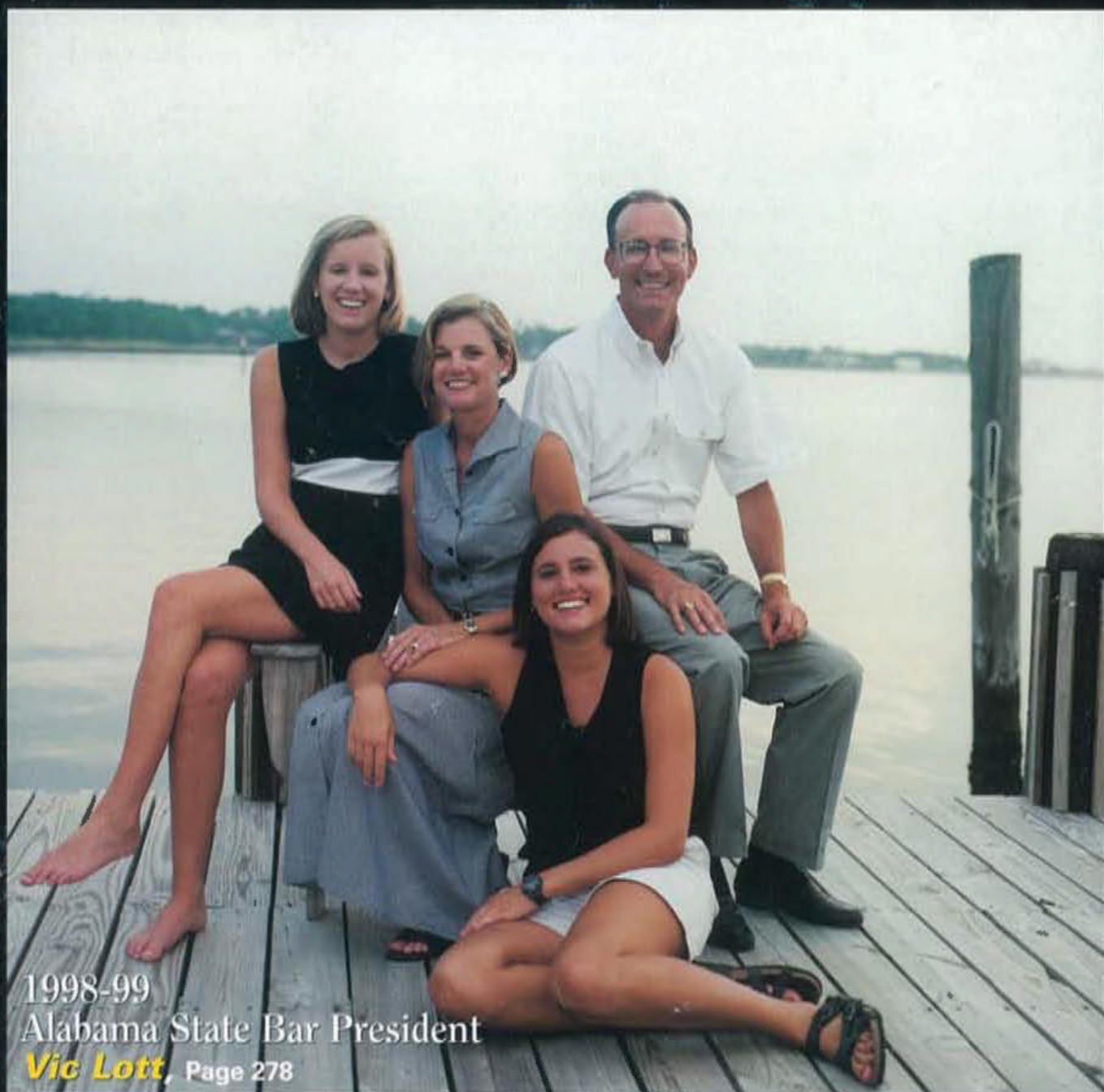


# The Alabama Lawyer

Vol. 59, No. 6

September 1998

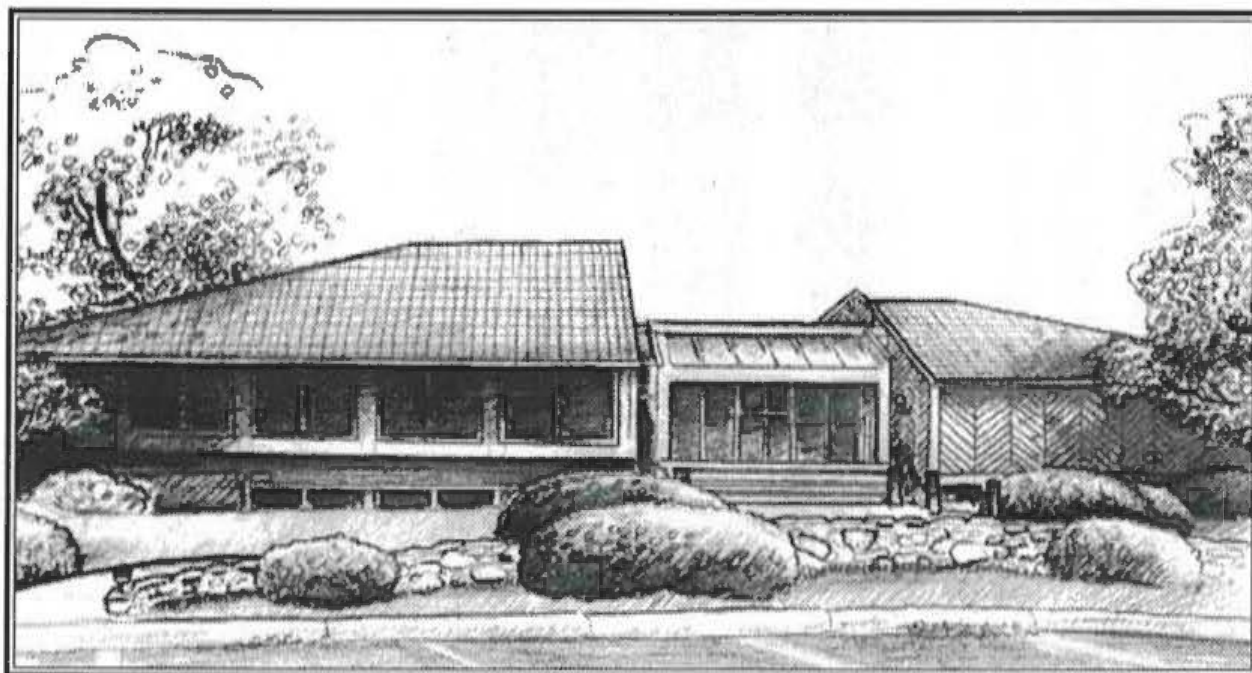


1998-99

Alabama State Bar President

**Vic Lott**, Page 278

AIM is pleased to announce  
its relocation to its own  
permanent corporate office.



"A Mutual Insurance Company Organized By And For  
Alabama Attorneys"

*New  
Address!*



**Attorneys Insurance Mutual  
of Alabama, Inc.\***

200 Inverness Parkway  
Birmingham, Alabama 35242-4813

Telephone (205) 980-0009  
Toll Free (800) 526-1246  
FAX (205) 980-9009

\*CHARTER MEMBER: NATIONAL ASSOCIATION OF BAR-RELATED INSURANCE COMPANIES.



# All the Federal Case Law You Need— At an Affordable Flat Monthly Fee!



## With Westlaw PRO™—ALLFEDS for solos and small firms

Now solos and firms with up to 15 attorneys can effectively search multijurisdictional federal case law, including Supreme Court cases, district and circuit court cases, unpublished cases, topical databases, headnotes and more — using the full power of Westlaw.

**Westlaw PRO—ALLFEDS** allows you to retrieve relevant federal case law with focused efficiency. Searching comprehensive federal sources is quick and easy, and it leads you directly to on-point results.

### **Westlaw PRO—ALLFEDS includes:**

- ▶ Federal Case Law—1945 to date
- ▶ U.S. Supreme Court Cases—1945 to date
- ▶ U.S. Courts of Appeals Cases — All Circuits 1945 to date
- ▶ U.S. District Courts Cases —1945 to date
- ▶ U.S. District Courts Reported Cases —1945 to date
- ▶ Unreported District Courts Unreported Cases—1945 to date
- ▶ Federal Bankruptcy —Bankruptcy Court Cases
- ▶ and more!

For more information or a no-obligation demonstration  
call your local West Group representative today!

1-800-762-5272





Alabama Bar Institute for Continuing Legal Education  
The University of Alabama School of Law  
Alabama State Bar

# 1998 Fall Master Calendar

A

B

I

C

L

E

---

<b>AUGUST</b>	12	GAL Training
---------------	----	--------------

---

<b>SEPTEMBER</b>	11	Advanced Planning for the Elderly
	18	Practical Criminal Defense
	25	Family Law Practice

---

<b>OCTOBER</b>	2	Depositions
	9	Tort Law
	16	Insurance Law
	23	Mediation Advocacy
	30	Trial Skills
	30-31	Family Law Retreat to the Beach

---

<b>NOVEMBER</b>	6	Real Estate Law
	13	Bankruptcy Practice
	19	Jury Selection
	19-20	Federal Tax Clinic

---

<b>DECEMBER</b>	2	Alabama Evidence in Huntsville
	3	Effective Negotiating and Settlement Techniques
	3	Alabama Update in Montgomery
	4	Alabama Update in Mobile
	4	Estate Planning
	10	Alabama Update in Birmingham
	10	Alabama Evidence in Mobile
	11	Alabama Evidence in Montgomery
	17	Alabama Update in Huntsville
	17	Video Replays in Birmingham
	18	Video Replays in Tuscaloosa
	18	Alabama Evidence in Birmingham

---

**December 1998 -- January 1999**

Dec. 26-Jan. 2      Ski & CLE in Crested Butte, Colorado





# The Alabama Lawyer

Vol. 59, No. 6

September 1998

## On the Cover

The cover photograph features 1998-99 Alabama State Bar President Victor (Vic) H. Lott, Jr. and his family at their home on Dauphin Island. From left to right are daughter Margaret Walsh, wife Austill, daughter Mary Austill and Vic. Mr. Lott is the managing partner of Adams & Reese, L.L.P. in Mobile.

—Photography by Nancy Sledge, Mobile

## IN THIS ISSUE

CONVENTION HIGHLIGHTS ..... 302

DRINKING AND DRIVING IN ALABAMA:

THE FACTS, THE LAWS AND POSSIBLE SOLUTIONS ..... 304

PUNITIVE DAMAGES IN ALABAMA AFTER *BMW v. GORE*:

ARE OUTCOMES ANY MORE PREDICTABLE? ..... 314

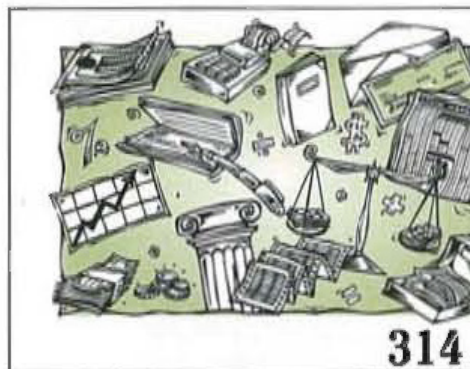
MAKING YOUR APPEALS MORE APPEALING:

APPELLATE JUDGES TALK ABOUT APPELLATE PRACTICE ..... 321

(Continued on page 276)



304



314



321

## ALABAMA STATE BAR ONLINE

What's New...

- Publications
- On-Line Community
- OGC Opinions
- CLE Calendar
- On-Line Change of Address



• Check us out at . . .

**www.alabar.org**

The Alabama State Bar on the World Wide Web



## DEPARTMENTS

President's Page  
278

Executive Director's Report  
282

About Members, Among Firms  
284

Bar Briefs  
288

Memorials  
290

Building Alabama's Courthouses  
296

Opinions of the General Counsel  
298

Legislative Wrap-Up  
300

Disciplinary Notice  
328

Recent Decisions  
332

CLE Opportunities  
336

Classified Notices  
338

Published seven times a year (the June issue is a bar directory edition) by the Alabama State Bar,  
P.O. Box 4156, Montgomery, Alabama 36101-4156. Phone (334) 269-1515 • www.alabar.org

Robert A. Huffaker.....Chair & Editor  
Susan Shirock DePaola.....Vice-Chair & Associate Editor  
David B. Champlin.....Vice-Chair, Finance  
Susan H. Andres.....Staff Liaison & Communications Director  
Margaret L. Murphy.....Staff Liaison & Managing Editor  
Rita M. Gray.....Advertising

### Board of Editors

Linda G. Flippo, Birmingham • Hon. Pamela W. Baschab, Montgomery • David B. Champlin, Birmingham •  
Eugenia H. Mullins, Birmingham • Samuel A. Rumore, Jr., Birmingham • J. Timothy Smith, Birmingham • Robert  
S. Smith, Huntsville • Gloria J. McPherson, Montgomery • Wendell J. Chambliss, Birmingham • Glenda G.  
Cochran, Birmingham • M. Donald Davis, Jr., Mobile • Victoria J. Franklin-Sisson, Birmingham • William G. Gantt,  
Birmingham • Hon. Debra Goldstein, Birmingham • Lynda L. Hendrix, Trussville • Michael A. Kirtland,  
Montgomery • Margaret Kubinyz, Birmingham • Alan T. Rogers, Birmingham • Matthew A. Vega, Birmingham •  
Robert M. Weinberg, Montgomery

### Officers

Victor H. Loft, Jr., Mobile.....President  
Wade H. Baxley, Dothan.....President-elect  
David R. Boyd, Montgomery.....Vice-president  
Keith B. Norman, Montgomery.....Secretary

### Board of Commissioners

1st Circuit, E. Mark Ezell, Butler. 2nd Circuit, Frank A. Hickman, Greenville. 3rd Circuit, William I. Grubb, II, Eufaula.  
4th Circuit, Ralph N. Hobbs, Selma. 5th Circuit, Ernestine S. Sepp, Tuskegee. 6th Circuit, Place No. 1, W. Scott  
Donaldson, Tuscaloosa. 6th Circuit, Place No. 2, J. Douglas McElvy, Tuscaloosa. 7th Circuit, William H. Broome,  
Anniston. 8th Circuit, William E. Shinn, Jr., Decatur. 9th Circuit, W.N. Watson, Ft. Payne. 10th Circuit, Place No. 1,  
Samuel H. Franklin, Birmingham. 10th Circuit, Place No. 2, James W. Gwin, Birmingham. 10th Circuit, Place No. 3,  
J. Mark White, Birmingham. 10th Circuit, Place No. 4, Samuel A. Rumore, Jr., Birmingham. 10th Circuit, Place No. 5,  
Edward P. Meyerson, Birmingham. 10th Circuit, Place No. 6, Mac B. Greaves, Birmingham. 10th Circuit, Place No. 7,  
Stephen A. Rowe, Birmingham. 10th Circuit, Place No. 8, Max C. Pope, Jr., Birmingham. 10th Circuit, Place No. 9,  
Carol H. Stewart, Birmingham. Bessemer Cut-off, George M. Higginbotham, Bessemer. 11th Circuit, Robert L.  
Gonce, Florence. 12th Circuit, Joseph E. Faulk, Troy. 13th Circuit, Place No. 1, Wesley Pipes, Mobile. 13th Circuit,  
Place No. 2, Billy C. Bedsole, Mobile. 13th Circuit, Place No. 3, Caine O'Rear, III, Mobile. 13th Circuit, Place No. 4,  
Celia J. Collins, Mobile. 14th Circuit, Philip P. Nelson, Jasper. 15th Circuit, Place No. 1, Robert D. Segall,  
Montgomery. 15th Circuit, Place No. 2, Wanda D. Deveraux, Montgomery. 15th Circuit, Place No. 3, James E.  
Williams, Montgomery. 15th Circuit, Place No. 4, Thomas J. Methvin, Montgomery. 15th Circuit, Place No. 5, David  
R. Boyd, Montgomery. 16th Circuit, George P. Ford, Gadsden. 17th Circuit, Taylor T. Perry, Jr., Demopolis. 18th  
Circuit, Conrad M. Fowler, Jr., Columbiana. 19th Circuit, John Hollis Jackson, Jr., Clanton. 20th Circuit, Rufus R.  
Smith, Jr., Dothan. 21st Circuit, Charles R. Godwin, Atmore. 22nd Circuit, Earl V. Johnson, Andalusia. 23rd Circuit,  
Place No. 1, Donna S. Pate, Huntsville. 23rd Circuit, Place No. 2, Patrick H. Graves, Jr., Huntsville. 24th Circuit,  
Charles A. Langley, Fayette. 25th Circuit, Oliver Frederick Wood, Hamilton. 26th Circuit, Homer W. Cornett, Jr.,  
Phenix City. 27th Circuit, John C. Gullahorn, Albertville. 28th Circuit, E.E. Ball, Bay Minette. 29th Circuit, R. Blake  
Lazenby, Talladega. 30th Circuit, J. Robert Bentley, Oneonta. 31st Circuit, William K. Hewlett, Tuscumbia. 32nd  
Circuit, Roy W. Williams, Jr., Cullman. 33rd Circuit, Robert H. Brodgen, Ozark. 34th Circuit, Robert I. Rogers, Jr.,  
Russellville. 35th Circuit, John B. Barnett, III, Monroeville. 36th Circuit, Chris Malcom, Moulton. 37th Circuit, J. Tutt  
Barrett, Opelika. 38th Circuit, Stephen M. Kennamer, Scottsboro. 39th Circuit, James M. Corder, Jr., Athens. 40th  
Circuit, John K. Johnson, Rockford

The Alabama Lawyer is published seven times a year for \$20 per year in the United States and \$25 per year  
outside the United States by the Alabama State Bar, 415 Dexter Avenue, Montgomery, Alabama 36104. Single  
issues are \$5.00 for the journal and \$25/\$60 for the directory. Periodicals postage paid at Montgomery, Alabama,  
and additional mailing offices.

### ALABAMA STATE BAR HEADQUARTERS STAFF

415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6310 • E-mail facts@alabar.org

Executive Director.....Keith B. Norman  
Executive Assistant.....Margaret Boone  
Director of Programs.....Edward M. Patterson  
Administrative Assistant for Programs.....Heidi Alves  
Director of Communications &  
Public Information.....Susan H. Andres  
Publications Director.....Margaret L. Murphy  
Communications & Publications Assistant.....Rita Gray  
Membership Services Director.....Diane Weldon  
Membership Assistant.....Myrna McHenry  
Director of Admissions.....Dorothy D. Johnson  
Admissions Assistants.....Mary Corbitt  
Jennifer Bacchus

Alabama Law Foundation, Inc. Director.....Tracy Daniel  
ALF Assistant.....Karl Marts  
Volunteer Lawyers Program Director.....Kim Oliver  
VLP Paralegal.....Greta Chambliss  
Bookkeeper.....Gale Skinner  
Graphics Arts Director.....Maggie Stuller  
Graphics Arts Assistant.....Roderick Palmer  
Lawyer Referral Secretary.....Katherine L. Church  
Receptionist.....Angie Crowe  
Alabama Center for Dispute  
Resolution Director.....Judith M. Keegan (269-0409)  
Law Office Management Assistance  
Program Director.....Laura A. Calloway

### ALABAMA STATE BAR CENTER FOR PROFESSIONAL RESPONSIBILITY STAFF

415 Dexter Avenue, Montgomery, AL 36104 (334) 269-1515 • FAX (334) 261-6311 • E-mail cpr@alabar.org

General Counsel.....J. Anthony McLain  
Assistant General Counsel.....L. Gilbert Kendrick  
Assistant General Counsel.....Milton L. Moss  
Assistant General Counsel.....Robert E. Lusk, Jr.  
Secretary to General Counsel.....Vivian Freeman  
Complaints Intake.....Kim Ellis

Client Security Fund, CSF &  
CLE Coordinator.....Bonnie Mainor  
Paralegals/Investigators.....Peggy Garrett  
Cheryl Rankin  
Robin Key  
Receptionist.....Melissa Burgess

The Alabama Lawyer, (ISSN 0002-4287), the official publication of the Alabama State Bar, is published seven times a year in the months of January,  
March, May, June (bar directory edition), July, September, November. Views and conclusions expressed in articles herein are those of the authors, not  
necessarily those of the board of editors, officers or board of commissioners of the Alabama State Bar. Subscriptions: Alabama State Bar members receive  
The Alabama Lawyer as part of their annual dues payment; \$15 of this goes toward subscriptions for The Alabama Lawyer. Other subscribers do not  
receive the directory edition of the Lawyer as part of their subscription. Advertising rates will be furnished upon request. Advertising copy is carefully  
reviewed and must receive approval from the Office of General Counsel, but publication herein does not necessarily imply endorsement of any product  
or service offered. The Alabama Lawyer reserves the right to reject any advertisement. Copyright 1998. The Alabama State Bar. All rights reserved.



THE MOST COMPREHENSIVE LIBRARY OF STATE LAW ON COMPACT DISC  
FROM THE PUBLISHER YOU CAN TRUST

# Michie's™ Alabama Law on Disc™

ASB  
MEMBER BENEFIT:  
6 MONTHS FREE  
LEXSEE™/LEXSTAT™

## YOUR SINGLE SOURCE FOR A COMPREHENSIVE STATE LAW LIBRARY ON CD:

- Michie's™ Alabama Code (Annotated)
- Alabama Rules Annotated
- Alabama Supreme Court Decisions since 1954
- Alabama Court of Appeals Decisions from January 1965 to September 1969
- Alabama Court of Civil Appeals Decisions since 1969
- Alabama Court of Criminal Appeals Decisions since 1969



ALABAMA STATE BAR

*If you're serious about finding the best electronic  
legal research system for your firm, you'll want*

## MICHIE'S™ ALABAMA LAW ON DISC™

*Here's why*

Highest quality, most comprehensive law library on CD

Powered by the industry standard FOLIO™ search engine

Online Connection™ to Alabama Caselaw Update library  
at no additional charge

Examine for 45 days without risk or obligation



**LEXIS**®  
LAW PUBLISHING

MICHIE

888/217-1730

[www.lexislawpublishing.com](http://www.lexislawpublishing.com)

Please use code 2AM  
when ordering

©1998 LEXIS - Law Publishing, a division of  
Reed Elsevier Inc. All rights reserved.



## PRESIDENT'S PAGE

By Vic Lott

# Professional Ethics: Past and Present



Vic Lott

---

*The following remarks were delivered by 1998-99 Alabama State Bar President Vic Lott of Mobile, upon his installation during the annual meeting's Grande Convocation at Orange Beach.*

---

**I**n drafting my remarks to you today, I have reflected at length upon the changes in our profession since I was licensed in 1975. If you read the newspapers, or even listen to conversations among our own colleagues at the bar, you will hear concerns about our image, about professionalism, and about greed. In fact, in many of the surveys taken within our own profession, these issues are among those felt to be of highest concern. I can't tell you how many times I have heard, or even thought myself, that the practice was more genteel, more civil, and that lawyers were more highly regarded even as recently as 1975 when I began my practice.

Yet, somehow, I think that we overlook, or perhaps forget, some of the long-standing derision of lawyers. A speaker at one of our own bar's annual meetings delivered a paper addressing the unpopularity of lawyers in which he "recalled the innumerable publications by the press of anecdotes and of practical jokes in which lawyers are the subject of ridicule." This was in 1881.

More recently the American Bar Association's Committee on Professional Ethics, in considering changes in the profession and its resulting decrease in professionalism, remarked that, "We can not be blind to the fact that, however high may be the motives of some, the trend of many is away from the ideals of the past, and the tendency more and more to reduce our high calling to the level of a trade, to a mere means of livelihood, or of personal aggrandizement. With the influx of increasing numbers, who seek admission to the profession mainly for its emoluments, have come new and

changed conditions." This report was delivered in 1906.

Has our image in fact changed markedly? Is the professionalism of the great majority of lawyers at a new low and should this rank as our number one concern? One could debate these issues forever, but perhaps the most important fact is that they are issues and they have been issues for well over a hundred years. I do not mean to indicate that the current concern about a lack of professionalism and our poor image is not important or is misplaced. To the contrary, it is my opinion that as officers of the court we are sworn to a higher standard of conduct and I firmly believe that it is the primary role of the Alabama State Bar to enforce that high standard and to lead our members to practice by that ideal.

However, whether our image has changed or not, there are many real, documented changes taking place in our profession today.

In the less populous communities across this state lawyers are besieged by growing numbers of lower and middle income families in need of legal services, but often unable to pay even a modest fee for those services. These same lawyers are also contending with increasing specialization within the law and the demands of clients which range from criminal defense and domestic relations to sophisticated corporate, tax, employment, securities and environmental needs.

In our larger communities lawyers and law firms are striving to create bou-

*(Continued on page 280)*



# ALABAMA EVIDENCE 1998 COURTROOM MANUAL

By Glen Weissenberger

NEW  
EDITION!

Designed specifically for courtroom use, this convenient softcover manual offers judges and practitioners many trial-tested features that not only provide fast, accurate answers to evidentiary questions, but also guide the user to underlying authorities and secondary sources.

1998 Edition; softcover; \$45.00.  
20% Off Additional Copies.

- Complete and Up-to-date Alabama Rules of Evidence
- Selected Alabama Revised Statutes, Annotated
- Authoritative Commentary
- Recent Significant Cases
- Illustrations Sections
- Analysis of Current Issues and Predicted Trends in the Law of Evidence
- Appendix Containing the Study Committee Notes to Alabama Rules of Evidence
- Quick-Reference Index
- Section Locator
- Annual Editions

## CHAPTER 102

### Rule 102. Purpose and Construction

Rule 102 reads as follows:

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

#### COMMENTARY

Rule 102 is identical to Fed. R. Evid. 102. The Alabama Rules of Evidence were modeled after the Federal Rules, except where different treatment was necessary for Alabama practice. Accordingly, issues interpreting the Federal Rules of Evidence provide persuasive authority to the Alabama courts for interpreting Rules of Evidence.

Rule 102 directs courts to apply a construction to the Rules of Evidence which will attain the stated goals of fairness to the parties throughout the administration of proceedings and the elimination of unjustifiable expense and delay. The Rule also provides courts with power to expand the Rules of Evidence through case law to insure growth and refinement of the law of Evidence in order that truth may be ascertained and fair results obtained. By granting discretion to the trial court in admitting evidence, the drafters tacitly recognized that the inflexible application of any system of rules may result in injustice.

A system of rules that does not allow for some discretion on the part of a trial judge in making evidentiary rulings lays the groundwork for its own obsolescence. As methods of communication and interaction between individuals change, the Rules of Evidence must accommodate this progress. Rule 102 is designed to insure the continued validity of the Alabama Rules of Evidence by providing that the evidence as to the disputed relationship between the parties is available to the trier of fact.

Rule 102 relies on the discretion of the trial court to fulfill its stated objectives. The court's discretion is, of course, subject to review under Rule 103.

#### ANALYTICAL COMMENTARY

Weissenberger's Federal Evidence § 102.1  
1 WESTLAW ¶¶ 102(01)-102(1)

## EVIDENCE 1998 COURTROOM MANUAL

ALABAMA §§ 3-4

Advisory committee's note

See Federal Rules of Evidence & Statutes?, 35 OREGON L.J. 383

Supreme Court and the Interpretation of the Federal Rules of Evidence, 1307 (1992)

Use of the Supreme Court's Approach to the Interpretation of Federal Rules of Evidence, 37 IND. L. REV. 367 (1993)

Comments to the Federal Rules of Evidence, 83 GEO. L.J. 1074

See Federal Rules of Evidence, 1 FLA. ST. U. L. REV.

The Proposed Federal Rules of Evidence, 8 FORDHAM L. REV. 1000

#### SIGNIFICANT CASES

1185 (5th Cir. 1977) (court is free to

with regard to subsequent inconsistent

objectives of Federal Rule 102), cert.

56 L.Ed.2d 395 (1979).

56, 39 (5th Cir. 1979) (Federal Rules

edge to implement Rule 102).

(E.D.N.Y. 1977) (reliance on Rule

of all pertinent evidence was

rev., 31 B.R. 512 (Bankr. Ct. Ohio

into evidence in original check

(1984), the court also cited Rule 102,

the check would thwart the general purpose

## ALSO AVAILABLE

### Federal Evidence 1999 Courtroom Manual

by Glen Weissenberger \$52.50

TO ORDER, call 800-582-7295  
or fax 513-562-8116  
or e-mail andpubmail@aol.com



anderson  
publishing co.

PR

Visit our web site for the most up-to date information on all Anderson products. [www.andersonpublishing.com](http://www.andersonpublishing.com)



## President's Page

(Continued from page 278)

tiques, or maintain corporate client bases in an age of rapidly increasing consolidation on a state, regional and, indeed, global basis. This consolidation of business is resulting in the regionalization of legal practices at the corporate level, often depriving established local firms of long-time clients.

All of this is occurring against a backdrop of declining loyalty to firms, clients and practices driven by the demand for profitability and by personal dissatisfaction and unhappiness in the profession which manifests itself in the breakup of law firms and practices.

Changes in technology have an impact on the legal profession daily, increasing the ability, and thus the expectation, for rapid response to issues. Gone are the days when lawyers communicated with typewritten correspondence as a means of exchanging positions, negotiating issues, or responding to a client's

needs. Today in the fast-paced world of telefax, e-mail, computerized research and the Internet, issues arise, are investigated, positions taken and responses demanded within 24-hour time frames. Distance is irrelevant, and jurisdictions begin to fade, creating ethical nightmares which are yet to be dealt with at even the national level, much less locally.

Accounting firms, paralegals, title insurers, legal specialists and others, driven by their own profit motives and the relative inaccessibility of legal service to the great majority of our population, increasingly infringe upon our profession, resulting in even greater competition and pressure on courts and legislators to deal with actions heretofore deemed as the unauthorized practice of law.

Trial lawyers versus the defense bar; litigators versus non-litigators; boutiques versus big firms; regional and national law firms versus local and statewide firms; state bars versus specialty bars; business versus non-business lawyers; criminal versus civil—the list of fractionalization and competitive factions within our profession goes on and on, each fighting for a piece of the action as the pendulum of profitability swings back and forth.

What, then, does the future hold for our profession? It has changed more in the past 15 years than in the previous 150. In our own state the number of lawyers licensed approaches 12,000 versus the mere 5,500 which were licensed in 1980. On average over 1,100 lawyers sit for the Alabama State Bar exam each year and over 600 receive their licenses, continuing to swell our ranks. Despite these facts, every survey taken indicates the increasingly difficult ability of the indigent and, alas, the middle class in our state (its vast majority) to access affordable, quality legal services for routine needs.

In the midst of all of this change, we, as Alabama lawyers, and our state bar in particular, must attempt to bring focus to our mission, our strategic plan, and the role of the bench and bar in the administration of a fair and impartial judicial system in this state.

In the past several years, we have begun to address many of these issues,

putting into place a strategic plan, focusing on the perceived lack of professionalism and unity of the bar, debating the import and answers to challenges to our image, and broadening service programs to our ever-changing profession.

Today, however, in order to keep pace with the ever-changing needs of our profession, its strengths and its weaknesses, we must do a better job of anticipating instead of reacting to paradigm changes in the way we practice law and the respect we hold for its institutions.

How do we intend to deal with the fractionalization and influence of specialty bars and sections? How do we intend to deal with advertising and solicitation on the Internet from the standpoint of enforcing each state's ethical rules? How do we intend to deal with the growing participation by the undereducated in our legal system and the added pressures which this has placed on lawyers and judges? What can we do to educate the populous of this state in understanding their legal system, and appreciating the role of lawyers and judges? What are we willing to do about the debilitating impact of billable hours, billing goals, contingent fees and alternative billing techniques on the spirit of our practitioners, and our image as professionals? What can we do about the widening gap in both expertise and profitability between rural and metropolitan lawyers, between large and small firms? How can we insure the capability of all of the people of this state to access our legal system for routine needs? What can we do to substantially increase minority participation in the legal profession in this state?

To address these issues we must promptly increase communication among the state and local bars, specialty bars, sections and all factions of our association. We must find better ways to reach out to the citizenry of this state and educate them about our legal system and invite their participation, and we must find a way to allow every man and woman in the state of Alabama who is in need of legal services to find affordable, quality assistance.

We can not expect understanding of our role in the legal system, or respect for that system, from those who have

COLLECTIONS SOFTWARE

**COLLECT  
MAX™**

DEBTOR MANAGEMENT  
SOFTWARE UNIQUELY  
DESIGNED FOR  
COLLECTIONS ATTORNEYS.

