, Donelson, Bearman, Caldwell & Berkowitz has added three first-year associates to its Atlanta office: Sabrina Atkins, Ian Calhoun and Charles "Chase" Ruffin.

Atkins is in the commercial and real estate litigation practice, focusing on residential mortgage litigation, and earned a J.D. from Mercer University in 2013. Calhoun is in the securities and corporate governance practice. He received his J.D. from the University of Georgia School of Law in 2013. Ruffin is in the business litigation practice, working in the firm's Macon and Atlanta offices. He is a 2013 graduate of Georgia State University School of Law.

Thompson Hine has elected J. Christopher Fox II as a partner, effective Jan. 1. Fox is a business litigator as well as a registered mediator and arbitrator.

Baker Donelson shareholder Scott Sherman has been re-nominated to another two-year term on the board of directors of the Anti-Defamation League's Southeastern region.

Greenberg Traurig's Atlanta office held its first blood drive this month, collecting 38 pints of blood for the Red Cross from 45 registered donors. "We reached 119 percent of our initial goal thanks to the support of Atlanta residents as well as our own attorneys and staff," said Greenberg shareholder Richard Valladares in a statement. Valladares, a member of the American Red Cross Blood Services Southern region minority recruitment advisory board, said he plans to make the blood drive an annual event.

The American Civil Liberties Union of Georgia gave its 2013 Pro Bono Award to Troutman Sanders, which was co-counsel with the ACLU for Mark Lyttle, a U.S. citizen whom U.S. authorities illegally deported to Mexico in 2008.

Lyttle, who has bipolar disorder and cognitive disabilities, was serving a 100-day jail sentence in his home state of North Carolina for inappropriately touching the backside of a female worker in a state psychiatric hospital when the North Carolina Department of Correction reported him to Immigration and Customs Enforcement as a suspected undocumented Mexican immigrant—even though he had never been to Mexico, was not of Mexican descent and spoke no Spanish, according to the federal suit filed by Troutman, the ACLU's Immigrant Rights Project and the ACLU Foundation of Georgia in U.S. District Court in the Northern District of Georgia.

While in ICE custody at the Stewart Detention Facility in Lumpkin, Lyttle signed a statement that he was from Mexico. An Atlanta immigration judge, William Cassidy, approved his deportation, and ICE started removal proceedings. Lyttle did not have a lawyer.

In December 2008, ICE officials flew Lyttle to Hidalgo, Texas, and ordered him to walk across the border to Reynosa, Mexico. He was wearing a green prison jumpsuit and had only $3 in his pocket. Lyttle spent the next 125 days wandering through Central America, homeless and subject to abuse and imprisonment because he had no identity documents. He finally made it to the U.S. Embassy in Guatemala, which helped him obtain a passport and return to the United States in April 2009.

"Few of us could ever imagine what it would feel like to be banished from your home country and left to fend for yourself, but that's exactly what happened to Mark Lyttle," said Troutman partner Michael Johnson in a statement.

Johnson led a team of Troutman lawyers, which included Brian Watt, Alex Reyes and Michael Wall, who with the ACLU filed a civil suit for damages against the United States, ICE and government officials in 2010. Lyttle's team settled the case with the federal government in 2012 for $175,000.
BEST IN SHOW

A BARK OUT TO

... Lee Becker, professor of journalism at the Grady College of Journalism and Mass Communication, who received the 2013 Paul J. Deutschmann Award for Excellence in Research from the Association for Education in Journalism and Mass Communication.

... Sybilla Beckmann, mathematics professor in the Franklin College of Arts and Sciences, who will receive the Association for Women in Mathematics’ annual Louise Hay Award.

... Lynne Billard, statistics professor in the Franklin College of Arts and Sciences, who was selected to receive the 2013 Florence Nightingale David Award by the Committee of Presidents of Statistical Societies.

... Corrie Brown, professor of anatomic pathology in the College of Veterinary Medicine, who received the Xlth International Veterinary Congress Prize from the American Veterinary Medical Association.

... Julian A. Cook III, professor in the School of Law; Tracie Costantino, associate professor in the Lamar Dodd School of Art; Sarah F. Covert, associate dean for academic affairs in the Warnell School of Forestry and Natural Resources; and Tom Reichert, professor and head of the Department of Advertising and Public Relations in the Grady College of Journalism and Mass Communication, who were among 49 faculty members from Southeastern Conference universities selected as 2013-14 Academic Leadership Development Program fellows.

...Nate Kohn, telecommunications professor in the Grady College of Journalism and Mass Communication and associate director of the Peabody Awards, who won a regional Emmy Award from the National Academy of Television Arts & Sciences’ Mid-America Chapter for “Ebertfest 2012 Retrospective Doc.”

... Henry “Fritz” Schaefer, Graham Perdue Professor of Chemistry in the Franklin College of Arts and Sciences, who received the 2014 Peter Debye Award in Physical Chemistry sponsored by E.I. du Pont de Nemours and Company.

... Sylvia Schell, assistant director in the Office of International Education, who won the inaugural 2013 Excellence in Diversifying International Education Award from the Diversity Abroad Network, a national organization promoting diversity in international education.

... Chung-Jui Tsai, Winfred N. “Hank” Haynes Professor in forest biotechnology in the Warnell School of Forestry and Natural Resources and also a Georgia Research Alliance Eminent Scholar with a split appointment in the department of genetics, who was named an International Academy of Wood Science fellow, one of the highest honors given by the academy for scientists in this field of study.

FREE BIOLOGY TEXTS A BOON FOR STUDENTS

The Center for Teaching and Learning is offering free e-textbooks for introductory biology courses at UGA, using a $25,000 University System of Georgia Incubator grant. A new biology textbook costs about $97. The grant could collectively save students enrolled in these courses $150,350 over the coming year. The ebooks are part of UGA’s commitment to the statewide Complete College Georgia Plan, an effort to retain and graduate students in a state college or university.

