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DEKALB D.A. SAYS NO CROSS-EXAMINATION AT PRELIMINARY HEARINGS

DeKalb County District Attorney, Gwen Keyes-Fleming, is asking DeKalb Magistrate Judges to rule that a criminal defendant has no right to cross-examine the state's witness at a preliminary hearing. The district attorney's office is filing motions in the magistrate court arguing that the court should "preclude cross-examination of the State's witness(es) during the preliminary hearing."

Relying upon *Gresham v. Edwards*, 281 Ga. 881 (2007) (hearsay admissible at preliminary hearing) and *In re T.F.*, 295 Ga. App. 417 (2008) (hearsay admissible at juvenile hearing), the motion contends that there is no right to a cross-examination during a preliminary hearing. The D.A.'s office further contends that to allow cross-examination of a police officer as to matters outside the evidence brought out by the state is a violation of the discovery statute and the Open Records Act.

Keyes-Fleming also wants to prevent the judge from asking the police officer questions designed to elicit information "in excess of the evidence adduced by the State to establish probable cause." The motion argues that "such additional evidence would be a violation of the Reciprocal Criminal Discovery Act and of the Open Records Act." According to the motion, "Any attempt by a judge to procure additional evidence—as opposed to clarification of existing evidence—would be "stepp[ing] beyond the role of arbiter and into that of advocate."

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Inside THE KING of All

PLEA

On Saturday October 13, 2007, Grammy award winning rapper T.I., real name Clifford Harris, age 27, was arrested on federal gun charges hours before he was scheduled to perform at the BET Hip Hop Awards in Atlanta. Harris was arrested in a federal sting when his bodyguard-turned-informant delivered three machine guns and two silencers to the hip-hop star. The sting began after Harris' bodyguard was arrested purchasing the machine guns and silencers from an un-



Rapper T.I. is serving a year and a day on federal weapons charges under a plea deal with federal prosecutors. Critics argue that T.I. received celebrity justice while those associated with the deal maintain he can and has used his position of influence to steer youth away from crime.

DEALS

dercover ATF agent. According to the bodyguard, he was buying the machine guns and silencers for Harris. The bodyguard then agreed to cooperate with the ATF and had several recorded phone conversations with the rapper. Harris was videotaped showing up to receive the weapons. He was arrested after inspecting the machine guns. At the time of his arrest there were three other guns in his car. Harris was indicted on three gun charges and faced 30 years in prison. See *Plea Deals* page 4.

RIGHT TO PUBLIC TRIAL MAY NOT INCLUDE JURY SELECTION

The Georgia Supreme Court recently upheld a trial judge's decision to order spectators out of the courtroom during jury selection. *Pressley v. State*, S08G1152. In *Pressley*, the judge ordered the uncle of the defendant out of the courtroom and off the sixth floor while the parties were selecting the jury. The defense attorney objected to the exclusion of the public and asked for some other accommodation.

On appeal, the Supreme Court recognized that a criminal defendant has the right to a public trial under the 6th and 14th Amendments to the United States Constitution. This right applies to jury selection. In order to exclude the public from a trial, there must be "an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Waller v. Georgia*, 467 U.S. 39, 48 (1984).

Continued on page 8.

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COURT DECISIONS

NO FINGER POINTING WITHOUT TESTIFYING

The Supreme Court of Georgia ruled that when, during the joint trial of two defendants, the State introduces part of one defendant's statement containing admissions of guilt, that defendant does not have the right to introduce other portions of the statement which point to the co-defendant's involvement. *Wilson v. State*, S08A1696.

In the *Wilson* case, co-defendants Wilson and Frazier had a jury trial and were convicted of murder. During the trial, a detective used the transcript of Wilson's interview with the police as evidence against Wilson. The interview had been recorded, but the judge prevented the State from

playing the recording because Wilson also implicated Frazier as a participant in the crimes. A statement by one co-defendant, who has not testified, that suggests the involvement of the other co-defendant is not admissible because it violates the second co-defendant's right to confront his accusers. This rule is based on the case *Bruton v. United States*, 391 U.S. 123 (1968).

Wilson wanted to play the entire recording of his interview with the police. He argued that Georgia law O.C.G.A. § 24-3-8) gives a defendant the right to admit the whole tape of an admission when the other side puts part of the statement with the admission into evidence. Since the State had put some of the admissions he made during the interview into evidence

through the detective, Wilson argued he should be allowed to play other portions of the tape. The judge would not allow Wilson to play the tape unless Wilson testified, saying it would violate the *Bruton* rule. On appeal, the Supreme Court of Georgia agreed with the judge, finding that it was proper to exclude that portion of Wilson's statement which pointed to Frazier's involvement because it did not also include Wilson's defense. If the portion of the statement Wilson sought to be admitted had pointed to Frazier but also contained Wilson's defense, then Wilson would be able to admit the tape and the defendants would have to be given separate trials.

