



1-1-1983

A Lawyer's Guide to Historic Sites in Atlanta

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Recommended Citation

69 A.B.A. J. 1052

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A Lawyer's Guide to Historic Sites in Atlanta



By Gerald F. Uelmen

THE MOTTO on the seal of the City of Atlanta is "Resurgens," and a phoenix is depicted rising from the ashes. Atlanta has been rebuilding since 1865, and the first question a visitor asks is, "When will you be finished?"

Everywhere a new building is going up or a new expressway going down. As a result, you won't find many structures of historic interest still standing within walking distance of downtown hotels. Peachtree Street has become a procession of skyscrapers indistinguishable from the glass towers of Houston or Los Angeles. Occasional bronze plaques serve as mute reminders of what used to be. But lawyers in search of Atlanta's history need not despair. Find a car, and a short drive will reward you with some

memorable sights, many of them closely associated with landmark court decisions.

Here are three excursions—locations in the downtown area, in the southern part of the city, and in the northern environs. Some of these sights also are accessible via Atlanta's excellent Metropolitan Area Rapid Transit Authority, which goes by the acronym Marta. Make sure you have 60 cents in change before you ride.

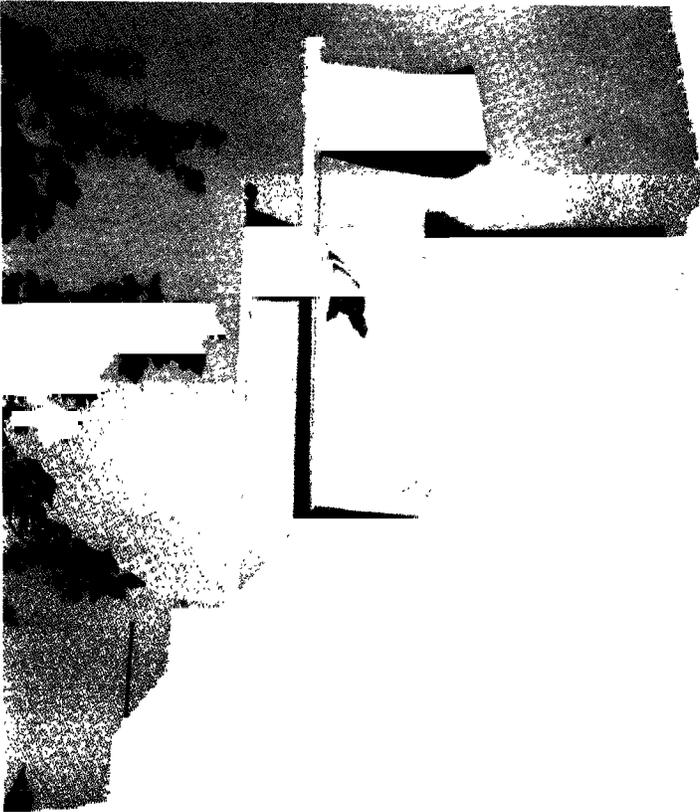
1. Downtown

The headquarters hotel for the A.B.A.'s 1983 annual meeting is the brand new Atlanta Hilton at the corner of Courtland and Harris. Believe it or not, the Hilton is built smack-dab on the former site of the Heart of Atlanta Motel.

In *Heart of Atlanta Motel v. United*

States, 397 U.S. 241 (1964), the Supreme Court upheld the public accommodations section of the Civil Rights Act of 1964, concluding that a congressional prohibition of racial discrimination by any inn, hotel, motel, or other establishment that provides lodging to transient guests was a proper exercise of the commerce power. Noting that the Heart of Atlanta solicited patronage for its 216 rooms by more than 50 billboards throughout Georgia, the Court rejected the contention it was a "purely local" enterprise. Even if it were, the Court found the words of *United States v. Women's Sportswear Manufacturers Association*, 336 U.S. 460, 464 (1949), provided a tight fit: "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze."

