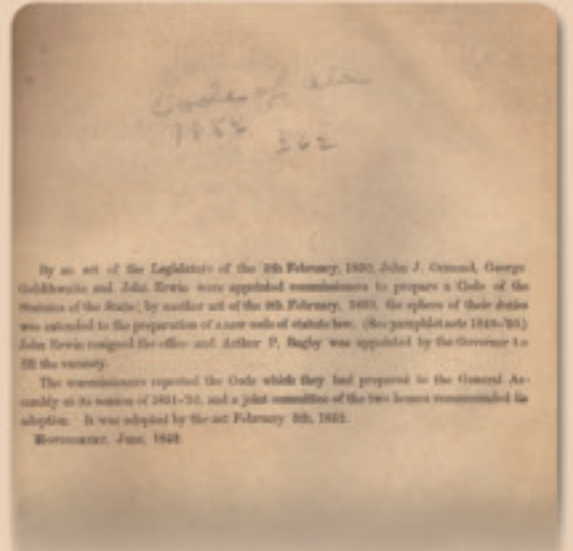
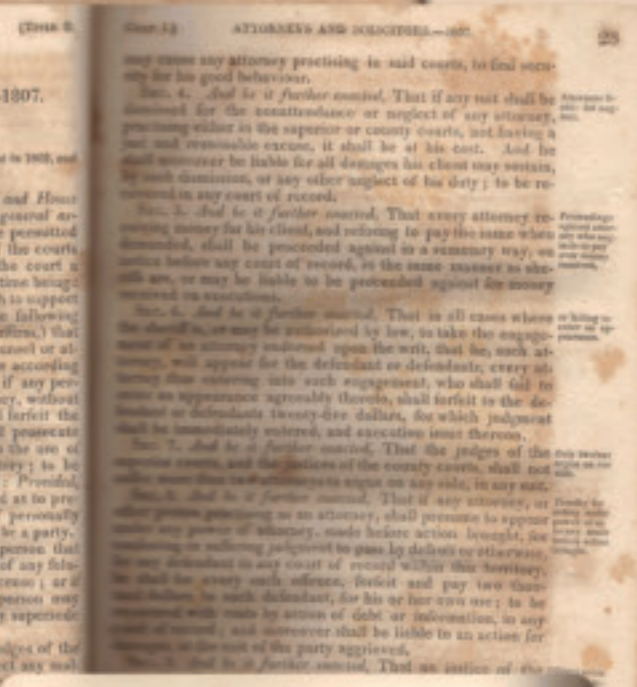
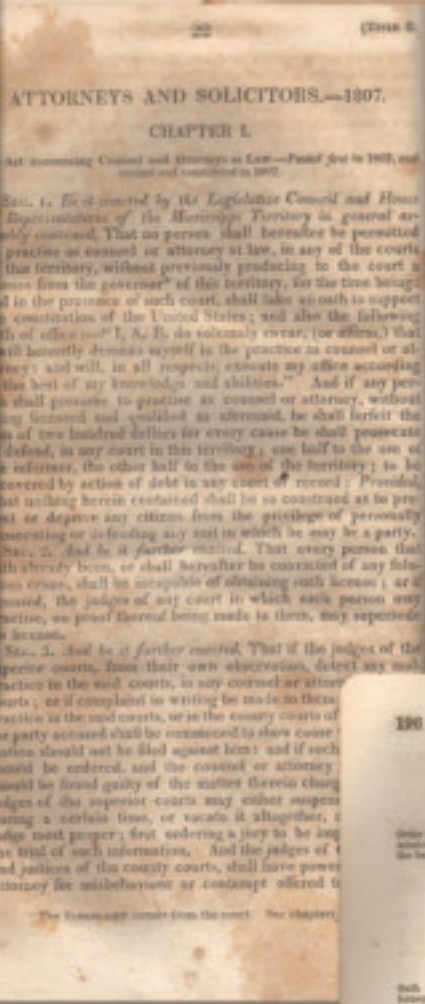
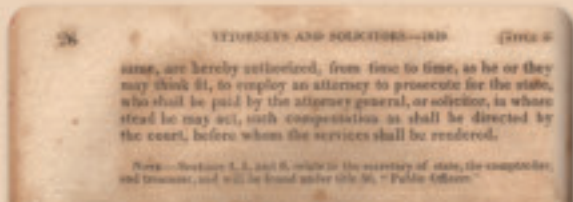
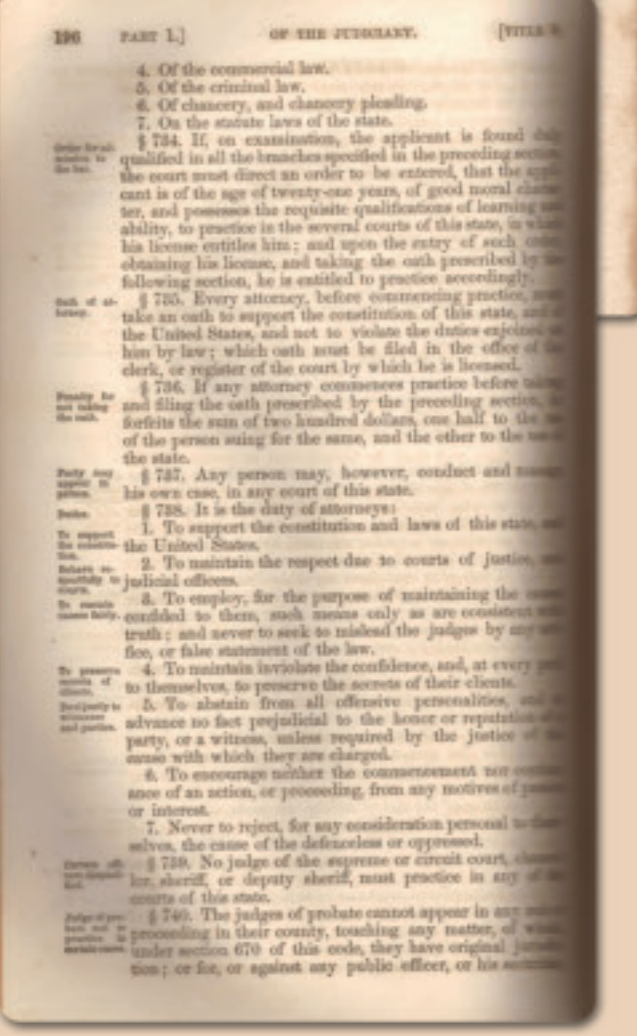