DEFENDANT CAN'T USE HIS STATEMENT TO POLICE IN COURT

A statement made by a defendant to the police upon his or her arrest is not admissible during trial unless he testifies and is cross-examined by the prosecutor. The statement is considered a self-serving declaration and has no value. *Alexander v. State*, S08A1586. The Supreme Court in *Alexander* stated, "[t]he defendant is allowed to declare his innocence in court; he is not allowed to avoid this opportunity by pre-trial declarations of innocence."

PROSECUTOR CAN COMMENT ON DEFENDANT'S DEemeanOR DURING TRIAL

A prosecutor can, during closing argument, comment upon the demeanor of a defendant during trial, including that a defendant had a smirk on his face or made threatening gestures. *Murray v. State*, A09A0860; *Hardnett v. State*, S09A0566.

MAN GETS OF 5 COUNTS OF OBSTRUCTION DURING ONE ARREST

The Court of Appeals held that a man could be convicted of and sentenced for 5 counts of obstruction even though the obstruction occurred during one arrest executed by five officers. *Jackson v. State*, A08A2326. As long as the evidence showed that the defendant hindered each of the five officers during his arrest in distinct and separate ways, there was no violation of the rule prohibiting more than one conviction for the same crime.

DISMISSAL IS NOT AN ACQUITTAL

The entry of a nolle prosequi, commonly referred to as a dismissal, does not act as an acquittal or bar future prosecution for the same offense. The state has the authority to re-indict the defendant for the same offense. *Bell v. State*, A08A1785.

NOLO PLEA CAN'T BE USED AGAINST DEFENDANT

A plea of nolo contendere, also called a no contest plea, cannot be used against a defendant in any other court or proceeding as an admission of guilt or for any other purpose. *Hooper v. State*, S08A1654.

POLICE CAN TESTIFY SUBSTANCE IS MARIJUANA

Expert testimony is not required to prove that a substance is marijuana. If a police officer has adequate training and experience he can testify that a substance is marijuana. *Dulcio v. State*, A09A0673.

MUST REGISTER AS SEX OFFENDER EVEN IF NOT CONVICTED OF SEXUAL OFFENSE

The Court of Appeals recently held that a defendant had to register as a sex offender even though the crime that he pled guilty to was not a sexual crime. *Rogers v. State*, A09A0425. In *Rogers*, the defendant was charged with Aggravated Sexual Molestation. The charge was reduced to Aggravated Assault, and he entered an *Alford* plea (see page 4). Even though the judge did not order Rogers to register as a sexual offender, his probation officer said he was required to register. The Court of Appeals agreed with the probation officer. The Court held that the Aggravated Assault conviction was based on facts alleged in the indictment before the charge was reduced and those facts involved underlying conduct which was sexual. The court further held that Rogers had to register even though the judge did not impose it as a condition of his sentence.

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WITNESS ARRESTED FOR PERJURY NOT PROSECUTORIAL MISCONDUCT

The Supreme Court rejected a Defendant's claim that the prosecutor committed prosecutorial misconduct by arresting a witness who had testified contrary to her statement to police. *Cox v. State*, S08A1591. Cox argued that the state violated his right to a fair trial by arresting a witness who testified that Cox was at her home with her during the time of the crime.

The witness testified that she remembered talking to the police after the crimes, but could not remember telling them that Cox was not with her at the time of the crime. The witness was arrested and charged with perjury. The next day the State called the witness back to the stand and this time she testified that Cox was not with her. The Supreme Court ruled that because there was no testimony regarding the effect of her arrest on her changed testimony, there was no evidence that the State violated Georgia law which makes it a crime to deter a witness from testifying truthfully by communicating to the witness a threat of injury or damage to the witness. Chief Justice Sears dissented, arguing that the warrantless arrest did violate Cox's right to due process of law, but agreed with the other Justices that the violation did not contribute to Cox's conviction.

CO-DEFENDANTS DON'T GET EXTRA JURY STRIKES

During the trial of a criminal case, both the state and the defense get 9 strikes that can be used to strike a juror off the jury panel. As long as the strikes are not used based on race, gender or nationality, each side is free to use them as they choose. Recently, defendants in a joint trial argued that in a trial of more than one defendant, each defendant should receive 9 strikes. The Supreme Court disagreed, holding that both defendants get 9 strikes and must split them between the two. *Dixon v. State*, S09A0222. The Court explained that if each defendant were given the full 9 strikes it would be inconvenient and difficult to get juries.