In a companion case the restaurant section of the act was challenged by the



pharmacist, J.S. Pemberton, concocted the formula in his backyard. Coca-Cola has kept a battery of lawyers busy protecting the company's trademark, filing more than 400 suits since the ruling in *Coca-Cola Company v. Koke Company*, 254 U.S. 143 (1920), in which Justice Holmes declared that Coca-Cola "means a single thing coming from a single source and well known to the community." Thus, the great dissenter was the first to declare that Coke is "the real thing."

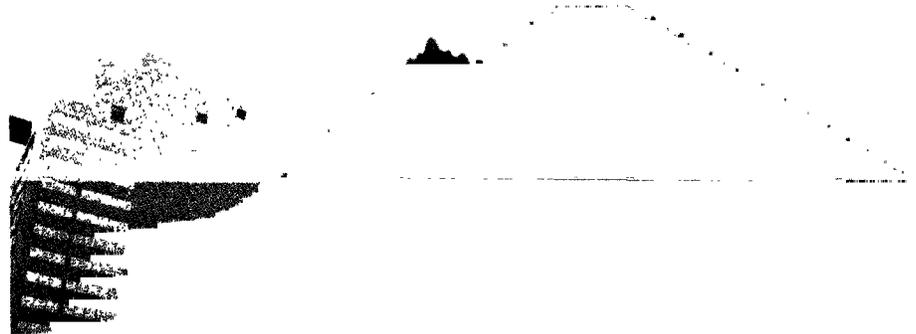
Our next stop is one of the few remaining architectural treasures in downtown Atlanta, the Old Federal Post Office at 56 Forsyth Street, two blocks west of Peachtree Street at Walton Street. Completed in 1911, the building housed the federal courts until a new federal building was built on Peachtree Street. When the old Fifth Circuit of the United States Court of Appeals was split and a new 11th Circuit created to sit in Atlanta, the new court found an old home. It is headquartered in this building. In the first case to be heard by the new court, sitting *en banc*, it held that decisions of the "old Fifth" prior to September 30, 1981, would be binding precedent in the new 11th. *Bonner v. City of Prichard*, 661 F. 2d 1206.

Pickrick Restaurant in Atlanta, owned by Lester G. Maddox, who dramatized his opposition to the Civil Rights Act by distributing pick handles to his customers. Maddox lost the case but won the governorship in 1966. *Willis v. Pickrick Restaurant*, 231 F.Supp. 396 (N.D. Ga.), dismissed, 382 U.S. 18 (1964). The Pickrick is now out of business.

Pause for Coca-Cola

To visit the home of the most famous name associated with Atlanta, go north on Piedmont or Interstate 75/85 to the North Avenue exit and turn left. At the corner of North Avenue and Luckie Street, on the southern edge of the Georgia Tech campus, is the world headquarters of the Coca-Cola Company. There's free parking at the corner of North and State Street, and a colorful museum in the tower lobby displays advertising memorabilia going back to the beginning.

That was in 1886, when an Atlanta





Atlanta's golden dome

The final downtown landmark is the Georgia State Capitol, at the corner of Courtland and Martin Luther King, Jr., Drive. The dome is covered with gold supplied from the mines at Dahlonega, Georgia, where America's first gold rush took place in 1828.

At the main entrance stands the gesticulating likeness of Tom Watson, who first made his mark as a criminal lawyer, wrote many popular biographies and history books, edited widely read magazines, ran as the Populist Party candidate for vice president and president of the United States, and ended his career in the U.S. Senate. He sponsored legislation creating the rural free delivery mail service, and 25 years later his *Jeffersonian Magazine* was barred from the mails because of its vehement anti-war rhetoric, 245 F. 585 (S.D.Ga. 1917). His magazines also were liberally laced with religious bigotry and racial hatred.

Across Capitol Street to the south is the Judicial Building, the home of the Georgia Supreme Court. It has been called on to settle many earth-shaking controversies, including which of three contenders should be governor of the

state, 41 S.E. 2d 883 (1947). But the question that really shook the Court to its foundations came in 1928—who should be president of the Atlanta Women's Club? Everyone except the chief justice was disqualified because his wife was on one side or the other of the heated controversy. The governor designated five superior court judges to sit. By a vote of four to two, the court decided that the refusal to recognize nominations from the floor invalidated the election results, thus requiring the second contested election in the club's history, 146 S.E. 173 (1928).

