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IN BRIEF

July 1992 Volume 53, Number 4

ON THE COVER: The 1992 Alabama State Bar Annual Meeting is returning to the Wynfrey Hotel in Birmingham. Come discover the city and its many attractions all over again!

Photo by Butch Guier, Montgomery

INSIDE THIS ISSUE:

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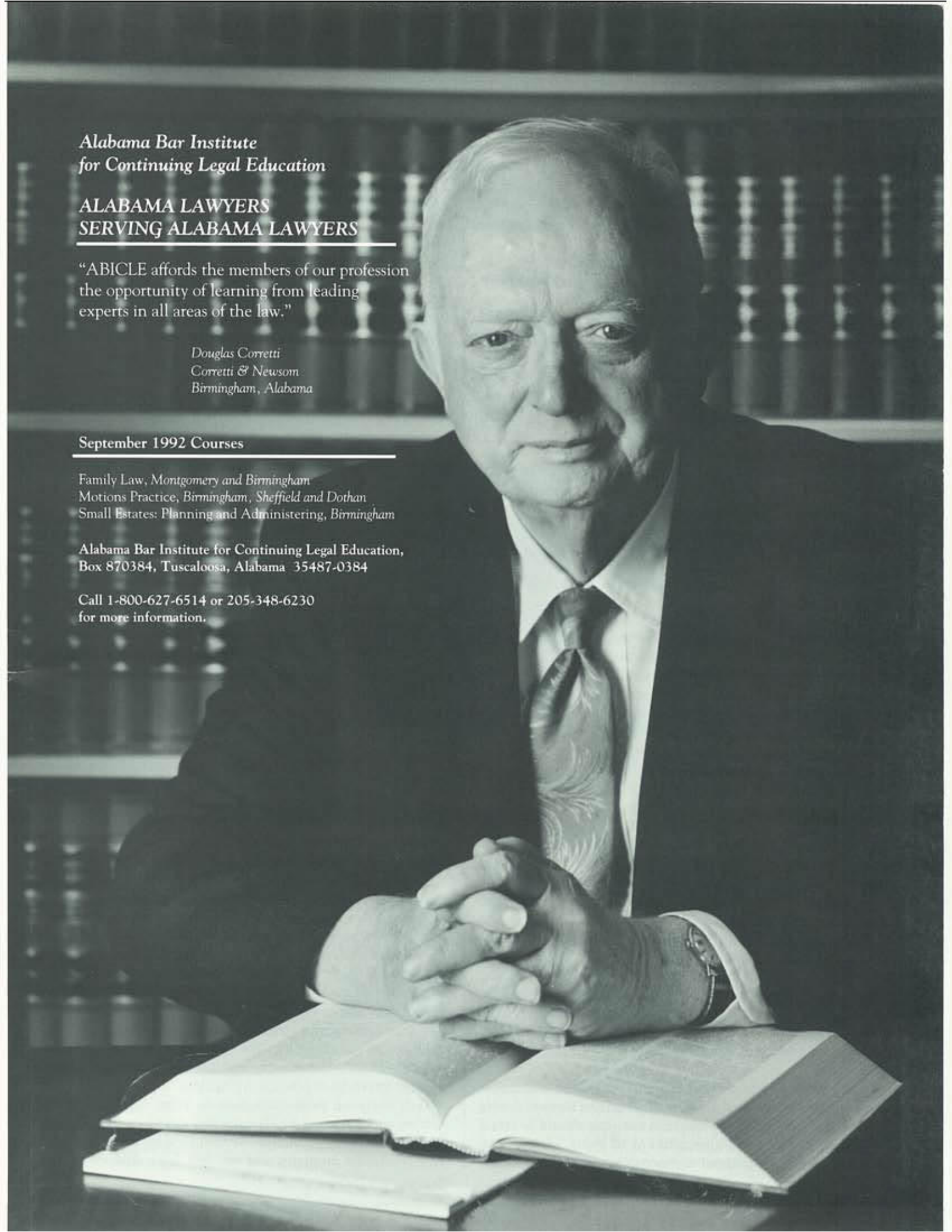

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PRESIDENT'S PAGE

This is my final report to you this year. It would be a gross understatement to say that the past 12 months for me have been exciting, interesting and totally rewarding.

I can report that the Alabama State Bar had an active, and I think, productive year. I feel comfortable reporting to you that it is in shape, fiscally sound and well-managed. I, however, cannot take any credit for that condition. The credit for our bar's soundness and stability goes entirely to my predecessors and the board of commissioners who have, over the years, insisted upon sound fiscal management and productive programs. We are also fortunate to have Reggie Hamner as our executive director. Our general counsel, Bob Norris, is outstanding and the remaining members of the staff are dedicated and hardworking.

Phillip E. Adams, Jr.

In thinking about my final report I decided that you might be interested in some statistics about the State Bar of Alabama, its makeup and the location of members within our state. At this writing, there are 9,728 members of the bar. We have 8,235 members located within our state and 1,493 members with offices outside the state. Our bar is becoming more and more urban. The counties of Jefferson, Montgomery, Mobile, Madison, and Tuscaloosa have 5,902 lawyers or almost 72 percent of the total lawyers located within our state. The largest circuit in our state is the Tenth Judicial Circuit (Jefferson County) with 3,026 lawyers while the smallest circuit currently is the 36th Judicial Circuit (Lawrence County) with 15 lawyers.

Our bar is relatively young with 4,970 people who were admitted in 1980 or later. These lawyers represent 51 percent of the total lawyers currently licensed to practice. Females represent 18 percent of our number. Based upon the female enrollment in law schools, this percentage should increase rapidly over the next decade.

Unfortunately, discipline is a rather large function of our bar. The General Counsel's office received, in 1991, 1,043 complaints about our members and has received through June 11, 1992 310 complaints. Files closed with discipline in 1991 were 98 and files closed with discipline through June 11, 1992 were 45. Lawyer discipline and the disciplinary process continue to receive much attention within our association and from the public.

I thank the members of the board of bar commissioners for their faithful attendance, service, attention and support during the past 12 months. Every lawyer in our state should be proud of the dedication and commitment of these 57 men and women who serve without compensation and devote many hours to careful review, study and debate of matters which come before our board. Much has been considered over the past year and it would be impossible for me to outline all of these accomplishments. I will, however, attempt to review a few of the significant actions.

Expansion of Disciplinary Commission — Last July the board approved and submitted to the supreme court a recommendation that the number of members of the Disciplinary Commission be increased from three to four and that the fourth member be a non-voting chairman who would serve a five-year term. The commissioners felt that this non-voting member would provide an improvement in the current disciplinary procedure and would add continuity to the Disciplinary Commission. We are fortunate that Commissioner Vic Lott of Mobile agreed to accept this difficult position and has served well in his first year as chairman.

Legal Education Task Force — The supreme court requested that the bar organize a task force to review standards and procedures for approval of non-ABA accredited law schools. Our task force sought advice from the deans of the non-accredited law schools located in Alabama with respect to the proposed standards in an attempt to insure that these standards would not impinge upon the abilities of the law schools to operate in an effective manner. The report, as adopted by the board of bar commissioners, recommends that the court adopt certain minimum standards for non-ABA accredited law schools within and outside the state of Alabama. The supreme court currently is reviewing this report and I assume will act upon it in the coming months.

Amendment to Pro Hac Vice — The board of commissioners approved an amendment to Rule VII of the Rules Governing Admission which relates to non-resident attorneys being admitted to practice pro hac vice. The commission's action was taken because of what was felt were significant shortcomings under the existing rule. The supreme court, by order dated March 27, 1992, approved the amendment of Rule VII and has established an effective date of this rule for October 1, 1992. Under the new rule a non-resident attorney must make a verified application to the Alabama State Bar rather than to the local bar commissioner. The commission believes this rule will significantly improve the method for admission of non-resident attorneys to practice pro hac vice.

Task Force on Professionalism — There has been much written and discussed in Alabama and elsewhere concerning the decline of professionalism. Several state bars have adopted professionalism programs and our task force studied several

programs before making its report. The task force made several recommendations to the commission, including the definition of professionalism as follows:

> "The pursuit of the learned art of the law as a common calling, with a spirit of service to the public and the client, and undertaken with competence, integrity and civility."

The task force also recommended and the commission approved a lawyers' creed, rules of engagement and amendment to Rule 9 of the Mandatory Continuing Legal Education Rules which requires for new admittees an eight-hour course in professionalism. The work product of this task force was truly outstanding! I believe every lawyer in our state who takes the time to read the creed and rules of engagement and other findings will agree that if we adhere to these aspirational goals our life and the level of professionalism would be tremendously improved.

Legislative activity — The state bar, during the past 12 months, has been fairly active with the Legislature. Last fall I learned that a joint legislative committee was considering a tax on professional services as a part of the tax reform package under consideration by the Legislature. This tax had been considered in several states and was implemented for a period of six months in Florida. We felt that the tax was the ultimate misery tax on consumers and was ill-advised and ill-conceived at this time. We were able to persuade the Transactional Tax Subcommittee that a tax on legal services would not be in the best interest of the citizens of this state and the proposal was not included in the legislation considered this year.

The board of bar commissioners also continued its involvement in the Department of Industrial Relations' attempt to revise the Workers' Compensation Act in our state. The board felt initially that the department's bill, which created an administrative law judge system to handle workers' compensation, was not in the best interest of the citizens of this state and would create an unneeded, expensive level of bureaucracy to handle workers' compensation cases currently handled by our judicial system. The board of commissioners' opposition was based only upon the administrative law judge system and the state bar did not take any position other than in opposition to the administrative law judge system. Steve Ford, chair of the Workers' Compensation Law Section of the bar, and Bob Lee of Birmingham spent many hours in Montgomery during the legislative session on behalf of the bar and served well.

Addition to bar building — The addition to the new bar building has been completed and has now been occupied for approximately six weeks. The building is very functional and has adequate room to house all 22 fulltime employees of the bar. Work is now in progress renovating the old building. When completed, we will have room at last to provide to our membership with meeting spaces and other services that simply have not been available before. Every member of our association will be proud of this building and it should serve the needs of the state bar well into the next century.

Our fund drive is continuing. As of this date we have received pledges of approximately $1,200,000 and have received contributions of approximately $700,000. I continue to be disappointed in the response of the majority of members of the bar in this effort. Let me hasten to add that we have had many members who have given tirelessly of their time, talents and money to support this effort. If you have not yet contributed, I hope you will consider donating at least $100 per year for the next three years to help pay for this building.

I cannot begin to thank all of the people who have tirelessly and unselfishly given of their time to help me during the past year. Wade Baxley, Billy Melton, Sam Franklin and Vic Lott have never refused to take time to talk with me about problems. I will never be able to repay them for their kindness and their support. They are all fine people and outstanding lawyers dedicated to service of our profession. We are indeed fortunate to have a person of Clarence Small's intelligence and ability who is willing to give his extensive talents to the service of the bar. I know his presidential year will be outstanding.

I would be totally remiss if I did not thank my secretary, Rhonda Romito, who has "taken on" additional responsibilities far beyond those she envisioned when she came to work with me years ago. Many of my clients tell me that they prefer to talk with her about their cases than to have to "deal with me." I will never be able to thank her adequately for her assistance and support.

Special thanks go to members of the Lee County Bar Association who have supported me throughout the years and rendered advice and assistance to me during the past year and have been most understanding of my "other job" when trying to arrange our normal professional schedule.

The members of my firm have been supportive and always have been quick to encourage me and to offer assistance when requested.

I also would be totally remiss if I did not thank my wife, Chris, for her encouragement, support and advice concerning matters relating to the bar and my personal schedule.

My year as your president has been, without a doubt, the highlight of my professional career. I have been constantly amazed and personally challenged by the dedication of members of our bar from all backgrounds and philosophies who annually volunteer thousands of hours to the service of our profession. I have never asked a lawyer to assist the bar who has not quickly and willingly accepted.

I have been honored to serve you as president. Words are inadequate to express my appreciation. I hope that some progress has been made during the past year for the betterment of our profession. ■

NOTICE

In the May 1992 issue of *The Alabama Lawyer*, **Joe Nathan Dickson** was incorrectly identified as an attorney in an article in the "Bar Briefs" section regarding his appointment to the State Personnel Board. Dickson is not a member of the Alabama State Bar nor is he licensed to practice in Alabama. This incorrect information was provided to *The Alabama Lawyer* by the State Personnel Board. The editors regret any confusion regarding this.

EXECUTIVE DIRECTOR'S REPORT

Out of Sight – Out of Mind

My mail bag of recent date prompted the subject matter of this column. Bear in mind that the circumstances do not relate to an undeveloped third-world country, but to Alabama's criminal justice system.

In a typical week, I will receive four or five letters asking the bar's help with respect to perceived injustices involving the incarceration of a person somewhere in our penal system. More often than not, I can readily see that there is little or nothing I or the bar can do; however, this is not always the case. Some of the matters I recently pursued, because of a ring of truth, frankly scare me—because "there, but for the grace of God, go I".

Reginald T. Hamner

I am talking about persons being lost in our criminal justice system. The more common requests involve getting a court-appointed lawyer to visit the prisoner at least once since the appointment or obtaining a transcript from a lower court proceeding; however, I recently received two letters that seemed too preposterous to believe — but I did believe them because of a possible ring of truth. The names and locales involved will not be identified to spare further embarrassment.

One jailed inmate was arrested August 14, 1991 and arraigned August 21, 1991. I received a letter from him on March 9, 1992 asking for help, as he was "on a one-way railroad to hell". He had been locked up six and a half months, had seen a lawyer twice for about a minute before a hearing, and had received no bond reduction hearing and no speedy trial. Relatives had purportedly contacted the appointed lawyer who complained of how little he was paid by the state.

It was obvious to me the man had been jailed too long, if believable, with no meaningful hearing for an arrest on a second degree assault and burglary charge arising from a dispute with a commonlaw wife with a known drug problem. I wrote the presiding judge who responded thus:

> "I appreciate your calling this to my attention. As a result, his case was disposed of with a jury verdict, finding him guilty of assault in the third degree, with a sentence of 12 months hard labor and credit spent in confinement continuous since August 18, 1991.
>
> "In all fairness, 'Mr. X's' lengthy incarceration before trial was the fault of the court system and not his court-appointed attorney."

I was glad I wrote the judge.

An Army officer wrote me concerning his brother's 18-month sentence in a county jail. The prisoner, during his brother's visit, had no "time card" showing time served or time remaining. His 18-month sentence began July 10, 1991 and on the February 16, 1992 visit to his brother, he learned that the county sheriff would not assist his brother in determining his time card status. The brother was concerned that the state had no record of his brother's incarceration.

I wrote the state prison commissioner who responded April 1, 1992:

> "Your (my) assumption that the State (Department of Corrections) is not aware that 'Mr. X' is incarcerated is correct. Our records indicate that he was sentenced January 22, 1990 to five years and released on appeal bond on February 28, 1990. We have received no further information from the sentencing court since that time."

It was suggested that I contact the circuit clerk to determine the status of "Mr. X's" case to see if he had been re-arrested (he obviously had, or had never be released). I forwarded this information to the brother. I also advised the bar commissioner in the circuit of this situation.

I am reminded of the Kingston Trio's song about the MTA, wherein they asked about Tom Dooley, "Did he ever return?" "No, he never returned and his fate is still unlearned."

These recent incidents convince me that this bar must become more vigilant to see that those placed in our system are not lost and locked away without due process of law. The court system and the state prison system should not tolerate even these two miscarriages of justice. I suggest that our local bar associations consider some monitoring of our county (and city) jail populations to insure that our citizens are not therein "lost". ■

LEGISLATIVE WRAP-UP

By ROBERT L. McCURLEY, JR.

The Alabama Legislature adjourned May 18, 1992 after passing a worker's compensation law, congressional reapportionment plan, a five-cent-per-gallon gasoline tax and the two state budgets.

Failing to receive final consideration were the 32 tax reform bills. Tom Carruthers of Birmingham and Professor Jim Bryce, University of Alabama law professor, gained the respect of both the proponents and opponents of tax reform. Professor Bryce was a chief consultant to both the Governor's Tax Reform Committee and to the Legislature's committee which was chaired by former Chief Justice Bo Torbert. As is often the case, the state now looks to the court system for solving its problems as the "equity funding" case for schools is scheduled for trial in Montgomery Circuit Court on August 3, 1992 in the consolidated cases of *Alabama Coalition for Equity v. Governor Guy Hunt* and *Harper v. Governor Guy Hunt.*

The Legislature had before it this year 1,532 bills. Of these 337 passed for 22 percent. However, of these 337 bills which passed, 180 were local bills and 95 more were appropriation bills or dealt with state agencies. Clearly, 275 bills, or 82 percent of those bills passed, had no direct statewide application. Resolutions gained a higher acceptance of adoption with 89 percent of all resolutions introduced being passed.

Some of the 50 bills that could have some degree of statewide application are as follows:

S-93 (Act 92-626)

Indians are now included as "minorities" for affirmative action programs.

S-109 (Act 92-608)

Provides for licensure of persons who are homebuilders when construction exceeds $10,000.

S-122 (Act 92-539)

Alabama Workman's Compensation law revised.

S-246 (Act 92-588)

Cities may provide for the issuance of a summons and complaint in lieu of a custodial arrest for the violation of any ordinance punishable as a Class C Misdemeanor not involving violence, drugs or alcohol.

S-321 (Act 92-607)

Vital Statistics—Bill repeals Sections 22-9-1 to 22-9-79 and provides a new statewide system for registering births, deaths, marriages, divorces, and adoptions.

S-324 (Act 92-600)

Attorneys' license fees will increase from $150 to $200 effective October 1, 1992 and to $250 on October 1, 1993.

S-365 (Act 92-601)

Amends §13A-5-40 to add to the list of crimes punishable as capitol offenses: murder when the victim is under 14 years of age; murder when the vicitim is in a car or house when the shot was fired from outside; and murder from a drive-by shooting.

H-254 (Act 92-186)

"Taxpayers' Bill of Rights and Uniform Revenue Procedures Act."

H-594 (Act 92-524)

Amended Sections 8-6-10 and 8-6-16 concerning administrative cease and desist orders from the Alabama Securities Commission.

H-605 (Act 92-227)

Docket fees were increased to provide money for court personnel and operations due to shortages caused by proration. District court fees increased from $59 to $64 and circuit court fees from $95 to $110.

The Alabama Law Institute drafted the following bills: UCC 2A-Leases, UCC 4A-Funds Transfers and Probate Procedure. All passed one house of the Legislature without opposition only to die on the Special Order Calendar of the second house the last day of the session.

The annual meeting of the Alabama Law Institute will be held at 4 p.m., Thursday, July 16, 1992 at the Wynfrey Hotel in Birmingham during the state bar's annual meeting.

For more information, contact Bob McCurley, Alabama Law Institute, P.O. Box 1425, Tuscaloosa, Alabama 35486 or phone (205) 348-7411. ■

	SENATE	HOUSE	TOTAL
Bills Introduced	628	904	1,535
Bills Passed	91	246	237
Percentage Passed	14	27	22
Resolutions	157	512	669
Resolutions Passed	123	472	595
Percentage Passed	78	92	89

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.

BAR BRIEFS

Booklet on oil and gas leasing available

Strudwick Marvin Rogers, counsel for the Alabama Oil and Gas Board and a member of the Alabama State Bar, has coauthored a booklet, entitled *A Landowner's Guide to Oil and Gas in Alabama.*

The booklet provides basic information about mineral rights and oil and gas law, and contains an explanation of numerous Alabama oil and gas laws, a glossary, and diagrams and pictures.

For a copy, contact the Geological Survey of Alabama, P.O. Box O, Tuscaloosa, Alabama 35486-9780. ■

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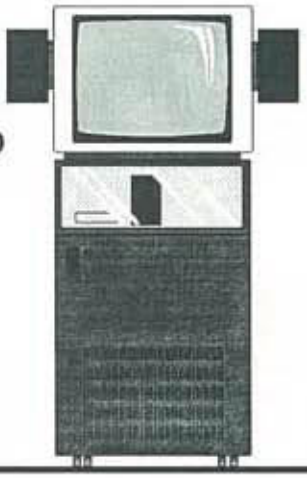

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BUILDING ALABAMA'S COURTHOUSES

TUSCALOOSA COUNTY COURTHOUSE

By SAMUEL A. RUMORE, JR.

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

Tuscaloosa County

Tuscaloosa County was created by an Act of the Alabama Territorial Legislature on February 7, 1818. The name is a Choctaw Indian word which means "Black Warrior", the same name as the river which flows through the county and the giant Indian chief who was killed by De Soto's men in 1540 at the Battle of Mauvila.

Although mounds found in Tuscaloosa County are evidence that aboriginal villages once were located there, no significant Indian towns survived to the period of American settlement. The first white settlers came to the area from the Carolinas, Georgia and Tennessee in 1816. The town that they founded was incorporated as Tuscaloosa on December 13, 1819.

The town of Tuscaloosa has served as the only county seat of Tuscaloosa County, except for one brief interlude when the courthouse was moved just outside the town's corporate limits to a place called Newtown. No fewer than nine separate facilities have served as the courthouse of Tuscaloosa County.

Tuscaloosa County Courthous

The first reference to a courthouse in the county was made in the notice of a meeting called in January 1820 for the purpose of electing Tuscaloosa town officers. Nothing is known of this building except that it was probably a temporary structure built of logs. It is believed that this courthouse was located at the southwest corner of present-day 4th Street and 22nd Avenue, where today there is a parking lot for Tuscaloosa city vehicles.

The next year, in 1821, the courts were moved to the Rising Virtue Lodge No. 4 Masonic Hall. Its location is not exactly known, but was probably the southeast corner of Greensboro Avenue and 6th Street. The county paid the Masons an annual rental of $80 for the use of their building.

In 1822, the people of Tuscaloosa County voted to move their courthouse to a third site, the site located outside Tuscaloosa's corporate limits. This time

a brick courthouse was built in a place then called Newtown. This area is now a part of Tuscaloosa called West End. Here is how the location of courthouse number three came into existence.

William Ely was the land agent for the Connecticut Deaf and Dumb Asylum. In 1819, Congress made a grant of a township of land in Alabama for the benefit of

the asylum. (As an aside, this is the same institution that received land in Jefferson County and made a donation of property to that county for a courthouse. The town that grew up around the courthouse in Jefferson County became known as Elyton in honor of William Ely.)

When Ely came to Tuscaloosa County in 1820, he selected four and one-half sections of land lying to the south and west of the city of Tuscaloosa as part of the grant for the asylum. This effectively blocked the growth of the city in all directions but the east since the Black Warrior River bounded it on the north and the land grant bounded it on the south and west.

Ely sold the land in 1821 to a group of speculators who laid out a town and called it the Lower Part of the Town of Tuscaloosa, an unwieldy name soon changed to the Newtown of Tuscaloosa, then later shortened simply to Newtown. Newtown grew faster than Tuscaloosa, and had a thriving business section for some time. The eastern boundary of Newtown was called East Street. In Tuscaloosa, this street marked the western boundary of that town, and so for Tuscaloosa it was called West Margin Street. Later this street with the two names marking the boundary between rival towns was called 32nd Avenue. Today it is called Martin Luther King, Jr. Boulevard.

The incorporators of Newtown were able to win enough votes in an 1822 election to select a permanent courthouse location by proposing a site directly adjacent to Tuscaloosa that appealed to some Tuscaloosa voters. The boosters chose a lot just west of West Margin Street and south of Tippecanoe Street, on present-day Martin Luther King, Jr. Boulevard between 6th and 7th streets. The courthouse that was subsequently erected has been described as a "handsome brick edifice" and a "stately brick courthouse."

