

The background of the cover is a photograph of a park scene. In the center, there is a large, circular fountain with water spraying upwards. The fountain is surrounded by a paved plaza with a geometric tile pattern. In the foreground, there are some yellow and red flowers. To the right, a black lamppost stands. In the background, there are trees and a building. The sky is blue with some clouds.

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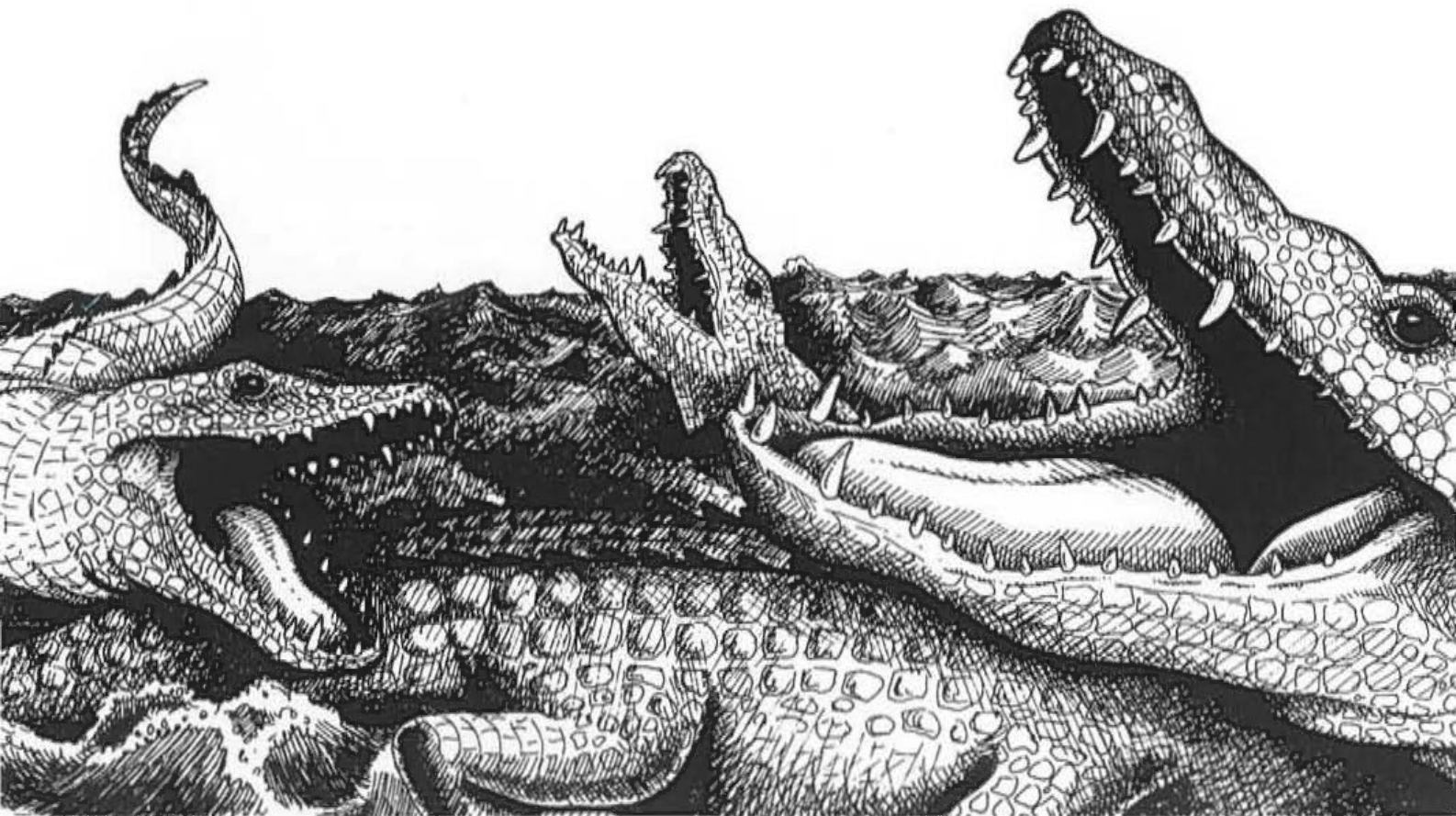
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25th Anniversary of the Judicial Article

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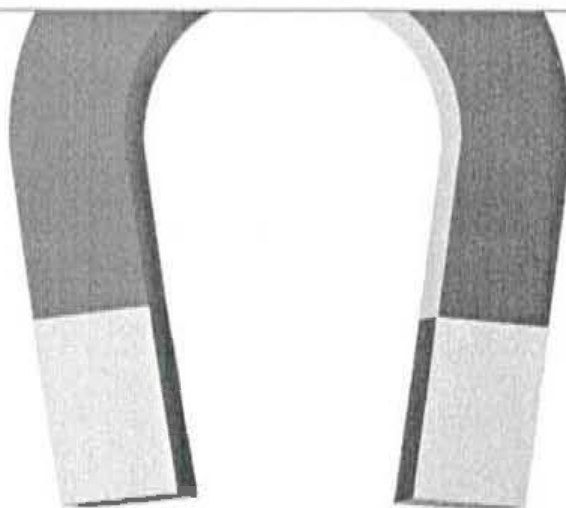
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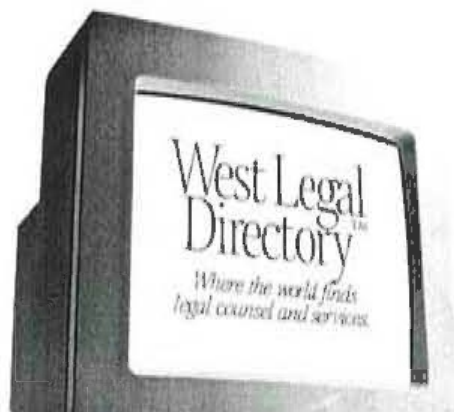
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On the Cover

Springtime in downtown Birmingham's Cultural District. The fountain is centered between Birmingham City Hall to the west and the Jefferson County Courthouse to the east.

The 1999 ASB Annual Meeting will be in Birmingham July 14-17 at the Birmingham Sheraton.

—Photo by Paul Crawford, JD

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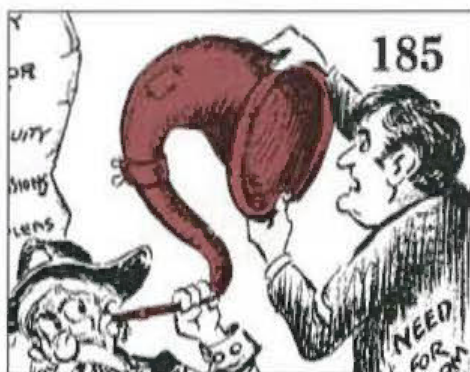
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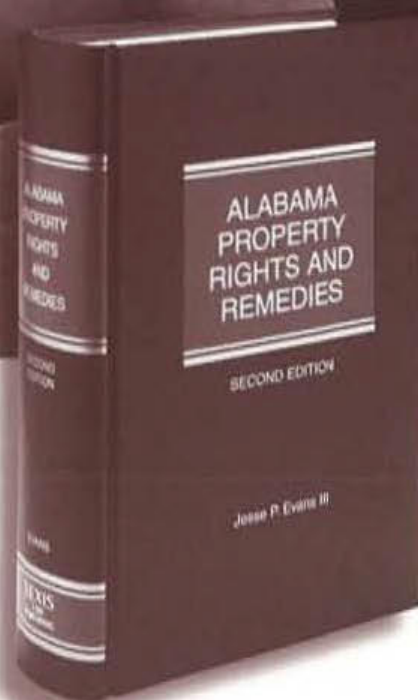
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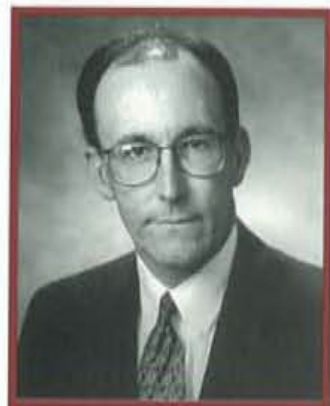
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PRESIDENT'S PAGE

By Vic Lott

Future of the Profession?



Vic Lott

Perhaps the title to this column begs the question. If we are still regarded as a "profession," will we be able to maintain this status into the 21st century? Certainly everyone would agree that we have seen many changes in the practice of law in the past ten or 15 years. Indeed, the pace of change has quickened as we approach the millennium. I have spoken about these changes with you in previous "President's Pages." So what does the future hold for us, and what can we do to control the direction which our "profession" takes?

As the law has become more and more specialized, requiring a greater degree of expertise in areas like employment, environmental, finance, ERISA, and intellectual property, large law firms in our state have prospered, while many lawyers, particularly younger lawyers, struggle to make ends meet. Small firm lawyers, and many lawyers in our more rural counties, spend their time on a variety of litigated matters—criminal, civil and domestic—and find it increasingly difficult to advise clients in areas which do not involve litigation. In addition, much of their time is spent in what is essentially pro bono work on behalf of the poor and indigent in the less populous areas of our state.

While our state bar and many local bars are leading the effort to improve access to our legal system for the indigent in both civil and criminal matters, the middle class, particularly the lower middle class, may have fallen through the cracks. Unable to access or afford legal services for many of their needs, and mindful of the poor perception which lawyers enjoy in Alabama, this group is increasingly turning to alternative sources for "legal" assistance. These alternatives may actually include some lawyers, though in many cases they are those who run major advertising campaigns for high-volume, low-fee work in

areas like bankruptcy, divorce, Social Security and collection matters. Many others are attempting to do their own legal work by using forms available on the Internet, or title companies, real estate agents, environmental engineers, financial consultants, and, most particularly, accountants. As we have failed or refused to provide legal services to so many in our state (by our pricing or specialization), these other groups have filled in the gaps. We in Alabama are not alone, and this may be a trend that will continue to expand. It may be that we lawyers have not "priced ourselves out of the market," but into the "marketplace."

Earlier this month, the New York State Bar Association's Special Committee on Multi-Disciplinary Practice and the Legal Profession issued a report to its bar. Multi-disciplinary practice involves the grouping and sharing of fees by different professionals in the same firm to provide a variety of services to clients. The American Bar Association is also studying this issue and its committee is to report later this year. These efforts focus principally on competition from the Big Five accounting firms, and point out that this competition is not something that may happen in the future, but a *fait accompli*, particularly in developed nations other than the United States, but also here. In the last few years the Big Five have moved aggressively to expand the reach of their practice in the areas beyond their former tax return domain. These firms now offer financial and estate planning, business consulting, litigation support, lobbying, and much more. Currently, Arthur Anderson is the largest private employer of lawyers in the United States, with the announced goal of becoming the largest law firm in the world shortly after the year 2000. In Europe, Canada, Australia, the Orient,

and South America the Big Five are already among the largest "law firms." Just last year the Big Five successfully lobbied Congress for a tax accountant-client privilege which became law over the objections of the American Bar Association, the Department of Justice and the Department of the Treasury. Their marketing notion of "one-stop shopping" has been found to be very appealing to the middle class and middle market companies.

In those countries, including the United States, where accounting firms have not yet been able to cross the line into the outright provision of legal services, it is because of their inability to convince legislators and state bar authorities to relax existing ethical constraints dealing with fee-sharing, client conflicts, incompatibility between lawyer confidentiality obligations and the disclosure obligations of accountants, the inability of lawyer-employees of accounting firms to represent firm clients in court, and the "former" lack of a general privilege for accountants. And yet, in the United Kingdom many are concerned that the only pure role for lawyers which will remain in the near future is as "bar-risters," and the role of "solicitors" could be subsumed by accounting and other multi-disciplinary firms.

In Florida, the state bar convened a conference in February of this year to discuss multi-disciplinary practices, the "flip side" of the ancillary business issue which many bars addressed in the 1980s. For years now, many larger firms have offered law-related services including lobbying, mediation, title insurance and others, though lawyers owned or controlled those businesses and the activities of those lawyers remain subject to the rules of the organized bar. In a multi-disciplinary practice, this is not necessarily the case. In fact, the typical multi-disciplinary firm would not be controlled by lawyers and it is this concern over the lack of "professional independence" which is at the heart of the growing debate over relaxation of ethical requirements to allow the multi-disciplinary practice.

Many point out that doctors lost much of their independence during the wave of managed care takeovers of individual practices in the last decade, resulting in situations where doctors are unable to

prescribe medications or tests without the approval of some corporate clerk. Already, insurance companies and other traditionally large users of legal services dictate the types of discovery which can be utilized by lawyers in preparing for trial. Claims officials determine when a deposition may be taken, whether a certain research project can be undertaken, and the number of interrogatories for which they are willing to pay. This attack on our professional independence is well on its way.

Yet, when bar associations raise concerns about ethical issues, professional independence and conflicts of interest to fend off competition from non-traditional providers of legal services, it inevitably sounds like we are trying to protect our turf and maintain the monopoly on the practice of law which we have enjoyed. The bottom line is that the public is demanding that we make the legal system accessible and affordable to all citizens. If we can't or won't, I believe legislators will eventually allow competition by authorizing paralegals, legal technicians, accountants and others to further invade the province of lawyering.

Is this our future? Are we to become a system focused solely on the efficiencies required to appease the marketplace, with only litigators, and a few boutique practices remaining beyond the reach of the multi-disciplinary providers? Perhaps this course appeals to many of us, but it is certainly not the "profession" which has existed in this country for over 200 years. We can't bury our heads in the sand and think that someone else will take care of this challenge. If we want to control our destiny, we must reach out to all the citizens of our state and provide true and meaningful access to our legal system on an affordable basis. This challenge faces large firms, small firms, sole practitioners, and big city and small town lawyers alike. If we enjoy the practice of law as we know it and want our "profession" to continue, then each of us must change our course and determine to become more involved in organized efforts to reach the indigent and the middle class, so that they respect our system of justice as it currently exists. Otherwise, the marketplace will prevail, and our clients will be properly referred to as "customers." For now, the choice is ours. ■



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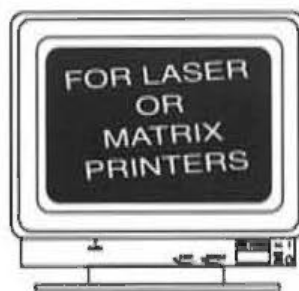
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PRESIDENT-ELECT PROFILES

Pursuant to the Alabama State Bar's rules governing the election of president-elect, the following biographical sketches are provided of Richard H. Gill and Samuel A. Rumore, Jr. Gill and Rumore were the qualifying candidates for the position of president-elect of the Alabama State Bar for the 1999-2000 term, and the winner will assume the presidency in July 2000.



RICHARD H. GILL

Richard H. Gill, a partner in the Montgomery firm of Copeland, Franco, Screws & Gill, P.A., was born April 9, 1940. He is a 1962 graduate, *magna cum laude*, of Vanderbilt University and a 1965 graduate of the University of Virginia School of Law. He was tapped for Phi Eta Sigma and Phi Beta Kappa (1961), and was a National Merit Scholar (1958).

He served as a captain in the United States Army from 1965-67 and received the Army Commendation Medal and First Oak Leaf Cluster.

Gill's Alabama State Bar involvement has included serving as a member of the Board of Bar Commissioners in 1983 and from 1986-1995, including serving on the Executive Council from 1994-95, and as a member of the State Bar Task Force on Lawyer Discipline and the Task Force on Lawyer Political Action Committees. He is a past chairman of the state bar's Committee on Character and Fitness and past vice-chairman of the Alabama Supreme Court Committee on Appellate Rules (1972-90).

In 1974, he was senior associate coun-

sel to the U.S. House of Representatives Committee on the Judiciary on the Matter of Impeachment of President Richard M. Nixon. Gill has also served as legal advisor to the Alabama House of Representatives Committee on the Judiciary on the matter of the adoption of the Judicial Article to the Alabama Constitution, 1972-73.

Gill is a member of the board of directors, Friends of the Montgomery County Public Library; the vestry of the Episcopal Church of the Ascension; and the board of directors, Central Alabama Mental Health Authority (1980-1985).

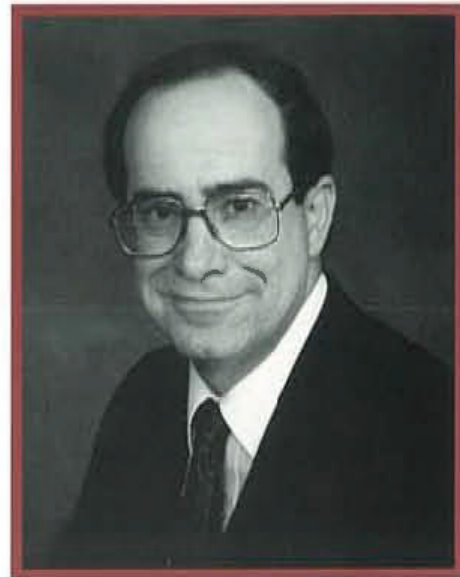
He also is a member of the Alabama Law Institute, the board of the Alabama Law Institute for Continuing Legal Education, the American Bar Association, the American Trial Lawyers Association, the Alabama Trial Lawyers Association (Executive Committee, 1977-1986). Gill was chosen a Fellow of the American College of Trial Lawyers and the Alabama Bar Foundation, and a Life Fellow of the American Bar Association.

Gill has been admitted to practice before the U. S. Supreme Court; the U.S. Courts of Appeal for the Fifth, Sixth and Eleventh Judicial circuits; the U.S. District Courts for the Middle and Northern districts of Georgia and the Northern, Middle and Southern districts of Alabama; and the Alabama Supreme Court.

He is a frequent lecturer and teacher at continuing legal education courses for the University of Alabama and Cumberland schools of law.

Articles he has authored include "The Proposed Alabama Appellate Rules, An Overview," 26 *Alabama Law Review* 639; "Uninsured Motorist Coverage: An Alabama Success Story," *Alabama Trial Lawyers Journal*, April 1973; and "Proving Attorney's Fees in Alabama," 45 *Alabama Lawyer*, No. 3, May 1984.

Gill is married to Minnie Lee Richardson Gill, and they have one son, Charles Nelson Gill, 27.



SAMUEL A. RUMORE, JR.

Samuel A. Rumore, Jr. was born in Birmingham, Alabama on February 27, 1949, the son of Samuel A. Rumore, Sr. and Theresa LaSusa Rumore. Sam was valedictorian of his high school class at John Carroll in Birmingham in 1967. He graduated from Notre Dame in 1971 with a degree in history. At Notre Dame, he was a student senator and was tapped for Phi Beta Kappa, academic honorary, and Phi Alpha Theta, history honorary. He was also commissioned a second lieutenant in the United States Army through ROTC and was a Distinguished Military Graduate.

In 1974, Sam graduated from the University of Alabama School of Law and began practicing law with Nina Miglionico in Birmingham that same year. He has continued to practice family law, probate, bankruptcy and elder law with "Miss Nina" for 25 years, and is a partner with her in the firm of Miglionico & Rumore. The other member of the firm is his wife, Pat Boyd Rumore, a native of Tuscaloosa and a 1975 graduate of the University of Alabama School of Law and former staff

attorney with Liberty National.

Sam completed more than 25 years of commissioned service in the United States Army Reserve. He served in a number of positions as both a staff officer and an Army lawyer. He graduated from the Command and General Staff Course, the Reserve Components National Security Course, and the Judge Advocate General's Corps Advanced Course. Sam retired from the Reserves in 1996 with the rank of colonel.

Sam has been active in the Birmingham Bar Association for more than 20 years. He has served on many "working" committees including the Grievance Committee, Fee Arbitration Committee and Law Day Committee, of which he was the chairman in 1982. Other Birmingham Bar activities have been the Professional Ethics Committee; Family, Domestic and Juvenile Courts Committee; and Special Assignments Committee.

Sam served for five years on the Birmingham Bar Executive Committee, including one year as secretary-treasurer of the Birmingham Bar in 1997. He chaired the History and Archives Committee of the Birmingham Bar for two years and is presently assisting with the publication of a book on the history of the Birmingham legal profession. He has served as a trustee of the Birmingham Legal Aid Society and is on the Board of Directors of the Birmingham Bar Foundation.

Sam is a member of the Alabama Law Institute. He has worked on the Alabama Adoption Code Project, the Joint Custody of Children Project, the Uniform Interstate Family Support Act Project, and the Legal Separation Act Project. He was also a member of the Supreme Court Advisory Committee on Child Support Guidelines and Child Support Enforcement.

One of Sam's proudest accomplishments came in 1983 when he was appointed chairman of a Family Law Committee with the expressed purpose of establishing an Alabama State Bar Family Law Section. The section was created in 1984 and Sam served as the first chairman of the section.

For the past nine years, Sam has represented the Tenth Judicial Circuit on the Alabama State Bar Board of Bar Commissioners. While on the board, he

has served on the MCLE Commission, various disciplinary panels, the Board of Editors of *The Alabama Lawyer*, and the board of the Alabama Bar Foundation. He proposed the creation of an Alabama State Bar History and Archives Committee and has served as chairman of that committee for the past two years. He was also a founding member of the Alabama State Bar Elder Law Section. Sam is presently a member of the Board of Bar Commissioners Executive Council.

Since 1987, Sam has written a regular feature in *The Alabama Lawyer* magazine on the courthouses of Alabama. He has shared his research and interest in Alabama history with the lawyers of Alabama in more than 65 articles. His writing has also appeared in the *Birmingham Bar Association Journal*, the *Alabama Review Quarterly Journal of Alabama History*, and in the book *I Wish I Was in Dixie*. His other professional affiliations include the American Bar Association, the American Association of Matrimonial Lawyers and

the Alabama Historical Association. Sam has lectured at CLE programs as well as historical societies around the state.

In community activities, Sam serves as chair of the Jefferson County Historical Commission and the Birmingham Public Park and Recreation Board. He was president of the Crestwood Neighborhood Association in the Birmingham Citizens Participation Program for four years, and was named Outstanding Citizen of Crestwood by the Crestwood Civic Club in 1991. He was in the 1992 class of Leadership Birmingham. Sam is also a member of the Birmingham Civitan Club, Central Alabama Mensa and the YMBC Civic Forum.

Sam and Pat Rumore are the parents of three children: Claire Patrice, 20, a sophomore at Auburn University; Theresa Grace, 18, a high school senior at John Carroll in Birmingham; and Samuel Charles, 16, a sophomore at John Carroll. The Rumores are members of St. Francis Xavier Catholic Church. ■

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EXECUTIVE DIRECTOR'S REPORT

By Keith B. Norman



After spending two days in Montgomery, Kazakhstan visitors depart for Sacramento. Left to right are: Felix Kerner, interpreter; Yevgeniy Lyssou, SKAL president; Raikan Khobdabergenova, SKAL executive director; Zhammat Asanova, SKAL executive board member; Tatyana Koretskaya, Lawyers World Newspaper correspondent; Alla Rutstein, interpreter; and ASB Executive Director Keith Norman.

Our Greatest Export: The Rule of Law



Keith B. Norman

This past March, we were honored by a visit of a four-member delegation from the Republic of Kazakhstan. The delegation was scheduled to visit Montgomery, Sacramento, Chicago and Philadelphia under the auspices of the American Bar Association's Central and Eastern European Law Initiative (CEELI). CEELI began in 1992 by mobilizing American lawyers and other legal experts to provide assistance to newly independent countries that were formerly part of the Soviet Union. Establishing judicial systems premised on the rule of law has been a crucial element of CEELI's work.

To further the rule of law in Kazakhstan and the 21 other nations, CEELI has attempted to identify partners with whom it could build long-term relationships. The program has initiated long-term strategies for strengthening the institutional capacity of local partners including judges' associations, lawyers' associations and legislative reformers. CEELI has contributed to stronger and more independent judiciaries by: educating judges through intensive and relevant workshops; making judicial associations institutionally

stronger to promote judicial independence; establishing judicial training centers; and leading initiatives to introduce judicial qualifying procedures. Similarly, CEELI has successfully helped develop independent professional legal associations and organize continuing legal education programs. CEELI has also stimulated reform in formerly Soviet law schools, and offered advice in the early stages of legislative and constitutional reform while emphasizing the important linkage between the rule of law reform and commercial law development.

Fostering these major changes in the legal structures in the emerging democracies has been a daunting task. Alabama lawyer **Teresa Cannaday** of Albertville has been one of the many lawyers and judges serving as technical advisors in the former Soviet Union. (See her article following this column.) Teresa has served in the Republic of Kazakhstan. Teresa contacted me by e-mail from Shymkent in southern Kazakhstan about six months ago. She was interested in establishing a partnership between the Alabama State Bar and the newly formed Southern Kazakhstan Association of Lawyers (SKAL). She also wanted to help

arrange for a delegation from SKAL to visit Alabama on a scheduled tour of the United States so that they could learn about the operation of the Alabama State Bar and Alabama's unified judicial system. After several e-mails and contacts with CEELI's office in Washington, the visit of the delegation from Southern Kazakhstan to Alabama was arranged. Our visitors included three lawyers, Mr. **Yevgeniy Lyssov**, president of SKAL; Ms. **Raikhana Khobdabergenova**, executive director of SKAL; and Ms. **Zhannat Asanova**, executive board member of SKAL. The fourth member of the delegation was a correspondent for *Lawyer's World Newspaper*, Ms. **Tatyana Koretskaya**. The Board of Bar Commissioners formalized our partnership with SKAL at its March meeting.

The two days that our four friends spent in Montgomery were an opportunity for them to observe and ask questions about the programs and operation of our state bar. They had a chance to learn about the operation of a local bar when they met with representatives of the Montgomery County Bar

Association. Our visitors also spent a full day learning about our state justice system. Their itinerary included visits to the Montgomery County Circuit Court, Montgomery Municipal Court and Police Department, Alabama Administrative Office of Courts, State Law Library and Supreme Court and Courts of Criminal and Civil Appeals. Although our friends had a chance to learn a great deal about bar operations and our unified judicial system, we had

a chance to learn from them, too. It was truly a mutually rewarding experience.

Before departing, our friends shared with me through the interpreters how much they appreciated the time everyone took to explain how our judicial system works and to answer their many questions. SKAL President Yevgeniy Lyssov related that they had heard about Southern hospitality, but what they experienced was more than they could have imagined. He told me that



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the one thing that was most meaningful to them was the fact that the Alabama State Bar had become their partner. I did not ask the interpreters to ask them why they felt that way because I think I knew the answer. It is something that lawyers in the United States take for granted. I believe that our lawyer friends from Southern Kazakhstan feel

that the organization of their own bar association and the partnership with the Alabama State Bar makes them a legal profession for the first time. They now see themselves as a part of a noble calling seeking to ensure that justice prevails under the rule of law.

Addendum: The successful visit of our visitors from Kazakhstan required the

help and assistance of many people. I thank the following individuals for taking time to help organize meetings or to meet with our visitors. *Alabama Supreme Court:* Chief Justice Perry Hooper, Justice Hugh Maddox, Justice Gorman Houston, Justice Harold See, Justice Champ Lyons and Justice Jean Brown. *Court of Criminal Appeals:* Judge Francis Long, Judge Jimmy Frye and Lane Mann, clerk. *Court of Civil Appeals:* Judge Sharon Yates and John Wilkerson, clerk. *Montgomery Circuit Court:* Presiding Judge Charles Price, Judge Tracy McCooley, Ms. Melissa Rittenour, clerk, and Robert Merrill, court administrator. *Montgomery Municipal Court and Police Department:* Municipal Judge Wanda Devereaux, Municipal Judge Lewis Gillis, Police Chief John Wilson, Major Larry Armstead, Captain Pat Downing and Court Administrator Pat Murphy. *Administrative Office of Courts:* Frank Gregory, director; retired Judge Joe Colquitt, Alabama Judicial College; Peg Walker, director, Judicial Study Commission; Lynda Flynt, general counsel; and Callie Longshore, director, Alabama Judicial College. *State Law Library:* Mary Horton and Alama Surles. *Montgomery County Bar Association:* Laura Crum, president; Dorman Walker, chair, Montgomery County Bar Association Grievance Committee; and Dawn Howard, executive director. Finally, I thank the **Alabama State Bar staff** for their usual efficiency and hard work in preparing for our visitors. ■



Looking on as Justice Jean Brown greets SKAL President Yevgeniy Lyssov (center) are MPD Capt. Pat Downing, Municipal Court Administrator Pat Murphy, ASB Executive Assistant Margaret Boone, interpreter Felix Kerner, Justice Gorman Houston, and Justice Champ Lyons.



During a break in the day-long orientation session, Felix Kerner (left) and Tatyana Korelskaya (second from left) visit with Judy Keegan, director of the Center for Dispute Resolution, and Dorman Walker, Montgomery County Bar committee chair.

Democracy in the Dark

By Teresa L. Cannady

On March 22 and 23, the Alabama State Bar hosted four visitors from Southern Kazakhstan. Three lawyers and one reporter, along with two interpreters, visited Montgomery to study the state bar and Alabama's Unified Judicial System. Their itinerary also includes visits to Sacramento, Philadelphia, Chicago and Washington, D.C.