Death penalty controversy

In more recent years the Georgia Supreme Court has been at the center of the controversy over capital punishment. Both *Furman v. Georgia*, 408 U.S. 238 (1972), invalidating discretionary death penalty laws, and *Gregg v. Georgia*, 428 U.S. 153 (1976), upholding statutes that require juries to weigh specified aggravating and mitigating circumstances, came from this court. Although seven years have elapsed since *Gregg*, Georgia, like many other states, has yet to carry out an execution. Gregg himself

If Coke is it, is it the real thing or the pause that refreshes?

ATLANTA is famous as the birthplace of Coca-Cola, which was concocted (or was it concoked?) by a pharmacist named J.S. Pemberton in 1886.

Pemberton's recipe has been a closely guarded secret. In 1911, in one of the first tests of the federal Pure Food and Drug Law, the government seized a shipment of Coca-Cola transported from Atlanta to Chattanooga and charged that it was "adulterated" and "misbranded." The misbranding allegation was based on the claim that Coca-Cola contained "no cocoa and little if any cola." The company responded that one ingredient was derived from decocainized coca leaves and cola tree nuts. The charge of "adulteration" was based on the fact, fully conceded, that caffeine was part of the syrup recipe. The feds relied on Section 7 of the 1906 act, which declared a food should be deemed adulterated "if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health."

As the district court noted, coffee would not be included, because the caffeine wasn't added to it. Coffee was "nature's poison." Coca-Cola won in the trial court by convincing the judge that the original recipe, and the one used ever since, included caffeine. Therefore, caffeine was not an "added" ingredient.

That argument didn't convince Justice Hughes, and the Supreme Court reversed and remanded for a jury determination whether caffeine was a poisonous or deleterious ingredient. *United States v. Forty Barrels and Twenty Kegs of Coca-Cola*, 241 U.S. 265 (1916).

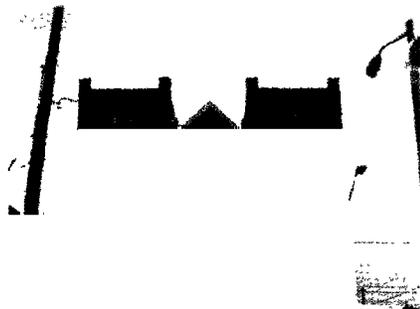
On remand, Coca-Cola won the right to continue adding caffeine, but today the jury is out once again on the question of how deleterious it is. This time Coke isn't waiting for a final verdict. In 1983, for the first time, caffeine-free Coca-Cola is available.

was stomped to death by his companions after escaping from Georgia's death row two years ago.

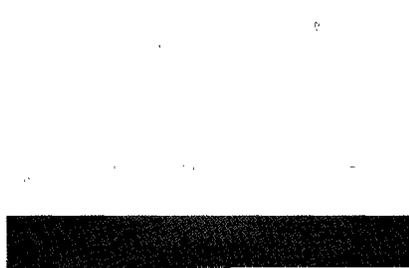
More recently, the court heard arguments on May 16 on whether to grant convicted killer Wayne B. Williams a new trial. Williams, a freelance photographer, was the only person arrested in the murders of 29 black children that terrorized Atlanta for two years. He was convicted of two of the murders in February, 1982, and sentenced to two consecutive life terms. His attorneys argued that the trial judge should not have allowed prosecutors to use evidence of 10 of the killings in which Williams was not charged to show a common pattern.

2. Southern environs

A short drive down Auburn Avenue will take you through the declining business district that was labeled the "richest Negro street in the world" at the turn of the century. Many of the leading black churches still front Auburn Street, including the Ebenezer Baptist Church, located at 413 Auburn Avenue, N.E. Here, within two blocks, you can visit the birthplace of Martin Luther King, Jr. (501 Auburn) and the stunning monument where he is buried in the churchyard adjoining Ebenezer.



Winner of the Nobel Peace Prize and leader of the civil rights movement, King was murdered in Memphis in 1968. His tomb is surrounded by the peaceful waters of a reflecting pool and is inscribed: "Free at least, free at last, thank God Almighty, I'm free at last."



