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# The Alabama Lawyer

Vol. 63, No. 7

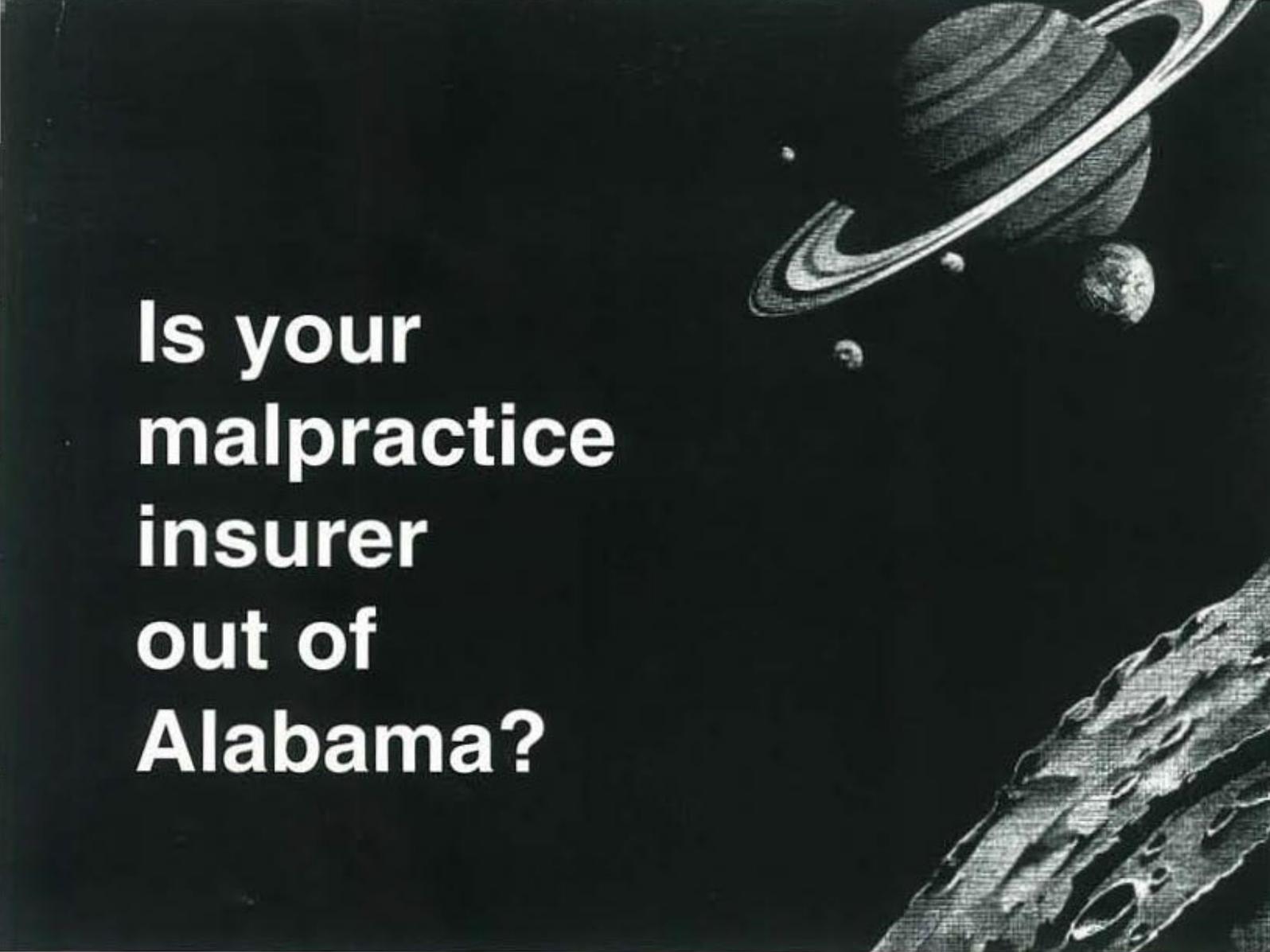
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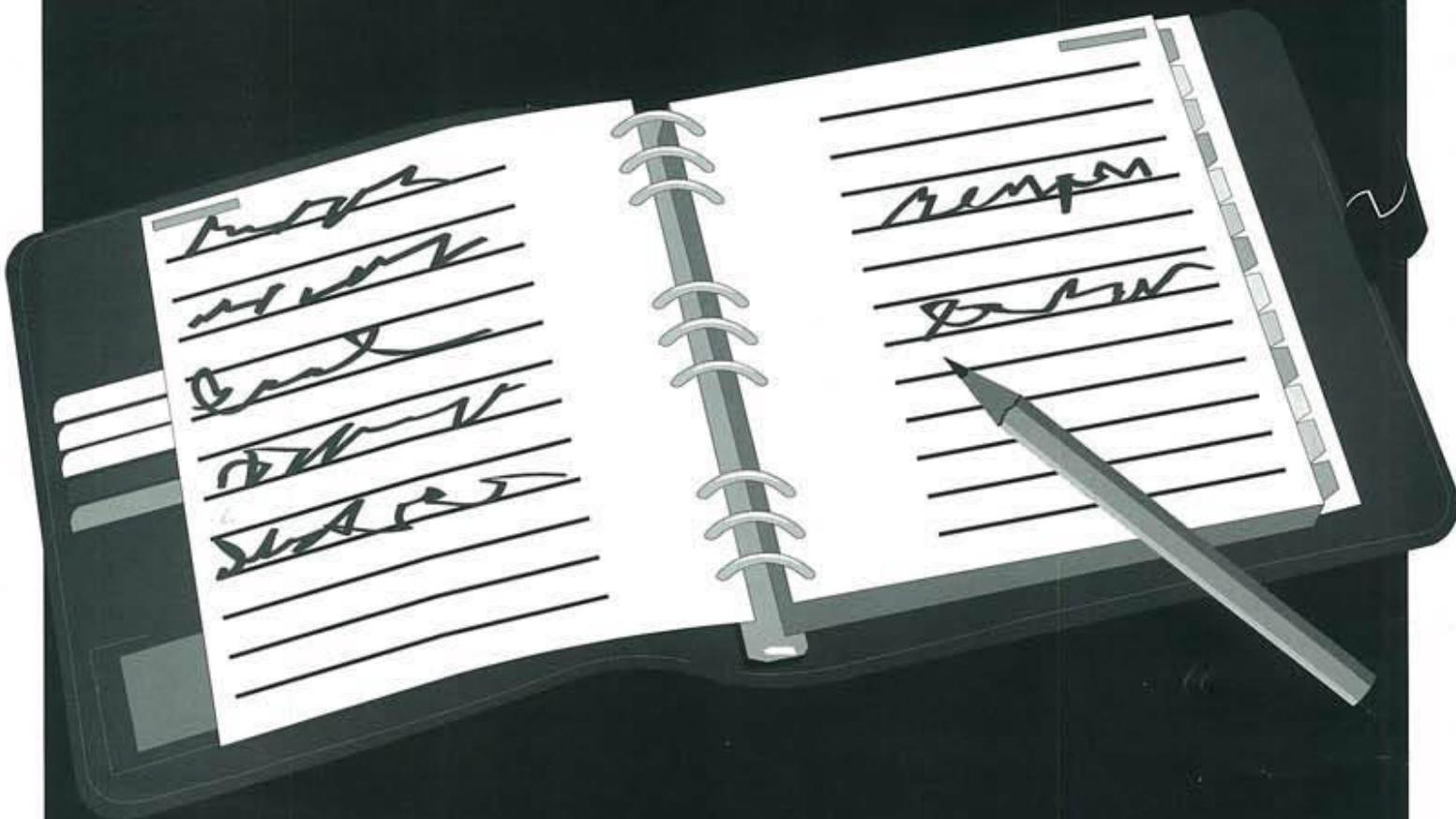
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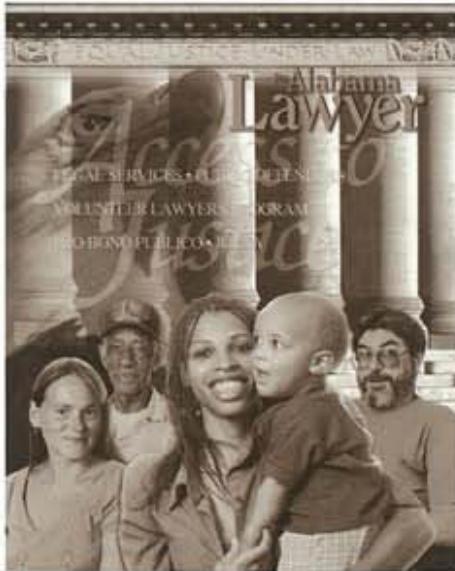
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**On the Cover:**

“Access to Justice” is the overall theme of the November 2002 issue of *The Alabama Lawyer*. The cover design by Jack Durham of J. Durham Design of Montgomery, with inspiration from Alabama State Bar Committee on Volunteer Lawyer Programs/Access to Legal Services members Allison Alford and Linda Lund, successfully captures that theme through a mix of images and text. These images include a photo of the columns and pediment of the United States Supreme Court inscribed with “Equal Justice Under Law;” the American bald eagle, a symbol of freedom; and photos of clients served by one of Alabama’s Legal Services programs.

*These client photos were taken by Roy Simmons of Huntsville.*



# Features

**343** Dedication, U.S. Courthouse, Middle District of Alabama

**352** Philanthropy Education

**355** Get Your Name On *This Page*  
*By Jeanne Marie Leslie, RN, M.Ed*



**357** **SPECIAL EDITION - Access to Justice**

**357** Pro Bono in Alabama

**363** The Growth of *Pro Se* In Alabama

*By Henry Calloway*

**365** A Judge’s Perspective of the Mobile Bar Association’s Volunteer Lawyers Program

*By Judge Don Davis*

**366** The VLP and a House

*By Pamela H. Bucy*

**369** IOLTA Program Provides Access to Justice

*By Tracy Daniel*

**370** Rights of Indigent Defendants in Criminal Cases after *Alabama v. Shelton*

*By Joseph P. Van Heest*

**374** Providing Access to Justice – Alabama’s Legal Services Programs

*By Melinda M. Waters, Kenneth R. Cain and Thomas G. Keith*



# THE ALABAMA LAWYER

Vol. 63, No. 7  
November 2002



**President's Page**  
**340**



**Executive Director's Report**  
**342**



**About Members,  
Among Firms**  
**344**



**Memorials**  
**346**



**Legislative Wrap-Up**  
**348**



**Opinions of the General  
Counsel**  
**350**



**Young Lawyers' Section**  
**378**



**Disciplinary Notices**  
**380**



**Classified Notices**  
**384**

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Fred D. Gray

# Civil Rights—Past, Present and Future, *Part I*

*(This is the first installment of a three-part series of articles.)*

The State of Alabama was a major venue for the development of the current civil rights movement. A substantial part of my legal career has been devoted to assisting individuals in obtaining their constitutional rights as the civil rights movement developed. I thought I would share with the members of our bar a speech I delivered at the annual convention of the International Society of Barristers in Nevis, West Indies on March 15, 2001.

Every Sunday beginning in January 2001 until May 2001, I traveled from Tuskegee, Alabama to Durham, North Carolina, where I was designated the Charles Hamilton Houston Professor at North Carolina Central University's School of Law, to teach a course entitled "Civil Rights—Past, Present and Future." Let me share with you what I wrote in my syllabus to that course:

"The central theme of the course is to examine the role of law in creating, maintaining and providing for civil rights and the elimination of racial injustices in all aspects of American life including, but not limited to, voting, administration of justice, education, housing and employment. This will give the students an opportunity to critically examine the role of law in eliminating racial injustices in the United States. It will also seek to give students an opportunity to understand the reasons for and the necessity of the rule of law in order to obtain, maintain and preserve civil rights, and to determine the present status in the field of civil rights and where do we go from here."

Here are a few of the lessons that I tried to convey to those students and a few of my personal experiences as lawyer for Dr. Martin Luther King, Mrs. Rosa Parks

and many others in the civil rights field during the course of a practice spanning more than 45 years.

## Historical Perspective

This is a very critical time in the history of the United States, because we inaugurated a new president and we face many controversial issues in the field of civil rights. So, it is fitting and proper that we talk a little bit about "Civil Rights—Past, Present and Future." There are many people today who believe, since African Americans no longer have to sit in the back of the bus, can attend restaurants of their choice if they can afford it, and can attend various institutions of higher learning without being discriminated against, that all of the racial barriers have been removed and there is no real need for any discussion about civil rights. There are some who view civil rights as something of the past, not an issue for the present, and certainly not an issue for the future. In order to understand where we are today, we need to take a historical view of civil rights and see how it has developed in the United States.

The basic documents upon which the laws of America rest are the Magna Carta, the Declaration of Rights and Grievances, the Declaration of Independence, and the United States Constitution, including its amendments.

The foundation of law as set forth in those documents deals with the rights of white Englishmen and white Americans. "We the people" of the preamble to the Constitution did not include persons who looked like me. The drafters of the Magna Carta, the Declaration of Rights and Grievances, the Declaration of Independence and the Constitution of the United States were not concerned about the rights of African

Americans. It became necessary to adopt amendments to the United States Constitution and pass additional laws in order to provide African-Americans with any rights. In December 1865, the 13th amendment to the Constitution abolished slavery. In July 1868, the 14th amendment to the United States Constitution made African Americans citizens of the United States and extended protection to them through the due process and equal protection clauses. Parenthetically, you know what has happened to the due process and equal protection clauses of the 14th amendment; even though they were passed primarily for the purpose of protecting the rights of African Americans, they now protect everybody's rights. Then, early in 1870, the 15th amendment to the Constitution prohibited denial of voting rights on the basis of race. The 13th, 14th and 15th amendments to the Constitution are the amendments to which I have devoted my 45 years of practice, for the purpose of seeing that all persons who are American citizens have the rights they are supposed to have. I have used these amendments in trying to break down the walls of segregation.

The wrongs to be corrected were deeply entrenched. They started when the first slaves landed in Jamestown, Virginia in 1619. African Americans are the only ethnic group in the United States who came to America without their consent. They were brought as slaves.

Segregation in education began when free common schooling was wretchedly poor for whites, and nonexistent for African Americans. Even when some schools became available to African Americans, those schools were inferior to the ones

available to whites. Interestingly, some people think that only the south had segregation laws, but the first school desegregation case occurred not in Alabama or Mississippi but in Boston. In a case argued by Charles Sumner on behalf of Sarah Roberts, the Massachusetts Supreme Court in 1850 held that Boston could segregate children based on race.<sup>1</sup>

Then there was the *Dred Scott* decision in 1857, where the Chief Justice of the United States Supreme Court held that a Negro whose ancestors were sold as slaves could not become a member of the community and, thus, could not file a suit in a federal court because he was not a citizen.<sup>2</sup> That case is probably most famously known as in effect holding that a Negro had no rights that a white man was obligated to respect. On the heels of that decision, in 1861 to 1865, Congress passed laws specifically providing for the segregation of schools in the District of Columbia. In light of this background, it wasn't a surprise when in 1896 the Supreme Court declared the doctrine of "separate but equal," in the field of transportation,<sup>3</sup> a doctrine that has plagued us every since. Those conditions have changed but I want you to know that there are still some problems. As we look at it today, I think you will be able to help solve some of these problems. ■

## Endnotes

*Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (1850).

*Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

*Plessy v. Ferguson*, 163 U.S. 537 (1896).

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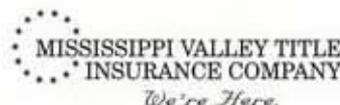


*Left to Right:* Tom Marvin, Gina Matthews, Leon Sanders, Buddy Rawson

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By Keith B. Norman



Keith B. Norman

# William D. "Bill" Scruggs, Jr. Service to the Bar Award

At its September meeting, the Board of Bar Commissioners created an award named after former state bar president and Ft. Payne native **Bill Scruggs**. An award honoring Bill had been suggested not long after his death last November. The award, as was suggested, would honor his memory by recognizing individuals whose record of service to the state bar emulated Bill's.

**Bar Commissioner Rocky Watson and Circuit Judge David Rains**, both of Ft. Payne and close friends of Bill's, spearheaded the effort. The stated purpose of the award as approved by the Commission is:

"...to honor the memory and accomplishments of William D. "Bill" Scruggs, Jr., and to encourage the emulation of his deep devotion and service to the Alabama State Bar by recognizing outstanding, long-term service by living members of the Bar of this state to the Alabama State Bar as an organization."

The awards committee will be comprised of the state bar's president-elect, executive director, general counsel and two members of the Board of Bar Commissioners appointed by the president. Although there is no requirement for the award to be made annually, recipients will be presented the award during the bar's annual meeting. A permanent plaque listing the recipients will be displayed at the state bar building.

Bill loved the bar and devoted a great deal of time to improving it. A perfect example of Bill's dedication occurred only a few months prior to his death. In August 2001, Bill attended his last bar committee meeting. He traveled to Montgomery to attend the

## William D. "Bill" Scruggs, Jr. SERVICE TO THE BAR AWARD



*"Bill was a dedicated, loyal and unselfish servant of the legal profession and in particular, the Alabama State Bar. . . the quality and breadth of his service to his chosen profession was as great as any lawyer who ever practiced in this state."*

- Alabama State Bar Memorial Resolution  
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Plaque in honor of Bill Scruggs

meeting, which was but a few months after he had undergone major surgery. It might have been a hardship for anyone else to attend this meeting so soon after surgery, but not for Bill. He enjoyed serving the bar and the legal profession too much not to attend.

Our bar was fortunate to have Bill's leadership and sage counsel for more than three decades. It is a fitting tribute that an award to recognize service to the state bar be named for him. Knowing Bill's love for the state bar, I am sure he would feel honored.

### Educational Debt Load Climbs

The educational debt load for those taking the July 2002 bar exam witnessed a sharp increase. Educational debt averaged \$58,736 for those with debt. Several examinees had educational loans totaling \$170,000! Even in today's favorable interest rate environment, a ten-year repayment with an interest rate of 6 percent means that the average debt load would require monthly payments of \$652. ■

The new United States Courthouse for the Middle District of Alabama was formally dedicated on September 13, 2002. Included here are photographs from the dedication ceremony of the new facilities.



— Photo by Norman Zoller,  
circuit executive, U.S. Court of Appeals, Eleventh Circuit

Giving the opening remarks for the dedication ceremony was W. Harold Albritton, III, chief judge, U.S. District Court, Middle District of Alabama (center), with J.L. Edmondson, chief judge, U.S. Court of Appeals for the Eleventh Circuit (left), Myron H. Thompson, U.S. District Judge, Middle District of Alabama (right), and Debra P. Hackett, clerk of the court (front).



— Photo by Riley Loyd,  
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Included among those attending the dedication ceremony were (left to right) Jesse Seroyer, United States Marshall, Middle District of Alabama; Mrs. Ruth Johnson, widow of Judge Frank M. Johnson, Jr.; Anne Hamner; and Reggie Hamner, retired executive director of the Alabama State Bar and project coordinator for the new courthouse.



