

ABA JOURNAL

Battle of Atlanta: Fight over a Downtown Homeless Shelter Strains Some Down-Home Ties

By Terry Carter

Stephen Riddell was livid. He was mincing no words with Steven Hall as they took turns interrupting each other during a deposition last year. “You’re pathetic. You’re an embarrassment to the legal profession,” Riddell sputtered at Hall in an exchange captured on videotape. “Racist,” Hall muttered in a pointed, one-word retort.

The blowup was uncustomary for both.

Riddell is managing partner of the Atlanta office of Troutman Sanders, a national firm of more than 650 lawyers. Hall is a shareholder in the Atlanta office of Baker, Donelson, Bearman, Caldwell & Berkowitz, a national firm of more than 560 lawyers.

Their ugly exchange came at the conclusion of an all-day, aggressively played cat-and-mouse game last year in the deposition of A.J. Robinson, president of Central Atlanta Progress, a downtown business association. But this scrap between two high-octane lawyers—both working pro bono—may be the least bizarre incident in nasty, ongoing litigation that has set the city’s upper crust against itself.

Robinson is accused in a civil suit (PDF) of helping orchestrate an illegal effort by city, business and civic leaders to shut down the Metro Atlanta Task Force for the Homeless, a shelter that houses 500 to 700 men each night, nearly all of them African-American.

The powers that be in Atlanta have made it clear for more than a decade that they want the shelter—located on a valuable stretch of the city’s famous Peachtree Street—to go away. They say the facility, which has been operating for 14 years in a building donated to the organization by a Coca-Cola heir, hurts business, tourism and the lifestyles of others in the neighborhood—as well as the homeless men they claim are simply warehoused there.

The vexing homeless problem isn’t unique to Atlanta, but some believe the methods and means that city leaders have been using to uproot the shelter might be. The details are being thrashed out in a multipronged litigation in state and federal court—against the city, as well as businesses and individuals.

“It’s amazing how much money is being spent on this dispute with 501(c)3 charitable organizations, with lots of parties subpoenaed and some having to spend money on lawyers,” Riddell says. “They’ve alleged some crazy stuff.”

As outlined in court files, the accusations read like one of those old animated cartoons in which someone tries various ways to kill a cat, only to watch in frustration as it proceeds to invoke its nine lives, one at a time.

For years, the city and its business leaders worked to cut off funding for

the shelter, even stalling required certification for state and federal grants.

When that didn’t kill the beast, Robinson and CAP are accused of going after the shelter’s private support, waging a successful “disinformation” campaign to get the head of the Atlanta-based Chick-Fil-A fast-food empire to end his generous, open-ended financial support of the shelter.

When the shelter had trouble paying for its utilities because its funding had been crippled, the city shut off its water. The move proved futile when it was revealed that the city had been very selective in its enforcement: At least nine other city water clients were even more in arrears than the task force shelter, the worst being the city’s own jail.

Finally, intending a coup de grace, Robinson and CAP tried to buy out a \$900,000 mortgage the shelter had taken on to replace its dried-up funding. Their intention, according to records and emails, was to call the note and foreclose on the building. The religious-based charity holding the note listened to CAP-orchestrated complaints about the shelter, but after considering the consequences of the sale, they balked.

Yet soon after, they were persuaded to sell to the Ichthus Community Trust (ichthus is the Greek word for fish that has been adopted as a Christian

religious symbol)—a nonprofit operated by another nonprofit called the Benevolent Community Investment Co. For the task force shelter Benevolent proved anything but. Funded by a longtime friend and ally of Robinson's, Benevolent and Ichthus foreclosed on the shelter. And but for a restraining order by a Fulton County Superior Court judge, the task force would have been out on its collective ear nearly a year ago.

Even the task force's law firm, Baker Donelson, has come under pressure from CAP and Robinson. The litigation, which includes a state racketeering action, charges that Robinson enlisted the local chamber of commerce to pressure Baker Donelson to reconsider its continued support of the task force. In an email exchange concerning research on the firm's clients, Robinson wrote: "Baker Donelson are on the wrong side of city, business community, United Way and all govt. entities providing homeless resources in Atlanta area: It is rumored they are preparing to sue the city. ... This would be a terrible mistake and will haunt them for years in Atlanta."