There's nothing free in the adjoining souvenir shop, though. In a landmark decision last year the Georgia Supreme Court held that Georgia law recognizes a celebrity's right to the exclusive use of his or her name or likeness, and that this right survives the death of its owner, even if the owner never exploited it commercially during his lifetime. Thus, the unlicensed manufacturer of a plastic bust of King could be enjoined. 296 S.E. 2d 697.

Legacy of Margaret Mitchell

When you leave the memorial, continue eastward to Boulevard and turn right. Boulevard will take you under the Marta tracks to Oakland Cemetery. To enter the cemetery, you must circle around to the west gate, at Martin Luther King, Jr., Drive.

Oakland Cemetery is a favorite with Atlanta's joggers, so be careful driving its narrow lanes. A map for a self-guided walking tour is available at the visitor's center. With it, you easily can locate the final resting place of *Gone with the Wind* author Margaret Mitchell. From her grave the entire Atlanta skyline can be seen over the tops of the magnolia trees,

including the towering rose-colored Georgia Pacific Tower, built on the site of Loew's Grand Theater on Peachtree Street, where the world premier of *Gone with the Wind* lit up Atlanta's skies in 1939.

Margaret Mitchell's father was a successful Atlanta lawyer, and her lawyer-brother spent much of his professional career protecting her copyrights. The disposition and taxability of the proceeds of one of the most successful motion pictures of all time have presented some interesting questions for the courts. See *Grill v. United States*, 303 F. 2d 922 (Ct.Cl. 1962); *Haas v. M.G.M.*, 617 F. 2d 1136 (5th Cir. 1980).

A picture of war

Leaving the cemetery, continue south on Boulevard. You'll go past Grant Park, with a sizeable parking lot to accommodate those who want to stop for a look at the Cyclorama. It's well worth the price of admission (\$3.00). This massive circular painting of the Battle of Atlanta during the War between the States (it's not called "Civil War" down here) was completed in 1885 by a group of German artists in Milwaukee. It was refurbished in 1982 and is dramatically highlighted as you view it from a revolving platform. The locomotive *Texas*, which achieved fame in a Civil War (oops!) chase with the *General*, also is on display.

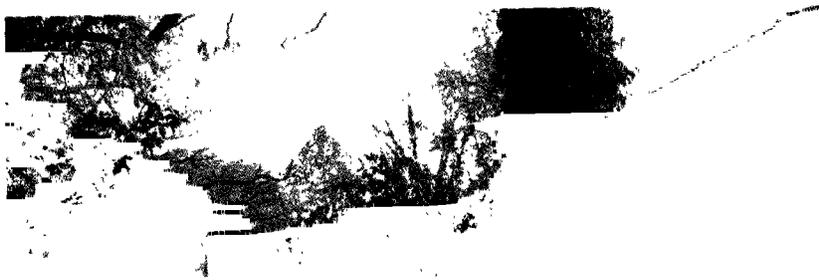
Boulevard takes you to the main entrance to the Atlanta Federal Penitentiary. At the time it opened in 1902, the 4,178-foot-long wall that surrounds it

was the largest reinforced steel and concrete structure in the world. Among the more famous guests there were Al Capone, Joe Valachi, and Eugene Debs. Few who left wanted to come back, with the notable exception of Gerald Chapman.

He went over the wall in a daring escape in 1923. While he was out, he

killed a policeman as he fled the scene of a burglary in Connecticut. He was convicted of first-degree murder and sentenced to death by state authorities. He then insisted on returning to Atlanta to finish his 25-year federal sentence before being executed by Connecticut. President Coolidge responded to his request by commuting his federal sentence, but

Chapman refused to accept the commutation. In *Chapman v. Scott*, 10 F. 2d 156 (D.Conn. 1925), affirmed 10 F. 2d 690 (2d Cir. 1926), the court held that Chapman "did not become invested with a tenancy for years of a cell in the Atlanta penitentiary." His refusal to accept the commutation made no difference, and he was hanged on March 3, 1926.



3. Northern environs

For a look at some of the most beautiful estates in the wooded suburbs north of Atlanta, head out the Northwest Expressway (Interstate 75) to Howell Mill Road and continue north.