— Photo by Norman Zoller

The eagle statuary adorning the front entrance of the new courthouse was named "Reggie" by the United States District Court for the Middle District in appreciation for Reggie Hamner, who served as project coordinator for the new facilities.



— Photo by Riley Loyd

The new United States Courthouse, Montgomery, Alabama



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### About Members

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**D. James Duplechin** announces the opening of his office at 614 East 5<sup>th</sup> Avenue, Florala 36442. Phone (334) 858-5858.

**Robert F. Nelson** announces the opening of his office at 25 S. Court Street, Montgomery 36104. Phone (334) 834-5700.

**Wendy Freeman Pope** announces the opening of her office located at 731 Middle Street, Montevallo 35115. Phone (205) 665-4180.

**Jason A. Stoves** announces the opening of his office located at 9 Office Park Circle, Suite 201, Birmingham 35223. Phone (205) 870-4802.

### Among Firms

**The Philip Dale Segrest Law and Mediation Center** announces that **Michael D. Weldon** has become a partner with the firm, and the new firm name is **Segrest & Weldon**.

**Alford, Clausen & McDonald, LLC** announces that **Todd P. Resavage** has joined the firm as an associate.

**Berkowitz, Lefkovits, Isom & Kushner, PC** announces that **Charles A. Powell, IV** is a shareholder of the firm.

**Breibart & Ingram, PC** announces that **Paul H. Webb** has joined the firm as an associate.

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**Dominick, Fletcher, Yeilding, Wood & Lloyd, PA** announces that **Joseph W. Strickland** and **Patrick F. Smith** have joined the firm.

**Feld, Hyde, Lyle, Wertheimer & Bryant, PC** announces that **Kelly A. Thrasher** has joined the firm as an associate.

**John T. Fisher, Jr., Paul E. Skidmore** and **Ted Strickland** announce the formation of **Fisher, Skidmore & Strickland, PC**. Offices are located at 1406 22<sup>nd</sup> Avenue, Tuscaloosa 35401. Phone (205) 344-4414.

**Ham & Zundel, LLC** and **Stankoski & Stankoski, LLP** announce the formation of **Ham, Stankoski, Stankoski & Zundel, LLP**. Offices are located at 338 Fairhope Avenue, Fairhope 36532. Phone (251) 928-8200.

**Haygood, Cleveland & Pierce, LLP** announces that **Thomas S. Melton** has become *of counsel*.

**Robert F. Jernigan** and **Ryan S. Small** announce the formation of **Jernigan & Small, LLP**, with offices at 2373 Capital Court, Mobile 36695. Phone (251) 607-7153.

**Ron Marlow** and **John Morrison** announce the formation of **Marlow & Morrison, LLC** and the relocation of offices to 3178 C Pelham Parkway, Pelham 35124. Phone (205) 620-4556.

**Najjar Denaburg, PC** announces that **Karen G. Kolaczek** has joined the firm as an associate.

**Rumberger, Kirk & Caldwell, PA** announces that **Marc Dawsey** has joined the firm as an associate. ■

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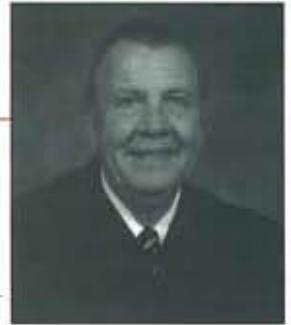
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## Judge William Bush Matthews, Sr.



Judge Willam Bush Matthews, Sr. died in Ozark, Alabama on May 20, 2002. At the time of his death, Judge Matthews was serving as a district judge in the 33rd Judicial Circuit. He was first elected to the bench in 1992 and was reelected in 1998. Prior to his election to the bench, Judge Matthews was engaged in the practice of law for 36 years in his adopted hometown of Ozark.

The above paragraph reads as one would expect a traditional obituary to begin. The words, while accurate, fall far short of describing the life of Judge Matthews. His was a life filled with pride, passion and professionalism. He was a man of boundless energy, optimism and good will. He was a man possessed of every qualification the public should expect from a member of the judiciary. He was a man of unquestionable integrity, a man of scholarship and a man with a strong work ethic. I know these things because "Buddy" Matthews was my friend for 33 years.

Shortly before his death, he was honored by a host of friends and officials at a ceremony in the courtroom he had occupied as a judge since 1992. At that ceremony the presiding circuit judge, P.B. McLaughlin, said that two words characterized Judge Matthews. These words were "commitment" and "loyalty."

I met Buddy in 1969 when I became executive director of the Alabama State Bar. He had already served three years on the Board of Bar Commissioners, having been elected in 1966 at the age of 35. For several years, both of us were the youngest lawyers in the room when the board met, and we shared many of the same goals and ideals for our profession and the state bar in general. Buddy served as bar commissioner for a total of 18 years, over a 27-year period. He left the commission in 1993 following his election as district judge. During his service on the commission, Buddy was elected by his peers to serve on every major committee of the bar that had anything to do with professional responsibility. He chaired the state bar's Grievance Committee and a Disciplinary Panel of the state bar, and headed the committee which established the Standards of Disciplinary Enforcement that were adopted by the Supreme Court of Alabama. He received the ASB President's Award in 2002.

There was no phase of Buddy's life where his passion, pride and professionalism could be hidden. Whether it was his family, high school and collegiate athletics, the local and state bar, or the Rotary Club, Judge Matthews gave his very best, usually 110 percent.

His passion for athletics was on display when he served as head cheerleader for the University of Tennessee's 1951 National Champion football team, as an undergraduate. If you played golf with him, or attended, or even listened to, a Vanderbilt basketball

game with him, you felt this same passion. One of his favorite titles was that of "Unk," a nickname he earned in Ozark where he "occasionally" would coach from the stands. In a close game, his nephew possessed the ball and Carroll High had a one-point lead. The rather conservative coach had wanted the ball held, but Buddy yelled for his nephew to shoot. Fortunately, the shot was good but the coach, even though victorious, was questioning the player's action in taking the shot. His only defense was that, "Uncle Buddy told me to shoot." The name stuck and "Unk" coached from the stands no small number of games when his own children played. He was a fan's fan.

Buddy was a humanitarian without equal and his passion for the Ozark Rotary Club, where he had 36 years of perfect attendance, was legendary. If ever the Rotary ideal of "service above self" had a prototype, it was Judge Matthews. He was the primary auctioneer for the annual Rotary Club auction in Ozark where he helped raise over \$500,000 for the Vivian B. Adams School and other children's charities. He was a Paul Harris Fellow and was awarded the Harry Hall Distinguished Service Award.

Judge Matthews was born in Memphis, Tennessee in 1931. He was raised in Memphis and attended the Gulf Coast Military Academy. He earned his B.A. degree from the University of Tennessee. He served as a first lieutenant during the Korean War and it was while he was in the office of the Staff Judge Advocate at Ft. Rucker that he met his wife of 47 years, Florence Carroll. He earned his law degree from the Vanderbilt University School of Law. His legal career covered 45 years, 36 of those involved in private practice in Ozark. He held public office as both the chief assistant district attorney and the Ozark city attorney. When he became a judge in 1992, he quickly gained the reputation as a judge who was both swift but fair in administering justice, as well as a judge who could temper justice with mercy. Sheriff Bryant Mixon noted that the judge did not agonize over decisions because he always did what he thought was right.

In addition to the pride and passion he exhibited for his profession, he was equally proud of his family. His late brother, Joe, was an outstanding attorney in Texas. Both of his sons, William B. Matthews, Jr. and Warren Carroll Matthews, are attorneys. His daughter, Maureen, is married to Dothan attorney David Johnston. Buddy took great pride in his wife, Florence, and the universal love and respect she enjoyed in her hometown. He also is survived by ten grandchildren who loved and admired him greatly.

Judge Matthews was a dynamic force in the commu-

nity where he lived, practiced and served. His portrait hangs in the Dale County Courthouse in tribute to the service he rendered the citizens of the 33rd Judicial Circuit; however, in his life he painted a larger portrait that will live as a reminder to all who knew him. That portrait is one of a consummate professional, an esteemed public servant, a loving son, a devoted brother, a dedicated father, and a cherished husband. Not only did the Alabama State Bar lose a valued member

in Judge Matthews's passing, but the town of Ozark lost one of its great citizens.

In addition to his legacies noted above, this passing of one of the best friends a person could have, as well as a fun companion to be with, leaves a void in the lives of those who knew and called him friend.

—Reginald T. Hamner,  
Montgomery

## Thomas H. Jackson

The bench and bar of the Bessemer Division of Jefferson County, along with the citizens in our area and the State of Alabama at large, suffered a tragic loss on April 12, when Thomas H. Jackson, known to many as "Lawyer Tom," passed away.

Mr. Jackson was born on July 29, 1925 in the southern part of Alabama, and Tom literally walked to school, sometimes barefoot, prior to his moving to Jefferson County.

Tom is survived by his loving wife, Margarete, whom he met while serving our country in Germany, and he and Margarete were married in excess of 55 years at the time of his death. Tom is also survived by his children, daughter Katherine Nichols and her hus-

band, Gerald, and son Thomas Hall Jackson, III, and his wife, Vickie; four grandchildren; and two great-grandchildren, who will sorely miss him.

Tom served in the Alabama House of Representatives from 1967 until 1971, and served his constituency well, while maintaining a full-time law practice.

As a member of the Bessemer Bar Association, Birmingham Bar Association and Alabama State Bar, he signified the stature and reputation of all of the lawyers in Alabama and will be missed by all who knew him.

—H. Jadd Fawwal,  
President, Bessemer Bar Association



**Alexander, Roger L.**  
Owingsville, Kentucky  
Admitted: 1997  
Died: June 4, 2002

**Manning, Glenn Franklin**  
Huntsville  
Admitted: 1948  
Died: August 7, 2002

**Atwell, Jennifer Lynn**  
Dothan  
Admitted: 1989  
Died: August 5, 2002

**Johnson, Clifton Wade**  
Scottsboro  
Admitted: 1996  
Died: August 18, 2002

**Padgett, Vernon Harper, Jr.**  
Cullman  
Admitted: 1965  
Died: May 24, 2002

**Brinsfield, Sol Exaviar, Jr.**  
Montgomery  
Admitted: 1934  
Died: August 27, 2002

**Lackey, Louis Herbert, Jr.**  
Tuscaloosa  
Admitted: 1954  
Died: August 2, 2002

**Roberson, Christian Edward**  
Birmingham  
Admitted: 1992  
Died: August 18, 2002

**Cheek, Robert Lee, Jr.**  
Montgomery  
Admitted: 1957  
Died: August 29, 2002

**Lawson, Thomas Seay, Hon.**  
Montgomery  
Admitted: 1929  
Died: September 2, 2002

**Williams, Horace Guice, III**  
Eufaula  
Admitted: 1996  
Died: August 26, 2002



By Robert L. McCurley, Jr.



Robert L. McCurley, Jr.

## Landlord-Tenant Act

In the last few years several bills have been introduced in the Alabama legislature concerning landlord-tenant law. The approach taken by these bills has been quite diverse and resulted in a request by the legislature that the Alabama Law Institute undertake a study of residential landlord-tenant laws. A committee was formed, chaired by **James M. Tingle** of Birmingham, which held its first meeting in September of 2001. For more than a year this committee met to draft a statute for Alabama. Alabama is one of the few states in the nation that does not currently have a landlord-tenant law. The committee used as its guide the Uniform Residential Landlord-Tenant Act drafted by the National Conference of Commissioners on Uniform State Laws in 1972. This Act has been adopted in 20 states.

The act is comprised of six articles as follows:

### Article I—General Provisions

This Act applies to and is the exclusive remedy to regulate and determine the rights of the landlord/tenant relationships under a rental agreement in Alabama. It applies only to residential landlord-tenant relationships. The act does not create any duties in tort or causes of action in tort nor does it deprive anyone of any causes of action in tort that may exist apart from this act. Other principles of law and equity are supplemental to this act.

Excluded from coverage is a residence in an institution, public or private, where the residence is incidental to another primary purpose such as a residence in a prison, hospital, nursing home, dormitory owned and operated by a college, or a residence by a landlord's employee such as a custodian or caretaker. Nor does the Act apply to fraternities, hotels, condominiums or property rented primarily for agricultural purposes.

A dwelling unit is defined to include a manufactured home that is rented as a residence.

### Article II—Landlord Obligations

A landlord cannot demand a security deposit in excess of one month's rent except for pets and increased risk to the premises. Upon termination of the lease, the landlord must refund any unexpended security deposit within 21 days. Failure to do so will allow the tenant to recover twice the amount that should have been refunded had the funds been returned promptly, plus a reasonable attorney's fee.

The landlord must comply with all building and housing codes materially affecting health and safety. This includes keeping in good and safe working order all electrical, plumbing, sanitary and heating facilities, and provide running water and reasonable amounts of hot water.

### Article III—Tenant Obligations

The tenant must comply with all applicable building and housing codes affecting health and safety and keeping the premises clean and safe, which is the converse of the minimum duties landlord owes tenant. The tenant must allow the landlord to inspect the premises and make the necessary repairs. The tenant must use the premises only as a dwelling unit.

### Article IV—Remedies

Either party may terminate the lease for a material non-compliance in 14 days if the breach is not remedied within that period. This includes failure to make repairs, pay rent and other breaches of the agreement. When there is a minor defect which to repair would cost less than half a month's rent and the landlord fails to correct the condition within seven calendar days, the tenant may cause the work to be done and deduct the cost of repairs from the next month's rent.

If the landlord unlawfully excludes the tenant or willfully cuts off utilities, the tenant may recover possession or terminate the agreement and recover an amount not more than three

times the monthly rent or three times the actual damages sustained, whichever is greater.

If the tenant abandons the dwelling or leaves property in the unit for more than 14 days after the lease is terminated, the landlord has no duty to store the tenant's property and may dispose of it without obligation. The landlord's lien on property of the tenant remains enforceable as provided in Alabama Code § 35-9-60.

#### Article V—Retaliatory Conduct

The landlord cannot retaliate by discriminately increasing rent or decreasing services when the tenant has complained about a violation of a building and housing code or lack of habitability. Further, the landlord may evict only for good cause. Good cause includes a failure of the tenant to pay rent and comply with building and housing code requirements.

#### Article VI—Effective Date

The act will become effective January 1, 2004 and applies to rental agreements entered into or extended or renewed on or after that date.

#### Not Covered

This act does not cover commercial ventures. "Eviction" and "unlawful detainer" actions are expected to be included in a second bill which will apply not only to residential landlord-tenant premises but to commercial ventures as well. The committee is drafting a bill which will unify the provisions "lawful detainer" in Title 6 and the Sanderson Act provisions in Title 35.

Joining James M. Tingle on the committee are **LaVeeda Morgan Battle**, Birmingham; **Professor Carol Brown**, University of Alabama School of Law; **John S. Casey**, Heflin; **Greggory M. Deitsch**, Birmingham; **Fred T. Enslen**, Montgomery; **Jack Floyd**, Gadsden; **William J. Gamble**, Selma; **William F. Horsley**, Opelika; **Ben Johnson**, Birmingham; **Professor David Langum**, Cumberland School of Law; **John V. Lee**, Mobile; **William Z. Messer**, Montgomery; **H. Floyd Sherrod, Jr.**, Florence; **Nathan G. Watkins, Jr.**, Livingston; and **Jerry Wood**, Montgomery.

Copies of the committee's draft will be available in January 2003.

**Organizational Session** .....January 14, 2003 (ten days)  
**Inauguration** .....January 20, 2003  
**Regular Session** .....March 4, 2003 (105 days)

For more information about the Institute or any of its projects, contact Bob McCurley, director, Alabama Law Institute, at P.O. Box 861425, Tuscaloosa 35486-0013; fax (205) 348-8411; phone (205) 348-7411; or visit our Web site at [www.ali.state.al.us](http://www.ali.state.al.us).

#### Robert L. McCurley, Jr.

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

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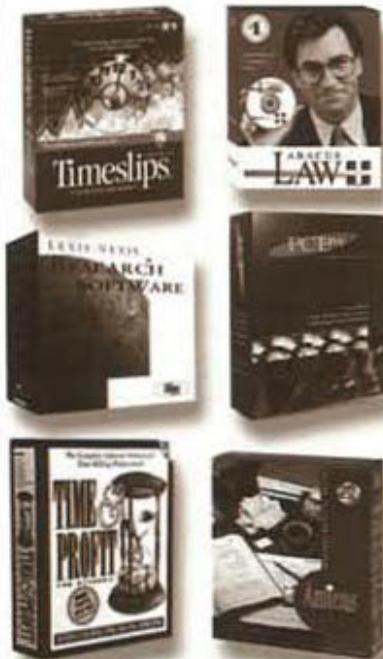
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## War Stories



The *Alabama Lawyer* is looking for "war stories" to publish in upcoming issues, humorous tales and anecdotes about

Alabama lawyers and judges. Obviously, for such stories to be published, they must be (a) true, (b) amusing and (c) tasteful. Send your reminiscences to: *The Alabama Lawyer*, P.O. Box 4156, Montgomery 36101. **Be sure to include your name, address and a daytime telephone number, in case we need to contact you.**



J. Anthony McLain

# Absent valid attorney's lien, the file of the client belongs to the client

## Question:

### Fact Situation No. 1:

A law firm (the "Firm") represents a client (the "Client") and maintains five different files relating to five different matters ("Matter 1, Matter 2, Matter 3, Matter 4, Matter 5") all of which are different. The Firm has an account receivable due from the Client relating to work performed on Matter 5, but all amounts due the Firm for previous work performed on Matters 1 through 4, inclusive, have been paid in full. The Client has delivered a letter to the Firm directing the transfer of his files to a different firm (the "New Firm"). With respect to the foregoing, please respond to the following questions:

1. Does the Firm have a lien, pursuant to Section 34-3-61 Code of Alabama (1975), on all papers of the Client in its possession, which would include all papers relating to Matters 1 through Matters 5, inclusive, even though Matters 1 through 4 were not in reference to the services rendered creating the purported lien, or
2. Does the Firm have a lien solely on the papers relating to Matter 5 and thus must

release to the New Firm, in accordance with the Client's instructions, all files relating to matters 1 through 4, inclusive?

### Fact Situation No. 2:

Assume the same facts that are contained in Fact Situation No. 1 except that all work product of the Firm relating to matters 1 through 5, inclusive, has been maintained and kept in one file of the Client. Would the questions set forth in Fact Situation No. 2 be answered in the same manner, and if not, please explain? Because client matters are now pending and work has been requested on various client files, (much of which is a matter of urgency), the ability to perform services is dependent on your ruling on the above facts. Accordingly, please expedite your response to this ruling request."

## Answer:

### Fact Situation No. 1:

As a matter of ethics, it would appear that the Firm would have a lien only on the papers relating to Matter 5, and, therefore, must release the client files in accordance with the client's instructions.