The victory for Newtown was a short-lived one. In 1826, Tuscaloosa became the state capital. In that same year, Tuscaloosa annexed Newtown and then moved the courts to Peter Donaldson's Hotel in the "old town." This fourth seat of justice for Tuscaloosa County was located at the southwest corner of Broad Street and Madison Street. Tuscaloosa City Hall is now located at this site at the corner of present-day University Boulevard and 22nd Avenue. This corner is only one block from the first courthouse site.

In 1830, the fifth courthouse location was selected and a two-story brick courthouse was constructed at the northwest corner of Market Street, now called Greensboro Avenue, and Union Street, now called 7th Street. This corner presently houses the Spiller Furniture Company. The building cost $2,478 and was paid for by a special tax. Edwin Sharpe was the contractor and John S. Fitch was the architect.

It should be noted in passing that the courthouse built at Newtown continued in existence until 1842. It was located approximately 300 yards southwest of the state capitol. On March 4, 1842 a tornado struck the area and destroyed the former courthouse building, the nearby hotel and many homes. Though this section was later rebuilt, it never regained its former stature. Bricks from the old courthouse were used for pillars and chimneys in several area houses. Today, Newtown is a historic district in the western part of Tuscaloosa.

In 1845, the Tuscaloosa County Courthouse was moved again. This sixth location marked the return to a former site, the southeast corner of Greensboro Avenue and 6th Street, where the Masonic Hall was previously located and the Alston Building is now located. The purchase price was $4,000. In 1846, the town of Tuscaloosa built a clock tower on the west end of the courthhouse. Ownership of the town clock remained with the town of Tuscaloosa rather than the county. Sketches of this building reveal a three-story structure with the clock tower centered on the Greensboro Avenue side of the building.

This sixth Tuscaloosa County Courthouse served the county for approximately 62 years. However, the commissioners of Tuscaloosa County ordered an election on November 6, 1906 to decide if a new courthouse should be built. The proposal passed by a margin of 1,106 in favor of a new courthouse to 215 against. Although the old courthouse property was sold at a public auction on January 9, 1907 for $22,275, the county retained the right to use the courthouse structure for two years until a new one could be built.

Various sites were proposed for the new courthouse. However, on January 23, 1907 the county commission purchased, on one block, the east half of lot 257 and all of lot 260 for $18,500. This is the site of the present courthouse. The commissioners interviewed several architects and finally chose William Ernest Spink of Birmingham. He was to be paid 5 percent of the total construction price for drawing plans and supervising the project. The building contract was awarded to Carrigan and Lynn Contractors of Birmingham for a contract price of $90,000. The construction of the courthouse was to be completed by August 31, 1908. The project proceeded ahead of schedule, and the county commission accepted the seventh Tuscaloosa courthouse on August 8, 1908.

The 1908 courthouse was built in the classical style. It was a two-story structure with a central pediment. The town clock from the former structure was not used in the new courthouse. Instead, it was placed in the tower of City Hall.

In August 1955, preliminary negotiations began between Tuscaloosa County and Birmingham architect Charles McCauley for plans and specifications on another new courthouse. By that time, the needs of the county far exceeded the capacity of the existing structure. Still, the county spent several years arranging financing and selecting an appropriate site. In August 1958, the county passed a resolution that authorized the purchase of property adjoining the present courthouse. However, there was strong local support to build the new courthouse at the site of the old state capital building; therefore the study and consideration dragged on. Finally, on March 14, 1961,

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the Tuscaloosa County Board of Revenue approved the motion to build a new courthouse and jail at their existing location.

In February 1962, the Board of Revenue agreed to lease the McLester Hotel, built in 1887, for use as a temporary courthouse while the old courthouse was being demolished and a new one constructed. On April 24, 1962, the hotel, located on the same block as the old courthouse, was officially designated the temporary county courthouse and became the eighth courthouse in the history of Tuscaloosa County.

The old courthouse was taken down by the Loftis Wrecking Company. It paid the county $4,800 for the right to salvage materials from the site. Meanwhile, Daniel Construction Company of Birmingham was awarded the new courthouse contract. The total price, including architect's fees and furnishings, was approximately $3,000,000 for the project. Charles McCauley of Birmingham was the architect.

Groundbreaking took place in September 1962, the cornerstone was laid June 5, 1963 and the ninth Tuscaloosa County Courthouse was dedicated Sunday, April 12, 1964. The day was cold and rainy and the ceremonies which had been scheduled for outdoors were moved inside the building. The dedication address was delivered by the Honorable George C. Wallace, governor of the State of Alabama, who had just recently returned from his strong showing in the 1964 Wisconsin Presidential Primary.

The present Tuscaloosa County Courthouse is a seven-story structure of modern design. From the old courthouse the builders saved the statues of two maidens, representing Agriculture and Minerals, the principal economic industries of the county, the marker honoring Chief Tushkalusa, the memorial to World War II servicemen, and the original 1907 courthouse cornerstone and keystone.

Over the years, courts have been held in Tuscaloosa in buildings that were borrowed, rented and built. The latest courthouse is the culmination of Tuscaloosa's Courthouse legacy from log cabin to modern highrise structure. ■

NOTICE

The Alabama Lawyer annually sponsors a legal writing contest open to law students attending any of the law schools in this state. A cash prize of $250 is awarded to the student whose paper is judged to be the best. The winner for the 1992 contest was Anthony M. Hoffman for his article, "Open-Bank Assistance: Is It a Useful and Effective Alternative to the Closed Bank Transaction". The first runner-up was Philip Segrest for his manuscript, "Universal Malice Murder as a Lesser Included Offense of Capital Offenses", and the second runner-up was Twala Grant for her paper, "Alabama's Fair Dismissal Act — A Model of Legislative Ambiguity".

Civil Court Mediation Rules

by J. NOAH FUNDERBURG

On August 1, 1992, Alabama's newly adopted Civil Court Mediation Rules will become effective. These rules are the work product of many hours of discussion, review and consideration. The rules were drafted by the state bar's Task Force on Alternative Methods for Dispute Resolution. The draft of the rules was then circulated to and reviewed by the following bodies: the board of bar commissioners of the state bar; a task force comprised of judges and court personnel which had been appointed by Chief Justice Hornsby to study methods of alternative dispute resolution; the District and Circuit Court Judges Association; and the standing committee for revisions to the Alabama Rules of Civil Procedure.

After receiving approval from each of these bodies, the Alabama Supreme Court approved an amendment to Rule 16 of the Alabama Rules of Civil Procedure and also adopted the Civil Court Mediation Rules.

The change to Rule 16 is relatively minor. The Mediation Rules, however, have the potential to greatly expand the tools available to lawyers in resolving their clients' problems. The primary focus of the Mediation Rules was to ensure flexibility and retain mediation as a voluntary procedure. For example, the rules give a judge the power to send parties to mediation, but also provide an option for the parties to immediately withdraw from mediation.

The introduction of the Mediation Rules is not likely to be remembered as a revolutionary step in the history of Alabama legal practice. It is, however, an evolutionary step. Mediation has been very effective in other states and communities in resolving a wide variety of disputes. It is time for Alabama lawyers and litigants to begin to enjoy the benefits that this form of dispute resolution can offer. Mediation is not a panacea nor is it appropriate in every case. It does offer an alternative with which each member of the bench and bar should become familiar. The Task Force on Alternative Methods of Dispute Resolution will continue to study mediation and other forms of alternative dispute resolution. Members of the bar who have questions or concerns about mediation should contact the task force at (205) 348-4960. ■

J. Noah Funderburg

J. Noah Funderburg is a graduate of Auburn University and the University of Alabama School of Law. Before becoming the associate director in 1984 of the clinical program at the University's law school, he was in private practice and then worked with Legal Services Corporation. Funderburg also teaches at the law school.

He has been a member of the state bar's Task Force on Alternative Methods of Dispute Resolution for four years, and is an administrator of a divorce mediation project sponsored by the Tuscaloosa Bar Association.

NOTICE

The State of Alabama
Judicial Department
In the Supreme Court of Alabama
March 3, 1992

Order

Whereas, the Board of Commissioners of the Alabama State Bar has proposed to this Court the adoption of a set of rules entitled "Alabama Civil Court Mediation Rules," and

Whereas, the Court has considered the proposed rules and deems it appropriate to adopt those rules,

Now, therefore, it is ordered that the Alabama Civil Court Mediation Rules, attached as an appendix to this order, be, and they hereby are, adopted by this Court, to be effective August 1, 1992.

Hornsby, C.J., and Maddox, Almon, Shores, Adams, Houston, Steagall, Kennedy, and Ingram, JJ. concur.

I, Robert G. Esdale, as clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 4th day of May 1992.

Appendix

Alabama Civil Court Mediation Rules

These rules have been promulgated with the assistance of the American Arbitration Association, whose mediation procedures have been applied in whole or in part in these rules.

Rule 1
Definition of Mediation and Scope of Rules

(a) Mediation is an extrajudicial procedure for the resolution of disputes suggested by Rule 16(6), Alabama Rules of Civil Procedure. In some situations, a mediator can assist parties in reaching a settlement of a dispute. Mediation is a process by which the parties submit their dispute to an impartial person — the mediator. The mediator may suggest ways of resolving the dispute, but cannot impose a settlement on the parties.

(b) These rules shall apply in the circuit courts of this State, but shall have no application in the district courts.

Rule 2
Initiation of Mediation; Stay of Proceedings

Upon motion of the parties concerned or by suggestion of the court or by agreement of the parties concerned, the court may enter an order directing parties to a pending action to proceed with mediation of one or more disputes in the lawsuit.

Upon the entry of an order for mediation, proceedings as to the dispute in mediation shall be stayed as to the parties in mediation; the proceedings shall be stayed for such time period as set by the court in its order of mediation. Upon motion by any concerned party, the court may, for good cause shown, extend the time period of the stay for such length of time as the court may deem appropriate.

Committee Comment to Rule 2 — Participation in the mediation process is strictly voluntary. Any party wishing to terminate the process may do so at any time pursuant to Rule 13. Pursuant to Rule 13, the mediation process is also terminated by expiration of the period of stay provided for by Rule 2.

Rule 3
Appointment of a Mediator

Upon order for mediation, the court, or such authority as the court may designate, shall appoint a qualified mediator. The mediator appointed shall be agreed upon by the parties concerned, except that if the parties do not agree upon a mediator, then the selection of the mediator shall be in the discretion of the court or its designated authority. A single mediator shall be appointed unless the parties or the court determine otherwise.

Rule 4
Qualifications of a Mediator

The mediator shall have those qualifications the court may deem appropriate, given the subject matter of the mediation. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest, except by the written consent of all parties. Before accepting an appointment, the prospective mediator shall disclose to the court any circumstances likely to create a presumption of bias or likely to prevent a prompt meeting with the parties. Upon receipt of notice of any circumstances of either character, the court shall either name a different person as mediator or immediately communicate the information to the parties for their comments. If the parties disagree as to whether the prospective mediator should serve, the court shall appoint another person as mediator.

Rule 5
Vacancies

If any mediator becomes unwilling or unable to serve, the court shall appoint another mediator. The appointment of a successor mediator shall be by the same procedures and upon the same terms as an initial appointment.

Rule 6
Assistance

Any party not represented by an attorney may be assisted by persons of his or her choice at proceedings before a mediator.

Rule 7
Time and Place of Mediation

The mediator shall fix the time of each mediation session. The mediation sessions shall be held at any convenient location agreeable to the mediator and the parties or as otherwise designated by the court.

Rule 8
Identification of Matters in Dispute

At least ten (10) days before the first scheduled mediation session, each party concerned shall provide the mediator with a brief memorandum setting forth the party's position with regard to the issues that need to be resolved. At the discretion of the mediator, the memoranda may be exchanged by the parties.

At the first session, the parties shall produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement this information.

Rule 9
Authority of Mediator

The mediator does not have authority to impose a settlement upon the parties, but shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or by the parties, as the mediator shall determine. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties (see Rule 13(a)(2)).

Rule 10
Privacy

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

Rule 11
Confidentiality

The mediator shall not divulge confidential information disclosed to the mediator by the parties or by witnesses in the course of mediation. All records, reports, or other documents received by a mediator while serving as mediator shall be considered confidential. The mediator shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation.

Each party shall maintain the confidentiality of the information received during the mediation and shall not in any arbitral, judicial or other proceeding rely on or introduce as evidence:

(a) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(b) Admissions made by another party in the course of the mediation proceedings;

(c) Proposals made or views expressed by the mediator; or

(d) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

The court shall neither inquire into, nor receive information about, the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.

Rule 12
No Record

There shall be no record made of the mediation proceedings.

Rule 13
Termination of Mediation

(a) The mediation process may be terminated at any time by any party to the mediation. It may also be terminated by the mediator. It shall be terminated by filing with the court one of the following:

(1) Notice that the parties concerned have executed a settlement agreement. Such a notice shall be signed by all parties concerned or by their attorneys;

(2) A written declaration signed by the mediator stating that in the mediator's judgment further efforts at mediation will not contribute to a resolution of the dispute between the parties (see Rule 9); or

(3) A written declaration signed by a party or parties, or by their attorneys, stating that the mediation process is terminated.

(b) Mediation shall also be terminated by the expiration of the period of stay provided in Rule 2.

(c) The fact that mediation has once been terminated as to a particular dispute shall not bar the entry of a later order to mediate that dispute.

Committee Comment to Rule 13—(1) Notification through subsection (2) assures confidentiality as to the party requesting termination.

(2) Notification through subsection (3) will allow either party to terminate the mediation process before a mediator is appointed, or, once a mediator has been appointed, will allow a party to terminate the process without further communication with the mediator.

Rule 14
Interpretation and Application of Rules

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. In other respects, they shall be interpreted and applied by the court.

Rule 15
Expenses, Mediator's Fee and Deposits

(a) Expenses — The expenses of a witness for a party shall be paid by the party producing the witness. All other expenses of the mediation, including necessary travel and other expenses of the mediator, the expenses of any witnesses called by the mediator, and the cost of any evidence or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless the parties agree otherwise, or unless the court directs otherwise.

(b) Mediator's Fee — A mediator shall be compensated at a reasonable rate, agreed to by the parties, or as set by the court. A mediator's fee shall be borne equally by the parties unless they agree otherwise, or unless the court directs otherwise.

(c) Deposits — Before the mediation process begins, each party to the process shall deposit such an amount of the anticipated expenses and fees as the court shall direct. When the mediation process has been terminated, the court shall render an accounting, requiring payment of additional expenses and fees by the appropriate parties, or returning any unexpended balance to the appropriate parties. ■

ADDRESS CHANGES

Please check your listing in the current 1990-91 *Alabama Bar Directory* and complete the form below ONLY if there are any changes to your listing.

Due to changes in the statute governing election of bar commissioners, we now are required to use members' office addresses, unless none is available or a member is prohibited from receiving state bar mail at the office. Additionally, the Alabama Bar Directory is compiled from our mailing list and it is important to use business addresses for that reason. (These changes WILL NOT appear in the 1991-92 edition of the directory. The cut-off date for the directory information was September 1, 1991.)

NOTE: If we do not know of a change in address, we cannot make the necessary changes on our records, so please notify us when your address changes.

_____ - _____ - _____ Member Identification (Social Security) Number

Choose one: ☐ Mr. ☐ Mrs. ☐ Hon. ☐ Miss ☐ Ms. ☐ Other _____

Full Name _____

Business Phone Number _____

Race _____ Sex _____ Birthdate _____

Year of Admission _____

Office Mailing Address _____

City _____ State _____ Zip Code _____ County _____

Office Street Address (if different from mailing address) _____

_____

City _____ State _____ Zip Code _____ County _____

ASA ROUNTREE COMES HOME

... AND REFLECTS ON 40 YEARS OF LAW PRACTICE

The following is the result of an interview by Andrew P. Campbell with Asa Rountree, both members of the Alabama State Bar.

Asa Rountree

After 30 years in New York City, Asa Rountree has resettled his roots in his native Alabama soil. Home is Birmingham, where Asa was born, attended Lakeview Elementary School and began law practice in 1954 with Cabaniss & Johnston, only to leave for the "Big Apple" in 1962. After almost 30 years as a distinguished litigator for the firm of Debevoise & Plimpton, and as one of the founders and later chair of the ABA Litigation Section, Asa, unlike Thomas Wolfe, decided it was time to go home again. Proving that life can be a circle, he became a stockholder in Maynard, Cooper, Frierson & Gale, P.C., thereby joining his old friend George Maynard, with whom he started at Cabaniss & Johnston as a young lawyer. Since his return, Asa has been active in the firm's litigation practice.

In his interview with *The Alabama Lawyer*, Asa Rountree looks back on 40 years of law practice and the changes wrought by the profession during that time:

Q: Asa, when did you decide you wanted to be a lawyer?

A: I decided when I was about 14 years old. The only other thing I ever thought about doing was being an architect, but I had no competence for that. I can't draw a straight line even with a rule. I am delighted, though, that one of my sons is an architect.

Q: And who hired you at Cabaniss & Johnston in 1954?

A: Joe Johnston, a man for whom I have always had the greatest affection and respect.

Q: And how many lawyers did they have at that time?

A: I was the 13th lawyer, as I recall.

Q: What caused you to take leave of your senses and head north to New York in 1962?

A: That's a difficult question to answer. It's a question I asked myself every day for almost 30 years, and I never did come up with the same answer. Lots of things went into the decision, though.

Q: How were you enticed?

A: I had been involved in a major securities case that arose out of New York but was pending here in Alabama. I represented a New York lawyer in the case, and I became interested in securities litigation. Also, I knew and liked the east. I had lived in Washington, D.C. on two different occasions. I had gone to law school in Boston. And the first time I was in the Army, I was a military policeman stationed for a while in New York City. So it was really a matter of finding out what the big city practice was like. That's the major reason I went.

Q: Asa, at that time your interest was in securities litigation. Was there that much securities litigation in Birmingham, Alabama available to you?

A: I think not. I believe that the case I was involved in, *Hooper v. Mountain State Securities Corporation,* was the first securities case, at least the first 10b-5 case, in the Fifth Circuit or certainly in Alabama. I won at the District Court level. The case then went up to the Fifth Circuit. I lost.

Q: Was that a factor in your decision to go north?

A: Not losing the case, but the fact that I liked that kind of litigation.

Q: One very significant event in your career was that you were involved at the original stages of the founding of the Litigation Section of the ABA. I would like for you to expand on how that came about.

A: Well, the Litigation Section was founded, as I recall, in 1973. The driving force was a young lawyer out of Houston, Texas named Will Wright, who decided that it would be a good idea if the ABA had a Litigation Section. In retrospect, it is surprising that the ABA had no Litigation Section.

Will, at his own expense, went around the country contacting lawyers in various geographic areas and in various areas of litigation practice. He got in touch with me through a good friend of mine in Atlanta, David Gambrell.

When Will reached me, I was very busy, and I told him I was not interested. He kept talking. I couldn't get him off the phone. Finally, just to get rid of him, I said, "I'll do anything you want me to." It was the beginning of a long association with some wonderful people.

Will put together a very interesting group of lawyers, most of whom had not been deeply involved in ABA matters on the ground that the association had become too bureaucratic. They saw this as an opportunity to build an organization from the ground up. It was an exciting group which included some of the best trial lawyers in the country. They had good ideas about developing a Litigation Section, and they did it. I believe the Litigation Section is now the largest section of the ABA, with about 66,000 members. It has had a vital program throughout all its years, including excellent publications.

I particularly enjoyed the lawyers I worked with in the Litigation Section. Although I like New York lawyers, I found it restorative, from time to time, to get out of New York and work and eat and drink and tell stories with lawyers from other parts of the country.

Q: Have you been pleased with the success of the Litigation Section and do you believe it has achieved its goals?

A: The answer is yes. The section has achieved its goals, as best I can tell, although I am no longer active in an official capacity. It continues to have great vitality. It has not become fossilized. I think it is a great organization.

Q: In the 30 years in New York, can you tell us about one or two of your cases or trials that stick out in your mind?

A: Well, that's an easy question. I once represented the Dallas Cowboys' Cheerleaders in a suit. A pornographic movie titled "Debbie Does Dallas" had been produced and was being shown in New York on Broadway at a theater called the Pussycat Cinema #2. This movie used a replica of the uniform of the Dallas Cowboys' Cheerleaders, played on their name, and made all sorts of associations with that organization. The Cheerleaders wanted it closed down. We brought suit for an injunction, not on obscenity grounds, because of the First Amendment, but for infringement of trademark. We were successful in enjoining the showing of the movie, and I think it is fair to say that that is the only time in the last 40 years or so that a pornographic movie has been closed down in New York. But, again, it was closed down for trademark infringement, not for obscenity. However, we could not stop the nationwide distribution of the movie because we could not, at least as a legal matter, identify the producers. The Fifth Amendment stood in our way. From time to time, I still see "Debbie Does Dallas." That is to say, I still see it advertised.

Q: The discovery in that case must have been quite interesting.

A: It was indeed, considering the nature and affiliations of the producers, to say nothing of the performers. We kept subpoenaing Bambi Woods, the star of the movie, for a deposition. A crowd would gather at the scheduled time, but Bambi never showed up. Each time, just about when the deposition was supposed to start, the telephone would ring and it would be Bambi saying, "Gee, you fellows looking for me?" She would promise to show up later in the day or the next day, but she never made it.

I went to see the movie before we filed suit. That was on a Sunday afternoon, and although I didn't realize the significance of it, because I was naive in those days, I wore dark glasses and a raincoat. I planned to go alone, being embarrassed by that sort of thing, but two young associates working on the case, one a man and one a woman, asked to go along. I told the woman I wouldn't take her with me. She hinted at unlawful discrimination. I yielded. When we got to the box office, I told her, "Look, I'll go in here with you, but I'm not going to buy your ticket. That would be contributing to the delinquency of a minor." Later on — and this was in the early days of feminism — a magazine reported that our law firm had demonstrated perfect equality, that when I took associates to see the film, I was careful to take one male associate and one female associate with me.

After we obtained a preliminary injunction, the defendants were apparently so sure of their First Amendment grounds that they kept showing the film. A contempt order was issued. The judge sent marshals up to Broadway to arrest the people who were running the theater in violation of the injunction. When the marshals appeared, patrons of the theater fled through the back exits. Some were businessmen wearing gray flannel suits. Some were wearing raincoats and dark glasses. Maybe they were businessmen, too.

Another case I fondly remember was a complex securities case in San Diego. It went on for about five years. When the weather got bad in New York, I could often find work — legitimate work — to do in San Diego, which is blessed with one of the best climates in America. On the way back to New York from San Diego, I would often stop and ski in Vail. Several years later, I saw my client at a club and I said, "Hey, how about sending me back to San Diego?" He declined the opportunity. A week later, I unexpectedly went to San Diego on another case. I sent him a postcard saying, "I made it back anyhow." Fortunately, my client had a good sense of humor.

Q: You also were quite famous, or infamous as it may be, for the "in-firm subsidiaries" which you created and which apparently flourished at your firm during your tenure there. Would you elaborate on those for us?

Andrew P. Campbell
Andrew P. Campbell, a partner in the Birmingham firm of Leitman, Siegal, Payne & Campbell, P.C., is a graduate of Birmingham Southern College, *cum laude*, and the University of Alabama School of Law, where he was a member of the Order of the Coif and Alabama Law Review. He is a past chairperson of the Business Torts and Antitrust Law Section of the Alabama State Bar, a member of the Executive Committee of the Birmingham Bar Association and a member of *The Alabama Lawyer* Board of Editors.