At 2450 Howell Mill Road you'll pass the scene of one of Atlanta's most baffling unsolved murders. On the evening of May 14, 1947, the strangled body of an Atlanta socialite, Peggy Refoule, was found in the waters of Peachtree Creek, behind the new home she had moved into with her husband Paul and their son. Paul Refoule was a French artist Peggy had met while studying at the Sorbonne.

The murder investigation was botched by the police from start to finish. When they learned Paul had carried on extramarital affairs with several of his art students, they focused their investigation on him, although there were several witnesses to his presence elsewhere at the time of the murder.

Police subjected him to numerous intensive interrogation sessions, continuing as long as 31 hours. When they were unable to uncover any criminal activity except a lurid description of his French love-making techniques from a former student, they charged him with sodomy. Ultimately he filed an unusual suit in federal court to prevent further police harassment, and a preliminary injunction was issued to restrain police from questioning him without his consent after an opportunity to consult with counsel. 74 F.Supp. 336 (N.D. Ga. 1947).

The sodomy charge was later *nolle prossed*. Within six months, he died after undergoing surgery. Friends attributed his death to the devastating effects of his wife's murder and the police investigation. No one was ever charged with the murder of Peggy Refoule.

Where Jimmy lived

Continue on Howell Mill Road to Moores Mill Road. A right turn and a short drive onto Paces Ferry Road will bring you to the 18-acre estate of the Georgia governor's mansion at 391 Paces Ferry Road. Built in 1967, it was first occupied by Lester Maddox, and then by Jimmy Carter. Free public tours are available Tuesday, Wednesday, and Thursday mornings from 10:00 to 11:45.

If this whets your appetite for historic house tours, continue east on Paces Ferry Road to Andrews Drive, where the Atlanta Historical Society offers tours of a reconstructed plantation house and one of Atlanta's most palatial homes, the Swan House. Both sit on a beautifully landscaped 22-acre site.

Frank was accused of the crime, he became a focal point for class hatred and anti-Semitic hysteria, drummed up to a frenzy by journalist Tom Watson. The only evidence against him was the well-rehearsed testimony of a black sweeper employed in the factory.

Frank was convicted and sentenced to death, and a petition for a writ of habeas corpus was denied by the United States Supreme Court over the dissents of Justices Holmes and Hughes, who concluded, "Mob law does not become due process of law by securing the assent of a terrorized jury." 237 U.S. 326, 349 (1915).

An act of courage

At that point Georgia's governor, John

Marshall Slaton, intervened in an astounding act of political courage. He commuted Frank's sentence to life imprisonment, an act that ended his promising political career. Slaton remained a stellar member of the Georgia bar and served in the A.B.A. House of Delegates from its formation in 1936 until his death in 1955 at age 88. A fellow Atlanta lawyer, E. Smythe Gambrell, wrote that "he lived long enough to see that which destroyed his public career bring about his beatification."

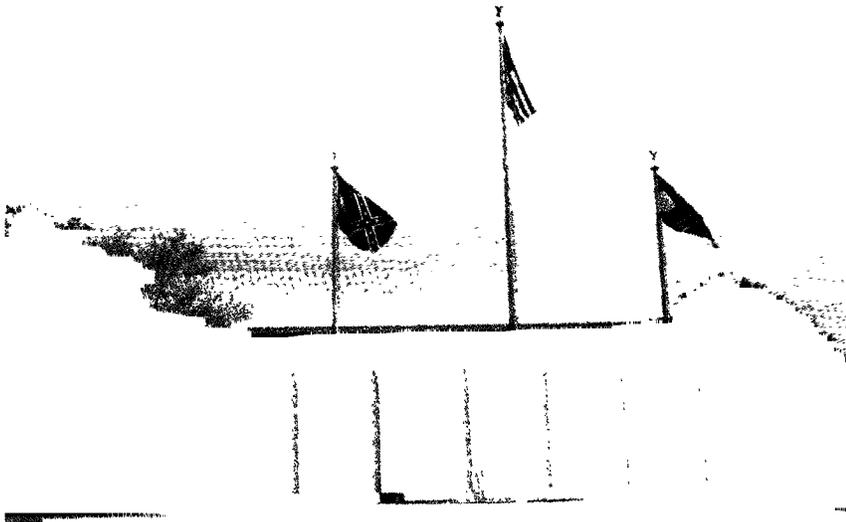
Two months after the commutation, Frank was kidnaped from prison and taken to Marietta, where he was hanged from an oak tree. The lynch mob was well organized. They had held meetings around the grave of Mary Phagan and called themselves "Knights of Mary Phagan." They formed the nucleus for the Ku Klux Klan resurgence in Georgia later that year.