GET AWAY DIVER MAY NOT BE PARTY TO THE CRIME

Any party to a crime who did not directly commit the crime may be convicted of the crime. A person is a party to the crime if he aids or abets in commission of the crime or intentionally advises, encourages, hires, counsels or gets someone else to commit the crime. Evidence of a defendant's conduct prior to, during, and after the crime can be used to show he was a party to the crime. "But driving a criminal perpetrator away from a crime scene with knowledge that he has committed the crime does not, in and of itself, render one guilty as a party to the crime." *Ratana v. State*, A09A0017.

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Plea Deals

In March 2008, T.I. pled guilty to two charges of illegally possessing firearms and one count of being a felon in possession of a firearm. He was represented by Attorneys, Dwight Thomas, Steve Sadow, Ed Garland, Don Samuel and Janice Singer. As part of the plea deal, T.I. had to perform at least 1000 hours of community service talking to kids about the dangers of crime, drugs, and gangs. At the time of the plea, he said, "I have a long road of redemption to travel ... I realize completely I violated the law, and I take it very seriously." A year later T.I. received a sentence of one year and a day, but with credit for good behavior the sentence could be a matter of months. Had T.I. not fulfilled the terms of the plea, the judge could have sentenced him up to 57 months.

Most criminal cases are disposed of by a plea deal. A plea deal like T.I.'s usually begins when a prosecutor makes a plea offer to the defense. Among the factors a prosecutor considers are the nature of the crime alleged, the defendant's criminal history, and any input from the alleged victim. In T.I.'s case there was no victim. Prosecutors had served notice that they intended to introduce evidence that on three prior occasions in 2001, 2002, and 2003, T.I. had unlawfully possessed guns, ammunition, and a silencer, all after having been convicted of a felony offense.

Despite his criminal history, his lawyers were able to get a deal for a minimal amount of prison time because he also had a history of good deeds. "He had a lot of good will. He had been helping people for years without any

interest in getting public recognition," says Thomas. However, without the prosecutor in agreement no deal was possible. According to Sadow, T.I.'s defense team began the plea negotiations by submitting a thorough plea proposal drafted by Samuel which was the result of their investigation of the facts and legal issues. Sadow adds that although the defense team felt that they had a defensible case, it was important that T.I.'s career was not jeopardized. Thomas says that he will always give credit to U.S. Attorney David Nahmius for understanding the tremendous benefit a plea deal could have on crime prevention. "He deserves the utmost respect and admiration for recognizing the value T.I. had to stop crime from happening in the first place," says Thomas. For his part, Nahmius defended the plea deal. "If Mr. Harris performs as expected, his efforts and ability to reach and influence a large number of young people should prevent and deter at least some of them from committing crimes that endanger their communities and ruin their lives," Nahmius said. Sadow also credits Nahmius for giving T.I. consideration for his efforts to get to people before they commit crimes in the same way defendants who become informants are given credit for their cooperation against other defendants. T.I. did not become an informant, but Sadow feels he had as great an effect on crime prevention as informants have on future prosecutions.

Once the prosecution makes a plea offer, the defense can make a counter-offer or simply accept the state's offer. The end result of the discussions between the prosecution and defense is a negotiated plea agreement which is in essence a contract between the state and the accused. *Clue v. State*, 273 Ga. App. 672 (2005). Thomas said that T.I.'s case was handled no different than any other case. "You analyze the facts and the law to determine what is in the best interest of your client," says Thomas. The judge cannot participate in the plea negotiations between the prosecution and the defense. However, the prosecution and defense can present a proposed plea agreement to the judge, and the judge is allowed to

indicate whether he/she is likely to accept the plea as presented. Uniform Superior Court Rule 33.5.

A defendant entering a guilty plea gives up the right to a jury trial and all defenses the person may have at trial including the right to remain silent and the right to question the witnesses against him. However, a defendant does not have a right to plead guilty, and the judge is not required to accept the guilty plea. *Bullard v. State* 263 Ga. 682 (1993). Sadow believes that the judge gave the plea deal a chance, because if T.I. did not fulfill the conditions of his plea, he could be stuck with a sentence of several years. If the judge decides not to accept a negotiated sentence, the defendant can take back the plea of guilty, and the fact that the defendant wanted to plead guilty cannot be used against him at trial. *Shoemaker v. State*, 213 Ga. App. 528 (1994). Likewise, a defendant may not mention during trial the prosecutor's offer of a negotiated plea. *Davis v. State*, 255 Ga. 598 (1986).