The visit is part of the Central and Eastern European Law Initiative (CEELI) sponsored by the American Bar Association. CEELI is an effort to provide technical assistance for the establishment of judicial systems under the rule of law in the former Soviet Bloc countries. ASB member Teresa Cannady has been serving for the last eight months as a technical advisor in Southern Kazakhstan. She has proposed that the ASB become a partner with the Southern Kazakhstan Bar Association. (Please also see the "Executive Director's Report" in this issue.)

Everyone knows where Kazakhstan is, right? It's part of the United Kingdom, or so, at least one AT&T international operator thinks. Kazakhstan is located in Central Asia and is the second largest state of the former Soviet Union. To the south Turkmenistan, Uzbekistan and Kyrgyzstan border Kazakhstan. To the east there is a 1,700 kilometer frontier with the People's Republic of China. The long northern border is with the Russian Federation. In the southwest there is a 2,320 kilometer coastline on the Caspian Sea. The Caspian is believed to be a rich source of oil but presently there is a controversy as to who owns these deposits of oil.

In October 1990 Kazakhstan declared itself an independent state and in December 1991 joined the Commonwealth of Independent States (CIS). The country has a rich history beginning in the 6th century when Turkic tribes began to settle the region. In the 13th century Mongols conquered the area. Catherine the Great exiled many Germans to the region

and Stalin did the same thing with many Korean people. Because of this history the current population consists of approximately 45 percent Kazakh, 40 percent Russian and the rest other nationalities.

Imagine, if you can, living in the United States all of your life and practicing law there for 30 years and someone suddenly tells you that your government no longer exists. The legal system is gone, the courts don't exist, and the social welfare system that provided for all your needs no longer exists. It is hard for us to imagine such a scenario but that is what happened in Kazakhstan in 1990. They literally had to start over again and this time with a history of 70 years of Communist oppression to overcome. The free world tells them that the great democracy has come to them but what does that mean? It means they can vote, if there is anyone to vote for, and it means that during the majority of any day in certain areas of the country there is no electricity and no gas, and the government and many private enterprises are no longer paying the workers their wages. It is hard to convince people that democracy is an improvement

when these conditions exist. It is about priorities. It is very difficult to be concerned about democratic ideas when you are a student sitting in a classroom with your coat and gloves on and snow piling up on your desk. On several occasions here I have heard people say, "At least during communist times, we always had electricity and we got paid."

"Democracy in the Dark" – it is not what they had hoped for.

Progress is being made daily, however, thanks in part to a program conducted by the American Bar Association known as the Central and East European Law Initiative or CEELI. CEELI is a public service project designed to advance the rule of law by supporting the law reform process underway in Central and Eastern Europe and the Newly Independent States of the former Soviet Union. CEELI makes available the legal expertise of American volunteers to assist emerging democracies in modify-



Attendees of the November 1998 Town Hall meeting in Shymkent, hosted by the Southern Kazakhstan Association of Lawyers (Teresa Cannady is third from left)



During a CLE seminar on refugee law, Teresa Cannady (third from left) poses as a refugee being interviewed by the director of the United Nations High Commission on Refugees, Luise Druke.

ing or restructuring laws and legal systems. A premise of the project is that lasting economic and political reform is dependent on a functioning system of law. The rule of law, so basic a part of our cultural fabric, is an urgent priority and a new phenomenon in many countries now moving away from communist and socialist systems.

CEELI's legal assistance programs were conceived through consultations with leaders in the region to respond quickly and broadly to the enormous tasks associated with reforming their economies and legal infrastructures. With little other technical legal assistance flowing into the regions from Western Europe or the United States, CEELI initially focused on such issues as constitutional law, judicial restructuring, criminal law, and commercial law. To support the development and reform of indigenous legal institutions, CEELI is allocating additional resources to assist in judicial restructuring, strengthening lawyers associations, reforming legal education, and combating organized crime and corruption.

In providing technical legal assistance, CEELI is guided by several key principles. First, CEELI is designed to be responsive to the needs and priorities of the countries of Central and Eastern Europe and the NIS, not those of the U.S. participants or sponsors. Accordingly, the structure of CEELI is heavily influenced by consultations with government and non-governmental officials, legal scholars and practitioners from the host countries. Second, CEELI recognizes that U.S. legal experience and traditions offer but one approach that participating countries may wish to consider. A variety of models, including those of many civil law countries, offer alternative legal traditions that are also valuable sources of law. Finally, CEELI is a public service project and not a device for developing business opportunities. Accordingly, strict conflict of interest guidelines have been developed to ensure neutrality and to avoid any appearance of conflicts.

By turning to the ABA's 370,000 member lawyers, as well as other legal experts in the U.S. and Western Europe, CEELI has been able to make available a high level of expertise in the areas in which the participating countries have requested assistance. Participating lawyers and judges volunteer their time on a pro bono basis. CEELI has been working in Kazakhstan since 1993 and presently has offices in three cities. The CEELI liaison to the city of Astana, Ann Marie

Bereschak of Pennsylvania, is working with Parliament to open a legislative drafting center. I provide assistance in both Almaty and Shymkent that centers on bar association development and dissemination of legal information. CEELI helped to start and continues to assist a bar association in Shymkent and we are also trying to open a law library there. My future projects include starting bar associations in two other cities as well as starting two law student associations.

It is hard for us as Americans to imagine *not* having a bar association and even harder for us to understand the lack of legal information. Law students are studying without books and there are few, if any, law libraries. We were able to purchase furniture and a small supply of books by monies provided from an ABA advocacy grant. We are currently seeking donations and other grants to adequately supply and operate the library.

I quickly became a local hero when we purchased furniture for the law library. I noticed that the workers were being very talkative with my interpreter and when I inquired as to what was happening I discovered that the employees had not been paid their wages in several months and were now going to be because we had bought these items. They asked me to come back soon and to buy more. The process of purchasing and moving these items took an entire afternoon. The men had to manually load the furniture onto a flatbed trailer, which they pulled with an old tractor several miles across town to where the one-room library is located.

Both the library (known as SKLIC, Southern Kazakhstan Legal Information Center) and the bar association (known as SKAL, Southern Kazakhstan Association of Lawyers) are Non-Governmental Organizations or NGOs. In order for any organized group to operate legally in Kazakhstan they must have a charter and be officially registered with the appropriate government office. This process can often be a cumbersome and time-consuming prospect.

The SKAL has a permanent office with a full-time executive director, Raihan Khobdabergenova, who is an attorney. They elect officers on a yearly basis and are continuously increasing their membership, including allowing law students to be members during the last two years of their education. They hold monthly roundtables and various seminars to assist the public and to continue their legal education, as well as to discuss proposed drafts of laws and offer their comments to Parliament.



During the Shymkent Town Hall meeting, Parliamentarians met with area residents.




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On November 7, 1998, the SKAL hosted a town hall meeting with the assistance of ABA/CEELI and IFES, the International Foundation for Election Systems. Again, in the U.S., this would have been a simple undertaking but not in Kazakhstan. Due to protocol with Parliament, invitations had to formally issued and approved by the head of the Senate. ABA/CEELI provided airfare and accommodations for eight Parliamentarians to travel from Astana to Shymkent. There are no travel agencies and credit cards are virtually unheard of, so the process involved quite a bit of logistical work. The meeting was a huge success. For most of these people this was the first time they had ever had an opportunity to speak with the representatives. They cannot simply go the Parliament sessions or even to the office of their representatives without an invitation and special pass to get in.

Every day is indeed a new adventure. Sometimes it can take three to four hours just to check your e-mail. The telephone lines are so poor here that it can take forever to get a connection and then you can only keep it for a few seconds. Everything moves slowly here and life is quite different than in the U.S. As a volunteer I have no salary. However, I am provided with housing, reimbursement for medical insurance premiums, and a monthly living stipend for meals and incidentals. My agreement here is to work for one year with a possibility of being asked to stay on for another year. It is quite a commitment to pick up and move, literally, halfway around the world.



Teresa Cannady in the law library in Shymkent with new furniture purchased with an ABA advocacy grant


Many western goods are available here in Almaty but Diet Coke (or Cola Light, as it is called here) is virtually unheard of outside of Almaty. Bread and vegetables are plentiful and cheap but most other goods, especially imported ones, are extremely expensive. I have just recently found a new Texaco Station with a mini-mart which sells Campbell's Tomato Soup for a mere \$3 per can. There is a huge department store, TSUM, which has quite a selection of items, including toasters for \$25 dollars and up, and plastic lamps for around \$50. No K-MART "blue light specials" here.

The work here can be frustrating but in the end is very rewarding. To see democracy in action and help it move forward is truly a dream come true. People everywhere have the same dream of a better life for themselves and their children. A man here asked me why all of the Americans smile so much. He asked, "Do you not have any problems?" I responded that we all think we do, but that compared to theirs, our problems looked pretty insignificant. I am always encouraged, though, when I meet young law students here who smile and tell me of their hopes for a truly democratic country one day.

If you are interested in the possibility of being a volunteer, either in-country, or with short-term assignments such as assisting with seminars or reviewing drafts of laws, please contact the CEELI office in Washington, D.C. at 1-800-98-CEELI. ■

Teresa L. Cannady

Teresa L. Cannady is a native of Albertville, Alabama, and is a 1991 graduate of the University of Alabama School of Law. She was admitted to the Alabama State Bar that year. Ms. Cannady was engaged in the private practice of law in Alabama until July 1997 when she moved to Kazakhstan to begin her work with ABA/CEELI. You can e-mail her in Kazakhstan at tlc@kaznet.kz.



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BAR BRIEFS



(Left to right) Huel M. Love, Sr., Ralph D. Gaines, Jr., William C. Sullivan and Thomas Reuben Bell

• The **Talladega County Bar Association** held a dinner meeting at the Coosa Valley Country Club in Sylacauga on February 27. This meeting was attended by over 75 lawyers and guests, and honored TCBA members who have also been members of the Alabama State Bar for 50 years or more. Honored were **Thomas Reuben Bell** (59 years), **George F. Wooten** (56 years), **Ralph D. Gaines, Jr.** (50 years), **Huel M. Love, Sr.** (50 years), and **William C. Sullivan** (50 years).

• **Baptist Health System** recently elected new officers for 1999 to its board of trustees. Each will serve a one-year term on the not-for-profit organization's 28-member board that, with the support of the Birmingham Baptist Association, manages the direction and function of the state's largest health care system.

Talladega attorney **B. Clark Carpenter, Jr.** will serve as chairman of the board. Carpenter is a partner with the firm of Wooten, Thornton, Carpenter, O'Brien, Lazenby & Lawrence.

• Birmingham attorney **Jim Porter**, of the firm of Porter, Porter & Hassinger, P.C., has been appointed a trustee of the **Alabama Trust Fund** to serve a six-year term. He has also been appointed as a board member of Forever Wild Land Trust to serve a six-year term.

• **Tazewell T. Shepard** has been elected vice-chairman of the **Alabama Space Science Exhibit Commission**, a state agency that governs the United States Space and Rocket Center in Huntsville and licenses Space Camp and Aviation Challenge.

• "Juvenile Justice" and "Animals and the Environment" will be twin themes of the first annual summer conference for the **Southern Animal Law Center, Inc.** The conference will be held July 29-August 1, 1999 in Atlanta. Information about the conference may be obtained from the Southern Animal Law Center, Inc. at P.O. Box 2692, Huntsville 35804. ■

WANTED: Alabama Judicial Code of Ethics

Around 1907, a framed copy of the new Alabama Judicial Code of Ethics, written by Thomas Goode Jones, was presented to each of the courthouses in Alabama. This Code of Ethics was the first such code ever established, and was the basis (with very few changes) for the existing American Bar Association Code of Ethics. This is an important part of Alabama's judicial history. The supreme court and state law library in Montgomery are very interested in obtaining a copy of this, regardless of its condition, to display in the new judicial building. If you have a copy of this, if you know of the existence of a copy, or if you know someone who might have some knowledge of this, contact **Tim Lewis, state law librarian, at (334) 242-4347** or **Mary Edge Horton at (334) 242-4958**.

Alabama Law Foundation Fellows Dinner

The third annual dinner of the Fellows of the Alabama Law Foundation was held Friday, January 29, 1999 at the Capital City Club in Montgomery. Fellows are lawyers who have been members of the Alabama State Bar at least ten years and who have demonstrated outstanding dedication to their profession and to their community. Sixteen new Fellows were inducted into Fellows membership in 1998. Membership in the Fellows is limited to 1 percent of state bar membership. Fellows are nominated by the membership of the Fellows.

Alabama Law Foundation President Spud Seale of Montgomery presided at the dinner. The speaker for the evening was Martha Barnett of Tallahassee, Florida. Ms. Barnett is a partner in the firm of Holland & Knight, and will



ALF Fellows: Standing (L-R) Rodney A. Max, Michael L. Edwards, George L. Beck, Jr. Seated (L-R) Jacob A. Walker, Jr., Robert P. Denniston, L. Tennent Lee, III



Martha Barnett, upcoming president-elect of the ABA, and ALF President Spud Seale

become the president-elect of the American Bar Association at its 1999 Annual Meeting. Ms. Barnett spoke on the rewarding experiences she has had in her legal career, especially in her pro bono activities.

Fellows' contributions will help fund projects of the foundation that benefit the legal community and the public. ■

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includes: the eight-minute video; a handbook of speech points; and informational brochures for the audience. (NOTE: TV and radio announcements have been excerpted from the video and are now being shown across the state—look and listen for them in your community and encourage your local stations to air them!)

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MEMORIALS

Charles Owings Caddis

Whereas, the Birmingham Bar Association lost one of its distinguished members through the death of Charles Owings Caddis on August 5, 1997 at the age of 53;

Whereas, Charles Owings Caddis obtained his undergraduate and law degrees from the University of Alabama and after graduating returned to Birmingham and was employed by the First National Bank of Birmingham in its trust department; and,

Whereas, Charles Owings Caddis later entered the private practice of law and established with his partners the firm of Kracke, Caddis, Gwin, Bashinsky & Woodward. Later, he was a partner in the firm of Carlton, Boles, Clark, Vann, Stichweh & Caddis. At the time of his death, Charles conducted his own private practice from the offices of McNamee, Snead & Mobley. His practice was concentrated in the areas of estates, real estate and general corporate matters; and,

Whereas, Charles Owings Caddis was a member of the Sons of the American Revolution, served on the Executive Board of the Jefferson County Republican Party and was a member of the Cathedral Church of the Advent; and,

Whereas, Charles Owings Caddis consistently warmed the hearts of our membership with his infectious smile and his engaging, charming conversation; and,

Whereas, the precious memories of the life of Charles Owings Caddis will always be a part of the thoughts of the membership of the Birmingham Bar Association. We are better off for Charles Owings Caddis' having been a part of this association; and,

Whereas, Charles Owings Caddis leaves as survivors his widow, Trent Douglass Caddis; his daughters, Leslie Caddis Davidson, Trent Caddis Hull and Addison Caddis Hubbard; his grandchildren, Patrick Douglas Hubbard, Turner Nicholson Hull, Matthew Henry Davidson, V and Carson O'Neill Hull; his mother, Earline Owings Caddis; and his sister,

Marian Caddis Braswell, together with an innumerable host of colleagues and friends who mourn his passing; and,

Whereas, this Resolution is offered as a record of our admiration and affection for Charles Owings Caddis and of our condolences to his widow, his children and other members of his family.

**-Brittin T. Coleman, president,
Birmingham Bar Association**

George I. Case, Jr.

The Birmingham Bar Association lost one of its distinguished members through the death of George I. Case, Jr. on December 2, 1998 at the age of 90.

George I. Case, Jr. was a native of Birmingham, where he lived all of his life. He was educated in the Birmingham City Schools and was a graduate of Woodlawn High School. Mr. Case attended Howard College and the Birmingham School of Law, where he graduated in 1933. Mr. Case later taught at the Birmingham School of Law. Mr. Case practiced law in Birmingham for over 50 years. He practiced with the firm of Taylor & Jefferies after graduating from law school until he went on to active duty during World War II. Mr. Case served with the Judge Advocate General's Corps and was in the active reserve until his retirement. When he returned from the war, Mr. Case practiced with the firm of McGowen & McGowen. Mr. Case was appointed special judge by former Governor Albert Brewer. He entered semi-retirement in 1970, but continued to practice part-time for many years thereafter. Mr. Case was a long-time member of the Birmingham Bar Association and an acknowledged leader in the field of bankruptcy law.

Mr. Case leaves as survivors his wife, Mary Elizabeth Case, of Birmingham; a daughter, Sara Case Pennington, of Homewood; and one son, Edmond Gaines Case, of Gulf Breeze, Florida; and an innumerable host of family, colleagues and friends who mourn his passing.

**-Brittin T. Coleman, president,
Birmingham Bar Association**

Arthur J. Hanes

Whereas, the Birmingham Bar Association lost one of its distinguished members through the death of Arthur J. Hanes on May 8, 1997 at the age of 80 years. He was a native of Birmingham and graduated from Woodlawn High School and Birmingham Southern College, which he attended on an athletic scholarship, playing football, baseball and basketball. He was a member of the Birmingham Southern Sports Hall of Fame and founder and president of the Birmingham Softball Association; and,

Whereas, at the commencement of World War II, Arthur J. Hanes enlisted as an ensign in the United States Navy, serving as skipper of a patrol torpedo boat in the South Pacific Theater, and was much decorated, including honors for services as "eyes of the fleet" at the battle of Leyte Gulf; and,

Whereas, Arthur J. Hanes graduated from the University of Alabama School of Law, served as a special agent for the Federal Bureau of Investigation, and from 1951 to 1960 was an executive of Hayes Aircraft and served as a member and president of the Birmingham Board of Education; and,

Whereas, in 1961, Arthur J. Hanes was elected mayor of the City of Birmingham. As mayor he broke ground for the Red Mountain Expressway and the Birmingham Botanical Gardens, and was a stalwart proponent of airport expansion, being greatly responsible for the first terminal and expanded flight schedules; and,

Whereas, after leaving politics, Arthur J. Hanes returned to his law practice and gained national attention for his vigorous defense of highly charged and difficult cases; and,

Whereas, Arthur J. Hanes was a member of the East Lake United Methodist Church, where he was a member of the administrative board and taught Sunday School for 25 years. He was president of the Toastmasters Clubs of Birmingham and was a Mason and a Shriner; and,



Whereas, Arthur J. Hanes was predeceased by his wife of 60 years, Eleanor Bernhard Hanes, and was survived by his sons, Judge Arthur J. Hanes, Jr. and Thomas B. Hanes, both highly respected members of this association; his grandchildren, Arthur J. Hanes, III, Heather Hanes Green, John Hanes and James A. Hanes; his sister, Martha Hanes Coefield; and many nieces and nephews; and,

Whereas, Mr. Hanes left a host of colleagues and friends who mourn his passing; and,

Whereas, this Resolution is offered as a record of our admiration and affection for Arthur J. Hanes and of our condolences to his sons and other members of his family.

**-Brittin T. Coleman, president,
Birmingham Bar Association**

Hugh W. Roberts, Jr.

Whereas, Hugh W. Roberts, Jr., a distinguished and respected member of the Tuscaloosa County Bar Association, departed this life on September 22, 1998 in Tuscaloosa, Alabama at the age of 79 years; and

Whereas, the Tuscaloosa County Bar Association honors his memory and recognizes his many contributions to the legal profession, our community, state and nation;

Now, therefore, be it remembered, that Hugh W. Roberts, Jr. was born on April 4, 1919 in Tuscaloosa, the son of

Hugh Waddell Roberts and Eddie Mae Hester Roberts. Hugh attended public schools in Birmingham and Tuscaloosa and graduated from Tuscaloosa High School. He enrolled in the University of Alabama and earned a Bachelor of Arts degree with a minor in journalism in 1946. He then entered the University of Alabama School of Law and received an LLB degree in 1948. While at the University, Hugh was president of Sigma Nu social fraternity, a member of Phi Delta Phi legal fraternity and junior class representative to the governing body of the law school.

Hugh entered the United States Army in 1940 and served until released from active duty in 1946. He was the commanding officer of an infantry battalion in the European Theater of Operations. For that service, Hugh was awarded the Silver Star, the Bronze Star and the Combat Infantryman's Badge. His battalion received the Presidential Unit Citation. After his release from active duty in 1946, he continued to serve his country as a member of the U.S. Army Reserve. Hugh was a graduate of the Command and General Staff School, retiring from the Army Reserve years later as a full colonel.

Known for his skills as both advocate and counselor, Hugh had a general practice of law in Tuscaloosa. He was a member of the Executive Committee of the Tuscaloosa County Bar Association and served as its president in 1962. He was

elected to the position of first vice-president of the Alabama State Bar in 1977 and president of the state bar in 1978. Hugh was a member of the Alabama Defense Lawyers Association, the National Association of Railroad Trial Counsel, the International Association of Insurance Counsel and Farrah Law Society.

Among his many contributions to the community was Hugh's service on the Bryce Hospital Human Rights Committee which resulted in improved treatment and living conditions for the mentally ill in the State of Alabama.

Hugh was a member of Christ Episcopal Church of Tuscaloosa for many years where he served on the vestry. He was married to the former Mary D. Rafield and is survived by daughters Mary Eugenia Phifer and Patricia Hester Steele.

Now, therefore, be it resolved by the Tuscaloosa County Bar Association, in meeting assembled this day, that its members mourn the death of Hugh W. Roberts, Jr., whose exemplary life of service to his clients, his family, our state and our nation is an inspiration to all who knew him, and whose extraordinary skill, diverse talents and warm friendship have enriched the lives of the members of this association. Be it known that the life, work and example of Hugh W. Roberts, Jr. have done honor to his chosen profession.

**-Scott Donaldson, president,
Tuscaloosa County Bar Association**

George Chester Batcheler
Birmingham
Admitted: 1963
Died: February 11, 1999

George Sage Lyons
Mobile
Admitted: 1959
Died: March 5, 1999

Dan Eugene Schmaeling
Montgomery
Admitted: 1978
Died: March 10, 1999

James Patrick Tillery, Jr.
Birmingham
Admitted: 1986
Died: October 16, 1998

Karl Cecil Harrison
Columbiana
Admitted: 1934
Died: November 15, 1997

Edwin C. Page, Jr.
Evergreen
Admitted: 1928
Died: January 20, 1999

T. Julian Skinner, Jr.
Birmingham
Admitted: 1935
Died: February 25, 1999

William Sidney Wilson, Jr.
Dothan
Admitted: 1934
Died: December 16, 1998

Victor Jackson
Gadsden
Admitted: 1983
Died: January 24, 1999

Robert Allen Petrussek
Muscle Shoals
Admitted: 1960
Died: December 4, 1998

Robert Eugene Steiner, III
Montgomery
Admitted: 1949
Died: February 8, 1999





Trying to navigate **rough** seas?

That is where the **Alabama Lawyer Assistance Program** of the Alabama State Bar can help provide guidance for you, or someone you know who needs help.

Many lawyers at one time or another suffer from the stress and emotional turmoil of practicing law. Some turn for relief to alcohol or other drugs, which often lead to devastating consequences.

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If you, or any lawyer, judge or law student you know, needs help, you owe it to yourself and your profession to call Jeanne Marie Leslie, RN, M.Ed., program director, at (334) 834-7576 or (334) 395-0807 (24-hour pager). Remember, all calls are strictly confidential.

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ABOUT MEMBERS, AMONG FIRMS

Due to the huge increase in notices for "About Members, Among Firms," *The Alabama Lawyer* will no longer publish address changes for firms or individual practices. *It will continue* to publish announcements of the formation of new firms or the opening of solo practices, as well as the addition of new associates or partners. Please continue to send in address changes to the membership department of the Alabama State Bar.

About Members

James V. Spencer, III announces the opening of his office at Riverchase South Office Building, Suite 212, Birmingham. The mailing address is P.O. Box 361785, 35236. Phone (205) 987-2830.

Regina Rose Hudson announces the opening of her office at 205 20th Street, North, Suite 730, Birmingham 35203. Phone (205) 252-1010.

John M. Woodham announces the opening of his office at 200-A E. Walnut Street, Troy. The mailing address is P.O. Box 53, 36081. Phone (334) 808-4011.

Robert H. Maxwell, P.C. announces the retirement of **Mr. Maxwell**, the acquisition of the firm by **Shirley D. Darby**, and the change of the firm name to **Shirley D. Darby, P.C.** Offices will remain at 104 N. Main Street, Atmore. The mailing address is P.O. Box 587, 36504. Phone (334) 368-4441.

Robert A. Mullins, Jr. announces the opening of his office at 2345 Bush Boulevard, Birmingham 35208. Phone (205) 788-9000.

James M. Orr, Jr. announces the dissolution of Anderson & Orr and the opening of his office at 951 Government Street, Suite 226, Mobile 36604. Phone (334) 432-5770.

Among Firms

Jackson, Myrick, Chambers & Byrne, L.L.C. announces that **John W. Donald, Jr.** and **Kelly Collins Woodford** have joined the firm, and that **Frank McRight** has become *of counsel*. Offices are located at 1100 Regions Bank Building, 106 St. Francis Street, Mobile 36602. Phone (334) 432-3444.

Richard E. Davis and **Leslie T. Fields** announce the formation of **Davis & Fields, P.C.** Offices are located at 25369 Highway 98, Suite C-2, Daphne 36526. The mailing address is P.O. Box 2925, 36526. Phone (334) 621-1555.

Spain & Gillon, L.L.C. announces that **Howard K. Glick** has become a member and **Myla C. Choy** and **Mark W. Macoy** have become associated with the firm.

Brooks & Hamby P.C. announces that **Jene W. Owens, Jr.** has become a partner with the firm.

The office of **Bankruptcy Administrator**, Northern District of Alabama, Western Division, announces that **Joseph E. Bulgarella** was appointed division attorney. Offices are located at 1118 Greensboro Avenue, Room 242, Tuscaloosa 35401. Phone (205) 758-0569.

Beasley, Wilson, Allen, Crow & Methvin, P.C. announces that **Robert L. Pittman** has become a shareholder of the firm, and that **Dana G. Taunton**, **Scarlette M. Tuley**, **J. Mark Englehart**, **Kendall C. Dunson**, **Scott T. McArdle**, **Clinton C. Carter**, **Tiernan W. Luck, III**, and **Karen L. Mastin** have become associated with the firm. The firm name has changed to **Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.**

Balch & Bingham announces that **B. Judson Hennington, III**, **Robert L. Loftin, III** and **Frederick R. Eames** have

joined the firm as *of counsel*. **R. Bruce Barze, Jr.**, **David B. Block**, **Matthew W. Bowden**, **Leigh Anne Hodge**, **C. Grady Moore, III**, and **Lisa J. Sharp** have become partners, and **William S. Blair**, **Gregory P. Butrus**, **J. Chris Cochran**, **Sean B. Cunningham**, **Bingham D. Edwards, Jr.**, **Theresa R. Jenkins**, **Eric B. Langley**, **Jennifer R. McCain**, **J. Beth Moscarelli**, and **Wendy A. Zarzaur** have joined the firm as associates.

Sabel & Sabel announces that **Maricia D. Bennekin** has become associated with the firm. Offices are located at Hillwood Office Center, 2800 Zelda Road, Suite 100-5, Montgomery 36106. Phone (334) 271-2770.

Akridge & Balch, P.C. announces that **Robert T. Treese, III** has become an associate. Offices are located at 1702 Catherine Court, Suite 2-D, Auburn 36830. Phone (334) 887-0884.

Rushton, Stakely, Johnston & Garrett, P.A. announces that **Charles Ali Everage** has become an associate. Offices are located at 184 Commerce Street, Montgomery. The mailing address is P.O. Box 270, 36101-0270. Phone (334) 206-3100.

Wallace, Ellis, Fowler & Head announces that **Vonda Felton** has become an associate. Offices are located at 111 N. Main Street, Columbiana. The mailing address is P.O. Box 585, 35051.

Huie, Fernambucq & Stewart, L.L.P. announces that **H. Lanier Brown, II** has become a partner with the firm, and that **Anna-Katherine Graves**, **James W. Moss** and **Cannon Lawley** have become associates. Offices are located at 800 Regions Bank Building, 417 N. 20th Street, Birmingham 35203.

Rhea, Boyd & Rhea announces that **Gina Dawn Coggin** has become a partner in the firm. Offices are located at

ROAD MAPS

DIRECTIONS FOR THE LEGAL PROFESSION

"The Image Problem Is Ours. TV Didn't Make It. The Movies Didn't Make It. We Did."

Douglas O'Brien, former chair, New York State Bar Association Public Relations Committee, addresses the tough topic of image and lawyer-bashing in a direct, practical and upbeat manner. You will definitely leave this session as a better lawyer. And that's no joke!

"There Is A Place At The Table For Us All."

The ASB Task Force On Minority Participation showcases the challenges of our legal profession today and how specialty and local bars can work with the ASB on issues important to all Alabama attorneys. Program highlights include: *"Miles To Go: Progress of Minorities in the Legal Profession"*; *How to Get and Retain Corporate Clients*; and a luncheon with guest speaker James C. Cole, esq., past president of the National Bar Association.

"One Of The Very Few, Really Funny, Inspiring Men In America Today!"

