

RR: 110 047: 050000
 ATTOR: TINKLER, WILLIAM
 150 E BONDGE DE LEON AVE
 UNIT: 200 PAP/SVC: FOR /50
 ATTORNEY AT LAW

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DAILY REPORT

A SMART READ FOR SMART READERS



IN RECESS
 Mark Immelman, right, has coached Larry Mize, a current Champions player and other pros, including brother Trevor, '08 Masters champ. Page 10.

Newsreel

Fisher & Phillips gross up 10 percent in '08

Labor and employment firm Fisher & Phillips didn't quite meet its 2008 expectations, said managing partner Roger K. Quillen, but it still enjoyed a "pretty good year." The firm's gross revenue was \$90.8 million, up 10 percent from 2007's \$82.5 million. Net compensation to equity partners was only up 1.2 percent, from \$36.8 million in 2007 to \$37.2 million in 2008.

But promotions for some associates and the reclassification of some equity partners to non-equity status resulted in a tripling of the number of non-equity partners from 6 to 18. Those moves meant that total compensation to non-equity partners jumped 148.8 percent, from \$1.3 million in 2007 to \$3.3 million in 2008, or \$182,307 per non-equity partner.

The firm had 92 equity partners in 2007, but that figure dropped to 86 in 2008. Profits per equity partner rose 8.3 percent, from \$399,520 in 2007 to \$432,563 in 2008. Combined net for both equity and non-equity partners was up 6.3 percent, from \$38.1 million in 2007 to \$40.5 million in 2008.

The total lawyer head count for the firm was up 5.2 percent, from 182.5 in 2007 to 192 in 2008.

Quillen said that, while the corporate slowdown impacted the firm's business, other areas opened up.

"When the economy became weak in the second half of '08, we saw a decline in billable hours, with clients trying to pull in their hours, putting off things like preventive practices—the type of work companies do when times are good."

But, he noted, "we had seen a decline in new federal employment discrimination cases; in '08, that started to turn around. ... There were probably close to 20,000 in 2006; by the end of 2007, it was down to 15,000 or less. Then it went back up a couple of thousand in '08."

"When the economy is soft and unemployment is high," he explains, "people tend to stay and fight rather than just find another job."

—Greg Land

4 BALANCING ACT
 Michael H. Trotter: Higher taxes on the rich is the only way to balance the federal budget.

4 NOT AN OPTION
 Defense lawyer: Mandatory pro bono work isn't the answer to the ailing PD system.

PARTNER PAY CUT
 Read about DLA Piper's decision to cut partner pay at DailyReportOnline.com.

1B OPINIONS
 Read summaries of recent opinions from Georgia's high court and Court of Appeals.



ZACHARY D. PORTER/DAILY REPORT
 Georgia State University law student Billy Corriher said, "It'd like to be in Atlanta, but at this point I can't restrict my search to one geographic area."

Students wary of job market

LAW STUDENTS AT JOB FAIR say there is fierce competition for limited jobs

BY MEREDITH HOBBS

THE MOOD at a regional job fair for law students Friday was understandably more anxious than usual. "It's looking awful out there," said one 3L, William D. Corriher, who is seeking a job in public interest law.

The Spring Southeast Legal Hiring Conference, held at Georgia State University's College of Law, drew students from 13 South-eastern schools. Twelve employers attended, mainly to interview previously vetted candidates. The mix of government agencies, See *Students*, page 5

High court OKs closed courtroom

DEKALB JUDGE SAID there wasn't enough space in courtroom for both spectators and potential jurors

BY ALYSON M. PALMER

A CASE ABOUT closed courtrooms is showing Atlanta criminal defense attorney Herbert Shafer that life in the law can come full circle.

Shafer nearly 25 years ago won a U.S. Supreme Court decision holding that a Fulton County judge had violated the Constitution by shutting the public out of a courtroom during a hearing on a motion to suppress evidence.

But on Monday, a 5-2 majority of the Supreme Court of Georgia ruled that Shafer's case, *Waller v. Georgia*, 467 U.S. 39 (1984), did not prevent a DeKalb County judge from closing the courtroom during jury selection on the ground that there wasn't enough room for both spectators and potential jurors.

Shafer represented the DeKalb defendant, Eric Presley, during the trial but not on appeal to the state high court.

Told of the decision Monday, Shafer, who has been practicing since 1950 and continues his practice at age 88, said that his former client should ask the nation's highest court for help. "He will get review," said Shafer, "because it's clearly



ALYSON M. PALMER
 Justice Harris Hines wrote for the court's 5-2 majority.