PRICES START AT JUST \$1700.

**JST**

FREE DEMONSTRATION VIDEO  
**1.800.827.1457**

JS TECHNOLOGIES, INC.  
1516 WILLOW LAWN DRIVE  
RICHMOND, VA 23230  
www.jstec.com

"THE SIMPLE SOLUTION"

ONE-TIME DATA ENTRY • WORDPERFECT/WORD INTERFACE

INTEGRATED TICKLER SYSTEM • AUTOMATIC FEE CALCULATION



no access to it. Most jurisdictions in this country are now concluding that the ability to improve access to justice can only come through a combination of many efforts, including pro bono services, funding for legal services, alternative dispute resolution, IOLTA programs, as well as local plans for providing access to justice in coordination with existing organizations, such as bar associations and United Way. Many other states are considering mandatory pro bono service for licensees, the shifting of punitive damage awards to fund legal services to the indigent, and taxes on legal services for such purposes. We must look at all available avenues in our state to familiarize our citizens with the legal system, such as the pilot program using lay volunteers currently being conducted in Lee County by the Administrative Office of Courts. We should also investigate simplified proceedings in small claims court, and for probate and domestic matters, or even consider the establishment of citizen dispute settlement centers to assist in

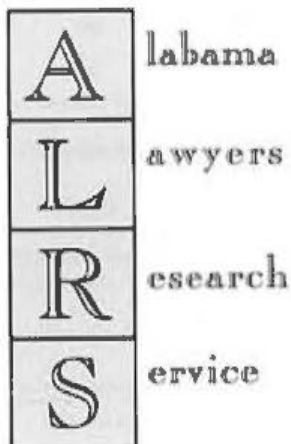
the resolution of disputes in an efficient and economical matter.

I know that some of these thoughts are of concern to many of our practicing attorneys. But we have a dilemma. We have the opportunity to design a means for Alabama lawyers to provide legal services to those in need in this state, or at least be instrumental in creating other avenues for the underprivileged and middle class to address their legal needs. Failing such, we can watch legislatures or federal courts authorize wholesale changes in our legal system.

I think this is the single greatest challenge facing our profession today, and I am convinced that our ability to resolve it is very much intertwined with the solution to our own image problems.

We must be willing to assume responsibility, as professionals, for our justice system and its creditability, and we must be willing to lead the membership of our Alabama State Bar to a swift and just resolution of each of these challenges.

Thank you. ■



A Service of The  
University of Alabama  
School of Law Library

ALRS provides the following research services:

- Preparation of Research Memos
- State & Federal Case Law Searches
- State & Federal Statute Searches
- State & Federal Regulation Searches
- WESTLAW Searches
- Legislative Histories
- Cite Checking/Shepardizing
- DIALOG/MEDLINE Searches
- Newspaper Searches
- Internet Searches
- Photocopy Service

Alabama Lawyers Research Service  
University of Alabama School of Law  
Post Office Box 870383  
Tuscaloosa, Alabama 35487-0383  
Phone: (205) 348-0300  
Fax: (205) 348-1112  
E-mail: ALRS@LAW.UA.EDU

The Alabama Lawyers Research Service is operated by The University of Alabama School of Law and does not engage in the active practice of law. Information disseminated by the ALRS does not constitute legal advice.



## REAL ESTATE SETTLEMENT SYSTEM

*"The Nation's  
Most Widely Used"*

*Now Available For  
Windows and DOS*

- ✓ HUD 1 Automatic Calculations
- ✓ Checks & Escrow Accounting
- ✓ Word Processor - Spell Check
- ✓ Data Base Reporting
- ✓ 1099S Reporting
- ✓ Regulation Z APR's
- ✓ Aggregate Escrow

**\$1,695.00**

\* Also Available:  
On Site Training  
Deeds & Mortgages  
Commitments & Policies



**(800) 937-2938**

<http://www.landtechdata.com>

**LANDTECH  
DATA CORPORATION**

1402 Royal Palm Beach Blvd.  
Building 200  
Royal Palm Beach, FL 33411



## EXECUTIVE DIRECTOR'S REPORT

By Keith B. Norman

# Education Debt for Law School Graduates Has Increased Significantly



Keith B. Norman

**I**n my July 1996 "Executive Director's Report," I expressed my grave concern about the high education debt load carried by many law school graduates sitting for the bar exam. Since my initial report, the educational debt load of law school graduates has increased substantially. The average debt for law

school graduates with educational loans who sat for the July 1998 bar exam exceeds \$50,000! This tremendous debt load is borne by 60 percent of the first-time examinees. The tables below reflect the increasing debt levels of the February and July examinees over the last three years.

	FEBRUARY 1998	FEBRUARY 1997	FEBRUARY 1996
FIRST-TIME EXAMINEES	293	199	287
EXAMINEES HAVING EDUCATIONAL DEBT	125 (44 percent)	105 (53 percent)	148 (51 percent)
TOTAL EDUCATIONAL DEBT	\$5,235,600	\$3,710,500	\$5,180,000
AVERAGE DEBT	\$41,885	\$35,308	\$35,000
DEBT RANGE	\$500 to \$125,000	\$1,500 to \$90,000	\$3,000 to \$90,000
DEBT SERVICE 7.5 PERCENT FOR TEN YEARS ON AVERAGE DEBT	\$497 per month	\$420 per month	\$415 per month

	JULY 1998	JULY 1997	JULY 1996
FIRST-TIME EXAMINEES	511	465	450
EXAMINEES HAVING EDUCATIONAL DEBT	310 (60 percent)	317 (68 percent)	327 (73 percent)
TOTAL EDUCATIONAL DEBT	\$15,629,000	\$14,116,221	\$13,372,000
AVERAGE DEBT	\$50,418	\$44,528	\$40,892
DEBT RANGE	\$2,000 to \$120,00	\$1,000 to \$111,000	\$1,000 to \$100,000
DEBT SERVICE 7.5 PERCENT FOR TEN YEARS ON AVERAGE DEBT	\$599 per month	\$528 per month	\$474 per month



The bar's Character and Fitness Committee expressed its concern about the potential problems such high levels of educational debt pose for the profession at the Board of Bar Commissioners' July meeting. The commission was very receptive to the committee's suggestion that a task force be appointed to study this matter. Clearly, this issue deserves our concern and our attention because of the serious consequences it portends for the future of these new lawyers and the clients they will represent. The recently completed Southern Opinion Research survey of state bar members shows that the median first-year salary for young lawyers is \$33,000. With 60 percent of July's first-time examinees saddled with a decade of monthly payments averaging \$600 just for their education, the debt-to-income disparity for these young lawyers is a reason for concern. As I stated in July 1996, "We must be concerned that new lawyers entering the ranks of the profession are not so burdened with debt that their ability to practice or to effectively represent their clients is impaired." I am hopeful that we can address this cause for concern before any serious problems develop.

### Summit on the Profession: A Successful First Step

Former state bar president Dag Rowe convened the Summit on the Profession on May 14 at state bar headquarters. An outstanding group of lay persons, lawyers and judges representing specialty bars, judicial organizations and the appellate courts attended a day long conference to discuss issues facing the legal profession and the judiciary. Among those attending were **Frank Gregory, Judge Ben McLaughlin, Judge Francis A. Long, Sr., Greg Breedlove, Keith Givens, Andrea Summer, Richard Sandefer, Dennis Knizley, Carol Ann Smith, Kenneth Fuller, Ed Livingston, Thomas Sorrells, Judge Charles Fleming, Launce Sills, Derek Simpson, Stova McFadden, Fred Killion, Jr., Barbara Rhodes, Dawn Howard, Caryl Privett, Vic Lott, and Wade Baxley.**

Each person attending the summit was asked to list what he or she perceived as the most crucial issues facing the judiciary and the legal profession. The top three issues of concern were: (1) Judiciary—Selection/Campaign Conduct/Politicization; (2)

Professionalism—Civility/Factionalization of the Profession; and (3) Public Perception—Public Confidence in the Justice System.

Part of the summit agenda included an interactive discussion of the top issues and ongoing efforts by bar groups to address the identified issues of concern. Participants were divided into three working groups to discuss a specific issue and develop a recommended action plan. The final recommendations of the three working groups were as follows:

#### Judiciary

- 1) Quick and uniform enforcement of Canon 7 violations;
- 2) Monitor legislation that would adversely affect the judiciary;
- 3) Remove judicial campaigns from partisan elections;
- 4) Address the need for minimum qualifications/standards for judicial candidates;
- 5) Improve communications between the courts and the bar; and
- 6) Increase diversity within the bar and on the bench.

#### Professionalism

- 1) Increase CLE to 14 hours with two hours of professionalism/ethics required, or as an alternative, have two hours of the existing 12 hours required to be professionalism/ethics training;
- 2) Encourage specialty bars to develop mentoring programs for members with the state bar serving as coordinator for all programs;
- 3) Promotion by state bar of meetings with various groups within the profession on a periodic basis and inform bar members of recommendations; and
- 4) Implement good ideas and promote communication among all members about what all professional organizations and groups are doing on behalf of the profession.

#### Public Perception

- 1) Work to improve access to legal services both for the poor and middle class through such programs as pro bono, free legal advice columns or law lines;
- 2) Educate and involve the public to demystify the system through programs such as the Partnership Program and court volunteer programs;
- 3) Promote professionalism within the legal profession, and decrease faction-

alization and emphasize civility; and 4) Have the state bar serve as the umbrella organization for lawyers working together to help local communities and provide visibility for those efforts to help strengthen the profession's unity and improve the public's perception of the profession.

Alabama State Bar President Vic Lott has appointed summit participants to a Task Force on Intra-Bench/Bar Communications to both facilitate communications within the profession and work on these recommendations.

Few members of the profession will fail to appreciate the importance of the three issues selected and considered at the summit. No doubt there are other issues and problems that will need to be addressed too. But, our profession has taken a bold and important step forward to replace factionalism with cohesion in order to work on solutions for these three problem areas. Only through our mutual cooperation as a profession can we realistically expect to be successful in solving these and the other problems that face the legal profession. ■

### MEDICAL/DENTAL MALPRACTICE EXPERTS



CONSULTATIVE EXPERTS  
TO THE MEDICAL-LEGAL COMMUNITY

- ★ **GRATIS** : Medical Team Preview and Written Findings
- ★ **GRATIS** : Conference and Reps To Your Office
- ★ **GRATIS** : Written Reports If Case Has No Merit

#### STAT AFFIDAVITS AVAILABLE!

Full Expert Witness Services To Over 750 REPEAT Firms. We Have Earned Our Reputation Prudently For Plaintiff & Defense Alike. We Do Not Broker Lists of University Types Who Are Weak And Vascillate Ad Infinitum. Our Basic Fee is \$275.

#### Health Care Auditors, Inc.

Feather Sound Corporate Center, Building II  
13577 Feather Sound Drive, Penthouse 690  
Clearwater, Florida 34622-5522

Telephone (813) 579-8054

Telecopier (813) 573-1333

We are pleased to receive your calls.





## ABOUT MEMBERS, AMONG FIRMS

### About Members

John T. Ritondo, Jr. announces the opening of his office at 310 21st Street, North, Suite 500, Birmingham, 35203. Phone (205) 328-5050.

Elissa H. Green announces the relocation of her office to 301-A Franklin Street, Huntsville, 35801. Phone (256) 534-7027.

Jane Creekmore Smith announces the relocation of her office to 302 N. 18th Street, Bessemer, 35020. Phone (205) 428-4248.

Donald Lee Herman, Jr. announces a change of address to 5417 Grove Ridge Way, Bethesda, Maryland 20852. Phone (301) 564-0270.

Beth H. Gerwin announces the relocation of her office to 2015 1st Avenue, North, Birmingham, 35203. Phone (205) 715-4445.

Lucien B. Blankenship announces the relocation of his office to 2015 1st Avenue, North, Birmingham, Alabama 35203. Phone (205) 458-1100.

Don F. Wiginton announces the relocation of his office to 200 Office Park Drive, Suite 314, Birmingham, 35223-2404. Phone (205) 942-9233.

Naomi Grace Drake announces the opening of her office at 2210 N. Main Street, Suite E, Daphne, 36526. Phone (334) 626-1312.

Charles L. Payne announces the opening of his office at 301 Title Building, 300 N. 21st Street, Birmingham, 35203. Phone (205) 322-2331.

David P. Dorn, formerly with Durward & Cromer, announces the opening of his office at 205 N. 20th Street, Suite 210, Birmingham, 35203. Phone (205) 322-3300.

Ray M. Thompson announces the opening of his office at 107 Saint Frances Street, Suite 1504, First National Bank Building, Mobile, 36602. Phone (334) 690-7799.

Sondra K. McDaniel announces a change of address to 1134 22nd Street, North, Suite 101, Legal Arts Building, Birmingham, 35234. Phone (205) 297-9888.

Rebecca Narmore Pace, formerly with Rosser, Marthaler & Narmore, announces that she has relocated her office to 301 N. Dickson Street, Tuscumbia, 35674. Phone (256) 314-6300.

### Among Firms

Longshore, Buck & Longshore, P.C. announces the relocation of its offices to the Longshore Building, 2009 Second Avenue, North, Birmingham, 35203. Phone (205) 252-7661.

Beasley, Wilson, Allen, Crow & Methvin, P.C. announces that Stephen W. Drinkard, R. Graham Esdale, Jr., L. Landis Sexton, Julia Anne Beasley, and Rhon E. Jones have become members of the firm. Offices are located at 218 Commerce Street, P.O. Box 4160, Montgomery, 36103-4160. Phone (334) 269-2343.

Armbrrecht, Jackson, DeMouy, Crowe, Holmes & Reeves, L.L.C. announces that Stephen R. Copeland has become a member and that Timothy D. Ryan, Leah P. Ladd, J. Walton Jackson and

Sam David Knight have joined the firm as associates and that Tamela E. Esham has joined as staff attorney. Offices are located at 1300 Riverview Plaza, 63 S. Royal Street, Mobile, 36602. The mailing address is P.O. Box 290, Mobile, 36601. Phone (334) 405-1300.

Miller, Hamilton, Snider & Odom, L.L.C. announces that Willard H. Henson, Jean M. Powers and Michael M. Shipper have become members. Offices are located in Mobile, Montgomery and Washington, D.C.

Arter Hadden, L.L.P. announces that Madeliene H. Dobbins has joined the firm as *of counsel* in the Washington, D.C. office, located at 1801 K Street, N.W., Suite 400K, 20006-1301. Phone (202) 775-7130.

Lehr, Middlebrooks, Price & Proctor announces the opening of its office in Decatur, located at 303 Cain Street, N.E., Suite E, P.O. Box 1626, 35602, and that Steven M. Stastny and Michael Broom have become shareholders. Phone (205) 308-2767.

Beard & Beard announces that P. J. Harris has joined the firm. Offices are located at 416 Gunter Avenue, P.O. Box 88, Guntersville, 35976. Phone (256) 582-3189.

Sirote & Permutt announces that Katherine N. Barr has joined the firm. Offices are located at 2222 Arlington Avenue, South, Birmingham, 35205. The mailing address is P.O. Box 55727, 35255-5727. Phone (205) 933-7111.

Hand Arendall, L.L.C. announces that E. Shane Black has joined the firm. Offices are located at 900 Park Place Tower, 2001 Park Place, North,



Birmingham, 35203. Phone (205) 324-4400.

Rudolph & Associates, P.C. announces that David L. Johnston has joined the firm. Offices are located at 1130 Quintard Avenue, Suite 500, Anniston, 36201. Phone (205) 237-8663.

Balch & Bingham, L.L.P. announces that Glenn G. Waddell, *of counsel*, has been named regional director of Peacemaker Ministries, with new offices in Birmingham. The mailing address is P.O. Box 59354, 35259. Phone (205) 290-0347.

Watson, Fees & Jimmerson, P.C. announces that Samuel H. Givhan has become a shareholder. Offices are located at AmSouth Center, 200 Clinton Avenue, West, Suite 800, Huntsville, 35801. Phone (256) 536-7423.

Jeffrey G. Tickal, formerly with Harris, Clecker, Berg, Rogers & Hollis, has joined the firm of Gullage & Williams. Offices are located at 2400 Frederick Road, Opelika, 36801. Phone (334) 705-0200.

Chenault, Hammond & Hall, P.C. announces that Amelia H. Griffith has become a partner. The new name is Chenault, Hammond, Hall & Griffith, P.C. Offices are located at 117 Second Avenue, N.E., Decatur, 35602. Phone (205) 353-7031.

Michael R. Forrester, formerly with Luther, Oldenburg & Rainey of Mobile, announces he has joined the U.S. Army JAG Corps, and will be stationed in Germany.

Wisner, Adams & Walker, P.C. announces that Donald W. Lambert has become a member. Offices are located at 100 Washington Street, Suite 200, Huntsville, 35801. Phone (205) 533-1445.

Dempsey & Steed, P.C. announces that R.F. Stewart, III and William M. Keever have joined as shareholders. The new name is Dempsey, Steed, Stewart & Keever, P.C. Offices are located at 100 RiverPoint Corporate Center, Suite 205, Birmingham, 35243. Phone (205) 970-0034.

Leitman, Siegal & Payne, P.C. announces that Christopher R. Hood has become an associate. Offices are located at The Land Title Building, 600 20th Street, North, Suite 400, Birmingham, 35203. Phone (205) 251-5900.

Pierce, Ledyard, Latta & Wasden, P.C. announces that Abe L. Phillips, Jr. and A. Lewis Phillips, III have joined the firm. Offices are located at Colonial Bank Centre, 41 N. Beltline, Suite 400, Mobile, 36608. Phone (334) 344-5151.

Johann G. Moller announces the formation of Moller & Associates, L.L.C. His office is located at 1117 22nd Street, South, Birmingham, 35205. Phone (205) 939-0000.

Gerhard E.W. Kelter, Jr., P.C. announces that Sarah A.A. Ames has joined the firm as an associate. Offices are located at 135 S. LaSalle Street, Suite 1905, Chicago, Illinois 60603. Phone (312) 853-0900. Other offices are located in Stockholm, Sweden, and Frankfurt and Flensburg, Germany.

Hatcher, Stubbs, Land, Hollis & Rothschild announces that C. Morris Mullin, Theodore D. Morgan and Teri Yancey Callahan have become partners and that W. Fray McCormick and Bradley R. Coppedge have become associates. Offices are located at 233 12th Street, Suite 500, Corporate Center, Columbus, Georgia 31901. Phone (706) 324-0201.

Robison & Belser, P.A. announces that Terry A. Sides, formerly of Hill, Hill, Carter, Franco, Cole & Black, P.C., has joined the firm as a partner. Offices are located at 200 Coosa Street, Montgomery, 36104. Phone (334) 834-7000.

Gloria McPherson, currently with the United States Attorney's Office in Montgomery, announces that she has accepted a position as assistant professor of justice and public safety at Auburn University at Montgomery.

Brooks & Hamby, P.C. announces that Richard H. Holston and James G. House, III have become associates. Offices are located at 618 Azalea

Road, Mobile, 36609. Phone (334) 661-4118.

Andre' M. Toffel, P.C. announces that Kimberly B. Glass has become an associate. She formerly was a law clerk for the Honorable Tamara O. Mitchell. Offices have relocated to the Farley Building, 4th floor, 1929 Third Avenue, North, Birmingham, 35203. Phone (205) 252-7115.

McCartha & Snowden, L.L.C. announces that Jud C. Stanford has become an associate. Offices are located at 2015 1st Avenue, North, Birmingham, 35203. Phone (205) 321-1920.

Bradford & Donahue, P.C. announces that its offices have relocated to 2000-A SouthBridge Parkway, Suite 525, Birmingham, 35209, and that David D. Schoel and W. Gregory Biddle have become associates. Phone (205) 871-7733.

Mary E. Stansel of The Stansel Law Firm, P.C. announces that the office has relocated to 2015 First Avenue, North, Birmingham, 35203. The mailing address is P.O. Box 2052, 35201. Phone (205) 458-1100.

Wendy Brooks Crew announces her disassociation with Baddley & Crew, P.C. and the formation of Wendy Brooks Crew & Associates. Offices will remain at 550 Park Place Towers, 2001 Park Place, North, Birmingham, 35203. Phone (205) 326-3555.

Parsons & Sutton announces that Angela L. Kimbrough has become an associate. Offices are located at 601 Greensboro Avenue, Alston Place, Suite 700, Tuscaloosa, 35401. Phone (205) 349-5500.

Myron K. Allenstein and Scott Denson announce the formation of Allenstein & Denson, L.L.C. Offices are located at 156 S. Lawrence Street, Mobile 36602. Phone (334) 433-2001.

Gorham & Waldrep, P.C. announces that Tamara Harris Johnson has become an associate. Offices are located at 2101 6th Avenue, North, Suite 700, Birmingham, 35203. Phone (205) 254-3216.

Watson, deGraffenried & Holley, L.L.P. announces that Charles A. Hardin, formerly an associate with Burr & Forman, L.L.P., and Joseph E. Powell have joined as associates. Offices are located at 1651 McFarland Boulevard, North, Tuscaloosa 35406. Phone (205) 345-1577.

Stewart & Smith announces that Jason E. Knowles has joined as an associate. Offices are located at 1131 Leighton Avenue, Anniston, 36207. Phone (256) 237-9311.

Rushton, Stakely, Johnston & Garrett, P.A. announces that Paul M. James, Jr., Chris S. Simmons, D.

Mitchell Henry, Robert C. Ward, Jr., and Bowdy J. Brown have become members. Offices are located at 184 Commerce Street, Montgomery, 36104. Phone (334) 206-3100.

Karl Benkwith and Cliff Heard announce the relocation of their office to the Sterling Centre, 4121 Carmichael Road, Suite 401, Montgomery, 36106. Phone (334) 395-9899.

William T. Eiland, P. Bradley Murray and Michael D. Sherman announce the formation of Eiland, Murray & Sherman, L.L.C. Offices are located at 3 S. Royal Street, Suite 200, Mobile, 36602. Phone (334) 432-0900.

Crosslin, Slaten & O'Connor, P.C. announces that Lee M. Russell, Jr., David W. Van Buskirk, M. Andrew Donaldson and Melinda Kaye Camp have become associates. The firm has relocated to 2400 Presidents Drive, Suite 300, Montgomery, 36116. Phone (334) 396-8882.

Haygood, Cleveland, Pierce & Speakman announces that John Wesley McCollum, Jr., formerly of Beasley, Wilson, Allen, Crow & Methvin, has become an associate. Offices are located at 611 E. Glenn Avenue, Auburn, 36830. Phone (334) 821-3892.

## Your Health Insurance Option...

If you're a member of the Alabama State Bar, Insurance Specialists, Inc., offers you and your family affordable medical insurance options **endorsed** by the Alabama State Bar.

**ISI has been insuring Professional Association members since 1959.**

**Sole Practitioners • Families • Recent Graduates**

- ◆ \$3,000,000 maximum per person
- ◆ Choice of deductibles and coinsurance
- ◆ Covers hospitalization, inpatient and outpatient medical care
- ◆ An optional maternity rider available on some plans

### SAMPLE MONTHLY RATES

AGE	MEMBER	MEMBER & SPOUSE	EACH CHILD
<30	\$51.14	\$107.66	\$38.25
35	\$62.36	\$130.98	\$38.25
40	\$73.88	\$155.71	\$38.25
45	\$89.90	\$189.62	\$38.25

Underwritten by Continental Casualty Company, one of the CNA Insurance Companies

\$750 DEDUCTIBLE, 70% COINSURANCE TO \$10,000  
ADDITIONAL MONTHLY BILLING FEE BASED ON PAYMENT MODE

**For Further Information and A Personal Rate Quote Call  
(404)814-0232 or 1-800-241-7753**

**Insurance Specialists, Inc. ◆ 33 Lenox Pointe, NE ◆ Atlanta, GA 30324**

1/88



## How do we improve the image of the legal profession today?

# Our answer is "One lawyer at a time."

And **YOU** can do your part by having the Alabama State Bar's award-winning video presentation "To Serve The Public" shown in your community!

"I didn't realize how many programs you had to help the public."

"How can our school participate in your partnership program?"

"It was an excellent video . . . with lots of helpful information."

*-The public's comments on the video*

Winner of a 1997 Public Relations Council of Alabama Merit Award and a prestigious 1998 TELLY award for video production, "To Serve The Public" is designed for use in speaking to civic and community groups, including schools. Every local bar association in the state has received a free copy of the video presentation and 300 brochures. Contact your local bar association president or call the ASB at (334) 269-1515 for additional copies or information. (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!) This complete public service video presentation includes: the eight-minute video; a handbook of speech points; and informational brochures for the audience.

### What Does The Presentation Do?

- 1) It highlights public service programs and resources of the state bar, focusing on the public as the true beneficiary of our legal system;
- 2) It features real Alabama lawyers involved in their communities presenting a positive message about the legal profession in Alabama; and
- 3) It makes it easy for individual attorneys to take this message out to their communities.

### Why Is It Important For You To Do Your Part?

The key to the success of the program lies with each individual bar member. Only if the video is seen by the public, will its positive image message be spread!

Please complete and return this form to:

**Communications, Alabama State Bar, P.O. Box 671,  
Montgomery, AL 36101 or fax it to (334) 261-6310.**

TO SERVE



THE PUBLIC

**YES**, I volunteer to present or to help schedule a presentation of "TO SERVE THE PUBLIC" to groups in my area. Contact me to make arrangements!

NAME \_\_\_\_\_

BAR ASSOCIATION \_\_\_\_\_

PHONE OR E-MAIL \_\_\_\_\_





## BAR BRIEFS



Mark Maloney

• Delegates representing the more than 28,000 Rotary Clubs recently elected **Mark Daniel Maloney** of Decatur to serve as a member of the Rotary International

Board of Directors for 1999-2001.

Maloney takes office July 1, 1999 and will serve two years as one of 18 members of the Rotary International Board of Directors. The board develops policies and establishes priorities for the global network of 1.2 million volunteers.

Maloney is a member of the firm of Blackburn, Maloney & Schuppert, LLC. He graduated from Harvard College with a degree in history and received a Doctor of Jurisprudence degree from Vanderbilt University and a Master of Laws degree in taxation from New York University.

A Rotarian since 1980, he is a past president of the Rotary Club of Decatur and served as district governor in 1989-90. He has received numerous awards and honors as a Rotarian.

Maloney's wife, **Gay**, is also an Alabama attorney and Rotarian. She is president of the Rotary Club of Decatur Daybreak, Alabama and will serve as an assistant district governor in 1998-99. ■

*Correction:* In the last issue of *The Alabama Lawyer*, it was incorrectly reported that Gregory S. Cusimano of Gadsden was *of counsel* to the firm of Floyd, Keener, Cusimano & Roberts P.C. and that William D. Scruggs of Fort Payne was *of counsel* to the firm of Scruggs, Jordan & Dodd P.A.

It should have read that Mr. Cusimano is a partner with the firm of Cusimano, Keener, Roberts & Kimberley P.C., and that Mr. Scruggs is the senior partner with Scruggs, Jordan, Dodd, Dodd & Thompson P.A. The editors apologize for these errors and any inconvenience they have caused.

## Helping Your Business Is Avis' Business.

Here's a business proposition from Avis because you're a member of **Alabama State Bar**. We'll give you very special discounts at participating Avis locations. For example, you are eligible for **20% off** our Avis Association Select Daily rates and **5% off** promotional rates.

And you can expect the most professional service in the industry. Because Avis cars come with Avis people, and trying harder is what they do best. So make it your business to take advantage of all the member benefits that Avis has waiting for you. Just show your Avis Member Savings Card or Association Membership ID card at time of rental. For more information or reservations, call Avis at **1-800-698-5685**. And be sure to mention your Avis Worldwide Discount (AWD) number: **A530100**.

### 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.

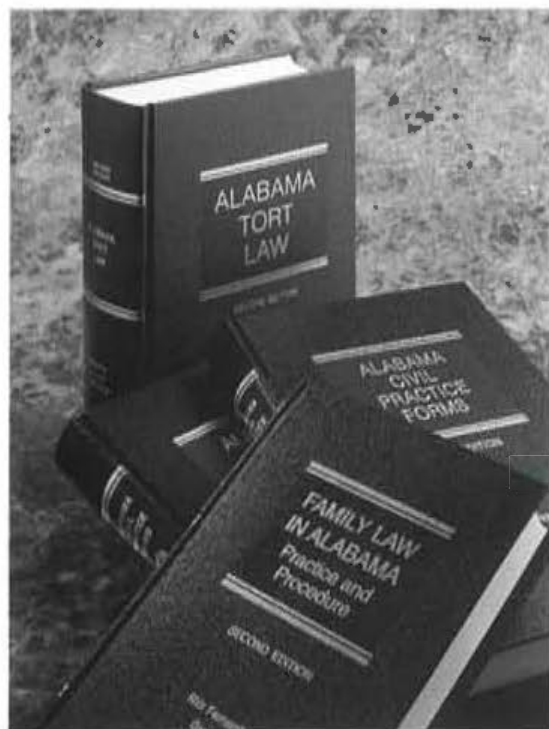
**An advance reservation is required.** May not be used in conjunction with any other coupon, promotion or special offer. Coupon valid at Avis corporate and participating licensee locations in the contiguous United States. Offer may not be available during holiday and other blackout periods. Offer may not be available on all rates at all times. Cars subject to availability. Taxes, local government surcharges, and optional items, such as LOW, 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 12/31/98.

#### Rental Sales Agent Instructions. At Checkout:

- In AWD, enter **A530100**. • In CPN, enter **MUGK720**.
- Complete this information:  
RA# \_\_\_\_\_ Rental Location \_\_\_\_\_
- Attach to COUPON tape.







## CORNERSTONES OF

# ALABAMA General Practice

**Special Cornerstones  
Series Price \$280\***

**Save 20% Off  
the Original Cover Price!**

**LEXIS®**  
LAW PUBLISHING



**ORDER TODAY AND EXAMINE FOR 45  
DAYS WITHOUT RISK OR OBLIGATION!**

**800/562-1215**

[www.lexislawpublishing.com](http://www.lexislawpublishing.com)

Please use code 2AP when ordering

©1998, LEXIS® Law Publishing, a division of Reed  
Elsevier Inc. All rights reserved.

\*Plus sales tax, shipping and handling where applicable.

Special Library from the Publishers of  
*Michie's™* Alabama Code

## A money-saving set of comprehensive practice resources

### Alabama Civil Practice Forms, Third Edition

*Allen Windsor Howell*

You'll have ready access to more than 400 up-to-date forms, covering a broad array of Alabama civil matters. **Alabama Civil Practice Forms** provides not only the most common forms, but also many that cannot be found in other sources. The forms include variations and optional alternate language for tailoring forms to client needs. This comprehensive practice tool is keyed to the *Michie's™* Code of Alabama, and also contains case citations and helpful law notes to guide you in further research.

2 volumes, hardbound, ©1997

**Stand-alone Price \$160\*** 63010-11

### Alabama Tort Law, Second Edition

*Michael L. Roberts and Gregory S. Cusimano*

This is the only true, comprehensive resource on tort law in Alabama. Includes detailed, up-to-date analyses of Alabama statutes and case holdings, and provides a thorough discussion of evidentiary issues. You'll have at your fingertips the information you need to determine if there is a case . . . and you'll be directed to the sources of authority needed to win it. Organized according to specific torts, areas of torts, and damages, **Alabama Tort Law** provides an easy reference source for active practitioners and includes the latest developments in Alabama tort law.

1601 pages, hardbound, with current supplement, ©1996

**Stand-alone Price \$105\*** 66645-11

### Family Law in Alabama: Practice and Procedure, Second Edition

*Rick Fernambucq and Gary Pate*

You can turn to this manual for current domestic relations case law in Alabama and the most recent legislative amendments, as well as for the comprehensive authoritative analysis you need to prepare your case with confidence. **Family Law in Alabama** assembles a wide variety of tools for use in everyday family practice; statutes, case law, forms, and guidance on every aspect of handling the case. In addition, you'll have ready access to insightful commentary and practical recommendations for dealing with clients in crisis.

650 pages, hardbound, with table supplement, ©1996

**Stand-alone Price \$85\*** 61916-11

Visit  
Our Booth  
at the Annual  
Bar Meeting  
July 9-11!