Mark Mayfield continues to earn accolades for his high-content seminars and stand-up comedy. He received rave reviews at his previous appearance before the Alabama State Bar and returns by popular demand to help Alabama lawyers *"Keep Balanced!"*

ALABAMA STATE BAR 1999 ANNUAL MEETING

July 14-17, 1999 • Birmingham, Alabama

See registration materials in this issue!

930 Forrest Avenue, Gadsden 35901.
Phone (256) 547-6801.

Galloway & Moss, L.L.C. announces that **Mary Margaret Relfe** has joined the firm. Offices are located 11 Oak Street, Birmingham 35213. Phone (205) 871-2133.

Webb & Eley, P.C. announces that **Hope Curtis** and **Robbie Alexander Hyde** have joined the firm. Offices are located at 166 Commerce Street, Suite 300, Montgomery 36104. The mailing address is P.O. Box 238, 36101-0238. Phone (334) 262-1850.

Hall & Hall, L.L.C. announces that **Jane G. Hall** has joined the firm. Offices are located at 600 Luckie Drive, Suite 405, Birmingham 35223. Phone (205) 871-6006.

Yearout, Myers & Traylor, P.C. announces that **Joe E. Herring** has become an associate and **Deborah S. Braden** has returned to the firm. Offices are located at 800 Shades Creek Parkway, Suite 500, Birmingham 35209. Phone (205) 414-8160.

Maynard, Cooper & Gale announces that **J. Fairley McDonald, III** and **M. Beth O'Neill** have become members; **S. Douglas Williams, Jr.**, **Peter S. Fruin** and **T. Louis Coppedge**, formerly associates with the firm, have become members; and **Jim G. McLaughlin**, **John A. Smyth, III**, **Alan F. Enslen**, **Stuart D. Roberts**, **M. Chad Tindol**, **David C. Cicero**, **Matthew W. Grill**, **James Philip Naftel, II**, and **Fallany O. Stover** have become associates. Offices are located at 1901 Sixth Avenue, North, 2400 AmSouth/Harbert Plaza, Birmingham 35203-2618. Phone (205) 254-1000.

Porter, Porter & Hassinger, P.C. announces that **Allison M. Wright** and **Kathryn L. Harman** have joined the firm as associates. The mailing address is P.O. Box 128, Birmingham 35201-0128. Phone (205) 322-1744.

Walter H. Honeycutt, Brenda Drendel Hetrick and **Jerome C. Carter** announce the formation of **Honeycutt, Hetrick & Carter, L.L.P.** Offices are located 157 N. Conception Street, Mobile 36603. The mailing address is P.O. Box 749, 36601. Phone (334) 432-2050.

Fawwal & Fawwal announces that **Ellis D. Bingham, III** has become an associate. Offices are located at 312 N. 18th Street, Bessemer 35020. Phone (205) 428-4141.

Johnston & Conwell, L.L.C. announces that **A. Lee Martin, Jr.** has become a partner. Offices are located at 800 Shades Creek Parkway, Suite 325, Birmingham 35209. Phone (205) 414-1218.

David T. Hyde, Jr. and **Clinton H. Hyde** announce the formation of **Hyde & Hyde, L.L.C.** Offices are located at 108 Court Street, Evergreen. The mailing address is P.O. Box 605, 36401. Phone (334) 578-3420.

Boardman & Tyra, P.C. announces a name change to **Boardman, Carr & Weed, P.C.**

Bond, Botes, Sykstus, Larsen & Ledlow, P.C. announces a name change to **Bond, Botes, Sykstus & Larsen, P.C.**

Walter P. Crownover, James O. Standridge and **Robert M. Spence** announce the formation of **Crownover, Standridge & Spence**. Offices are located

at 2600 7th Street, Tuscaloosa 35401. Phone (205) 349-1727.

Pompey & Pompey, P.C. announces that **Deborah B. Montgomery** has become an associate. Offices are located at 117 Broad Street, Camden 36726. The mailing address is P.O. Box 189, 36726. Phone (334) 682-9032.

Callis & Stover announces that **Scott F. Stewart** has become an associate. Offices are located at Church Street Professional Centre, 101 Church Street, Suite 100, Rainbow City 35906. Phone (256) 442-6102.

Swafford, Peters & Priest announces that **John R. Colvin** has become a partner, and the firm's name has changed to **Swafford, Peters, Priest & Colvin**. Offices are located at 100 First Avenue, SW, Winchester, Tennessee 37398. Phone (931) 967-3888.

Strong & Klasing, P.C. announces that **Sue E. Williamson** has become a shareholder, and the firm's name has changed to **Strong, Klasing & Williamson, P.C.** Offices are located at 1320 Alford Avenue, Suite 201, Birmingham 35226. Phone (205) 823-9393.

Baker & Johnston announces that **James C. Wilson, Jr.** has joined the firm and the firm's name has changed to **Baker, Johnston & Wilson, L.L.P.** Offices are located in Birmingham and New York.

Gaines, Wolter & Kinney, P.C. announces that **Lavonya K. Chapman** has joined as an associate. Offices are located 1200 Corporate Drive, Suite 250, Birmingham 35242.

Eyster, Key, Tubb, Weaver & Roth announces that **Jenny L. McLeroy** has become a partner. Offices are located at 402 E. Moulton Street, Decatur 35603. Phone (256) 353-6761.

Samuel L. Russell, district attorney, tenth judicial circuit-Bessemer division, announces that **Amye R. Jefferson** has become an assistant district attorney. Phone (205) 481-4145.

Copeland & Copeland was dissolved December 31, 1998. **Wayne Copeland** announces his retirement from the practice of law. **James M. Copeland** and **William Timothy Copeland** announce

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the opening of the **Copeland Law Firm, L.L.P.**, with offices at 816 Chestnut Street, Gadsden 35901. Phone (256) 546-9500. **Brian Keith Copeland** will continue to practice under **Copeland & Copeland** at 820 Chestnut Street, Gadsden. Phone (256) 547-8678.

Yearout, Myers & Traylor, P.C. announces that **Deborah S. Braden** has joined the firm. Offices are located at 800 Shades Creek Parkway, Suite 500, Birmingham 35209. Phone (205) 414-8160.

Akridge & Balch, P.C. announces that **Robert T. Treese, III** has joined the firm as an associate. Offices are located at 1702 Catherine Court, Suite 2-D, Auburn 36830. Phone (334) 887-0884.

Cecil Caine and Richard Derek Proctor announce the formation of **Caine & Proctor**. Offices are located at 652 Walnut Street, Moulton. The mailing address is P.O. Box 667, 35650. Phone (256) 974-1126.

Gorham & Waldrep, P.C. announces that **John A. Lentine** has joined the firm as an associate. Offices are located at 2101 Sixth Avenue, North, Suite 700, Birmingham 35203. Phone (205) 254-3216.

Kimberly O. Fehl and David W. Vickers announce the formation of **Fehl & Vickers, L.L.C.** Offices are located at 461 S. Court Street, Montgomery 36104.

Constangy, Brooks & Smith, L.L.C. announces that **Shannon L. Powell** has become an associate. Offices are located at 1901 6th Avenue, North, Suite 1410, Birmingham 35203. Phone (205) 252-9321.

Folmar & Folmar, P.C. announces that **Steven C. Curtis** has become an associate. Offices are located at 510 S. Brundidge Street, Troy 36081. The mailing address is P.O. Box 209, 36081. Phone (334) 566-0451.

Friedman, Leak & Bloom announces that **Robert R. Bedwell, III** has joined the firm. Offices are located at 3800 Colonnade Parkway, Suite 650, Birmingham 35243. Phone (205) 278-7000.

Cabaniss, Johnston, Gardner, Dumas & O'Neal announces that **C. Fred**

Daniels has joined the firm. Offices are located at Park Place Tower, 2001 Park Place, North, Suite 700, Birmingham 35203. Phone (205) 716-5200.

Sirote & Permutt announces that **Elizabeth Holland Hutchins** has joined the Birmingham office. The firm also announces that **Maria Bouchelle Campbell** has joined, *of counsel*. Offices are located in Birmingham, Huntsville, Mobile and Montgomery.

Davis & Davidson announces that **James D. McLaughlin** has joined the firm, and the firm's name has changed to **Davis, Davidson & McLaughlin**. Offices are located at 324 E. Magnolia Avenue, Auburn 36830. Phone (334) 821-1908.

Klemm & Gourley, P.C. announces that **Pamela R. Scott** has joined the firm. Offices are located at 128 S. Oates Street, Dothan 36301. Phone (334) 677-7734.

Regions Bank of Birmingham announces that **Sidney O. Roebuck, Jr.** has been promoted to senior vice-presi-

dent and personal trust manager, trust department.

Gaines, Gaines & Rasco, P.C. announces that **Thomas M. Little** has become a partner and **L. Shaw Gaines** has become an associate. The firm's name has been changed to **Gaines, Gaines, Rasco & Little, P.C.** Offices are located 127 N. Street, Talladega 35160 and the mailing address is P.O. Box 275, 35161. Phone (256) 362-2386.

Nathan G. Watkins announces that he became district attorney for the **17th Judicial Circuit** in January. His mailing address is P.O. Box 766, Livingston 35470-0766. Phone (205) 652-4119.

Kerry R. McDonald and Kristi A. Dowdy announce the formation of **McDonald & Dowdy**. Offices are located at 3100 Lorna Road, Suite 300, Birmingham 35216. Phone (205) 824-0507.

John F. Kizer, Jr., L.L.C. announces that **William H. Benson, III** has become an associate and **Melissa B. Collins** has changed her name to **Melissa A.**

Free Report Reveals. . .

"Why Some Alabama Lawyers Get Rich. . . While Others Struggle To Earn A Living"

California Lawyer Reveals His \$300,000 Marketing Secret

RANCHO SANTA MARGARITA, CA— Why do some lawyers make a fortune while others struggle just to get by? The answer, according to California lawyer David Ward has nothing to do with talent, education, hard work, or even luck. "The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

Ward, a successful sole practitioner who at one time struggled to attract clients, credits his turnaround to a little-known marketing method he stumbled across six years ago. He tried it and almost immediately attracted a large number of referrals. "I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

Ward points out that although most lawyers get the bulk of their business through referrals, not one in 100 has a referral system, which, he maintains, can increase referrals by as much as 1000%. Without a system, he notes, referrals are

unpredictable. "You may get new business this month, you may not." A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year.

"It feels great to come to the office every day knowing the phone will ring and new business will be on the line," he says.

Ward, who has taught his referral system to almost two thousand lawyers throughout the US, says that most lawyers' marketing is, "somewhere between atrocious and non-existent." As a result, he says, the lawyer who learns even a few simple marketing techniques can stand out from the competition. "When that happens, getting clients is easy."

Ward has written a new report entitled, **"How To Get More Clients In A Month Than You Now Get All Year!"** which reveals how any lawyer can use this marketing system to get more clients and increase their income. To get a FREE copy, call 1-800-562-4627 for a 24-hour free recorded message.

Babcock. Offices are located at New South Federal Savings Building, 215 N. 21st Street, Suite 600, Birmingham 35203. Phone (205) 324-1582.

Rosen, Cook, Sledge, Davis, Carroll & Cade, P.A. announces that **R. Cooper Shattuck** has become a shareholder. Offices are located at 2117 River Road, Tuscaloosa 35401. Phone (205) 344-5000.

The Law Offices of Joseph T. Carpenter announce that **Samuel M. Ingram** has joined the firm. Offices are located at 303 Sterling Centre, 4121 Carmichael Road, Montgomery 36106. Phone (334) 213-5600.

Williams, Potthoff & Williams, L.L.C. announces that **Joel P. Smith, Jr.** has become a partner, and the firm's name has changed to **Williams, Potthoff, Williams & Smith, L.L.C.** Offices are located at 125 S. Orange Avenue, Eufaula 36027. Phone (334) 687-5834.

Wisner, Adams & Walker, P.C. announces that **Billie B. Line, Jr.** has

joined the firm, and the firm's name has changed to **Wisner, Adams, Walker & Line, P.C.** Offices are located at 100 Washington Street, Suite 200, Huntsville 35801. Phone (256) 533-1445.

Ranah L. Stapleton and Tracy G. BirdSong announce the formation of **BirdSong, Stapleton & Associates**, with offices at 207 Montgomery Street, Suite 700, Montgomery 36104. Phone (334) 269-3355.

Espy & Metcalf, P.C. announces that **David G. Poston** has joined the firm, and the firm's name has changed to **Espy, Metcalf & Poston, P.C.** Offices are located at 326 N. Oates Street, Dothan 36303. The mailing address is P.O. Drawer 6504, 36302. Phone (334) 793-6288.

Davidson, Wiggins, Jones & Coleman, P.C. announces that **McCoy Davidson** is of counsel, and **Randal Kevin Davis** and **J. Paul Zimmerman** have joined the firm as associates. Offices are located at 2625 8th Street, Tuscaloosa 35401, and the mailing address is P.O. Box 1939, 35403-1939. Phone (205) 759-5771.

Constangy, Brooks & Smith, L.L.C. announces that **Michael D. Giles** has become a member. Offices are located at 1901 6th Avenue, North, Suite 1410, Birmingham 35203. Phone (205) 252-9321.

Rhea, Boyd & Rhea announces that **Gina D. Coggin** has joined the firm as a partner. Offices are located at 930 Forrest Avenue, Gadsden 35901. The mailing address is P.O. Box 8486. Phone (256) 547-6801.

Burr & Forman announces that **Gregory F. Harley, Peter A. Grammas, Patricia Powell Burke** and **F.A. Flowers, III** have become partners. **Stephen J. Bumgarner, James C. Stanley, III, Rebecca W. Block, Lori L. Howland, Jamie L. Moore, and D. Brian O'Dell** have joined the firm as associates. Offices are located in Huntsville, Birmingham and Atlanta.

Pittman, Hooks, Dutton & Hollis, P.C. announces that **Lynn Crosson** has joined the firm. Offices are located at 1100 Park Place Tower, Birmingham 35203. Phone (205) 322-8880.

Lightfoot, Franklin & White, L.L.C. announces that **Lee M. Hollis** and **Jackson R. Sharman, III** have become partners, and **Marjorie P. Slaughter, W. Larkin Radney, IV** and **James F. Hughey, III** have become associated with the firm.

Glassroth & Associates, P.C. announces that **Joseph P. Van Heest** has become a shareholder, and the firm's name has changed to **Glassroth & Van Heest, P.C.** Offices are located at 615 S. McDonough Street, Montgomery 36104. Phone (334) 263-9900.

Hand Arendall, L.L.C. announces that **Windy Cockrell Bitzer** and **Joshua J. Wright** have joined the firm as associates. Offices are located in Mobile, Birmingham and Foley.

Siniard, Lamar & McKinney, P.C. announces that **M. Roy Braswell** has become a partner, and the firm's name has changed to **Siniard, McKinney & Braswell**. The mailing address is P.O. Box 2767, Huntsville 35804. Phone (256) 536-0770.

McDaniel, Baines & Norris, P.C. announces that **M. Brian Slaughter** has joined the firm. Offices are located at Two Metroplex Drive, Suite 504, Birmingham 35209. Phone (205) 871-1811.

Christopher K. Whitehead and **Wallace D. Mills** announce the formation of **Whitehead & Mills, L.L.C.** Offices are located at 1300 E. Main Street, Suite D, Prattville 36066. Phone (334) 358-0057.

Lehr, Middlebrooks, Price & Proctor announces that **Tessa M. Thrasher** has joined the firm. Offices are located at 2021 Third Avenue, North, Birmingham. The mailing address is P.O. Box 370463, 35237. Phone (205) 326-3002.

W. David Nichols, P.C. announces that **John L. Bodie** has become an associate. Offices are located at 3825 Lorna Road, Suite 214, Birmingham 35244. Phone (205) 987-4480.

Stephen C. Moore and **Mark C. Wolfe** announce the formation of **Moore & Wolfe**, with offices at 1252 Dauphin Street, Mobile 36604. Phone (334) 433-7766. ■



J. Forrester DeBuys, III

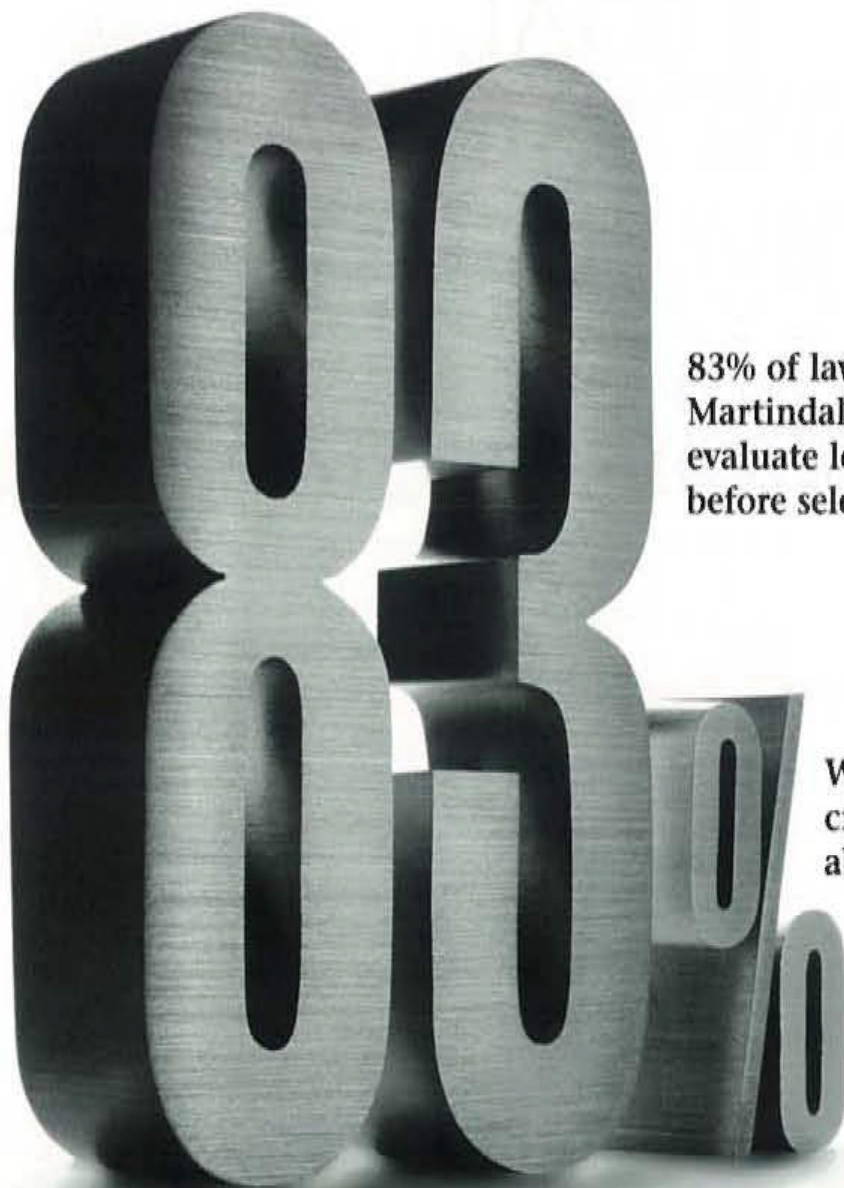
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involved in divorce*

ALABAMA STATE BAR Publications Order Form

The Alabama State Bar is pleased to make available to individual attorneys, firms and local bar associations, at cost only, a series of brochures on a variety of legal topics of interest to the general public.

Below is a current listing of public information brochures available from the Alabama State Bar for distribution by local bar associations, under established guidelines.

Brochures

Law As A Career

...opportunities and challenges of a law career today

\$10.00 per 100 Qty. _____ \$ _____

Lawyers and Legal Fees

...a summary of basic information on common legal questions and procedures for the general public

\$10.00 per 100 Qty. _____ \$ _____

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BUILDING ALABAMA'S COURTHOUSES

By Samuel A. Rumore, Jr.



Henry County Courthouse, around 1902

Henry County

Established: 1819

The following continues a history of Alabama's county courthouses—their origins and some of the people who contributed to their growth. If you have any photographs of early or present courthouses, please forward them to: Samuel A. Rumore, Jr., Miglionico & Rumore, 1230 Brown Marx Tower, Birmingham, Alabama 35203.

Henry County

The area that would become Henry County, Alabama was part of the first county in the Mississippi Territory, Washington County, established in 1800. Later, it became a part of Monroe County when it was established in 1815. After Monroe County was subdivided in 1818, the future Henry County became a part of Conecuh County. And when Conecuh County was subdivided, one of the counties created from it was Henry. Henry County was established on December 13, 1819, one day before Alabama became a state.

Even after all of the subdividing, at its birth Henry County was Alabama's largest county. It included all of the southeastern part of Alabama which

covers the present counties of Barbour, Coffee, Covington, Crenshaw, Dale, Geneva, Henry, Houston, and Pike. The original Henry County also included small portions of present-day Conecuh and Bullock counties. Because so many counties came out of Henry, it is known as the "Mother County" of Alabama.

Another nickname for Henry County is "The Cradle of the Wiregrass," because southeast Alabama is considered the "Wiregrass" region and every county in that region was formed from Henry County. Wiregrass is a genuine type of grass that is a member of the Aristida family. It has long, round, wire-like blades which grow 12 to 15 inches high. This tough grass once covered the



Henry County Courthouse, soon after the turn of the century

plains of southeast Alabama but is now rather scarce.

Henry County is bordered on the east by the Chattahoochee River. Also flowing through the county is the Choctawhatchee River. Before Henry County was established, the immediate area around the Choctawhatchee was informally called the Choctawhatchee country. When the Alabama Territorial Legislature created seven new counties on December 13, 1819, the initial proposal was for the county that would become Henry to be named Choctawhatchee County. However, since the other six counties were being named for individuals—Butler, Greene, Jackson, Jefferson, Perry, and Wilcox—the final decision was to likewise name this county for a hero, Patrick Henry.

Patrick Henry was born at Studley in Hanover County, Virginia on May 29, 1736. He served as a member of the Virginia House of Burgesses. Henry is remembered as a fiery and persuasive orator. In one of his speeches he proposed a resolution that the colonists should have the exclusive right to tax themselves. In arguing against the hated Stamp Act he cried, "Caesar had his Brutus; Charles the First, his Cromwell; and George the Third—" At that point the Speaker of the House

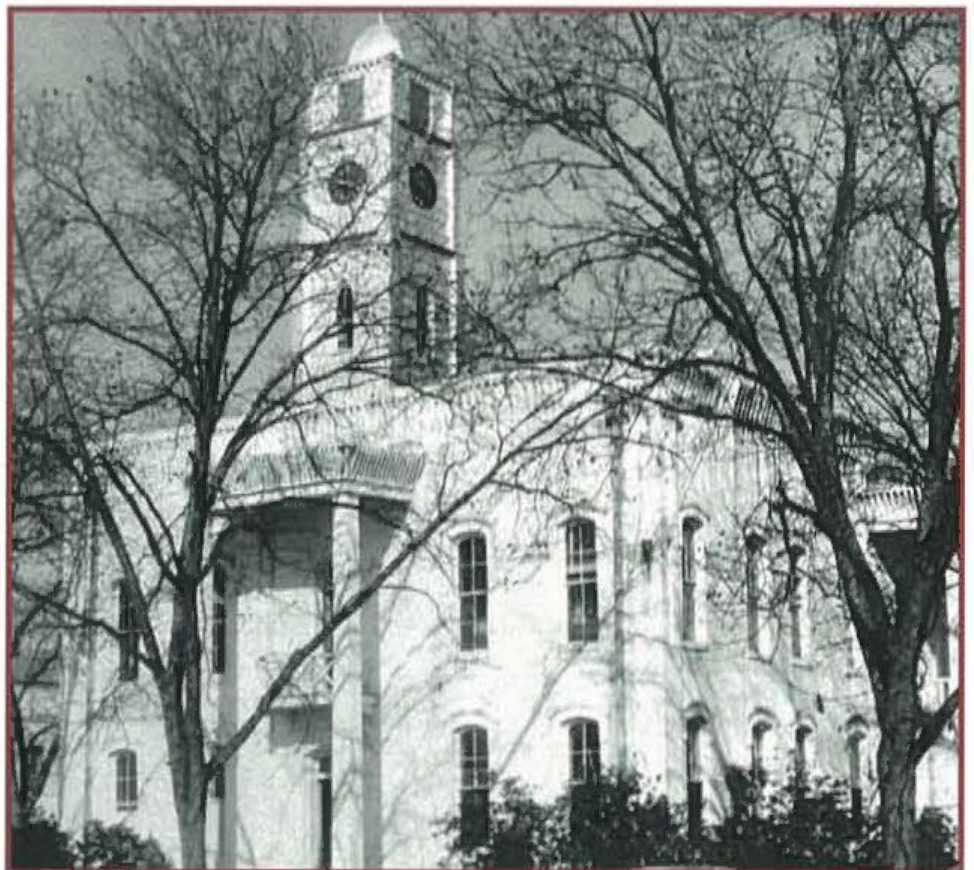
shouted, "Treason." Other members did the same. Henry completed the sentence by saying, "—and George the Third

may profit by their example. If this be treason, make the most of it."

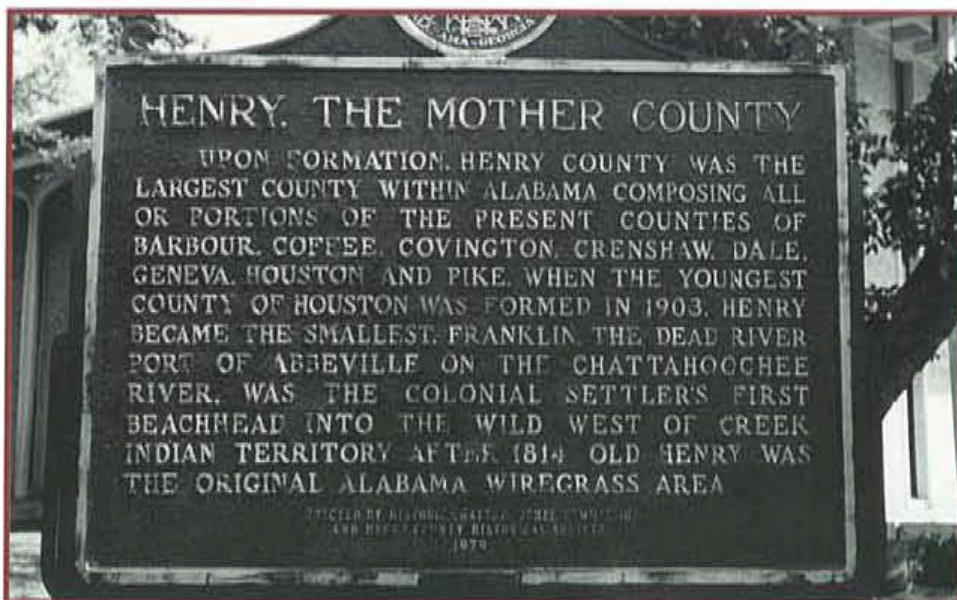
His most famous speech came at the Virginia Provincial Convention which met at St. John's Church in Richmond on March 23, 1775. He appealed to the colonies to take up arms for their rights. His often quoted remarks ended with, "Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not of the course others may take; but as for me, give me liberty, or give me death!"

Henry was named commander of Virginia's troops. In 1776 he was elected governor of Virginia and served, though not consecutively, for five terms. After the Revolution he opposed the ratification of the United States Constitution because he felt it would trample on the rights of individual states. However, he was influential in the adoption of the first ten Amendments to the Constitution, popularly known as the Bill of Rights.

In 1788 Henry retired from public life and returned to his private law practice where he became a noteworthy criminal



Henry County Courthouse, Abberville, 1965, immediately before demolition



Marker at courthouse

defense lawyer. He was offered and declined many federal offices including United States Senator, Secretary of State, Minister to Spain, and Chief Justice. He was even elected governor of Virginia for a sixth term but refused the position. In 1799 George Washington persuaded Henry to run for the Virginia Legislature. He was elected but died on June 6, 1799, before he could take office. He is buried on his estate, Red Hill, in Charlotte County, Virginia. Twenty years after his death, his name was given to a county in Alabama.

The Act which created Henry County appointed five county commissioners to select a county seat and superintend the construction of a courthouse and jail. These commissioners were Joel T. McClendon, Johnson Wright, S. Smith, William C. Watkins, and John Fanning. Unfortunately these members could not agree on a site and did not carry out their duties to establish the seat of government in Henry County.

The first circuit court in Henry County was held in 1820. It was presided over by Judge Reuben Saffold of the 2nd Circuit. Since there was no courthouse and no official county seat at this time, the trials took place at the home of the sheriff, John G. Morgan. No records exist of these first Henry County court proceedings.

A great geographic change took place in Henry County on December 7, 1821. The Legislature created Pike County

from the northern portion of Henry County and Covington County from the western portion. The county was left with less than half of its former territory. And, at this time, a county seat had yet to be selected.

On December 18, 1821, a second five-member commission for Henry County was appointed by the Legislature. These members were William Beauchamp, Robert Irwin, William Irwin, James Rabb, and Stephen Matthews. They selected a site for the county seat and

called it Richmond, probably as a further memorial to Patrick Henry, name-sake of the county and governor of Virginia of which Richmond is the capital.

