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Message from the Chair

*America! America!
God mend thine every flaw,
Confirm thy soul in self-control,
Thy liberty in law!*

America the Beautiful, Katharine Lee Bates (1913)

I had intended to write about the need for further expansion of the Georgia Court of Appeals. Today is September 14, however. That topic will keep.

For the moment, as America unifies in response to the terrorist attacks, other matters seem frivolous. A natural response is to ask, what can I do? What can we, as lawyers, do?

For the moment, for most of us, the answer is not much. Give blood. Write a check. Pray.

Particularly, as lawyers, the answer is not much. Lawyers, as such, don't do unification especially well. As lawyers, we are fundamentally about disunity. We are the zealous advocates of particular interests.

Someone is going to have to represent the particular interests of the alleged terrorists who have already been arrested. Someone is going to have to insist that they be treated with a fairness utterly incomprehensible to the perpetrators of these assaults. That someone, that lawyer, must be prepared to stand in the face of international outrage.

Some may suggest that, for now, civil liberties are a luxury we cannot afford. They are not. Civil liberties are most crucial when they are least convenient and when the persons benefiting from them are the least admirable. They are the heart of our freedoms. They are what is most worth fighting for.

Christopher J. McFadden

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Without Precedent: Footnotes in Judicial Opinions*

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Ed.- Although this article was written about Texas, readers who have noted the differing styles of footnote use in opinions from the Georgia Court of Appeals will find this piece of interest.

Two years ago, four appellate practitioners wrote to the Texas Lawyer to complain about the use of footnotes in judicial opinions. Wendell Hall et al., Give Footnotes the Boot, TEXAS LAWYER (Nov. 17, 1997). The letter said that using footnotes for every citation was an "awful practice" that made opinions harder to read, and concluded that the use of footnotes "is a bad idea, and we think it will diminish the quality of written appellate advocacy and the value of our courts' opinions as precedent for future lawyers and judges." I share the concerns expressed in the letter. No good reason exists to abandon the use of citation sentences.

Substantive Footnotes

Judicial opinions now contain two very different types of footnotes: substantive and bibliographic. Bibliographic footnotes contain the same information ordinarily found in citation sentences. Substantive footnotes contain text that wasn't important enough to put in the opinion but the writer couldn't leave out altogether.

Substantive footnotes are misnamed because they hardly ever contain any substance. They also have few defenders. Even Bryan A. Garner, who favors the use of bibliographic footnotes, abhors the use of substantive ones. Garner, in fact, predicts that judges will react "with revulsion" to substantive footnotes in briefs. Garner, Unclutter the Text by Footnoting Citations, TRIAL (Nov. 1997).

The two main objections to substantive footnotes have been that they retard reading speed and comprehension and that they often contain ill-considered statements. See generally Abner J. Mikva, Goodbye to Footnotes, 56 U. COLO. L. REV. 647, 649 (1985); RICHARD POSNER, THE FEDERAL COURTS: CHALLENGE AND REFORM 352-

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