## MEMORIALS

### Judge David Lee Rosenau, Jr.

Whereas, David Lee Rosenau, Jr. was born on April 2, 1903 in Athens, Alabama. He graduated from Green University in Athens. He then attended Yale University at age 15 and upon graduating, was accepted to the Stanford School of Law at age 19. After receiving his law degree in 1924, he went to work in the legal department of Alabama Power Company in Birmingham. He moved back to Athens in 1925 and opened a law office. During this time, he also worked as a legal correspondent for area newspapers.

In 1937 he was appointed by Governor Bibb Graves to fill a vacancy in the Limestone County Court. That began his 44-year career in the judicial system, one of the longest legal careers in the State of Alabama. In 1954 and again in 1958, he was appointed as one of four American delegates to travel to the International Congress of Juvenile Court Judges in Brussels, Belgium. After retiring from the Limestone County Court, he was appointed by the Alabama Supreme Court as a special supernumerary judge who heard court cases throughout the state.

He began teaching business law classes at Athens State College around 1955 and continued until the late 1960s. During this time, he was awarded many fellowships to universities throughout the country.

He was a life-long member of the First United Methodist Church of Athens, past member of the Lions Club and a member of the Alabama State Bar.

Judge Rosenau died on Friday, March

13, 1998, at Athens-Limestone Hospital after a lengthy illness. The service was held at the First United Methodist Church in Athens on Sunday, March 15, 1998, conducted by Dr. Steve Screws and Dr. Curtis Coleman.

Judge Rosenau is survived by his wife, Jewell Hertzler Rosenau; two daughters, Joy Rosenau Graham of Athens, Alabama and Jill Rosenau Hicks of Tuscaloosa, Alabama; two granddaughters, Katharyn Graham of Chapel Hill, North Carolina, and Jobi Hicks of Dallas, Texas; two grandsons, William Rosenau Graham of Newport, RI, and John Jay Hicks of Tuscaloosa, Alabama; one sister, Margaret Rosenau Wilson of Athens, Alabama; and several nephews and one niece.

— Donald B. Mansell  
President, Limestone County Bar Association

### John Forrest Dillon, IV

Whereas, John Forrest Dillon, IV, of Alexander City, Alabama was a member of the Tallapoosa County Bar Association and the Alabama State Bar at the time of his death on May 22, 1998 at the age of 67.

Whereas, John Forrest Dillon, IV was born November 15, 1930 in Alexander City, Alabama, and attended school in Montgomery, Alabama; he received a Bachelor of Science degree from the University of Alabama in 1953 and attended the University of Alabama School of Law where he served as associate editor of the *Alabama Law Review*. Dillon graduated from the University of Alabama School of Law in 1954, obtain-

ing an L.L.B.

Whereas, John Forrest Dillon, IV served in the Army from 1954 to 1957, obtaining the rank of 1st lieutenant. His military service included a tour of duty in Korea.

Whereas, John Forrest Dillon, IV became a partner in the firm of Wilbanks, Wilbanks, & Dillon in 1958. He was the senior partner of Dillon, Kelley & Brown from 1970 until 1992, when he joined the firm of Morris, Haynes, Ingram & Hornsby and served as *of counsel*.

Whereas, John Forrest Dillon, IV served as attorney for the City of Alexander from 1972 until 1997, for the Alexander City Board of Education from 1972 until 1996 and for the Tallapoosa County Board of Education from 1958 until 1997. He also served as attorney for the Central of Georgia Railroad and Norfolk-Southern Railroad practicing throughout Alabama, as well as before the Interstate Commerce Commission and the Public Service commissions in Alabama and Georgia.

Whereas, John Forrest Dillon, IV served as president of the Tallapoosa County Bar Association from 1970 until 1987, at which time he additionally served as a member of the Alabama State Bar Board of Bar Commissioners. He was a former president of Kiwanis Club and Willow Point Golf and Country Club, as well as a former director of the Alexander City Chamber of Commerce. He was also past senior warden of the Saint James Episcopal Church and former member of the Board of Directors of the SouthTrust





Bank of Central Alabama.

Whereas, John Forrest Dillon, IV was survived by his wife, Robbie G. Dillon; and daughter and son-in-law Breck and Joe Wheeler; a stepson, Andy Gothard; and stepdaughter, Honey Haynes; a brother, William Dillon; a sister, Virginia D. Gorman; and five grandchildren, John Wheeler, Sam Wheeler, Harris Haynes, Hannah Haynes, and Hamp Haynes.

— Tom F. Young, Jr.  
President, Tallapoosa County Bar  
Association

### J. Connor Owens, Jr.

Whereas, J. Connor Owens, Jr. was born in Roanoke, Alabama on December 30, 1923 and departed this life while residing in Bay Minette, Alabama, on March 13, 1998.

Whereas, prior to beginning his post-secondary education, Connor volunteered for the Army following the outbreak of World War II and distinguished himself in the European theater, earning a Purple Heart and Silver Star for gallantry in action.

Whereas, he attended Clemson University, received his undergraduate degree in the study of history and English at the University of Georgia in 1947, and attained his law degree from the University of Georgia in 1950, while also teaching undergraduate English at that institution.

Whereas, following his admission to both the Georgia State Bar and the Alabama State Bar, he set up practice in Bay Minette, Alabama in 1952, and became involved in the work of the Baldwin County Bar Association, serving as its president from 1972 until 1976.

Whereas, Connor was truly devoted to his profession and gave himself to it, and was recognized as a prominent civil defense lawyer, who served on the Board of Directors of the Alabama Defense Lawyers Association from 1966 until 1969.

Whereas, Connor was always willing to lend advice to younger lawyers regarding problems they were facing in the course of their profession.

Whereas, Connor trod with much success before judges and juries throughout south Alabama where his presence will be greatly missed.

Whereas, Connor was known, not only for his intelligence, but for his compassion, often willing to take up the cause of a poor citizen wronged with no expectation of being paid a fee.

Whereas, he had the panache and learning to appropriately quote Shakespeare in his briefs to support his positions, as well as reasoned argument and case citation.

Whereas, Connor was instrumental in forming important institutions within his community, having participated in conceiving the idea for and organizing the First National Bank of Bay Minette, as well as the Bay Minette Country Club.

Whereas, Connor was a devoted husband and father.

Whereas, Connor was an officer in the First United Methodist Church of Bay Minette and taught Sunday School there.

Whereas, Connor's life and career set a worthy example for his entire profession and is one that will long be remembered by the Baldwin County Bar.

Whereas, this brief recitation of a few salient facts about Connor's life presents a pale and indistinct image of the well lived and full life of Connor Owens, a life that touched and improved his community and the lives of many others.

Whereas, the members of the Baldwin County Bar Association express our deep regard and sense of loss at the passing of Connor from this honorable profession.

Be it resolved that this resolution be spread upon the minutes of the Association and that copies be forwarded to his wife, Anne Owens, and to his four children, Margaret Simpson, James Connor Owens, III, Leila Morris, and Elizabeth Frost.

— David A. Simon  
President, Baldwin County Bar  
Association

### Norman West Harris

Norman West Harris of Decatur, Alabama, one of the leading lawyers

of this state, died on May 27, 1998. He was born in Decatur on June 12, 1907 and lived all of his life in that city. His father, A.J. Harris, was a distinguished lawyer, as was his grandfather, C.C. Harris who, in 1872, moved from Moulton and began his law practice in Decatur. His mother, Edith West Harris, was the daughter of Reverend Anson West who was a renowned bishop in the Methodist Church. He was preceded in death by his brother, Julian Harris, who, like him, for over a half century was a giant of the legal profession in this state.

Harris graduated from high school in Decatur in 1923. In the fall of that year he entered Alabama Polytechnic Institute (now Auburn University) and received a B.S. degree in electrical engineering in 1927. After graduation he worked for Brooklyn Edison Company in Brooklyn, New York for 11 months. He quickly realized that the law had a higher claim on his talents. At the suggestion of his father, he entered the law school of the University of Virginia in the spring of 1928. In the spring of 1931 he received a law degree and entered law practice with his father, A.J. Harris, and his brother, Julian Harris. After their father's death in 1935, he and his brother formed a partnership, Harris & Harris, a firm that was universally recognized throughout north Alabama for its integrity and surpassing legal skill. In 1989 Harris & Harris merged with Caddell & Shanks and became Harris, Caddell & Shanks, P.C. He continued as a member of that firm until his retirement on October 1, 1992.

Harris was skilled not only as a practicing lawyer, he was distinguished as well in public service. He served in the legislature of Alabama for 12 years, one term in the Senate and two terms in the House of Representatives. He was a life-long member of the First United Methodist Church where he had served on the board of stewards, including several years as its chairman. Governor Dixon appointed him as a special justice of the Supreme Court of Alabama to sit with the six active justices in the case of *Fleetwood Rice vs. Tuscaloosa County*





because the six were tied and it was necessary to break the tie.

In the trial of a lawsuit Norman Harris was a fierce advocate and a feared adversary. He neither asked nor gave quarter in pursuing or protecting his clients' interests. In every matter Harris was always the perfect gentleman. He displayed in every way the highest and most noble standards of ethical conduct. His rate of success in litigation was remarkable. His life and service made a lasting impression for good upon the administration of justice in this state.

He has left for all of us who claim the name of "lawyer" a perfect example of noble and devoted service to the "Jealous Mistress."

— John A. Cadell  
Decatur, Alabama



*Charles Reeder*

## Charles Reeder

Whereas, Charles Reeder, a long-standing member of the Mobile Bar Association, died on February 6, 1998, after a courageous battle to recover from a debilitating stroke. Charles was a man of many talents, a restless intellect, learned of the law, a gifted teacher, ardent supporter of many cultural and civic causes, skilled photographer and poet, and perhaps above all, a person truly loved and

admired by many hundreds of men and women, boys and girls, whose lives he had touched and enriched.

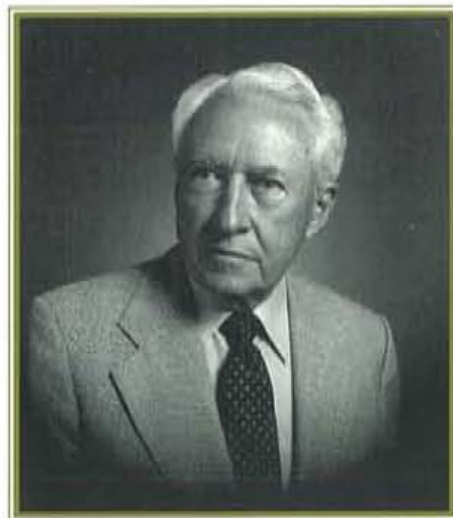
Reared in Montgomery, with an early career in journalism, Charles served in the U.S. Army Air Corps as a meteorologist during World War II. He subsequently graduated from Jones Law School and obtained his license to practice law. A resident of Mobile since 1965, he regularly participated in the activities of this association and of the state bar, including CLE, until his death, even though he chose not to engage actively in the practice of law.

The principal interest of Charles was as an educator. A renowned mathematician, he chose private tutoring as his special forte. Over many years he literally tutored two, and sometimes three, generations of hundreds of Mobile families through the intricacies of algebra, geometry, trigonometry and calculus at both high school and college levels, and became the admired, respected and loved friend of children and parents alike.

For many years Charles also served Spring Hill College as an expert fundraiser and student recruiter. A life-long Episcopalian, he was an active member of St. John's Episcopal Church while in Mobile. He is survived by many nieces, nephews, grandnieces and grandnephews and numerous other devoted relatives who live in Mobile, Montgomery and other cities.

Now, therefore, be it resolved by the Mobile Bar Association, in meeting assembled this day, that the members mourn the death of Charles Reeder, whose exemplary life of service to others has been an inspiration to all who knew him; and whose diverse talents and warm friendship and understanding have enriched the lives of all the members of this Association who have been privileged to know him, as well as the lives of many of their children and grandchildren; and whose career has done honor to his chosen profession.

— Stova McFadden  
President, Mobile Bar Association



*Charles Albert Lesesne Johnstone, Jr.*

## Charles Albert Lesesne Johnstone, Jr.

Whereas, Charles Albert Lesesne Johnstone, Jr., a distinguished and highly respected member of the Mobile Bar Association, departed this life on March 3, 1998, at the age of 87 years; and

Whereas, the Mobile Bar Association desires to honor his name and recognize his many contributions to the legal profession, City of Mobile and State of Alabama;

Now, therefore, be it remembered that Charles Albert Lesesne Johnstone, Jr. was born on December 3, 1910, in Mobile, the son of Charles Albert Lesesne Johnstone and Virginia Inge Johnstone. Charlie Johnstone grew up on Government Street a few blocks west of Broad Street. He graduated from Murphy High School in 1927, and went on to the University of Alabama receiving his A.B. degree in 1932 and achieved membership in Phi Beta Kappa. In 1934, he earned his L.L.B. degree from the school of law.

In 1937, Charlie Johnstone left his individual law practice to join the firm of Stevens, McCorvey, McLeod, Goode & Turner. That same year, Mr. Tom Stevens left the firm to become vice-president and general counsel of the Waterman Steamship Company,





and Charlie was fond of saying he took Mr. Steven's place. The year 1940 was not a good one on the world scene, but it marked a high point in Charlie Johnstone's life because on October 12th of that year, he married the lovely and gracious Olivia Mayton of Mobile, who survives him.

During World War II, Charlie Johnstone entered the United States Army and served as a captain in the legal division of the Office of the Chief of Engineers from 1942 to 1945 in Washington, D.C. and was discharged with the rank of major. He then returned to his law firm and went on to serve for many years as senior partner of that firm, now Johnstone, Adams, Bailey, Gordon & Harris, L.L.C.

Charlie Johnstone was a learned practitioner of the law. When a young lawyer joined his firm, the young lawyer was told by contemporaries not to worry if he or she could not find the answer when assigned a legal research project by Mr. Johnstone. If he ever asked for research, one could be assured that there was not an answer because he would have known it. He also had a good grasp of the practicalities of law practice, counseling young lawyers that if it looks like the judge is leaning your way, get out of the courtroom as fast as you can.

In a major lawsuit in the circuit courts of Conecuh and Monroe counties, he was successful in quieting title to some 40,000 mineral acres. The bill in equity in that case was tried before the Honorable Robert E. L. Key in Evergreen. At the conclusion of the trial which lasted a number of days, Judge Key stated from the bench, "Mr. Johnstone, that is the way a bill in equity should be presented to the court; we should wrap it up and send it to the law school."

A considerable portion of Charlie Johnstone's practice related to probate matters, and early in his legal career, Charlie, Ralph Holberg, Jr. and another contemporary spent two or three evenings a week for a period of one to two years assisting the chief clerk, Miss Edith Vaughan, in drafting court orders which were used by the court for a

number of years. Miss Edith carefully reviewed pleadings and proposed court orders filed by lawyers in the court with a fine-tooth comb and would frequently send such pleadings and proposed orders back to members of the bar marked in red ink with instructions for redrafting. But Miss Edith stated that she never had to send a pleading or proposed court order back to Charlie Johnstone because whatever he drafted was always in perfect form.

Charlie Johnstone was very organized and used his time at work to the fullest; he was not given to taking coffee breaks. However, it was rare indeed that he did not leave the office at 11:30 a.m. sharp on Wednesdays for his golf game—rain or shine. If it was raining as he left the office, he would tell the receptionist it never rains on the golf course.

Charlie Johnstone served as president of this association in 1956 and was a member of the Alabama State Bar and American Bar Association and the Farrah Law Society. He served as a director of the Merchants National Bank of Mobile and was active in many of the city's business, civic and cultural organizations.

Charlie Johnstone was admitted to practice before the Alabama and United States supreme courts, the U.S. Tax Court, the U.S. Court of Claims, the U.S. courts of appeals for the Fifth and Eleventh circuits and the United States District courts of the Southern and Northern divisions of Alabama and the Eastern District of Texas.

Charlie Johnstone and his long-time friend and partner, Bob Adams, were honored by their firm with the establishment of the Johnstone Adams Scholarship at the University of Alabama School of Law and the dedication of the room at the Alabama State Bar housing the staff of *The Alabama Lawyer* as the Johnstone Adams Room.

In every respect, Charlie Johnstone was a lawyer's lawyer and a gentleman's gentleman. In addition to Mrs. Johnstone, he is survived by his daughter, Virginia Inge Johnstone Smith; son-in-law, Frederic Lee Smith; and grand-

sons, Frederic Lee Smith, Jr. and Charles Lesesne Johnstone Smith.

— Stova F. McFadden  
President, Mobile Bar Association

## William Michael Clarke

Whereas, the Mobile Bar Association to honors the memory of William Michael Clarke, a practicing attorney in Mobile for more than 47 years, from 1950 until his death on January 15, 1998.

Now, therefore, be it remembered that William Michael 'Billy' Clarke was born in Mobile, Alabama on January 19, 1923. He attended Catholic schools in Mobile, including St. Patrick's School in "the Grove" and McGill Institute, then located at the northwest corner of Government and Joachim streets. The excellent faculty at McGill was comprised of members of the order of Brothers of the Sacred Heart.

Billy Clarke grew up in "the Grove" and attended St. Patrick's Church there. "The Grove" is the area of the City of Mobile near Beauregard and St. Joseph streets (now part of the Henry Aaron Loop). Throughout his life Billy Clarke spoke highly of the area and all of the people and friends who lived and grew up there, including the Reverend Oscar H. Lipscomb, now Archbishop of Mobile.

After graduating from McGill Institute, Billy Clarke served in the United States Marine Corps during World War II, from 1942 until 1946, based in the Panama Canal Zone.

After serving his country, he entered the University of Alabama where he received his undergraduate degree. He was admitted to law school at the University of Alabama and received his law degree there in 1950.

He began the practice of law under the tutelage and in the office of Graham A. Sullivan, one of Mobile's most beloved attorneys. Their offices were in the Van Antwerp Building on the corner of Royal and Dauphin streets. During this time Billy Clarke also was employed part-time at Brookley Air Force Base, the largest employer of the City of Mobile at that time. He lived in the area of "Birdville"





(the home in Birdville having been built as a "Defense Housing Project" for employees and service people at Brookley Air Force Base). While he worked on Brookley, Billy Clarke "discovered" a relatively new field of law, that is, Chapter 13 of the Bankruptcy Act. Many employees at Brookley, because they were not able to pay their debts and were about to lose their jobs, came to Billy Clarke to get relief. Billy Clarke found a way for his clients to pay their just debts with dignity, without fear of harassment, late night phone calls, suits, garnishments, and loss of their jobs. As a result, Billy Clarke established a highly successful practice in handling Chapter 13 petitions in bankruptcy. He became recognized as the "father" of the Chapter 13 practice in Mobile, and he held that reputation until he died.

While he practiced with the Honorable Graham A. Sullivan, Billy was almost another member of Mr. Sullivan's family. Graham Sullivan's son, James Sullivan, recalls fondly that when he expressed a desire to participate in sporting events and fishing, "Mr. Clarke took me to my first college football game at Ladd

Stadium at the request of my father, and on many occasions took me crabbing on the Causeway when crabs were plentiful."

Furthermore, James Sullivan remembers Billy Clarke as being "fiercely loyal to his friends and quite influential in judicial appointments."

During the late 1950s Billy Clarke became very active in state politics. He was one of the strongest supporters of the Honorable John Patterson when Patterson ran against, and defeated, the Honorable George Wallace for Governor. Billy had been a classmate of his friend, John Patterson, at law school.

Billy Clarke later entered into a law partnership with Mobile attorneys Tom Haas and Douglas Stanard, as Clarke, Haas & Stanard, until his partner, Douglas Stanard, was appointed to a circuit judgeship of Mobile County.

His longtime friend, Tom Haas, described Billy Clarke as a person with a "great sense of humor...He had a keen interest in 'The Grove' and in Mobile County Courthouse activities. He was able to tell many wonderful, colorful and oftentimes humorous tales about the members of the local bar, most of whom have now passed away. But Billy

Clarke persevered and worked right until the end."

Billy was particularly fond of telling stories about outstanding attorneys who practiced in Mobile, including the Honorable Sam Johnston, Sr. (grandfather of Mobile Circuit Judge Joseph E. "Rusty" Johnston), the Honorable Harry Seale, and the Honorable Tisdale J. Touart, longtime judge of the Inferior and General Sessions Court of Mobile County.

Not only was Billy Clarke a great storyteller, he in fact started a publication for the Mobile Bar Association, telling fascinating stories about the various members of the Mobile Bar.

He was a true, loyal friend whose legacy with the Mobile Bar should not be forgotten.

William Michael Clarke is survived by his children, Michelle Wells, Mobile; Charles E. Clarke, Irvington; Avril McRae, Mobile; William Michael Clarke, Jr., Pensacola, Florida; Fran Dounouk, Hartford, Connecticut; and Cathy Jones, Mobile; 19 grandchildren; and two great-grandchildren.

— Stova F. McFadden  
President, Mobile Bar Association

Gary Lynn Aldridge  
*Birmingham*  
Admitted: 1978  
Died: July 12, 1998

John F. Dillon, IV  
*Alexander City*  
Admitted: 1953  
Died: May 22, 1998

Woodford Wyndham Dinning  
*Demopolis*  
Admitted: 1941  
Died: May 1, 1998

Robert W. Gwin  
*Birmingham*  
Admitted: 1939  
Died: June 8, 1998

Norman West Harris  
*Decatur*  
Admitted: 1930  
Died: May 27, 1998

Walter Bruce Henley  
*Northport*  
Admitted: 1952  
Died: April 25, 1998

Jasper Newton Powell, Jr.  
*Hartselle*  
Admitted: 1961  
Died: June 6, 1998

Thomas F. Sweeney  
*Mobile*  
Admitted: 1945  
Died: June 8, 1998

Douglas Stanley Taylor  
*Montgomery*  
Admitted: 1988  
Died: May 20, 1998

Robert H. Woodrow, Jr.  
*Birmingham*  
Admitted: 1948  
Died: June 7, 1998



**CIVIL ACTIONS AT LAW, THIRD EDITION**  
by Grover S. McLeod

Manchester Press is pleased to announce that Grover S. McLeod has written a third edition of his best-selling lawbook, Civil Actions at Law in Alabama. In many ways, this book is monumental, as it is 872 pages in length and consists of 75 chapter topics, which are the heart of Alabama practice.

Chapter 1 - Actions at Law	Chapter 38 - Uninsured Motorist
Chapter 2 - Negligence	Chapter 39 - Actions Against Fiduciaries
Chapter 3 - Wantonness	Chapter 40 - Dangers Kept
Chapter 4 - Negligent Entrustment	Chapter 41 - Right to Work
Chapter 5 - Private Nuisance	Chapter 42 - Breach of Contract
Chapter 6 - Trespass	Chapter 43 - Implied Contracts
Chapter 7 - Assault and Battery	Chapter 44 - At-Will Employment Contracts
Chapter 8 - Damage to Trees or Plants	Chapter 45 - Account
Chapter 9 - False Imprisonment	Chapter 46 - Interference With Contracts
Chapter 10 - Water Rights Between Upper, Lower and Adjacent Owners	Chapter 47 - Slander of Title
Chapter 11 - Trover and Conversion	Chapter 48 - Felonies
Chapter 12 - Detinue	Chapter 49 - Interference With Dead Bodies
Chapter 13 - Ejectment	Chapter 50 - Actions by the Attorney for His Fee
Chapter 14 - Forcible Entry and Unlawful Detainer	Chapter 51 - Actions by Clients Against Attorneys at Law
Chapter 15 - Malicious Prosecution	Chapter 52 - Actions Against the State
Chapter 16 - Actionable Fraud	Chapter 53 - Actions Against Counties
Chapter 17 - Joint Tortfeasors	Chapter 54 - Actions Against Municipal Corporations
Chapter 18 - Extended Manufacturer's Liability Doctrine of Alabama	Chapter 55 - Medical Malpractice
Chapter 19 - Products	Chapter 56 - Actions Against Hospitals for Personal Injury
Chapter 20 - Collateral Source Rule as to Products	Chapter 57 - The Expert Medical Witness
Chapter 21 - Actions against Landlords by Tenants for Injuries or Damages	Chapter 58 - Bad Faith
Chapter 22 - Actions Against Landowners	Chapter 59 - Tort of Outrage
Chapter 23 - Actions for Wrongful Death	Chapter 60 - Wrongful Dismissal of a Civil Servant
Chapter 24 - Actions by a Parent for Injury or Death to an Infant	Chapter 61 - Abuse of Process
Chapter 25 - Torts Within and of the Family	Chapter 62 - Wrongful Garnishment
Chapter 26 - Actions That Arise out of, or are Exceptions to, the Workmen's Compensation Act	Chapter 63 - Breach of Express or Implied Warranties
Chapter 27 - Principal and Agent	Chapter 64 - The Relationship of Insurance to the Civil Action
Chapter 28 - Conspiracy	Chapter 65 - The Inadvertent Ending of the Action
Chapter 29 - Restraints Against Trade	Chapter 66 - Actions Against Administrators or Executors of Estates
Chapter 30 - Libel and Slander	Chapter 67 - Interference with an Expectancy
Chapter 31 - Alcohol and the Civil Action	Chapter 68 - Punitive Damages
Chapter 32 - Right to Privacy	Chapter 69 - Actions for Breach of Covenant of Quiet Enjoyment
Chapter 33 - Implied Warranty in the Sale of a New House	Chapter 70 - Actions Against General Contractors
Chapter 34 - Failure to Provide Service by a Public Utility	Chapter 71 - Actions Against Accountants
Chapter 35 - Truth-in-Lending	Chapter 72 - Sexual Harassment in the Work Place
Chapter 36 - Usury and Related Consumer Credit Incidents	Chapter 73 - Retaliatory Discharge
Chapter 37 - Actions Against Insurance Carriers for Failure to Settle Claims	Chapter 74 - Arbitration
	Chapter 75 - Actions Against Fellow Employees Involving Safety Work Rules and Safety Devices

To place your order, please mail this form to: Manchester Press, P.O. Box 550102, Birmingham, AL 35205, or call 205-933-1800. (E-mail: [msm1208@aol.com](mailto:msm1208@aol.com); Web: [www.worldreachinc.com/manchesterpress](http://www.worldreachinc.com/manchesterpress)).

Please send me \_\_\_\_ copy(ies) of Civil Actions at Law in Alabama, 3rd ed., by Grover S. McLeod.

( ) I have enclosed my check in the amount of \$108.00 (\$95.00 plus 8% tax plus shipping/handling charges) per book.

( ) Please charge \$108.00 to my Visa/MC account per book.

My account number is: \_\_\_\_\_ Exp. Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_



# BUILDING ALABAMA'S COURTHOUSES

By Samuel A. Rumore, Jr.

## Jefferson County

**T**he Family Court of Jefferson County is one of the few specialized courthouses in the state of Alabama. It also has a new facility. At its recent dedication and ribbon-cutting ceremony held on May 26, 1998, Judge Sandra Storm, presiding family court judge, declared that the facility was a "courthouse for kids." She also stated that good planning went into the courthouse design together with many innovations. Because of this forethought, the courthouse works well. It is no surprise that the experiences of many people over many years went into the planning of the family court facility.

In 1896, Judge N. B. Feagin, a Birmingham police court judge, began the first efforts in Birmingham to treat juveniles differently from adults. He began paroling young offenders to the Birmingham Boys Club. By 1911 the legislature had passed an act which set up a separate juvenile court in Jefferson County. The first session was held May 1, 1911 and Judge Samuel Murphy was appointed by Governor Emmett O'Neal as the first juvenile court judge of Jefferson County. Judge Murphy presided over the court for the next 28 years until his death on October 2, 1939.

The first court sessions were held in a downtown building on 3rd Avenue North between 20th and 21st streets, near the downtown courthouse. The court then rented and later purchased the Debardeleben home located at 206 15th Street South. Court was held here from 1913 to 1916. From 1916 to 1918, the Old Sanatorium located at 1st Avenue and 22nd Street South housed the court. Then from 1918 to 1926, the City of Birmingham allowed the court to use the Southside jail for its proceedings.

Judge Murphy and the Jefferson County

Commission recognized the need for a permanent location for the family court and made the decision to purchase the old Eubank property in the Elyton section of Birmingham for this purpose. Elyton had been the former county seat town of Jefferson County from 1821 to 1873. The new family court was built within two blocks of the location where the Elyton Courthouse had once stood.

In 1927, the juvenile courthouse and detention home, costing \$125,000, was completed at 120 2nd Court North. This building was constructed in the Georgian Revival style and was considered one of the best facilities of its kind in the South. The structure was later dedicated as the Samuel D. Murphy Memorial Building.

Following Judge Murphy's death, family court was presided over by judges Walter Emmett Perry, Sr., William L. Hogue and Talbot Ellis. Under Judge Ellis, work was begun on remodeling the main building and constructing a separate detention facility and shelter cottage. Judge Ellis died suddenly in May 1965 and he was succeeded by Judge G. Ross Bell on June 11, 1965.

Judge Bell carried on the efforts of expansion and renovation at family court. A new \$700,000 detention home on site was completed in December of 1966. In May 1967 the main court building was renovated. Evan M. Terry served as architect for this project and J. F. Holley Construction Company, Inc. was contractor.



*First Juvenile Court building on Southside, the Debardeleben Home*

## Jefferson County

*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.*



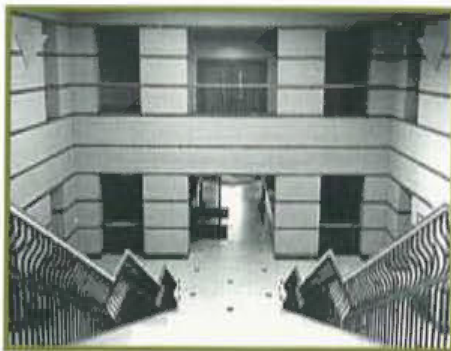


*Family Court of Jefferson County, 1950*

Also in 1967, an act approved by the legislature required the family court judge to be elected rather than appointed. The act elevated the position to that of a circuit judge. Judge Bell was elected as the first presiding circuit judge of the Family Court of Jefferson County. Ten years later, two new district judgeships were created. William G. Fowler became a district judge in the Birmingham division and Ralph D. Cook became a district judge in the Bessemer division.

In 1978, after 18 months of planning and construction, another change was made to the family court physical plant. New offices for juvenile intake and two juvenile courtrooms, presided over by trial referees, were completed. The new facilities were needed because in January 1977, the jurisdiction of all juvenile courts in the state of Alabama was raised to age 17. In January 1978, the

jurisdiction was expanded to age 18. Over the next few years, the appointment of new judges highlighted changes at family court. On June 20, 1980, Judge Sandra Ross became the district judge in the Birmingham division. On June 23, 1981, Judge Vincent Schilleci became the district judge in the Bessemer division. And on April 30, 1982, Judge Bell retired as circuit judge and was replaced by Judge Charles M. Nice. The most recent judicial personnel changes took place in November 1988



*Stairway and atrium, Family Court of Jefferson County*



*Judge Sandra Storm's courtroom*



*Family Court of Jefferson County, 1998*

when Judge Sandra Ross (now Storm) was elected presiding circuit judge and Judge Elise Barclay was elected district judge in the Birmingham division.

The next major improvement at family court was the construction of an 80-bed detention facility completed in 1990. This building was dedicated as the G. Ross Bell Youth Detention Center. The architect was Harmon Collier Associates, Inc. and the general contractor was Miree Construction Corporation.

Planning for the present family court facility began in the early 1990s. Court employees traveled around the country to study successful innovations in other jurisdictions. Construction began in 1995. More than \$13,000,000 was spent in renovations, expansion and landscaping.

The interior of the building blends marble, brick and custom woodwork. A two-story atrium with a magnificent staircase is the central feature of the renovated structure. The building is fully handicapped accessible. It contains a children's play area with a TV and VCR as well as a food court highlighted by skylights. There are a dozen glassed-in conference rooms, six courtrooms and a huge reception area.

The project was designed by Giattina Fisher Aycock Architects, Inc. Supervising architect was Jamie Aycock. Bill Harbert Construction Company served as general contractor. The new Jefferson County Family Court facility should serve the citizens, and especially the children, of Jefferson County well into the 21st Century.



*Ribbon-cutting ceremony—Tuesday, May 26, 1998*

#### **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 Migliorico & Rumore. Rumore serves as the bar commissioner for the 10th Circuit, place number four, and is a member of *The Alabama Lawyer* Editorial Board.