A: That is too long a story, and I'm not sure it would be very interesting. But, in brief, I established an imaginary conglomerate, the parent of which was named REINC (Rountree Enterprises, Inc.). It all started when the firm's management was resisting a proposal to scatter mimeograph machines throughout the office in addition to having a central duplicating department. All sorts of reasons were given why this was not feasible. There wasn't space; it wasn't electrically feasible; it would not be economic. I then established REINC's first subsidiary, RPOOXI (Rountree-Point-of-Origin-Xeroxing, Inc.), which acquired a mimeograph machine for its own account, put it in the hall, and sold its services. The deal was that RPOOXI would bear all losses and turn all profits over to the firm, a square deal if ever there was one. It soon became clear the hall mimeograph machines were the wave of the future. From time to time thereafter, in order to fill similar market gaps, I established additional subsidiaries, such as ROPUBCO (Rountree Publishing Company); RIRSSA (Rountree Information Retrieval System S.A.); RMTIA (Rountree Mid-Town Trial Advocacy Institute); ROTELCO (Rountree Telephone Company, Inc.); and The Magnus Gallery, which marketed canvasses that I painted under the name of R. Brant (the "R" stands for Rhemm). It was a lot of fun, and my partners were of sufficient good nature and forbearance to allow me to entertain myself in that way.

Q: You have always been known for quotes and witticisms relating to law office management as well as the practice of law. One of your more famous quotes is, "It takes a madam to run a whorehouse," or, stated otherwise, "No successful whorehouse or any other successful economic organization has ever been run on democratic principles." Another is, "All committee meetings should be held at midnight." I assume that was based on your experience in law office management?

A: The firm that I belonged to in New York was and is a wonderful organization, both in its professionalism and in its personal relationships. We had a luncheon meeting of partners every week. We also had departmental meetings and meetings of various administrative committees. In almost 30 years, I never left one of those meetings without being awestruck at the courtesy, restraint and kindness with which our partners treated each other. So it was a marvelous place to work and to be. On the other hand, when cordial relationships of that nature exist, decision-making is often by consensus, and there are inefficiencies in that process. Occasionally, when I was active in firm administration, I would become frustrated with the process. And I never have been fond of committees, which I believe to be a satanic device to avoid doing hard things that need to be done. Those are the reasons for the quotations. The first is known as Rountree's First Law of Efficiency; the second, as Rountree's Second Law of Efficiency.

Q: Let me ask you a few more serious questions. With your having come back to Birmingham after 40 years of law practice, both here and in New York, I wanted to ask you a little bit about, to reflect on the art and the practice of litigation and the major changes that have seemed significant to you in both the field, the art of advocacy and in lawyers you have experienced over the years.

A: I have some extensive thoughts on that subject, but I find difficulty in expressing them in this format. For one thing, though, there is not now, and was not when I left Birmingham, all that much difference between the practice of the law in Birmingham and the practice of the law in New York. The major difference, at the time I left Birmingham, was that litigation in New York involved so much money that lawyers could afford economically to do a first-class professional job. That was the major attraction of the New York practice. Coming back to Birmingham, I'm struck by the complexity of much of the litigation here. In most respects, it's the same sort of litigation you see in New York. The cases seem to move a little more quickly here, and for that reason, or perhaps for other reasons, litigation practice here is more trial-oriented. There is a difference between a litigator and a real trial lawyer. Litigators do not always recognize the difference; trial lawyers do. So that I may be clear, I am just a New York litigator, but a very good one.

Q: With respect to the evolution of litigation over the last 30 to 40 years, what changes have seemed the most significant to you?

A: There have obviously been many changes, and most of them have been evolutionary. For one thing, litigation has become more complex as the world has become more complex. Litigation has more of a technological orientation than it did 40 years ago. Techniques for discovering, collecting, organizing, analyzing, storing, retrieving and presenting information to triers-of-fact have become far more sophisticated.

Discovery has certainly become more complex and expensive in the last 40 years. Discovery was born of a wistful dream of simplification and enlightenment, but it has become an incubus on the entire litigation process, to the enrichment of lawyers, perhaps, but to the impoverishment of their clients. As you know, efforts are being made and have been made for a long time to try to deal with discovery abuse. That was one of the early efforts of the Litigation Section. At present, Judge Sam Pointer's Advisory Committee on Civil Rules has made some far-reaching and controversial proposals relating to discovery.

Judge Pointer, I might say, is one of the most highly respected jurists in the nation. His accomplishments are truly outstanding. I became fully aware of those accomplishments when, several years ago, I was chairman of a committee of the American College of Trial Lawyers which recommended Judge Pointer for an award which he thereafter received. In addition to his judicial and administrative duties in the Northern District of Alabama, he has participated in legal education matters all over the country. He has long been a faculty member in the school for new federal judges and, as I recall, he has "taught" about two-thirds of the federal judges now sitting. He was

the editor of the revision of the Manual for Complex Litigation. And, as I mentioned, he is now chairman of the prestigious Advisory Committee on Civil Rules. We are fortunate to have him.

Another change has been in the public perception of lawyers. Lawyers have never won popularity contests, but, at least according to de Tocqueville, they were once considered to be the only true aristocracy in America. They no longer have that esteem, I'm afraid. Now, not only lawyers but the litigation process itself draws public disdain. This is something the profession must address.

Q: There appears to be a trend due to the great competitive pressures in litigation for lawyers to adopt a "kill or be killed" approach where basic civility and in many cases ethics take a second seat to essentially trying to destroy the opposition, both in discovery and in trial. I'm not talking simply about the loss of civility between lawyers, I'm also talking about lawyers and judges. In your view, is this a serious problem, and, if so, what do you think we can do about it?

A: I think it is a very serious problem. By luck, I have been spared many of the incivilities suffered by many other lawyers, but I am confident in my belief that there is ever increasing absence of civility amongst lawyers and perhaps between lawyers and judges. There is not the collegiality within the profession that there was 40 years ago. That's too bad. It makes the practice of the law a lot less fun than it once was.

A strong judge can control lawyers, at least in the cases before him, but it is difficult to know what can be done about general incivility between lawyers or between judges and lawyers. In any event, this matter should be continuously addressed by the leaders of bench and bar. Not long after I returned to Birmingham, there was an excellent article on that subject by Warren Lightfoot, who was then president of the Birmingham Bar Association.

Q: Do you find that litigators' behavior is somewhat determined by the spirit and philosophy of their firm?

A: Often that is very true. I cannot comment about Birmingham firms, but in New York and in other areas of the country you often know what to expect from a lawyer just by knowing what law firm he comes from. A firm establishes a certain ethos, and lawyers joining the firm pick up that ethos. Some firms find delight in playing "hard ball." I myself do not believe those tactics to be productive in the long-run, whatever the short-run triumphs may be. Recently, there have been some highly publicized occurrences that bear me out.

Q: One of the increasing problems with the competitive and increasingly profit-oriented focus of many law firms in our society today is basically how, for a younger lawyer, to preserve his or her values and live a meaningful life outside of the office with the family. Do you have any advice in that regard?

A: My advice would not be very valuable because it would be very general. Basically, though, the norm of moderation — of absence of excess — is just as valid today as it was in the time of Aristotle. I tell young lawyers who work with me that although their paramount obligation is to their clients because that's the nature of professionalism, and that although the profession is demanding, and that although there are times when they will have to work day after day, night after night, life is a far broader tapestry than the practice of law. I tell them that there is a big, wide, wonderful world out there; that they should be careful not to miss it; and that they should not neglect the obligations and pleasures relating to family, community and self.

Q: Was it your experience, Asa, that a lawyer who brought a broader range of interests to practice made a better lawyer?

A: Yes, although in all candor there are some clients these days who do not agree with that sentiment. In too many instances, they regard their lawyers simply as technicians or gunslingers, not as wise counsellors. Generally, those clients are the poorer from that attitude.

Q: What would be a fitting epitaph for Asa Rountree?

A: He had a diverse and interesting life. It was a square deal.

Having witnessed the depressing trend of Alabamians not returning to Alabama after completion of law school, it is quite encouraging to mark the return of this native son who has honored our state with his life and achievements. Asa Rountree will contribute much energy, goodwill and wisdom to this state and its bar. Thus, New York's loss will be our gain. ■

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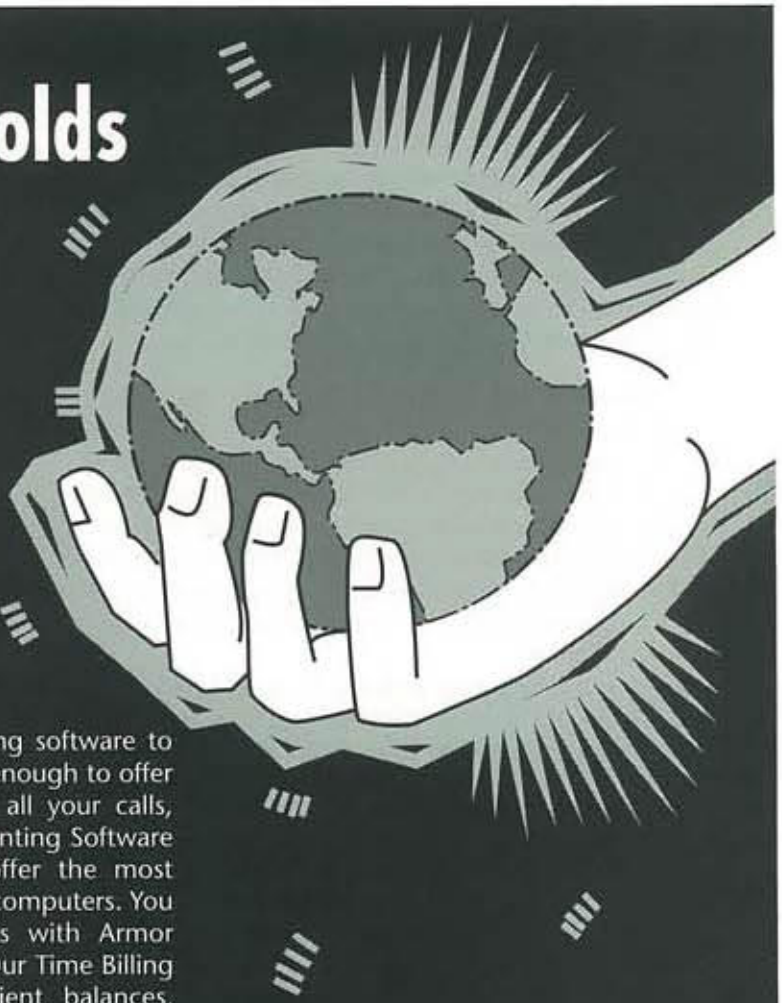

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DISCIPLINARY REPORT

Reinstatements

Major Edward Madison, Jr. was reinstated to the practice of law by order of the Supreme Court of Alabama, effective May 4, 1992. [Pet. #91-05]

Russellville lawyer **H. Neil Taylor, Jr.** was reinstated to the practice of law by order of the Supreme Court of Alabama, effective April 17, 1992. [Pet. #92-03]

Suspensions

Anniston attorney **James Almwick Mitchell** was suspended for a period of 45 days, effective April 1, 1992. Mitchell was found guilty by the Disciplinary Board of neglecting a legal matter, failing to keep his client reasonably informed and refusing to cooperate in the investigation of the complaint filed against him. During February 1991, a former divorce client asked Mitchell to assist him in having his child support payments reduced. The client sent Mitchell the requested sum of $250 in March 1991. From that point on, the client had no success contacting Mitchell about the matter. Finally, in June 1991, the client's second wife talked with Mitchell and he told her he had been waiting for them to send him court costs before filing anything for the client. After a complaint was filed with the bar, several attempts were made to obtain a response to the allegations contained in the complaint. Nothing was submitted by him until after formal charges were served upon him in November 1991. [ASB No. 91-562]

Alabama lawyer **Marvin L. Warner**, a resident of Cincinnati, Ohio, was suspended from the practice of law by order of the Supreme Court of Alabama for a period of four years, effective April 7, 1992.

Warner was convicted of unauthorized acts and securities fraud in connection with his position as president of the Home State Savings Bank, a state chartered privately insured savings and loan association, with headquarters in Cincinnati. Home State collapsed mainly as a result of its trading in government securities and its investments in reverse repurchase agreements, secured by the assets of the bank. The court held Warner responsible for this activity and ordered him to make restitution in the amount of $12,200,000 and to be incarcerated in the state penitentiary in Ohio for a period of ten and a half years, of which seven years shall be suspended. [Rule 22(a)] [Pet. # 91-05] ■

TO: William Kent Eason
FROM: Alabama State Bar
RE: Order to Show Cause, CLE 92-57

Notice is hereby given to **William Kent Eason**, attorney, whose last known address is 142-E 14th Avenue, NE, Birmingham, Alabama 35215, that his name has been certified to the Disciplinary Commission for noncompliance with the Mandatory Continuing Legal Education requirements of the Alabama State Bar and that as a result thereof an Order to Show Cause has been entered against him ordering him to show, within sixty (60) days from the date of entry of the order, why he should not be suspended from the practice of law. Said order having been entered April 24, 1992, and this *Alabama Lawyer* issue being dated around July 15, 1992, the attorney has until September 14, 1992 to show cause.

Disciplinary Commission
Alabama State Bar
415 Dexter Avenue
Montgomery, Alabama 36104

NOTICE

Disciplinary Proceedings

Robert W. Graham, attorney at law, whose whereabouts are unknown, must answer the Alabama State Bar's formal disciplinary charges within 28 days of July 15, 1992 or, thereafter, the charges contained therein shall be deemed admitted and appropriate discipline shall be imposed against him in ASB Nos. 90-795(A) and 90-932 before the Disciplinary Board of the Alabama State Bar.

Disciplinary Board
Alabama State Bar

About Members, Among Firms

ABOUT MEMBERS

Randall B. James announces the opening of his office at 559 South Lawrence Street, Montgomery, Alabama 36104. Phone (205) 262-0500.

Richard C. Dean, Jr., formerly with Azar & Azar, announces the opening of his office, effective January 4, 1992, located at 407 South McDonough Street, Montgomery, Alabama 36104. Phone (205) 264-2695.

Algert S. Agricola, Jr. announces the relocation of his firm to 111 Washington Avenue, Montgomery, Alabama 36104. Phone (205) 832-9900.

Hank Hawkins announces the relocation of his office to 2103 Lurleen B. Wallace Boulevard, Northport, Alabama 35476. The mailing address is P.O. Box 596, Tuscaloosa 35402. Phone (205) 339-3215.

W.L. Matthews, Jr. announces the opening of his offices at 118 East Moulton Street, Suite 1, Decatur, Alabama 35601. Phone (205) 355-6070.

Henry A. Leslie, Sr. announces the opening of his offices at 456 South Court Street, Montgomery, Alabama 36104. Phone (205) 834-3200.

AMONG FIRMS

Finkbohner, Lawler & Olen announces that **Steve Olen** has withdrawn from the firm and will practice at 169 Dauphin Street, Suite 301, P.O. Box 1826, Mobile, Alabama 36633. Phone (205) 438-6957. The firm will continue to practice as **Finkbohner & Lawler**, 169 Dauphin Street, Suite 300, P.O. Box 3085, Mobile 36652. Phone (205) 438-5871.

Humphreys, Dunlap, Wellford, Acuff & Stanton announces that **Fred M. Ridolphi, Jr.** has joined the firm, with offices at 2200 First Tennessee Building, Memphis, Tennessee 38103.

Rives & Peterson announces that **Deborah Alley Smith** and **Bennett Lee Pugh** have become partners in the firm and **Mark A. Stephens** and **Thomas C. Logan** have become associates of the firm. Offices are located at 1700 Financial Center, 505 North 20th Street, Birmingham, Alabama 35203-2607. Phone (205) 328-8141.

Miller, Hamilton, Snider & Odom announces that **Carroll E. Blow, Jr.**, **Matthew C. McDonald** and **Mark J. Tenhundfeld** have become members of the firm, **Joseph C. Gill, Jr.** has become *of counsel* to the firm and **James Rebarchak** has become associated with the firm. Offices are located in Mobile, Montgomery and Birmingham, Alabama and Washington, D.C.

Longshore, Evans & Longshore announces that **Gary P. Cody** has become a partner in the firm, and the firm has relocated its offices to 650 Park Place Tower, 2001 Park Place, Birmingham, Alabama 35203. Phone (205) 252-7661, 1-800-489-7661.

Martin, Drummond & Woosley announces a name change to **Martin, Drummond, Woosley & Palmer**, and that offices continue to be located at 2020 AmSouth/Harbert Plaza, 1901 Sixth Avenue, North, Birmingham, Alabama 35203. Phone (205) 322-8000.

Central Bank of the South announces that **Elena A. Lovoy**, formerly of Redstone Federal Credit Union, has joined the bank. The mailing address is P.O. Box 10566, Birmingham, Alabama 35296. Phone (205) 933-3195.

Woodall & Maddox announces that **Jeff W. Parmer**, former law clerk and staff attorney to the Honorable Kenneth F. Ingram, Supreme Court of Alabama, has become associated with the firm. Offices are located at Chase Commerce Park, 3821 Lorna Road, Suite 101, Birmingham, Alabama 35244. Phone (205) 733-9455.

Tanner & Guin announces that **Herbert M. Newell, III** and **Duane Wilson** have become shareholders in the firm, effective January 1, 1992. Offices are located at 2711 University Boulevard, Suite 700, Tuscaloosa, Alabama 35401. Phone (205) 349-4300.

Bolt, Isom, Jackson & Bailey announces that **Stephen K. Wollstein** has become a member and that **Michael D. Rogers** has become associated with the firm. Offices are located at 822 Leighton Avenue, Anniston, Alabama 36201. Phone (205) 237-4641.

Feibelman, Shulman & Terry announces that **Eric J. Breithaupt** has become a member. Offices are located at 150 N. Royal Street, Suite 1000, P.O. Box 2082, Mobile, Alabama 36652. Phone (205) 433-1597.

Haygood, Cleveland & Pierce announces that **Michael Sharp Speakman** has become associated with the firm. Offices are located at 120 South Ross Street, and the mailing address is P.O. Box 3310, Auburn, Alabama 36831-3310. Phone (205) 821-3892.

Steve Olen and **Michael S. McGlothren** announce the formation of **Olen & McGlothren**, located at Riverview Plaza Office Tower, 63 North Royal Street, Suite 710, Mobile, Alabama 36602. The mailing address is P.O. Box 1826, Mobile 36633. Phone (205) 438-6957.

Bell Richardson announces that **John J. Callahan, Jr.** and **Michael E. Lee** have become principals of the firm. The office remains at 116 South Jefferson Street, P.O. Box 2008, Huntsville, Alabama 35804. Phone (205) 533-1421.

Richard E. Dick and **Michael K. Wisner** announce that they have left Bell Richardson and formed **Dick & Wisner**, with offices at 100 Washington Street, Huntsville, Alabama 35801.

Haygood, Cleveland & Pierce announces that **Michael Sharp Speakman** has become associated with the firm. Offices are located at 120 South Ross Street, and the mailing address is P.O. Box 3310, Auburn, Alabama 36831-3310. Phone (205) 821-3892.

W.H. Rogers and **Rod M. Alexander** announce the formation of **Rogers & Alexander**, 757 Lawrence Street, Moulton, Alabama 35650. Phone (205)

974-1936. They also announce that **John Eric Burnum** has joined the firm as an associate.

Clark & Scott of Birmingham announces that **David M. Wilson** has become a member and **Michael E. Henderson** has rejoined the firm. The Mobile firm of **Clark, Scott & Sullivan** announces that **Rudene B. Crowe** has become a member.

Sharon R. Hoiles announces the change of the firm name from Sharon R. Hoiles to **Hoiles & Dasinger** and that **Michael A. Dasinger, III** has become a member of the firm. Offices are located at 18410 Pennsylvania Street, Robertsdale, Alabama 36567. Phone (205) 947-4757.

Charles A. Graddick, former attorney general of Alabama, and **David E. Belser**, former chief trial attorney, Montgomery County District Attorney's Office, announce the formation of **Graddick & Belser**, at 138 Adams Avenue, Montgomery, Alabama 36103. Phone (205) 262-2000.

Phelps, Owens, Jenkins, Gibson & Fowler announces that **Susie T. Carver** became a partner in the firm January 1, 1992, that **C. Barton Adcox** joined the firm as a partner March 1, 1992 and that **Karen C. Welborn** became associated with the firm March 1, 1992. Offices are located at 1201 Greensboro Avenue, Tuscaloosa, Alabama 35401. Phone (205) 345-5100. ■

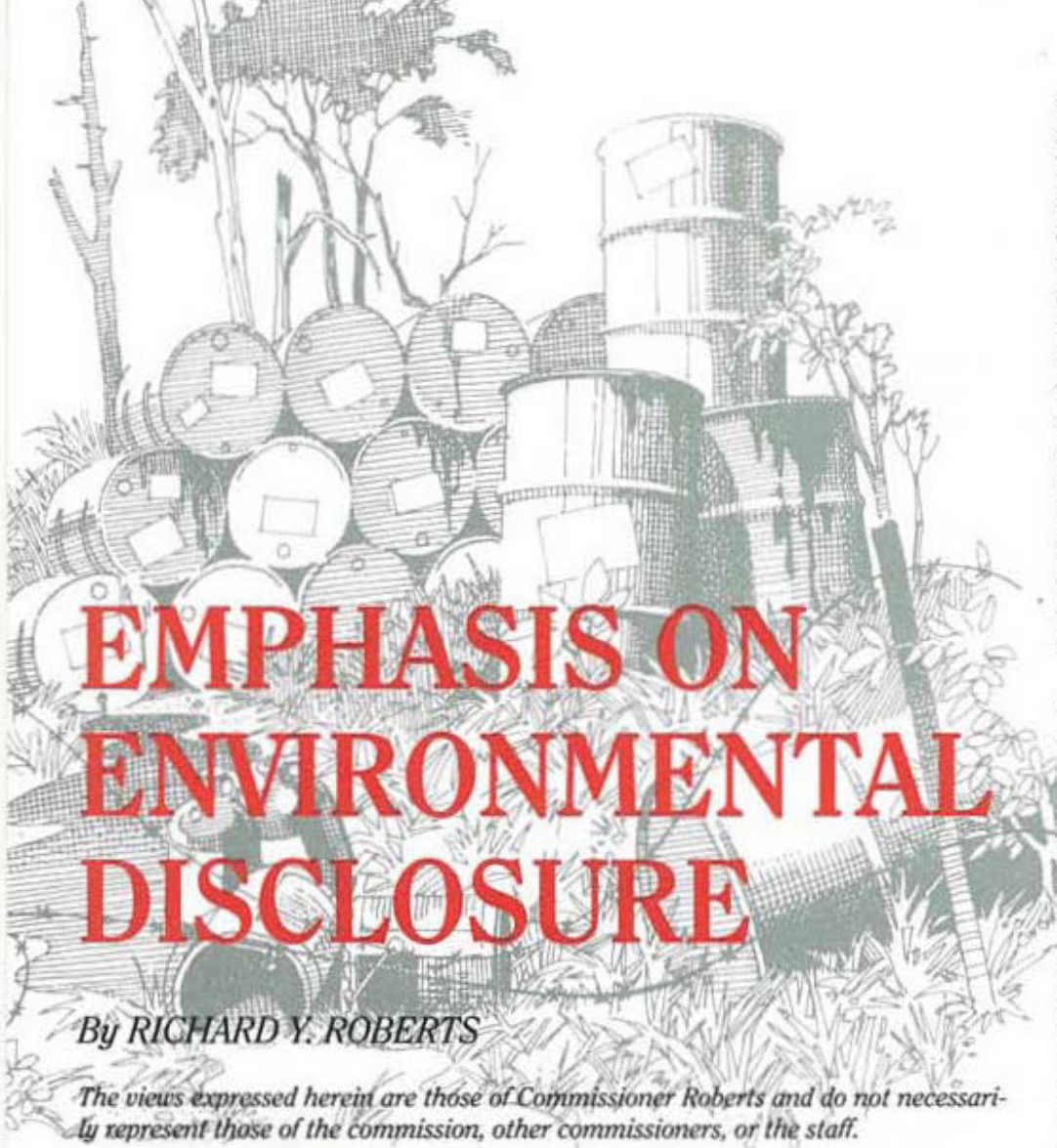
— PLEASE NOTE! —

Alabama State Bar members: Whenever you are requested to furnish your state bar identification number (pleadings filed with courts, etc.), please refer to your Social Security number, as that is what we keep on record identifying you.