In addition to a negotiated guilty plea, a defendant may enter a non-negotiated plea. In a non-negotiated plea, the prosecutor and defense have not reached any agreement as to sentence. They can make a recommendation to the judge, but once the judge makes a decision, the defendant cannot take his plea back. *Skinner v. State*, A09A0773. The defendant has essentially thrown himself on the mercy of the court and has to accept the sentence the judge imposes.

T.I. admitted that he was in fact guilty and was given credit for accepting responsibility. However, a defendant may enter a guilty plea without admitting that he is in fact guilty of the crime. This plea is called an *Alford* plea after the case *North Carolina v. Alford*, 400 U.S. 25 (1970). However, if the plea is a negotiated plea, the state must agree to the *Alford* plea. Even if the state does not oppose an *Alford* plea, the judge does not have to accept the defendant's *Alford* plea. *Jackson v. State*, 251 Ga. App. 578 (2001).

A motion to withdraw a guilty plea must be brought within the same term of court that the plea was entered. The terms of court are found in O.C.G.A. § 15-6-3. However, neither the judge nor the prosecutor has to tell the defendant at the time of the plea that he has to ask to withdraw his plea during the term of court. *Bennett v. State*, A08A0589. A defendant who files a motion to withdraw his guilty plea during the term of court is entitled to have a lawyer appointed to assist him in challenging the guilty plea. *Fortson v. State*, 272 Ga. 457 (2000). After the term of court, the judge has no authority to withdraw a guilty plea, and the defendant must challenge the guilty plea by a habeas corpus action. *Davis v. State*, 274 Ga. 865 (2002).

There is no unqualified right to appeal from a guilty plea. An appeal from a guilty plea is only permitted if the issues the defendant wants to raise can be determined by a review of the transcript of the guilty plea. *Clayton v. State*, S09A0531. There will be no appeal in T.I.'s case. Like most plea deals, each side got something out of the bargain. "Although I am not thrilled about my next year and a day," said T.I., "I am pleased that I am beginning to put this all behind me." Thomas adds, "Everyone wants to see this work out the way it is supposed to." They hope T.I. will continue to inspire the youth to be their best and avoid the criminal justice system.



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Rising Number of Gangs In Metro Atlanta Have Attention Of Police & District Attorney

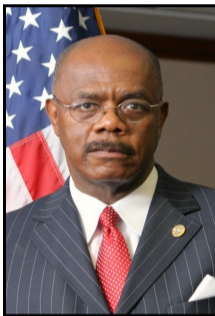
By Donnell Suggs

I moved to Atlanta from Brooklyn, New York in the summer of 2006. Immediately after I walked through the automatic doors at Hartsfield-Jackson airport onto the street I realized it was as hot a day as I have ever felt in my life. Already having locked down a job that officially started in two days, I just needed a place to stay before I started looking for an apartment. To save money, I decided to stay at a hotel near my new place of employment. The hotel was on Boulevard Avenue and North Avenue. Coming from New York, I wasn't surprised by the guys hanging out on the corners or alarmed by the noisy evening street arguments that I regularly heard from my room on the second floor. I was used to that. What surprised me were the groups of young men hanging out on the corners or by the gas stations. That was not what I thought about when I pictured a southern city, especially Atlanta, the south's crown jewel of urban renewal and achievement. These couldn't be gangs could it? Atlanta has gangs?

During a recent interview with Fulton County District Attorney Paul Howard regarding the rising number of gangs and gang violence in metro Atlanta, I got the answer to my three year old question. Yes there are a number of gangs that have taken root here in Atlanta; Howard assured me. "I want to alert the public to the fact that these young people are being recruited into this gang life," says Howard. "These are our children that are joining these gangs either for protection or a sense of belonging, something has to be done," he adds. Beginning in 2008, the Fulton County District Attorney's office took a step towards getting something done by creating their own gang unit. The unit consists of two prosecutors, an investigator, and an administrator who handle all of the gang related cases that come through the office. In little over a year, the team has been assigned over twenty cases, seventeen of which involve at least one death. There is no major American city without its fair share of crime. What is most discouraging are the ages of those being accused. "What alarms me the most is not the violence involved with the crimes, it's the age of the people involved," Howard said. He continued, "There is a

young man currently accused of murder in a gang related case who is fourteen years old." Other jurisdictions have also taken notice. DeKalb County District Attorney Gwen Keyes-Fleming has created a gang division within her office as well.