The CTL is working with 2013 Meigs Award recipient Peggy Brickman and fellow faculty members to replace bound textbooks in two introductory biology courses with texts online. Brickman’s textbook “University of Georgia Concepts of Biology” can be found at https://openstaxcollege.org/pages/GeorgiaBiology and will be used in her sections of Biology 1103: Concepts of Biology this fall and beyond. The team is currently preparing material for Biology 1104 that will be taught in the spring semester.

Called Open Education Resources (OERs), the learning materials are in the public domain with open copyright licenses that are available at no cost to faculty, students or the institution. Materials are authored by highly regarded faculty from peer and aspirant institutions. Content is reviewed in the same manner as printed textbooks. Because content is accessible online, the texts provide a foundation for faculty course development.

The USG Incubator grant provides early-stage funding and other support for innovative institutional, multi-institutional or regional level projects aimed at increasing college completion. In addition to funding, the grant will place a strong emphasis on sharing promising practices and methods growing from these projects.
The Association of Public and Land-grant Universities (APLU) has designated UGA an Innovation and Economic Prosperity University, acknowledging the university’s commitment to working with public and private partners to support economic development across the state.

UGA is one of only 16 universities in the country to receive the designation. Economic development has become one of the cornerstones of UGA’s mission under the direction of President Jere W. Morehead, who serves on APLU’s Committee of Research Intensive Public Universities. Morehead said the APLU designation is a reflection of the hard work and effort the university is undertaking to support economic development statewide.

The designation followed a nearly year-long internal and external assessment by UGA of regional economic development efforts and development of a comprehensive plan for moving forward.

Learn more about economic development and UGA on p. 26.

Identifying a killer

UGA played a key role in identifying the virus that killed an unusual number of bottlenose dolphins this summer. Starting in early June, hundreds of dolphins were found dead in the mid-Atlantic region, with increased dolphin strandings reported in the waters off New York, New Jersey, Delaware, Maryland, Virginia and North Carolina. Samples were collected and sent to UGA’s Athens Veterinary Diagnostic Laboratory, housed in the College of Veterinary Medicine. In August researchers led by virologist Jerry Saliki, head of the diagnostic lab, identified the virus as morbillivirus, a subgroup within the family of paramyxo viruses. The lab is one of three in the U.S. with the ability to test tissue samples at the molecular level to identify morbillivirus. In addition to providing comprehensive diagnostic services for U.S. clients, it has served clients from areas of the Middle East, China, Hong Kong, Singapore, Australia, Portugal and other countries. For more information, visit www.vet.uga.edu/dlab.

Grants for UGA start-up

Two federal grants totaling $1.95 million will provide jobs and research support for a growing UGA startup company that aims to change the way science is taught in classrooms.

Funding totaling $1.8 million from a National Institutes of Health grant will be used to create new software-based case studies, apps and iBooks to teach important concepts related to how nerve cells function. Students also will learn how these functions can be affected by various diseases.

Together, the grants will provide eight technology jobs for the next three years, says Tom Robertson, an associate professor of physiology and pharmacology at the College of Veterinary Medicine, who is the CEO of startup company IS3D LLC.

IS3D was founded in 2010 by eight UGA faculty and staff members who share the philosophy that today’s high school and elementary students could become more interested in learning science—and better master its principles—through interactive software designed to engage them in the learning process. To date, IS3D has released a number of science education applications for both Apple and Android mobile devices, and the new funding ensures more will follow.

Over the next three years, the new teaching materials and a portal will be developed with teachers and students from multiple school districts in Georgia and other states.

Learn more at http://is3donline.com.
For the third year, the UGA Alumni Association recognized 40 outstanding alumni under the age of 40. They were selected for their contributions to business, leadership, research, the arts, community, education and philanthropy; their dedication to the University of Georgia; and how well they uphold the pillars of the Arch—wisdom, justice and moderation. Chosen from a pool of about 500 applicants nominated by friends, family, business associates and UGA faculty and staff, the winners were selected by a committee of UGA administrators and faculty, members of the UGA Foundation and the Alumni Association. The 2013 class of outstanding alumni was celebrated at an awards luncheon on Sept. 19 at the Georgia Aquarium.
Top: Two thousand train cars a day from five rail lines pass through the CSX Rice Yard in Waycross, making it the largest classification rail yard in the CSX network.

Bottom: Jake Hunter (right), assistant terminal superintendent, shows (from left) Darren Hayunga, assistant professor of insurance, legal studies and real estate, and Josh Walton, from the Small Business Development Center, around the operations tower for the CSX Rice Yard.
1996

Laurie Barron (BSEd '96)
Barron is a National Board Certified Teacher, a distinction earned by only 1 percent of U.S. teachers. In 2012, she was named Georgia Middle School Principal of the Year while serving as principal of Smokey Road Middle School in Newnan. Now living in Montana, she is superintendent for Evergreen School District.

Timothy Murphy (BBA '96)
Murphy is a senior vice president of financial planning and analysis for RockTenn, a publicly traded consumer packaging company in Norcross. Under his direction the company has grown from $1 billion to $10 billion and acquired another company, Smurfit-Stone Container Corporation, in 2011.

Padgett “Pat” Wilson (AB '96)
Wilson is chief operating officer for the Georgia Department of Economic Development, managing an annual budget of $26 million and 170 staff members. He also is executive director of Georgia Allies, a marketing partnership between the state and the private sector that promotes Georgia’s economic development priorities.

Brendan Kyle Hatcher (BBA ’97)
Hatcher is an international export and investment strategist with Tennessee’s Department of Economic and Community Development. Previously he served as a diplomat in the Bahamas and Russia, where he addressed issues like human trafficking and religious freedom. In August 2014, he will become economic chief at the U.S. Embassy in Budapest.