CAP and several other defendants responded with SLAPP suit (PDF) (strategic lawsuit against public participation) claims in state court, contending that Hall's lawsuits were efforts to shut out their side of a public debate about the homeless. A special master recently rejected the allegations, citing this passage from Robinson's deposition as possible evidence of CAP malice:

Q: Can you think of any strategy you ever considered to cause injury to the task force that you did not carry out or take steps toward performing?

A: Any strategy to injure the task force?

Q: Right. That you did not actually take steps ...

A: No, I can't.

Q: ... to carry out?

A: No. I can't think of any.

"The other side just doesn't seem to get it," Hall says. "You can't tortiously interfere with someone's business."

Demolition's Dilemma

Atlanta helped create the unusual reach and depth of its homelessness problem. The city razed much of its public housing without first making arrangements for those being displaced. From the time it began preparing for the Olympics in the early 1990s and on through 2008, the city tore down nearly 4,700 public housing units.

"We've demolished more public housing than any other city in the country and the [Atlanta] Housing Authority speaks with pride of that, which I say with tragic irony," says Frank Alexander, a law professor at Emory University and director of its Project on Affordable Housing and Community Development. "We offer less housing at the lower end of the economic spectrum than most any other community."

Last August 30,000 people showed up on a steaming hot day in the East Point suburb of Atlanta hoping to apply for a mere 655 units available through section 8 subsidized housing. It was the first time since 2002 that applications had been accepted.

The Metro Atlanta Task Force for the Homeless was launched in 1981 after 17 homeless men died during a cold snap. Incoming Mayor Andrew Young called together religious and community groups for help providing shelter to prevent recurrence of such a tragedy.

But the ubiquity of male homelessness in Atlanta—homeless men outnumber women by 2-to-1 or greater—keeps the task force occupied as a nearly perpetual source of public resentment.

Critics say time has passed the shelter by. Of the hundreds of mostly African-American men staying there, many are chronically homeless and worst-case, suffering from drug addiction, alcoholism and mental illness.

They come in and go out like the tide at seashore, sometimes hundreds

milling around in front before entering at dusk, and again as they leave in the morning for a day on the streets and in parks, in plain view of commuters heading to and from work in nearby downtown.

City and community leaders argue that other Atlanta homeless facilities could absorb the men, and that the shelter's location would be better suited to house a smaller number of women and children overnight and to expand services for the homeless in general, a greater priority now.

But for a variety of reasons—its leaders argue not of their making—the facility has grown and evolved in ways different from today's best practices of smaller, more goal-oriented operations.

Says Anita Beaty, task force executive director since 1985, "We've reached the point where we're just doing what we can for these men who have nowhere else to go and come here when other shelters turn them away as overflow."

Hall admits the heavy concentration of homeless men in that neighborhood probably is not optimal, but he asks, "What's the alternative? They say they can transition 25 [men] a week into other housing, and to give them six to eight months to do that. But at that rate another 500 would have come in.

"The other side doesn't have anything realistic to offer. They just want it gone."

Enter the 'Bum Bot'

Perhaps nothing epitomizes civic hostility toward the downtown Atlanta homeless like the continued notoriety of the "Bum Bot."

In 2007, the owner of a bar named O'Terrills built a 300-pound device to roam sidewalks and alleys late at night, rousting the homeless from nooks and doorways. It was fashioned primarily with a smoker-grill mounted on a three-wheeled, battery-powered scooter and included remote control, a video feed, a spotlight and a turret with water cannon.

Rufus Terrill guided his Bum Bot around the neighborhood and, through

a loudspeaker on the unit, shouted at those sitting or sleeping in doorways and alleys during the late hours: “You’re trespassing. That’s private property. Move on.”

The hesitant were hit with blasts of water.

Terrill was invited to join in when CAP pulled together several civic and business leaders in a letter-writing campaign (talking points provided) to persuade a multijurisdictional review of homeless facilities that the task force should be denied funding. The effort succeeded: HUD ceased giving grants to the task force at the end of 2007.

Meanwhile, Terrill’s Bum Bot has continued making headlines and TV news around the country.