## OPINIONS OF THE GENERAL COUNSEL

By J. Anthony McLain, general counsel

### Corporate Representation— Parent Subsidiaries— Conflict of Interest



J. Anthony McLain

#### Question:

"By this letter, our firm requests a written opinion from the Alabama State Bar through its general counsel concerning the following question of conflict of interest in the context of corporation representation under the following facts:

"May a lawyer represent a wholly-owned subsidiary of a publicly traded parent company and then institute separate litigation against the parent company? For purposes of this question, the parent company and the wholly owned subsidiary are separate corporate entities. Further, what other facts or circumstances, if found to exist, would create a conflict of interest assuming that the separate corporate identities of these two corporate entities would normally, in and of itself, eliminate a conflict of interest under the general rule provided in Rule 1.7 of the Alabama Rules of Professional Conduct?

"Our firm would appreciate your written opinion in this regard and is awaiting that written opinion before making its decision to undertake representation of a prospective client in an action against the parent or holding company referred to above which is a separate corporate entity from the firm's existing corporate client ...."

#### Answer:

You may represent a wholly-owned subsidiary of a publicly traded corporation while, at the same time, instituting litigation against the parent company if the subsidiary and parent are separate corporate entities. You may represent both entities in unrelated litigation if both entities have separate corporate identities, there is no risk that confi-

dential information will be misused, and your representation of the subsidiary is not limited by your litigation involving the parent.

#### Discussion:

Rule 1.13 of the Alabama Rules of Professional Conduct recognizes that an organization client is a legal entity and thus, the entity is the client as opposed to its officers, directors, employees, shareholders, or other constituents. Consequently, the parent corporation, even when it owns 100 percent of the stock of the subsidiary, is still a shareholder and constituent of the subsidiary. See California State Bar Ethics Opinion 1989-113 (7/6/90).

The Disciplinary Commission of the Alabama State Bar reached a similar conclusion in RO-90-96 (incorporated and made a party of this opinion) when it held that a law firm may represent a plaintiff in a suit against an insurance company that is a subsidiary of a large corporation, even though the firm represented other subsidiaries of the corporation in unrelated litigation, if each subsidiary has its own corporate identity and there is no risk that the firm will misuse confidential information.

From a practical standpoint, the entity theory has more validity when applied to large publicly held corporations. Professor Wolfram addressed this point in his *Hornbook on Modern Legal Ethics*, as follows:

"The position of the Code and the Model Rules, that the lawyer represents only the corporate entity, makes sense primarily in the setting of large, publicly held corporations. As corporate stock ownership is concentrated in



fewer and fewer hands, the distinction between corporate entity and shareholders begins to blur. In the case of a sole-owner corporation, they may merge. Often a lawyer for such a partnership corporation will provide personal legal services for corporate principals interchangeably with services to the corporate entity. In recognition of that common reality, one court has held that for conflict of interest purposes, a small and closely held corporation and its shareholders are to be treated as virtually identical and inseparable." Wolfram, *Modern Legal Ethics*, West Publishing (1986) p. 422, citing *In re Brownstein*, 602 P.2d 655, 656-657.

Thus, a lawyer may represent a client in an action against a corporation that is a wholly-owned subsidiary of an existing corporate client so long as the parent corporation is not the alter ego of the subsidiary. See also Maryland State Bar Ethics Opinion 87-19. [RO-92-20] ■

## For an Expert Business Appraisal, Knowledge and Experience Make the Difference . . .

Russell Financial Consulting, Inc. is an independent certified professional firm specializing in business appraisals. Deirdre Russell, owner, has the experience and recognized industry credentials that provide the highest quality, expert valuations for businesses and professional practices. Her affiliation with the American Business Appraisers Network, a national coalition of independent business appraisers, expands her resources to offer a wide range of business appraisal services.

### VALUATION SERVICE USES:

- LITIGATION SUPPORT SERVICES
- ESTATE PLANNING
- MERGERS AND ACQUISITIONS
- EMPLOYEE STOCK OWNERSHIP PLANS
- INVESTMENT AND FINANCING DECISIONS



Deirdre (Dee) Y. Russell,  
CFA, JD

## RUSSELL FINANCIAL CONSULTING, INC.

POST OFFICE BOX 241672 • MONTGOMERY, ALABAMA 36124-1672

TELEPHONE 334-613-6044 • FAX 334-613-6029

Member American Business Appraisers National Network • ABA Offices Near Principal US Cities

## On The Stand, Experience Counts...

*Smiley-Smith & Bright has the Experience you can Count On.*

### Experienced In:

- Forensic Accounting
- Expert Witness Testimony
- Litigation Support Services

### Served As Expert Witness In:

- Quantification of Economic Capacity Loss
- Analyses of Fraud Claims in Consumer Financing Transactions

- Damage Quantifications in Automotive Dealership Disputes
- Fraud Auditing and Analysis in Business Transactions
- Analyses of Damages in Breach of Contract/Fraud Claims
- Analyses of Claims Re: Lost Profits/Lost Business Opportunity

**Smiley-Smith  
& Bright**

CERTIFIED PUBLIC ACCOUNTANTS

Yvette  
Smiley-Smith  
CPA

Nancy B. Bright  
CPA

575 SOUTH LAWRENCE STREET • MONTGOMERY, AL 36104 • OFFICE: (334) 263-9030 • FAX: (334) 263-9080





## LEGISLATIVE WRAP-UP

By Robert L. McCurley, Jr.

### Business Entities

In the last four years the number of business entities available throughout the United States has greatly expanded and virtually all of the existing entities have been revised. The model acts were drafted by the Business Section of the American Bar Association and the uniform acts are proposed by the Commission on Uniform State Laws. In each case, committees of the Alabama Law Institute reviewed these drafts. After several years' study in each case the Institute committees made changes to conform the new laws with existing Alabama law. Alabama has kept pace with the rest of the nation and in some cases been out front in providing a range of business entities available for use by lawyers as they assist clients.

The Business Corporation Act was revised and became effective in Alabama January 1995. Alabama approved a new general partnership law that became effective in 1997 as well as a limited liability partnership law that was effective the same year. The Limited Partnership Act was revised and it will become effective October 1, 1998.

In 1994, Alabama created the authority for limited liability companies in Alabama and it was revised to meet conformity with other states. The amended LLC law became effective in January 1998. Also revised in Alabama was the Professional Corporation law in 1984 when at the same time it abolished any further forming of professional associations.

The Alabama Nonprofit Business law was revised in 1985 and a new Unincorporated Nonprofit Act became available in 1996.

With eight choices of business entities now available in Alabama, the Institute is looking into areas each has in common with the others. We hope a lawyer will not be caught in a trap of having to distinguish not only between the different benefits each entity offers but needing to know how each differs in technical procedures.

Since November of 1997 a committee of the Institute chaired by James Pruett, a Gadsden attorney, with the committee's chief reporter, Howard Walthall, professor of law at Cumberland, has been reviewing areas of law that are in common to determine uniformity among the various acts. Also,

members of this committee are:

Professor James Bryce, University of Alabama School of Law  
Larry B. Childs, Birmingham  
James R. Clifton, Andalusia  
C. Fred Daniels, Birmingham  
Robert Denniston, Mobile  
Peck Fox, Montgomery  
James F. Hughey, Jr., Birmingham  
Greg Leatherbury, Jr., Foley  
Mark Maloney, Decatur  
Tommy Mancuso, Montgomery  
George Maynard, Birmingham  
E.B. Peebles, Mobile  
James Pruett, Gadsden  
Don Siegal, Birmingham  
Henry Simpson, Birmingham  
Bradley Sklar, Birmingham  
Robert Walthall, Birmingham

Areas that have been identified are:

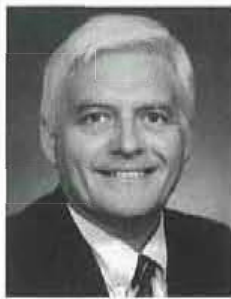
- (1) Mergers and conversions—Robert Walthall of Bradley, Arant, Rose & White has led the review of this section;
- (2) Definitions—Professor Howard Walthall is comparing the definitions in all the statutes;
- (3) Formations and filing requirements—This study is being led by Mark Maloney of Blackburn, Maloney & Schuppert;
- (4) Foreign qualifications study led by Brad Sklar of Sirote & Permutt; and
- (5) Dissolution and disassociation is being reviewed by Rick Clifton of Albrittons, Givhan, Clifton & Alverson.

Other areas yet to be reviewed are certificates of good standing, fees and purpose. It is expected that as an area under review is completed a bill will be presented to the Legislature so that each can be considered by the Legislature as quickly as possible. The entire study may take several years.

If anyone has a business entity area that you would like for the committee to consider, please direct your concerns to any member of the committee or to the Institute office.

### Institute Annual Meeting

The Annual Meeting of the Alabama Law Institute was held Thursday, July 9, 1998 during the Alabama State Bar Meeting. The following persons were re-elected: President—James M. Campbell of Anniston; Vice-President—Demetrius C. Newton of Birmingham; Executive Committee Members: Senator Roger H. Bedford, Jr. of Russellville; George E. Maynard of Birmingham; Oakley W. Melton of Montgomery; Yetta G. Samford of Opelika; Richard S. Manley of Demopolis; Senator Wendell Mitchell of Montgomery; Senator Steve Windom of Mobile; and Representative Mark Gaines of Birmingham.



**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.



### Legislators Recognized

At the Annual Bench and Bar Luncheon, legislators were recognized for their leadership in passing comprehensive legislation of interests to lawyers.

Sponsors of the Limited Partnership Act:

Representative Mark Gaines

Senator Ted Little

Senator Roger Bedford

Sponsors of the Limited Liability Company Amendments:

Representative Mark Gaines

Senator Steve Windom

Sponsors of the Legal Separation Act:

Representative Marcel Black

Representative Mike Rogers

Senator Roger Smitherman

Senator Sundra Escott-Russell

Senator Roger Bedford

Senator Roy Smith

Senator Ted Little

### Laws Being Studied by Institute Committees:

The Uniform Child Custody Enforcement Act, chaired by Gordon Bailey of Anniston with Penny Davis as reporter; Uniform Management of Public Employee Retirement Systems Act, chaired by Kyle Johnson of Montgomery with Professor Jim Bryce as reporter; Uniform Principal and Income Act, chaired by Leonard Wertheimer of Birmingham with reporter Professor Tom Jones; the ongoing review of Criminal Procedure Law is chaired by Billy Burney of Decatur with the committee's reporter Bob McCurley.

For more information about 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; Institute homepage: [www.law.ua.edu/ali](http://www.law.ua.edu/ali).

## We'd like to announce that **AMICUS** has changed its name. And nothing else.

Birmingham's premier source for legal staffing is now Special Counsel. And although we may answer the phone a little differently these days, nothing else has really changed.

We still have the same experienced legal staffing consultants you've worked with in the past – and we still offer the finest attorneys, paralegals, and support staff in the region.

So call us at the same number you always have – (205) 870-3330. We may have changed our name to Special Counsel, but we're still the first name in legal staffing.

### Special Counsel®

ATTORNEYS • PARALEGALS • SUPPORT STAFF

Suite 210 • 2340 Woodcrest Pl., Birmingham, AL 35209

(205) 870-3330; Fax (205) 870-3337

Offices Nationally & Internationally • (800) 737-3436

[www.specialcounsel.com](http://www.specialcounsel.com) • An enterprise of AccuStaff Incorporated

The NATION'S LEADER in Legal Staffing

## 1999 Joint Meeting of the Federal and State Bench and Bar

The Alabama Judicial College, a division of the Administrative Office of Courts, is joining with the Alabama State Bar Bench and Bar Task Force again this year to sponsor the 1999 Joint Meeting of the Bench and Bar on January 21, 1999 at Embassy Suites in Montgomery. They will also be joined by members and guests of the State/Federal Council.



Registration begins at 8 a.m., with training sessions of interest to federal and state judges and attorneys practicing in these courtrooms to follow. The registration fee of \$55 includes a luncheon at noon and a reception at the hotel following the conclusion of the program.

Additional information on the specific training sessions and the registration form will be in upcoming issues of *The Alabama Lawyer* and the *ADDENDUM*.

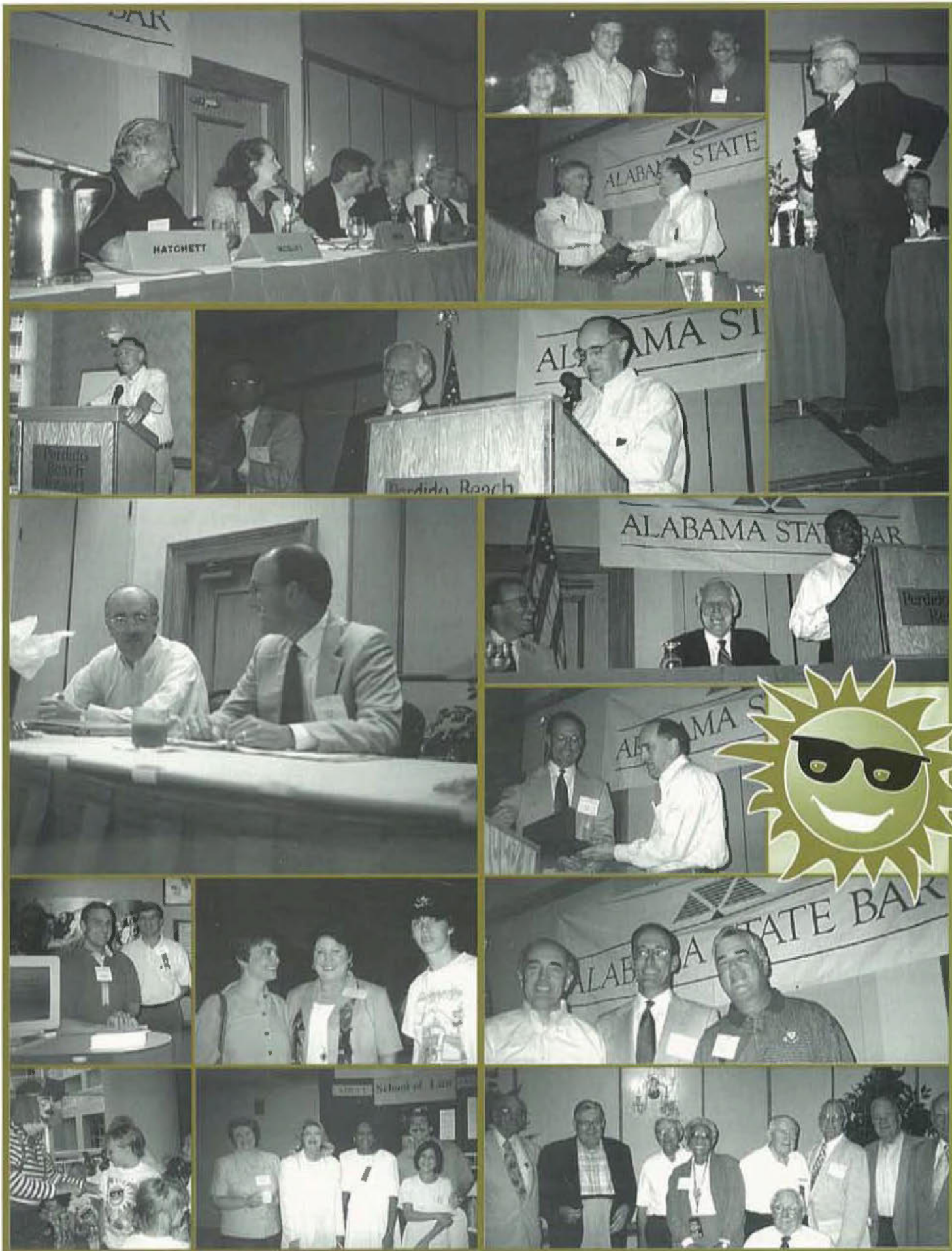


1998 ALABAMA STATE BAR  
**ANNUAL MEETING**

**HIGH-  
LIGHTS...**









# Drinking and Driving In Alabama:

## *The Facts, the Laws and Possible Solutions*

By T. Brad Bishop

### Introduction

*I turned twenty-one in prison doing life without parole  
No one could steer me right but Mama tried  
Mama tried to raise me better but her pleading I denied  
Now there's only me to blame because Mama tried*

### *The Grateful Dead*

Willie C. Mosely never had a driver's license, but he did plenty of driving—and drinking. A second conviction for DUI murder has put the 60-year-old Alabamian in prison with a 45-year sentence. His latest victims were a motorcycle driver and passenger. His first were a mother and two children. During a recent interview at the state prison in Atmore, Mosely attempted to explain why he drove drunk.

Most of the time when you drink, you ain't hardly satsfied, and you'll be wanting to go somewhere and do something when you ain't got no business doing it. At the time, you don't be thinking because you just say I'll run right over here and run right back and ain't nothing going to happen. But it really just don't pay to go.<sup>1</sup>

Although Mosely may regret drinking and driving, he cost several people their lives and must spend the rest of his own in prison. Ironically, Mosely's mother was strict about alcohol and never allowed it in her house. His victims would be alive

today if Willie had heeded his mother's warnings.

Unfortunately, stories such as his are not unusual. Mosely is just one of thousands across the nation who have caused injury or death as a result of drinking and driving.

### Statistical Data

Statistics show that about two in every five Americans will be involved in an alcohol-related automobile accident at some time in their lives.<sup>2</sup> On a national level, in 1995, over 17,000 persons died and over one million were injured as a result of drunk driving accidents.<sup>3</sup> For Alabama drivers, the risks associated with drunk driving are even higher.

While the national rate of deaths caused by drunk driving declined between 1982 and 1991, the numbers in Alabama rose by over 36 percent.<sup>4</sup> Between 1992 and 1994, more than 3,000 traffic fatalities occurred on Alabama's roads and highways.<sup>5</sup> Over 40 percent of those deaths were alcohol related.<sup>7</sup> In Alabama, between 1992 and 1994, the total number of alcohol-related traffic accidents rose three percent, from 8,998 to 9,242.<sup>8</sup> Additionally, injuries from alcohol-related crashes rose 16 percent, from 6,301 in 1992 to 7,323 in 1994.<sup>9</sup> In 1995, Alabama's annual highway fatality rate was the fourth highest in the nation.<sup>10</sup> The statistics for 1996 are equally discouraging. Although the number of injuries resulting from drunk driving accidents fell to 5,560, a significant decrease, the number of alcohol-related deaths increased to 348.<sup>11</sup>

### Legislative Response to the Drunk Driving Problem

State legislatures have become increasingly aware of the dangers and risks associated with drunk driving. In the past two decades, more than 2,300 anti-drunk driving laws have been enacted in the United States.<sup>12</sup> The Alabama Legislature has consistently enacted tougher DUI statutes that have resulted in increased fines, longer jail sentences and longer



**Brad Bishop**

Professor Brad Bishop is a long-time faculty member at Samford University's Cumberland School of Law. In 1992 he received the Alabama State Bar Award of Merit for his contribution as "author, teacher, legal scholar and municipal judge." Author of several books, his latest is *Drunk Drivers: The Law in Alabama*, published by Samford University Press.



license-revocation periods.<sup>13</sup> In 1994, the Legislature substantially amended the DUI laws in Alabama. The 1994 legislation made a fourth DUI conviction within a five-year period a Class C felony, punishable by a fine of not less than \$2,000 and by imprisonment of not less than one year and one day but not more than ten years.<sup>14</sup> More recent amendments to the DUI statute dropped the five-year limitation, and now, a fourth DUI conviction at any time during one's life constitutes a felony offense.<sup>15</sup> Moreover, the minimum fine for a fourth DUI conviction is now \$4,100.<sup>16</sup>

In 1995, the Legislature took further action and lowered the legal blood alcohol level for drunk drivers from 0.10 percent to 0.08 percent.<sup>17</sup> In 1996, the Legislature made it unlawful for any person under the age of 21, or any school bus or daycare driver, to operate a motor vehicle with a blood alcohol content of 0.02 percent or more.<sup>18</sup> In addition, the 1996 legislation set the maximum blood alcohol level at 0.04 percent for commercial drivers.<sup>19</sup>

Despite the strict amendments to Alabama's DUI laws, the Alabama Department of Public Safety estimates that a driver may drive under the influence between 200 to 2,000 times before being arrested for the first time.<sup>20</sup> Studies also show that drunk driving arrests have fallen each year since 1991.<sup>21</sup> The decrease in DUI arrests and convictions is not, however, evidence that the stricter laws are working. Rather, in spite of the tougher laws, the number of alcohol-related traffic accidents is on the rise.<sup>22</sup>

Conviction rates, which ranged from 95 percent in the 1980s to 98 percent in 1990, have fallen each year and reached a low of 78 percent in 1995.<sup>23</sup> Although Alabama law provides that first-time DUI offenders can be sentenced to a year in jail, and fined \$600 to \$2,100 or both, first-time offenders are rarely incarcerated. Rather, most Alabama judges impose the minimum mandatory sentence for the first offense. Even for subsequent offenses, maximum sentences and fines are rarely imposed, and offenders do not always serve the entire time of a strict sentence.<sup>24</sup>

Often, maximum sentences are not imposed because the tough mandatory sentencing requirements place judges in a dilemma. The judge must balance the value to society of incarcerating the offender against the realization that the decision could cost the offender his job, the family a breadwinner, and increase welfare costs to the state. The jails are already overcrowded, and once the hard core drinker is incarcerated, the state court or municipality becomes liable for any medical expenses incurred during the period of incarceration.<sup>25</sup>

Some may not sympathize with the judges' dilemma. Critics have argued that maximum sentences should be imposed unconditionally. However, one must recognize that even when sentencing was at its toughest in Alabama, drunk driving did not significantly decline. Statistics seem to indicate that tough DUI laws are no real deterrent to the problem drinker. In Alabama, of the approximately 110,000 people convicted for driving under the influence between 1988 and 1992, more than 25,000 were repeat offenders.<sup>26</sup> Many of those repeat offenders had four or more convictions during that time. "Figures from the Department of Public Safety show that almost 1,400 Alabamians had as many as eight convictions."<sup>27</sup> Alabama's most notorious repeat offender had 13 DUI convictions in five years.<sup>28</sup>

Formerly, habitual repeat offenders benefited from Alabama's statute because convictions that were more than five years old could not be considered prior offenses for sentencing purposes. If a person with a multitude of DUI convictions avoided arrest for five years, his next conviction would be treated as if it were his first.<sup>29</sup> However, Alabama's new statute abandoned the five-year limitation with respect to each offense occurring after the second.<sup>30</sup> Under the new statute, once an individual has been convicted twice for DUI, the five-year limitation no longer applies to that individual, and if he receives a DUI at any time after the second conviction, it would be treated as a third offense. A major increase in felony prosecutions for drunk drivers is likely to result.

Other solutions have been offered and implemented to combat Alabama's drunk driving problem. In addition to incarceration and fines, Alabama law requires an accused to attend a mandatory educational program, often referred to as DUI school.<sup>31</sup> The program is divided into three levels.<sup>32</sup> Level 1 is a 12-hour course directed primarily toward the social drinker who made a bad decision.<sup>33</sup> Level 2 is a 24-hour course aimed at multiple offenders.<sup>34</sup> Level 3 involves state approved treatment programs that last from one to 12 months.<sup>35</sup> The Mandatory Treatment Act of 1990 requires every DUI offender to complete at least Level 1 of the program.<sup>36</sup>

DUI schools have been successful in lowering the conviction rate of repeat DUI offenders. A 1991 Auburn University study concluded that Alabama's DUI School program reduced the number of repeat offenders, especially in the 31-45 age group.

#### CLASS ACTION ADMINISTRATION

##### Our Services Include

Settlement Notice Administration  
Call Center Assistance  
Address Tracking Service  
Class Member Data Base Maintenance  
Claims Form Handling  
Settlement Benefit Disbursement

##### Please Call

1.888.414.1470 Toll Free

Fax: (205) 414-9384

Office: (205) 414-1470

**TILGHMAN & Co., P.C.**  
SETTLEMENT ADMINISTRATION

L. STEPHENS TILGHMAN, CPA  
3419 Independence Dr., Suite 102  
Birmingham, Alabama 35209

Post Office Box 11250  
Birmingham, AL 35202-1250



For that group, 22 percent of those who did not attend the program were convicted of a subsequent DUI within the next two years.<sup>37</sup> Of those who attended the program, only 12 percent were convicted of another DUI within two years.<sup>38</sup>



### **ALA. Code § 32-5A-191: Alabama's Current DUI Statute**

Driving Under the Influence (DUI) prosecutions comprise a significant number of the cases brought in Alabama's municipal and district courts. Section 32-5A-191(a) of the Alabama Code<sup>39</sup> prohibits any person from driving while (1) the weight of alcohol in his blood is .08 percent or more; (2) he is under the influence of alcohol, a controlled substance, or both to a degree that renders him incapable of driving safely; or (3) he is under the influence of any substance that impairs his mental and physical faculties to such a degree that he is incapable of safely driving.

Although most prosecutions pursuant to section 32-5A-191 rely upon a chemical analysis of the defendant's blood or breath, the prosecution may establish a *prima facie* case of DUI without reference to such tests. A *prima facie* case requires that the prosecution establish the following: (A) reasonable suspicion to stop the vehicle; (B) proof of operation or actual physical control of a motor vehicle; (C) probable cause that led to the arrest; and (D) the arresting officer's on-the-scene observations and conclusions that (i) the consumption of alcohol or other intoxicants was involved and (ii) the consumption affected the physical coordination and mental faculties of the accused to such an extent that he was incapable of safely driving. Of course, a chemical test, although not required, may be used to substantiate or corroborate the prosecution's case.

#### **A. Reasonable Suspicion to Stop the Vehicle**

The first element of a *prima facie* case requires that an officer have reasonable suspicion to stop or approach the vehicle. In *Martin v. State*, the court made it clear that probable cause is not required to stop a vehicle.<sup>40</sup> However, mere suspicion of a violation is not an adequate justification.<sup>41</sup> The officer must demonstrate "independent facts which lead to an 'articulable and reasonable' suspicion" of a violation before stopping a vehicle.<sup>42</sup> Factors that can contribute to a reasonable suspicion include (1) "erratic or evasive" driving such as speeding, running off the road, or crossing the center line; (2) the "appearance of the vehicle" or those in it; (3) the time and location of the vehicle when it is stopped; for example, in an area known for narcotics activity; and (4) the "experience of the police officer."<sup>43</sup> One factor alone will rarely justify an investigatory stop; rather, a totality of the circumstances test is employed which generally requires a showing of a combination of the foregoing factors.<sup>44</sup>

The reasonable suspicion standard, developed by case law, has been codified by the Alabama legislature. Section 15-5-30 of the Alabama Code provides that the officer may "stop any person abroad in a public place who, he reasonably suspects, is committing, has committed or is about to commit a felony or other public offense."<sup>45</sup>

#### **B. Actual Physical Control or Possession of the Vehicle**

In addition to the reasonable suspicion requirement, an officer must prove that the accused was in actual physical control

of the vehicle. In *Cagle v. City of Gadsden*, the court stated that proof of control or possession of a motor vehicle while under the influence may be established in two ways.<sup>46</sup> One method is the use of direct evidence, typically, the eyewitness testimony of the arresting officer. Second, circumstantial evidence may establish that the individual, though not actually seen driving, was in "actual physical control" of the vehicle. "Actual physical control" has been defined as the "exclusive physical power, and present ability, to operate, move, park, or direct whatever use or non-use is to be made of the motor vehicle at the moment."<sup>47</sup> Under this approach, convictions have been upheld in cases in which the officer found the defendant asleep or behind the wheel of a crashed automobile.<sup>48</sup> In addition, admissions by the defendant that he was driving and eyewitness testimony that the defendant was driving have been held sufficient to support a DUI conviction.<sup>49</sup>

In *Cagle v. City of Gadsden*, the Alabama Supreme Court introduced a "totality-of-the-circumstances" test to determine whether an individual was in actual physical control of a vehicle.<sup>50</sup> In so holding, the court expressly abandoned the three-pronged test enunciated in *Key v. Town of Kinsey*, which previously set forth the elements necessary to establish actual physical control.

Under the *Key* test, the prosecution had to first show that the accused was in actual or constructive possession of the vehicle's ignition key or that the key was not necessary to operate the vehicle. Second, the prosecution had to establish that the accused was in the driver's seat, behind the steering wheel, and in such condition that, but for his intoxication, he was physically capable of starting the engine and causing the vehicle to move. Finally, the prosecution had to establish that the vehicle was operable to some extent.<sup>51</sup> The *Cagle* court concluded that the three-pronged test enunciated in *Key* was too easy to circumvent and that "a more reasonable result would be attained by using a totality-of-the-circumstances test."<sup>52</sup> For instance, under the *Key* test, a driver could avoid a DUI conviction by simply throwing his keys away or moving over to the passenger side of the car before the officer approached the vehicle. However, although the *Key* elements are not the sole factors to be considered, those factors are still relevant in determining whether a person was in actual physical control of the vehicle.<sup>53</sup>

Under the *Cagle* approach, an individual need not be driving to be arrested and convicted for driving while under the influence. For example, a person stopped alongside the road, asleep behind the wheel, is considered to be in actual physical control of the vehicle. Thus, under Alabama law, a driver who knows he has had too much to drink will not avoid prosecution if he pulls over to "sleep it off," because doing so is equivalent to driving while under the influence.

#### **C. Probable Cause Leading to a DUI Arrest**

Probable cause is an essential element of a *prima facie* case for DUI. A law enforcement officer must have probable cause to make a DUI arrest. Probable cause to arrest exists if facts and circumstances within the arresting officer's knowledge are sufficient to justify a man of reasonable caution to believe that an offense has been or is being committed.<sup>54</sup> Probable cause for a DUI arrest may be established through evidence indicating that the accused drove in such a manner as to attract the



attention of a law enforcement officer and that the officer's observation led to the belief that the suspect was intoxicated. The officer's observations are most often based on the appearance of the suspect, the odor of alcohol, and some type of field sobriety test.

Field sobriety tests are tests administered by law enforcement officers to determine whether there is probable cause to believe that a driver is under the influence. Although the type of test and the manner in which the tests are applied may vary, all field sobriety tests have two essential purposes. The first purpose is to establish probable cause for a DUI arrest. Observations made by an officer administering a field sobriety test can provide the required probable cause for a DUI arrest. The second purpose of field sobriety tests is to produce evidence that can be used by the prosecutor at the DUI trial, although field sobriety tests do not conclusively establish whether a driver was under the influence.<sup>55</sup> Officer testimony of a driver's performance of the tests is not considered expert testimony and can be used as persuasive evidence of a driver's faculties at the time of arrest.<sup>56</sup>

Three general types of field sobriety tests are used to determine whether a driver is under the influence. These three are: 1) sensory/nervous system tests, 2) mechanical tests, and 3) physical coordination tests. The sensory/nervous system tests monitor the reactions of the driver's nervous system. The Horizontal Gaze Nystagmus Test [HGN] is such a test. The HGN test indicates whether a driver is under the influence by measuring jerk nystagmus or quick jerks in eye movements. An officer administering the HGN test will ask the driver to cover one eye. The officer will then move an object, usually a pen or light, gradually out of the driver's field of vision. As the officer moves the object, he observes the driver's uncovered eye for involuntary jerking.<sup>57</sup> Admissibility of HGN test results in Alabama courts is unclear. The court of criminal appeals has held that results of the HGN test can be admitted following a foundation establishing the "scientific reliability of the test and the officer's expertise" in administering the test.<sup>58</sup> The Supreme Court of Alabama, however, has yet to explicitly determine the admissibility of HGN test results.<sup>59</sup> Other states are in disagreement over the admissibility of HGN tests. Arizona holds that HGN tests satisfy the *Frye* standard and permits the introduction of HGN test results in DUI cases.<sup>60</sup> Florida, on the other hand, concludes that HGN testing represents scientific evidence that may not be admitted as a lay observation of intoxication.<sup>61</sup>

The second type of field sobriety tests are those that use mechanical devices to obtain an estimate of a driver's blood alcohol content. The device most commonly used by Alabama law enforcement agencies in the field is the Alco-Sensor which provides the officer with an estimate of the driver's blood alcohol content after the suspect has blown into the device. Like all other field sobriety tests, the Alco-Sensor can be used as evidence at the DUI trial for the purpose of establishing probable cause for the arrest. The measurements of the Alco-Sensor, however, cannot be used to conclusively establish that the defendant was intoxicated or that the defendant's blood alcohol level exceeded legal limits.<sup>62</sup>

The third type of field sobriety tests are those that measure the physical coordination of the driver. Examples of such tests

include the one-leg stand, the walk-and-turn, the finger-to-nose, and the Romberg alphabet tests.<sup>63</sup> These coordination tests "do not prove absolutely that the subject is illegally intoxicated;" rather, these tests measure whether "the subject's coordination has been impaired by the consumption of alcohol."<sup>64</sup> Therefore, expert testimony regarding the reliability and general acceptance in the scientific community of the particular test is not required to admit the results of these tests into evidence. Observations of the arresting officer, recounting the defendant's performance of the tests, can be used as evidence of the defendant's "balance, coordination, and/or mental agility," which is relevant to the issue of the defendant's sobriety.<sup>65</sup>

#### **D. Driver Must Be "Under the Influence"**

Before making a legal arrest for DUI, a law enforcement officer must have reasonable grounds to believe the individual was driving under the influence. Alabama case law defines "under the influence" as "having consumed such an amount of alcohol as to affect [the driver's] ability to operate a vehicle in a safe manner."<sup>66</sup>

Characterizing a person as "under the influence" does not require reliance on a scientific test.<sup>67</sup> For instance, tape recordings and videotape evidence are admissible as proof that a defendant was under the influence.<sup>68</sup> A law enforcement officer may give his opinion as to the sobriety of the accused in a DUI case,<sup>69</sup> and such an opinion may be based on personal observations. Therefore, the arresting officer should state in clear detail his on-the-scene observations of the physical coordination and mental faculties of the accused. This testimony should include the results of field sobriety tests, a description of the manner in which the accused produced his driver's license, the suspect's manner of speech, the suspect's ability to walk, the odor of alcohol, the degree of support needed by the accused to stand erect, the accused's ability to understand and respond to instructions, and the general appearance and overall mannerisms of the accused.