ZACHARY D. PORTER/DAILY REPORT
 Chief Justice Leah Ward Sears dissented, predicting major impact.

contrary to controlling jurisprudence."

Getting the U.S. Supreme Court's attention is akin to winning the lottery, but Gerard B. Kleinrock of the DeKalb County Public Defender's Office, who represented Presley, said the appeal decided Monday, said

See *Court*, page 8

► **GEORGIA SUPREME COURT ROUNDUP**

Rulings: Hotel taxes, wrongful death, drugs

BY STEVEN H. POLLAK

THE SUPREME COURT of Georgia issued nine decisions Monday, including one that remanded the city of Atlanta's suit against Hotels.com and several other online travel companies. The following are summaries of the noteworthy cases as described by the court's public information office:

In a 5-2 decision, the court threw out a Georgia Court of Appeals decision in the city of Atlanta's case against Hotels.com and several other online travel companies. The court remanded the case back to the Court of Appeals and ordered it to direct the trial court to decide whether the companies are subject to the hotel occupancy tax.

Previously, the trial court had dismissed the city of Atlanta's complaint saying that the city had not exhausted certain administrative remedies before suing in court.

In the majority decision, written by Justice Carol W. Hunstein, the court held that "the City's claim for declaratory judgment as to the applicability of the hotel tax ordinance should not have been dismissed based on the City's failure to exhaust administrative remedies and should, rather, be resolved on its merits."

The dissenting opinion stated that the Court of Appeals was correct to uphold the lower court's dismissal. Justice Harold D. Melton wrote that "[u]nder the clear law applicable to

See *Rulings*, page 9



City of Atlanta v. Hotels.com, No. S08G0568

Georgia high court OKs closed courtroom

Court, from page 1
the case is worthy of certiorari. "I just think it's a very unfair opinion in a lot of ways," said Kleinrock.

At issue in Monday's ruling was a conclusion by DeKalb Superior Court Judge Linda W. Hunter that there was no room for Presley's uncle to sit in the courtroom during jury selection. Justice P. Harris Hines wrote for the majority that Presley forfeited his right to complain on appeal when he didn't



Herbert Shafer

give Hunter an alternative plan for accommodating spectators.

Chief Justice Leah Ward Sears dissented, suggesting the practical difficulties of limited space couldn't justify shortchanging Presley's right to have the public view all parts of his trial.

Noting that Presley's case was a "garden variety drug trafficking case" with no national security issues or undercover officer safety issues, Sears warned that the court's decision could have consequences for hundreds or thousands of similar cases pending in the state.

"The majority today gives the trial courts in these cases the green light to exclude the public entirely from voir dire in all of them," she wrote.

According to Hines' opinion in the case, Hunter asked Presley's uncle to wait outside

the courtroom, on a different floor, while she conducted jury selection. She told him he could come back after jury selection was finished but he could not sit in the audience with prospective jurors.

Shafer objected, asking whether seating for



ZACHARY D. PORTER/DAILY REPORT
Defense lawyer Gerard Kleinrock said he is troubled by the state Supreme Court's ruling.

both jurors and some members of the family could be accommodated, according to Hines' opinion. Hunter maintained her position, saying "we have 42 jurors coming up. Each of those rows will be occupied by jurors."

Fourteen of the prospective jurors were seated in the jury box, according to Presley's brief at the Georgia Supreme Court, leaving 28 prospective jurors to sit in the courtroom benches and 22 vacant seats for spectators, even under the trial court's preferred practice regarding how many prospective jurors to seat on each bench. Kleinrock argued in the brief that this meant two open benches

could have been left empty as a buffer zone between the prospective jurors and a bench of several spectators.

According to a Court of Appeals opinion in the case, a bailiff testified at the hearing on Presley's motion for a new trial that county courtrooms become very crowded during jury selection and that it was difficult to maintain security under those conditions. He testified that when a defendant is not in custody—as in Presley's case—only one deputy is assigned to maintain order in each courtroom.

The jury convicted Presley, and a panel of the state Court of Appeals—Presiding Judge Edward H. Johnson and Judges Herbert E. Phipps and Charles B. Mikell Jr.—rejected Presley's complaint about the courtroom closure. The Supreme Court agreed to take a look at that issue, with only Justice George H. Carley disagreeing with the grant of certiorari.

In his majority opinion, Hines said that a criminal defendant's Sixth and Fourteenth Amendment right to a public trial extends to jury selection. But he said the trial judge had an overriding interest in making sure potential jurors heard no "inherently prejudicial remarks" from observers.