“The Bum Bot is part of the dehumanization of the homeless and the poor,” says Maria Foscarinis, executive director of the Washington, D.C.-based National Law Center on Homelessness & Poverty. “This is part of the reason we’re starting to frame these problems as human rights issues.”

The group has increasingly been working on trends in the criminalization of homelessness, most recently laws targeting those who give food to the homeless in public places or in certain areas of cities.

In the group’s periodic reports on “The Top 10 Meanest Cities,” Atlanta comes in at No. 4, though Foscarinis adds that much of what is alleged in litigation over the task force would not have factored into the city’s rank.

Like its clients, the task force has fallen on hard times. The shelter’s budget has dropped from a high of about \$2 million annually in the late 1990s to just a tiny fraction of that. In the past four years it has gone from 28 full-time employees to just two; the building has been foreclosed on; and the pileup of problems rises like a stack of unpaid bills—literally.

As its government funding and donations shrank, so did various services

the task force offered concerning jobs, housing, health care and the like. And its lawyers argue the shelter’s opponents have actively caused cuts in funding and then used those money woes as a reason to shut it down.

“They went after that weak spot they created themselves,” says Hall.

But task force critics, some of them former allies, believe Beaty has been a destructive force at the shelter, hurting the chances of those it serves as well as holding back progress that would help the homeless regionwide.

“It hasn’t been said here, but as in all disputes, there is an underlying philosophical difference,” says Edward J. “Jack” Hardin, founding partner of Atlanta’s Rogers & Hardin and co-chair of the United Way Regional Commission on Homelessness, which opposes the task force’s methods and mission.

“There are people in the homeless community who believe in what I call unconditional hospitality, that everyone has the right to a house, and others who say you’re becoming co-dependent if you facilitate their self-destructive behavior unless there is some degree of tough love, some condition on those benefits.

“As a corporate lawyer, it is natural for me to think that by the time suits get to the courthouse, opportunities for solution are greatly diminished,” Hardin says.

“Steve Hall has drunk the Kool-Aid.”

Burning Bridges

Hall and Beaty fell into this battle together slowly. His firm had been doing routine pro bono work at the shelter, helping the homeless navigate bureaucracies such as getting ID cards and Social Security benefits. Other firms joined in, sending a lawyer over one day a week or so.

When the city shut off the shelter’s water in December 2008, Hall was called on for nonroutine duty. He went to court immediately and got it turned

back on. Then he looked at Beaty and asked, “Why the hell didn’t you pay the bill?”

“Sit down and let’s talk,” Beaty replied.

Hall couldn’t believe what he heard in Beaty’s story of mysteriously disappearing donors and governmental efforts cutting grants. The conversation continued over weeks and months with more details. He came to believe her narrative, he says, and later confirmed it through discovery. He became a fan.

Beaty, 69, is a soft-spoken, earthy grandmother known foremost for her unbridled passion—often with emphasis on the unbridled. She and her husband, Jim, were hired in 1985 to run the relatively new task force with her taking the lead.

That same year they adopted a 17-month-old boy whose homeless mother was too emotionally fragile to care for him. The Beatys are white; their now-27-year-old son is black. They also have six older children in a second-marriage mixture of “yours, mine and ours.”

Beaty’s critics say she has long tried to live and work an impossibility: being both service provider for the homeless and an activist advocate. In the latter role she is a finger-jabbing nemesis shouting her version of truth to power, sometimes wrapped in insult.

There’s this from Beaty fan Larry Keating, an urban historian and professor emeritus at the Georgia Institute of Technology in Atlanta: “She’s in-your-face political, always yapping things like ‘Give me money to put people on MARTA [the city’s rapid transit system] and get them jobs.’ She’s been the motivating force fighting back on all local legislation trying to marginalize and criminalize homelessness.

“And she’s got a mouth. Those in power have gone after her mercilessly,” Keating says.

Beaty has more war stories than a decorated WWII-Korea-Vietnam vet. In 1996, for one example, the task force sued the city over police sweeps

clearing the streets of black men in preparation for Atlanta's international debut hosting the Olympics. They complained that newly enacted ordinances against panhandling and loitering were used improperly to round up 9,000 people as police carried blank arrest papers preprinted with "African-American male" and "homeless" on them. (Around the same time, the city also infamously offered free, one-way bus tickets anywhere in the U.S. for homeless people willing to leave.)