Ron Holt (BSA '97)
In 2003, Holt invested his savings in a fledgling maid service. Ten years later, Two Maids & A Mop is the largest privately owned residential cleaning company in the country, with 150 team members in five states. In 2013, he was a semifinalist for the Ernst & Young Entrepreneur of the Year Award.

1997

1998

Charlie Bethel (BBA ’98, JD ’01)
Bethel is a Georgia state senator serving his second term representing the 54th district. He is director of human resources for J&J Industries Inc. and was named Freshman Legislator of the Year by the Georgia Chamber of Commerce in 2012. Bethel twice served on the Dalton City Council.

Angela Dotson (BBA ’98, MAcc ’99)
Dotson is one of the youngest partners at Habif, Arogeti & Wynne, the largest tax, accounting and consulting firm headquartered in Georgia. A breast cancer survivor, she also serves on the board of directors for Turning Point, a health care facility for women battling breast cancer.

Shunta Jordan (BSFCS ’98, MEd ’03)
Jordan is the J.B. Fuqua Chair of Speech & Debate at Pace Academy in Atlanta and has coached six state championship teams and one national championship debate team. She also is the assistant varsity girls basketball coach and leads summer debate workshops for middle and high school students.
Dr. Patrick Lucas
(BS '98)
Lucas co-founded the Northeast Georgia branch of Compassionate Care Hospice and serves as its medical director. After his residency at Wake Forest University, he joined Hawthorne Medical Associates in Athens and became a full partner. He was chief of internal medicine at Athens Regional Medical Center from 2009 to 2013.

Robyn Painter
(AB '98)
Painter is an attorney and internship coordinator with the Georgia Appellate Practice and Educational Resource Center in Atlanta, where she advocates for convicted criminals on Georgia's death row. She served in the Peace Corps, developing a public health program in Madagascar, before earning her law degree from Georgetown University in 2004.

Kevin Abernethy
(AB '99)
Abernethy is partner at Hall Booth Smith in Atlanta. In 2010, Georgia Lt. Gov. Casey Cagle appointed him to a four-year term on the State Ethics Commission. The following year, Abernethy became the youngest Georgian to be selected to serve as chairman of the commission. He's now serving his second term as chairman.

Dr. Charnetta Colton
(BS '99)
Colton is a physician at South Atlanta Pediatrics in Riverdale and Locust Grove. Previously she practiced at Children's Healthcare Center in Sandersville, where she served on the Washington County Chamber of Commerce board of directors and was medical director of CrossFit Kids. She is also a Christian playwright with two productions to her credit.

Jon Howell
(BBA '99)
Howell is president and CEO of the Georgia Health Care Association. The GHCA represents 95 percent of Georgia's 359 skilled nursing facilities, a number of assisted living communities and a home- and community-based case management program. Howell also serves on the Georgia Chamber of Commerce board of directors.

Emily Hanson Scofield
(MS '99)
Scofield is the executive director of the U.S. Green Building Council's North Carolina chapter. In that role, she coordinated the first Charlotte Environmental Sustainability Week in 2011, and in 2012 she convened the Democratic National Convention's Energy, Technology and Community Sustainability Legacy Village, bringing together businesses, schools and nonprofit organizations.

Allen Yee
(BS '99, JD '03)
Yee is an attorney with The Coca-Cola Company, managing litigation for the world's largest beverage company since 2011. Before that he spent seven years in Dallas with Vinson & Elkins, one of the world's largest law firms. He also is chairman of the board of trustees for the Sigma Pi Education Foundation.

Thomas Forsberg
(BBA '00, MBA '10)
Forsberg's 13-year career with SunTrust Bank has taken him from credit analyst to first vice president and relation-
Jessica McClellan
(AB '00, JD '03)
McClellan, a specialist in admiralty and maritime law, is a member of the U.S. Department of Justice's Civil Division and one of nine attorneys handling litigation from the 2010 BP oil spill in the Gulf of Mexico. She is a co-author of the fourth and fifth editions of *Admiralty and Maritime Law*.

2001

Kimberly Black
(BS '01)
Black was a member of UGA's NCAA championship swim team, earning a gold medal in the 4x200 freestyle relay at the 2000 Olympics. In 2001, she was named NCAA Woman of the Year. Today Black is a transplant social worker at Ochsner Health System's Multi-Organ Transplant Institute, where she provides counseling and support to patients.

Lindsey Groepper
(ABJ '01)
Groepper was the first employee hired by Indianapolis-based BLASTmedia in 2005. Eight years later, she's president of the company. From spring 2012 to spring 2013, Groepper brought in more than $1 million in new business revenue, including acquiring rapper 50 Cent's new audio brand, SMS Audio, as a client.

Jennifer Jordan
(JD '01)
Jordan is principal and owner of The Jordan Firm and recently developed an iPad application called JuryStrike to help attorneys select juries more efficiently and effectively. She is on the board of directors for WIN List, GreenLaw and Blueprint Georgia and was named to *Georgia Trend* magazine's "40 Under 40" in 2007.

Mark Anthony Thomas
(BBA '01)
Thomas is enrolled at MIT as a 2014 Sloan Fellow for Innovation and Global Leadership, following a stint as director and publisher of City Limits, a New York-based nonprofit news agency that reports on urban life and policy. Thomas was a presenter during UGA's inaugural TEDx event earlier this year.

2002

Andy Barrs
(MFR '02)
Barrs is founder/CEO of Vega Media Partners, founder of Principle Centered Investments, co-founder/CEO of PharmD on Demand and co-founder of Brossie Legendary Turkey Callers. He serves as chairman of the Emerging Leaders of Georgia Forestry Association and co-founded the Warnell School Young Alumni Endowment for Leadership Training at UGA.