Although relevant, the mere proof that the arresting officer smelled alcoholic beverages on the accused's breath will not sustain a conviction for driving under the influence. Intoxication cannot be estab-

lished by simply proving that the accused drank intoxicating liquor or had an odor of liquor on his breath in the absence of some proof showing that it produced in him some manifestation of intoxication.<sup>70</sup>



#### **Methods of Prosecuting DUI-Alcohol Cases**

Driving under the influence may be prosecuted by presenting evidence of (1) driving with an illegal blood alcohol level, (ALA. CODE § 32-5A-191(a)(1)), or (2) driving "under the influence of alcohol," (ALA. CODE § 32-5A-191(a)(2)). These subsections merely represent "two different methods of proving the same offense—driving under the influence [of alcohol]."<sup>71</sup>

The relevant proof to be offered in each case will depend on the code section upon which the prosecution's case is based. Under section 32-5A-191(a)(1), the degree of intoxication as indicated by chemical testing will be the key evidence. Under section 32-5A-191(a)(2), the prosecution is not required to rely on chemical test results but may introduce other direct or cir-



cumstantial evidence that the defendant was under the influence.<sup>72</sup> Unsafe operation of the vehicle, not the degree of intoxication *per se*, is the relevant evidence. However, even in a prosecution under subsection (a)(2), chemical test results are admissible to sustain the prosecution's burden of proof.<sup>73</sup> "The prosecution's burden is to prove that the defendant was under the influence of alcohol to the extent that it affected his ability to operate his vehicle in a safe manner."<sup>74</sup> The jury, or trier of fact, must decide if the prosecutor met this burden of proof.<sup>75</sup>

Although providing two methods to charge an accused with driving under the influence has its advantages, many DUI appeals focus on the issue of whether a defendant was properly charged under Section 32-5A-191(a)(1) or (a)(2). Accordingly, law enforcement officers and prosecutors should be aware of the proper methods to charge an offender with driving under the influence. For instance, the prosecution is permitted to charge a defendant under both subsections,<sup>76</sup> and it may later elect to proceed under only a single subsection or to withdraw one of the charges.<sup>77</sup> Because proof of a violation of one subsection does not support a conviction for the other,<sup>78</sup> charging an accused under both subsections may aid in securing a successful prosecution.<sup>79</sup> Moreover, a complaint that merely refers to a code section or that charges the defendant with being "under the influence" is insufficient to put a defendant on proper notice of the crime for which he is being charged and is insufficient to support a conviction.<sup>80</sup> Conversely, a complaint that tracks the language of a code section is sufficient to put an accused on notice of the charges against him.<sup>81</sup>

Prosecutors and law enforcement officers, therefore, should learn the relevant code language and should use that language in the complaint whenever possible. Jury instructions also present problems in DUI cases; therefore, judges should make certain that the jury is charged under the same DUI subsection as that which the defendant is charged.<sup>82</sup>



## Conclusion

The ideal solution to Alabama's drunk driving problem would be for people to abstain from driving after having consumed any alcohol or drugs. Reality indicates, however, that such abstinence is not likely to occur, irrespective of what is done to combat the problem. As long as alcohol is available for consumption, Alabama will have drunk drivers. Consequently, the state's legislature, courts, law enforcement officials, and private interest groups must work in concert to develop the most effective possible means to contain the problem.

Perhaps the best way to at least mitigate the problem is to educate our youth at an early age of the hazards associated with alcohol. A study conducted by the National Institute of Health found that children who begin drinking before they turn 15 are four times as likely to become alcoholics as those who start drinking at the age of 21. According to Dr. Clarence Chen, "[k]ids start drinking because they think it's the adult thing to do."<sup>83</sup> Thus, parents need to be aware that they are role models for kids and they should educate their children on the dangers and consequences of drinking and driving. However, parental guidance does not always work. It certainly had little impact on Willie Mosely, who stated in an interview

that his mother "was very strict about alcohol, disapproving of it and never allowing it in her house."<sup>84</sup> Willie realizes that his mother tried to raise him right, and he now wishes he had listened to her advice. "If I had paid attention to her, I'd be in a whole lot better shape," he said.<sup>85</sup>

## ENDNOTES

1. Lyrics taken from *Mama Tried*, originally written and performed by Merle Haggard.
2. Rose Livingston, *Talladega Teamwork Curbs Drunken Drivers*, THE BIRMINGHAM NEWS, February 21, 1993, at 1A.
3. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS 1995 (1995).
4. MADD 1996 SUMMARY OF STATISTICS: THE IMPAIRED DRIVING PROBLEM. The Alabama chapter of Mothers Against Drunk Driving may be reached at 1-800-635-0722.
5. Bob Blalock and John Archibald, *Drunk and Driving*, THE BIRMINGHAM NEWS, April 4, 1993, at 10A.
6. Roy Williams, *Alabama's Traffic Death Rate Second Worst in Nation*, THE BIRMINGHAM NEWS, August 31, 1992, at 1A.
7. *See id.*
8. John Archibald and Dave Parks, *State DUI Arrest Rate Drops as Alcohol-Related Wrecks Rise*, THE BIRMINGHAM NEWS, JUNE 9, 1996, at 1A.
9. *See id.* *See also* MADD - Alabama, We're Not Just Mothers Anymore. Mothers Against Drunk Drivers Figures are slightly higher for 1994. According to MADD, there were 9,400 alcohol-related accidents in Alabama in 1994. *Id.*
10. Archibald and Parks, *supra* note 9, at 1A.
11. These figures may be obtained from MADD - Alabama at 1-800-635-0722.
12. MADD, 1996 SUMMARY OF STATISTICS: GENERAL STATISTICS.
13. *See* ALA. CODE §32-5A-191(a) (Supp. 1996).
14. *See id.* at § 32-5A-191(f).
15. 1997 Ala. Acts 556.
16. *See id.*
17. *See* ALA. CODE § 32-5A-191(a) (Supp. 1996); 1995 Ala. Act 764.
18. *See id.* at § 32-5A-191(b), (c).
19. *See id.* at § 32-5A-191(b).
20. Blalock and Archibald, *supra* note 6, at 10A.
21. Archibald and Parks, *supra* note 9, at 1A.
22. *See id.*
23. *See id.*
24. John Archibald and Bob Blalock, *Sparing the Rod*, THE BIRMINGHAM NEWS, April 6, 1993, at 1A.
25. *See id.* at 6A.
26. Bob Blalock and John Archibald, *Most Repeaters are from Small Towns*, THE BIRMINGHAM NEWS, April 5, 1993, at 5A.
27. *See id.*
28. *See id.*
29. Blalock and Archibald, *supra* note 6, at 10A.
30. *See* 1997 Ala. Acts 556.
31. *See* John Archibald and Bob Blalock, *DUI School Works, But Some Won't Go*, THE BIRMINGHAM NEWS, April 6, 1993, at 6A.
32. *See id.*
33. *See id.*
34. *See id.*
35. *See id.*
36. *See id.*
37. *See id.*
38. *See id.*
39. ALA. CODE § 32-5A-191(n), as amended by 1995 Ala. Act 784, states, in full, as follows:  
(a) A person shall not drive or be in actual physical control of any vehicle while:  
(1) there is .08 percent or more by weight of alcohol in his or her blood;  
(2) under the influence of alcohol;  
(3) under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;



- (4) under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or
- (5) under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.
40. 529 So. 2d 1032 (Ala. Crim. App. 1988).
  41. See *Jones v. State*, 579 So. 2d 66, 67 (Ala. Crim. App. 1991); *Bryant v. City of Gadsden*, 574 So. 2d 919 (Ala. Crim. App. 1990); *Bradford v. City of Huntsville*, 557 So. 2d 1330, 1331 (Ala. Crim. App. 1989).
  42. *Ex parte Yeung*, 489 So. 2d 1106, 1109 (Ala. 1986).
  43. *Martin v. State*, 529 So. 2d 1032 (Ala. Crim. App. 1988).
  44. See *id.*; *United States v. Tapia*, 912 F.2d 1367 (11th Cir. 1990).
  45. ALA. CODE § 15-5-30 (1982).
  46. 495 So. 2d 1144, 1145 (Ala. 1986).
  47. *Key v. Town of Kinsey*, 424 So. 2d 701, 703 (Ala. Crim. App. 1982).
  48. See *Adams v. State*, 585 So. 2d 161 (Ala. 1991); *Long v. State*, 650 So. 2d 621 (Ala. Crim. App. 1994); *Spann v. State*, 440 So. 2d 1224 (Ala. Crim. App. 1983).
  49. *Farley v. City of Montgomery*, 677 So. 2d 1251 (Ala. Crim. App. 1995); *Robinson v. State*, 584 So. 2d 533 (Ala. Crim. App. 1991); *Reeves v. City of Montgomery*, 466 So. 2d 1041 (Ala. Crim. App. 1985).
  50. 495 So. 2d 1144, 1145 (Ala. 1986).
  51. See *Key v. Town of Kinsey*, 424 So. 2d 701, 703 (Ala. Crim. App. 1982).
  52. *Cagle*, 495 So. 2d at 1145.
  53. See *id.* at 1147.
  54. See *Parker v. State*, 397 So. 2d 189 (Ala. Crim. App. 1981).
  55. See *Seewar v. Town of Summerville*, 601 So. 2d 198 (Ala. Crim. App. 1992).
  56. See *Smith v. City of Tuscaloosa*, 666 So. 2d 101, 103 (Ala. Crim. App. 1995).
  57. *Brunson v. State*, 580 So. 2d 62, 63-64 (Ala. Crim. App. 1991).
  58. *Sides v. State*, 574 So. 2d 850, 858 (Ala. Crim. App. 1990). See also *Hargrove v. City of Rainbow City*, 619 So. 2d 944 (Ala. Crim. App. 1993); *Desselle v. State*, 596 So. 2d 602 (Ala. Crim. App. 1991); *Johnson v. State*, 591 So. 2d 580 (Ala. Crim. App. 1991); *Blake v. State*, 581 So. 2d 1282 (Ala. Crim. App. 1991); *Malone v. City of Silverhill*, 575 So. 2d 101 (Ala. Crim. App. 1989).
  59. See *Brunson v. State*, 580 So. 2d 62 (Ala. Crim. App. 1991); See also *Ex parte Malone*, 575 So. 2d 106 (Ala. 1990); *Sides v. State*, 574 So. 2d 859 (Ala. 1990).
  60. See *State v. Superior Court*, 718 P.2d 171 (Ariz. 1986).
  61. See *State v. Meador*, 674 So. 2d 826 (Fla. Dist. Ct. App. 1996).
  62. *Pitts v. City of Auburn*, 552 So. 2d 184 (Ala. Crim. App. 1989).
  63. *Scott v. State*, 624 So. 2d 230 (Ala. Crim. App. 1993); *Boykin v. McHenry*, 643 So. 2d 984 (Ala. Civ. App. 1993); *Seewar v. Town of Summerville*, 601 So. 2d 198 (Ala. Crim. App. 1992); *Raley v. State*, 586 So. 2d 285 (Ala. Crim. App. 1991); *Bradford v. City of Huntsville*, 557 So. 2d 1330, 1331 (Ala. Crim. App. 1989).
  64. *Seewar v. Town of Summerville*, 601 So. 2d 198, 200 (Ala. Crim. App. 1992).
  65. *Id.*
  66. *Ex parte Buckner*, 549 So. 2d 451 (Ala. 1989); *Frazier v. City of Montgomery*, 565 So. 2d 1255 at 1257 (Ala. Crim. App. 1990). See also *Scott v. City of Guntersville*, 612 So. 2d 1273 (Ala. Crim. App. 1992); *Rice v. State*, 611 So. 2d 1161, 1163 (Ala. Crim. App. 1992); *Harris v. State*, 601 So. 2d 1099, 1103 (Ala. Crim. App. 1992).
  67. See *Shoemaker v. State*, 481 So. 2d 409 (Ala. Crim. App. 1985).
  68. See *Siegel v. City of Decatur*, 669 So. 2d 1029 (Ala. Crim. App. 1995); *Bryant v. City of Gadsden*, 574 So. 2d 919 (Ala. Crim. App. 1990).
  69. See *Smith v. City of Tuscaloosa*, 666 So. 2d 101, 102 (Ala. Crim. App. 1995);

## Samford University Cumberland School of Law

### Continuing Legal Education September - December 1998 Schedule

September	18	Consumer Real Estate Finance: Regulation and Litigation - Birmingham
	25	Is Your Client Covered? Insurance Claims and Conflicts - Birmingham
October	2	9th Annual Bankruptcy Law Seminar--Bankruptcy Fundamentals - Birmingham
	9	Automobile Accident Litigation - Birmingham
	16	As the Century Turns, Representing Businesses in Alabama - Birmingham
	22-23	Basic Lawyering Skills--A Primer for New Lawyers - Birmingham
November	30	A Day in Discovery featuring James W. McElhaney - Birmingham
	6	Advanced Domestic Relations - Birmingham
	13	12th Annual Workers' Compensation Seminar - Birmingham
	20	Expert Testimony with Edward J. Imwinkelried - Birmingham
December	4	Recent Developments for the Civil Litigator - Mobile
	4	Recent Developments for the Civil Litigator - Birmingham
	10	Employment Law Update, Including Sexual Harassment - Birmingham
	18	Pro-Active Mediation and Arbitration - Birmingham
	30-31	CLE By The Hour - Birmingham

For specific information about any seminar write Cumberland CLE, Box 292275, 800 Lakeshore Drive, Birmingham, AL 35229-2275, or call 870-2391 or 1-800-888-7454. Samford University is an Equal Opportunity Institution and welcomes applications for employment and educational programs from all individuals regardless of race, color, sex, disability, or national or ethnic origin.



- Reuther v. City of Leeds, 599 So. 2d 1246 (Ala. Crim. App. 1992); Sanders v. City of Birmingham, 542 So. 2d 325 (Ala. Crim. App. 1989); Spurgeon v. State 500 So. 2d 1116 (Ala. Crim. App. 1988); Grimes v. State, 491 So. 2d 1053 (Ala. Crim. App. 1986).
70. See Boyd v. City of Montgomery, 472 So. 2d 694 (Ala. Crim. App. 1985).
71. Sisson v. State, 528 So. 2d 1159, 1162 (Ala. Crim. App. 1987).
72. Medley v. State, 630 So. 2d 163 (Ala. Crim. App. 1993); Lawrence v. State, 601 So. 2d 194 (Ala. Crim. App. 1992).
73. See Harry v. State, 571 So. 2d 392 (Ala. Crim. App. 1990).
74. Ex parte Buckner, 549 So. 2d 451, 453 (Ala. 1989). See Jones v. City of Summerdale, 677 So. 2d 1289 (Ala. Crim. App. 1996).
75. See Jones v. State, 579 So. 66 (Ala. Crim. App. 1991); Sanders v. City of Birmingham, 542 So. 2d 325 (Ala. Crim. App. 1988).
76. See Medley v. State, 630 So. 2d 163, 164-65 (Ala. Crim. App. 1993); Bryant v. City of Gadsden, 574 So. 2d 919, 920 (Ala. Crim. App. 1990).
77. See Hastings v. State, 589 So. 2d 795, 796 (Ala. Crim. App. 1991); Nerud v. City of Mountain Brook, 517 So. 2d 652 (Ala. Crim. App. 1987).
78. See Stone v. City of Huntsville, 656 So. 2d 404, 413 (Ala. Crim. App. 1994); Corum v. City of Huntsville, 491 So. 2d 1091 (Ala. Crim. App. 1986); Smith v. State, 435 So. 2d 158 (Ala. Crim. App. 1983).
79. See Stone, 656 So. 2d at 413. See also Sturgeon v. City of Vestavia, 599 So. 2d 92 (Ala. Crim. App. 1992).
80. See Bishop v. State, 555 So. 2d 317 (Ala. Crim. App. 1989); Corum v. City of Huntsville, 491 So. 2d 1091 (Ala. Crim. App. 1986); Smith v. State, 435 So. 2d 158 (Ala. Crim. App. 1983).
81. See Sandlin v. State, 575 So. 2d 1221 (Ala. Crim. App. 1990).
82. See Collier v. State, 544 So. 2d 986, 987 (Ala. Crim. App. 1988); Jones v. State, 513 So. 2d 50 (Ala. Crim. App. 1986).
83. Kalpana Srinivassan, *Drinking Young Encourages Alcoholism, Study Finds*, THE BIRMINGHAM NEWS, January 15, 1998, at 4B.
84. Rose Livingston, *Talladega Teamwork Curbs Drunken Drivers*, THE BIRMINGHAM NEWS, February 21, 1993, at 1A.
85. *Id.*

**D. Dale Tyler... Founder of Tyler, Eaton, Morgan, Nichols & Pritchett Court Reporters, died on January 28, 1998. He was our mentor, dear friend and partner.**

Dale was the first Registered Professional Court Reporter in the state of Alabama, an expert in his field, and was always armed with a laugh, a helping hand and a warm, caring heart.


We will miss him deeply!

Don Eaton Gary Morgan  
Laura Nichols Gail Pritchett

Mike Lowery	Teresa Turquitt	Dana Scott
Susan Treadaway	Paige Paugh Scott	Faith Roy
Gail Lowery	Maya Xiong	Miriam Stewart
Eleanor Pickett	Michele Lee	Ann Kines

*Tyler  
Eaton  
Morgan  
Nichols & Pritchett*  
**COURT  
REPORTERS**

575 Park Place Tower • 2001 Park Place North  
Birmingham, Alabama 35203-2793  
205-252-9152 • WATS: 1-800-458-6031 • FAX: 205-252-0196



**4 Office Park Circle, Suite 217  
Birmingham, AL 35223  
Phone: (205) 803-4312  
Fax: (205) 803-4318  
E-mail: DonMinyard@prodigy.net**

## With so much at stake, whom will you trust with your next valuation?

Expert valuation is critical for you and your clients. Whatever your need, no other valuation practitioner in Alabama has Don Minyard's combination of expertise and credentials.

- Ph.D. in Accountancy
- Accredited in Business Valuation (one of only eight in Alabama)
- Certified Public Accountant
- Certified Fraud Examiner

His years of teaching at Auburn and Samford Universities have given him the ability to explain complex financial issues in a manner anyone—especially jurors—can understand. Trust your next valuation to Don Minyard and his team.

### Forensic Accounting

- Litigation Support
- Fraud Examination
- Expert Witness
- Consulting
- Business Valuation

### Minyard and Associates, P.C.

CPA Accredited in Business Valuation

Member American Institute of Certified Public Accountants, Alabama Society of Certified Public Accountants, Association of Certified Fraud Examiners

**Donald H. Minyard, Ph.D., CPA, ABV, CFE**



## IMPORTANT!

### Licenses/Special Membership Dues for 1998-99

All licenses to practice law, as well as special memberships, are sold through the Alabama State Bar headquarters.

In mid-September, a dual invoice to be used by both annual license holders and special members will be mailed to every lawyer currently in good standing with the bar.

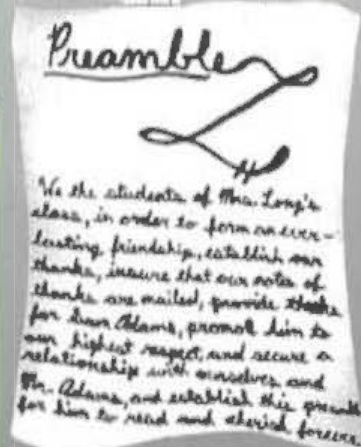
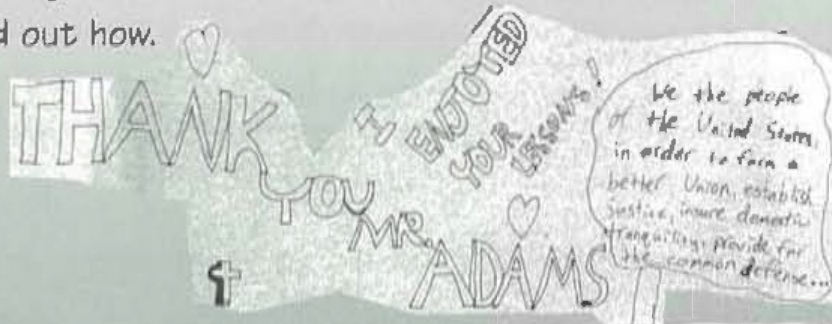
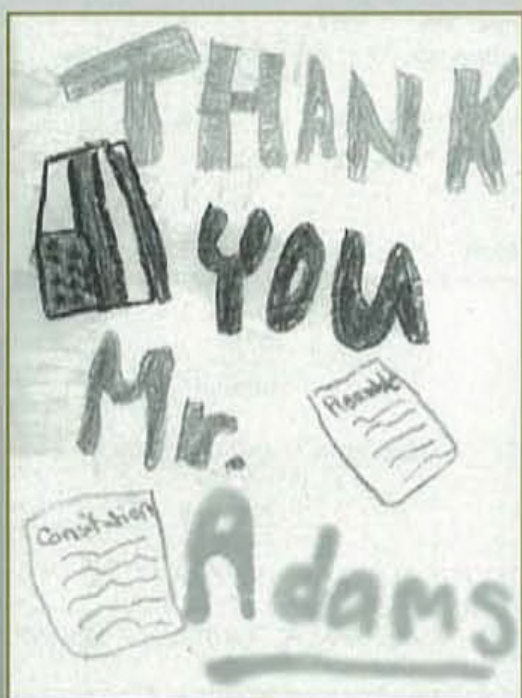
If you are actively practicing to anticipate practicing law in Alabama between October 1, 1998 and September 30, 1999, please be sure that you purchase an occupational license. Licenses are \$250 for the 1998-99 bar year and payment must be RECEIVED between October 1 and October 31 in order to avoid an automatic 15 percent penalty (\$37.50). Second notices will NOT be sent!

An attorney not engaged in the private practice of law in Alabama may pay the special membership fee of \$125 to be considered a member in good standing.

Upon receipt of payment, those who purchase a license will be mailed a license and a wallet-size license for identification purposes. Those electing special membership will be sent a wallet-size ID card for both identification and receipt purposes. If you do not receive an invoice, please notify Diane Weldon, membership services director, at 800-354-6154 (in-state WATS) or (334) 269-1515, ext. 136, IMMEDIATELY!

## The Alabama State Bar Partnership Program—It's Working

Start it working in your community. Call the ASB communications director at (334) 269-1515, ext. 132, to find out how.





## LEGAL ASPECTS of DIVORCE

*...offers options and choices  
involved in divorce*

## CONSUMER FINANCE OR BUYING ON TIME

*...outlines important aspects of buying on credit and  
principal kinds of consumer credit plans and terms*

### 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**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...opportunities and challenges of a law career today.

**Lawyers and Legal Fees**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

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

**Last Will & Testament**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...covers aspects of estate planning and the importance of having a will

**Legal Aspects of Divorce**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...offers options and choices involved in divorce

**Consumer Finance or "Buying on Time"**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...outlines important considerations and provides advice on financial matters affecting the individual or family

**Mediation...Another Method  
for Resolving Disputes**

\$10.00 per 100 Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...provides an overview of the mediation process in question-and-answer form

**Acrylic Brochure Stand**

\$5.00 each Qty. \_\_\_\_\_ \$ \_\_\_\_\_

...individual stand imprinted with individual, firm or bar association name for use at distribution points.

One stand per brochure is recommended.

Name to imprint on stand: \_\_\_\_\_

Mailing Address

Subtotal \$ \_\_\_\_\_

Shipping & Handling \$ 5.00

TOTAL \$ \_\_\_\_\_

Please remit **CHECK OR MONEY ORDER MADE PAYABLE TO THE ALABAMA STATE BAR**  
for the amount listed on the TOTAL line and forward it with this order form to:

Susan H. Andres, Director of Communications, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101, (334) 269-1515



# INTELLECTUAL PROPERTY SECTION

Attorneys interested in participating in the Intellectual Property Section of the Alabama State Bar should contact Will Hill Tankersley, Jr. at Balch & Bingham, (205) 226-3424 or [wtankers@balch.com](mailto:wtankers@balch.com), or Ed Patterson at the state bar, (334) 269-1515, ext. 161, or [edpatter@alabar.org](mailto:edpatter@alabar.org). The section's mission is to promote expertise, networking and updates on a variety of intellectual property areas, including trademarks, trade secrets, copyrights, patents, computer law, "Year 2000" litigation, and intellectual property consumer protection statutes.



## Appointments

### United States Bankruptcy Judges, Middle District of Alabama

The United States Court of Appeals for the Eleventh Circuit invites applications from highly qualified persons for a 14-year term of appointment as U.S. Bankruptcy Judge in the Middle District of Alabama succeeding Judge A. Pope Gordon. Judge Gordon has indicated his intention to retire upon expiration of his term April 14, 1999. The position will be available for appointment April 15, 1999.

The duty station for this position will be located at Montgomery, Alabama.

The basic jurisdiction of a Bankruptcy Judge is specified in Title 28, U.S. Code and explained in Title 11, U.S. Code, as well as in 98 Stat. 344 P.L. 98-353, Title I, Section 120. The duties of the position are demanding and comprehensive.

This selection process will be confidential and competitive. A subcommittee of the Judicial Council of the Eleventh Circuit will review all applicants and recommend the best qualified persons to the full Judicial Council, which in turn will recommend in confidence at least three nominees to the judges of the U.S. Court of Appeals for the Eleventh Circuit. The Court of Appeals will make the appointment subject to an FBI and IRS investigation of the appointee. The current annual salary is \$125,764. Persons shall be considered without regard to race, color, gender, religion, or national origin.

The Court also invites applications from highly qualified persons for a 14-year term of appointment as U.S. Bankruptcy Judge in the Middle District of Alabama succeeding Judge Rodney R. Steele. Judge Steele has indicated his intention to retire upon expiration of his term on October 17, 1999. The position will be available for appointment October 18, 1999.

The duty station for this position will be located at Montgomery, Alabama.

The basic jurisdiction of a Bankruptcy Judge is specified in Title 28, U.S. Code and explained in Title 11, U.S. Code, as well as in 98 Stat. 344 P.L. 98-353, Title I, Section 120. The duties of the position are demanding and comprehensive.

This selection process will be confidential and competitive. A subcommittee of the Judicial Council of the Eleventh Circuit will review all applicants and recommend the best qualified persons to the full Judicial Council, which in turn will recommend in confidence at least three nominees to the judges of the U.S. Court of Appeals for the Eleventh Circuit. The Court of Appeals will make the appointment subject to an FBI and IRS investigation of the appointee. The current annual salary is \$125,764. Persons shall be considered without regard to race, color, gender, religion, or national origin.

**Application forms and the full announcements may be obtained from any district court or bankruptcy court clerk of the Eleventh Circuit or from the circuit executive in Atlanta. Further information concerning the positions is available through Norman E. Zoller, circuit executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303; phone (404) 335-6535.**

***Applications must be received at the circuit executive's office in Atlanta no later than October 14, 1998.***



# Punitive Damages In Alabama After *BMW v. Gore*: Are Outcomes Any More Predictable?

By E. Berton Spence



## Introduction

In May 1996, the Supreme Court of the United States issued its opinion in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996) ("*Gore-U.S.*"), reversing a decision of the Supreme Court of Alabama and holding that a punitive damage award affirmed by the Alabama court violated the Due Process clause of Amendment XIV of the Constitution of the United States. By January 1998, the Supreme Court of Alabama had issued its first ten opinions reviewing, under the "guideposts" created by Justice Stevens in *Gore-U.S.*, awards of punitive damages in cases not involving wrongful death. This paper examines those ten cases and analyzes whether Alabama's punitive damages laws are more concrete or predictable as a result.

The ten cases are listed, along with brief items of information concerning them, in Table 1. Five of the ten were the subject of orders of remand from

the Supreme Court of the United States which required the Supreme Court of Alabama to review the cases a second time in light of the *Gore-U.S.* opinion (see Table 2).

Within the body of these opinions, the Alabama Supreme Court has concluded that the factors enumerated in *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986) and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989) (the so-called "*Hammond/Green Oil* factors"), that it was using prior to *Gore-U.S.* to determine whether punitive damage awards were excessive, pass constitutional muster under *Gore-U.S.* The Alabama court has also incorporated the three "guideposts" referenced by the U.S. Supreme Court in *Gore-U.S.* as a means of assessing whether a civil defendant has been given fair notice of the amount of punitive damages that might be awarded against it by a civil jury in Alabama. Even though the Alabama court has, to some extent, treated the *Hammond/Green Oil* factors and the "guideposts" as cumulative or additive doctrines, it has stated that the *Hammond/Green Oil* standards contain the guideposts and accommodate the due process concerns that led to their creation. This reasoning is most fully expounded in the Alabama Supreme Court's opinion in *BMW of North America, Inc. v. Gore*, 701 So. 2d 507,

509-10 (Ala. 1997) ("*Gore-Ala.*"), which it issued in May 1997 after the case was remanded to it from the U.S. Supreme Court in May 1996. The Alabama court has not, however, directly confronted the sentiment expressed by Justice Breyer in his concurring opinion in *Gore-U.S.*; i.e., that "the [*Hammond/Green Oil*] standards, as the Alabama Supreme Court authoritatively interpreted them here, provided no significant constraints or protection against arbitrary results." 116 S.Ct. at 1605.

The guideposts created by Justice Stevens in *Gore-U.S.* are (1) the reprehensibility of the defendant's act; (2) the ratio of the punitive damages to the compensatory damages; and (3) a comparison of the punitive award to comparable sanctions that could have been awarded in other civil or criminal proceedings. This paper examines the Supreme Court of Alabama's treatment of these guideposts in its first ten post-*Gore-U.S.* opinions. The detailed analysis summarized in the text and presented more fully in tables 1 and 2 illustrate that the guideposts have not provided greater predictability of outcomes than existed prior to *Gore-U.S.*

## Reprehensibility: A Lack of Meaningful Hierarchy

In only four of the cases decided since



**E. Berton Spence**

E. Berton Spence is a partner in the Birmingham-based firm of Lange, Simpson, Robinson & Somerville LLP. He received his law degree from the University of Alabama.





*Gore-U.S.* does the Alabama court apply a specific label (i.e., "high," "moderate," "low" "significant") to the degree of reprehensibility of the acts of the defendant. None of the four labels has been used more than once. In the other six opinions, the degree of reprehensibility is either left unspecified or is defined only in relative terms as "lesser" than some other situation or "higher" than that found in a different case. As can be seen from Table 2, the inherent lack of a definable hierarchy of degrees of reprehensibility runs counter to the goal of consistency and predictability. It does so by preventing any positive correlation between the punitive to compensatory damage ratios and the stated degree of reprehensibility of the defendants' acts.