The town of Richmond was called Wiggins Springs prior to becoming the county seat. The key qualifications for the selection of Richmond as county seat were that it was centrally located within the newly configured county and its land was flat, making it well suited for town-building. Richmond, however, had no other advantage and the town failed to grow. The county did build a log courthouse there. True to the nature of the times and the frontier, most of the cases heard involved land transactions, the sale of crops, assault and battery, and the failure to pay debts. The builders of the courthouse and jail at Richmond were Robert Irwin and Pelatiah Whitehurst.

On December 22, 1824, the Alabama Legislature created Dale County from parts of Henry, Covington and Pike counties. The next day, the Legislature appointed Robert Irwin, Bartlett Smith, Robert Richards, Benjamin Harvey, and Elijah Bryan as agents for Henry County to select land for use by the county in establishing a new seat of justice. Richmond was not initially located within the newly created county of Dale, but it was so close to the county line



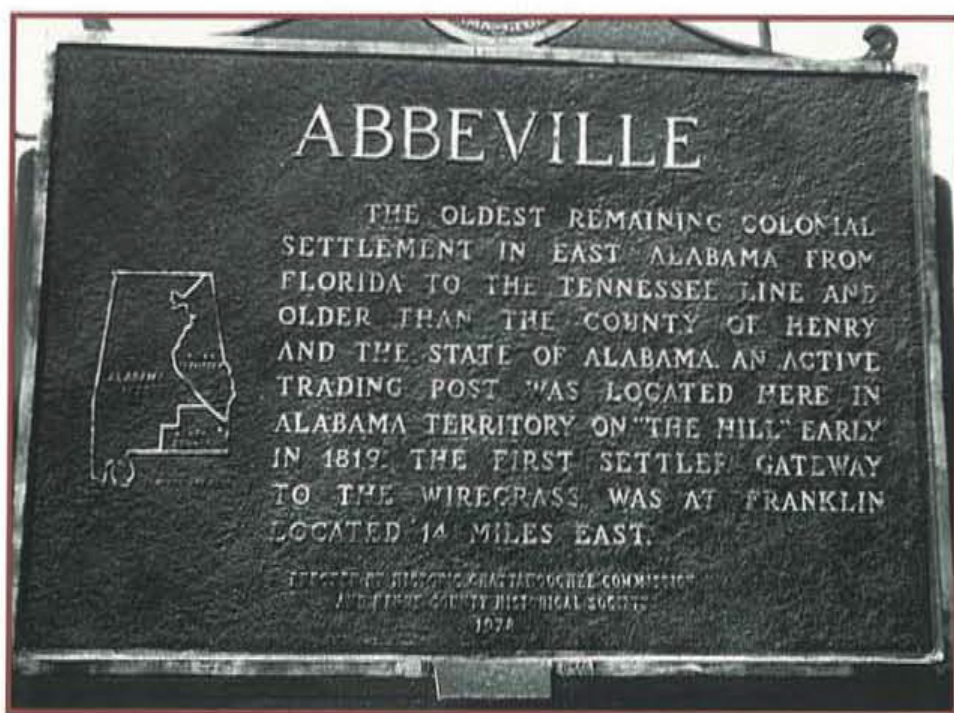
Historic marker at courthouse

that a group of citizens petitioned the Legislature to move the boundary line four miles east. The Legislature obliged them on January 4, 1826, and this action placed Richmond in Dale County.

Since Richmond was no longer in Henry County, county officials chose to unofficially move the county seat to the largest town in the county, Columbia, a center of trade and a steamboat port on the Chattahoochee River. The citizens built a log courthouse in 1826 which was located on the southeast corner of a square facing Washington Street, the town's main thoroughfare.

The Henry County selection commission appointed in 1824 did not reach a decision on the new permanent courthouse site. By June 13, 1827, two new members, Peter Simmons and George Jones, were appointed to replace Benjamin Harvey and Bartlett Smith on the commission. This group also failed to act so the next Legislature appointed a new commission on December 20, 1827. This commission consisted of Moses Kirkland, Joel T. McClendon, Sion Smith, Moses Weems, and Andrew Gamble. The new commission was directed to submit to voters a final choice between a site as near to the center of the county as practical and the courthouse site already being used at Columbia. After this vote was taken, on December 20, 1828 the Legislature officially designated Columbia on the Chattahoochee River as the seat of justice of Henry County.

Richmond, though never large, was an important place: it was the first county seat of Henry County and it was also the first county seat of Dale County. Shortly after the Richmond site was annexed into Dale, the Legislature required both Henry and Dale counties to levy a special tax to pay the debt owed for the construction of the courthouse and jail there. In December 1827, the Legislature specifically directed that the Circuit Court of Dale County would meet at the "old courthouse" of Henry County. However, in January 1830, a commission selected the town of Daleville to be the county seat of Dale County and on December 8, 1830, the Legislature authorized the sale of the old courthouse and jail at Richmond. The town of Richmond soon faded into obscurity and today it no longer exists.



Historic marker in Abbeville

Columbia was one of the earliest settlements in Henry County. It started as a trading post because it was located at a crossing point from Georgia on the Chattahoochee River. The first settlers came around 1820 and probably named the town for Christopher Columbus. It is sometimes even referred to as "Columbia—Gem of the Wiregrass." The citizens built a log courthouse in Columbia which was used for a number of years.

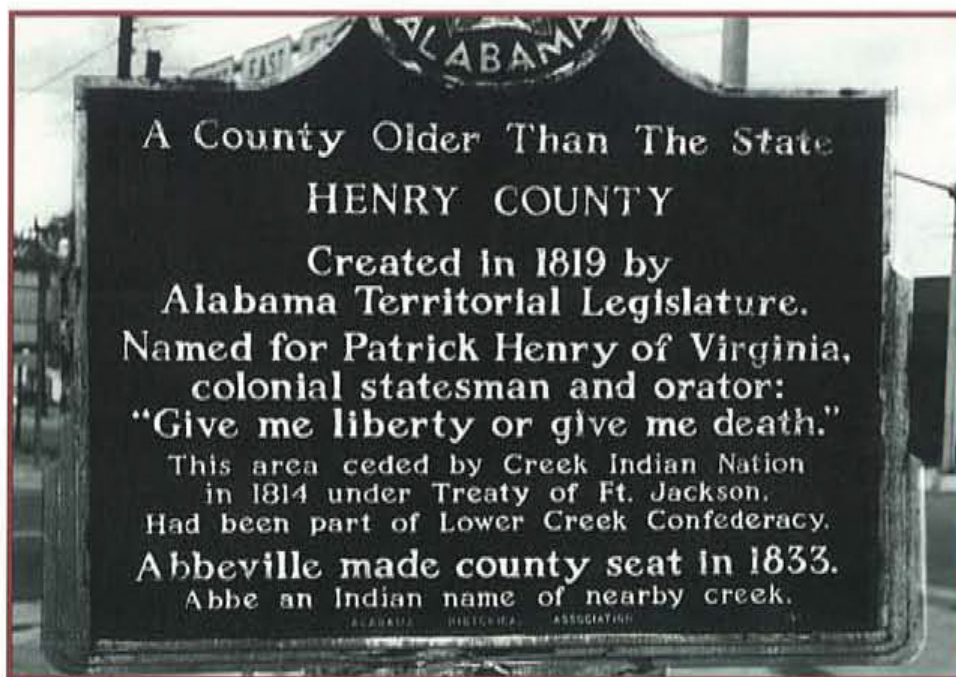
The selection of Columbia as county seat was not totally satisfactory. It was located on the eastern border of the county. While it did have a river port and a trail crossing, it was not convenient to reach from the interior portions of the county.

By 1832 there was an effort to move the county seat to the center of the county. The Legislature directed that an election be held concerning the removal of the courthouse from Columbia. The strongest proponents for removal lived near Abbeville, and so Abbeville became the temporary county seat.

During the next session of the Legislature, another five-person commission was appointed. The members of this commission were Moses Kirkland, Bryan Sholar, James Bennett, Sion Smith, and John Faircloth. This time the commission was to select one site in

addition to Abbeville, located within three miles of the geographic center of the county. The legislature directed the sheriff to hold an election where the choices were Abbeville and the site nearest the center of the county. This turned out to be a hotly contested race as the center site had many influential citizens supporting it. The vote was a close one. However, Abbeville won and it officially became the county seat of Henry County in 1833. The size of Henry County, with Abbeville as the county seat, would remain approximately the same for the next 70 years.

Abbeville was established on a ridge near a creek and was probably settled prior to 1820. There is some question about the derivation of the town name but it is generally accepted that the town was named for the nearby creek. There have been various spellings of the Indian name for the creek, including Yatta Abba, Pattayaba and Yattayabba. The name has been corrupted over the years as Abbie Creek, Abbey Creek and then Abbe Creek. The name of the town was formerly spelled "Abbeyville" but over time the "y" was dropped. A possible translation of the name is "dogwood grove." One thing is certain, Abbeville, Alabama is not named for either Abbeville, South Carolina or Abbeville, France. The town name is of Indian origin.



Marker for Henry County placed by the Alabama Historical Association

As an aside, one of the early settlers of Abbeville was Henry A. Younge who became Abbeville's first postmaster in 1833. Younge was a native of Switzerland. He later moved to another location in the Wiregrass area and also became the postmaster there. That town was named Geneva in honor of his home in Switzerland. At the time it was founded, Geneva was located in Coffee County. The legislature created Geneva County in 1868 and likewise named it for the city of Geneva, Switzerland.

The first court in Abbeville was held in an old log building which had been used as a school prior to 1833. Although Abbeville was the county seat, it continued to be challenged for that position by other towns and areas of Henry County. On January 17, 1845, the Legislature appointed another commission to select one site in addition to Abbeville so that voters could have a choice between the two locations for their county seat. The members of this commission were William C. Willis, James Murphy, August Spann, John S. Cote, James Pynes, James Brown, and Michael Koonce. Those desiring the new site for the courthouse wrote "new site" on their ballots. Those who wanted the courthouse to remain in Abbeville wrote in "Abbeville."

The supporters of a new site lost and immediately plans were made to build a

suitable courthouse for Henry County in Abbeville. A building committee consisting of Gillum Moore, William Whiddon, Weeks Pippen, Aaron Odom, and Young Mann was appointed on January 8, 1846. Soon a wooden structure replaced the old log courthouse which was returned to being used as a school.

Despite the two previous courthouse site votes won by Abbeville, its opponents continued to seek a new county seat. On January 23, 1860, the Legislature passed yet another Act calling for another county-wide vote on the issue of county seat location. Again, Abbeville won the election.

On February 13, 1879 the issue was raised again. The Legislature called for another election on the location of the courthouse. This election was between Abbeville and the center of the county. Proponents of Abbeville wrote in "Abbeville." Proponents of the geographic center of the county wrote in "centre." As in the previous elections, Abbeville won again.

It became apparent that Abbeville's opponents, citizens from the southern part of Henry County, were never going to be content traveling the distance from south Henry County to the county seat in Abbeville. On February 17, 1885, the Legislature ordered another election. This time the issue was presented

differently. The people were to decide where the second week of each term of circuit court would be held. The decision was already made to hold the second week of court in the southern portion of the county. The election contest was over which town would host the second week—Columbia or Headland.

It was a spirited campaign and each town vigorously sought the branch courthouse. Columbia residents argued that theirs was the older town and it had previously been the county seat. Headland argued that it was a new town and more centrally located. *The Abbeville Times*, a county seat newspaper, supported the campaign for Headland. However, the vote favored Columbia and its citizens provided a courthouse building. On the fourth Monday in August 1885, a term of the circuit court of Henry County was once again held in the old county seat town of Columbia.

It was also in 1885 that a movement began for the construction of a new courthouse in Abbeville. The old courthouse was made of wood and had no vaults for keeping valuable records. Still, there was some concern that the area did not have suitable clay with which to make bricks for a courthouse. In any event, there was a great debate and much controversy concerning the construction of a new courthouse building.

Finally, county officials decided that they needed more facts. On April 17, 1885, they appointed a committee consisting of A. C. Gordon, N. L. Hauley, Thomas J. Howerton, R. J. Reynolds, John T. Davis, and W. E. Bradley to contact architects, contractors and builders and get detailed plans, specifications and cost estimates for a brick building. They were directed to report back by August. After doing all it was instructed to do, the committee, in its report to the county, recommended that construction of a brick courthouse be delayed indefinitely.

Despite this report, support for a new courthouse continued. On November 28, 1888, the Legislature authorized Henry County to borrow money and issue bonds for the purpose of building a new courthouse and jail in Abbeville. The legislature set a cap of \$10,000 on the amount that could be borrowed.

The wooden courthouse which had served Henry County for more than 40 years was torn down. Its rock foundation was used in the new brick building. By July 1889, a report to the county commission listed the materials used in the building. Lumber, brick, hardware, lime, cement, and other materials cost the county \$2,201. No mention was made for the cost of the labor.

The courthouse constructed on the Abbeville square in 1889 was of simple design. It contained two stories and had a clock tower crowned with a cupola and topped by a flag pole. Early photos of the courthouse show porches at the entrances on both the first and second floor levels. Also, the courthouse was originally constructed of unpainted brick. Later photos, including a picture made immediately before demolition in 1965, show a building painted white.

Because Henry County was long and narrow, and because Abbeville was located in the extreme northern part of the county, the issue of where a branch courthouse in the southern part of the county should be located remained volatile as population growth continually shifted to the south. As early as 1869, Columbia had begun the campaign for a branch courthouse that did not end until it received one, as previously noted, in 1885. When Headland was established as a town in 1871, it was laid out with a large square with the hopes that it would receive a branch courthouse at some future time. Another town in the southern part of the county experienced substantial growth and by the 1890s it also competed for a branch courthouse. This new town was Dothan, which was chartered in 1885.

It is interesting to compare population figures for towns in Henry County in 1890. At that time, Abbeville, the county seat of Henry County, had a population of 465. Columbia, the former county seat and branch courthouse site at the time, had a population of 960. A third town listed in the records was "Dothen." Note the spelling. It had a population of 247.

On December 12, 1894, the Alabama Legislature approved a law allowing circuit court to be held in Dothan. The citizens of Dothan had to provide a courthouse, free of expense to Henry County,

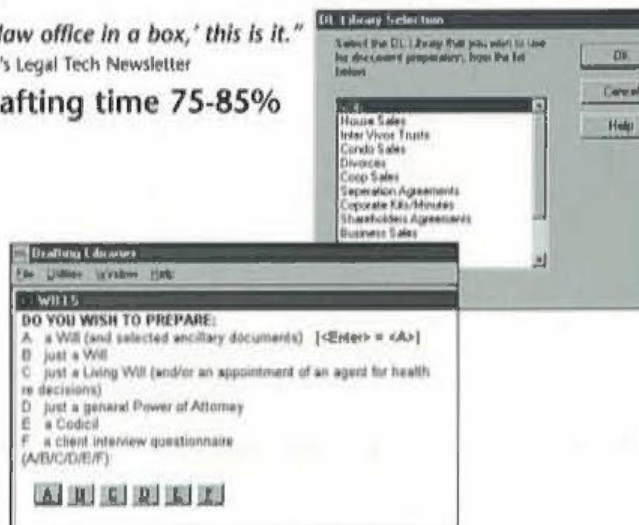
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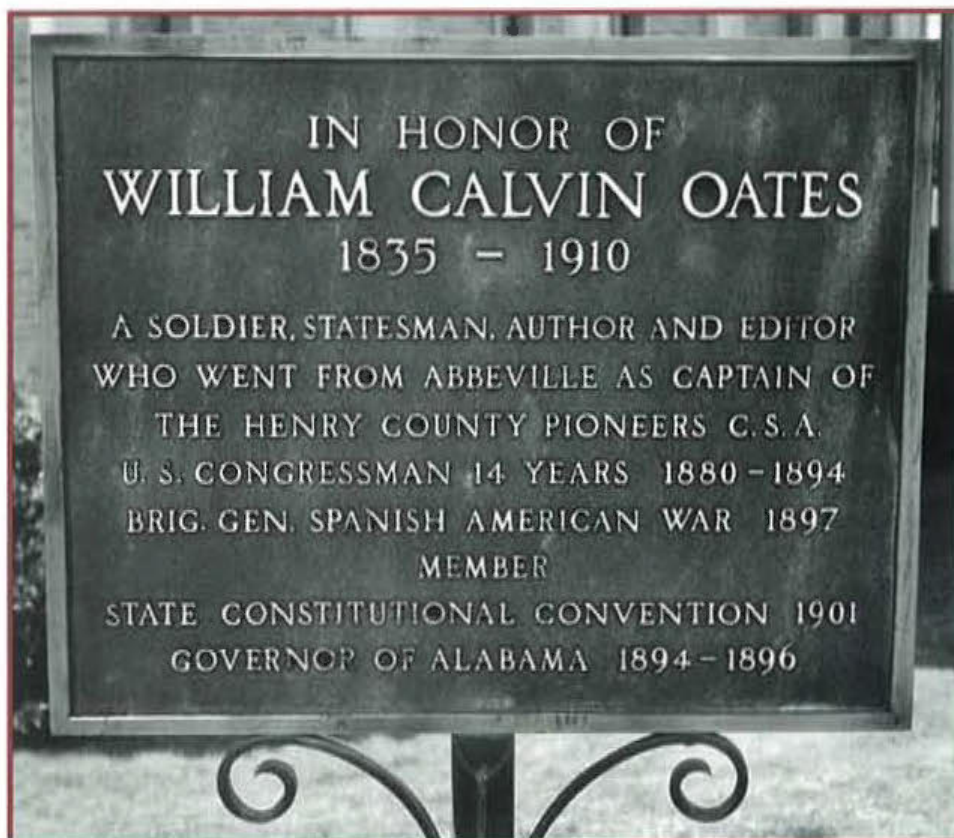
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Marker at courthouse honoring Governor William Calvin Oates of Henry County



Courthouse at Abbeville

in order to have court proceedings in their town. This the citizenry gladly did. From 1895 until 1903, when Houston County was created, Henry County had three courthouses, a situation unique in the history of Alabama. The county seat was Abbeville; Columbia had a branch courthouse; and Dothan also had a branch courthouse.

With the strong, steady growth of the Dothan area, both economically and in population, it became obvious that Henry County would once more be divided. The Alabama Constitution of 1901 foreshadowed this event. Article II, Section 39, mandated that no new county in Alabama could be formed with less than 600 square miles, and no existing county could be reduced to less than 600 square miles. This was done to prevent the division of Jefferson County

which had slightly more than 1,100 square miles.

Nevertheless, Section 39 contained a constitutional exception. It specifically addressed the needs of the citizens residing in the southeast corner of Alabama. It provided that out of the counties of Henry, Dale and Geneva, a new county of less than 600 square miles could be formed so as to leave the counties of Henry, Dale and Geneva with not less than 500 square miles each.

That is exactly what was done on February 9, 1903, when Houston County, the last county created in Alabama, was established. Houston County contains approximately 577 square miles. Henry County was left with approximately 557 square miles. Dale County was left with approximately 561 square miles. And Geneva County was left with approximately 578 square miles. With this final partition, Henry County, the Mother County, which was the largest county when Alabama became a state, became what is now the third smallest county in Alabama.

Both Dothan and Columbia, the two branch courthouse towns, were located within the boundaries of the newly-established Houston County. After 1903, Henry County reverted to having one courthouse at Abbeville.

The story of the courthouses of Henry County has one final entry. The 1889 courthouse was used for over 75 years. In 1965 the county razed the structure in order to build the fourth courthouse at Abbeville. Construction for the latest Henry County Courthouse was commenced in 1966 and completed on April 26, 1967. The structure has two stories and a basement. It is of modern design containing 31,000 square feet and costing \$504,332. A colonnade of 48 flared columns surrounds the courthouse on all four sides. The architects for the building were Epps and Davis of Headland, Alabama. The contractor was Jones and Hardy of Birmingham. ■

The author acknowledges the assistance of Abbeville attorney Gwen Dagian in obtaining photographs and information used in this article.

Sources: *History of Henry County, Alabama*, Eva Clyde (Stovall) Scott, 1961; *Henry, The Mother County, 1816-1903*, Hoyt M. Warren, 1976; *Henry's Heritage, A History of Henry County, Alabama*, 4 volumes, Hoyt M. Warren, 1978-1985; "Wiregrass Sagas," Oscar L. Thompkins, *The Alabama Lawyer*, vol. 3, pages 249-276, July 1942; "Brief History of Henry County," William W. Nordan, Henry County Historical Society, no date.



Samuel A. Rumore, Jr.

Samuel A. Rumore, Jr. is a graduate of the University of Notre Dame and the University of Alabama School of Law. He served as founding chairperson of the

Alabama State Bar's Family Law Section and is in practice in Birmingham with the firm of Miglionico & Rumore. Rumore serves as the bar commissioner for the 10th Circuit, place number four, and is a member of *The Alabama Lawyer* Editorial Board.

ROAD MAPS

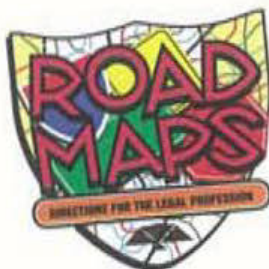
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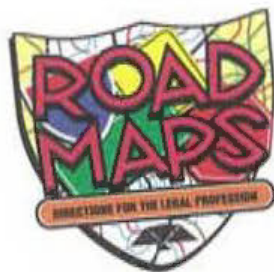


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(Thursday schedule continued on next page)



3:30 pm - 4:30 pm

WORKSHOP

"TICK, TICK, TICK . . . BOOM! The Year 2000 Problem with Five Months Left — What Alabama Lawyers Need to Do . . . NOW!"

The title says it all. This workshop is a survival kit for the impending year 2000 problem and covers everything from taking care of your hardware and software issues to guiding clients to ethical concerns and obligations.



3:30 pm - 5:00 pm

WORKSHOP

"EFFECTIVE COMMUNICATIONS"

Douglas G. O'Brien, Esq.

New York, NY

It's more than you think! Listening, speaking, writing, imaging, non-verbal. How do you overcome obstacles? Test the theory by exercises and role-playing in this highly interactive workout. Using videotapes, listening, speech, and writing exercises, this nationally recognized expert will challenge you as well as motivate you to first be aware of your skills at communicating, and then practice improving those skills.

3:00 pm - 4:30 pm

SECTION PROGRAMS

Health Law, Elder Law, and Real Property, Probate and Trust Law

4:00 pm - 4:30 pm

SECTION BUSINESS MEETING

Business Law

4:30 pm - 5:00 pm

SECTION BUSINESS MEETING

Young Lawyers'

5:00 pm - 5:30 pm

SECTION BUSINESS MEETING

Oil, Gas and Mineral Law



6:00 pm - 8:00 pm

ASB MEMBERSHIP RECEPTION

McWane Center



8:30 pm

"AFTERGLOW" RECEPTION

Birmingham Sheraton

Co-sponsored by the Alabama Lawyers Association, Magic City Bar Association and the Alabama State Bar



KIDS' CHANCE GOLF SCRAMBLE

Friday, July 16, 1999 • 12:30 PM Shotgun Start

What better way to relax after a morning spent sitting in a seminar than an afternoon of golf? It's even better when you know that you're helping make a difference in a young person's life. Join us on the golf course for the 4th Annual Kids' Chance Golf Scramble. Upon registration you will receive a confirmation showing the name of the golf course.

The Kids' Chance Scholarship Fund provides scholarships for children who have had a parent killed or permanently and totally disabled in an on-the-job injury. Kids' Chance was established in 1992 by the Workers' Compensation Section. Thirty-one students are attending college or technical school with help from Kids' Chance this year.

If you are unable to play in the tournament, please consider sponsoring a hole. The Workers' Compensation Section appreciates your support.

Tom Oliver, chair

GOLF SCRAMBLE ENTRY FORM

Name _____

Address _____

City _____ State _____ ZIP Code _____

Office Telephone _____ Home Telephone _____

Member Club _____

USGA _____ Handicap Index _____ GHIN Number _____

____ Individual Player . . . \$100 \$ _____ Hole Sponsorship & 1 Player Slot . . . \$300 \$ _____

____ Hole Sponsorship . . . \$250 \$ _____ Hole Sponsorship & 4 Player Slots . . . \$500 \$ _____

TOTAL ENCLOSED \$ _____

If you do not have a team, you will be paired with another player. For further information, contact Tracy Daniel at 800-354-6154. Please make checks payable to: **KIDS' CHANCE SCHOLARSHIP FUND.**



FRIDAY JULY 16, 1999



7:00 am - 8:30 am

BREAKFASTS

Christian Legal Society, Farrah Order of Jurisprudence/Order of the Coif, Jones School of Law, Birmingham School of Law, Miles School of Law, Past Presidents', *The Alabama Lawyer* Editorial Board



9:00 am - 10:15 am

MORNING PLENARY SESSIONS

"LAWYERS KEEPING BALANCE"

Mark Mayfield

Kansas City, MO

Back by popular demand, corporate comedian Mark Mayfield will address problem-solving and dealing with change, all with the benefit of side-splitting humor.



10:25 am - Noon

"HOW TO MAKE MONEY AND STAY OUT OF TROUBLE WHILE ENJOYING LIFE"

Jay G. Foonberg, Esq.

Santa Monica, CA

Also back by popular demand, one of America's most effective speakers to lawyer audiences, Jay Foonberg, will tell us all how to "do it right and make money at the same time!" — a sure road to success!



SPECIAL "MINORITIES OPPORTUNITIES & PARTICIPATION CONFERENCE"

"THERE IS A PLACE AT THE TABLE FOR US ALL"

Sponsored by the Task Force on Minority Participation of the Alabama State Bar

8:00 am - 9:00 am

MINORITY PARTICIPATION TASK FORCE MEETING

9:15 am - 10:45 am

"MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION"

10:45 am - 11:00 am

BREAK

11:00 am - Noon

"HOW TO GET AND RETAIN CORPORATE CLIENTS"



12:15 pm - 1:45 pm

ALABAMA STATE BAR MEMBERSHIP LUNCHEON

GUEST SPEAKER:

James O. Cole, Esq.

Senior Vice-President & General Counsel, Republic Industries, Ft. Lauderdale, Florida
(Mr. Cole is a native of Florence, Alabama, a

graduate of Harvard Law School, and is past president of the National Bar Association.)

"DOING BUSINESS IN CORPORATE AMERICA: CHALLENGES & OPPORTUNITIES"



2:00 pm - 3:30 pm

WORKSHOP I

"A THREE-LEGGED STOOL FOR SUCCESS IN THE PRACTICE OF LAW"

Jay G. Foonberg, Esq.

Come prepared with your questions after Jay Foonberg tells you three roads you MUST travel if you ever hope to become a successful lawyer. Highly interactive session!

2:30 pm - 3:30 pm

SECTION PROGRAM

Intellectual Property Law

3:30 pm - 4:30 pm

SECTION PROGRAM

Administrative Law, Family Law

3:30 pm - 5:00 pm

SECTION PROGRAM

Environmental Law

4:30 pm - 5:00 pm

SECTION BUSINESS MEETING

Women's Section



3:30 pm - 5:00 pm

WORKSHOP II

"THE CASE FOR CIVILITY IN LITIGATION: REPRESENTING YOUR CLIENT AND PRESERVING YOU"



5:00 pm - 6:30 pm

UNIVERSITY OF ALABAMA SCHOOL OF LAW RECEPTION

Come and meet Coach Mike Dubose at the Summit Club, AmSouth Harbert Plaza.