## Discussion:

The Disciplinary Commission has repeatedly held that the files of a client belong to the client absent some fee dispute or attorney's lien. See RO-86-02, RO-91-06 and RO-90-92. Specifically, in RO-86-02, the Commission stated:

"Subject to the attorney's lien provided for in Code of Alabama (1975), §34-3-61, the attorney must provide copies of a client's complete file to the client upon request if it is material delivered to the lawyer by the client or if it consists of an original document prepared by the lawyer for the client."

The Commission further opined that: "Where the attorney has received full compensation for his services rendered *in connection with a given file*, he must surrender these materials to the client upon the client's request." (*Emphasis supplied*).

This principle was reaffirmed in RO-87-148 which fully cites the then-applicable Disciplinary Rule, as well as the statutory provision concerning attorney's liens.

## Answer:

### Fact Situation No. 2:

If the work product of the Firm relating to matters 1 through 5, inclusive, is so intricately interwoven that it cannot be segregated, with reasonable effort, the statute would appear to allow the attorney's lien to attach to the entire work product.

## Discussion:

The work product of the Firm relating to matters 1 through 5, inclusive, may or may not be subject to segregation. If the work product is such that the matters for which the Firm has been compensated cannot be separated from the whole, without reasonable effort, the language of the statute would appear to protect all papers of the integrated file.

If, on the other hand, with the exercise of reasonable effort, such segregation of the work product relating to matters 1 through 4 can be accomplished, then the answer to Fact Situation No. 2 would be the same as that stated in Fact Situation No. 1, above. [RO 92-05] ■

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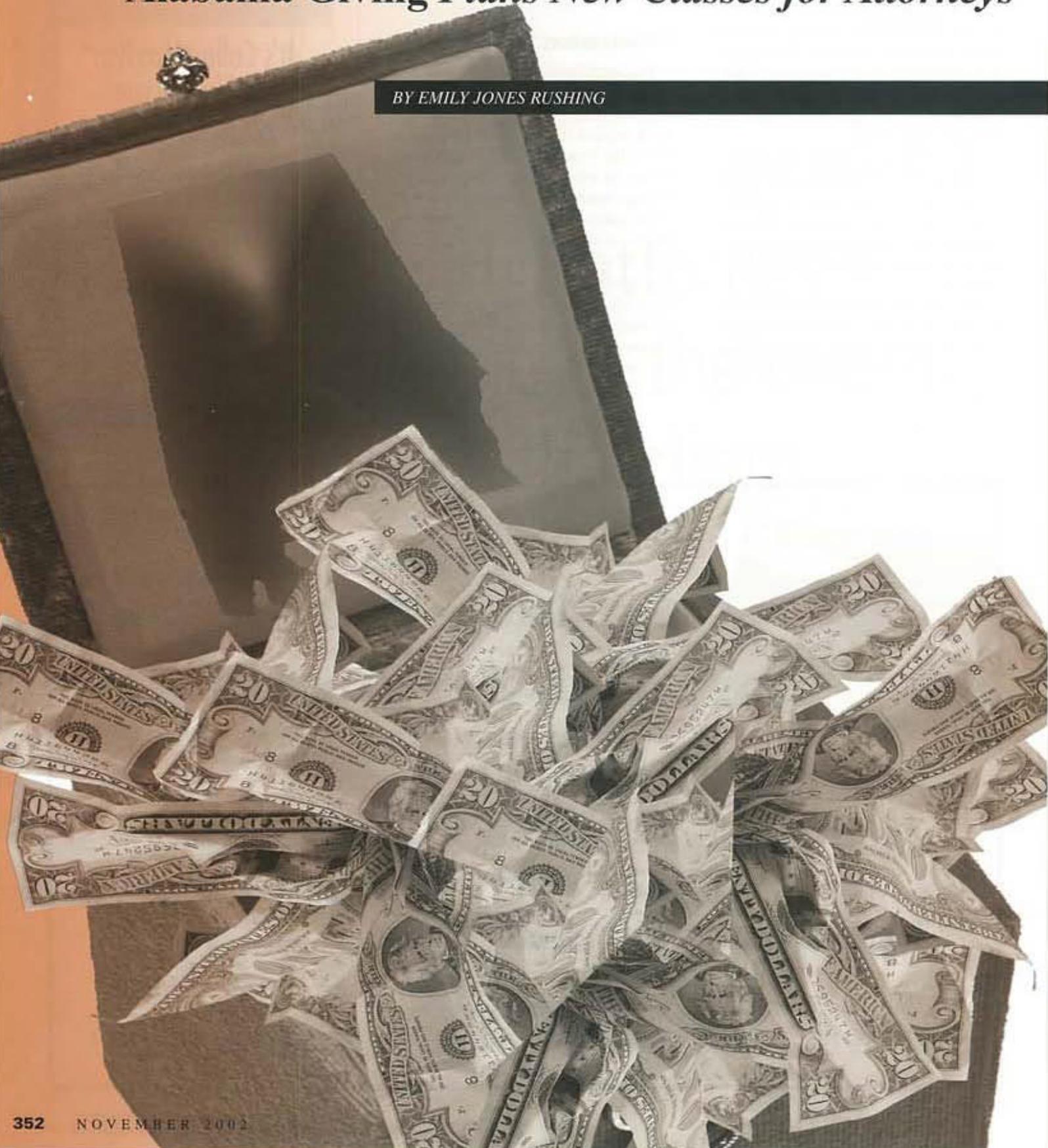
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# PHILANTHROPY EDUCATION:

*Alabama Giving Plans New Classes for Attorneys*

BY EMILY JONES RUSHING



Alabama is a generous state. Its residents prove that year after year in a survey based on itemized federal tax returns, where Alabama regularly ranks among the top six states for average charitable contributions.

At the same time, Alabama ranks far below other states in giving through organized philanthropy, reporting in year 2000 a total of only 550 family, corporate or community grant-making foundations in the state.

The Alabama Giving project aims to change that second statistic, building on the acknowledged strength in individual giving with a broad-based effort to build philanthropy throughout the state. Alabama's attorneys will be part of that effort, thanks to a new course developed by the Southeastern Council of Foundations. This continuing legal education course on philanthropic options will be co-sponsored by the Business Law and Corporate Section and the Real Property, Probate and Trust Law Section of the Alabama State Bar and offers two CLE hours for participants.

According to Jera Stribling, coordinator of Alabama Giving and executive director of the Joseph S. Bruno Charitable Foundation, the courses are designed in particular for attorneys who are not already experts in tax and estate planning. But they also may be valuable for specialists who want to know more about the benefits of philanthropy to the donor as well as to the community.

"There are many tax savings available to individuals, families and corporations who set up private foundations or use new or existing community foundations for their charitable giving," Stribling said. "But these financial benefits are just the beginning.

"Philanthropy is vital to the communities and people of Alabama. So, talking about charitable giving involves more than discussing estate planning and mortality with wealthy clients—it involves setting life goals for anyone at any level."

Through the upcoming courses planned for 2003, attorneys will learn techniques for addressing such issues with their clients. They also will gain an understanding of the ways that money from settlements, inheritances or hard work can create opportunities to make an impact on the community through planned giving.

"Attorneys are a vital component of

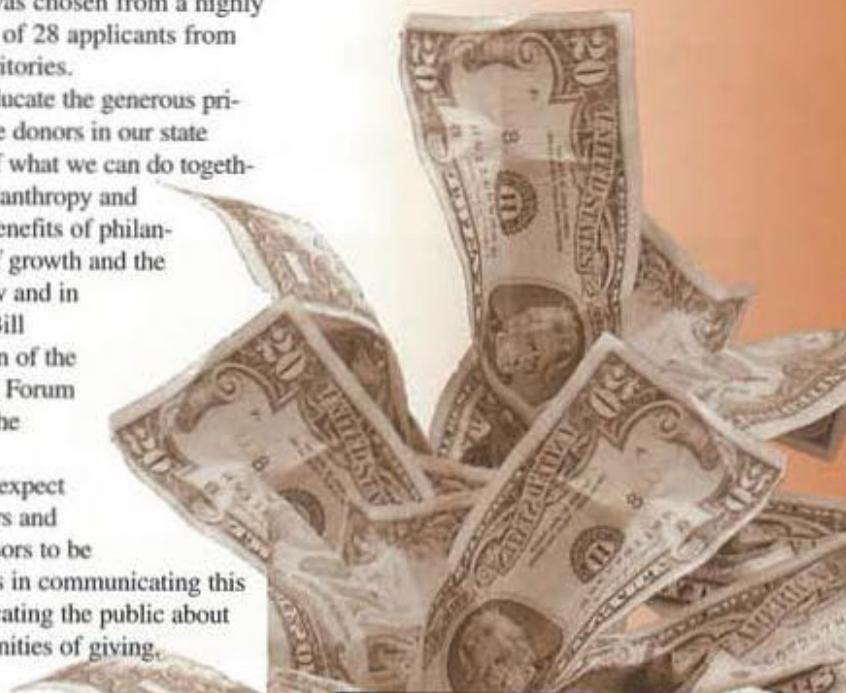
getting this message out and educating the public, especially in rural areas where they often play many different roles as trusted advisors," said Sue McInnish, director of the Alabama Civil Justice Foundation. "We want to make sure that everyone who is interested has an opportunity to take advantage of these new courses."

Alabama Giving is a project of the Alabama Funders Forum, a statewide consortium of public and private foundations. Funding for Alabama Giving has been provided in part by a grant, one of seven made nationwide, through New Ventures in Philanthropy, an initiative of the Forum of Regional Associations of Grantmakers.

The grant provides startup funding for efforts to encourage the creation of new foundations and corporate giving programs, increase new gifts to existing foundations and market the value and importance of philanthropy. Earlier this year, representatives of Alabama Giving and the Southeastern Council of Foundations set up an exhibit at the Alabama State Bar convention and provided many of those who attended with a copy of the *Southeastern Toolkit for Giving*, a resource for attorneys and estate planners.

"In these challenging economic times, promotion of philanthropy is more critical than ever in strengthening our communities. The importance of the Alabama Giving project cannot be overstated," said Bart Morrison, director of New Ventures in Philanthropy, adding that the project was chosen from a highly competitive pool of 28 applicants from 20 states and territories.

"We hope to educate the generous private and corporate donors in our state about the value of what we can do together to increase philanthropy and about the many benefits of philanthropy in terms of growth and the quality of life now and in the future," said Bill Johnson, chairman of the Alabama Funders Forum and president of the Alabama Power Foundation. "We expect community leaders and professional advisors to be important partners in communicating this message and educating the public about the many opportunities of giving."



"In particular, we want to reach out to the communities where organized philanthropy is the exception rather than the rule. To create the best environment for our state, we need to have the support of strong foundations—private, corporate and community—in rural as well as urban areas."

Partners in Alabama Giving include five community foundations—The Community Foundation of Greater Birmingham, Community Foundation of South Alabama, Central Alabama Community Foundation, Community Foundation of Southeast Alabama, and Calhoun County Community Foundation—as well as the Alabama Power Foundation, Alabama Child Caring Foundation, Joseph S. Bruno Charitable Foundation, EyeSight Foundation of Alabama and Alabama Civil Justice Foundation.

Dates for the upcoming classes will be announced soon. To request more information on resources already available for professional advisors, go to [www.alabamagiving.org](http://www.alabamagiving.org) or call (205) 313-4827.

**Sources:** According to Urban Institute's National Center for Charitable Statistics, Alabama consistently ranks among the top six states for individual giving to charities, based on the average charitable contribution per tax return as a percentage of the state's average income.

According to a report from the Southeastern Council of Foundations, which represents Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, Alabama currently has 550 grantmaking foundations, with combined assets of \$1.7 billion. Those figures represent 6 percent of the total number of foundations in the Southeast region (8,925) and 3 percent of total foundation assets for that area (\$57 billion), which includes Alabama, Arkansas, Florida, Georgia,



Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

**Contact:** Elizabeth Dennis is the research and communications assistant for the Alabama Giving Project. Beth is working with several communities throughout the state to access their philanthropic potential and will be working with the Alabama State Bar to coordinate the scheduling, publicity and promotion of the upcoming CLE courses. Beth can be reached at (205) 313-4827. ■

*Information for this article was provided by Alabama Giving and the Alabama Funders Forum, a statewide organization made up of public and private foundations.*

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# Get Your Name On This Page

BY JEANNE MARIE LESLIE, RN, M.ED

If you are one of the thousands of lawyers in Alabama who first turns to the disciplinary page to see who's been reprimanded, you have been challenged to get your name on *this* page and help be part of the solution.

I clearly remember knowing when I took the job as director of the state bar's Alabama Lawyer Assistance Program (ALAP), that asking people for money was not my forte. It was something I could not imagine doing. Offering hope and the possibility of living life without alcohol and drugs or the burden of depression was my passion. That was something I trained for and knew was my calling.

As with any endeavor, along the way there have been obstacles. Many times I've sought direction and guidance from members of the Lawyers Helping Lawyers Committee and the ASB Office of General Counsel. I've relied on directors from assistance programs in other states for advice on policies and on procedures and received assistance from the Alabama Medical Association Physician's Program. However, the major obstacle ALAP has had in helping lawyers suffering from addiction or depression clearly has been a financial one.

On too many occasions lawyers in Alabama have been denied access to appropriate treatment solely because they



Mac Greaves, Squire Gwin, Wade Baxley, ALAP Director Jeanne Marie Leslie, Carol Stewart, ASB President Fred Gray, and ASB Executive Director Keith Norman with the first donation to the Alabama Lawyer Assistance Foundation from the firm of Burr & Forman

lacked the financial means to pay for it. People change; lawyers **do** recover and return as valuable members of their families, communities and the legal profession. Asking for money to assist these lawyers during their greatest time of need has become my new fervor. You see, no one is immune to the disease of addiction or the debilitating effects of depression. Those people can easily be someone you know and care about. For more information on how you can help, call (334) 834-7576. ■

The Alabama Lawyer Assistance Foundation was incorporated in 2001. It is a nonprofit corporation [501(c)(3)] under the management of an elected board of directors. The purpose of the foundation is to provide financial assistance to Alabama lawyers suffering from addictions to alcohol/drugs and other mental illnesses, and who lack the resources to pay for appropriate help. This is not a "give-away," but an opportunity to help these lawyers help themselves. A revolving loan fund gives lawyers in need the opportunity to get treatment. Loans from the fund are paid directly to the treatment care providers. Repayment is expected once the lawyer is back on his or her feet, so money will be available to aid the next lawyer in need.

Fundraising kicked off May 1, with a goal to raise \$500,000. Response has been overwhelming! We graciously thank all contributors so far and will be recognizing all contributions in upcoming issues. Thanks also to the many volunteers who helped make this happen and to the law firm of **Burr & Forman** for being a pacesetter!

# 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 under established guidelines.

## BROCHURES

<b>To Serve the Public</b> .....	<b>\$10.00 per 100</b>	<b>Qty.</b> _____	<b>\$</b> _____
...details of bar public service programs highlighted in the <i>TO SERVE THE PUBLIC</i> video presentation			
<b>Law As A Career</b> .....	<b>\$10.00 per 100</b>	<b>Qty.</b> _____	<b>\$</b> _____
...opportunities and challenges of a law career today			
<b>Lawyers and Legal Fees</b> .....	<b>\$10.00 per 100</b>	<b>Qty.</b> _____	<b>\$</b> _____
...a summary of basic information on common legal questions and procedures for the general public			
<b>Last Will &amp; Testament</b> .....	<b>\$10.00 per 100</b>	<b>Qty.</b> _____	<b>\$</b> _____
...covers aspects of estate planning and the importance of having a will			
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...outlines important considerations and provides advice on financial matters affecting the individual or family			
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...provides an overview of the mediation process in question-and-answer form			
<b>Arbitration Agreements</b> .....	<b>\$10.00 per 100</b>	<b>Qty.</b> _____	<b>\$</b> _____
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<b>Acrylic Brochure Stand</b> .....	<b>\$5.00 each</b>	<b>Qty.</b> _____	<b>\$</b> _____
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## Pro Bono In Alabama

**T**he unmet civil legal needs of Alabama's poor are enormous. Alabama's legal community works through several programs in an effort to meet those needs. Pro bono referrals, reduced-fee representation, community legal education programs, partnerships with churches and other service providers and fundraising for Legal Services programs are among the various ways Alabama lawyers fulfill their obligation to give back to the community by helping to meet the civil legal needs of the poor.

Trying to capture a clear picture of Alabama's pro bono efforts brings to mind the parable of the blind men who examine an elephant. Each man reaches a different conclusion based upon the part he has touched. So it is with pro bono. It is hard to see the whole effort when each part is so different.

Alabama has four organized pro bono programs and although we do not have a volunteer in every county we have volunteers willing to accept cases in every county in the state. The four pro bono programs are: Madison County Lawyer Referral Service, Mobile Bar Association Volunteer Lawyers Program, Birmingham Bar Association Volunteer Lawyers Program and the Alabama State Bar Volunteer Lawyers Program.

The first of these programs was the Madison County Lawyer Referral Service, which was established in 1982. Attorneys who wish to be registered with the county lawyer referral service agreed to take one pro bono case per year for every area of law in which they registered. In order to serve attorneys who want to perform pro bono service but do not wish to be included on the lawyer referral panel, Madison County expanded its program in 1999 to include a purely volunteer component.

In 1987 the Mobile Bar Association created the Mobile Bar Pro Bono Project, which was renamed last year to the Mobile Bar Volunteer Lawyers Program. This program has been highly successful with over 50 percent of the Mobile Bar Association participating in the program.

Based on the success of the Mobile program a resolution was presented to the Alabama State Bar Board of Bar Commissioners in July 1990 to create a program to expand pro bono legal services throughout the state. Through the passage of this resolution the Alabama State Bar Volunteer Lawyers Program was created. As stated in the Resolution, the purpose



of the program is to provide an "efficient organized vehicle through which attorneys may volunteer to advise and represent, without expectation of compensation, low-income Alabamians who cannot afford such legal services."

In 1992 the Alabama State Bar Volunteer Lawyers Program, working with the Birmingham Bar Association, formed the Birmingham Bar Association Volunteer Lawyers Program.

In addition to the different histories, each pro bono program has developed different projects to meet the needs of the underserved in their communities. These different projects have come about as the result of suggestions from member volunteers, other agencies who routinely work with our client population and from the success of other programs. All of these differences are an effort to optimize and expand limited resources while making the experience of providing services a positive one for volunteers.

Just as all the different parts of the elephant make up a strong unified whole, Alabama's four pro bono programs do as well. Only 15 years after the first attempt to provide an organized structure for pro bono service in Alabama there are organized volunteers to serve all 67 counties. Today 26 percent of Alabama lawyers with an active license participate in some way with one of the four programs. Although this is well above the national average of 17 percent we only make a dent in the unmet legal needs of Alabama's poor. Even adding the 14,548 cases handled by Alabama's Legal Services Programs to all the pro bono cases handled, only about 20 percent of the civil legal needs of Alabama's poor are met. Every Alabama lawyer would have to take more than a *half dozen* cases every year to handle the need completely.

