

# NEWSLETTER

Dear Sandy Springs Bar Members,

Congratulations and best wishes to our very own, Ken Shigley, as he becomes State Bar of Georgia President this weekend.

I am very excited to announce that we will have not one, but two wonderful and special guests as our June speakers.

We will first hear from the Mayor of Sandy Springs for about 15 or 20 minutes to give us an update on the city of Sandy Springs economic developments, etc.. and then followed by The Honorable Robert Leonard, Judge, State Court of Cobb County.

Best Regards,

Fariba Bayani  
President, Sandy Springs Bar Association

## Thank You!!

Thank you very much to Dean Richardson Lynn, for speaking to our members at our May meeting.

### JUNE MONTHLY MEETING



**JUDGE ROBERT LEONARD**  
*with Special Guest*  
**SANDY SPRINGS MAYOR**  
**EVA GALAMBOS**

**DATE**  
**JUNE 9th, 2011**

#### LOCATION

[Click For Map](#)

Five Seasons at the Prado  
11:45 to 1:00 - \$15.00  
Atlanta, GA 30346

11:45 to 1:00 - \$15.00

#### MEMBERSHIP DUES/INQUIRIES

DUES SHOULD BE SENT TO:

**Mr. Joe Nagel**

6100 Lake Forest Drive  
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Atlanta, GA 30328



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## Member Announcements

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### Congratulations!

The State Bar of Georgia has re-appointed David S. Crawford of Eason, Kennedy & Crawford to the 2011-2012 Professionalism Committee.

This Committee is chaired by Donald R. Donovan, Paulding County District Attorney and consists of attorney members from throughout Georgia and a public lay member. The committee is charged with the duty of considering and making recommendations to the Executive Committee and Board of Governors as necessary to advance professionalism in the practice of law.

It shall concern itself with the various facets of professionalism including knowledge, technical skill, integrity in relations with both clients and courts, dedication to the law and public good, and ultimately the providing of competent legal services to the public.

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## Sandy Springs Commerce Building:

**(1) Office space available starting at \$595/month; and**

**(2) Law office space sharing available in nice law office currently used by two attorneys (third attorney retired). One attorney specializes in transactional law and other specializes in family law. Cost negotiable.**

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**A PROLOGUE TO THE PRELIMINARY EXAMINATION:  
THE EVOLVING ROLE OF PARTICIPANTS DURING VOIR DIRE**

A jury trial demonstrates the heart of the adversarial system and exposes some gross inequities in the American legal system due to juror bias and prejudice. This essay provides a study of the voir dire stage and attempts to bring about a change. The catalyst for change is rooted in a quest for truth and justice. In Georgia, every court's judges are charged with the duty of administering justice and maintaining dignity and authority of the Court.[FN1] Here, we examine the evolving role of participants, including the attorneys and the trial judge during the preliminary examination of prospective jurors.

The voir dire is the beginning phase of a jury trial. The Honorable Braswell D. Deen, Jr., former Chief Judge, Court of Appeals of Georgia, addressed the history of voir dire and jury function in his book *Deen's List: ABC's on ADR*, (Wolfe Publishing 1995). Judge Deen noted the term is of French origin brought to England in 1066 when the Normans conquered England. "Voir" means to see the juror and "Dire" means to hear the juror respond to questions that may be asked to determine that all are impartial and fair. Additionally, it has been said that a jury of 6 or 12 persons is "a cross-section of the community, with different experiences, different backgrounds and from which differences you will be able to arrive at the truth by using the combination of your collective common sense." [FN2] Thus, jury selection is very important to the trial lawyer, and voir dire is the chief impetus eliminating juror bias and prejudice.

But, trial judges resolute on relieving congested dockets have limited attorney participation. Trial judges have frequently narrowed the parameters to keep attorneys from arguing their case or educating potential jurors prematurely. "In fact, appellate courts typically 'will refuse to find error regardless of what questions the trial court allowed or refused'". [FN3]

It is axiomatic that attorneys are familiar with their clients, case facts and opposing arguments whereas the trial judge may have seen the court record for the first time at the pretrial conference. Accordingly, a trial judge exercising restraint should give the broader portion of voir dire to the attorney. Careful wording of voir dire questions will limit the need for the trial judges intervention.