5:30 pm - 6:30 pm

CUMBERLAND SCHOOL OF LAW RECEPTION

"Ragin' Cajun" band
Zydeco, 2001 15th Avenue South



SATURDAY JULY 17, 1999

8:00 am - 9:15 am

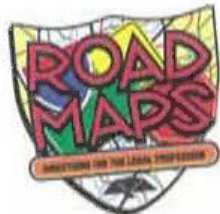
ANNUAL COMMITTEE/TASK FORCE BREAKFAST

9:30 am - Noon

GRAND CONVOCAION

• Alabama Supreme Court
Chief Justice Perry Hooper

• Board of Bar Commissioners' Meeting



ALABAMA STATE BAR 1999 ANNUAL MEETING

July 14-17, 1999 • Birmingham, Alabama



ADVANCE REGISTRATION PLEASE PRINT

Name (as you wish it to appear on name badge) _____

Check Categories That Apply: ☐ Bar Commissioner ☐ Past President ☐ Local Bar President ☐ Justice/Judge
☐ Section Chair ☐ Committee Chair

Firm _____ Office Phone: _____

Address _____

City _____ State _____ Zip _____

Spouse/Guest Name _____

REGISTRATION FEES

ADVANCE REGISTRATION

	By June 30	After June 30	Fees
<input type="checkbox"/> Alabama State Bar Members	\$160.00	\$195.00	\$_____
<input type="checkbox"/> Full-time Judges	\$ 80.00	\$ 97.50	\$_____
<input type="checkbox"/> Attorneys admitted to bar 5 years or less	\$ 80.00	\$ 97.50	\$_____
<input type="checkbox"/> Non-Member (does not apply to spouse/guest of registrant)	\$275.00	\$300.00	\$_____
TOTAL REGISTRATION FEES			\$_____

NOTE: To ensure adequate meeting space, please indicate your plans to attend any portion of the SPECIAL ALL-DAY CLE program on Wednesday, July 14: ☐ I will attend

OPTIONAL EVENT TICKETS

THURSDAY, JULY 15, 1999

	No. of Tickets	Cost	Fees
<input type="checkbox"/> Bench & Bar Luncheon	_____ @	\$17.00 ea.	\$_____
<input type="checkbox"/> Membership Reception	_____ @	\$35.00 ea.	\$_____
<input type="checkbox"/> Afterglow Reception (Limit 2 Tickets per Registration)	_____ @	No Charge	No Charge
(Follows the Membership Reception)			

FRIDAY, JULY 16, 1999

BREAKFASTS

	No. of Tickets	Cost	Fees
<input type="checkbox"/> Christian Legal Society Breakfast	_____ @	\$18.50 ea.	\$_____
<input type="checkbox"/> Farrah Order of Jurisprudence/Order of the Coif Breakfast	_____ @	\$15.00 ea.	\$_____
<input type="checkbox"/> Jones School of Law Breakfast	_____ @	\$10.00 ea.	\$_____
<input type="checkbox"/> Birmingham School of Law Breakfast	_____ @	\$12.50 ea.	\$_____
<input type="checkbox"/> Miles School of Law Breakfast	_____ @	\$20.00 ea.	\$_____

LUNCHEONS

<input type="checkbox"/> Membership Luncheon	_____ @	\$17.00 ea.	\$_____
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RECEPTIONS

<input type="checkbox"/> Cumberland School of Law Reception	_____ @	\$20.00 ea.	\$_____
<input type="checkbox"/> University of Alabama School of Law Reception	_____ @	\$20.00 ea.	\$_____

TOTAL EVENT TICKETS \$_____

TOTAL FEES TO ACCOMPANY FORM \$_____

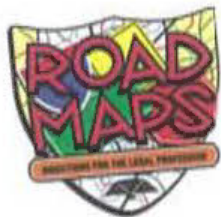
Appropriate payment must accompany registration form. Payment by check is requested.

CHECKS FOR REGISTRATION/TICKETS SHOULD BE MADE PAYABLE TO THE ALABAMA STATE BAR.

MAIL REGISTRATION FORM & CHECK TO: 1999 Annual Meeting, Alabama State Bar, P. O. Box 671, Montgomery, AL 36101

Advance registration forms **MUST BE RECEIVED NO LATER THAN JUNE 30, 1999.**

Cancellations with full refunds may be requested through noon, **FRIDAY, JULY 9, 1999.**



ALABAMA STATE BAR 1999 ANNUAL MEETING

July 14-17, 1999 • Birmingham, Alabama



HOTEL RESERVATION FORM PLEASE PRINT

SHERATON BIRMINGHAM HOTEL RESERVATION REQUEST

To secure a reservation, this form must be received by **JUNE 10, 1999**.

Requests received after this date will be honored based on availability and regular rack rates will apply.

THE HOTEL RESERVATION FORM MUST ACCOMPANY YOUR ANNUAL MEETING REGISTRATION FORM.

Name _____

Address _____

City _____ State _____ Zip Code _____

Firm _____ Day Telephone _____

Arrival Day/Date _____ Departure Day/Date _____

No. of Rooms _____ No. of Persons _____

Name(s) of additional occupants: _____

No charge for children under 18 when sharing room with parents and using existing bed space. There is a \$15 charge for a crib.

Check the Applicable Room Rate:

☐ Single

☐ Double

☐ Triple

☐ Quad

STANDARD

\$105

\$105

\$115

\$115

CORPORATE CLUB

\$125

\$125

N/A

N/A

In order to confirm this reservation request, a deposit equal to room rate plus 8% occupancy tax is required.

Please enclose your check or money order, or provide credit card information below:

Please bill my credit card: ☐ VISA ☐ MasterCard ☐ American Express ☐ Diners Club ☐ Carte Blanche ☐ Discover

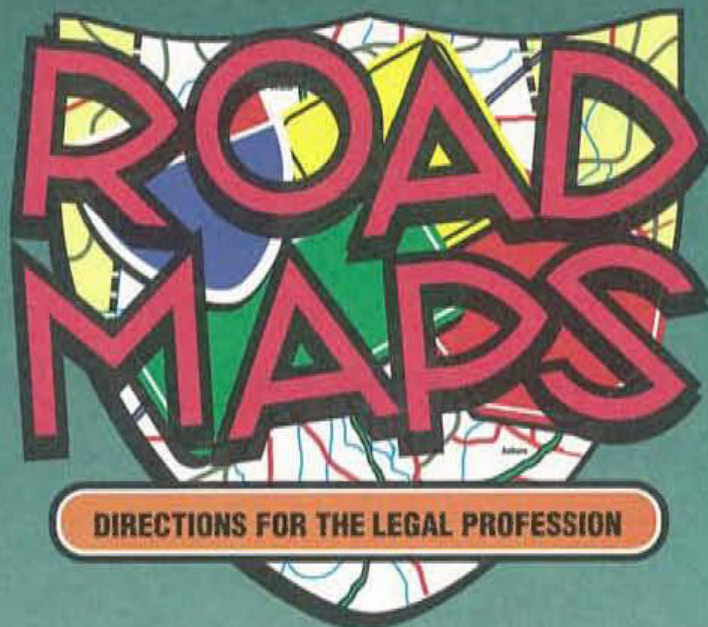
Card No. _____ Expiration Date _____

Cardholder's Signature _____

PLEASE MAKE CHECK PAYABLE TO SHERATON BIRMINGHAM HOTEL. Do not send currency.

CANCELLATION/ MODIFICATION POLICY: Should cancellation or modification of this reservation be necessary, there will be no penalty provided the reservations office is notified no later 72 HOURS prior to your arrival day. Should cancellation occur after this time or if the hotel is not notified of cancellation, the deposit will not be refunded. When canceling, please record your cancellation number.

CHECK-IN TIME is 3:00 p.m. CHECK-OUT TIME is Noon.



ALABAMA STATE BAR

1999 ANNUAL MEETING

**July 14-17, 1999
Birmingham, Alabama**

- **38 HOURS OF CLE OFFERED**
 - **BENCH & BAR LUNCHEON**
- **PLENARY SESSIONS • WORKSHOPS**
- **GRANDE CONVOCATION • LEGAL EXPO '99**
 - **MCWANE CENTER**
- **MEMBERSHIP RECEPTION**
- **KIDS' CHANCE GOLF SCRAMBLE**
- **AND MORE!**



LEGISLATIVE WRAP-UP

By Robert L. McCurley, Jr.

Regular Session of the Legislature

The Regular Session of the Legislature that began in March 2, 1999 must end within 105 calendar days, meaning the last possible day for the Legislature to meet is June 14, 1999. During that time the Legislature can meet only 30 legislative days. With the first month of the Legislature history, the Legislature has already consumed 11 legislative days. No bills were introduced in the Senate, however, 415 bills were introduced in the House of Representatives during the first month.

Although the Senate consumed 11 days in March, the House met only four of the legislative days.

Pending Institute Legislation

The Law Institute has two bills pending before the Legislature this year: **Uniform Child Custody Jurisdiction and Enforcement Act** (HB 224), sponsored by Representatives Demetrius Newton, Marcel Black and Bill Fuller and Senator Rodger Smitherman (See November 1998 *Alabama Lawyer*), and the **Merger of Business Entities Act** (HB 312), sponsored by Representative

Bill Fuller and Senator **Roger Bedford**, which will allow business entities of one kind to merge into a separate form of business entity (See September 1998 *Alabama Lawyer*).

Revisions Under Study

The **Uniform Principal and Income Act** is under review by an Institute committee chaired by attorney **Leonard Wertheimer** of Birmingham with **Professor Tom Jones** serving as reporter.

The purpose of the Principal and Income Act is to provide rules that apply to the interest of successive income and remainder beneficiaries. This bill deals with several issues that were not covered by the 1931 and 1962 Principal and Income acts. For example, the new act will deal with the application of the probate administration rules to revocable, living trusts after the settlor's death and to other terminating trusts. Similarly, the act will deal with income tax obligations resulting from the ownership of S corporation stocks and interests in partnerships. Finally, as an example, the act also deals with the allocation of net income from harvesting and selling timber between principal and income.

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Especially For Alabama State Bar Members Save \$15 Off A Weekly Rental!

Reserve an Avis Intermediate through a Full Size 4-Door car. Then present this coupon at a participating Avis location in the U.S. and receive **\$15 off a weekly rental**. Subject to complete Terms and Conditions. For reservations, call your travel consultant or Avis at: **1-800-698-5685**.

TERMS AND CONDITIONS

Coupon valid on an Intermediate (Group C) through a Full Size four-Door (Group E) car. Dollars off applies to the cost of the total rental with a minimum of five days. Coupon must be surrendered at time of rental; one per rental. An advance reservation is required. May not be used in conjunction with any other coupon, promotion or special offer. Coupon valid at Avis corporate and participating licensee locations in the contiguous United States. Offer may not be available during holiday and other blackout periods. Offer may not be available on all rates at all times. Cars subject to availability. Taxes, local government surcharges, and optional items, such as LDW, additional driver fee and fuel service, are extra. Renter must meet Avis age, driver and credit requirements. Minimum age is 25, but may vary by location. Rental must begin by 12/31/99.

Rental Sales Agent Instructions. At Checkout:

- In AWD, enter **A530100**. • In CPN, enter **MUGK720**.

- Complete this information:

RA# _____ Rental Location _____

- Attach to COUPON tape.



Moreover, a number of matters that were provided for under the prior acts have been changed or clarified under the Revised Uniform Principal Income Act. For example, income from partnerships will be based on the actual distribution from the partnership in the same manner as corporate distributions. Distributions from corporations and partnerships that exceed 20 percent of the entity's gross assets will be considered principal whether or not intended by the entity to be a partial liquidation. The percentage used to allocate the amounts received from oil and gas has been changed to 90 percent of those so that 90 percent of those receipts are allocated to principal and the balanced income. Also, the unproductive property rule has been eliminated for trusts other than marital deduction trusts.

Finally, this revision of the Uniform Principal and Income Act has been updated so that it is coordinated with the Uniform Prudent Investor Act.

The **Public Employees Retirement Systems Act** committee is chaired by attorney **Kyle Johnson** of Montgomery with **Professor Jim Bryce** serving as reporter.

In 1997 the Law Institute formed a committee to review the Public Employees' Retirement Systems Law in Alabama. The committee is studying the Uniform Management of Public Employee Retirement Systems Act and comparing it to Alabama's current law. It has been noted that throughout the

United States, state and local retirement systems currently manage in excess of one trillion dollars in assets for the benefits of the participants and beneficiaries. The federal law, the Employee Retirement Income Security Act (ERISA), does not apply to these systems. Consequently, the systems that we are studying are regulated in each state by state law. This new act is an attempt to assist states in the modernization, clarification and uniformity of rules governing the management of public retirement systems. Generally, the act is designed to protect the participants and beneficiaries of the public retirement system in two ways. First, the act will articulate the fiduciary obligations of the trustees who have discretionary authority over the various aspects of the system. Second, the act will assist with the monitoring of the retirement systems by requiring significant disclosure of the financial and actuary status of the systems.

The act is designed to replace laws that might inhibit or prevent the use of modern investment practices. Drafters of the act consider the immediate beneficiaries of the revision as being the system's participants and beneficiaries but the ultimate beneficiaries being the state taxpayers by virtue of the State's being able to offer employees either a better pension at the same cost or the same pension at a lower cost.

For more information concerning the Institute or any of its projects, contact Bob McCurley, director, Alabama Law Institute, P.O. Box 861425, Tuscaloosa, Alabama 35486-0013; fax (205) 348-8411; phone (205) 348-7411; or through the Institute's home page, www.law.ua.edu/ali.

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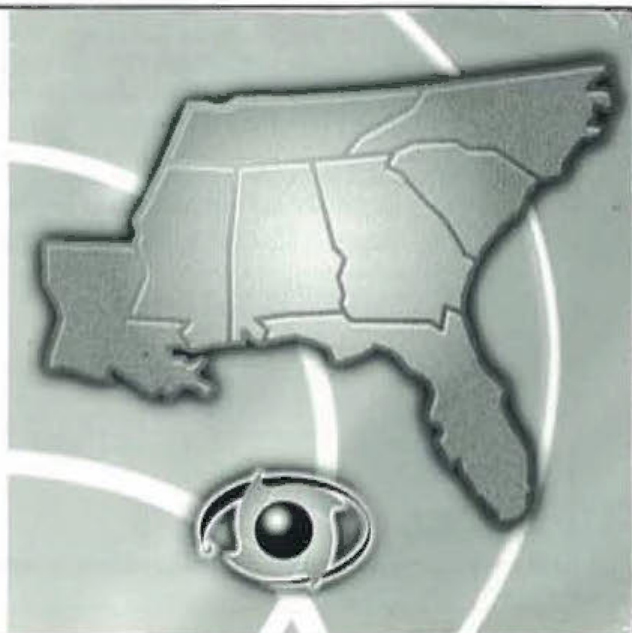
Robert L. McCurley, Jr.

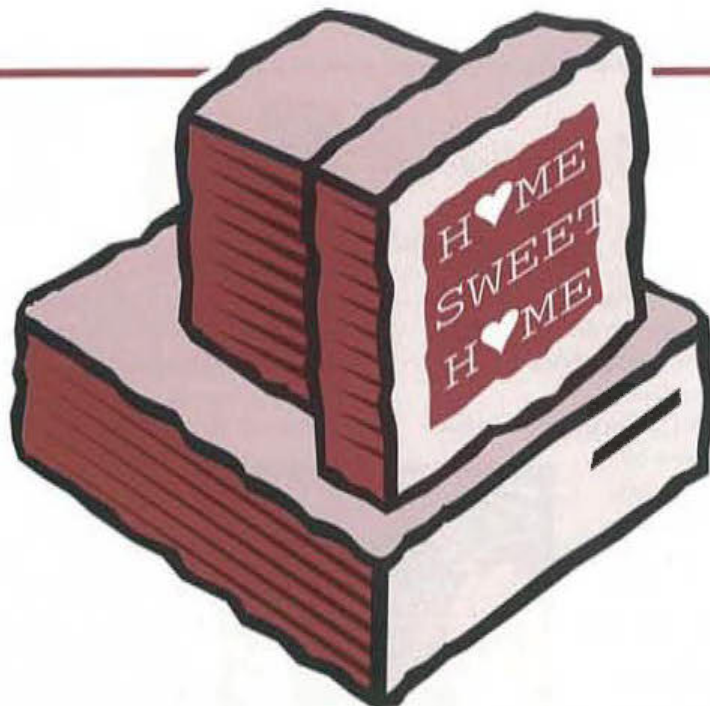
Robert L. McCurley, Jr. is the director of the Alabama Law Institute at the University of Alabama. He received his undergraduate and law degrees from the University.

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Who says you can't go home again?

And again. . .and again. Because every time you visit the Alabama State Bar's homepage at www.alabar.org, you're getting just what you need to prepare you for whatever is outside that familiar front door into the "real world."

It's the place to find resources for your law practice, links to other legal sites, an on-line bar directory, ABR headnotes (supreme court decisions), information on member benefits and discounts, and informative brochures for your clients. And it's where you can reach the helpful folks of the bar staff who can answer your questions.

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The Art of Intervention: **Get Tough**

By Charles Shults

In dealing with any type of addiction, whether it is to chemicals, sex, food or gambling, any of the big four, denial must be overcome. The term "tough love" means caring about someone to take action that often seems counterintuitive.

The wife who lives with a husband who is a practicing alcohol addict is advised by the addiction counselor to quit covering for him when he lays out of work because he has a hangover. This seems perilous to her, because if he loses his job, how will they make a living? Yet if the husband's awareness of his disease is ever to happen, those closest to him must quit covering for him and stop allowing him to avoid the consequences of his behavior.

This is a difficult proposition, when we care about someone, to confront them with their behavior and insist that they get help. Too often, we believe that if we just look the other way, eventually they will realize the error of their ways and straighten up, quit drinking too much, get off the cocaine, stop hanging out at topless bars. It usually doesn't work like that. What the addict learns instead is that we will look the other way, and we can all go on pretending that the problem isn't there. Until one day it blows up, and then we say, "Who'd a thought it?"

Occasionally we have the courage to speak up. We mention directly or obliquely our concerns, or give some hint that we know there is a problem. Or we ask if there has been some special circumstance, something unusual, that is producing such aberrant behavior. The addict responds in whatever fashion we have indicated will reassure us: They will straighten up and do better. We are mistaken—there is no problem. Yes, they have been under a lot of pressure, but soon will have things under control. There have been a lot of problems with the wife, kids, car, case, finances, mother-in-law, and judge who doesn't like me.

Whatever will appease you now is what you will hear. Because, you see, the addict truly has a disease that warps their sense of reality, their perspective of what is happening, and they may actually believe the lies that they are telling you. And so you buy it—sincere delusion.

Sometimes you don't say anything at all because some addicts are in positions of power. They may be judges, or the senior partner in the firm. Or they may know something about us that we fear will be used against us. Or we can't afford to lose the income they bring in. Or they may be our old pal from college, who was there when we needed him. Fear keeps us silent. We convince ourselves that things will get better, or that we can manage the situation, clean up the mess, cover it up, close the door, keep it quiet. No one will know.

For a while you buy it. And for a while things may get better. But then the problems get worse, and the addict contin-

ues to spiral downward. Or maybe we do figure out a way. We put him in the back office, shift the workload, prop up the staff, double-check his work, mollify the clients, and pay the debts. We may do whatever it takes so that he can make it to retirement, finish the case, and maintain the status quo. We have become enablers.

Whether we want to admit it or not, we have now become full-fledged co-addicts, people who will live and work with addiction, and do whatever it takes to play their roles so that the addiction can go on. Some of us pride ourselves on being the antagonist, the gadfly. We know there is a problem and we say so. That is our role. Some of us are the peacemakers. We try to smooth things over and work things out. Some of us are the distracters. We are very good at shifting attention away from the real problem, or making light of a bad situation. However we chose to play the role, we help to keep the addiction going.

But there is another role that can be played, that of the intervenor. We begin to play this role when we see that what we tried before is not working. We can educate ourselves about addiction as a disease. We need not look at our comrade, spouse, boss, employee or acquaintance who has an addiction as someone who is weak, or immoral, or stupid. We can begin to compassionately view them as someone who desperately needs our help, and help can be obtained.

Addiction is a disease that can be treated successfully, but first it must be confronted.

That is where you come in.

The Alabama Lawyer Assistance Program of the Alabama State Bar is dedicated to getting help for addicted lawyers. The program offers assistance with interventions, referral services and colleague support. It takes everyone involved being willing to take a united stand that enough is enough and it is time to get help. If you would risk your life to save a friend, then risk your friendship to save a life. The longer you wait, the harder it becomes to successfully treat the disease. The further down the addict goes, the fewer resources they have for recovery.

In our ignorance of what addiction really is, many of us used to think that addiction was something to be ashamed of, and that looking at addiction as a disease was a cop-out for not taking responsibility. Not so.

Addiction recovery means taking responsibility. And the only shame is in continuing to live in ignorance and denial when you know a better way. For confidential help, phone (334) 834-7576 or (334) 395-0807 (24-hour pager).



Charles Shults, JD, MA, is a licensed professional counselor with Alabama Therapy Associates, L.L.C. in Birmingham and a member of the Alabama State Bar.

LOCAL BAR

Award of Achievement

The Local Bar Award of Achievement recognizes local bar associations for their outstanding contributions to their communities. Awards will be presented at the Alabama State Bar's Annual Meeting in Birmingham on July 17, 1999 at 10 a.m.

Local bar associations compete for these awards based on their size. The three categories are large, medium and small bar associations.

The following criteria will be used to judge the contestants for each category:

- ★ The degree of participation by the individual bar in advancing programs to benefit the community;
- ★ The quality and extent of the impact of the bar's participation on the citizens in that community; and
- ★ The degree of enhancement to the bar's image in the community.

To be considered for this award, local bar associations must complete and submit an award application by June 1, 1999.

An award application may be obtained by calling or writing the director of programs at the state bar, (800) 354-6154 or (334) 269-1515, ext. 161 or 305, P.O. Box 671, Montgomery, Alabama 36101.

Large Bar Associations

10th Circuit
13th
15th

Medium Bar Associations

6th Circuit
7th
8th
11th
16th
20th
23rd
28th

Bessemer Cut-off
(division of 10th
Circuit)

Small Bar Associations

1st Circuit
2nd
3rd
4th
5th
9th
12th
14th
17th
18th
19th
21st

22nd
24th
25th
26th
27th
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Mike Papantonio

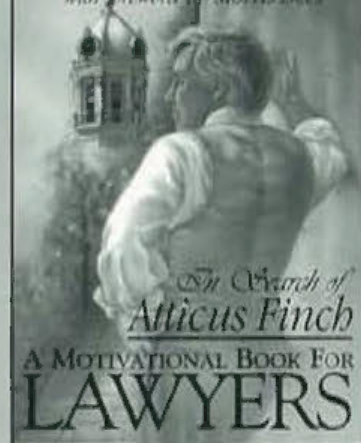


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Papantonio explains how neither Clarence Darrow nor Atticus Finch resembled the single-dimensional, linear-thinking attorney that seems to be almost cliché and epidemic in the '90s. They were not abridged versions of lawyers. Their endless effort to understand and appreciate the world outside the four walls of their offices provided balance to their lives. They both worked hard to acquire a type of enlightened wisdom that improved their lives and the lives of people they served.

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Reflections on the 25th Anniversary of the Judicial Article

Reflections on the 25th

By Justice Hugh Maddox

When I came to Montgomery in February 1957 to serve as a law clerk to the late Judge Aubrey M. Cates, Jr., of the Alabama Court of Appeals, the bench and bar faced some serious problems:

- (1) Alabama had no uniform system of inferior courts;¹
- (2) the justice-of-the-peace system was in place;
- (3) there were no uniform rules of procedure for the trial of civil cases;² and
- (4) there was no administrative office for courts, either at the state or local level, to deal with the problems of case management.

These four problems mentioned above were compounded when, in the 1960s, the Supreme Court of the United States began expanding the protection afforded by procedural due process rights, particularly in criminal cases, which contributed to an increase in court dockets. The rapid development in the law of procedural due process, especially in criminal cases, and the desire of many lawyers to modernize Alabama's judicial system spurred the Alabama State Bar to take steps that ultimately resulted in major changes to Alabama's judicial system during the 1970s.

In the mid-1960s, under the leadership of Howell Heflin,³ the bar established a committee to

study the feasibility of holding a citizens' judicial conference.⁴ The committee recommended that the bar, with the help of the American Judicature Society, sponsor a Citizens' Conference on Alabama State Courts.⁵ The Citizens' Conference, whose primary mission was to study the problems of the judicial system and to recommend solutions to those problems, was held in Montgomery on December 8-10, 1966, and was hailed as an overwhelming success.⁶

In 1966, I was serving as legal adviser to Governor George C. Wallace. Although I did not attend the Citizens' Conference, the keynote speaker at the conference, Associate Justice Pelham J. Merrill of the Alabama Supreme Court, was a personal friend of mine. Merrill, a former state legislator, had long been an advocate of judicial reform. In his keynote speech, entitled "The Facts About Alabama's Courts and Judges Today," Justice Merrill not only detailed some of the problems I have

already noted, but he also pointed out that Alabama's judges were not adequately compensated and that there were no retirement benefits for judges. He also discussed Alabama's system of electing judges, and stated that "[m]ore and more states are coming to what we know as the Missouri Plan or a variation of it," and noted that he had tried "to get the Legislature to consider such a procedure when [he] was a member in 1947, but the idea then was too new."⁷ Justice Merrill further pointed out that Alabama had no provisions, other than impeachment, for the removal of judges for misconduct.

In my opinion, the convening of that First Citizens' Conference (as it came to be known) was the catalyst for the judicial reform that would later occur. The consensus statement of the First Citizens' Conference⁸ became a blueprint for most of the reforms that would later be wrought by constitutional amendments,



And Who Is The Best Man?

statutes, and court-made procedural rules. The one significant recommendation of the conference that remains not implemented was the recommendation that Alabama change its method of selecting judges.

One of the first major changes resulting from the Citizens' Conference occurred in 1969, when the Legislature adopted legislation that restructured the appellate courts. At that time, Albert P. Brewer had succeeded the late Governor Lurleen Burns Wallace as Governor. I had the privilege of serving as legal advisor to Governor Lurleen Wallace, and, upon her death, I was also privileged to continue to serve in that position in Governor Brewer's administration. I distinctly remember the day Justice Merrill and supreme court marshal and librarian William Younger brought to the Capitol proposed legislation to increase the size of the supreme court and to create the court of civil appeals and the court of criminal appeals. Justice Merrill and Mr. Younger asked Governor Brewer to support the legislation, and he did.

With Governor Brewer's support, the Legislature subsequently adopted legislation abolishing the Alabama Court of Appeals, which had limited civil and criminal jurisdiction, and replacing it with two appellate courts—the Alabama Court of Criminal Appeals and the Alabama Court of Civil Appeals. The court of criminal appeals was given exclusive appellate jurisdiction in all criminal cases.¹⁰ The court of civil appeals was given exclusive appellate jurisdiction of specified civil cases involving less than \$10,000, workers' compensation cases, domestic relations cases, and appeals from administrative agencies except the Public Service Commission.¹¹

The bill increasing the number of justices on the supreme court was introduced in the Legislature by then Senator C. C. "Bo" Torbert, who would go on to be elected chief justice in 1976. The Legislature approved the bill, and the supreme court grew from seven to nine members in 1969.¹² In September of that year, Governor Brewer appointed me to one of the two newly-created seats on the supreme court, and I was privileged to be a part of rapid and expansive changes in Alabama's judicial system that soon followed.

Howell Heflin, the former president of the state bar, was elected chief justice in 1970. One of Chief Justice Heflin's favorite initiatives was judicial reform, and upon taking office he led the court and the state through a period of substantial reform.¹³ Among the first major reforms to be accomplished was the adoption of constitutional amendments to abolish the office of justice of the peace¹⁴ and to address the issues of disciplining judges and judicial retirement.¹⁵

The high-water mark of judicial reform during the 1970s was, without a doubt, the ratification of Amendment 328 to the Alabama Constitution of 1901. That amendment adopted a new Article VI, known as the Judicial Article. When the Legislature passed the Judicial Article Implementation Act,¹⁶ to implement the provisions of Amendment 328, sponsored, among others, by then Senator Torbert, most of the recommendations of the First Citizens' Conference on Alabama State Courts became the law. The one major exception was that Alabama still had made no changes in the way judges were selected.

What type of reforms were made by the Judicial Article? The Judicial Article merged Alabama's courts into the Unified Judicial System, of which the

chief justice is the administrative head. The Judicial Article also made other major reforms, including granting the supreme court the authority to make procedural rules for the court system.

The new judicial system in Alabama received rave reviews in newspapers throughout the nation,¹⁷ but it was not without problems. When Chief Justice Torbert came into office after the 1976 election, he was faced with a serious financial crisis. A December 1977 article in *Alabama Magazine* discussed some of the problems the new Unified Judicial System faced, pointing out that, "Torbert had scarcely put on his judicial robe for the first time before he learned that financially speaking the Court's cupboard was bare."

Despite the bumps in the road, the adoption of Amendment 328 and the creation of the Unified Judicial System paved the way for additional reforms and judicial streamlining under Chief Justice Torbert, followed by Chief Justice Sonny Hornsby and Chief Justice Perry O. Hooper, Sr. In the 25 years since the Judicial Article was adopted, the supreme court has adopted the Rules of Appellate Procedure, the Rules of Civil Procedure, the Rules of Juvenile Procedure, the Rules of Judicial Administration, the



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Rules of Criminal Procedure, and the Rules of Evidence. The supreme court has also adopted rules governing the conduct and disciplining of judges and lawyers. These include, among others, the Canons of Judicial Ethics, the Rules of Procedure of the Judicial Inquiry Commission and the Rules of Professional Conduct.

In addition to the adoption of uniform rules of procedure and rules relating to the conduct of lawyers and judges, another improvement was automation, which has made case management more efficient and has streamlined the juror system. The automation of the Unified Judicial System has resulted in:

- (1) a uniform case filing system;
- (2) centralized juror management that allows the random selection of prospective jurors through the use of the Administrative Office of Courts' mainframe computer;
- (3) a system that allows judges to conduct on-line legal research on personal computers in their offices; and
- (4) a system that allows clerks to keep accurate and easily accessible records. Automation has helped make our courts more efficient and has thus helped to ensure the timely disposition of disputes brought by the people of Alabama to their courts for resolution.

Yet another improvement was the development of a system of continuing education for judges and judicial system employees. The Judicial College, a division of the Administrative Office of Courts, provides continuing education for judges, court clerks, judicial assistants and other judicial system employees to ensure the more uniform and efficient disposition of cases. There has also been a conscious effort to make the trial courts "user friendly," by providing prompt, efficient, and uniform judicial services.