Erin Hames
(BSEd '02)
From 2006 to 2010, Erin served as former Gov. Sonny Perdue's policy director and was executive sponsor for Georgia's Race to the Top team that secured a $400 million grant for the state. In 2011, she joined the office of Gov. Nathan Deal as deputy chief of staff for policy.

Ashley Jones
(AB '02)
Jones is chief of staff for U.S. Rep. John Barrow, a position she has held since 2007. At the time she was the youngest female chief of staff on Capitol Hill. She oversees the D.C.
2013 was a big year for pro tennis player John Isner (M ‘07). In April he won the U.S. Men’s Clay Court Championship (above), his sixth title. Three months later he won the BB&T Atlanta Open and appeared—naked—in ESPN The Magazine’s Body Issue, an annual photo essay celebrating athletes’ bodies. In August he reached the final of the Washington, D.C., Citi Open, where he lost to 2009 U.S. Open champion Juan Martin Del Potro. Two weeks later, Isner beat No. 1-ranked Novak Djokovic and Del Potro to reach the final of the Cincinnati-based Western & Southern Open, where he lost to No. 3-ranked Rafael Nadal. At the U.S. Open, Isner lost in the third round but donated 20 percent of his prize money to America’s VetDogs, an organization that helps train canines for blind and disabled veterans.

CLASS NOTES
Compiled by Chase Martin

1960-1964
Mike Scruggs (BS ’61) of Hendersonville, N.C., was appointed to the North Carolina Veterans Affairs Commission.

1965-1969
George W. “Buddy” Darden III (AB ’65, JD ’67) of Marietta was honored with the Distinguished Service Scroll Award from the UGA School of Law’s alumni association. Gary Allen Brown (BSA ’66, MS ’68, PhD ’70) of Farmingdale, N.Y., received Farmingdale’s Distinguished Service Award. A. Mark Smith (ABJ ’66) of Eatonton was inducted into the Georgia Press Association’s Golden Club. Charles H. Van Rysselberge (ABJ ’68, MA ’71) of Daniel Island, S.C., was awarded Honorary Life Membership by the American Chamber of Commerce Executives Association. Stella Bailey (BSHE ’69, MHE ’71) of Cordele was honored at the Inaugural Pearl Awards. Reynold Jennings (BSPh ’69) of Kennesaw is CEO of WellStar.

1970-1974
Jeff Lurey (BSPh ’70) of Atlanta received the Georgia Pharmacy Association’s 2013 Meritorious Service Award for outstanding service in pharmacy. Mary Lynn McCorkle (AB ’70) of Brooklyn, N.Y., exhibited her artwork at the Berry College Moon Gallery. H. Darrell Young (AB ’70) and Joseph P. Hester (PhD ’73) published an article, “Building From Within: Designing a Values-Based Cultural Template,” in the Journal of Values-Based Leadership. Charles Harman (BBA ’71), former chief of staff for Sen. Saxby Chambliss, was named vice president for government and community affairs at Emory University. Pete McDonald (BBA ’71) of Rome was appointed president of Georgia Northwestern Technical College. Maxine Burton (BSEd ’72, MEd ’78) of Athens was appointed by Gov. Nathan Deal to serve on the Georgia Council for the Arts. Edward L. Shaw Jr. (AB ’72, EdD ’84) of Mobile, Ala., is in his 27th year of teaching at the University of South Alabama and was selected as one of the top 50 professors for the first 50 years of existence of the university. Janet Collins (BSHE ’73, MS ’76) of St. Mary’s City, Md., is the 74th president of the Institute of Food Technologies and the first IFT president to be both a food scientist and a registered dietitian. David A. Garfinkel (AB ’73, MPA ’75) of Jacksonville, Fla., was recognized on Florida Trend’s 2013...
Legal Elite list. Elaine Bunn (AB ‘74) of Washington, D.C., was chosen to serve as the deputy assistant secretary of defense for nuclear and missile defense for the U.S. Department of Defense.

1975-1979
Marie Garrett (BSEd ‘75) of Alpharetta began teaching a graduate level introductory class in public administration at Reinhardt University.
Will Harris (BSA ‘76) of Bluffton was named the 2013 Swisher Sweets/Sunbelt Expo Southeastern Farmer of the Year.
Betsy Crossley (BS ‘77, MS ‘80) of Brentwood, Tenn., received a Top Dawg Award for being elected to another term as Brentwood mayor from the Nashville Chapter of the UGA Alumni Association. Robert T. Parker IV (BSA ‘77) of Suwanee was named president and CEO of the National Peanut Board.
James W. Barge (BB ‘78) of Lithia Springs was named chief financial officer of Liongate. Steve C. Jones (BBA ‘78, JD ‘87) of Atlanta was honored with the Distinguished Service Scroll Award from the UGA School of Law’s alumni association. Jeff Shellebarger (BS ‘78, MS ‘80) of Katy, Texas, was named president of Chevron North America Exploration and Production Company.

1980-1984
Lee Bentley (BBA ‘80) of Tampa, Fla., is an interim U.S. attorney and was appointed to fill the 35-county Middle District of Florida. Nancy D. Bryan (BSW ‘80) of Tifton is the executive director of Ruth’s Cottage, a shelter for victims of domestic violence, and The Patrick House, a child advocacy center. Rebekah Farber (BSEd ‘80) of Encino, Calif., was appointed board chair of RAVSAK: The Jewish Community Day School Network. Tim McElhannon (BA ‘80) of Lexington, Va., fulfilled a lifelong dream of hiking the Appalachian Trail. He began his hike at Springer Mountain, Ga., March 27, and reached the summit of Mount Katahdin, Maine, on Aug. 4.
Timothy Montgomery (BSA ‘80, DVM ‘83) was named to the House Advisory Committee for the American Veterinary Medical Association. Margaret Mary Peltier (AB ‘80) of Gulf Breeze, Fla., is

-called the plays

Andy Johnston (ABJ ‘88)

Mark Lewis was only a year into his job at the NCAA when he had to tackle two unpopular decisions: To stop selling team jerseys through the NCAA website and to stop licensing a popular football video game.