There is a huge misconception that Atlanta's gangs stem from and only operate in concentrated areas of the city. According to



"I want to alert the public to the fact that these young people are being recruited into this gang life."

District Attorney Paul L. Howard, Jr.

Atlanta Police Department Homicide Lieutenant Keith Meadows, Atlanta's south west, southeast and northwest territories house the majority of gangs in the city, but that doesn't mean gang associated crimes only occur in those areas. There has been a recent increase in "smash and grabs," the stealing of whatever is within arms reach without the use of firearms and sometimes even violence. These occur mostly in areas like the Virginia-Highlands, far from the zones most associated with the city's violence. Items such as flat screen televisions, due to their light weight, and clothing, preferably jeans, costing as much as \$600 per pair at certain trendy boutiques that don't normally have much security, are the most targeted items due to their high street resale value. There have been plenty of arrests but that doesn't seem to have slowed the crime rate much. Lt. Meadows points out that gangs are operating more intelligently than ever before. He says, "It's a must that we keep a step ahead".

Despite the best efforts of the police department and District Attorney, gang member recruitment is in full swing throughout the penitentiary system. Young men are join-

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ing gangs inside of jail to better adapt and come home full fledged gang bangers looking to start their own 'sets'-gangs are broken down by the area they inhabit-within their old neighborhoods. There has also been an influx of out-of-state gangs from southern states such as Arkansas and Alabama, and as far away as Chicago and California moving into Georgia.

The Atlanta Police have reason to believe the gangs are behind many of the recent smash and grabs. There is hope though, Atlanta Police are now redirecting their focus and are having success according to Lt. Meadows. "We're focusing more on arresting individual members, weakening the gangs from the inside-out, and we're making progress," he says. He points out that this is not just a law enforcement issue, it's a community issue. He says, "We need everyone to step up and give us a call if they know or see anything. You can stop these gangs from taking hold of your neighborhood before it becomes too late." District Attorney Howard agrees that the issue of gangs and gang violence belongs as much to the community as it does to the legal and law enforcement departments. Howard says, "This is a direct challenge to our parents, church leaders, political leaders, all of us."

COMMUNITY SPOTLIGHT

A REFUGE *for* Parents Of Murdered Children

By Aleta Sinkfield

Children being murdered. Why? In the natural order of things, parents usually die before their children. For death to occur the other way around, is thought to be unnatural. "The worst is losing a child. It is two things you never really get over, losing a mother and losing a child," says Katherine Warthen. She lost her youngest son January 1996, to gun violence. She passes the street everyday where her son was murdered but refuses to look in that direction.

According to a report by Northeastern University, "Homicide rates have remained stable in recent years, with the exception of one group: black teenaged boys." The authors of the study, criminology professors James Alan Fox and Marc Swatt, explain that the number of black murdered victims rose more than 31 percent from 2002 to 2007. The perpetrator? Another young, black male. Fox and Swatt point out that over the same period, the number of young black perpetrators of murder rose by 43 percent. Most murders involved gun violence.

It is so final. In an instant, lives change with the reality of a child being murdered. Warthen says she wants the perpetrator to know "he took a part of my life" in shooting and killing her son. "Not a day goes by when I don't think about my son," Warthen says. Murder not only takes the victims from this life, it takes life from the victims' friends, community, and parents.

Though statistics of murdered children are said to be higher for one race/group of people, the pain is no less for a parent of another race/group when losing a child to murder. Murder does not discriminate nor warn of its arrival. The heartache it brings is unbearable, especially to the parents bearing the pain and anger of a selfish, senseless act. A child being murdered brings initial shock, disbelief, and confusion. "I was in a state of shock for a minute," is how Annette Leonard described feeling when notified of her son's death. His death was also due to gun violence.



It is unfair for one who has not experienced having a child murdered to approach a parent of a murdered child to say they know how the grieving parents feel. Warthen was "torn up, burst into tears and became hysterical" at the news of her son's death. She did not go to the crime scene which was eight houses down from her home.

Parents of murdered children need a refuge to release their pain, anger and even hate. Some parents seek help. Some parents do not. For those seeking refuge from hurt and grief, Parents of Murdered Children, Inc. (POMC), is available for families of those who have died by violence. It is a non-profit group operated with grants and donations.

Founded in 1978 by Charlotte and Robert Hullinger, POMC is "based on the idea that grief must be shared." The Hullingers founded the organization three months after their daughter was murdered. POMC provides the ongoing emotional support needed to help parents and other survivors deal with their acute grief while promoting a healthy resolution.