NOTICE

Notice of and opportunity for comment on proposed Eleventh Circuit Rule 33-1 establishing a prehearing conference program in the U.S. Court of Appeals for the Eleventh Circuit

Pursuant to 28 U.S.C. §2071(b), notice is hereby given of intent to adopt proposed Eleventh Circuit Rule 33-1 which would establish a Prehearing Conference Program in the U.S. Court of Appeals for the Eleventh Circuit. A copy of the proposed rule may be obtained without charge from the **Office of the Clerk, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303. Phone (404) 331-6187.** Comments on the proposed rule may be submitted in writing to the clerk at the above address prior to August 31, 1992.



EMPHASIS ON ENVIRONMENTAL DISCLOSURE

By RICHARD Y. ROBERTS

The views expressed herein are those of Commissioner Roberts and do not necessarily represent those of the commission, other commissioners, or the staff.

Introduction

The importance of environmental disclosure is reflected in the offering documents and periodic reports filed with the Securities and Exchange Commission ("Commission") every day by issuers located throughout the country. This article is intended to provide a brief overview of the environmental disclosure requirements applicable to companies under federal securities laws.

Overview

Growing awareness of environmental issues

As society strives to maintain and improve the environment, costs are imposed on companies that may need to be disclosed to investors. Compliance costs associated with regulations restricting development and limiting harmful emissions can have a material effect on the operations of a corporation. Moreover, government regulations and the public's concern for the environment has spawned new industries and, at the same time, rendered "non-environmentally safe" products unfashionable. Perhaps even more significant, however, are environmental laws that can impose large liabilities, particularly with respect to past generators of waste materials. Indeed, the term "environmental due diligence" has acquired a relevance to participants in business transactions that would have been unimagined only a decade ago.

Environmental liability

While both federal and state environmental laws have permeated the consciousness of many businesses, particular industries, such as the pharmaceutical, petroleum, chemical, waste management, and heavy manufacturing segments, among others, must be particularly sensitive to disclosure and accounting issues presented by these laws. For example, the Resource Conservation and Recovery Act ("RCRA") is a "cradle-to-grave" law affecting most manufacturers, that governs the generation, storage and disposal of hazardous materials. Each year, U.S. industry produces an estimated 300 million tons of waste that has been classified as hazardous. Compliance with the requirements of RCRA has been estimated by the Environmental Protection Agency ("EPA") to cost businesses in excess of $20 billion per year. Similarly, the Clean Water Act and the Clean Air Act each impose annual compliance costs estimated at more than $30 billion.

Although environmental laws may affect the day-to-day operating costs of companies, liability under the Comprehensive Environmental Response, Compensation and Liability Act, known as the "SuperFund" legislation, has been a greater source of debate in recent years. Under the SuperFund legislation, waste transporters and waste generators, as well as past and present owners and operators of hazardous waste sites, may be designated by the EPA as Potentially Responsible Parties ("PRP"). Unlike most fault based liability schemes, past or present owners of a hazardous waste site can be held liable without regard to whether they were responsible for the release of hazardous substances. Moreover, each PRP is "jointly and severally liable" for the cost of cleaning up the entire site.[1]

Vigorous enforcement of environmental laws likely to occur in the decade to come has made environmental liability a matter of growing prominence for lenders, rating agencies, and acquisition-minded companies, among others. In response to these concerns, there already is a growing reluctance of traditional lenders, as well as trustees for bondholders, to exercise covenants that permit foreclosure on property securing defaulted debt.[2] In addition, the expanding scope of environmental liability has produced a perhaps unanticipated effect on governmental issuers of municipal conduit bonds that, through foreclosure or the offering process, acquire title to a hazardous waste site.

One need only look at the newspapers to learn that potential environmental

liability also may scuttle even the largest acquisitions or may endanger even the largest of industries. For example, the press reported that a proposed acquisition by Northwest Airlines of Midway Airlines fell through at the last minute because of concerns, among other things, with potential liability arising from possible leaks in an underground fuel tank at Midway Airport in Chicago.[3] It also was reported that one of the major threats to the solvency of the property - casualty insurance industry is the risk of contract reinterpretations that may impose enormous unforseen environmental cleanup costs.[4]

Principal reporting requirements

Historical role of the commission

The federal securities laws are designed to promote full disclosure of material information. The general antifraud provisions impose liability on persons who make false statements or omissions of material facts in connection with the purchase or sale of securities. These provisions apply to all securities transactions, including private placements and mergers of many businesses. In certain cases, these general antifraud provisions will require disclosure to investors of the material effect of environmental laws on an issuer.

Richard Y. Roberts

Richard Y. Roberts was sworn in October 1, 1990 as a Commissioner on the U.S. Securities and Exchange Commission.

Before being nominated to the Commission, Roberts was in the private practice of law with the Washington office of Miller, Hamilton, Snider, Odom & Bridgeman, an Alabama law firm. Before that, Roberts was administrative assistant and legislative director for Senator Richard Shelby, a position he assumed in 1987. Prior to that, he practiced with Pappanastos, Samford & Roberts and Perry, Russell & Roberts.

Roberts is a 1976 graduate of the University of Alabama School of Law and a 1973 graduate of Auburn University. He also received a Master's of Laws in taxation from the George Washington University National Law Center in 1981. Roberts is a member of the Alabama State Bar, and the District of Columbia Bar Association.

In addition to complying with the general antifraud provisions of the federal securities laws, issuers registering public offerings of securities under the Securities Act of 1933, or filing periodic reports under the Securities Exchange Act of 1934, must comply with the applicable line-item disclosure requirements under Regulation S-K. With the increase in regulation and environmental liability since the early 1970s, the Commission has attempted to refine the disclosure obligations raised by environmental legislation and the regulations promulgated thereunder.

In 1971, for example, the Commission first issued a release calling to the attention of issuers their disclosure responsibilities in connection with litigation and compliance costs associated with environmental requirements.[5] A series of subsequent releases over the next two decades sought to further refine the disclosure responsibilities of issuers subject to environmental laws. In addition, several prominent enforcement actions instituted by the Commission against issuers that failed to disclose known environmental liabilities and compliance costs have highlighted the importance of accurate disclosure in this area.[6]

Regulation S-K

Three provisions of Regulation S-K have particular significance for issuers that are subject to potential environmental liabilities and risks. Item 101, for example, requires an issuer to provide a general description of its business. In addition, it requires specific disclosure of the material effects that compliance with federal, state and local environmental laws may have upon the capital expenditures, earnings, and competitive position of the issuer. An issuer must disclose any material estimated capital expenditures for environmental control facilities.[7]

Item 103, for another example, requires that the issuer disclose any material pending legal proceeding, including specified proceedings arising under federal or state environmental laws.[8]

Finally, the Management Discussion and Analysis ("MD&A") provision, Item 303, requires management to discuss the issuer's historical results and its future prospects. This forward-looking disclosure is triggered by any "known" trends, demands, commitments, events or uncertainties that are reasonably likely to have a material affect on the issuer's operating results or financial condition. The purpose of the MD&A is to give investors a look at the company through the eyes of management. MD&A and the related financial statements are the heart of an issuer's disclosure document.[9] Obviously, Item 303 would compel management to disclose the significant implications of environmental laws on future operations of the issuer.

Accounting and disclosure relating to environmental loss contingencies

Beyond these narrative discussions mandated by Regulation S-K, environmental matters also may have implications for the financial statements of issuers. Generally accepted accounting principles, specifically FASB Statement No. 5, indicate that an estimated loss from a loss contingency must be accrued by a charge to income if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.

It is the responsibility of management to accumulate on a timely basis sufficient relevant and reliable information to make a reasonable estimate of environmental liability. If management determines that the amount of the liability is likely to fall within a range, and no amount within that range can be determined to be the better estimate, the registrant is required to record at least the minimum amount of the range.[10] Additional exposure to losses also should be disclosed and changes in estimates of the liability should be reported in the period that they occur.[11] The measurement of the liability should be based upon currently enacted environmental laws and upon existing technology.

The recognition and measurement of the liability must be evaluated separately from the consideration of any expect-

ed insurance recoveries. If information available prior to the issuance of the financial statements indicates that it is probable that environmental liability had been incurred at the date of the financial statements, the amount of the company's liability should be recognized and recorded, if it can be estimated, regardless of whether the issuer is able to estimate the amount of recoveries from insurance carriers.[12]

Uncertainties

Having described the environmental disclosure requirements, it should be mentioned that determining the costs of regulatory compliance, and measuring the bottom line effect of potential environmental liability, in many cases may be difficult. The last decade has witnessed the enactment of a host of legislative and regulatory initiatives in the environmental area where the costs are yet uncertain. Environmental standards, for instance, may impose on issuers the requirement to use not merely the best available technology, but technology that does not yet exist and whose costs, in some cases, cannot accurately be measured. Moreover, sudden, and perhaps unpredictable, liability arising from accidental discharges of hazardous waste, including oil spills, may have a profound effect on the balance sheet of a company. Even the law in this area is still evolving. Fundamental interpretive issues affecting lenders, insurers and the role of the bankruptcy laws have yet to be clearly resolved. Moreover, although defeated in the most recent session of Congress, further legislative refinements are likely that may reduce the potential exposure of some persons, such as lenders, municipalities, and defense contractors.

Finally, although the general accounting standards that are applicable to the contingent liabilities of any issuer can be summarized, a great deal of discretion is left to management and auditors. The actual costs of remediating a hazardous waste site will depend upon the complexity of the problem and the technology determined to be most effective; the participant's share of responsibility for the total costs; and its ability to recover part of the costs from the other parties. All of these factors may not be immediately apparent.

In addition, FASB No. 5 predates the SuperFund legislation, and there is a paucity of specific guidance to help management and their accountants appropriately reflect environmental clean-up costs on their balance sheets. Moreover, due to the press of other projects, the Financial Accounting Standards Board is unlikely to provide additional guidance on accounting for environmental costs in the near future.

Ongoing review

Although a number of issues have yet to be resolved, it is clear that aggressive enforcement of environmental laws will increase in the 1990s. Environmental issues must become a growing concern for corporate management. Yet a recent study by Price Waterhouse indicates that at the largest corporations, only 11 percent had adopted any written accounting procedures or policies to deal with environmental issues and less than 20 percent had established environmental oversight committees at the board of directors level.[13]

At the Commission, the large dollar amounts of anticipated environmental liability costs has produced increased pressure to monitor the adequacy of issuer disclosure. During the past several years, the staff of the Commission's Division of Corporation Finance has been closely looking at the adequacy of environmental disclosure in connection with its review of filings. When the staff finds material omissions or deficiencies relating to environmental matters, it will request corrective disclosure and, in egregious cases, may refer the matter to the Division of Enforcement.

In order to enhance the disclosure in this area, a dialogue has been developed between the staffs of the Commission and the EPA. Through an informal understanding, the staff receives from the EPA lists of all companies that have been named as PRPs on hazardous waste sites. Information also is received concerning companies subject to the clean up requirements under RCRA; criminal cases under federal environmental laws; civil proceedings under environmental laws; and companies

barred from government contracts under the Clean Air Act and the Clean Water Act. The staff currently utilizes this information in its review process. In the near future, it is anticipated that this dialogue will be formalized through the execution of a memorandum of understanding with the EPA.

Conclusion

Many companies already are acutely aware of their responsibilities and potential liability under applicable environmental laws. Regardless of their sophistication, however, it is the responsibility of counsel to make sure that their clients are familiar with their responsibilities to investors under the federal securities laws.

In the future, some companies will face significant losses due to environmental liability. Counsel should acquaint themselves with the applicable environmental regulations and should focus seriously on whether their clients have adequately disclosed the short-term and long-term effects of environmental laws on their operations. ■

ENDNOTES

1. Currently there are some 1,200 sites designated on the National Priorities List. Another 30,000 sites nationally have been submitted as candidates for the list. Cleanup costs at the average Superfund site are estimated by some to be approximately $30 million. Moreover, many sites will cost over $100 million. The U.S. Government Office of Technology Assessment has speculated that over the next 40 to 50 years the cost of cleaning up these sites may exceed $500 billion.
2. Moreover, a recent court decision holding liable a county that was the nominal owner of property securing industrial development bonds may chill public involvement in this segment of the tax-exempt bond market. Stevens, "Environmental Liability Rears Head As Latest Terror to Municipal Bond Industry as EPA Pursues Issuers," *The Bond Buyer*, Nov. 1, 1990, at 3A.
3. *See, e.g.*, "Midway asks Northwest what it wants," *Chicago Tribune*, Nov. 13, 1991, at C1; "NWA — Midway crash: Excuses don't hold up," *Crain's Chicago Business*, Nov. 18, 1991, at 14; "Northwest pulls out of Midway rescue," *Flight International*, Nov. 20, 1991, at 1.
4. *See* "Regulation should be proactive to head off insolvency," *The Business Journal* (Portland, OR), December 2, 1991, at 7.
5. Securities Act Release No. 5170 (July 19, 1971).
6. *See In the Matter of Occidental Petroleum Corporation*, Securities Exchange Act Release No. 16950 (July 16, 1990), *In the Matter of United States Steel Corporation*, Securities Exchange Release No. 16233 (September 22, 1979); *SEC v. Allied Chemical Corporation*, Litigation Release No. 7841 (March 4, 1977).
7. In one of the enforcement actions alluded to earlier, United States Steel Corporation was found to have filed false reports with the Commission because, among other things, it failed to disclose significant costs it estimated would be necessary to bring its operations into compliance with the requirements of both the Clean Air Act and the Clean Water Act. *In the matter of United States Steel Corporation*, Securities Exchange Act Release No. 16223 (Sept. 22, 1979).
8. Specifically, Item 103 requires disclosure of any administrative or judicial proceeding arising under environmental laws if: (a) such proceeding is material to the business or financial condition of the issuer; (b) such proceeding includes a claim for damages or costs in an amount exceeding 10 percent of current consolidated assets; or (c) a governmental authority is a party to the proceeding, unless any sanctions are reasonably expected to be less than $100,000. It is important to note that any such proceedings known to be contemplated by governmental authorities also are required to be disclosed.
9. In a 1989 interpretive release on MD & A, the Commission stated that an issuer should follow a two-step analysis in determining whether prospective information is required. Securities Act Release No. 6835 (May 18, 1989). First, is the "known" trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure, is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.
10. FASB Interpretation No. 14.
11. APB Opinion No. 20.
12. In contrast, however, the Emerging Issues Task Force has indicated that the cost of improvements necessary to prevent further environmental contamination, or to comply with new regulations, may be capitalized. Costs should generally be charged to expense, but may be capitalized when one of the following criteria are met: (1) the costs extend the life, increase the capacity, or improve the safety or efficiency of property owned by the company compared to when it was constructed or acquired; (2) the cost mitigate or prevent environmental contamination that has yet to occur or may compared to when it was constructed or acquired; and (3) the costs are incurred in preparing property for sale that is currently had for sale. *Emerging Issues Task Force Abstract No. 90-8 — Capitalization of Costs to Treat Environmental Contamination. See also EITF Abstract No. 89-13 — Accounting for the Cost of Asbestos Removal* (Indicating that: (1) costs incurred to treat an asbestos problem may be capitalized as part of the acquisition; (2) costs incurred to treat an asbestos problem in an existing property may be capitalized as a betterment; (3) the carrying value of the property is subject to an impairment test in either circumstance; (4) asbestos treatment costs are not extraordinary items; and (5) significant exposure for asbestos treatment costs should be discussed in MD&A)
13. *Environmental Accounting: The Issues, the Developing Solutions* (1991).

TO: William Kent Eason
FROM: Alabama State Bar
RE: Order to Show Cause, CLE 92-57

Notice is hereby given to **William Kent Eason**, attorney, whose last known address is 142-E 14th Avenue, NE, Birmingham, Alabama 35215, that his name has been certified to the Disciplinary Commission for noncompliance with the Mandatory Continuing Legal Education requirements of the Alabama State Bar and that as a result thereof an Order to Show Cause has been entered against him ordering him to show, within sixty (60) days from the date of entry of the order, why he should not be suspended from the practice of law. Said order having been entered April 24, 1992, and this *Alabama Lawyer* issue being dated around July 15, 1992, the attorney has until September 14, 1992 to show cause.

Disciplinary Commission
Alabama State Bar
415 Dexter Avenue
Montgomery, Alabama 36104

ALABAMA STATE BAR HONOR ROLL BUILDING FUND

Between April 9 and June 3, 1992 the following attorneys made pledges to the Alabama State Bar Building Fund. Their names will be included on a wall in the portion of the building listing all contributors. Their pledges are acknowledged with grateful appreciation.

(For a list of those making pledges prior to April 9, please see previous issues of ***The Alabama Lawyer.****)*

Roderick Mark Alexander

Michael E. Ballard

Clifford Lanier Branch

Thomas Kirven Brantley, Jr.

James Melvin Edwards

V. Edward Freeman, II

Joseph James Gallo

Norman Gunter Guy, Jr.

William Wallace Haralson

Kathryn McCullough Harwood

John Benjamin Holt

John David Knight

Frances Kilpatrick Milwee

James Warren Tarlton, IV

George Walton Walker, III

Between April 9 and June 3, 1992 the following firms made pledges to the building fund. Their names will also be included on a wall in the new building listing all contributors. Their pledges are acknowledged with grateful appreciation. (Please see previous issues of ***The Alabama Lawyer*** *for listings of those making contributions prior to April 9.)*

Walker, Hill, Adams, Umbach, Meadows & Walton

Workers' Compensation Law Section

DISASTER RESPONSE:

Do you know the Bar's Plan?

by RICHARD F. ALLEN

Hurricanes, tornadoes, earthquakes, airplane crashes, chemical spills, nuclear accidents, train wrecks, and fires. Disasters, whether natural or man-made, come in all shapes and sizes, yet they have some characteristics in common — they often strike when least expected, their destruction is indiscriminate, and human beings have to cope with the aftermath. Traditionally, members of the Alabama State Bar have always played a role in the recovery from both natural and man-made disasters, sometimes volunteering time and services, sometimes pursuing claims for innocent victims, and sometimes sifting through the rubble that was once their own thriving law practice.

The bar's participation in recovery efforts, while often laudatory, has generally been local and *ad hoc*, individual lawyers working locally to do what they could to help their friends and neighbors. Under the leadership of two of the Alabama State Bar's past presidents, Harold Albritton and Phil Adams, a Task Force on Disaster Response has prepared, and the staff of the state bar is prepared to implement, a statewide, coordinated bar association plan to response to disasters which might affect lawyers as well as our clients — the people and the businesses of the State of Alabama.

The mandate issued to the Task Force on Disaster Response was as follows:

> "The mission of this Task Force shall be to develop a comprehensive plan that will allow the Bar to effectively and expeditiously respond to [a natural or man-made disaster] in the event of a future disaster."

More specifically, the task force was tasked to accomplish three specific objectives:

> (1) In cooperation with the Young Lawyers' Section, create a statewide network that would respond to the legal needs of those citizens who have suffered a loss as a result of a disaster, and who, under the circumstances, lack the financial resources to retain legal counsel;
>
> (2) Develop and recommend a plan of rapid assistance to lawyers and the local judiciary adversely affected by a disaster; and
>
> (3) Develop a plan of action to respond rapidly to mass disasters which could result in improper solicitation both by local and "parachute lawyers".

The task force's work product turned out to be three plans which are somewhat interrelated and which have been coordinated with each other and with a myriad of agencies which play a role in disaster recovery activities. With the adoption and implementation of these plans, the bar has taken steps to ensure that the bar's response to a future disaster will be immediate, effective, and it is hoped, well-coordinated.

Every lawyer in the state at least needs to be aware of the existence of these plans for several reasons. First, in anticipation of a future disaster, lawyers around the state are being asked to identify excess but serviceable equipment and materials which might be quickly marshalled in order to help our brothers- and sisters-at-the-bar whose practices might be disrupted by a disaster. Since, disasters are unpredictable and indiscriminate, we were are all potential victims, and as such we all need to know that a plan is in existence that can have help on the way in a matter of hours if our equipment and facilities are destroyed in a disaster.

Second, although the Young Lawyers' Section has assumed primary responsibility for providing volunteer services to disaster victims, this does not mean that "old" lawyers cannot give their time, as we always have in the past, in helping our friends and neighbors in times of despair. This article will explain the plan for providing such volunteer assistance so that lawyers around the state will know how to get involved in an organized way.

Finally, the article will discuss a problem we have not experienced so far here in Alabama, but with which many of our neighboring state bars have had to contend. That is the problem of out-of-state lawyers descending in large numbers on the scene of a man-made disaster, such as an airplane crash or major chemical spill that causes multiple deaths, or severe injuries to many persons (A Mass Casualty Disaster), and perhaps taking unfair advantage of victims or their families.

Network to provide legal assistance to disaster victims

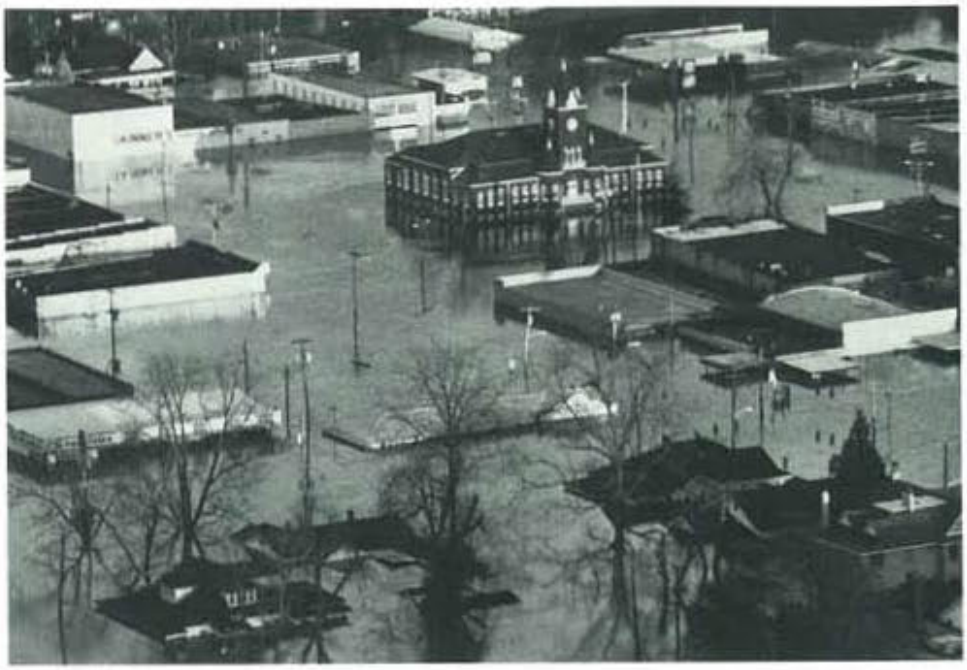
The bar's plan to provide legal assistance to victims of a disaster is incorporated in a document entitled "Volunteer Lawyer Disaster Manual." The manual provides background information a volunteer lawyer would need to know in order to provide legal assistance to victims and to know where he or she fits in the overall victims' assistance universe, establishes policies and procedures for providing legal assistance on a non-discriminatory, non-fee-generating

basis, and provides guidance to the volunteer lawyer who is actually providing the legal assistance. The key to this plan's success is awareness by the bar of its existence, and volunteers coming forward to help in the disaster's aftermath.