For example, in *Foremost Ins. Co. v. Parham*, 693 So. 2d 409 (Ala. 1997), the degree of reprehensibility is unspecified. The court points out, however, that many of the actions found fraudulent in this case were not so defined at the time they were committed. The court's prospective ruling also indicates that most, if not all, of these acts will not be considered fraudulent from the date of the opinion forward. These are indications of low reprehensibility. Even so, the unspecified degree of reprehensibility is held sufficient to support ratios of punitive to compensatory damages

ranging from 37:1 to 492:1 (this case involved four different causes of action from two plaintiffs and each count was analyzed separately). Even if one uses the overall ratio of punitive to compensatory damages arrived at for each plaintiff, one is left with the ratios of 94:1 and 121:1.

This poses a sharp contrast to *Ford Motor Co. v. Sperau*, 708 So. 2d 111 (Ala. 1997), in which the reprehensibility was labeled "moderate," yet a 3.5:1 ratio of punitive damages was reduced to a ratio of 1.06:1 on the premise that a ratio as high as 3.5:1 would run afoul of the *Gore-U.S.* guideposts.

In another of the cases, *Union Security Life Ins. Co. v. Crocker*, So. 2d (Ala. August 15, 1997), the court upheld an award of punitive damages without knowing what the ratio was because the verdict form used by the jury did not specify which damages were compensatory and which were punitive but merely included a total. It did this in the context of a degree of reprehensibility labeled "high." In *Life Ins. Co. of Georgia v. Johnson*, 701 So. 2d 524, 530 (Ala. 1997), however, a case in which the court found the reprehensibility to be "far more reprehensible than that of Union Security," it reduced a 20:1 ratio to a 12:1 ratio.

A fourth label (in addition to "low," "moderate" and "high") for the degree of reprehensibility, "significant," was introduced in *Patel v. Patel*, 708 So. 2d 159, 163 (Ala. 1998) to describe an uncle's defrauding of his nephew in the purchase of a hotel and to provide a basis for the affirmance of a 2.6:1 ratio of punitive to compensatory damages.

The only empirical conclusion that can be drawn from these ten holdings is that when the Alabama Supreme Court puts no label on the degree of reprehensibility, as it has done in the majority of its post-*Gore-U.S.* decisions, the ratio of punitive damages to compensatory damages can range from 1:1 to 492:1 (see Table 2).

### The Ratio: There Are No Precise Measurements

The necessity of analyzing the ratio of punitive damages to compensatory damages gives an initially logical or formulaic appearance to the measurement of punitive awards. The Alabama court

has not developed, however, a predictable formula for arriving at a constitutionally appropriate ratio. It has refrained from doing so in furtherance of a stated policy goal. Specifically, the Alabama court has explained that it will not adopt a precise measurement by which a defendant could know in advance the total amount of punitive damages to which it might be subject for the doing of a particular act:

We reject the easy answer of adopting one ratio that would apply to all and would therefore give a wrongdoer precise notice of the penalty that his misconduct might incur. To do so would frustrate the purpose of punitive damages, which is to punish and deter a defendant's misconduct.

*Gore-Ala.*, 701 So. 2d 507, 514 (Ala. 1997).

The apparent rationale for this avoidance of precise notice is one predicated on economics. In theory, a fixed, predictable fine for specific conduct may be treated as a cost of doing business. If the benefit of engaging in the prohibited activity exceeds its cost, even a cost enhanced by the fine, that fine will be ineffective to deter the conduct. For example, if one can sell enough cars by defrauding the buyers to generate profits that are in excess of the profits that would be incurred without the fraud, even after deducting the cost of the punitive damage awards, then the punitive award has not created an incentive to cease defrauding the buyers. If one has no idea, however, how high the fine may go, one cannot safely engage in this practice.

Whether this rationale accurately reflects behavior in the marketplace is subject to debate by economists. See A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 Harv.L.Rev. 869 (1998). Whether or not such a policy of creating deterrence through uncertainty is ultimately beneficial, however, does not change that it is undeniably at odds with the stated goal of the U.S. Supreme Court in *Gore-U.S.*, which was to further the fair notice component of due process by creating predictability with regard to punitive awards.

As was demonstrated in Section I and in Table 2, the ratio of punitives to com-



penalties cannot, in these ten opinions, be correlated with the degree of reprehensibility of the defendant's wrongful conduct. A further look at Table 2 suggests that there is, as yet, no limit to the punitive:compensatory ratio inherent in the post-*Gore* rulings of the Alabama Supreme Court. In this context,

there are two competing ideas expressed in various of these ten opinions, but neither has been adopted in an actual holding endorsed by a clear majority.

One proposal, championed by Justice Gorman Houston in his concurrence in the result of *Gore-Ala.* (701 So. 2d at 521-22), would use a 3:1 ratio as a

benchmark, only to be exceeded in certain defined circumstances. This idea has been remarked on favorably by Justice See (in his concurrence in part and dissent in part in *Johnson* and his dissent in *Sperau*) and by Justice Maddox (by his joining in See's dissent in *Sperau*), as well as by Chief Justice Hooper (who

# TABLE ONE

CASE	FACTS	PUNITIVE AWARD	PARTICIPATION OF JUSTICES <sup>1</sup>
<i>FOREMOST</i> <sup>2</sup>	Fraud claims against homeowner's insurer for misrepresentation about premiums and suppression of fact that coverage for adjacent structures was optional.	Plaintiff 1: \$7,500,000 reduced to \$175,000. Plaintiff 2: \$7,500,000 reduced to \$173,000.	Author: H Concurring: Hp, M, K, A, Sh, S Concurring in Result: C Dissenting: B
<i>GORE</i> <sup>3</sup>	Fraud claim against car maker for failing to disclose pre-sale repair of paint scratch.	\$2,000,000 reduced to \$50,000.	Per Curiam Concurring: Sh, K, B, A, C Concurring in Result: H, Hp, M Recused: S
<i>SPIVEY</i> <sup>4</sup>	Bank defrauded borrower by disbursing proceeds from construction loan to creditors of borrower not involved in the construction project.	\$500,000 affirmed.	Author: H Concurring: A, Sh, C, B Concurring in Result: M, S, Hp Not participating: K
<i>HILLCREST</i> <sup>5</sup>	Building lessor defrauded lessee by misrepresenting extent of parking spaces available to lessee in operation of hair salon.	\$130,000 reduced to \$94,000.	Author: C Concurring: A, Sh, K, H Concurring/Dissenting: B Dissenting: Hp, M, S
<i>UNION SECURITY</i> <sup>6</sup>	Sales agent represented that insured would be covered on credit life policy even though agent misrepresented to insurer health problems of insured and knew that discovery of health problems would void coverage.	\$2,000,000 reduced to \$1,000,000.	Author: B Concurring: A, Sh, H, K, C Dissenting: Hp, M, S
<i>DAISEY JOHNSON</i> <sup>7</sup>	Insurance agent defrauded insured by selling her unnecessary medicare coverage.	\$5,000,000 reduced to \$3,000,000.	Author: Sh Concurring: A, K, C, B Concurring/Dissenting: Hp, H, S
<i>SPEAU</i> <sup>8</sup>	Auto manufacturer defrauded purchasers of dealership by failing to disclose poor financial performance of other, similar dealers.	\$8,000,000 reduced to \$1,792,000.	Per curiam Concurring: Hp, Sh, K, C, A Dissenting: M, H, S Recused: B
<i>WILLIAMSON</i> <sup>9</sup>	Insurance company defrauded sales agent by refusing to pay commissions.	\$2,000,000 reduced to \$750,000.	Author: C Concurring: Sh, K, Hp, M, H, B, S Not participating: A
<i>TALENT TREE</i> <sup>10</sup>	Employee of personnel service was defrauded by employer who manipulated her sales figures to reduce her commissions.	\$2,000,000 reduced to \$1,500,000.	Author: Sh Concurring: A, K, C, H Concurring in result: M, B Concurring/Dissenting: Hp Not participating: S
<i>PATEL</i> <sup>11</sup>	Purchaser was defrauded by seller regarding potential profitability of hotel.	\$225,000 affirmed.	Author: C Concurring: Hp, A, Sh, H, K, B Concurring in result: M, S

## FOOTNOTES

1. The nine justices of the Supreme Court of Alabama who participated in these decisions were Chief Justice Hooper (Hp) and Justices Houston (H), Maddox (M), See (S), Shores (Sh), Almon (A), Kennedy (K), Butts (B) and Cook (C).

2. *Foremost Ins. Co. v. Parham*, 693 So.2d 409 (Ala. 1997).

3. *BMW of North America, Inc. v. Gore*, 701 So.2d 507 (Ala. 1997).

4. *First Commercial Bank v. Spivey*, 694 So.2d 1316 (Ala. 1997).

5. *Hillcrest Center, Inc. v. Rone*, \_\_\_ So.2d \_\_\_ (Ala. August 1, 1997).

6. *Union Security Life Ins. Co. v. Crocker*, \_\_\_ So.2d \_\_\_ (Ala. August 15, 1997).

7. *Life Ins. Co. of Georgia v. Daisy Johnson*, 701 So.2d 524 (Ala. 1997).

8. *Ford Motor Co. v. Sperau*, 708 So.2d 111 (Ala. 1997).

9. *American Pioneer Life Ins. Co. v. Williamson*, 704 So.2d 1361 (Ala. 1997).

10. *Talent Tree Personnel Serv., Inc. v. Fleenor*, 703 So.2d 917 (Ala. 1997).

11. *Patel v. Patel*, 708 So. 2d 159 (Ala. 1998).



# TABLE TWO

CASE	REPREHENSIBILITY	REPREHENSIBILITY ANALYSIS	BEGINNING RATIO <sup>1</sup>	ENDING RATIO <sup>1</sup>
<i>FOREMOST</i> <sup>2</sup>	Unspecified (appears slight)	Misrepresentation: Damages small and entirely economic in nature. Suppression: Concealment of facts probably was not actionable at the time it occurred.	459:1 <sup>1</sup> 624:1 10,647:1 10,941:1	37:1 50:1 488:1 492:1
<i>GORE</i> <sup>3</sup>	"lesser" (than what?)	Case involved only economic damage, making economic status of plaintiff relevant (economic injury to well-off plaintiff is not as reprehensible as economic injury to poor plaintiff). Case did not involve reckless disregard for health and safety. The Court says these facts show a "lesser degree" of reprehensibility, but does not specify what it is "lesser" than.	500:1	12.5:1
<i>SPIVEY</i> <sup>4</sup>	Unspecified	Court says that the "overall reprehensibility" of the defendant's conduct means that the 1:1 ratio of punitive to compensatory damages passes constitutional muster. The Court does not give a label to the degree of reprehensibility or explain why the defendant's actions are reprehensible.	1:1	1:1
<i>HILLCREST</i> <sup>5</sup>	Unspecified	Court says "reprehensibility of the defendants' conduct is of a degree that supports the jury's punitive damages award" without stating what degree of reprehensibility has been established. The conduct is reprehensible because it involved knowing concealment.	2.8:1	2:1
<i>UNION SECURITY</i> <sup>6</sup>	High	Reprehensibility is "high" because it involves knowing concealment, but this is mitigated by the fact that the agent's bad conduct was an "aberration" for the company.	?	?
<i>DAISEY JOHNSON</i> <sup>7</sup>	Higher than <i>Union Security</i>	Reprehensibility is more so than in <i>Union Security</i> because the defendant's conduct involved knowing concealment but was not an aberration (persons other than this plaintiff were similarly victimized) and had a great economic impact on a poor plaintiff.	20:1	12:1
<i>SPEREAU</i> <sup>8</sup>	Moderate	Degree of reprehensibility, though ultimately labeled "moderate," is discussed as "high," but not high enough to warrant a \$6,000,000 punitive award. It is deemed to be this high because even though it involved only economic injuries to sophisticated plaintiffs (buyers of an auto dealership), the amount of economic damage involved was great enough to potentially ruin the plaintiffs.	3.5:1	1.06:1
<i>WILLIAMSON</i> <sup>9</sup>	Low	Economic injury was not great, and there was no evidence of similar fraud on other persons.	8:1	3:1
<i>TALENT TREE</i> <sup>10</sup>	Unspecified	Injury was purely economic. The defendant provided some information when the plaintiff originally complained, but the defendant withheld one key document until one month prior to trial. The plaintiff gave the defendant a reasonable opportunity to remedy its misconduct before filing suit. The defendant made counter accusations against the plaintiff during the course of litigation. The defendant concealed information which is evidence of an improper motive.	6.67:1	5:1
<i>PATEL</i> <sup>11</sup>	Significant	Family member's taking advantage of relatives in hotel transaction and misrepresenting profitability was "significantly reprehensible."	2.6:1	2.6:1

\* Cases remanded by the United States Supreme Court for further review pursuant to *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996).

## FOOTNOTES

1. "Beginning ratio" indicates the status of the ratio of punitive damages to compensatory damages with which the Alabama Supreme Court was confronted at the outset of the current review of the case. In some cases, the Court is reviewing a jury verdict for the first time. The jury's verdict may or may not have been reduced by the trial court before the appeal. In other cases, the Alabama Supreme Court may already have reduced the verdict once, but is now reviewing the case a second time on order from the U.S. Supreme Court (these cases are indicated with an asterisk).

2. "Ending ratio" means the ratio of punitive damages to compensatory damages included in the Alabama Supreme Court's final ruling. In other words, if the ratio has been reduced on appeal, this figure is what it has been reduced to.

3. This case involves four different counts: one each of misrepresentation and suppression for two different plaintiffs.

4. The ratios for this case are presented in this order: (1) Plaintiff Parham's misrepresentation claim; (2) Plaintiff Massey's misrepresentation claim; (3) Plaintiff Parham's suppression claim; (4) Plaintiff Massey's suppression claim.



joined in See's dissent in *Johnson*).

The other plan, announced in the per curiam opinion in *Gore-Ala.*, would generally cap punitive damages, regardless of their ratio to compensatory damages, at 10 percent of the "net worth" of the defendant. This idea was endorsed by Justices Shores, Almon, Kennedy and Butts (via their concurrences in the *per curiam* opinion of *Gore-Ala.*), and perhaps also by Justice Cook, though his concurrence in the *Gore-Ala.* opinion is not entirely clear on this point.

As with so much in this area of law, however, the proponents of each of these plans have not advanced them on a consistent basis. Justice Houston authored the majority opinion in *Foremost* in which a ratio of 492:1 was deemed appropriate. Justice Houston has also concurred in a ratio of 5:1 (*Talent Tree Personnel Services, Inc. v. Fleenor*, 703 So. 2d 917 (Ala. 1997)) without specifying any circumstances that would justify a ratio higher than 3:1. The "10 percent" plan has fared no better. In *Hillcrest Center, Inc. v. Rone*, So. 2d (Ala. August 1, 1997), authored by Justice Cook and concurred in by justices Almon, Shores, Houston and Kennedy, an award of much greater than 10 percent of the defendant's net worth (43 percent) was upheld in a case in which the plaintiff's complaint was that the defendant misrepresented how many parking spaces would be available for the plaintiff's hair salon if it leased space in a particular commercial building (the reprehensibility of this act was unspecified). The ratio of punitive to compensatory damages deemed fair in this case was only 2:1, however, leaving it within Justice Houston's benchmark approach.

Rather than applying either the "10 percent" rule or the "3:1" benchmark, both of which have been expressly discussed in the opinions, the court appears to be merely reducing awards by arbitrary percentages once it has made a finding that the award is excessive. A fair number of these reductions are very roughly in the neighborhood of one-half, though a look at the change in ratios of the ten cases as illustrated in Table 2 (what the ratio was before the court heard the appeal and what the ratio became as a result of the court's ruling) shows three clear exceptions: (1) *Gore-Ala.*, in which a 500:1 ratio was reduced to a 12.5:1 ratio (but remember that the first time the Alabama Supreme Court had this case, before it went to the U.S. Supreme Court, the Alabama court cut the punitive award from \$4,000,000 to \$2,000,000, exactly in half) (see *BMW of North America, Inc. v. Gore*, 646 So. 2d 619 (Ala. 1994)); (2) *Foremost*, in which a ratio as high as 10,941:1 was reduced to 492:1; and (3) *Talent Tree*, in which a 6.67:1 ratio was reduced to 5:1 (but, again, the original jury verdict was 10:1 before it was reduced by the trial court, so the ultimate effect of the appeal process was to cut the jury's punitive verdict in half). *Patel* is a particularly interesting opin-

ion in this regard, in that the Alabama Supreme Court affirmed an award of \$225,000 in punitive damages which itself was arrived at by the trial court's cutting in half the original jury verdict's award of \$450,000. In other words, the Supreme Court of Alabama merely adopted the post-verdict review and remittitur of the trial court, which was a reduction of the verdict by half.

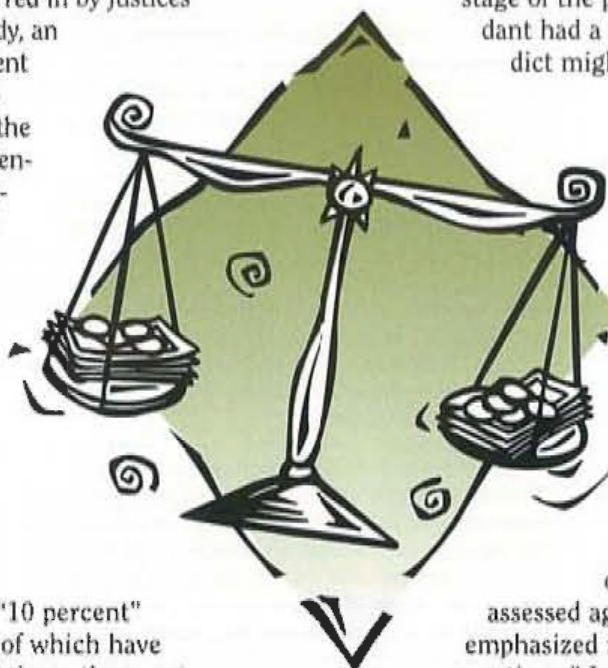
In the other cases, we see changes such as the reduction of a 20:1 ratio down to 12:1 (*Johnson*), and a reduction of 2.8:1 down to 2:1 (*Hillcrest*), both of which are reductions of not quite half, alongside reductions of 8:1 down to 3:1 (*American Pioneer Life Ins. Co. v. Williamson*, 704 So. 2d 1361 (Ala. 1997)) and 3.5:1 down to 1.06:1 (*Sperau*), both of which are cuts of more than half.

Once again, however, the results in these cases provide no real predictability of how future awards of punitive damages will be analyzed on appeal. Perhaps more importantly, these results have nothing to say about the initial stage of the process, the jury trial. Even if a defendant had a rough notion that an "excessive" verdict might be significantly reduced on appeal,

there is nothing in the post-*Gore* decisions from which that defendant could reasonably predict what amount of punitive damages might result from the trial court's instructions to the jury. In other words, one-half of an indefinite number is still an indefinite number.

#### **"Comparable Sanctions": The Least-Used Guidepost**

In deciding if a defendant received fair notice of the amount of punitive damages that might be assessed against it, the U.S. Supreme Court emphasized in *Gore-U.S.* the role of "comparable sanctions." In other words, if there is a civil or criminal statute that applies to the same acts as those which form the basis of a common-law cause of action, the reviewing court is to compare the maximum statutory fine to the punitive damage award. The simplest example of this is Alabama's Deceptive Trade Practices Act, Ala. Code §§ 8-19-1 through 15 (1993), which creates a civil fine for certain types of dishonest behavior in a business context. The victim of such an act has a choice of suing under the common law for fraud, or for violation of the trade practices statute. The maximum civil fine for a single violation under the statute is \$2,000. The act also authorizes a private action in which "up to three times any actual damages" (§ 8-19-10) may be recovered. Based on the language of § 8-19-10(a)(2), it seems clear that the amount over and above the actual damages, or an amount equal to twice those damages, is intended as a punitive award. The punitive damage awards at issue in the first ten cases decided since *Gore-U.S.*, however, are all *much* higher than \$2,000 and most are more than twice the amount of compensatory damage (see Table 2).





Many of them are in the millions of dollars.

The "comparable sanction" guidepost has had no discernible effect on the computation of the awards in the majority of the ten Alabama cases. Instead, in most instances, the Alabama court has held that if the statutory fine to which it would otherwise compare the award of punitive damages is lower than the award, it cannot be meaningfully employed in the post-verdict analysis. Only if the statutory fine is already large enough to justify either the jury's award or the amount to which the court intends to remit that award will the court use it for comparison. This was made clear in the *per curiam* opinion in *Gore-Ala.*, which states:

under the Alabama Deceptive Trade Practices Act, Ala. Code 1975, § 8-19-5, the maximum sanction for committing a fraudulent act against an Alabama consumer is a meager \$2,000. Because the legislature has set the statutory penalty for deceitful conduct at such a low level, there is little basis for comparing it with any meaningful punitive damages award, particularly where the defendant is wealthy and the profit gained from the fraudulent act is substantial.

*Gore-Ala.*, 701 So. 2d at 514. Thus, the court turned away from the question of whether anything in Alabama's positive law would put a defendant on notice that it might be punished by an award in the millions of dollars, and addressed instead the unrelated (though potentially important) question of whether the legislature had set the civil fine for deceptive trade practices at an amount sufficient to deter a wealthy transgressor of that statute.

Justice Cook's majority opinion in *Sperau* proceeds similarly:

As we recognized in *BMW II*, a \$2,000 statutory penalty for deceitful conduct is so meager that there is little basis for comparing it with any meaningful punitive damages award.

*Sperau*, 708 So. 2d at 122.

Despite the treatment of this question in the above examples, in six of the ten post-*Gore* cases, the "comparable sanction" guidepost is not employed at all. Only in *Foremost*, *Sperau*, *Talent Tree*, and *Patel* is this guidepost actually included in the analysis of the case.

In *Foremost*, Justice Houston noted with respect to one of the four counts being analyzed that the jury's award of punitive damages was 3,000 times greater than the maximum civil fine available for the defendant's conduct. The amount of punitive damages to which the court reduced the award, however, was still 750 times greater than the civil fine.

Only in *Sperau*, authored by Justice Cook, has there been any meaningful use of this guidepost. In reducing a punitive damage award from a 3.5:1 ratio to an approximately 1:1 ratio, Justice Cook noted that a comparable statutory action would have allowed a total award roughly equal to the total amount of punitive and compensatory damages at which he arrived after analyzing the other guideposts. Because his total was similar to what would have been mandated by the statute, Justice Cook concluded that the defendant, under that guidepost, could not be said to have been denied fair notice of the potential amount of punitive damages that might be affirmed by an appellate court in Alabama.

In *Talent Tree*, however, Justice Shores noted that the defendants' conduct was analogous to the crime of theft by deception, which carries potential imprisonment of two to 20 years. She further concluded that potential imprisonment of 20 years should put a defendant on notice that it might have to pay as much as \$1,500,000 in punitive damages in a civil case. She did not, however, explain why the potential for prison time could not justify the original award of \$3,000,000, or the award of \$2,000,000 which followed the trial court's remittitur.

In perhaps the most puzzling of these analyses, Justice Cook summarily concluded in *Patel* that "[t]here are no comparable civil or criminal penalties for similar conduct" (708 So. 2d at 163) even though the case dealt with common-law fraud, which he had already compared to the Deceptive Trade Practices Act in *Sperau*. Indeed, in *Sperau* Justice Cook specifically discussed the attributes of the Deceptive Trade Practices Act that would have made it a useful comparison to the facts present in *Patel*. In *Sperau*, Justice Cook quoted from Ala. Code § 8-19-5(20), which declares unlawful the following:

In connection with any seller-assisted marketing plan, either misrepresenting the amount or extent of earnings to result therefrom . . .

*Sperau*, 708 So. 2d at 121. The fraud in *Patel*, though not in the context of a "seller-assisted marketing plan," concerned misrepresentations of the extent of earnings that would result from the operation of a hotel which the defendant sold to the plaintiff. In addition, the sanctions available under this statute would have come very close to justifying the total punitive award affirmed within Justice Cook's opinion. The compensatory damages in *Patel* were \$85,908. A treble damage award under the Deceptive Trade Practices Act would have yielded a total damage award of \$257,724 plus attorney's fees. The total award affirmed by Justice Cook was \$310,908, \$225,000 of which was punitive (a ratio of 2.6:1). A ratio of 2.6:1 is not so far from 2:1 that one could, with any predictable degree of success, claim a lack of fair notice that a jury might moderately exceed the statutorily-sanctioned punitive award. Regardless, Justice Cook chose not to compare the statutory remedy to the common-law action for fraud despite having done so in *Sperau*.

*Sperau* therefore remains the sole exception to a body of opinions in which the Alabama Court has simply not utilized the "comparable sanction" guidepost in any way that could provide predictability.

## Richard Wilson & Associates

Registered Professional  
Court Reporters

804 S. Perry Street  
Montgomery, Alabama 36104

**264-6433**



# Why pay more than you have to?

Name-brand law office software at discount prices.

The biggest, most popular titles in legal software are available from **BlumbergExcelsior** at substantial savings below publisher list prices.



Download at  
www.blumberg.com  
or call 800 221-2972  
ext. 565

**DEMO AVAILABLE**

Timeslips Deluxe, Abacus Law, Amicus Attorney, Time & Profit, PCLaw Jr., and more!

**BlumbergExcelsior®**  
Since 1887

**800 LAW MART**  
Fax: 800 561-9018  
Arlington, TX Noxcross, GA Albany, NY Orlando, FL

**800 529-6278**  
www.blumberg.com

## Conclusion

Despite the U.S. Supreme Court's decision in *Gore*, and despite the Supreme Court of Alabama's first ten opportunities to create from *Gore* a predictable legal system regarding punitive awards in civil cases, one cannot yet reliably foresee the maximum punitive verdict that might be rendered in any given case. The only real lesson of the first ten cases is that it is better for a civil defendant to appeal an award of punitive damages than to accept it. The odds appear quite high that a large punitive award in a non-wrongful death case will be reduced significantly on appeal, though the reasons for this may not always be clear. This uncertainty appears to be a conscious choice of public policy—the favoring of deterrence over predictability. For better or worse, however, the Supreme Court of the United States has enshrined predictability in the temple of due process. It has not yet made a similar icon of deterrence. The potential conflict of these two goals suggests that *Gore*-U.S. may not be the last statement that our nation's highest court is called on to make in the arena of punitive damages. ■

## Barbara C. Miller v. Alabama State Bar ASB 93-393, 94-086, 95-192

### ALABAMA SUPREME COURT ORDERS S.C. #1950330, 1960912

January 9, 1998

"(W)e conclude that Miller should be unconditionally reinstated...immediately."

March 13, 1998

"(T)his Court became convinced that Miller had unduly been required to suspend her practice." "We cannot come to the conclusion that Miller deliberately defied an order of this Court."

June 10, 1998

Refund of Court costs denied.

**PAID FOR BY FRIENDS OF  
BARBARA C. MILLER, ATTORNEY**  
James Reeves, Trustee,  
SOUTHTRUST ACCT. #57-493-080

## Prepaid Affordable College Tuition Program (PACT)

Alabama State Treasurer Lucy Baxley encourages parents of children from birth to ninth grade to consider enrolling them in Alabama's Prepaid Affordable College Tuition (PACT) program. This program is administered as a division of the State Treasurer's Office and presently has an enrollment of 45,000 children. Since its inception in 1989, assets of the trust fund have grown to over \$470,000,000.

Laws establishing this program provide an opportunity for parents, grandparents or other sponsors to participate by purchasing a contract with PACT. Benefits of the contract provide full payment of tuition and mandatory fees for four years of undergraduate school at any public college or university in the state. If the student elects to attend a private or out-of-state school, PACT will pay the amount of the weighted average cost of tuition and fees charged by the public four-year institutions in Alabama.

Enrollment is open only one month each year. Enrollment for 1998 will be available for the month of September only. Cost for enrolling this year varies from \$7,949 for an infant to \$11,061 for a student entering ninth grade in the fall. Payment can be made in one lump sum or by an extended payment plan.

**For more information or an application for enrollment, please call the PACT Division of the Treasurer's Office at 1-800-252-7228 or (334) 242-7514.**



# Making Your Appeals More Appealing:

## Appellate Judges Talk About Appellate Practice

by Susan S. Wagner

In a perhaps unprecedented gathering, 14 appellate judges met in May to talk about effective appellate advocacy at the 1998 Business Torts and Antitrust Institute, cosponsored by the Alabama State Bar Business Torts and Antitrust Section and ABICLE. The panel consisted of seven active justices and one former justice of the Alabama Supreme Court, the entire Alabama Court of Civil Appeals, and one representative of the Eleventh Circuit Court of Appeals. In a program packed with notable speakers and timely issues, the appellate panel was the highlight event.

Hot topics among the Alabama judges were "deflection" from the Alabama Supreme Court to the Court of Civil Appeals under Ala. Code § 12-2-7(6) and discretionary review of Alabama Court of Civil Appeals decisions by writ of certiorari to the Alabama Supreme Court. Other topics included effective writing and oral argument, interlocutory appeals, common mistakes, and miscellaneous procedural tips.

**Supreme Court Relief Act.** The "deflection" provision of Ala. Code § 12-2-7(6), which Presiding Judge William Robertson calls the "Supreme Court Relief Act," was enacted in 1993. It permits the Alabama Supreme Court to transfer cases previously within its exclusive jurisdiction to the Alabama Court of Civil Appeals. In fact, with the exception of utility rate cases, bond valuation proceedings, and bar disciplinary proceedings, the supreme court may in its discretion transfer *any* case, unless the court determines that the case "presents a substantial question of federal or state constitutional law" or "involves a novel legal question, the resolution of which will have signif-



icant statewide impact."

Many practitioners who had never practiced before the court of civil appeals may now find a large portion of their appeals being decided in the first—and often last—instance by the court of civil appeals.

**Missed Opportunity.** The Alabama Supreme Court deflects roughly 29 percent of its cases, and the deflected cases make up about 30 percent of the caseload of the court of civil appeals. On the other end, only about 10 percent of petitions for writ of certiorari to the court of civil appeals are granted. Thus, the best chance of assuring that a case is heard by the Alabama Supreme Court may be to resist deflection in the first place.

The time to oppose deflection is *before* it happens. Judge Sharon Yates noted that Form 24, the docketing statement for appeals to the Alabama Supreme

Court, contains a question addressed to the appropriateness of deflection. It asks, "If you believe this case should not be transferred to the Court of Civil Appeals [pursuant to Ala. Code § 12-2-7], please state with specificity the reasons(s) why it should *not* be transferred . . ." Unfortunately, appellants' attorneys often delegate the task of completing Form 24 to secretaries and paralegals who do not know the significance of this question. Appellees' counsel rarely take any stand on deflection, but may make their views known through a letter to the clerk of the Alabama Supreme Court.

**Appellate Rule 39—the Silent Killer.** Justice Mark Kennedy reports that an "overwhelming number" of applications for certiorari to the Alabama Supreme Court are procedurally defective because they fail to comply with Ala. R. App. R. 39. These applications are denied because the court cannot reach the merits. Justice Kennedy said that the order denying certiorari in these cases generally does not cite the procedural irregularity as the reason for the denial. Justice Gorman Houston reports counting 20 certiorari petitions in a single conference

### Susan S. Wagner

Susan S. Wagner, of the Birmingham firm of Berkowitz, Lefkowitz, Isom & Kushner, was the 1997-98 chairperson of the Alabama State Bar Business Torts & Antitrust Section. She received her law degree from the University of Alabama School of Law.



of the supreme court that were denied because the lawyers failed to comply with Rule 39 of the Alabama Rules of Appellate Procedure.

The critical requirements of Rule 39 are described in *Ex parte Save Our Streams, Inc.*, 541 So. 2d 549 (Ala. 1989). Under Rule 39(a), an application for rehearing in the court of civil appeals must first be filed. According to Judge Sharon Yates, the most common mistake in applying for rehearing is the failure to comply with Rule 39(k) relating to motions to adopt additional or corrected facts. This failure effectively precludes review by the Alabama Supreme Court. A common mistake in seeking certiorari is in failing to satisfy the requirement of Rule 39(c)(4) for specificity in alleging that the court of civil appeals' decision conflicts with other controlling law.

**Other Mistakes that Matter.** Justice Harold See pointed out that because failure to file a notice of appeal within the time set forth in Ala. R. App. P. 4 is jurisdictional, such mistakes as filing in the wrong court or attempting to file by fax can result in the dismissal of an appeal. With respect to papers to be filed in the appellate courts, Justice See also noted that they are "deemed filed" under Ala. R. Civ. P. 25(a) on the day of mailing if "certified, registered, or express mail of the United States Postal Service" is used, but *not* if they are sent by Federal Express or any other overnight courier service. Thus, an application for rehearing sent by Federal Express on the due date will be dismissed as untimely.