The Boston office of Ropes & Gray represented the plaintiffs. A federal judge issued a restraining order two days before the Olympics opening ceremonies, and the city later settled by paying \$3,000 each to five homeless men and \$60,000 to fund a homelessness advocate.

One story Beaty relishes most might have been the biggest bridge among the many she has burned over the years. As the story goes, then-Mayor Bill Campbell was speaking at a groundbreaking ceremony in 1994 for the revamping of a park named for Robert W. Woodruff, the late president of Coca-Cola, which is headquartered in Atlanta; the park was being fixed up for the Olympics.

Beaty brought a contingent of task force residents and others to protest crackdowns on the homeless. Chanting "No justice, no peace," they drowned out the speeches.

As Beaty tells it: "The mayor couldn't speak over us, so his handlers got him to keep smiling—he's known for his temper—and they pulled him over to a hole he could shovel dirt into for a photo op. Three of our guys saw that and jumped in the hole and lay down, looking up at him with their arms folded and grinning. He looked like he was going to bite his mustache off."

Beaty laughs lustily at her own twice-told tale. But in 2007, the former mayor was among several current and former city, business and community leaders who helped persuade Dan Cathy, president and COO of the Chick-Fil-A restaurant chain, to end his financial support for the task force.

It is Beaty's eagerness to bite hands that feed her clients that has made many donors or potential donors shy away, says Hardin.

"I've had this conversation with Anita when we were good friends in happier times," he says. "When you disrupt something very important to the Woodruff Foundation, for example, and then ask them for money, however morally justifiable, it is not an effective strategy."

Still, one donor in particular has stood by the task force: William C. Wardlaw III, known simply as B Wardlaw. His family's wealth came largely from Coca-Cola stock. Wardlaw's website, Coca-Cola Anarchist, highlights the task force's plight along with his writings on various other topics.

In 1997, on the heels of Beaty's court battle over police sweeps and other skirmishes with the city, Wardlaw paid \$1.3 million for the vacant, 96,000-square-foot, block-long building that now houses the task force. Wardlaw donated the building to the homeless operation—which moved from a location near the Atlanta Braves stadium.

Even in hard times, Wardlaw has continued subsistence funding of the shelter and pays salaries of \$52,000 each to the Beatys through a charitable trust. Without his help, the shelter likely would have gone out of business long ago.

When the CAP campaign against the task force shelter donations crested in 2007, according to court records, CAP opened a new, sophisticated front involving Atlanta's "homelessness czar."

Debi Starnes began going head-to-head with Beaty and the task force when she was on the Atlanta City Council in the mid-'90s. When she left the council, she became the mayor's policy adviser on homelessness.

In 2008, budget cuts ended Starnes' city job. But CAP stepped up, donating nearly the equivalent of her salary of about \$94,000 a year to the United

Way. The money wasn't ostensibly earmarked, but Starnes is now paid by the United Way to continue as the city's homelessness czar.

While in the mayor's office, Starnes is alleged to have helped CAP undermine task force applications for grants and state housing trust funding. That pattern continued after the United Way began paying the salary for Starnes' city work with money provided by CAP, an arrangement both Hall and HUD describe as "bribery."

Certification is required for projects that seek state housing trust funding. But Hall alleges that the mayor's office and its homelessness adviser routinely interfered with task force applications, even when their projects were properly certified. In 2009, for instance, the city held task force applications past their deadline, even after the Department of Community Affairs sent a reminder that the deadline was approaching.

Atlanta City Attorney Cathy Hampton says, "We do not comment on pending litigation matters."

Whether activists, employees, residents or a combination, Curtis Motley, Darryl Gray, Charles Cunningham, Jack Jackson, Joe Beasley, Maurice Lattimore and Solomon Ebb all do their part to ensure the shelter, task force and Traditional Housing Program is fully functional. Photos by Gregory Miller

The Endgame

This battle over Atlanta's homeless entered its endgame last May, when the Ichthus Community Trust foreclosed on the task force building. Hall went to court and got a temporary restraining order to stop the action, and in the process convinced Fulton County Superior Court Judge Craig L. Schwall that the move might be part of a broad, coordinated effort to disrupt and destroy the task force.