Organization members feel POMC provides support not available through counselors or other victim assistance programs since 99 percent of their board members are relatives of victims of murder. This way, people are receiving support from other parents and survivors who know first hand the feelings associated with a child being murdered.

Leonard received support from friends, co-workers and counseling provided by her employer. She took two weeks (bereavement) from her job. After returning to work, she realized she was not doing well with her son's death. "I thought I could handle it, but I could not," she said. Personnel on her job recommended she take a month off and attend counseling sessions with the Employee Assistance Program (EAP). Leonard said it did not help. "I didn't get anything out of sitting talking to a stranger for eight sessions," Leonard says. Unlike Leonard's experience with counseling, Warthen said, "It helped going to family crisis counseling" which she still attends. "I was able to talk with other grieving parents. Just talking helped," she added. In addition to counseling, Warthen was pre-

scribed medication for depression.

Most parents say they never recover from the loss of their child. Some seek counseling, medication, or find comfort in their religion. Unfortunately, some neglect their other children or contemplate suicide. It is a vicious torment of pain. It is a process of healing not to be measured against anything else happening in their life. The constant play back of "what if's" pertaining to their murdered child, accompanied by sleepless nights can consume one's mental state. Parents wonder if their child suffered at the hand of their perpetrator. It is a haunting thought. Warthen asks herself everyday, "Why didn't he (her son) just run" as the car rounded the corner for a second time before the perpetrator started shooting. It puzzles her to this day. Holidays, birthdays, and other celebrations do not have the same meaning. With the parent of a murdered child, another date is added to memory -- the day their child was murdered.

Parents can share their grief with understanding from others. With chapters across the United States, POMC provides assistance and support to over 100,000 survivors each year. The only Georgia chapter is in Clayton County. The contact person for the Clayton County Chapter is Rene Glaspie-Willis. Her number is (404) 242-8735. Survivors of murdered children wanting to start a POMC chapter should contact the National Organization of POMC," said Nancy Ruhe, executive director, at (888) 818-7662 or natl-pomc@aol.com.

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SOJ What is your background?

T.D. I was born in Augusta and moved to Irwinton, Georgia when my dad was in medical school. That's where I grew up. I went to the University of Georgia for undergraduate and law school. My wife and I got married when we were both in undergraduate school so I worked part time all the way through law school. I spent 9 years as an active Navy Advocate Judge followed by 14 years in the reserves. I worked 17 years in the Gwinnett County District Attorney's Office before being appointed to the bench.

SOJ What is the most fun part of your job?

T.D. There are two things that a Superior Court Judge does that are pure fun. One of those is adoption and the other one is swearing in new lawyers. I do a lot of things that are satisfying but those are the two that are pure fun. Adoption wins by a small margin over swearing in new lawyers. Although, I try to make a big deal out of swearing in lawyers because it's an important milestone in someone's life.

SOJ What has been the most challenging aspect of caseload management?

T.D. The flood of civil cases that I started with. When I started back in 2006, I was coming from the D.A.'s office directly to Superior Court. They could not give me any criminal cases because I was conflicted out of those because I was the Deputy District Attorney. I had the desire to do everything at once because a lot of the cases that were transferred to me were old complex type litigation. The hardest thing about that quite frankly is getting enough patience to realize that you can't do it all in 6 weeks or 6 months. You have to establish a system of priorities of who you are going to bring into court.

SOJ Do you accept waivers of arraignment?

T.D. We do. Our waivers are on a particular form. We generally insist that the defendant has signed off on it rather than just counsel. I view that as protection for the lawyer as much as anything else.

SOJ How far in advance do they need to be received?

T.D. I think the goal is to have them in 48 hours ahead of time so that everybody whose involved and who is transporting people from the jail know who needs to come to court.

SOJ Do you accept conflict letters by fax?

T.D. Yes.

SOJ When a criminal matter comes before you for bond, do you weigh any of the factors more heavily than the others.

T.D. I don't go into any particular bond hearing with any sort of set procedure for how I weigh the different factors that I have to go through. I view all four of the statutory matters equally in that I have to be satisfied to a certain degree before I can say that a person is entitled to a bond. The approach I take to bonds is different based on the individual, the facts of the particular case, and what they are charged with. But I don't have any preset notions of any of that. I set bonds for people who have been alleged to have committed armed robberies. There are people who are charged with crimes that are less serious than a violent crime that I have not put on bond be-



cause of their prior record. It's a sliding scale and I never know how it stacks up until I hear all the information. That's why I am very interested in hearing from the defense attorney about the client's situation.