The Alabama Emergency Management Agency (AEMA) is the executive agency of the State of Alabama which is responsible for coordination of the state's response to all major disasters. If the President declares a national disaster, the AEMA works in conjunction with the Federal Emergency Management Agency (FEMA). If the President fails to declare a major disaster in Alabama, the Governor of Alabama may still declare a state of emergency. In such case, AEMA is responsible for the administration and coordination of the state's response to the disaster. Normally, the AEMA will establish a field office near the site of the disaster which will be the headquarters for the state coordinating officer (and federal coordinating officer if the FEMA is involved). The AEMA may also establish one or more Disaster Application Centers (DACs) in the disaster area. Representatives of federal agencies, state and local governments, private relief agencies, and other organizations which can provide assistance or counseling are present in the DAC. Pursuant to a mutual support agreement between the AEMA and the bar, the AEMA will provide space, communications and other facilities necessary for the bar to perform its voluntary disaster relief activities in each DAC.

The plan anticipates that the bar leadership will be notified by the Alabama Emergency Management Agency immediately upon the occurrence of a disaster which might require implementation of the plan. The plan has been coordinated with the AEMA and coordination with and notification of the bar is now written into the AEMA disaster response plans.

Richard F. Allen
Richard F. Allen, of the Montgomery firm of Capell, Howard, Knabe & Cobbs, is a graduate of Florence State University and the University of Alabama School of Law. He served as law clerk to former Alabama Supreme Court Chief Justice Howell Heflin from 1973-74 and as chief legislative assistant to U.S. Senator Heflin from 1979-81. He is a member of the Montgomery County Bar Association, the Alabama State Bar and the American Bar Association.



The Elba flood

Photo: The Dothan Eagle

Although the thrust of the plan is for lawyers to volunteer their time and efforts to help their friends and neighbors recover from a disaster, the task force realized that providing such support would be more effective and better organized if a non-volunteer (i.e., someone in a paid status) could be on the scene to determine what needed to be done and to coordinate the bar's contribution toward the relief effort. Since the Alabama National Guard responds to almost every disaster scenario, it appeared logical to the task force to seek a commitment from the Guard to provide a National Guard lawyer to do the preliminary assessment of a disaster site and, when needed, to coordinate the work of volunteer lawyers in responding to the disaster. Although the National Guard had traditionally not activated a lawyer to perform such a role, the Staff Judge Advocate (SJA) for the Alabama National Guard, Col. Larry Craven, immediately recognized the need for such an on-site coordinator and obtained permission from the State Adjutant General, Major General Ivan Smith, for the Guard to fill the need. In any future disaster in which the Guard is called upon, the SJA will activate a Guard lawyer to represent the bar as well as the Guard, fulfilling the assessment and coordination role. A formal mutual support agreement has been prepared and executed by the president of the Alabama State Bar and the Adjutant General of the Alabama National Guard.

In the course of the task force's work, it was also discovered that the attorney general's office routinely sends a lawyer to the scene of any significant disaster. That lawyer serves as the eyes and ears of the attorney general in order to determine what, if any, additional support the disaster relief team might require from his office. That role is currently performed by Assistant Attorney General Dennis Wright. An agreement between the bar and Attorney General Jimmy Evans was subsequently drawn up which provided that Wright or his successor would also serve as the eyes and ears of the bar, to assess the situation and coordinate volunteer services at the site of a disaster.

Accordingly, at the onset of a disaster, in addition to notifying the bar headquarters, AEMA contacts both designated officers in the Office of the Attorney General and the Alabama National Guard to arrange for on-site damage assessment and coordination of volunteer assistance. The redundancy in this role is on purpose, it's being the task force's feeling that if we have two officials designated to represent the bar at a disaster site, there is a high probability that at least one of them will, in fact, be there. And since these lawyers are being compensated for their time, at least one will remain on-site for the duration of an emergency.

If a determination is made to implement the plan (based upon a recommendation by our representative on-site to the bar president), then the bar's coordinating officer, i.e., either the specifically activated National Guard officer or assistant attorney general on the scene, will contact the Young Lawyers Section volunteer coordinator for the region in which the disaster occurred (who will also have been alerted through YLS channels). The YLS coordinator identifies lawyers (both young and old) who are willing to participate and puts the volunteers in touch with the on-site coordinator who schedules the volunteers to serve a specific shift in a specific disaster application center. For purposes of this plan, which has been coordinated with the Young Lawyers Section, the state has been divided into four geographic regions and a volunteer coordinator has been assigned for each region. For a more complete discussion of the YLS preparations to implement the plan, see Young Lawyers' Section, 53 *Ala. Lawyer* at 99 (March 1992).

Using the materials available in the "Volunteer Lawyer Disaster Manual", as well as their own experience and good common sense, the volunteer lawyers will help disaster victims cope with a wide range of problems from landlord/tenant matters to insurance claims.

Reconstitution of the local bar and local judiciary

The need to have a plan to help individual lawyers, or indeed an entire local bar, was brought home by the flood that ravaged the City of Elba in March 1990. As in many small towns, most of the law offices in Elba were clustered around the courthouse and when downtown Elba was submerged under 18 feet of water for four or five days the devastation was complete. Indeed, all that remained of one two-person law firm was a concrete slab where once a thriving law practice had existed. In Elba, all of the local lawyers were themselves victims of the disaster, many sustaining severe damage not only to their offices but to their homes as well. In addition, the first floor of the courthouse sustained considerable damage and the files for many pending civil and criminal actions were damaged or destroyed and had to be reconstituted. While some relief was provided to local lawyers from other members of the bar, it was, as has been the case in most past disasters, *ad hoc* and uncoordinated. The Administrative Office of Courts immediately began a reconstruction effort aimed at getting the court system back in operation and did a creditable job notwithstanding the severe water damage and the lack of experience in handling such a disaster.

In its consideration of the bar's role in reconstituting the local bar and judiciary, the task force made an early determination at the resources available to reconstitute the judiciary, whether local or the appellate courts in Montgomery, are available through the state agency responsible for the reconstitution of the court system — the Administrative Office of Courts. Those resources by far outweigh any that could be made available by the state bar. Nevertheless, the task force coordinated our plan with the Administrative Office of Courts. While affecting this coordination it was discovered that there is really no formal plan in existence for reconstituting either the appellate courts in Montgomery or the local courts around the state. Officials with AOC indicated that such a plan was needed and that they would be preparing such a plan. At this writing, the plan has not been developed, but an appendix has been reserved in the bar's plan to accommodate a copy of the AOC plan when it is published.

The plan for reconstituting a local bar, or a portion of a local bar, struck by disaster is divided into phases. The first phase is the pre-disaster planning phase, during which equipment and supplies which might be needed in the event of an Elba-like disaster are located and recorded on a computer at the state bar headquarters. This information is to be updated every six months. Once a disaster strikes, a need assessment is conducted by the bar commissioner or commissioners for the effected area in connection with the leadership of the local bar. Once it is determined that the disaster had an impact on lawyers to the extent that reconstitution plans should be implemented, the bar commissioner(s) will make such a recommendation to the president of the bar who will direct the execution of the reconstitution plan. In the third phase, the bar commissioner(s) and the local bar leadership will determine specifically what supplied and equipment are needed by local lawyers. This information will be channeled to the staff of the bar. The bar staff will then review items on their master computer list to determine what can be made available and will, in conjunction with the bar commissioners and the local bar leaders, contact firms holding the equipment and arrange for it to be shipped to the effected area.

No physical transfer of supplies and equipment will be made until such time as a disaster strikes. During the pre-disaster phase, lawyers and law firms that have excess equipment will keep it on hand and merely notify the bar of its availability. (Of course, no lawyer or firm is committed to hold such equipment just because it is reported at on-hand. If it is disposed of in the ordinary course of operations, it will be dropped from the bar's list upon notification to the staff on the next questionnaire.) Once a disaster strikes, arrangements will be made to get the equipment in the hands of those who need it.

The key to a successful reconstitution effort will be the speed with which it can be accomplished. This, in turn, will depend upon how conscientious the local bar is in letting the bar headquarters know of the availability of useable equipment. Lawyers or firms having serviceable equipment excess to current needs will be asked to respond generously and expeditiously when the questionnaire from the bar is distributed.

Parachute lawyer plan

Although we have never had the problem here in Alabama, we are all familiar with the phenomena that often occurs after a major man-made disaster, such as an airplane crash, which causes mass casualties. Typically, the area is inundated with lawyers from all around the country and, unfortunately, sometimes these lawyers seem to prey on the victims or victims' families who are subject to both physical or emotional stress, and who may not be aware of what their options are. These out-of-state lawyers are sometimes referred to as "parachute lawyers."

The thrust of the plan to deal with the problem of parachute lawyers is to generate public awareness to help victims protect their rights in the event of a disaster. A crisis task force made up of the state bar president, the executive director of the bar, the president of the local bar association (at the disaster site), the general counsel for the state bar association, and the director of programs is created under the plan. In the event of a disaster, the Alabama Emergency Management Agency notifies the state bar headquarters and provides as much information as is initially available. The official taking the call will then convene (by telephone if possible) the crisis task force. The task force will decide what level of response, if any, is appropriate. Options range from a pre-prepared press release, basically informing victims of their rights, to an on-site response team, lead by the state bar president, which would function in conjunction with the AEMA and the local bar association. Once on site, the response team would evaluate the situation and determine what additional public statements, media releases, etc., would be required in order to protect the rights of victims of a disaster.

Pursuant to the plan, the state bar headquarters will publish a "Victim's Guide" which will be printed in sufficient quantities to be distributed to victims and family members in the event of a disaster, either by representatives of the state bar or by a local bar association in the effected area. The sole purpose of the pamphlet is to assist victims in preserving their legal rights until such time as they are prepared to make an informed decision — a decision based on all circumstances and unburdened by the emotional trauma and stress caused by the tragedy. The victim's guide has been reviewed by the general counsel for the Alabama State Bar and by the executive director of the state trial lawyers association. It was based on a similar document prepared by the Texas State Bar Association but has been conformed to conditions here in Alabama.

Conclusion

The day a plan is committed to paper it starts becoming obsolete. Accordingly, staff members at state bar headquarters have been assigned the responsibility of keeping the plans current and effecting continuing coordination with the Alabama Emergency Management Agency, the Attorney General's office, and the State Adjutant General. Each year, the Alabama Emergency Management Agency conducts exercises to test and validate its plans. The bar's plans, especially the plan pertaining to victims assistance, will be tested during an upcoming exercise.

Soon, each member of the bar will be receiving a questionnaire soliciting the list of excess supplies and equipment which could be donated to other bar members in the event of a disaster. The results will be catalogued and maintained on the state bar's computers. Every six months, the bar will be asked to update this list by noting changes from previous reports. With the list of available equipment safely stored in the bar computers, we probably will be as ready as we can be to respond to the unknown.

As of this writing, no disaster has triggered the full implementation of any of the plans, although the victims' assistance plan was partially implemented during floods in north Alabama in early 1991. There the plan appeared to work well. Conceptionally, the plans and preparations appear to be sound. Only participation by bar members, before, during and after a disaster, however, will ensure an effective response when the need arises. ■

LITERATURE FOR LAWYERS:

A New Approach to an Old Subject

by DUNCAN B. BLAIR

On March 20, 1992, 25 members of the Birmingham Bar Association met in the faculty lounge of the Cumberland School of Law for an unusual and innovative legal seminar entitled "Literature for Lawyers." This seminar — which was sponsored by the Cumberland School of Law and the Birmingham Bar Association and funded by the Alabama Humanities Foundation — required its participants to read the following three works: Shakespeare's *King Lear*, Tolstoy's *The Death of Ivan Ilych* and Katherine Ann Porter's *Noon Wine*. The participants then attended a six-hour discussion lead by two faculty members from the Brandeis University Humanities and the Professions Program. Participants earned 5.9 hours of CLE credit.

By all measures the program was a success. One hundred percent of those who signed up to attend did. The discussion among participants was candid. In written evaluations every participant expressed surprise that works of literature could be so relevant to the practice of law. Participants reported that they had stretched their minds and examined their values. When asked to compare the program to other continuing legal education programs that they had attended, every participant completing an evaluation reported that the program was "better than most." When asked what they particularly liked about the seminar, participants responded with the following:

The work I did at home on these books; creativity; the participation and intellectual exercise; the knowledge of the speakers and bringing human touch to law practice; interaction of speakers with attendees via materials; participation; broad-based; intellectual stimulation; dialogue that was generated; I thought; Socratic method exchange and ideas; it dealt with real life; it made me think; I stayed involved; class participation and interaction between speakers and participants; leadership; materials; opportunity to participate — not just listen; small size; provocation; use of literature to examine our lives — professional and private; lawyers could participate and offer insights.

What do these works of literature have to offer practicing lawyers? Perhaps the best place to start is the preamble to our new rules of professional conduct. There we find an acknowledgement of the humanity of lawyers that is relatively rare in legal writings. The preamble states:

Virtually all difficult ethical problems (in the legal profession) arise from conflict between a lawyer's responsibility to clients, to the legal system, and to the lawyer's own interest in remaining an upright person while earning satisfactory living.

The aim for "Literature for Lawyers" was, and is, to explore this tension in personal, nonlegal terms, using literature as a catalyst for discussion. The discussion focuses on two types of texts: the texts of literature and the texts of each participant's professional life. Both texts are up for critical examination.

"Literature for Lawyers" does not offer its participants answers; it only helps participants ask the questions. For example, what do we mean when say that justice is blind? Blind to what? To what extent are judicial decisions influenced by the emotional needs of the decision-maker? To what extent can, or should, lawyers play to those emotional needs? These and other questions are explored in King Lear, which tells the story of a man who allows his judgment to be corrupted by vanity and the desire for flattery.

Another topic discussed in "Literature for Lawyers" was the relationship between advocacy and truthfinding. Are advocates interested in discovering the truth? And, if not, should they be? One participant observed that she always wants to learn the truth from her client; another said that the truth is irrelevant; a third said that he was only interested in a version of the truth; and a fourth asserted that it is presumptuous of an advocate to conclude that he has ascertained the truth. What is the relationship, if any, between truth, winning and justice? Is winning everything? Is it the function of a judge or jury to pass moral judgment or provide moral acquittal? And, if not, what is, or should be, the source of our values and how should we act when our values conflict with our obligations as advocates? When, if ever, do we have a responsibility to ourselves or to the legal system that goes beyond our responsibility to our clients?

These questions, and others, are explored in *Noon Wine*, which tells the story of a man who is acquitted of manslaughter but nonetheless commits suicide because he was not allowed to tell his story in the trial. In his view, "[a]t the trial, they hadn't let him talk. They just asked questions and he answered 'yes' or 'no', and they never did get to the core of the matter."

Another topic discussed in "Literature for Lawyers" was the relationship between our personal and professional lives. Should we force the two to remain separate? Is there a place in our professional lives for love? Do we use our professional lives as a refuge from our personal? What is a successful career? A meaningful life? These and other questions are explored in *The Death of Ivan Ilych*, which tells the story of a successful lawyer and judge who lives his professional life in complete conformity to the expectations of society. He fills his role quite capably, but as he dies he realizes that his life has been a living death.

Plato wrote that an unexamined life is hardly worth living. "Literature for Lawyers" provides an opportunity for practicing lawyers to examine the personal side of their professional lives. Given the enthusiastic response that this program received in Birmingham, plans are already underway to offer it in the other metropolitan areas of the state. ■

Duncan B. Blair

Duncan B. Blair is a graduate of Vassar College and Vanderbilt University Law School. He served as law clerk to Judge Sam C. Pointer, Jr., U.S. District Court for the Northern District of Alabama, and is a partner with the Birmingham firm of Lange, Simpson, Robinson & Somerville. He is a member of the Birmingham Bar Association, the Alabama State Bar and the American Bar Association.

ORDER

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT IN THE SUPREME COURT OF ALABAMA
MARCH 3, 1992

Whereas, the Board of Commissioners of the Alabama State Bar and the Supreme Court's Advisory Committee on the Alabama Rules of Civil Procedure have recommended to this court that Rule 16, Alabama Rules of Civil Procedure, be amended; and

Whereas, the court has considered the proposed amendment and deems it appropriate to adopt that amendment,

Now, therefore, it is ordered that the Rule 16, Alabama Rules of Civil Procedure, be, and it is hereby, amended to read as follows:

Rule 16. Pre-trial Procedure; Formulating Issues

"In any action the court may of its own motion, or shall on timely written notice by any party to the cause, direct and require the attorneys for the parties to appear before it, at least 20 days before the case is set for trial, for a conference to consider and determine:

"(1) The simplification of the issues;

"(2) The necessity or desirability of amendments to the pleadings;

"(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof:

"(4) The limitation of the number of expert witnesses;

"(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

"(6) The possibility of settlement or the voluntary use by all parties of extra-judicial procedures to resolve the dispute, including mediation conducted pursuant to the Alabama Civil Court Mediation Rules; and

"(7) Such other matters as may aid in the disposition of the action.

"The court shall make an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits issues for trial to those not disposed of by admissions or agreement of counsel; and such order when entered shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court shall establish by rule a pre-trial calendar on which such actions may be placed for consideration as above provided.

"(Amended effective August 1, 1992.)

"(dc) District Court Rules — Pre-trial procedure in the district court shall be as follows:

"Immediately preceding the trial on the merits, or prior thereto, if justice requires, the court may direct and require the attorneys for the parties to appear before it for a conference to consider and determine:

"(1) the simplification of the issues;

"(2) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

"(3) such other matters as may aid in the disposition of the action."

It is further ordered that this amendment shall become effective August 1, 1992.

Hornsby, C.J., and Maddox, Almon, Shores, Adams, Houston, Steagall, Kennedy, and Ingram, JJ. concur.

I, Robert G. Esdale, as clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 4th day of May, 1992. ■

YOUNG LAWYERS' SECTION

By KEITH B. NORMAN, president

PARTING SHOTS

This year's Annual Seminar on the Gulf was held May 15 and 16 at the Sandestin Resort in Destin, Florida. Every year, the Young Lawyers' Section Annual Seminar Planning Committee, with assistance from the Alabama Bar Institute for CLE, designs a program that provides information in various areas of practice that lawyers encounter early in their careers. The co-chairs for this year's annual seminar were **Frank Woodson** of Mobile and **Hal West** of Birmingham. Frank and Hal put together a fine slate of topics with an outstanding group of speakers which was approved for 6.0 hours of CLE credit. Additionally, there were a number of social activities highlighting this year's program.

Keith B. Norman

I thank the firms and organizations who graciously hosted our social activities. By sponsoring these activities, our hosts allowed us to offer Alabama young lawyers a weekend of CLE and social activities for the cost of just a CLE registration fee. Keeping the overall cost of this seminar low is a priority every year. We hope that by keeping the cost as low as possible more young lawyers will be encouraged to attend.

On Friday and Saturday mornings, the breaks were hosted by the **Beasley, Wilson** firm of Montgomery. The golf tournament on Friday afternoon at the Sandestin Golf Course was hosted by **Insurance Specialists, Inc.** of Atlanta. Insurance Specialists is the state bar's endorsed insurance administrator for life, medical and disability insurance. Refreshments were served and generous cash prizes were awarded for the top two teams, as well as cash prizes for closest to four different par three holes. For those who chose to lie on the beach or by the pool on Friday afternoon, **First American Title Insurance Company** hosted a beach party.

On Saturday, **Foshee & Turner Court Reporters** of Birmingham hosted the afternoon beach party. The firm of **Pittman, Hooks, Marsh, Dutton & Hollis** of Birmingham hosted a social hour and cocktail buffet at the Sandestin Resort bayside pool. The cocktail social was followed by the band party featuring the "Soul Practitioners". The Saturday evening buffet and band party were well-attended and thoroughly enjoyed by all. The buffet and band party have become traditions of the Annual Seminar at the Gulf and we are very appreciative of the generosity of the Pittman, Hooks firm.

The Annual Seminar does not happen by accident. Many hours of planning and arranging are required. Frank Woodson and Hal West deserve a great deal of credit not only for planning the CLE portion of this year's program but also for arranging to have the sponsors host each of the social activities. **Jenelle Marsh** of ABICLE, who is a young lawyer also, works very closely with the members of our program committee to plan the CLE offerings each year. Jenelle also deserves many thanks for helping us maintain a high level of quality for our CLE programs.

Your suggestions and ideas for CLE topics at the annual seminar are welcomed and appreciated. As an example, I point to a telephone call that I received last fall from **John Pennington** of Birmingham. John, who handles Social Security claims, called to suggest that a topic on representing Social Security claimants be included in this spring's program. This was an excellent suggestion and that topic was included. I hope that you will let us know of other program ideas and topics. We do not want to be repetitious in our offerings; instead, we hope to bring topics that are interesting as well as relevant for young lawyers in today's legal climate.

Report of the Section Bylaws Committee

I am happy to report that at the board meeting held during the Annual Seminar, the Executive Committee of the YLS adopted the report and recommendation of the Bylaws Committee with only two minor changes. This is a significant step forward with respect to restructuring our section's bylaws.

The committee made the following recommendations for changes to the bylaws of the YLS of the Alabama State Bar:

(1) Officers be elected by statewide ballot instead of holding officer elections at the annual meeting;

(2) Executive Committee members be appointed for a term of three years only and not be allowed to serve more than one term;

(3) The president or chair of each local affiliate shall be a voting member of the Executive Committee;

(4) The Executive Committee shall have at least one member for each congressional district; and

(5) These proposed changes will not apply to the current officers or the current members of the Executive Committee. The proposed changes would begin with the election of a treasurer in July 1993 and be effective as to members of the Executive Committee appointed after July 1993.

I believe the two additions to the Bylaws Committee report were good ones. The first was that in order for the president-elect to qualify to seek that office, he or she must have at least one year's experience on the Executive Committee. The second was the requirement that the president would be prohibited from appointing more than one person to the Executive Committee from a single law firm. This would not prevent a person from seeking elected office in the YLS even though there may be another person from his or her firm then serving on the Executive Committee.

In consultation with President-elect Sid Jackson, an Implementation Committee will be appointed to incorporate these recommendations into a set of bylaws which will be presented to the Executive Committee for final approval and then to the board of bar commissioners for ratification. I hope that the Implementation Committee can finish its work by this fall so that we can present a new set of bylaws to the commissioners before the end of the year. I am grateful for the work of this committee and its members which included **Robert Baugh** of Birmingham, **Norbert Williams** of Montgomery, **Rhonda Pitts** of Birmingham, **Lori Collier** of Dothan, **Sid Jackson** of Mobile, **Hal Albritton** of Andalusia, and **Sabrina Simon** of Birmingham. I especially thank **Percy Badham** of Birmingham for his leadership as chair of this committee.