Although the first 25 years of the Unified Judicial System have been overwhelmingly positive, there are two areas that I believe still need to be addressed. First, further restructuring would help the appellate courts to better manage their caseloads and to work more efficiently. Over 20 years ago, during Chief Justice Heflin's tenure, the National Center for State Courts

conducted a study of the appellate court system in Alabama and recommended some significant changes.¹⁸ Among them was the recommendation that the supreme court be converted into what is known as a certiorari-review-only court, similar to the United States Supreme Court in operation. That is, the supreme court would hear only those cases on certiorari review from decisions of the two courts of appeals; it would not hear cases on direct appeal. Except for legislation that allows the supreme court to deflect some civil cases to the court of civil appeals, and the addition of some judges on the intermediate courts of appeals, there has been no appellate court restructuring since the adoption of the Judicial Article.

The second main area that I believe merits future consideration is the question of judicial selection. The recommendation of the First Citizens' Conference that Alabama move away from the partisan selection of judges is still not implemented, despite further support for that recommendation by two subsequent citizens' conferences.¹⁹

Although these two areas still deserve attention, there can be no question that the reforms implemented over the last 25 years have greatly improved our judicial system. Hundreds of individuals have made those reforms possible, including many distinguished lawyers, judges, legislators, and citizens, too numerous to name. In my opinion, however, three deserve special recognition: Chief Justice Heflin, Chief Justice Torbert and Justice Merrill. Without their leadership in the bar, in the Legislature, and on the court, our judicial system would probably be very different from the system we enjoy today. In fact, had it not been for their dedicated leadership, the Unified Judicial System might very well have not come into being, and Alabamians would not be benefiting from a modern and efficient judicial system.

Endnotes

1. The inferior courts of the state were configured differently in different parts of the state. See Hugh Maddox, "The Scope and Applicability of the Proposed Alabama Rules of Civil Procedure to the Courts of Alabama," 18 *Ala. Law* 216 (1957).
2. In 1957, the Supreme Court of Alabama did not have rule-making power. Although strong voices were raised in support of the adoption of a version of the Federal Rules of Civil Procedure, in

Alabama, the Legislature refused to act. See H. 14, Journal of the House, Regular Session of 1957, introduced to provide rules of procedure for the trial courts. H. 14 passed the House, but it was not adopted by the Senate, as shown by Journals of the House and Senate for the 1957 Regular Session.

3. Heflin served as president of the bar in 1965-66. In 1970 he became the first person to be elected Chief Justice of the Alabama Supreme Court without first having been appointed to that position. He later became a distinguished United States Senator.
4. Howell T. Heflin, "Scope and Function of New Committees," 26 *Ala. Law* 359, 362 (1965).
5. 27 *Ala. Law* 115, 116 (1966).
6. The conferees were from all parts of Alabama and represented a variety of professions and trades. A list of the conferees and some of their individual comments on the conference are published at 28 *Ala. Law* 131-223 (1967).
7. Peiham J. Merrill, "The Facts About Alabama's Courts and Judges Today," 28 *Ala. Law* 139 (1967).
8. *Id.* at 144-45.
9. 28 *Ala. Law* 190.
10. 1969 *Ala. Acts* 987.
11. *Id.*; the jurisdictional amount was subsequently increased to \$50,000. See 1993 *Ala. Acts* 93-346.
12. 1969 *Ala. Acts* 802.
13. A Second Citizens' Conference was convened in 1973, primarily for the purpose of drafting what has come to be known as the Judicial Article and related legislation to implement the recommendations of the first Citizens' Conference.
14. *Ala. Const.* of 1901, Amend. 323. This amendment was later repealed and replaced by Amendment 328, adopting a new Article VI, the Judicial Article.
15. *Ala. Const.* of 1901, Amend. 317. This amendment was also repealed and replaced by Amendment 328.
16. 1975 *Ala. Acts* 1205.
17. See, e.g., "Revised Alabama Court System Called a Model," *The St. Louis Post-Dispatch*, June 2, 1975; "It Can Be Done," *The Houston Post*, May 25, 1975; Neil R. Pearce, "State Courts: Alabama Excels," *The Cincinnati Post*, May 24, 1975; Howard James, "Alabama Aims to Reform Antiquated Court System," *The Christian Science Monitor*, November 29, 1974.
18. Report on the Appellate Process in Alabama, National Center for State Courts, November 1973.
19. The Second and Third Citizens' conferences on the Alabama State Courts were convened in 1973 and 1995, respectively.



Justice Hugh Maddox

Justice Hugh Maddox has been on the Supreme Court of Alabama since 1969. He is a graduate of the University of Alabama and the University's School of Law. He is the author of *Alabama Rules of Criminal Procedure* and received the 1997 Alabama State Bar Judicial Award of Merit.

Judicial Reform In Alabama: A Reflection

By Charles D. Cole



Louder - Please

Introduction

Much has been written, by this author and others, concerning judicial reform in Alabama. This article offers reflections on those activities from one who participated in the process during 1971-1975, as director of the Judicial Conference activity which produced the five-year court plan for Alabama's courts (January 1973-November 1973), as director for the Permanent Study Commission on Alabama's Judicial System, which joined the Constitutional Revision Commission in proposing a new judicial article to the Legislature of the State of Alabama as an amendment to the Alabama Constitution (September 1972-May 1974), and as director of the Advisory Commission on Judicial Article Implementation (June 1974-May 1975), which compiled the implementation legislation for the Judicial Article after it was ratified by the Alabama electorate on December 18, 1973.

Although this article will briefly consider some of the efforts undertaken to establish the proper climate for judicial reform in Alabama before 1971, the primary emphasis herein will be to chronicle the reflections of this author concerning the ratification and implementation of the Judicial Article, Amendment 328 to the Alabama Constitution, which serves as the current basis for the Alabama Unified Judicial System (UJS).



Out to pasture?

This author recognizes that then Chief Justice Howell T. Heflin initiated the 1971-1975 Alabama judicial reform even prior to the time he became chief justice, leading to a Citizens' Conference on the Alabama Courts in 1966, later initiating the reform effort of the early 1970s, and masterfully managing all the parties and interests essential to obtain court reform. The author also has tremendous appreciation for the efforts of Chief Justice C.C. "Bo" Torbert, the gentleman who succeeded Chief Justice Heflin, for responding to and solving problems encountered in the implementation. Chief Justice Torbert performed an outstanding service to the people of the State of

Alabama by assuring that the implementation was achieved, among other things by solving the fiscal problems resulting from inadequate data for projection purposes and by spearheading political concessions made to obtain ratification of the constitutional amendment and the implementation legislation. This author can, without qualification, assure all interested parties that any inaccuracy in revenue and expenditure factors relating to the implementation of the UJS was not intentional by anyone involved in the process. Unfortunately, fiscal projections were required for implementation purposes which could not be based upon accurate data or firm fund receipt practices

because much of the data necessary for accurate projections of revenue and expenditures, or court cost and fine availability realities, did not exist. Even so, staff attempted to respond to requests made of it and sincerely regrets the grief caused Chief Justice Torbert, thus requiring the masterful manner in which he handled the political problems caused by the fiscal needs of the UJS.

This article also recognizes the contribution of the many Alabamians who devoted their time and effort to create a judicial system from a non-system of courts of varied jurisdictions that were not subject to any centralized administration or accountability. Though Chief Justice Heflin provided the necessary leadership, the reform accomplished would not have been possible without the effort of the Alabama citizens who participated in the several conferences, committees and commissions, and the voting electorate, who seized the opportunity to establish an accountable structure for judicial services in the state.

The conclusion of this article will offer the author's view of the benefits of the judicial reform effort and enumerate some of the problems of the old non-system which continue today and are deserving of current attention in contemporary Alabama.

Judicial Reform in Alabama Prior to 1971

Judicial services in the trial courts of the State of Alabama prior to the reform of the 1970s were provided by circuit courts, the trial court of general jurisdiction, equity courts, trial courts of limited jurisdiction with varying types of criminal and civil jurisdiction, justices of the peace, and municipal courts. The trial court services available to the people of the State of Alabama remained essentially unchanged from 1875 until the abolition of the justices of the peace by constitutional amendment in 1972. During this period, in an effort to meet the need for judicial services in cases not requiring the formality and expense of circuit procedures, courts of limited jurisdiction were established in many,

but not all, counties of the state. A trial court survey, conducted by the Judicial Conference of Alabama in compiling a plan for modernization of Alabama courts in 1973, revealed that there were 85 limited jurisdiction trial courts in Alabama, apart from municipal and probate courts, under 23 different names, each with varying jurisdiction and procedure. Hence, even a lawyer could not know, from county to county, the proper or most convenient forum in which to present a claim for relief.

Governor Emmet O'Neal created a commission to study judicial reform in 1912; however, it was not until 1973 that comprehensive judicial reform occurred in the State of Alabama. Governor O'Neal, utilizing the report of a committee he had appointed to study the issue of judicial reform in Alabama, reported to the legislature in 1915 on the lack of judicial administration and management, asserting that "in Alabama our whole judicial system has grown up without harmony, unity or scientific arrangement, each legislature creating different courts, until the whole system has become a patchwork which now demands revision and reform."¹ Governor O'Neal emphasized the need for court consolidation, recommending that jurisdiction of all trial courts be consolidated, including some of the jurisdiction at that time vested by statute in the probate court, into one system of circuit courts.² The governor concluded his recommendations by urging that the methods of practice and procedure be simplified, citing the inefficient and antiquated methods of procedure and practice in use at that time. The governor also acknowledged that the public deserved appropriate management of judicial resources and judicial management authority. This management capability later became an important element of the reform of the 1970s. In fact, although Governor O'Neal's Commission recommended and the legislature conferred administrative and supervisory powers on the chief justice, the support staff necessary to facilitate the exercise of such authority was not provided to the chief justice until the 1970s when the Department of Court Management and the Administrative Office of Courts were created.

The Alabama legislature did establish a Judiciary Advisory Council and a Commission for Judicial Reform in 1955. These entities attempted to implement procedural reform by producing new rules of practice and pleading in 1957; however, after an unsuccessful initial effort to enact such, the rules were ignored until 1971. The proposed 1957 rules were comparable to the federal rules, involving a merger of law and equity, simplified pleading, greater use of discovery, liberal joinder of parties

and claims, with an emphasis on the use of summary judgment and a closer scrutiny of the appellate process.³ While the proposed simplification of practice and procedure was not implemented in the 1950s, incremental changes occurred in the early 1960s when the legislature established a Judicial Conference for the State of Alabama to conduct a continuing study of the administration of justice and to present reports to each regular session of the legislature recommending improve-

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ments in judicial administration within the state.¹

Howell T. Heflin was elected president of the Alabama State Bar in 1965 and introduced national concepts of the state court reform movement existing at that time. The American Judicature Society supported citizens' court conferences throughout the United States, providing an opportunity for persons from the various states who were interested in judicial reform to meet and create the appropriate climate for judicial reform, with both lay persons and professionals involved in the process.

The first Citizens' Conference on State Courts was held in Alabama in 1966 and is looked upon by many as the

starting point for the judicial reform of the 1970s. The 1966 Citizens' Conference recommended the creation of a judicial administrative office, the abolition of the office of the justice of the peace, a uniform statewide system of limited jurisdiction trial courts, merit selection of judges, and an independent judicial commission for discipline and removal of judges. All of these recommendations except merit selection of judges later occurred during the 1970s; however, there were no immediate changes resulting from the 1966 Conference.

The 1967 Alabama legislature considered creating a Constitution Revision Commission to recommend procedures

for revising the 1901 Constitution. The resolution called for a Joint House-Senate Constitutional Revision Committee. The resolution resulted in a committee of six persons being designated to review the general problem of constitutional revision.² Governor Lurleen Wallace was not receptive to comprehensive revision of the Constitution; however, in 1969, Governor Albert Brewer endorsed the idea of creating a constitutional commission and the Alabama Constitutional Commission³ was created in September 1969. The Commission, chaired by Judge Conrad M. Fowler of Shelby County, worked tirelessly formulating a proposed Constitution for the state.

Howell T. Heflin was elected Chief Justice of the Supreme Court of Alabama in 1970 and, shortly thereafter, sought legislation establishing a department of court management to aid the chief justice in the management of the judicial branch of government. He also promoted legislation that would give the supreme court authority to promulgate rules of pleading and practice, as well as the authority to establish rules of appellate procedure and practice, and the creation of a permanent commission to study the system of justice in Alabama. Additionally, he sought two constitutional amendments: one abolishing the impeachment method of removing judges, and establishing a judicial commission to serve as an independent commission with authority to censure, discipline, and retire or remove judges found guilty of misconduct in office,⁴ and the other abolishing the office of justice of the peace.⁵

Judicial Reform in Alabama, 1971-1975

The chief justice directed the Judicial Conference to consider the judicial article formulated by the Constitutional Commission in 1971. The ongoing Constitutional Commission activity, and mobilization of the Judicial Conference by Chief Justice Heflin, created an awareness by leadership throughout Alabama that judicial reform justified political attention. The 1971 Alabama legislature had also, at Heflin's request, created the Permanent Study



'Father, Dear Father...

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Commission on Alabama's Judicial System.⁹ In the organizing statute, the legislature required that the Study Commission continually study the judicial system of the state, the administration of justice in Alabama, including criminal rehabilitation and punishment, and all other matters related directly or indirectly to the administration of justice in Alabama. The Commission was specifically authorized to apply for and receive grants to coordinate and facilitate studies in connection with its purpose and functions.

The Study Commission obtained a grant from the Alabama Law Enforcement Planning Agency to facilitate its operation.¹⁰ The Study Commission is composed of six members of the House of Representatives, six members of the state Senate, the members of the Judicial Conference, the Lieutenant Governor, the Speaker of the House of Representatives, the legal adviser to the Governor, and a member of the staff of the Attorney General, appointed by the Attorney General.¹¹ The Chief Justice of the Supreme Court of Alabama is designated by the statute as chairman of the Commission and is authorized to appoint and dismiss employees for the Commission as may be necessary for Commission purposes. Chief Justice Heflin appointed the author of this article to serve as director of the Study Commission. The Study Commission maintained offices at the Cumberland School of Law, Samford University, during the several years required for Commission activity in support of the ratification and implementation of the proposed judicial article.

The chief justice organized the Commission into committees of four to six persons, with each committee being responsible for consideration of one of the various problems within the topical area of committee responsibility. The committees' responsibilities included the availability of law books for members of the judiciary, defense of indigents, judicial compensation, criminal pleas, physical facilities for the appellate courts, a unified court system, the cost of administration of the justice system, and bail bond practices.

The Judicial Conference Committee of the Study Commission became very active in the formulation of a compre-

hensive plan for Alabama's judicial system. Consultants were used for this study to both determine the specifics of the judicial and administrative activity within the state and define the current problems in the system to seek to obtain the maximum benefit from all available resources. The study considered the current and projected judicial system under a unified structure as proposed by the Constitutional Commission judicial article, including court services, prosecutorial services, defense services, and law reform. Obviously, the law reform segment of the study was dependent to a large extent upon recommendations that would be made in the other three areas. The four-point study conducted by the Judicial Conference not only included projected programs and recommendations for improvement of the system but also provided for a description of legislation that would be necessary for implementation. Ultimately, the results of the court study, called the Five-Year Plan for Alabama's Judicial System, were completed during 1973 and served as the basis for the initiation of reform efforts and grant funding for those efforts, which resulted in the unification of the Alabama judicial structure.

As previously mentioned, Chief Justice Heflin had sought to establish a means other than impeachment for discipline and removal of judges, simplification and improvement of practice and procedures in the courts of Alabama, abolition of the office of justice of the peace, and an administrative structure for a judicial system to offer improved judicial services to the people of Alabama. Each of these significant reform activities will be briefly discussed prior to discussion of the proposed judicial article.

Judicial Commission of Alabama

The impeachment procedure in Alabama furnished a judicial forum for the removal of state judges; however, it did not provide an effective means for private citizens to register their complaints concerning the improper conduct of a judge. At the time the Judicial Commission was created, only five

states had used the impeachment procedure against a member of the judiciary within the previous 15 years.¹² The constitutional amendment creating the Judicial Commission of Alabama¹³ was ratified by the people of Alabama in January 1972. The Commission was authorized to investigate and conduct hearings concerning the qualification of judges, and make recommendations to the Alabama Supreme Court in regard to the retirement, censure, suspension or removal of any judge from the supreme court, municipal courts or other courts of record.

The constitutional amendment creating the Judicial Commission of Alabama required the Judicial Conference Committee of the Permanent Study Commission to promulgate the rules of procedure to be used by the judicial disciplinary commission. The Judicial Conference met in July 1972 and compiled rules which were utilized by the Judicial Commission to meet its constitutional mandate. The Judicial Commission was a one-tier commission which both investigated alleged improprieties of judi-

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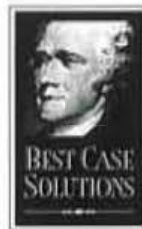
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cial persons and, if cause was found to hold formal hearings, held the necessary hearings to determine whether sanctions should be recommended to the supreme court. This system, based upon numerous other states' structures operating at the time, was changed by the judicial article ultimately proposed to the legislature in 1973, and ratified by the people, to have the judicial discipline function performed by a two-tier structure, composed of the Judicial Inquiry Commission¹⁴ and the Court of the Judiciary.¹⁵ The Judicial Inquiry Commission investigates complaints against judges and justices and, where cause is found to require hearing, files charges with the Court of the Judiciary.¹⁶

Rule-Making Power

As noted *infra* in this article, the need for modern and effective rules of procedure for trial and appellate cases had been recognized for many years prior to 1971. The Alabama legislature conferred rule-making power upon the Supreme Court of Alabama for both trial and

appellate practice in 1971.¹⁷ This author understands that an article will by Judge James O. Haley will appear in a forthcoming issue of *The Alabama Lawyer* concerning the authority to promulgate rules of practice and procedure and how such has been used by the Alabama Supreme Court. Therefore, additional information regarding same will not be offered herein except to applaud the constructive effect of Judge Haley and the advisory committees of outstanding Alabama lawyers, judges and law professors who have served the judicial system of the State of Alabama by their conscientious and tireless efforts, which are ongoing at this time, to both recommend and render current the procedure for use in our state courts.

Abolition of the Justice of the Peace

The 1971 Alabama legislature also proposed a constitutional amendment which provided for the abolition of the office of justice of the peace and

notaries public with the power and jurisdiction of a justice of the peace.¹⁸ The amendment was approved in January 1972, abolishing the office of the justice of the peace and eliminating the outdated office which had caused the entire judicial system to be subjected to public ridicule. The fee system method of justice of the peace compensation was a primary basis for criticism of the office, and most persons serving in that office were not licensed to practice law. A large number of appeals were taken from the justice of the peace courts and tried *de novo* on appeal.

The Alabama Constitution of 1901 and complementary legislation permitted counties to establish courts of limited jurisdiction in lieu of justices of the peace. Further, in response to the needs of those counties with no courts of limited trial jurisdiction to handle matters previously within the jurisdiction of the justice of the peace, the 1971 legislature provided for the establishment of a court of limited jurisdiction called the Justice Court. The Justice Court legislation was permissive; however, if a county established a Justice Court, the judge appointed for that court was required to be "learned in the law."¹⁹ Further, the compensation of the judge sitting for such a Justice Court would be by fixed salary and not fees created by judicial business conducted.

The abolition of the office of the justice of the peace and the enabling legislation allowing creation of the Justice Court were improvements, but were only incremental steps toward the needed reform of courts of limited jurisdiction in Alabama. All limited jurisdiction trial courts, other than municipal and probate courts, were ultimately abolished by implementation of the judicial article, which will be discussed *infra*, and were replaced by the District Court of Alabama.

Department of Court Management

The 1971 Alabama legislature created the Department of Court Management (DCM).²⁰ The DCM was specifically charged with assisting the Chief Justice of the Supreme Court of Alabama in carrying out his duties as the chief administrative officer of the trial courts



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of the state.²¹ The DCM commenced operation in November 1971, when Chief Justice Heflin appointed a court administrator, Charles Y. Cameron, esq. The first administrative duties performed included assigning judges to various state appellate courts in order to eliminate congestion in case backlog. The operations of the department were limited because the legislative appropriations for the first two years of its existence were only \$50,000 per year. Hence, the court administrator applied for grants and other assistance, pursuant to statutory authority granted to the department.

The first grant awarded to the DCM financed a study of the trial courts of the state with the major objective being to eliminate court congestion. As an example of the DCM's success during the first two years of operation, statewide statistics were compiled and analyzed and served as a basis for judicial assignments to aid with court congestion. Between January 1, 1972, and June 30 of that year, a seven percent reduction in the backlog of cases was reported for the circuit courts of Alabama.²² Chief Justice Heflin, aided by the administrative capability provided by the DCM, applied sound management principles to the judicial business of Alabama for the first time. A non-system was becoming a system.

The Constitutional Basis for the Judicial Branch of Government Proposed in 1973

Chief Justice Heflin caused a second Citizens' Conference on Alabama's State Courts to convene in Birmingham, April 5-7, 1973, a mere month before the 1973 legislature would convene. The Second Citizens' Conference recognized the improvements made in the manner in which judicial services were offered to the people of Alabama in the previous two years and, following a presentation by Constitutional Commission Chairman Judge Conrad M. Fowler, urged the legislature to allow the voters

of the state to determine the fate of the proposed judicial article, which would offer a basis for a unified judicial system with centralized budgeting and management capabilities and improve the jurisdictional structure for the trial court system throughout the state. Chief Justice Heflin, through Mike House, Robert Martin, Senator Stewart O'Bannon, Representatives Ronnie Flippo and Bob Hill, and many other public spirited Alabamians caused the proposed judicial article to be approved by the legislature and ratified by the people.

One should recognize, however, that the judicial article, as proposed to the legislature, provided, *inter alia*, a court of appeals, a continuation of the circuit court of Alabama as the trial court of general jurisdiction, a trial court of limited jurisdiction to be known as the district court, and a probate court. The district court, as proposed, would have replaced all existing trial courts of limited jurisdiction including municipal courts. The proposed article also required that all judges be licensed to practice law, created a Judicial Compensation Commission, provided for a unitary and centralized judicial budget, provided for rule-making authority in the supreme court, created a nominating committee for appointment of judges to fill vacancies, and established a Judicial Inquiry Commission and Court of the Judiciary.²³ Numerous political changes were necessary to gain legislative approval. The primary changes which occurred during the legislative process were:

1. The intermediate courts of appeal, the court of criminal appeals and the court of civil appeals, were given constitutional status as separate entities;
2. The merit selection of judges was removed from the proposed amendment, leaving the election method of state judges as the constitutionally accepted methodology, unless subject to other constitutional provisions; and,
3. The municipalities were allowed to exercise the option to retain their separate courts or come within the district court system.

The proposed judicial article was approved by the House of Representatives after having first been approved by the Senate. Staff work by Mike House and others facilitated the preparation of the bill for signing in an extraordinarily short period of time. In fact, the bill was approved approximately 15 minutes before the close of the session and staff had previously prepared several different versions of the bill to facilitate conforming such to the adopted bill. This allowed Representative Ronnie Flippo and Senator O'Bannon to obtain the signatures of the Lieutenant Governor and the Speaker of the House mere minutes before the session closed.


Ratification and Implementation of the Judicial Article

The proposed judicial article was ratified by the people of the State of Alabama on December 18, 1973. Only

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118,449 voters participated in the referendum; however, the proposal was ratified by a 62.1 percent majority of those voting. Chief Justice Heflin then appointed a 55-person commission, the Advisory Commission on Judicial Article Implementation, to propose the manner in which the United Judicial System would be created. The Advisory Commission was created by order of the chief justice in April 1974. The Commission, representing the courts, clerks, registers, district attorneys, lawyers, and members of the legislature and local government, was charged with the mandate to draft the policy recommendations and legislation to implement the newly ratified Judicial Article. The Advisory Commission was chaired

by Joseph F. Johnston from Birmingham, and this author had the privilege to serve as full-time staff director, on leave from Samford University, during the year the Commission was operational.

The Commission received funding through grants to the DCM from the Alabama Law Enforcement Planning Agency (ALEPA) to consider and make the detailed policy recommendations necessary to implement the revised Judicial Article of the Alabama Constitution. Robert "Bo" Davis and John Will Caylor of the ALEPA were extremely helpful throughout the judicial reform process, identifying grant funding which would allow necessary study and survey activity. The Law

Enforcement Assistance Administration (LEAA) also furnished discretionary funds as necessary to provide the consultants and study effort to facilitate a basis for Advisory Commission activity. Specifically, William B. Herndon of the LEAA joined Messrs. Davis and Caylor in taking a special interest in assuring availability of the necessary grant funding to allow the Commission to respond properly to the charge given it by the chief justice.

The Commission held its first meeting June 23-25, 1974 and conducted a careful analysis and appraisal of the problems anticipated in the implementation process and discussed possible solutions therefor. Ultimately, the Commission was organized into four working committees subsequent to the June meeting to facilitate careful study and formulation of preliminary recommendations with respect to the major policy decisions that would be required for Judicial Article implementation: district court organization, replacing courts of limited jurisdiction throughout the state with a limited jurisdiction district court structure; municipal courts and court-related agencies; court personnel and administration; and fiscal and budgetary matters. A fifth committee addressing prosecutorial services was subsequently appointed, and an interim committee was organized to draft final recommendations in several crucial areas.²⁴

The Commission held extensive meetings again in October and November 1974, and a final meeting in February 1975. The committees, however, met frequently during this period. The staff of the Commission and their consultants and advisers met with the committees for each of ten weekends over a three-month period. The attendance of all meetings of both the full Commission and the committees was remarkably close to 100 percent, with all members participating actively and conscientiously. There was continuous communication among members and staff. The report, transmitted to the legislature on March 28, 1975, could not have been completed without the vast amount of competent work by the consultants and the staff furnished by the DCM. Every problem identified by the Commission was carefully considered and the recommendations offered to the



Advisory Commission Committee Structure

District Court Organization Committee

Judge William H. Lumpkin, chairman, Centre
Judge Paul Brunson, Mobile
Judge Conrad M. Fowler, Columbiana
Judge Robert Gwin, Birmingham
Judge James O. Haley, Birmingham
Harold Herring, attorney, Huntsville
Robert M. Hill, Jr., attorney, Florence
Earl Morgan, district attorney, Birmingham
James L. North, attorney, Birmingham
J. Richmond Pearson, attorney, Birmingham
Fred B. Simpson, district attorney, Huntsville
Judge William C. Sullivan, Talladega
Cleo D. Teague, circuit clerk, Decatur
Judge Jerry Vanderhoof, Tusculum
Myron Waits, attorney, Talladega
W. Mike House, attorney, *ex officio*, Montgomery

Personnel and Administration

Judge J. Edward Tease, chairman, Florence
Broox G. Garrett, attorney, Brewton
Billy D. Harbin, circuit clerk, Huntsville
Walter Henley, attorney, Northport
David H. Hood, Jr., attorney, Bessemer
Judge Richard Hundley, Decatur

Thomas L. Jones, professor of law, University of Alabama
Judge Hardie Kimbrough, Grove Hill
Judge Joseph C. McCorquodale, Jackson
James D. Pruett, attorney, Gadsden
Judge John Puryear, Tuscaloosa
Lewey Stephens, district attorney, Elba
John Vardaman, attorney, Anniston
Charles Y. Cameron, *ex officio*, court administrator, Montgomery

Fiscal and Budgetary Committee

Judge Bernard Reynolds, chairman, Selma
Judge Wilbur E. Dearman, chairman, Judicial Retirement Subcommittee, Livingston
Mary Auburtin, circuit clerk, Marion
Carl Bear, attorney, Montgomery
Timothy M. Conway, attorney, Birmingham
Jane K. Dischuck, attorney, Tuscaloosa
Judge Mark Ezell, Butler
Ronnie Flippo, certified public accountant, Florence
Richard Manley, attorney, Demopolis
C. C. Torbert, Jr., attorney, Opelika
Judge Jack Wallace, Clayton
W. W. Dillard, Jr., *ex officio*, chief examiner of public accounts, Montgomery

Municipal Courts and Court-Related Agencies

Drayton Hamilton, chairman, attorney, Montgomery
J. Mason Davis, attorney, Birmingham
Annette Dodd, professor of law, Birmingham
Roger Killian, attorney, Fort Payne
M. Roland Nachman, Jr., attorney, Montgomery
Judge Gordon Rosen, Tuscaloosa
Judge Fred Scott, Greenville
E. Boyce Scruggs, circuit clerk, Russellville
Judge Tennant M. Smallwood, Birmingham
Charles Tarter, attorney, Birmingham
John D. Whetstone, director, District Attorneys' Association, Montgomery
James Wilson, attorney, Jasper
Judge G. Ross Bell, *ex officio*, Birmingham

Prosecution Services Committee

Timothy M. Conway, attorney, Birmingham
Judge Hardie Kimbrough, Grove Hill
Earl Morgan, district attorney, Birmingham
Fred B. Simpson, district attorney, Huntsville
Lewey Stephens, district attorney, Elba
Judge Jack Wallace, Clayton
John D. Whetstone, director, District Attorneys' Association, Montgomery

legislature reflected a thoroughly studied consensus. The Commission report contained 66 recommendations which treated matters ranging from court organization to pre-filing fees and uniform court costs to be effective when the state assumed the cost of judicial services previously paid by the counties. The implementation legislation that was offered to implement the policy recommendations exceeded 200 pages.²⁵

The most glaring of the political compromises necessary to obtain legislative approval of the 1973 Judicial Article was the removal of merit selection of judges from the proposed constitutional amendment. The partisan election of judges in Alabama continues to be a problem and will be the primary thrust of the following section of this article.