Justice See noted that it is the litigants' responsibility to get the record filed and to make sure that it is complete. Counsel should personally review the appellate record, including exhibits, in the trial court to be sure nothing is omitted. Judge John Crawley suggested that counsel should make sure, in cases with a preliminary hearing, that *all* of the transcripts make it into the record.

Where no transcript of the proceedings is available, Ala. R. App. P. 10(d) permits the filing of a "statement of the evidence or proceedings from the best available means, including the appellant's recollection." Judge Roger Monroe stated that without a transcript or Rule 10(d) statement, the appellate court cannot reverse on the basis that the decision is not supported by the evidence. If no evidentiary hearing has been held, Judge Crawley suggested being sure that the *absence* of a hearing appears of record.

**Don't Make Me Cry.** Chief Justice Perry Hooper's advice for oral argument:

- Don't make a jury argument;
- Stay at the podium;
- Don't spread yourself too thin; and
- Be prepared to answer questions from the court.

According to Justice Gorman Houston, the Alabama Supreme Court hears oral argument in only 10 percent of the cases. Counsel can expect that at least one justice—the one to whom the case is assigned—has thoroughly studied the case, briefs, and record and needs help in writing an opinion. This justice will have written and circulated to the other justices a bench memorandum in which the facts, issues, standard of review, and contentions of the parties are set forth. Justice Houston explained that the court is looking for:

- A factual summary distilled into a few sentences;
- A "dialogue with the court, not a monologue to the court";
- No jury speeches, lectures, personal attacks on opposing counsel, or overstatements;
- A logical analysis;
- Eye contact;
- Courtesy and honesty; and
- A complete understanding of the law pertinent to all the issues.

**How To Write the Opinion.** On the topic of brief writing, former Justice Terry Butts agreed that the court does not want a jury argument, saying, "Please don't 'wave the flag' or ask the court to 'send a message.'" Justice Butts also advised:

- Avoid legalese;
- Write in the active voice;
- "If it can be said in ten words, don't say it in 11,"
- Don't put an issue before the court and then fail to develop it so that the court has to do your research for you;
- Don't make arguments in footnotes;
- Don't "endlessly chronicle well-established points of law," such as the standard of review in summary judgment cases;



## THE COUNSELORS OF REAL ESTATE™

(American Society of Real Estate Counselors)

### EXPERT SERVICES FOR LAWYERS

- Expert Witness Testimony
- Litigation Support
- Program and Project Management
- Highest and Best Use of Land
- Asset and Investment Decision Making
- Acquisition/Disposition
- Pension Fund Investment Consulting

#### Birmingham

Roy Bragg, CRE ..... 205.252.6999  
Hop Chichester, CRE ... 205.871-8310  
Carey Gilbert, II, CRE ... 205.252.6999  
Henry Graham, CRE ... 205.871-7100  
Steve Graham, CRE ... 205.871-7100  
Charles Parrish, CRE ... 205.251.1267

Tom Rast, CRE ..... 205.870.9494  
Todd Sharley, CRE ..... 205.322.7500  
Julian Skinner, III, CRE ... 205.879.4529  
Lonnie Tidwell, CRE ... 205.252.8696

#### Montgomery

Ed Dennis, CRE ..... 334.262.5241



Cite only recent cases unless an older case is more notable authority;  
 Don't discuss cited cases without explaining how they apply to your case;  
 Don't misquote or misrepresent the holdings of cases;  
 Make the brief friendly and easy to read;  
 Bind the brief so that it lies flat; and  
 Break for paragraphs frequently.

Justice Houston said that in preparing briefs, he would first write "the best opinion that I think my client could possibly get" to "make sure that it will write that way" and then would brief from that opinion. He suggested that if the law is against you, cite Justice Shores' statement in *Jackson v. City of Florence*, 320 So. 2d 68, 73 (Ala. 1975), to try to get the court to change the law:

As strongly as we believe in the stability of the law, we also recognize that there is merit, if not honor, in admitting prior mistakes and correcting them.

Justice Kennedy suggested that it might not help your rehearing application to argue that the original opinion "shocks the conscience," is "the worst thing I've ever read," or "cannot be the law."

Justice Janie Shores said that the court is looking for help from the lawyers, explaining that the Alabama Supreme Court handles more than 1,700 cases per year, compared with 100 cases decided by the United States Supreme Court. According to Justice Shores, "Some firms can complicate any case." She strongly suggested that in the statement of the case, only the critical events be outlined, not the date of each pleading, motion, and ruling.

**A Really Bad Brief.** Judge William Thompson reminded us that there are many fine books and articles written about how to write good briefs. He chose instead to provide "12 Steps for Writing a Really Bad Brief":

1. Totally disregard rules 28, 31 and 32 of the Alabama Rules of Civil Procedure. Following these rules will only lead you to file the requisite number of copies of a timely and technically correct brief.
2. Don't worry about time constraints. Wait until your opponent files a motion to dismiss for your failure to timely file a brief and then file your brief the next day.
3. Include numerous eye-catching typographical and grammatical errors interspersed with a multitude of misspelled and misused words.
4. Never miss the opportunity to confuse your reader with a few misplaced modifiers or poor pronoun placement. For example, one we saw recently was, 'My client could not see the judge because he was in jail charged with Driving Under the Influence.'
5. Confuse the facts by using 'Appellant' and 'Appellee' instead of the parties' names. For example, "'The Appellant told the Appellee that the Appellant's land, which previously was owned by the Appellee's mother would be sold to the Appellee when the Appellee paid the Appellant the purchase price agreed

upon by the Appellee and Appellant.'"

6. Misquote, or better yet, don't even cite legal authority which supports your argument on a point of law. Simply use words like 'I conclude,' 'I believe' or 'the court must' to get around this technicality.

7. In your statement of facts, include only those facts favorable to your client. The judges will have no problem with your attempts to deceive the court and will likely not even notice the inconsistencies between your brief and that of your opponent.

8. Include every issue, fact and argument you can think of, even if they weren't raised at the trial court level and the chances of succeeding on these points is extremely unlikely. This will serve to beef up your brief and make for extremely tedious reading.

9. Do not cite to the record in your brief. However, if by chance you slip up and do so by accident, make sure you reference the incorrect page number and send the judge on a wild goose chase.

10. Excessive humor, sarcasm and cliches are definitely to be included.

11. Don't miss an opportunity to cast aspersions on the intelligence, motives, or integrity of the opposing attorney.

12. Try to include something insulting about the court in your brief. For example, tell them that you've researched their opinions and have found that they consistently, unfairly rule against people like your



**CAROLYN D. AVERY,  
CPA, CFE**

Summerford Accountancy, P. C. in Birmingham, Alabama announces that Carolyn D. Avery, CPA, CFE has joined the firm as Manager of Financial Investigations. She is a Certified Public Accountant and Certified Fraud Examiner with six years of public accounting experience and eleven years of internal auditing experience. Summerford Accountancy, P.C. specializes in forensic accounting and fraud investigations, including business valuations, consulting and resolving matters in litigation.

**Summerford Accountancy, P.C.**  
**CERTIFIED PUBLIC ACCOUNTANTS & FRAUD EXAMINERS**

SUITE 401 • 2107 FIFTH AVENUE NORTH • BIRMINGHAM, AL 35203  
 PHONE (205) 716-7000 • FAX (205) 716-7007



## New Commissioner Orientation

The annual commissioners' orientation for incoming new members of the



Alabama State Bar Board of Bar Commissioners was held July 9 in Montgomery. Members of the ASB staff presented the one-day orientation which included a slide presentation highlighting functions and program operations of the bar.



New ASB commissioners are:

William I. Grubb, II, 3rd Circuit, Eufaula; Ernestine S. Sapp, 5th Circuit, Tuskegee; W. Scott Donaldson, 6th Circuit, Place No. 1, Tuscaloosa; Celia J. Collins, 13th Circuit, Place No. 4, Mobile; Thomas J. Methvin, 15th Circuit, Place No. 4, Montgomery; Charles A. Langley, 24th Circuit, Fayette; Homer W. Cornett, Jr., 26th Circuit, Phenix City; and Roy W. Williams, Jr., 32nd Circuit, Cullman.



## The Master of the Trial Method of Advocacy

**James W. McElhaney**

**A Day in Discovery, October 30, 1998, Birmingham**

Jim McElhaney has visited Birmingham four times in the '90s. Five hundred of your colleagues have been entertained, informed, and educated by his mastery of oratory and his unique approach to trial tactics. McElhaney has been uniformly praised by Alabama lawyers for his practical advice . . . .

- ♦ *Jim McElhaney was dynamic. This is by far Cumberland's best seminar ever! I got my money's worth.*
- ♦ *McElhaney is very effective at telling you what to do and then showing you by example.*
- ♦ *Fabulous, spellbinding, personable, unflappable, and delightful! He is the top dog in his field!*

McElhaney has turned his sights from the courtroom toward the arena where cases are really won or lost (or successfully settled) and has created a brand new program - A DAY IN DISCOVERY. Join us and explore both formal and informal discovery tools and tactics in the practical and effective McElhaney style. This program will sell out, so register early by calling Cumberland CLE at 1-800-888-7454 today!

Samford University is an Equal Opportunity Institution and welcomes applications for employment and educational programs from all individuals regardless of race, color, sex, disability, or national or ethnic origin.



## Don't lose it!

Never lose, misplace or misfile another piece of paper.

***melcooper***

WWW.MELCOOPER.COM

(800) 733-7637

**Document Imaging  
Records Mgt.**



client. Or you may want to take the lead from the Texas attorney you may have read about in the *ABA Journal*, who described the Texas Supreme Court as 'one of the four horsemen of the apocalypse' and its justices as 'nine nutty professors.' I feel sure he'll prevail."

**Extraordinary and Interlocutory.** Justice Hugh Maddox stated that extraordinary writs make up approximately 12 percent of the Alabama Supreme Court's calendar and are often used by the court to review arbitration and class action rulings. Appeal by permission under Ala. R. App. P. 5 is rarely used. Justice Maddox suggested that summary judgments sometimes are used, with the trial court's cooperation, as a method of interlocutory review on a dispositive issue of law.

While the rules prescribe no time limit for the filing of mandamus petitions, the court may not be impressed that a petition filed 42 days after an adverse ruling is the sort of emergency that merits extraordinary relief. Last-minute petitions to delay trial are not well received.

Judge Robertson recommended that if the Alabama Court of Civil Appeals denies a writ of mandamus, the losing party should file a new petition in the Alabama Supreme Court under Ala. R. App. P. Rule 21(e), rather than an application for rehearing in the court of civil appeals.

**What Else You Should Know About the Court of Civil Appeals.** Presiding Judge William Robertson explained that court of civil appeals' cases are randomly assigned to individual judges by a "draw pool." The court of civil appeals holds an internal "motion docket" each Tuesday to keep motions and extraordinary writs from "falling through the cracks." If a motion or writ is an emergency, the court will respond immediately. Otherwise, motions usually are acted upon within 14 days. Extraordinary writs remain on the motion docket until ruled on or placed in the "draw pool" for preparation of an opinion.

Judge Monroe noted that the Alabama Court of Civil Appeals rarely grants oral arguments because of its heavy case load. Because the court will hold cases slated for oral argument until it gets a full calendar, their disposition may be delayed.

**An Extraordinary Epiphany.** The sole representative of the Eleventh Circuit Court of Appeals, Judge Ed Carnes, addressed effective speech and writing. He suggested that

lawyers pay heed to the wisdom of Winston Churchill, who said, "Short words are best and the old words when short are best of all."

Judge Carnes also told of John Newton, an 18th-century English slave ship captain turned abolitionist and preacher, who is remembered chiefly because "one of the songs he wrote is such a powerful statement about his wretched past and his deeply felt religious faith . . . that it has become the most popular Christian hymn ever written. It has endured for more than two centuries, has been translated into many languages, and is sung by millions of people every year." The song is "Amazing Grace."

Judge Carnes mused, "Why is that hymn so powerful and moving? Of course, John Newton had much to work with, because he had a real message to deliver about his past, his conversion, and his faith. Having something to say is essential to effective writing in briefs and in hymns." "Amazing Grace" has six verses, but a total of only 148 words. The average word length is four letters. There are only two three-syllable words in the song — "amazing" and "already" — and none more complicated than that. "The old slave trader turned preacher wrote with simple, direct, powerful words."

"How fortunate we are that John Newton was not an attorney," Judge Carnes said. "Think about it. If he had been, instead of writing 'Amazing grace, how sweet the sound that saved a wretch like me,' he might have written:

'Oh, extraordinary religious epiphany, which was not unwelcome inasmuch as it induced a state of spiritual transcendence for an allegedly not unneedy party, such as the undersigned.'

"It is hard to imagine singing those words at a funeral, and there is little chance they would have lasted for more than 200 years."

Judge Carnes then challenged the audience to translate the following legalese into a famous line from a "down-home, bay-ing-at-the-moon, done-me-wrong" country song:

"Your patent predisposition for indiscriminate carnality will invariably lead to self-inflicted mental anguish, as well as to self-incriminating gestures, words, and deeds."

When Justice See guessed Hank Williams' "Your Cheatin' Heart" ("Your cheatin' heart will tell on you . . ."), Judge Carnes said that it worried him that Justice See was able to get it right.

Judge Carnes summarized his advice: "So, if you're in trial or on appeal because your client has a cheating heart, just remember to write and speak with amazing grace."

### Questions?

Justice Janie Shores told us to call or come by the clerk's office for answers to tricky procedural questions. The personnel are knowledgeable and anxious to help. Judge Crawley echoed this sentiment with respect to the court of civil appeals, but advised: "If the phone is busy, go read the rules." ■

## Do You Need a Tree Expert?

- |                        |                       |
|------------------------|-----------------------|
| * Tree Valuations      | * Tree Protection     |
| * Pesticide Damages    | * Timber Trespass     |
| * Tree Care            | * Tree Assessments    |
| * Registered Foresters | * Certified Arborists |



Southern Urban Forestry Associates  
205-333-2477  
P. O. Box 1403, Northport, AL 35476



VLP

# Thank You

The Alabama State Bar Volunteer Lawyers Program provides legal assistance to hundreds of indigent clients through the dedication of over 1,700 VLP attorneys. Each year, Alabama lawyers provide thousands of hours of free legal services to the poor. While the task of choosing just three attorneys to receive this award was difficult, this year's recipients have provided outstanding service to the VLP and best exemplified the spirit of the Volunteer Lawyers Program.

## 1998 Alabama State Bar Pro Bono Award

### Recipients for Outstanding Service to the Volunteer Lawyers Program

★ Hugh M. Lee, Tuscaloosa ★

★ Nancy D. Stuart, Montgomery ★

★ Phillip D. Mitchell, III, Decatur ★



*J. Forrester DeBuys, III*  
J. Forrester DeBuys, III CLU

You establish goals for creating wealth. We help you meet your goals, while protecting your family and estate through insurance and financial products.



The Company You Keep.®

104 Inverness Center Place  
Suite 500  
Birmingham, AL 35242  
995-1122

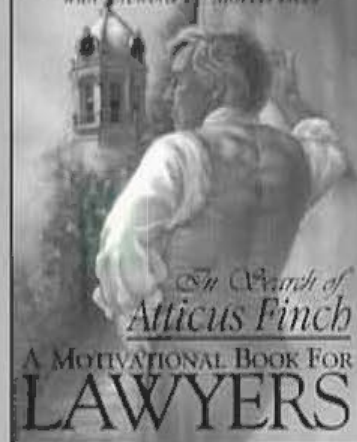
## Rethink the way you live as a lawyer!

Mike Papantonio



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.

Mike Papantonio  
with Foreword by Morris Dees



Order Today: 1-800-577-9499  
Only \$24.95 plus \$3.00 S&H  
(Add Florida Sales Tax if applicable)



Or by check to:  
Seville Publishing, P.O. Box 12042  
Pensacola, FL 32590-2047



## POSITION AVAILABLE

### Alabama State Bar Volunteer Lawyers Program Director

The Alabama State Bar has a challenging career opportunity for a highly motivated, dedicated, self-starting attorney. This position will coordinate pro bono civil legal services. Duties will include managing the ASB Volunteer Lawyers Program, recruitment and recognition of volunteer private lawyers in the civil pro bono effort; coordinating pro bono efforts with local bar associations; serving as a resource in developing local pro bono programs; and acting as a clearinghouse for successful pro bono programs around the state and nation.

The person sought must have a J.D. degree and at least two years' experience in the practice of law or other equivalent experience; be self-motivated and self-directed; possess excellent communication skills; possess strong organizational abilities; be willing to undertake regular statewide travel; and be able to work with a wide variety of personalities and groups.

The salary is commensurate with experience, and an excellent fringe benefits program is provided.

For consideration, forward the following materials: resume and salary history, INCLUDING a cover letter explaining background and interest in position, in confidence to:

**SEARCH COMMITTEE  
VOLUNTEER LAWYERS PROGRAM  
P.O. BOX 671  
MONTGOMERY, AL 36101**

Deadline for submission is October 15, 1998. The Alabama State Bar is an equal opportunity employer.

Small Business Networking  
Password/Data Recovery  
Forensic Computer Analysis  
Public Safety Software

Our IACIS Certified professionals can examine any computer system to determine the system contents. All examinations are performed in accordance with current rules of evidence and are admissible in court. Expert witness testimony related to computer issues is available. Visit our Web Page or call us for more details!

## Forensic Computer Analysis



Stasis Corporation

4647 T Highway 280 East, Suite 107  
Birmingham, Alabama 35242

[www.stasiscorp.com](http://www.stasiscorp.com)

Phone: (205) 991-7501







## DISCIPLINARY NOTICE

### Reinstatements

- On May 26, 1998, Elberta lawyer **Andrew Wilson Hayes** was reinstated on the roll of the Alabama Supreme Court as an attorney authorized to practice law in the courts of Alabama. [Pet. No. 98-002]
- On January 9, 1998 Huntsville lawyer **Barbara C. Miller** was reinstated on the roll of the Alabama Supreme Court as an attorney authorized to practice law in the courts of Alabama. [Pet. No. 97-007]
- Huntsville attorney **Joe N. Lampley** was reinstated to the practice of law by order of the Disciplinary Board of the Alabama State Bar effective May 19, 1998. [Pet. No. 98-04]

### Notices

- Notice is hereby given to **Charles Timothy Koch** of Mobile, Alabama that he must respond to the charges in disciplinary files ASB No. 97-090(A) and ASB No. 97-110(A) within 30 days from the date of this publication (September 15, 1998). Failure to respond shall result in further action by the Office of General Counsel. [ASB No. 97-090(A) and ASB No. 97-110(A)]
- Notice is hereby given to **Theodore Richard Pearson** of Birmingham, Alabama that he must respond to the charges in disciplinary file ASB No. 96-313(A) within 30 days from the date of this publication (September 15, 1998). Failure to respond shall result in further action by the Office of General Counsel. [ASB No. 96-313(A)]
- Notice is hereby given to **Carey W. Spencer, Jr.**, who practiced law in Sturbridge, Massachusetts and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-38]
- Notice is hereby given to **Melvin Richard Hughes** who practiced law in Birmingham, Alabama and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated

June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-9]

- Notice is hereby given to **Leland L. Price**, who practiced law in Knoxville, Tennessee and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-37]
- Notice is hereby given to **Rebecca Kirkland Stephenson**, who practiced law in Birmingham, Alabama and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, she has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of her license. [CLE No. 98-19]
- Notice is hereby given to **Kenneth H. Millican**, who practiced law in Hamilton, Alabama and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-27]
- Notice is hereby given to **Carlos Rae Allen, Jr.**, who practiced law in Homewood, Alabama and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-1]



- Notice is hereby given to Scott Patrick Archer, who practiced law in Atlanta, Georgia and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated June 23, 1998, he has 60 days from the date of this publication (September 15, 1998) to come into compliance with the Mandatory Continuing Legal Education requirements for 1997. Noncompliance with the MCLE requirements shall result in a suspension of his license. [CLE No. 98-29]

## Suspensions

- Gadsden attorney **John David Floyd** pled guilty before the Disciplinary Board of the Alabama State Bar to a violation of Rule 3.4(a), which provides that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value" and to a violation of Rule 4.1(a), which provides that a lawyer shall not knowingly "make a false statement of material fact or law to a third person." Floyd was ordered suspended from the practice of law in the State of Alabama for a period of 91 days with the imposition of said suspension to be held in abeyance pending successful completion of a one-year probationary period. As a condition of probation, Floyd was ordered to serve a 30-day suspension from the practice of law in the State of Alabama effective June 13, 1998. Other conditions of probation were ordered. In July 1996, the respondent attorney was retained to represent a criminal defendant who had been charged with two counts of criminal trespass in the third degree and one count of unlawful possession of a controlled substance. The defendant's arrest for criminal trespass in the third degree was based on the fact that he had been banned from Gadsden Housing Authority property and that his name was published on a banned list maintained by the Gadsden Housing Authority for use by the Gadsden Police Department. The search incident to the defendant's arrest for criminal trespass in the third degree led to the charge of possession of a controlled substance. Although a plea agreement in the matter had been negotiated between the respondent attorney and the deputy district attorney prior to the date of trial, on the morning of the trial, the respondent attorney requested to be heard on a motion to suppress. Prior to the hearing on the motion to suppress, the respondent attorney represented to the deputy district attorney that the defendant's name was not on the Housing Authority notice of trespassing "banned list" and, therefore, his arrest and incident search were unlawful. The respondent attorney produced a copy of the "banned list" which did not contain the defendant's name. When the police officers involved in the arrest produced their copy of the Housing Authority banned list, it was discovered that the Housing Authority banned list produced by the respondent attorney had been altered to delete his client's name. In determining discipline in this case, the board considered the fact that the altered document was not submitted as evidence in any proceeding and that Floyd had no prior discipline. [ASB No. 97-201(A)]
- Birmingham attorney **Charles Leroy Howard, III** was suspended from the practice of law in the State of Alabama for a period of 91 days, effective July 16, 1998, by order of the Supreme Court of Alabama. This suspension is based upon Howard's guilty pleas before the Disciplinary Board of the Alabama State Bar to violating rules 1.15(a) and (b) [safekeeping property], and 1.1 [competence], Alabama Rules of Professional Conduct. In ASB No. 95-214, Howard pled guilty to violating rules 1.15(a) and (b), A.R.P.C., based upon his participation with a client and other individuals in a series of improper and ill-advised investment schemes. Howard, acting as escrow agent for the group, solicited in excess of \$200,000 from a single investor. The investment for which these funds were initially solicited never materialized. It was later discovered that Howard had co-mingled these funds with attorney and personal funds and that he failed to account for these funds when called upon to do so by the investor. The Disciplinary Board ordered that Howard make restitution to the investor in the amount of \$201,000. In ASB No. 96-170, Howard provided legal advice and counsel to the White Hall Downtown Development Authority in connection with bond issues to be issued by the Authority. Howard, acting as bond counsel, gave certain advice and made certain recommendations to the City of Whitehall in connection with this bond issue. This advice was improper and resulted in violations of the Securities Act of 1933 and the Securities and Exchange Act of 1934. Howard admitted that he had no legal training or experience with such matters. Howard's conduct resulted in the filing of a civil action by the Securities and Exchange Commission which was settled in February 1997 by entry of a consent order in favor of the Securities and Exchange Commission. [ASB Nos. 95-214 and 96-170]
- Jackson attorney **Larry Wayne Keel** was suspended from the practice of law in the State of Alabama for a period of 89 days, effective June 17, 1998. On June 16, 1998, Keel appeared before Panel I of the Disciplinary Board of the Alabama State Bar and admitted to violating rules 7.1(a) and (b) and 7.3, Alabama Rules of Professional Conduct. Keel obtained the name and telephone number of two individuals who were involved in an automobile accident in Evergreen, Alabama. On the day after the accident, Keel contacted one of the individuals by telephone for purposes of soliciting the prospective client to engage his services in the matter. Neither of the individuals who were contacted by Keel knew him or had ever used his services and neither had requested that he contact them. During his conversation with these prospective clients, Keel made several representations to these individuals concerning the results his firm could achieve on their behalf and benefits available to these clients through his firm, and compared his firm's services as superior to those of other lawyers. In imposing the discipline in this case, the Disciplinary Board specifically noted that the severity of discipline imposed was substantially mitigated by Keel's acknowledgment of his wrongdoing and acceptance of full responsibility for his misconduct in addition to the fact that Keel had been sued by the individuals for invasion of privacy which resulted in Keel's



agreement to pay the individuals \$10,000 to settle their claims and substantial adverse publicity regarding Keel's conduct in the local media. No prior discipline was considered. [ASB No. 97-54(A)]

- Birmingham attorney Charles Eugene Caldwell was suspended from the practice of law in the State of Alabama for a period of 45 days effective July 7, 1998. Caldwell was found

guilty of violating Rule 1.5(f), which provides that "without prior notification to and prior approval of the appointing court, no lawyer appointed to represent an indigent criminal defendant shall accept any fee in the matter from the defendant or anyone on the defendant's behalf." Caldwell was also found guilty of violating Rule 8.4(c) which provides that it is professional misconduct for a lawyer to "violate or attempt to violate the

Rules of Professional Conduct" and found guilty of violating Rule 8.4(c) which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The board's finding of guilt was based upon an incident where Caldwell was acting as appointed counsel for a defendant in the District Court of Jefferson County, Alabama, in connection with two pending felony drug cases. At the time of his appointment, Caldwell requested that the defendant pay him an additional \$600 for his services. Subsequent to the appointment and their initial meeting, Caldwell advised this defendant that there was nothing he could do for him until he paid the \$600. In a subsequent meeting between Caldwell and his client, his client expressed his displeasure with Caldwell's continued request for an additional \$600. According to the defendant, Caldwell then advised him that the \$600 was for bond and that he was negotiating with the district attorney regarding a plea. When Caldwell's demands were made known to the district court, the court relieved Caldwell of his appointment and ordered a hearing on the allegations. Immediately prior to the hearing, Caldwell advised the court that he had just been retained by the defendant and that he had recently accepted the defendant's income tax refund check of approximately \$591 for his services. During the hearing the defendant initially indicated that the whole matter was a misunderstanding and that his earlier statements to the court regarding Caldwell's repeated requests for more money were untrue. However, upon further examination, the defendant admitted that the first statement that he gave was true and that he had changed his testimony because Caldwell had met with him prior to the hearing, coached him concerning their agreement, and advised him that his statement to the district judge had jeopardized his chance for probation and that he should advise the court that his initial statement was untrue. [ASB No. 95-57] ■



The most difficult problems require the most innovative responses. When the shadows of title problems

loom, a unique approach makes all the difference. Mississippi Valley Title responds. With in-depth knowledge

to serve your local needs instantly. Strength to offer national resources and reserves immediately.

Flexibility to change with your business readily. Call us today.



1-800-843-1688, [www.mvt.com](http://www.mvt.com)



# OBJECTION!



If you're not insured with the Attorneys' Advantage Professional Liability Insurance Program... you should object to your current insurer on the following grounds:

1. You may be paying too much for your liability coverage.
2. You may not have the broad coverage you really need.

**A**ttorneys' Advantage Professional Liability Insurance offers broad coverage...up to \$10 million in limits. Program benefits include:

- **First Dollar Defense**
- **Claims Expense in Addition to Liability Limits**
- **Risk Management Program**
- **Full Prior Acts Coverage Available**

Best of all, it's underwritten by TIG Insurance Company, A.M. Best rated "A" (Excellent), XI.

Don't delay! For more information, including a no-obligation quotation, call today. Plus you'll receive a free copy of *The Quarter Hour*, the newsletter for Attorneys' Advantage insureds that contains useful, practical information on ways to manage risk in your practice.



Professional Liability Insurance, Inc.  
300 Delaware Avenue • P.O. Box 2287  
Wilmington, DE 19899

**PLI** Professional Liability Insurance, Inc.

**1-800-441-9385**

Fax: 1-800-716-3411

[www.zutz-pli.com/lawyers.html](http://www.zutz-pli.com/lawyers.html)

**TIG INSURANCE**

**Attorneys' Advantage®**  
Professional Liability Coverage  
On Favorable Terms





## RECENT DECISIONS

By Wilbur G. Silberman and David B. Byrne, Jr.

### United States Supreme Court

#### White defendant has standing to attack anti-black bias in Grand Jury selection

*Campbell v. Louisiana*, Case No. 96-1584, U.S., 66 U.S. LW 4263 (1998). White defendants have the requisite legal standing to challenge indictments against them based on alleged discrimination against blacks in the selection of grand jury members. The United States Supreme Court ruled by a seven-to-two vote that any white defendant can "raise an equal protection challenge to discrimination against black persons in the selection of his grand jury." Justice Anthony M. Kennedy, writing for the Court, observed, "Regardless of his or her skin color, [a defendant] suffers a significant injury in fact when the composition of the grand jury is tainted by racial discrimination."

The Court's holding on the equal protection issue represented an extension of the doctrine of third party standing, which the Court applied in *Powers v. Ohio*, 499 U.S. 400 (1991), in the context of alleged discrimination in the exercise of peremptory challenges to petit jurors.

The defendant, who was convicted of murder, based his claim of discrimination on evidence that in the Louisiana parish where he was indicted, no black person had served as a grand jury foreperson from 1976 to 1993, even though blacks made up approximately 20 percent of the parish's registered voters. The Louisiana Supreme Court held that he had no standing to raise a Fourteenth Amendment challenge because he was not a member of the racial group who suffered the alleged discrimination.

Outside of the core holding in *Campbell*, the Court's extension of the

three-part test set out in *Powers v. Ohio* for third-party standing, was expressly adopted, as follows:

1. A defendant must have suffered an injury in fact;
2. The defendant must have a close relationship to the excluded jurors; and
3. There must be some hindrance to the excluded juror's assertion of their rights on their own.

The Supreme Court left for another day the problem of defining a defendant's due process rights in the context of grand jury selection. The Court held only that, "a defendant has standing to litigate whether his conviction was procured by means or procedures which contravene due process." The Court again made the point that the defendant's claim did not concern the foreperson's "performance of his duty to preside," but rather, his performance as a grand juror.

#### Attorney-Client privilege extends beyond the grave

*Swidler and Berlin v. United States*, Case No. 97-1192, U.S. (1998). The United States Supreme Court ruled that the attorney-client privilege extends beyond the grave. The Supreme Court, on June 25, 1998, held, in a six-to-three decision, that a grand jury subpoena does not trump the attorney-client privilege after a client's death. Independent counsel Kenneth Starr had sought to review the notes of a conversation that White House Deputy Counsel Vincent Foster had with a lawyer shortly before committing suicide in 1993.

Chief Justice Rehnquist, writing for the Court, observed, "...The attorney-client privilege is one of the oldest recognized privileges for confidential communications. Knowing that communications will remain confidential even after death encourages the client to communicate fully and frankly with counsel."

The case involved three pages of notes taken by James Hamilton, a Washington lawyer whom Foster visited at home nine days before his death. Starr contended that he needed the notes as part of his inquiry into whether Clinton administration officials lied to conceal Mrs. Clinton's alleged role in the 1993 firing of the White House travel office employees.

After noting that "there is no case authority for the proposition that the privilege applies differently in criminal and civil cases," the Chief Justice added, "balancing ex post the importance of the information against client interest, even limited to criminal cases, introduces substantial uncertainty into the privilege's application. For just that reason, we have rejected the use of a balancing test in defining the contours of the privilege."

#### Habeas Corpus: Gun-Using suspects can rescind guilty pleas

*Bousley v. Brooks*, Case No. 96-8516, U.S. (1998). Defendants who pleaded guilty to "using" a gun during a crime, in violation of 18 U.S.C. 924(c)(1), before a judicial decision significantly narrowed the federal law's scope, can move to withdraw their previously entered pleas of guilty.

In the 1995 decision, *Bailey v. U.S.*, 516 U.S. 137 (1995), the Supreme Court held that prosecutors must show someone actively "used" a gun during a drug crime, by displaying or firing it before a conviction under the anti-gun law could be obtained. A drug trafficker, who secretly had a gun nearby in case of a confrontation, did not violate the law.

In a seven-to-two decision, Chief Justice Rehnquist wrote that a defendant who takes back his previously entered plea of guilty must show in a new habeas proceeding that he is actually innocent of the crime.