Fortunately, he had the skills needed to avoid a potential firestorm.

“I didn’t take a class on whether to sell jerseys on a website or not, but what I felt like I learned at Georgia was a skill set of problem solving and orienting myself to processing information and making a decision. That’s not something you learn in a classroom, but part of the whole experience,” says Lewis (BBA ‘88, JD ‘92), who became executive vice president for championships and alliances at the NCAA in April 2012.

Just 20 years earlier Lewis was a standout at UGA, a polished debater who led UGA’s moot court team to a national championship in 1992.

President Jere W. Morehead, who oversaw the UGA School of Law’s moot court program when Lewis was on the team, recognized his potential.

“Mark was the best advocate in the National Moot Court Competition,” Morehead says. “Believe me, at that point, I knew there was nothing that Mark wasn’t capable of accomplishing.”

Before working at the NCAA, Lewis held positions with various Olympic organizations, where he handled a network of international committees and amateur federations. Overseeing the NCAA’s 89 championships, in addition to corporate and media partner programs, isn’t much different from his Olympic work, he says, “except all the meetings are in English and I don’t have to leave the country.”

His connections with athletics, both at Georgia and in his personal life, have helped as well.

As an undergraduate he was a long snapper on Vince Dooley’s final football team in 1988 and roomed with kicker John Kasay, who retired from the NFL earlier this year.

Lewis’ father, Bill, was a defensive assistant coach at UGA in the 1980s. The two recently met to watch Georgia play Clemson in the 2013 season opener.

His “Bulldog allegiance isn’t hidden” at NCAA headquarters in Indianapolis, he says. He has a framed drawing of Dooley, signed by members of the 1988 team, to commemorate Dooley’s 25 years of coaching.

“I’ve been working around sports ... but to be back and be around student-athletes and the college aspect of things and the passion that people have for their alma mater and their university, it’s just really something special,” Lewis says. “And to be a small part of that, it’s a great thing. I like to tell people that I’m glad that I don’t have to work for a living.”

— Andy Johnston is a freelancer living in Watkinsville.
It has been a busy fall for UGA alumni both here in the Classic City and across the globe. If you did not make it to Athens for a home football game, I hope you joined your fellow Bulldog faithful for a game-watching party or other alumni gathering in your local area. It was a pleasure to witness the investiture of UGA President Jere W. Morehead (JD '80) on Nov. 19.

People regularly ask me how Kitty and I like living in the Athens area, and I always respond, “I knew it was going to be good, but I just did not know it was going to be this good.” Being so close to campus really renews me. I see the hustle and bustle of our students’ daily routines, and I witness our exceptional faculty working to prepare those students for the next stages of their lives. A personal treat for me is that I often see Betty Jean Craige and Jim Cobb, both of whom taught me at UGA back in the mid-1970s. They are still so involved and connected with this great university.

College football season may be coming to a close in the next few weeks, but that doesn’t mean you can’t come to Athens to see a gymnastics meet or a basketball game or drop by one of Athens’ dining establishments for a great night out. Your university and your Alumni Association have numerous upcoming events, so please stay connected.

The UGA Alumni Association will kick off 2014 with a bang by hosting the annual Bulldog 100 Celebration at the Atlanta Marriott Marquis on Saturday, Jan. 25. I invite you to attend this festive evening honoring 100 of the fastest-growing businesses owned or operated by UGA graduates. This year marks the fifth Bulldog 100 and promises to be an extra-special affair. Visit www.alumni.uga.edu/b100 for more information and to register to attend.

It is the season of giving, a season of reflection and thankfulness. I’d like to thank those of you who have made a financial contribution to the university this year. If you have not yet contributed, please seriously consider making UGA part of your culture of philanthropy. Private giving to UGA is the fuel that keeps the university reaching new heights in instruction, research and service.

I sincerely wish you all a blessed holiday season and a happy new year.

Always a Dawg,
Tim Keadle (BBA '78), president
UGA Alumni Association

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the new executive director at Pensacola Little Theatre. Krysta Harden (ABJ '81) of Alexandria, Va., was nominated to be deputy secretary for the U.S. Department of Agriculture. Dan Jackson (BSFR '81) of Montgomery, Ala., was named assistant state forester for the Alabama Forestry Commission. Elaine Hamilton (BSEd '82, MEd '83) of Thomasville retired as the executive director of United States Tennis Association Georgia. Tim McMillan (BBA '82) of Enigma is the Lower Southeast Farm Press Peanut Profitability Award winner for 2013. Victor Keith Wilson (BSW '82, MEd '87) of Charleston, S.C., was named vice president for student affairs at UGA. Mike Hubbard (ABJ '83) is serving his fourth four-year term in the Alabama legislature. Auburn University dedicated a new building to Hubbard, the Mike Hubbard Center for Advanced Science, Innovation and Commerce. Mark Whitney (AB '83, MS '91, BS '92) of Covington was named assistant director of the Georgia Department of Natural Resources' Wildlife Resources Division. Liz Bau-Buckingham (ABJ '84) of Boise, Idaho, retired after 20 years as the owner of Family Magazine & Media Inc. and publisher of Treasure Valley Family Magazine. Martha Jacobs (BBA '84, JD '94) of Armuchee was honored as the Assistant District Attorney of the Year for Georgia by the Prosecuting Attorneys' Council of Georgia. Richard Riley IV (BBA '84) is the principal officer/consul general at the U.S. Consulate General in Halifax, Nova Scotia, Canada. Gregory L. Roseboro (AB '84, JD '87) of Athens was named director of law admissions for UGA Law.