SOJ In considering a case, is the seriousness of the offense itself something that causes you to feel that bond isn't appropriate?

T.D. Not standing alone. The nature of the crime that is alleged is something that I think any judge takes into account. Also, past behavior as it relates to the bond factor concerning the risk to commit other felonies. I can honestly say that I have never refused to give someone a bond just because they are charged with murder or armed robbery. In most cases, I usually explain to the defendant what it is that I have to be able to find and what the four factors are that I am dealing with. If I have a problem with one of them, I tell them what it is and why. I don't think I've ever made a bond decision just on the charge and I think it will be wrong for me to do so. I think that's an abdication of the responsibility and authority that I have. I asked for this job because I wanted more accountability and more responsibility. It doesn't make sense to me to ask for it and not be willing to exercise it.

SOJ Do you look at mandatory minimums any differently as a judge as you did as a prosecutor?

T.D. No, I look at them exactly the same way. I am not a big fan of them. I recognize that the legislature is the group that is empowered to give us the rules that we play by. I bend to the will of the legislature in that regard. I never have been a big fan of mandatory minimums either as a judge or as a prosecutor. I think most judges will say that they want maximum flexibility to deal with the cases that come before them because every case is different. You can't do cookie cutter justice from case to case because we're dealing with human beings.

SOJ Do you engage in pretrial discussions?

T.D. I view the superior court rule that for-

bids me from taking part in pretrial negotiations very seriously. I think that the rule limits me to confirming for two lawyers who have agreed on something that I'll take their plea or that I won't. But if two lawyers come to me wanting to have a pre-trial conference, and they have not even agreed on a negotiated plea, I will not even talk to them. I will not get in the middle of listening to both sides tell me what they think I ought to do on a criminal case and then having to pick a sentence. I think that's specifically what the superior court rule tells me not to do.

SOJ Do you accept blind pleas, and do you allow for their withdraw?

T.D. Up until the time I pronounce the sentence, the defendant can withdraw as a matter of right. After that, it's a question of whether they have good cause. I have non-negotiated pleas come in all the time. The D.A.'s who work in my court room make sure the defendant understands that if it is a non-negotiated plea, I can give them any sentence up to the maximum and that once that sentence is announced there is no right to withdraw the plea. They can ask for it, but it's a matter that I will examine at that time. The same holds true on a negotiated plea. I make sure that the defendant understands that if I am going to deviate in any way from the recommended sentence on a negotiated plea, I give them a chance to withdraw that plea.

SOJ Do you feel that it is appropriate to impose a greater sentence because the defendant has elected not to accept responsibility when the facts are pretty strong against them going to trial?

T.D. If a person comes before me and accepts responsibility for what they did, that is the person that I am most impressed with; a person who looks me in the eye and says, "Judge I did it, and I'll carry the weight for it. I'm not blaming it on my mother and how she raised me. I'm not blaming it on the wrong crowd." That person impresses me quite frankly. I don't view additional time after a trial guilty verdict as punishment for going to trial. Another way to look at what a case is really worth from a punishment stand point is what you find at the end of a trial because you heard all the evidence and everybody has had the chance to come before the jury and say this is what happened. At the end of the trial you know as much about that case that you're ever going to know as a prosecutor, defense counsel, or judge. Once you have heard all that information, that case, from a sentencing stand point, may call for a sentence of X. If somebody were willing to come in earlier in the process, then, as a frank recognition of how criminal cases unfold, they might be sentenced at X minus a certain amount. Continued on page 8.