New needs for pro bono representation arise with each natural disaster and tragic event. Although Alabama is a long way from New York, our state still must deal with the aftermath of the September 11<sup>th</sup> tragedy. America's call to arms raises legal issues for many of Alabama's citizen soldiers. Alabama's

Volunteer Lawyers Program joined the ABA's Operation Enduring Lamp to provide pro bono services to military personnel called to active duty. When a tornado or flood effects a region of our state destroying homes and lives, volunteer attorneys go into action, providing counsel and advice to victims. Pick any area of law and there are Alabama lawyers providing significant pro bono services, service that often fails to make the radar screens of public awareness.

Some lawyers may grumble about pro bono, saying that no one asks electricians to give their services freely. But they miss the distinction lawyers have from electricians, (other than the obvious, that electricians are generally better liked and better paid). The legal profession is tied to pro bono service, not by ARPC 6.1, but through its history. No matter how important it is to be an electrician on a cold morning when the power is out, being a lawyer is about being a part of a system of justice on which our society is built. Alabama lawyers have many opportunities to provide and expand access to justice through Alabama's pro bono programs.

## Madison County Lawyer Referral and Information Services And Volunteer Lawyers Program

By Lee Ann Pasker

In today's society we all want choices, choices about how we live, work, spend our money and even how we help others. In Madison County, pro bono service is all about choices. We are unique in that Madison County attorneys have *two* programs through which they can meet their historical and ethical obligation to provide pro bono services to indigent clients.

First, there is the Lawyer Referral and Information Service of Madison County, Inc. (LRIS). Formed in 1982 by the Huntsville-Madison County Bar Association, the LRIS provides fee-generating referrals to participating attorneys in 30 different areas of law. A fee of \$100 for up to five areas of law is required with an additional \$20 fee for each additional area of law in which attorneys wish to enroll. These attorneys agree to a reduced consultation fee on referrals as well as agreeing to take one pro bono case per year for each area of law in which they are listed. At the time LRIS was formed there was little to none attorney advertising and the bar association felt this would be a beneficial arrangement for attorneys and clients.

These pro bono cases are screened for eligibility by Legal Services of North-Central Alabama, Inc. The only reason that a participating attorney could reject a pro bono case through LRIS would be due to a conflict of interest.

For many years this was the only organized delivery of pro bono services in Madison County. The bonus of the program was that you could build your practice while performing a public service.

With the later explosion in attorney advertising it became apparent that not all attorneys felt the need to be a part of the referral service, but still had a desire to perform public service.

A strictly *volunteer* program, such as the state bar's Volunteer Lawyers Program, seemed the answer. The state bar had been handling this for Madison County for a short time, but it only made sense that both programs are run from the same office. Hence, two choices for Madison County attorneys. Being a member of the Madison County Volunteer Lawyers Program only requires you to take up to two pro bono cases per year in as many as 16 different areas of law. A case may be rejected for any reason such as the press of time, etc. Being a member of the VLP allows an attorney a little more flexibility, but not the bonus of paying referrals. Something to fit every type of practice!

We have been fortunate to have a base of dedicated, hard-working attorneys in *each* program. Many, if not most, of the cases referred are difficult, time consuming and not always attractive, yet rarely has an attorney rejected a case when called by the LRIS and VLP staff. Thank you to each for their continued support and help in representing those who might otherwise go unrepresented.

### Lee Ann Pasker

Lee Ann Pasker has been the director of the Madison County Lawyer Referral Service and Volunteer Lawyers Program since 1982. She received her B.S. degree in education from Auburn University and her J. D. from Cumberland School of Law. She is a member of the Huntsville-Madison County Bar Association.

## Mobile Bar Association Volunteer Lawyers Program

By Ann Stein

The Mobile Bar Association Volunteer Lawyers Program has several unique features, such as in-office attorney and client consultations two afternoons a week, a 100 percent honor roll for law firms, an extremely active Mobile Bar Association Volunteer Lawyers Program Committee, and, the main ingredient, enthusiastic, dedicated volunteer lawyers. Fifty-six percent of the Mobile Bar Association members volunteer their time and expertise. With these innovations along with many others, our legal community takes an active role in assisting the low-income residents of Mobile County.

Our program gives the lawyers the choice of coming to our Volunteer Lawyers Program's office one afternoon a year to



*Volunteer attorney Slade G. Watson, right, interviews potential clients at the Mobile Bar Association VLP office.*

interview clients, or having clients referred directly to their office. The lawyers who volunteer to come to our office are a strong component of our legal services. After we have taken the client's information over the telephone, the Volunteer Lawyers Program's staff assigns that person an in-office appointment based on the scheduled lawyer's subject matter. Six to eight clients are scheduled for a particular afternoon. This number has been chosen to accommodate emergencies that come up with clients and to handle the "no-show" clients. Each client is sent a postcard confirming the date and time of their appointment. In addition, the day before their appointment each client is called and reminded. Clients are asked to be at the Volunteer Lawyers Program office at 1:15 p.m. so that all of the needed paper work can be completed prior to the attorney's arrival.

Our volunteer lawyer is asked to be at the office at 2:00 p.m. to begin seeing clients. When he/she arrives, all of the clients are ready for their legal consultations. This method has worked very successfully so that our lawyer does not have any "down time" waiting for clients to arrive for their appointments. Some lawyers have consulted with all of their clients in an hour or so while other lawyers have spent several hours. The lawyer does

not see the cases until he/she reaches the Volunteer Lawyers Program's office, so he/she has the opportunity to accept or reject each case on its individual merits. Most of our volunteers accept every client they met with that afternoon, normally six to eight cases.

If the case is accepted, it is assigned to that lawyer and a full packet of information is sent to him/her. If the case is rejected, it immediately comes back to the VLP director to find a lawyer who handles that subject matter. She then contacts that lawyer and if he/she accepts the case, refers the client to his/her office. If rejected, the search for another lawyer is started. This method works for everyone—the client, the lawyer and the Volunteer Lawyers Program's staff.

The Volunteer Lawyers Program director schedules lawyers to ensure that each legal subject area is covered every month, scheduling up to six months in advance. Volunteer lawyers for these afternoons are faxed a letter with their scheduled date. If they have a conflict with the scheduled date, they notify the Volunteer Lawyers Program's director. The same letter is re-faxed as a reminder a month before his/her appointment and the lawyer is called the day before as a reminder and to see if anything unexpected has appeared on his/her schedule for the next afternoon.

If a lawyer is unable to make his/her scheduled appointment, he/she normally reschedules for another day that is convenient. If the cancellation is at the last minute, the Volunteer Lawyers Program's director meets with the clients. Many times the volunteer lawyer who was originally scheduled for that afternoon will review the cases with the VLP director, choosing the cases he/she will handle.

Three years ago a 100 percent Honor Roll for law firms was established by the Volunteer Lawyers Program. The 100% Honor Roll has been an excellent recruiting tool for volunteer lawyers and has been a successful way to promote, encourage and raise public awareness of our pro bono legal services. Last year, 45 law firms had 100 percent participation in the VLP. All year lawyers are recruited, with a major recruiting drive conducted every fall. Solo practitioner law firms are listed, as well as large law firms. In November, the honor roll is updated, printed and framed. It is then displayed at the annual Mobile Bar Association's December meeting and is proudly displayed in the circuit court's hallway at Government Plaza. This 100% Honor Roll is a tribute to the law firms that are so vital to our program's existence, as well as giving recognition and public exposure to the Volunteer Lawyers Program.

A strong component of our program's success is our dedicated Mobile Bar Association Volunteer Lawyers Program Committee chaired by Gilbert B. Laden. This committee meets monthly, except for July so members can attend the Alabama State Bar's Annual Meeting, and December, when the Volunteer

Lawyers Program co-hosts the monthly Mobile Bar Association luncheon. These lawyers not only handle issues that arise with the program but they handle the solicitation of other lawyers and law firms for monetary support for the Volunteer Lawyers Program. They are definitely a hands-on and very active part of the operations of our program. Another definite plus is that many of the lawyers in the Mobile Regional Office of Legal Services Corporation of Alabama are committee members, and the two organizations enjoy a very cooperative and harmonious working relationship. This committee is certainly one of the most dedicated committees of the Mobile Bar Association and contributes an immeasurable amount of time, expertise and talent to our pro bono program.

Our volunteer lawyers display a dedicated and enthusiastic spirit regarding pro bono work. It has been this way since this

program was established in 1987, and that spirit continues to grow and thrives even stronger today with 570 lawyers on our active panel and 698 on our membership roster, which includes our local judges. As recently noted by Donald M. Briskman, president of the Mobile Bar Association, the Volunteer Lawyers Program is proud to serve as the "flagship of the Mobile Bar Association" as we strive to serve those less fortunate Mobile County residents.

#### Ann Gathings Stein

Ann Gathings Stein is the director of the Mobile Bar Association Volunteer Lawyers Program. She received her Ed. S. degree from the University of Montevallo and her J.D. from Birmingham School of Law. She is a member of the Alabama State Bar Committee on Volunteer Lawyers Programs/Access to Legal Services.

## Birmingham Volunteer Lawyers Program

By Debra Jenkins

The Birmingham Volunteer Lawyers Program (VLP) has a strong and active membership of 715 volunteers. The VLP asks that each volunteer lawyer in Jefferson County, excluding the Bessemer Cut-Off, accept two case referrals per year in the area(s) of law they choose or perform 20 hours of legal help per year, whichever comes first. If a volunteer lawyer cannot accept case referrals, we simply ask that they assist and serve in other ways. The volunteer can perform client initial interviews, serve as a mentor to a less experienced volunteer lawyer, assist staff attorneys at Legal Services of Metro Birmingham, Inc. with their large caseloads, make financial contributions, and/or sponsor seminars/trainings.

The VLP sponsors seminars each year that give Volunteer Lawyer Program and Private Attorney Involvement Program volunteers an opportunity to earn up to 12 hours of CLE credit. This is our way of honoring our volunteers and at the same time

rewarding them with the CLE credits they may need for the year. We are very appreciative of the volunteer trainers who conduct the trainings year after year. They are generally the same attorneys and judges who continually find time in their very busy schedules to help and support the program. Most have served as trainers and designers since we began offering these trainings in 1998. The VLP is proud that we can depend on the designers of the trainings and the trainers to give of themselves in this way. Most of all we are deeply grateful for their willingness to serve and support the VLP.

Anne Mitchell designed our Probate Law Training in 1999 and she has done so again this year. Timothy Lupinacci also designed the Bankruptcy Training for 2001. All VLP volunteers and Private Attorney Involvement (PAI) program members are invited to attend free of charge. All non-members are asked to pay a nominal registration fee for each training being presented or simply join the VLP before the scheduled training to attend free of charge.

We have a good and viable Volunteer Lawyers Program in the Birmingham area. We are grateful for the cooperative efforts of the Birmingham Bar Association, the Alabama Law Foundation, Inc., Legal Services of Metro Birmingham, Inc. and the many current VLP volunteers who ensure the success of this very important program.

### Our 2002 schedule of trainings is listed below:

TRAINING	DATE	DESIGNER
Fourth Annual Domestic Relations Training	September 6, 2002	Kenneth R. Cain, Jr.
Third Annual Bankruptcy Training	November 7, 2002	Timothy M. Lupinacci
Probate Law Training	November 14, 2002	Anne W. Mitchell

#### Debra Jenkins

Debra Jenkins has been the director of the Birmingham Bar Association Volunteer Lawyers Program since 1995. Prior to that, she was employed by Legal Services of Metro Birmingham for 15 years. She attended Tuskegee University and the University of Alabama at Birmingham. Debra serves as a liaison to the Alabama State Bar Committee on Volunteer Lawyer Programs/Access to Legal Services and is a member of the National Association of Pro Bono Professionals.

## Taking the Show On the Road – The Alabama State Bar Volunteer Lawyers Program Community Legal Education Programs

By Linda L. Lund

I don't know about you, but I love old movies, especially musicals. I cannot count the number of times I've watched as Mickey Rooney and Judy Garland, Bing Crosby, or Annette and Frankie would get the "kids" together and put on a show. With this mythology safely imbedded in my psychic it is no wonder that when I saw the opportunity to obtain a grant from the ABA I, in essence, proposed to "put on a show."

The show or series of shows I proposed were not musicals but were, in fact, educational. To be precise, they were Community Legal Education Programs. Just as the "kids" Judy and Mickey got together always turned out to be well-trained professionals, my "kids" were as well. They, however, were trained not in tap and voice but in UCC, PFAs and Estate Administration. These Community Legal Education Programs were envisioned as a way to expand the program. Since its inception, the primary focus of the Alabama State Bar VLP has been direct legal representation of clients in civil matters. The VLP accepts case referrals from Alabama's three Legal Services programs ensuring that the clients have income below 125 percent of the federal poverty level. The VLP then attempts to place the cases with a VLP attorney in the client's local area. Community Education Programs allow VLP attorneys to educate and advise low-income members of their community on legal issues while working in collaboration with community groups and local Legal Services personnel.

In the last two years we have taken our show on the road. We have worked with wonderful local attorney volunteers, Legal Services programs and community agencies across the state from Florence to Dothan and Oxford to Daphne. All of the programs have the same basic format: client registration followed by two or three speakers on various aspects of the overall topic, after which clients would be able to meet one-on-one with volunteer attorneys to receive counsel and advice. All participants receive a packet of written materials prepared by the VLP and the speakers. Although our publicity is targeted to the low-income community, everyone can attend the speaker portion of the program. We limit the one-on-one session with an attorney to those members of the audience who meet our normal eligibility requirements, i.e., with income below 125 percent of the federal poverty level.

Clients, volunteer attorneys, Legal Services personnel and community agencies all positively responded to the expansion of the VLP beyond direct client representation. The programs have helped individual clients with critical needs, including an impending mortgage foreclosure and tens of thousands of dollars in child support arrearage. They have also served as a positive reflection of the legal community, with each program receiving positive media coverage. Melinda Waters, executive director of Legal Services Corporation of Alabama, stated,

"These Community Education Programs are an example of a public/private partnership that works and is essential in light of the current meager funding of Legal Services for the poor." We had an overwhelming response from individual volunteer attor-



*Tuscaloosa volunteer attorney Hugh Lee at a Consumer Law Community Legal Education Program*

neys. In fact, in several locations we were in the unfamiliar position of having too many volunteers and turning down offers of assistance!

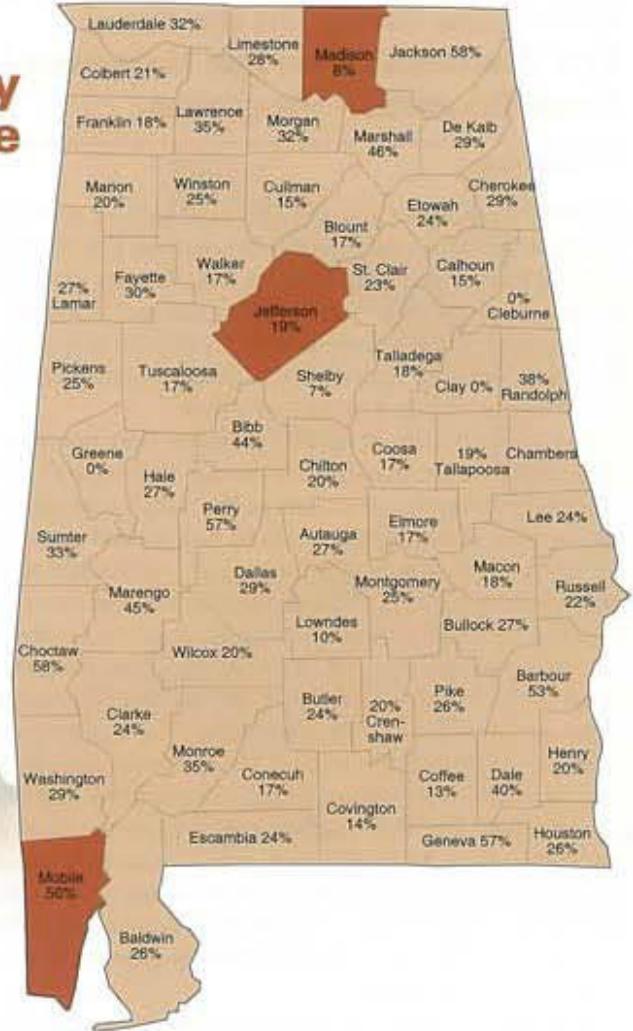
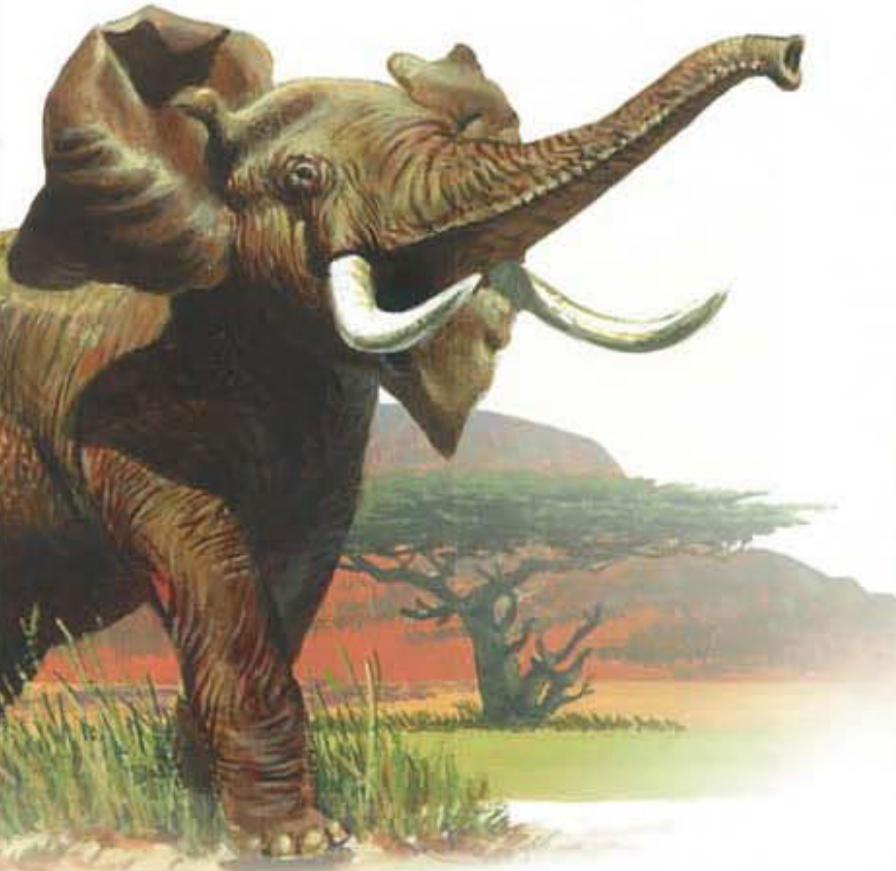
The Alabama State Bar Volunteer Lawyers Program currently has over 1,000 volunteers participating in the program. Volunteer attorneys select the areas of law in which they are willing to accept cases. By enrolling in the program, attorneys agree to accept two case referrals a year. Prior to referral, all of our clients are pre-screened by one of the Legal Services program offices to ensure that the client is truly needy. Last year the program handled over 1,000 matters, making 669 case referrals to volunteer attorneys. The overwhelming percentage of these cases 68 percent, where in the area of family law, divorce, adoption, custody, and child support. The average number of hours spent by an attorney in a VLP case referral was 5.24 hours.