1985-1989
Elizabeth Brannen Chandler (BBA '85, JD '88) of Atlanta was named vice president and general counsel of Rollins Inc. Timothy M. Dixon (BSEd '86) of Millwood received a 2013 Distinguished Alumni Award from the UGA College of Education. Anita Gregory Arnold (BBA '89) of Orlando, Fla., obtained her chartered property and casualty underwriter designation. Noel Barnes (AB '89) of Atlanta was named the new CFO of the Woodruff Arts Center.
formed the cello and guitar duo Montana Skies. Michael S. Martin (BSFR ’98), president of Georgia Timber, and wife Stephanie welcomed their second child, Cooper James, June 24. La’Keshia Frett Meredith (BSFCS ’98) of Conyers was named to the Virginia Cavaliers’ coaching staff. Beth Carey (BSFCS ’99, MEd ’03) of Winterville opened Beth’s Bakery, the first vegan and nut-free bakery in the Athens area. Sean Kirk (AB ’99) of Nashville, Tenn., and his wife Candice welcomed their first child, Stella Rose, July 12. Christopher Turner (BBA ’99, MAec ’00) of Atlanta was promoted to senior manager at Ernst & Young LLP.

2000-2004
Ashlee Crews (AB ’00) of Durham, N.C., received a 2013 Rona Jaffe Foundation Writer’s Award. Patrick C. Kindregan (BBA ’01) of Cumming joined Floyd Medical Center’s Family Medicine Residency program. Jennifer Parris Norman (BSEd ’01, MEd ’03) and Chip Norman of Leesburg welcomed their second son Davis Gray Norman Aug. 7. William Dryden (BFA ’02) of Woodstock was named Brumby Elementary School’s 2013 Teacher of the Year and earned a specialist degree in educational leadership from Kennesaw State University. Kathy Couch Jones (BS ’02) and husband Colin Warner Jones (MM ’04) of Mundelein, Ill., welcomed their first child, Owen Eugene Jones, June 22. Jennifer Lance (BBA ’02, MEd ’06) of Washington is seeking her doctorate degree in science education, focusing on science education in a rural classroom. Eric NeSmith (ABJ ’02) of Athens joined Editor & Publisher’s 25 Under 35 list for 2013. John Nelson Ozier (AB ’02) of Nashville, Tenn., is the general manager for the creative division at ole, an independent music publisher.

Steven Christopher Smith (BS ’02) and wife Tovia Martirosian Smith welcomed their second child, Tovia Virginia McMillian Smith, Aug. 6. Brandi Nicole Littlejohn (AB ’03) and Christopher Brandon Skeen (AB ’03) of Waleska were married June 1. Chris is an audio designer for HLN and CNN with Turner Broadcasting System in Atlanta, and Brandi is a lean six-sigma process improvement leader at Floyd Medical.

In 1966, Bill House was the first member of a Greek organization (Sigma Phi Epsilon) to be elected student body president at UGA. He credits his successful campaign to his experience on the UGA Debate Union (now UGA Debate Team) during which he participated in more than 100 debates. But he recognized that scholarship funds were limited for debate students and were necessary for some students to be able to complete their degrees. “I hope to get these funds in their hands soon,” House says, “and I am looking forward to meeting the champion debater that these funds help.”

Want to give? Go to giving.uga.edu.
Reaching new heights

Alumnus performs at Sea World and competes in high diving competitions

by Karen Rosen

Ginger Huber was so high above the Barcelona harbor last summer that she took comfort from the masts of the tall ships anchored nearby.

“It just seemed like you weren’t all alone up there,” says Huber (BS ’97).

She then stepped to the edge of the 20-meter platform—nearly seven stories high—and dove into the murky water.

Again, Huber was not alone. Three scuba divers waited for her to give them the ok sign. She came up for air after her third dive with a silver medal in the inaugural high diving event at the 2013 World Championships.

“It’s exhilarating,” Huber says of the two-second plummet. “There’s a definite sense of falling and a very hard impact.

“It can feel like hitting a brick wall. If you have your chin just a little bit out of place, it’ll feel like a good punch.”

As Ginger Fields at UGA, Huber was a member of the diving team, specializing in the 1-meter springboard. Her best finish was a second place in the Southeastern Conference in 1996.

Back then she was leery of anything higher than the 3-meter springboard.

“I didn’t like it. I was just scared of the heights and the impact hurt.”

Now at home in San Diego, Huber performs up to seven times a day in shows at Sea World. She’s the assistant performance manager for the show and plunges from 7 meters, about 23 feet.

“It’s kind of a normal job; it’s just you do unusual things.”

She also competes in the Red Bull Cliff Diving Series, where she has to climb to the 20-meter level from which she dives.

No one is more surprised by her transition to the extreme sport of high diving than her former coaches.

“I would never have expected it in a million years,” says UGA Head Coach Jack Bauerle.

Head Diving Coach Dan Laak adds, “This one came out of the blue.”

Huber started doing “show diving” when she graduated from Chattahoochee High School. When she finished her degree in sociology, an entertainment company recruited her.

She worked her way up—literally—performing her first 20-meter dive at Six Flags Over Georgia into an “itty bitty little tank.”

“It looks like you’re going to miss it,” she says, adding that an even bigger fear is smacking the bottom.

In 1998, Huber performed in her first cliff-diving show at Waimea Falls in Hawaii, and eight years later married fellow diver Chris Huber, who is now her coach.

Huber, who at age 38 calls herself “the grandma” of the team, wants to continue high diving to help the sport grow.

“It’s not to say that 20 meters doesn’t scare the bejeezus out of me,” she says, “because I get up there and I look down and there’s definitely a lot of energy channeling through my body.”

But that’s not what really frightens her.

“I don’t really like being underwater,” Huber says with a laugh. “I’m ok diving and coming right back out.”