Judicial Reform in Alabama: Where Do We Go from Here?

The UJS in Alabama has been successful because dedicated staff and leader-

ship throughout the state have made it so. The primary change in the manner in which judicial services are offered, as a generality, is simply that the UJS is a "system," whereas judicial services were offered by a non-system prior to the constitutional reform which occurred during 1971-1975. The management structure, with the chief justice as the administrative head of the system, and an administrative office to implement administrative decisions, provides a basis for an accountable system which is subject to management and accountability to the extent that any political branch of government is manageable. The actuality of the cost of the system and its performance is amenable to determination, which was not possible prior to judicial reform.

Associate Justice Hugh Maddox of the Alabama Supreme Court reported on the Third Citizens' Conference on Alabama State Courts in July 1995.²⁶ Justice Maddox's article offers an historical account of how the Third Citizens' Conference on Alabama's Courts was conceptualized and convened, with the first meeting being held on March 23,

1995. Former Governor Albert P. Brewer and the late Associate Justice Oscar W. Adams co-chaired the Conference. The Conference held four formal meetings and, subsequent to those meetings, filed its report with Chief Justice Perry O. Hooper, Jr. and Alabama State Bar President Warren B. Lightfoot, addressing issues relating to revision of the Canons of Judicial Ethics, Selection of Judges to Fill Vacancies and Selection of Judges for New Terms. The Alabama Supreme Court has addressed the revision to the Judicial Canons that was recommended; however, the second and third of the Conference recommendations continue to require action, namely, the selection of judges both to fill vacancies and to enter into new terms of judicial office. These issues have surfaced in prior Citizens' Conferences and during deliberations of the Permanent Study Commission on Alabama's Judicial System in 1972. Hence, the portions of the report of the Third Citizens' Conference on Alabama state courts relating to filling judicial vacancies and selection of judges for new terms are

offered *in toto*. The Third Citizens' Conference recommended as follows:

Selection of Judges to Fill Vacancies

After extended discussion the conferees adopted a recommendation that vacancies occurring during the term of office of appellate judges should be filled by appointment of the governor from nominees submitted by a judicial nomination commission to be composed of nine members, six of whom would be lay members: one lay member appointed by the governor; one lay member appointed by the lieutenant governor; one lay member appointed by the speaker of the house; two members appointed by the Board of Bar Commissioners of the Alabama State Bar, one of whom must be a lay member; two members appointed by the Alabama Lawyers Association, one of whom must be a lay member; and two members appointed by the Women's Section of the Alabama State Bar, one of whom must be a lay member. If the governor fails to act on the appointment within 60 days after the names of the nominees are submitted

to the governor, the Commission will have the power to appoint.

The Conference further recommended that vacancies in trial court judgeships occurring during the term of office would continue to be filled by appointment of the governor. Individual circuits should have the option to establish nominating commissions by local legislation providing for the composition and selection of each circuit's judicial nominating commission and insuring minority and female representation. Each such commission should actively seek minority and female applicants for the judicial vacancies to be filled.

Selection of Judges for New Terms

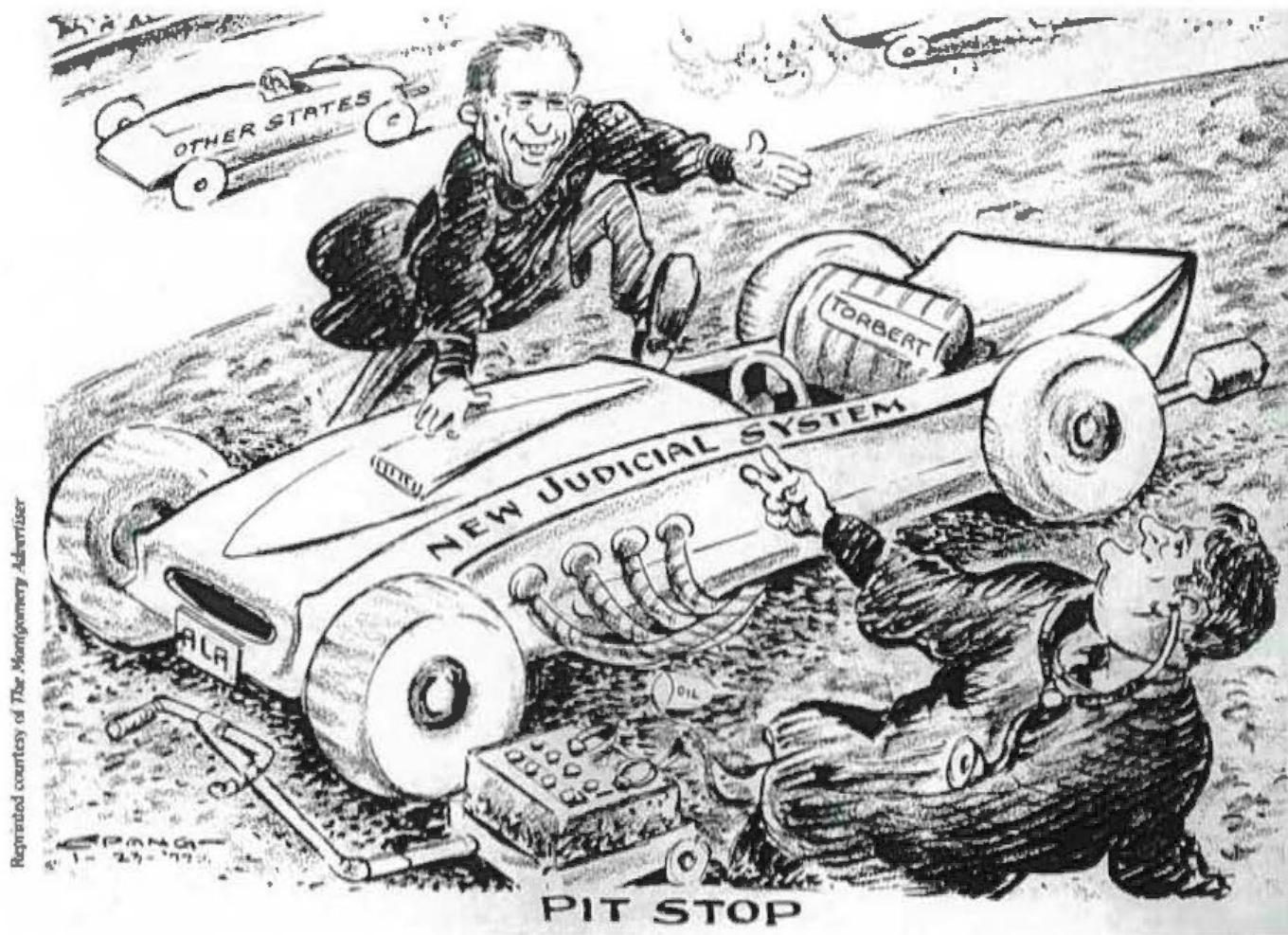
At its meeting on June 22, 1995, the Conference deliberated the method of selection of judges for new terms of office. Two proposals were submitted for consideration. N. R. Nachman, a Montgomery attorney, proposed that the Conference recommend the merit selection method of selecting appellate judges for each new term of office. The judges

would be appointed by the governor from a list of nominees submitted by a judicial nomination commission with a retention election at the end of each term. Circuit Judge Kenneth O. Simon of Jefferson County offered a substitute proposal that the Conference recommend the selection of judges for each new term of office for both appellate and trial courts by nonpartisan election. After extensive debate and discussion the Conference adopted the Simon resolution recommending the selection of judges for each new term of office for both appellate and trial courts by nonpartisan election.²⁷

The foregoing two recommendations of the Third Citizens' Conference are consistent with discussions concerning the selection of judges that have occurred in the State of Alabama since the Citizens' Conference of 1966.

Conclusion

Judicial reform requires perseverance. The persons and entities that would be adversely affected by reform efforts must be willing to sacrifice personal interest



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and take a broader view supporting the continued improvement of the quality of legal services in Alabama. There is little doubt, in the judgment of this author, that the judicial reform efforts during 1971-1975 were successful because of the leadership and staff working so diligently to assure the implementation of the improved court organization, more efficient practices and procedures in the courts of Alabama, and the management capability which became a reality after ratification of the current constitutional basis for the judicial branch of government in the State of Alabama.

There is, as always, much left to be done. The most important of the suggested reforms which could not be politically accomplished during the 1970s is, in the opinion of this author, to move away from the partisan political selection of judges to either a nonpartisan election or some form of a full merit selection of judges. Certainly, following the recommendations of the Third Citizens' Conference for both filling vacancies in judicial office and selecting judges for new terms would be a tremendous improvement and, it is hoped, will become a reality in Alabama at some time in the near future. The recommendation relating to selection of judges for new terms could be implemented by legislation consistent with the current Judicial Article.²⁸ The recommendation relating to filling vacancies would require a constitutional amendment to make nominating commissions available to all judicial circuits within the state.

Concerns regarding the bifurcated nature of the district and circuit court jurisdiction should also be considered for potential reform. A unification of the judicial services offered by the court of limited jurisdiction, the district court, and the court of general trial court jurisdiction, the circuit court, would allow assignment of judges within the one-tier court system created by such a merger. A merger of these two courts is, in the opinion of this writer, highly desirable and justified by the increased management capability and simplification of appeals which might be taken from trial cases to the appropriate court of appeals. Admittedly, however, the priority as offered in this conclusion, recognizing judicial selection as the primary problem which future reform efforts

should address, is the highest priority which this author would suggest.

Future judicial reform efforts will occur when the bar, bench and non-lawyer leadership work together to improve the manner in which judicial services are furnished to the people of Alabama. The Alabama Supreme Court has the Permanent Study Commission on Alabama's Judicial System and the Administrative Office of the Courts to furnish staff and conduct studies necessary to offer the appropriate legislation to implement the recommendations of the Third Citizens' Conference. Non-lawyer support continues to be needed to aid the bench and bar in an ongoing effort to improve the UJS of Alabama for the new millennium. ■

Endnotes

1. Report on Judicial Reform in Alabama 27, submitted to the Alabama Administrative Office of the Courts (1988), citing General Laws of the Legislature of Alabama 1915, LV.
2. *Id.* at 28.
3. *Id.* at 31.
4. *Id.* at 32.
5. *Id.* at 34.
6. 1969 Ala. Acts 753.
7. ALA. CONST. amend. 317 accomplished this purpose.
8. ALA. CONST. amend. 323 abolished the Office of Justice of the Peace in Alabama.
9. 1971 Ala. Acts 2337, codified at Ala. Code tit. 3, § 373 (122) - (130) (1940) (Recomp. 1958) (Supp. 1971).
10. The Study Commission obtained a grant from the Alabama Law Enforcement Planning Agency on February 18, 1971, in the amount of \$52,984 to finance consultant studies and defray commission expense of operation. See Cole, "Judicial Reform in Alabama: A Survey," 4 *Cumb.-Sam. L. Rev.* 41 (1973).
11. Ala. Code tit. 13, § 373 (124) (1940) (Recomp. 1958) (Supp. 1971).
12. See Cole, *supra* note 11, at 42.
13. ALA. CONST. amend. 317.
14. ALA. CONST. art. 6, § 156.
15. ALA. CONST. art. 6, § 157.
16. See Cole, "Discipline, Removal or Exoneration of Alabama Jurists," 5 *Cumb.-Sam. L. Rev.* 214 (1974). This article offers an explanation of the discipline and removal processes prior and subsequent to ALA. CONST. amend. 328 and the transitional rules of procedure applicable to such.
17. Ala. Code tit. 13, § 17 (2) (1940) (Recomp. 1958) (Supp. 1971).
18. ALA. CONST. amend. 323.
19. Ala. Code tit. 13, § 508 (1940) (Recomp. 1958) (Supp. 1971).
20. *Id.* at § 9.
21. *Id.*

22. See Cole, *supra* note 11 at pp. 62-67 for narrative concerning specifics of the department's activity during the first two years and an enumeration of grant funding utilized for those activities.
23. The Judicial Inquiry Commission and Court of the Judiciary replaced the Judicial Commission of Alabama as established in 1971.
24. An enumeration of the persons who contributed their time for Advisory Commission activity will be found after the end notes of this article. The roster of Advisory Commission members is offered by the committee organization used for study and reporting purposes.
25. 1975 Ala. Acts 1205. The specifics of the Implementation Act are outside the charge given this author by *The Alabama Lawyer*. One should see Shores, "The Alabama Experience Over the Past Five Years," 49 *N.Y.S.T.B.J.* 96 (1977); and, Mitchell, "The Judicial Article Implementation Act," 38 *Ala. Law.* 31 (1997). Justice Janie L. Shores offered the comments which serve as the basis for her "Alabama Experience" article to the National College of the State Judiciary, and Ned Mitchell was the staff person designated by the DCM to work with the author of this article during the course of the Advisory Commission activity. The articles offer the characteristics of the Judicial Article ratified by the Alabama electorate and a summary of the Judicial Article Implementation Act.
26. Maddox, "The Third Citizens' Conference on Alabama State Courts," 56 *Ala. Law.* 243 (1995).
27. Report of Third Citizens' Conference on Alabama State Courts, submitted by Oscar W. Adams, Jr., and Albert P. Brewer.
28. See ALA. CONST. Amend. 328, 6.1.3 and 6.1.4, set forth as follows: 6.1.3. Election of judges. All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts. 6.1.4. Vacancies in judicial office. The office of a judge shall be vacant if he dies, resigns, retires, or is removed. Vacancies in any judicial office shall be filled by appointment by the governor; however, vacancies occurring in any judicial office in Jefferson County shall be filled as now provided by amendments 83 and 110 to the Constitution of Alabama of 1901 and vacancies occurring in Shelby, Madison, Wilcox, Monroe, Conecuh, Clarke, Washington, Henry, Etowah, Walker, Tallapoosa, Pickens, Greene, Tuscaloosa, and St. Clair counties shall be filled as provided in the Constitution of 1901 with amendments now or hereafter adopted, or as may be otherwise established by a properly advertised and enacted local law. A judge, other than a probate judge, appointed to fill a vacancy, shall serve an initial term lasting until the first Monday after the second Tuesday in January following the next general election held after he has completed one year in office. At such election such judicial office shall be filled for a full term of office beginning at the end of the appointed term.



Charles D. Cole
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It Was About Power and Judicial Independence

By Robert A. Martin

Armed with a passionate belief in "business-type supervision of the business operations of the courts" and a native sense of how to push without shoving, Chief Justice Howell Heflin has transformed Alabama's judiciary into one of the most modern and efficient in the U. S. As soon as he assumed office he began sweet-talking the legislature and the electorate into reforming the state's briar patch of conflicting jurisdictions and ludicrous rules. It was a five year campaign and he won it. Alabama will get a single statewide court structure with common procedural rules.

"Push but Not Shove." *Time*, September 27, 1976

On December 18, 1973, the voters of Alabama ratified a constitutional amendment which completely revised Article VI, the Judicial Article to the state's 1901 Constitution. The vote came seven years after Alabama State Bar President Howell T. Heflin convened the first Citizens' Conference on Alabama Courts in 1966, four years after Governor Albert Brewer appointed a commission to rewrite the entire state constitution, and almost two years after Heflin took office as chief justice. To constitutionally reform the judiciary of an entire state in this short time span was considered a remarkable achievement by judicial leaders nationwide.

Ed McConnell, then the executive director of the National Center for State Courts, quoted on the front page of the January 18, 1975 *New York Times*, called it "the most dramatic illustration in the country of what can be done, without undue delay, to improve the quality of justice in state courts."

Aside from restructuring the courts below the circuit court level to make them uniform, just what would this significant constitutional reform accomplish over the next 25 years? The sum and substance, in the broad context, was about the independence and power of the judicial branch of state government. The reforms embodied in the Judicial Article, the statutory laws and two other constitutional amendments Heflin pushed through the legislature and the electorate between 1971 and 1975 have made the Alabama Judicial System a true co-equal branch of government.

How?

By breaking the yoke of legislative control over the rule-making power for the judiciary and shifting that power to the state supreme court, and by creating an administrative body and state financing of the courts to provide for their opera-

tional needs in each circuit and district. No longer does a county commission hold the power of the purse over local judges, intimidating them to do its bidding, and no longer can the legislature dictate to another branch of the government how it should function. Heflin's proposals would be the nexus for moving the state courts into the 20th century, albeit nearly 70 years late.

In their paper, "The Court That Came In From the Cold," which later became a chapter in their book on judicial federalism, Mary C. Porter and G. Alan Tarr characterized the rule-making authority of the Alabama Supreme Court prior to 1971 in this way:

Until 1971 Alabama statutes were unclear about whether the legislature or the court had authority to establish rules of procedure. The court and the State Bar expressed considerable unhappiness with the archaic and arcane rules—one of the most respected and hardworking justices complained that the appellate courts were operating with "1915 tools" (Merrill). Nevertheless, the court held that it lacked the inherent power to establish the rules; the responsibility was the legislature's (Ex parte Foshee, 1945, Livingston, C.J. dissenting). Because of rampant confusion about procedural requirements, a large number of decisions were based on technicalities rather than the merits of the cases (Frye, 86). In many instances, serious injustices were done. In one case the court dismissed an appeal from a 99-year sentence for murder because the transcript had been filed one day before the deadline (*Hornbuckle v. State*, 1958; Frye, 67).

Sometimes the wrong color ribbon on a brief or pages numbered incorrectly would defeat an appeal. The court at times would even measure the margins on the pages of an appeal and reject the case if they were not correct.

If the absurdity was rampant at the appellate level, it was worse in the lower courts. Justices of the Peace ("JP's") and municipalities were running roughshod over citizens with traffic citations. JP's were permitted to retain a percentage of the fines they imposed, and speed traps by municipalities would spring up on a regular basis to enhance a town treasury. The speed trap at the little town of Fruithurst between Birmingham and Atlanta was an example of the times.

Delay in both the appellate courts and trial courts was a significant problem. Circuit and appellate judges were underpaid and uniformity was nonexistent. The quickie-divorce scandal of the mid-1960s had rocked the bar and the judiciary. Over 20 judges and lawyers were disbarred or suspended. A powerful legislator from Marion County, Rankin Fite, had created the

Marion County Superior Court, giving it domestic jurisdiction concurrent with the circuit court. No judge was ever elected. They just kept being appointed on a rotating basis. Lawyers would fly out-of-state divorce clients into Birmingham and whisk them over to Hamilton on a private jet, landing on a new 6,000 foot runway financed by tax dollars.

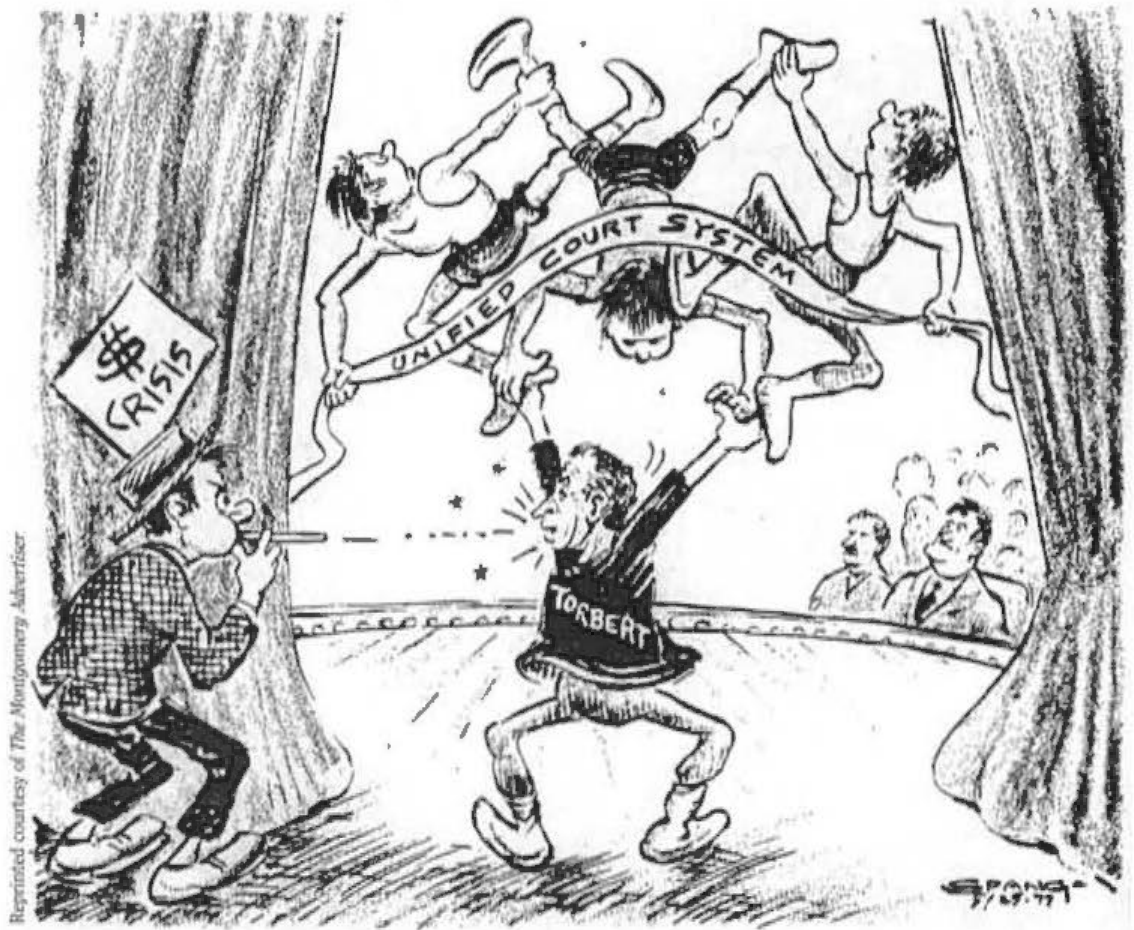
This was the state of the judiciary in Alabama when Heflin became chief justice. He had promised to reform the system in the 1970 campaign for chief justice as he defeated former Governor John Patterson for the job by a two-to-one margin.

The story is told that employees at the supreme court knew something was up when, upon his arrival, Heflin ordered a Dictaphone. It hasn't been the same there since January of 1971. He first set about to pass legislation creating a state department to assist in the administration of the courts and to transfer judicial rule-making from the legislature to the supreme court. That legislation, along with two proposed constitutional amendments—one to abolish JP's and establish a small claims court, and the other to create a commission to discipline judges, mandate judicial retirement at age 70, and create a retirement plan for judges—passed the legislature in 1971. The two amendments were ratified by the voters in January 1972.

The constitutional commission created by Brewer in 1969 had worked four years on its draft of a new state charter and planned to submit its report to the 1973 Regular Session, but with little hope that it would be considered. Heflin seized on this report as a way to accomplish the total and complete reform upon which he had based his 1970 campaign. It would also be a way to solidify such things as rule-making, judicial administration, judicial compensation, and court structure into constitutional law.

Another citizens' conference on the courts was quickly planned and Article VI of the Brewer Commission's proposal was revised; it had contained merit selection of judges, but Governor George Wallace had already sent Heflin word that he would use everything in his power to defeat the reform if it took away the popular election of judges. Heflin informed the citizens' conference participants that any change in judicial selection would have to be "placed on the back burner for a while." Wallace was lukewarm to the reform proposals—probably because he feared Heflin's future political ambitions and because he simply did not

see the need for change. He never fought the reform proposals directly, but did not stop his political cronies from attempting to derail the effort. However, some Wallace supporters backed Heflin's proposals, including Wallace's brother, Jack, who had succeeded him as circuit judge.



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Heflin chose two Florence lawyer-legislators, Sen. Stewart O'Bannon, Jr. and Rep. Bob Hill, Jr., to sponsor the bills which proposed the Judicial Article. It was a tough adventure throughout the summer of 1973. O'Bannon, who had no other major bills that session, sat back and collected his IOU's in the Senate. The proposed amendment had generated quite an array of opponents. One, the League of Municipalities, which feared the proposal would take away city funds from court costs and fees, attempted to pressure O'Bannon. Capitol observers will not likely forget the day O'Bannon took the microphone on the Senate floor and placed the lobbyists for the league in his gunsight. The Senate passed the amendment by a vote of 25-3, but Heflin would later have to compromise on the municipal issues in the House.

That year Heflin's hometown mayor and close friend, the late William F. "Bill" Gardiner of Tuscumbia, became president of the League of Municipalities. It was Gardiner who laid the groundwork for the compromise that satisfied the League. Heflin retained both the requirement that all municipal judges be lawyers and the provisions that brought the municipal courts under the supervisory authority of the supreme court. The cities got both the option to retain or abolish their courts and a split with the state of the funds generated from court costs and fines.

Even though the league was now on board, the amendment would continue to have significant opposition in the House, where it was meeting outright hostility from the chairman of the Constitution and Elections Committee, Joe McCorquodale, and lukewarm support from House Speaker Sage Lyons. Lyons had assigned the bill to McCorquodale's committee but it was late in the session before it would be allowed up for a committee vote. Even then McCorquodale thought he had the votes to kill it and he did, save two unexpected switches Heflin obtained at the last minute. On an 8-6 vote the proposed amendment was sent to the House floor, but Lyons was in no rush to bring it to a vote, even though O'Bannon had threatened on the Senate floor that he would tie up any House bills with Lyons' name on them for the remainder of the session if the bill did not get a vote on final passage.

It was the last night of the 1973 regular session and the amendment's supporters were forced by the House leadership to muster the necessary two-thirds vote to suspend the rules and bring the bill up out of order. Hill, with the help of another Florence legislator, Rep. Ronnie Flippo, who later would be elected to Congress, fought off attempts to postpone and defeat the bill. Knowing that *sine die* adjournment was only hours away, opponents tried to load the bill up with amendments designed to create more opposition. That is why the constitution today permits Shelby, Tuscaloosa, Madison, Wilcox, Monroe, Conecuh, Clarke, Washington, Henry, Etowah, Walker, Tallapoosa, Pickens, Greene, and St. Clair counties to provide for the filling of judicial vacancies by local legislative acts. Because of the time constraints, Hill and Flippo did not object to the amendments. They also picked up crucial support by permitting a change which deleted language abolishing constables. As the clock neared midnight the proposed amendment was finally adopted and would be placed on a special constitutional amendment election ballot on December 18, 1973.

Heflin energized the support of nearly 50 diverse organizations, from the Alabama Farm Bureau to the AFL-CIO, in support of the reform effort. The state bar spent \$50,000 and the Alabama Motorists Association \$10,000 on advertising to support the amendment. Farm Bureau's interest stemmed from its own proposal on the ballot to create financing for a swine research lab at Auburn. It was in the best interest of all to keep any opposition to a minimum. Heflin stumped the state, making more than 50 speeches and TV appearances pushing ratification. Both amendments got 62 percent of the vote in a very light turnout a week before Christmas Day 1973.



Former Alabama Supreme Court Chief Justices Howell Heflin, Sonny Hornsby and Bo Torbert

The amendment gave the legislature four years to implement its provisions, but Heflin wanted it done in two. The advantage of doing so, he argued, was that it would save the expense of a costly election for judges for the new district courts. He obtained federal funds, established a commission to draft the necessary statutory laws, and named Joseph F. Johnston, a leading constitutional lawyer, to chair the commission. He named Cumberland Law Professor Charles D. Cole as its full-time executive director and appointed 55 members. The commission spent over a year drafting the statutory language of the implementation bill. Although many provisions of the new constitutional amendment were self-executing, the bill presented to the legislature by the commission in 1975 contained 168 pages. It would swell to over 198 on final passage.

O'Bannon had not sought re-election to the Senate, so Heflin turned to Opelika Sen. C. C. "Bo" Torbert, Jr. to sponsor the implementation bill in the Senate. Hill remained the House sponsor. It would be another long battle. Lyons didn't return to the House but McCorquodale was now the speaker. He had softened some, perhaps realizing that if the legislature failed to implement the amendment, the supreme court would be able to do so by court rule. It was not easy, even though Torbert lined up 25 of the 35 senators as co-sponsors and 72 House members had signed on. The final votes, however, reflected near unanimity after the battle: 30-0 in the Senate and 100-1 in the House.

Heflin decided not to seek re-election to the supreme court in 1976. He knew he would be the target of resentment that still smoldered in the legislature. "We kicked too many behinds for me to have stayed on," he later said. Torbert ran



Robert A. Martin

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in 1975. In 1985 he received a Special Merit Citation award from the American Judicature Society for his work in judicial reform and judicial compensation.



The Show Goes On

for chief justice and defeated Rep. Douglas Johnstone of Mobile. Johnstone would later be elected to the circuit bench and last year was elected an associate justice on the supreme court. Heflin knew the waters ahead would be rough as the financial and administrative aspects of the trial courts would be transferred to the state. He thought, though, that Torbert, being from the legislature, could soothe some of those troubled waters. The new chief justice, however, had barely gotten his new robe fitted when financial problems hit and legislators were attempting to "sunset" the Department of Court Management. In the end Heflin was right. Torbert didn't miss a beat. He quickly changed the name to the Administrative Office of Courts, moved the employees under constitutional protection, developed a continuing dialogue with the legislature, and brought in a new Administrative Director of Courts, Allen L. Tapley, a school and hospital administrator from Opelika, who had managed his campaign. Within two years 1,100 county court employees were transferred to the state, the new district court was placed in operation, and most court operations had been streamlined and simplified by Tapley and the new Administrative Office of Courts.