*If you would like more information on the Volunteer Lawyers Program or want to enroll, please contact Linda Lund at the Alabama State Bar, P. O. Box 671, Montgomery, Alabama 36101, phone (334) 269-1515.*

### Linda L. Lund

Linda L. Lund is the director of the Alabama State Bar Volunteer Lawyers Program. She received her B.S. degree from Auburn University and her J.D. from the University of Alabama School of Law. She serves as staff liaison to the Alabama State Bar Committee on Volunteer Lawyer Programs/Access to Legal Services.

**Counties By Participation Rate**



**“REMEMBER WHEN YOU BELIEVED IN JUSTICE FOR ALL?”**

**“IT’S STILL POSSIBLE.”**

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**ALABAMA STATE BAR VOLUNTEER LAWYERS PROGRAM ENROLLMENT FORM**

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**COMPLETE AND FAX TO (334) 261-6310**

# The Growth of *Pro Se* In Alabama

BY HENRY CALLOWAY

*Pro se* means “on one’s own behalf.” Representing oneself in court is a time-honored American tradition and is a right under Article I, §10 of the Alabama Constitution.

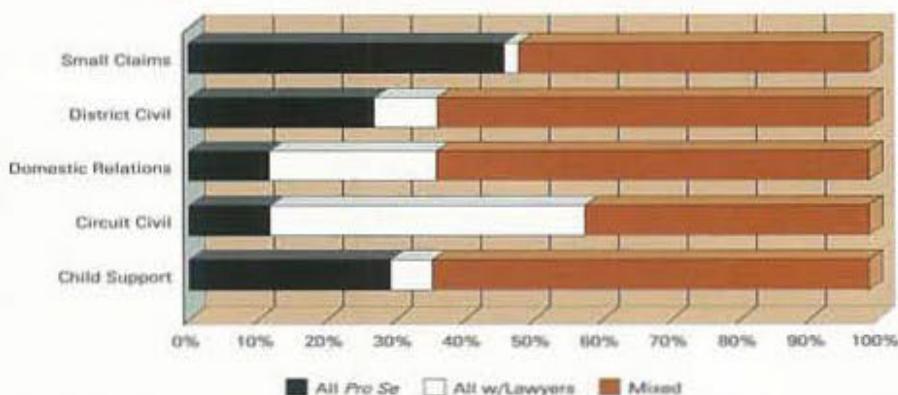
But self-representation raises concerns among judges about slowing the court process. Lawyers also have mixed feelings about *pro se* representation, both for economic reasons and also because of concerns about whether the litigants’ rights are being protected.

Nevertheless, *pro se* representation is already here in a big way in Alabama. According to statistics from the Administrative Office of Courts, in 2001 only 15 percent of the civil cases filed in Alabama had attorneys on both sides. Both sides were *pro se* 29 percent of the time, and one side had a lawyer but the other didn’t 56 percent of the time.

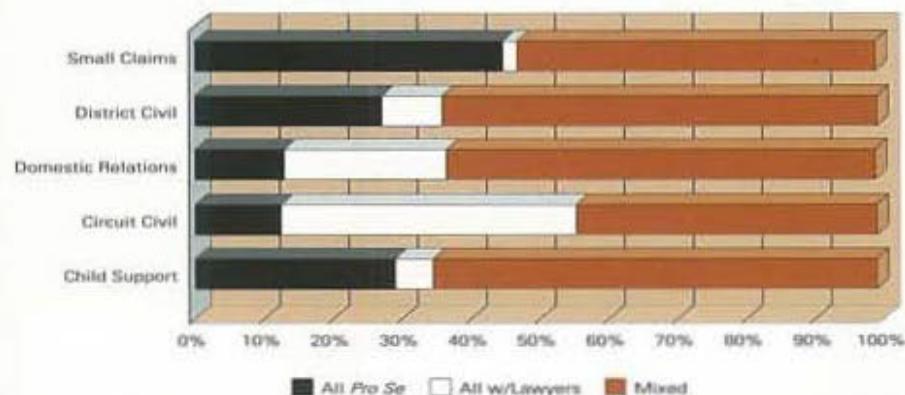
Those numbers are skewed somewhat by the large number of district court and small claims cases, but even the numbers in other categories are striking. Only 44 percent of all circuit court civil cases had lawyers on both sides, 13 percent were totally *pro se*, and 43 percent were mixed.

Many Alabamians are fending for themselves in the areas of child support and domestic relations. Twenty-nine percent of child support cases were *pro se* on both sides, 65 percent were mixed, and only 6 percent had lawyers on both sides. In the area of domestic relations, only 24 percent had lawyers on both sides, 63 percent were mixed, and 13 percent were totally *pro se*.

## 2000 Alabama Pro Se Case Statistics



## 2001 Alabama Pro Se Case Statistics



Some litigants represent themselves by choice, but many of them do not, particularly in child support and domestic relations cases. "We see a lot of people in the area of child support who cannot afford an attorney and need help quickly," says Ann Stein of the Mobile Bar Association Volunteer Lawyers Program. The underfunded Legal Services offices in Alabama cannot meet the need for legal services to low-income citizens, according to Ms. Stein. "For time-sensitive matters, such as petitions to modify child support or eviction proceedings, we have some *pro se* forms and directions prepared by our local bar committee that we give to the clients."

Court systems, Legal Services offices, and pro bono programs in other states are turning to *pro se* programs as a low-cost, efficient way of meeting the needs

of low-income persons. About 40 states have some sort of *pro se* program in place. The Superior Court of Maricopa County, Arizona utilizes a self-service center at the courthouse which provides instructions to users and access to an interactive Web site that allows clients to fill out forms. Missouri is testing a remote electronic filing system for adult abuse matters which allows shelter advocates to help victims complete petitions online and submit them to the court. In other states, customer service centers in the courthouse provide brochures, forms and personalized instructions.

Volunteer lawyer programs have also developed a variety of services to meet the needs of *pro se* litigants. In Baton Rouge, volunteer attorneys provide weekend divorce workshops for *pro se* divorce litigants. Central Virginia Legal

Aid operates a pro bono hotline that permits clients to talk with pro bono attorneys and receive advice on how to proceed *pro se* if they are not eligible for free legal services.

According to a 1999 study, *pro se* assistance programs greatly increase public access to the courts for indigent and low-to-medium income litigants. The availability of court-approved forms, instructions and information improves the quality and uniformity of pleadings filed, reducing frustration by litigants and the court. Court clerks enjoy having a place to refer *pro se* litigants for advice and assistance. According to the study, an unexpected benefit to the court system is that *pro se* programs help move cases more expeditiously.

What is Alabama doing about *pro se* litigants? In early 2000, the Alabama State Bar and Chief Justice Perry Hooper created a *pro se* task force which met several times. Some members of the committee went to Arizona to study the programs there. However, the committee has not met since Chief Justice Roy Moore took office.

In the wake of the apparent demise of the *pro se* task force, the state bar's Committee on Volunteer Lawyer Programs/Access to Legal Services has appointed a subcommittee to study *pro se* issues. Subcommittee Chairman Al Vreeland says, "We are taking some baby steps." The committee is assembling a collection of *pro se* forms which it plans to disseminate to the Legal Services and Volunteer Lawyers Program offices in the state for their use and comments. "If there is good response to the forms, we may try to expand their use or to generate a broader discussion about *pro se* assistance in Alabama," says Vreeland. ■

**Henry Callaway**

Henry Callaway is a member of the firm of Hand Arendall and practices in its Mobile office. He received his undergraduate degree from Harvard and his law degree from Vanderbilt Law School. He has been active in the Mobile County Bar and the Alabama State Bar Volunteer Lawyers programs.

## *A Judge's Perspective of the Mobile Bar Association's Volunteer Lawyers Program*

BY JUDGE DON DAVIS

**R**etired Mobile County Probate Judge L. W. "Red" Noonan has noted and shared with the undersigned and Mobile probate lawyers for years that when Judge Noonan was a teenager in the early 1930s in Mobile, the Mobile Rescue Mission was located on Government Street between Royal and Water streets (present site of the Adams Mark Hotel). The Rescue Mission was located near Mobile's waterfront and train station on a highly traveled part of Government Street. Judge Noonan vividly recalls that the Rescue Mission had a large white banner on its rear wall, which was very visible to persons walking in front of the Rescue Mission during the day-time and at night (when it was lighted). This banner contained the following message: "The test of a real man is how he treats another who could be of no possible use to him." I am reminded of this message when I think of the Mobile Bar Association's Volunteer Lawyer Program (VLP) and the hundreds of Mobile lawyers who participate in the VLP.

The constitutional and property rights of many people from all walks of life are dealt with or affected every day in Alabama's probate courts. Oftentimes these persons have limited financial means. The lack of financial means does not negate the need of these persons obtaining legal relief through Alabama's court system and specifically the probate courts, as to matters within the probate courts' jurisdiction. Additionally, in many instances the persons having an interest in the matters pending before the probate courts are infants, minors and incapacitated adults. The nature of the proceedings, from the perspective of the party seeking judicial relief or of the person who may be affected by or the primary subject of the legal proceeding, underscores the need for all who are required to come before the probate courts having the opportunity of being represented by legal counsel.

In Mobile, the Probate Court and the VLP have formed a strong cooperative relationship since the inception of the VLP in 1989, which works for the benefit of those in need of legal representation and assistance, but unable to pay for the same. The Mobile County Probate Court and the VLP interact in the following manner:

### **Guardianship and Conservatorship Cases**

Frequently the VLP initiates guardianship and conservatorship cases. When advised of the same, these cases are set at the beginning of the court's docket to try to minimize the amount of time the volunteer lawyer has to be present in court. Generally,

the court will waive court costs in these cases. In many instances, a guardian ad litem has to be appointed. Further, in guardianship proceedings, a "court representative" must be appointed. The VLP has furnished the court with a list of lawyers who are willing to serve as guardians ad litem and/or court representatives on a volunteer basis and waive their fees. When the VLP has initiated a guardianship and/or conservatorship case, the court utilizes the VLP's volunteer list for the guardian ad litem and court representatives appointments.

### **Adoptions/Name Change Petitions/Petitions To Claim Allowable Exemptions Before Estate Administration/Estate Administration Cases**

The VLP also assists qualified persons in adoption, name change, exemption and estate administration cases. The same practices outlined in the preceding paragraph are followed in cases involving lawyers who are volunteering their time and talent in these types of cases.

The court feels strongly that all persons should have the opportunity of having legal representation. When a person comes before the court and states that they would like legal representation but cannot afford the same, if a delay in the court hearing will not prejudice the other interested parties in the court continues said case for a reasonable period of time to enable said person to ascertain whether they qualify for assistance through the VLP and to enable the VLP lawyer to become involved in the pending matter. The court also attempts to encourage participation in the VLP by appointing the lawyers who have volunteered to serve as guardians ad litem or court representative and waive the fee for their representation to the next non-pro bono case the court has requiring a guardian ad litem and/or court representative.

The court expresses its gratitude to the VLP and the individual lawyers who participate in the VLP for the services they provide to the needy in the Mobile community. Truly, these lawyers act in the spirit of the motto of the old Mobile Rescue Mission and, in the estimate of the court, are "real" lawyers and a credit to the legal profession. ■

#### **Judge Don Davis**

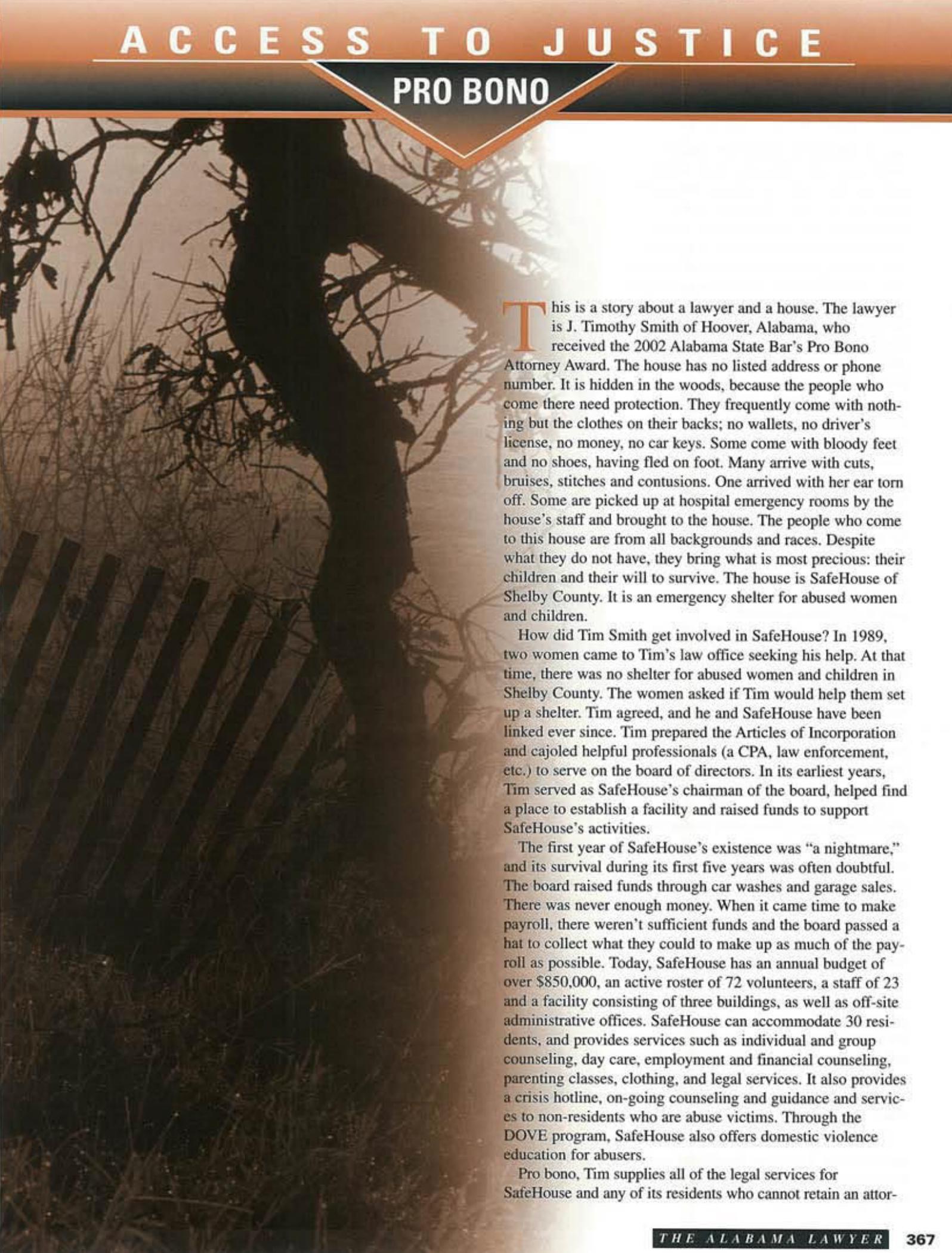
Don Davis was elected to serve as judge of probate of Mobile County in 2000. Prior to his election, he practiced law in Mobile for 19 years and was a member of Sirote & Permutt, P.C. Judge Davis also served as general conservator for Mobile County before his election and was a long-time participant in the Mobile Bar Association's Volunteer Lawyers Program.

ACCESS TO JUSTICE

PRO BONO

# The VLP and A House

BY PAMELA H. BUCY



This is a story about a lawyer and a house. The lawyer is J. Timothy Smith of Hoover, Alabama, who received the 2002 Alabama State Bar's Pro Bono Attorney Award. The house has no listed address or phone number. It is hidden in the woods, because the people who come there need protection. They frequently come with nothing but the clothes on their backs; no wallets, no driver's license, no money, no car keys. Some come with bloody feet and no shoes, having fled on foot. Many arrive with cuts, bruises, stitches and contusions. One arrived with her ear torn off. Some are picked up at hospital emergency rooms by the house's staff and brought to the house. The people who come to this house are from all backgrounds and races. Despite what they do not have, they bring what is most precious: their children and their will to survive. The house is SafeHouse of Shelby County. It is an emergency shelter for abused women and children.

How did Tim Smith get involved in SafeHouse? In 1989, two women came to Tim's law office seeking his help. At that time, there was no shelter for abused women and children in Shelby County. The women asked if Tim would help them set up a shelter. Tim agreed, and he and SafeHouse have been linked ever since. Tim prepared the Articles of Incorporation and cajoled helpful professionals (a CPA, law enforcement, etc.) to serve on the board of directors. In its earliest years, Tim served as SafeHouse's chairman of the board, helped find a place to establish a facility and raised funds to support SafeHouse's activities.

The first year of SafeHouse's existence was "a nightmare," and its survival during its first five years was often doubtful. The board raised funds through car washes and garage sales. There was never enough money. When it came time to make payroll, there weren't sufficient funds and the board passed a hat to collect what they could to make up as much of the payroll as possible. Today, SafeHouse has an annual budget of over \$850,000, an active roster of 72 volunteers, a staff of 23 and a facility consisting of three buildings, as well as off-site administrative offices. SafeHouse can accommodate 30 residents, and provides services such as individual and group counseling, day care, employment and financial counseling, parenting classes, clothing, and legal services. It also provides a crisis hotline, on-going counseling and guidance and services to non-residents who are abuse victims. Through the DOVE program, SafeHouse also offers domestic violence education for abusers.

Pro bono, Tim supplies all of the legal services for SafeHouse and any of its residents who cannot retain an attor-

## PRO BONO

ney. He represents the women who come to SafeHouse in divorces or custody disputes; not only those who are indigent and qualify under the state bar's Volunteer Lawyers Program<sup>1</sup> for free legal assistance, which make them ineligible for such services but who cannot gain access to those assets without court intervention. Tim sometimes represents SafeHouse, as when it is subpoenaed for records (which it is legally prohibited from supplying, but must respond with motions and often by appearing at court hearings). About once a week, Tim receives a call from SafeHouse asking for his help in assisting a resident. One SafeHouse staff member related how she called Tim late on a Tuesday afternoon to see if he could handle a protective order hearing the next morning in the Shelby County courthouse. Even though Tim was scheduled to be at a hearing for a retained client in a Jefferson County court at the same time, he arranged to handle both matters, racing from Jefferson County to Shelby County in time to represent the SafeHouse resident.

Getting information from Tim about what he does for SafeHouse and its residents is next to impossible. Like a recalcitrant witness being cross-examined, he responds with the barest description and only when prompted by some bit of information I've already obtained. The staff of SafeHouse, who nominated Tim for the VLP Award, however, is glowingly forthcoming. Here is what they tell about Tim's devotion to SafeHouse.