Pictured above and right are four pages from the Digest of the Laws of Alabama 1823.



Pictured above and right are two pages from the Code of Alabama 1852.





# PROFESSIONALISM IN ALABAMA: A Look at Our Past and Present in Planning Our Future

**By Justice Hugh Maddox**

**“THE PURITY and efficiency of  
judicial administration, which,  
under our system, is largely  
government itself, depend as  
much upon the character,  
conduct, and demeanor of  
attorneys in this great trust, as  
upon the fidelity and learning  
of courts, or the honesty and  
intelligence of juries.”**

*Preamble to the first Code of Ethics  
adopted December 14, 1887  
by the Alabama Bar Association*

Professionalism of lawyers in Alabama has been required for many, many years. In fact, it was required by law when Alabama was part of the Mississippi Territory, when Alabama became a state and when, in 1887, the recently-formed Alabama State Bar adopted the first *Code of Ethics* for lawyers that became the model for the *Code of Ethics* adopted by the American Bar Association and other state bar associations. That was in the past.

Today, when the Alabama State Bar, the Chief Justice’s Commission on Professionalism and the American Inns of Court Foundation are actively pursuing initiatives that promote professionalism among Alabama lawyers and judges, there is a renewed interest in the image that the bench and bar portrays, and Alabama’s efforts to improve the professionalism of lawyers and judges could rank Alabama, as it did in 1887, as a leader in the nation for encouraging professionalism of the bench and bar.

