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# A CALL TO SANITY

By Lee Tarte Wallace

It sounds so reasonable. A mother with kids wants to work less so she can spend more time with her kids, so she convinces her firm to let her work part-time. The firm allows her to work part-time, in exchange for less pay.

It sounds reasonable, but my anecdotal experience is that it is anything but. My friends who have taken the part-time route have wound up working essentially the same hours as the men in their firms, but for less pay, less respect, and less future.

GAWL is about to release its study on women lawyers working part-time, and one of the most telling – and frightening – facts we found was that women lawyers who work part-time are working, on average, 39.5 hours a week. My experience is that these same women average 60% or less of the salary that “full-time” lawyers make. (GAWL’s study did not explore the issue of salaries, but hopefully our next study will.)

GAWL’s study shows that the legal profession is fundamentally and radically askew, having veered so far from the reasonable that we no longer even recognize it.

Only in law could 39.5 hours a week be “part-time.” Only in law could people say part-timers working 39.5 hours a week are not really serious about their careers.

A 2002 ABA study found that in 1965, lawyers billed

between 1200 and 1600 hours a year. Today, full-time lawyers are expected to bill 2000 to 2400 hours a year, and part-time lawyers are expected to bill 1200 hours. In a 2007 study, the ABA found that most lawyers would not recommend the legal profession to a young person. These two facts – the toll of being a lawyer, and the dissatisfaction with it – cannot be unrelated.

Increasingly we see a young generation of lawyers shuddering at the dizzying salary increases, because they know the lifeblood that will be exacted from them with each successive pay raise. As a profession we need to reevaluate what we demand of ourselves. Perhaps women wanting part-time work, and the younger generation facing the human toll of the increasing hours, will help us regain a sane and balanced view of who we are as lawyers – and as people.

*Lee Wallace practices personal injury, product liability and whistleblower law in her own firm, the Wallace Law Firm.*



**Lee Wallace**  
 GAWL President

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# Is Brian Nichols the Appropriate Poster-Child For The Indigent Defense System?

By **Heather C. Wright**  
**Civil Litigator**

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Like many of you, I have been following the Brian Nichols case with some interest. For the past several months, we have seen intermittent stories regarding the delays of the trial of Brian Nichols due to costs. To date, Nichols's case has cost Georgia's taxpayers over \$1.5 million. Even this civil attorney knows that such fees are not unheard of in a death penalty case. During my tenure as a judicial law clerk, I assisted with the trial of two death penalty cases, and was constantly amazed with the amount of time, energy, and money spent on capital cases. Trying a death penalty case makes other litigation seem like the minor leagues, because the stakes are so much higher comparatively. That is why the Nichols's case has become a political football.

In following the Nichols case, it has become clear to me that the biggest part of the problem is that Brian Nichols is not an acceptable poster-child for correcting the flaws in the indigent defense system. Unfortunately, the State Bar, whose responsibility it is to educate the public about our legal system was the very victim of Nichols's alleged crimes. Each of us, regardless of political affiliation felt that the crimes committed in the Nichols's case were an attack on the system that we serve. So, it's hard to

believe that there would be a widespread acceptance for fixing the problems in the indigent defense system that have become apparent as a result of the Nichols case.

In reviewing information about the case, I was shocked to learn that the State indigent defense system has budgeted approximately \$4.5 million for the defense of approximately 70 to 90 capital cases. Given the issues that capital cases generally raise, it seems apparent that such a budget is inadequate. Regardless of which side of the capital punishment debate you support, providing an adequate defense is the only way to ensure that justice is served. Providing a half-hearted defense is merely creating grounds for appeal and additional costs.

While the Nichols case has consumed more than one-quarter of indigent capital offense budget, other capital defendants have been awaiting trial. Like Nichols, other capital cases have been postponed as there are not enough defense funds to go around. It seems to me that if we are going to have an indigent defense system, then we must fund it and regulate it properly. Otherwise, we shouldn't bother.

Pursuant to constitutional requirements, we – meaning the State and the people – must provide an adequate defense for indigent defendants; there-



Heather C. Wright

fore, we have to find a way to properly fund the system. The problem occurs when we argue about what constitutes an "adequate" defense, especially in a capital case. Nichols is not an appealing defendant for such an argument, when one is trying to convince the public to properly fund the indigent defense system. Rather, Nichols has become an excellent political pariah to demonstrate how the system is flawed when we should be swiftly rushing Nichols to the needle. This sentiment is being spouted not just by the public, but by members of the Bar. I challenge that as members of the Bar, it is incumbent upon us to ensure that the public understands why funding the indigent defense system is important. Unfortunately, Nichols is not the most persuasive candidate for such a public discourse.