On one recent occasion, Tim came to SafeHouse, examined the facility to determine what needed to be fixed, purchased the necessary materials, and organized a "WorkDay" with seven or eight volunteers, to repair what is on his list. Recently, Tim served as the Chef for "Pamper Day." On Pamper Day, the children staying at SafeHouse are taken out by SafeHouse volunteers for fun activities, and hairstylists and manicurists come in to attend the women. The day's finale is a dinner. At the most recent "Pamper Day," Tim not only prepared an elegant feast, worthy of a five-star restaurant (cornish game hens with orange sauce, wild rice, chocolate mousse), he borrowed silver plate covers from the Summit Club and trained the SafeHouse staff in the proper serving techniques. On another recent weekend, Tim and his 11-year old daughter grilled dinner for the families staying at SafeHouse. As one staff member said, "It meant so much to these ladies for someone to take time to make them feel special."

As abuse victims, the women who come to SafeHouse are embarrassed, depressed, humiliated and exhausted. They have no self esteem or sense of personal power for they have been told, many since they were small children, that the abuse they

receive is their fault, because of their failures, weaknesses and inadequacies. The children who come to SafeHouse too often see men only in the role of abuser. According to the SafeHouse staff, for residents to see a man who is respectful, kind and understanding is invaluable.

Domestic violence is a pervasive problem in our society. According to the recently released report by the Alabama Women's Initiative, Inc., almost one-fourth of all reported violent offenses are domestic violence.<sup>2</sup> According to the Alabama Criminal Justice Information Center, of the 21,127 violent offenses reported in 1999, 4,358 were due to domestic violence including 50 homicides, 187 rapes, 59 robberies, and 4,062 aggravated assaults.<sup>3</sup> To take one example, in the City of Birmingham, domestic violence is the leading cause of homicides.<sup>4</sup>

Why does Tim Smith do what he does for SafeHouse, day after day, year after year? In Tim's words: "I just thought it was so unjust and so unfair for these women to come out of a situation like they have, so beat down, and then to have to fight to get legal help also. ... I don't think I'm different. I see lawyers do things to help all the time."<sup>5</sup>



Tim Smith and Joy McCartney at the 2002 VLP reception after Tim was named the recipient of the Pro Bono Award



Tim Smith serves as chef for "Pamper Day."

## Endnotes

1. The Volunteer Lawyers Program (VLP) began statewide in Alabama in 1991. Modeled after the highly successful Mobile Bar Association's Volunteer Lawyers Program, it provides a way for lawyers in Alabama to help their communities: Attorneys enroll in the program by agreeing to provide up to 20 hours, per year, of free legal service to poor citizens of Alabama. Cases are referred to the VLP from Legal Services offices around the state. Before referral, the cases are screened for merit and complexity (each case should be resolvable in 20 hours or less) and the potential client is screened for income eligibility (must live at or below 125 percent of poverty level, currently \$ 1,885 monthly, for a household of four.)
2. Alabama Women's Initiative, Inc., *The Status of Women in Leadership in Alabama* 9 (2002).
3. *Id.*
4. *Id.*
5. If you are interested in working with SafeHouse, contact J. Timothy Smith at (205) 823-1650.

### Pamela H. Bucy

Pamela H. Bucy received her B.A. degree in 1975 from Austin College and her J.D. in 1978 from Washington University School of Law where she was elected to Order of the Coif. Professor Bucy is the Frank M. Bainbridge Professor of Law at the University of Alabama School of Law. She teaches criminal law, criminal procedure and white-collar crime and publishes in the areas of white-collar crime and health care fraud. Professor Bucy is a member of the Committee on Volunteer Lawyer Programs/Access to Legal Services.

# IOLTA program provides access to justice

“Equal Justice Under Law” is inscribed above the portico of the United States Supreme Court. For poor people in America there sometimes might as well be a sign above the courthouse door that says, “Abandon hope all ye who enter here” because many people simply cannot afford to hire a lawyer. Throughout our country and our state, however, there are groups and people dedicated to providing access to justice for those who are unable to pay a lawyer’s fees. IOLTA programs are one mechanism for funding legal aid to the poor.

IOLTA is an acronym for the Interest on Lawyers’ Trust Accounts program. It is a program that has allowed the banking community to cooperate with the legal community to serve the citizens of Alabama. Alabama’s IOLTA program was established in 1987 and we have awarded over \$11 million in grants since that time.

How does IOLTA work? Lawyers routinely hold funds for clients. A lawyer is required to keep client funds separate from the lawyer’s own money. The lawyer establishes one or more demand deposit accounts into which they can deposit funds of multiple clients and disburse them to the clients at the appropriate time. Individual clients cannot earn interest on this money because their money is either not held long or is a relatively small amount of money. Disciplinary rules prevent lawyers from earning interest on client funds.

The IOLTA program allows attorney trust accounts to be changed to interest bearing demand deposit accounts with the interest being paid to the Alabama Law Foundation. A lawyer or law firm takes a “Request to Establish IOLTA Account” to their bank. The bank then changes the trust account to an interest-bearing account and remits the interest earned on the account to the foundation.

Each March the foundation makes grants of IOLTA funds. Most of the funds awarded go to programs that provide legal aid to

the poor. The three programs funded by the Legal Services Corporation saw a tremendous need for services among victims of domestic violence. Many of them were trapped in a cycle of abuse but could not afford to hire a lawyer to help them break free. The Alabama Law Foundation stepped in and funded lawyers to handle the cases of victims of domestic violence. Last year over 1,000 victims of domestic violence received assistance from foundation-funded lawyers.

Our state has many lawyers who are willing to provide legal assistance on a pro bono basis. They need an administrative system to get cases in and assigned out to lawyers. The Alabama Law Foundation provides funding for the Alabama State Bar Volunteer Lawyers Program, the Mobile Bar Association Volunteer Lawyers Program and the Birmingham Bar Association Volunteer Lawyers Program. Combined, these three programs helped serve over 1,500 people in matters such as divorces, wills, adoptions, custody matters and consumer claims. We can be proud in Alabama that we have one of the highest rates of pro bono participation in the nation.

Interest rates are currently at their lowest since the IOLTA program was established, less than 1 percent in most cases. Revenue on IOLTA accounts is expected to be \$450,000 this year. Our challenge in the year ahead will be to maximize IOLTA revenue and find other sources of funding to supplement IOLTA, which is completely dependent on the cyclical nature of interest rates.

BY TRACY DANIEL



**Tracy Daniel**

Tracy Daniel is executive director of the Alabama Law Foundation. She received a B.A. in marketing from Huntingdon College and an M.B.A. from Auburn University.

# RIGHTS OF INDIGENT DEFENDANTS IN CRIMINAL CASES AFTER *ALABAMA V. SHELTON*

BY JOSEPH P. VAN HEEST

While the Alabama State Bar's Volunteer Lawyers Program provides assistance to indigent clients in various civil matters, the Alabama and United States Constitutions guarantee access to the assistance of legal counsel to indigent clients in criminal matters.

The Sixth Amendment to the United States Constitution guarantees that "in all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense."

U.S. CONST., AMEND. VI.

The Sixth Amendment right to counsel applies to all federal and state criminal prosecutions where the defendant is accused of a felony or of a misdemeanor if a sentence of incarceration is imposed. *Johnston v. Zerbst*, 304 U.S. 458, 463 (1938) held that the Sixth Amendment right to counsel applies in federal criminal proceedings, and *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) held that the Sixth Amendment right to counsel applies to state criminal proceedings through the Fourteenth Amendment. This right to counsel attaches at the initiation of adversarial judicial proceedings, "whether by way of formal charge, preliminary hearing, indictment, information or arraignment." *Kirby v. Illinois*, 406 U.S. 682, 689 (1972).

A recent United States Supreme Court opinion clarified the right to counsel afforded indigent defendants by defining a "suspended sentence" as a sentence of incarceration actually imposed, thus entitling an indigent defendant to appointment of counsel. *Alabama v. Shelton*, 122 S.Ct. 1764 (May 20, 2002).<sup>1</sup> Often in a criminal case, a trial judge may sentence a defendant to a term of imprisonment and suspend the sentence, placing

that individual instead on probation. This is quite common in misdemeanor cases in either district or municipal courts. If the defendant completes the term of probation without incident, and completes all the required terms of probation, the suspended sentence is then lifted and the defendant serves no jail time. However, if the defendant fails to complete all requirements of the term of probation and probation is revoked, the suspended sentence may be imposed and the defendant imprisoned for

whatever the term of the suspended sentence. In *Alabama v. Shelton*, the court held that a suspended sentence may not be later imposed unless the defendant was accorded "the guiding hand of counsel" in the original prosecution for the crime charged. *Id.* at 1767 (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972)). The United States Supreme Court upheld the Alabama Supreme Court's view that a suspended sentence constitutes a "term of imprisonment" within the mean-

ing of *Argersinger, supra*, and *Scott v. Illinois*, 440 U.S. 367 (1979), even though incarceration is not immediate or inevitable at the time the sentence is imposed. *Shelton*, 122 S.Ct. at 1770, 1776.

The Supreme Court noted that "In Alabama, ... the character of the probation revocation hearing currently afforded is ... an 'informal' one<sup>2</sup> ... at which the defendant has no right to counsel, and the court no obligation to observe customary rules of evidence.<sup>3</sup> ... More significant, the sole issue at the [probation revocation] hearing – apart from determinations about the



necessity of confinement ... is whether the defendant breached the terms of probation.... The validity or reliability of the underlying conviction is beyond attack." *Shelton*, 122 S.Ct. at 1772 (endnotes added). "Deprived of counsel when tried, convicted, and sentenced, and unable to challenge the original judgment at a subsequent probation revocation hearing, a defendant in Shelton's circumstances faces incarceration on a conviction that has never been subjected to 'the crucible of meaningful adversarial testing.' *United States v. Cronin*, 466 U.S. 648, 656 (1984). The Sixth Amendment does not countenance this result." *Shelton*, 122 S.Ct. at 1772.

Following the opinion in *Shelton*, each defendant charged with misdemeanors in any state courts, which result in sentences of probation which include suspended jail sentences, are constitutionally guaranteed the right to counsel. If determined to be indigent, the defendant is entitled to have counsel appointed to represent him or her, and all of the rights which go with that right.

### **Beyond the Right to Counsel—The Right to Effective Assistance of Counsel Includes the Right to Other Services**

The right to counsel in criminal cases, as guaranteed by the Sixth and Fourteenth amendments to the United States Constitution, includes the right to *effective assistance* of counsel. *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970); *United States v. McCutcheon*, 86 F.3d 187, 189 (11<sup>th</sup> Cir. 1996). To protect that right, indigent defendants in both federal and state courts are entitled to receive funds for necessary services including investigative and expert services, transcripts, and interpreters. Furthermore, the defense may request these funds from the court *ex parte*. See *Ex parte Moody*, 684 So.2d 114 (Ala. 1996). The Alabama Supreme Court held "... an indigent criminal defendant is entitled to an *ex parte* hearing on whether expert assistance is necessary, based on the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution." *Id.* at 120. In *Moody*, the Court stated, "[a]n indigent defendant should not have to disclose to the state information that a financially secure defendant would not have to disclose." *Id.*, (citing *United States v. Meriwether*, 486 F.2d 498, 506 (5<sup>th</sup> Cir. 1973)). Moreover,

[r]equiring an indigent defendant to prematurely disclose evidence in a hearing where the state is present encroaches on the privilege against self-incrimination, which applies at all stages of a criminal proceeding. The privilege against self-incrimination "does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution.

*Id.* (citing *Maness v. Meyers*, 419 U.S. 449, 461 (1975)). Pursuant to *Shelton*, these rights are to be extended to misdemeanor cases where the defendant faces a suspended sentence of imprisonment.

### **Investigative Services and Experts**

For the past 17 years, the courts have recognized that an indigent defendant has a right to a psychiatrist, at public expense, upon a showing that the defendant's mental condition is a significant issue at trial. *Ake v. Oklahoma*, 470 U.S. 68 (1985). The Eleventh Circuit clarified this ruling to hold that "the right to psychiatric assistance does not mean the right to place the report of a 'neutral' psychiatrist before the court; rather it means the right to use the services of a psychiatrist in whatever capacity defense counsel deems appropriate." *Cowley v. Stricklin*, 929 F.2d 640 (11<sup>th</sup> Cir. 1991).

In the federal courts, 18 U.S.C. § 3006A provides for the adequate representation of defendants in federal criminal cases. In addition to the appointment of counsel, that statute permits funding for services other than counsel including investigative, expert or other services necessary for adequate representation. 18 U.S.C. § 3006A(e). The applicable standard is the showing of necessity for the defense as set forth in *Ake, supra*. Likewise, under Alabama law, expert services extend beyond the assistance of a psychiatrist for mental health issues as described in *Ake*. See *State v. DuBose*, 662 So.2d 1156 1178-79 (Ala. Crim. App. 1993), *aff'd*, 662 So.2d 1189, 1193 (Ala. 1995). A defendant is entitled to the services of an expert where he or she shows a reasonable probability that an expert would aid in his defense and that a denial of an expert to assist at trial would result in a fundamentally unfair trial. *Ex parte Moody*, 684 So.2d 114 (Ala. 1996). The right to fundamental fairness under the due process clause requires that before an accused is afforded the opportunity to have an expert of his choosing examine a piece of evidence whose nature is subject to varying expert opinion, it should first be determined that the evidence is critical. Evidence is critical for purposes of the due process clause if the particular evidence could induce a reasonable doubt in the minds of enough jurors to avoid a conviction when that evidence was developed by skilled counsel and experts. *Ex parte Sanders*, 612 So.2d 1199, 1201 (Ala. 1992) (citations omitted).

Expert witnesses to be sought and approved in cases as being necessary to prepare a defense may include experts on accounting services, ballistics, eyewitness testimony, fingerprints, handwriting, linguistics, mitigation specialists (in capital cases), and physicians performing tests such as electroencephalograms. Additionally, in many circumstances, especially involving complex or voluminous facts which cover a long period of time or a wide geographical location, counsel may seek to request investigative services. Any such request should indicate, with as much particularity as possible, why such investigative services are necessary, and why defense counsel cannot be expected to perform the necessary investigation personally. If necessity is shown in an *ex parte* hearing or motion, the courts should view the request liberally and approve the requested funds.



### Transcripts

*Griffin v. Illinois*, 351 U.S. 12 (1956) and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners. *Id.* at 19. The State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal. See *Britt v. North Carolina*, 404 U.S. 226, 227, n. 1 (1971) (citations omitted). Even without specific allegations as to the need for the transcript of prior proceedings, it can ordinarily be assumed that a transcript of a prior mistrial would be valuable to the defendant in at least two ways: as a discovery device in preparation for trial, and as a tool at the trial itself for the impeachment of prosecution witnesses.<sup>5</sup> *Britt*, 404 U.S. at 228. In Alabama, the court of criminal appeals recently noted:

“Although ‘the State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal,’ *Britt v. North Carolina*, 404 U.S. 226, 227, 92 S.Ct. 431, 433, 30 L.Ed.2d 400 (1971), ‘the availability of alternative devices that would fulfill the same functions as a transcript,’ *id.*, 404 U.S. at 227, 92 S.Ct. at 434, provides an adequate substitute for a transcript in many cases.”

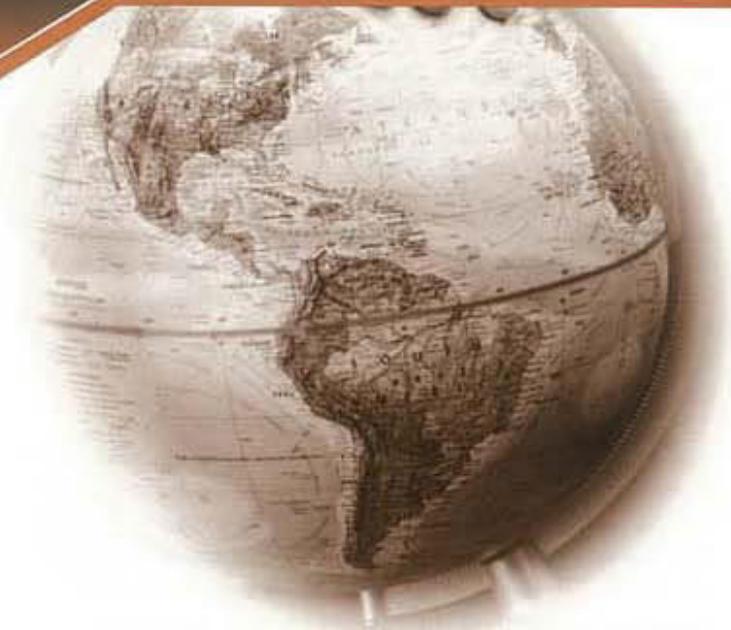
*Quick v. State*, \_\_\_ So.2d \_\_\_, 2001 WL 564259 (Ala. Crim. App. May 25, 2001).

Of course, with the possible exception of an audiocassette recording there is generally no alternative device available which fulfills the same function as a transcript. Even in *Britt*, the Supreme Court noted that this was the rare circumstance where the defense counsel conceded that an informal request to the court reporter would have yielded an adequate alternative. *Britt*, 404 U.S. at 229.

### Interpreters

As international travel becomes more accessible to more people and the economy becomes global, we are seeing an increase in non-English speaking persons throughout the United States and even in Alabama. Over the past several years, international companies have begun to lay roots in Alabama further increasing the number of non-English speaking persons present in the State. Naturally, the increase in non-English speaking individuals in Alabama can be expected to lead to an increase in the number of non-English speaking defendants appearing in Alabama's courts. When representing a non-English speaking defendant, the criminal defense lawyer must be concerned about two aspects of the case—out-of-court preparation and investigation, and in-court proceedings.

For out of court communication with a non-English speaking indigent defendant, defense counsel is entitled to funds to hire an interpreter to prepare the case for trial and discuss the defense with the client. The Sixth and Fourteenth Amendment right to effective assistance of counsel warrants fees for this necessary service. In the federal system, the “other services”



provision in 18 U.S.C. § 3006A(e) includes the necessary expenses for hiring a translator for the preparation of a defense. Obviously, if defense counsel cannot communicate with his client prior to trial, defense counsel cannot provide effective assistance of counsel at trial.

The requirement of providing a translator in court to a criminal defendant who cannot speak or understand English is founded in a criminal defendant's Constitutional guarantees to a fair trial and to confront the witnesses and evidence against him or her. The Court Interpreters Act of 1978, 28 U.S.C. § 1827, mandates the appointment of an interpreter in federal court whenever the court determines that a criminal defendant speaks only or primarily a language other than English. That provision also establishes statutory guidance for the use of translators, in order to ensure that the quality of the translation does not fall below a constitutionally permissible threshold. *United States v. Joshi*, 896 F.2d 1303 (11th Cir. 1990); *United States v. Martinez*, 616 F.2d 185 (5th Cir. 1980). The general standard requires word-for-word translation of everything relating to the trial that a defendant conversant in English would be privy to hear. *Joshi*, 896 F.2d at 1309.