—Karen Rosen is a freelance writer who lives in Atlanta.
Award from the UGA College of Education. **Stephen Gordon** (EdD '89) of Austin, Texas, received a 2013 Distinguished Alumni Award from the UGA College of Education. **Tena Crews** (EdD '94) of Lexington, S.C., received a 2013 Distinguished Alumni Award from the UGA College of Education. **Brad Simmons** (MEd '94) and **Jessica Simmons** (MEd '09) of Mount Airy welcomed son Jackson Garen March 18. **Merrianne Dyer** (EdS '97) of Gainesville received a 2013 Distinguished Alumni Award from the UGA College of Education. **Rebecca Fatima Sta. Maria** (PhD '00) of Malaysia received a 2013 Distinguished Alumni Award from the UGA College of Education. **Tara Trobaugh** (MMEd '05) of Ringgold was named the 2013 Georgia Young Mother of the Year by the Georgia Mothers Association, and was named the National Young Mother of the Year by American Mothers Inc.

**Environment & Design**

**John Robert Crawford** (MHP '05) of Oxford, N.C., was named executive director of Uptown Lexington.

**Journalism & Mass Communication**

**Tom Hagley Jr.** (MMC '92) of Vancouver, Wash., was promoted to chief of staff for Vancouver Public Schools, where he has worked since 1992. **James A. Rada** (PhD '97) of Ithaca, N.Y., has had his documentary “Meet Me at Equality: The People’s March on Washington” picked up by PBS.

**Law**

**Leamon “Lea” R. Holliday III** (JD '70) of Savannah received the Savannah Bar Association’s Judge Frank S. Cheatham Jr. Professionalism Award. **Gary E. Jackson** (JD '75) of Atlanta received the President’s Award from the Council of Municipal Court Judges of Georgia. **Theodore Freeman** (JD '76) of Atlanta was elected president of the Georgia Defense Lawyers Association. **John E. Thompson** (JD '78) of Atlanta was chosen for inclusion in Best Lawyers in America 2014.

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On the fast track

Alumnus works with seniors on important issues

by Sara Freeland (ABJ '05)

It was the last race of the 2012 season. Confetti was streaming through the air. And Jim Dau was standing on the stage in Victory Lane with NASCAR driver Jeff Gordon and his team.

As director of media relations for the AARP, one of Gordon’s sponsors, Dau (BBA '97) spends four or five weekends a year next to a track watching the four-time NASCAR Cup Series Champion race and spreading the word about the Drive to End Hunger, a national effort led by the AARP Foundation to combat hunger among Americans 50 and over.

Using trivia games, tablet computers and other techniques to engage fans, Dau’s crew illustrates just how many older Americans—9 million—have trouble putting food on the table.

The goal is to raise resources to fix the problem in the short term—to deliver meals to those in need—and in the long term, to nurture solutions to improve access to nutritious meals with local food systems.

“Few people realize how many older Americans struggle with hunger,” Dau says. “So being able to work with Jeff [Gordon] and leveraging his stature to raise awareness and develop solutions is a huge resource in the fight against hunger.”

Dau has also worked with two of his childhood heroes: tennis player Martina Navratilova, AARP’s fitness ambassador, on wellness issues, and Mike McCurry, former White House press secretary, on advocacy matters.

His job isn’t all hanging out with celebrities, that’s just a perk. He helps with strategic planning for AARP. He’s the on-the-record spokesperson. He does TV interviews, writes press releases and does media training for the organization. And when the Drive to End Hunger trailer catches fire as it did in September, he helps set reporters straight—no, Gordon’s No. 24 car was not on fire two days before the race—and gets back to the important issues, like “helping people in need put food on the table.”

Dau got his unofficial start working with the media at age 11 as a paper delivery boy.

“I fell in love with the news well before then,” he says. “My brother and I would have political debates at the dining room table when I was 8 or 9. I knew that I liked communications. And whether it’s policy, politics or consumer advocacy, I knew that’s what I wanted to do.”

A business school grad, Dau says he took the scenic route coming back to journalism.

He worked in developing countries for four years, helping to strengthen political parties and civil society groups.

“I realized at some point that I had done more to help countries like the Dominican Republic or Columbia than my own country... so I wanted to come back and shift to domestic policy,” he says.

He has been with the AARP since 2007, spreading the word about healthcare reform, consumer advocacy and financial security. He helps people read their 401k statements and save money for retirement and is working on legislation that would close the coverage gap in Medicare’s prescription drug program.

“I certainly never thought I’d be here at AARP, but here I am putting all the elements together. I always thought I’d be on the other side, be the person with the notepad. But maybe that’s what’s next.”

—Sara Freeland is a public relations coordinator in the Office of the Vice President for Public Affairs.

L. Waters (JD ’78) of Savannah was honored at the American College of Prosthodontists and ACP Education Foundation’s 2013 Annual Session. D. Albert Brannen (JD ’82, MBA ’82) of Atlanta was chosen for inclusion in Best Lawyers in America 2014. Edward J. Coleman III (JD ’82) of Augusta was appointed U.S. bankruptcy judge for the 45-county Southern District of Georgia. Jeffrey Hanson (JD ’91) of Macon was appointed to the State Court by Gov. Nathan Deal. Edward “Ted” Henneman Jr. (JD ’94) of Savannah received the 2013 Business Commitment Pro Bono Business Law Award. John Arthur Ernst (JD ’03) of Atlanta was named to the DeKalb County Board of Ethics. Ramsey H. Bridges (JD ’05) of Athens is the associate director of admissions for UGA Law.

Pharmacy
Lane Brunner (PhD ’95) was hired by the University of Texas at Tyler to spearhead the development of the university’s pharmacy program.