In Nichols's case, there are substantial fees for experts, investigators, and multiple attorneys. Any litigator in any field of practice could speculate as to the potential costs for trying such a case under those circumstances. Yet, we have state legislators, Public Defender Standards Council members, and judges arguing over what constitutes an "adequate" defense while Nichols and other defendants await trial. The State has substantial resources at its disposal to attempt to convict these individuals, but the offenders do not know what standards will be applied to their defense. That smacks of appellate fodder for overturning a

conviction. On appeal, issues like Standards Council members' asking the Judge to remove defense lawyers during discovery, the District Attorney's asking that the Judge be recused, and State legislators' calling for impeachment of the presiding judge create substantial grounds for a new trial, and thus, we taxpayers get to pay twice. Such a system is clearly flawed and doesn't serve the purpose of either side of the political debate on capital punishment.

As long a capital punishment is a constitutional and lawful means to punish crimes, it is incumbent upon our justice system to ensure that anyone accused of a capital offense is afforded adequate representation. The parameters of adequate representation, including budgeting for same, could and should be provided by published pre-set standards, which should not be changed or regulated during an ongoing defense. Perhaps we should look to other pending cases indefinitely postponed for a new poster-child for the cause of correcting the indigent defense system.

*Heather Wright has an established practice that primarily focuses on assisting her clients with contracts, corporate formation, and other aspects of business law and planning. She also litigates personal injury claims and insurance coverage issues. She also has a healthy practice in family law, estate planning and probate.*

## Judges Deserve Better

by **Lee Wallace**  
and **Randy Evans**

Several local law firms have raised starting salaries for first-year associates to \$145,000. Ironically, these first-year lawyers are now paid more than most judges in our state. In 2006, superior court judges made far less, having a base salary of \$113,470 (some counties supplement that amount, but none of the supplements reaches the first-year associate pay level); Supreme Court justices made only minimally more, with salaries of \$158,000.

Georgians have been fortunate to have had so many judges whose

dedication to public service makes them willing to endure financial sacrifice. Unfortunately, there are limits to the financial sacrifice that we can realistically expect experienced judges and the pool of highly qualified new judicial talent to endure. As the data now confirms, Georgia is not competitive in its compensation. As a result, we are undermining our ability to attract and keep the most talented and gifted lawyers as judges.

The best estimates are that judges are paid approximately one-third of what their counterparts in the private sector are paid. While the pay is much lower, the risks for judges in today's world are much greater. Disgruntled litigants pose serious and immediate dangers to judges and their families. Random acts of violence threaten the lives of judges and court personnel. Political cam-

paigns are now more expensive and contentious than ever.

Notwithstanding these challenges, judges have one of the most important roles in an open and free democracy predicated on the rule of law. They are the guardians of justice in our society, charged with finding what is right, and applying it fairly, in order to civilly and peacefully decide controversies. At the core of a constitutional republic, judges separate chaos from order; armed conflict from peaceful resolution; and, a democracy from tyranny.

There was a time when the common retort to arguments for judicial pay increases was that there was no shortage of people who wanted to be judges. That is no longer the case. Increasingly, lawyers are taking a pass on leaving lucrative law practices in favor of judicial public

service. Those who chose to serve, as well as those who continue to serve, do so at great personal sacrifice.

Given the importance of our judiciary in modern times, the time has come to increase the pay of our judges to levels that are commensurate with the work they do. Georgia judges deserve respect for the jobs they do. Respect begins with fair and meaningful compensation.

The Commission on Judicial Service has recommended a 20% increase in salary for Superior Court, Court of Appeals, and Supreme Court Justices serving in Georgia. Last year the Georgia House passed H.B. 119, which would be a good step toward this goal. We urge our legislators and Governor to take action to remedy the crisis looming over Georgia and its judiciary.

# Entity Formation for the Sole Practitioner

**Is 2008 the year** that you will attack the legal community as a sole practitioner? You may be a shining star litigator, or the best divorce attorney Atlanta has EVER seen, but can you honestly remember the difference between an LLC and a PC? That law school corporations class was a really long time ago, and all of us know that there are only a limited number of brain cells available to hold non-essential information. Many excellent lawyers are woefully inadequate businesswomen; we excel in our own area of law, and leave mundane matters to others. This approach to the practice of law is fine if you are in a firm with corporate talent. But hanging a shingle will now require you to manage all aspects of your practice, from telephones and IT issues to trial calendars. This primer is intended to remove at least 1 item for your “to do” list: your corporate formation.

First, please note that this information applies only to single owner entities. All bets are off when the time comes to add a second owner. A shareholder agreement or operating agreement is crucial when two or more attorneys practice law together!

Remember the corporations class we were talking about earlier? If you stayed awake at all during class, you will recall the phrase “piercing the corporate

veil”. The big idea in setting up your practice is to protect your personal assets as much as possible by creating an entity for your law practice. I urge you NOT to open an office without first creating your entity.

The most common entity choices for the sole practitioner are the professional corporation (PC) or the limited liability company (LLC). Both the PC and the LLC are entities that give your business a level of corporate protection. Both require a filing with the Secretary of State. Both must have a registered agent and both must file annual reports to remain in active compliance with the Secretary of State.