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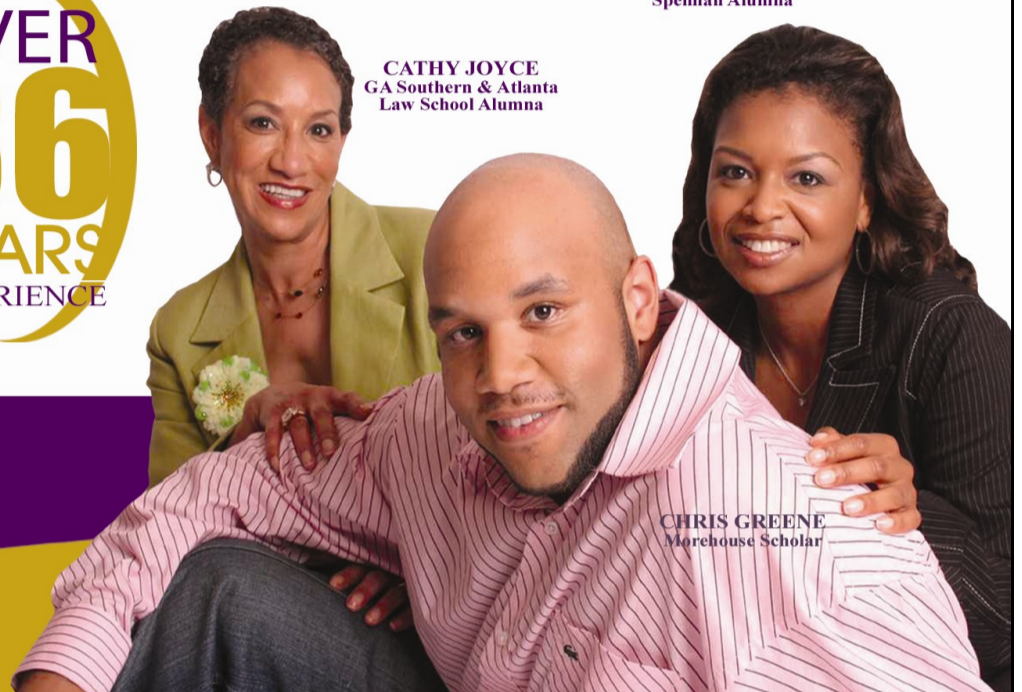
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PUBLIC TRIAL cont from p.1

The Supreme Court found that the trial judge had an overriding interest in ensuring that potential jurors did not hear any prejudicial remarks from observers. The Supreme Court also found that the order excluding the uncle was not overbroad because observers would be allowed back into the courtroom after jury selection. As far as considering “reasonable alternatives to closing the proceeding,” the Supreme Court pointed out that the defense attorney did not suggest any alternatives. The Supreme Court held that when there is no discussion on the record as to alternatives, “it can be inferred that the trial court, in ordering closure, determined that no lesser alternative would protect the articulated interest.” The Supreme Court held that “the party opposed to closing the proceedings must alert the court to any alternative procedures that allegedly would equally preserve the interest.” Therefore, Pressley had to present the judge with any alternatives he wished the judge to consider.

Chief Justice Sears wrote a dissent, joined by Presiding Justice Hunstein. “A room that is so small that it cannot accommodate the public is a room that is too small to accommodate a constitutional criminal trial,” wrote Chief Justice Sears. She pointed out that closing the courtroom was not required by space considerations or due to any conduct of the spectators. According to Chief Justice Sears, the trial judge had the obligation to consider alternatives to closing the courtroom, and it was not appropriate to shift this burden to the defendant. The dissent found it “troubling” that the decision appears to permit closure of the courtroom during jury selection in every criminal case.

NO COOKIE CUTTER JUSTICE cont from p. 7

It’s not any set formula. I have had cases where I end up sentencing the person to less than the recommendation for the plea even at the end of the trial.

SOJ Do you impose a deadline for a negotiated plea ?

T.D. No, it’s not up to me to decide whether or not the state and the defense want to enter a negotiated plea or to tell the parties that they either have a negotiated plea by a certain date or from then on they can’t negotiate. I do think that calendar call is the day to take pleas and that the trial week should be reserved for trials.

SOJ After a verdict, do you generally communicate with the jury?

T.D. I generally ask the jury if they have any questions about the process. I more often do that in open court. As a judge, I’ve never answered the question, “Judge, what do you think about a case from a factual standpoint or who should have won or who should have lost?” I never will because I don’t have to. That’s the jurors’ decision.

SOJ Do you have any approach to handling speedy trial demands?

T.D. I tell both sides that I am trying to get them in as quickly as possible. If I have a very serious violent felony case already planned and somebody drops a speedy on another case, depending on how many months I have to get to that speedy case, I may not make it the next case I try. I will generally put it on every trial calendar from that time.

SOJ What are your hobbies and musical tastes?

T.D. I try to play a lot of tennis. I am an unabashed member of the Georgia Bulldog Nation. I’ll try to get over to see three or four baseball games and tennis matches. My wife and I both like to garden. In my CD player I have Allison Craft, Lucinda Williams, Mary Gauthier, Joe Cocker. When I was thirteen to sixteen, I was in a garage band. I listened to the Beatles and Rolling Stones. So I like all that stuff from the sixties. I’m bad about buying CD’s for one song. Number two on Joe Cocker’s greatest hits “Feeling All Right” is one of my favorite songs of all time, and I bought the CD because it had a good version of it.