This is my final column as president of the Young Lawyers' Section. Having served as committee chair of the Youth Judicial Program and then as an elected officer of this section has given me an opportunity to work with outstanding young lawyers across the state on public service programs and programs serving our profession. To me, the YLS and the work of the many lawyers around the state exemplify the high ideals and noble calling of this profession. I thank you for the opportunity of serving. ■

RIDING THE CIRCUITS

Elmore County Bar Association

The following are the 1992-93 officers of the Elmore County Bar Association:

President:.....Paul Hiebel, Wetumpka

Secretary/Treasurer:.....Glenn Goggans, Wetumpka

Jackson County Bar Association

The following are the 1992-93 officers of the Jackson County Bar Association:

President:.....Stephen M. Kennamer, Scottsboro

Vice-president:.....Gary W. Lackey, Scottsboro

Secretary/Treasurer: Pamela McGinty Parker, Scottsboro

REMARKS OF M. R. NACHMAN, JR.

Judge Frank M. Johnson and his wife stand by his bust at the May 22 dedication of the Frank M. Johnson Building

At the Dedication Ceremony of the Frank M. Johnson Building, May 22, 1992

I am privileged beyond measure to be able to appear today to honor Judge Frank Johnson on this occasion. Surely no ceremony was ever more fitting than the permanent dedication of this judicial building to his name. During his quarter century here on the district bench, and during the ensuing dozen years on the appellate bench — with his primary office in this building — Judge Johnson has achieved recognition as one of the foremost judges of this land.

As a lawyer who has practiced here before Judge Johnson during this 37-year period, he is etched indelibly in my mind and always will be. As one grows older, one has fewer heroes. And I have fewer heroes. But Judge Johnson has remained a constant one.

Of course, judges are men and women, not disembodied spirits. But Judge Johnson's every judicial endeavor has embodied the concept and practice of elemental fairness, which is, after all, the essence of due process of law. No litigant, weak or powerful, no lawyer, whether a stumbling novice or a graceful and accomplished practitioner, could leave his courtroom without the sure conviction that he or she had seen due process in action, had seen an uncompromising,

fearless and unflinching insistence on fairness, and had seen a judge thoroughly prepared on the facts and law of the case at hand.

Judge Johnson's career is graphic proof that the legal process is still the most effective means of accommodating the needs of all who want to live peacefully in a just and civilized society. His every decision — regardless of the particular area of the law, and regardless of personal difficulties, invective, isolation and even attempted violence — has adhered uncompromisingly to Lord Coke's rejoinder to King James—"[N]ot under man, but under God and the law," He has marked well the admonition of Judge Learned Hand that of all the factors that enter into the art of being a judge in the great tradition, the foremost is "[H]e shall abstain from substituting his personal choice."

And Judge Johnson has done more. He has engaged in a constant quest to improve the administration of justice and to better the peaceful solution of conflict through reason. He has understood that our great legal tradition is not a treasure to be hoarded and counted periodically. As one directly responsible for its conduct and stewardship, Judge Johnson has used the law as a source of dynamic energy to ensure that social change and the solution of society's problems are acomplished with integrity, conscientiousness and fidelity to that noble tradition.

In 1831, a French political writer, de Tocqueville, came to this country and later wrote a discerning treatise entitled, Democracy in America. Prophetically he noted:

"Scarcely any question arises in the United States that is not resolved sooner or later into a judicial question."

Certainly judicial questions have come to Judge Johnson out of such origins, and he has not blinked at deciding them. These decisions have become landmark examples of a necessary and pervasive use of a court's traditional equity powers to assure protection of constitutional rights.

Judge Johnson has understood that a failure of a judge to resolve a claim of constitutional violation is not judicial abstention; it is a decision not to enforce constitutional rights by the very agency established under the Constitution to do so.

Judges have a constitutional obligation to intervene whenever constitutionally protected rights of our citizens are affected. And they have an especial obligation when, as with the Alabama schools and prisons and mental hospitals, other problem-solving agencies in our state were so preoccupied with other affairs that they abdicated their responsibility. Judge Johnson did not usurp power, or exercise a long-suppressed desire to run state schools or prisons or mental hospitals. Quite simply, he responded to a constitutional duty.

An ironic benefit may come from Judge Johnson's courageous decisions in answer to those who have a traditional and justifiable concern about accommodating the reality of judicial power to the theory of representative government. That answer is that all organs of government — not just the courts — must be conducted so as to assure equal justice under law, guaranteed by our Constitution. And when they do, courts will cheerfully withdraw.

It is particularly apt amid today's difficulties to recall the topic and credo of Judge Johnson's commencement speech at the University of Alabama on May 15, 1977 when he was awarded an honorary doctorate. His topic was, "What is Right with America". His concluding credo was that our most cherished birthright is "the right to share in the freedoms which our government was established to secure and protect," And, quoting from Senator Sam Ervin, he reminded all who heard or read his words:

"These freedoms are exercisable by fools as well as by wise men, by agnostics as well as by the devout, by those who defy our Constitution and laws as well as by those who conform to them, by those who hate our country as well as by those who love it."

Times have not always been easy for judges and lawyers, and these times are certainly no exception. But Judge Johnson has honored all who have practiced or litigated here — and countless other Americans who have not — by over a third of a century of dedication to the proposition that, in America, law is supreme. His court has been a model of fairness and of expedition. His name on this judicial building will be a constant reminder to all who come here, whether or not lawyers, that Judge Johnson's performance has been a sample of our best, of the finest that the law can produce in a civilized society.

As a lawyer, I thank you, Judge Johnson — and I thank your devoted wife, Ruth — for the honors your service has bestowed on America's lawyers. History, and generations yet unborn, will remember you and thank you, too. ■

Dedication

On Friday, May 22, 1992 the federal courthouse in Montgomery was rededicated and named the Frank M. Johnson, Jr. Federal Building and United States Courthouse to honor an Alabamian who has spent 36 years as a federal judge. Judge Johnson's long and distinguished judicial career, most recently on the Eleventh Circuit Court of Appeals, is most notable for the landmark decisions he handed down concerning human rights, the protection of minorities and women, and the reform of prisons and mental institutions.

The dedication ceremony was held in the second floor courtroom, in which Judge Johnson has heard many cases, and was broadcast by closed circuit television to the other courtrooms in the building where more than 400, including many Eleventh Circuit judges, were in attendance. The master of ceremonies was the Honorable Gerald Bard Tjoflat, chief judge, United States Court of Appeals for the Eleventh Circuit. Several individuals offered tributes to Judge Johnson, including the Honorable Warren E. Burger, chief justice of the United States (retired); the Honorable Howell Heflin, U.S. Senator, State of Alabama; State Representative Alvin Holmes, District 78; and M. Roland Nachman, Jr., esquire, of Montgomery. Remarks by the Honorable Elbert Parr Tuttle, senior judge, Eleventh Circuit Court of Appeals, were read by Judge Tjoflat in Judge Tuttle's absence.

In a separate ceremony in the main lobby of the courthouse, a bust of Judge Johnson was unveiled and presented. The bust was commissioned by Judge Johnson's past and present law clerks. Judge Johnson's wife of 53 years, Ruth Jenkins Johnson, unveiled the bust, which was sculpted by Douglas and Sandra McDonald. Frank Lane Heard, III presided over the ceremony. Heard is a former law clerk now practicing in Washington, D.C.

Judge Johnson

The Frank M. Johnson, Jr. Federal Building and U.S. Courthouse and the bust of Judge Johnson now stand as unique tributes to Judge Johnson's selfless dedication to the law. ■

ADDRESS CHANGES

Please check your listing in the current 1990-91 *Alabama Bar Directory* and complete the form below ONLY if there are any changes to your listing.

Due to changes in the statute governing election of bar commissioners, we now are required to use members' office addresses, unless none is available or a member is prohibited from receiving state bar mail at the office. Additionally, the Alabama Bar Directory is compiled from our mailing list and it is important to use business addresses for that reason. (These changes WILL NOT appear in the 1991-92 edition of the directory. The cut-off date for the directory information was September 1, 1991.)

NOTE: If we do not know of a change in address, we cannot make the necessary changes on our records, so please notify us when your address changes.

_____ - _____ - _____ Member Identification (Social Security) Number

Choose one: ☐ Mr. ☐ Mrs. ☐ Hon. ☐ Miss ☐ Ms. ☐ Other _____

Full Name _____

Business Phone Number _____

Race _____ Sex _____ Birthdate _____

Year of Admission _____

Office Mailing Address _____

City _____ State _____ Zip Code _____ County _____

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_____

City _____ State _____ Zip Code _____ County _____

REASSESSMENT OF THE LAWYERS' DISCOVERY RESPONSIBILITIES

The Early Disclosure Provisions of the Proposed Amendments to Rule 26, Federal Rules of Civil Procedure

By PAUL W. GREENE

A substantial portion of the May 1992, Eleventh Circuit Judicial Conference was devoted to consideration of the need for the development of management systems to facilitate more efficient disposition of the burgeoning case load in the United States District Courts. The formal agenda of the conference, as well as informal discussions among judges and lawyers, resonated with an acknowledgment of a general dissatisfaction with the delay and expense associated with even a simple diversity lawsuit. Criticism of the courts, like criticism of the legal profession itself, is neither new nor inherently unhealthy. The judicial system is dynamic and has consistently demonstrated that through the unique combination of academic debate, lawyer-generated analysis, judicial flexibility and legislative initiatives the institution can adapt to and accommodate changing needs of the society in which it must function. The history of the American judiciary is a record of constant change, punctuated by upheavals of epic proportion when circumstances demand. The recurring criticism of the judicial process necessarily reflects a critique of the system in place at the time of the examination. This historical myopia tends to obscure the proper view of the incremental development of the institution as a whole.

Speaking to the Judicial Conference, former Fifth Circuit Court of Appeals Judge and Attorney General of the United States Griffin Bell observed with palpable melancholy that his was the last generation of lawyers schooled in the art and science of common law pleading. Judge Bell was particularly critical of the discovery process. Discovery practice, an integral component of the notice pleading system, was dismissed as a wasteful exercise engaged in by unsupervised adults. This expression of frustration with the present rules of procedure by an eminent jurist and practitioner argues less for a return to their archaic predecessor than for another practical modification to remedy identifiable deficiencies. One such proposal is found in the proposed amendments to Rule 26, which anticipates significant non-adversarial pretrial disclosure. The Advisory Committee has proposed a process by which the exchange of basic relevant information will occur without court intervention or formal motion practice. While the proposed amendments have received some justifiable criticism, it seems that some commentators do not fully apprehend the role the amendments are intended to play in the mosaic of the civil procedural process. Discovery is perceived as the principal source of much delay and expense by lawyers, judges, and the public. The non-adversarial approach to discovery is intended to simplify and expedite the resolution of litigation. The reformative process is another step in the development of the court systems and adjustment to practical necessity.

One-minute history of civil procedure

If the aspirational goal of a judicial system is to "secure the just, speedy, and inexpensive determination of every action, and [assure] that cases might be settled on their merits . . . " *Nichols v. Sanborn Co.*, 24 F. Supp. 908, 910 (D. Mass. 1938), there is virtually no rational argument in favor of a return to common law issue pleading in its traditional form. Issue pleading was and remains incapable of efficiency in the delivery of justice. Common law pleading, which was originally oral, evolved over centuries into a detailed byzantine written exercise. In order to prevail, the common law plaintiff had to choose the correct form of action. He and his lawyer then embarked on the exchange of pleadings with the defendant that was designed ultimately to produce a single issue for resolution by a judge or trial by a jury, with the trial itself as something of an afterthought to the pleading process. *See* R. Palmer, *The County Courts of Medieval England* 90 (1982). This issue pleading evolved in the days of much more rudimentary notions about the resolution of fact disputes than our present methods involve; issues framed were narrow and precise, as indeed they had to be when the "jurors" were members of an inquest who presumably knew the facts. It would have been not only useless, but institutionally improper as well, for

pleaders in such a system to try to achieve a fact presentation. Skinner, *Pretrial and Discovery Under the Alabama Rules of Civil Procedure*, 9 Ala. L. Rev. 204, 205 (1957). Discovery, or any factual development, was therefore irrelevant or improper in most cases. The implicit assumption of the demurrer was that the claimant could not prove what he did not allege, and would not allege, under oath, what he could not prove. Lewis, *Federal Summary Judgment: A Critical Analysis*, 83 Yale L.J. 745, 746 (1974). Discovery either did not exist or the use of devices approximating modern discovery was severely restricted. *See Ex parte Joiner*, 258 Ala. 466, 64 So. 2d 48 (1953) (depositions for perpetuation of testimony); *Ex parte Rowell*, 248 Ala. 80, 26 So. 2d 554 (1946) (interrogatories for limited purposes). The exhaustive pleading mechanisms were inherently incapable of resolving a legal dispute in an expeditious manner. Moreover, the court was necessarily involved at each stage of the process, in part because it was assumed few, if any, trials would result.

Early reform

In 1848, the State of New York adopted the Code of Civil Procedure, named for its principal draftsman, David Dudley Field. The Field Code, which was captioned as an act to simplify and abridge the practice, pleadings and proceedings of the courts of the State of New York, was intended to eliminate decisions based upon technicalities. In place of stylized verbiage, the Code directed that the complaint contain "a statement of the facts constituting the cause of action, in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended." By 1900, more than 27 states had adopted a code pleading system based upon the Field Code. F. James & G. Hazard, *Civil Procedure* 18 (3rd Ed. 1985). The Code's reformulation of pleading rules predictably created its own interpretive and semantic disputes. Pleading forms under the Code caused increasing difficulty for even the most common claims. Richard Marcus, *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure*, 86 Colum. L. Rev. 433, 438 (1986). In addition to the Code's internal shortcomings, there is substantial evidence that the simplified code pleading process was sabotaged by judges and lawyers alike. *See McArthur v. Moffett*, 143 Wis. 564, 567, 128 N.W. 445, 446 (1910) (referring to "[t]he cold, not to say inhuman, treatment which the infant code received from the New York judges"). In a remarkable address to the American Bar Association in 1906 on the causes of dissatisfaction with the American judicial system, the dean of the Yale Law School, Roscoe Pound, identified code pleading and common law pleading as a source of disillusionment by the general public.

Criticism of the various pleading codes and common law practice of the states led to a movement to develop uniformity in the federal court with the goal of reforming of the entire pleading process. The motivation for such change was both a need for uniformity and a reaction to delay and expense. In 1934, following 20 years of contentious debate, the Congress of the United States passed the Rules Enabling Act which authorized the Supreme Court to promulgate rules of judicial procedure. The notion of uniform, simplified procedural rules for federal courts was advanced with the serendipitous contention that the Supreme Court would devise such sound and simple rules that each state would then be obliged to copy them. Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence and Emerging Procedural Patterns*, 137 U. Pa. L. Rev. 1999 (1989) (from the Symposium on the 50th Anniversary of the Federal Rules of Civil Procedure, 1938-1988). One obvious purpose of the Federal Rules of Civil Procedure as promulgated in 1938 was to expand the opportunity for a decision on the merits of a claim while retaining a procedural mechanism for the interception of meritless or specious claims or defenses. The discovery rules (26-37) were intended to facilitate the full disclosure of the material facts to both sides. Rule 12 and 56 dispositions would guard against claims improperly made or insupportable defenses. During the debate over the enabling legislation, Senator Thomas Walsh, an opponent of the Act, gave cogent voice to a second material consideration in the judicial process when he observed that "it is the habits of our bar that need reforming, not the rules under which they act." The adversarial component of the practice of law was not altered by the Field Code nor the Federal Rules.

The role of discovery - the new cause of delay

The spirit of the Federal Rules of Civil Procedure included a liberal discovery provision as a companion to the liberalized pleadings rules. Permissive discovery, it was hoped, would inform the parties of the relevant facts, eliminate surprise, help limit the issues, and provide a basis for either intelligent settlement or an efficient trial. It was a promise of the systemic change that broadening discovery would facilitate summary judgment, the epitome of an inexpensive, speedy disposition of the merits of a claim. The zenith of the extensive latitude of discovery was reached in 1970 when requests for production of documents under Rule 34 were authorized as a matter of normal practice rather than upon a demonstration of good cause which had previously been required. Federal Rules of Civil Procedure, Advisory Committee Notes (1970 Amendments). After 1970, reflecting the realities of the practice of law in our courts, the commentary to the rules began to reveal an uneasiness with the broadening of the discovery process. A significant source of the discomfort was the tension created by the relationship between the lawyer's traditional role as an advocate and the permissive discovery requirements of the Federal Rules. In 1978, Wayne D. Brazil, then an associ-

Judge Paul W. Greene

Magistrate Judge Paul W. Greene received his undergraduate degree from the University of South Alabama and his law degree, *cum laude*, from Cumberland School of Law. He served as a judicial law clerk to Morgan County Circuit Judge R.L. Hundley, and then was assistant district attorney (in Morgan County and then Jefferson County). In 1985, he was appointed assistant United States Attorney for the Northern District of Alabama, and in 1988, he was appointed U.S. Magistrate Judge for the Northern District.

ate professor of law at the University of Missouri, wrote an illuminating and frequently quoted law review article critical of the role of advocacy in civil discovery. Professor Brazil noted that:

> The academic and judicial proponents of the modern rules of discovery apparently failed to appreciate how tenaciously litigators would hold to their adversarial ways and the magnitude of the antagonism between the principal purpose of discovery (the ascertainment of truth through disclosure) and the protective and competitive instincts that dominate adversary litigation. Neither the architects of the discovery machinery nor the judges who embraced their work would have endorsed the central premise of this essay: that adversary pressures and competitive economic impulses inevitably would work to impair significantly, if not frustrate completely, the attainment of the discovery system's primary objectives.
>
> . . . The unarticulated assumption underlying the modern discovery reform movement was that the gathering and sharing of evidentiary information should (and would) take place in an essentially non-adversarial environment. That assumption was not well made. Instead of reducing the sway of adversary forces in litigation and confining them to the trial stage, discovery has greatly expanded the arenas in which those forces can operate. It has also provided attorneys with new weapons, devices, and incentives for the adversary gamesmanship that discovery was designed to curtail . . . .

See Wayne Brazil, *The Adversary Character of Civil Discovery: A Critique and Proposals for Change*, 31 Vand. L. Rev. 1295, 1303-1304 (1978). Professor Brazil recognized the practicalities of the legal marketplace by quoting Judge Frankel's succinct, if cynical, observation that "the business of the advocate, simply stated, is to win if possible without violating the law." The preoccupation with winning is not merely a product of competitive instincts or self-selected personality traits nor can it be dismissed as a peculiarity that is congenital to the personality of the kinds of persons who become litigators. The focus on winning is ratified by professional expectations and driven by clear economic incentives. The ethical and economic considerations of adversarial discovery are further clouded by the discrete interests that can exist in the attorney-client relationship. The client generally relies upon the attorney to determine the proper course of civil litigation. The attorney fee costs associated with discovery disputes are viewed from different perspectives by the client and counsel. The expenditure of time and effort in opposing or pursuing certain discovery may arguably be in the client's best interest or, at a minimum, consistent with the ethical obligation of zealous representation, while at the same time require that substantial costs be borne by the client. The economic benefit to the lawyer can be a detriment to the client. This juxtaposition occurs not only in the frequently condemned "abuse of discovery" context, but is a predictable consequence in general litigation practice. Discovery can be a time-consuming, expensive process even when properly conducted by responsible lawyers. The costs associated with discovery grow exponentially when an attorney negligently, consciously, or maliciously abuses the discovery mechanisms. The amendments to Rule 26 under consideration are intended to provide substantial incentives for the elimination of significant portions of the first problem. The 1983 amendments, which provide for sanctions for lawyers and parties, remain central to controlling the latter.

1983 amendments—sanctions

In the late 1970s, criticism that the federal courts had become increasingly mired in congestion, delay, and high litigation costs was frequent. Moreover, these problems were thought to have been partially caused or exacerbated by the Federal Rules, or at the very least, it was assumed the rules could not cope with them. Indeed, by 1983, the criticism had become severe enough to raise questions about the viability of the federal civil justice system and even the continuing worth of the Federal Rules. *See* Martin Louis, *Intercepting and Discouraging Doubtful Litigation: A Golden Anniversary View of Pleadings, Summary Judgment, and Rule 11 Sanctions Under the Federal Rules of Civil Procedure*, 67 N.C.L. Rev. 1023 (1989). The 1983 amendments to the Federal Rules of Civil Procedure, 97 F.R.D. 165 (1983), revitalized Rule 11, and made clear that through Rule 7, Rule 11 applied to motions, Rule 16 provided for substantial changes in pretrial discovery conference rules, including strengthening sanctions, and Rule 26 provided for limiting frequency or the extent of the use of discovery methods and imposing Rule 11-type signing

requirements on discovery requests, responses, and objections. These rules reinjected the court, at least on an *ad hoc* basis, into the pretrial process, with the understanding that abusive discovery would be curbed.

The 1983 amendments, while increasing judicial supervision of discovery, did little to eliminate the adversarial nature of the process. The notion of a self-executing discovery system is predicated in part on the assumption that lawyers share in the belief that a speedy and just adjudication of claims is consonant with their traditional role as an advocate. Addressing the adversarial role of discovery, Wayne D. Brazil, now a United States Magistrate Judge in Northern District of California, [progressing up or down the ladder of success, depending upon one's perspective] observed in ruling on a discovery matter in which more than $40,000 had been expended by counsel on a single discovery dispute which focused solely upon *when* contention interrogatories should be answered by the defendant:

> [The entire process] strikes this court as strong evidence that there has been in this case a major breakdown in what is supposed to be the self-executing system of pretrial discovery. The spirit of Rule 26, as amended in 1983, has been violated. So has the spirit of Rule 1, which declares the purpose of the Federal Rules of Civil Procedure is "to secure the just, speedy, and inexpensive determination of every action." The discovery system depends absolutely on good faith and common sense from counsel. The courts, sorely pressed by demands to try cases promptly and to rule thoughtfully on potentially case dispositive motions, simply do not have the resources to police closely the operation of the discovery process. The whole system of civil adjudication would be ground to a virtual halt if the courts were forced to intervene in even a modest percentage of the discovery transactions. That fact should impose on counsel an acute sense of responsibility about how they handle discovery matters. They should strive to be cooperative, practical and sensible, and should turn to the courts (or take positions that force others to turn to the courts) only in extraordinary situations that implicate truly significant interests.