Seventy years after Mary Phagan's murder, an eyewitness to the crime stepped forward and identified the black sweeper whose testimony convicted Leo Frank as the actual killer. The former factory employee reported he had maintained his long silence because the sweeper threatened to kill him if he told anyone.

Some added goodies

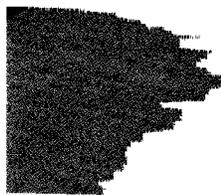
It might be outrageous to suggest getting back on Interstate 75 and going another 50 miles as part of a tour of Atlanta's environs, but if you have an afternoon and it's a nice day, give yourself a real treat. A tour of New Echota can be the highlight of your visit to Atlanta and will offer some exciting insights into a very historic case.

The drive north takes you through rolling woodlands, past Kennesaw Mountain. You can visit the battlefield park and see the *General*, the other locomotive involved in the chase with the *Texas*, at the Big Shanty Museum in Kennesaw. Among the Union soldiers wounded at the Battle of Kennesaw Mountain was a young man who memorialized his experience by naming his son after the battle. That's how we got U.S. District Judge Kennesaw Mountain Landis, who fined Standard Oil \$30 million and served 25 years as baseball's first commissioner. I've encountered several federal judges who should have been named after the



More adventurous explorers should find their way back to Interstate 75. A drive of less than ten miles north will take you to the central scene of one of the most tragic cases to shake the South, whose reverberations are still being felt: the lynching of Leo Frank. Take the first Marietta loop exit into Marietta, and wind your way to the City Cemetery. In the southeast corner you'll find a headstone marking the grave of Mary Phagan, the 12-year-old victim of a brutal murder in the Atlanta pencil factory where she had gone to collect her week's wages on April 26, 1913.

When factory superintendant Leo





enacted a law requiring any white person living in the Cherokee Nation to obtain a permit from the state. Worcester went to prison to test the constitutionality of this law.

William Wirt, a very able lawyer who had served as prosecutor in the trial of Aaron Burr, took his case to the Supreme Court and won a ruling that the statute was in contravention of the federal treaty with the Cherokees. That ruling was ignored, thus setting the stage for the Trail of Tears, over which the Cherokees were forcibly removed to Oklahoma.

We'll never know if Jackson actually made the statement about John Marshall, but we do know that at one point a Cherokee delegation met with Old Hickory and were told: "I only blame you for suffering the lawyers to fleece you. I have been a lawyer myself long enough to know how lawyers will talk to obtain their client's money." *Journal*

(Gerald F. Uelmen is a professor of law at the Loyola Law School in Los Angeles and delights in directing his fellow lawyers on tours of legal landmarks. Last year for the A.B.A. annual meeting he prepared a walking tour of San Francisco. For this article he acknowledges the helpful suggestions made by Franklin Garrett of the Atlanta Historical Society.)

dome just east of Atlanta: Stone Mountain.

Shades of the Cherokees

To visit New Echota, leave Interstate 75 at Exit 131. The reconstruction of the capital of the Cherokee Nation is open from 9 to 5 every day except Monday, and from 2 to 5:30 on Sundays. The history of New Echota was capsulized in 55 A.B.A.J. 339 (1968). Here you can visit the Cherokee Supreme Court, the printing press that used Sequoia's alphabet, and the home of Samuel Worcester, whose courage gave us *Worcester v. Georgia*, 6 Pet. 515 (1832). This is the landmark case to which Andrew Jackson referred when he reportedly said, "John Marshall has made his decision, now let him enforce it."

Worcester was a missionary who lived among the Cherokees. As part of a plan to distribute Cherokee lands to white settlers by lot, the Georgia legislature



