



Bobby Segall

The Independence of Our Judiciary

I've only been president two months, but I can tell already—it's pretty cool. Yeah, it's a lot of work (mostly work others make for you), but, boy, are there perks. I mean, your life changes completely. I noticed it right away. The first thing is that people are interested, or pretend to be, in what you have to say. And, even when what you say is goofy, people are polite: "That's an interesting idea," as opposed to "Cut the BS, Bobby, be serious." Never mind that I *was* serious.

They arrange meetings when *you* want them, and sometimes even *where* you want them. Most of you are familiar with conflicts in your schedules. Not me! No more—except for those pesky judges, of course. Now, if there's a conflict, the bar staff conforms events to my schedule. I don't even have to ask. They want to be helpful. It's almost like being breast-fed. (Not really, but I've always heard that a president should try to include sexual references in his/her column. It's attention getting.)

Another thing—you get your own stationery. It says "The Office of the President" and it has your name on it. I've never even had personal stationery with my name on it. (I had to fight to get my firm to include my name on its stationery.) So, of course, I'm writing tons of letters. Not that I have much to write about, it's just that I love using my stationery. So, if you receive a letter from me that makes no sense, please ignore the content and just know that I wanted you to see my stationery—with my name on it.

As president, you also get a lot of free food. In fact, if you schedule enough meetings at the right times, you can cut out buying food altogether. That's the real reason **Doug McElvy** spoke to so many local bar associations. Every one of them provided lunch or dinner. The best part is that folks are insulted if you offer to pay for your food—and I've learned that good bar presidents try hard never to offend.

Pretty impressively, you get calls from folks who never would have called you had you not been president. Have you ever been called by the sitting chief justice of the Alabama Supreme Court, other than to solicit a campaign contribution back when that was kosher? I never had been, but now I get calls from the chief justice. It's "Bobby this" and "Chief Justice that." (Ok, I'm exaggerating—okay, lying—but he has called me once, and he called me "Bobby." I called him "**Justice Nabers.**")

I've also gotten calls from federal judges. Really! And, so far, the word "contempt" hasn't been mentioned. One judge even invited me to the **Eleventh Circuit Judicial Conference** where I got to see Miami-based humor writer **Dave Barry** speak at lunch. Barry said he moved to Miami from the United States. Someone at my table asked me if I had moved to Alabama from the same country. Thanks to civility lessons from McElvy, my response was (a little) nicer, and shorter, than George Carlin's seven dirty words.

That's another thing. As president, you get to say outrageous things—just like you were Howard Dean or somebody like that. And, no matter how radical you sound, people pretend like you're not a dope. Sometimes, you can tell it's hard for folks to pretend. Still, they try. And, sometimes, my outrageous comments can actually be persuasive. For example, I suggested to **Keith Norman** that the bar move from electing its president to a process of merit selection. Keith said the more he heard me talk (about almost anything), the better the idea sounded.

I've also learned something pretty important as president. I've learned that candor is the best policy. Mark McGwire (testifying on steroids before Congress) taught me that. And, even though some past presidents have suggested that candor may not always be the best practice,

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Cumberland School of Law is indebted to the many Alabama attorneys and judges who contributed their time and expertise to planning and speaking at our educational seminars during the 2004–05 academic year. We gratefully acknowledge the contributions of the following individuals to the success of our CLE seminars.

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the most meaningful thing you get to do as president is talk about issues that are critical to our profession. So, I'm going to candidly share (some of) my (repressed) feelings with you about those critical issues: The way we select appellate judges in Alabama reeks! (Bar presidents can't say "s--ks.")

Can we agree on this? There is no more critical issue than that of the **independence of our judiciary**, both in practice and in perception. People need to know—to believe—that when they come to court, they will receive justice and fairness, untainted by contributions from plaintiff lawyers, defense lawyers, the Business Council, the AEA or even Karl Rove or James Carville. The way we select our judges, though, and especially our appellate judges—in outrageously expensive¹, often mean-spirited, and always demeaning elections—leads to just the opposite perception.² Really! After some of these “Wrestlemania”-style contests, our win-

ning judge appears about as impartial as a figure-skating judge in the Olympics.³

The fact that we have, by good fortune, elected, for the most part, talented, honest and good people has made no dent in the perception that our judges are “politicians in robes.” Is there a better way? Duh! That Alabama is one of only eight states (including Mississippi) that still selects judges in mud-slinging elections (fully protected by the First Amendment) suggests that there may be no worse way. In my view, and in the view I believe of the overwhelming majority of the bar, it is time to take a first step—maybe even a giant leap—toward assuring that our system of justice is one that the public accepts as independent and impartial and that gives substance to the concept that we are a nation (okay, a state) ruled by laws and not by people. We should, and we must, begin at the top of our judicial food chain, with our appellate courts. And I have a plan, or at least a hope, okay, a wish.