The history of professionalism of lawyers in Alabama and the regulation of lawyer conduct is recorded in ancient Alabama law books. In 1802, before Alabama became a state, and not too many years after the people had ratified the Constitution of the United States, the territorial legislature provided that “[n]o person hereafter shall be permitted to practice as counsel or attorney at law, in any of the courts of this territory, without

previously presenting to the court a license from the Governor of this territory, for the time being; and in the presence of such court shall take an oath to support the constitution of the United States; and also the following oath of office—‘I, A.B., do solemnly swear, (or affirm) that I will *honestly demean myself* in the practice as counsel or attorney, and will in all respects, execute my office according to the best of my knowledge and abilities.’” Toulmin’s Digest of the Laws of Alabama, Title 3, Chapter 1, Section 1, p. 22. (Emphasis added.) The oath required to be taken at that time, especially as it relates to the conduct of attorneys and their legal skills, is strikingly similar to the oath that every Alabama lawyer has taken since 1907, that reads as follows:

“I do solemnly swear (or affirm) that I will *demean myself as an attorney*, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person’s cause for lucre or malice and that I will support the Constitution of the State of Alabama and of the United States, so long as I continue a citizen thereof, so help me God.” (Emphasis added.)

*Ala. Code* § 34-3-15.

In 1819, when Alabama became a state, the Alabama legislature, by Act passed on December 16, 1819, which stated that “no person shall be permitted

by any court to practice therein as counsellor or attorney at law, unless he shall have obtained a license from the supreme court of this state, and it shall be the duty of the said court, when application shall be made by any person for a license as aforesaid, on his producing satisfactory evidence that he sustains a good moral character, to examine, or cause to be examined in open court the person so applying; and if after such examination, it be the opinion of said court that he is duly qualified, it shall be the duty of the judges thereof to grant a license under their hands and seals, which shall be attested by the clerk of said court." The law further provided "[t]hat every counsellor or attorney, before he be permitted to practice, shall take the following oath or affirmation, to wit: 'I \_\_\_\_, do solemnly swear, that I will *honestly demean myself* in the practice as a counsellor or attorney at law; and will execute my said office according to the best of my skill and abilities.'" Title 8, Chapter 4, sections 1 and 2. (Emphasis added.)

Likewise, the Alabama legislature, in Title 8, § 735, *Code of Ala.* 1852, provided that: "Every attorney, before commencing practice, must take an oath to support the constitution of this state, and of the United States, and not to violate the duties enjoined on him by law; which oath must be filed in the office of the clerk, or register of the court by which he is licensed." The legislature further provided, in Section 738 of Title 8, the following:

"It is the duty of attorneys:

- "1. To support the constitution and laws of the state and of the United States.
- "2. To maintain the respect due to courts of justice and judicial officers.
- "3. To employ, for the purpose of maintaining the cases confided to them, such means only as are consistent with truth; and never to seek to mislead the judges by any artifice, or false statement of the law.
- "4. To maintain inviolate the confidence, and at every peril to themselves, to preserve the secrets of their clients.
- "5. To abstain from all offensive personalities, and to advance no fact

prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

- "6. To encourage neither the commencement nor continuance of an action, or proceeding, from any motive of passion or interest.
- "7. Never to reject, for any consideration personal to themselves, the cause of the defenseless or oppressed."

The words "demean myself as an attorney," or words of similar import, are contained in the early codes and laws, and are still in the oath that is required to be taken today. What do those words really mean? They obviously mean that an attorney is a professional person, and that there is a higher standard of conduct expected and required of attorneys. But the real question is: How can Alabama lawyers be encouraged to again read the oath that they took and carry out the promises therein made? Stated differently, how can Alabama lawyers recapture a spirit of professionalism today when most polls show that, in society at large, there is a decreased respect for lawyers in spite of increased efforts by lawyers and judges to emphasize professionalism?

William Hairston, of the Birmingham bar, probably answered those questions succinctly when, on July 18, 1980, at the annual meeting of the Alabama State Bar in Birmingham, attired in the style of the 1870s, entered the assembly and delivered a magnificent address entitled *The State Bar of Alabama Enters Its Second Century*. That address is printed in 41 *Alabama Lawyer* at page 475.