Over the next decade Torbert and the supreme court established a strong and independent administrative arm for the courts and continued the important development of court rules to govern the practice, procedure, and administration of Alabama's judiciary and bar. In 1986 Torbert sweet-talked the

legislature into enacting a bonding authority to construct a new judicial building. He didn't seek re-election in 1988, leaving to his successor, Sonny Hornsby, the task of overseeing construction of the new state building. Hornsby did that and also was a driving force in improving technology in the management of the courts.

Today the Alabama judiciary is fulfilling the role Heflin envisioned in the 1960s: an independent, co-equal branch of government, with state administration, funding, and rule-making power conferred in the constitution and the flexibility to adapt to change. It will enter the 21st Century ahead of the game. ■

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Note: To date, all courses except those noted have been approved by the Center. Please check the Interim Mediator Standards and Registration Procedures to make sure course hours listed will satisfy the registration requirements. For additional out-of-state training, including courses in Atlanta, Georgia, call the Alabama Center for Dispute Resolution at (334) 269-0409.

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OPINIONS OF THE GENERAL COUNSEL

By J. Anthony McLain, general counsel

Ethical Propriety of Lawyer Knowingly Filing Lawsuit In Wrong Venue



J. Anthony McLain

RO-89-117

Question:

Is it a violation of the Code of Professional Responsibility of the Alabama State Bar for a lawyer to file a lawsuit in one county when he knows that venue for the action does not lie in that county?

Answer:

This question has been previously considered by the Disciplinary Commission and most recently Opinion RO-84-102 was decided by the Commission. In Opinion RO-84-102, the Commission held as follows:

"There is nothing unethical, per se, in an attorney knowingly filing a lawsuit in a wrong venue. However, it is unethical for a lawyer to require a party to present testimony or evidence in support of a sworn plea in abatement or motion for change of venue where there is no genuine issue of any material fact concerning proper venue."

On reconsideration, we hereby rescind Opinion RO-84-102 and once again endorse and adopt the conclusion of ABA Informal Opinion 1011 that it is unethical to knowingly file a lawsuit in the wrong venue if it is done to harass the defendant or take advantage of the absence of the opposing party.

Disciplinary Rules 7-102(A)(1) and (2) provide as follows:

- (A) In his representation of a client, a lawyer shall not
- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another;

- (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

In our opinion Disciplinary Rule 7-102(A)(2), as stated above, when read together with the provisions of Rule 11 of the Alabama Rules of Civil Procedure and Rule 11 of the Federal Rules of Civil Procedure, clearly indicates that the higher standard set forth in ABA Informal Opinion 1011 is the appropriate standard. Rule 11 of the Federal Rules of Civil Procedure says in pertinent part as follows:

"The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other papers; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needlessly increase the cost of litigation"

Comments to the Federal Rules indicate that the reasonable inquiry required by the Rule may depend on such factors as:

"... how much time for investigation was available for the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the plead-

ing, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the Bar."

Rule 11 of the Alabama Rules of Civil Procedure differs somewhat from the Federal Rule. Nonetheless, Rule 11 of the Alabama Rules still provides that:

"The signature of an attorney constitutes a certificate by him that he has read the pleading, motion, or other papers, that to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay."

Ethical Consideration 7-10 provides as follows:

"The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm."

It is our opinion that when an attor-

ney who knows, or reasonably should know, that a lawsuit has been filed in one county when that is the wrong venue, the attorney has, in fact, counseled or assisted his client in conduct that the lawyer knows to be fraudulent and that he has knowingly made a false statement of law or fact [DR 7-102(A)(5) and DR 7-102(A)(7)] in the course of his representation of the client.

Certain provisions of Disciplinary Rule 7-102(A) make special reference to false representations regarding the residency of parties to suits for divorce in Alabama. Disciplinary Rules 7-102(A)(9) and 7-102(A)(10) state as follows, to-wit:

"DR 7-102

- (A) In his representation of a client, a lawyer shall not:
- (9) File or prosecute or aid in the filing or prosecution of any suit, cross-bill, or proceeding seeking a divorce in a court in Alabama as attorney or solicitor for a complainant or cross-complainant therein or serve as referring or forwarding

attorney for such complainant or cross-complainant with knowledge or reasonable causes to believe that neither party to such suit, cross-bill, or proceeding is at the time of the filing of the bill of complaint or cross-bill of complaint therein, a bona fide resident of the State of Alabama;

- (10) While acting as attorney for either party in any suit for divorce in any court in Alabama, represent to the court or conspire with any party, attorney, or person to represent to the court that either party to such is a bona fide resident of Alabama, knowingly such representation to be false."

We feel that the same standard is appropriate in other civil actions and adopt the result in ABA Informal Opinion 1011.

Discussion:

For further discussion, see RO-84-102 and ABA Informal Opinion 1011. ■

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DISCIPLINARY NOTICE

Notice

William Lyle Shumway, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of May 15, 1999 or, thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB No. 98-172(A) before the Disciplinary Board of the Alabama State Bar.

—Disciplinary Board, Alabama State Bar

Reinstatements

- Baldwin County attorney **Lloyd Earl Taylor** was reinstated to the practice of law by order of the Alabama Supreme Court dated August 31, 1998. [Pet. No. 98-01]
- **Lawrence Henry Hipsh, Sr.** was reinstated to the practice of law by order of the Supreme Court of Alabama effective January 29, 1999. [Pet. No. 90-01]

Suspensions

- Eufaula attorney **Donald Joseph McKinnon** was suspended from the practice of law in the State of Alabama for a period of 45 days, effective 12:01 a.m., December 23, 1998, by order of the Supreme Court of Alabama.

The order of the Supreme Court of Alabama was based upon Mr. McKinnon's plea of guilty of failing to make reasonable efforts to ensure that a non-lawyer employee's conduct was compatible with his professional obligations as a lawyer, a violation of Rule 5.3, Alabama Rules of Professional Conduct, and to soliciting professional employment from prospective clients with whom neither he nor his firm had a familial or current or prior professional relationship, a violation of Rules 7.3, A.R.P.C.

The respondent attorney admitted that he and/or his non-lawyer employee, Gracelyn Graves, requested or encouraged present clients to solicit prospective clients on the firm's behalf in various legal matters.

McKinnon will be automatically reinstated to the practice of law effective February 5, 1999. Upon reinstatement, McKinnon will be placed on probation for a period of two years. Other conditions of probation were ordered. [ASB No. 98-97(A)]

- On March 11, 1999, the Alabama Supreme Court suspended Birmingham lawyer **Marcus Lavon Whatley** for a period of 91 days. The suspension was the result of a conditional guilty plea between Whatley and the bar. The complaint was

filed by a circuit judge in connection with a material misrepresentation made by Whatley during a court proceeding. During the investigation of the complaint, Whatley asked his former secretary to sign an affidavit accepting blame in the matter. She refused to sign the affidavit because of false statements therein. Whatley nevertheless submitted the unsigned affidavit to the bar stating that she had recanted her earlier statement to him. This was denied by his secretary in a subsequent letter to the bar in which she described Whatley's intense pressure to sign the affidavit. Whatley's prior discipline was considered in determining how to resolve this case. [ASB No. 98-124(A)]

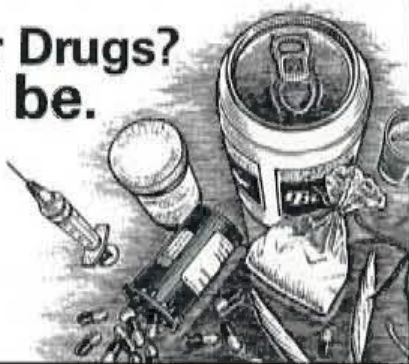
- Mobile attorney **James David Brooks** pled guilty before the Disciplinary Board of the Alabama State Bar to a one-count violation of Rule 3.4(a), Alabama Rules of Professional Conduct, which provides that a lawyer shall not obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value. Brooks was placed on probation for a period of one year and ordered suspended from the practice of law in the State of Alabama for a period of 30 days, effective 12:01 a.m., Saturday, January 30, 1999. Brooks will be automatically reinstated to the practice of law in the State of Alabama effective March 1, 1999. [ASB No. 94-160]
- The Alabama Supreme Court entered an order suspending Russellville attorney **Rebecca Green Thomason** from the practice of law for a period of 45 days effective March 1, 1999. This suspension was a result of Ms. Thomason's having plead guilty to the formal charges which had been filed against her. The charges allege that the District Court ordered Ms. Thomason's client to submit a urine sample to be tested for drugs and that Ms. Thomason provided a urine sample of her own to be submitted for drug testing and substitution for the urine sample of her client. Ms. Thomason plead guilty to having violated the Rules of Professional Conduct including Rule 8.4(a), which prohibits an attorney from attempting to violate the Rules of Professional Conduct through the acts of another, Rule 8.4(c), engaging in conduct involving deceit or misrepresentation, Rule 8.4(d) which prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice and Rule 8.4(g), engaging in conduct that adversely reflects on the attorney's fitness to practice law. [ASB NO. 98-142(A)]
- Huntsville lawyer **Carter Alan Robinson** was suspended from the practice of law in the State of Alabama for a period of 60 days effective January 1, 1999. Robinson was found guilty by Panel IV of the Disciplinary Board of a violation of Rules 1.4(a), 8.1(b) and 8.4(a), Alabama Rules of Professional Conduct. In ASB No. 97-181, the respondent attorney was engaged by an out-of-state law firm to pursue a collection matter. Although the respondent attorney was advanced

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costs and paid a "non-contingent suit fee," the respondent attorney did no substantial work in the matter. During the course of his representation, the respondent attorney failed or refused to respond to numerous telephone and written requests by the out-of-state law firm regarding the status of the matter. Because of the respondent attorney's conduct, a grievance was filed with the Alabama State Bar. During the course of the investigation of the grievance, the respondent attorney failed or refused to respond to numerous requests for information regarding the matter. Although a response was eventually filed by the respondent attorney, it was filed untimely and not responsive to the request for information.

In ASB No. 97-243, the respondent attorney was retained to represent a client who was a truck driver in a matter involving a ticket for running a stoplight. During the course of this representation, the respondent attorney did little or no work in the matter and provided his client with inaccurate or incomplete information. Because of the respondent attorney's conduct, the client was forced to hire different counsel to resolve the matter which had been further complicated by the respondent attorney's inaction and failure to communicate. [ASB Nos. 97-181(A) and 97-243(A)]

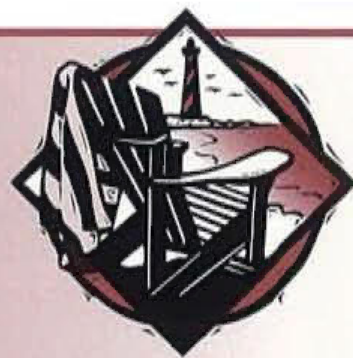
- Andalusia attorney **Richard Jude Spurlin** was interimly suspended from the practice of law by order of the Disciplinary Commission date March 19, 1999. [Rule 20(a), Pet. No. 99-01]

Public Reprimands

- Dothan attorney **Charles Bruce Adams** received a public reprimand

with general publication on January 22, 1999. The Disciplinary Commission determined that Adams violated Rules 1.1 and 1.3 of the Alabama Rules of Professional Conduct by failing to act competently and diligently in the handling of an appointed criminal appeal before the Alabama Court of Criminal Appeals. Adams failed to file a brief within the time proscribed, or within the extension provided by the court. Adams had previously been reprimanded for similar conduct in two other appointed criminal appeals. [ASB No. 98-126(A)]

- On January 22, 1999, Birmingham attorney **Jerome Tucker** received a public reprimand without general publication. The Disciplinary Commission found that he had violated Rules 1.3 and 1.4(a) of the Rules of Professional Conduct in his representation of certain church members in a factual dispute with their new pastor. Tucker failed to respond to discovery until after a motion to compel was granted by the court. Thereafter, he provided incomplete responses, and his clients were sanctioned. He did not advise his clients about the sanctions order, and the case was dismissed for that reason. Later, the clients took up a collection and paid the sanctions. The case was not reinstated, however. [ASB No. 97-368(A)]
- Mobile attorney **Selma Dingler Smith** received a public reprimand without general publication effective January 22, 1999. Ms. Smith failed to file appeal briefs on three different occasions for various clients. As a result, Ms. Smith was discharged as attorney of record in each case. [ASB No. 98-013(A), ASB No. 98-014(A) and ASB No. 98-046(A)]



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RECENT DECISIONS

By Rachel Sanders-Cochran and Wilbur G. Silberman

Recent Decisions of the Supreme Court of Alabama—Civil

Will Alabama's Supreme Court breathe new life into \$250,000 statutory cap on punitive damages?

Oliver v. Towns, Ms. 1970312, So. 2d (Ala., January 15, 1999). In this legal malpractice action concerning an attorney's misuse of a \$12,000 settlement, the Alabama Supreme Court raised the question of whether the \$250,000 punitive damages cap established in Alabama Code § 6-11-21 may be constitutional. Upon entry of a default judgment against the defendant attorney for breach of contract, fraud, deceit and misrepresentation, the trial court awarded the plaintiff \$500,000 in compensatory damages and \$1,000,000 in punitive damages. The defendant filed a motion requesting a new trial and challenging the damages award as excessive, specifically raising the applicability of the \$250,000 cap as provided in Ala. Code 1975, § 6-11-21. The trial court denied the defendant's motion without examining the issue of excessiveness of the damages.

On appeal, the Alabama Supreme Court ruled that, upon a timely motion,

the trial court must hold a hearing to determine whether a damages award is excessive, even if that award is the result of a bench trial or default judgment. Because the trial court denied the defendant's motion to review the damages award, the Alabama Supreme Court remanded the case for a hearing to consider whether the compensatory award was excessive; whether clear and convincing evidence supports a punitive award; and, if so, whether the punitive award is excessive, including whether the \$250,000 cap on punitive damages, found in 6-11-21, was applicable.

Although § 6-11-21 was held unconstitutional in *Henderson v. Alabama Power Co.*, 627 So. 2d 878 (Ala. 1993), the court questioned whether *Henderson* remained good law, based on "post-*Henderson* developments in the concept of due-process law" and the "forceful rationale of the dissents in *Henderson*" authored by Justices Maddox and Houston. The court also found it significant that the United States Supreme Court, in *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 20 n. 9 (1991), referenced the \$250,000 cap found in § 6-11-21 as possibly preventing a punitive damages award from exceeding the outer limits of due process. Based on these observations, the majority instructed the trial court to "address [on remand] whether the \$250,000 cap established by the Legislature in § 6-11-21 applies in this case."

Medical malpractice; scope of privilege created by Alabama's peer review statute, Alabama Code § 22-21-8

Ex parte Dr. Andrew Burch, Ms. 1971232, So. 2d (Ala., February 19, 1999). In this medical malpractice action, plaintiff sued Dr. Burch and the hospital for wrongful death of a patient. After the patient's death at the hospital, a Surgical Review Committee meeting was convened to review the case and to evaluate the physician's performance in connection with the treatment provided to

the patient. Dr. Burch appeared at this meeting to discuss his reasons and decisions regarding treatment of the patient.

A dispute arose between the physician and the hospital as to the information provided by the hospital staff to Dr. Burch regarding the patient's deterioration and what changes in the treatment plan should be undertaken. Dr. Burch's deposition testimony allegedly contradicted his earlier statements made to the Surgical Review Committee and cast doubt on whether he had been fully or properly informed by the hospital staff regarding the deterioration of the decedent's condition. Prior to trial, the hospital indicated its intent to offer the minutes of the Surgical Review Committee meeting and its intent to call Dr. Spires, the chairman of the Surgical Review Committee, to establish the inconsistencies in Dr. Burch's prior statements and his deposition testimony. Dr. Burch objected, relying upon Alabama's Peer Review Statute, Ala. Code § 22-21-8, which prohibits discovery of accreditation, quality assurance, or credentialing materials or information provided to medical review committees. The trial court granted Dr. Burch's motion *in limine* as to the minutes of the committee meeting but ruled that the hospital could offer Dr. Spires' testimony regarding inconsistent statements made by Dr. Burch before the Surgical Review Committee. Dr. Burch sought mandamus review.

The Alabama Supreme Court granted Dr. Burch's petition for writ of mandamus, upholding the privilege created by Ala. Code § 22-21-8. The supreme court noted that the express language of the statute was unambiguous and clearly protected from discovery any information obtained from Dr. Burch during the committee meeting. The court rejected the hospital's argument that evidence of prior inconsistent statements was admissible under Rules of Evidence 102 and 613, notwithstanding any privilege created by § 22-21-8.



Rachel Sanders-Cochran

Rachel Sanders-Cochran attended Cumberland Law School, where she graduated *cum laude* and was a member of the Cumberland Law Review and Curia Honoris. She practices with the Montgomery firm of Rushon, Stakely,

Johnston & Garrett, P.A. She covers the civil decisions.

Further, the court rejected the hospital's argument that, in *Ex parte St. Vincent's Hospital*, an exception to § 22-21-8 was recognized when privileged materials are essential to a party's cause of action.

Appellate jurisdiction and interlocutory orders; Eleventh Circuit concludes it has no jurisdiction to hear appeal when party voluntarily dismisses claim with prejudice

Druhan v. American Mutual Life, No. 97-6087, F.3d (11th Cir., February 10, 1999). Plaintiff sued her insurance company alleging that she had been fraudulently induced into purchasing the insurance policy. Because plaintiff's policy had been purchased in connection with a benefits package provided by her employer, the defendant insurer removed the action to federal court, claiming preemption by the Employee Retirement Income Security Act (ERISA). When the federal district court denied plaintiff's motion to remand, plaintiff moved the district court to dismiss her complaint with prejudice. Plaintiff argued that she had no claim under ERISA and that the court's order denying her motion to remand left her without a remedy. The district granted plaintiff's motion to dismiss and entered a final judgment against plaintiff's claims with prejudice. Plaintiff immediately appealed this judgment.

The Eleventh Circuit Court of Appeals dismissed plaintiff's appeal, finding that it had no jurisdiction. The Eleventh Circuit noted that its jurisdiction was limited to "cases and controversies and that without the presence of adverse parties as to an issue, no "case or controversy" could exist. The Court commented that neither the plaintiff nor the defendant alleged that the judgment was entered in error. The judgment was entered at the plaintiff's request and thus, was not adverse to her. Additionally, the defendant asserted no error in entry of that judgment. Because there was no adverseness as to the issues appealed, the Eleventh Circuit held there was no case or controversy to be heard.

Alternatively, the plaintiff argued that her appeal was, in substance, one from an interlocutory order denying the

plaintiff's motion to remand and that the Court should place form over substance in ruling on the jurisdictional issue. However, the Court noted that plaintiff had not complied with the statutory requirements of 28 U.S.C. § 1292, which governs appeals from an interlocutory order. Because the district court's order denying remand was not among those interlocutory orders from which a party could appeal as of right and the plaintiff did not seek certification of the interlocutory order by the district court, the Eleventh Circuit concluded it had no jurisdiction to hear the appeal, regardless of whether it considered the form or the substance of plaintiff's appeal.

In a footnote, the Eleventh Circuit recognized that at least five other circuits have allowed a plaintiff to appeal from a voluntary dismissal with prejudice if that dismissal was sought for the sole purpose of expediting review of a prior order that effectively eliminated the plaintiff's claim. However, the Eleventh Circuit refused to adopt such a practice, noting that none of the circuits have identified the alleged source of their authority to hear such an appeal.

Recent Bankruptcy Decisions

Bankruptcy Judge James S. Sledge holds that arbitration clause in buyer's order for automobile is unenforceable

Roy A. Knepp v. Credit Acceptance Corporation, Wynn's Oil Company, and MeritPlan Insurance Company, 1999 WL 61694 (Bkrtcy.N.D.Ala., Judge James S. Sledge, Jan. 29, 1999). Judge Sledge, in a lengthy, thoughtful opinion, discussed various arguments and situations as to enforcement in Alabama of a mandatory arbitration clause. The plaintiff (buyer) had filed an adversary proceeding to "determine the validity and extent of a lien" and, in the pleading, raised allegations that in connection with the sale of an automobile,

defendants had engaged in fraudulent actions, violated the Alabama Mini-Code, and engaged in civil conspiracy. The plaintiff also sought to have his action certified as a class action under F.R.C.P. 23. The defendants responded by filing a motion to compel arbitration under such a clause contained in the purchase order signed by him when he purchased the vehicle, *but not signed by anyone else*.

In his memorandum opinion, Judge Sledge, in reflecting on the history of the judicial system by emphasizing the inherent and constitutional right of trial by jury, first commented on arbitration as being an encroachment upon the system. He reviewed the Federal Arbitration Act (FAA) passed in 1925 to allow merchants to resolve disputes in a non-judicial forum. He found no problem with parties doing so provided they were equal in sophistication. He did not find this to be a fact in consumer contracts where the parties were not equal, and where the language requiring arbitration could be buried in fine print in the contract. Judge Sledge wrote that with regard to consumer transactions, the contracts are favorable to the seller or credit grantor. The disadvantages of compulsory arbitration to the consumer are initial advance costs, which could be from \$500 to \$7,000, and then the daily costs while the arbitration is pending. He contended that there is no guarantee of due process coupled with the loss of right of jury trial and the right to an independent trial judge, no opportunity for discovery, etc. He cited the Alabama Code section prohibiting enforcement of arbitration clauses and mentioned recent Alabama appellate court decisions which frown upon the waiver of right to jury trial. He then noted that the Alabama law becomes of little value because of the actual wording in the



Wilbur G. Silberman

Wilbur G. Silberman, of the Birmingham firm of Gordon, Silberman, Wiggins & Childs, attended Sanford University and the University of Alabama and earned his law degree from the University's School of Law. He covers the bankruptcy decisions.

contracts that the sale is in interstate commerce and the purchaser's agreement that the vehicle will be so used, thus bringing into play the superiority of the federal law.

Judge Sledge then denied the motion to compel arbitration, but followed with findings of fact. In this latter portion of the opinion, he commented upon the fact that the buyer is compelled to accept additional charges of insurance, document fee, fee to public officials and purchase of a service contract, all of these probably totaling around \$1,000.

In the hearing, the plaintiff made four arguments:

- (1) arbitration denies the right to jury trial;
- (2) substantive due process is denied;
- (3) under the stated facts in the instant case, the defendants are non-parties to the arbitration clause but are the ones requesting arbitration; and
- (4) the arbitration clause is fatally flawed. After noting the foregoing, Judge Sledge then determined as follows:

First: The court must agree that the contract states that it involves interstate commerce and thus the FAA must be applied. If an agreement exists, it is subject to the FAA and state law is pre-empted.

Second: The issue is whether the arbitration clause is valid and enforceable. In this instance, because the dealer did not execute the purchase contract with the purchaser, there was no agreement to arbitrate.

Third: Even though the court determined there was no agreement to arbitrate, the next issue is whether the doctrine of unconscionability voids the arbitration clause. This determination in Alabama rests on four factors:

- (1) absence of choice on one party;
- (2) are the contractual terms unreasonably favorable to one party;
- (3) was there unequal bargaining power between the parties; and
- (4) were there oppressive, one-sided, unfair terms in the contract?

The court discussed all issues at length and then found the clause unconscionable due to the inability of the plaintiff to pay the initial fees of \$500 which could go up to \$7,000, plus the daily costs which could be several hundred dollars per day.

The next question is whether arbitration agreements violate public policy and deprive the plaintiff of constitutional rights. In responding to this, the court first rejected plaintiff's argument that the FAA was not intended by Congress to be applied in state court actions. Judge Sledge said that he had no choice on this as the United States Supreme Court has decided that it should be so applied. The next question was whether the clause resulted in an involuntary waiver of right to jury trial. This was answered negatively in this case as no jury trial had been requested. However, on the question of due process, he said that the Eleventh Circuit in *Davis v. Prudential Securities*, 59 F.3d 1186 (11th Cir.1985) held that "the [state] action element of a due process claim is absent in private arbitration cases." This holding has been criticized as inhibiting class actions. It will be found in many cases that debtors' claims are too small taken by themselves and, on major issues without substantial attorneys fees, they would never be filed. Thus, if arbitration were enforced, the plaintiff would be prejudiced against filing a class action.

Judge Sledge then considered whether the arbitration clause deprived the debtor access to the bankruptcy court. If so, it would result in it being void as contrary to public policy. He equated this as being no different from agreements against filing bankruptcy petitions, which have been held to be unenforceable. He also touched upon agreements not to oppose a motion for relief from the automatic stay, which sometimes are upheld and sometimes not. He ruled that a debtor may waive the right to have an issue decided in the courts of bankruptcy, especially as 9 U.S.C. §10 provides for a limited review by the district court. Regardless, there is still the question of whether a mandatory arbitration clause creates an "inherent conflict" with the Bankruptcy Code. He discussed several cases, including the recent case of *Paladino v.*

Avnet Computer, 134 F.3d 1054 (11th Cir. 1998), in which the Eleventh Circuit held that a discrimination case under Title VII could go to arbitration if provided for under the employment agreement, but that arbitration could allow damages only for breach of contract. Thus, in view of the *Paladino* holding and the bankruptcy doctrine of swift adjudication of commercial disputes, he held that there is an inherent conflict between the FAA and Title 11.

Finally, the Court held that under the facts of this case, as the defendant is a non-signatory party, arbitration cannot be compelled. In reaching this conclusion, he noted the case of *McBro Planning & Dev. Co. v. Triangle Elec. Constr.*, 741 F.2d 342 (11th Cir. 1984), where it was held that a motion to compel arbitration by a non-signatory should be granted provided that such parties claims were very closely connected with the underlying contractual obligations. He found that this doctrine required one of two fact patterns: one where the obligations of the non-signatory had been assigned to it by the contract which contained the arbitration clause, and the other when the party who signed the contract raised issues of which it and the non-signatory were involved. He said there were no such facts in this case and, therefore, declined to apply *McBro*. Further, he took comfort for his ruling from an August 1998 opinion of Judge Acker of the Northern District of Alabama who held that the arbitration clause was limited to disputes between the signatory buyer and dealer. (See *MS Dealer Corp. v. Franklin*.) Finally, the court rejected any theory of third-party beneficiary being entitled to rely upon the arbitration clause, as not only was there no enforceable agreement to arbitrate but, even if so, it could not be used by a non-signatory.

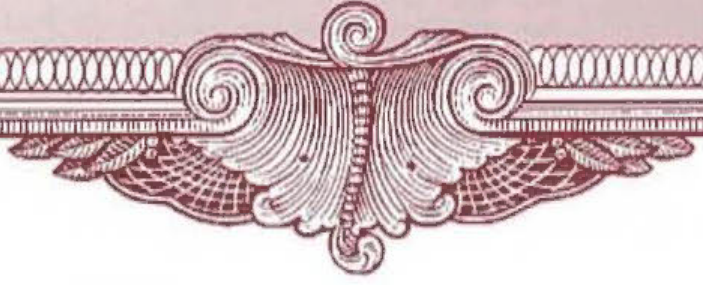
Comment: The opinion is quite long. It covers many aspects, and should be helpful for one disputing the validity of an arbitration clause. It should be no surprise that this case has been appealed to the district court and in all probability will reach the Eleventh Circuit. Conceivably this could adversely react against the automobile dealers should the appellate courts embrace the opinion of Judge Sledge. ■



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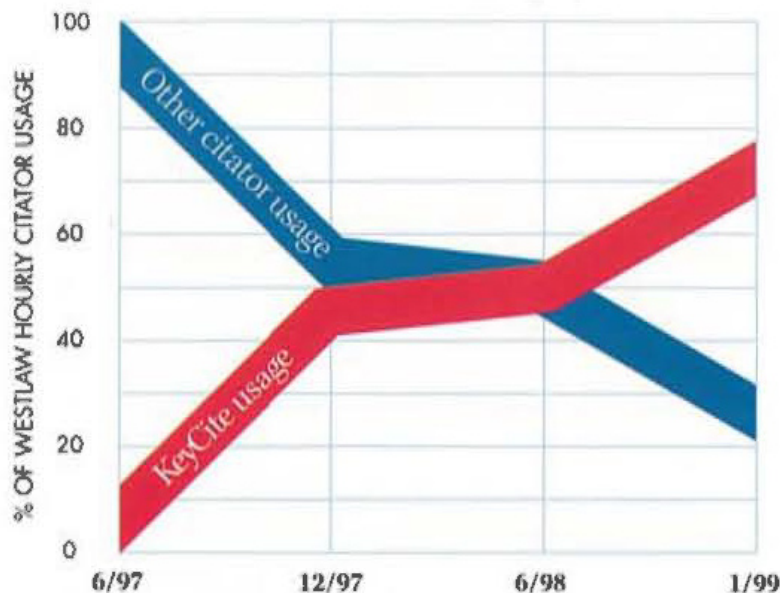


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