It's easy to say that what we need is a present-day **Howell Heflin**—Chief Justice Heflin—a modern Moses—to lead us out of the wilderness. And, we do need a charismatic leader. But, even with a great leader, this “wait for Godot” attitude can, and has, become a crutch and, even worse, an excuse for not trying. We have to make progress now. Together, we can do what lawyers are supposed to do—ignore the naysayers and rise above politics and self-interest and what may seem the expediency of the day. And, rise above simple inertia. “Professionalism” means more than being nice to one another, and a lot more than complying with our *Code of Professional Responsibility*. That's basic. No real effort is required. Our greater task as professionals, as lawyers, is to promote in Alabama a system of lasting justice, a system in whose integrity and impartiality our citizens will impose trust and confidence. We must

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- 21 Friday, Serving as a Guardian Ad Litem in Alabama - Tuscaloosa

NOVEMBER

- 3 Thursday, DUI Defense - Birmingham
- 4 Friday, Medical Malpractice - Birmingham
- 4 Friday, Collection Law - Tuscaloosa
- 11 Friday, Hot Topics for the Litigator - Tuscaloosa
- 17 Thursday, Back to the Basics - Birmingham
- 18 Friday, 24th Annual Bankruptcy Law Update - Birmingham

DECEMBER

- 1 Thursday, Alabama Update - Mobile
- 2 Friday, Alabama Update - Montgomery
- 2 Friday, 28th Annual Estate Planning - Birmingham
- 8 Thursday, Alabama Update - Huntsville
- 8 Thursday, Tort Law Update - Birmingham
- 9 Friday, Trial Skills - Huntsville
- 16 Friday, Damages and Remedies: Awards, Interest and Attorney's Fees - Birmingham
- 16 Friday, Trial Skills - Montgomery
- 21 Wednesday, Trial Skills - Birmingham
- 21 Wednesday, Video Replays - Tuscaloosa
- 22 Thursday, Alabama Update - Birmingham
- 12/27-1/3 Ski and CLE - Big Sky, Montana

demonstrate that we lawyers truly do love justice, that we care about right and wrong, and that we care about the legacy of justice we leave for our children and for all who follow us. Our goal is clear. We must convince our legislature and our citizens that the merit selection of appellate judges (as opposed to bar presidents) is an idea whose time has come, and gone, and come again and again and again.⁴

And, guess what? We do have a charismatic leader, one of impeccable reputation and ability, to guide us. We have our leader, despite the shortcomings of my efforts to recruit him. Not very long ago, I called the person **Bill Clark's** entire *ad hoc* committee on judicial selection⁵ felt most likely in Alabama to be a great, modern-day judicial reformer. I said, "Houston, we have a problem." And, **Justice Gorman Houston**, with his usual equanimity, fired back, "Congratulations, funny man, you're the 500th person to say that to me."

Off to this auspicious beginning, several committee members and I laid out a case that Justice Houston, having personally participated in our present system of judicial elections, understood far too well. We also begged him. Finally, we promised him a leadership team with which to work,⁶ and we promised him your help. After we made clear that we were not trying to change anything before the 2006 elections, to the great and good fortune of us all, Justice Houston, in my view the ultimate professional, agreed to serve.

Of course, we all have roles to play. To promote merit selection, I am willing, if necessary, to demean myself, even more than usual. If nothing else works, I'll run for the appellate bench, on a ticket with that great American (idol), Judge Paula Abdul. We could be elected too, because Paula, along with W. Mark Felt, will handle all (campaign) solicitations. If either Judge Abdul or I are elected, merit selec-

tion will quickly gain status as Alabama's most critical need.