"Although his claim was procedurally



defaulted, petitioner may be entitled to a hearing on the merits of it if he makes the necessary showing to relieve the default."

### **Punitive forfeiture and the Eighth Amendment's excessive fines clause**

*United States v. Bajakajian*, Case No. 96-1487, \_\_\_ U.S. \_\_\_ (1998). The Supreme Court, in *United States v. Bajakajian*, applied the Eighth Amendment's excessive fines clause for the first time in the Court's history. The ruling resulted in the High Court's first reversal of a forfeiture on Eighth Amendment grounds, and featured a rare, if not unprecedented, split between Justices Thomas and Scalia in a criminal case.

The defendant, a California businessman, failed to report \$357,144 hidden in his luggage on an international flight. Although the money was lawfully obtained and intended for lawful use, the Customs Service seized all the funds because the defendant failed to report it and then lied about it when questioned by Customs' agents.

Writing for the five—four majority, Justice Thomas declared that certain forfeitures constitute punishment, and thus, violate the excessive fines clause of the Eighth Amendment if they are "grossly disproportional to the gravity of the defendant's offense." The Court held that the forfeiture of the respondent's entire \$357,144 would be grossly disproportional to the gravity of his offense. His crime was solely a reporting offense. Thus, for the first time, the Supreme Court used the yardstick of proportionality to determine whether or not the forfeiture would be grossly disproportional to the gravity of the offense. The Court critically focused the issue as follows:

A punitive forfeiture violates the excessive fines clause if it is grossly disproportional to the gravity of the offense that it is designed to punish. Although the proportionality principle has always been the touchstone of the inquiry, see e.g. *Austin*, *supra* at 622-623, 113 S.Ct. at 2812-13, the clause's text and history provide little guidance as to how disproportional a forfeiture must be to be excessive. Until today, the Court has not articulated a governing standard. In deriving this standard, the Court finds two considerations particu-

larly relevant. The first previously emphasized in cases interpreting the cruel and unusual punishment's clause is that judgments about the appropriate punishments belong in the first instance to the legislature . . . The second is that any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise. Because both considerations counsel against requiring strict proportionality, the Court adopts the gross disproportionality standard articulated in *Solem v. Helm*, 463 U.S. 277.

## **Recent Bankruptcy Cases and New Legislation**

### **Bank in preference action loses \$37.5 million on letter of credit seizure**

*Matter of P.A. Bergner*, (7th Cir. April 9, 1998), 140 F.3d 1111, 32 BCD 536. Bank One issued a standby letter of credit for two beneficiaries. The debtor, as the account party, committed to reimburse the issuer any sums drawn whether at the time the draft was presented by a beneficiary or thereafter, and in the event of a default, the debtor was to pay issuer the full amount of the drafts presented under the letters of credit. Thus, the issuer bank would hold the money, without interest, and be in a position to honor any drafts. Additionally, the bank was granted a security interest and lien on any amount on deposit with it. The court described the arrangement as a tripod, one leg being the standby letter and agreement between the bank and debtor, the second being the letter of credit arrangement between the issuer and the beneficiaries, and the third being the obligations (secured by the letters of credit) from the debtor to the beneficiaries. The debtor became in default to the beneficiaries and, within 90 days of bankruptcy, paid the bank over \$31.2 million in order to protect the bank in honoring drafts under the letters of credit. After filing chapter 11, the debtor claimed a voidable preference against the bank. The bankruptcy court ruled in debtor's favor but did not allow interest. The case ultimately

reached the Seventh Circuit on appeal.

The bank, in its defense, contended (1) there was no transfer; (2) if there were a transfer, it was not because of an antecedent debt; and (3) the debtor's estate was undiminished by the transfer. All of these contentions were rejected by the appellate court, which held there was no new value given, as there was no subsequent credit granted. The court reasoned that the different obligations were independent of each other, as the bank was legally bound to pay the beneficiary according to the terms of the letter of credit regardless of what debtor did in satisfying the bank as the issuer. Because any alleged perfection of a common law security interest in the debtor's bank account could not have occurred until Bank One assigned control of the bank account, such control occurred within the 90-day period, and thus was not within the exception. The court also ruled against the bank's claim of a security interest in the bank account of the debtor. Finally, adding to the woes of Bank One, the Seventh Circuit held the debtor to be entitled to pre-judgment interest, and determined as an abuse of discretion the bankruptcy court's reasoning that interest would be a windfall to the debtor.

**Comment:** The opinion of the court appears logical. However, because of the amount involved unless the case is settled, I assume it is on the way to the United States Supreme Court.

### **Bankruptcy Judge Jack Caddell held that proceeds of payment bond, as contrasted with performance bond, are property of estate**

*Matter of Monarch Tile*, Bkcty N.D. AL., Feb. 12, 1998, 319 B.R. 622. In May 1994, the Alabama Department of Transportation (ALDOT) issued a permit to Monarch Tile to construct a turnout lane along a public highway. The permit required a bond or certified check for \$10,000 "to guarantee the faithful performance of this permit. . . ." Upon satisfactory completion, the money or bond was to be returned to Monarch, but otherwise to be used to complete the project. Monarch filed a cash bond, and subcontracted the job to David Michael for \$8,500. Michael satisfactorily completed the job but, prior to receiving payment,



Monarch filed a chapter 11 bankruptcy. Michael filed an adversary complaint against debtor and ALDOT to obtain payment. Judge Caddell ruled in favor of debtor and ALDOT, stating that the "Little Miller Act" in §39-1-1 (1975) of the Alabama Code pertained only to payment, while the transaction in the instant case was a performance bond for the benefit of ALDOT to insure construction of the turnout lane, and not a payment bond for Michael's benefit. He also held that although sympathetic, §105 of the Bankruptcy Code does not allow a bankruptcy judge to do equity without limits.

**Comment:** Although this appeared to be a close question, upon inquiry, I found there was no appeal.

## New Legislation

The Donation Protection Act, signed

June 19, 1998, immediately effective, amends §§ 544, 548, 707, and 1325 of the Bankruptcy Code by ameliorating the strict law on avoidable transfers with relation to charitable contributions. The limitations in the Act are that the transfer does not exceed 15 percent of gross annual income of the debtor for the year in question, or is consistent with prior practices of the debtor in making contributions, that it must qualify as a charitable contribution

under the Internal Revenue Code, is made by a natural person to a "qualified religious or charitable entity" under the IRC, and is in cash or a financial instrument as defined in the IRC. The law is intended to prevent suits against charitable and religious organizations to set aside gifts, which includes tithing in the organizations. However, transfers intended to hinder, delay, or defraud remain vulnerable to attack. ■



**Wilbur G. Silberman**

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



**David B. Byrne, Jr.**

David B. Byrne, Jr., is a graduate of the University of Alabama, where he received both his undergraduate and law degrees. He is a member of the Montgomery firm of Robison & Belser and covers the criminal decisions.

# Technology Exchange Project

Legal Service organizations, faced with recent funding cuts, are struggling to balance personnel, capital and other costs. If they are lucky enough to have any type of computers, the machines are generally outdated "dinosaurs" relegated to secretaries' desks for word processing tasks, and are not being used to manage client loads or perform research or any of the other myriad tasks most lawyers now count on technology to help them with so they can best serve their clients.

Three American Bar Association entities—the Standing Committee on Legal Aid and Indigent Defendants and the sections of Litigation and Business Law—have launched the "Technology Exchange Project," funded by the Open Society Institute of New York, to help match needy legal service offices with legal firms that are upgrading their systems. Firms are being asked to donate their used equipment to a computer clearinghouse being coordinated by the ABA. The ABA will kick off the project by donating about 400 used computers during the next two years.

Firms are asked to donate equipment that is in good working order and that is capable of using Windows 3.11. A firm that does not have equipment to donate can still help with the project by volunteering time of its information services staff to serve as technical support for legal services programs.







## MARK YOUR CALENDARS!

The Alabama Criminal Defense Lawyers Association Presents:  
**"Defending Against Allegations of Child Sex Abuse:  
Current Issues and Strategies"**

November 7, 1998  
Huntsville Marriott  
9:00 a.m.-4:30 p.m.

\$100 Registration Fee (Lunch included)


### TOPICS INCLUDE:

- Evidence and Problems Unique to Child Sex Abuse Cases
- Trial Preparation for Cases Without Live Child Testimony
- Cross Examination of the Case Worker or Child Advocate
- Attacking the Suggestive Child Interview
- New Strategies for Obtaining Discovery
- Jury Selection in the Child Sex Abuse Case
- Effective Use of Defense Experts

For More Information, contact ACDLA at (334) 567-2575.

**Attorneys: Buy Extras for Your Staff!**

# 1998 BAR DIRECTORIES are in!



**Members**  
**\$25 each**  
**1 TO 5 COPIES**

**\$20 each**  
**6 OR MORE COPIES**

**Non-members—\$60 each**

ORDERS MUST BE PRE-PAID

Mail check to: Alabama Bar Directory • P.O. Box 4156 • Montgomery, AL 36101





## CLE OPPORTUNITIES

*The following listing is a random sampling of in-state programs approved for credit by the Alabama Mandatory CLE Commission on the printing deadline date for this issue of The Alabama Lawyer. Many other in-state programs, as well as programs nationwide, are continually being evaluated and approved. All are identified by sponsor, location, date and specialty area. For a complete listing, contact the MCLE Commission office at (334) 269-1515, ext. 156 or 158, or you may view a complete listing of current, approved programs at [www.alabar.org](http://www.alabar.org).*

### SEPTEMBER

9-11

Mediation and Conflict Management  
Huntsville  
Community Mediation Center of the  
Better Business Bureau  
CLE credits: 20.0 Cost: \$275  
(205) 532-1425

10

Domestic Violence Bench Manual  
Training Seminar  
Montgomery  
Alabama Judicial College  
CLE credits: 5.3  
(334) 242-0300

11

Elder Law  
Birmingham  
Alabama Bar Institute for CLE  
CLE credits: 6.0  
(800) 627-6514

Developments and Trends in Health  
Care Law  
Birmingham  
Cumberland Institute for CLE  
CLE credits: 6.5  
(800) 888-7454

11-12

How to Get and Keep Good Clients  
Auburn  
Auburn University Hotel and  
Conference Center  
Auburn University Bar Association  
CLE credits: 5.0 Cost: \$225  
(334) 321-5816

12-13

Practical Issues for Prosecutors  
Guntersville  
Jefferson County District Attorney's  
Office  
CLE credits: 5.5  
(205) 325-5252

18

Consumer Real Estate Finance,  
Regulation and Litigation  
Birmingham  
Cumberland Institute for CLE  
CLE credits: 6.0  
(800) 888-7454

Criminal Defense  
Birmingham  
Alabama Bar Institute for CLE  
CLE credits: 6.0  
(800) 627-6514

24

Individual Income Tax Strategies and  
Preparation  
Birmingham  
Professional Education Systems, Inc.  
CLE credits: 6.7 Cost: \$195  
(715) 836-9700

Labor and Employment Law in  
Alabama  
Mobile  
National Business Institute  
CLE credits: 6.0 Cost: \$179  
(715) 835-8525

25

Is Your Client Covered? Insurance  
Claims and Conflicts  
Birmingham  
Cumberland Institute for CLE

CLE credits: 6.0  
(800) 888-7454

Individual Income Tax Strategies and  
Preparation  
Huntsville  
Professional Education Systems, Inc.  
CLE credits: 6.7 Cost: \$195  
(715) 836-9700

Family Law Practice  
Birmingham  
Alabama Bar Institute for CLE  
CLE credits: 6.0  
(800) 627-6514

Labor and Employment Law in  
Alabama  
Montgomery  
Holiday Inn South  
National Business Institute  
CLE credits: 6.0 Cost: \$179  
(715) 835-8525

### OCTOBER

1-5

Divorce Mediation Training  
Mobile  
Atlanta Divorce Mediators, Inc.  
CLE credits: 40.0 Cost: \$895  
(404) 378-3238

2

Ninth Annual Bankruptcy Law  
Seminar—Bankruptcy Fundamentals  
Birmingham  
Cumberland Institute for CLE  
CLE credits: 6.0  
(800) 888-7454



Depositions  
Birmingham  
Alabama Bar Institute for CLE  
CLE credits: 6.0  
(800) 627-6514

9

Automobile Accident Litigation  
Birmingham  
Cumberland Institute for CLE  
CLE credits: 6.0  
(800) 888-7454

Tort Law  
Birmingham  
Alabama Bar Institute for CLE  
CLE credits: 6.0  
(800) 627-6514

15

Winning Strategies for Jury Selection  
in Alabama  
Mobile  
Radisson Admiral Semes  
National Business Institute  
CLE credits: 6.0 Cost: \$179  
(715) 835-8525

## In-State Mediation Training

(Approved for CLE credit and Alabama Center for Dispute Resolution roster registration)

September 9-11  
Huntsville  
**Mediation-Conflict Management**  
Better Business Bureau  
(Anne Isbell)  
(205) 539-2118  
20 Hours

September 17-19  
Birmingham  
**Mediation Process & the Skills of Conflict Resolution**  
Litigation Alternatives, Inc.  
(Troy Smith)  
(800) ADR-FIRM  
(889) ADR-CL3  
22 Hours

October 1-5  
Mobile  
**Divorce Mediation**  
Atlanta Divorce Mediators  
(Elizabeth Manley)  
(800) 862-1425  
40 Hours

October 22-24  
Birmingham  
**Mediation Process & the Skills of Conflict Resolution**  
Litigation Alternatives, Inc.  
(Troy Smith)  
(800) ADR-FIRM  
(889) ADR-CL3  
22 Hours

### OUT-OF-STATE

September 10-14  
Atlanta  
**Divorce Mediation**  
Atlanta Divorce Mediators  
(Elizabeth Manley)  
(800) 862-1425  
40 Hours

September 11-12 & 18-19  
Atlanta  
**General Mediation Training**  
Alternative Dispute Resolution, Inc.  
(Joe Davenport)  
(770) 395-9992  
20 Hours

September 14-16  
Atlanta  
**Mediation Training**  
Resolution Resources Corporation  
(800) 745-2402  
20 Hours

October 5  
Atlanta  
**Arbitration Training**  
Resolution Resources Corporation  
(800) 745-2402  
7 Hours

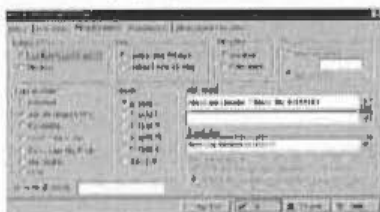
**Note:** To date, all courses except those noted have been approved by the Center. Please check the Interim Mediator Standards and Registration Procedures to make sure course hours listed will satisfy the registration requirements. For additional out-of-state training, including courses in Atlanta,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

QUALITY SOFTWARE, NOW FOR WINDOWS®

## BEST CASE™ BANKRUPTCY

FOR WINDOWS®

You've got Windows installed because it's easier to use. Now, switch to the Windows-based bankruptcy software that's easier to use.



Attorneys in every state prefer our program and the forms it produces.

Call today for a  
FREE demo packet.  
**1.800.492.8037**

BEST CASE SOLUTIONS, INC.  
600 Davis Street, Suite 201  
P.O. Box 32  
Evanston, IL 60204-0032

www.bestcase.com



## THE GENERAL IS FIGHTING MAD!

Lt. Gen. Robert Johnston, USMC Ret., Chief of Staff of Operation Desert Storm, is fighting mad. He's joined MDA's battle to save lives. The general knows the enemy - life-threatening diseases.

Join the general. Volunteer to help MDA. Call your local MDA office or 1-800-FIGHTMD.

**MDA** Muscular Dystrophy Association  
www.mdausa.org







## CLASSIFIED NOTICES

**Rates: Members:** Two free listings of 50 words or less per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings—\$35 per insertion of 50 words or less, \$.50 per additional word;

**Nonmembers:** \$35 per insertion of 50 words or less, \$.50 per additional word. Classified copy and payment must be received according to the following publishing schedule:

**September '98 issue**—deadline July 15, 1998; **November '98 issue**—deadline September 15, 1998.

No deadline extensions will be made.

**Send classified copy and payment, payable to *The Alabama Lawyer*, to: *Alabama Lawyer Classifieds*, c/o Rita Gray, P.O. Box 4156, Montgomery, Alabama 36101.**

### SERVICES

- **TRAFFIC ACCIDENT RECONSTRUCTION AND EVALUATION OF HIGHWAY DESIGN:**

This engineer has reconstructed over 3,000 accidents in 20 states on highways, streets, railroads and highway construction zones involving trucks, vans, cars, pedestrians, and farm implements. Computer animations and CAD drawings prepared to illustrate his opinions. Over 42 years' engineering experience. Registered professional engineer and full ACTAR certification. John T. Bates, P.E., toll-free 1-800-299-5950.

- **STRUCTURAL ENGINEER AND CONSTRUCTION MANAGER:**

Registered professional engineer in three states, M.S.C.E. Twenty-five years' experience with heavy industrial, pulp and paper, petrochemical plants, commercial, and residential. Experience with unusual structural failures and claims. Computer animation for failed structures. Negotiate construction claims and mediate construction disputes. Contact Hal K. Cain, Mobile. Phone (334) 681-2605.

- **INVESTIGATIVE SERVICES:**

ARGUS Protective Services is a privately owned, Birmingham-based security company, offering a full range of investigative services including insurance fraud investigations, surveillance, background investigations, witness

location, process service, asset traces, accident reconstruction, undercover operations, due diligence, and corporate consulting. ARGUS serves clients in Alabama and Mississippi. Contact Allison McFarlin at (888) 987-5600.

- **FORENSIC DOCUMENT EXAMINER:**

Handwriting, typewriting, altered documents, medical records, wills, contracts, deeds, checks, anonymous letters. Court-qualified. Eighteen years' experience. Certified: American Board of Forensic Document Examiners. Member: American Society of Questioned Document Examiners, American Academy of Forensic Sciences, Southeastern Association of Forensic Document Examiners. Criminal and civil matters. Carney & Hammond Forensic Document Laboratory, 4078 Biltmore Woods Court, Buford (Atlanta) Georgia 30519. Phone (770) 614-4440. Fax (770) 271-4357.

- **MEDICAL REVIEW:** Save time and money. Let us organize and summarize your client's medical records. If you need an expert review we have the board-certified physician you need. Twelve years' medical review experience working for you. Call Expert Resources. Phone (614) 475-1260.

- **INSURANCE EXPERT WITNESS:** Douglas F. Miller, Employers' Risk & Insurance Management-independent risk manager. Fee basis only, expert witness. Eighteen years' in risk man-

agement insurance consulting, policy analysis, assistance to your corporate clients. Member SRMC. Experience in deductibles, self-insurance, excess, underlying coverage. Call (205) 967-1166, Birmingham, Alabama or WATS 1-800-462-5602.

- **INSURANCE EXPERT WITNESS:**

Bad faith/fraud/insurance coverage/claims matters/ marketing issues. Former claim attorney with prior sales background available to consult and testify in cases with life or health insurance disputes. Experienced in trial testimony. Excellent credentials. A.C. Jones, Jr. J.D., CLU, FLMI, Birmingham, Alabama. Phone (205) 988-3210. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

- **DOCUMENT EXAMINER:** Examination of questioned documents. Certified forensic handwriting and document examiner. Thirty years' experience in all forensic document problems. Formerly, Chief Questioned Document Analyst, USA Criminal Investigation Laboratories. Diplomate (certified)-AFFDE. Member: ASQDE; IAI, SAFDE; NACDL. Resume and fee schedule upon request. Hans Mayer Gidion, 218 Merrymont Drive, Augusta, Georgia 30907. Phone (706) 860-4267.

- **DEVELOPMENTAL DISABILITIES:**



Expert testimony provided related to the administration of programs for persons with mental retardation or developmental disabilities. Particular emphasis on the propriety of policies, procedures and individual treatment in institutional and community living settings related to risk management and compliance with state and federal regulations. Phone (316) 221-6415. William A. Lybarger, Ph.D.

• **SOCIAL SECURITY DISABILITY**

**BRIEFS:** Experienced attorney will write Social Security disability appeals briefs. Twenty-four briefs written for the firm of Davis & Horne of Jacksonville, Florida. Normal ten-day turnaround. Emergency services available. \$325 per brief. Satisfaction guaranteed. References and writing sample available. Contact Jonathan Green, (205) 870-4343. *No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.*

• **DOCUMENT EXAMINER:** Certified Forensic Document Examiner. Chief document examiner. Alabama Department of Forensic Sciences, retired. American Board of Forensic Document Examiners, American Academy of Forensic Sciences, American Society of Questioned Document Examiners. Over 20 years' experience in state and federal courts in Alabama. Lamar Miller, 11420 N. Kendall Drive, Suite 206-A, Miami, Florida 33176. In Birmingham, phone (205) 988-4158. In Miami, phone (305) 274-4469. Fax: (305) 596-2618.

• **HANDWRITING EXPERT/FORENSIC DOCUMENT EXAMINER:** ABFDE certified; past president, Southeastern Association of Forensic Document Examiners; American Academy of Forensic Sciences fellow. Federal court qualified. Nineteen years' experience. Civil and criminal. Handwriting comparison, forgery detection, detection of altered medical records and other documents. L. Keith Nelson, Stone Mountain, Georgia. Phone (770) 879-7224.

• **LEGAL RESEARCH AND WRITING:** Research and writing services, including briefs, trial memoranda, and other documents. Prompt deadline services. Experienced researcher and writer. Licensed Alabama attorney and member of the Alabama State Bar since 1979. Katherine S. Weed, P.O. Box 590104, Birmingham, Alabama 35259. Phone (205) 941-1496. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*

• **LEGAL RESEARCH, WRITING AND CONTRACT LEGAL SERVICES:** Attorney (former federal law clerk). John Ritondo, #205, 140 Robert Jemison Drive, Birmingham, 35209. Phone (205) 940-9953. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*

• **ECONOMIC EXPERT WITNESS:** Personal Injury; workers' compensation; business loss; agricultural loss; bankruptcy feasibility plans; etc. Twenty-six years' as university faculty member, 12 years' experience as economic expert witness. Member of Alabama State Bar. William E. Hardy, Jr., Ph.D., J.D. Phone (334) 821-0855; Fax (334) 844-3519; e-mail: whardy@acesag.auburn.edu. *No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.*

• **STRUCTURED SETTLEMENTS AND LOTTERIES:** Inform your clients! Top dollar paid for insurance settlements, structured settlement annuities, business notes and periodic payment contracts. Help clients explore their options. Call today, no obligation. Your client will receive straightforward, reliable service. Heartland Capital Funding, Inc. (800) 897-9825. "Professional Annuity Funding for you and your client." Brochures available.

• **PSYCHIATRIC SERVICES:** Clemmie Palmer III, M.D. announces the opening of Palmer Psychiatric Services, PC, specializing in general psychiatry, individual therapy, medication management, cultural/ethnic issues, disability and forensic examinations. His office is located at 2835 Zelda Road, Suite #8, Montgomery, Alabama 36106. Phone (334) 396-3030.

• **SKIP TRACING-LOCATOR:** Need to locate someone? Will locate the person or no charge/no minimum fee for basic search. 87% success rate. Nationwide. Confidential. Other attorney needed searches/records/reports/information services in many areas from our extensive databases. Tell us what you need. Verify USA. Call toll-free (888) 2-VERIFY.

• **ELECTRICAL EXPERT WITNESS:** Steven J. Owen, electrical consultant, 24 years' in electrical industry. Member of BOCA, CABO, IAEI, ICBO, SBCCI, OSHA authorized instructor. LPI certified lightning protection. NICET certified. Master Electrician/Contractor in 39 states. Fee basis only. Call (205) 987-2502; Fax (205) 982-9613.

• **ANIMAL LAW:** The Southern Animal Law Center is now offering legal services and counseling free of charge in cases which involve animal matters. Emphasis is placed upon cruelty and abuse cases, representation of animal welfare groups, public policy consideration, pet death, criminal defense and prosecution, and animal-caused injury matters. The director of the center is Huntsville attorney James R. Foley, who may be reached at (205) 536-2788. *No representation is made that the quality of the legal services performed is greater than the quality of legal services performed by the other lawyers.*

## POSITIONS OFFERED

• **ATTORNEY JOBS:** Harvard Law School calls our publication, "Probably



the most comprehensive source of nationwide and international job openings received by our office and should be the starting point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. \$45-3 months. \$75-6 months. Contact: Legal Employment Report, 1010 Vermont Avenue NW, Suite 408-AB, Washington, DC 20005. (800) 296-9611. Visa/MC/AMEX. Website: [www.attorneyjobs.com](http://www.attorneyjobs.com)

- **ASSOCIATE POSITION:** Mid-size AV rated. Bovis, Kyle & Burch, L.L.C. is seeking an associate with two to five years' experience in corporate, transactional and general business. Must possess superior academic qualifications, be able to assume immediate file handling responsibility and work directly with clients with minimal supervision. Mail resume to Frank Klein, 53 Perimeter Center East, Third Floor, Atlanta, Georgia 30346 or fax (770) 668-0878.
- **ATTORNEYS WANTED:** Outstanding attorneys needed in all practice areas and at all experience levels. Our clients

include the top firms and companies in the Southeast and across the nation. Strictly confidential. Contact Richard G. Brock, esq., at Special Counsel/Amicus. Phone (205) 870-3330, extension 102. Fax (205) 870-3337.

- **ASSOCIATE WANTED:** Mid- to senior level associate for small, commercial litigation firm in Birmingham. Superior research, writing skills and above average academics necessary. Perks include casual dress and interesting work. Inquiries kept confidential. Submit resume, writing sample and salary requirements to: Managing Partner, P.O. Box 530101, Birmingham, Alabama 35253.
- **ASSOCIATE POSITION:** Atlanta office of international law firm seeks labor and employment associate. Successful candidate should have excellent academic credentials and a minimum of two years' experience in employment litigation. Send resume and law school transcript in confidence to Hunton & Williams, Recruiting Coordinator, NationsBank Plaza, Suite 4100, 600 Peachtree Street, N.E., Atlanta,

Georgia 30308-2216. No phone calls or placement firms, please. EOE/AA

#### • **INTERNATIONAL LEGAL REFORM:**

The American Bar Central and East European Law Initiative (CEELI) seeks experienced attorneys to work on criminal, environmental, commercial and/or civil law reform projects in Central and Eastern Europe and the former Soviet Union. Support includes all housing, transportation, and living expenses. Call 1-800-982-3354 for an application.

### MISCELLANEOUS

#### • **LEGAL ASSISTANT CERTIFICATE:**

The Samford University of Paralegal Education announces its Legal Assistant Certificate Program. The program takes one year to complete for students with a prior degree. For students with no prior degree, they may complete one concurrently. The program is approved by the American Bar Association. For more information, call (205) 870-2783, or write to S.U. Box 2200, Birmingham, Alabama 35229. The next term began August 3, 1998.

### FOR SALE

- **LAWBOOKS:** William S. Hein & Co., Inc., serving the legal community for more than 70 years, is still your number one source for buying/selling lawbooks. Save 50 to 70 percent on single volumes, major sets, federal & state, foreign/international law, rare/antiquarian law. Appraisal services available. Call (800) 496-4346; fax (716) 883-5595. Website: [lawlib.wuacc.edu/hein/heinused.htm](http://lawlib.wuacc.edu/hein/heinused.htm).
- **LAWBOOKS:** Save 50 percent on law books. Call National Law Resource, America's largest law book dealer. All sets guaranteed excellent and up-to-date. Your satisfaction absolutely guaranteed. We buy/sell/appraise. Phone (800) 886-1800. Fax (312) 382-0323. E-mail: [lawstuff@aol.com](mailto:lawstuff@aol.com).



*"Court surety service no ordinary agent can match"*

**CIVIL COURT BONDS BY PHONE...  
BY TOMORROW**

**CURATORS ♦ INJUNCTION ♦ APPEAL ♦ ATTACHMENT ♦ DETINUE  
ADMINISTRATORS ♦ GARNISHMENT ♦ LANDLORD-TENANT  
CONSERVATORS ♦ ALL OTHER FEDERAL & STATE COURT BONDS**

**1-800-274-2663**



Your clients didn't retain  
*"just any attorney"*  
to represent their legal interests.

Don't retain  
*"just any valuation firm"*  
to advise and assist you.

IN COURT OR OUT, LITIGATION SUPPORT OR ESTATE PLANNING, YOU SHOULD ALWAYS  
BE ARMED WITH A RELIABLE BUSINESS VALUATION FOR YOUR CLIENT.

FOR SWIFT RESPONSE AND STRICT ADHERENCE TO THE PROFESSION'S HIGHEST STANDARDS,  
RELY ON WILLIAMS, TAYLOR & ASSOCIATES.

WE ARE A NATIONALLY RECOGNIZED ACCOUNTING, VALUATION AND CONSULTING FIRM  
WITH THE STRONGEST CREDENTIALLED PROFESSIONALS IN ALABAMA.

**WILLIAMS, TAYLOR & ASSOCIATES - SERIOUS ABOUT YOUR BUSINESS.**



JAMES L. WILLIAMS,  
CPA/ABV, CVA, CBA



ROBIN E. TAYLOR,  
CPA/ABV, CVA, CBA



WILLIAM K. NICHOLS II,  
CPA, CVA



TIMOTHY W. YORK,  
CPA/ABV, CVA



**WILLIAMS, TAYLOR & ASSOCIATES**  
ACCOUNTANTS • CONSULTANTS

2140 ELEVENTH AVENUE SOUTH, SUITE 400 • THE PARK BUILDING • BIRMINGHAM, ALABAMA 35205  
(205) 930-9111 • (800) 874-8552 • FACSIMILE (205) 930-9177 • WEBSITE [www.wtnacpa.com](http://www.wtnacpa.com)



**NEW  
EXPANDED  
COVERAGE: ALL  
CASES IN THE  
NATIONAL REPORTER  
SYSTEM\* AM JUR 3D  
NOTES ON BANKRUPTCY  
AND COURT ON INSURANCE**

Flags as current as Westlaw warn you at a glance if your case is no longer good law.

KeyCite assigns depth of treatment the same day a case is added to Westlaw.

How can KeyCite headnote treatment be so current? The same day the citing case (Richardson) is handed down, KeyCite instantly links the headnotes from the cited case (Luebeck).

The screenshot shows the KeyCite interface with a sidebar on the left containing options like 'Show Full History', 'Negative History Only', and 'List Minor History'. The main area displays a list of cases under 'Overruled by' and 'Positive Cases'. The 'Overruled by' section lists 'Richardson v. Corvallis Public School Dist. No. 1, 1997 WL 795819, \*2+ (Ore. Dec 23, 1997) (NO. 96-497) \*\* \*\*\*\*\* HN: 1,2'. The 'Positive Cases' section lists 'Willis v. St. Peter's Hospital, 406 P.2d 593 (NO. 11906) \* HN: 1,2'. The interface also shows a 'History of the Case' section and a 'List Citations' button.

## New KeyCite. This citator warns you of overrulings in time to save your argument.



If the status of your case changes, you'll know within hours by using the new KeyCite™ citation research service from West Group.



When you KeyCite a case via Westlaw®, CD-ROM or the Web, an overruled case leaps out at you before the judge can. You'll see reversals within 3-4 hours of case receipt and overrulings within 24 hours. The flags reflect history treatments assigned by West Group legal editors.

\*\*\*\*\* Depth of treatment stars tell you how much other cases discuss your case.

Integrated Key Numbers and headnotes *in full text* let you focus on what's important to you, with instant links to citing cases.

Plus, any source discussing your case—all the cases in the National Reporter System, a million unpublished cases, thousands of ALR® annotations and Am Jur 2d articles, and over 600 law reviews—is a click away.

Because nobody wants a surprise in court.



### FREE BOOKLET!

To get full details on the new choice in citation research, request the illustrated KeyCite guide.

CALL 1-800-760-9378 TODAY  
or visit [www.westgroup.com/keycite/](http://www.westgroup.com/keycite/)



**WEST  
GROUP**

**KeyCite**  
The Key to Good Law

Bancroft Whitney • Clark Boardman Coughlin  
Lawyers Cooperative Publishing • Westlaw® • West Publishing

© 1998 West Group. 7/98/2 5/99/00 C0001 1 58P-106-6 This feature is shown within one user profile screen.

\*\*\*\*\*CAR-RT-SORT\*\*B-099  
MR. RAYMOND ERIC POWERS III  
CAPELL, HOWARD, KNABE & COBBS  
PO BOX 2069  
MONTGOMERY AL 36102-2069