Public & International Affairs
Gregory von Lehmen (MPA ’78, PhD ’86) of Adelphi, Md., was named provost of Mount Washington College. Anne Marie Chotvacs (MPA ’99) of Alexandria, Va., is majority clerk of the House State and Foreign Operations Appropriations Subcommittee.
Law alum to head state economic development office

Chris Carr (BBA ’95, JD ’99), former chief of staff to U.S. Sen. Johnny Isakson, was selected by Gov. Nathan Deal to become commissioner of the state Department of Economic Development. Carr replaces Chris Cummiskey (BBA ’96), who joined Southern Power, a Southern Co. subsidiary, as chief commercial officer. Cummiskey was economic development commissioner for two years, following a position as UGA director of state government relations. Carr began working for Isakson in 2004, running his Senate campaign.

Social Work
Jane Skinner (MSW ’09) of San Jose, Calif., published a scholarly article concerning retirement communities in The Journal of Housing for the Elderly.
Fenwick Broyard (MSW ’13) was named executive director of Community Connection of Northeast Georgia.

Veterinary Medicine
Stephen Schaefbauer (DVM ’06) was named to the Council on Public Health and Regulatory Veterinary Medicine for the American Veterinary Medical Association. Stic Harris (DVM ’09) of Gaithersburg, Md., was named a 2013-14 Future Leader by the American Veterinary Medical Association.
Elizabeth Antley (DVM ’13) received a Certificate of Merit for Proficiency in Small Animal Medicine and Surgery. Ashley Ballew (DVM ’13) received the Kaytee Avian and Special Species Excellence Award. Nicole Balsone (DVM ’13) received a Certificate of Merit for Proficiency in Small Animal Medicine and Surgery. Jessica Beck (DVM ’13) received a Certificate of Merit for Proficiency in Pathology. Stephanie Bradshaw (DVM ’13) received a Certificate of Merit for Proficiency in Large Animal Medicine and Surgery. Robert Campbell (DVM ’13) received a Certificate of Merit for Proficiency in Large Animal Medicine and Surgery. Victoria Churchill (DVM ’13) received the John Morton Award for Humane Animal Care. Cheryl Coplon (DVM ’13) received an Award for Proficiency in Emergency and Critical Care. Elizabeth Dale (DVM ’13) received a Certificate of Merit for Proficiency in Pathology. Zachary Daniel (DVM ’13) received the Award for Academic Excellence in Veterinary Ophthalmology. Alec Davern (DVM ’13) received the American College of Veterinary Surgeons Award. Ember Epperson (DVM ’13) received a Certificate of Merit for Proficiency in Pathology. Emily Falls (DVM ’13) received a Certificate of Merit for Proficiency in Small Animal Medicine and Surgery. Jennifer Trzezinski Given (DVM ’13) received the American College of Veterinary Surgeons Award. Robert Gooden (DVM ’13) was awarded the Outstanding Senior Oncology Student Scholarship. Justin Graham (DVM ’13) received the Food Animal Production Medicine Clinical Proficiency Award. Sawyer Howell (DVM ’13) received the Food Animal Production Medicine Clinical Proficiency Award. Anna Jeffers (DVM ’13) received a Certificate of Merit for Proficiency in Pathology. Dustin Major (DVM ’13) received the Novartis/Ethicon Surgical Excellence Award. Tori Moore (DVM ’13) received a Certificate of Merit for Proficiency in Large Animal Medicine and Surgery. Clara Moran (DVM ’13) was awarded the American College of Veterinary Internal Medicine Certificate of Clinical Excellence. She also received...
Humans of New York

Brandon Stanton’s blog pioneers a new form of storytelling

by Allyson Mann (MA ’92)

If you’re in New York City, and a guy wearing a backward baseball cap asks to take your photo, beware. Because it’s probably Brandon Stanton, and the next thing he’s going to do is ask you a few questions.

He might open with “What’s your greatest struggle?” or “What’s been your saddest moment?”

But he’s not just being nosy. Stanton (AB ’08) is the creator of Humans of New York, a photo blog with images and stories that offers a glimpse into the lives of New Yorkers.

HONY was born in 2010 when Stanton, who’d been trading bonds in Chicago, lost his job. He decided to spend a summer doing what he enjoyed—traveling and working on photography. Eventually he settled in New York with the idea of creating a photographic census of the city, an interactive map with images of people tagged to the location where they were shot.

But he soon noticed that his best images were not candid shots of people on the street, they were the portraits of people who agreed to stop and pose for him. And he started finding out more about his models, asking them questions and including a caption with his images.

“I think the main trajectory of the evolution of Humans of New York is that it’s gotten much more intimate,” Stanton says. “Now it can’t really even be described as a photography blog. It’s more of a storytelling blog, where I tell these people’s stories in images and words.”

In the early days Stanton borrowed money to pay rent, but a print sale bought him more time. He continued to hone his photography and interview skills, posting about six images a day and traveling to work in other locations like Boston, San Francisco and Iran.

Three years and 5,000 images later, HONY has an audience of more than a million (1.2 million Facebook likes plus 400,000 Tumblr and 130,000 Instagram followers). In October, St. Martin’s Press published Humans of New York, a collection of 400 photos and stories from the blog. And copycat blogs—Humans of Paris, Berlin and India, for example—have sprung up on Facebook.

There’s additional work that accompanies such growth, like HONY’s fundraising efforts, which brought in $500,000 during the past year for causes like Superstorm Sandy relief and Stanton’s local YMCA. But he still pounds the pavement every day, asking strangers if he can shoot their picture and learn a little about their life.

“I’m continually amazed by the amount of information and disclosure that these people are generous enough to give me on the streets,” he says, “and very amazing stories come out of it.”

GET MORE

www.humansofnewyork.com

“I’m a philosophy professor.”
“Never make an exception of yourself.”
“People like to make exceptions of themselves. They hold other people to moral codes that they aren’t willing to follow themselves. For example, people tend to think that if they tell a lie, it means they’re dishonest. So never make an exception of yourself. If you’re a thief, don’t complain about being robbed.”