Hines noted that the U.S. Supreme Court hasn't given clear guidance on the question of whether a court must on its own initiative come up with alternatives to a courtroom closure. He said the majority was persuaded by a 1997 decision of New York's highest court that said when there is a basis on the record for closing the courtroom on a limited basis, the burden is on the party opposing the courtroom closure to alert the trial court to any alternative procedures that might work. The query about accommodating both observers and potential jurors Shafer made at the time of the closure was too "nebulous," wrote Hines.

"Ruling that, in these circumstances, Presley was obliged to present the court with any alternatives that he wished the court to consider, recognizes the general appellate precept that one who objects to an action of the trial court must raise the issue at the time of the trial court's action, so as to afford the court the opportunity to take any appropriate remedial action, or else forfeit review," wrote Hines. "When neither the defendant nor the State directs the court's attention to alternatives, there is no abuse of discretion in the court's failure to sua sponte advance its own alternatives."

Presiding Justice Carol W. Hunstein joined Sears' dissent.

"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 Sears. But Sears suggested that a too-small courtroom wasn't really the problem in Presley's case, noting that the pictures in the record make clear that space considerations did not require closure of the courtroom during voir dire.

Instead, she wrote, "it was the trial court's sole decision to conduct voir dire with 42 potential jurors in the courtroom at a time that created the overcrowding problem, a decision wholly within the trial court's control."

Shafer had no advance notice of Hunter's decision to close the courtroom, noted Sears, so the lawyer's failure to come up with alternatives on the spot can't be considered a waiver of the issue. Moreover, she wrote, it's even more important to require a judge to consider alternatives when the par-

ties haven't requested closure.

"The constitutional right to a public trial is designed primarily to police the conduct of the judges who preside over them by exposing their actions to public scrutiny," Sears wrote.

Kleinrock, who represented Presley on appeal, said he was troubled by the court majority's comments about the importance of the state's interest in preventing jurors from overhearing comments by others in the courtroom. There was no unique problem with Presley's trial, said Kleinrock. There was no indication that the uncle had caused problems in court before, he said, and there was actually room to accommodate more than the jurors. Kleinrock said courts in Georgia and elsewhere have said that trial judges should not shut a courtroom on the basis of speculation about what might go wrong.

Hunter had alternatives, Kleinrock said. She could have brought in only half of the jurors at a time, as judges do in death penalty cases with large numbers of potential jurors, he said. He said a judge can admon-



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.

—Chief Justice Leah Ward Sears

ish the potential jurors to let her know if anyone makes an inappropriate comment to them. And, he said, if something goes wrong, a judge can declare a mistrial.

"The defense lawyer did try to talk about accommodations," said Kleinrock, but the judge cut him off by making her ruling.

He said a problem with the court's opinion is it puts the burden of coming up with alternatives to closing the courtroom on the person who wants the courtroom open. This can be especially difficult when a judge, the prosecution and the defense all agree they want the courtroom closed, he said. "The only people who have a right to attend are people armed with lawyers," said Kleinrock.

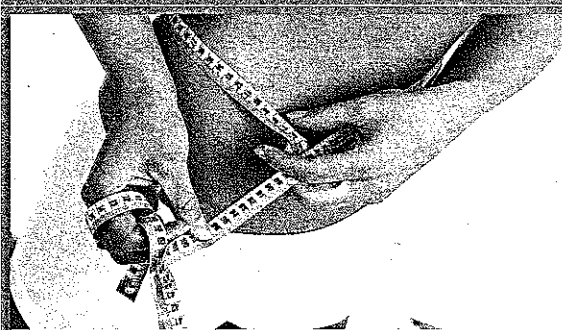
Assistant District Attorney Daniel J. Quina made the winning appellate argument. District Attorney Gwendolyn Keyes Fleming said through spokeswoman Jada K. Hudspeth that she was pleased by the decisions of the state appellate courts in the case and that she had not heard of any other objection on this ground in another case in DeKalb Superior Court during her tenure.

Hollie Manheimer, executive director of the Georgia First Amendment Foundation, said in an e-mail that the defense had wanted her organization to file an amicus brief in the case, but the group didn't have the resources. "Access to courtrooms, particularly in criminal cases, in one of our most important rights," wrote Manheimer. "It's a constitutional right, and the threshold for closing courtrooms in criminal cases is extremely high. As the dissent in the case notes, access denied on space considerations is not meaningful access."

The case is *Presley v. State*, No. S08G1152. ☉

Alyson M. Palmer can be reached at alyson.palmer@incisivemedia.com or (404) 419-2842.

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