In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 332-33 (N.D. Cal. 1985). Magistrate Judge Brazil, in either his role as an academician or a judicial officer, is not alone in expressing exasperation with certain aspects of the discovery process. Abuse of discovery was identified more often than any other factor as a major cause of delay in civil litigation by both state and federal judges polled in a study conducted in 1987. Approximately 80 percent of all the judges polled said that they had at least some problems with the discovery process. In addition, the overwhelming majority of the 161 federal judges [of 200 interviews] and 503 state judges [of the 800 interviewed] who said that litigation costs are excessive identified discovery practice as the cause. Taylor, *"Judges Identify Causes of Delay in Civil Litigation," Litigation News*, December, 1988, at 3. The journey from complaint to resolution has been said to be a slow trek across the badlands of discovery. The dominance of civil discovery has changed what it means to be a litigator. In some firms, there are what are defined as "litigation associates" who do only document review and interrogatory drafting. Some firms encourage lawyers to specialize and to spend their entire professional lives only taking depositions. The day is fast approaching, if it is not already here, when litigators will not try cases, they will just discover each other to death. Discovery affects how the public and clients see trial lawyers. Few aspects of litigation are more criticized than the foot-thick interrogatories and endless depositions. *Id.*

Proposed amendments to Rule 26

The record of the effectiveness of the 1983 amendments in controlling discovery costs has, according to some critics, been so dismal that an entirely new process is warranted. For instance, the reporter of the Advisory Committee on civil rules, Dean Paul Carrington of the Duke University Law School, recently wrote in a commentary to the draft amendments that "discovery practice has become encumbered with excess motion practice and other papers to such an extent that Rules 26-37 are no longer consonant with the aims of the rules stated in Rule 1. It is the aim of this rule [amended Rule 26] to eliminate much of the excess paper by calling upon professional responsibility of the bar to substitute informal methods of exchanging information for costly formal methods." The prevalent criticism of civil discovery under the Federal Rules is that it is inefficient, wasteful, costly, and subject to precisely the kind of gamesmanship that the drafters of the rules had sought to eliminate. Thus, rather than reducing the poker-hand concept of the adversarial process, the discovery provisions permit a skilled practitioner, particularly in complex cases, to use extended discovery as a means of delay or harassment, or to exhaust the resources of an opponent. The actual or threatened protracted discovery can negatively influence settlement to the disadvantage of one side of the lawsuit. The sanctions authority offered by 1983 amendment to the discovery rules in and of itself cannot remove the adversarial costs from the process. The intent of the proposed amendments to Rule 26 is as important as the specific provision. An unstated goal of the proposed amendments is the development of a professional climate in which lawyers can engage in the informal exchange of relevant information without resorting to a formal discovery device. Critics contend that the mandatory informal disclosure of information is an oxymoron. Witt, *"Grafting Disclosure Onto Discovery," Defense Counsel Journal*, April, 1992, at 155. Such criticism ignores the underlying intent of the Advisory Committee to restructure the relationship between the attorney, the client, and the court in pretrial context.

Proposed Rule 26(a) speaks in terms of required pretrial *disclosures* as distinct from discovery. The rule provides that all parties exchange information regarding potential witnesses, documentary evidence, computation of damages and insurance policies early in the lawsuit. The rule provides for mandatory exchange of detailed written statements of testimony that may be offered at trial through retained experts, as well as the obligation to specifically identify particular evidence. These disclosures are to occur prior to engaging in formal discovery. The goal of the rule is to accelerate the exchange of basic

information and eliminate paperwork involved in requesting such information.

The Rules of Procedure have provided an opportunity for district courts throughout the United States to experiment with local rules that are in harmony with the articulated objectives of Rule 1. The provisions of proposed Rule 26(a) are based in part upon the successful experience of such local rules. Many jurisdictions limit scope and methods of discovery as well as require early disclosure of basic information.

The disclosures required under Rule 26(a) are only a part of the procedural change. The rule will provide for a mandatory meeting between the parties to be held prior to the court's Rule 16 scheduling conference. The purpose of the meeting will be to identify the issues to be litigated. The parties will devise a discovery plan for completing discovery with regard to those issues. This plan will then be available to the parties and the district court at the time the Rule 16 order is entered. The early meeting between the parties to jointly produce a discovery plan is consistent with the Advisory Committee's goal of removing the adversarial process from a critical stage in the evolution of a lawsuit. The disclosures required under Rule 26 are to be made without awaiting any discovery request from counsel representing another party. Significantly, the authority for the production of this information is derived not from the assertion of a claim of one party directed toward the other side, but rather upon the authority of the court itself. The focus of proposed Rule 26(a) is upon the attorneys' obligation to the court under the Federal Rules. As the functional equivalent of court-ordered interrogatories, the early disclosure of information customarily secured through formal discovery is to be a routine matter reducing both the time required to obtain such basic information and the formal process necessary to secure its production.

The rule provides for the identification of all persons who, at the time, may have discoverable information relative to the factual disputes between the parties. All such persons with information must be disclosed whether or not their testimony is in support of the position of the disclosing party. The proposed commentary to the rule provides: "As officers of the court, counsel are expected to disclose the identity of those persons who may be used by them as witnesses or who, if their potential testimony were known, might reasonably be expected to be deposed or called as witnesses by any other parties." The commentary suggests a shift away from the traditional advocate's role of a lawyer in this pretrial stage, placing emphasis on her duty to the court.

The disclosure rule requires the identification of relevant documents by category but does not require the actual production of documents. While description of the documents is required by the rule early in the litigation, the disclosing party does not waive traditional work product immunity or attorney-client privilege claims. In addition, identifying documents under the provisions of proposed Rule 26(b) does not waive the describing party's right to assert that the *production* of the documents is unjustified when the relevance is measured against the cost of production or other burden. Subparagraph (c) of proposed Rule 26 requires disclosure of the calculation of damages and provides for the availability of supporting documents for inspection and copying just as if a Rule 34 request had been made. Subparagraph (d) provides for the early disclosure of insurance policies, including making them available for inspection and copying.

The nature of the information described in proposed Rule 26(a)(1) is precisely the kind of information which has been generated by formal discovery motions in the past. Not surprisingly, the response to formal discovery requests is typically made on the final day such production is required. Normally, the parties have little incentive to meet and discuss the issues of the lawsuit or the process of discovery until a dispute arises. The proposed amendments to Rule 26 are not in and of themselves expected to eliminate the costs of discovery. The rule, together with additional changes to the federal procedural rules will, however, permit the parties to avoid the necessity of formal exchanges at this critical early stage of litigation. The informal discovery process does not relieve any party from complying with the spirit of the discovery rules. The court retains the authority and the obligation to impose sanctions for the negligent or intentional abuse of the discovery process under Rules 26 and 37.

The federal courts are indeed clogged, owing at least in part to the ever-expanding criminal docket. There is delay, justified and unjustified, in the resolution of a civil lawsuit. Nothing in the judicial experience suggests that a return to a more formalized and rigid pleading structure would have any positive impact on the present state of the law. With the progressive changes recommended by the Advisory Committee to Rule 26, another step in the consistent development of the judiciary has been taken. Relieving counsel from the burdens of unnecessary and wasteful confrontations will provide another opportunity for consideration of the merits of litigation with a concomitant reduction of time and money lost. ■

Cumberland Thanks You!

The Cumberland Institute for Continuing Legal Education is indebted to the many Alabama attorneys and judges who contributed their time and expertise as speakers, program chairpersons, planning committee members, moderators, and advisory board members during the 1991-1992 academic year. We gratefully acknowledge the contributions of the following individuals to the success of our CLE programs:

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RECENT DECISIONS

By DAVID B. BYRNE, JR. and WILBUR G. SILBERMAN

SUPREME COURT OF THE UNITED STATES

Sentencing guidelines — gang membership

Dawson v. Delaware, No. 90-6704 (March 9, 1992). Did a jury violate a convicted killer's First Amendment right of association during the sentencing phase of his trial by considering his membership in a racist prison gang as an aggravating factor when sentencing him to the death penalty? The Supreme Court, in an eight-to-one decision, answered yes.

In an opinion authored by Chief Justice Rehnquist, the Supreme Court held that gang membership was not relevant to the crime and had not been proved relevant in determining future dangerousness. "The [gang] evidence in this case cannot be viewed as relevant 'bad' character evidence in its own right," the Chief Justice wrote, adding that membership in the gang "is constitutionally protected." Justice Harry A. Blackmun wrote a concurring opinion and Justice Thomas dissented, "denying that . . . gang membership told the jury anything about [the inmate's] activities, tendencies and traits — his character — ignores reality."

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

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

Is grand jury intended to be level playing field?

United States v. Williams, No 90-1972 (May 4, 1992). May a federal judge dismiss an indictment if prosecutors withheld from the grand jury exculpatory evidence suggesting that the defendant was not guilty? The Supreme Court, in a five-to-four decision, answered no.

In an opinion authored by Justice Scalia, the Court said that the prosecution's failure to disclose "substantially exculpatory evidence" in its possession does not empower a federal judge, under the federal court's supervisory powers, to dismiss an indictment. "Neither justice nor the concept of a fair trial require it."

SUPREME COURT OF THE ALABAMA

Individual voir dire tied to pretrial publicity

Anderson v. State, 26 ABR 2499 (March 27, 1992). The issue in *Anderson* was whether the trial court committed reversible error in denying defense counsel's request to individually question each member of the venire for the purpose of making peremptory strikes after several jurors indicated that they had some knowledge about Anderson's previous convictions.

At Anderson's new trial, the judge asked the venire if any of them had knowlege of the circumstances surrounding the case. They were also given a brief description of the nature of the offense so that they could determine if they had any prior knowledge. In response, several of the jurors responded that they had heard something about the case, but that they would be able to base their decision only on the evidence heard from the witness stand. Defense counsel then requested the court's permission to question each juror individually to determine the extent of his or her knowledge of the case. The trial judge denied the request for individual voir dire and counsel objected.

The supreme court, speaking through Justice Kennedy, affirmed the conviction. In *Brown v. State*, 571 So.2d 345, 350 (Ala.Crim.App. 1990), judgment vacated *Alabama v. Brown*, _____ U.S _____,111 S.Ct. 2791, 115 L.Ed.2d 966 (1991), the request for individual voir dire was granted only because defense counsel offered proof of the extensive nature of the pretrial publicity. However, in *Anderson*, defense counsel failed to present proof that the pretrial publicity about the defendant's case was so extensive as to warrant individual voir dire under the teaching of *Brown, supra*.

Voir dire in capital murder case

Brown v. State, 26 ABR 2607 (April 10, 1992). Brown was found guilty of murder and sentenced to death. The court of criminal appeals reversed the judgment of conviction, holding that the trial court's voir dire examination of the jury was not sufficient to allow it to make an independent determination as to whether the juror's impartiality had been destroyed by the extensive pretrial publicity in the case. The supreme court granted the state's petition for writ of certiorari, but later quashed the writ as improvidently granted. *Brown v. State*, 571 So.2d 353 (Ala. 1990).

Subsequently, the state filed a petition for writ of certiorari to the United State Supreme Court. The petition was granted and the supreme court vacated the judgment and remanded the case to

the court of criminal appeals for reconsideration in light of *Mu'Min v. Virginia*, 500 U.S.____, 111 S.Ct. 1899 (1991).

In *Mu'Min*, the supreme court held that the procedure used by the trial judge (in questioning the venire members in panels of four) did not violate the defendant's Sixth Amendment right to an impartial jury. On remand, the court of criminal appeals again reversed the conviction distinguishing the *Brown* case from *Mu'Min*. The Supreme Court of Alabama, in an opinion by Chief Justice Hornsby, reversed the court of criminal appeals.

Prior to voir dire, the defendant moved for individual voir dire based on the pretrial publicity of the case. The trial judge denied the motion, but during voir dire asked the following question: "Now, ladies and gentlemen, does anyone know anything about this case, either what you have heard, read, know firsthand, news media, anybody know anything about this case?" Sixty-three percent of the venire responded in the affirmative. The trial judge immediately asked the entire venire if any member felt that what he had read, heard or talked about would interfere with his or her ability to render a fair and impartial verdict. No juror responded. The trial judge denied the defendant's request for individual voir dire stating that he believed that individual voir dire was necessary only if a prospective juror equivocated as to whether he or she could be fair and impartial.

In affirming the trial court, the Supreme Court of Alabama observed that the U.S. Supreme Court in *Mu'Min* held that a trial judge only needed to examine the extent of exposure to the pretrial publicity in order to determine whether a juror could act impartially. Justice Hornsby observed that the method of determining impartiality is not critical. "The crucial requirement is that the trial court get enough information to make a meaningful determination of juror impartiality."

Capital murder — mitigating factors submitted during sentencing phase

Henderson v. State, 26 ABR 2670 (April 10, 1992). Henderson was convicted of capital murder and sentenced to death by electrocution. The Supreme Court of Alabama reversed the court of criminal appeals because of the intermediate appellate court's erroneous belief that there was only one mitigating factor when, in fact, three existed. The supreme court determined that the error in the sentencing procedure and in the review by the court of criminal appeals adversely affected the substantial rights of the defendant. Specifically, the court of criminal appeals had affirmed the trial court's finding that Henderson's low I.Q. of 68 did not constitute a non-statutory mitigating circumstance.

In a per curiam opinion, the supreme court held that the defendant's mental retardation was, in fact, an appropriate mitigating factor, relying upon *Lockett v. Ohio*, 438 U.S. 586, 606-08 (1978). In *Lockett, supra*, the supreme court held that the Eighth and Fourteenth amendments require that the sentencer not be precluded from considering as a mitigating factor any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.

BANKRUPTCY

Durrett distinguished — 11th Circuit holds that receiving less than 70 percent of fair market value at foreclosure sale not necessarily fraudulent transfer under Section 548

Grissom v. Johnson, 955 F.2d 1440, 22 B.C.D., 1178 (11th Cir. March 17, 1992). Debtor's residence was sold at foreclosure for less than 70 percent of its fair market value. After the debtor filed a Chapter 13, the court determined that the Chapter 13 trustee could avoid the sale because there had not been reasonably equivalent value. The Eleventh Circuit reversed and set out certain guidelines. First, the court said that sales prices obtained at regularly conducted, non-collusive lawful foreclosure sales are presumed to be for reasonable equivalent value, but that this is rebuttable. The court held that there should be evidence as to the value of the property, the nature and type of advertising, the number of serious bidders at the sale, and any other competitive conditions surrounding the sale. It was emphasized that the proper way to determine reasonable equivalency under §548 is to conduct a thorough inquiry of all relevant facts and circumstances.

Comment: There are serious questions of burden of proof raised by the opinion. The appellate court said that the Bankruptcy Court misstated the relevant burden of proof as being upon the mortgagee, and, yet, two paragraphs later, it seemed to place the burden on the mortgagee to prove that the sale met all requirements. In an abundance of caution, it is recommended that the lender should be prepared to offer its own proof.

Educational loan to private institution non-dischargeable, same as if made to public institution; however, this does not entitle school to withhold transcript of student's accomplishments

Andrews University v. Merchant, ____F.2d____, 22 B.C.D. 1169 (6th Cir. March 11, 1992). Andrews University guaranteed a full recourse bank loan made for paying a portion of debtor's educational expenses. The debtor received help from the school for her other expenses, for which she gave a note to Andrews University. After graduation, she defaulted on both loans, and Andrews, after paying the bank loan, become the sole creditor for the debtor's educational expenses. After filing a Chapter 7 case, the debtor requested a copy of her educational transcript, which the school refused. The debtor claimed violation of the automatic stay. The University defended on the ground that §523(a)(8) excepts from discharge both the loan and credit expenses. The bankrupty and district courts rejected the defendant's argument, and also held that §362(a) was violated in withholding the transcript. The Sixth Circuit reversed on the issue of dischargeability in holding that §523(a)(8) does apply because the loans were funded at least in part by a non-profit institution, and further that credit extensions evidenced by

promissory notes payable to the University constituted loans, and accordingly are non-dischargeable. However, in affirming, the court stated that the automatic stay was violated by withholding the transcript, that there is no exception to the automatic stay, and that it applies until the case is closed, dismissed or a discharge is granted or denied.

Ninth Circuit rules that bankruptcy court may not waive fees under 28 U.S.C. Section 1915 as it is not court of United States

In re Perroton, ____ F.2d ____, 22 B.C.D. §1152 (9th Cir. March 9, 1992). In this case, the debtor requested permission to appeal the bankruptcy court's decision *in forma pauperis*. The Ninth B.A.P. said a bankruptcy court does not have authority to waive prepayment of filing fees. On appeal, the Ninth Circuit, in a detailed opinion which examined the statutory language, held that a bankruptcy court cannot waive commencement fees under Title 28 §1915(a) because it is not a "court of the United States", under the definition in Title 28 U.S.C. §451.

Bankruptcy court should not sanction creditor for violation of automatic stay, if violation arises out of state domestic law case involving alimony maintenance, or support, unless it clearly would not become enmeshed in state court case

Carver v. Carver, 60 U.S. LW 2577; 954 F.2d 1573 (11th Cir. March 6, 1992). The ex-husband, who was directed to pay a residence mortgage by the state court, filed Chapter 13. He failed to list his ex-wife as a creditor, and also failed to pay the mortgage, thus precipitating foreclosure proceedings. The ex-wife, being unaware of the bankruptcy, then filed contempt action in family court. After the citation was filed, she learned of the bankruptcy but her attorney, nonetheless, argued that the bankruptcy stay does not apply to alimony and support. The family court gave the ex-husband six months' jail sentence.

The ex-husband obtained a loan from his new father-in-law to obtain jail release, and then sued in bankruptcy for willful violation of the stay. The Eleventh Circuit held that the bankruptcy court in this instance should have abstained because of (1) strong state interest in domestic relation matters; (2) state courts are competent to handle such cases; (3) congested federal court dockets; and (4) the possibility of incompatible state and federal court decrees where the state has continued supervision of the case. In the concluding paragraph, Judge Fay did say that where the bankruptcy court would not be required to delve too deeply into family law, the court need not abstain from fashioning a remedy for violation of the automatic stay, but that in this case, it should have abstained.

Comment: This case may throw an added burden on both bankruptcy and family courts, as well as the trial lawyers, in attempting to determine whether the facts justify non-compliance with the automatic stay. ■

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By this honor roll, the Alabama State Bar Volunteer Lawyers Program recognizes the following attorneys for their participation in organized pro bono projects (for civil cases) across the state. We extend thanks to these outstanding attorneys who, through their generous assistance, cooperation and dedication, are making access to justice a reality for hundreds of disadvantaged Alabamians.

(This honor roll reflects our efforts to gather names of attorneys who participate in organized pro bono projects for civil cases only, or who serve on boards or committees whose primary focus is legal aid to the poor. We also salute all lawyers in Alabama who donate their time providing free legal assistance to low-income persons. However, if we have omitted the name of any attorney who participates in an organized program, please send that name and address to: Melinda M. Waters, Director, Alabama State Bar Volunteer Lawyers Program, P.O. Box 671, Montgomery, Alabama 36101.)

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John F. Janecky, Mobile
Debbie L. Jared, Elba
Raymond E. Johnson, Montgomery
Raymond L. Johnson, Jr., Birmingham
V.G. Johnston, III, Mobile
Watkins C. Johnston, Montgomery
Andrew M. Jones, Mobile
Nancy S. Jones, Tuscaloosa
Patrick A. Jones, Huntsville
William G. Jones, III, Mobile
Willie Mays Jones, Tuscaloosa
Richard M. Jordan, Montgomery
Samuel Kaufman, Montgomery
Marilyn S. Kavanaugh, Huntsville
Thomas G. Keith, Huntsville
Patricia K. Kelly, Montgomery
John W. Kelly, III, Selma
Joshua O. Kelly, III, Huntsville
D. Kevan Kelly, Tuscaloosa
Stephen M. Kennamer, Scottsboro
Christopher Kern, Mobile
Frederick W. Killion, Jr., Mobile
William A. Kimbrough, Mobile
Mark E. King, Tuscaloosa
Christopher Knight, Mobile
Michael D. Knight, Mobile
Dennis J. Knizley, Mobile
T. Cowin Knowles, Montgomery
Julian H. Kohn, Jr., Montgomery
Thomas O. Kotouc, Montgomery
Joseph O. Kulakowski, Mobile
Louis H. Lackey, Jr., Tuscaloosa
Gilbert B. Laden, Mobile
Archie C. Lamb, Jr., Birmingham
Joe N. Lampley, Huntsville
Charles D. Langford, Montgomery
Alexander F. Lankford, III, Mobile
Forrest S. Latta, Mobile
Robin G. Laurie, Montgomery
Charles M. Law, Montgomery
Richard A. Lawrence, Montgomery
Thomas S. Lawson, Jr., Montgomery
John Leach, Mobile
Barry C. Leavell, Montgomery
Michael E. Lee, Huntsville
Palmer S. Lehman, Montgomery
Francis E. Leon, Jr., Mobile
F. Martin Lester, Jr., Mobile
Joseph J. Levin, Montgomery
Loyd H. Little, Jr., Huntsville
Dorothy Wells Littleton, Montgomery
Alan C. Livingston, Dothan
Frank M. Long, Montgomery
J. Paul Lowery, Montgomery
John G. Lowther, Birmingham
David V. Lucas, Huntsville
Merceria L. Ludgood, Montgomery
Champ Lyons, Jr., Mobile
Peter S. Mackey, Mobile
Bruce MacPherson, Montgomery
Arthur J. Madden, III, Mobile
R. Bruce Maddox, Montgomery
J. Michael Manasco, Montgomery
Thomas G. Mancuso, Montgomery
Howard A. Mandell, Montgomery
Ted Lee Mann, Birmingham
Glenn F. Manning, Huntsville
A. Richard Maples, Mobile
Michael E. Mark, Mobile
L.A. Marsal, Mobile
Lisa A. Marsh, Mobile
James L. Martin, Eufaula
Barbara Martin, Tuscaloosa
Steven A. Martino, Mobile
R. Edward Massey, Jr., Mobile
W. Troy Massey, Montgomery
Joseph M. Matranga, Mobile
Gregory B. McAtee, Mobile
Donald C. McCabe, Daleville
Robert H. McCaleb, Huntsville
Daniel L. McCleave, Mobile
Jacqueline M. McConaha, Mobile