At a hearing in December, Hall piqued Schwall's interest with allegations of self-dealing behind the creation of Ichthus and the companies associated with it. Ichthus and its managing entity,

Benevolent Community Investment Co., were both created in June 2009—BCIC in Georgia and Ichthus in Nevada.

In an effort to deal with their financial troubles, the Beatys had borrowed a total of \$900,000 against the building that Wardlaw donated to them. The lien holder was the Sisters of Mercy, a storied Catholic charitable group that dates back 180 years. When CAP tried to purchase their interest in the note, Sisters of Mercy eventually declined. Then the newly created Ichthus entered the deal.

According to deposition testimony by CAP president Robinson, real estate developer Manny Fialkow, a longtime family friend, “told [Robinson] that perhaps he would use a vehicle that he wanted to use” to buy the notes for the building himself.

Hall claims that Fialkow is behind the creation of Ichthus and BCIC, as well as Premium Funding Solutions, which subsequently loaned Ichthus the \$900,000 to buy the notes. (The building is valued at multiples of that, the main reason Judge Schwall has permitted the task force to remain despite being unable to make payments on the note.)

According to Georgia corporate records, Fialkow was listed as Premium Funding’s registered agent as recently as 2010. A month after Ichthus bought the notes—and three months before it foreclosed—that role was transferred to one of Fialkow’s lawyers, Eric L. Shapiro, who is also the registered agent for BCIC. And Hall says that when he was trying to stop Ichthus from foreclosing last May, he dealt directly with Fialkow.

Lawyers for Ichthus and PFS, as well

as the lawyer defending Fialkow in the suit brought by the task force, deny Fialkow has anything to do with the building, despite whatever is suggested by Hall’s paper trail.

“The standard here is: Does he have a legal interest or control?” says Matthew Moffett, Fialkow’s lawyer in the litigation. “The answer is no. He does not own the property, does not manage the property, and he has no legal control over the property.”

The trustee for Benevolent and Ichthus is Valerie McClellan, a longtime associate of Fialkow’s. McClellan and Ichthus asked the court to allow them to evict the task force in favor of a paying client to avoid foreclosure by Premium Funding. And in a hearing in December, Hall told Judge Schwall that he believes she is “just a front” for Fialkow, and that Ichthus’ fear of foreclosure was disingenuous.

Schwall seemed taken aback by the allegations of self-dealing. He demanded that any evidence of Fialkow’s involvement in the various companies be made available to the court. “I’m not playing any games, so if we have got companies related to each other and somebody is operating some company, this isn’t the courtroom to come in and do that with,” he said.

Premium Funding went ahead and foreclosed on Ichthus, but the task force continues to occupy the building it once owned.

In an interview, Ichthus’ lawyer, Scott Bonder, says the whole argument is unfair: “Valerie McClellan is the person I take my marching orders from. She has worked doing property development and on projects owned

and controlled by Fialkow in the past. This is like the mentee eventually doing something and being cast as a conspirator with the mentor.”

Even if the Beatys and their shelter are successfully expelled from their building, that may not be the end of it. The HUD complaint was filed by the Washington, D.C.-based civil rights law firm Relman, Dane & Colfax, the same firm that secured the \$62 million settlement in 2009 from Westchester County.

With that case HUD dusted off Fair Housing Act laws on the books for more than three decades but never used. The agency declared at the time that it would now aggressively enforce anti-discrimination statutes. And now Westchester must build moderate-income housing within its well-to-do communities.

In the task force’s state-court litigation, the SLAPP claims were dismissed in March and discovery began in earnest concerning, among other things, how Fialkow fits in all this. That would determine both flourish and fulcrum for Hall’s conspiracy theory and the alleged tortious interference with the business of the task force.

Yet very few if any of the hundreds of men who sleep at the task force shelter understand the seismic struggle in which they might be called pawns. Through two foreclosures and multipronged litigation encompassing the city’s power structure and the federal government, they have continued to trudge in for respite from the streets, then back out for another day.

However the litigation plays out, this Battle of Atlanta seems set up for a very bitter end.