Hairston delivered a similar message on professionalism on January 18, 1996, when he was a participant in a drama entitled *History of the Bench and Bar of Alabama 1820-1996*, that was presented in the supreme court courtroom of the Heflin-Torbert Judicial Building in Montgomery by the Montgomery County American Inn of Court, which is now the Hugh Maddox American Inn of Court. The Inn had invited Hairston to participate in the production and to describe the history of the creation of the Alabama State Bar and the adoption of the first

lawyer's code of ethics. On that occasion, Hairston delivered the following address to the assembled group that consisted of members of the Montgomery Inn, circuit and district judges who were attending their annual meeting in Montgomery, some federal circuit and district judges and judicial building staff and personnel:

"Many years ago, God called Moses up into the mountain and gave him the laws, the yardsticks, with which to turn a tribe of slaves into a nation. When he came down from the mountain with his eyes aglow from the wonder of it all he found his people had removed all restraints and succumbed to their animal passions.

"In disgust, he stomped the tablets, the laws, into the dust. And then he realized what he had done. He had destroyed the hope of building a civilization out of these nomadic tribesmen.

"He called to the Lord for forgiveness and restitution. The Lord responded by telling Moses, 'Hew ye two tablets like unto the first.' A basic truth that is just as important today as it was then, 'Go right back where you got off track and start all over again.'

"We do well to look at our heritage to find if we are steering a true course and if not, to straighten it out.

"Mobile laid the foundation of the Alabama State Bar when the Mobile lawyers incorporated the Mobile Bar Association in 1869. About ten years later, the Alabama State Bar, a voluntary association consisting of 30 members, was incorporated.

"Captain Walter W. Bragg was elected as our first President. We find in those that followed in this office distinguished personalities such as: Senators E. W. Pettus, Frank S. White and Howell Heflin; Governors Edward O'Neal, Thomas H. Watts, Thomas G. Jones and Emmett O'Neal; Ambassador Hannis Taylor; Justice Edward deGraffenried; Dean William S. Thorington; President of the American Bar, Henry Upton Sims; President of Lions International Roderick Beddow; Judge Richard Rives, but to name a few.

"It would be shortsighted to restrict the pillars of our Association to those names that are highlighted on the pages of history. In the 117 years of this Association's existence, many have met the challenge laid down by Teddy Roosevelt when he declared, 'Every man owes some of his time to the upbuilding of his profession.'

"The Alabama State Bar was, and is, a social organization. I doubt that we will ever reach the magnitude of the banquets that took place in the Exchange Hotel here in Montgomery, although Birmingham's annual reception comes mighty close. These lavish meals were not the only matters of substance enjoyed by the Association. In addition to the social interaction there were at the very beginning of our Association, the primary concerns as to administration of justice and self-discipline of the profession, or ethics. At the fifth annual meeting of the Association, a committee chaired by Colonel Thomas Goode Jones presented the results of two years spent drafting a code of conduct for lawyers.

"In Colonel Jones we find our Moses. He ran the gauntlet from the dizzy peaks of life to the desert of despair. He carried his country's white flag of surrender to General Grant. As a Democrat, he was appointed to the federal bench by a Republican president. Reduced to bankruptcy, he rose to occupy the Governor's office. It was this man of destiny that in 1887 authored the nation's first *Code of Legal Ethics*.

"The 56 Canons, those 56 moral principles, authored by Colonel Jones, and honed in committee and floor debate, became the 'Ten Commandments' of the legal profession for the entire nation.

"The importance of the *Code* to our founding fathers is found in the Preamble:

"The purity and efficiency of judicial administration, which under our system is largely government itself, depends as much upon the character, conduct and demeanor of attorneys in this great trust, as upon the fidelity and learning of the

courts, or the honesty and intelligence of juries.

"The tenets start off with a reminder that basic to the relationship between bench and bar is respect for the bench. The lawyer is cautioned not to withhold the respect due the judge's station, and also to refrain from 'marked attention and unusual hospitality to a judge.' Our present-day canons of judicial conduct recognize that respect is a two-way street by charging the judge to observe the high standards of conduct so that the integrity of the judiciary may be preserved.

In 1923, the Legislature integrated the Alabama State Bar with an Act entitled, 'An act to provide for the organization, regulation and government of the State Bar including admissions and disbarments of lawyers.'

"R. E. Gordon, President of the Mobile Bar Association, opened the 46th Annual Meeting with the following remarks:

'Yea, gentlemen, if we are to be true to our profession, if we are to practice upon that high plain upon which the profession is pitched, *our every day deportment as lawyers is impressing upon the world the realization that the Golden Rule is the ethics of the legal profession.*' (Emphasis added).