PRO BONO HONOR ROLL

Thomas G. McCroskey, Mobile
John E. McCulley, Northport
Henri B. McDaniel, Huntsville
J. Mark McDaniel, Huntsville
William H. McDermott, Mobile
J. Fairley McDonald, III, Montgomery
James H. McDonald, Jr., Mobile
Karen R. McDonald, Mobile
Matthew C. McDonald, Mobile
Edward B. McDonough, Jr., Mobile
R. David McDowell, Huntsville
Michael H. McDuffie, Montgomery
J. Douglas McElvy, Tuscaloosa
John H. McEniry, III, Birmingham
Walter E. McGowan, Tuskegee
C. Michael McInnish, Montgomery
Lester L. McIntyre, Mobile
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Jeffery W. McKinney, Huntsville
Charles N. McKnight, Mobile
C. Knox McLaney, III, Montgomery
James H. McLemore, Montgomery
Lucie U. McLemore, Montgomery
Susan A. McMillan, Huntsville
Judith L. McMillin, Mobile
L. Thompson McMurtrie, Huntsville
Earl D. McNeal, Huntsville
Rose A. McPhillips, Mobile
Sandra K. Meadows, Mobile
Tyrone C. Means, Montgomery
Von G. Memory, Montgomery
Thomas J. Methvin, Montgomery
Barbara C. Miller, Huntsville
Charles P. Miller, Montgomery
Edwina E. Miller, Tuscaloosa
J. Robert Miller, Huntsville
James David Mills, Mobile
J. Floyd Minor, Montgomery
Anne W. Mitchell, Birmingham
J. Wilson Mitchell, Florence
Phillip D. Mitchell, II, Tuscaloosa
Tamara O. Mitchell, Mobile
James D. Moffatt, Athens
Stephen R. Monk, Birmingham
James E. Moore, Mobile
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William B. Moore, Jr., Montgomery
Larry C. Moorer, Mobile
H. Dean Mooty, Jr., Montgomery
Randall C. Morgan, Montgomery
R. Stan Morris, Birmingham
F. Chadwick Morriss, Montgomery
Henry T. Morrissette, Mobile
Roger S. Morrow, Montgomery
W. Alexander Moseley, Mobile
K. Elise Moss, Huntsville
Barbara W. Mountain, Tuscaloosa
Robert H. Mudd, Jr., Mobile
John Russell Munger, Jr., Huntsville
Randle A. Myers, Montgomery
P. Russell Myles, Mobile
G. Dennis Nabors, Montgomery
M. Roland Nachman, Jr., Montgomery
George A. Nassany, Jr., Tuscaloosa
Stephen M. NeSmith, Montgomery
Mark A. Newell, Mobile
James B. Newman, Mobile
Richard Newton, Tuscaloosa
John A. Nichols, Luverne
John R. Nix, Mobile
Bert P. Noojin, Orange Beach
Ray O. Noojin, Jr., Birmingham
Keith B. Norman, Montgomery
Tabor R. Novak, Jr., Montgomery
A. Stewart O'Bannon, III, Florence
Dennis E. O'Dell, Huntsville
Caine O'Rear, III, Mobile
David R. Pace, Huntsville
Herman D. Padgett, Mobile
Delano J. Palughi, Mobile
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Edward B. Parker, II, Montgomery
Thomas E. Parker, Jr., Huntsville
Thomas F. Parker, IV, Montgomery
Charles N. Parnell, III, Montgomery
Jo Karen Parr, Montgomery
W. Cameron Parsons, Tuscaloosa
Donald C. Partridge, Mobile
Nicki E. Patterson, Mobile
Gerald R. Paulk, Scottsboro
C. Tom Payne, Montgomery
Gary C. Pears, Birmingham
Joel H. Pearson, Montgomery
David R. Peeler, Mobile
John W. Pemberton, Montgomery
Simeon F. Penton, II, Montgomery
R. Jeffrey Perloff, Mobile
R. John Perry, Mobile
T. Dudley Perry, Jr., Montgomery
Christopher E. Peters, Mobile
C. Mark Peterson, Birmingham
Abram L. Philips, Jr., Mobile
Brenda J. Pierce, Mobile
Joseph G. Pierce, Tuscaloosa
Dennis R. Pierson, Montgomery
J. Jerry Pilgrim, Mobile
Craig S. Pittman, Mobile
Harry S. Pond, IV, Mobile
Jimmy B. Pool, Montgomery
Joseph N. Poole, III, Montgomery
Melissa A. Posey, Mobile
Arthur T. Powell, III, Mobile
Joseph M. Powers, Mobile
Robert F. Powers, Montgomery
Susan B. Prather, Phenix City
Alvin T. Prestwood, Montgomery
Walter J. Price, Jr., Huntsville
David W. Proctor, Birmingham
James D. Pruett, Birmingham
Larry O. Putt, Birmingham
A. Richard Pyne, Montgomery
Richard L. Pyper, Montgomery
David R. Quittmeyer, Mobile
Larry L. Raby, Montgomery
Sandra L. Rander, Mobile
A. Clay Rankin, III, Mobile
Royce A. Ray, III, Mobile
Randolph P. Reaves, Montgomery
James Rebarchak, Mobile
F. Grey Redditt, Jr., Mobile
Mark L. Redditt, Mobile
Elna L. Reese, Montgomery
Kelly D. Reese, Mobile
W. Boyd Reeves, Mobile
Harry M. Renfroe, Jr., Tuscaloosa
J. Donald Reynolds, Montgomery
Robert D. Reynolds, Montgomery
Laura Rice, Tuscaloosa
Robert S. Richard, Montgomery
Harry H. Riddick, Mobile
Frank W. Riggs, Montgomery
J. Burruss Riis, Mobile
Jeffrey L. Riley, Tuscaloosa
James V. Roberts, Jr., Mobile
Jasper B. Roberts, Montgomery
Carter A. Robinson, Huntsville
Sandra G. Robinson, Mobile
Charles S. Rodenhauser, Huntsville
William C. Roedder, Jr., Mobile
Albert L. Roemer, Montgomery
Scott A. Rogers, Huntsville
Roger S. Roland, Tuscaloosa
J. Wesley Romine, Jr., Montgomery
Jay M. Ross, Mobile
James B. Rossler, Mobile
Beth M. Rouse, Mobile
Dale Y. Rouse, Birmingham
Robert H. Rouse, Mobile
Benjamen T. Rowe, Mobile
Bonnie C. Rowe, Huntsville
S. Dagnal Rowe, Huntsville
L. Thomas Ryan, Jr., Huntsville
Jack B. Sabatini, Huntsville
M. Wayne Sabel, Montgomery
William H. Saliba, Mobile
P. Mark Sandlin, Huntsville
Newman C. Sankey, Montgomery
Ernestine S. Sapp, Tuskegee
Robert E. Sasser, Montgomery
Richard S. Sawyer, Mobile
Ellsworth P. Scales, III, Mobile
David Schoen, Montgomery
Janet E. Schroeder-Grant, Montgomery
John B. Scott, Jr., Montgomery

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Everett B. Searcy, Montgomery
James D. Sears, Tuscaloosa
Solomon S. Seay, Jr., Montgomery
Robert D. Segall, Montgomery
William B. Sellers, Montgomery
John W. Sharbrough, III, Mobile
Clifford C. Sharpe, Mobile
R. Cooper Shattuck, Tuscaloosa
C. Winston Sheehan, Jr., Montgomery
Tazewell T. Shepard, III, Huntsville
Bob Sherling, Mobile
H. Floyd Sherrod, Jr., Florence
Richard E. Shields, Mobile
Kenneth J. Shinbaum, Montgomery
Richard D. Shinbaum, Montgomery
Robert M. Shipman, Huntsville
Terry A. Sides, Montogmery
G. Griffin Sikes, Jr., Montgomery
Curtis M. Simpson, Florence
Dana Jill Simpson, Rainsville
Larry U. Sims, Mobile
Joan B. Singleton, Birmingham
Thomas H. Siniard, Huntsville
William E. Skinner, Montgomery
Clarence M. Small, Jr., Birmingham
Donna W. Smalley, Tuscaloosa
Alfred F. Smith, Jr., Birmingham
Andrew A. Smith, Tuscaloosa
Anita T. Smith, Mobile
Frances H. Smith, Montgomery
Frankie Fields Smith, Mobile
Hugh V. Smith, Jr., Montgomery
J. Timothy Smith, Birmingham
James D. Smith, Tuscaloosa
Maury D. Smith, Montgomery
Robert H. Smith, Mobile
Robert Sellers Smith, Huntsville
Stuart E. Smith, Huntsville
Susanna B. Smith, Tuscaloosa
Justice D. Smyth, III, Montgomery
A. Rankin Sneed, Huntsville
Joel L. Sogol, Tuscaloosa
Kyra L. Sparks, Mobile
Robert M. Spence, Tuscaloosa
S. Alexander Spoon, Montgomery
Curtis H. Springer, Montgomery
Jack W. Sprinkle, Mobile
Alyce M. Spruell, Tuscaloosa
Mary Ann Stackhouse, Gadsden
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Frank J. Stakely, Montgomery
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K. Scott Stapp, Tuscaloosa
William H. Starnes, Huntsville
Joseph D. Steadman, Mobile
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T. Jeffers Stein, Mobile
Robert E. Steiner, III, Montgomery
Dennis Steverson, Tuscaloosa
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Donald J. Stewart, Mobile
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Allen R. Stoner, Montgomery
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Courtney W. Tarver, Montgomery
M. Franklin Tatom, II, Huntsville
Ann E. Taylor, Mobile
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Barry E. Teague, Montgomery
Rowena Teague, Birmingham
Don T. Terrell, Huntsville
Joseph D. Thetford, Mobile
Frank L. Thiemonge, III, Montgomery
Richard L. Thiry, Mobile
Kenneth L. Thomas, Montgomery
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James D. Turner, Tuscaloosa
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Robert B. Tuten, Huntsville
John M. Tyson, Sr., Mobile
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Kenneth W. Underwood, Jr., Montgomery
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Pete J. Vallas, Mobile
Joan Van Almen, Montgomery
Elizabeth C. Vickers-Addison, Montgomery
Sandra Lois Vinik, Birmingham
Charles H. Volz, III, Montgomery
Al L. Vreeland, Tuscaloosa
George H. Wakefield, Jr., Montgomery
Charlie D. Waldrep, Birmingham
George M. Walker, Mobile
David B. Walston, Birmingham
Donna L. Ward, Mobile
Joseph W. Warren, Montgomery
Melinda M. Waters, Montgomery
Michael D. Waters, Montgomery
Slade G. Watson, Mobile
W. Clark Watson, Birmingham
William W. Watts, III, Mobile
Kendrick E. Webb, Montgomery
Donald B. Weir, Jr., Huntsville
John W. Weiss, Montgomery
Sanford D. Weiss, Montgomery
Stanley Weissman, Montgomery
Helen C. Wells, Montgomery
Judson W. Wells, Mobile
Stephanie W. Werdehoff, Huntsville
Michael R. White, Montgomery
J. Paul Whitehurst, Tuscaloosa
Kitty H. Whitehurst, Tuscaloosa
Calvin M. Whitesell, Jr., Montgomery
J. George Whitfield, Jr., Mobile
Bryant A. Whitmire, Jr., Birmingham
Eugene P. Whitt, Jr., Montgomery
Mark D. Wilkerson, Montgomery
Bruce E. Williams, Huntsville
George K. Williams, Mobile
James E. Williams, Montgomery
Jesse M. Williams, III, Montgomery
Richard R. Williams, Mobile
Rick A. Williams, Montgomery
Ronnie L. Williams, Mobile
J. McGowin Williamson, Greenville
Warren J. Williamson, Jr., Greenville
Jack W. Willis, Montgomery
Sue A. Willis, Birmingham
Charles S. Willoughby, Mobile
E. Calhoun Wilson, Tuscaloosa
Duane A. Wilson, Tuscaloosa
E. Hamilton Wilson, Jr., Montgomery
Frank M. Wilson, Montgomery
James E. Wilson, Jr., Montgomery
Lauren Wilson-Carr, Tuscaloosa
Stephen M. Wilson, Huntsville
Terry P. Wilson, Montgomery
Phyliss C. Wimberly, Tuscaloosa
Stephen R. Windom, Mobile
Patricia Winston-Hall, Mobile
Ronald W. Wise, Montgomery
Michael K. Wisner, Huntsville
Mark C. Wolfe, Mobile
J. Jerry Wood, Montgomery
Oliver Frederick Wood, Hamilton
Tom Wright, Montgomery
D. Coleman Yarbrough, Montgomery
Edwin L. Yates, Montgomery
Suzanne Oztekin Yayman, Birmingham
Michael A. Youngpeter, Mobile
Alex W. Zoghby, Mobile

C·L·E OPPORTUNITIES

The following programs have been approved by the Alabama Mandatory Continuing Legal Education Commission for CLE credit. For information regarding other available approved programs, contact Diane Weldon, administrative assistant for programs, at (205) 269-1515, and a complete CLE calendar will be mailed to you.

JULY

10 Friday
CHILD CUSTODY & VISITATION IN ALABAMA
Huntsville, Marriott
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

15 Wednesday
ADVANCED REAL ESTATE IN ALABAMA
Mobile
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

16-18
ANNUAL MEETING
Birmingham, Wynfrey Hotel
Alabama State Bar
(205) 269-1515

20-24
ESTATE PLANNING
Dallas, Westin Hotel
Southwestern Legal Foundation, Inc.
(214) 690-2377

21 Tuesday
CONSTRUCTION LAW IN ALABAMA
Birmingham, Parliament House
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-852

22 Wednesday
CONSTRUCTION LAW IN ALABAMA
Huntsville, Marriott
Credits: 6.0 Cost: $128
(715) 835-8525

23-24
BASIC WILL DRAFTING
New York, PLI Training Center
Practising Law Institute
Credits: 10.0
(212) 765-5700

28 Tuesday
BAD FAITH LITIGATION IN ALABAMA
Mobile, Ramada Resort & Conference Center
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

29 Wednesday
BAD FAITH LITIGATION IN ALABAMA
Montgomery, Governor's House Hotel
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

AUGUST

3 Monday
HEALTH LAW UPDATE
Destin, Sandestin Beach Resort
Center for Health Services Continuing Education
Credits: 6.0 Cost: $275
(205) 934-1672

12 Wednesday
ESTATE PLANNING AND PROBATE
Birmingham
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

19 Wednesday
PLANNING OPPORTUNITIES WITH LIVING TRUSTS IN ALABAMA
Mobile
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

20 Thursday
PLANNING OPPORTUNITIES WITH LIVING TRUSTS IN ALABAMA
Montgomery
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

25 Tuesday
BAD FAITH LITIGATION IN ALABAMA
Birmingham
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

26 Wednesday
BAD FAITH LITIGATION IN ALABAMA
Huntsville
National Business Institute, Inc.
Credits: 6.0 Cost: $128
(715) 835-8525

28 Friday
WORKER'S COMPENSATION
Birmingham, Sheraton Civic Center
Cumberland Institute for CLE
Credits: 6.0
(205) 870-2865

SEPTEMBER

10 Thursday

FAMILY LAW
Montgomery
Alabama Bar Institute for CLE
Credits: 6.0
(205) 348-6230

11 Friday

FAMILY LAW
Birmingham
Alabama Bar Institute for CLE
Credits: 6.0
(205) 348-6230

TAX STRATEGIES FOR THE 1990S
Montgomery
Tax Reduction Institute Seminars, Inc.
Credits: 6.5 Cost: $295
(206) 776-7262

NEGOTIATION & SETTLEMENT IN THE 1990S
Birmingham, Wynfrey Hotel
Cumberland Institute for CLE
Credits: 6.0
(205) 870-2865

17-18

THE ADA AND ITS EFFECT ON WORKER'S COMPENSATION IN ALABAMA
Birmingham, Wynfrey Hotel
Alabama Committee on Worker's Compensation
Credits: 6.3 Cost: $75
(205) 521-8304

18 Friday

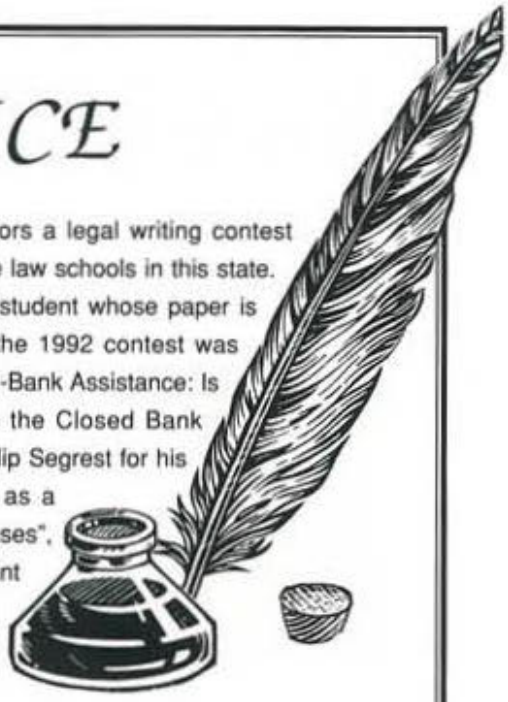
BANKRUPTCY: THE BASICS
Birmingham, Wynfrey Hotel
Cumberland Institute for CLE
Credits: 6.0
(205) 870-2865

25 Friday

ELDER LAW
Birmingham, Wynfrey Hotel
Cumberland Institute for CLE
Credits: 6.0
(205) 870-2865

NOTICE

The Alabama Lawyer annually sponsors a legal writing contest open to law students attending any of the law schools in this state. A cash prize of $250 is awarded to the student whose paper is judged to be the best. The winner for the 1992 contest was Anthony M. Hoffman for his article, "Open-Bank Assistance: Is It a Useful and Effective Alternative to the Closed Bank Transaction". The first runner-up was Philip Segrest for his manuscript, "Universal Malice Murder as a Lesser Included Offense of Capital Offenses", and the second runner-up was Twala Grant for her paper, "Alabama's Fair Dismissal Act — A Model of Legislative Ambiguity".



NOTICE

The Alabama State Bar has been requested by Harry Rosenberg, United States Attorney for the Eastern District of Louisiana, to publish the foregoing notice to members of the Alabama State Bar:

United States of America v. Gregory Lenn Brown
United States District Court
Eastern District of Louisiana
Criminal Number 91-445 "F"

Please take notice that Gregory Lenn Brown, also known as G. Lenn Brown, doing business as Personal Injury Trial Lawyers Association, U.S.A. Incorporated; PITLA U.S.A., Inc.; PITLA; Promark, Inc.; Promark, Ltd; Promark Communications, Inc.; Bankruptcy Attorney's Trust, Inc.; BAT; Patientlink; DUE/DWI Defense League, Inc.; HealthLink, Inc.; Association of Accounting and Tax Professionals; AATP; and LawLink, Inc., has pleaded guilty to various crimes arising out of a fraudulent investment scheme. Brown has admitted that he and his associates persuaded various individuals and professional firms to invest in referral services which suggested that members of the public retain subscriber professionals through the use of commercial advertising and toll-free telephone numbers. Brown has agreed to forfeit his assets; these assets will be used to repay (in part) the losses of victims of his schemes.

If you believe you are a victim of Brown's crimes and you want to know how to apply for partial repayment of your losses, you must furnish your name and full mailing address to:

Mary Jane Lattie
Victim Witness Coordinator
United States Attorney's Office
Hale Boggs Federal Building
501 Magazine Street, 2nd Floor
New Orleans, Louisiana 70130

Responses must be in writing and received by the United States Attorney's Office no later than September 1, 1992 in order to be considered. If your response is timely, further information will be mailed to you.

Harry Rosenberg
United States Attorney

. M.E.M.O.R.I.A.L.S .

Robert Bernard Wilkins

Whereas, Robert B. Wilkins, a distinguished member of this association, died on February 20, 1992; and

Whereas, the Mobile Bar Association desires to remember his name and recognize his significant contributions to our profession and to this community;

Be it known that Robert Bernard Wilkins was born on the 24th day of August 1922. A lifelong resident of Mobile, Wilkins graduated from Murphy High School and earned his undergraduate degree at Spring Hill College. He received his law degree from the University of Alabama and was a charter member of the National Association of Bond Lawyers.

Wilkins, a veteran of World War II, served in combat in the Pacific Theater aboard the U.S.S. New Jersey. He served in the Alabama House of Representatives from 1950 to 1954, and was named attorney for the Alabama State Docks in 1959.

Robert Wilkins was active in civic and community affairs throughout his career. He served as attorney for the Industrial Development Board of the City of Mobile during the 1970s, and was a guiding influence on the development of what is now the Theodore Industrial Park. He was a former member of the board of directors of the Mobile Area Chamber of Commerce, the board of directors of the Mobile County Chapter of the American Red Cross, and a committee chairman for Downtown Mobile Unlimited. He was also on the Council of Regents and former president of the Alumni Board of Visitors of Spring Hill College, which honored him in 1985 with its O'Leary Award for his community service.

A member of St. Ignatius Catholic Church, Wilkins was actively involved as a layman in the Catholic Archdiocese of Mobile. He served as financial advisor to the Priests' Retirement Board of the Catholic Archdiocese of Mobile.

Wilkins was also a great enthusiast of baseball, beginning with the old Mobile Bear organization. He was an active field sportsman.

It has been said of Wilkins, "He was truly a gentleman who could walk with kings or paupers and treat them both the same."

He leaves surviving, his wife, Monica Damrich Wilkins of Mobile; four sons, Robert B. Wilkins, Jr. of Alexandria, Virginia; David Damrich Wilkins of Tuscaloosa; and Thomas Bartley Wilkins and Carleton Richard Wilkins, both of Mobile; and two grandchildren.

He is also survived by three brothers, J. Carleton Wilkins, Jr., J. Vernon Wilkins and Marion F. Wilkins, all of Mobile; three sisters, Marie Martin, Ruth O'Connor and Regina Morris, all of Mobile; and nieces, nephews and other relatives.

Now, therefore, be it resolved by the Mobile Bar Association, in regular meeting duly assembled, that the life of Robert B. Wilkins was that of an able lawyer possessed of dignity and integrity; and that his family, his many friends and the legal profession have suffered a great loss with his death.

– Jerry A. McDowell
President
Mobile Bar Association

Please Help Us ...

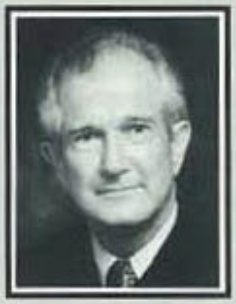
We have no way of knowing when one of our membership is deceased unless we are notified. Do not wait for someone else to do it; if you know of the death of one of our members, please let us know.

PLEASE NOTE!

Alabama State Bar members: Whenever you are requested to furnish your state bar identification number (pleadings filed with courts, etc.), please refer to your Social Security number, as that is what we keep on record identifying you.

. M.E.M.O.R.I.A.L.S .

Judge Robert Proctor Bradley



The death of Judge Robert P. Bradley on April 27, 1992 removed from our midst the prototype for a true public servant. His public career spanned over four decades of service to the State of Alabama. He was admitted to the Alabama State Bar in 1951.

Following graduation from the University of Alabama School of Law, he served the State of Alabama as an assistant attorney general, legal advisor to Governor John Patterson and interim prison commissioner during the administration of Governor Albert Brewer. He served as judge of the Alabama Court of Civil Appeals for over 19 years. He also served as chair of the Alabama Judicial Inquiry Commission.

Judge Bradley was one of the three charter members appointed to the Alabama Court of Civil Appeals in December 1969 following its creation by the Alabama Legislature. He served as its presiding judge from January 1987 until he assumed active retired status in January 1989. He remained an active retired judge until the time of his death.

Judge Bradley was born in Belleville, Alabama on November 3, 1923. He was the eldest son of J. Proctor Bradley and Hulit Ellis Bradley. Prior to his moving to Montgomery, he resided in Conecuh, Baldwin and Escambia counties.

Bob Bradley (he never introduced himself in any other fashion) was respected for his absolute integrity, strong work ethic, dedication to public service and quality work. He was admired and respected for his sound judgment and willingness to assist others. His character was unassuming and above reproach, while his friendship will be remembered as both deep and full.

Judge Bradley was a Navy veteran of World War II. He was graduated from the National Judicial College at the University of Nevada and the Appellate Judges School of New York University. He served as an instructor at the Alabama State Trooper Academy in Selma, Alabama. Judge Bradley was a member of the Alabama State Bar and the Montgomery County Bar Association. He was the recipient of the Alabama State Bar Award of Merit in 1981. Active in the Episcopal Church, he served as a lay reader in Montgomery's Church of the Holy Comforter.

Surviving Judge Bradley is his wife of 39 years, the former Peggy Oliver, and one son, Robert Keith Bradley of Harvest, Alabama. Mrs. Bradley retired from state service after having served Justices Pelham J. Merrill and Samuel A. Beatty as their confidential assistant.

The memorial fund at the Church of the Holy Comforter in Montgomery was the suggested beneficiary of those wishing to honor Judge Bradley's memory.

– RTH

ROBERT P. BRADLEY
Montgomery
Admitted: 1951
Died: April 27, 1992

ROBERT FOSTER ETHEREDGE
Tuscaloosa
Admitted: 1949
Died: April 11, 1992

CAROL JOAN MILLICAN
Rainsville
Admitted: 1976
Died: May 9, 1992

RUFUS ARTHUR BURNS
Birmingham
Admitted: 1945
Died: April 7, 1992

JOHN WAGNER FINNELL
Tuscaloosa
Admitted: 1947
Died: March 27, 1992

DONALD L. NEWSOM
Birmingham
Admitted: 1952
Died: May 12, 1992

CLASSIFIED NOTICES

RATES: Members: 2 free listings per bar member per calendar year EXCEPT for "position wanted" or "position offered" listings — $35 per insertion of 50 words or less, $.50 per additional word; **Nonmembers:** $35 per insertion of 50 words or less, $.50 per additional word. Classified copy and payment must be received according to the following publishing schedule: **May '92 issue**—deadline March 31, 1992; **July '92 Issue**—deadline May 29, 1992. No deadline extensions will be made.

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