The Alabama Legislature enacted its own provision for in-court translators for non-English speaking defendants. ALA. CODE § 15-1-3, which became effective July 1, 2000, requires that “[i]f the court in a criminal or juvenile proceeding determines that due process considerations require an interpreter, the court shall appoint a qualified person to interpret the proceedings for the defendant, juvenile or witness requesting assistance.” ALA. CODE § 15-1-3(a)(3). Moreover, “the interpreter shall also interpret the testimony or statements of the defendant, juvenile, or witness, and, where applicable, assist in communications with counsel.” *Id.* This can fairly be interpreted to entitle a criminal defendant to the assistance of an interpreter during the investigative and pre-trial phases of the criminal process, so as to assist counsel in preparing a defense, and ensuring effective assistance of counsel at all stages of a criminal proceeding.

### Who is Indigent: Ala. Code §15-12-5(b)

In Alabama, a defendant who is unable to afford to retain counsel is deemed to be indigent. ALA. CODE § 15-12-1. "In determining indigency, the judge shall recognize ability to pay as a variable depending on the nature, extent and liquidity of assets, the disposable net income of the defendant, the nature of the offense, the effort and skill required to gather pertinent information, and the length and complexity of the proceedings."

ALA. CODE § 15-12-5(b). In addition, a defendant whose relatives or friends retain the services of counsel may still be considered indigent for purposes of receiving funds for expert or other investigative services where such services are deemed to be necessary to the defense. That is because the assets of friends and relatives, not legally responsible for the defendant, are not included within the "assets" referred to in ALA. CODE § 15-12-5(b). See *Ex parte Sanders*, 612 So.2d 1199, 1201 (Ala. 1993).<sup>6</sup> Furthermore, counsel appointed to represent an indigent defendant is also entitled to reimbursement for expenses reasonably incurred in such defense and approved in advance by the trial court. ALA. CODE § 15-12-21(d).

### Indigent Defense in Alabama

The federal courts in Alabama are divided into three districts. Pursuant to 18 U.S.C. § 3006A, and in order to provide adequate representation to indigent defendants in criminal cases, the Middle and Southern districts provide indigent defendants representation through Community Defender Organizations (CDOs), as well as panels of criminal defense attorneys appointed to handle criminal cases. The Northern District of Alabama currently relies solely upon a panel of criminal defense attorneys appointed to handle cases in that district. The CDOs are similar to public defender offices, with slightly different management and accountability. While receiving funding from and being accountable to the Administrative Office of United States Courts, the CDOs are not under the control of the judges but rather an independent board of directors. The offices are fully staffed with several trial attorneys, full-time investigators and support staff. The CDOs are also responsible for providing training to panel members and administering the panel of attorneys who take criminal appointments where the CDO has a conflict of interest. This occurs most often in multi-defendant cases, where the defenders office can only represent one defendant.

Under Alabama law, each judicial circuit determines the method of providing indigent defense. A few circuits provide fully funded public defender offices, while most other circuits either issue appointments to individual lawyers on a case-by-case basis, or operate under a contract system, wherein virtually all cases before a particular judge are handled by one specific lawyer or law firm contracted by the State of Alabama to provide criminal defense services to indigents in that court.

Even with recent increases in hourly rates for indigent attorneys fees, the lawyers who represent indigent defendants in criminal cases throughout Alabama do so at a great discount from what they would otherwise receive as either retained criminal defense lawyers or even as an hourly rate in most civil defense matters. However, the persons they represent are without question entitled to effective assistance of counsel. As Justice Hugo Black stated 40 years ago:

The right of one charged with crime of counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

*Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). ■

### Endnotes

1. Prior to the Court's decision in *Shelton*, the right to counsel attached in any criminal prosecution whether classified as petty, misdemeanor, or felony that actually led to imprisonment even for a brief period. *Argersinger v. Hamlin* 407 U.S. 25, 37 (1972). The Court later drew the line at "actual imprisonment," holding that counsel need not be appointed when the defendant is fined for the crime charged, but is not sentenced to a term of imprisonment. *Scott v. Illinois*, 440 U.S. 367, 373-74 (1979).
2. *Buckelew v. State*, 265 So.2d 202, 205 (Ala. Crim. App. 1972).
3. *Martin v. State*, 241 So.2d 339, 340 (Ala. Crim. App. 1970).
4. In Alabama, a criminal defendant does not have the right to counsel in a probation revocation hearing but must have the right to counsel afforded him or her for the substantive offense before s/he can be placed on probation with a suspended sentence. *Shelton, supra*.
5. The rules of evidence permit impeachment by a prior inconsistent statement and the attorney's memory alone may not provide the proper foundation for such impeachment. Additionally, to impeach by prior inconsistent statement under such circumstances, defense counsel would risk becoming a witness to testify as to his memory if the state's witness disagreed with the attorney and no transcript was available. This would require withdrawal of counsel and granting of a mistrial. Consequently, the particularized need of preparing for impeachment of prosecution witnesses should suffice, in most cases, to obtain a free copy of a transcript of a prior hearing.
6. "This is in accord with the general rule that 'the earnings or property of various persons other than the accused, but in some way related to him, [should] not be considered in determining his indigency, the test being the personal means of the accused.' Annot., 51 A.L.R.3d 1108, § 4 (1973). [T]he court must look only to the defendant's own earnings and assets, disregarding the potential assistance of friends and relatives who have no obligation to support the defendant." 2 W. LaFave and J. Israel, *Criminal Procedure* §§ 11.2(e) at 28 (1984). *Russaw v. State*, 572 So.2d 1288, 1295 (Ala. Crim. App. 1990).

#### Joseph P. Van Heest

Joseph P. Van Heest is an assistant federal defender for the Middle District of Alabama, in Montgomery. He received his B.S. from Syracuse University and his J.D. from The Catholic University of America. He is secretary of the Alabama Criminal Defense Lawyers Association, and serves on the Board of Directors of the Federal Bar Association, Montgomery Chapter.

# Providing Access to Justice - Alabama's Legal Services Programs

BY MELINDA M. WATERS, KENNETH R. CAIN AND THOMAS G. KEITH

**"Equal justice under the law is not merely a caption on the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our legal system exists." Hon. Lewis Powell, Jr., former associate justice, United States Supreme Court**

Every person in this country is required to live under and obey the law. Our democratic society requires no less. However, if only some people—but not others—have access to the law, the justice system becomes unfair and dysfunctional.

**It is the role of Alabama's Legal Services programs to provide equal access to justice in civil matters for low-income Alabamians who would not otherwise be able to obtain a private attorney.** However, fulfilling this role has become increasingly difficult because of nationwide cuts in funding for legal services for the poor.

In 1996, funding from Legal Services Corporation, the private non-profit organization established by Congress in 1974, was reduced by 30 percent. This cut followed a decade of such funding cuts during the 1980s. Adjusted for 20 years of inflation, our appropriation in 2001 was less than 50 percent of what it was in 1980. Additionally, the Alabama programs are losing over \$560,000 statewide for fiscal year 2003 due to cuts

from Legal Services Corporation as a result of the data from the 2002 Census.

Alabama Legal Services programs have met the challenge by doing more with less. Staff positions have been eliminated and certain employee benefits reduced. Reserves earned as attorney's fees have been depleted in order to continue providing services. Restrictions imposed by Congress now prohibit the programs from seeking such court-awarded attorney's fees, thus eliminating an essential source of supplemental funding. Meanwhile, the need for high-quality legal services for the poor continues to grow.

With over 85 percent of funding coming from Legal Services Corporation in Washington, the Alabama Legal Services programs have reached a point in our 27-year history where it has become imperative to diversify our funding base. Foundations and individuals have been approached for financial support. Grants from governmental agencies are routinely sought by staff and a fundraising campaign supported by the Alabama State



Bar is underway within the private bar. Better than anyone else, attorneys understand the need for equal access to the legal system and are giving their support to our efforts not only by making financial contributions, but also by providing direct services to our clients on a pro bono basis through the Alabama State Bar Volunteer Lawyers Program and other such programs in the state. Finally, and very importantly, the Alabama Legal Services programs continue to receive vital funding from the Alabama Law Foundation through its IOLTA program for domestic violence work throughout the state.

Clients of the Alabama Legal Services programs are as diverse as the state itself, encompassing all races, ethnic groups and ages. They include the working poor, veterans, family farmers and people with disabilities. Some were formerly middle class and became poor because of age, unemployment, illness or the breakup of a family. Although many clients are elderly or disabled, the majority of them are employed at one or more jobs that pay low wages. The majority of clients are women—most of them mothers with children. The legal problems faced by those living in poverty can have serious, long-term consequences for children, and, as a result, for society as a whole.

The advocates of Alabama's Legal Services programs provide a full range of services to eligible clients in civil matters, including counsel and advice, mediation, administrative and judicial representation, appeals in appropriate cases, and legal self-help materials and forms. To be eligible for these services, a client's income after certain deductions cannot exceed 125 percent of the federal poverty level established annually by the U.S. Office of Management and Budget. Currently, this means, for example, that the monthly income for a household of four cannot be more than \$1,885 before taxes. Also, clients must be U.S. citizens or legal aliens.

In 2001, the staffs of the three Alabama Legal Services programs closed more than 14,500 cases involving issues such as child support, assistance to bat-

tered spouses, help with consumer fraud cases and assistance in obtaining Social Security, Medicaid and other benefits.

In 2001, 48 percent of the cases handled involved family law. They centered on issues such as protection from domestic abuse and child abuse, custody conflicts, child support and health, and educational placement of children.

Debt, bankruptcy and consumer cases were the next most frequent (19 percent) type of legal problems seen by staff in 2001. Low-income individuals, particularly the elderly, often come to Legal Services as a last resort to help them solve disputes over illegal credit charges, vehicle repairs, warranty and repossession cases, and inadequate work performed by "fly-by-night" contractors. Legal Services staffs ensure that our clients are justly treated and protected by consumer laws.

Employment and income maintenance (15 percent) cases are among the most important handled by staff, because without income, most clients cannot obtain housing, resolve consumer debt problems, obtain health care, etc. The most common types of problems in this area include denial of SSI benefits, disability benefits or unemployment compensation, as well as non-payment of wages and benefits or wrongful discharge.

Because low-income residents of Alabama face many obstacles in maintaining decent, safe and affordable housing for their families, close to 12 percent of cases involve housing law. Working with other housing agencies, Legal Services staffs strive to prevent homelessness by helping clients stabilize their housing situations and avoid illegal evictions.

There are presently three Legal Services programs in Alabama. The largest of the three, Legal Services Corporation of Alabama, provides free legal assistance to low-income people in 60 counties, with offices in Montgomery, Dothan, Mobile, Selma, Tuscaloosa, Florence, Opelika, Anniston,

Monroeville, and Gadsden. Located in Alabama's most densely populated area, Legal Services of Metro Birmingham provides legal counsel and representation in Jefferson and Shelby counties. Legal Services of North Central Alabama provides services in the five counties of Madison, Jackson, Morgan, Limestone, and Cullman.

In the case histories that follow, it can be seen that for those who cannot afford an attorney, the Legal Services programs in Alabama can make the difference between going hungry and obtaining food stamps, between eviction or being able to stay in your home, between remaining in a dangerous abusive situation or reaching safety.

In solving such legal problems, there are also clear benefits to the community. For example, helping a family avoid losing their home or utility service can save the city or county the cost of emergency housing. Helping a qualified disabled person receive SSI payments and Medicaid can result in savings of local and state dollars. And, perhaps most importantly, making sure that everyone has access to justice—regardless of income or personal circumstance—may prevent someone from taking the law into his or her own hands because of a feeling of powerlessness in the face of the increasingly complex legal system today.

Right now, with one Legal Services attorney per approximately 12,000 eligible people in Alabama, the programs can address only a fraction of the legal needs of Alabama's poor. Still, the staffs of the Alabama Legal Services Programs advocate for clients vigorously and strive to serve as many people as possible. The following client stories show the skill, ingenuity, commitment and tenacity of Legal Services advocates.

For Alabama's poor, Legal Services is a shield against unfairness, a defender of individual rights and possibly the only means by which low-income citizens can have legal problems resolved. What does "Equal Access to Justice" mean? For thousands of low income citizens in this state, it means receiving assistance from Alabama's Legal Services Programs.

**"It is important to remember there cannot be 'Equal Access to Justice.' as promised by the inscription on the Supreme Court of the United States building, unless there is 'Equal Access to Justice.'"**

***Hon. Frank M. Johnson, former presiding judge, Middle District of Alabama, United States District Court***

### Case #1

Lottie, 56, was married to her abusive husband for 26 years. According to their 19-year-old daughter, the husband beat Lottie daily. There were times when the daughter had to pick up her bleeding mother off the floor and call the police. Lottie's husband moved out, leaving her with no income and no way to make the mobile home payment. He subsequently filed for divorce. Lottie was represented by Legal Services. After a day-long trial, Lottie was awarded \$420 a month alimony, \$700 for a burial plot, and ownership of the mobile home and her car. She is now working at a local daycare center and has been able to keep her mobile home by paying back payments due on the home with the money received from the trial.

### Case #2

Mildred, a homeless woman temporarily residing with her sister, was told that she could not enroll her child in public school unless she could produce a lease showing that she was a bona fide resident of her sister's home. Since she was not on her sister's lease, enrollment of the child was denied. Legal Services intervened with the Board of Education and the child was allowed to enroll in school.

### Case #3

Larry, a working family man, lost his driver's license because he was involved in a automobile accident which the police determined was his fault. He had no insurance. Without his driver's license, Larry had no way to get to and from work. His job was in jeopardy. With help from Legal Services, a settlement was reached whereby Larry agreed to pay for the damages in small monthly payments, and the owner of the other car provided a "conditional release" so that Larry's driver's license could be reinstated and he could continue to work.

#### Melinda M. Waters

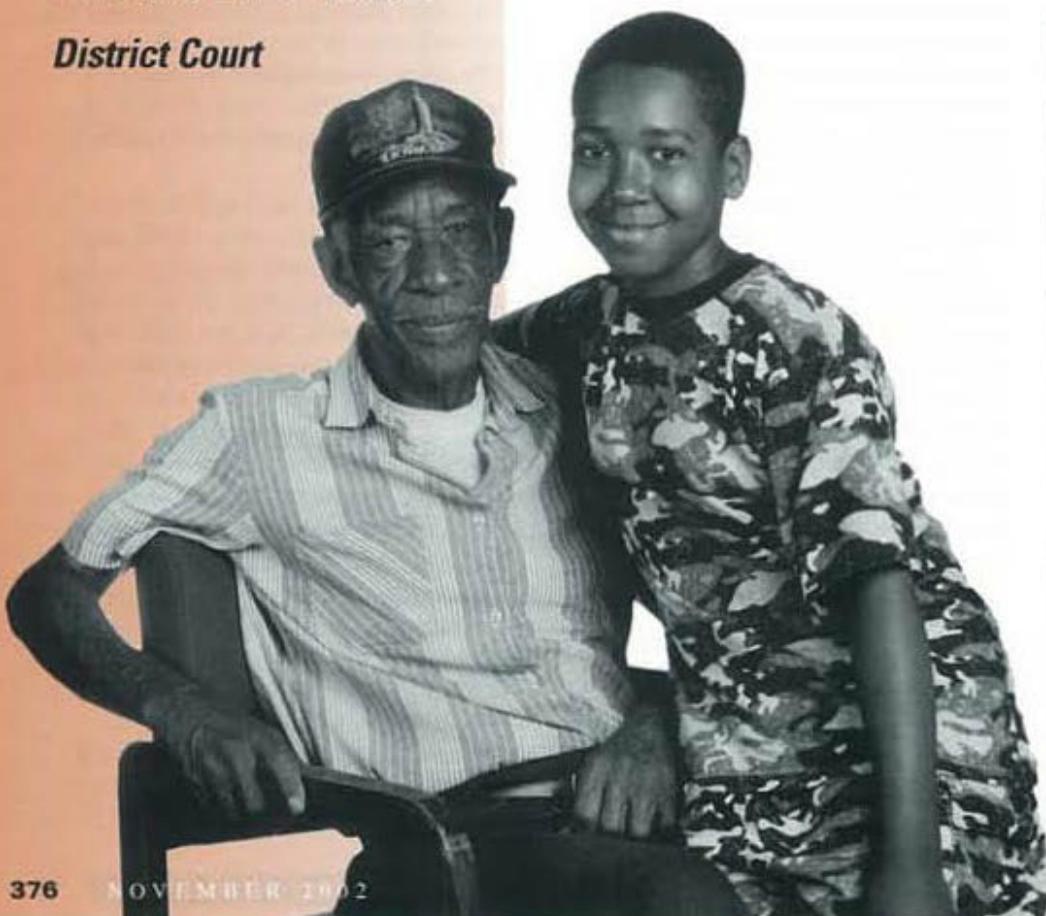
Melinda M. Waters has been the executive director of Legal Services Corporation of Alabama, Inc. since 1995; prior to that, she served as director of the Alabama State Bar Volunteer Lawyers Program. She graduated magna cum laude from the University of Alabama in 1974. She also received her J. D. from the University's School of Law in 1977.

#### Kenneth R. Cain

Kenneth R. Cain is the executive director of Legal Services of Metro Birmingham, Inc. He received his undergraduate degree from the University of Alabama at Birmingham in 1974 and his law degree from the University of Alabama School of Law in 1978. He is a member of the Birmingham Bar Association, Alabama State Bar and American Bar Association.

#### Thomas G. Keith

Thomas G. Keith is the executive director of Legal Services of North-Central Alabama, Inc. He received a degree in business administration in 1966 from Auburn University through the Co-op Education Program. He received his J. D. from the University of Alabama School of Law in 1973. He is a member of the Madison County Bar Association and the Alabama State Bar.



# Join the Alabama State Bar Volunteer Lawyers Program

Join the Volunteer Lawyers Program and receive the "Basic Issues of Law" manual on a 3-1/2" disk, free. This manual covers nine "bread-and-butter" areas of the law, including adoption; bankruptcy; collections litigation; divorce, custody and post-divorce; guardian and conservator by court appointment; mortgage foreclosure; powers of attorney; and will drafting. To join, simply complete the form below and mail to: Volunteer Lawyers Program, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101. Upon receipt of your enrollment form, the VLP will mail to you the "Basic Issues of Law" disk.

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| <input type="checkbox"/> Family Law             | <input type="checkbox"/> Real Property     |
| <input type="checkbox"/> Probate                | <input type="checkbox"/> Where you need me |

**Get on the list of very important people. Enroll today!!**



Robert G. Methvin, Jr.