"That meeting adopted rules governing the conduct of attorneys. The 1923 canons varied substantially in language from those adopted in 1887.

"Since 1923, there have been two other substantial revisions of the canons. Many are of the opinion that each revision, including that of 1923, resulted in a relaxation of the level of conduct required of a lawyer.

Hairston then recounted "[t]he early concerns over the administration of justice," that he said "were slow in developing, but develop they did," and he pointed out the judicial reform that occurred in Alabama with the adoption of the Judicial Article and the adoption of rules of procedure. He stated that "[t]he system that came out of the work of the Bar under Presidents Howell Heflin, Truman Hobbs, and Robert Albritton was proclaimed as the finest in the country," and indeed it was. He also pointed out in his address the importance of the publication of *The Alabama Lawyer*, under the leadership of its three editors, Walter B. Jones, J. O. Sentell and Robert Huffaker, in keeping the bar informed. He praised the establishment of the Continuing Legal Education program of the bar.

He closed his address, looking at the present and to the future, and stated:

"Over the years the Bar had moved, some times barely moved, *but always upward in the improvement of the character and quality of those who would practice law in Alabama; in the improvement of discipline of those who tend to ignore the rules we live by; and in the improvement of our system of justice.*

*There are problems ahead, but the men and women who make up this Bar have shown that they have what it*



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takes to overcome our problems. . . “  
(Emphasis added).

Hairston, in his presentation, referred to Thomas Goode Jones as “our Moses.” Clearly, the adoption of the first *Code of Ethics* in 1887 was a significant turning point for professionalism among lawyers. But it was not the starting point for regulating lawyer conduct. Most scholars seem to agree that Jones, in drafting the first code of ethics in Alabama, used the writings of George Sharswood, a University of Pennsylvania Law School professor who had delivered lectures on ethics that were summarized and published in his *1854 Essay on Professional Ethics*, and who would later serve as chief justice of the Pennsylvania Supreme Court. But most scholars seem to agree that Sharswood, in developing his ethical principles, relied heavily on scriptural writings and his belief that “law is derived from principles laid down by a Supreme Being,” and that “the book of Proverbs was a source of

ethical principles for lawyers.” Maddox, *Lawyers: The Aristocracy of Democracy or “Skunks, Snakes and Sharks,”* 29 Cumb. L. Rev. 323, 328 (1998-1999). In fact, Jones used a quote from Sharswood in the preamble to 1887 *Code of Ethics* that reads as follows:

“There is, perhaps, no profession after that of the sacred ministry, in which a high-toned morality is imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity; in which so many delicate and difficult questions of duty are constantly arising. There are pitfalls and mantraps at every step, and the mere youth, at the outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belongs commonly to riper years. High moral principle is the only safe guide; the only torch to light his way amidst darkness and obstruction.”

— *Sharswood*

In view of the fact that some polls show that, in society at large, there is a decreased respect for lawyers in spite of increased efforts by lawyers and judges to emphasize professionalism, what is currently being done in Alabama to foster professionalism that looks to the future? For one thing, the current president of the Alabama State Bar, Mark White, graphically demonstrated the importance of the oath all lawyers take before they become lawyers when he, at the 2008 Annual Meeting of the Alabama State Bar, had the oath printed on a business card, and when he delivered his initial address as president of the bar, he asked each Alabama attorney present to stand and voluntarily take the oath again in order to demonstrate the sanctity of the obligation that each had undertaken upon entering into the profession. There are also other things that are being done to promote professionalism in Alabama.

Chief Justice Sue Bell Cobb has established the Chief Justice’s Commission on Professionalism, and she and former president of the bar Douglas McElvy are the co-chairs of that Commission. The current members of the Commission are:

## Managerial Roles:

Chief Justice Sue Bell Cobb

J. Douglas McElvy, chair

Judge Harold L. Crow, executive director, Chief Justice’s Commission on Professionalism

## Members/Former Members of the Judiciary:

Former Chief Justice Drayton Nabers, Jr.

Justice J. Gregory Shaw

Judge Sharon Lovelace Blackburn

Judge Charles W. Fleming, Jr.