The terminology, or “names” of the various players in a PC and an LLC are different, but serve the same function. With a PC, the owner is a shareholder. She will own 100% of the issued stock of the PC, but the number of shares issued may be as little as 1 share. In a PC, the shareholder must be licensed to practice the profession listed in its Articles of Incorporation. In our sole practitioner situation, the shareholder must be licensed to practice law. In an LLC, the owner is called a member. She will own 100% of the LLC, and has the option of having “membership units” (the LLC equivalent to a stock certificate) issued to her.

In the PC, the shareholder

will elect a board of directors, which is usually comprised of 1 person; the attorney herself. Then the director(s) elects officers, and in most single shareholder PCs, the shareholder will also hold the corporate offices of President, Secretary and Treasurer. In short, the attorney will have the following titles: Sole Shareholder, Sole Director, President, Secretary, and Treasurer. The PC’s by-laws and corporate resolutions will give broad authority to the officers, so the attorney will sign virtually all binding papers as President of the PC.

Similarly, the LLC will have a Sole Member who elects herself “Sole Manager” to run the LLC. The LLC may choose to designate corporate officers, such as President, Secretary and Treasurer, but there is no legal requirement for this. Generally speaking, an LLC manager can have broad authority and can bind the LLC.

The PC may choose to be treated for tax purposes as a C Corp. or may file a Subchapter S election and be treated as an S Corp. The single member LLC may choose to be treated as a corporation (Sub S or C Corp) or a sole proprietorship. Here I defer to your individual tax advisor, but the point is that the single member LLC has the option of filing on a Schedule C to the owner’s individual return.

The actual formation filing is

not difficult, but check with an attorney who practices in this area so that you do not miss anything. Whether you choose a PC or an LLC, be sure to file your annual registration with the Secretary of State to keep your entity in good standing. Be sure to sign your lease, your equipment contracts, your checks, and all other important business documents using the proper title. Then go, practice law, and enjoy your new status as a business owner!

For the really ambitious lady who wants to do everything herself, here are the best places to start:

[www.sos.ga.gov](http://www.sos.ga.gov) for the Secretary of State, then corporations, then online services and registrations, then search by to file online or to check business name availability.

[www.irs.gov](http://www.irs.gov) for the tax ID number

And ALWAYS use a wonderful CPA to assist you!

*Barbara Ellenberg is a business woman turned attorney. Unsurprisingly, her practice focuses primarily on corporate, finance, and real estate matters where she assists clients in getting deals done and done well. Barbara is a member of the Georgia and South Carolina bars, and an active member of the Georgia Association of Women Lawyers. She can be reached at [bhe@wjrlaw.com](mailto:bhe@wjrlaw.com) and 404-261-0500.*

## GAWL’s upcoming events:

### JANUARY 31, 2008

GAWL Hosts Law School Mixer  
GAWL will be hosting Georgia law students and law school faculty for an educational mixer at Alston & Bird from 5:30 to 8:00 p.m. on January 31st. The event will kick off with an hour of networking, after which GAWL President Lee Wallace will be on hand for opening remarks. Speakers Holly Miller and Alicia Jones, both of whom co-chair GAWL’s Public Affairs Committee, will follow with a presentation on selected results from GAWL’s recently completed work-life balance study entitled “It’s About Time.” There will be ample time after the presentation for questions about the study and/or further mixing, mingling, and noshing. Contact Kristi Wallace ([kwallace@smithcarson.com](mailto:kwallace@smithcarson.com)) or Kathy Harrington ([kathy@patentax.com](mailto:kathy@patentax.com))

for further details.

### FEBRUARY 22, 2008

It’s About Leadership: GAWL’s Inaugural Leadership Academy. GAWL launches its Inaugural Leadership Academy: It’s About Leadership on February 22 at the Margaret Mitchell House in Midtown Atlanta. We are pleased to announce the following members of the Inaugural Class:

- Janine Bowen – McKenna Long & Aldridge (Atlanta);
- Janet Bozeman – Hyatt & Stubblefield, P.C. (Atlanta);
- Catherine Coppedge – AFLAC (Columbus);
- Stephanie Crosse – AFLAC (Columbus);
- Sherry Goodrum – Lee, Goodrum & McAllister (Columbus);
- Dana Grantham – Smith Gambrell & Russell (Atlanta);

- Tracey Hawkins – Synovus Financial Corp. (Columbus);
- Holly Hempel – Nelson Mullins Riley & Scarborough (Atlanta);
- Elisa Kodish – Nelson Mullins Riley & Scarborough (Atlanta);
- Amy Kolczak – Owen Gleaton Egan Jones & Sweeney (Atlanta);
- Cristina Leon – The Partners Group (Atlanta);
- LaRae Moore – Office of the District Attorney, Chattahoochee Judicial Circuit (Columbus);
- Catherine Salinas – Carlton Fields (Atlanta);
- Kelli Wok – Moore, Ingram, Johnson & Steele (Marietta); and
- Heather Wright – The Wright Law Firm (Atlanta).

Congratulations to our new Leaders!