# YLS Executive Committee Named, Events Scheduled

This year promises to be an exciting one for the Young Lawyers' Section. We have an outstanding group of young attorneys from across the state who have agreed to devote significant time and resources by serving on the Executive Committee. Members of the 2002-2003 Alabama Young Lawyers' Executive Committee are:

Stuart Y. Luckie, Mobile—president-elect  
 Brannon J. Buck, Birmingham—secretary  
 Christina D. Crow, Union Springs—treasurer  
 Todd S. Strohmeier, Mobile—immediate past president  
 Nolan E. Awbrey, Birmingham  
 Robert N. Bailey, II, Huntsville  
 Robert E. Battle, Birmingham  
 LaBarron N. Boone, Montgomery  
 Benjamin M. Bowden, Andalusia  
 Anna Katherine Bowman, Birmingham  
 Bryan N. Cigelski, Mobile  
 Paul J. DeMarco, Birmingham  
 Suzanne C. Dorsett, Huntsville  
 April A. England, Selma  
 James F. Hughey, III, Birmingham  
 Gregory B. McCain, Dothan  
 Patrick S. McCalman, Andalusia  
 Craig D. Martin, Mobile  
 Apsilah O. Millsaps, Tuscaloosa  
 Joseph A. Morris, Dothan  
 James B. Pittman, Jr., Daphne  
 Robin P. Francis Rolison, Mobile  
 Roman A. Shaul, Montgomery

Joel P. Smith, Eufaula  
 J. Matthew Stephens, Birmingham  
 James M. Terrell, Birmingham  
 Kimberly C. Walker, Mobile  
 Harlan F. Winn, Birmingham  
 R. Tucker Yance, Mobile

I take this opportunity to thank immediate Past President **Todd Strohmeier** for all of his hard work and leadership this past year. This year we will be implementing many of Todd's innovative ideas.

On Wednesday, October 16, new bar admittees participated in the admissions ceremony that was coordinated by Executive Committee Member **Christy Crow** in conjunction with the staff of the Alabama State Bar. Special thanks go to Christy and the Alabama State Bar staff members who made this event one to remember.

The Young Lawyers' Section will be sponsoring a special continuing legal education seminar in Birmingham later this year. We hope to have the seminar on Friday, November 22, the day before the Alabama-Auburn game. We expect to have numerous judges from across the state speak on various topics. Please make sure to mark your calendar, as it will not only be informative, but will provide a chance for attorneys who "wait until the last minute" to get their CLE hours for the year.

Once again, we will be sponsoring the **Minority High School Pre-Law Conference**, which has proven to be one of the most meaningful events hosted by the YLS. The conference is designed to provide an inside look at the legal profession to those minority high

school students interested in pursuing a legal career. We normally have over 100 high school students in attendance. The students gather at Alabama State University and are divided into small groups for instruction and discussion with successful and distinguished minority members of the bar. This event has continued to get bigger and better each year and under chairman **LaBarron Boone's** leadership, this year should be no exception.

In addition, the YLS will be implementing the **Alabama State Bar Mentoring Program**. This program addresses the concern that many recent law school graduates are not being taught the practical aspects of practicing law during law school. Once implemented, the program will teach the recent graduates the practical aspects of practicing law by pairing the recent graduates with other more experienced attorneys throughout the state. The Mentoring Program has been a success in other states, and we hope to have this program going in Alabama in the near future.

Lastly, the YLS **Sandestin Seminar** will be held again in May 2003. This event is one of the highlights of the year for the section, and it provides a mechanism for young attorneys across the state to gain CLE credit and meet and exchange ideas, as well as relax at the beach.

The Executive Committee will also be spearheading many more projects which are too exhaustive to list here. I feel confident that this year's Executive Committee is up to the challenge of furthering the goals of the entire state bar, as well as the Young Lawyers' Section. ■

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# WANTED

The Alabama State Bar Lawyer Referral Service can provide you with an excellent means of earning a living, so it is hard to believe that only three percent of Alabama attorneys participate in this service! LRS wants you to consider joining.

The Lawyer Referral Service is not a pro bono legal service. Attorneys agree to charge no more than \$25 for an initial consultation, not to exceed 30 minutes. If, after the consultation, the attorney decides to accept the case, he or she may then charge his or her normal fees.

In addition to earning a fee for your service, the greater reward is that you will be helping your fellow citizens. Most referral clients have never contacted a lawyer before. Your counseling may be all that is needed, or you may offer further services. No matter what the outcome of the initial consultation, the next time they or their friends or family need an attorney, they will come to you.

For more information about the LRS, contact the state bar at (800) 354-6154, letting the receptionist know that you are an attorney interested in becoming a member of the Lawyer Referral Service. Annual fees are \$100, and each member must provide proof of professional liability insurance.



- Notice is hereby given to **Frank Clark Gilmore, III**, who practiced law in Birmingham and whose whereabouts are unknown, that pursuant to an order to show cause of the Disciplinary Commission of the Alabama State Bar, dated April 29, 2002, he has 60 days from the date of this publication (November 15, 2002) to come into compliance with the Client Security Fund assessment requirement for 2002. Noncompliance with the Client Security Fund assessment requirement shall result in a suspension of his license. [ASB CSF No. 02-36]

## Reinstatements

- On August 14, 2002, the Disciplinary Commission entered an order dissolving **Buel Don Hale's** summary suspension and reinstating him to the practice of law in Alabama. [Rule 20(a); ASB Pet. No. 02-06]
- On June 24, 2002, the Disciplinary Board, Panel IV, entered an order dissolving Gadsden attorney **John Edward Cunningham's** interim suspension. This dissolution was conditioned on the grounds that Cunningham adhere to the terms of the order entered May 31, 2002, which conditions included that an audit of Cunningham's trust account be conducted by a certified public accountant in order to determine whether there had been any misappropriation of client funds. Cunningham was also ordered to participate in and comply with any requirements placed on him by the Alabama Lawyer's Assistance Program and the Law Office Management Assistance Program of the Alabama State Bar. [Rule 20(a); ASB Pet. No. 02-07]
- On July 23, 2002, Panel I of the Disciplinary Board entered an order dissolving **Silas Crawford, Jr.'s** summary suspension and reinstating him to the practice of law in the State of Alabama. [Rule 20(a); ASB Pet. No. 02-09]

## Disbarments

- The Alabama Supreme Court adopted an order of the Disciplinary Board, Panel I, disbarring Mobile attorney **Harry Searing Pond, IV** from the practice of law in the State of Alabama effective June 14, 2002. Pond was interimly suspended on March 21, 1997. Charges were filed and served by publication. No answers were filed and defaults were entered on September 24, 2001. Pond's specific whereabouts are unknown and he has had no contact with the bar. The three cases involved the willful neglect of legal matters entrusted to Pond.

In ASB No. 96-319, Pond also misappropriated funds belonging to the firm and another client in order to pay off the complaining client in whose case

he had neglected to file suit. The amount in question was approximately \$10,000. Shortly after being confronted about this, Pond disappeared from the Mobile area, without a word or notice to his former law partners or his family.

In addition to the three cases which are at issue in the formal charges, there were 50-55 other files which Pond handled in similar fashion. The remaining members of the law firm, and other lawyer volunteers, spent hundreds of hours trying to service these clients, whom Pond had neglected and abandoned. The firm members had to ultimately refund about \$37,000 to clients being represented by Pond. It was also learned that Pond, in effect, was stealing from the firm accounts incrementally, and in small amounts. At some point, Pond told his present ex-wife that the firm had not been paying him monies to which he was entitled, while associated with the firm. The ex-wife then brought a claim for Pond's unpaid compensation. This claim was found to be without merit.

Under Section 9.22 of the Alabama Standards for Imposing Lawyer Discipline, the board found several "aggravating factors" having applicability to a determination of discipline in these three cases.

Accordingly, it was the decision of the Disciplinary Board that Pond be disbarred from the practice of law, effective the date of the order entered June 14, 2002, rather than the date of his earlier interim suspension. [ASB nos. 96-223(A), 96-309(A) & 97-164(A)]

- The Supreme Court of Alabama adopted an order of the Disciplinary Commission, dated January 28, 2002, disbarring Birmingham attorney **John Stewart Davidson** from the practice of law in the State of Alabama to be effective retroactive to November 16, 2001. On October 11, 2000, Davidson pled guilty to three criminal charges in the U.S. District Court for the Northern District of Alabama. The charges consisted of bankruptcy fraud, concealment of assets from a trustee in bankruptcy, and perjury in bankruptcy court. All these crimes constituted felony

offenses under the United States Code. Davidson was sentenced to serve one year in a federal correctional facility. On November 16, 2000, Davidson was interimly suspended pursuant to Rule 20 of the Alabama Rules of Disciplinary Procedure. Davidson was released from prison on August 12, 2001. The Disciplinary Board, Panel V, entered an order on October 23, 2001, determining that Davidson's crimes constituted "serious crimes" under rules 8(c)(2) and 22(a)(2) of the Alabama Rules of Disciplinary Procedure. Prior discipline was considered. [Rule 22(a), Pet. No. 01-03]

## Suspensions

- Mobile attorney **Stephen Keith Orso** was interimly suspended from the practice of law in the State of Alabama pursuant to Rule 20(a), Alabama Rules of Disciplinary Procedure, by order of the Disciplinary Commission of the Alabama State Bar dated July 17, 2002. The Disciplinary Commission found that Orso's continued practice of law is causing or is likely to cause, immediate and serious injury to his clients or to the public. [Rule 20(a); ASB Pet. No. 02-01]
- Effective July 22, 2002, attorney **Tamara Ann Story (Knowles)** of Alexander City has been suspended from the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-144]
- Effective July 22, 2002, attorney **James Roland Cockrell** of Leeds has been suspended from the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-107]
- Effective July 22, 2002, attorney **Michael Douglas Herrin** of Jackson, Mississippi has been suspended from the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-49]
- Effective July 22, 2002, attorney **George Frazier Gates** of Jackson, Mississippi has been suspended from

the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-36]

- Effective July 22, 2002, attorney **Claude Bennett McRae, Jr.** of Gulf Shores has been suspended from the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-65]
- Effective July 22, 2002, attorney **Deanna Sanders Higginbotham** of Dothan has been suspended from the practice of law in the State of Alabama for noncompliance with the 2001 Mandatory Continuing Legal Education requirements of the Alabama State Bar. [CLE 02-119]
- Pelham attorney **William David Nichols** was suspended from the practice of law in the State of Alabama for a period of two years, retroactively to March 23, 2001, the date of his interim suspension, with credit for 50 days to be given toward his two-year suspension, from September 28, 2000 through November 17, 2000, which was the period of a prior related interim suspension, by order of the Alabama Supreme Court. The supreme court entered its order based upon the decision of the Disciplinary Commission of the Alabama State Bar.

In ASB No. 02-109(A), the complainant hired Nichols in 1998 to handle a workers' compensation action. She alleged that Nichols did nothing on her case and stopped communicating with her in July 2000. Note that this complaint was not filed until March 2002. Nichols waived the filing of formal charges and admitted that he violated Rule 1.3 and Rule 1.4(a), A.R.P.C. in this case. No restitution was requested or ordered.

In ASB No. 01-08(A), Nichols pled guilty to charges I through IX, violations of rules 1.3, 1.4(a), 1.15(a), 1.15(b), 1.15(c), and 8.4(a), (c), (d), and (g), A.R.P.C., respectively. Nichols claimed that the funds were owed to him for prior legal work. Nichols has agreed to place the amount in dispute in trust to be held until such time as the civil action is

resolved. In the event a judgment is rendered against Nichols, the funds held in trust will be paid to satisfy the judgment.

In ASB No. 01-20(A), Nichols pled guilty to charges I through VIII, violations of rules 1.1, 1.3, 1.4(b), 1.5 (a), and 8.4(a), (c), (d), and (g), A.R.P.C., respectively. Nichols agreed to make restitution to the complainant in the amount of \$5,000.

In ASB No. 01-46(A), Nichols pled guilty to charges I through VI, violations of rules 1.3, 1.4(a), 1.4(b), and 8.4(a), (d), and (g), A.R.P.C., respectively. Nichols agreed to make restitution to the complainant in the amount of \$1,000.

In ASB No. 01-48(A), Nichols agreed to make restitution to attorney Gerald M. Freeman, which represents referral fees for clients referred to Nichols by Freeman in whose cases Nichols obtained and collected judgments. Based upon Nichols's agreement to make restitution, the formal charges were dismissed.



### A Death Penalty Seminar "Loosening the Death Belt VII"

January 31—February 1, 2003  
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Hear nationally acclaimed death penalty lawyers talk about successful techniques necessary to prepare and defend Capital Cases.

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(205) 879-7400 Rate: \$124.00 s/d

In ASB No. 01-65(A), Nichols agreed to forfeit and forgive any fees and costs incurred during his representation of the complainant in a federal worker's compensation case. Based upon that agreement, the formal charges were dismissed.

In ASB No. 01-97(A), Nichols pled guilty to charges I through IX, violations of rules 1.3, 1.4(a), 1.15(a), 1.15(b), 3.4(c), and 8.4(a), (c), (d), and (g), A.R.P.C., respectively. Nichols agreed to make restitution to the complainant in accordance with the terms of a civil judgment rendered against Nichols in the case of *Kelly v. Thompson*, CV-94-02, in the Circuit Court of Coosa County, Alabama, on April 24, 2001.

ASB nos. 02-07(A), 01-47(A), 01-49(A), 01-191(A), and 01-264(A) were dismissed in exchange for Nichols's plea.

ASB nos. 01-122(A), 01-241(A), 99-271(A), 00-171(A), 00-127(A), and 97-269(A) were dismissed upon Nichols's agreement to make full restitution in each case. These cases were based primarily on allegations that Nichols accepted representation and a retainer and then did little or no work in the matter or was suspended after accepting the representation and retainer and unable to perform the legal services. [ASB nos. 97-269(A), 99-271(A), 00-127(A), 00-171(A), 01-08(A), 01-20(A), 01-46(A), 01-47(A), 01-48(A), 01-49(A), 01-65(A), 01-97(A), 01-122(A), 01-191(A), 01-241(A), 01-264(A), 02-07(A), and 02-109(A)]

- The Supreme Court of Alabama entered an order adopting the order of the Disciplinary Board, Panel I, suspending former Dothan attorney **Edward Michael Young** from the practice of law in the State of Alabama effective June 14, 2002, for a period of 91 days. Young, who was previously suspended for 91 days effective May 19, 2000, was found guilty of violating Rule 1.3 and Rule 1.4(a) of the Alabama Rules of Professional Conduct. Young accepted \$2,500 to handle a criminal case for a client. Thereafter, Young abandoned his practice without notice to the client or return of any fees. Formal charges

were served on Young by certified mail at an address in Columbus, Georgia on November 15, 2001. Young failed or refused to answer and a default was entered. Young did not appear at the scheduled hearing on discipline. [ASB No. 99-104(A)]

- On March 15, 2002, the Supreme Court of Alabama adopted the February 21, 2002 order entered by the Disciplinary Board, Panel I, accepting the conditional guilty plea entered by former Roanoke attorney **William Morgan Butler** involving ten bar complaints filed against him. In ASB No. 98-326(A), Butler pled guilty to charge III, involving Rule 8.4(c) [misconduct] of the Alabama Rules of Professional Conduct. In ASB No. 00-298(A) and 96-003(A), Butler waived the filing of formal charges and entered a plea of guilty to a violation of Rule 1.3 [diligence] of the Alabama Rules of Professional Conduct. In ASB No. 96-85(A) and No. 96-108(A), Butler agreed to refund the fees paid by the complainants. In the remaining cases captioned above, Butler pled guilty to all charges contained therein. Two of the cases involved violations of Rule 1.1 [competence]; one case involved a violation of Rule 3.4(a) [fairness to opposing party and counsel]; four of the cases involved violations of Rule 1.3 [diligence], Rule 1.4(a) [communication]; Rule 8.1 (b) [bar admission and disciplinary matters]; two involved violations of Rule 8.4(c) [misconduct]; and three involved violations of Rule 8.4(g) [misconduct] of the Alabama Rules of Professional Conduct. Butler received a 30-month suspension retroactive to July 14, 1999. He also agreed to reimburse the Alabama State Bar's Client Security Fund the sum of \$5,265.05. This amount will be paid in full on or before one year from the date of the order entered by the Disciplinary Board. The interim suspension entered on July 14, 1999 will be dissolved by operation of Rule 20(c)(2) of the Alabama Rules of Disciplinary Procedure. [ASB nos. 95-229(A), 95-267(A), 96-03(A), 96-85(A), 96-108(A), 98-325(A), 98-326(A), 99-50(A), 99-194(A), and 00-298(A)]

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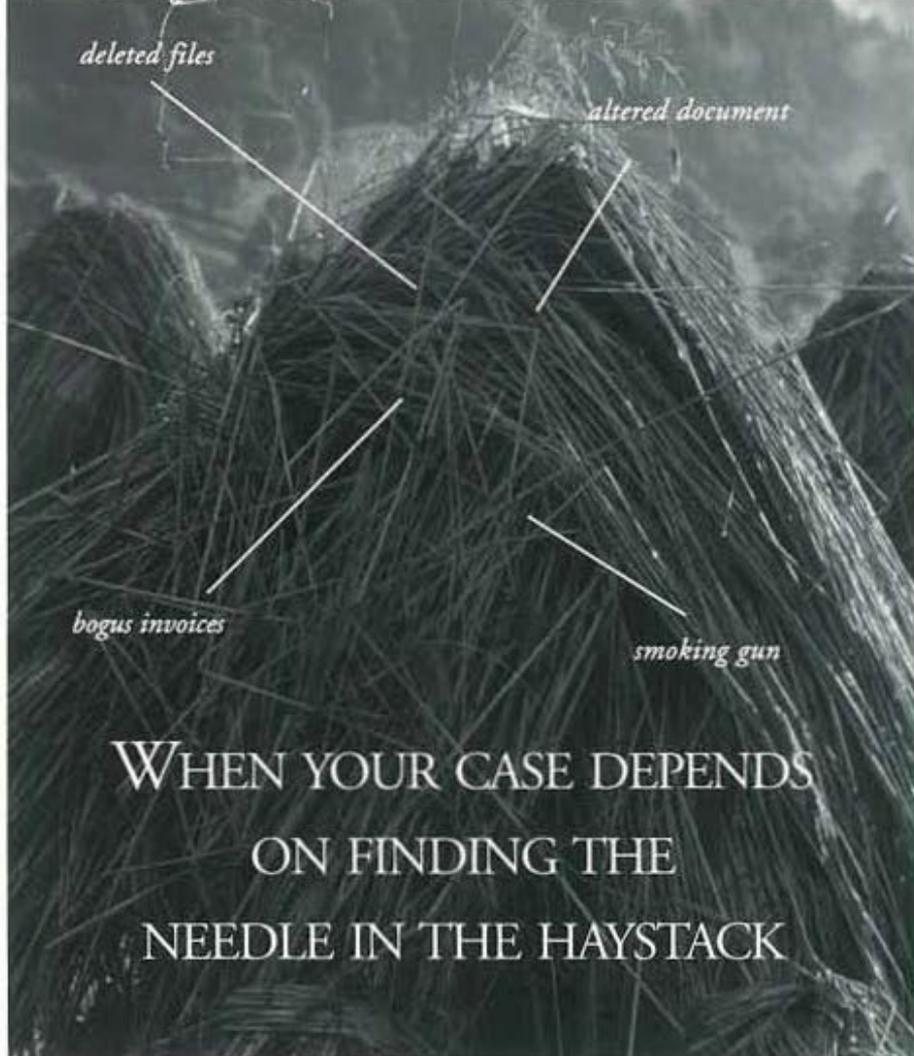
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