Judge William C. Thompson

## Deans:

Dean John L. Carroll, Cumberland of Law

Dean Charles I. Nelson, Jones School of Law

Dean Kenneth C. Randall, the University of Alabama School of Law

## Other Members:

V. Nicholas Abbett

D. Leon Ashford

Samuel N. Crosby

Samuel H. Franklin

Leon Garrett

Anita K. Hamlett

Phillip W. McCallum

Thomas J. Methvin

J. Anthony McLain

Keith B. Norman

George Robert Parker


Ernestine S. Sapp

Bryan A. Stevenson

James Michael Terrell

J. Mark White

The mission of the Chief Justice’s Commission is “to support and encourage judges and lawyers to aspire to and to exercise the highest levels of professional integrity in their relationships with litigants, lawyers and their clients, the courts and the public; to sustain a high level of respect for professionalism among all members of the Alabama bench and bar and law students; and to ensure that the practice of law remains a high and worthy calling which serves clients and the public good.”



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The Chief Justice's Commission conducted a 2008 Professionalism Consortium at the Cumberland School of Law on February 21, 2008 which was attended by many Alabama justices and judges and lawyers. Under the leadership of retired Judge Harold Crow, it recently created a program entitled "The Professional Initiative (PSI)," whose purpose is "to promote professionalism and thereby bolster public confidence in the legal profession." PSI is an informal, voluntary, local lawyer and judge assistance program that handles client-lawyer, lawyer-lawyer and lawyer-judge issues, and uses local volunteer peers to communicate privately and informally with lawyers and judges when complaints have been filed against a lawyer or judge. Pilot projects are being set up in three circuits in the state. Any lawyer or judge who desires to be a volunteer in the PSI program may call the state bar at (334) 269-1515.

Additionally, the Chief Justice's Commission on Professionalism, on July 2, 2008, adopted a resolution in which it agreed to cooperate with the state liaison for the American Inns of Court Foundation (the author of this article) "to co-operate with the American Inns of Court Foundation in carrying out the separate,

but consistent, missions of both the Commission and the American Inns of Court Foundation." The mission of the American Inns of Court Foundation is "to foster excellence in professionalism, ethics, civility and legal skills," and one of the goals of the American Inns of Court Foundation is "to promote the American Inns of Court mission by encouraging members of the legal profession to participate in an American Inn of Court, and to communicate a culture of excellence in professionalism, ethics, civility and skills to the legal community and generally." The state liaison is currently attempting to establish additional

Inns of Court at the three accredited law schools, which would include law student members. He is also attempting to establish Inns of Court in other areas of the state where there are no active Inns of Court, and to encourage those already established to carry out the mission of the American Inns of Court Foundation.

Based on the foregoing, it is apparent that Alabama has a glorious past of professionalism, and that during this time when there is an increased emphasis on professionalism, each lawyer in Alabama should look at the past and the present, and will plan for a more glorious future of the profession. ▲▼▲



*Justice Hugh Maddox retired in January 2001 as the senior associate justice on the Alabama Supreme Court. After being appointed to the supreme court by then Gov. Albert Brewer in 1969, he was elected on five different occasions. He has written numerous books, articles and stories, including a children's book he not only authored but also illustrated. Justice Maddox graduated from the University of Alabama with a degree in journalism and the university's school of law. He served in the U.S. Air Force for two years as a commissioned officer. He continued his service in the Air Force Reserve, eventually retiring as a colonel. He served three governors as a legal advisor.*

The Hugh Maddox Inn of Court in Montgomery recently presented a \$3,000 contribution to the Montgomery YMCA Youth Judicial Program. The program was founded in 1979 by Justice Hugh Maddox and annually involves over 500 public and private high school students in Alabama in mock trial competitions, with students serving as judges, lawyers, jurors, witnesses, and bailiffs. The gift will be used for scholarships for deserving youths to participate in statewide competition that is held annually in Montgomery.



*Pictured are, left to right, Justice Maddox; Sam Adams, YMCA Youth Judicial director; D'Jara Britton, 2009 YMCA Youth Judicial chief justice and a junior at Montgomery Catholic High School; Jeff Duffey, 2007-08 president, Hugh Maddox Inn of Court; and Mark Englehart, 2008-09 Inn president.*