The landmark case of *Walls v. Kim*, 275 Ga. 177 (2001), condemned the practice of juror rehabilitation by trial Courts in situations where the juror admits to facts demonstrating bias.[FN4] Accordingly, the trial Court is no longer permitted to utilize the "magic question" that usually went as follows: "Will you be able to put aside any preconceived thoughts or notions, listen to the evidence and the Court's instructions, and decide this case fairly without favor to either party?" [FN5] This magic question did nothing to rehabilitate the biased juror.[FN6] Thus, the Supreme Court of Georgia has now enunciated the threshold rule that the solution is not to rehabilitate, but to excuse the biased juror. [FN7]

With this pronouncement in mind, counsel and trial judges must remain diligent in efforts to root out biased jurors. Nonetheless, you cannot ask jurors how they would decide the particular facts of your case, even if those facts are stated as hypothetical.[FN8] Yet, more recently hypothetical questions probing for juror bias against certain witnesses, who used drugs was allowed by the trial Court.[FN9] .Thus, preliminary examination questioning is evolving.

Richard J. Crawford's article in *American Journal of Trial Advocacy* provides a foundation for question construction. The article recounts effective question construction as:

- 1) What are your thoughts in that area?
- 2) How do you feel about that concept?
- 3) Can you discuss how your background and experience might affect your evaluation of such issues?
- 4) What impressions first come to your mind when you think of the items we have been discussing here?
- 5) What kinds of factors can you list which might be important to you when trying to resolve this kind of issue?
- 6) Would you discuss the items in your background which might be helpful or even hurtful in trying to evaluate the dimensions of this case you have heard listed so far?

“Such questions clearly probe bias far better than yes or no questions, and they also reduce the risk of stepping outside case law parameters.”[FN 10]

A consequence of the revised question construction is less intervention by the trial judge. Moreover, the potential juror's response will help cultivate peremptory challenges. “All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the Court.”[FN11] Thus, thorough preliminary examination benefits the parties, attorneys and trial judge.

In one study, “the average total examination time of court-conducted voir dire required 64 minutes, as compared to counsel-conducted voir dire of 111 minutes.”[FN12] In comparison, the difference in time is not that significant.

For these reasons, broadened attorney led voir dire will benefit the Civil Justice System in America and help the trial judge ensure that a fair and impartial jury is seated.

**Researched and written by David S. Crawford.**

David S. Crawford, Esq. practices throughout the State of Georgia in the area of Torts and Criminal Law. He is the Immediate Past President of the Sandy Springs Bar Association, and is on the Board of Governors of the Southern Trial Lawyers Association (STLA), as well as many other organizations.

- FN1 *Johnson v. State*, 177 Ga. 881, 171 S.E. 699 (1933);
- FN2 *Deen's List: ABC's on ADR*, (Wolfe Publishing 1995);
- FN3 *20 Am. J. Trial Advoc.*, 645 (1997); Cf Charles Alan Wright, *Federal Practice and Procedure*, §2482 (2d Ed. 1991);
- FN4 *Walls v. Kim*, 275 Ga. 177 (2001); cert. granted from 250 Ga. App. 259 (2001);
- FN5 Rosser Adams Malone, Esq. *Can Your Jury Compensate Human Harm?*; Southern Trial Lawyers Association, *A New Beginning* Seminar, 2/7/02;
- FN6 *Id.*;
- FN7 *Id.*;
- FN8 *Hart v. State*, 137 Ga. App. 644, 224 S.E.2d 755 (1976);
- FN9 *Green v. State*, 221 Ga.App. 694, 472 SE2d 457 (1996);
- FN10 *20 Am. J. Trial Advoc.*, 645 (1997);
- FN11 28 USC §1870 (West Group 1999);
- FN12 Fred D. Howard, *Judge versus Attorney - Conducted Voir Dire*, 4 Oct. Utah B.J. 13, 14 (quoting *State v. Ball*, 685 P.2d 1055, 1058 (Utah 1980)).

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## LUNCHEON HIGHLIGHTS

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