My guess, and hope, is that you have more realistic ideas about how to move our state toward a better way of selecting its appellate judges. If this is an issue about which you are interested, or on which you are willing to work, really work, please e-mail me at segall@copelandfranco.com. We need lawyer power.⁷ If you disagree with me, and with Justice Houston, because you feel either that our appellate judges should be subjected to humiliating elections or that our judicial system should be perceived by the public as the best money can buy, please do not e-mail me. (Kidding, I love speaking to naysayers.)⁸

In addition to improving the way in which we select our judges, our profession has other critical issues, ones that will be discussed in subsequent columns. One such issue relates to **indigent defense**. After an independent judiciary, the second prong of a system of true justice is providing competent defense lawyers to indigents who have been charged with crimes. To provide competent counsel, it's necessary to pay counsel, and not to have a system where lawyers risk becoming indigent in order to represent indigents. We have a crisis in that area right now. We have to address it. The chief justice has appointed a commission to address it, and our bar will take a leadership role in that effort.

Another critical issue is **civil legal services to the poor**. At a time when Legal Services Corporation funding has been cut way back, this bar, and we lawyers in Alabama, must devote ourselves to finding a way to assure that our disadvantaged citizens are not left without fundamental civil legal services. More will be said and done in these areas by our state bar throughout the year and, it is hoped, for years into the future.

In closing, I want you to know that serving as president of our unified bar is a thrilling experience and an amazing honor. The greatest pleasure for me, and probably for everyone else who has ever served, has been to meet and work with so many wonderful people. Although I don't get out much, lawyers, to me, are the best and

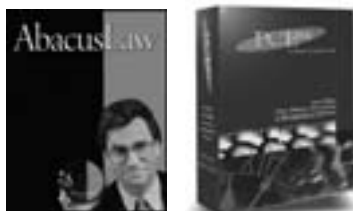
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brightest people in the world—the most passionate, the most interesting, the most sincere, the most caring, the most energetic, the most adaptable, the most creative, and even the most entertaining.⁹ Alabama lawyers are good and true friends to one another and to their clients. Like you, I want our profession to be all it can be—and that’s a lot. I also want our profession to be perceived by the public for what it is—a noble and courageous calling. I look forward very much to working toward that goal with all—well, maybe not “all”—of you throughout this year and beyond. ■

Endnotes

- Whoever said Alabama is not first in anything? According to the *Montgomery Advertiser*, for the last decade (ending with the 2004 elections), Alabama was first in the country in the money spent on state supreme court elections. In fact, Alabama administered a crushing defeat to runner-up Texas. During the decade, candidates for the Alabama Supreme Court spent \$41 million compared to a paltry \$27.5 million spent by candidates for the Texas Supreme Court. And, you wonder why a lot of folks in Alabama, including some lawyers, doubt the impartiality of our justices?
- And that perception is often fueled by lawyers. Just recently, parties to the *Vioxx* litigation challenged the objectivity of the Alabama judge handling the case—on the basis of campaign contributions he received while running for the Alabama Supreme Court. Some time ago, an Alabama lawyer, in a filing before the Alabama Supreme Court, suggested that just about every judge on the court was bought, because of political contributions.
- You should fill in the country you believe has the most egregiously biased figure-skating judges.
- Merit selection can take many forms, but an obvious one is that a broad-based judicial nominating commission submits a limited number of qualified nominees to the governor for appointment to vacancies. This method is already successfully used for circuit and district court positions in Jefferson County and other judicial circuits. Once appointed to a judgeship, judges, at the end of their terms, stand for retention elections in connection with which they are evaluated by a broad-based judicial evaluation commission. A proposed constitutional amendment has already been drafted and approved by the Board of Bar Commissioners.
- That committee consists of **Wade Baxley, Bill Bowen, Albert Brewer, Walter Byars, Bradley Byrne, Tom Carruthers, Bill Clark, Bob Denniston, Boots Gale, Fred Gray, Warren Lightfoot, Vic Lott, Rick Manley, Doug McElvy, Bob McCurley, Larry Morris, Rod Nachman, Keith Norman, Paul Patterson, Drew Redden, Maury Smith, Chuck Stewart, Howard Walthall, and Mark White.**
- This article has gone to press well in advance of its publication date. It is hoped that by now our entire leadership team is in place. Its other members either have been, or shortly will be, announced.
- If you would like to see a copy of the proposed constitutional amendment, let me know, and I (ok, my secretary) will e-mail it to you.
- Actually, I understand that some lawyers may feel that the selection of judges simply is a matter that the bar should not address. If you feel that way, I would like to hear from you—not enough to include an invitation in the text, but at least enough to include one in a footnote.
- On occasion, very, very rare occasion, in Alabama, lawyers can also be outrageous, exasperating, frustrating, insufferable, outlandish, self-aggrandizing, and even despicable, but we’ll deal with that later. I’m trying to be nice in this column.



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